



FIDIC Policy Statement

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS

Background

The disease of corruption is unfortunately spreading at the very time when world communications are improving and the economies of nations are becoming more interdependent as we move towards the global neighborhood. Corruption's taint includes the procurement of design and construction.

Corruption, that can be defined as "the misuse of public power for private profit", is morally and economically damaging. Firstly, it jeopardizes procurement processes, is always unfair, and is often criminal: it saps money from required development projects and adversely affects their quality. Secondly, and worse than being pragmatically wrong, in allowing wasteful procurement corruption is basically wrong: it undermines society's values, breeds cynicism and demeans the individuals involved. It is more than stealing funds, it is stealing trust.

The consulting engineering industry which, as it should, has been motivated historically by concern for the needs of society, must seek to both prevent and react to the blight of corruption. FIDIC and its Member Associations, representing the leaders of the consulting engineering industry will neither ignore nor acquiesce with the tide of corruption. Nor will they consider that local corruption is cultural and unchangeable. The member firms of FIDIC's Member Associations will neither initiate nor accede to corrupt practices.

The FIDIC Policy Statement *Corruption* was approved by the FIDIC Executive Committee in September 2003. Printed copies can be obtained from the FIDIC Bookshop, either individually or as inserts in the binder *FIDIC Policy Statements*. Electronic versions are available from www.fidic.org/policies. Reproduction is permitted provided the source is acknowledged.

FIDIC has taken a proactive role in joining the worldwide effort to combat corruption by supporting international anticorruption initiatives, promoting high ethical standards, recommending the implementation of integrity management, and cooperating with agencies investigating corruption.

Where corruption occurs

Corrupt practices can occur at all stages of the procurement process: in the marketing of engineering services; during the design; in preparing tender documents (including specifications); in pre-qualifying tenderers; in evaluating tenders; in supervising the performance of those carrying out the construction; while issuing payment certificates to contractors; and on making decisions on contractors' claims.

Business development

The selection of a consulting engineering firm is a most important task, and is the basis for the essential and mutual client–consultant trust. The various selection criteria advocated by FIDIC, to be applied in judging a firm's suitability to carry out a project, are completely undermined if the selection process is tainted by corruption. The preparation of a short list is an important part of the process, and must be carried out openly.

Consulting engineering firms should promote the availability and capability to perform consulting services only on the basis of quality considerations. They should not seek work which calls for expertise beyond their particular training and experience.

A bribe of whatever form, intended to influence an evaluation committee during the prequalification phase, or later during the final retainer

discussions, whether directly or indirectly (using mechanisms such as scholarships, actions of agents, or currency exchange facilities) constitutes unethical behaviour.

Design, specification preparation and pre-qualification

In the preparation of designs, and later the specification documents, the consulting engineering firm must pursue the best interests of the client. The consulting firm must not accept remuneration from suppliers which are under consideration for incorporation into the design, and must avoid references to brand names. The consulting firm must not be influenced to use products or processes because they are owned or promoted by organizations with whom the consulting firm may have an affiliation, except where the consulting firm has a role, known to the client, as an equity participant in, for example, a design and build project.

The delivery system or contractual approach recommended to the client must be the most appropriate for the project. Similarly, in evaluating potential tenders during a prequalification period, the best interest of the client must be paramount. This usually means the fostering of competitive tendering. The use of FIDIC forms of Conditions of Contract, which are balanced documents developed and revised in the light of experience, is recommended. Even more importantly, a tendering and evaluation process conducted with transparency and expedition will make

more likely a contract award which will be predicated upon proper factors. As quoted in the FIDIC document *Tendering Procedure*, 2nd Ed 1994 [1], the key factors and method of evaluation should be established in the introductions to the tenderers, in order that the subsequent evaluation will be objective and fair to all tenderers.

Construction supervision and claims

During the course of construction, the consulting engineering firm is charged with the responsibility of exercising discretion in accepting materials, expressing satisfaction or approval, determining quantities and value, and giving opinion, consent or decision. The proper and impartial exercise of that responsibility, in the client's best interests, is at the core of the consulting firm's role, and is the essence of the FIDIC system.

Consistent with the objectives of this policy statement, it is noted that the *FIDIC Plant and Design-Build Contract*, 1st Ed 1999 [2], and the *EPC/Turnkey Contract*, 1st Ed 1999 [3], as with the laws of many countries, provide that bribery by the contractor is a basis for contract termination, much like the more conventional bases for default.

