

CONTRACTORS & SUPPLIERS

**Anti-Bribery Guidance
Chapter 14**

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

QUICK READ

Procurement and contracting are high risk areas for corruption. Corrupt employees in the procurement and contracting function may solicit or accept bribes and kickbacks from bidders and contractors. They can manipulate procurement processes to favour particular bidders, disguise the basis of decisions to award contracts and even generate funds to be paid to bidders to pay bribes or to be returned in kickbacks.

The company should ensure that it has effective procedures to counter bribery and corruption in its procurement and contracting processes. This will include tailored training for staff, financial controls over payments to contractors. The company should also communicate the anti-bribery programme to contractors and suppliers, and include anti-bribery provisions in contracts, and conduct rigorous monitoring of transactions and high-value contracts.

Key elements:

- **Publicly commit** to fair trading and demonstrate your commitment through your procedures to deter corrupt bidders from participating company tenders.
- Conduct **due diligence** on prospective bidders to identify red flags for bribery and corruption.
- Implement consistent and transparent **review processes** for major contracts to ensure they have not been awarded based on bribery.
- **Monitor** contracting processes, decisions and transactions to identify red flags for collusion between bidders and procurement staff.

BEST PRACTICE

- **Commit to fair trading:** The code of conduct should state that the company is committed to integrity and will operate transparently and fairly in its business dealings. This commitment and the policy of zero tolerance of bribery should be made clear to third parties. This will enhance the reputation of the company, set the tone for the bidding process and, over time, deter demands for bribes.
- **Demonstrate your commitment:** When awarding contracts, the company should communicate and demonstrate that its contracting and purchasing procedures are carried out in line with this commitment.
- **Assess the risks:** The procedures for tendering and contracting should be examined rigorously to identify areas where there is risk of bribery and improvements should be made, such as strengthening of monitoring systems, and controlling rush orders or order changes which heighten the risk of bribery.
- **Monitor:** Check for evidence of bribery or red flags during contract negotiations and in the contract implementation phase (it is in this phase that bribery typically takes place). Software can be used to monitor for red flags, such as unusual financial patterns or employees that are reluctant to take holidays (and hand over contractor relationships to colleagues).

GUIDANCE

14.1 Procurement and contracting

The procurement and contracting function manages the process of tendering for the supply of goods and services, awarding contracts and ensuring they run smoothly. It is one of the operational functions most vulnerable to corruption, particularly the solicitation and receipt of bribes and kickbacks.

Sales and marketing functions that participate in contract tenders are also vulnerable. For example, employees may pay bribes to win orders, gain insider information (such as tender specifications before they are released) or to influence tender specifications or procurement processes to make them more favourable to the company. [Click here](#) to see an example of bribery related to contract specifications.

The company should be rigorous in ensuring all staff engaged in sales, marketing and procurement activities receive appropriate anti-bribery training and are subject to anti-bribery controls, and that its anti-bribery programme and tendering procedures are communicated to and endorsed by all contractors and suppliers. Staff involved in procurement should not receive, or provide, gifts and hospitality from bidding companies.

14.2 Tendering

The company's purchasing and contracting processes should remove any opportunity for employees to steer the award of a contract to a particular bidder. For large contracts, the company should apply a consistent and systematic review procedure to demonstrate the process is free from bribery. The company should be open about the process by which contracts of interest to stakeholders have been opened and awarded. It should notify unsuccessful bidders of its decisions and the basis for selecting winning contracts.

Corrupt employees will have four key aims relating to tendering:

- To manipulate the process for awarding contracts so that corrupt contractors will be selected who are willing to pay bribes and kickbacks.
- To falsify documentation to disguise contracts awarded through bribery.
- To create opportunities for corrupt contractors to improve their margins and earn additional fees to fund kickbacks and further bribes.
- To encourage existing corrupt contractors to bid for other contracts and penalise honest contractors.

14.2.1 Inviting tenders

The company should give equal notice of tenders to all potential bidders (a common way of distorting the process is to tip off one supplier in advance and give others a short period in which to prepare their bid).

It should check for red flags, such as the provision of hospitality to procurement staff by potential bidders.

Where bids are to be solicited through advertising and other channels, the company should ensure that they are disseminated widely.

There should be security for handling bids before and after opening so that corrupt bidders are not given inside information about specifications or competitors' bids.

When setting the specifications for a contract, the company should have checks in the process to ensure that the specifications are not distorted to match one particular supplier's product or services (thereby excluding or putting at a disadvantage other potential suppliers). Specifications should be drawn up to encourage a wide range of tenders.

