B Lab Controversial Issues Statement - Engineering Consulting Companies with Clients in the Defense Sector

B Lab's Approach to Controversial Issues and B Corp Certification

As for-profit companies that meet the most rigorous standards of overall social and environmental performance, accountability, and transparency, Certified B Corporations are leaders in the movement to use business as a force for good.

Whether through information a company provides in its Disclosure Questionnaire, an issue raised by a third-party through B Lab's formal Complaints Process, or public discourse on B Corp certification requirements and standards, difficult and complex questions regularly arise as to how controversial issues in the world of business should affect a company's eligibility for B Corp certification. Judgments on these issues are then determined by B Lab's independent Standards Advisory Council as part of a disclosure review process.

B Lab's Disclosure Questionnaire forms the basis of the disclosure review process, which covers sensitive industries, practices, outcomes, and penalties and is based on third party screenings and standards like the IFC Excluded Industries List and International Labor Organization Conventions. Recognizing that any list of sensitive issues may be incomplete, however, B Lab also reserves the right to conduct similar reviews on issues that are not currently featured in the Disclosure Questionnaire, but are deemed subject to material stakeholder concern and a potential violation of the B Corp movement's Declaration of Interdependence.

When new industries or issues where a decision making model has not already been developed arise, B Lab conducts research into the issue in order to guide the Standards Advisory Council's decision. Research is based on secondary sources compiled by B Lab staff, with the overall intent of identifying and understanding the different concerns related to the industry or issue and the different perspectives of stakeholders. This includes a review of press related to the industry and its impact, how the issue is covered by other standards, existing public policy and public policy recommendations from non-profit organizations and other topical experts, examples - potentially both good and bad - of actors within the industry, interviews with expert stakeholders and other public commentary and perspectives. This content is in turn used to develop the framework for Standards Advisory Council review, and determines the types of questions that individual companies are required to answer as part of their review.

Particularly when it comes to industries that are controversial, there is a natural and healthy tension between the inclination to exclude all companies in those industries from eligibility for B Corp Certification, and *the need for leadership* that has the potential to transform the culture, behavior, and impact of those industries. While B Lab and it's Standards Advisory Council may determine that an industry as a whole is ineligible for certification because of its negative impacts or practices, they also recognize that in controversial industries it may be possible for companies to be meaningfully managing those potential negative impacts or controversies. In these circumstances, the need may be greatest to distinguish between good and bad actors, as well as good, better, and best performance by using rigorous standards of verified social and environmental performance, legal accountability, and public transparency. All stakeholders are best served by the existence of credible and transparent standards that facilitate improved policy, investment, purchasing, and employment decisions.

Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns. B Lab will also document and share these positions publicly in order to enable all stakeholders, including citizens and policymakers, to make their own judgments about a company's performance, as well as further thoughtful, constructive public discussion about important issues. Existing B Lab statements and frameworks on controversial issues are available here.

These frameworks, like B Lab's standards generally, are works in progress, and we look forward to improving upon them in the future. B Lab invites other perspectives as it continues to refine its views and, hopefully, contribute to a constructive conversation about the role of business in society.

Independent of eligibility for B Corp Certification, all companies in any industry are able to use the B Impact Assessment as an internal impact management tool to assess and improve their overall practices, and/or adopt a stakeholder governance legal structure (such as benefit corporation) appropriate to the company's current corporate structure and jurisdiction.

If you have questions or comments about B Lab's approach to the below issues, please email B Lab's Standards Management team at standardsmanagement@bcorporation.net.

Engineering Consulting Firms with Clients in the Defense Sector and B Corp Certification

Companies that provide engineering consulting services to clients in the defense sector are controversial because of the implications of their services being used in ways that may harm others and/or be misused, as well as limited transparency in the defense sector and consequent concerns of corruption.

