

# RESIST

## Resisting Extortion and Solicitation in International Transactions

*A company tool for employee training*

*Jointly developed by*



International Chamber of Commerce

*The world business organization*



**United Nations** Global Compact



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# Introduction

## Purpose of the tool

Many companies have implemented complex compliance programmes covering corruption and anti-bribery and have demonstrated their engagement in the fight against corruption. A clear business case for companies to counter corruption has been established.<sup>1</sup> However, when bidding for projects or conducting their daily business, many companies complain that they still have to face solicitation from foreign public officials and business people. This issue is not addressed by a number of existing international anti-bribery conventions however negatively it affects international investment and commercial transactions.

To better address the risk of solicitation, companies need to anticipate individual solicitation situations and know how to best confront them when they cannot be avoided. Based on real-life scenarios, **RESIST (Resisting Extortions and Solicitations in International Transactions)** is designed as a tool to provide practical guidance for practitioners on how to respond to an inappropriate demand by a client, business partner or public authority in the most efficient and ethical way, recognizing that such a demand may be accompanied by a threat. RESIST is primarily a training tool for companies to support employee awareness and responses to dilemmas in the public procurement and project implementation process in a way that also makes good business sense.

## Presentation of the tool

Without claiming completion, companies that participated in the design process have identified a total of 21 scenarios along the business process, illustrating a range of different solicitation situations. The scenarios are divided into two categories:

- Solicitation in the context of the procurement process (7 scenarios)
- Solicitation in the context of the implementation process and daily operations (14 scenarios)

Each of the 21 scenarios addresses two basic questions in a concrete and specific manner:

- How to prevent the demand from being made
- How to react if the demand is made

This first publication deals with the procurement process and the related seven scenarios. General recommendations, which apply to most situations and may be considered as good practice, have been provided in the Annex. Readers are advised to study these answers before looking into individual scenarios. All answers to dilemma situations comprise either individual company or collective action. In the event competing bidders intend to cooperate in resisting a solicitation situation, legal advice should be sought to ensure that such action would not be in breach of applicable antitrust laws.

## Audience

The target audience for this tool comprises all companies conducting international business that are exposed to solicitation risks. Solicitation is often a key problem for small and medium size companies (SMEs), which are more vulnerable than larger companies with fewer resources with which to face such situations. Although answers provided apply to all companies, implementation may differ according to company size. Within a company, this tool is mainly directed to trainers organizing training sessions in the field of ethics and integrity and to individual employees involved in the sales process and representing their respective company in international business. It will help trainers to make company employees more aware of the risks to which they are exposed and each scenario, considered as a case study, will provide the opportunity for an open discussion on how to face solicitation dilemmas in an effective and practical way.

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<sup>1</sup> "Clean Business is Good Business – The Business Case against Corruption", jointly developed by the UN Global Compact, Transparency International, the International Chamber of Commerce and the World Economic Forum Partnering Against Corruption Initiative: [http://www.unglobalcompact.org/docs/news\\_events/8.1/clean\\_business\\_is\\_good\\_business.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/clean_business_is_good_business.pdf)

## Partner organizations

RESIST is a joint project led by four major international organizations involved in the fight against corruption:

- International Chamber of Commerce (ICC)
- Transparency International (TI)
- United Nations Global Compact (UNGC)
- World Economic Forum Partnering Against Corruption Initiative (PACI)

We are grateful to the following companies, adhering to one or more of these organizations or initiatives that have contributed to the preparation of practical answers to each scenario:

ABB  
Alcan  
Alcatel-Lucent  
Aveng  
Basel Institute on Governance  
The Coca-Cola Company  
De Beers Group of Companies  
EADS (European Aeronautic Defence and Space Company)  
EDF (Electricité de France)  
Fluor Corporation  
HSBC  
International Federation of Inspection Agencies  
MTN Group  
Philips  
PricewaterhouseCoopers  
Sanlam  
SAP  
SGS  
Siemens  
Statoil Hydro  
Thales  
Total

## Feedback on tool

We encourage you to provide feedback on this tool to enrich answers and contribute to the development of good practices when dealing with solicitation situations. Please contact:

- International Chamber of Commerce: Viviane Schiavi, [viviane.schiavi@iccwbo.org](mailto:viviane.schiavi@iccwbo.org)
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# List of Scenarios

