

Avoiding misconduct through Ethical Contracting in Project Management^{1, 2}

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ABSTRACT

Although Ethics can be seen as only a matter between individuals and their consciences and behaviors; a lack of Ethics, especially in a professional environment, can have deep consequences. In the following paper, we will discuss what Ethical Contracting in Project Management is and try to answer the following question: What ethical standards are considered to be “best tested and proven” practices for project managers to follow or adopt? And what is the best alternative to avoid misconduct?

Through this paper, we will identify and explain what may be alternatives to avoid misconduct; and thanks to the selection of criteria and weighting techniques, we will be able to eliminate options and concentrate on the best alternative solution: mandatory transparency. When employees are required to share information with their supervisors, misconduct can be avoided. Therefore, they are more likely to behave ethically, since their reputation, as well as their company’s, is at stake.

Keywords: Contracts moral standards; Contracting rights and wrongs; Contracts ethical standards; Planning moral principles; Ethical administration; Agreement moral codes, Organizations moral values, Unethical contracting

INTRODUCTION

According to a recent study conducted by the Ethical Consumer Magazine in 2017, “Finance is the most unethical business sector in the UK”³. Indeed, it has long been known that the financial industry - worldwide - is prone to scandals about illegal and unethical behaviour. One of the latest

¹ Editor’s note: This paper was prepared for the course “International Contract Management” facilitated by Dr Paul D. Giammalvo of PT Mitratata Citragraha, Jakarta, Indonesia as an Adjunct Professor under contract to SKEMA Business School for the program Master of Science in Project and Programme Management and Business Development. <http://www.skema.edu/programmes/masters-of-science>. For more information on this global program (Lille and Paris in France; Belo Horizonte in Brazil), contact Dr Paul Gardiner, Global Programme Director, at paul.gardiner@skema.edu.

² How to cite this paper: Julia, C. (2019). Avoiding misconduct through Ethical Contracting in Project Management, *PM World Journal*, Vol. VIII, Issue V, June.

³ Rob Harrison. (2017) Unethical sectors in the UK report. *Ethical Consumer Magazine*

example is the Danske Bank, which is currently under investigation after illegal money laundering was revealed.

But, Finance is not the only industry pointed at. From the Oil industry to Retail and even the pharmaceutical sector, moral values have not stopped business leaders from taking unethical decisions. Can't decent profit be earned without putting ethical standards aside?

Although unethical behaviour is often discovered only once the job is completed, it usually starts right at the beginning of a project : at the contracting stage, where owners and contractors tend to make more profit-oriented decisions in order to get the cheapest deal, rather than taking ethical aspects also into account. One example is bid shopping, which consists in “playing one bidder against another to wrangle lower prices, before or after submission of bids”⁴. By cutting costs, such practice can reduce the quality of work produced and impact owners as much as contractors. In spite of the fact that such kind of practice is commonly considered unethical and even prevented in some US states thanks to anti-bid shopping legislation, it still remains widely performed.

Commonly, a contract is defined as “an agreement between two or more parties in which an offer is made and accepted, and that each party benefits” (Lectlaw.com). Although a contract has to be legal in order to be valid and enforceable, it does not have to be ethical.

Some ethical and moral values, such as Human Rights, are considered as universal, but most of them are cultural and personal. For example: a Fashion owner that chooses to work with factories in Bangladesh because they are the cheapest is not illegal, but yet unethical.

So what is the role of the Project Manager when dealing with contracts? Does he only have to apply what he is told (e.g. accept the contractor with the lowest bid price) or must he also try to do his best to integrate ethical aspects such as Fairness, Sustainability, Gender equality... even if not required?

The following Ishikawa diagram shows what causes Project Managers to accept unethical contracts. The three branches are: money, law and people. The causes may be intentional or unintentional.