In response to these controversies, B Lab and its independent Standards Advisory Council have rendered the following decision regarding their eligibility for B Corp Certification:

*Note: This decision applies only to engineering consulting services because of their involvement in defense projects in an indirect capacity i.e. through providing technical and supportive services to a potential project. It does **not** apply, for instance, to companies such as manufacturers of munitions or other defense contractors who are more directly involved in the products that may cause harm.*

A. *Companies that provide engineering consulting services to clients in the defense sector and derive more than 5% of their annual revenue from the sector, are eligible for B Corp Certification as long as:*

    1. *They formally acknowledge their responsibility towards potential harm associated with their projects and are able to demonstrate that they have specific mechanisms to acknowledge and manage that responsibility (including due diligence mechanisms, anti-corruption measures, anti-lobbying stance, etc.)*
    2. *Their projects have low severity impacts*, and*
    3. *They disclose the material risks associated with their services, associated practices and historic % revenue from the defense sector on their B Corp Public Profile.*

B. *Companies that provide engineering consulting services to clients in the defense sector and derive less than 5% of their annual revenue from the sector are eligible for B Corp Certification with incremental disclosure on their B Corp Profile regarding material sensitive issues in the industry and historic % revenue from the defense sector as long as their executed projects have low severity impacts.*

    *Projects that **do not** have low severity impacts are those that have high levels of of social and ethical concerns and potential harm, which may include offensive weapon systems, offensive weapon carriers, controversial weapons and emerging technologies such as drones, artificial intelligence and neurotechnologies with a capability to harm people and the planet in disproportionate and indiscriminate ways, and projects serving clients that have a high likelihood of misuse (e.g. governments involved with alleged human rights abuses). Low severity projects, while still carrying a risk and responsibility, can be sufficiently managed by adopting the practices outlined in this statement.*

Industry Overview and Associated Risks

Engineering consulting firms work with clients in the public and private sectors to provide engineering advice and technical solutions on a wide variety of projects ranging from designing and testing complex software to executing infrastructure projects. Depending on their expertise, engineering firms may work for clients in the defense sector, wherein they may provide a host of services such as designing, building, testing and servicing infrastructure or equipment for military use (including weapons and associated systems). They may also provide military research, training, or work on other projects that may aid the military.[1][2] Some projects that are executed in the defense sector could be highly specialized and therefore necessitate a high level of customization specifically for defense applications.

Given the nature of these services, there are inherent potential risks related to such engagements in the defense sector; namely the ethical implications of their services being used in ways that harm others and/or being misused, the lack of transparency and potential for corruption in defense projects and risks pertaining to private sector involvement in activities related to warfare.

Engineers from engineering consulting companies that work for clients in the defense sector usually work on specific sub-systems with limited information on the overall project and also do not make the actual decisions on how their services are used. Therefore, they arguably cannot be attributed the same level of responsibility as military personnel that are directly involved in the decisions of military operations or those that manufacture weapon systems as their sole business. Yet despite their indirect role in supporting military operations, engineers, system designers, and computer scientists do play a necessary role in defense and therefore bear important obligations in relation to their work in the defense sector.[3]

All these concerns are further exacerbated by low levels of transparency in defense projects where companies that provide services may have incomplete information about the larger project of which they may be a part or its eventual end-use. This limited transparency coupled with competition for a limited number of high value contracts and close business relationships

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[1] Davies, M. (2015), Ethical Issues in the Global Arms Industry: A Role for Engineers, *Ethical Dilemmas in the Global Defense Industry Conference*, Retrieved from <https://www.law.upenn.edu/live/files/4240-michael-davis-paperglobal-defense-industry-and>

[2] Major General Robert Robert Latiff, USAF (retired), "*Ethical Issues in Defense Systems Acquisition*," pp. 209-219 in the Routledge Handbook of Military Ethics, ed. George Lucas (London: Routledge, 2015) <https://newbooksinpolitics.com/political/routledge-handbook-of-military-ethics/>

[3] Fichtelberg, A. (2006), Applying the Rules of Just War Theory to Engineers in the Arms Industry, *Science and Engineering Ethics 12, 685-700*, Retrieved from <https://www.thphys.uni-heidelberg.de/~stamatescu/DIDEPG/SEMPE/SEE/see10_23294751.pdf>

with governments can create the risk of corruption and bribery to meet business objectives.[4] One may also argue that the lack of transparency and secrecy that is a feature of defense projects is also essential for national security purposes.

