

APPENDIX C **SAMPLE INTEGRITY PACT**

This appendix contains the text of an integrity pact that was written with the help of Transparency International and subsequently signed with the government of Colombia in June 2000. Its purpose was to strengthen transparency in the bidding process for government-financed projects.

Integrity Pact for Strengthening Transparency in the Procurement Process No. 02/01 MDN-ARC for the Acquisition of Two Sea Bound Patrol Aircraft for the Ministry of Defense—National Navy of Colombia

Before domestic and international public opinion, we the undersigned, on one side, THE LEGAL REPRESENTATIVES AND MANAGING OFFICERS OF THE OFFERORS PARTICIPATING IN THE SUBJECT PROCUREMENT PROCESS acting on our own behalf and in representation of the legal entities that we represent as offerors, as well as in the name of all the officers and advisors who have either (1) directly, indirectly, formally or accidentally determined our participation in procurement process No. 02/01 MDN-ARC for the acquisition of two sea bound patrol aircrafts for the Ministry of National Defense—National Navy of Colombia (herein referred to as the “Subject Procurement”); (2) intervened in the preparation of our proposals to participate in the Subject Procurement; or (3) assessed our officers or companies in the Subject Procurement (hereinafter referred to individually or collectively as the “Participating Entities”) and, on the other side, the OFFICERS AND ADVISORS OF THE COLOMBIAN MINISTRY OF DEFENSE, OF THE COLOMBIAN NAVY AND OF THE COLOMBIAN AIR FORCE, who directly, indirectly, formally or accidentally have participated in the technical, economical and legal structuring of the Subject Procurement or in its procedures, promotion, revision and definition, have together agreed to subscribe to this 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, this Pact focuses upon a *non-bribery commitment for purposes of obtaining or retaining a contract or any other improper advantage. This includes the commitment not to collude with third parties for purposes of limiting competition in the award of this contract, as well as the obligation not to engage in unfair practices and acts contrary to free competition and an objective award within the procurement process* (hereinafter referred to as the “Non-bribery Commitment”).

The Non-bribery Commitment includes any type of *payment, gift or other favor, whether offered or granted and whether, in a direct or indirect manner or through third parties, to officials or advisors of the COLOMBIAN MINISTRY OF DEFENSE, THE COLOMBIAN NAVY AND THE COLOMBIAN AIR FORCE*, for purposes of:

1. Attempting to have the project, or segments of it, structured in such a way as to advantage one or more Participating Entity;
2. Securing any undue advantage to any Participating Entity in the evaluation and selection process leading to the award of the contract;
3. Being awarded the contract;
4. Achieving substantial changes in the contract through adjustment of its specifications, terms or any other material component thereof;
5. Having public officials, advisors or the receiver or supervisor of the contract (or their personnel, advisors and subcontractors) approve proposals for (or otherwise accept) substandard performance of parameters, which have been proposed by a Participating Entity and accepted by the COLOMBIAN MINISTRY OF DEFENSE
6. Having public officials, advisors or the receiver or supervisor of the contract (or their personnel, advisors and subcontractors) refrain from a) duly monitoring project implementation, b) reporting violations of contract specifications or other forms of non-compliance in a timely fashion, or c) holding contractors fully accountable for compliance with their legal obligations;
7. Evading taxes, duties, levies, rights, licenses or any other legal obligation;
8. Inducing any public officer to breach his official duties in any manner.

Within the above framework and in full compliance with Colombian laws, the undersigned fully commit to the following:

1. The Participating Entities and THE COLOMBIAN MINISTRY OF DEFENSE place importance on the submission of proposals within a free, impartial, competitive and abuse-free environment. Within this scope, the Participating Entities are pleased to confirm that:
 - a. They have neither offered to grant, granted or facilitated any improper inducement or reward nor attempted to offer, grant or facilitate any inducement or improper reward, nor 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, THE COLOMBIAN NAVY OR THE COLOMBIAN AIR FORCE, including their relatives or business associates, for purposes of being awarded this contract, or retaining it or any other undue advantage, and
 - b. They have neither colluded with others, nor will so collude, for the undue limiting of competition for the award of this contract.

- c. The Participating Entities 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—COLOMBIAN NAVY AND AIR FORCE confirm that they have neither requested nor accepted, nor shall they request or accept, whether directly or indirectly through third parties, any payment or favor from the Participating Entities 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 has a present and actual need for goods meeting the precise technical specifications described in the Subject Procurement.

2. The Participating Entities hereby commit to performing their activities within a framework of principles for ethical behavior and 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 working with the company on this project, including their agents, consultants and subcontractors. This framework shall be recorded in each Participating Entity's ethical code, which should demonstrate that each corresponding entity will perform under internal compliance systems capable of detecting corruption risks and preventing the payment of bribes. As a condition of participation, each Participating Entity shall file their corresponding ethics code with the COLOMBIAN MINISTRY OF DEFENSE.
3. This commitment is submitted in the name and on behalf of the Presidents and/or General Managers of each Participating Entity. All those participating as a 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 to this Pact in their own name and on behalf of each and all the Presidents and/or General Managers of the associated companies.
4. Each international company participating in the Subject Procurement hereby assumes this commitment in the name and on behalf of the President and / or General Managers of the company's parent companies, and this commitment shall include all managers and personnel of their Colombian subsidiaries, should the latter exist.
5. Regarding the submission of bids, Participating Entities hereby commit to presenting a serious tender, including reliable information, and not to present an artificially low price seeking to compensate such price during the execution of the contract by claiming additional payments. This commitment is understood as not limiting the possibility that additions to the contracts for other items may be accepted, whenever they are fair and duly supported.
6. Regarding business-related payments, the Participating Entities agree that:

- a. Payments to agents and other third parties will be limited to reasonable compensation for clearly business-related services.
 - b. In the event of a claim related to non-compliance of the Non-bribery Commitment made in this Pact and the existence of serious evidence of such non-compliance assessed for this purpose by the Arbitrator designated under number 10 herein, the involved or successful Participating Entities hereby commit to furnishing to the Arbitrator, if so demanded, all information under their control, directly or indirectly, on (1) payments relating to the preparation of the tender and/or contract, (2) contract beneficiaries, and (3) all other the contract-related documentation.
 - c. Upon the completion of the performance of the contract, the legal representative of the successful Participating Entity will formally certify that no bribes or other illegal fees have been paid in order to obtain or retain this contract. The final accounting shall include brief details of the goods and services provided sufficient to establish the legitimacy of the payments made.
7. In the event of non-compliance with the ethical commitments made herein by officials and Participating Entities, a decision shall be issued by an Arbitrator, called the “Tender's Transparency Defender,” in order to achieve the purposes of this Pact. His or her decisions shall be fair pursuant to Law 446 of 1998.

The Arbitrator shall hear the above-mentioned matters upon request of the Government, Transparency International, or any of the Participating Entities.

The above-mentioned Arbitrator shall have the qualifications provided for in the National Constitution to hold the position of Supreme Court or Constitutional Court Justice and shall be selected from the list of arbitrators of the Chamber of Commerce of Bogotá, through the public impaneling system.

8. Should a declaration of guilt be issued by the Arbitrator for the default of any Participating Entity's under its Non-bribery Commitment, 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 defaulting Participating Entity be the party to whom the contract was awarded (“Defaulting Contractor”), any of the remaining parties to this Pact shall be entitled to request, before a competent Judge, total nullity of the underlying contract on the basis that it lacks licit cause;
 - b. Where the party involved is a Defaulting Contractor, the underlying contract will be terminated immediately for due cause attributable to that party. The Defaulting Contractor is hereby obligated to unconditionally and irrevocably accept termination of the contract for due cause

immediately upon the declaration of default issued by the Arbitrators. The Defaulting Contractor will assume the contractual consequences derived from such termination.

- c. Any defaulting Participating Entity shall be required to pay economic satisfaction equivalent to ten percent (10.00%) of the value of the contract, as an estimation of damages inflicted on the Participating Entities who have not defaulted under their Non-bribery Commitments. Should there be more than one complying Participating Entity, the resulting amount shall be distributed equally among them.
- d. Any defaulting Participating Entity 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 the effectiveness of the above-stated provisions, this Pact shall be included as an integral part of the contract to be signed by the chosen Participating Entity. The legal effects contemplated in letters a) and b) of this numeral shall solely be applicable to the Participating Entity 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 Participating Entity.

- 9. All chiefs at the COLOMBIAN MINISTRY OF DEFENSE, the COLOMBIAN NAVY and the AIR FORCE, shall be obliged to undertake each and every action required to ensure that the competent entities promote and perform such investigations as may be required into the conduct of officers of any Participating Entity, or of their external advisors, who could have acted in default of the provisions of this Pact and of any applicable law.
- 10. In event of proven default to the Non-bribery Commitment, as established in numeral 8 of this Integrity Pact, the COLOMBIAN MINISTRY OF DEFENSE should exclude the defaulting Participating Entity from future eligibility for participation in direct contracting processes.
- 11. The Participating Entities hereby declare publicly that they know and accept the conditions of total transparency and equity, as established in the Documents of the Subject Procurement process and all their amendments. Thus, they commit not to seek to disqualify other Participating Entities using any argument concerning default of conditions not specifically included herein, throughout the period of evaluation of the proposals.
- 12. The Participating Entities do hereby accept that, throughout the period of evaluation of proposals, the criteria used will favor substantive aspects over formal ones, always seeking to favor free competition and the participation of the largest possible number of bids in the Subject Procurement process.
- 13. Additionally, the Colombian Government has established the Presidency's Program Against Corruption, with the purpose to serve as a channel for processing any investigation on any possible form of extortion or bribery

through public contracting. Participating Entities shall voluntarily report before this Program any information on irregular doings of which they have knowledge, which bears relation to the Subject Procurement process.

As evidence of acceptance of the foregoing, the officials of the COLOMBIAN MINISTRY OF DEFENSE, the COLOMBIAN NAVY and the COLOMBIAN AIR FORCE sign the present document on the _____

OFFICIALS AND ADVISORS OF THE COLOMBIAN MINISTRY OF DEFENSE

Colombian Minister of Defense and other senior officer's signatures appear.

OFFICERS AND ADVISORS OF THE COLOMBIAN NAVY

Names and functional position of additional signing officer follow.

AIR FORCE OFFICERS PARTICIPANT IN TECHNICAL ADVISORY OF THE PROJECT

Names and functional position of several Air Force officers follow.

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

WITNESSES

Names and position of several senior government officials, the Executive Director of Transparencia por Colombia and the Director of the Presidency's Program Against Corruption.