

U4 Expert Answer



Examples of integrity agreements for consultants and advisors

Query

Could you provide an overview of integrity agreements and any benchmarking work done on these agreements. Please provide (i) examples of integrity agreements used by other donors for consultants, advisors also for the private sector and (ii) an overview of their layout.

Purpose

We are in the process of renewing our integrity agreements with direct contracting consultants and advisors for short and long term consultancies and we would like to comply with international standards and best practices.

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Caveat

There is very little material publicly available on such contractual arrangements. Answering this query would require getting access to the various agencies' internal documents, which goes beyond the scope of Helpdesk services. The present answer has been based on the professional approaches of consulting bodies towards ethical issues, also on the few publicly accessible examples of integrity agreements and finally on the best practice checklist for the management of work

consultancies developed by the Hong Kong's Independent Commission Against Corruption (ICAC).

Summary

Because of the sensitive nature of their work, consultants and advisors may encounter a wide range of ethical dilemmas in the course of their services to their clients, including issues related to professional standards and performance, confidentiality of information, independence and conflicts of interest.

These dilemmas are addressed in the consulting sector with codes of professional conduct that are meant to protect the integrity of the profession. On the client side, ethics clauses or integrity agreements addressing such integrity dilemmas for consultants and advisors can be integrated in the consultancy contracts. While very little information is publicly available from donor agencies on this topic area, examples from organisations such as the Hong Kong ICAC, the EU, the US congress and professional consulting bodies themselves are available and provide a sample of the ethical issues consultant can face. Ethical commitment clauses to be included in the consultancy agreements typically cover issues of confidentiality of information, prevention of bribery, declaration of interest and a declaration of ethical commitment. For example, the Hong Kong ICAC recommends practices on how to minimise risks of

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corruption at all stages of the process of selecting, awarding and monitoring consultancy agreements.

1 Overview of potential ethical issues faced by consultants

Potential ethical minefields

According to the ICAC, a consultant is an individual or a company engaged under a term contract to provide expert advice and services in a particular area. Consultants may work for a consultancy firm or be self-employed, and usually engage successively with multiple clients.

As such, consultants and advisors may encounter a wide range of ethical dilemmas in the course of their services to their clients, including donor agencies. For example, the sensitive nature of their work may expose them to confidential and privileged information about their former or current clients' operations and strategies which may be misused for personal advantage. Conflicts of interests can occur when the personal/financial interests of the consultant/consulting firm conflict with those of their clients'. There is also a risk of creating dependent patterns of relations between consultants and clients, which may compromise the integrity of the consultancy services, undermine the independence of the consulting firm as well as introduce a bias in the selection of future consultants. Candidates competing for a consultancy contract may attempt to obtain confidential information, collude with competitors or influence the contract award process through corrupt means, including bribery. Bribes, hospitality or entertainment can also be used to influence the outcome of the consultancy, compromising the impartiality of the services provided. Although not documented, there could also be a risk of extortion to keep confidential, the privileged information accessed through the consultancy. There is also a potential for abuse in tracking time, timekeeping and billing practices.

Consultants' codes of conduct

Integrity in consultancy contract can be seen as a two-way street where both the consultant and the client need to act and handle each other with fairness and integrity. As consultants are expected to do their job ethically and responsibly, many consulting firms and organisations have developed guidelines and codes of ethics to promote desired standards of practices and

conduct and protect the integrity of the profession. Key integrity principles usually cover, among others, issues of professional standards and performances, confidentiality of information, and conflicts of interest.

Professional consulting bodies' codes of conducts provide a good overview of the issues facing consultants in the course of their work. For example, the UK-based Institute of Business Consulting's (IBC) code of professional conduct and practices commits individual members of IBC to highest standards of professional behaviours, disclosing of any personal interest that may affect the integrity of the services, safeguarding confidential information, protecting the interests of each client, and providing independent and objective services. Members are required to reaffirm their commitment to the code on an annual basis (Institute of Business Consulting, no date).

