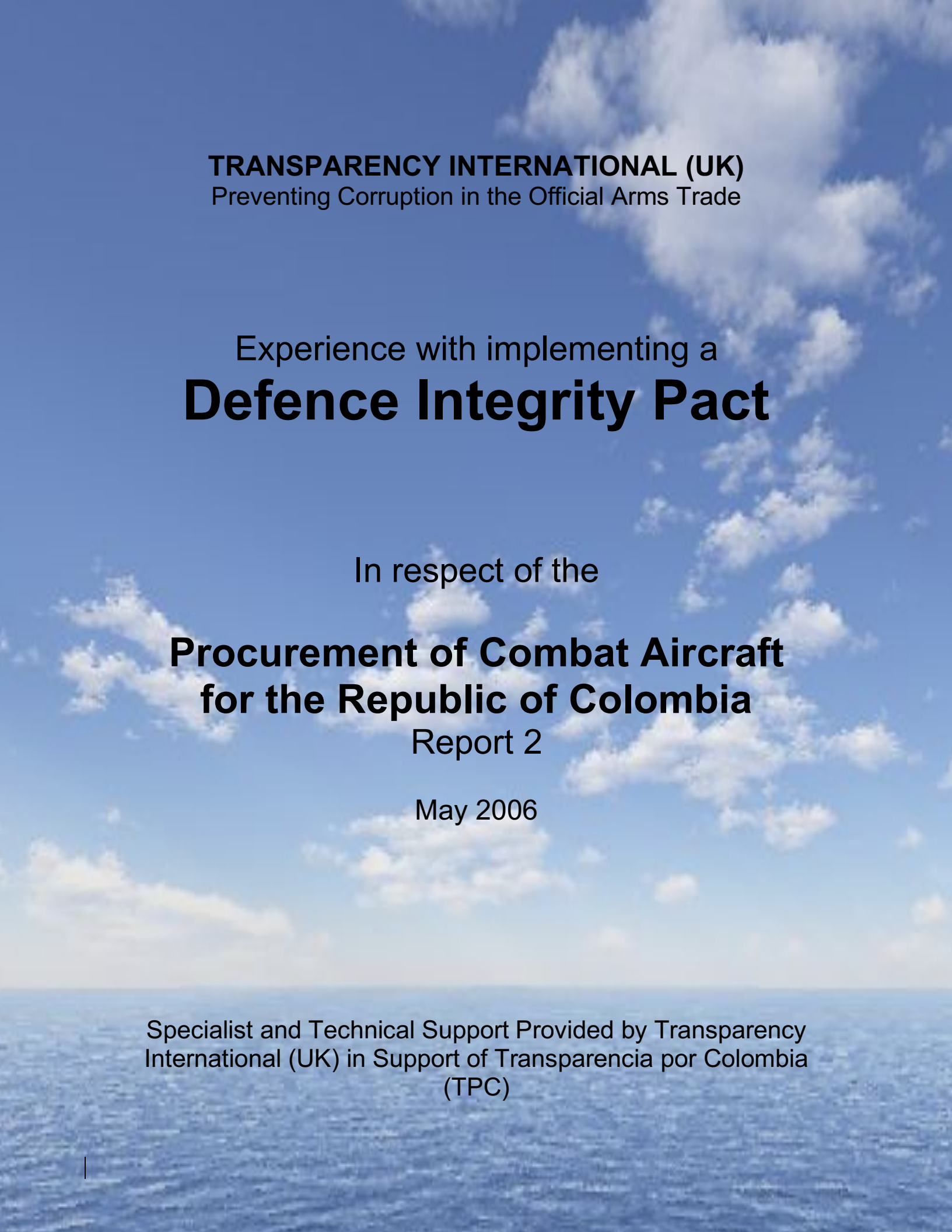

TRANSPARENCY INTERNATIONAL (UK)
Preventing Corruption in the Official Arms Trade

Experience with implementing a

Defence Integrity Pact

In respect of the

Procurement of Combat Aircraft for the Republic of Colombia

Report 2

May 2006

Specialist and Technical Support Provided by Transparency International (UK) in Support of Transparencia por Colombia (TPC)

SUMMARY

Transparency International, through their chapters in the UK and in Colombia, has been engaged with the Colombian Ministry of Defense and the Colombian Air Force. The purpose of the cooperation was to strengthen the transparency of a recent tender exercise for 22 drug interdiction aircraft, a tender worth $237 million, through the introduction of a Defence Integrity Pact. The application of the Pact in this tender is part of a wider international exercise designed to develop and test approaches for reducing corruption in the defence sector generally. The Ministry of Defense was thoroughly supportive of increased transparency for this tender.

