



Due Diligence for Business Associates

Due Diligence for Business Associates

To provide the requirements for the preparation and completion of a due diligence investigation of proposed partners and business associations ("Associate"). Associate includes a relationship that arises where Bechtel makes a binding commitment either unilaterally or as the result of complying with local law to use a specific subcontractor or supplier on a project either before or after Bechtel submits a bid. Proper completion and review of the due diligence investigation is fundamental to a thorough assessment of all business Associates and is essential for ensuring compliance with Bechtel's policies.

Appropriate due diligence of the Associate must be performed before a commitment is made. This instruction applies to the diligence investigation conducted for every Associate for which the Joint Associations (Partnering) policy requires approval. The status and results of the due diligence must be reported in the request for approval under policy, together with a statement as to when any outstanding due diligence will be completed.

An investigation will always entail satisfying certain basic minimum requirements. Additional investigative steps must be satisfied in certain situations, such as when the initial review of the Associate raises a "red flag" (e.g., the Associate is owned by a government official or evidence of a prior or current bad reputation) or the project will take place in a jurisdiction that presents a high risk of corrupt actions.

Instructions for completing the required due diligence investigation are set forth in the Due Diligence Guidelines for Business Associates found in Attachment A to this instruction.

Responsibilities

Global Business Unit or Functional Unit

The GBU or Functional Unit team is responsible for conducting the due diligence investigation according to the Ethics and Compliance Due Diligence Guidelines for Business Associates set forth in Attachment A, completing the due diligence questionnaire and file, and making a recommendation and explanation to GBU or Functional management on the acceptability of the Associate. All financial information relating to an Associate that must be reported in the request for approval under the Joint Associations (Partnering) will be obtained through the GBU CFO.

The GBU team sends the completed due diligence questionnaire and file to the Legal Department for permanent filing.

Legal Department

The Legal Department is responsible for assisting the GBU or Functional Unit by conducting research in support of the GBU due diligence team's investigation.

The Legal Department maintains a register of Associates who have already been the subject of a due diligence investigation and a central repository for all completed due diligence questionnaires and due diligence files.

The Legal Department conducts periodic updates of due diligence investigations for Associates on active projects, or who have been designated by a GBU or Functional Unit to be kept up-to-date, and shares the results of such periodic searches and updates with the original GBU or Functional Unit sponsor of the Associate and with any other GBU that has registered an interest in the Associate.

The Legal Department periodically reviews and updates the due diligence guidelines and questionnaire as appropriate.

The Legal Department ensures that this Management Instruction and the Ethics and Due Diligence Guidelines for Business Associates are available to the GBU and Functional Unit due diligence teams on the Legal Department website on myBechtel.

Ethics and compliance due diligence guidelines for business associates

1. Scope of due diligence

These guidelines describe the due diligence investigation that is required to be performed in making a decision on whether or not to form a joint association under the Joint Associations (Partnering) policy. Specific questions regarding a due diligence investigation will be referred to either the Legal Department's Principal Counsel (Compliance) or GBU Principal Counsel.

The due diligence investigation of a potential Associate should be made early in the relationship, usually at the same time that Bechtel and the potential Associate are negotiating the terms of their relationship, and of their joint pursuit of a project.

Deviations from these guidelines must be documented and explained.

2. Subjects of due diligence

The GBU or Functional Unit will make a due diligence investigation as described in these guidelines for every member (an "Associate") of any joint association for which the Joint Associations (Partnering) policy requires approval. The policy requires approval for all project-specific and multi-project joint associations, joint ventures, joint stock companies, teaming agreements, partnerships, exclusive subcontractor relationships¹ and similar joint undertakings of any sort.

It is important to identify the precise legal entity with which we will partner, and if it is a subsidiary, sister company or a special purpose entity of a parent company, you will conduct the appropriate due diligence inquiry for both the Associate and its parent company. The appropriate due diligence related to a parent company may vary dependent upon ownership interests including whether the parent is publicly traded on a recognized major stock exchange (e.g., London, NYSE, NASDAQ), or where a substantial interest in or control over an otherwise publicly traded company is actually held or exercised by a private individual (e.g. through front or shell companies or ownership of "golden" shares).

If one of Bechtel's Associates is itself a joint association, the GBU or Functional Unit will make a due diligence investigation for each member of that second-tier joint association.

The GBU or Functional Unit will also do a due diligence investigation for any agents of Bechtel's Associates who are working on the same project. Use the Business Ethics Due Diligence Guidelines for Agents for this purpose.

The Legal Department will up-date the due diligence investigation, concerning those parts of the due diligence requirements for which it is responsible, for all approved Associates with whom we have an existing project, or who have been designated by a GBU or Functional Unit to be kept up-to-date, at least every two years, and will provide the results of the investigation to each GBU or Functional Unit who has registered an interest in the Associate.

3. Classification of Associates

The extent of the due diligence investigation will vary depending on classification of the Associate.

The GBU or Functional Unit will assign one of three classes (Class A, Class B or Class C) to each Associate after the initial screening. The due diligence required for a Class A Associate represents the minimum investigation that must be performed for all Associates. Additional information is required for Class B and Class C Associates. It is important to note that the class of an Associate may change as a result of information discovered during the due diligence investigation. It is possible that an Associate may satisfy the criteria of more than one Class. In that event the GBU must perform a due diligence investigation that satisfies the more restrictive of the applicable Class obligations.

(a) An Associate will be Class A where

- (i) either
 - Bechtel has worked successfully with the Associate² in the last three years on a project where the Associate provided similar services ("Recently Approved Associate"), or

- the Associate, the client and the project are all located³ in one or more of the following countries:⁴
 - » Australia
 - » Belgium
 - » Canada
 - » France
 - » Germany
 - » Japan
 - » Netherlands
 - » Sweden
 - » Switzerland
 - » United Kingdom
 - » United States; or
 - » With the approval of the Legal Department's Principal Counsel (Compliance) or the Chief Ethics and Compliance Officer, a country listed by Transparency International in its most recent Corruptions Perceptions Index with a rating of at least 80 or above; or
- (ii) The Associate is acting as an exclusive subcontractor or supplier and it will NOT have to interface with any governmental agencies (exclusive of obtaining its own license to do business) for or on behalf of Bechtel in the performance of the project or act in any manner in which it can influence the award of the contract which Bechtel is pursuing (e.g. bring export credit financing or unilaterally satisfy local content requirements).
- (iii) Provided as to (i) and (ii) above, the initial screening review does not give
 - reason for concern about the Associate's character, reputation or ethics, or
 - give raise to any red flags (see Attachment 1) that are not resolved to the satisfaction of the Legal Department's Principal Counsel (Compliance) or the Chief Ethics and Compliance Officer.

(b) An Associate will be a Class B Associate where one (but only one) of the criteria set forth in Section 3 (a) (i) (B) or (ii) above for a Class A Associate is not met or as to any such Associate the criteria in (iii) above is not satisfied.

(c) An Associate will be Class C where it is not Class A or Class B.

4. Due diligence file

It is essential that every step of the due diligence process is recorded in a due diligence file that is kept in an easily accessible place. No matter how thorough our investigation, it is always possible that we will form an association with someone who does not share our values and who pays a bribe or commits some other breach of trust. In that case, we will want to show that we were careful in selecting the Associate and took reasonable steps to determine that the Associate was someone with whom we should feel safe in associating. But the wrongful act of our Associate is often not discovered until years later, perhaps long after the project is finished. Thus, we must be able to find a clear record of our due diligence investigation, even if the people who worked on the project—and their files—are gone.

Thus, all information regarding a due diligence investigation will be maintained in a due diligence file, a copy of which will be kept by the Legal Department's Principal Counsel (Compliance) in the central legal files. The file will contain as applicable:

- Completed Business Associate Identification Form
- Results of screening research
- Copy of any early notification letter
- Results of investigation research
- Record of any inquiries (Class B or Class C)
- Record of initial and final interviews (Class B or Class C)
- Completed due diligence questionnaire
- Completed forms set forth in Attachment 7 or Attachment 8

- Copy of management approval letter

Due diligence step-by-step

The following sections describe each step in the due diligence process.

1 Steps that apply to all classes of Associates

(a) GBU due diligence team

Once a potential Associate is chosen, the senior GBU or Functional Unit officer responsible for the prospect or, where an exclusive subcontractor/supplier is selected after the award of a project is made, the project, should assign a team to conduct the due diligence investigation. The team should include GBU personnel working on the prospect or project, and must include representatives of the GBU Principal Counsel and if a prospect the GBU M&BD group. A Team Leader from the GBU or Functional Unit should be selected who will be responsible for the completion of the due diligence investigation.

(b) Screening

The initial screening is a quick check of the sort of information that might disqualify even companies that we know well. It will also provide the information needed for any early notification that may be required under the Joint Associations (Partnering) policy. These are the steps of the initial screening:

- Identify the specific legal entity that will be the Associate, and parent company (if applicable), so that appropriate data is collected. A sister company or special purpose entity is not the same as a parent company.
- Collect basic publicly available information on the Associate, using readily available sources (e.g., local business contacts, Google), including the Register of Associates, maintained by the Legal Department, who have already been the subject of a due diligence investigation. This will include research on executives/principals of the Associate.
- Complete the Business Associate Identification Form in Attachment 3. The Business Associate Identification Questionnaire Forms in Attachment 7 and Attachment 8 may be used in support of this step. It is recognized that not all of the information requested on the forms may be available at this early stage.
- Check on the local reputation of the Associate for honesty in business that is publicly available (e.g., local contacts, Google for the prior 5 year period) and with Bechtel people who may have information about the Associate's reputation.

Provide the Legal Department as much information about the company (and the parent company if applicable) as is known. This includes the full name (or as much as you know), business address or where you think the company is located (country), what type of business or industry the company is in (E&C, water, power) and the full names of the executives (if known). Also state if you will accept information in other languages (and which languages -- such as Italian, Spanish, etc.) and any certainty/uncertainty on spelling of the company name or the geographic location of its headquarters.

An important item is the spelling of the company's name. Companies may be referenced in an English form (such as Group Wiese) or in the applicable local language (Grupo or Grupo or Wiese de Grupo). The Legal Department will attempt to identify alternate spellings if the full name is not known.

Information that is gathered will be provided to the Legal Department so that it can perform a basic media search and a search of Restricted Party Lists, as described in Attachment 4.

The results of the preliminary research by the GBU or Functional Unit team and the Legal Department, including the resolution of any red flags, will be used to make a recommendation on whether or not to proceed with the Associate, subject to the satisfactory completion of the remaining due diligence investigation requirements.

(c) Recently Approved Associate Screening

The screening process described in Section B 1 (b) above completes the due diligence investigation for any Associate who has been approved within the last two years (as shown in the Register of Associates); provided, however, that if that Associate would have otherwise been a Class B or Class C Associate: (i) a full due diligence investigation as set forth in Section B 1 (f) for that Associate has been completed within the last three years; and (ii) any red flags that were found

were fully resolved as determined by the Legal Department's Principal Counsel (Compliance) or the Chief Ethics and Compliance Officer. If red flags were found that cannot be resolved on available information, the additional investigation for Class A Associates will be conducted.

(d) Early notification

GBU management will prepare an early notification, if it is required under the Joint Associations (Partnering) policy, based on the input of the GBU team.

(e) Investigation

The investigation is a more in-depth evaluation of data for each Associate. These are the steps of the investigation:

- General Background Information for all Classes of Associates
 - The GBU or Functional Unit team has completed the initial screening set forth in Section B 1 (b) above and any gaps have been resolved (e.g. if the full names of the executives/principals were not provided in the initial screening stage, they will be provided now).
 - The GBU or Functional Unit team will complete the due diligence questionnaire. The form of questionnaire is set forth in Attachment 5 (see also the Business Associate Identification Questionnaire Forms in Attachment 7). The questions should be answered to the best of your ability. If a question seeks a "yes" or "no" answer, but cannot be answered in that fashion, please explain why in the "comments" column.
 - The Legal Department will conduct, as further described in Attachment 4, (A) a search of company information through the company's website (if available), (B) a media search, (C) a search of Restricted Party Lists, (D) a search of information on the country (unless it is a Class A country – see section A.3) in which the project and the Associate are located to determine the level of corruption that is perceived to exist in those jurisdictions, and (E) a review local laws concerning improper payments (e.g., FCPA, UK Bribery Act of 2010, etc.).
 - The GBU or Functional Unit team should investigate how business is transacted in the host country, for two principal reasons: to see how likely improper payments are in the country; and to provide input to the Legal Department to see how the local laws concerning improper payments would apply.
 - The GBU or Functional Unit team will review the information available about the Associate and the project (including any experience of Bechtel with the Associate), the results of the research by the Legal Department, and any red flags. If red flags are found in the investigation of a Class A Associate that cannot be resolved between the GBU or Functional Unit and the Chief Ethics and Compliance Officer or the Legal Department's Principal Counsel (Compliance) on available information, the additional investigation for a Class B Associate or Class C Associate, as applicable, will be conducted.

2. Additional steps for Class B Associates:

(a) Inquiries

Check the Associate's reputation with private parties and certain government agencies. Guidance on making the inquiries is given in Attachment 6. Checks can be made with:

- Private parties
 - Companies that we know well, who are already working in the country
- Government agencies (the staff of the Bechtel Washington DC office may be able to facilitate contacts)
 - Commercial officer at US embassy in foreign country
 - Other foreign embassies (e.g. UK or Australian)

b. Interviews

The process for Class B Associates includes at least one interview with a senior officer of the Associate so that the GBU or Functional Unit can access reliable detailed information and will also include an inspection of the Associate's facilities.

With the approval of the GBU President, this interview can be omitted for any Class B Associate, if:

- It is a public company whose securities are traded on one of the following exchanges:



- New York Stock Exchange
- NASDAQ
- London Stock Exchange
- Any other exchange approved by the General Counsel; and
- The initial screening review does not give reason for concern about the Associate's character, reputation or ethics, or raise any red flags that have not been resolved.

3. Additional steps for Class C Associates

Additional steps are added for Class C Associates that are not used for Class A Associates or Class B Associates:

a. Inquiries

In addition to inquiries for a Class B Associate, the GBU or Functional Unit team will check on the local reputation for honesty in business of the Associate with private parties (e.g. independent reputable local business persons). These may include:

- Local lawyers and banks (Corporate Treasury may be consulted for assistance in identifying potential contacts with local banks); and
- Public Accounting Firms (Corporate Finance may be able to contact local offices of international accounting firms for assistance with information about local laws and practices)

b. Interviews

The process for Class C Associates includes two interviews. The initial interview will meet the same criteria as that performed for a Class B Associate. There will also be a personal meeting, face-to-face, between a senior official of Bechtel and the Associate (e.g. Owner or Managing Director). This meeting has two primary purposes: to make sure that the Associate understands that Bechtel is deadly serious about compliance with its policies concerning business practices; and to allow senior Bechtel managers to assess the depth of the Associate's commitment to following our rules. With the approval of the GBU President and the Legal Department's Principal Counsel (Compliance), these interviews can be omitted for any Class C Associate, if:

- It is a public company whose securities are traded on one of the following exchanges:
 - New York Stock Exchange
 - NASDAQ
 - London Stock Exchange
 - Any other exchange approved by the General Counsel; and
- The initial screening review does not give reason for concern about the Associate's character, reputation or ethics, or raise any red flags that have not been resolved.

4. Additional Due Diligence for Exclusive Subcontractors/Suppliers

Where an exclusive subcontractor/supplier will be used in a high risk jurisdiction⁵ and the scope of work of the subcontractor/supplier will include substantial interface with government entities (e.g. customs clearance or obtaining work visas for staff or labor) the Supplemental Subcontractor/Supplier Due Diligence Work Sheet Form (Attachment 8) should also be utilized to memorialize the initial due diligence performed as to that subcontractor/supplier.

5. Summary Comments (Applies to all classes of Associates)

The GBU Counsel and the Legal Department's Principal Counsel (Compliance) shall review the due diligence concerning the Associate prior to the completion of the Due Diligence questionnaire (Attachment 5).

For all classes of Associates, there will be a final summary, based on the answers to all of the questions in the questionnaire (Attachment 5), stating whether or not the person completing the questionnaire believes that Bechtel should consider partnering with this company.⁶ The GBU Principal Counsel or the Legal Department's Principal Counsel (Compliance) shall approve the completed due diligence package as set forth in Attachment 2 prior to the submission of the Policy 304 Management Approval Letter.

6. Due Diligence File Record Retention

Whatever the outcome of the Joint Associations (Partnering) policy process and whether or not any formal agreement with the Associate is in fact entered or whether the prospect or project goes forward, the GBU or Functional Unit team will send a completed due diligence questionnaire (Attachment 5) and a complete due diligence file (section A.4) to the Legal Department's Principal Counsel (Compliance), for permanent filing.

7. Periodic updates

The Legal Department will up-date the due diligence file concerning those parts of the due diligence requirements for which it is responsible as described in Attachment 4, for Associates on active projects, or who have been designated by a GBU or Functional Unit to be kept up-to-date, at least every two years, and sooner if a significant red flag appears. If red flags are found that cannot be resolved on available information, the additional investigation for Class B or C Associates as applicable will be conducted.

In either case, results will be shared with the original GBU sponsor of the Associate, and with any other GBU that has registered an interest in the Associate.

Footnotes

¹ An exclusive subcontractor relationship under the Joint Associations (Partnering) policy includes a relationship that arises where Bechtel makes a binding commitment either unilaterally or as the result of complying with local law to use a specific subcontractor or supplier on a project either before or after Bechtel submits a bid.

² This will include affiliates of an Associate with whom Bechtel has worked successfully, provided there is clear common control.

³ You should treat a subsidiary as located with its parent, unless there is significant local ownership.

⁴ These are the 11 best-rated countries in TI's Bribe Payers Index for 2008, and are also all among the 25 best-rated countries in TI's Corruption Perceptions Index for 2010.

⁵ High risk jurisdictions are defined as those countries with a Transparency International CPI of 50 or less.

⁶ This summary could also be used as a part of the Joint Associations (Partnering) policy MAL.