

ÉTICA & COMPLIANCE

NA CONSTRUÇÃO

— **CBIC** —



**ETHICS & COMPLIANCE
IN CIVIL CONSTRUCTION:
THE STRENGTHENING OF
INTERNAL CONTROL AND
IMPROVING REGULATORY
FRAMEWORKS & PRACTICES**

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CREDITS

José Carlos Martins

President, CBIC

Ana Cláudia Gomes

President, Social Action and Citizenship Forum – FASC/CBIC

Carlos Eduardo de Lima Jorge

President, Public Work Committee – COP/CBIC

Doca de Oliveira

Communication Coordinator – CBIC

Geórgia Grace

Project Coordinator – CBIC

Cláudia Rodrigues

Project Management – FASC/CBIC

Denise Soares

Project Management – COP/CBIC

Gadioli Branding e Comunicação

Graphic Design

ÉTICA & COMPLIANCE NA CONSTRUÇÃO CIVIL: FORTALECIMENTO DO CONTROLE INTERNO E MELHORIA DOS MARCOS REGULATÓRIOS & PRÁTICAS

Brasília-DF, June 2016

Brazilian Chamber of the Construction Industry – CBIC SQN-
01- Block 01 - Building E - Central Park Building 13th floor ZIP
70.711-903-Brasília/DF
Phone: (61) 3327-1013

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STRENGTHENING THE INTERNAL CONTROL

Brazil is experiencing a decisive moment for its future, in which society is demanding new paradigms in commercial relations between the government and private actors. This scenario requires a firm positioning of the construction and the real estate market, towards the fortification of paradigms that traditionally guided its operations and in the reinforcement of mechanisms that modernize the tools of internal control of entities and companies in the sector. The care and respect for ethics in business are not new in construction and in the Brazilian real estate market, a positioning that has been reaffirmed at every opportunity- especially now. Acts like those leading to the formulation of the Code of Ethics for the sector in 1992; the contribution that led to the creation of Law 8.666; the concepts presented in the Carta de Belo Horizonte, which denounced and rejected the deviations practiced in the Collor government; and their daily actions puts the CBIC and its members in a leading position in this field. More than reaffirming its commitment to ethics, introducing and im-

proving their compliance mechanisms, the civil construction wants to contribute to the improvement of regulatory frameworks and practices that today govern the relationship between the public and private sectors

For this, the Câmara Brasileira da Indústria da Construção (Brazilian Chamber of Construction Industry-CBIC) together with the National SESI, makes available to the industry and society the **Guia de Ética e Compliance Para Instituições e Empresas da Construção Civil,(Guide to Ethics and Compliance for Institutions and Civil Construction Companies)**, a guidance document aimed at the prevention that brings the most modern premises and compliance initiatives, aligned with international standards and serving as a reference and a suggestion so that entities of this sector and associated companies subsidize their own compliance policies. With guidelines that indicate the best competitive practices, and in the business relationship with the government and other actors, the volume is composed of:

ETHICS REFERENTIAL GUIDE

Guides and clarifies the premises for the formulation of a Code of Ethics, in order to favor the adoption of formal documents in this field.

COMPLIANCE AND POLITICAL REPRESENTATION GUIDE

Guides and clarifies the assumptions and care that should guide the relationship of entities and private companies with the public sector, with a focus on transparency and legitimacy of the institutional and commercial dialogue.

CODE OF CONDUCT FOR COMPETITIVE CONSTRUCTION

Guides and clarifies the assumptions and precautions that most guide most modern and effective initiatives for competitive practice, focusing on transparency and free competition.

COMPANIES CORRUPTION RISK ASSESSMENT MANUAL

Guides and informs about compliance and the various existing frameworks in this field, including International, indicating the necessary measures to establish an effective internal control policy to assess and prevent risks of the practice of deviations or corruption.

IMPLEMENTATION OF COMPLIANCE PROGRAMS IN BUSINESS - WHY AND HOW

WHY?

