Jacki is currently the Senior Manager, Corporate Compliance at Fluor Corporation. Prior to joining Fluor, she was the Chief Compliance Officer at Global Compliance, where she was responsible for the development, administration and management of Global Compliance’s internal ethics and compliance program. In addition, Jacki was actively involved in consulting with Global Compliance’s clients to assist them in building effective compliance programs.

Jacki also spent seven years as the Assistant Director, Global Ethics & Compliance at Dresser, Inc. Jacki was integral in the creation of Dresser’s ethics and compliance program including the design and implementation of a new Code of Conduct and an ethics and compliance training program. She also developed and implemented global ethics and compliance policies and procedures, established a program to manage third parties, and managed internal investigations of reported business misconduct.

Jacki was one of the first in the industry to obtain the certification of Certified Ethics and Compliance Professional (CCEP). She has long been an active leader in the ethics and compliance community and an active member with the Ethics and Compliance Officer Association (ECOA), the Society for Corporate Compliance and Ethics (SCCE), the Practicing Law Institute (PLI) and The Conference Board. Additionally, Jacki is a frequent speaker on ethics and compliance industry speaking agendas and webinars. Her areas of expertise within global ethics and compliance include program design, development, implementation and management.

Fluor Corporation

- One of the world’s leading publicly traded engineering, procurement, construction, maintenance, and project management companies
- #124 in the FORTUNE 500 in 2012
- Over 1,000 projects annually, serving more than 600 clients in 66 different countries
- 43,000 employees executing projects globally
- Offices in 28 countries on 6 continents
- Celebrating 100 years in 2012

Fluor Corporate Headquarters
Dallas, Texas
Ed Petry, Ph.D

Ed joined ELG in 2006 after almost ten years as Executive Director of the Ethics and Compliance Officer Association (ECOA). Ed served on the Advisory Panel to the U.S. Sentencing Commission which was responsible for the 2004 revisions.

Earlier in his career he was a tenured Professor of Ethics and a prolific author and researcher. He was also a member of the Ethics Oversight Committee for the U.S. Olympics.

Ed’s work with the ECOA and the Sentencing Commission helped establish the standards by which corporate ethics and compliance programs are measured.

At Navex Global, Ed applies his more than 25 years of experience to help companies assess their ethics and compliance programs. He has also written many of the most admired codes of conduct for companies worldwide.
Meet the new ethics and compliance powerhouse.

**FLUOR.**

- Pioneers of online compliance training solutions.
- Leading provider of integrated hotline and web-based software & services.
- Fully integrated compliance solutions to identify, monitor and mitigate enterprise risk.
- Leading developer and supplier of policy and procedure management software.

**NAVEX GLOBAL™**

The Ethics and Compliance Experts

**FLUOR.**
Initial Questions

- How many of you share responsibility for both legal and compliance matters?
- Are you involved with strategic planning in your organization?
- Do you have a strong advocate in the General Counsel or other member of the executive team?
- Do you work for a multi-national organization? Domestic only?
- Have you ever been involved in the M&A process before?

E&C in Mergers, Acquisitions and Major Corporate Events

“To avoid being held liable, U.S. companies are encouraged to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives.”

“The Lay Persons Guide to the FCPA”
published by the United States Department of Justice
Not a Hypothetical #1

- A large U.S. based multi-national company is looking into acquiring a construction and contracting business with operations in Brazil and South Korea. During the pre-acquisition due diligence it is revealed that:
  - “illicit payments to government officials were common” in Brazil and South Korean
  - These payments “were portrayed as necessary in the industries in which [the Brazilian acquisitions] conducted business.”
- Prior, during and after the acquisition, the company did not have;
  - A company wide compliance program
  - System of internal controls to prevent misconduct
- Acquired employees did not receive any risk specific training
- $1M in disgorgement and $50M civil penalty

