

TRANSPARENCIA POR COLOMBIA

&

TRANSPARENCY INTERNATIONAL (UK)

Preventing Corruption in the Official Arms Trade

An independent review of the procurement of military items and the use of Integrity Pacts in those contracts

Lessons that can be applied in the international use of Procurement reviews and Integrity Pacts in defence, based on work done for the Ministry of Defense of the Republic of Colombia

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A report prepared by Transparencia por Colombia and
Transparency International (UK)

SUMMARY

This report outlines the results of a study carried out by Transparencia por Colombia and Transparency International (UK) into the procurement procedures used in the Ministry of Defense and the use of a simplified form of Integrity Pact in Colombian defence procurement procedures. The study was conducted at the invitation of the Colombian Ministry of Defense. Some 23 defence contracts awarded during 2003 and 2004 were reviewed; additionally, a number of bidders and Defense Ministry staff were interviewed. There were many useful lessons learned, which are described in this report; most importantly, that the routine use of Integrity Pacts will be seen to be more effective when there is use of an Independent Monitor, for example in larger procurements or where there may be particular reasons (eg complex technical scope, or particular reasons to doubt the bidders). The purpose of this report is to inform the wider adoption of both Integrity Pacts in defence and Independent Reviews of defence procurement internationally.

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1. INTRODUCTION

1.1 This study analyses the effects of the implementation of Integrity Pacts (IP) on the defence procurement processes utilized by the Colombian Ministry of Defense. The study stemmed from the common interests of Transparency International (UK) (TI(UK)), Transparencia por Colombia(TPC) and the Colombian Ministry of Defense to understand better how the in-Country organizations manage and benefit from Integrity Pacts.

2. HISTORICAL PERSPECTIVE

2.1 At the start of 2002, Minister Gustavo Bell Lemus asked TPC to engage with the Ministry of Defense in order to find mechanisms to reinforce transparency in defense procurement processes. TPC undertook the request, formalised through contract No. 169/02, which lasted from 21st of August until the 21st of October 2002. TPC work with the Ministry included:

- The conduct of six workshops with the Contracting Work Team to identify the most vulnerable processes, and the measures that should be taken.
- The conduct of five work sessions with the Legal Office and the Contracting Work Team to address the contract implementation stage.

2.2 After producing the risks map together with trying to determine the solutions to mitigate them, TPC presented and recommended the use of Integrity Pacts in addition to an Anti-corruption Commitment document that had previously been used. The Ministry supported this recommendation and decided to implement Integrity Pacts in all procurement processes, including the 'payments declaration' contained within the Anti-corruption Commitment.

2.3 By completion of the 'Integrity Island' study, the Ministry of Defense was asking bidders to declare completed, or intended, contract payments during the process. TPC recommended the use of Integrity Pacts including the declaration of payments. As a result, the Ministry required every contract bidder to sign two documents: the Integrity Pact and the Anti – Corruption Commitment (declaration of payments).

2.4 There was considerable liaison between TPC and TI(UK) and much of the knowledge gained through IP implementation in Colombia was utilized in a global study of the defense sector procurement by TI(UK). The Ministry of Defense considered that the study would complement their renewed efforts to increase integrity in all procurements processes, and offered their full collaboration to TPC which was very much appreciated.

3. DOCUMENT AND PROCEDURE ANALYSIS - RESULTS

3.1 At the beginning of the study, TPC asked the Ministry of Defense for information about all contracts in 2003 in order to identify procurement processes for subsequent detailed analysis. Out of a total of 57 contracts completed during the period, TPC selected 23 of those that were armament related for detailed review. The study was conducted at the premises of the Ministry of Defense, where appropriate files were made available. The willingness and the openness of the team of people who work at the Ministry was greatly appreciated, especially the Contracting Work Team who wanted to help and who were always available to answer questions when needed.

3.2 Principal findings of the review in respect of procedures

3.2.1 **Procurement Procedures.** Colombian Procurement Law 80/93 permits an exemption to the standard procedures in procurement cases related to the defence sector. However, in every one of the 2003 contracts the Ministry of Defense followed the formal procedures stated in the Law 80/93 and Decree 2170/02, and did not use the exemption. This was clearly documented in all related files, which indicated that standard procedures were strictly followed

3.2.1.1 **Statement of Requirement** The Ministry of Defense is required to perform a study to determine why such a particular purchase is necessary. This is based on military information which justifies the purchase. Subsequently this evolves into the Statement of Requirement which includes: technical specifications, and the budget available.

3.2.1.2 **Media Coverage** The two most important Colombian news papers publicise the bid which includes hearing dates, date of the opening and closing of the bid and the budget.

3.2.1.3 **Web Site Publication** The preliminary Terms of Reference are publicly available on the Ministry of Defense website¹. The site hosts all preliminary data and also allows for questions and suggestions to be submitted even before the initiation of formal procedures. The web facility also informs interested parties who wish to attend the preliminary hearing where they may openly ask specific about the requirements for contract participation as well as the technical specifications and budget.

