



# Foreign Corrupt Practices Act Compliance

*Gravity Storage LLC*  
*April 2024*

# FCPA Policy

- Applies to all officers, employees, agents and consultants
- Management responsibility to ensure policy is understood and complied with
- Policy components
  - Description of FCPA
  - Operational Directions
  - Financial and Accounting Directions
  - Hospitality Guidelines
  - Special Consultants Guidelines

# FCPA Policy

- Conduct every transaction with integrity
- Comply with FCPA
- Comply with local law
- Comply with Code of Business Conduct and Ethics
- Compliance Officer: Roberto Flores

# FCPA - Anti-Bribery

## Persons may not:

- Give money or anything of value
- To foreign officials
- With corrupt intent -- knowingly
- To obtain or retain business

# What is a Bribe? Part 1

## Give money or anything of value

- first class airfare
- side trips to resorts
- scholarships or summer jobs for family members
- permit person to designate recipients of corporate charitable contributions

# What is a Bribe? Part 2

## To foreign officials

- officer or employee of foreign government, armed forces, agency, government owned business
- person acting in an official capacity for government
- official of public international organization – IMF, World Bank, Red Cross
- person holding legislative, administrative or judicial office
- nominee of any of these
- any political party, official or candidate
- any one else while knowing all or a portion will be given or promised to a foreign official
- any person, while knowing or being aware of the high probability that payment will be given, directly or indirectly, to foreign officials, political parties or candidates.

# What is a Bribe? Part 3

## With corrupt intent – knowingly

- know or reason to know
- failure to inquire
- information indicating a “high probability” that prohibited conduct may result
- disregard or deliberately ignore circumstances that indicate the high probability of violation
- actual knowledge not required

# What is a Bribe? Part 4

## To obtain or retain business

- for purpose of influencing any act or decision, inducing person to do or omit to do anything in violation of duty
- inducing person to use influence to affect or influence government act or decision
- securing improper advantage – example: tax exemption or operating permit for facility that otherwise would not qualify.



# What is a Bribe? Part 5

- No exceptions - even for small payments
- Payment does not actually have to be made
- Liable for acts of third parties
- “Willful blindness” no defense

# Red Flags

- Suspicious or unnecessary representatives and intermediaries
- Conducting business in bribery-prone countries
- Requests for cash payments
- Excessive consulting fees or commissions
- Reimbursement requests for inadequately documented expenses
- Transactions with government sponsored companies

# Exception:

## Facilitating or Expediting Payment

- Purpose: expedite or secure performance of routine, governmental action
- Not for decisions to award or continue business
- Not for discretionary government acts
- Not hospitality, entertainment or gifts
- No dollar limit, but should be nominal
- Must be recorded accurately

# Affirmative Defenses

- “Reasonable and bona fide” expenditures directly related to
  - promotion, demonstration or explanation of products or services
  - execution or performance of a contract with foreign government or agency
- Payment permitted under local law

# Penalties

## Criminal – Department of Justice

- Companies:
  - \$2 million fine
- Individuals:
  - \$100,000 fine – cannot be reimbursed by company
  - 5 years imprisonment

# Penalties

## Civil – Securities and Exchange Commission

- Companies:
  - \$25 million fine
- Individuals:
  - \$5 million fine
  - 20 years imprisonment

# Operational Directions

- Apply to officers, employees, agents, representatives and joint venture partners, inside and outside US
- May be more demanding than local law or custom
- May be non competitive

# Report Request for Payment

**Any demand for payment must be reported to the Compliance Officer or another company officer, or senior manager.**

- Rich Gresham
- David Drips
- Roberto Flores



# Financial and Accounting Directions

- Accounts must accurately and fairly reflect transactions and disposition of assets
- Avoid “slush funds” and “off the books” accounts
- Ensure management authorization
- Cash, bank accounts, investments and other assets must be recorded accurately
- No anonymous (numbered) accounts or payments to anonymous accounts
- No payments in cash, or checks made payable to “Cash”
- No fictitious invoices, misleading documentation
- No fictitious entities, sales, services, loans or financial requests

# Financial and Accounting Directions

- Check requests in writing, explaining purpose of payment and authority for payment
- No expense reimbursements without reasonable documentary support
- No payments to third parties outside country where services are performed or where third party normally conducts business, unless approved by Compliance Officer or another GS officer
- Payments to government agencies, not individuals, and only with prior written approval of Compliance Officer or another GS officer
- Amounts paid to Gravity Storage LLC are promptly deposited in a GS bank account
- Anyone suspecting bribe or kickback must immediately report suspicion to CFO, a Compliance Officer or another GS officer
- Each GS officer and other senior managers must file with the CFO an internal certification of compliance each quarter.

# Facilitating Payments

**Prior approval by Compliance Officer required unless:**

- impractical to seek approval
- less than \$100
- routine, ministerial action, not obtaining or retaining business
- written report to Compliance Officer and on expense report

# Hospitality Guidelines

- Consistent with generally accepted standards of professional courtesy in U.S.
- Be given without expectation of reciprocity
- Reasonable and bona fide
- Offered in connection with products, services or government contract
- Permitted under local law

# Prohibited

- Cash gift or per diem payment
- Gift provided in secret
- Extension of credit or forgiveness of debt
- Appearance of illegality
- Failure to properly record gift

# Hospitality Meals – Per Person

- Breakfast -- \$25
- Lunch -- \$50
- Dinner -- \$100
- Refreshments -- \$50
- Not more than 20 events per year
- Or as approved by Compliance Officer

# Site Visits and Other Travel

- Pay expenses to vendors, not individuals
- Pay expenses to government or organization, not individuals
- Require documentation

# Industry, Government or Ceremonial Functions

- Reasonable value
- In accordance with guidelines
- Not offered to influence a decision
- Mementos, items with company logo or other small items worth less than \$75
- To organization, not individual, when appropriate
- Gifts in excess of \$75 require approval of Compliance Officer



# International Consultants

- Special category of consultants
- Consultant, agent or representative likely to have contact with foreign customer or foreign government officials
- Services related to obtaining, retaining or facilitating business or opportunities

# Restrictions on International Consultants

- No felons or persons debarred or proposed for debarment
- No government officials, political parties or political candidates
- No officer, director, employee or "affiliate" of customer

# Special Approval Procedure

## Prior approval by Compliance Officer

- Consultant and agreement
- Is payment unreasonable or excessive
- Evaluate character, integrity and compliance orientation
- Check references
- Invoices of consultant

# Consulting Agreement

- Precise description of work
- Identify Company representative
- Require documentation for expense reimbursement
- Term not to exceed 2 years
- GS's right to terminate without cause
- Immediate termination for improper payments or FCPA violations
- Special representations and warranties regarding FCPA matters
- Independent contractor
- Consultant Code of Conduct

# Conclusion

 **Complex, technical law**

 **Be alert**

 **If it feels wrong, ASK**

 **If you have questions, ASK**

 **Small variations in facts can make a payment or action illegal**