TRANSPARENCY INTERNATIONAL
Defence & Security

SUSTAINMENT AND CONTRACTING PROTOCOL

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Operational contracting and sustainment has traditionally been seen as a support function separate from the main business of conducting military operations. Recent experiences, however – especially that of ISAF in Afghanistan – have prompted a wholesale re-evaluation of these assumptions, as financial flows and political relations generated through sustainment activities strengthened adversaries and made it far more difficult for ISAF to achieve key goals related to security and stability.

Sustainment contracts with international forces tend to generate significant income for the contractors. When handled well, increased availability of work and injection of additional resources can provide an economic stimulus in the area of operations, help diversify the economic base, spur on competition, and widen access to opportunity for a wide range of stakeholders. But mission sustainment, from food delivery to large-scale outsourcing of transport services needed to supply international troops, also carries significant risks in fragile and conflict environments.

The sheer volume of cash and resources entering a community and/or a banking system (depending on whether one is in existence) during sustainment activities is a key issue. Trying to absorb such sums can create or exacerbate corruption, fraud, criminality, and potential diversion of resources by adversary groups. This should be anticipated by international missions. The timing, sequencing and pace of sustainment activities needs to be considered not only with mission budgets and needs in mind, but also with reference to the absorptive capacity of the host nation.

Revenues generated by contracting with international forces, as well as the political relationships they can help forge, are attractive to local providers and can prompt unscrupulous competition, sometimes including violence and illegal measures such as land grabs and extortion of material and access. If these revenues are monopolised by one ethnic, social, tribal or family group, their flow risks exacerbating pre-existing divisions, enable dominance of one group at the cost of others, and result in long-term grievances and potential destabilisation of the area.

Finally, operational contexts also often come with less stringent oversight. Due to large quantities of items needed, limited number of potential partners, weak governance in the area of operations, and short delivery timeframes, the usual due diligence procedures might either be skipped or become less effective. Lax oversight and operational pressures – it is difficult to threaten cancelling a contract if operational outcomes depend on it – create environments more susceptible to corruption risks at all stages of the sustainment process, from tenders to contract oversight and execution.

In Iraq, Custer Battles, a company which undertook to provide security, construction and operational services to support the Iraqi Currency Exchange (ICE), submitted apparently false invoices and used shell sub-contractors to artificially inflate its costs. During the tender process, Custer Battles was the only company whose bid undertook to complete the work at a low price and to the deadline specified by the Coalition Provisional Authority. However, after the bidding was completed, the contract was modified four times, and each time the price was increased. The changes in the contract; submission of false or ill-substantiated invoices; discrepancies between invoices submitted and reports of actual services provided; and other issues were all red flags that the international coalition officials did note, but felt powerless to act on due to operational pressures and the fear that terminating the contract would create significant knock-on effects.

> "If an official were to try to cancel a meal-service contract, for example, some colonel is going to be on the phone to you ripping your lips off saying, 'Why aren't my troops being fed?'…The threat of cancelling a contract is normally the sharpest quiver in the bag of the contracting officer. But there's no arrowhead on it any more…So the checks and balances are gone. The system is broken."
>
> **Quoted in 'Corruption in procurement processes,' 2007**

The risks and benefits related to operational sustainment also apply to other situations which entail mission-financed projects, such as delivering humanitarian aid or mission-funded reconstruction or development projects (for example, the US Commander's Emergency Response Programme, which saw ISAF commanders disbursing resources for reconstruction and development projects). These lines of activity also involve contracts with local providers, payments and transfers of other resources, and are exposed to similar risks. Risk pathways and mitigation measures that apply to sustainment can therefore be adapted to other activities; for more detailed guidance tailored to risks affecting humanitarian assistance, see TI's

guidance on the issue.

While the focus of this contracting protocol is on the risks created by the flow of political and financial resources into the operational environment, it is important to remember that corruption-related risks in sustainment also affect and are often magnified by the behaviour of mission forces. When assessing risks related to sustainment, planners and commanders need to look inside the mission as well as toward its environment.

Impact of mission activities: the resources the mission provides to local stakeholders through sustainment – from money to political support – can either spur competition and provide support to local entrepreneurs, or be diverted to solidify corrupt and criminal networks which undermine the legitimacy and effectiveness of governments, and which can prolong conflict and increase fragility.

CONTRACTING RISKS AND MITIGATIONS: THE PROCESS AND THE TIMELINE

PRE-DEPLOYMENT

- Make contracting 'commander's business': assess corruption risks in sustainment and their impact on the mission
- Provide guidance and train staff on corruption risks in operational contracting. In multinational deployments with personnel from different countries, help create a common approach and set of standards
- Ensure that the planned contracting process includes a stage for reviewing how the possible contractors and contracting strategy will impact the conflict environment
- Agree on mitigation strategies
- Identify sources of knowledge on local contractors, from military officers to development institutions and NGOs, such as Center for International Private Enterprise or Building Markets
- Ensure that there is a database to record all contractors and all contracts entered into. If this does not already exist, set one up.
- Prepare training for local contractors, including on corruption reporting and expected standards
- Ensure plans for contract audits are established before deployment, and that a unit or a body responsible for oversight is in place
- Work out the possible levels of transparency in mission contracts and identify potential allies for oversight and monitoring (for example civil society organisations)
- Establish whistleblowing mechanisms for contractors and set up investigative mechanisms

TRANSITION PHASE

Disseminate tender calls through channels likely to reach the greatest number of local contractors, from online ads to communications during community meetings

Carry out due diligence and intelligence assessments that includes affiliations of potential contractors (including with spoilers, criminal groups or corrupt networks). Make sure these considerations form an integral part of contractor selection.

Monitor local prices and talk to people who can tell you the reasons for price fluctuations. Local prices are often a prime indicator of rigged markets. This is when firms agree to artificially inflate prices in order to increase profits.

DURING DEPLOYMENT

Map out where the funds from potential contracts are likely to end up, and whether it is/can leak to corrupt networks or opponents

Introduce competition with fresh contractors, or split the contract value up to promote competition.