3.2.1.4 **Preliminary Public Hearing** At the Preliminary Public Hearing officials explain the Terms of Reference and answer questions from the public.

¹ www.mindefensa.gov.co

3.2.1.5 **Budget** The contract budget, which cannot be exceeded by bidders, is set by the Ministry and published in the press. Normal defence procurement process budgets in Colombia are usually below US\$ 10 million.

3.2.1.6 **Evaluation** Three specialised committees (legal, economic and technical) are formed and are responsible for evaluating the bids. Evaluations are made available to participant bidders. If the bidders do not agree with these evaluations, they may submit questions, which will be answered by the evaluators.

3.2.1.7 **Adjudication at a Public Hearing** The contract decision made by the Ministry is given at a public hearing, where arguments against the final recommendation are aired and analyzed, and the formal documents signed.

3.3 Findings in respect of the Integrity Pact documentation

3.3.1 **Document Confusion** A result of the Government requirement to sign two documents, there was confusion between the Integrity Pact and the Anti-Corruption Commitment. Some of the bidders inserted both documents; others only one; some even had the text of the Integrity Pact with the Anti – Corruption Commitment's title. Some officials regarded the Integrity Pact as being almost the same as the Anti-Corruption Commitment², and therefore considered it sufficient that bidders presented one out of the two documents. However, in some cases both documents were signed and in others only the Integrity Pact.

3.3.2 **Document Signatories** Of the documents presented to the bidders, the Integrity Pact should be signed not only by the bidders, but also by the Ministry officials including those from the legal, economic, and technical committees. The files observed during the study, which contained the Integrity Pact, were never signed by Ministry personnel and rarely by the committees. In most cases the documents were signed by all bidders,³ but not always by their legal representatives. This indicates poor methodology in the way that the Integrity Pact was made available to the bidder: In most cases the documents were accessible only during formal contract presentations where bidders were asked to complete a Pact not previously signed by the Ministry.

3.3.3 **Bidder Understanding of Integrity Pacts and the Anti – Corruption Commitment** The Anti – Corruption Commitment is included as an element of the Terms of Reference, therefore it was signed by most bidders as part of the contract process but they never fully understood its real value, effect or the useful tools contained within it. Whilst signature requirement was included in the Terms

² The contracting team said that it would be easier to find one document instead of two.

³ In two out of 15 files that were analysed, when the bidders were asked to sign, a messenger and employee (based in the warehouse) signed the Integrity Pact instead of the responsible managers or the legal representatives.

of Reference, the actual signing of the documents was scheduled during the presentation of the contract bid and was undertaken as part of the process. As a result, bidders were not necessarily familiar with the text of the Pact beforehand, and not all bidders were ready to sign it directly with the legal representatives.

3.3.4 Ministry of Defense Document Confusion Research indicated that not only were the bidders confused with the 2 different sets of documents but also that some Ministry officials were not clear why they needed both an Integrity Pact and an Anti – Corruption Commitment. For them, the main distinction between the two was that the Anti – Corruption Commitment implied a unilateral decision to disclose information while the Integrity Pact implied a multilateral obligation.

3.3.5 Disclosure of Payments Payment disclosures in accordance with the Anti – Corruption Commitment were not always considered accurate. Sometimes they were unspecified, on other occasions they were considered very low considering their bid and the value of the contract. Additionally, the payment differential between bidders was large. When TPC asked the contracting work team about these disclosures, they said that they never studied the payments because they were extremely difficult for them to understand and identify valid or unreasonable figures.⁴

4. MEETINGS WITH THE MINISTRY OF DEFENSE

4.1 After the files were reviewed, TPC consulted the Ministry Contracting Team and the Secretary General in order to clarify some points relating to procurement processes and the Integrity Pact.

4.2 **Meeting with the Ministry of Defense Contracting Team** TPC met with the Ministry Contracting Work Team lawyers and questioned them on general procedures and the files that were investigated. These officials (mostly lawyers) had been working at the Ministry for about ten years and been responsible for some of the processes that were analysed. The main issues discussed were:

4.2.1 **Procurement Centralisation** In 2003, the Ministry of Defense decided to centralise almost all purchases. Forming the Army, Navy and Air Force elements into a single unitary group in the Centralized Contracting Team was not an easy task, although it has brought unique benefits in terms of transparency. Disputes between military officers and civilians within the Ministry were discussed with TPC. The former believed that their power was diminishing and they were unhappy to accept the new arrangements; on the other hand, the civilians were content with better transparency and technical procedures. In spite of these differing opinions, centralization was considered a good option.

⁴ They specifically argued that they have no idea how the US or European costs compare to Colombian costs and how the origin cost are combined to produce a final cost. For that same reason they are not able to analyse these service payments.

4.2.2 **Procurement not Subject to Centralization** Common purchases to all forces are centralized, whilst the remainder remain decentralized. The reasons for doing so are the specification of the purchase and the urgency of procurement; overall, 60% of purchases relate to the centralized element. It is important though, that almost all purchases must include the Integrity Pact and the Anti – Corruption Commitment.