⁴ Bid Shopping definition (n/a). Retrieved from BusinessDictionary.com

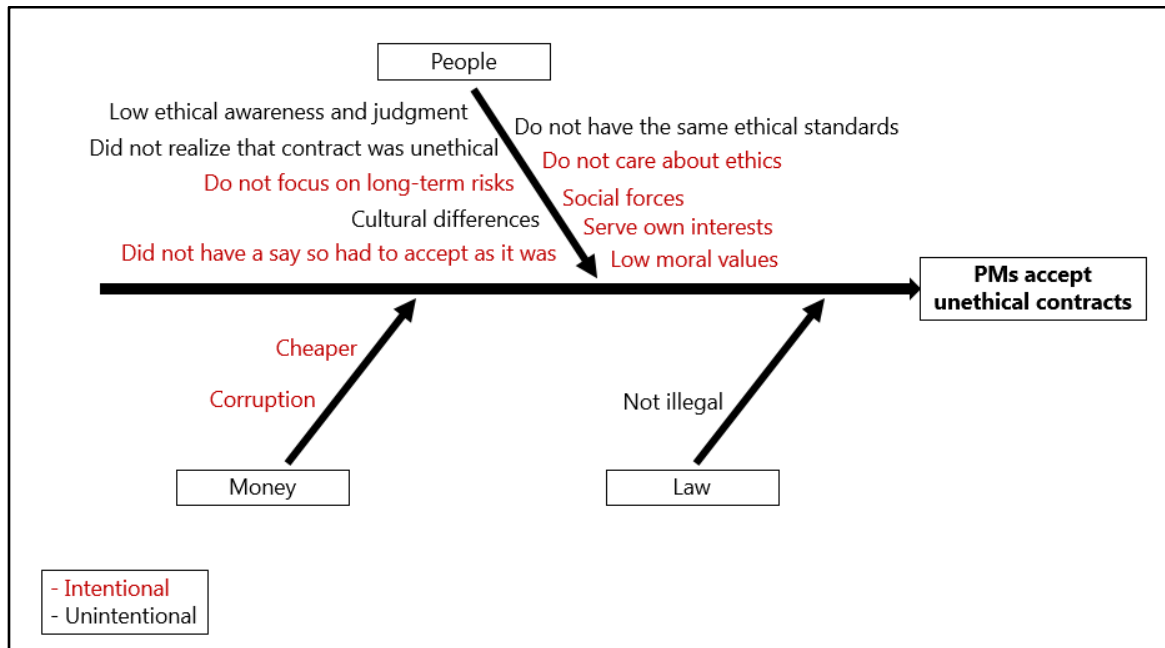


Figure 1: Ishikawa diagram - intentional and unintentional causes of unethical contracts⁵

The main cause is that when analysing the risks, Project Managers tend to focus only on the financial ones because they are short-term and directly impact their business; while putting issues about the environment or employee well-being aside, since such risks are more long-term and have an indirect impact.

Why should Project Managers focus on the long-term and make ethical contracting a priority? Based on what are the current PMs practices worldwide, we will discuss what an ethical contract is, and what the cost of integrating ethics in contracts and the risks of unethical contracting are. We will also identify the culture differences on ethics.

METHODOLOGY

Step 1: Summarize

As introduced, because there is a lack of global ethical standards, contracting in project management raises the following question:

- What ethical standards are considered to be “best tested and proven” practices for project managers to follow or adopt?

⁵ By Author

Step 2: Identification of alternative solutions

Definition of ethical contracting

Before identifying any alternative solutions, it is necessary to explain what an ethical contract is. An ethical contract is a contract that binds 2 or more parties, that is legal, and that aims to be durable⁶. Durability, or Sustainability, applies to People and Planet. Through the entire contracting process, an ethical project manager makes sure that the decisions and choices comply with the law, that they do not harm in any way the stakeholders (eg. child labor from a subcontractor), and that they take into account environmental aspects (eg. CO2 pollution). An ethical contract cannot be just about profit. Also, the different binded parties must have the same understandings of what is right and wrong.

Also, ethical contracting implies “assuring fair treatment of bidders, offerors, and contractors”⁷, and avoiding any sort of misconduct⁸ such as conflicts of interest⁹, corruption¹⁰, fraud and collusion. “Ethics is the basis on which most of the procurement related principles, such as fairness, integrity, and transparency, are based.”¹¹ When contracting, every stage can be a source of misconduct, such as giving gifts at the end of a contract, for example¹²; that is why a good Project Management should be able to detect potential warning signs such as missing files or reluctance to delegate¹³.