Not a Hypothetical #2

- A large U.S. defense contractor was looking at a merger with a military intelligence and communications company. During the pre-acquisition due diligence it was discovered that:
  - There were potentially several FCPA violations
- Jointly disclosed the matter to the DOJ
- Pushed back closing date of the merger — twice
- Merger collapsed due to the inability to resolve the DOJ investigation
- $13M criminal fine, $15M civil disgorgement penalty
Two recent opinion releases from the DOJ offer guidance on how companies should approach due diligence in both pre and post closing activities:

- Pre-closing activities should focus on:
  - Assessment of financial controls
  - Business locations
  - Use of third parties
  - Prior internal investigations
  - Compliance culture
  - Existence of policies, training and audit practices
  - Hotline reporting systems and action taken
  - Overall compliance structure

- Post-closing activities should focus on:
  - Embedding compliance culture within newly acquired company
  - Training on key risk areas in a timely manner – within the first 30 days
  - Providing clear, concise and understandable polices and procedures
  - Setting the expectations early
  - Providing employees with an avenue to report violations and ask questions
“Due diligence” is a term used for a number of concepts involving either an investigation of a business or person prior to signing a contract, or an act with a certain standard of care. It can be a legal obligation, but the term will more commonly apply to voluntary investigations. A common example of due diligence in various industries is the process through which a potential acquirer evaluates a target company or its assets for acquisition.[1]

In other Words: Understanding who you are doing business with before doing business with them and what potential risks do they pose to your organization.
A Poor Risk Assessment Can Harm You!

Risk Assessment

Ensuring compliance with policies and the law

- Identify:
  - current program components
  - what improvements are needed
  - and set priorities
- Identify training needs
- Provide feedback to leadership
- Determine and allocate resource needs
- Determine how the programs would best integrate together
Risk Assessment

- Help answers these questions:
  - What are the major ethics and compliance risks, including those that are the most likely to occur based on the Company’s history, industry, regions of operation and regulatory environment?
  - What categories of employees are most likely to expose us to these risks?
  - How effective are current mitigation efforts in our primary risk areas?
  - How do we prioritize our mitigation efforts given that we have many risks and finite resources?

Risk Assessment: Methodology and Deliverables

- Risk identification and measurement. Use interviews and benchmarking to achieve these goals:
  - Create an inventory of the ethics, compliance and reputational risks confronting the company, industry and regions. This includes organizational and cultural risk factors.
  - Assess the likelihood and magnitude of each category of risk, and note where there are significant variations by business unit, regions or employee segment.
Risk Assessment: Methodology and Deliverables

- Risk identification and measurement. Use interviews and benchmarking to achieve these goals:
  - Recognize risks that may be underappreciated by the Company
  - Evaluate current mitigation strategies
  - Identify gaps between risks and mitigation strategies
- Recommendations. Provide detailed recommendations for improving risk mitigation.

Risk Assessment

Document Request

- Statement of values, vision, mission
- Code of Conduct
- Policies, Procedures
- Compliance Charter
- Compliance job descriptions and resumes
- Board & Compliance Committee Reports
- Audit Plans and results
- Annual training & communications plan
- Delivered training & communications with completion reports
- Risk Assessment results
- Compliance & HR Survey Results
- Investigation log with disposition and resolution
- Compliance Work & Communication Plans
-Helpline Statistics
- Performance Evaluation Compliance Criteria

Interviews

- Board Members
- Executive Leadership
- Senior Management
- Compliance Officer
- Human Resources Officer
- General Counsel
- Compliance Office Personnel
Oversight, Structure, and Leadership

- Upward flow of information
- Knowledge and understanding
- Appropriate engagement
- Delegation of duties
- Effective structure
- Access
- Tone in the middle

“I report to the Board twice a year on Helpline data and trends. But time is tight, I sometimes get squeezed”
- a CCO

“Ethics? Well, we have a Code and I think Legal would be on top of any issue … but I don’t think it comes up much”
- an all-too typical VP

“It’s uneven. I’m comfortable talking about ethics, but for some others it’s painful to watch”
- a line supervisor

Standards and Policies

- Risk-based standards
- A user-friendly Code
  - Clear, readable, easy to find information, links, relevant and practical
- Emphasis on responsibilities and speaking up
- Easy access to documents

“It really doesn’t apply to me, it’s all about office issues.”
- a shop floor employee

“We’re all set. We redid our Code just after SOX.”
- an overconfident GC

“When I need information I go on-line, I’m used to social media, I text a question to a friend or Google it, I usually need a quick response…our Code’s not like that. It’s in my drawer I think.”
- a 20-something employee
Alignment with HR Practices

- HR/Ethics partnership
- Incentives or pressure that leads employees to cross the line
- Ethics built into promotion criteria and performance reviews
- Consistent discipline
- Exit interviews

“Years ago I trusted HR, but not anymore. You go to them and they go straight to your manager.”
– an employee

“We include ‘lives up to our Values’ as part of our annual review.”
– a VP

“They say they’re working with him. Sure. All I know is he gets promoted when he should have been fired.”
– a frustrated manager

“Why should I ask someone who just left what they think about the ethics and compliance program?”
- a Chief Compliance Officer

Communications and Training

- Risk-based communications and training plans
- Tailored initiatives for the Board, leadership and high-risk employees
- A focus on management responsibilities
- Means to convey lessons learned
- Assessment of training effectiveness

“It’s the same every year and most of it doesn’t apply to me anyhow.”
– an employee

“We received a demo of the on-line training program.”
– a Board member

“We don’t use actual cases, that would raise confidentiality issues.”
– a worried CCO

“We use an annual survey to assess our training and our entire program. Look for yourself. With a few exceptions the scores are excellent and have shown steady improvement.”
– a CCO unprepared for our assessment results
Assessment methodology

- Interviews. Engage Board members and senior leaders in one-on-one discussions that are designed to determine the following:
  - Whether there is sufficient oversight of the program by the Board and/or the Audit Committee.
  - Is the program designed to address the topics that the leaders believe are key risk areas? What keeps them up at night?
  - What specific steps have they as key leaders taken to set the right tone at the top?
  - What are leaders' opinions about the adequacy of the company's compliance efforts?

E&C Inventory and Assessment

<table>
<thead>
<tr>
<th>Program Component</th>
<th>Red</th>
<th>Yellow</th>
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<tbody>
<tr>
<td><strong>Board Oversight</strong></td>
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<tr>
<td>• Is the Board of Directors knowledgeable about the content and operation of the ethics program?</td>
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<tr>
<td>• Does the Board exercise reasonable oversight with respect to the implementation and effectiveness of the program and the organization's culture?</td>
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<tr>
<td>• Is the Board, or a committee thereof, accessible to individuals with day-to-day responsibility for ethics?</td>
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<tr>
<td>• Does the Board or a committee thereof, receive timely reports of significant investigations involving the company or any elected officers?</td>
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### E&C Inventory and Assessment

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<tr>
<td><strong>Risk Assessment</strong></td>
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<tr>
<td>- Does the organization periodically assess the risk of criminal conduct and take appropriate steps to design, implement or modify each ethics program element to reduce the risk of criminal conduct identified through this process?</td>
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<tr>
<td>- Does the organization define high risk areas including the potential for reputational risks and ethics risks?</td>
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<tr>
<td>- Does the organization deploy the respective programs' resources in a risk-sensitive manner?</td>
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<tr>
<td>- If appropriate, does the company have groups within various business units assigned to address unique issues and ethics risks faced by the specific business units?</td>
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### E&C Inventory and Assessment

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<tbody>
<tr>
<td><strong>Structure and Leadership</strong></td>
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<tr>
<td>- Does the organization have a high-level person and a person with day-to-day responsibility assigned to manage the program? Is there a defined relationship to the Board of Directors?</td>
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<tr>
<td>- Does senior leadership understand and exercise their responsibilities to create and maintain a culture that supports compliance with the law and ethical conduct?</td>
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<tr>
<td>- Is there an Ethics Committee or Council of company management that receives information from the high-level person or the person with day-to-day responsibility and also provides practical input into the program?</td>
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<tr>
<td>- If appropriate, are there committees or councils designated to ensure that ethics initiatives are appropriately deployed in regional areas where significant differences in requirements or culture could leave certain risk areas unaddressed?</td>
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<tr>
<td>- Have ethics responsibilities been assigned to line management? Are they knowledgeable about the content and operation of the ethics program?</td>
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### E&C Inventory and Assessment