4.3 **Procurement Processes** The Ministry of Defense is trying hard to follow the standard procedures established by Law 80/93 and Decree 2170/02. During TPC interviews, information on procedures and openness was gathered. Whilst there was an indication that officials were as open as possible, the only exception noted related to technical specifications. The Ministry of Defense deals with a great number of procurements that are very sensitive and sometimes directly influence National security. For that reason, when it comes to technical specifications, the potential bidders are required to sign a confidentiality agreement before sight of the requirements.

4.4 **Expansion of the Contractor Base** One of the reasons most procurements are made openly is in an effort to attract new bidders. In spite of this the Ministry has noticed that for most contracts the bidders are exactly the same. Government-to-Government dialogue in a to the bid to expand the contractor base was disappointing due to a limited response.

4.5 **Procurement Balance** The procurement balance was as follows: 95% of the processes are made by public bids; and 5% are government to government/single source contracts.⁵ This is unusual in defence, and suggests that the procurement processes is more open than many others.

4.6 **Offsets** The Ministry of Defense has never tried to implement offset agreements because they make the process extremely long (requiring two negotiation procedures - one government to government and the other with the suppliers). They were aware of agreements undertaken by Brazil and Indonesia, but believed that if they were to conclude a contract with Russia, regarding helicopter maintenance, they would have to specify a minimum 50% offset.

4.7 **Published Information** The government publishes its investment plan each year and the Ministry of Defense's budget is included. When a purchase larger than US\$ 20 – 30 million is imminent, which requires external debt arrangements, the Ministry needs authorization from the Ministry of Finance; the Office of Public Debt; the Parliamentary Commission for Public Debt; and CONPES (Economical and Social Policies National Council).

⁵ One example of government to government contracts is when the Ministry of Defense had to buy Black Hawk helicopters because were the only ones in the market fulfilling the requirements of a guerrilla war in a very special geography and they had to be with very specific details. US won the contract.

5. Conclusions Following Ministry of Defense Meetings

5.1 The Ministry of Defense considered that it was taking significant steps to uphold the law and support the efforts of the National Government. It also realized that external agencies, such as TPC, provided valued and useful expertise but that the necessary workshops were expensive financially and time consuming. It was considered that the Ministry was also doing its best to promote Anti – Corruption Commitments and Integrity Pacts in order to fight corruption and was willing to continue the work.

5.2 **Suggestions Proposed by TPC** The following suggestions were made by TPC to the Ministry:

6.2.1 The introduction of a unified document in which the Integrity Pact and the Anti – Corruption Commitment were included.

6.2.2 The presence of Transparencia por Colombia as an independent monitor during special procurement processes.

5.3 **Meeting with the Ministry of Defense Secretary General** TPC met with the Secretary General, the main topics reviewed were:

5.3.1 **Centralisation** Centralization was considered an effective way of minimising the risks that face the procurement processes regarding discretionary decisions in each Military Service. However, although it has great benefits, it had been difficult to adopt; in particular, the loss of power and the increased workload for bid analysis and budgets have caused difficulties. In response, the Secretary General has allowed senior officers from all Services to gather together to take decisions as a group.

5.3.2 **Bidders Reaction.** The Ministry reported that overall the bidders were pleased with centralisation and the evaluation processes. As procurement was now clear and open, bidders rarely complained, and accepted the Ministry's decisions. Should they disagree over a particular evaluation, they can raise observations, which will be officially examined. The Secretary General, during her tenure, has not seen evidence (at the time of the interview) of corrupt behavior from bidders.

5.3.3 **Collusion** With regard to cases where different bidders quoted the same prices very close to the budget (99% or closer) ceiling, the Secretary General stated that there was no information that could determine whether or not collusion had occurred; her main explanation was the high quality of the market studies and that bidders must not exceed the budget ceiling.

5.4 **Evaluation Procedures** Decree 2170/02 states that the most important criteria within a bid is the economic evaluation while the others (technical and legal) are basic requirements that must be complied with in order to be eligible for economic comparison. Article 4 of the Decree is now suspended because it supposedly violates article 29 of Law 80/93 which states there should be more than one criteria (a combination of them) in order to support a bid.

5.5 **Future Purchases** In the next five years it is anticipated that the Ministry will undertake a large purchase of aircraft. Since this is not a common purchase, the Ministry will need authorization of the Ministry of Finance and CONPES.

5.6 **Political Will** The Government is following anti-corruption policies similar to those recommended by TPC. The annual Development Plan requires strict control over public organisations and the Government has committed itself to a zero tolerance policy for corruption and has applied the guidelines when investigating unsatisfactory contracts and claims of corruption and bribes.

5.7 **Conclusion Following Meetings with Secretary General** The Ministry of Defense is committed to fighting corruption with centralization as part of the process of controlling large contracts. The Ministry is willing to pay more attention to the pre-contractual phases, especially regarding the appropriate construction and definition of technical specifications as well as the associated elements (hearings, observations, use of external experts, etc).