Lack of ethical global standards

Although ethical standards are widely understood as “principles and values that promote good behavior, trust and fairness”¹⁴, ethics are still open to interpretation. That is why there are differences at the cultural and corporate level.

⁶ Honeyman, C. and Prof. J. H. Wade. 2005. Negotiating Beyond Agreement and Commitment: Why contracts are breached and how to make them more durable (20): 7-17. Bond University.

⁷Ethics & Procurement Integrity. OGE. Retrieved from https://www.cdc.gov/about/ethics/pdf/OGE_Guidance_Ethics_Proc_Integrity.pdf

⁸Code of Ethics for Compliance and Ethics Professionals. The Society of Corporate Compliance and Ethics. Retrieved from http://www.corporatecompliance.org/Portals/1/PDF/Resources/SCCECodeOfEthics_English.pdf

⁹Checklist : Identifying conflict of interest. Integrity. Retrieved from https://www.integrity.tas.gov.au/_data/assets/pdf_file/0003/280479/Identifying_conflict_of_interest_risk_areas_in_business_service_areas_-_checklist.pdf

¹⁰Enhancing Integrity in public procurement: a checklist. OECD. Retrieved from <http://www.oecd.org/gov/41760991.pdf>

¹¹Ethics in procurement. UN. Retrieved from <https://www.ungm.org/Areas/Public/pph/ch04s04.html>

¹²Corruption in procurement. Retrieved from https://www2.gwu.edu/~clai/training_programs/Regulatory_Programs/Spring_2011/Apr_2011_Chris_Yukins.pdf

¹³Ethics in procurement. UN. Retrieved from <https://www.ungm.org/Areas/Public/pph/ch04s04.html>

¹⁴ Definition Ethical standards. Retrieved from BusinessDictionary.com

- **Cultural differences**

Cultural differences concerning contract management may affect the ethical aspects of a contract and the behaviour of the stakeholders. Project Managers may face difficulties when dealing with international contractors because some behaviours might be necessary in his own country but unacceptable in the host country. As an example, 69.4%¹⁵ of Public firms in Cambodia receive bribe requests. It is the PM's role to decide whether he must stick to his ethical principles and therefore have very little chance of dealing successfully with Cambodian people, or to accept bribery as it is commonly practiced.

- **Corporate differences**

Similarly, corporations do not all have the same Code of Ethics or Conduct. For example, some may not focus on environmental aspects, and this will reflect in their contract dealings. When facing such issues, the PM's role will be to either compromise, or choose contractors that have the same values and principles.

Identification of Best practices

Although globally recognised ethical standards does not exist, as values and principles depend on each individual understandings and culture; it is still possible to identify what can be the Best Practices when dealing contracts internationally. The Society of Corporate Compliance and Ethics (SCCE) has issued a Code of Ethics for Compliance and Ethics Professionals¹⁶. This Code can be considered as a benchmark of excellence.

Alternative solutions

1. Better protection for whistleblowers

According to Paragraph 1.4 of the Code of Conduct from the SCCE, if a professional becomes aware of a misconduct, he must be able to report it to public officials if the issue has not been resolved at the company level. Moreover, if a company does not follow what the Ethics expert advises, then the Ethics advisor should quit from the company (Paragraph 1.4).

¹⁵ 20 Countries Where Bribery In Business Is Common Practice. (2017, April 25) Retrieved from <https://www.worldatlas.com/articles/20-countries-where-bribery-in-business-is-common-practice.html>

¹⁶ Code of Ethics for Compliance and Ethics Professionals. The Society of Corporate Compliance and Ethics. Retrieved from http://www.corporatecompliance.org/Portals/1/PDF/Resources/SCCECodeOfEthics_English.pdf

In practice, few have the courage to get to that level because of the fear of being fired, or having their career damaged. So far, global protection laws for whistleblowers do not exist.^{17,18} But at the company level, employees must have the right to report wrongdoing without any consequences.

2. Mandatory training for PMs on ethics

Another solution is to make training about ethics mandatory for project managers.¹⁹ When dealing with contracts, they should be able to identify ethical matters, and better understand the impact of culture on ethics. They will also learn the benefits of focusing on the long-term. At this stage, PMs can still put ethics aside, but at least, they have the knowledge.

3. Ethics in certifications

Although PMI²⁰, APM²¹, IPMA²² and AACE²³ have issued their own Codes of Conduct, they are only guides that PMs can refer to. Therefore, a solution to our problem would be to make concrete ethical application a requirement to obtain the certification. In other words, PMs who want to be certified must be able to show that they implement ethical measures and make ethical decisions when doing their job.

This solution also includes the alignment of PMI, APM, IPMA and AACE's Codes of Conduct with the SCCE Code of Conduct, as it is more complete and stringent. As an example, only the Guild of Project Controls²⁴ has adopted the SCCE Code as their basis for their code of ethics. As Glenn Butts, from NASA said "Before things change - the approach and consequences must change!"²⁵.

¹⁷ Whistleblower Protection Act. Retrieved from https://en.wikipedia.org/wiki/Whistleblower_Protection_Act

¹⁸ Whistleblower Protection EU. Retrieved from https://ec.europa.eu/commission/news/whistleblower-protection-2018-apr-23_en

¹⁹ Ethical Contracting: Is It Possible? Retrieved from <https://www.ecmag.com/section/your-business/ethical-contracting-it-possible>

²⁰ Code of Ethics & Professional Conduct, PMI. Retrieved from <https://www.pmi.org/about/ethics/code>

²¹ Ethics in Project Management, APM. Retrieved from <https://www.apm.org.uk/resources/find-a-resource/ethics-in-project-management/>

²² IPMA Code of Ethics and Professional Conduct. Retrieved from <https://www.ipma.world/assets/IPMA-Code-of-Ethics-and-Professional-Conduct.pdf>

²³ AACE Canon of Ethics. Retrieved from <http://web.aacei.org/about-aace/govdocuments/canon-of-ethics>

²⁴ Guild Code of Ethics. Retrieved from <http://www.planningplanet.com/guild/code-of-ethics>

²⁵ Build Management Competency. Glenn Butts. (2010, September). Retrieved from <http://www.build-project-management-competency.com/wp-content/uploads/2010/09/Glenn.Butts-Mega-Projects-Estimates.pdf>

4. Tougher legislation

Another solution would be to implement tougher laws regarding ethics²⁶, the environment, employment conditions, contract breaches, etc. Those laws would be global to avoid any issues with culture differences in terms of ethics.

5. Mandatory transparency

Risk of misconduct and unethical behaviour is enhanced when employees hold confidential information for themselves²⁷. A solution would be to make transparency mandatory between the employees and their managers: employees will have to share every document/information concerning the contract with their managers.

6. Clear and strict accountability

When employees know that they are personally accountable²⁸ for their behavior, they are less likely to behave unethically. The implementation of a strict Code of Conduct within the organization, that would also clearly define the consequences of misconduct, can be a solution.

Attributes to measure and evaluate each alternative

To determine which attributes are the most relevant, we will put ourselves in the shoes of an Owner and ask ourselves the following question “How can I make my project managers follow the best practices and deal ethical contracts?”.

In order to rank the possible solutions from best to worst, we will consider the following attributes:

- Cost: will this solution cost me money?²⁹
- Duration: which amount of time will this solution need to get implemented?³⁰
- Effectiveness: how much will this solution impact PMs behaviour?