Ensure that oversight mechanisms and reporting structures for military spending and contracting are transparent from the outset.

Avoid and/or control subcontractor, agent and intermediary chains

Focus on project delivery and sign-off: verify, ideally on site, the quality and timeliness of delivery. Involve others, including CSOs, in monitoring

Where possible, make contracts transparent and communicate their content to the local populations. Require and offer full contract transparency. Publish all the successful contracts so local citizens can see them and alert you to any odd factors.

SUSTAINMENT AND CONTRACTING RISK PATHWAYS

Using mission resources to consolidate criminal networks and benefit adversaries

Contracting relationships not only create tangible financial flows, but also result in intangible, social and political links between mission forces and local service and goods providers. As local contracts become the sources of key supplies needed by the missions, financial, political and social relationships grow on that basis. They can be an important resource for local stakeholders, who can use them to build up their own political and economic position.

This can be helpful if it serves to differentiate the host nation power base and support change agents attempting to build resilient, inclusive governance structures. But reflexive and unscrutinised support of local powerbrokers who could supply land, building materials and labour force for the construction of military bases can also enable the creation of vertically integrated criminal syndicates, hollowing out security institutions and extorting the population. In Afghanistan, for example, the twin levers of financial and political support for local actors supported malign networks and effectively undermined ISAF's ability to achieve its goals, including provision of security, stability and governance.

- In the southern province of Kandahar, a close relationship between warlord and governor Gul Agha Sherzai and the forces of Operation Enduring Freedom enabled Sherzai to build up a privileged position in supplying labour and materiel to international forces, often at extortionate prices. At the same time, US political support and significant amounts of money allowed Sherzai to consolidate a political and economic empire in the province, feeding (often criminal) patronage networks and controlling the populations' access to resources and jobs.

> "In a few swift strokes, he made the desert bloom with American installations — and turned an extravagant profit in the process. He swiped land and rented it to U.S. forces to the tune of millions of dollars… He furnished American troops with fuel for their trucks and workers for their projects, raking in commissions while functioning as an informal temp agency for his tribesmen."
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> *Anand Gopal, No Good Men Among the Living*

Mission resources could similarly be diverted not only to criminal networks, but also benefit the mission's direct adversaries. Challenges related to oversight in operational environments as well as long, partly privatised supply chains diminish the mission's ability to understand financial flows that contracts generate, and increase the risk of resources flowing to adversaries.

- The Host Nation Trucking contract, which as of 2009 covered over 70% of the US Department of Defense's transport needs inside Afghanistan, quickly became a vehicle of illicit enrichment and had significant force protection repercussions. With at least $360 million available annually to each one of 8 contractors, the contract was a significant source of income and resources. Widespread subcontracting to unvetted companies with links to the insurgency; allowing companies to act as security-providing militia; and lack of response to reports of widespread bribery-for-passage schemes and contractors' collusion with the insurgency created an opportunity for resources to flow to adversaries and in effect endanger the force.

Collusion

Collusion – illegal cooperation or conspiracy aimed at distorting the tendering and procurement process – can create the appearance of competition while in fact directing resources to particular powerbrokers through a network of seemingly independent companies. Collusion can increase the risk of mission resources being used to strengthen corrupt and criminal networks, and of diversion of resources to benefit insurgent or terrorist groups.

Where collusion becomes a significant issue, it distorts the economy of the area and closes off opportunities for real competition. This means that an opportunity to support independent companies and networks that can, with time, create power centres that push for better governance for the new businesses, is lost. It can also distort operational

assessments by conveying the picture of a decentralised environment that supports competition and economic development, and hiding significant underlying problems.

- For development contracts, which often aim explicitly at diversifying the type and number of economic actors and at strengthening competition, collusion can be a significant issue. In some tenders, development funders told us in 2018, companies would apparently coordinate bids to rotate contract awards between them, effectively forming cartels and preventing strong competition from taking root.

Subcontractors, agents and intermediaries

The fragmentation of the supply chain to include significant numbers of subcontractors, agents and intermediaries has been identified as key a contributor to corruption risk. In 2015, the World Bank noted that agents and intermediaries played a significant part in 6 out of 9 substantiated cases of fraud and corruption in its supply chain: payments were made to undisclosed agents who would then transfer funds to government officials as bribes. In 2013, more than 90 per cent of reported US Foreign Corrupt Practices Act (FCPA) cases were found to have involved third party intermediaries.
In operational contexts, major contracts could be subcontracted multiple times as the international forces rely on larger companies, which in turn employ local entrepreneurs to deliver work in theatre. Involving more companies in particular contracts can be a good thing, but not if the contracting authority loses sight of the entities it's working with, or if it lacks resources to vet them or to monitor their work. Multiple layers of subcontracting dilute and complicate the relationship between the contracting authority and the contractors, can lead to the loss of oversight, and increase the risk of fraud and leakage of funds. Contracting authorities frequently have limited visibility of supply chains and the extent of subcontracting; even where obligations to disclose subcontractors and to monitor their performance do exist, they are only followed up on and verified in a very selective manner due to limited resources.

> "Corruption goes mainly through subcontractors – that's how the big guys get paid. They either set up shell subcontractors to receive payment or to route payment through, or deploy small companies as shields in procurement."
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> **World Bank official, September 2017**

Asset disposal

Disposal of mission assets, usually coming at a point when international forces are winding down, transitioning or withdrawing, poses significant corruption risks. Withdrawals tend to focus attention on the home country and take it away from the operational theatre, which is no longer a key preoccupation in mission planning.

As missions transition or withdraw, they often divest equipment that is no longer necessary or has been deemed too expensive to transport back to the home country. It could be transferred through sales, donations, or simply by dumping superfluous assets. However, while they might no longer be significant for the mission itself, these assets, if they make their way into the hands of malign networks, can prolong conflict and strengthen spoiler groups. This is especially the case with weapons, vehicles and IT equipment, which could be sold on to the highest bidder, or diverted by host nation officials seeking private enrichment.

- Experience of deployed UK officers suggested that oftentimes, it is easier for missions to simply leave equipment behind when redeploying from a theatre. In many cases – for example, when it concerns furniture or similar items – this is not likely to cause major problems. In other cases, however, if it's IT equipment or other, more valuable resources, the risk it that they might be used to strengthen malign actors or to prompt competition among local actors.

Consequences to the mission

- Waste of resources
- Strengthening of corrupt and criminal networks
- Weakening of legitimate governance structures
- Difficulty in achieving development- and security-related goals due to spoiler activity and lack of opportunities for the majority of the population
- Increasing disenchantment among the host nation population
- Increasing violence and insecurity levels
- Adversaries using corruption as a way to discredit friendly government and/or in recruitment
- Diminished force protection levels
- Exit strategy more difficult to achieve

Indicators & Warnings

Diversion of financial flows to patronage networks

- Refusal to divulge the identity of beneficial owners and or/company officers, i.e. those who draw benefits from companies and those who direct companies' actions
- Shareholders, owners or company officers who are, or have recently been, public officials (could indicate a revolving door)
- History of allegations and investigations against companies or individuals
- History of companies or individuals being suspended or debarred by governments or international institutions
- Overcharging for services – rates above reasonable/ market rates
- Reports of bribery and extortion
- High-end lifestyles (among contractor and mission officers) that cannot be attributed to salaries or other legitimate means
- Requests for payments in cash or other untraceable instruments
- Requests for payments to offshore companies
- Requests for advance payments with no subsequent accounting for expenditure
- Requests for additional payments or contract modification after the bidding process in concluded (it could indicate that the initial offer was under-valued in order to influence the bidding process)
- Poor or no documentation for travel and other expenses
- Use of 'general purpose' or 'miscellaneous' accounts/line items in budgets
- Use of shell companies (no employees, no offices, little to no work history) and/or subcontractors whose role is unclear
- Discrepancies between the details contained in bids and specifications in the final contract
- Company refusal to agree to audits and/or adopt compliance measures
- Contractor willingness to violate or evade laws
- Attempts to explain misconduct by referring to 'customs' or 'the way it is done'
- Product substitution: products of lower quality than foreseen are delivered
- One person or group becoming the key contractor and intelligence source at the same time
- One person or group acting as jobs gatekeeper for large communities

Collusion

- Companies submit bids that only win in certain geographical areas
- Regular suppliers do not submit bids for contracts as would normally be expected considering their background, abilities and means
- Companies submit a large number of bids without winning any, possibly creating 'cover' for others
- Only one company offering to complete a project to the required deadline (this could indicate the timeline is unrealistic and the company might try to raise costs at a later stage)
- One-off, but disqualifying flaws in bids that could otherwise win the tender (suggesting international failures to enable others to win)
- Apparent shell companies (no employees, no offices, little to no work history) submitting bids
- The winning participant repeatedly sub-contracts with the rejected competitors, allowing for other companies to really reap the profits of the contract (it could indicate that ownership of all companies is the same)
- Bid documentation sent from the same address and/or contains identical errors, for example in calculations, addresses, or names
- Seeking to hire losing bidders as subcontractors (while it could be a perfectly legitimate recognition of expertise, it could also be a sign of collusion)
- Concentration of power and functions in the hands of one person or group
- One person or group acting as jobs gatekeeper for large communities

- History of allegations and investigations against companies or individuals
- History of companies or individuals being suspended or debarred by governments or international institutions

Agents & Intermediaries

- Refusal to divulge the identity of beneficial owners and or/company officers, i.e. those who draw benefits from companies and those who direct companies' actions
- Shareholders, owners or company officers who are, or have recently been, public officials (could indicate a revolving door)
- Abnormally high payments to agents or intermediaries
- Signs that agents or intermediaries could be shell companies: no premises, staff, recent incorporation and little to no verifiable performance record
- Requests for payments in cash or other untraceable instruments
- Directing payments through an intermediary
- Pressure for payments to made urgently or ahead of schedule
- Reports of bribery and extortion
- Submission of false invoices, often lacking necessary detail and/or photocopied

Subcontractors

- Refusal to divulge the identity of beneficial owners and or/company officers, i.e. those who draw benefits from companies and those who direct companies' actions
- Shareholders, owners or company officers who are, or have recently been, public officials (could indicate a revolving door)
- Large-scale subcontracting with limited visibility of who is doing the actual work
- Subcontractors appearing after the contract is negotiated and the bidder selected
- Lack of transparency on who the subcontractors are and what their remit is
- Engagement of subcontractors whose line of business appears to be different than required, or whose staff or office size does not correspond to needs to work record
- Very little to no verifiable information about the subcontractor; predominantly anecdotal evidence of performance and work history
- No compliance or anti-corruption programme for contractors or subcontractors
- Subcontractors providing gifts and hospitality to officials
- Subcontractor premises and staff do not match claimed expertise or performance record
- Submission of false invoices, often lacking necessary detail and/or photocopied
- Significantly higher or lower use of materiel than estimated
- Excessive stocks of products, either because it sits unused or because wrong quantities have been delivered
- Product substitution: products of lower quality than foreseen are delivered
- Poor product quality and/or product failure

Asset disposal

- Refusal to divulge the identity of beneficial owners and or/company officers, i.e. those who draw benefits from companies and those who direct companies' actions
- Shareholders, owners or company officers who are, or have recently been, public officials (could indicate a revolving door)
- Reports of divested equipment in enemy hands
- Reluctance of either contracting officers or purchasers to undergo due diligence and/or audit procedures
- Interest in asset disposal from host nation stakeholders with no apparent legitimate rationale

Mitigation measures

Mitigating corruption in sustainment

- Making sustainment and contracting Commander's business
- Ensure appropriate levels of expertise and familiarity with the context
- Merit- and integrity-based bidding: promoting integrity standards
- Supply chain due diligence
- Limited reliance on and control of agents
- Training and awareness raising
- Transparency in contracting
- Contract oversight
- Sanctioning contractors through suspension and debarment
- Tracking and monitoring of asset disposal

These are specific measures that can help mitigate corruption risks in sustainment and other areas of activity that include contracting, such as humanitarian aid and reconstruction.

Get your own house in order

- Pre-deployment training and preparation
- Internal investigations and sanctions

Promoting strong integrity standards among mission personnel can help set expectations for relations with the host nation, and prevent creation of new opportunities for corrupt networks.

Investing carefully and applying conditionality

Ensuring that financial flows do not exceed the host nation's absorptive capacity will diminish the risk of diversion by corrupt networks; tying funding and assistance to improvements in governance can help create momentum for reform.

Working with civil society: from political inclusion to tactical cooperation

- Formulating political strategies
- Tactical cooperation: project oversight

Civil society organisations can be valuable allies in the fight against corruption: they can help set strategies, understand what could be improved and how, and oversee specific projects using mission funds.

Investing in monitoring and oversight

- Overseeing donor funds: Inspector General systems
- Overseeing donor funds: End-use monitoring of equipment
- Strengthening host nation oversight
- Supporting external oversight bodies

Stronger oversight of mission resources will help limit opportunities for corrupt networks, and helping develop host nation or civil society oversight mechanisms will help create longer-term accountability of host nation forces.

Focusing on investigations and protecting whistleblowers

Ensuring that the international mission is able to receive and process signals of wrongdoing from those familiar with the projects it finances increases the likelihood of detection and diminishes the appeal of corruption.

When designing anti-corruption measures to protect mission forces, take into consideration some of the general approaches to frame your plans:

- Staying one step ahead: horizon scanning and iterative approaches
- Planning and budgeting for the long term
- Communicating anti-corruption: the role of StratCom
- Including corruption in mission threat assessment and mission analysis
- Making anti-corruption someone's job: the importance of ownership
- Generating and using specific expertise, including civilian organisations
- Establishing dedicated anti-corruption task-forces (if warranted by the seriousness of the risks)
- Preserving existing oversight measures
- Preparing tactical guidance and standard operating procedures: 'Don't shoot the computers'
- Ensuring operational continuity and information management

MITIGATING CORRUPTION IN SUSTAINMENT AND CONTRACTING

Mitigating corruption risks in operational sustainment and contracting can be one of the most difficult anti-corruption activities that international missions can undertake. This is due to tight operational timelines and requirements, limited resources, insecure environments that make oversight more difficult, and a lack of guidance and practice in approaching contracting as a key operational consideration.

When attempting to prevent or counteract corruption in contracting, those responsible need to consider some general principles in approaching anti-corruption, including planning for anti-corruption measures from the very outset of the mission; considering the centres and networks of power when planning specific measures; being prepared to put in place iterative measures that can respond to evolving risks; and ensuring that there is continuous access to information through mission personnel changes. Applying a combination of conditionality, strong monitoring and oversight measures, and an ability to receive and investigate claims of wrongdoing, can both prevent and tackle manifestations of corruption. When sanctioning contractors, some of the most effective measures are those that can be applied together with civilian government departments, such as targeting of corrupt individuals' assets in other countries. Perhaps most importantly, commanders need to ensure their own house is in order and to prevent mission staff from involvement in illegal schemes.

As operational contracting can be one of the primary interfaces between the international mission and the local population, it's important to also consider more specific measures that can help reduce the risk and prevalence of corruption in contracting, and to build on measures tried out in other contexts.

Costs and Benefits:

As with all anti-corruption measures, there are trade-offs involved when deciding what to prioritise and how much additional expertise and manpower is necessary. Measures such as contractor due diligence, better oversight and application of administrative sanctions require planning, time and expertise; they might also lengthen contract fulfilment timelines. In the longer term, however, they are likely to result in better-quality goods and services being delivered, and therefore shorten the timelines later on during the intervention. Importantly, these measures will also enable the mission to gain a more comprehensive, accurate understanding of the operational environment, and to avoid blind spots related to ill-controlled financial flows strengthening criminal groups or mission adversaries.

Making sustainment and contracting 'Commander's business'

Ensure that sustainment is seen as part of the overall operational design and as key to achieving mission goals.

It is not yet habitual for contracting to be integrated with planning or intelligence analysis, and investigation of the financial flows contracting creates has not been a priority for military personnel. A US Congressional investigation into a supply contract in Afghanistan – the Host Nation Trucking Contract - shows that while military contracting officers focused on contract implementation and contractor performance, they have not considered the wider implications of corruption and extortion along the supply chain and the way these could undermine the wider objectives of the deployment.

> "Under normal circumstances, contractors do not volunteer to the government that they might be breaking the law; in this case, HNT contractors repeatedly did just that. Their reports fell on deaf ears….Although many military officials later expressed concerns… about what they had heard, little action was ever taken to investigate the issue. From the logisticians' perspective, their jobs were to make sure the goods got to where they needed to go. Any other concerns were beyond the scope of their duty."
>
> Warlord, Inc., p. 55

What the logisticians missed in this case was that corruption and resource diversion along the supply chain, which fed not only corrupt Afghan officials, but also filled the coffers of the insurgency. As local supply chains are one of the most significant interfaces between the mission and the host nation, those who run them are in a crucial position: they can both observe and address corruption and fraud risks that affect mission goals and host nation actors.

Following the Host Nation Trucking scandal, ISAF Commander General David Petraeus issued guidance that squarely put contracting among key issues influencing the missions' ability to fulfil their goals:

> "….contracting has to be 'Commander's business.' Indeed, I expect Commanders to consider the effects of our contract spending and understand who benefits from it. We must use intelligence to inform our contracting and ensure those with whom we contract work for the best interests of the Afghan people. We must be better buyers and buy from better people."
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> COMISAF/CMDR USFOR-A, 'COMISAF's Counter-Insurgency (COIN) Contracting Guidance, 2010

In practice, what recognising sustainment and contracting as 'commander's business' means is seeing sustainment through the lens of the overall goals that the mission is trying to achieve. It means working to ensure not only that financial flows are reconciled and audit trails correct, but also that the overall design of sustainment supports mission goals rather than endangers them. Commanders' involvement will also set an appropriate tone from the top, stressing expectations of integrity and consideration rather than focusing only on getting the contract fulfilled.

The following are sample questions that could be asked to guide the assessment of the impact that sustainment can have on mission goals and on governance and security in the area of operations:

- Who are local sustainment partners likely to be?
- Are there reasons to suspect they are involved in corrupt or criminal practices?
- Are they likely to misuse mission resources?
- Is that misuse likely to undermine governance and security? Is it likely to increase mission costs?
- Is resource misuse likely to enrich the adversaries, including insurgent or terrorist groups?
- What would be the impact of corruption along the supply chain on the mission's overall objectives?
- Are there ways of making local contracts support for the local economy?

Seen this way, contracting becomes part of overall operational and tactical planning and analysis. It also allows the strategic recognition of the importance of contracting to be translated into processes, analysis and expertise which would support it. As this tends to be a new way of approaching sustainment, commanders' commitment is crucial if it is to take root and shape the way staff approach the issue.

Lead personnel: J4, J8 with J5, POLAD, LEGAD and Command Group

Ensure appropriate levels of expertise among mission personnel

Equip contracting officers and their technical representatives (who are often responsible for monitoring and oversight of contracts), with the skills and contextual knowledge to conduct an effective procurement and contract delivery process, and to recognise anomalies.

The ability to conduct due diligence checks in a particular environment, to identify red flags, and to minimize risks related to corrupt networks, requires a substantial level of expertise and familiarity with the operational environment. Procurement know-how enables the contracting officer to structure relevant processes in a way contracting that enables due diligence to be performed and bids to be assessed for irregularities. Familiarity with the local environment makes it easier to pick up on red flags and to assess the significance of ethnic, social and family networks and of financial flows. This means not only putting in place an effective, comprehensive training programme, but also managing military personnel rotations to minimize disruption.

> "It is too easily forgotten that procurement is a professional skill, and therefore not a job for generalists or staff on rotation. … Invest in solid continuity. People who stay in the mission longer … will provide better stability and implementation of guidelines."
>
> NATO contracting officer presentation, February 2017

- During the ISAF operation, members of the Polish contingent individually decided to extend their deployments (to up to 18 months) in order to ensure that one person oversaw bidding, implementation and monitoring for one particular project, gaining knowledge and relationships helping them assess particular situations and individuals. This is an individual initiative which could be applied systematically.

- In some NATO operational headquarters, procurement personnel in key positions are international civilians, for whom the posting is a long-term career choice rather than a short-term rotation. This could be another way of maintaining continuity, though it has to be balanced with the risk that staff posted for the long term could form relationships that could impair their judgment.

Lead personnel: J1, J7, with J4, J8 and J9

Promoting competition: disseminating information about bids

To help minimise the risk of collusion and diversion of mission resources to malign networks, international missions should promote competition and open the bidding process to as many companies as possible. This, however, might necessitate distribution of information about tenders and contracting opportunities through a variety of means. In addition to the standard announcements online, in the newspapers, through social media, and through notifications to particular companies, it might be helpful to announce tenders through means enabling mission to reach local populations, especially in areas with limited literacy:

- Through local radio stations
- Through mobile networks
- During community meetings
- With the assistance of community and religious leaders

Promoting competition: merit and integrity-based standards

Use sustainment processes, including bidding requirements, to promote and reward higher integrity and performance standards among contractors.

International forces might not always be able to avoid contracting with politically exposed or connected persons, such as company owners or managers linked to politicians through familial, social or ethnic ties. There are, however, two ways way to limit contracting with politically connected companies.

One, donors can use precise bid language and project specifications to discourage political bids. Realistic standards, based on a thorough analysis of the local market and coupled with a solid assessment of resources needed to implement it can help assess bids and avoid fraud; holding companies to exacting performance standards, can also discourage the politically connected.

> "…[H]old people to standards, and you can bankrupt the incompetent and the politically connected."
>
> **Donor official, September 2017**

The World Bank requires documentation of performance to be submitted with bids and attempts to verify it as part of due diligence. The Resolute Support mission in Afghanistan has adopted a similar policy, requesting detailed performance records from potential contractors.

Two, mission leadership could put a premium on corporate integrity standards: policies mitigating corruption risks, regulations of conflicts of interest, staff training, and inclusion of subcontractors in integrity requirements could all be treated as a competitive advantage in the bidding process. This would make working with integrity a sensible, not just a moral, choice. A key challenge, however, is ensuring that company anti-corruption measures are in fact aimed at limiting corruption, not merely ensuring compliance and a correct paper trail.

The World Bank treats bidders' ability to mitigate corruption risks as a competitive advantage in the bidding process. Alongside price and quality of work, it has become one of the selection criteria in the Bank's work, especially in fragile and conflict states.

Lead personnel: J8, with J4 and J2

Performing supply chain due diligence

Verify supplier performance history, integrity record, ownership and links to malign actors.

Knowing who to do business with is a big part of mitigating corruption risks, and recognising contractors who have links to corrupt networks can help avoid fraud and overcharging. It will also reduce the flow of resources to malign actors. Due diligence checks could include, though not be limited to:

- Company work and performance history
- Any history of fraudulent or corrupt behaviour in the past among bidders and suppliers
- Existence and record of a supply chain, including subcontractors, agents and intermediaries
- Beneficial ownership of a company and the owners' work and legal history
- The owners' family and other social networks and connections, especially connections to criminal patronage networks, corrupt actors, organised crime groups, or insurgent and terrorist group
- Financial flows, especially any flows to or from shell companies
- History of unexpected wins or losses in previous bids.

For the due diligence checks to be possible, mission leadership and contracting staff need to ensure that bidding calls contain language enabling checks on company and individual records.

- According to a senior officer interviewed in 2018, NATO forces in Kosovo require that bidders agree to verification of their companies and their financial transactions by the mission, which in effect means intelligence-based verification by the J2 branch.

The Resolute Support mission in Afghanistan verifies contractor information using a central US database, the Joint Contingency Contracting System. The JCSS is a way to store and use information and contractor performance history, helping ensure continuity and access to information across personnel rotations.

One challenge of supply chain due diligence is ascertaining the identities, links and influence of individuals either controlling or deriving benefit from particular companies.

Different jurisdictions have varying standards regarding disclosure of beneficial owners, with some requiring no disclosure and others, for example the EU countries, requiring disclosure of individuals controlling 25% or more of company assets. In jurisdictions where beneficial ownership disclosure laws are not stringent, it might be necessary for the mission to explore contract-related and mission-specific ways to ensure beneficial ownership information which is necessary to protect mission resources, can be accessed.

In many operational environments, record-keeping is at best patchy and at worst non-existent, and it can be difficult to verify companies' work history and their owners' professional and social positions and relationships. In these cases, documentary evidence might need to be replaced by community checks and interviews, supported by intelligence information (signals and human) where possible and appropriate.

Lead personnel: J2, J4, J8 and J9

Good practice: Task Force 2010

Task Force 2010, set up by US forces in Afghanistan to stop resources flowing to adversary groups, focused on assessing potential contractors for risk of collaboration with the insurgents. According to interviews with former TF 2010 staff, contractors were graded on an A-D scale, with 'A' denoting 'beyond suspicion' and 'D' signalling near-certainty that a company was most likely cooperating with insurgent groups. While TF 2010 was not specifically geared toward tackling corruption, it was one of the factors they took into consideration when assessing contractors. The overall institutional solution and mode of working could be adapted to mitigating corruption risks in sustainment.

TF2010 checks were preventive in nature and did not include monitoring or oversight of contracts and projects as they were implemented. They did, however, enable suspension or debarment of problematic companies. TF2010 would start gathering information on potential contractors through consulting open sources and databases such as those run by US government departments or the World Bank, and gather information on particular contractors within local communities. If those gave cause for concern, further intelligence was gathered through human sources, through signals intelligence such as phone tapping, and through analysing financial flows. In some cases, checks were initiated by observations from routine inspections, such as those of fire or health safety. Final decisions on employing or disbarring a company were taken at the level of US joint commands such as CENTCOM.

Where TF2010 faced challenges was in coordinating with other interested agencies: one interviewee noted that

it was an isolated unit, which did not work directly with civilian agencies and which did not cooperate with ISAF-wide anti-corruption task forces. This means that it had limited opportunities to share information. It did, however, did pass information on to Special Inspector General for Afghanistan Reconstruction in order to inform their audits.

Good practice: Preventive Services Unit, The World Bank

The Preventive Services Unit (PSU), part of the Bank's Integrity Vice Presidency, is tasked with assessing and mitigating corruption and fraud risks in the procurement process. The unit analyses risks posed by particular procurement processes; identifies red flags; advises on project design based on known red flags and previous corruption and fraud risks; and provides training to Bank staff. The PSU provides a much-needed link between investigations, which can reveal particular vulnerabilities, and project design, which can use the results of previous analyses to introduce safeguards that can close off known avenues of corruption. It therefore enables a Bank-wide iterative project design that can help close off opportunities for corruption.

Limited reliance on and control of subcontractors, agents and intermediaries

Mitigate corruption risks by limiting and/or controlling the use of third parties in the supply chain. Impose obligations on primary contractors with regard to controlling the performance and integrity record of subcontractors.

Given the risks inherent in diluting the supply chain relationships by employing subcontractors, agents and intermediaries, making their use transparent and controlled is a key way to prevent corrupt networks from profiting from mission resources. In addition, mission leadership should require that primary contractors work to ensure that suppliers and subcontractors abide by integrity standards, and that breaches are reported and followed up on.

The World Bank requires that all agents and intermediaries a bidder intends to work with are disclosed, as are the fees paid to them. While some companies still manage to avoid controls, the appearance of previously undisclosed agents during the bidding process or the duration of the contract constitutes a red flag that could prompt an audit. Measures that the contracting authorities could implement include:

- Requiring the primary contractor to disclose the use of agents, intermediaries and contractors, and the fees paid to them
- Verifying the bona fides of agents and intermediaries and vetoing their use if they appear to be shell companies
- Performing due diligence on subcontractors to the same standard as on primary contractors, and disallowing their use if they appear to be linked to corrupt networks
- Verifying the performance and integrity records of agents, intermediaries and subcontractors
- Requiring anti-corruption and integrity programmes for subcontractors
- Ensuring reporting lines for contractor and subcontractor misconduct, and protecting whistleblowers
- Following up on allegations of wrongdoing.

Lead personnel: J8, with J4 and J2

Training and awareness raising for contractors and subcontractors

Offer integrity training and awareness raising on corruption and integrity to contractors and subcontractors.

An explicit commitment to integrity, as well as an explanation of the mission's approach to mitigating corruption risks within in its supply chain, could help promote integrity standards among those who cooperate with the mission. Outreach in the form of training and workshops could help illustrate that commitment and pass on practical knowledge on corruption mitigation measures.

Especially where the mission employs conditionality or includes integrity requirements in sustainment or reconstruction contracts, training and awareness raising for contractors and subcontractors should be obligatory, and should provide support for contractors wishing to comply with the conditions. These training programmes need to go beyond the processes and procedures to establish a common understanding of corruption and what the mission considers to be a corrupt practice. This is especially important as some practices that are seen as corrupt in some environments – collusion or overbilling, for example – might not be interpreted as such elsewhere.

However, it might not be necessary for the mission to organise and deliver the training itself. It is also possible to partner with local and international CSOs, think tanks, or business chambers to use existing training programmes

and adapt them for mission needs.

Lead personnel: J8, J7, J9

Transparency in contracting

Release as much information as possible about local sustainment contracts and any development funds you have control of, in order to enable external scrutiny and increase the likelihood of irregularities getting noticed.

Where possible and where it does not impede operational security, all contracts – from sustainment to those directed at development projects or humanitarian aid – should be made public and therefore enable oversight and reporting on problems. It is especially important to release information on what is being paid for, how much it costs, what the requirements for contractors are, and what the timeline for delivery is.

For example, if US$25,000 has been given to build a school, this could be publically announced on TV, radio, in newspapers, during community meetings, and could be posted in the local language at the school site. This allows local communities to assess whether the work on the new school is progressing and whether it is likely to reflect the value of US$25,000. Being transparent about contracts creates new opportunities for oversight and for whistleblowing if stakeholders note discrepancies between specifications and what is being done. Transparency on the part of the ISAF chain of command, for example, enabled civil society oversight of projects in Afghanistan, potentially preventing abuses and ensuring better quality of work.

While each mission will need to decide what can safely be shared and what would help external stakeholders conduct monitoring, one standard for open contracting which could provide some guidance is here: http://standard.open-contracting.org/latest/en/

Among information to be released, missions could include:

- Planned project deliverables
- Project timelines and milestones
- Contractors and subcontractors participating in the project
- Standards and materiel required
- Amount being paid and payment schedule

Lead personnel: J8, J4, J9

Contract oversight

Ensure that contract performance and delivery is overseen closely and regularly. Monitor financial flows for links with malign actors.

Oversight of contract performance and delivery of the right products can make a huge difference. This is not just because auditors can identify specific issues and problems with both performance and financial trails, but, perhaps even more importantly, because their presence signals that the contracting authority cares about how its money is spent and it will follow up on discrepancies. This in turn creates an incentive for behaving with integrity and a deterrent from fraud and corruption.

> "…I go to the field to show people there is a credible threat and a chance of detection in case of wrongdoing. This sends a signal that [we] are aware of risks and prepared to take action."
>
> **World Bank official, September 2017**

Good practice for project monitoring includes:

- Monitoring project implementation and standards
- Where possible, monitoring in person and onsite
- Employing qualified technical representatives and auditors to ensure an appropriate level of expertise
- Planning for and resourcing oversight from the start of the project
- Monitoring financial flows to check whether payments to contractors make their way to corrupt networks, shell companies, or to malign actors outside the country.

Oversight in fragile and conflict-affected states poses a number of challenges:

Access and physical safety: especially for civilian organisations, sending personnel to conflict areas (especially remote) poses issues related to duty of care; similar challenges occur if personnel are threatened due to their work or findings. Travel bans for staff limit the opportunities to engage personally in project monitoring.

Resources: staff time and finances allocated to oversight tend to be limited and investigators often only have limited time to follow up on a complaint or to analyse red flags.

Political pressure: in some cases, leadership pressure to

support particular actors makes following up on results of audits difficult.

There are few easy fixes. Some contracting authorities have attempted third-party oversight, which, however, creates the risk of the third party – which often has little to no vested interest in the project's success – becoming part of the corrupt network. One possibility is to work with civil society, which does have an interest in projects being delivered and whose members are usually based in the area in question. Another is to oblige recipients of the funds to conduct dual reporting – both to donor officials and to an independent monitor. While not foolproof, this solution creates additional costs to corruption and may pose another barrier to overcome.

What has very rarely been attempted is cooperation between civilians and armed forces to secure access to risky project sites for oversight purposes. While it has the potential to help mitigate security risks, it does create reputational issues for organisations which wish to be seen as civilian and/or impartial. If they are to be put in place, these arrangements would need to be carefully negotiated and closely monitored.

Lead personnel: J8, J4, J9, audit units

Sanctioning contractors: suspension and debarment (S&D)

Use administrative sanctions, in addition to criminal sanctions, to increase the cost of corruption.

Suspension and debarment are administrative sanctions applied to contractors who fail to meet performance obligations, facilitate financial flows to malign actors, or commit crimes, including corruption and fraud. They include suspending existing contracts or debarring companies – usually for a defined period of time – from applying for new ones. They should be considered part of the sanctioning spectrum, alongside civil and criminal remedies, and can be especially useful if civil or criminal jurisdiction is disputed or if the justice system is ineffective, they can be used directly by the contracting authority.

While S&D measures need to be based on solid evidence, the evidentiary threshold is lower than for criminal or civil cases brought to court: it is normally 'preponderance of evidence', or likelihood that an offence has been committed. This provides the sanctioning authority with flexibility and greater repertoire of responses to infractions.

S&D measures have been used by a number of entities in contingency contexts.

Spurred by reports of US and ISAF resources likely flowing to Afghan insurgent groups, the US Congress mandated theatre commanders to suspend or abrogate contracts if those performing them were supporting US adversaries. The so-called Section 841 of the 2012 National Defense Authorization Act had become the legal basis for terminating contracts in the Central Command area of operations, especially in Afghanistan.

The World Bank uses suspension and debarment to sanction contractor misconduct and protect Bank contracts from corruption, fraud and other offences subverting the procurement processes. In order to enable investigations and application of sanctions, Bank contracts contain clauses enabling Bank officials to access documents and correspondence (including emails) pertaining to the contract, and specify instances in which suspension and debarment can take place. The Bank has also issued debarment decisions targeting individuals and their holdings, to prevent individuals under sanction from simply establishing another company and continuing to apply for government contracts. In order to ensure continued access to relevant information, the Bank maintains a link of debarred companies, available online.

The NATO mission in Kosovo has similarly utilised language enabling the contracting authority to terminate contracts due to corruption, fraud and other types of misconduct (Interview 5).

In Iraq, SIGIR worked with the Army's Legal Service Agency's Procurement Fraud Branch to suspend 14 individuals and companies due to fraud and misconduct allegations. It also referred 12 other cases to the Army Suspension and Debarment Official, which debarred 8 of those.

Suspension and debarment, while flexible and useful responses where other measures fail, are not without challenges. First, it can be a challenge to ensure that individuals behind debarred companies do not simply establish a new company and apply for contracts again. Second, where they are applied in operational environments, it is not always possible to make all evidence – some of which could have been procured through intelligence channels and remains sensitive – publicly available. As the procedure is not a judicial one and there is no trial involved, the process and the decisions can be perceived as arbitrary and unfair, especially in cases where evidence is not made public. The company being suspended or debarred could also seek redress in court, increasing the time and costs for contracting authority.

It is important to ensure that the process does not allow for large amounts of discretion for individual officials, or it might create more risks than it addresses. To manage these risks, the suspension and debarment decisions themselves should be subject to audits and reviews, and the companies affected should have recourse to at least

one instance of independent review.

Moreover, tools such as suspension and debarment (including designations such as the US Section 841), need to meet some conditions if they are to be effective:

The contract termination threshold needs to match the average sums for contracts awarded in the area of operations. If it is set with regard to the usual practice in the sending country, it might leave out the bulk of contracts awarded in an area with lower prices. For example, the US Section 841 only applied to contracts valued above $100,000, although approximately 80 percent of contracts awarded in Afghanistan fall far below the $100,000 threshold.

It needs to be based on a disciplined, timely flow of information, especially where sustainment arrangements include a significant amount of subcontracting and where the contracting authority has limited visibility on the supply chain. If primary contractors are made responsible for enforcing suspension and debarment of subcontractors, these arrangements need to come with information flows enabling timely decision making.

Suspension and debarment on the basis of intelligence brings with it the challenges of classification: while the debarment itself can be made public, the reasons for it cannot. Therefore, the contracting authority needs to be prepared to underwrite the legal and possibly financial costs of this decision if a contractor or subcontractor decides to challenge it and wins in court.

Lead personnel: J8, with J2

Tracking and monitoring for asset disposal

Establish procedures for divesting unnecessary assets that ensure they are tracked and do not enrich corrupt networks. Implement end user monitoring similar to that applied to security assistance programmes.

Asset disposal, usually at a point of mission transition or withdrawal, need to be tracked and monitored if key assets such as weapons and vehicles are to be kept away from malign groups. The asset disposal process needs to be carefully designed and implemented, with oversight of where assets go and arrangements for end-user monitoring similar to those implemented in security assistance projects.

- In the US, transfers of equipment related to security assistance are overseen through the Blue Lantern and Golden Sentry programmes, run by the State and Defense Departments respectively. Both programmes enable US personnel to verify, either through inventories or physical checks, that equipment passed to local forces through security assistance programmes is utilised and stored in accordance with previously agreed procedures. These programmes, which are normally used in the context of security assistance, could be adapted to track asset disposal as well.

ADDITIONAL RESOURCES

Contracting as Commander's business:

'COMISAF Contracting Guidance,' 2010, available at: https://smallwarsjournal.com/blog/comisafs-counterinsurgency-coin-contracting-guidance

Investing in fragile environments:

Center for International Private Enterprise (CIPE), 'Guide to Responsible Investment in Post-Conflict Zones', 2018, available at: https://www.cipe.org/wp-content/uploads/2018/04/GUIA-POSCONFLICTO-INGLES-2.pdf (offers guidance and checklists on responsible investment in fragile and conflict-affected states)

Technical guidance on operational contracting:

Defense Pricing and Contracting, Department of Defense, 'Contingency Contracting Policy', available at https://www.acq.osd.mil/dpap/pacc/cc/policy.html

Panel on Contracting Integrity, Department of Defense, publications available at, https://www.acq.osd.mil/dpap/cpic/cp/panel_on_contracting_integrity.html

Department of Defense Inspector General, Fraud Detection Resources for Auditors, 'Fraud Red Flags and Indicators', available at http://www.dodig.mil/Resources/Fraud-Detection-Resources/Fraud-Red-Flags/

Company conduct and compliance:

Transparency International – Defence and Security, 'Defence Companies Anti-Corruption Index,' available at https://companies.defenceindex.org/

Transparency International – Defence and Security, 'Out of the Shadows: Promoting Openness and Accountability in the Global Defence Industry,' 2017, available at http://ti-defence.org/publications/out-of-the-shadows/

Center for International Private Enterprise (CIPE),'Anti-corruption Compliance. A Guide for Mid-Sized Companies in Emerging Markets', 2014, available at: https://www.cipe.org/wp-content/uploads/2014/01/CIPE_Anti-Corruption_Compliance_Guidebook.pdf

All publications analyse existing company anti-corruption and compliance programmes, and offer suggestions on what makes an effective anti-corruption structure in the private sector.

Suspension and Debarment:

Allison Lerner and Steve Linick, 'Suspension and Debarment. Debunking Myths and Suggesting Practices for Officers of Inspectors General', *The Journal of Public Inquiry,* Spring/Summer 2011, pp. 38-42, available at: https://www.ignet.gov/sites/default/files/files/jpiss2011.pdf

Steven Trent and Brian Persico, 'Suspension and Debarment Program. A Powerful Tool to Promote Contractor Accountability in Contingency Environments', *The Journal of Public Inquiry*, Spring/Summer 2011, pp. 32-36, available at: https://www.ignet.gov/sites/default/files/files/jpiss2011.pdf

World Bank, *Notes on Debarred Companies and Individuals,* available at: http://pubdocs.worldbank.org/en/387181466627871302/World-Bank-Notes-on-Debarred-Firms-and-Individuals.pdf

Joint approaches to sanctions:

Stolen Assets Recovery Initiative (StAR), The World Bank, available at: http://star.worldbank.org/star/

The StAR initiative offers a database of corruption- and asset recovery-related cases searchable by jurisdiction, which can be helpful in mapping out particular issues and identify some of the companies which had been engaged in questionable behaviour. The StAR project provides guidance on legal and technical procedures which could help recover assets, especially when hidden in foreign jurisdictions.

Organisations that work on open contracting

Open Contracting Partnership: an organisation promoting transparency and accountability in contracting

Source: https://www.open-contracting.org/

Project on Government Oversight (POGO): tracks and analyses US government contracts, including in the defence sector

Source: https://www.pogo.org/

These organisations can help commanders identify what information on contracts and projects to release to facilitate oversight.

Organisations working on contracting in fragile states

Building Markets: an NGO creating opportunities for entrepreneurs in fragile and conflict states

Source: https://www.buildingmarkets.org/what-we-do

Center for International Private Enterprise (CIPE): a non-governmental organisation promoting better conditions for business in fragile and conflict states and offering training and assistance to businesses

Source: https://www.cipe.org/

Consult these organisations to help formulate sustainment and contracting strategies that can benefit the host nation

Transparency International Defence & Security

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