

RESPONSES TO THE CONSULTATION PAPER ON THE REVIEW OF THE OECD ANTI-BRIBERY INSTRUMENTS

Comments from the International Federation of Consulting Engineers (FIDIC)

Introduction

The OECD's Working Group on Bribery in International Business Transactions has released a Consultation Paper on Combating Bribery. It summarises the main issues which have arisen so far in the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials.

FIDIC and its Anti-corruption Activities

FIDIC, the International Federation of Consulting Engineers, represents 78 National Member Associations, consisting of over 45,000 consulting engineering firms worldwide. These firms employ over 1,500,000 professional staff. They provide engineering and related services to clients worldwide on projects with construction costs exceeding US\$1.5 trillion annually and involving consulting engineering fees of over US\$120 billion per annum.

FIDIC actively engages with a wide range of stakeholders related with the bribery and corruption issue. FIDIC is active in a number of multilateral forums such as the UN Global Compact, the TI Business Principles, the WEF's PACI, and it maintains frequent interactions with the Multi-lateral Development Banks. FIDIC emphasises the need for integrity, quality and clarity in the procurement of engineering services, both with its members, and with the clients of member firms.

FIDIC acknowledges that bribery and corruption is a significant problem for the construction sector, but contends that the issues stem at least as much from the "demand side" of bribery and corruption as from the "supply side".

FIDIC's response to the possible involvement of its members in such activities was to develop its Business Integrity Management System (BIMs) in 2001. This system is basically a quality management system which reinforces the integrity policy of a company, much like a quality assurance programme reinforces a company's commitment to quality. BIMs provides a verifiable means of detecting and correcting potentially corrupt practices, reinforcing the message that such practices are not acceptable within the company. The OECD is aware of BIMs (and its design was initiated by Prof Pieth), but it is not mentioned in this Discussion Paper. Yet the OECD has not hesitated to label the industry as a contributor to corruption in the final statements of clause 112.

To assist agencies such as the Multilateral Development Banks to address corruption on the "demand side", FIDIC has developed GPIMs – a Government Procurement Integrity Management System. This system contains similar elements to BIMs, and involves a QA type approach to identifying and dealing with potential problems. It also contains an important education component. We are currently working with the Banks to identify opportunities to field test the system in practice.

Issues Requiring Attention

FIDIC believes that anti-corruption efforts must be comprehensive in nature, and must address the underlying causes of corruption, covering both the "supply side" and the "demand side" of corruption. Leadership must come from governments, aid donors, industry and professional associations. This leadership must be supported by legal systems that quickly and effectively prosecute corrupt officials and companies, and by commitments by individual companies and professionals to contribute positively to continuous improvement in the integrity of public procurement processes. An environment in which bribery and corruption is not allowed to flourish, and in which good practice is acknowledged, will see good practice being further developed and adopted.

Some cases of bribery arise from simple greed. Others occur because some public servants are placed in positions of authority but are not paid a living wage by their government in the expectation that they will make their personal income through bribes. This is deep systemic corruption and the current OECD convention will not rectify this problem.

The OECD efforts to stem bribery and corruption are welcomed by our industry but, because of their one-sided approach, FIDIC believes that they have limited potential for success. In particular, (quoting from clause 132 of the Consultation Paper) “foreign public officials play an active role in the vast majority of foreign bribery transactions”. However, the efforts discussed in the consultation paper deal only with the “supply side” of bribery. The suggestion in clause 133 that the Parties to the convention should ratify other agreements that address the demand side is, in our opinion, a weak response to this reality. FIDIC is of the view that the OECD convention should be broadened to include criminalization of those who accept bribes.

We propose that a more balanced approach be considered. Companies that have been successfully prosecuted for bribery and corruption face a variety of sanctions, including seizure of the benefits of the transaction, criminal prosecution, and removal from further access to that market. The assumption is made that the individuals who have carried out the improper behavior were acting on behalf of an accepted company practice and the company as a whole should be penalized. Consequential damage to other (usually innocent) livelihoods in the company is ignored. Individuals who receive bribes should similarly be faced with criminal prosecution, seizure of the benefits of the transaction and removal from employment in the public sector. In addition, the agency for which the guilty individual works should also be subject to sanctions for condoning the behavior, reflecting the same practice as that applied to companies convicted of bribery.

FIDIC’s Business Integrity Management System is intended to provide companies with a mechanism for preventing, detecting and internally rectifying inappropriate behavior. These systems cost money and senior management time to implement, yet there are currently no client groups that give recognition to companies in our industry that take such proactive and systematic steps to ensure integrity. It would be helpful if organisations such as OECD could recommend to public sector organisations that they request evidence of systematic management of integrity as part of the selection process for firms who work for the public sector. It would also be helpful if part of the restoration of a convicted company’s ability to do work included the installation of some such management system.

Firms in our industry are in a good position currently to avoid corruption because the industry is busy and firms are more selective where they do business. The better companies are applying risk management processes (due diligence) to the countries where they do business. If corruption risks are deemed to be too high (ie corrupt practices are virtually unavoidable in the course of business) then they choose no longer to do business there. This results in a dearth of high quality expertise being made available to such countries – a situation which is now of considerable concern and interest to MDBs, as the quality of projects is seen to be falling as a result.

FIDIC does not see the current global anti-corruption initiatives as sustainable or effective and seeks to identify more suitable solutions.

Conclusion

FIDIC’s policy on bribery and corruption is zero tolerance, and we believe that all consulting engineering firms should also have a zero tolerance to corruption. FIDIC advocates that quality firms should all act with integrity. However, in an imperfect environment there needs to be balance. We fully agree with the provisions sought in bilateral aid-funded procurement (ss120), and we understand that the

MDBs are now working with the OECD-DAC in the assessment of good practice for their borrowing countries. However, we have yet to see such practices fully incorporated within procurement policies. To do so would mean recognizing suitable benchmarks and effective tools which can demonstrate compliance with such principles. This is why FIDIC is devoting considerable energy to BIMs and GPIMs, as the consulting industry's contribution to improved integrity in public procurement. Procurement must not only be clean; it must be seen to be clean. This means that our firms should only deal with agencies that have good practices in place, and those same agencies should only work with suppliers who can demonstrate that they are committed to following good practices themselves. Our firms need to see leadership from key government and financial stakeholders to ensure that our integrity enhancement efforts are sustainable.