²⁶Do Stronger Laws Prevent Corporate Crime? (2007, April 1). Retrieved from <https://sloanreview.mit.edu/article/do-stronger-laws-prevent-corporate-crime/>

²⁷Checklist : Identifying conflict of interest. Integrity. Retrieved from https://www.integrity.tas.gov.au/_data/assets/pdf_file/0003/280479/Identifying_conflict_of_interest_risk_areas_in_business_service_areas_-_checklist.pdf

²⁸Enhancing Integrity in public procurement: a checklist. OECD. Retrieved from <http://www.oecd.org/gov/41760991.pdf>

²⁹How much does it cost to be ethical? (2013, November 11). Retrieved from <https://blog.iese.edu/ethics/2013/11/28/how-much-does-it-cost-to-be-ethical-what-is-the-cost-of-corruption/>

³⁰The importance of time tracking in project management. Retrieved from <http://www.projectcoordinator.net/en/blog/the-importance-of-time-tracking-in-project-management>

- Feasibility: is this solution feasible at a company level?³¹
- Company image: will this solution improve our company's image?³²
- Sustainability: can this solution reach some of the UN's 8 MD Goals, especially 3.Promote gender equality, 7.Ensure environmental sustainability, and 8.Develop a global partnership for development?³³

We will also use the 5 SMART goals as scoring attributes³⁴:

- S - specific and clear
- M - measurable
- A - agreed upon
- R - realistic, relevant, reasonable, results-oriented
- T – trackable

Step 3: Development of the Feasible Alternatives

To determine which of these attributes have the most impact, we will use a non-compensatory model³⁵, based on disjunctive reasoning.

	Cost	Duration	Effectiveness	Feasibility	Image	Sustainability	Specific	Measurable	Agreed upon	Realistic	Trackable	Ordinal ranking
Cost	1	0	0	0	0	0	1	1	0	0	1	4
Duration	0	1	0	0	0	0	0	0	0	0	0	0
Effectiveness	1	1	1	1	1	1	1	1	1	1	1	10
Feasibility	1	1	0	1	1	1	1	1	1	1	1	9
Image	1	1	0	0	1	0	1	1	0	0	1	5
Sustainability	1	1	0	0	1	1	1	1	0	0	1	6
Specific	0	1	0	0	0	0	1	1	0	0	1	3

³¹Enhancing Integrity in public procurement: a checklist. OECD. Retrieved from <http://www.oecd.org/gov/41760991.pdf>

³²Corporate Image - Encyclopaedia - Business Terms. Retrieved from <https://www.inc.com/encyclopedia/corporate-image.html>

³³MDG Goals. United Nations. Retrieved from http://www.undp.org/content/undp/en/home/sdgoverview/mdg_goals.html

³⁴Smart goals. Project Smart. Retrieved from <https://www.projectsmart.co.uk/smart-goals.php>

³⁵Sullivan, Wickes & Kroelling (2014) Engineering Economics 15th Edition Using the approach. Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

Measurable	0	1	0	0	0	0	0	0	0	0	1	2
Agreed upon	1	1	0	0	1	1	1	1	1	1	1	8
Realistic	1	1	0	0	1	1	1	1	0	1	1	7
Trackable	0	1	0	0	0	0	0	0	0	0	1	1

Table 1 - Attributes ordinal ranking³⁶

The most important attribute is **effectiveness**, then feasibility, sustainability, company image and then cost. The least impactful attribute is duration.

Step 4: Selection of the Criteria to ACCEPT or REJECT the Alternative Solutions

Using a multi-attribute decision making model³⁷ will enable us to determine the best option possible, from an Owner perspective.

Good 1	Medium 0,5	Bad 0
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	Better protection for whistleblowers	Training for PMs on ethics	Ethics in certifications	Tougher legislation	Mandatory Transparency	Strict accountability
Effectiveness ³⁸	Good	Good	Very good	Very good	Very good	Very good
Feasibility	High	High	Low	Low	High	High
Cost ³⁹	None	Expensive	Medium	Expensive	None	None
Duration	Low	Long	Long	Very long	Low	Low
Image ^{40,41}	High	High	High	High	Medium	Medium

³⁶By Author

³⁷Sullivan, Wickes & Kroelling (2014) Engineering Economics 15th Edition Then the second step is to calculate the relative weighting of each attribute. Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

³⁸Implementing an effective corporate ethics policy (2014, June 1st). Retrieved from <https://www.fm-magazine.com/issues/2014/jun/20149701.html>

³⁹Does running a business ethically add value or cost? (2012). Retrieved from <https://www.goodcorporation.com/fr/business-ethics-debates/does-running-a-business-ethically-add-value-or-cost/>