To prevent crisis, manage the company's reputation and be better supported if problems occur.

LEGAL FRAMEWORKS

- Law 12846 (anti-corruption)
- Decree 8420/15
- CBIC code of ethics

ALERT CHARACTERISTICS

- Lack of planning and vision with emphasis on the short-term
- Lack of ethics management policies

REQUIREMENTS FOR ETHICS MANAGEMENT

- Commitment of the company top management
- A program that reaches all employees and can be extended to include others
- Risk Identification
- Training
- Internal control
- Provision for partnerships with government regulatory agencies and entities of the civil society

GENERAL STEPS

- Define the organization's values
- Creation of an ethics management structure
- Creation of internal manual of conduct
- Disseminate them among employees and third parties
- Giving the example while in leadership
- Instituting a formal compliance program (implementation of a conduct manual)

COMPLIANCE STRUCTURE

- Map the business environment and identify risks
- Direct and supervise the organization's members
- Develop trainings
- Establish channels for an internal ombudsman
- Receive complaints and answer questions

ELEMENTS OF A CODE OF CONDUCT

- Organizational values
- Enforcement clauses
- Instructions on how to communicate situations to the appropriate channels
- Answers to frequently asked questions
- Commitment and adherence Agreement

RISK ASSESSMENT

- Establish the process
- Identify risk
- Classify the inherent risk
- Identify and classify the mitigation controls
- Calculate the residual risk
- Develop action plan

PLAN OF ACTION

- Establish lines of communication and the reception of complaints
- Communicate and train employees
- Effectively address any complaints
- Monitor and audit the program (eventually by external consultants)
- Periodically review the program



IMPROVEMENT OF REGULATORY FRAMEWORKS AND PRACTICES

In addition to proving useful for modernizing the management of organizations and companies, the Câmara Brasileira da Indústria da Construção (Brazilian Chamber of Construction Industry-CBIC) presents a set of proposals to improve the regulatory frameworks in force, to prevent the risk of the practice of deviations and corruption, a framework that complements the discussion led by segments of the Judiciary and Legislative with the common aim of promoting the transparency and the

highest standards of free and broad business competition. Besides participating in the reflection of how to make supervision and punishment of deviations more effective, the civil construction sector wants to collaborate in the effort to prevent it from happening. Thus, taking advantage of the experience and the knowledge produced in the studies that guided the production of the guide, the CBIC has 12 points whose confrontation and correction can prevent the registration deviations. They are:

TENDERING

RISK 1

Projects: The absence of complete projects in public bids has given margin to unlawful procedures that rely on inaccurate budgets and consequential additives or project revisions, subjectively approved and without transparency.

Proposal: Create mechanisms to cancel tenders that started without complete Engineering projects, punishing the responsible public officials.

RISK 2

Works Clustering: The definition of the object to be tendered must take into account the possibility of subdivision in the largest possible number of lots, technically and economically feasible, under the penalty of concentrating the market in a few companies.

Proposal: Create a mechanism that requires the government to disclose in public notices the technical and economic reasons explaining the fractioning - or not - of the object of the bid.

RISK 3

Excessive Demands: The practice of defining certificates for past experience in the tech-

nical field with values or quantities that are excessive, as well as the certification of higher financial indexes to the regular or average values, eliminating large quantities of companies of the processes, companies that are able to execute the proposed Project.

Proposal: To create mechanisms able to avoid the excessive demands in public notices, with penalties for the responsible when this occurs.

RISK 4

Environmental Licenses: The current regulation regarding bidding does not condition the development of the bidding process or formalize the administrative contract or the issuing of the Service Order to the issuing of the environmental licensing. Without such definition, these licenses are left for a later moment, during the execution of the contract, creating commitment risks with their own workability of the venture according to the criteria mentioned previously.