14.2.2 Evaluating bids

The evaluation process should be subject to scrutiny, as corrupt employees can manipulate the evaluation criteria and weighting of decisions in favour of their preferred bidders. The bid validity period should also be monitored to make sure that corrupt employees are not deliberately delaying completion of the award process to force successful bidders to drop out. Due diligence should be carried out on contractors and suppliers and their agents. Special care should be taken in cases of sole or exclusive sourcing to ensure that the decision has been made as an exception, with due management checks and valid criteria, and that bribery has not played a part in the decision.

14.2.3 Post-tender monitoring

The company should have processes that prevent corrupt employees from generating funds for a bidder to pay bribes or otherwise giving them additional compensation. For example, an employee might help to increase the margins of a contract by accepting reduced quality services and products, or alter a contract after it has been awarded by including increases in fees due to changes in technical specifications. Billing for essential work not specified in the contract is an indicator of collusion between the supplier and the employee responsible for awarding the contract.

The company should make sure that equipment and services are actually provided and that they match the specification upon which the contract was awarded. Failures or delinquencies on contracts should be examined and sanctions applied for any breaches of procedures. The company should monitor the management of the contract to check whether honest contractors and suppliers are subjected to harassment or delays either during a contract or when bidding for new contracts. Conversely, corrupt contractors may be treated favourably to reward them for bribes paid during the bidding process and to encourage further bribery.

14.3 Communicating the programme to contractors and suppliers

The company should communicate its anti-bribery programme before awarding a major contract and ensure that contractors and suppliers are willing to conform to it. Contracts should include a clause giving the company the right to apply sanctions, including termination, in the event of a violation relating to bribery. The company should ensure that the contractors' employees understand both the contractor's programme, if it has one, and the requirements of the contract with the company to observe its own programme.

The company should work in partnership with its major contractors, sub-contractors and suppliers to help them develop anti-bribery practices. It should meet them periodically, hold performance reviews and encourage compliance and business integrity. These meetings can inform third parties of developments in the company's programme, help them develop systems, give them information about bribery risks and be used for exchanging information. The company can work with its leading contractors and suppliers to ensure that their employees receive regular anti-bribery training and communications.

14.4 E-procurement systems and vendor management

Technology can also make the procurement process easier through the use of self-service portals where the third party can fill in and upload the requisite due diligence data and update it periodically. Such systems can greatly reduce the time and cost of preliminary due diligence for both parties. Supporting systems can pick up anomalies in any data entered and raise red flags. For more information, see Managing Third Parties (Chapter 12).

14.5 Integrity Pacts

Integrity Pacts were developed as a tool for preventing corruption in public contracting. An Integrity Pact is both a signed document and approach to public contracting which commits a contracting authority and bidders to comply with best practice and maximum transparency. A third actor, usually a civil society organisation (often one of our chapters), monitors the process and commitments made. Monitors commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis.

Integrity Pacts have been around since the 1990s, and have been applied in more than 15 countries and 300 separate situations. They help save taxpayer money, ensure that infrastructure projects and other public works are delivered efficiently, and close off avenues for illicit gain. An update to the Integrity Pact concept in 2016 has seen it draw on major advances in the areas of technology and civic participation.

The Integrity Pact is co-created by TI national chapters, or other civil society partners, and government officials responsible for a particular procurement process. Its clauses are drawn from both international open contracting principles as well as the local legal and social context. In this way the tool is constantly

evolving based on lessons learned and best practice around the world as well as up-to-date analysis regarding the country and sector's corruption risk profile. In this way, the Integrity Pact avoids being a one-size fits all approach but rather a living tool that adapts to local opportunities and challenges.

For more information and tools please see [here](#).

CHAPTER APPENDIX

14.6.1 Case study: Bribery in contract specifications - Illegal information brokering by UK civil servant

A senior official at the UK Ministry of Defence (MoD) was given concurrent sentences of two years in 2007 in the UK for receiving bribes of more than £217,000 from Pacific Consolidated Industries (PCI), a US company, in return for providing confidential information to help PCI secure a £4.5 million contract to supply the British Armed Forces with gas containers. When PCI was taken over by another company, due diligence by the acquirer uncovered a total of nine corrupt payments paid over the years. The MoD official enjoyed lavish hospitality from the company: PCI's vice-president paid for the official and his wife to fly to the USA, put them up in luxury hotels and entertained them on his yacht. The information the official supplied included the amount allocated for the gas equipment and the specifications of the kit ordered in previous years. This put other companies bidding for the contract at a disadvantage under the tendering process as they would have received only the general specifications.

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