⁴⁰The Advantages of Ethical Behavior in Business (2018, June 29). Retrieved from <https://smallbusiness.chron.com/advantages-ethical-behavior-business-21067.html>

⁴¹The Importance of Business Reputation. (n/a). Retrieved from

Sustainability	High	Medium	Medium	High	High	High
Specific	Medium	Medium	Medium	Low	High	High
Measurable	Medium	High	High	Low	Medium	Medium
Agreed upon	Medium	High	Medium	Low	High	Medium
Realistic	High	High	Medium	Low	High	High
Trackable	Medium	High	Medium	Low	Medium	Medium

Table 2 - Marking of the alternative solutions⁴²

Then weighing each attribute:

	Better Protection for whistleblowers	Training for PMs on ethics	Ethics in Certifications	Tougher Legislation	Mandatory Transparency	Strict Accountability
Effectiveness	0,5	0,5	1	1	1	1
Feasibility	1	1	0	0	1	1
Cost	1	0	0,5	0	1	1
Duration	1	0	0	0	1	1
Image	1	1	1	1	0,5	0,5
Sustainability	1	0,5	0,5	1	1	1
Specific	0,5	0,5	0,5	0	1	1
Measurable	0,5	1	1	0	0,5	0,5
Agreed upon	0,5	1	0,5	0	1	0,5
Realistic	1	1	0,5	0	1	1
Trackable	0,5	1	0,5	0	0,5	0,5
Total	8,5	7,5	6	3	9,5	9

Table 3 - Weighing the marks of the alternative solutions⁴³

<https://www.businessinfocmagazine.com/2012/10/the-importance-of-business-reputation/>

⁴²By Author

⁴³By Author

Thanks to these results, and since the minimum acceptable level is <8.5, we are now able to determine which alternatives can be eliminated. Therefore, we will not analyse “ethics in certifications”, “tougher legislation”, and “Training for PMs on ethics”.

The best alternatives are “Better protection for whistleblowers”, “Mandatory transparency”, and “Strict accountability”.

FINDINGS

Step 5: Rank order summary

Thanks to an additive weighting technique⁴⁴ that compares the attributes and the alternatives weights, we will summarize the rank order of our 3 remaining alternatives, that is to say “Protection for whistleblowers”, “Transparency” and “Accountability”.

	Step 1	Step 2	Protection for whistleblowers		Transparency		Accountability	
	Relative ranking	Normalized weight (A)	(B)	(A)*(B)	(C)	(A)*(C)	(D)	(A)*(D)
Effectiveness	10	0,18	0,5	0,09	1	0,18	1	0,18
Feasibility	9	0,16	1	0,16	1	0,16	1	0,16
Agreed upon	8	0,14	0,5	0,07	1	0,14	0,5	0,07
Realistic	7	0,13	1	0,13	1	0,13	1	0,13
Sustainability	6	0,11	1	0,11	1	0,11	1	0,11
Image	5	0,09	1	0,09	0,5	0,045	0,5	0,045
Cost	4	0,07	1	0,07	1	0,07	1	0,07
Specific	3	0,06	0,5	0,03	1	0,06	1	0,06
Measurable	2	0,04	0,5	0,02	0,5	0,02	0,5	0,02
Trackable	1	0,02	0,5	0,01	0,5	0,01	0,5	0,01
Duration	0	0	1	0	1	0	1	0
Total	55	1	0,780		0,925		0,855	

Table 4 - Alternatives rank order⁴⁵

This method allows us to have a more detailed ranking. Now, we know that “**mandatory transparency**” is the best solution, but “clear accountability” and “protection for whistleblowers” are not far below.

Step 6: Selection of the preferred alternative

From best to worst, here is the ranking stated in step 5 of the alternatives:

⁴⁴Sullivan, Wickes & Kroelling (2014) Engineering Economics 15th. Adaptation from planning planet. Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

⁴⁵By Author

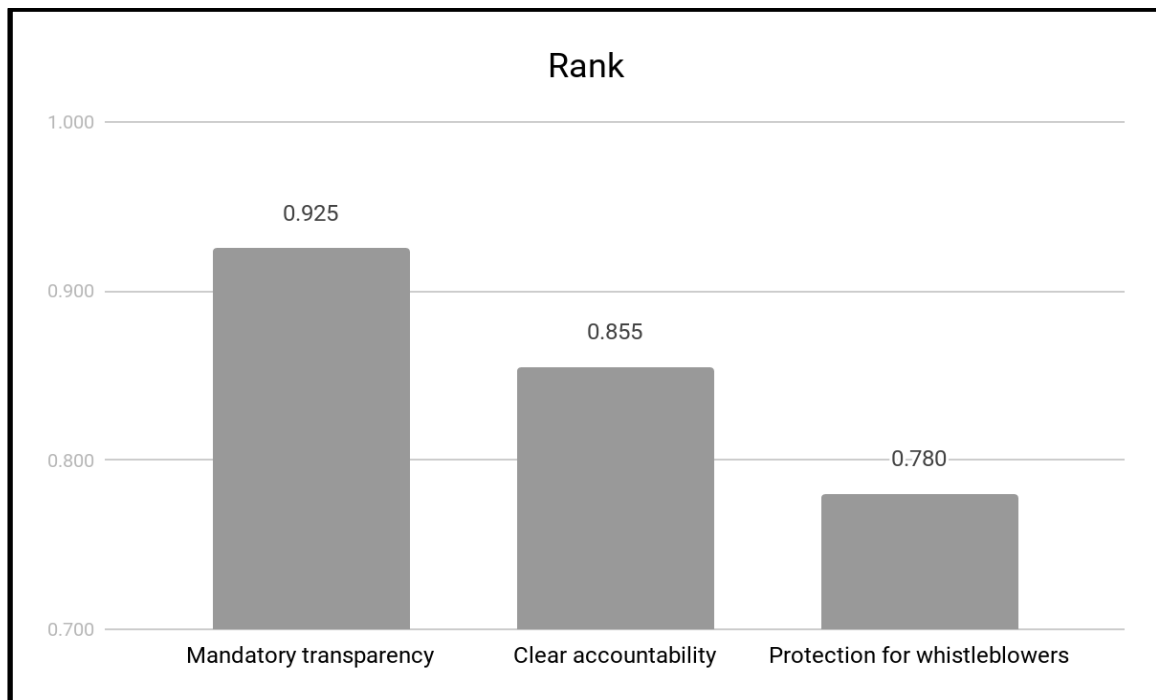


Table 5 - Rank order of the 3 best alternatives⁴⁶

Because “Protection for whistleblowers” has a lower score than “Mandatory transparency” and “Clear accountability”, we will not keep that alternative.

Our two remaining alternatives each had a score of 9.5 and 9 respectively, as seen in step 4; whereas the worst solution had a score of 3.

- For Accountability: $9/3=3 \times 100 = 300\%$. That means this solution is a better choice by 300% than the others.
- For Transparency: $9.5/3=3.16 \times 100 = 316\%$. That means this solution is a better choice by **316%** than the others.

This can also be explained by the fact that they can be implemented at corporate level, and as seen in step 4, easy and inexpensive to implement.

Transparency is a key measure to “prevent corruption and enhance accountability”⁴⁷. For the OECD, transparency is the number 1 measure to avoid misconduct. It applies to every level of the company and, when dealing with contracts in a project environment, it requires strict recording of information from all employees whatever their hierarchical position. Although transparency

⁴⁶By Author

⁴⁷Enhancing Integrity in public procurement: a checklist. OECD. Retrieved from <http://www.oecd.org/gov/41760991.pdf>

makes information more accessible, it does not imply the divulgence of confidential information to the wrong people.

Accountability is making sure each employee, according to their position, know they have moral duties and are responsible for the consequences of their actions. Also, “accountability is the readiness or preparedness to give an explanation or justification to stakeholders for one’s judgments, intentions, and actions.”⁴⁸

Although both are very closely linked together, we will focus on **mandatory transparency**, since there can’t be good accountability without transparency.

Step 7: Effects of the solution

Now that we know that Transparency is the best solution to avoid misconduct, we will use the Kurt Lewin force field analysis tool. “The idea behind Force Field Analysis is that situations are maintained by an equilibrium between forces that drive change and others that resist change”⁴⁹.

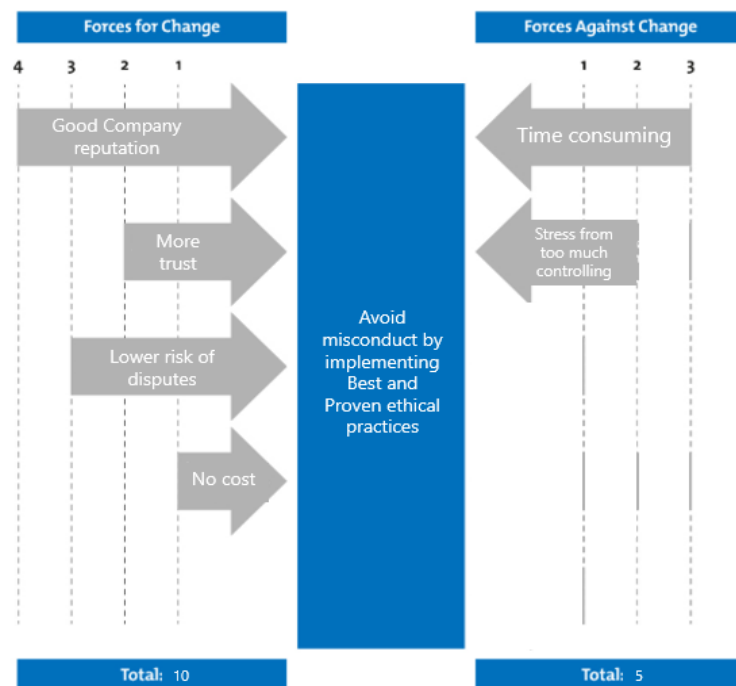


Table 6 - Kurt Lewin Force field analysis⁵⁰

⁴⁸Ethical principles of Responsibility and accountability. Page Center Training. Retrieved from <https://pagecentertraining.psu.edu/public-relations-ethics/ethics-in-crisis-management/lesson-1-prominent-ethical-issues-in-crisis-situations/ethical-principles-of-responsibility-and-accountability/>

⁴⁹Kurt Lewin force field analysis. Mindtools. Retrieved from https://www.mindtools.com/pages/article/newTED_06.htm

⁵⁰By Author

Thanks to this tool, we can see that the forces for change outweigh the forces against change twice. In other words, implementing strict transparency in order to avoid misconduct has much more benefits than drawbacks.

CONCLUSION

The goal of this paper was to answer the following question: What ethical standards are considered to be “best tested and proven” practices for project managers to follow or adopt? And what is the best alternative to avoid misconduct?

Through this paper, we have identified and explained the following alternatives: Better protection for whistleblowers, Training for PMs on ethics, Ethics in certifications, Tougher legislation, Mandatory Transparency and Strict accountability.

Thanks to the selection of criteria and weighting techniques, we were able to eliminate options and concentrate on the best alternative solution which was “mandatory transparency”. When employees are accountable for their actions and are required to share information with their supervisors, misconduct can be avoided. Therefore, they are more likely to behave ethically, since their reputation, as well as their companies, are at stake. Of course, it is recommended that such measures are supported by strict internal policies such as protection for whistleblowers.

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Céline Julia is a PGE Student at SKEMA Business School, currently in MSc Program & Project Management & Business Development, in Lille, France. Born near Paris, she was raised by a French father and a British & Canadian mother. After graduating from High School, she did a Preparatory class for competitive entrance into French Business School during two years in the North of France. Fallen in love with Lille, she completed a Bachelor's degree in Management in SKEMA Business School, and then studied Global Management for 6 months in NC State University in Raleigh, NC, USA. Back in Lille, France, and after several internships in Human Resources, she realized that what she liked best was project management, especially related to Sustainable Development. In 2018, she got her Prince2 and Agile certifications.

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