Proposal: To institute a procedure that defines how to get the previous environmental license as a requirement for the publication of the public notice and attainment of the environmental installation license constituted as a requirement for the issuing of the Service Order.

RISK 5

Contract Guarantee: The public administration must always search for a better price. The exclusive option for the lowest price has consistently led to the risk of contract nonperformance and / or excessive requests for the reshaping of the economic and financial contracts equation. The unenforceability of the proposed prices was allowed by law only as a relative assumption, assuming in all cases the rebuttal by the bidder. There are countless cases of companies that greatly reduced the prices of their proposals, with the expectation of being winners of the event and adjust those prices subsequently through artifice.

Proposal: To create procedures in order to require Complementary Guarantee Presen-

tations to bids whose prices are lower than the 90% of the reference price published by the contracting public administration.

RISK 6

Responsible Budget: More often than not, there are cases where the reference budget of the contracting authority has an incomplete project basis or it is done in order to adjust to the budget available for the project, even if known to be insufficient. The result of these procedures is the "adjustments" made after the bid, usually carried out in a non-transparent way.

Proposal: To create procedures that will hold accountable, at a technical, administrative and civilly level, the one responsible for the preparation of the reference budgets in bids.

CONTRACTS

RISK 7

Balance in the Contractual Management: The existing imbalance between the contractor and the hired company, with regard to the rights and responsibilities in contracts, generates an over empowering of the public administrator, leaving him to decide on issues that should be previously defined in the bidding process. To meet deadlines is an obligation for both the contractor and the hired company. The ones related to inspection, the release of assessments and its corresponding payments. To the hired company, it is expected to perform services that meet the required quality level and delivered within the agreed deadlines.

Proposal: To create mechanisms that define it clearly and beforehand the rights and responsibilities of contractors and hired companies, offering total balance between both parties. The mandatory establishing of the Risk Matrix in bids will contribute to such settings.

RISK 8

Compliance of Contracts: Contracts are perfect legal acts and as such they should clearly define the full set of obligations, rights and responsibilities of both parties. Availability of sufficient resources for the performance of the contracted object, meeting payment deadlines, providing technical and material specifications, having the project's complete description (the plan), are all legal requirements for the contract's validation. Failure to comply with such requirements entails the practice of mismanagement or, as a rule, the search for non-legal solutions to overcome the problems arising.

Proposal: To increase the activities of supervision and control agencies focusing on the following aspects of the execution of the contract: compliance with payment deadlines, meeting the project specifications and the prior existence of a complete designed project.

RISK 9

Resources Availability: The good performance of the work entails respecting the physical and financial schedule approved in the contract. However, experience has shown (especially at the stage of severe fiscal crisis) that the actual availability of funds for the payment of services performed is subject to the public finance management situation. Failing to pay, delaying payments or partially paying are means used by the public administration with no costs entailed, as ways to balance its cash. This practice leads to the pursuit of individual or privileged solutions for some companies.

Proposal: To create mechanisms that will ensure the regular flow of financial resources throughout the execution of the work. If there is a proven need for reviewing the

initial estimate, the government should issue a prior notice, negotiating between the parties a new schedule that will take into account the arising costs.

RISK 10

Transparency regarding the Chronology of Payments: The payments for performed services should strictly follow the chronology of its formal registration. The company that first performed the service is entitled to be paid ahead of the one that performed it later. Not respecting this order has given rise to malpractices, with benefits to some and losses to others.

Proposal: To create proceedings that will compel the accountability of the chronological order of payments, by contracting agency and by revenue source.

TRANSPARENCY

RISK 11

Ombudsman

Proposal: The creation of a direct channel of communication between construction entities, supervision agencies and Prosecution Services to receive complaints related to manipulated bids.

RISK 12

Selection of the Projects by Funds with the State's participation

Proposal: Transparency and accountability of the criteria used on the analysis and selection of projects by the Structural and Investment Funds with the State's participation (the case of the FI-FGTS and the newly created BNDES Structuring Fund).







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