#### Program Component

**Alignment with HR Practices**

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<th>Question</th>
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<tbody>
<tr>
<td>Do employees believe that others who violate Company standards get promoted to positions of increased authority? Is disciplinary action administered appropriately and consistently for violations of the Code, values, policies or the law?</td>
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<tr>
<td>Are potential new hires and third parties working on behalf of the company screened to prevent hiring individuals who have exhibited behavior contrary to the organization’s values in the past?</td>
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<tr>
<td>Is strong ethical conduct included as part of the promotion criteria for internal promotions – particularly for those being promoted into high-risk or substantial authority positions?</td>
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<tr>
<td>Is there a defined performance evaluation process to ensure that all management is meeting their responsibilities to implement an effective program and to create and maintain a culture that supports compliance with the law and ethical conduct?</td>
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<tr>
<td>Are there any incentives or disincentives built into the goal setting or performance review process that could force employees to make a choice between ethical behavior and meeting organizational or personal objectives?</td>
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**Communications**

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<tr>
<td>Is the Code applicable to directors, officers, employees and third parties and available to employees in their native language?</td>
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<tr>
<td>Does the company have policies and procedures that provide specific guidance to employees – especially in high risk areas? Are the policies and procedures understandable, communicated, and easily accessible?</td>
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<tr>
<td>Does the company have a detailed ethics communication strategy and written plan that incorporates the organization’s risk assessment?</td>
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<tr>
<td>Does the company communicate, to all levels of employees, lessons learned from ethical issues the organization has confronted?</td>
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### E&C Inventory and Assessment

#### Program Component

<table>
<thead>
<tr>
<th>Training</th>
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<tbody>
<tr>
<td>• Does the company have a detailed training plan that defines the training required for various levels and groups of employees as well as contractors and agencies based on the company's risk assessment process?</td>
</tr>
<tr>
<td>• Does the training address key concerns of employees such as fear of retaliation?</td>
</tr>
<tr>
<td>• Are employees who are working in a high-risk environment (as defined by the risk assessment) receiving training in sufficient detail to help them identify problem situations and avoid the violation of company standards and the law?</td>
</tr>
<tr>
<td>• Are managers and supervisors provided additional training on their responsibilities under the ethics program?</td>
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</table>

<table>
<thead>
<tr>
<th>Reporting and Response</th>
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<tbody>
<tr>
<td>• Do employees know about and trust the upward communications channels available to them?</td>
</tr>
<tr>
<td>• Do employees believe they can raise issues to management or the 800 number without fear of retaliation?</td>
</tr>
<tr>
<td>• Does the company have a tracking system for all calls and issues received to ensure that all are handled appropriately and in a timely manner?</td>
</tr>
<tr>
<td>• Does the company explain the reporting system and processes to all employees including information on how the process works?</td>
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<tr>
<td>• Does the company enforce policies prohibiting retaliation or retribution against individuals who report suspected or actual violations of Company policy or the law?</td>
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</table>
E&C Inventory and Assessment

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<tbody>
<tr>
<td><strong>Monitoring and Assessment</strong></td>
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<tr>
<td>• Does the company conduct audits to ensure that Program elements are functioning as intended?</td>
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<tr>
<td>• Does the company perform qualitative assessments (culture) to show that the Program overall is having the desired impact?</td>
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<tr>
<td>• Does the Company utilize exit interviews to ask departing employees if they are aware of any actual or suspected violations of Company policy?</td>
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</table>

E&C Risk Assessment – Interviews

◆ Once you’ve completed the preliminary review and have a general understanding of risk areas and risk mitigation efforts, it is time to involve others more directly in the process.

◆ Assessing risk is a forward-looking exercise. It’s fairly easy to point to known risks, the harder task is to identify what has been missed or ignored to-date as well as what are likely to be issues down the road.

◆ Develop an interview list.
  – At the top of your list should be Leadership
  – Followed by Subject Matter Experts (SMEs) in key areas This may include colleagues in Finance, Human Resources, Health and Safety, Legal, Tax, Purchasing and others.
E&C Risk Assessment – Interviews

- During your interviews, encourage colleagues to ‘blue sky,’ or to ‘think outside the box.’
- For example, begin by asking: “What are the business challenges facing the organization over the next year?” Explain that you do not want them to limit their response to what they may think of as “Ethics matters”, but you want to know “what keeps them up at night?”
- Starting with such questions will broaden the scope of issues under consideration and it will also underscore the link between business planning and Ethics.

E&C Risk Assessment – Interview Responses

<table>
<thead>
<tr>
<th>“What keeps you up at night?”</th>
<th>Possible Ethics-related risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing growth – adding new business partners, acquisitions</td>
<td>Supplier Selection, Fair-Treatment of Suppliers, Gifts and Entertainment, Conflicts of Interest, Confidential Information, Business Intelligence, Pressure on Employees, Fair Competition, Insider Trading</td>
</tr>
<tr>
<td>Managing growth – new employees</td>
<td>Hiring Practices, Recruiting, the Orientation/Discovery Process, Diversity, Favoritism, Conflicts of Interest, Manager’s Role in Conveying and Building an Ethical Culture</td>
</tr>
<tr>
<td>Making the numbers/financial pressures</td>
<td>Accuracy in Financial and Business Records, Employee Work/Life Balance, Use of Company Resources, Protecting Company Assets (when employees take work home), Internal Controls, Pressure on employees</td>
</tr>
<tr>
<td>Product development or new product launch</td>
<td>Intellectual property, Product Safety and Quality, Confidentiality, Advertising and Marketing, Insider Trading</td>
</tr>
<tr>
<td>International/global business development</td>
<td>Cultural and Legal Differences, Managing Diversity, Maintaining Company Identity and Corporate Culture, Bribery and Facilitation Payments, Import/Export Controls, Sexual Harassment, Political Activities</td>
</tr>
</tbody>
</table>
E&C Risk Assessment – Interviews with SMEs

- When meeting with SMEs, focus on their area of expertise and pursue the following lines of questions:
  - Has our business or other companies in our businesses experienced Ethics problems that you are aware of? What has happened to other companies who have had issues in this area?
  - Do external parties (regulators, industry groups, activists) have special or rising concerns in this area? What are current enforcement trends?
  - How many employees have the potential opportunity to cause a violation in this area? What level of employee has the potential to cause a violation?
  - What mitigation steps are in place? What have you seen elsewhere that you believe ought to be considered? Are there current standards or processes that are intended to address these issues but aren’t working?

Why assess culture?

- Legal and regulatory requirements
  - Federal Sentencing Guidelines
  - The Department of Justice’s prosecution guidelines
  - Securities and Exchange Commission

- Evaluate whether the hearts, minds, and conduct of employees are aligned with the company’s mission, goals, values and policies
Culture Assessment - What we look for

- Do employees believe that it is possible to behave ethically and achieve objectives at the Company?
- Is unethical behavior clearly seen as out of bounds?
- Do employees believe they can raise issues to management or the 800 number without fear of retaliation?
- Do employees believe that management will take appropriate action if misconduct is communicated to them?
- Do employees believe that others who violate Company standards are held accountable or are they promoted to positions of increased authority?
- Focus groups. Focus groups enable you to learn about employee perceptions of the organizational culture and program effectiveness.