The purpose of this report is to capture the learning gained from this process, so as to be able to inform and promote the wider use of Defence Integrity Pacts internationally. The work of the team is described, and in particular the lessons learned in preparing and executing the Pact. In the end the tender did not go through to completion as all but one of the bidding companies withdrew. Nevertheless, many useful lessons were learnt and are described in this report. Those lessons are now being applied to other Defence Ministries and in other Defence Integrity Pacts.

This is the second report of two: the first report describes a review of smaller defence procurements in Colombia and the application of a reduced form of Integrity Pacts in these procurements.

CONTENTS

1. INTRODUCTION

1.1 In early 2004, Transparencia por Colombia (TPC) requested specialist technical assistance from Transparency International (UK) (TI(UK)) during the procurement process for new combat aircraft for the Colombian Air Force. TI(UK) undertook to review the contract and aircraft specification documents, provide appropriate comments, and supply in-Country advice prior to the formal contract launch. Subsequently, support was provided whenever requested by TPC until the contract process terminated in the summer of 2005.

1.2 This report has been written to bring together all the learning from this process: there is great interest in using Integrity Pacts in major defence tenders and this is an important relevant experience.

2. TRANSPARENCY INTERNATIONAL (UNITED KINGDOM)

2.1 **Transparency Background**. Transparency International United Kingdom (TI(UK)) is one of TI's national Chapters, and is engaged in work to reduce corruption in the official arms trade. Within the United Kingdom, this work is sponsored by the UK Government's Department of International Development (DFID), and comprises four main threads:

2.1.1 Trialling the use of Integrity Pacts in defence procurements

2.1.2. Working with defence companies to encourage the development of an industry consortium for joint working against corruption in international tenders

2.1.3. Intervening where practical to strengthen laws and international instruments against bribery in defence

2.1.4. Working to improve anti-corruption capability in defence ministries and in their procurement practices

2.2 **Defence Integrity Pacts**. TI(UK) has engaged with several governments to put the Defence Integrity Pact concept into practice, using wherever possible the links built up between the Government and the National TI chapter.

Integrity Pacts vary somewhat from country to country, and sector to sector, to suit national needs. However, there are usually three main features:

- A ***contract***, in which all the bidders and the Government agree to no bribery pledges, and the bidders agree to enhanced disclosure rules. In addition, the bidders agree to sanctions, particularly withdrawal from the tender, in the event that they are found not to abide by the pledges.

- The use of an ***independent monitor(s)***, who ensures that all the parties live up to their commitments under the pact. This usually includes the use of an independent technical expert who reviews the tender documents for bias and corrupt influence, and who is available to bidders in case of concern or complaint
- More ***public transparency*** of documents and process. In this way it is easier for civil society to have an input, and to see that the principle of transparency is being implemented

Defence Integrity Pacts are a tool to combat corruption at the tendering and contract stage of procurement. They bind all the bidders and the Government together in a contract to reduce the possibility of corruption occurring both during and after the tendering.

The contract includes some or all of the following:

- Pledge and undertakings by bidders not to offer or accept bribes
- Pledge and undertakings by the government, their consultants and advisers. The anti-bribery part of the pledge is comparable to that signed by the bidder
- Restrictions on government officials from obtaining work at bidding firms or their partners for a period after the bid
- Disclosure of details of agents or intermediaries. This disclosure may only be of the name and services contract of the agent, but may also require disclosure of payments to and from the agent
- The appointment of an independent monitor or monitoring team. Access by the monitor to all meetings and unrestricted access to all material documents
- Publication of some or all of the documents, evaluation criteria, bidders' proposals and the detailed results of the evaluations. In some cases, public hearings for discussions of the bid
- Bidders agree to withdraw if there is evidence of breach of the pledge. Further sanctions may involve exclusion from bidding for subsequent contracts

In addition, the Government may encourage the involvement of Civil Society groups like Transparency International.

More detailed information on Integrity Pacts and their use can be found on www.transparency.org.uk

3. REQUEST FOR ASSISTANCE FROM COLOMBIA

3.1 The requirement to replace an aging fleet of combat aircraft engaged in anti drug running operations has been ongoing in Colombia for a considerable time. TPC, the National TI Chapter, has been a world leader in anti-corruption activities for many years and in mid 2004 a representative from TI(UK) visited Colombia to discuss Integrity Pacts and offer assistance. A request was made for specialist and technical support during an imminent aircraft acquisition programme. Due to the very short time available before public document release, TI (UK) immediately formed a specialist team and initiated document review.

4. CURRENT COLOMBIAN DEFENCE ACQUISITION AND CONTRACT MECHANISMS

4.1 **In-Country Transparency**. TPC is viewed internationally as being particularly strong and has worked for some years with the Colombian Ministry of Defense to increase transparency in defence related activities, especially procurement. This has included work to raise awareness among the Ministry Procurement Group, as well as utilising a simplified form of the Integrity Pact during minor defence tenders. In 2004 TPC and TI(UK) engaged in a study of the impact of these simplified Pacts utilising 23 contract examples: see separate report on www.transparency.org.uk. This groundwork led to a request from the Government of Colombia to TPC seeking assistance to ensure the integrity of a forthcoming contract for circa 22 combat aircraft to be used in support of counter-drug operations. With substantial local knowledge, but without specialist expertise in aircraft procurement, TPC sought advice from TI(UK).

