

## **SECTION B – INTEGRITY PACT**

---

### **NOTICE TO BIDDERS**

1. **SARAWAK ECONOMIC DEVELOPMENT CORPORATION (SEDC)** is committed to fight corruption in public contracting. As part of this program, SEDC has reviewed its arrangements for the letting and implementation of public sector contracts against criteria of integrity, transparency and accountability.
2. In an effort to limit the scope for abuse, SEDC is introducing new procedures, which SEDC is sure your company will wish to support. The objective is to ensure that there is fair competition for public sector business, and that competition takes place openly and in a manner that provides fair and equal opportunity for all competitors and integrity and accountability in contract implementation. The new procedures will also apply to the execution of contracts by the successful bidder/supplier. The new procedures are set out in the attached Technical Memorandum entitled "Procedures for Bidding for SEDC Contracts: The Integrity Pact".
3. As part of its confidence building strategy, SEDC will treat the oversight and monitoring of the implementation of these new procedures with the highest priority. SEDC will pay particularly close attention to the need to prevent or sanction any case of extortion, or acceptance of bribes, by SEDC officials. We are asking all those bidding for SEDC business to assist SEDC by reporting any instances of extortion or bribe-taking occurring.
4. A special office for the investigation and handling of any reports of extortion or bribery in public procurement has been set up in the Chairman's Office and can be reached as follows:

The Chairman  
11<sup>th</sup> Floor, Menara SEDC  
Jalan Tunku Abdul Rahman  
93100 Kuching

Tel no: 082-419707 / 416777  
Fax No: 082-426777 / 424330

## **SECTION B – INTEGRITY PACT**

---

### **PROCEDURES FOR BIDDING FOR SEDC CONTRACTS**

The following procedures will apply to tenders, pre-qualification or consultancy services involving SEDC. These procedures are in addition to the standard legal and administrative requirements. They will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by SEDC and any of the competing bidders/firms.

#### **1. Integrity Statement by Bidder**

Each bidder for a supply, construction or other service contract (other than a consultancy) must submit a statement, as an integral part of the tender documents, with the following text:

*"This Company places importance on competitive tendering taking place on a basis that is free, fair, competitive and not subject to abuse. This Company is pleased to confirm that:*

- (i) it has not offered or granted, and will not offer or grant, either directly or indirectly through agents or other third parties, any improper inducement or reward to any public official (in the country where the contract is to be performed, in the home-country of the Company, or in any International Financial Institution), their relations or business associates, in order to obtain or retain this contract or other improper advantage, and*
- (ii) it has not colluded, and will not collude, with others in order to unduly limit competition for this contract.*

*'The Company understands the material importance of these commitments to SEDC and SEDC's reliance upon its commitments.*

*'This Company has a No-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the Project, including agents, consultants, consortium partners, subcontractors and suppliers. Copies of our No-Bribery Policy/Code of Conduct and Compliance Program are attached.*

*[In cases where companies participate in the bidding which do not yet have a general no-bribery policy/Code of Conduct: "This Company has developed, for the purposes of this tender, a Compliance Program - copy attached - which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this Company on the Project, including agents, consultants, consortium partners, subcontractors and suppliers."]*

*[In cases where SEDC chooses not to require the existence of no bribery policy/Code of Conduct: "This Company will make the necessary arrangements so that this no-bribery commitment will be complied with by all its managers and employees as well as by all third parties working with this Company on this project, including agents, consultants, consortium partners and subcontractors."]*

## **SECTION B – INTEGRITY PACT**

---

### **PROCEDURES FOR BIDDING FOR SEDC CONTRACTS (CONT'D)**

*'This commitment is submitted in the name and on behalf of this Company's Chairman and/or Managing Director and/or Chief Executive Officer.*

*[Alternative: In the case of globally-active companies it may be difficult to obtain the commitment "in the name and on behalf of the (international headquarters) CEO"; in such cases, one should require a reference to the CEO of the Regional headquarters, or the highest possible officer.]*

#### **2. Integrity Statement by Consultant**

Each consultant or consultant firm submitting a proposal for a consultancy contract related to the Project must submit a statement, as integral part of its proposal, with the following text:

*"This Consultant/ Consultant Firm ("Consultant") places importance on the selection of consultants taking place on a basis that is free, fair, competitive and not subject to abuse. This Consultant is pleased to confirm that*

- (i) it has not offered or granted, and will not offer or grant, either directly or indirectly through agents or other third parties, any improper inducement or reward to any public official (in the country where the contract is to be performed, in the home-country of the Consultant or in any International Financial Institution), their relations or business associates, in order to obtain or retain this contract or other improper advantage, and*
- (ii) it has not colluded, and will not collude, with others in order to unduly limit competition for this contract.*

*'The Consultant understands the material importance of these commitments to the Government and the Government's reliance upon its commitments.*

*'This Consultant further confirms that it will not demand or accept any payment or other favour in exchange for*

- (i) designing a project or parts thereof in a manner that might offer undue advantages to one or several bidders,*
- (ii) giving undue advantage to any of the bidders in the evaluation and selection of bidders for a contract award, or*
- (iii) refraining from properly monitoring project implementation, reporting violations of contract specifications or other forms of non-compliance, or holding suppliers and contractors fully to their legal obligations.*

*'This Consultant has a No-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the Project, including agents, consultants, consortium partners, subcontractors and suppliers. Copies of our No-Bribery Policy/Code of Conduct and Compliance Program are attached.*

## **SECTION B – INTEGRITY PACT**

---

### **PROCEDURES FOR BIDDING FOR SEDC CONTRACTS (CONT'D)**

*[In cases where Consultants participate in the selection process which do not yet have a general no-bribery policy/Code of Conduct: "This Consultant has developed, for the purposes of this proposal, a Compliance Program – copy attached - which includes all reasonable steps necessary to assure that the no-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this Consultant on the Project, including agents, consultants, consortium partners, subcontractors and suppliers."]*

*[In cases where a government chooses not to require the existence of a no bribery policy/Code of Conduct: "This Consultant will make the necessary arrangements so that this no-bribery commitment will be complied with by all its managers and employees as well as by all third parties working with this Consultant on this project, including agents, consultants, consortium partners and subcontractors."]*

*'This commitment is submitted in the name and on behalf of this Consultant's Chairman and/or Managing Director and/or Managing Partner and/or Chief Executive Officer.*

#### **3. Extension of commitment to subsidiary**

- (a) If a bidding company has a subsidiary, the no-bribery commitment must extend to that subsidiary and its managers and employees as well. If the tender is submitted by the subsidiary, the no-bribery commitment must also extend to the parent company and its managers and employees.
- (b) Bidders will also be required to submit similar no-bribery commitments from their subcontractors and consortium partners. The bidder may however cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.

#### **4. Payments to agents and other third parties**

- (a) Payments to agents and other third parties shall be limited to appropriate compensation for legitimate services.
- (b) Each bidder will make full disclosure in the bid documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the bid and, if successful, the implementation of the contract.
- (c) The disclosure of all such payments will be made upon request by SEDC, in particular when some suspicion of wrongdoing emerges.
- (d) The successful bidder will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract upon request by SEDC, in particular when some suspicion of wrongdoing emerges.

## **SECTION B – INTEGRITY PACT**

---

### **PROCEDURES FOR BIDDING FOR SEDC CONTRACTS (CONT'D)**

- (e) Within [one year] of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid in order to obtain or retain this contract. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.
- (f) Statements required according to subparagraphs (b), (d) and (e) of this paragraph will have to be certified by an appropriate senior corporate officer of the bidder.

#### **5. Ambit of IP**

- (a) The IP however focuses on *bribery in order to obtain or retain the contract or other improper advantage, including collusion with others in order to limit competition for this contract*. This includes any payments or other favors offered or granted in order to:

- (i) win a contract award,
- (ii) get a contract change order (adjusting the price, the specifications, the time frame for implementation or any other important contract components) approved by SEDC,
- (iii) get sub-standard or sub-specification performance approved by a public official or the supervising consultant or his staff,
- (iv) circumvent tax, duty, license or any other legal obligations that should be met, or
- (v) induce an official to breach his/her official duties in any other way.

- (b) It also includes the demand for, or acceptance of, any payment or other favor by a consultant in exchange for

- (i) designing a project or parts thereof in a manner that it might offer undue advantages to one or several bidders,
- (ii) giving undue advantage to any of the bidders in the evaluation and selection of bidders for a contract award, or
- (iii) refraining from properly monitoring project implementation, reporting violations of contract specifications or other forms of non-compliance, or holding suppliers and contractors fully to their legal obligations.

#### **6. Sanctions for non-compliance**

If a bidder or consultant fails to comply with its no-bribery commitment, any or all of the following sanctions will apply:

- (i) denial or cancellation of the contract;
- (ii) liability for damages to SEDC, in the amount of 5 (five) percent of the contract value, unless SEDC can demonstrate and prove a higher damage, or the bidder can demonstrate and prove a lesser damage;
- (iii) liability for damages to any of the competing bidders, in the amount of 1 (one) percent of the contract value, unless either of the parties can demonstrate and prove a higher or lesser damage;
- (iv) forfeiture of the bid and/or performance security; and

## **SECTION B – INTEGRITY PACT**

---

### **PROCEDURES FOR BIDDING FOR SEDC CONTRACTS (CONT'D)**

- (v) debarment by SEDC from bidding or consideration for further public contracts for such period as the SEDC may deem appropriate.

#### **7. Undertaking by SEDC**

The SEDC hereby confirms:

- (i) that none of its officials will demand or accept any bribe, gift, favor, or other advantage for himself or any other person, organization or third party, directly or through a friend, relative, or other third party, in connection with this contract,
- (ii) that it will make publicly available all appropriate technical, judicial and administrative information relating to the contract,
- (iii) that none of its officials will disclose otherwise confidential information to any outsider who may use this information for an undue advantage in the procurement process for this project,
- (iv) that none of its officials will commit any other acts of Conflict of Interest, and
- (v) that its officials will be reminded that they have an obligation to report to the appropriate government office any attempted or completed bribes or other violations enumerated in this paragraph.

#### **8. Violation by SEDC Official**

In case of violation, by any SEDC official, of any of the undertakings submitted under paragraph 7 above, appropriate sanctions will be pursued against the official.

#### **9. Disputes Resolution**

(a) All disputes between SEDC and the bidder and/or consultant relating to these arrangements shall be finally resolved under the Arbitration Act, 2005 and any modification thereof and rules made thereunder in force at the date of the request for arbitration.

(b) The tribunal shall consist of a single arbitrator to be appointed by both parties, or failing agreement by the Director of the Regional Centre for Arbitration, Kuala Lumpur. The place of the arbitration shall be Kuching, Sarawak. The language of the arbitration shall be English. Any disputes relating to these arrangements shall be settled in accordance with the laws of Malaysia.

#### **10. Financing Debarment**

In cases where SEDC debar an offender from SEDC business because of violation of the no-bribery commitment or other corrupt practices, the International Financing Institution/external donor providing financing will also consider debarring that offender from eligibility for contracts financed by it globally.

## **SECTION B – INTEGRITY PACT**

---

### **PROCEDURES FOR BIDDING FOR SEDC CONTRACTS (CONT'D)**

**11. Arrangement for oversight**

SEDC has made special arrangements for adequate oversight and monitoring of the procurement process and the execution of the contract. In this regard, SEDC has provided for limited public hearings on the procurement process [public hearings may be truly "public", giving the entire population affected by a project the opportunity to raise questions about project concept or design etc, or "limited public", meaning the bidders, considering that the bidders usually are the best equipped to see any biases or potential advantages/disadvantages for individual bidders in the design and specifications for the procurement process] and for access by Civil Society to meetings of its Tender Evaluation Committee and to all documents relating to the evaluation of the competitive tenders, the award decision process and the execution of the project.

**12. Special Office for Investigation**

SEDC has also set up a special office for the investigation and handling of any reports of extortion or bribery in public procurement.

**13. Public disclosure**

SEDC will, at its sole discretion, publicly disclose the award decision including the major elements of the evaluation and the reasons for the selection of the successful bidder.

**14. Non-conforming bids**

Bids which do not conform to the requirements of these procedures will not be considered.