

ANTI-CORRUPTION TOOLS

How to react when faced with a rigged invitation to tender?

During the course of your work, you will undoubtedly have to face complex situations as a professional and as a responsible citizen as well. You might even imagine seeing alarms flashing and hearing a faint whisper telling you that something is not right... what should you do?

Once you have realized that there is indeed a problem, you must make an **informed decision** and find the **best solution depending on the circumstances**. To help you, you will take into account:

- the values that govern the profession;
- your personal values;
- the consequences of your actions with respect to others (all stakeholders and the public);
- various generally accepted moral principles;
- the public's reasonable expectations of you, as well as those of your organization (by referring to its code of ethics, if applicable), clients and partners;
- the laws, standards and policies that apply to the situation, namely the *Code of ethics of engineers*.

In order to help you throughout your decision-making process, the RESIST¹ tool provides practical advice as to how to respond or react to certain illicit demands or situations in the most efficient and ethical manner possible, wherever you may be.

EXAMPLES OF THINGS TO DO

During an invitation to tender, if the project specifications – including the technical specifications – are established in a way that favours a provider or excludes potential competitors, we are faced with a rigged invitation to tender. What should you do once you are aware of this situation? Here is an example found in the RESIST tool:

"Your company is preparing to submit a bid for the supply of telecommunications equipment to a state-owned company. You are an experienced supplier of such equipment and know that several of your competitors are planning to submit bids as well.

While studying the tender documents, you notice that they include specifications that only the equipment of one of your less-experienced competitors meets. You are surprised because these specifications have no impact on performance of the equipment; in fact, your technical experts consider these specifications outdated and that

your equipment, and that of most of the other competitors, outperforms any equipment meeting the required specifications. Some days later, you are approached by a person who suggests that the tender documents could be changed in your favour in exchange for a payment.

1) Demand prevention: How to reduce the probability of the demand being made?

- Engage in a dialogue with the procurement agency to improve procedures in the following areas:
 - Get agreement from the procurement agency on the appointment of an independent consultant (individual, company or international organization such as the World Bank) to supervise the entire bidding process;
 - Request a pre-qualification round to exclude bidders lacking technical and financial delivery capacity (either through their own organization or through relevant contractors);
 - Request a meeting with the procurement agency to better explain technical aspects of your product or services;
 - Suggest publishing the terms of reference;
 - Should the procurement agency rely on a technical expert, request that the procurement agency disclose links and business dealings of this expert with any of the bidders.
- Check and, if applicable, challenge (legally and/or publicly) the qualifications of the members of the body defining the terms of reference.
- Check if there are any specific relations between the company whose equipment fits the specifications and the procurement agency (or its directors or officers).
- Have the terms of reference reviewed by a qualified third party (such as an expert, civil society or employers' organization).
- Engage with the procurement agency to discuss the results of the review of the terms of reference and explain your technical specifications.
- Suggest to other companies bidding with you to collectively address the procurement agency.
- Challenge the terms of reference publicly and/ or by reference to local laws or applicable procurement rules.
- Approach the industry association or trade association that provides technical specifications for your industry

to ensure that guidance for specifications is generic enough to allow all companies to bid and that the specifications are up to standard." **(Excerpt taken from the RESIST tool.)**

A LAW ON YOUR SIDE

In Québec, corruption, misconduct and collusion are unacceptable and intolerable when it comes to anything having to do with contract management in the public sector. In 2011, the Québec government adopted a law aimed at reinforcing its preventive and control efforts in these matters: the Anti-corruption Act (R.S.Q., chapter L-6.1).

This act helps the Québec permanent anti-corruption unit (the "*Unité permanente anticorruption* (UPAC)") carry out its mission. Under the commissioner for the fight against corruption, UPAC coordinates and leads the government's forces and expertise in society's fight against corruption².

You can report a wrongful act to UPAC. In order to do so, you should provide to the commissioner any information which, in your opinion, demonstrates that:

- a wrongful act has been or is about to be committed;
- you were asked to commit a wrongful act.

You should also be aware that you can report a wrongful act regardless of:

- any duty of loyalty or confidentiality binding you to your employer or client;
- any restriction relating to communication under Québec law – for example: the Act respecting access to documents held by public bodies and the protection of personal information and the Act respecting the protection of personal information in the private sector.

Should you have any questions or wish to discuss possible solutions, feel free to contact the Ordre des ingénieurs du Québec at 1 877 ÉTHIQUE. You have a duty to report any wrongful act carried out by a fellow member to the Ordre's Office of the Syndic. Et surtout, n'oubliez pas que, comme le disait Albert Einstein : « Un problème sans solution est un problème mal posé. »

And most of all, always keep in mind what Albert Einstein said: "In difficulty lies opportunity."

1. *RESIST – Resisting Extortion and Solicitation in International Transactions, A company tool for employee training.* Copyright © 2011 – International Chamber of Commerce, Transparency International, United Nations Global Compact, World Economic Forum. Available online at: http://www.unglobalcompact.org/languages/french/documents_clefs.html.

2. <https://www.upac.gouv.qc.ca/>