The consulting engineering firm must not offer or accept remuneration of any kind which may be perceived to, or in reality, attempt to influence the selection or compensation procedure or affect the impartial judgement of the consulting engineering firm.

Therefore FIDIC recommends as follows

- 1 Member Associations and their members, both firms and individuals, should internally develop and maintain systems to protect their high ethical standards and codes of conduct. They should cooperate candidly with other organizations which seek to reduce corruption. Member firms should associate themselves only with other firms who share similar high ethical standards.
- 2 Member firms should have a commitment to integrity through the implementation of a Business Integrity Management System (see *Guidelines for Business Integrity Management in the consulting industry*, Test Ed 2001 [4]) involving all levels of management and every employee, focusing on corruption prevention.
- 3 Members Associations should assist member firms in developing a Business Integrity Management System, by providing guides, training and general support.
- 4 Member firms should have access to an independent evaluation of the Business Integrity Management System with guidelines developed by the consulting engineering industry.
- 5 To reduce the opportunities for corruption in the process of the procurement of engineering and construction services (see *FIDIC Guidelines for the selection of consultants*, 1st Ed 2003 [5]), quality-based selection procedures (see *Quality Based Selection for procurement of consulting services*, 1st Ed 1997 [6]) and competitive tendering (see *Tendering Procedures*, 2nd Ed 1994 [1]), respectively, should be used.
- 6 In implementing particular projects, consulting engineering firm should recommend to their clients the most appropriate and objective procurement process or delivery system, consistent with the demands of the project.
- 7 Funding agencies should be kept fully informed by the consulting firm of the procurement steps as they occur. The consulting firm shall notify funding agencies of any irregularities, in order that cancellation or other remedies may be exercised, in accordance with the loan agreement.
- 8 Member firms should be aware of local law regarding corruption and should promptly report criminal behaviour to the proper law enforcement authorities.
- 9 FIDIC Member Associations should take prompt disciplinary actions against any member firms found to have violated the *FIDIC Code of Ethics*. This could include, among other actions, expulsion and notification to public agencies. Procedures should be established by Member Associations to assure that the due process of law is afforded in such cases. The procedure for determining whether the expulsion of a member firm is warranted, should be conducted confidentially but expeditiously.
- 10 Member Associations should foster and support the enactment of legislation in their own countries, which is aimed at curbing and penalising corrupt practices.

References and resources

- 1 *Tendering Procedures*, 2nd Ed 1994.
- 2 *Plant and Design-Build Contract*, 1st Ed 1999.
- 3 *EPC/Turnkey Contract*, 1st Ed 1999.
- 4 *Guidelines for Business Integrity Management in the consulting industry*, Test Ed 2001.
- 5 *Guidelines for the selection of consultants*, 1st Ed 2003
- 6 *Quality Based Selection for procurement of consulting services*, 1st Ed 1997.

Resources available at www.fidic.org/policies/corruption

Other relevant FIDIC publications

- *Model Representative Agreement, Test Ed 2004.*
- *Client/Consultant Model Services Agreement*, 3rd Ed 1998.
- *Joint Venture Agreement*, 1st Ed 1992.
- *Sub-Consultancy Agreement*, 1st Ed 1992.
- *Short Form of Contract*, 1st Ed 1999.
- *Construction Contract*, 1st Ed 1999.
- *The FIDIC Contracts Guide*, 1st Ed 1999.
- *Conditions of Subcontract for Work of Civil Engineering Construction*, 1st Ed 1994.
- *FIDIC Policy Statements*, 2004.
- *Capacity building: building the capacity of consulting firms*, 2001.
- *Sustainable development in the consulting engineering industry: a strategy paper*, 2000.
- *Engineering our future*, 1998.
- *Guide to Quality Management in the consulting engineering industry*, 2nd Ed 2001.
- *Guide to the interpretation and application of the ISO 9001:2001 Standard for the consulting engineering industry*, 1st Ed 2001.
- *Consulting engineers and the environment: guide for actions*, 1st Ed, 1994.
- *Risk Management Manual*, 1st Ed 1997.
- *Professional liability insurance: a primer*, 1st Ed 1991.
- *Insurance of large civil engineering projects*, 2004.
- *Amicable settlement of construction disputes*, 1st Ed 1992.
- *Construction, insurance and law*, 1st Ed 1986.
- *Mediation of professional liability claims*, 1st Ed 1993.
- *Risk Management expectations*, 1st Ed 1991.

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