

Business Principles for Countering Bribery In The Engineering & Construction Industry

An initiative of the World Economic Forum, Transparency International
& The Basel Institute on Governance

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Credits

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Foreword

At the 2003 annual meeting of the World Economic Forum in Davos, the Engineering & Construction Governors of the Forum established a multinational Task Force of member companies to develop anti-corruption principles to guide companies that participate in engineering and construction projects around the world. The E&C Business Principles for Countering Bribery in the Engineering & Construction Industry (the “E&C Business Principles”) are the product of a year-long effort by the Task Force, working in close association with Transparency International and the Basel Institute on Governance.

We believe the time is right for issuance of these E&C Business Principles and that their widespread adoption will raise standards across the industry and contribute to the goals of good governance and economic development. Companies that adopt these Principles will be committing to two fundamental actions – adoption of a “zero tolerance” policy on Bribery and development of a practical and effective Program of internal systems and controls for implementing that policy. In practical terms, this will mean either implementing anti-bribery practices based on these E&C Business Principles or, for companies with established programs, using the E&C Business Principles to benchmark existing practice.

This document has been designed to provide E&C companies with practical guidance and a reference point for developing their own implementation policies and procedures for countering Bribery. Future efforts will focus on the development of an implementation program to secure commitment and sustainable adherence to the E&C Business Principles across the E&C industry and to work with public and private sector institutions to take complementary steps.

On behalf of the Task Force, I wish to thank all those whose contributions made successful completion of this important industry initiative possible.

Alan Boeckmann
Chairman and Chief Executive Officer
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1 Introduction

These Business Principles for Countering Bribery in the Engineering & Construction Industry were developed by a multinational task force of E&C companies working with the World Economic Forum, Transparency International and the Basel Institute on Governance.

The aim of these Principles is to provide a framework for good business practices and risk management strategies for countering Bribery. They are intended to assist enterprises to:

- eliminate Bribery
- demonstrate their commitment to countering Bribery
- make a positive contribution to improving business standards of integrity, transparency and accountability wherever they operate.

The E&C Business Principles build on general industry anti-bribery principles developed in 2002 by Transparency International and a coalition of private sector interests, non-governmental organizations and trade unions.¹ Changes to the 2002 principles have been made to reflect circumstances and concerns unique to the E&C industry and to enhance the guidance on Program development.

The E&C Business Principles commit signatory companies to two basic actions: adoption of a *zero tolerance* policy on Bribery and development of a practical and effective internal “Program” for implementing that policy. These Principles are designed to provide E&C companies of all sizes with practical guidance, rather than to be prescriptive, for developing their own policy statements and programs for combating Bribery and other forms of corruption in international business. In so doing, they contribute to the goals of good governance and economic development and give practical effect to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and other similar governmental and private sector initiatives. These include the ICC Rules of Conduct to Combat Extortion and Bribery and the anti-bribery provisions of the revised OECD Guidelines for Multinationals.

This E&C initiative reflects an appreciation that corruption and Bribery are corrosive of economic progress and good governance. It recognizes the need for anti-bribery principles that can be applied industry-wide and that are based on a profound commitment to fundamental values of integrity, transparency and accountability.

¹ “Business Principles for Countering Bribery,” published by Transparency International and Social Accountability International (Dec. 2002).

2 The E&C Business Principles

- **The enterprise shall prohibit Bribery in any form.**

Bribery (“Bribery”) is the offering, promising or giving, as well as demanding or accepting, of any undue advantage, whether directly or indirectly, to or from:

- a public official,
- a political candidate, party or party official, or
- any private sector employee (including a person who directs or works for a private sector enterprise in any capacity),

in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business.

- **The enterprise shall commit to the continuation or implementation of an effective Program to counter Bribery.**

An effective Program is the entirety of an enterprise’s anti-bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight. This commitment is to develop and administer an internal compliance Program that effectively makes an enterprise’s anti-corruption policy an integral part of daily practice.

