



NCI BUILDING SYSTEMS, INC.

FOREIGN CORRUPT PRACTICES ACT POLICY STATEMENT AND COMPLIANCE GUIDE

Introduction

The Foreign Corrupt Practices Act as amended by the International Anti-bribery and Fair Competition Act of 1998 (collectively, “FCPA”) was enacted to prohibit bribes and other illegal payments to officials of a foreign government, public international organization or foreign political party by American companies and by foreign persons present in the United States to obtain or retain business or to secure any improper advantage. The FCPA is part of the Securities and Exchange Act of 1934 and contains provisions concerning record keeping and accounting as well as penalties for violations.

Briefly, the accounting provisions require companies to keep detailed books, records and accounts accurately reflecting corporate payments and transactions. They also require such companies to institute and maintain internal accounting control systems that would assure management’s control over the company’s assets. The prohibited payments (anti-bribery) provisions are designed to prohibit U.S. citizens and companies and foreign persons present in the United States from using the mails or any instrumentality of interstate commerce corruptly in furtherance of an offer, payment or promise to pay or give anything of value to officials of a foreign government, public international organization or foreign political party, or (with knowledge or belief that it will go to someone in any such class of recipients) to any person for purposes of influencing official acts (including failures to act) in order to assist in obtaining or retaining business or to secure any improper advantage.

This Policy Statement and Compliance Guide (“Guide”) is not designed to be all encompassing, but it is intended to expand upon the provisions of NCI’s existing Code of Business Conduct and Ethics which address international operations. This Guide clearly sets forth NCI’s policy which prohibits any activity in support of prohibited practices and gives a basic understanding of the law so that situations arising under color of the FCPA’s provisions will be properly identified and the appropriate action taken. If you have any questions about the information contained in this Guide or if you have any questions about a particular business transaction, you should contact the FCPA Compliance Coordinator as discussed below.

Policy Statement

It is the unalterable policy of NCI Building Systems, Inc., its subsidiaries and affiliates, to comply with the provisions of the FCPA (“Policy”).

Compliance with this Policy is mandatory. No employee has the authority to act contrary to the provisions of this Policy or to authorize, direct or condone violations of it by any other employee or by any agent.



No employee shall offer, promise, make, or facilitate the making of, payments to foreign officials or officials of a public international organization as are prohibited by the FCPA.

Any employee who has knowledge of facts or incidents which he or she believes may be in violation of this Policy has an obligation, promptly after learning of such fact or incident, to review the matter with the FCPA Compliance Coordinator.

Any employee who violates this Policy, who orders another to violate this Policy, or who knowingly permits a subordinate to violate this Policy, will be subject to appropriate disciplinary action.

Prohibited Practices

Briefly, the elements of a violation of the FCPA include the following:

1. The use of the mails or any means or instrumentality of interstate commerce (unless the prohibited act is committed outside of the United States by a U.S. person)
2. corruptly in furtherance of
3. an offer, payment promise to pay, or authorization of the payment of anything of value
4. to any foreign official, foreign political party or candidate thereof, any officials of a public international organization, or any intermediary while knowing or believing that any portion of such payment will be offered, given, or promised to such person
5. for the purpose of inducing such person to do any act or make any decision in his official capacity, or use his influence with any foreign government, instrumentality or official thereof, to effect or influence any act or decision of such government, official or instrumentality
6. in order to assist such company or person in obtaining or retaining business for or with, or directing business to, any company or person or to secure any improper advantage.

Definitions

Important concepts embodied in the FCPA include the following:

1. Corrupt Intention. Although the statutory language does not define the term “corruptly”, the legislative history indicates that the word “corruptly” connotes an evil motive or purpose, an intent to wrongly influence the recipient. The offer, payment, promise or gift must be intended to induce the recipient to misuse his official position to the payor’s benefit. This does not require that the official actually misuse his position,



only that the payor intended such a result in consideration for a thing of value given. It is therefore likely that a payment or an offer to pay any amount made for the purpose of influencing official action might be found to be an intent to “corruptly” influence the recipient.

2. Foreign Official. The term “foreign official” means any officer or employee of a foreign government or governmental department, agency, or instrumentality, and includes any person acting in an official capacity on behalf of a governmental entity. “Foreign official” also includes officers of government-owned corporations (such as housing authorities, oil companies, electric utilities), members and candidates of a foreign political party and the officials of certain public international organizations. Any doubts about whether a particular person is a government official should be resolved by assuming that the individual involved is a government official for FCPA purposes.

3. Knowing. This element was introduced primarily to cover payments for illicit purposes to intermediaries or foreign agents who would in turn make payment to foreign officials. A company or person has knowledge of prohibited conduct if the company or person is (a) aware that such person (to whom company resources are given) is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur or (b) has a firm belief that such circumstance exists or that such result is substantially certain to occur. A company or person is also deemed to have knowledge of a particular circumstance if the company is “aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.” Thus, a U.S. corporation can be held liable if its actions indicate a conscious disregard or deliberate ignorance of circumstances that should reasonably alert the company to the high probability of illegality. A U.S. corporation cannot turn a blind eye to suspicious activities of its foreign finders, agents, representatives or partners, hoping not to learn of prohibited activity.

Penalties

Penalties for violating the FCPA can be severe. Corporations are subject to criminal fines of up to \$2,000,000 and civil fines up to \$10,000 per violation. Individuals are subject to criminal fines up to \$100,000, imprisonment for up to five (5) years, or both. Individuals are also subject to civil fines up to \$10,000. Violations of the FCPA are not covered by Directors and Officers Insurance, and individuals cannot be indemnified by their employer for such violations.

NCI takes its obligations to comply with the FCPA seriously. Accordingly, employees who fail to follow NCI’s FCPA policy and procedures, whether expressly stated in this Guide or otherwise, may be subject to adverse employment action, including, where warranted, dismissal.



Permissible Payments

1. Facilitating (“Grease”) Payments. Payments related to the facilitation of routine governmental actions ordinarily and commonly performed by a foreign official, so-called “grease payments,” do not violate the FCPA. Examples of routine administrative tasks include: obtaining licenses, provision of common governmental services, such as telephone service, mail pickup, and processing official papers, such as visa applications or work orders. Routine governmental action does not include any decision to award new business to or continue doing business with a particular company or person.

2. Threats of Violence. A very narrow exception to the FCPA permits payment that would otherwise violate the FCPA if the company is the victim of extortion. The government has interpreted extortion to cover only threats of physical violence. Nevertheless, no payments should be made under threat of violence unless expressly approved by the FCPA Compliance Coordinator. Threats of even severe economic harm are not considered extortion under the FCPA. For instance, a demand by a government tax auditor for a personal payment of cash in order to cause a multi-million dollar tax audit to “go away” would not fit within this exception. Payment of the auditor’s demand would constitute a violation of the FCPA.

3. Lawful Payments. The FCPA permits payments that are “lawful under the written laws and regulations” of the official’s country. The mere absence of written laws prohibiting certain activity does not meet the requirement that the activity be lawful under the written laws. Further, the fact that foreign officials may routinely solicit and receive bribes does not make the payment of such bribes acceptable for NCI.

4. Payment of Reasonable and Bona Fide Expenses. Companies may also pay bona fide and reasonable expenditures (including travel and lodging) incurred by or on behalf of a foreign official if the payments are directly related to either (a) the promotion, demonstration or explanation of products or services or (b) the execution or performance of a contract with a foreign government or agency.

FCPA “Red Flags”

Certain situations arise which may indicate a potential violation of the FCPA. The following “red flags” are merely a representative list of the types of transactions that may suggest a potential violation. Employees should always be alert to signs that a transaction is “wrong.”

1. Payments greater than “normal”. These may be finders’ fees, agents’ fees or payment for goods or services which are more than normal.

2. Third-party payments. Payments of money to persons outside the normal scope of the transaction. This includes payments made to accounts or persons in third countries. There may be reasonable explanations for making third-party payments, but such reasons must be documented and approved before such payments are made.



3. Large bonuses. Although not inherently illegal, large bonuses which are success-based require careful scrutiny since the recipient of such a bonus may be tempted to share a portion of the bonus with a government official if the government official agrees to exercise his influence to secure an order for NCI.

4. Over-invoicing. Invoices which are “padded”, higher than normal, or inadequately documented as to products or services delivered or received compared to prices charged or paid can be a sign that money is being siphoned for inappropriate uses. In addition to an auditing concern, such invoices can be a sign of FCPA problems as well.

5. Lack of standard invoices. Abbreviated, “customized” or non-industry-standard invoices can be an indication of efforts to hide or disguise payments for unauthorized purposes. Insist on standard invoices (and understand what they are), or demand a satisfactory and credible explanation for any variations.

6. Unusual credits granted to new customers. Pre-payments, extensions of credit and cash advances to new and unfamiliar customers must be avoided. Such conditions are sometimes a sign that money must be placed in the hands of local officials before an order can be completed.

7. Checks drawn to “cash”. Any transaction that is not adequately documented as to its true commercial purpose could not only indicate an FCPA problem, it could also subject NCI to additional sanctions for violations of its accounting standards and record-keeping obligations. Carefully, clearly and accurately document all payments to or from NCI customers, finders and other parties with whom NCI does business.

Selecting Local Parties

Finders, customers, agents, business partners, contractors and venture partners (collectively, “local parties”) all can be sources of FCPA problems. The following checklist provides an illustrative, but not exhaustive, list of sources that can be used to evaluate local parties in foreign jurisdictions:

1. Investigate the local party’s reputation within the community.
2. Conduct a background check, ensuring that all such checks are sufficiently documented.
3. Call the country desk at the U.S. State Department and inquire whether they know the local party (if they do, make a note of the conversation).
4. Call the country desk at the U.S. Department of Commerce and make the same inquiry.
5. Call the commercial attaché of the U.S. Embassy in the foreign jurisdiction and make the same inquiry.
6. Call the commercial office of the foreign country’s embassy or consulate in the United States and make the same inquiry.



7. Make sure that the local party has experience in the business activity for which the local party is being compensated.

Once a local party (such as a finder) has been selected, it is important that NCI retain control over that local party's activities involving NCI and its products. Attached as Appendix A to this Guide is sample contract language that should be used whenever the company engages or compensates a local party.

FCPA Red Flags for Local Parties

The following are indicators of potential problems with FCPA compliance by local parties:

1. The local party is doing business in a country which previously has had problems with bribery of its officials (an improper payment question which arises in a country that traditionally has had a bribery problem indicates a high-risk situation).

2. The local party has a reputation for paying bribes.

3. The local party requests excessive fees or commissions.

4. The local requests payment in cash.

5. The local party requests that payments be made to third parties or to bank accounts in countries other than the country in which the local party is acting on NCI's behalf.

6. The local party has a special relationship to the foreign government (if the local party's relatives, partners, owners, principals, or staff members are officials, officers, or representatives of a foreign government or political party or candidates for political office, there may be a potential for an FCPA violation).

7. The local party refuses to provide representations on his conduct (such as whether the agent is aware of the FCPA and has not taken, and will not take, any action that would violate the FCPA).

8. The local party requests payment of exorbitant travel and entertainment expenses or gifts for foreign officials, or requests reimbursement of such expenses not approved in advance.

9. The local party requests that its relationship with NCI be kept secret.

10. The local party misrepresents its background, history or experience in our industry or in the foreign jurisdiction in which it operates.

Designation of FCPA Compliance Coordinator

Compliance with the FCPA demands the attention of each employee who negotiates with, or facilitates payments or transfers of value to, foreign officials. To facilitate compliance, the following procedures will be implemented.



1. Todd R. Moore, Vice President, General Counsel and Corporate Secretary, is designated as the FCPA Compliance Coordinator for NCI. He may be contacted by phone at 281.897.7788, by facsimile at 281.897.7870 or by email at TMoore@ncilp.com. Matthew D. Thiem, Division Counsel, is designated as the Assistant FCPA Compliance Coordinator for NCI. He may be contacted by phone at 281.897.7788, by facsimile at 281.897.7871 or by email at MThiem@ncilp.com. For purposes of this Guide, references to the FCPA Compliance Coordinator are to each of Mr. Moore and Mr. Thiem, and their respective successors.

2. The FCPA Compliance Coordinator is responsible for distributing copies of this Guide and any supplemental material that may be provided to all affected employees and securing a Compliance Statement, in the form of Appendix B to this Guide, from each such employee. The Compliance Statement will provide that the employee has received a copy of this Guide, that he is familiar with it and the related procedures, that he is familiar with the Policy (as described above) that prohibits activity in violation of the FCPA and that he agrees to abide by such Policy.

3. The FCPA Compliance Coordinator is responsible for providing advice when questions concerning potential violations of the FCPA arise and for maintaining copies of the Compliance Statements.

4. The FCPA Compliance Coordinator is to provide advice and guidance to NCI Building Systems, Inc., its subsidiaries and affiliates, and to take whatever additional steps he deems necessary to assure that compliance with the FCPA is being achieved.

Questions and Concerns

Employees with questions about how to comply with this Guide should contact the FCPA Compliance Coordinator. Similarly, any employee who believes that NCI or one of its officers, employees, finders, agents or associates is acting in violation of the FCPA or this Guide should report such concerns to the FCPA Compliance Coordinator.



APPENDIX A

FCPA Contract Provision Language¹

(a) **Local Party** warrants and represents to the Company that neither **Local Party** nor any of its officers, directors, employees, agents or other representatives has performed or will perform any of the following acts in connection with this Agreement, any sale made or to be made hereunder, any compensation paid or to be paid hereunder, or any other transactions involving the business interests of the Company: pay, offer or promise to pay, or authorize the payment of, any money, or give or promise to give, or authorize the giving of, any services or anything else of value, either directly or through a third party, to any official or employee of any governmental authority or instrumentality, or of a public international organization, or of any agency or subdivision thereof, or to any political party or official thereof or to any candidate for political office for the purpose of (i) influencing any act or decision of that person in his official capacity, including a decision to fail to perform his official functions with such governmental agency or instrumentality or such public international organization or such political party, (ii) inducing such person to use his influence with such governmental agency or instrumentality or such public international organization or such political party to affect or influence any act or decision thereof or (iii) securing any improper advantage.

(b) If **Local Party** breaches any of the covenants set forth in clause (a), above, (i) this Agreement shall become void; (ii) the Company shall have a right of action against **Local Party** for the amount of any monetary payment or thing of value made or given by **Local Party** in breach of any of such covenants; (iii) all obligations by the Company to pay any Fee or other compensation to **Local Party** shall cease immediately; and (iv) the Company may at its sole discretion, rescind this Agreement and **Local Party** shall immediately return to the Company any Fee paid to **Local Party** arising from any transaction in violation of clause (a), above.

¹ These provisions are provided for purposes of guidance and illustration only. Contracts involving NCI's interests in international transactions should always be coordinated with NCI's Corporate Legal Department.



APPENDIX B

NCI Foreign Corrupt Practices Act Policy Statement and Guide Acknowledgement

Name: _____

Title: _____

Department: _____

Location: _____

Supervisor: _____

I have received and read the NCI Foreign Corrupt Practices Act Policy Statement and Compliance Guide (the "Guide"). I am familiar with the Guide and the related procedures contained therein. I understand the provisions of the FCPA and the consequences of its violation. I also understand the NCI Policy that prohibits activity in violation of the FCPA, and I agree to abide by such Policy and the provisions and procedures contained in the Guide. I know where a copy of the Guide is located and to whom I should refer questions should issues or questions arise.

Signature/Date