Similarly, the Australia-based Institute for Ethical Consulting (IFEC) has developed a code of ethics to promote "*the highest standards of ethics, integrity and service of the consulting sector*" (Institute for Ethical Consulting, 2009). The objective of the code is to ensure that members will make no misleading statements to their clients, will conduct themselves with integrity and will deliver services with integrity and high professional standards to maintain the reputation of the consulting sector. The code addresses issues such as professional integrity, confidentiality, use of information acquired during previous assignments, deceptive or unlawful practices, consultancy contracts and services, etc. The code also requires all members of the IFEC to make a statement on how they plan to publicise the code to their staff and clients. The code goes beyond being a mere aspirational statement and contains specific mechanisms for enforcement under the form of an Ethic Committee in charge of investigating and arbitrating any complaints received by IFEC.

Clients can require that mention be made of the codes of conduct in the consultancy agreement signed with consulting firms. It is also possible to require that consultants take all necessary ethical measures to specifically prevent bribery and corrupt practices. This is the approach used for example by the White House's Federal Acquisition Regulation (FAR) Council¹ with its

¹ The Federal Acquisition Regulatory Council was established to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the U.S Federal Government

contractors. FÅR requires contractors to have a written code of business ethics and conduct, an internal control system and impose a duty to disclose to the Government the violation of certain criminal laws. Contractors must also have “a *satisfactory record of integrity and business ethics*” and “*conduct themselves with the highest degree of integrity and honesty*”. The code of business ethics should be 1) in writing; 2) issued within 30 days of the contract award; 3) furnished to each employee engaged in the performance of the contract; and 4) that the contractor promotes compliance, for example through compliance training program and an internal control system. While such clauses can not be applied to all consultancy contracts, some of these provisions could be potentially amended or adapted to the specific conditions of consulting the sector. However, there is little information on how widely such codes have been adopted in the consulting sector.

2 Examples of integrity agreements for consultants and advisors

On the client side, ethics clauses or integrity agreements that can be integrated in the consultancy contract can be a way to address integrity dilemmas faced by consultants and advisors. While there are close to no publicly available integrity agreements from donors, the approach used by the ICAC, the US Congress and the EU provide a sample of the ethical issues that can be covered by such integrity agreements.

Hong Kong ICAC example

Probity clauses

The most elaborate publicly available attempt to provide guidance in this regard is the Hong Kong’s Best Practice Checklist for Works Consultancies, as a step-by-step procedural guide with recommended practices on how to minimise risks of corruption at all stages of the process of selecting, awarding and monitoring consultancy agreements (ICAC, No date). As part of the recommended control measures, the consultancy agreement should include probity clauses to commit the consultant to ethical practices and require that he/she to submit, as part of the payment application, a declaration pledging compliance with these clauses. To avoid potential conflicts of interest, a clause can also be

included to debar him/her from assisting other consultants or contractors in bidding for contract arising from the first consultancy agreement.

Ethical commitment clauses for inclusion in the consultancy agreements have four major areas of focus, including confidentiality, prevention of bribery, declaration of interest and a declaration of ethical commitment.

The **confidentiality clause** commits the consultant not to disclose information such as the terms of the agreement or any report, document, specification, software, data, etc., to outsiders, whether they are furnished by the employer or generated by the consultant.

The **prevention of bribery** clauses require consultants to prohibit their directors, agents, sub-contractors or staff involved in the agreement from offering, soliciting or accepting any advantage as defined in the Hong Kong’s Prevention of Bribery ordinance. Consultants should also caution their staff from soliciting or accepting excessive hospitality, entertainment or inducement that may compromise their impartiality in relation to the assignment.

The **declaration of interest** clause commits the consultant to declare in writing any conflict of interest or potential conflict between their personal/financial interest and their duties in connection with the agreement.

The **declaration of ethical commitment** clauses consist of a declaration of compliance with the confidentiality and prevention of bribery clauses in a form provided by the contracting authority when requesting payment of services. Payment can be withheld until the consultant submits the signed declaration.