3 Development of a Program for Countering Bribery

- 3.1 An enterprise should develop a Program that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent Bribery from occurring in all activities under its effective control.
- 3.2 The Program should be tailored to reflect an enterprise's particular business circumstances and corporate culture, taking into account such factors as size, nature of the business, potential risks and locations of operation.
- 3.3 The Program should be consistent with all laws relevant to countering Bribery in all the jurisdictions in which the enterprise operates.
- 3.4 The enterprise should involve employees in the implementation of the Program.
- 3.5 The enterprise should ensure that it is informed of all matters material to the effective development and implementation of the Program, including emerging practices in the E&C industry, through appropriate monitoring activities and communications with relevant interested parties.

4 The Program: Scope and Guidelines

In developing its Program for countering Bribery, an enterprise should identify and assess specific areas that pose the greatest risks from corruption.

The Program should reflect emerging practice, with particular attention to the E&C sector and types and locations of business activity most susceptible to corruption and Bribery. All Programs should at a minimum cover the following areas:

4.1 Bribes

- 4.1.1 The enterprise should prohibit Bribery in all business transactions that are carried out either directly or through third parties, specifically including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control.
- 4.1.2 The enterprise should prohibit Bribery in any form, including on any contract payment or portion of a contract payment, or by any means or channels to provide improper benefits to customers, agents, contractors, suppliers or employees thereof.
- 4.1.3 The Program should provide guidance on the meaning and scope of this prohibition, with particular attention to areas of high risk to E&C companies.

4.2 Political contributions

- 4.2.1 The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates or organizations or individuals engaged in politics, as a subterfuge for Bribery.
- 4.2.2 All political contributions should be transparent and made only in accordance with applicable law.
- 4.2.3 The Program should include controls and procedures to ensure that improper political contributions are not made.

4.3 Charitable contributions and sponsorships

- 4.3.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for Bribery.
- 4.3.2 All charitable contributions and sponsorships should be transparent and made in accordance with applicable law.
- 4.3.3 The Program should include controls and procedures to ensure that improper charitable contributions and sponsorships are not made.

4.4 Facilitation payments

- 4.4.1 Recognizing that facilitation payments² are prohibited under the anti-bribery laws of most countries, enterprises which have not yet eliminated them entirely should support their identification and elimination by (a) explaining in their Program that facilitation payments are generally illegal in the foreign country concerned, (b) emphasizing in their Program that they are of limited nature and scope and must be appropriately accounted for, and (c) including in their Program appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees.

4.5 Gifts, hospitality and expenses

- 4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could improperly affect, or might be perceived to improperly affect, the outcome of a procurement or other business transaction and are not reasonable and *bona fide* expenditures.
- 4.5.2 The Program should include controls and procedures, including thresholds and reporting procedures, to ensure that the enterprise's policies relating to gifts, hospitality and expenses are followed.

²

Facilitation payments: These are small payments made to secure or expedite the performance of routine action to which the enterprise is entitled.

5 Program Implementation Requirements

The following section sets out the requirements that enterprises should meet, at a minimum, when implementing the Program.

5.1 Organization and responsibilities

- 5.1.1 The Board of Directors (or equivalent body) is responsible for overseeing the development and implementation of an effective Program.
 - 5.1.1.1 The Program should be based on the E&C Business Principles and the Board (or equivalent body) should provide leadership, resources and active support for management's implementation of the Program.
 - 5.1.1.2 The Board (or equivalent body) should ensure that the Program is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.
- 5.1.2 The Chief Executive Officer (or executive board) is responsible for seeing that the Program is carried out consistently with clear lines of authority.
 - 5.1.2.1 Authority for implementation of the Program should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.
- 5.1.3 The Board of Directors (or equivalent body), Chief Executive Officer (or executive board) and senior management should demonstrate visible and active commitment to the implementation of the E&C Business Principles.

5.2 Business relationships

The enterprise should apply its Program in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships.

- 5.2.1 Subsidiaries
 - 5.2.1.1 The Program should be designed and implemented on an enterprise-wide basis, applicable in all material respects to controlled subsidiary entities.
 - 5.2.1.2 The enterprise should undertake measures to see that the conduct of subsidiary entities is consistent with the E&C Business Principles.

5.2.2 Joint ventures³

5.2.2.1 Due diligence should be conducted before entering into a joint venture, and on an on-going basis as circumstances warrant. The Program should provide guidance for conducting due diligence.

5.2.2.2 The enterprise should undertake appropriate measures, including contract protections, to ensure that the conduct of joint ventures is consistent with the E&C Business Principles.

5.2.3 Agents, advisors and other intermediaries

5.2.3.1 The enterprise should undertake due diligence before appointing an agent, advisor or other intermediary, and on an on-going basis as circumstances warrant.

5.2.3.2 The Program should provide guidance for conducting due diligence, entering into contractual relationships, and supervising the conduct of an agent, advisor or other intermediary.

5.2.3.2.1. Due diligence review and other material aspects of the relationship with the agent, advisor or other intermediary should be documented.

5.2.3.2.2. All agreements with agents, advisors and other intermediaries should require prior approval of senior management.

5.2.3.2.3. The agent, advisor or other intermediary should contractually agree in writing to comply with the enterprise's Program and should be provided with materials explaining this obligation.

5.2.3.2.4. Provision should be included in all contracts with agents, advisors and other intermediaries relating to access to records, co-operation in investigations and similar matters pertaining to the contract.

5.2.3.2.5. Compensation paid to agents, advisors and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered and should be paid through *bona fide* channels.

³ The provisions in 5.2.2 apply also to non-controlled subsidiaries, consortium partners, teaming agreements and nominated subcontractors.

5.2.3.2.6. The enterprise should monitor the conduct of its agents, advisors and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Program.

5.2.4 Contractors, subcontractors and suppliers

5.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.

5.2.4.2 The enterprise should undertake due diligence, as appropriate, in evaluating contractors, subcontractors and suppliers to ensure that they have effective anti-bribery policies.

5.2.4.3 The enterprise should make known its anti-bribery policies to contractors, subcontractors and suppliers. It should monitor their conduct and should have a contractual right of termination in case of conduct inconsistent with the Program.

5.3 Human resources

5.3.1 The enterprise's commitment to the Program should be reflected in its Human Resource practices.

5.3.2 The enterprise should make clear that compliance with the Program is mandatory and that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business.

5.3.3 The enterprise should apply appropriate sanctions for violations of the Program, up to and including termination in appropriate circumstances.

5.4 Training

5.4.1 Managers, employees and agents should receive specific training on the Program, tailored to relevant needs and circumstances.

5.4.2 Where appropriate, contractors and suppliers should receive training on the Program.

5.4.3 Training activities should be assessed periodically for effectiveness.

5.5 Raising concerns and seeking guidance

5.5.1 The Program should encourage employees and others to raise concerns and report suspicious circumstances to responsible enterprise officials as early as possible.

5.5.2 To this end, the enterprise should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances ("whistle-blowing") in confidence and without risk of reprisal.

- 5.5.3 These channels should also be available for employees and others to seek advice or suggest improvements to the Program. As part of this process, the enterprise should provide guidance to employees and others on applying the Program's rules and requirements to individual cases.

5.6 Communication

- 5.6.1 The enterprise should establish effective mechanisms for internal communication of the Program.
- 5.6.2 The enterprise should publicly disclose its Policy for countering Bribery.
- 5.6.3 The enterprise should be open to receiving communications from relevant interested parties with respect to its Policy for countering Bribery.

5.7 Internal controls and audit

- 5.7.1 The enterprise should maintain accurate books and records, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.
- 5.7.2 The enterprise should establish and maintain an effective system of internal controls, comprising financial and organizational checks and balances over the enterprise's accounting and recordkeeping practices and other business processes related to the Program.
- 5.7.3 The enterprise should establish feedback mechanisms and other internal processes designed to support the continuous improvement of the Program.
- 5.7.4 The enterprise should subject the internal control systems, in particular the accounting and recordkeeping practices, to regular audits to verify compliance with the Program.

5.8 Monitoring and review

- 5.8.1 Senior management of the enterprise should monitor the Program and periodically review the Program's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report the result of the Program review to the Board, Audit Committee or equivalent body.
- 5.8.2 The Board, Audit Committee or equivalent body should receive and evaluate periodically an assessment of the adequacy of the Program.