4.2 **Colombian Defence Procurement – Outline Budgets** Military procurement in Colombia is undertaken by the Ministry of Defense with an average annual budget of some 600 billion pesos (605 billion in 2003 equating to US $250 million) which in turn is part of the overall annual defence expenditure of circa US$ 880M. Additionally, there are occasional major acquisition projects outside of the routine budget such as the purchase of Sikorsky Black Hawk helicopters from the United States of America.

4.3 **Political Impact on the Acquisition Process.** The Colombian political process has a significant impact on defence acquisition. The President is elected for a period of four years only, and has not been permitted to be re-elected (although after constitutional changes approved by Congress in 2005, the current President will be seeking re-election in 2006). The first year of any new administration is limited by the fact that the budget for that year had been set by the previous administration and the last year is normally constrained by preparation for the next election. As a result there are only two ‘standard’ years which leads to heavy pressure on the procurement process in order to fulfil any Presidential agenda. This, in turn, leads to pressure to award contracts as

quickly as possible which detracts from transparency measures due to the lack of time for ample public scrutiny.

4.4 **Ministry of Defense Procurement Organisation** Within the Ministry of Defense, the purchasing is split between a Central Procurement Group, situated in the Secretary General's Department, and procurement groups in the offices of each of the military services, Army, Navy, Air Force and Police. Overall, the centralised group has responsibility for some 60% of the budget, through about 200 contracts, whilst the Single Services have 40%. Contract values vary, but typically do not exceed US$ 10 – 20 million. However, several different contracts could be let from one requirement, as bidders can be selected on the most competitive price for different items within the overall package. The centralised group also provides the templates and standard forms that are used by all the groups. Large non-standard purchases are the responsibility of the Central Group.

4.5 **Defence Procurement Process** The procurement process is standard and prescribed by law. A defined Statement of Requirement is developed into a Technical Specification. The tender mechanism determines the evaluation criteria and requests for bidders which are then promulgated in a 'public statement'. Once the bids from potential contractors are received they are evaluated by three groups: legal; technical; and economic.

4.6 **Procurement – Information in the Public Domain** The Colombian Freedom of Information law prescribes that much procurement data be made available to the public:

- The Statement of Requirement is made public if requested
- The Specifications may be made public
- The Terms of Reference are made public
- Notice is given of a Preliminary Hearing, at which prospective bidders can question Ministry officials regarding the procurement and the tender process.
- The expected budget and quantity of items are made public. As a matter of law, the bids cannot exceed the budget, so any financial queries are conducted at the preliminary hearing
- Any additions or corrections to the Specification after the preliminary hearing are made public
- Any clarification questions and their answers are available for public inspection and/ or made public

- The evaluations of the bids are available for public inspection and bidders can observe final evaluation assessments regarding its own bid or those of others

- Final award is made at a public hearing

Technical specifications relating to contracts for the Ministry of Defense are exempt from public scrutiny on the grounds of National Security. However, to date the Ministry has **not** invoked this exemption and puts almost all information in the public domain although sensitive information may be omitted. Potential bidders are required to sign a confidentiality agreement, this accords with most defence procurement processes.

4.7 **Anti-corruption Documents** In addition to an overt approach to procurement, potential contractors are required to sign two anti-corruption documents; an Integrity Pact (IP) and an Anti-Corruption Commitment (ACC). The IP differs slightly from the standard model in that it is not co-signed by the Ministry, except for witnessing. Additionally, all Government staff involved in the process are required to sign an Ethical Commitment document, which is regarded as the counterpart to the signature of the IP by the bidders. The Anti Corruption Commitment is considered as a unilateral statement by each bidder, and has within it a requirement to disclose at the time of submission of the bids all Commission payments made to date, and those which are expected to be paid if they are awarded the contract. The two documents perform a similar function, and despite the potential confusion their use is strongly supported by the Government legal staffs despite TPC advice to the contrary.

4.8 **Reaction to initial Transparency Implementation** The earlier introduction of transparency measures some years ago generated noteworthy resistance within the Ministry of Defense: they were viewed as hindering quick procurement, together with a fear that they might impact on quality issues generated by supplier revision caused by tender results. Currently these concerns appear to have significantly reduced. Progress has been pleasing as earlier transparency efforts in 2001/2002 brought limited success at a time when procurement centralisation was being promoted.

4.9 **Transparency Rationale** Corruption prevention remains the main driver for the introduction of transparency measures. However, of note, the Defense sector institutions were viewed locally by 2004 among the most honest Government organisations, based on national survey results (Confecámaras Probidad III Survey), following efforts over several years to improve. Additionally, there was a strong desire to attract a wider range of potential contractors as many companies believed that corruption and human rights issues detracted from Colombia as an appropriate marketplace.

4.10 **Integrity Tools - Legal Status and Government Support** Until the end of 2002 there was no legal basis for tools such as the IP or the ACC.

Procurement law was governed by the National Law on procurement, Law 80 of 1993. At the end of 2002, the Colombian Government decreed that several transparency tools would be legal, and incorporated them as Decree 2170/02. At the same time the President also supported the use of Integrity Pacts in his presentation of the National Development Plan to Parliament, which has the status of a law. This was upheld by the Constitutional Court. However, TPC has not had, and does not expect to have, legal challenges to the use of IPs that are considered legally a private contract.

4.11 **Tender Mechanisms Including Competition Versus Single Source** It is understood that some 95% of contracts enter the competitive tender process. With the availability of a single source exemption, direct contracting in Colombia, reportedly, rarely happens apart from communications equipment. Occasionally, Government to Government contracts are placed outside the tender process. Assessment mechanisms are complex, Decree 21/70 stated that the ultimate evaluation was to be economic, thus any technical and legal review had to have been completed previously. However, recently, Decree 21/70 has been suspended and Article 25 of Law 80 reinstated thereby requiring both economic and technical criteria be used in the final evaluation.

4.12 **Procurement Risk - the Military and Government View** The Secretary General has previously expressed concern over the content of the technical requirements and the resultant technical specification which, unless precisely constructed, controlled and supervised could lead to a specification favouring a single contractor with the attendant corruption risk. Furthermore, there was resistance to centralisation of the procurement process within the Ministry of Defense, thereby indicating concern over potential loss of control from some elements. However, TPC reports that a more transparent process was strongly supported by many military personnel; similarly it was viewed that the new methodology would be supported by contractors.

5. THE APPLICATION OF INTEGRITY PACTS TO THE ACQUISITION OF COMBAT AIRCRAFT

5.1 **Aircraft Requirement** The requirement for modern combat aircraft to replace the existing aging operational fleet had been under consideration for several years by the Colombian Government. In 2004 a budgetary allocation of some $237 million for circa 22 airframes was approved and the purchase programme initiated. Interestingly, an earlier attempt at acquisition stalled due to the lack of clarity over aircraft type, turbo prop (jet engine driving a propeller to provide thrust) versus turbo fan (jet engine providing thrust directly) and the associated capabilities. The debate was rekindled in late 2004. Six companies expressed an interest in bidding:

- Aerovochody (Czech Republic)

- Catic (China)
- Embraer (Brazil: Tucano torboprop)
- Lockheed Martin (USA: turbofan)
- Raytheon (USA: T6 turboprop))
- Scimitar (Ukraine: Sucol SU-25 turbofan)

5.2 **TI(UK) and TPC Support** TPC involvement throughout the tendering process was considerable and initially resulted in: marked Government openness; agreement to the inclusion of an Integrity Pact; and approval to review tender documentation prior to release to bidders. With considerable local knowledge but without specialist technical expertise TPC formally sought assistance from TI (UK).

5.3. **TI(UK) Structure and Personnel** The TI(UK) defence team comprised a Team Leader (Mark Pyman) with extensive experience in large scale contracts and anti-corruption methodology, a recently retired Admiral (Hugh Edleston) with considerable knowledge of senior defence administration and developing country corruption, and a full time research assistant. Following the TPC request for assistance it was decided that air and contracting advice was necessary and the team was enhanced by Air Commodore Alan Waldron (an ex Director of Air Operations in the Ministry of Defence also with contracting experience) and Commander Patrick Brown (with knowledge of contracting and contractor support in the international defence arena). Additionally, TI (UK) had already funded one TI Colombia representative (Luis Avella) to provide local advice and a regular interface with Government and Military authorities.

5.4 **Initial Document Review** The entire range of bid documents, pre contractor release, was made available by the Colombian Government and passed to TI(UK) by TPC on 13th January 2005. The contents and breadth was considerable ranging from technical specifications through to contractual support post award. Review was undertaken immediately against an exceptionally challenging deadline; the initial report was forwarded to Colombia some 14 days later. A detailed analysis was not possible within the required timeframe but it was considered by the team that the major areas had been identified and addressed. Observations, passed via TPC to the Colombian Bid Team, were separated into Operational, Commercial and Management aspects.

5.5 **TI (UK) Immediate Reflections** Immediate, but very subjective, in-house reflections centred on a range of issues. Firstly, team composition: the team needed to have military, contract, procurement and anti-corruption experience. The present team fulfilled these requirements, worked well together and were able to prepare a most comprehensive report against daunting deadlines. Secondly, the volume and complexity of material; the bid document pack was

substantial and very technically detailed. The provision of a definitive report would have required considerable staffing and legal advice which would have been costly both in terms of manpower and time. Thirdly, the quality of some elements of the specifications gave rise to serious concerns on some the technical aspects regarding corruption potential.

5.6 **Initial Colombian Response** The bid team, with the Colombian Air Force (FAC) as the end user specifying the technical requirement, responded swiftly; agreeing with some TI (UK) comments, rejecting others and justifying the original specification for the rest. It decided that there were considerable unresolved technical and contractual issues and that an in-Country visit would be beneficial. Within one week of the initial report being passed to Colombia, Air Commodore Alan Waldron arrived at Bogota for a series of meetings.

5.7 **TI(UK) /TPC Interface** Prior to discussions with the bid team, background meetings were held with TPC. It was clear that TPC had formed an efficient team which was exceptionally well regarded in country and that the organisation was pivotal in the inclusion of Integrity Pacts and anti corruption measures in the aircraft acquisition programme.

5.8 **Meeting With Government and FAC Staff** The initial, and probably most important, meeting included one of the Independent Anti-Corruption Assessors, the FAC Commander, several other Generals, the Acquisition Project Leader, specialist technical staffs, Ministry of Defense officials and specialist contract lawyers. The meeting was conducted in English, but with frequent forays into Spanish. Following an excellent FAC presentation, the bulk of the meeting concentrated on the technical specifications (additional more technically detailed discussion was conducted on the following day) and contract details. Outline observations are at Para 5.10 below. A report outlining the work done and findings up until March 2005 is attached at Annex 1.

5.9 It was clear that there was considerable pressure from the Secretary General's office for complete openness and desire for the technical specification to be as clear as possible thereby reducing the potential for corruption. There was also considerable support from the military, especially the project team, who realised that the comments being made by TI(UK) could have a considerable positive impact on the operational effectiveness of the aircraft. However, treading the line between providing a cheap consultancy service and ensuring that the errors or inconsistencies in the project were due to lack of expertise and not due to corruption was at times difficult. The relationship between TI(UK) and the team appeared very good and was enhanced due to the high level of technical dialogue and mutual respect during the meetings.

5.10 **Technical and Contract Observations** The major technical and contract observations, with corruption potential, were the following:

- ***Core Purpose and Capability***. The bid Terms of reference documents were considered not sufficiently clear, especially on key items like core purpose and required aircraft capability.

- ***Future Capability Insufficiently Define*d** It was considered that the tender had not sufficiently addressed the long term operational capability required of the aircraft and systems

- ***Flight Simulation Not Considered*** Acquisition of a Flight Simulator to support the aircraft and crews has not been considered

- ***Inadequate Operational Evaluation*** The evaluation of the aircraft was based on simple criteria rather than phased approach based on operational capability.

- ***Prototypes*** Inclusion of prototypes within the competition was considered unwise.

- ***Tender Evaluation Matri x*** It was considered that the Tender Evaluation Matrix was insufficiently balanced, and too heavily weighted towards operational criteria rather than economic.

- ***Pre and Post Contract Award Controls*** It was considered that pre and post contract award controls outlined in the bid documentation required further detailed work.

- ***Offset Programme*** The proposed offset programme was considered to have corruption potential and required improvements to improve transparency

- ***Acquisition – Positive Comments*** Despite the comments above, there was a clear willingness from all Government and Military officials interviewed to support transparency and anti-corruption measures. Indeed, it was pleasing to note that a great many of the TI comments had been supported, of which a great number were in the process of being implemented at the time of the visit to Colombia.

5.11 **Post Visit Action** Post the TI(UK) visit, a follow up report and detailed analysis was provided to TPC for onward transmission to FAC. Subsequently, there was considerable technical and bid document revision prior to contractor release.

5.11.1 Additionally, TPC: reviewed the bid documents; provided observations on corruptions risks; directed a workshop with the prospective evaluation team in

order to construct a Risk Map of the evaluation procedure, consider mitigation measures for identified risks and address a conduct and communication code. Furthermore, TPC helpfully provided inputs to the MOD regarding transparency and Offset Programme evaluation procedures, although the Programme was retained despite TI(UK)'s concerns of the potential high corruption risk. TPC continued to monitor the evaluation, including test flights reports, and the decision mechanism to declare the process void as eventually the only bidder (see 5.12) failed to comply with all technical requirements.

5.12 **Tender Collapse** Post tender documents release, and prior to any submission, the Ministry received letters from one bidder and then collectively from a group of four bidders announcing their intention to withdraw from the tender. The letters cited a number of reasons for the withdrawals, including: insufficient time for bid preparation; perceived favouritism of turboprop over turbofan; high cost of shipping airframes to Colombia for evaluation. In addition, the collective set of bidders believed that the tender specification favoured the Embraer Tucano. Subsequently, the Ministry of Defense considered options were: address the concerns and re-issue the tender documents; continue with one bidder; or re-start the entire process. TPC and TI(UK) were included in the dialogue. However, ultimately the Ministry conclusion was to was to proceed with single source negotiation with Embraer. TPC and TI(UK) were requested to continue with oversight of the negotiation, but declined to do so.

5.13 The TPC request to meet with bidders to discuss the tender was approved by the Ministry of Defense, with the proviso that it was not as a direct precursor for them to rebid. However, it was only possible to interview three companies (Scimitar, Raytheon, Lockheed Martin). None of them indicated that corruption was a factor: indeed two of them positively commented that they thought that the process had been clean.

6. LESSONS LEARNED

6.1 **Different sorts of learning** Involvement throughout the tender process generated four distinct areas where lessons were learned. Firstly, the human factor, especially expertise and commitment (both in the immediate contract environment and also remotely). Secondly, the assessment of contracts, mechanisms and tender documents, particularly their volume and the complexity when viewed against required response timescales. Thirdly, the structure of TI support to third parties together with channels for advice. Fourthly, action following contract bid collapse, especially with a resultant single source procurement option.

6.2 **The Human Factor – Expertise** The in-country TI Chapter provided the essential background and immediate interface with both Government and Military staffs, together with providing the crucial dialogue with potential bidders. Without the local drive and determination it is most unlikely that IPs would have been an integral element of the Colombian combat aircraft acquisition programme. Therefore a thriving and well respected local organisation – not necessarily a TI Chapter - is important in taking forward anti-corruption measures. However, defence expertise is rare, and TPC were not unusual in not having technical expertise to undertake a complex aerospace evaluation. TI (UK) was able to rapidly expand its existing structure with highly qualified personnel experienced in both aviation and contracts. The resultant team formed good working relationships with TPC, the Colombian Government and Colombian Military staffs, which were essential to an effective engagement.

6.3 **The Human Factor – Commitment** TPC and TI(UK) personnel engaged in the project were committed to providing a clear, unbiased and balanced advice. Similarly, the commitment from most of the Government representatives to introduce anti-corruption and openness measures was impressive and that clearly resulted from support at the highest level. The selection of well-respected, independent Colombian assessors was further evidence of good intent..

6.4 **The Human Factor – Budgets and Value For Money** As with most projects, success often depends on appropriate funding. TI(UK) funding of the dedicated TPC person in Bogota proved crucial to the programme to facilitate integration and dialogue at the local level.. The speed and expertise of project staffing and responses were out of all proportion to the costs. It is estimated that had external non-TI consultants have been employed, manpower costs would have increased by a factor of around 10.

6.5 **Document Evaluation – General** The volume and complexity of the documents were considerable, with required analysis set against challenging deadlines. Specialist TI involvement at the earliest opportunity would have eased the workload and possibly resolved some of the more operational/corruption potential concerns that were raised, such as definition of capability and the balance between turboprop and turbofan.

6.6 **Document Evaluation – Technical** The technical evaluation required broad knowledge of a range of operational, engineering and contractual issues. Striking the comment balance between value for money, operational effectiveness, and corruption potential was at times very difficult bearing in mind the lack of cutting edge combat equipment procurement expertise in the Colombian bid team (was, for example, a stated requirement based on inadequate knowledge or on corruption potential). A balanced view was necessary, and ideally the operational/technical expert should also have considerable contracting experience. Furthermore, there needed to be an awareness of any bias towards a particular piece of equipment, service or supporting facility. A specification, for example, of self sealing fuel tanks was a most valid operational need, but if only one candidate airframe offered the modification, was this bias or combat imperative? Furthermore, flying evaluations were to be undertaken by relatively junior aircraft who could have been subject to pressures from senior officers. Protracted 'independent expert' supervision during the in country evaluation would reduced both flying and evaluation ground risks.

6.7 **Document Evaluation – Contract** Many of the observations (at para 6.6) relating to the technical documents also read across to the contract specific section. With Spanish as the document's formal language, it is possible that nuances were lost in any translation to English, thus TI inputs, without the benefit of specialist legal analysis were broad rather than definitive. Many issues were raised concerning the contract, its implementation, both pre and post award, as well as concerns regarding the required offset programme.

6.8 **TI Support Structure** During the project, two major threads concerning the structure and content of support emerged. Firstly, the relationships between the in-country government, the local TI chapter and the team providing external TI support. The preferred format was for an agreement between the responsible government Ministry and the local TI Chapter, with (in the Colombia case) TI(UK) as the technical experts providing assistance to the local TI chapter. For the directly engaged TI organisation, a formal 'participation agreement' is necessary in order to outline precise boundaries and responsibilities between relevant parties. The current participation agreement template build son this experience.

Secondly, there was uncertainty of precisely what any report to the Government on the tender documents and processes should contain. Content options ranged from: observations; recommendations; corruption risk only; operational issues; through to value for money comments. It was considered that many of these

areas were completely and utterly intertwined as, for example, a value for money or operational issue could indeed have a covert corruption risk (see below). Therefore a balanced approach was necessary.

6.9 **Single Source Options** The withdrawal of all bidders from the contract competition except one (Embraer) was unexpected and unforeseen. Subsequent TI support for project continuance, bid team discussion with single source supplier, raised many issues, although the Colombian Government was keen to retain TI engagement to scrutinise procurement. Considerable TPC/TI(UK) dialogue ensued. Whilst TI's general approach is to work to support a government whom they believe to be seeking to act in good faith, however, the procurement had already been compromised given the withdrawal of the bidders and therefore lacked of any degree of competition. Regrettably, TI thus felt obliged to decline to continue to support and scrutinise.

6.10 **The corruption perspective is different from the functional experts**
It was evident that a 'corruption eye' is a very different perspective from a functional expert's eye. The functional expert is looking for functional effectiveness, for clarity of requirement, for future proofing, for alignment with current products on the market, for the type of procurement approach being adopted. Some examples:

- A technical requirement might be clear and required, but only be deliverable by one bidder: eg self sealing fuel tanks might be sensible, but if they are only on one bidders plane then it will be a cost or evaluation penalty on the other bidders: is this being reasonably expressed or is it a subtle bias to one bidder?
- The operational test requirements are clear, sensible and have a large weight in the evaluation. However, they are made by the junior pilots doing the test, and thus are easily subject to influence from more senior officers. This may not be the intention, but it allows the decision to be dominated by just one or two relatively low level decisions, unless the evaluation is structured better.
- Some military requirements are only capable of being fulfilled by some countries. The requirement might be reasonable, but the limited number of companies who can fulfil it may be a deliberate restricting of the competition.

We have noted a similar story from other experienced TI chapters: that sometimes even though you may feel the need – and indeed to have a need – for functional experts, it is often the case that the bulk of the observations come from the experienced TI person looking for corruption risks and not from the functional expert.

6.11 **Should the need for the purchase be part of the scope?**

In doing the review of the documents, the first major finding was that it was crucial for the purpose of the tender – ie the operational need – to be clearly

documented and the rationale expressed. Without this it was much harder to comment on the extent to which the tender specification met the basic purpose of doing the purchase. Clearly a lot of work had been done on the need, but very little of this or its output was included in the tender package.

Is it the role of the Integrity team to question the need? It is well known that creating unnecessary needs is one of the classic ways in which corruption in defence is manifested. We discussed this question with several of the TI staff involved in Integrity Pacts. The general response was that the need had to be questioned at an earlier stage: the Integrity Pact was not likely to be a constructive place for querying the need, and that this needed to take place earlier on in open discussion as far as possible. In this case the need had been extensively discussed in the country and had been approved by parliament. We did not feel that there was anything out of line between the need and the capability being sort to fulfil it.

6.12 **Distinctions between value for money problem and corruption risk**

In reviewing the tender documents, we met this issue more than any other. The functional experts would comment that a particular specification was not an efficient or effective way to satisfy the requirement. There could have been a corruption angle, but in most cases was much more likely simply to be a different professional view on how to satisfy the requirement. The expert's view may indeed be a better way to do it, but could also just be a different professional opinion. If we believe the comment is really a value for money observation and not a corruption risk, should we be making it at all? Does the review then risk becoming simply a piece of cheap consultancy?

Our conclusion was that both perspectives are relevant and mostly complementary. In addition, the value for money aspect can be one way of 'selling' the value of such reviews to defence ministry staff. In this case the value for money comments were also well received.

6.13 **Transparency Tools and Mechanisms**. Whilst Offset Programmes are not recommended, there are at times political imperatives for their inclusion within contracts; in these cases tools and mechanisms are necessary in order to introduce transparency and eliminate corruption. Similarly, the use of Ethical Workshops for procurement officials to identify and discuss corruption elements relevant to all contract phases should be a consideration as a supportive adjunct to Integrity Pacts.

6.14 **Incorporation of Lessons Learned into Defence Integrity Pact Templates** Lessons learned from the Colombia experience were considerable and have, or will be, incorporated into TI(UK)'s template documents for Participation and Defence Integrity Pacts.

CONCLUSIONS RELEVANT TO THE INTEGRITY PACT APPLICATION

7.1 This was a very worthwhile exercise, and was clearly adding to the transparency and credibility of the bid process. The cooperation between TI (UK), TI Colombia, the Defense Ministry and the Air Force was very good.