## Scenarios Related to the Procurement Process

Number	Short Description
1	In a bidding round, the terms of reference (including technical specifications) are biased to favour one supplier or to exclude potential competitors
2	Intermediary offers company to win bidding upon payment of loser's fee during pre-bidding or bidding stage
3	Bribe solicitation for confidential information during pre-bidding or bidding stage
4	"Kickback" scenario: Your sales representative is offered hidden compensation by the customer or by an intermediary
5	A host country may impose or imposes a partnership with a designated local company that may present high corruption risks
6	Client demands a last-minute "closure fee" to close a deal that is now too late to lose
7	A company complaining about an unfair procurement process is threatened with a spurious criminal prosecution that will lead to a heavy fine
Annex	Guidance on Generic Good Practice Related to the Procurement Process

## Scenario 1

**In a bidding round, the terms of reference (including technical specifications) are biased to favour one supplier or to exclude potential competitors**

**Description:** *Your company is preparing to submit a bid for the supply of telecommunications equipment to a state-owned company. You are an experienced supplier of such equipment and know that several of your competitors are planning to submit bids as well. While studying the tender documents, you notice that they include specifications that only the equipment of one of your less-experienced competitors meets. You are surprised because these specifications have no impact on performance of the equipment; in fact, your technical experts consider these specifications outdated and that your equipment, and that of most of the other competitors, outperforms any equipment meeting the required specifications. Some days later, you are approached by a person who suggests that the tender documents could be changed in your favour in exchange for a payment.*

### 1) Demand prevention: How to reduce the probability of the demand being made?

- Engage in a dialogue with the procurement agency to improve procedures in the following areas:
  - Get agreement from the procurement agency on the appointment of an independent consultant (individual, company or international organization such as the World Bank) to supervise the entire bidding process
  - Request a pre-qualification round to exclude bidders lacking technical and financial delivery capacity (either through their own organization or through relevant contractors)
  - Request a meeting with the procurement agency to better explain technical aspects of your product or services
  - Suggest publishing the terms of reference widely
  - Should the procurement agency rely on a technical expert, request that the procurement agency disclose links and business dealings of this expert with any of the bidders

- Check and, if applicable, challenge (legally and/or publicly) the qualifications of the members of the body defining the terms of reference
- Check if there are any specific relations between the company whose equipment fits the specifications and the procurement agency (or its directors or officers)
- Have the terms of reference reviewed by a qualified third party (such as an expert, civil society or employers' organization)
- Engage with the procurement agency to discuss the results of the review of the terms of reference and explain your technical specifications
- Suggest to other companies bidding with you to collectively address the procurement agency
- Challenge the terms of reference publicly and/or by reference to local laws or applicable procurement rules
- Approach the industry association or trade association that provides technical specifications for your industry to ensure that guidance for specifications is generic enough to allow all companies to bid and that the specifications are up to standard

### 2) Response to a bribery demand: How to react if the demand is made?

- Reject the demand
- Keep a detailed record of the circumstances of the bribe demand made
- Inform a relevant representative of your client that you have been approached with such a suggestion and report the demander

## Scenario 2

### Intermediary offers company to win bidding upon payment of loser's fee during pre-bidding or bidding stage

**Description:** Companies A and B have been pre-qualified by a ministry to bid for the supply of an infrastructure project. An intermediary allegedly close to the ministry approaches both bidders with the following proposal: should company A win the project, it would contribute to a "loser's fee" payable to the intermediary; if company B accepts to lose, it would receive adequate compensation for the bid preparation.

#### 1) Demand prevention: How to reduce the probability of the demand being made?

- Review likelihood that intermediaries will attempt to become involved in the contract negotiations
- Engage in a dialogue with the procurement agency to improve procedures in the following area: agree with procurement agency that no intermediaries can be added to the process after bid submission
- Be aware that a donation or a subcontract requested by the intermediary from company A could be a channel for the payment of a loser's fee to company B.

#### 2) Response to a bribery demand: How to react if the demand is made?

- Solicited employees should immediately stop discussions with the intermediary on the grounds that the loser's fee falls outside the scope of the bidding process, thus could derail it
- Request from the intermediary a proposal in writing to test the legitimacy of the demand
- Report to the ministry about the demand made by the intermediary who claims to act on behalf of the ministry
- Refuse to engage intermediaries that have not been selected prior to bid submission
- Challenge the merits of the loser's fee that could increase the contract price to the detriment of the government budget or negatively impact the profitability of the project to the detriment of the company's interests

- Explain to the intermediary/procurement agency that the proposed scheme could expose all the parties (individual or company) to a prosecution risk not only in the country where the deal occurs but also in countries that ratified the OECD or related UN Conventions fighting corruption or money laundering
- Refuse payment on the grounds that such loser's fee violates the business principles of your company and may violate applicable laws, more specifically, competition laws in your country and/or the host country of investment and procurement regulations in the host country, e.g. bid-rigging
- Solicited company should inform the other company of its refusal to accept the bid-rigging scheme

## Scenario 3

### Bribe solicitation for confidential information during pre-bidding or bidding stage

**Description:** *You are running an overseas field office for a multinational company and still need a big deal to reach the annual sales target. You are preparing the bid for a big contract that you are eager to win. A consultant who is close to the customer approaches you and offers to reveal the evaluation criteria and provide you with information on bids already submitted by some of your competitors against the payment of a fee.*

#### 1) Demand prevention: How to reduce the probability of the demand being made?

- Establish effective, clearly communicated policies for employees involved in the bidding process:
  - Identify and openly address incentives to pay bribes, especially towards the end of the year
  - Train employees on standard bidding procedures and rules of interaction with agents and other intermediaries
  - Consider incentives to report bribery demands
- Perform due diligence on agents, consultants and other intermediaries involved in bids:
  - Awareness of “red flags”, as these parties are often used to pay bribes to extortionists
  - Eliminate any intermediaries that are non-essential to the bid, ask to prove need
- Maximize opportunities for detection by employing additional control procedures to detect bribes:
  - Reviews of heightened risk payments to agents/consultants/advisers used in the bidding process
  - Implement regular, independent internal monitoring function that reports to a senior executive on heightened risk payments to agents/consultants or to financial institutions outside of the project location
- Avoid putting financial information in your bid until the last minute to avoid leaks

#### 2) Response to a bribery demand: How to react if the demand is made?

- Refuse payment
- Ask consultant to put request in writing
- Record meeting, keep minutes and report to management
- Disclose to contracting party that you have been approached with information and that there might be a leak in the process
- Disclose to competitors that you have been approached with confidential information and suggest jointly approaching procurement agency with an NGO for increased scrutiny of the bidding process, which will limit the value of the confidential information
- Industry initiatives: expose known extortionists for future reference
- Regulators: in regulated industries, alert authorities of bribery demands

## Scenario 4

### “Kickback” scenario: Your sales representative is offered hidden compensation by the customer or by an intermediary

**Description:** *Your company is bidding for a large foreign government contract where one or several intermediaries are involved. One of the intermediaries approaches one of your employees and suggests entering into a contract to support the employee in the bid preparation and states that the intermediary can arrange to win the bid against payment of an extra commission. The intermediary offers your employee a portion of this commission as a hidden compensation (“kickback”) if your employee accepts such an arrangement and secures from the company the approval for this extra commission.*

#### 1) Demand prevention: How to reduce the probability of the demand being made?

- Always operate as a team consisting of at least two employees who must comply with strict reporting directives and control mechanisms
- Set up clear company directives including a whistle-blowing policy and related (severe) sanctions for non-compliance
- Set up specific guidelines dedicated to negotiations that expressly address the kickback issue with the obligation to immediately report any solicitation to management
- Emphasize in training sessions the criminal and reputation risks not only for the company but also for the exposed employees themselves
- Send regular reminder communications to the exposed employees
- Include expressly the kickback case in consultants’ contracts as an event of immediate termination for material breach, and reserve legal actions
- Provide competitive remuneration for staff exposed to such offers
- Check market rates for commission of intermediaries
- Require employees to sign a code of conduct statement regularly
- Try to establish an integrity pact that clearly states that company staff does not accept hidden compensation
- Include in terms of contract/bid that sales representatives accepting a kickback will be sanctioned and that your company does not condone the practice

#### 2) Response to a bribery demand: How to react if the demand is made?

- Immediately report to management or the appropriate officer assigned with matters involving the code of conduct (e.g. compliance officer)
- Start an internal investigation by an independent party (i.e. corporate internal audit, compliance officer), in particular, perform audits on earlier transactions with the soliciting person(s)
- Review bid terms with final terms and analyse whether the solicitation has negatively reflected on the evaluation of your company
- Protect the exposed employee if he or she reported the incident (otherwise sanction), i.e.:
  - Transfer the exposed employee
  - Appoint another company employee to accompany the exposed employee in the negotiations until the transfer is effective (this only applies if the employee operates on his or her own and not in a team)
- Record the incident and inform the customer at the appropriate level.
- Terminate any business relationship with the intermediary.

**Note:** during discussions, it was noted that the most difficult aspect is for a company to detect fraud by its own employees. The answers under point two were made under the assumption that the employee has reported the incident.

## Scenario 5

### A host country may impose or imposes a partnership with a designated local company that may present high corruption risks

**Description:** *In a call for tender, your company may be asked or is asked to contract with a designated local company (such as a co-contractor, sub-contractor or consultant) as a pre-condition to bid. The designated company might not or does not have the necessary qualifications to perform the task.*

#### 1) Demand prevention: How to reduce the probability of the demand being made?

- Encourage local professional and business associations to engage with the government to enact laws and rules favouring freedom of contracting
- Seek the leverage of international financial institutions to enhance the freedom of contracting
- Engage in a dialogue with the procurement agency to improve procedures in the following areas: allow for freedom of sub-contracting for bids, i.e. pre-selection of eligible local companies should be made on the basis of objective financial, legal and technical criteria, including capacity to deal adequately with health, safety, environment and human rights requirements; in such a pre-qualification process, compliance to generally accepted corporate social responsibility should be considered
- As a deterrent to prevent an imposed partnership, select (after due diligence), prior to an upcoming bidding process, a local company with good reputation and sign with it a joint bidding agreement with anti-corruption provisions

#### 2) Responses to a demand: How to react if the demand is made?

- Resist the request from the government or governmental entities using financial and technical arguments highlighting the inability of the imposed local company to meet the requirements of the project and the standards of your company or those shared with other venture partners
- Negotiate with the government or governmental entity and propose to substitute the imposed company with another local company of your choice with a good reputation and higher financial and technical records
- Discuss this pre-condition with other bidders and civil society organizations and jointly approach the government to remove this requirement and allow for open selection of local contractors
- If a local company is effectively imposed on your company and if, in your judgement, such company appears to be acceptable, insert adequate safeguard provisions in the contract with the imposed local company (including termination clauses); such contract should include a detailed description of the scope of work and market price remuneration, proportional to the services to be rendered

## Scenario 6

### Client demands a last-minute “closure fee” to close a deal that is now too late to lose

**Description:** *Your company is bidding for a large government contract. After two or three years of costly negotiations, your company is eventually awarded the contract. But just before the contract is being signed, you get solicited for a bribe by a member of the purchase committee. How can your company overcome this situation in a legally acceptable way without losing the contract?*

#### 1) Demand prevention: How to reduce the probability of the demand being made?

- Elaborate a strict framework to support the negotiations: submit a detailed offer including terms and conditions and/or propose (if relevant) a draft contract, that both includes anti-bribery clauses and termination for default in case of bribery
- Define the scope of negotiation: make sure that the negotiation team has a clear mandate; inform the customer that the team is empowered with a specific limited mandate for negotiation, which excludes any request out of the scope of the call for tender terms
- During negotiations, including at closing time, identify decision-makers (technical, budgetary, etc.) within the procurement organization to determine where the solicitation could come from
- At bidding stage, consider involving main actors in fighting corruption such as banks and export credit agencies that might have a good knowledge of customer/decisions-makers and their practices

#### 2) Responses to a bribery demand: How to react if the demand is made?

- Immediately inform your management and define an appropriate strategy (e.g. changing the negotiation team)
- Go back to the soliciting person with at least one witness (management, adviser, bank representative) with the following position:
  - Reaffirm your willingness to sign the contract and ignore the solicitation
  - In case the solicitation is reiterated:
    - First, inform the person that the request is not acceptable
    - Second, threaten to back off from the bid with public communication of the reasons for doing so, or actually back off from the bid
    - Set a deadline for signature based on the terms and conditions previously agreed
- Go to customer that established the purchase committee to check the bid and inform him or her that the company has the impression that they are being subjected to a solicitation; ask the customer to inquire and suggest repeating the bid if necessary
- If sufficient evidence is available, address the national anti-corruption body/agency/ombudsman
- Go public and expose the situation; be prepared to back off the project

## Scenario 7

### A company complaining about an unfair procurement process is threatened with a spurious criminal prosecution that will lead to a heavy fine

**Description:** *Company A knows that its competitor Company B has won the public bid because Company B bribed the public official in charge of the bidding process. Company A makes a report to the police. Company B reacts with threats of phoney accusations against Company A that would result in unjustified criminal proceedings against Company A unless it withdraws the report.*

#### 1) Demand prevention: How to reduce the probability of the demand being made?

- Instead of making a report on its own, Company A could approach other competitors that also lost the tender as a result of the bribe payments by Company B to the public official and make the report together; Company A thus reduces the probability of the demand being made as Company B would have to issue the threat against all of the companies involved, which is rather unlikely (subject to antitrust laws or with the help of local counsels)
- Instead of making a report to the police, Company A could address the public official's superior or the competent fraud investigation unit in the public official's department and thus make it obvious that any allegations by Company B would only be acts of revenge and thus deter Company B from making threats in the first place
- Company A could also inform the press and the public that it has evidence of bribe payments by Company B to the public official in question. This would also reduce the likelihood of the demand by Company B being made in the first place

#### 2) Response to a bribery demand: How to react if the demand is made?

- Explain to Company B that hard evidence has already been submitted and that even if the accusation would be revoked the case would very likely go ahead anyway as the proceedings have now been started
- Threaten to (and then do) inform the perpetrator's supervisor, superior or compliance officer or, as a last resort, the chief executive of Company B, and likewise the superior of the public official
- If the tender in relation to which the threat is made is financed by a multinational corporation or other foreign institution/donor, contact the compliance department of the donor institution
- Inquire whether criminal proceedings can be brought forward against the competitor in the competitor's home jurisdiction
- Inform the public about the threats made by Company B and thus increase the negative consequences for the extortionist (Company B)

## Annex: Guidance on Generic Good Practice Related to the Procurement Process

*Many scenarios call for common responses that are applicable to most situations. While the answers are partially repeated in the individual scenarios, this annex provides an overview of generic responses to extortion and solicitation demands during the procurement process.*

### 1) Demand prevention: How to reduce the probability of the demand being made?

#### General company anti-corruption policies

- Implement and enforce a zero tolerance anti-bribery policy based on ethical values
- Establish a no-bribe and zero tolerance reputation by publicizing anti-corruption policies efforts and the related anti-corruption programme
- Set up clear company directives including whistle-blowing policy and related effective sanctions for non-compliance
- Provide training to operational and field personnel on procurement regulations and competition laws; the consequences of bribery and anti-competitive deals for the company and the involved employees; how to respond to such demands (i.e. alert process, compliance department); and to whom to report such demands
- Emphasize in training sessions the criminal and reputation risks not only for the company but also for the exposed employees themselves
- Send regular reminder communications to exposed employees
- Provide competitive remuneration for staff at risk to reduce incentive to accept kickbacks
- Require high risk employees to sign a code of conduct statement regularly
- Introduce anti-corruption clauses in contracts with suppliers and sub-contractors

#### Policies for company representatives involved in bidding processes

- Train and discuss anti-corruption policies with personnel involved in the procurement process before the start of the project:
  - Identify and openly address incentives to pay bribes
  - Introduce “excuse pages” that describe why the usual answers and justification why bribes need to be paid are not valid
  - Perform background checks on personnel involved in bidding for procurement projects, including potential conflicts of interest, while respecting legal considerations and privacy rights
  - Provide training to at-risk personnel on the consequences of bribery (legal, financial, reputational, etc.)
  - Prepare employee guidance on how to respond to bribery demands (i.e. whistle-blower hotlines, compliance training and consultation) that incorporates cultural, industry and function specific advice
  - Consider incentives to report bribery demands
- Before, during and after the bid process, prohibit or strictly regulate gifts, entertainment, sponsorship and donations activity through policy, guidance, training and a formal approval process
  - Establish thresholds appropriate to the local environment
  - Zero tolerance policy for parties directly or indirectly involved in the bid process
- Consolidate disbursement mechanisms for personnel involved with bidding
  - Avoid petty cash funds that would enable staff to respond positively to any solicitation
  - Consolidate bank accounts
  - Risk management review to approve the opening of project-based accounts
  - Be clear with your employees about categories of expenses for which claims for reimbursement will be approved or rejected or for which a prior application should be made to avoid the risk of fait accompli and exposure for the company and its management
- Always operate as a team consisting of at least two employees who must comply with strict reporting directives and control mechanisms
- When meeting with other parties, request to be accompanied by a lawyer or another third party to reduce the probability of being asked for a bribe
- Be on alert for inappropriate schemes during the bidding process. Consult experts familiar with international transactions (financial and legal) where concerns exist

### **Assessment of corruption risk of procurement project**

- Include assessment of corruption risk as standard procedure when selecting proposal opportunities
- When bidding for large contracts, favour projects that are financed by multilateral financial institutions (e.g. World Bank) that have a clear anti-corruption policy
- Assess corruption risks at the project level before engaging in bidding process:
  - Consider geographical, cultural, industry or counterparty risks and incentives
  - Include functional, industry and cultural experts on the bid team
  - Standardize review of bid by non-project team members, including senior operational personnel, risk management and finance specialists
  - Establish correlation between risk factors and bribery demands:
    - Avoid environments with unacceptable risks
    - Proactively manage risk through enhanced controls and monitoring
  - Seek relevant information from major enterprises, embassies, export credit agencies, banks or trade associations about the business practices in that country
  - Consult country profiles on online tools such as [www.business-against-corruption.com](http://www.business-against-corruption.com)
  - Assess level of enforcement of existing anti-corruption policies and laws
- Monitor the living standards of the members of the body defining the terms of reference/procurement agency

### **Due diligence and management of agents and intermediaries**

- Perform due diligence on agents, consultants and other intermediaries involved in bids:
  - Identify “red flags” as these parties are often used to pay bribes to extortionists, e.g. family relationship with government officials, no registered office, refusal to reveal owners<sup>2</sup>
  - Eliminate any intermediaries that are non-essential to the bid
  - Implement risk management/compliance approval for payments to intermediaries
  - Review and ascertain whether the level of proposed compensation for the intermediary is commensurate with the nature and scope of services and whether the services are legitimate ones
- Include in contracts that compensation should be paid into a bank in the country of the agent’s operations

- Management should instruct sales teams that they have no authority to hire intermediaries; the need for an intermediary needs to be justified
- Ensure internal authorizations are obtained by appropriate corporate officials (at least one of the two approvers must have no personal sale incentives) prior to engaging a consultant or agent and making any fee payments
- Enter into written agreements with intermediaries that include anti-corruption, maximum commission and legal compliance clauses

### **Implementation of additional control procedures for bidding on projects**

- Maximize opportunities for detection by employing additional control procedures to detect bribes:
  - Segregation of disbursement activities from bid approval processes
  - Bidding approval process should not fall under the sole responsibility of the sales team involved in the bid if the size of your organization allows it
  - Formal vendor review and approval process
  - Use open bids for subcontracting activities whenever and wherever possible
  - Hold regular market reviews of marketing fees per country
  - Review of payments involving heightened risk:
    - To agents/consultants/advisers used in the bidding process
    - To bank accounts with financial institutions outside the project location, to tax havens or to countries maintaining banking secrecy
    - Require a bank’s certificate about the identity of the owner of the bank account to be credited
- Implement a regular, independent internal monitoring function that reports to a senior executive on:
  - High risk payments to agents/consultants or to financial institutions outside of the project location
  - Regular, timely and detailed review of bidding process documentation
- Use anti-corruption technology to increase monitoring effectiveness
  - Employ computer-assisted techniques to identify higher risk transactions

<sup>2</sup> For more examples, refer to “Business against Corruption – Case Stories and Examples, Integrity Due Diligence”, UN Global Compact, 2006: [http://www.unglobalcompact.org/docs/issues\\_doc/7.7/case\\_stories/BAC\\_2B.4.pdf](http://www.unglobalcompact.org/docs/issues_doc/7.7/case_stories/BAC_2B.4.pdf)

### **Initiation of collective action to improve overall business integrity**

- Encourage local professional and business associations to engage with the government to enact laws and rules for transparent procurement processes
- Seek the leverage of international financial institutions to enhance the quality and predictability of public procurement.

### **Support transparency of procurement processes with authorities**

- Engage in a dialogue with the procurement agency to improve procedures in the following areas:
  - Encourage adoption of best practice procurement guidelines (World Bank/OECD)
  - Making the procurement process transparent, including the publication of terms of reference
  - Work with other stakeholders (e.g. civil society organizations) to influence procurement agency to adopt best practices
  - Favour the establishment of an integrity pact, based on TI guidelines, between the local public authority and the various competitors, in order that officials do not demand or accept any bribes or gifts
  - Get agreement from the procurement agency on the appointment of an independent consultant (individual, company or international organization such as the World Bank) to supervise the entire bidding process
  - Request a pre-qualification round to exclude bidders lacking technical and financial delivery capacity (either through their own organization or relevant contractors)
  - Suggest that all bidders should as a pre-qualification requirement have implemented anti-corruption policies and related programmes
  - Agree with procurement agency that no intermediaries can be added to the process after bid submission

### **Legal and financial precaution**

- State in contracts that contractual disputes will be submitted to international arbitration on neutral ground
- Provide contractually for disputes to be submitted to the jurisdiction of the International Centre for the Settlement of International Disputes if the host country and the country of the investor are parties to the ICSID Convention
- Apply for guarantee by the Multilateral Investment Guarantee Agency (MIGA) if the host country and the country of the investor are MIGA members, or by a similar national organization of the country of the investor

## **2) Responses to a bribery demand: How to react if the demand is made?**

### **Immediate response**

- Take time to think about the situation, do not act alone and stick to your mandate
- Answer that the solicitation (direct or indirect) is to be made in writing and needs to be reported to your management
- Refuse payment on the grounds that any solicitation violates the business principles of your company and may violate applicable laws such as accounting and/or anticorruption laws in your country and/or the host country and money laundering, and could lead to the dismissal and criminal prosecution of the employee concerned

### **Report internally**

- Immediately report to management or the appropriate officer assigned with matters involving the code of conduct (e.g. compliance officer) and define an appropriate strategy (e.g. changing the negotiation team)
- Record the incident and make internal assessment to define corrective actions.

### **Investigate**

- Investigate the deal and the intermediary as well as past deals with the same counterparty (client, authorities, etc.) or intermediary in same country, or even other countries
  - Include legal, operational and risk management specialists
  - Retain investigation results for both legal implications and future risk assessments

**Discuss with legitimate representative of the customer**

- Go back to the customer or soliciting person with at least one witness (management, adviser, bank representative) with the following position:
  - Reaffirm your willingness to sign the contract and ignore the solicitation
  - In case the solicitation is reiterated:
    - First, inform the customer that its request is not acceptable
    - Threaten to back off from the bid with public communication of the reasons for doing so
    - Or actually back off from the bid
- Report (directly or anonymously) to the appropriate level of the organization allegedly represented by the person demanding the bribe
  - Assess whether the demand is systemic or simply a rogue employee
    - Rogue employees – Expose to superiors
    - Systemic corruption – Report to organization (directly or anonymously) and superiors
- Explain to the intermediary/procurement agency that the proposed scheme could expose all the parties (individual or company) to a prosecution risk not only in the country where the deal occurs but also in OECD countries on the grounds of regulations fighting corruption or money laundering
- Convene meeting of all parties and discuss potential challenges to a successful contract without specifying too many details; this should serve as a deterrent to the guilty party

**If suspicions are substantiated, disclose externally to:**

- Government – Use various governmental agencies to report corrupt organizations
- Embassy or consulate representing your home country to seek guidance and support
- Financing institutions, if any export credit financing or coverage is proposed
- Competitors, if they are subject to a regulatory environment similar to yours
- Industry trade association in the host country to report on a “no name” basis and in a collective manner such solicitation to relevant authorities
- Industry initiatives:
  - Leverage industry initiatives to communicate bribery demands
  - Expose known extortionists
- Regulators:
  - In regulated industries, alert the regulators of bribery demands that may stem from officials of a state-owned company
- Media/NGOs: Leverage public scrutiny of bidding process

**Withdraw**

- Withdraw from the bidding process and disclose the reasons for the withdrawal to the public, to international organizations and/or selected officials of the country organizing the tender