Reporting and Response

- Understanding what happens when a call is made
- Managers who appreciate their responsibilities
- Clear escalation process
- Timely process and follow-up
- Feedback to risk assessment and training
- TRUST

"For all I know the phone in the next cubicle will ring if I call the Hotline."
- a manager

“You bet I want to know who called and why they didn’t come to me first!”
- an angry supervisor

“How can it be confidential? They’re going to have to investigate it won’t they?”
- a skeptical employee

“I have call data but to tell you the truth I’m not always sure what to make of it.”
- a CCO
Develop Your E&C Plan

- Based on the Risk & Program Assessment, develop your E&C Plan in six key areas:
  - Policies
  - Leadership
  - Communications
  - Training
  - Alignment
  - Monitoring
- In each case, prioritize, be practical, don’t over reach, develop specific, agreed upon actions, responsible persons need to be identified and held accountable, and distribute a completion schedule with key milestones.
- Remember – assessments are not static, be flexible and open – your plan will change and evolve as risks are mitigated and new risks are identified.

M&A – Red Flags

Risk of becoming implicated in corruption charges based on inherited liabilities. Need to seek protection against the acquisition of tainted assets.

- Red Flags include:
  - The target is active in a “high risk” jurisdiction e.g. Russia, China and Africa
  - Operates in an industry which has a history of bribery laws violations (including Energy, Natural Resources and Defense)
  - The target is heavily reliant on licenses, or consents issued by the local government
  - Substantial volumes of the target’s business is conducted through agents.
  - Deficient record and book-keeping practices at target
  - Historic corruption inquiries relating to the Target or Target’s Senior Management

- Mitigation & Solutions include:
  - Extended due diligence to determine undisclosed violations
  - Risk profile for target based on volume of sales & agents
  - Negotiate protections for closing exposure
  - Implement procedures to protect against transfer of tainted assets/personnel
  - Acquisition Representations & Warranties
**Joint Ventures – Red Flags**

“Associated person” could include a joint venture partner (posing additional risk of liability for failure to prevent bribery)

- **Red Flags include:**
  - Reference checks reveal potential JV Partner’s flawed background or reputation
  - JV Partner’s reliance on public officials to secure contracts
  - Unusual contract terms or payment arrangements requested by JV Partner
  - Excessive, false or inadequately described payments requests in JV books & records
  - Unusual or overly generous subcontracting arrangements
  - JV Partner offers preferential access to government officials / government deals

- **Mitigation and Solutions include:**
  - Ensure Senior Manager board role / seat at table of JV Partner
  - Enhanced due diligence of JV Partner to detect undisclosed violations
  - Adequate monitoring regarding the activities carried out within the JV

**Agents, Advisors and Business Consultants – Red Flags**

Agents can pose significant legal, regulatory and reputational risks. Anti-corruption laws impose implicit duty to vet its third parties.

- **Red Flags include:**
  - Agent is located or doing business in a country with high levels of corruption
  - Objections to representations regarding compliance with anti-corruption laws
  - Disproportionate commission/fees/cash payments onshore vs. offshore
  - Fees linked to a percentage of the project cost or value
  - Request for money to be paid into a personal or offshore bank account
  - Services detailed to be provided are vague
  - Agent is a relative or close associate of a present or former official

- **Mitigation and Solutions include:**
  - Justification for use of Agent
  - Fees negotiated according to market rates only
  - “Ability to terminate” for identified breach by Agent
Suppliers – Red Flags

Suppliers which provide services should be scrutinized as business partners. Risk that such companies supply chain is from high risk countries.

- Red Flags include:
  - Previously convicted of, or is alleged to have been involved in illegal conduct
  - Rising expenses for goods and services
  - Increasing purchases from one vendor
  - No division of duties between new vendor approval and authorization for purchasing
  - Contracts written to limit competition
  - Same vendor wins contracts by small margins
  - Contract always goes to the bid received last
  - Splitting one purchase into multiples to avoid the approval process
  - Paying above-market prices for goods or services

- Mitigation and Solutions include:
  - Embed compliance principles and signatory requirements within Internal Procurement process
  - Develop meaningful measurements to analyze trends on vendor wins and vendor concentration
  - Instill mandatory RFP process (e.g. 3 estimates per contract)
  - Activate rights to audit in contracts

Develop Your E&C Plan

Thank you
If you have further questions, please contact:

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Sr. Manager, Corporate Compliance
Fluor
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