At the same time, the dependence of the global defense sector on private contractors is not insignificant. Total arms sales among the world's 100 largest defense contractors was around $398 billion in 2017[5] and private contractors in the United States have received approximately half of the entire defense budget each year between 1998 and 2003.[6] Deriving profits from military missions and war-related activities could result in avenues for lobbying and could create pressures for the continued existence of a market for defense related products and services; contributing to what is known as the military industrial complex and thereby perpetuating war.[7]

While there are multiple risks to providing engineering consulting services to clients in the defense sector, defense services mostly operate under democratically elected governments and arguably provide essential services pertaining to the national security of countries.

Best Practices for Engineering Companies with Clients in the Defense Sector

As described above, Certified B Corporations providing engineering consulting services in the defense sector are required to demonstrate that they are engaged in best practices to sufficiently manage the material sensitive issues in the industry and in order to determine their eligibility for B Corp Certification. B Lab will assess the company's practices against the following list that was identified through secondary research and stakeholder engagement to address issues material to the industry:

1. **Anti-bribery and anti-corruption measures:** Formal policies and procedures related to anti-corruption such as internal monitoring, periodic training and whistleblower programmes[8] and transparency on the company's position on lobbying and political contributions.[9]
2. **Formal recognition of the ethical implications and potential harms of their services**: Formally acknowledging (e.g. in their code of ethics[10]) that their services are

[4] Sustainalytics (2014), Sector Report: Aerospace and Defense, Retrieved from <https://www.sustainalytics.com/esg-research/sector-reports/defense/>
[5] Stebbins, S. & Comen, E. 2019, Military spending: 20 companies profiting the most from war, <Website URL>
[6] Porter, G. 2018, America's Permanent War Complex, <https://www.theamericanconservative.com/articles/americas-permanent-war-complex/ >
[7] See note Porter
[8] Transparency International (2011), *Building Integrity and Countering Corruption in Defence: 20 Practical Reforms*, Retrieved from <https://images.transparencycdn.org/images/2009_HandbookBuildingIntegrity_EN.pdf >
[9] See note 6
[10] See note 5

utilized by militaries of their home country or other countries and recognizing that these services could be utilized to inflict harm on civilians and the environment.

3. **Due diligence on customers and projects**:
    - Conducting an assessment of potential clients during the project bidding process, including consideration for factors[11] such as ownership status of client (i.e. private or government), the human rights performance of the client regime (if they're a government), stability of the regime, responsible utilisation of military equipment by the regime, etc.
    - Conducting an assessment of specific projects, including consideration of whether the project could be used for maleficent purposes (e.g. ascertaining that the project will not be used for controversial weapons or offensive weapons that can have a disproportionate and indiscriminate impact on civilian population). One example of a framework[12] for such an assessment is offered in Appendix 1 of this document.
4. **Designing to avoid harm**: During the execution phase of the project, exploring the possibility of deliberately designing for considerations such as proportionality, discrimination, prevention of illegal use and environmental conservation.
5. **Whistleblowing mechanisms**: Availability of mechanisms for engineers to report on ethical concerns related to the projects during the project execution phase
6. **Ethics Training**: Training and education on the practices mentioned above to help put them into practice and facilitate a corporate ethos that manages concerns in the industry

Rationale for the Standards Advisory Council Decision and Disclosure:

While acknowledging the responsibility of engineering consulting firms in the defense industry in potential harm and misuse, the Standards Advisory Council determined that given their indirect involvement[13] in the defense sector, it is appropriate to certify engineering consulting companies with clients in the defense sector when specific circumstances are met.

Specifically, these circumstances are not participating in projects with high severity impacts, and only being a small part of the overall revenues of the business, or having in place formal mechanisms to screen and manage the material risks related to their involvement in the defense sector described above.

High severity projects by their nature have a high risk of harm and therefore the potential harm cannot be sufficiently addressed by other mechanisms to accept responsibility and impact. Low severity projects, on the other hand, while still carrying a risk and responsibility, can be

[11] See note Davies
[12] Lucas, G.R. (2014), Legal and Ethical Precepts Governing Emerging Military Technologies: Research and Use, Amsterdam Law Forum Vol 6:1, Retrieved from <http://amsterdamlawforum.org/article/viewFile/330/498>
[13] See note 1

sufficiently managed by adopting the best practices above. It was also, however, acknowledged that in cases where defense projects comprise only a small portion of company revenues (5% or less), having such formal mechanisms in place might not be practical and necessary given the overall orientation of the business.

The disclosure requirement in the Standards Advisory Council's decision is intended to recognize that some people may disagree with the position outlined by the Standards Advisory Council and should have the relevant information to make their own judgment regarding the company's social and environmental performance.

Companies that have not sufficiently managed these issues in the opinion of the Standards Advisory Council will not be eligible for B Corp Certification. Further, specific, material and credible complaints about companies that provide engineering consulting services in the defense sector will be investigated through B Lab's formal Complaints Process.

The requirements stated in this document apply to all prospective B Corps that provide engineering consulting services to clients in the defense sector, and establish the precedent that B Lab will review company's % revenue from the defense sector, the nature of services rendered by the company, their clients and projects along with management practices for the risks identified through B Lab's research and stakeholder engagement process. In cases where B Lab is unable to determine whether a company is meeting the requirements of this statement, the company's case will be presented to the Standards Advisory Council for a decision.

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The decision of the Standards Advisory Council has been informed by independent research conducted by B Lab and stakeholder consultations including academic experts.

This statement is effective as of May 2020 until further judgment from the Standards Advisory Council.

Please send your feedback or questions to B Lab's Standards Management team at standardsmanagement@bcorporation.net.

Appendix 1: List of Legal and Ethical Precepts for Military Technologies

In his paper[14] titled "*Legal and Ethical Precepts Governing Emerging Military Technologies: Research and Use*", Dr. G.R. Lucas Jr. has suggested certain principles that could guide the behaviour of those involved in the development, testing and manufacture of military technologies. These could serve as guardrails for engineers providing services in the defense sector, to assess the legal and ethical nature of the projects that they are involved in. Some of these principles are listed below:

Principle	**Description**
The Principle of Mission Legality	A military mission that has been deemed legally permissible and morally justifiable on all other relevant grounds does not lose this status solely on the basis of a modification or change in the technological means used to carry it out unless the technology in question represents or employs weapons or methods already specifically proscribed under existing international Weapons Conventions, or in violation of the prohibitions in international humanitarian law against means or methods that inflict superfluous injury or unnecessary suffering.
The Principle of Unnecessary Risk	Within the context of an otherwise lawful and morally justified international armed conflict or domestic security operation, we owe the war-fighter or domestic security agent every possible minimization of risk we can provide them in the course of carrying out their otherwise legally permissible and morally justifiable missions.
The Principle of Greatest Proportional Compliance	in the pursuit of a legally permissible and morally justifiable military (or security) mission, agents are obligated to use the means or methods available that promise the closest compliance with the international laws of armed conflict (LOAC) and applicable rules of engagement (ROEs), such as non-combatant distinction (discrimination) and the economy of force (proportionality).

[14] Lucas, G.R. (2014), Legal and Ethical Precepts Governing Emerging Military Technologies: Research and Use, Amsterdam Law Forum Vol 6:1, Retrieved from <http://amsterdamlawforum.org/article/viewFile/330/498>

The Principle of Due Care	All R&D, design, and manufacture of systems undertaken with full knowledge of, and in good faith compliance with, the above Precepts (such good faith at minimum to encompass rigorous testing to ensure safe and reliable operation under the terms of these precepts) shall be understood as legally permissible and morally justifiable.
Principle of Product Liability	Mistakes, errors, or malfunctions that nonetheless might reasonably and randomly be expected to occur, despite the full and good faith exercise of due care as defined in the previous Precept, shall be accountable under applicable international and/or domestic product liability law, including full and fair financial and other compensation or restitution for wrongful injury, death, or destruction of property.
Principle of Criminal Negligence	By contrast, R&D, design, or manufacture of systems undertaken through culpable ignorance, or in deliberate or wilful disregard of these precepts shall be subject to designation as “war crimes” under international law, and/or as reckless endangerment or criminally negligent behaviour under the terms of applicable international and/or domestic law.
Orientation and Legal Compliance	All individuals and organizations (including military services, industries, and research laboratories) engaged in R&D, design, manufacture, acquisition, or use of such systems for military purposes shall be required to attend an orientation and legal compliance seminar of not less than 8 hours on these precepts, and upon conclusion, to receive, sign, and duly file with appropriate authorities a signed copy of these precepts as a precondition of their continued work.