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ENGINEERS AND ENVIRONMENTAL CONSULTANTS



Dealing with Integrity Issues within the South African Consulting Sector



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Introduction

- **Integrity** - *Steadfast adherence to a strict moral or ethical code.*
- **Corruption** - *The act of corrupting or of impairing integrity, virtue, or moral principle; the state of being corrupted or debased;*
- **Collusion** - *A secret agreement for an illegal purpose; conspiracy or cartel*
- **Bribery** - *the making of illegal payment to persons in official positions as a means of influencing their decisions*

Do we have a problem?

- **41% of South Africans** *perceive substantial corruption exists, that needs to be urgently addressed.*
- **39% of South Africans** *perceive substantial corruption exists but is not a pressing issue.*
- **62% of business sector** *consider it a serious issue in doing business*
- **32.6%** *of corruption due to **Bribery***
- **29.7%** *from **Corruption** in general*
- **12.0%** *of corruption due to **Fraud***

Country Corruption Assessment Report
April 2003



Understanding the BIMS alternative

Client – Consultant Relationships

- **Typical examples**

Consultants & Contractors Actions

- **Pre-qualification and tender**
- **Project execution**
- **Dispute resolution**

Client – Consultant relationship

Client or Potential client pressures

- Being requested to provide political party donations “as we keep you going by giving you so much work”
- Being asked outright for computers and equipment in exchange for jobs
- Demanding to be entertained very frequently at big expense (normally in an innocent manner)
- Being requested to give kids of clients jobs, or bursaries or pay for holidays for clients and their kids and friends
- Hunting trips and other trips.
- Expensive work trips overseas!

The BIMS alternative

- Record and keep transparent all donations.
- Limit entertainment costs (Public Sector R350 max)
- Demand approval from person’ supervisor.
- Report transgressors to statutory or representative bodies.



Pre-qualification & tender

Price fixing or cartel arrangements

- Shortlisted Consultants agree to share the market.
- Each “competes” on all major tenders.
- They agree in advance who will win.
- The selected winner shares his price prior to submission.
- The others submit tenders with higher prices.
- The winning price higher than in a competitive bid.
- Each consultant gets an opportunity to win.

The BIMS alternative

- Keep the Client’s interests primary and inform them and their funders if approached.
- Audit and review internal pricing procedures and prices.
- Take full legal recourse against internal and external transgressors.

Pre-qualification & tender

Bribery

- A Consultant appoints an agent who agrees to assist in getting the Consultant appointed.
- They sign a formal agreement with deliverables.
- The Consultant realizes the commission far exceeds the accepted price for such deliverables.
- The Consultant suspects the “extra” money will be used to buy influence.
- The Consultant includes the commission in his price.
- He wins the tender and pays the commission.
- The agent pays the project owner a bribe.

The BIMS alternative

- Scrutinize all appointments / payments for agents independently.
- Declare these in your bid.
- Inform funding agencies of unscrupulous agents.

Pre-qualification & tender

Manipulation of design

- A Consultant is appointed to design and prepare a tender for a project.
- A contractor bribes the Consultant to provide a design which only he can fully comply with.
- The Consultant provides an appropriate design.
- The contractor submits a price that is higher than a competitive tender.
- The price is higher than several of the other tenders.
- The Consultant recommends that the only compliant contractor be appointed despite not being the cheapest.

The BIMS alternative

- Proprietary solutions must be motivated or avoided
- Inform the client of the Contractors intent to bribe.

Project execution

False work certificates

- A Contractor is appointed to remove unsuitable material from site and to replace it with suitable material.
- The Contractor will be paid by volume.
- The client appoints a Consultant to determine the volumes and assess the material qualities.
- The Contracts manager agrees with the Consultant to falsely certify extra volumes not actually moved.
- In return, the Contractor will pay the Consultant 30% of the payment received for the false volumes

The BIMS alternative

- Inform the client of the Contractors intent to commit fraud.
- Report the Contractor to appropriate institutions representative bodies (SAFCEC).

Project execution

Concealing defects

- A Contractor accidentally omits some structural steel from the foundation works.
- Neither the Engineer nor the Client realises the omission.
- The Contractor decides not to disclose the omission.
- The Contractor invoices the Client in full (including the omitted structural steel).

The BIMS alternative

- If supervision is partially or not specified under the Engineers responsibility, highlight risks to the client.
- If full responsibility is given ensure that quality procedures eliminate risk of non-detection of omissions.
- Do not allow approval of payment for unverified items.
- Independent quality audits

Project execution

Extortion by project owner's representative

- A contractor is due the final payment on a project.
- The Project owner's representative demands payment to authorise the release of the final payment.
- The contractor makes the payment into the representative's personal account.
- The project owner's representative authorises the release of payment.

The BIMS alternative

- Project owner to have whistleblower system.
- Employment of representatives to included adherence to BIMS.
- Immediate dismissal and legal recourse.

Dispute resolution

Submission of incorrect or misleading contract claims

- A claim for an extension of time that is greater than the actual delay caused, or where the cause is untrue;
- A loss and expense claim which is overstated;
- A claim for payment for the supply of work, equipment or materials which are defective, or are not in accordance with the specification;
- A claim containing false or misleading statements regarding scope of work, quality, timing, or limitations of liability.

The BIMS alternative

- If supervision is partially or not specified under the Engineers responsibility, highlight risks to the client.
- If full responsibility is given ensure that quality procedures eliminate risk of non-detection of omissions.
- Do not allow approval of payment for unverified items.
- Independent quality audits

Dispute resolution

Supply of false expert evidence

In dispute resolution proceedings, a claimant appoints an expert.

- The expert's initial report is unsupportive of the claimant's case.
- The claimant offers additional payment to the expert to amend his report to make it favorable to the claimant's case.
- The expert believes the amended view to be arguable, but presents it in the report as his most favored view.
- The expert witness gives oral evidence in accordance with it.
- The Claim is successful

The BIMS alternative

- Reject approach and terminate appointment.
- Institute proceedings to ensure payment for work done.
- Report claimant to Project owner or funder.
- Blacklist claimant internally

What can we do?

COMMITMENT TO CESA POLICY

- *Member firms will neither initiate nor accede to corrupt practices*
- *Accepting or giving a bribe constitutes unethical behavior*
- *Acceptance or payment of remuneration not to affect impartial judgment*
- *Awareness and respect of local laws and client guidelines*
- *Disciplinary Action against firm's own transgressors.*
- *Disciplinary Action against firms who transgress.*
- *Reporting all cases to CESA*
- *Support and encourage use of CESA Whistleblower Schemes*



Thank You



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