

FCPA TRAINING: HOW TO “RESIST” A SOLICITATION FOR A BRIBE

At most Foreign Corrupt Practices Act (FCPA) compliance and ethics training sessions there is usually one or more archetypal story about “someone I know” who was solicited to pay a bribe or “I heard about someone” from whom a bribe was solicited. Sometimes this solicitation story can be better described as extortion. One question for the FCPA compliance trainer is how to handle such questions and is there an authoritative source to fall back upon for answering such questions?

The answer to the both questions is that there is now a readily accessible tool to use as an authoritative source in responding to such hypothetical questions. In June, during a meeting of the United Nations 10th Principle Working Group in New York, the expanded edition of *Resisting Extortion and Solicitation in International Transactions* (RESIST) was released. It is a practical tool to help companies train employees to respond appropriately to a variety of solicitations. This training tool was jointly developed and released by the International Chamber of Commerce, Transparency International, the United Nations and the World Economic Forum. It was developed with the assistance of international companies which participated in the project.

Iohann Le Frapper, who chaired phase two of the RESIST initiative, stated that “RESIST is the only anti-bribery training toolkit developed by companies for companies and sponsored by the four global anti-corruption initiatives working on the supply side of the issue of fighting corruption,” and it “helps businesses avoid solicitation from the onset” and also provides practical advice on how best to confront demands for bribes when they do arise.

RESIST presents 22 scenarios, the initial seven examples deal with solicitation in the procurement process and were first published in 2009. The 2010 RESIST edition adds another 15 scenarios which discuss solicitation of bribes in the context of project implementation and in day-to-day project operations.

Each scenario presented is designed to respond to two basic questions with real world facts and responses:

- Demand Prevention - How can the company prevent the demand from being made in the first place?
- Demand Response - How should the company react if such a demand is made?

The paper also presents a general list of suggestions which companies can implement to assist in their overall FCPA compliance effort. Embedded within are specific procedures to put these general suggestions into practice, for example the suggestions on Demand Prevention include (1) general company anti-corruption policies; (2) policies on facilitation payments; (3) policies for company representatives who may be exposed to solicitation of bribes; (4) techniques for

dealing with specific risks; (5) due diligence of agents and intermediaries; (6) management of agents and intermediaries; (7) implementation of additional control procedures; (8) transparency in the procurement process; (9) initiation of collective action to improve overall business integrity; and (10) implementation of legal and financial precautions. The suggestions on Demand Response include: (1) the immediate response; (2) internal company reporting; (3) company investigation, including discussion with the relevant persons; (4) disclose to the appropriate external source, if appropriate and ultimately (5) withdrawal from the situation, whether it is the project or the entire country.

The RESIST paper is a very useful tool and one that we recommend for the FCPA compliance specialist. It provides a list of common scenarios, which companies have faced in the past, how to handle them and proposes controls to implement to try and ameliorate the solicitation of bribes and outright extortion.

The full document may be downloaded at

<http://www.iccwbo.org/policy/anticorruption/index.html?id=37568>.

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