

PREVENTING CORRUPTION IN THE OFFICIAL ARMS TRADE



Defence Integrity Pacts
Sample Integrity Pact

27 June 2005

Sample Defence Integrity Pact - Introduction

This document is an example of a Defence Integrity Pact. It will need to be adapted for use with COUNTRY X law and reviewed by the Principal's lawyers. Readers should note that Integrity Pacts vary considerably in their detail and in the level of their commitments from country to country. There are other clauses, eg restrictions on government officials to take roles in any bidding company for some time after the bid, that are not present in this sample.

There is a companion document to this one that explains in outline how the Defence Integrity Pact operates.

Defence Integrity Pact

between the

- Government of COUNTRY X, Minister of Defence
- hereinafter called the Principal

and

- The contractors who will bid for the DEFENCE PRODUCT/SERVICE Y system
- hereinafter called the Bidder/Contractor

Preamble

The Principal intends to award, under the procedures prescribed by law, a number of contracts for developing the present DEFENCE PRODUCT/SERVICE Y. This concerns in particular software, design and installation contracts (To be confirmed/amended as required). The Principal attaches great importance to full compliance with all relevant anti-bribery laws and regulations, and the principles of economical use of resources, and of fairness and transparency in its relations with its Contractors.

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organization „Transparency International“ (TI). Following

TI's national and international experience, the Principal has appointed ORGANISATION Z as the external independent Monitor who will, until the DEFENCE PRODUCT/SERVICE Y is completed and put in service, accompany and monitor/control the tender processes and the execution of the contracts for compliance with the principles mentioned above.

§ 1 – Commitments of the Principal

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:

1. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of, a contract demand, take a promise for or accept, for him/herself or a third person, any material or immaterial benefit which he/she is not legally entitled to,

2. The Principal will, during the tender process, treat all Bidders alike, in compliance with the relevant provisions of the law. The Principal will in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.

3. The Principal will exclude from the process any prejudiced persons, in accordance with the provisions of the law.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offense under the corruption sections, or if there should be a concrete suspicion in this regard, the Principal will inform the [State Prosecutor's Office] and in addition can initiate disciplinary or civil sanctions.

§ 2 Commitments of the Bidder/Contractor

(1) The Bidder/Contractor commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

1. The Bidder/Contractor will not offer, promise or give to the Principal, to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange an advantage during the tender process or the execution of the contract.

2. The Bidder/Contractor will not enter with other Bidders into any illegal agreement, which would constitute a violation of the relevant provisions of the law. This applies in particular to agreements regarding prices, price components, prohibited price recommendations, the participation in recommendations or agreements concerning the submission or non-submission of bids or similar conduct.

3. The Bidder/Contractor will not commit any criminal offense against the law. The Bidder /Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained on diskettes or other data carriers.

4. The Bidder/Contractor shall not pay any agent, broker or other intermediary except as disclosed in the Schedules described in (2) below.

5. This contract is entered into in the name and on behalf of the presidents and/or general managers of the company's parent companies and this commitment includes all managers and personnel of the Company's subsidiaries in COUNTRY X country, should the latter exist.

(2) The Bidder/Contractor will, during the course of the tender process and throughout the contract, disclose any payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract. In particular, The Bidder/Contractor will provide the Principal with a schedule, which shows:

- i) the name and address of all agents, advisers and representative companies to which the Bidder/Contractor, or the Bidder/Contractor's parent, associated or subsidiary company, consortium or joint venture partner, or sub-contractor, has made, or intends to make, any payment, directly or indirectly, in relation to the Project;
- ii) the amount paid, or intended to be paid, to each agent, adviser and representative company and the currency of such payment;
- iii) a summary of the services which each agent, adviser and representative company has provided, or is intended to provide.
- iv) Full copies of all the agreements for services
- v) During the course of the pre-qualification and tender process, the Bidder/Contractor will provide to the client two separate monthly reports of all actual payments made in relation to the project. The first schedule will show all bid related and administrative or normal organisational expenses. The second schedule will show all payments to the above agents, advisers or representative companies.
- vi) The Bidder/Contractor will, if requested by the Principal, provide such further details in relation to the above agents advisers and representative companies and payments as the Principal shall require.

(3) The Bidder/Contractor will not instigate third persons to commit offenses according to [the Law] or be an accessory to such offenses.

(4) Obligation on the Bidder/ Contractor to ensure compliance

1. The Bidder/Contractor will take all reasonable steps to ensure that the provisions of this agreement are complied with by all its staff, consultants, parent

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- and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers
2. The Bidder/Contractor shall have in place a suitable written anti-bribery policy applicable to its business. This programme should cover, inter alia, bribes, political contributions, Charitable donations and sponsorship, facilitation payments, and gifts, hospitality and expenses
 3. The Bidder/ Contractor shall have in place a suitable compliance programme to ensure adherence to the anti-bribery policy. This should cover, inter alia, senior management accountability; applicability to subsidiaries, consortiums and joint ventures; rules for the engagement agents, brokers or any other intermediaries; due diligence on partners, agents and other intermediaries; training; raising concerns and whistle blowing; internal audit and internal investigations; monitoring and review. The Bidder/Contractor shall provide a copy of such policy and compliance programme together with its request for the tender documents. The Bidder/Contractor must be able to show that this policy has been communicated to all those bodies working with it in relation to this tender.
 4. The Bidder/Contractor will appoint an appropriate senior manager with responsibility for ensuring that the provisions of this agreement are complied with.
- (5) The Bidder/Contractor agrees to carry out internal investigations where the Principal has expressed doubts or reasonable concerns in regard to compliance with this agreement. The investigations shall be carried out by a competent independent internal group, and be done swiftly so as not to delay the tender or contract timetable. The investigation report will be made available to the Principal.

§ 3 - Disqualification from tender process and Exclusion from future Contracts

If the Bidder/Contractor, before contract award, has committed a serious transgression through a violation of § 2 or in any other form such as to put his reliability as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender

process or to terminate the contract, if already signed.

(1) If the Bidder/Contractor, after the contract has been awarded to him, has committed a serious transgression through a violation of § 2 or in any other form such as to put his reliability as Bidder into question, the Principal is entitled to give notice of cancellation of the Contract.

(2) If the Bidder/Contractor has committed a serious transgression through a violation of § 2 such as to put his reliability into question, the Principal is entitled also to exclude the Bidder/Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and a maximum of 3 years.

(3) If the Bidder/Contractor can prove that he has restored the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

(4) A transgression in terms of the Nr.1-3 above is considered to have occurred if in light of all evidence no reasonable doubt is possible.

§ 4 – Previous Transgressions

(1) The Bidder/Contractor declares that no previous severe transgressions occurred in the last 3 years that could justify his exclusion from the tender process. If transgressions have occurred, the Bidder/Contractor has supplied full details of them to the Principal.

(2) If the Bidder/Contractor makes incorrect statements on this subject, he can be disqualified from the tender process; or the contract, if already awarded, can be terminated.

§ 5 – Equal treatment of all Bidders/Contractors/Subcontractors

(1) The Bidder /Contractor undertakes to demand from all Subcontractors a commitment consistent with this integrity pact and to submit it to the Principal before contract signing or, at the latest, before the Principal approves the subcontracting.

(2) The Principal will enter into an agreement with the same conditions as this one with all Bidders, Contractors and Subcontractors.

(3) The Principal will disqualify from the tender process all bidders who do not sign this agreement or violate its provisions.

§ 6 Criminal Charges against violating Bidders/Contractors/Subcontractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee of a Bidder, Contractor or Subcontractor which constitutes a corruption related crime, or if the Principal has a concrete suspicion in this regard, the Principal will inform the State Prosecutor's Office.

§ 7 – External Independent Monitor

(1) The Principal has appointed a suitably qualified external independent Monitor for the period until completion of the project. The task of the Monitor is to review, independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

(2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He presents his reports to all the parties.

(3) The Monitor has the right of access without restriction to all Project documentation of the Principal. The Bidder/Contractor will also grant the Monitor, upon his request, unlimited access to his Project documentation and to the Project documentation of his sub-contractors, agents, intermediaries and representatives. The Monitor is under contractual obligation to treat the information and documents with confidentiality.

(4) Prior to the tender documentation being made available to interested parties, the principal will ask the independent Monitor to review the Statement of Requirements and the Specification, so as to point out to the Management of the Principal areas of text where he believes that there may be opportunities for corruption, for example in specifications that may favour one contractor over another.

The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual or financial relations between the Principal and the Bidder/Contractor. The parties offer to the Monitor the option to attend such meetings.

(5) As soon as the Monitor notices a possible violation of this agreement, he will so inform the Principal. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(6) The Monitor will also publish reports on the progress of the tender/contract as follows. Within one month after completion of the Pre-qualification Process, the Monitor will issue a written report simultaneously to the Principal, the Bidder/Contractors and any body providing financial aid in relation to the project. Within one month after completion of the Tender Process, the Monitor will issue a

second written report to the above organisations. Once the contract has been awarded, the Monitor will issue reports at six monthly intervals to the above organisations. These reports will provide details of all suspected or actual breaches of the provisions of this agreement, actions taken by the Monitor and the Parties in relation to such breaches, and any reports made by the Monitor to criminal authorities, professional associations or other bodies. The reports will be published by the independent Monitor on the internet at the same time as they are issued to the Principal and their Bidder/Contractors.

(7) If the Monitor has reported to the Principal a substantiated suspicion of an offence against the corruption related criminal laws, and the Principal has not, within reasonable time, taken visible action to proceed against such offence or reported it to the State Prosecutor's Office, the Monitor may also transmit this information directly to the State Prosecutor's Office.

§ 8 – Public transparency

The principal attaches great importance to transparency, and is keen that the bid be as open to public scrutiny as is consistent with the need for proper security and protection of confidential information. The law already provides for public transparency in respect of the announcement of the bid, and the opening of the bids. The Principal has agreed that the following documents shall be publicly available:

The Statement of Requirements

The tender specification

The successful bid documentation

The process of Question and Answer will also be made public.

In addition, the Principal will take steps to encourage members of the public to inform him or Civil Society organisations of concerns they may have, and for those civil society organisations to inform the independent Monitor.

§ 9 – Contract Duration

This agreement begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the respective contract, and for all other Bidders 12 months after the contract has been awarded.

§ 10 – Other Provisions

- (1) This agreement is subject to COUNTRY X law. Place of performance and jurisdiction is the headquarters office of the Principal.

- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement closest to their original intentions.

Principal

Bidder/Contractor

The Principal's lawyers need to ensure that this Integrity pact is compatible with COUNTRY X law and the proposed contract document.