

AUGUST 2010 GREY MATTERS ETHICS CHALLENGE

tone AT THE TOP

Challenge Question:

You have just been hired by XYZ Corp. as a project manager (“PM”). XYZ Corp. is a small family owned construction company that has been in business for more than 50 years. The company recently created an ethics & compliance program, in part because it engages in federally funded and federal government contracting work. When you were hired you received the company’s Code of Conduct (“Code”) from one of the owner’s sons, John, who tells you that he created the compliance program. You get the feeling during your meeting with John that his father, Dave, is not 100% on board with the program and would prefer to “do things the old way.” After the meeting you attend an exciting and informative Code of Conduct Training where John effectively communicates that he “walks” the “talk”. Dave attended the training but says nothing.

You are assigned to a major government project and as PM are responsible for signing certifications submitted to the government agency. You rely on subordinates to compile the supporting documentation. A subordinate comes to you and says that Dave told him that this month’s payment requisition had to be submitted today or millions of dollars would be delayed and the company would suffer dire financial consequences. Dave also comes to you and asks you to sign the certification so the payment request can be submitted. Dave admits that his request violates the Code, but promises to review the supporting documentation tomorrow and asks you not to call John. Despite Dave’s request, you try to contact John but cannot reach him. Near day’s end, the subordinate comes to you and again requests you sign the certification. You respond, “I don’t have the expertise to review this stuff, so I am depending on you to have it right. On that basis I will sign it.”

Was the PM’s response appropriate?

Response #1

The PM’s response was inappropriate. If the PM’s primary duties include approving payment requisitions, then the PM should have the expertise to understand and review the supporting documentation.

The story mentions that Dave, the owner would review the supporting documentation tomorrow. It also mentions that the Month’s Payment Requisition had to be submitted that day, or the company would suffer dire financial consequences. If this was the case, then why would Dave wait until the next day to review the documentation, instead of immediately? Why would Dave also tell the PM not to contact John, rather than consult with John to see if there is a way to expedite the payment requisition and remain in compliance with the ethics program?

If anything, the PM sets himself up as a scapegoat should the company be audited or investigated, and should the supporting document be incorrect or insufficient, because he approved the payment requisition. It is doubtful that Dave would defend the new PM in those circumstances, because Dave even conceded that submitting the payment requisition was in violation of the Code.

Discussion:

Correct. The PM's response was inappropriate. Aside from the reasoning that the PM should have the expertise to understand and review the supporting documentation, the real crux of the issue is that he signed the payment requisitions without having done the necessary review. It is incorrect, however, to characterize the PM as a "scapegoat." The PM knowingly had the responsibility for signing the requisitions, which are essentially certifications to the government in this case, and he knowingly chose to ignore that responsibility. One key point that should be highlighted is that Dave, the owner of the company, was clearly sending the wrong message to the PM and the subordinates by flagrantly and knowingly disregarding the Code of Ethics. The PM, also in a supervisory role, did not set the right tone from the top.

Response #2

No, the PM's response was not appropriate. The PM needs to take more time to FACT find, before signing anything of questionable ethics, or do so understanding the possible outcome of his actions. We all make decisions and we all need to be held responsible for our decisions, as best as I can tell no gun is being held to the PM's head to sign.

A few comments:

The PM should not assume strictly based on personal feeling what Dave is thinking. Maybe the PM thinks Dave is unethical because of the PM's own feeling about the PM's views on ethics. The PM should stick to FACTS, not feelings, when deciding what others might be thinking. Maybe Dave will be bankrupt without this payment requisition and his mind is preoccupied trying to run a for profit organization. Although Dave might 100% agree with codes of ethics he is human and a bit stressed out that day. It may be better for John to run this part of the business that Dave has been assigned responsible for. I think that the Owner Dave should be able to decide what is right for his son, his business, and I assume his potential choice for future owner, John (son), to do his job. Maybe Dave knows it is most important to train John his potential replacement as owner and there is no other way to do this but by delegation of responsibility with real world, non-theoretical, experience. Also, just because Dave asked John not to call the PM does not mean anything unethical is happening, for the same reasons I stated above. We don't know if perhaps Dave has external personal/medical/other reasons in the delegation of responsibility to reduce stress or something like this. By the PM breaking the chain of command after being asked not to call John direct I think he should be reprimanded, unless the policy said it was OK for the PM to go to John direct. The PM has now disrespected his direct supervisor, and I don't think that is proper, again assuming the ethics plan did not address this otherwise.

As presented this situation gives no FACTS as to what is breaking the Code of Ethics, but strictly based on the fact that Dave admits it breaks the Code means FACTS need to be established prior to the PM signing anything, now, or ever for the company that could put the PM in direct harm's way. Just because a requisition is critical or of the highest priority, in and of itself, does not make it unethical. FACTS need to be attained here if the PM wants to stay under the employ of his current position.

Before the PM makes any rash decisions the PM should schedule a face to face meeting with Dave to find out answers to questions the PM may have with respect to the company's ethics and its compliance. If the PM still thinks that there is questionable ethics in his role within his current organization the PM should start to find a new employer and get out of potentially bad positions.

Discussion:

Correct. The PM's response was inappropriate. This response recognized some key points. Specifically, (1) we all make decisions and we are responsible for those decisions, and (2) before we sign anything we need to, if necessary, do further fact-finding and understand the possible outcome of our actions.

The response, however, incorrectly states no facts were given as to what is breaking the Code of Ethics, but for Dave's admission that it violated the Code. The fact that the PM signed the payment requisition certification without reviewing it was a violation of the Code.

As outlined in the Code:

- ❖ Before submitting a progress payment request **make sure that all of the information is truthful and accurate**, including the status of payments to subcontractors, and that invoiced work has been performed in accordance with the requirements of the contract.
- ❖ Each progress payment request **must be reviewed and approved by the Project Manager before submission to the government.**

As for the possible hypothetical reasons set forth in this response as to what may or may not have been motivating Dave to push for the payment requisition certification, they have no direct bearing on the PM's responsibility and accountability for his or her actions. It is also worth noting that the PM did not break the chain of command by trying to call John. As stated in the challenge scenario, John created the Compliance Program and provided the training on the Code of Conduct. Thus, the PM's action in trying to reach John regarding a potential Code violation was appropriate. Indeed, it was the PM's obligation to do so. Each of us, as Dragados employees, has a duty to promptly report any suspected violations.

Response #3

At the pre-construction meeting for any large state or federal project they establish very strict dates for the billing cycles so that scenarios similar to your challenge cannot happen to them.

For example, the quantities of work performed for the monthly requisition is agreed to be cut off on the third Friday of each month. The engineer gets the last week of the month to review and approve the requisition, and it gets sent to the owner on the first of the month. The owner's engineering department takes 2 weeks to review the requisition and sends it to their accounting on the 15th of the month. If all the owner's checks and balances are approved the actual check is cut around the 1st of the following month.

If a PM cuts the requisition off on the third Wednesday of the month to get some cash in early because his boss's boss is pressuring him, the owner's representative will hand the requisition right back to the PM and tell him to wait until Friday. The boss can pressure the PM all he wants on a large project, but the PM cannot do a thing to get him any money earlier than previously scheduled. These large owners are very shrewd and are not going to let a contractor get ahead of them financially even if it is for only a day or two, they are on to all of the contractor's various games.

Discussion:

While this response raises several valid points, *i.e.*, there are established billing processes and checks and balances for payment requisitions on government contracts, the Grey Matters Challenge scenario was crafted to emphasize the importance of setting the appropriate tone at the top of the company's management structure to ensure that employees of **all levels** understood and followed the company's Code of Ethics. The scenario was in no way advocating or endorsing behavior that contradicts the company's Code of Ethics or which could be interpreted as or perceived to be one of the "contractor's various games." Dragados does not play games in its business dealings and is committed to conducting its business with the utmost **integrity** and **honesty**.

Ethics & Compliance Answer:

In addition to the discussion points above, although a PM (or any supervisor) should be able to rely on his or her subordinates to perform their assignments responsibly and accurately, the comment made by the PM to the subordinate clearly sent the wrong message that doing your job in accordance with the required rules and standards was not necessary. The PM communicated, whether intentionally or not, a lack of accountability and responsibility for his or her actions. The PM also communicated, whether intentionally or not, that he or she was performing his or her duties without integrity and honesty. This is certainly not appropriate conduct for a PM or for any other employee. Every employee has the responsibility to abide by the Code of Conduct and any applicable rules and regulations.

Setting the Tone at the Top is not limited to the highest level of company employees. Ethical leadership applies at all levels and is but only one element of Compliance.

Commit to "Doing the Right Thing"

Obey the regulations and policies that apply to your job

Make compliance awareness part of your job

Put your Code of Conduct in an accessible spot

Lead by example

If in doubt, check it out

Attend training sessions

Notify supervisor of possible wrongdoings

Communicate openly and honestly

Ethics is a part of all activities

Thank you to all those employees who responded to the Challenge.