The checklist provides sample forms that can be adopted or adapted where applicable. It includes sample codes of conduct with report forms on gifts received, declaration of conflict of interest, sample probity, anti-collusion and debarment clauses as well as declaration forms on compliance. (Please see: http://www.icac.org.hk/filemanager/en/Content_1031/manworkconsult.pdf)

Other general provisions

The checklist also recommends general provisions, which although not directly related to corruption, can be

included into the consultancy agreement to promote compliance with high professional standards. This includes:

- Specification of key personnel and their qualification/experience to be provided by the consultant;
- Requirement that the consultant should notify any change in key personnel;
- Clear statement of the method payment and time limit for processing payment application;
- Clause to “cap” expenses and fees to avoid excessive charges;
- Condition for the consultant to submit a site supervision plan for agreement before commencement of work for projects to be supervised by the consultant;
- Requirement for the consultant to seek project team approval for ordering any variation of work with cost implications;
- Provision allowing the project team to issue instructions to the consultant;
- Provisions allowing for deduction of payment and termination of agreement in case of deficiencies in performance.

The EU ethics clauses

The European Commission's ethical clauses targets more directly contractors than consultants. It covers the above mentioned provisions, with, among other issues, a special emphasis on (European Commission, 2010):

- Preventing tender applicants to influence the bidding process in an unlawful way;
- Declaring potential conflict of interest in relation to the proposed assignment;
- Debarring contractors and other stakeholders associated with the agreement from supplying services or equipment without the written agreement of the contracting authority;
- Calling for the impartiality of the consultant and for the respect of the profession's code of conduct;

- Refraining from making public statements about the project or services without prior approval from the contracting authority;
- Maintaining professional secrecy during and after the completion of the contract;
- Refraining from any relationship that could compromise the independence of the consultant.

The Commission also contractually reserves the right to suspend or cancel any project financing if corrupt practices are discovered at any stage of the award of the process. The Commission may also carry whatever documentary work on the spot checks necessary to find evidence in case of unusual commercial expenses. Failure to comply with one or more of the ethics clauses may result in the exclusion from EU contracts and in penalties.

Other types of potential requirements and approaches

The US House of Representatives

Beyond integrity clauses integrated into consultant agreements, some organisations recommend that consultants be considered as employee and as such require that they abide to the organisation's code of conduct and overall ethical rules and regulations.

The U.S. House of Representatives for example subject consultants to the House's ethical clauses, including those pertaining to gift acceptance, undue influence exerted on the consultant, discrimination, etc. (U.S. House of Representatives Committee on Ethics, No date). Consultants are required to execute an oath of confidentiality before receiving access to classified information. In addition to these rules, consultants are also prohibited from engaging in certain lobbying activities, such as lobbying the contracting committee on any matter. Consultants are also subject to the House's gift rules governing the acceptance of anything having monetary value such as services, travels, meals, tickets, sporting events, shows, etc.

While the House's rules do not require consultants to file public financial disclosure statement given the short term nature of their services, the Ethics Committee strongly recommends that each committee, before entering into a consulting contract, obtain some basic financial information on the individual's source of income, the type of income and the rate at which he is

compensated, the identity of each clients for whom he is providing services, the nature and value of any investment and liability held by the individual that could be affected by the services provided to the committee. These recommendations are intended to allow monitoring of the consultant's compliance with conflict of interest rules.

The potential of adapting integrity pacts to the consulting sector

As already mentioned, integrity in the consulting sector is a two-way street engaging both the client and the consultant. An alternative approach to integrity clauses in consultant agreements could be to adapt the concept of integrity pact to the consulting sector with the view to reinforcing the mutual accountability dimension of the client/consultant relationship. The Integrity Pact is a tool developed by Transparency International that consists of a process that includes an agreement between a contracting authority and all bidders for a contract stipulating that neither side will pay, offer, demand or accept bribes to obtain or implement the contract. For more information on integrity pacts, please see: http://www.transparency.org/global_priorities/public_contracting/integrity_pacts)

3 References

Hong Kong's Independent Commission Against Corruption (ICAC), (no date), *Management of Works Consultancies: Best practice checklist*, http://www.icac.org.hk/filemanager/en/Content_1031/manworkconsult.pdf

Institute of Business Consulting, (no date), *Code of professional conduct and practice*

Institute for Ethical Consulting, (2009), *Code of ethics*, <http://www.ifec.biz/ethics.pdf>

U.S. House of Representatives Committee on Ethics, (no date) House ethics manual, <http://ethics.house.gov/Subjects/Topics.aspx?Section=142>

European Commission, (2010). *Practical guide to contract procedures for EC external actions*, http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm