

anti-bribery and corruption flags



Request For Information (RFI)

Contains broad capabilities sought in the equipment, quantity required, anticipated delivery timelines, etc. Bidders to respond with availability and cost estimates of the equipment.

Who made you aware of the RFI? Was it a middle man?



Services Qualitative Requirements (SQR)

Contains fundamental (technology and performance) requirements of the equipment in a detailed, realistic and verifiable manner.



Request For Proposal (RFP)

Bid documents inviting offers and containing specific (technology and performance) requirements of the equipment, eligibility of bidders, terms of the contract, Integrity Pact, etc.

Is anyone who using undue influence to vary the SQR or RFP terms to suit certain bidders?



Bid Submission

Submission of offers by bidders along with disclosures, undertakings and Integrity Pact Bank Guarantee (if applicable). The offer will have separate technical and commercial bids.

Who front ends the bid submission (and the clarification process prior to bid submission)?



Technical Evaluation

A Technical Evaluation Committee (TEC) evaluates technical bids and shortlists bidders for field trials. Bids that are non-compliant with the RFP and/or SQR, are rejected.

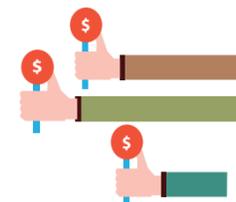
Has anyone offered to influence standard procedures for technical evaluation?



Field Evaluation Trials (FET)

Shortlisted bidders will provide their equipment for field trials wherein essential parameters of performance and technical specifications are tested.

Has anyone promised that FETs are a "mere formality" and nothing more?



Contract Negotiations

The Contract Negotiation Committee (CNC); (i) sets a price benchmark and evaluates the commercial bids (to identify the lowest bidder (L1); and (ii) incorporates the commercials in the contract.



Competent Financial Authority

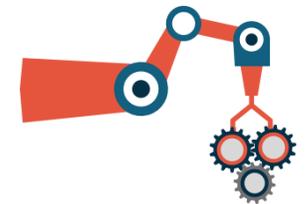
Approval for award of contract to L1 based on CNC's report (which contains its recommendation and a summary of the commercial negotiation process and evaluation parameters).



Award of Contract

Contract will be awarded to L1 and performance guarantees are taken from L1 at the time of signing of the contract.

Are you making any payments (other than those payments required by the tender) triggered by the award of the tender?



Contract Administration

Execution of contractual obligations towards delivery of equipment. The equipment may be subject to monitoring and testing at this stage.

Who front ends contract management and ongoing execution?

## FAQS

### What is a bribe?

- » Any form of illegal gratification received by a government official;
- » Anything of value without consideration like gifts, free transport, accommodation etc. received by a government official from persons with whom they are likely to engage in business with;
- » Use of undue influence over a government official to deviate from set procedures/ policies mainly in procurement process.

### Who are middlemen and what is their role in defence procurement?

Defence procurement (world over and especially in India) is a process that has its own nuances and limited visibility. Therefore, those who understand the process better can play a role in assisting contractors/suppliers in navigating it.

The role of middlemen can range from assisting the bidder in understanding the process, support in answering queries or approaching the right departments for clarifications etc. (back end support) to front ending bid submissions, participating in the contract negotiations (agency functions) and influencing the procurement process in any manner other than via the tender submission (influence peddling).

### What is the perception risk that 'agents' carry?

Unfortunately, agents have been in the middle of a number of bribery prosecutions in India. Therefore, any use of 'agents' may carry negative connotations (independent of the task of such an agent) in India.

### What happens if there is a bribery allegation?

The government has adopted a zero tolerance policy and you can expect an investigation being ordered against the accused. When such allegations are made, the CBI (Central Bureau of Investigation) usually (or in some cases the state police authorities) investigates the matter and formal criminal proceedings (in the normal courts) are initiated based on the CBI's report. Investigation and prosecution are both extremely intensive, long drawn and complicated processes.

Independently and in parallel, the Central Vigilance Commission (CVC) investigates and recommends action against the government official.



### Where do we see corruption in the defence procurement process?

Various phases of the defence procurement process are subject to different types or risk exposure. Refer to the figure (in the previous page) to get a better idea of the phases and risk exposure highlights.

### Are all activities of middlemen illegal?

While activities falling within the back end support are legal, there is a very high possibility that agency functions are illegal and influence peddling is definitely illegal. Admittedly, there is a lot of grey area between back end support and agency functions but it is highly advisable to take a conservative view while looking at what is allowed and what is not.

### What do I do if I need genuine back end support?

For regulatory and perception risk management, it is highly advisable to:

- » restrict the involvement of middlemen to back end support only;
- » ensure a robust contractual arrangement;
- » ensure payment of consideration via normal banking channels; and
- » diligence the middleman.

### What are the potential repercussions in bribery cases?

**A. Contractual Sanctions** – Bidder at the time of bid submission signs a pre-contract 'Integrity Pact'. Sanctions under the Integrity Pact include:

- » forfeiture of deposits - made at the time of bid submission;
- » encashment of bank guarantees;
- » termination of the defence contract; and
- » blacklisting of the bidder from bidding for future government contracts.

Integrity Pact is a mandatory undertaking signed by bidders in government procurement contracts. The pact prevents them from indulging in corrupt or anti-competitive practices

**B. Statutory Sanctions** include:

- » heavy fines; and
- » imprisonment terms.

Abetment of bribery is also punishable as though the person who abetted the offence had committed it.

## anti-bribery compliance defence procurement

### What is the corporate liability in case of bribery cases?

Criminal Liability can be attached if:

- » an officer/agent of a company (in case of defence procurement – bidders or their agents) commits the offence of bribery while exercising the powers given to him by the company;
- » the directors, employees or agents of a company commit an act of fraud, willful misconduct or gross negligence.



### Can employees/directors/managers be made personally liable?

Yes, the director of a company who is in charge of the affairs of the company, will be liable for offences of the company. In addition, "officer in default" (which includes whole time directors, key managerial personnel, chief executives and top level management) responsible for the acts of the company are also liable.

### How can I mitigate the risks?

#### Core guidelines:

Companies must formulate procedures on ethical conduct of employees and intermediaries while dealing with government officials. Specific whistleblower programs, anti-bribery practices and training programmes should be put into place for India specific projects. It is not sufficient defence to show that these measures were in place. Proof is required that these measures were communicated to the employees/intermediaries and that the employees/intermediaries had easy access and knew how to activate them – if required.

#### Use of agents:

Intermediaries must be used as 'back end support' and not be engaged as agents of the company (unless declared and registered). Before engaging an intermediary, companies must conduct thorough diligence of the intermediaries. Companies must establish a robust contracting process to ensure that all aspects of the relationship (including scope of services, payment procedure, taxes etc.) are captured clearly.

#### Monitoring and review:

Companies should evaluate the effectiveness of its policies by undertaking timely in-house or external audits of the policies, monitoring of third party relationships, audit of high risk transactions and review of internal financial control mechanisms.



#### Top-level commitment:

Establishing the 'tone from the top' is important. Top-level management should devote appropriate time to anti-bribery and corruption compliance, and commit adequate resources to ensure such compliance. The company's 'zero tolerance' policy towards bribery and corruption should be communicated well to both internal and external stakeholders.

#### IRP:

Despite all these proactive measures, if a company is investigated for corruption, it should develop and implement an Incident Response Protocol (IRP). The IRP is a combination of legal, technical and public relations steps in order to manage, contain and mitigate risks

