



DUE DILIGENCE ON SUBCONTRACTORS

ABLM SESSION – FIATA HEADQUARTER MEETINGS – ZURICH

March 28, 2019

DUE DILIGENCE MUST BE CONDUCTED ON ALL SUBCONTRACTORS

- Due diligence must be conducted on every sub-contractor
- Especially when dealing with high value shipments or commodities
- Background, compliance and financial checks

DUE DILIGENCE ON OVERSEAS SUB-CONTRACTORS

1. BACKGROUND

- Group structure and key board members, incorporation documents
- Membership in the local freight association
- Number of years in business
- Ensure operational staff are seasoned and professionally trained

DUE DILIGENCE ON OVERSEAS SUB-CONTRACTORS

2. COMPLIANCE

- Exclusive or non-exclusive agency or subcontractor agreement
- Dispute resolution and arbitration; always try to have the law in your home country
- Duration and termination clauses, dispute resolution policy and formality
- It is mandatory that they have proper insurance in place and E&O
- Dangerous goods certification

DUE DILIGENCE ON OVERSEAS SUB-CONTRACTORS

2. COMPLIANCE....cont'd

- Has the sub-contractor been involved in lawsuits or government enforcement actions?
- Have they been cited for violation of federal, state or local laws or regulations? If so how were the violations resolved?
- Does the sub-contractor have an employee code of conduct? Do they require employees to sign the code?
- Has the sub-contractor been mentioned in negative news coverage? How did the management respond?

DUE DILIGENCE ON OVERSEAS SUB-CONTRACTORS

3. FINANCIAL

- Public company; equity structure, percentage of shares, capital availability ratio, forms of investment, major shareholders
- Financial statements, cash flow statements, balance sheets
- Perform follow ups periodically to uncover any changes in the stability, assets and reputation of the company

DUE DILIGENCE ON OVERSEAS SUB-CONTRACTORS

4. REFERENCES

- Bank and insurance references
- Customer references
- Supplier references
- Sub-trades and carriers that may have contracted work with sub-contractors

LICENSE, TECHNICAL CAPACITIES OR CREDIT RECORDS

- Perform a credit check; obtain a "Dun & Bradstreet Credit Report" on the agent
 - at times only limited info available
- A/P insurance; we work with EDC and Coface to establish credit worthiness for A/P insurance. They are good international references.
- Contact the local freight forwarding association and inquire if they are members in good standing
- We ask for references on projects, carrier relationships, volumes shipped (inbound/outbound)
- We check technology capabilities and systems

CONTRACTUAL / OPERATIONAL MEASURES TO SUPERVISE THE PERFORMANCE OF SUB-CONTRACTORS

- SOPs, SLAs, KPIs
- We establish SLAs that are clear on the mandate and operational matrixes
- Detailed service agreement on modes of transportation, tradelanes, airport and port pairs and geographic territories and jurisdiction
- We establish cost and buying capabilities with all carriers and benchmark with market
- We have quarterly and annual reviews to ensure we maintain a strong business relationship

AGREEMENTS WITH AGENTS & SUB-CONTRACTORS

TOPICS TO COVER

- Scope of work
- Credit limits
- Profit share
- EDIT capabilities

REMEDIES FOR BREACH OF CONTRACTUAL OBLIGATIONS

IF THE BUSINESS IS TO BE REGULAR....

- Insert a clause in the agent / service agreement
- Authorize monthly offset of the A/R and A/P transactions
- Can reduce the net monthly amount owed from the sub-contractor

DUE DILIGENCE ON SHIPPERS & CLIENTS

- Operational performance and subject matter experts
- Financial compliance and governance
- Credit terms and credit worthiness
- Profit share agreements or break bulk agreements
- IT capabilities and systems
- Sales capability and sales force
- Management reputation and capability
- Non-compete, non-disclosure, non-solicitation agreements in the master agreement

RISKS OF SHOPPING FOR THE LOWEST RATE

- Very risky approach and very short lived
- Best policy is → 1 city / 1 partner
- Avoid confusion for shippers, service deterioration and poorly managed relationships

HOW TO PREVENT AGENTS/ SUB CONTRACTORS FROM DEMANDING ADDITIONAL PAYMENTS

- This usually happens when thorough checks have not been completed
- Insure the risk with EDC or Coface
- Establish terms prior to shipment departure
- Have a valid agency agreement in place
- Duties and taxes are always risky; ensure to have written confirmation that all costs will be protected and remitted in the agreed timeline without risk to the beneficiary.
- The best policy is to be paid in advance for high risk cargo

TYPES OF INSURANCE COVERAGE FOR SUB-CONTRACTOR RISK

- Receivable insurance coverage (EDC, Coface, Euler) to mitigate bad debt risk
- If these reputable firms decline coverage, use caution and conduct more due diligence
- If you have not travelled to meet the sub-contractor personally or have firm references beware



THANK YOU