6. MEETINGS WITH BIDDERS

6.1 **TPC Interviews** TPC interviewed four defence bidders. Two, had a track record over a long period of winning contracts (one large international company, one representative office of an overseas weapons manufacturer), and two had a track record of losing (one large US company, one small trading company). All four considered that the processes had improved substantially over the last few years, mentioning in particular centralisation, the new law on publishing more information at an early stage, and the clear political will. Interestingly, one interviewee did not feel this so strongly, as company had withdrawn 18 months ago, after having won only one small contract out of 40 bids.

6.2 There was a very marked difference between 'winning' bidders and 'losing' bidders. The winning ones were very happy with the process, and felt that when they had concerns the Ministry were good at taking these into account. The losing ones were emphatic about being excluded and specific about how it happened.

6.3 In discussion with a number of bidders several points were brought out strongly:

6.3.1 No small bidder is ever going to invoke the arbitration clause of the IP they have signed. Not only would it involve expense and entanglement with lawyers, it was 'like fighting with your client'.

6.3.2 Two control bodies (the Procuraduría, the Contraloría) are present at public hearings; some bidders consider that they are not well informed about the processes and they can only intervene when the contract is adjudicated. However, they rarely attend the meetings called by the MoD, and can only investigate *after* the contract has been awarded.

6.3.3 The technical specification and the technical evaluations are the prime areas for corruption: bidders can be rejected easily, depending on how these elements are phrased or interpreted. For instance, too rigid a specification allows almost anyone to be rejected on a small point; specifying a country of origin as a requirement is a blatant restriction of competition; writing the specification so that only one or two companies can comply is common. Bidders have specific examples of these.

6.4 **Issues Analysed** The main issues analysed were:

6.4.1 **General Considerations** The bidders had participated in different bids, offering material related to arms and ammunition. The bidders stated that there had been a considerable improvement in procurement processes over the past four or five years.

6.4.2 **Centralisation** Centralisation was regarded as a wise decision for fighting corruption and make the processes simpler. Specialised professionals in charge of organising the procurement process lend confidence to the process and make it easier for bidders.

6.4.3 **Procurement Process** Procurement procedures are regarded as having developed positively. Law 80/93 along with Decree 2170/02 have made the processes more public; and the Ministry is making an effort to execute what the Law prescribes.

6.5 Some bidders consider that the processes are, at times too strict. However, there are differences between the internal and the external viewpoints. For example, at the public hearings, the Ministry is supposed to listen to the bidder's comments and observations. What really happens is often completely different: the hearings are formally undertaken but the bidders consider that there are few revisions and that officials rarely listen to any comments made.⁶ In addition, the controlling officials are supposed to attend the hearings, but they

⁶ One bidder argues the contrary saying that when he has participated, the Ministry has changed some of the requirements in order to take into account some of the bidders observations.

are largely absent and if present they are insufficiently acquainted with the bid in order to understand the issues.

6.6 Technical Specifications The bidders regard the technical specifications as the most important part of the process but sometimes find it extremely confusing. All bidders complain about this area but there is no common thread. One bidder observed that specifications were too specific; another noted that they should be clearer and permanent; and another stated that the technical specification should concentrate more in applications and not in systems. Thus technical specifications are an area of corruption potential.

6.7 Integrity Pacts and Anti – Corruption Commitments Even though the four bidders, noted above, had signed Integrity Pacts and were aware of the contents, they did not appreciate the value of the Pact. After TPC explained the tools inside the pact, the bidders observed that they would not even dare to use them. All the bidders seemed to know what the Pact is but they did not know the consequences of signing it. The same thing happened with the Anti – Corruption Commitment; they did not have a systematic approach to disclose the payments they made and they did not exactly know how to explain them.

6.8 When TPC tried to explain how arbitration worked within the Integrity Pact, the bidders stated that they would never use that type of instrument (or at least have not used it) because arbitration might be expensive and they were afraid they would lose their clients and would never be able to participate in a bid again.

6.9 Suggestions Offered by Bidders The following suggestions were offered:

6.9.1 All bidders suggested, and sought, the involvement of an objective third party who understood the case and was able to remain engaged with the process thereby making it transparent and efficient.

6.9.2 Bidders considered that a solution to the lack of accurate technical specifications should be found as it was a source of considerable difficulty and was an area vulnerable to corruption.

7. LEGAL ASPECTS

7.1 The Integrity Pact is not the only instrument to tackle corruption: there are other established legal tools. But what are the main differences between law and the Integrity Pact? What other sanctions are prescribed? TPC discussed these issues with their lawyers that had been involved with the Pact, who were knowledgeable about procurement law and had been involved with TPC for some 5 years.

7.2 The Essence of the Integrity Pact Perceptions varied amongst bidders of how the pact works. The Integrity Pact was considered by many to be an agreement, signed by all bidders, in which the parties, on a voluntary basis, agreed to follow certain principles and obligations. This indicated that many bidders failed to grasp the fact that the Pact in the defence bids was mandatory. Additionally, Pacts affect not only the bidders but also the Government. Whilst clearly effective for bidders, should the government be involved in corruption, the bidders may have to find and use a common law that provides for the controlling officials to investigate the case.

7.3 The Integrity Pact and the Anti – Corruption Commitment will not change procurement but represent a good start. These are the only tools available and are extremely helpful in every procurement process.

7.4 Sanctions Almost all bidders were concerned with the sanctions within the Integrity Pact. They regarded sanctions as being very similar to those in Colombian law, but there are substantial differences: a bidder, by law can be responsible in the contractual procedure consigned in law 80/1993 and decree 2170/2002. The bidder can also be involved in criminal sanctions provided in the Penal Law. Further, the Integrity Pact has some peculiar legal mechanisms and sanctions such as equity award and arbitration.⁷

7.5 Other Mechanisms The bidders can use several mechanisms to fight corruption. Firstly, they can notify the controlling officials of problems within the process; this is very commonly used by bidders and allows them to maintain secrecy. Secondly, they can use a public notice to a public official in a General Office; and thirdly, they can contact the media and request intervention in the process. The media in Colombia is very powerful and can get involved in the process if something is not working well.

7.6 Procurement Process The Ministry of Defense generally uses direct contracting. This procedure is extremely open to all bidders and is easily regulated by TPC. The Terms of Reference are very specific and are posted on the Ministry website at the start of the contract package which enables anyone to make observations and request answers.⁸ However, during this period Congress tries to add articles related to the observations, but there is not enough time for all of them to be resolved.

7.7 Agents Disclosure The law does not prescribe anything about agent disclosure (specifically), but in the Terms of Reference (that are prescribed by

⁷ The lawyer mentioned one case of arbitration here in Colombia, for the Congress Maintenance services. It is now closed because the bidder cannot afford to go to arbitration. They have sufficient evidence though, so Transparency por Colombia is trying to find a way to perpetuate the arbitration procedure

⁸ There is an example of this with the Ministry of Communications. With the arrival of new cellular technology, terms of reference were published on the web. This facilitated the presentation of observations on the terms at the preliminary hearing. As a result, the Ministry changed some aspects of the terms.

Law) it is obligatory for the bidders to disclose payments. However it is unclear whether there are poor instructions or the process is inadequate, bidders sometimes fail to complete the forms or do so inaccurately.

7.8 **Legal Suggestions** Following legal analysis, the following suggestions were made:

- Bidders who sign the Agent's Disclosure must be committed to the Integrity Pact process
- The pact must include, very specifically, the agent's disclosure in order to analyse related payments.
- All bidders should sign the Integrity Pact.

8. CONCLUSIONS OVERALL

8.1 ***Integrity Pact and Anti – Corruption Commitment*** There is confusion between the Integrity Pact and the Anti Corruption-Commitment documents and this applies both to the bidders but also Ministry of Defense officials. There should be only one document which each bidder is obliged to sign and it must be completed correctly. The disclosure of payments must be specified in a very clear and detailed way. However, the main objective is to get best value from the Integrity Pact; signatories of the Integrity Pact must be aware of their commitments. The Pact must be more than a requirement: it should be a life-time commitment.

8.2 ***Technical Specifications*** The technical specifications are problematic for most bidders. Even though the Ministry of Defense aims for maximum transparency, sometimes there is a lack of clarity in the technical specifications. No clear solution to this problem has been presented, although for larger tenders independent experts are considered.

8.3 ***Independent Monitor and Technical Assessor*** The main improvement bidders wished to see was for an independent review and independent oversight of the technical specifications for corruption aspects. The individual/s would also provide a ready point of access for issues and concerns, for example search/clarification of requirements that favoured one particular commercial company.

8.4 ***Centralisation*** Efforts to centralise purchases at the Ministry of Defense has resulted in greater transparency and efficiency. The contracting work team is formed of specialised lawyers who are well briefed and willing to follow the law. Centralisation has made processes more unified and controllable. Most of the assessments made by the Military, most of the bidders, and other external agencies, agree with this improvement.

8.5 Procurement Process Above all, the Ministry of Defense has tried to follow the Law in every purchase undertaken. Each requirement was considered individually and as a result there is general belief the process is transparent..

8.6 Suggestions The following points/suggestions were raised and offered to the appropriate organizations:

8.6.1 Ministry of Defense

- a) Implement a uniform Integrity Pact (with disclosure of payments)
- b) All officers from the contracting work team at the Ministry of Defense must be trained on the mechanisms of the Integrity Pact.
- c) The purpose and value of the Integrity Pact must be conveyed at the preliminary hearing so any comments from bidders can be clarified.
- d) TPC and/or an independent technical assessor should be involved in the larger procurements.
- e) The technical, legal and economic committees should be present at the adjudication at public hearings so that if any bidder has an observation, they will be available to provide answers.

8.6.2 Transparencia por Colombia

- a) Design the uniform Integrity Pact and describe carefully the pre-contractual and contractual payments related to expenses and agents.
- b) In spite of the expense, the officers at the Ministry of Defense have requested Transparencia por Colombia to accompany the Ministry of Defense in some important events such as the preliminary hearings, the Integrity Pact signature, evaluations; and to provide independent technical assessment of the requirement and the specification

8.6.3 Transparency International

- a) Make a clear distinction between Integrity Pacts that do have an independent assessor and those that do not
- b) Continue organising evaluations in order to compare with other country experiences and learn from them.
- c) These evaluations will contribute to the growth of the implementation of the IPs throughout the world.

8.6.4 Bidders

- a) Understand the meaning of the Integrity Pact. The bidders understood the pact to be merely a requirement in order to bid, but did not appreciate the value of the pact.
- b) If there is any question regarding of transparency in the process, the Integrity Pact should be used.

8.6.5 Public Officials and Bodies

- a) Include an objective third party in the procurement process. This Party will scrutinise irregularities in the Involve Civil Society more actively.

Annex 1 PROPOSED UNIFORM INTEGRITY PACT INCLUDING PAYMENTS DECLARATION

INTEGRITY PACT FOR STRENGTHENING TRANSPARENCIA IN THE PROCUREMENT PROCESS No. ---- FOR THE MINISTRY OF DEFENSE.

Before the domestic and international public opinion, we the undersigned, on one side, **THE LEGAL REPRESENTATIVES AND MANAGING OFFICERS OF THE OFFERORS** participating in procurement process No.-----, acting on our own behalf and in representation of the legal entities that we represent as offerors, as well as in the name of each and everyone of the officers and advisors that either directly, indirectly, formally or accidentally have determined our participation in this contracting process or who have somehow intervened in the preparation of our proposals to participate in this procurement process or who have assessed our officers or companies in this participation and, on the other side, the **OFFICERS AND ADVISORS OF THE COLOMBIAN MINISTRY OF DEFENSE** who directly, indirectly, formally or accidentally have participated in the technical, economical and legal structuring of the underlying procurement process or in its procedures, promotion, revision and definition, have together agreed to subscribe the present **INTEGRITY PACT**, upon having considered that in Colombia any and all corruption forms are illegal and that the Colombian Government prosecutes and will continue prosecuting transgressors.

Notwithstanding due compliance with Colombian laws, the Integrity Pact is focused on a *non-bribery commitment for purposes of obtaining or retaining a contract or any other improper advantage. This includes the compromise not to collude with third parties for purposes of limiting competition in the award of this contract, as well as the obligation not to incur in unfair practices and in acts contrary to free competition and to the promotion of an objective selection within the procurement process.*

The foregoing includes any type of payments, gifts or other favors, whether offered or granted, in a direct or indirect manner or through third parties, to officials or advisors of the COLOMBIAN MINISTRY OF DEFENSE for purposes of:

1. Attempting to have the project, or segments of it, structured in such a way that advantages be so provided for one or several offerors;
2. Providing undue advantage to any participant in their evaluation and selection for the award of the contract;
3. Being awarded the contract;
4. Achieving substantial changes in the contract through adjustment of specifications, terms or any other material component of the contract;

5. Ensuring that outcome below parameters submitted by the OFFERORS and agreed on with the COLOMBIAN MINISTRY OF DEFENSE, be approved by public officials, advisors or the receiver or supervisor of the contract (or by their personnel, advisors and subcontractors);
6. Refraining from due monitoring of project implementation, from timely reporting of violation of contract specifications or other forms of non-compliance or from making contractors fully accountable for compliance with their legal obligations;
7. Evading taxes, duties, levies, rights, licenses or any other legal obligation that must be met;
8. Inducing any public officer to breach his official duties in any manner;

Within the above framework, in full compliance with Colombian laws, the undersigned fully compromise to:

1. The participant entities and THE COLOMBIAN MINISTRY OF DEFENSE assign importance to the submission of proposals within a free, impartial, competitive and abuse-free environment. Within this scope the companies are pleased to confirm that:
 - a) They have not offered to grant, granted or facilitated any inducement or improper reward, nor have they attempted to offer, to grant or to facilitate any inducement or improper reward, nor and will they offer, grant, or facilitate any inducement or improper reward, whether directly or indirectly through agents or third parties, to any official or advisor of THE COLOMBIAN MINISTRY OF DEFENSE their relatives or business associates, for purposes of being awarded this contract, or retaining it or any other undue advantage, and
 - b) They have not colluded nor will they collude with others for the undue limiting of competition, for the award of this contract. The companies understand the material relevance of the foregoing commitments for the COLOMBIAN MINISTRY OF DEFENSE and their consequent seriousness.

On their own behalf, the OFFICIALS AND ADVISORS OF THE COLOMBIAN MINISTRY OF DEFENSE also confirm that they have not requested nor have they accepted, nor shall they request or accept, whether directly or indirectly through third parties, any payment or favor from the offering companies in exchange for favoring them in the award of the contract or its retention. In this same sense, the abovementioned officers declare that the service is in need of the goods for which this process has been established, with the precise technical conditions that are being required and that this need is real and coherent with the precise technical conditions.

2. The participant entities do perform their activities within a framework of behavioral ethical principles and do commit to taking all necessary measures to ensure that this non-bribery commitment be observed by all their managers and employees as well as by all third parties jointly working with the company

on this project, including their agents, consultants and subcontractors. This framework should be recorded in the entities' ethical code, which should demonstrate that the corresponding entity counts with internal compliance systems that are capable of detecting corruption risks and preventing the payment of bribes. In order to participate in the current process, the offering entities must have filed their corresponding ethics code before the COLOMBIAN MINISTRY OF DEFENSE.

3. This commitment is submitted in the name and on behalf of the Presidents and/or General Managers of the offering companies. All those integrating the pertinent consortium ("*consorcio*" as defined in article 7 of the Law 80 of 1993) or temporary union ("*unión temporal*" as defined in article 7 of the Law 80 of 1993) do also subscribe this Pact on their own name and on behalf of each and all the Presidents and / or General Managers of the associated companies.
4. International companies participating in this contracting process do assume this commitment in the name and on behalf of the President and / or General Managers of the company's parent companies and this commitment includes all managers and personnel of their Colombian subsidiaries, should the latter exist.
5. Regarding the submission of proposals, the participant companies do commit to structuring serious proposals, with trustworthy information and an economic component adjusted to reality, so to ensure likelihood to accurate deliver of the underlying service under quality and promptitude conditions stated in the term sheet.
6. Regarding contract related payments, the participant entities do hereinafter agree that:
 - a) Payments to agents and third parties shall be limited to the reasonable compensation for proper services clearly associated with the incumbent business.
 - b) With the presentation of their corresponding proposal, each offeror shall include a declaration stating the payments it has made or intends to make for purposes of the preparation and presentation of the proposal, and of the execution of the contract, in the event it is awarded such. Payments are divided into two main categories. The first category, named basic expenses, will include current administrative payments such as bidder's team, lawyers, premiums for insurance policies, taxes and other obligatory legal expenses, publicity, entertainment, etc. The second category, named agents, will include all payments to representatives, agents or advisors of other companies, whether they are public or private nature.

Offerors will clearly state the beneficiary of the corresponding payment, the amount and the purpose.⁹

PRECONTRACTUAL PHASE:

a) **Basic Expenses:** This will include lawyers, bidder’s team, publicity, entertainment.

BENEFICIARIES (Name of the beneficiary of the payment that is going to be done).	AMOUNT (\$)	PURPOSE (In this column, discriminate in a very clear and detailed way the payments that are going to be done).
1.		
2.		
3.		
	Total:	Total:

b) **Agents:**

BENEFICIARIES (Name of the Agents).	AMOUNT (\$)	PURPOSE (In this column, discriminate in a very clear and detailed way the payments that are going to be done).
1.		
2.		
3.		
4.		
5.		
	Total:	Total:

CONTRACTUAL PHASE:

a) **Basic Expenses:** This will include lawyers, bidder’s team, publicity, entertainment.

BENEFICIARIES (Name of the beneficiary of the payment that is going to be done).	AMOUNT (\$)	PURPOSE (In this column, discriminate in a very clear and detailed way the payments that are going to be done.)
1.		
2.		

(1) The only expenses that will be excepted from this declaration correspond to minor expenses such as office supplies, courier and messenger, etc., which may be consolidated in one single item denominated “working expenses”, provided that consolidated items, jointly or severally, do not exceed one thousand dollars of the United States of America (US\$ 1.000.00).

	Total:	Total:
b. Agents:		
BENEFICIARIES (Name of the Agents).	AMOUNT (\$)	PURPOSE (In this column, discriminate in a very clear and detailed way the payments that are going to be done).
1.		
2.		
3.		
	Total:	Total:

- c) With the presentation of their proposal, offerors will declare and document the value of all their banks accounts before starting to incur in payments in relation to the proposal. This will allow to monitor the accumulation of the aggregate of transactions during the stages corresponding to the preparation of the proposal and of the execution of the contract, in the event it is awarded.
- d) In the event that any complaint is raised regarding a compliance default on non-bribery, as per this Pact and should any evidence exist on the default of such commitment, as certified by the duly appointed Arbitrators as established by numeral 7 of the present document, the allegedly involved proponent or the awarded proponent do hereby commit to place at disposition of the Arbitrators all information concerning payments made to related third parties as of the drafting of the proposal and/or the contract, and as available on the beneficiaries themselves, as well as all available contract related documentation. In the event that any such documentation may be considered of privileged nature, the Arbitrators shall commit to maintain of such privilege.
- e) Upon conclusion of contract execution, the legal representative of the party to whom the contract was awarded party shall formally certify that no bribery or illegal fees have been paid for purposes of obtaining and/or retaining this contract. Final accounting on the process shall include details of delivered goods and services, which are considered sufficient to satisfy legality of effected payments, in accordance with clause b) above.
7. For purposes of preservation of the contents of the Integrity Pact of the tender process herein, before eventual compliance defaults to ethical nature commitments undertaken by both officials and participants, the pronouncements of three (3) Arbitrators, called "The Defendants for the Transparencia of the Tender" whose rulings shall be deemed in equity, as provided for in Law 446 of 1998.

All above related issues shall be made of complete knowledge to the Arbitrators in accordance with a request so formulated by THE COLOMBIAN MINISTRY OF DEFENSE, by the Presidency's Program Against Corruption

(“*Programa Presidencial de Lucha contra la Corrupción*”), by “Transparencia por Colombia” or by express manifestation of any of the participants.

The Arbitrators shall meet the same qualifications required in the Colombian Constitution for Magistrates to the Constitutional Court or the Supreme Court of Justice. The three (3) Arbitrators shall be selected from a list of candidates for the position of Arbitrator at the Chamber of Commerce of Bogotá, by agreement between the undersigned. At the signature of this document, each and every one of the persons signing, should submit a list of three (3) candidates to occupy the three (3) positions. The selected Arbitrators will be those who obtain the largest number of votes.

8. Should any participant default compliance of its non-bribery commitment, and declaration of guilt shall have been issued by the Arbitrators, the following legal effects will be triggered, in addition to all other processes contemplated under Colombian legislation and under any legislation corresponding to the jurisdiction of the contractual process:
 - a) Should the defaulted participant be the party to whom the contract was awarded, any of the remaining parties to the present document shall be entitled to request, before the competent Judge, total nullity of the underlying contract on the basis that it lacks licit cause;
 - b) The government contract will be terminated immediately, for due cause attributable to the contractor. The participant defaulting compliance with the non-bribery commitments derived from the present document is hereby obligated to unconditionally and irrevocably accept termination of the contract due to reasons attributable to himself, immediately upon the declaration of default issued by the Arbitrators. The defaulted participant will assume the contractual consequences derived from such termination.
 - c) The defaulted participant will have to pay economic satisfaction equivalent to ten per cent (10.00%) of the value of the contract, as anticipated estimation of damages inflicted on the remaining proponents that participated on the tender and have not defaulted compliance of the commitments undertaken herein. Should there be more than one complying proponent, the resulting amount shall be equally distributed amongst them.
 - d) The defaulted participant will abstain from participating in contracting processes of any nature, with public entities of the Republic of Colombia, for a period of five (5) years.

In order to ensure effectiveness of the above stated provisions, the present agreement shall be included as an integral part of the contract to be signed by the chosen participant. In the event the Arbitrators’ ruling evidences default of the commitments included in the present Pact, this agreement will have as effect the mandatory anticipated termination of the contract, by cause attributable to the contractor.

The legal effects contemplated in letters a) and b) of this numeral shall solely be applicable to the participant awarded with the contract. The legal effects provided for in letters c) and d) shall be applicable to the awarded party or to any other proponent.

9. In addition, all chiefs at the COLOMBIAN MINISTRY OF DEFENSE, shall carry the obligation to undertake each and every action and deed required to ensure that the competent entities promote and perform the corresponding investigations required, on the basis of conduct of officers of the contracting entity or of their external advisors, who could have incurred in default of the provisions of the present Pact and of any applicable law.
10. In those events of proven default to the non-bribery commitment, as established in numeral 8 of this Pact, above, the COLOMBIAN MINISTRY OF DEFENSE may [*or should?*] exclude the defaulting party from future eligibility for participation in direct contracting processes.
11. The participant entities declare publicly that they know and accept the participation conditions, as established in the Documents of the procurement process and all its amendments, in terms of its total Transparencia and equity. Within such framework, they commit to not use, throughout the period of evaluation of the proposals any argument concerning default of conditions not specifically included, while aiming to achieve disqualification of competitors.
12. Participating companies do hereby accept that throughout the period of evaluation of proposals, the criteria to be used will make substantive aspects prevail over formal ones. The other fundamental guidelines will favor free competition and fair play and the participation of the largest possible number of offerors in the procurement process.
13. Additionally, the Colombian Government has established the Presidency's Program Against Corruption, with the purpose to serve as a channel for the processing of any investigation on any possible form of extortion or bribery through public contracting. Participant entities shall denounce before this Program any information on irregular doings over which they have knowledge, which bears relation to the underlying procurement process.

As evidence of acceptance of the foregoing, the officials of the COLOMBIAN MINISTRY OF DEFENSE, sign the present document on the

OFFICIALS AND ADVISORS OF THE COLOMBIAN MINISTRY OF DEFENSE

LEGAL REPRESENTATIVES AND OFFICERS OF PROPONENT COMPANIES
signing the present document on the date of submission of their respective proposals.