7.2 The combination of local TI Chapter and Defence/ Contract expertise from TI(UK) was crucial to the credibility and authority of the TI intervention.

7.3 We found that it was possible to make valuable and relevant comment on corruption risks in the tender documents, even in a short timescale. The scrutiny needed quite a combination of skills: military technical expertise, anti-corruption expertise and procurement/contracts expertise.

7.4 A key issue in scrutiny of the tender documents was to distinguish between operational/ value-for-money observations and corruption risk observations. These often overlapped, but it was helpful to make the distinction.

7.5 A single source procurement, or the transition of the project from a competitive to a single source one, makes the application of an Integrity pact problematic and probably not realistic.

7.6 A whole set of useful lessons have been learned which are now being taken into account in further defence work and Defence Integrity pacts elsewhere.

ANNEXE 1

TRANSPARENCY INTERNATIONAL (UK)

Prevention of corruption in the official arms trade

COLOMBIA FINAL REPORT

MARCH 9, 2005

1. CONTENTS

1. INTRODUCTION

1.1. **Background** The Colombian Ministry of Defense is proceeding with a significant aircraft acquisition**,** Contract Number 05/04 – CE-MDN-FAC, for the acquisition of a minimum of 22 new combat aircraft. The Colombian government is concerned that this acquisition be as free of corruption as possible. To this end, the Government has appointed two respected independent assessors. One of these assessors has requested the involvement of the Transparency International (TI) national chapter in Colombia, Transparencia por Colombia (TPC), and the use of some of the 'tools' of TI in this acquisition. These tools include the use of an 'Integrity Pact' (IP) to be signed by the Government, its relevant departments and agencies and all the bidders. A successful implementation of an IP would be founded upon scrutiny of the key bidding documents for signs of bias and to mitigate corruption risk. TPC has experience of IPs, but not in the area of defence procurement.

1.2. **Involvement of Transparency International (UK) (TI(UK))** The UK national chapter of TI (TI(UK)) is separately engaged in an international project to find ways of preventing corruption in the official arms trade. This work, funded by the UK Department for International Development (DFID), covers two main areas of work: 1) Engaging with defence companies with the objective of bringing them together in an anti-corruption consortium, and 2) Promoting the use of IPs in defence procurement as a way to achieve corruption-free procurement. In developing this work, TI(UK) has brought together professionals experienced in the areas of procurement and defence operations.

1.3. **Assistance to TPC** TI(UK) has accordingly been requested by TPC to assist by making observations on the draft bid documents, recognizing that the way in which the requirements are drafted and the evaluation procedures are defined can in themselves offer considerable opportunity for bias or improper influence on the result. In order to be able to offer solidly based observations, the documents have been examined from a technical perspective as well as a contractual point of view. However, the observations are in no way directed towards the technical specification of what should or should not be provided, but are made so as to increase the precision of the specification and to identify areas where that lack of clarity could lead to a corruption risk.

1.4. **Observations**. The Ministry of Defense seeks to limit scope for corrupt bidding practices and through fair competition to drive down procurement costs. TPC welcomes the opportunity to extend its experience of IPs in Colombia to defence procurement. TI(UK) is pleased to cooperate in this exercise to demonstrate its belief that IPs offer a practical way to eliminate or limit bribery in defence procurement; if successful TI(UK) would seek to promote the wider use

of IPs through its international contacts in the industry and through the TI movement. This process will also help TI(UK) in developing its understanding of how best to provide assistance to other governments undertaking such major procurements. This coincidence of objectives has encouraged TI(UK) to undertake the essential first stage scrutiny for this acquisition free of charge toTPC, using the funding provided to TI(UK) by DFID. TI(UK) believes that its participation will demonstrate that this sort of scrutiny can lead to a more transparent and corruption free procurement environment.

1.5. **Disclaimer** TI(UK) is pleased in good faith to offer the observations in this Report to TPC. In so doing it has however to be clearly understood that TI(UK)

- has not taken and does not take any position on the decision of the FAC, the Ministry of Defense or other relevant departments or agencies to proceed with the acquisition of combat aircraft;
- is a UK not for profit, non-governmental organization working in the UK and with the TI movement to stem the damaging consequences of corruption;
- is not a consultancy, is not qualified to offer consultancy services and does not do so in this Report or in any oral or written statements made prior to or incidentally to this Report;
- has had limited time and resources to review documentation and has not seen all relevant documentation; and
- has not taken local legal advice on Colombian law, administration and practice governing defence procurement.

It is accepted that effective scrutiny of bidding and related papers calls for technical and operational knowledge and experience. However, any technical and operational observations in this Report or in any oral or written statements made prior to or incidentally to this Report are made with the strictly limited purpose of informing the design of the procurement process and to illustrate areas of potential corruption risk. No such technical or operational observations should in any way be construed as recommendations as to whether and if so what equipment should be specified or purchased by or on behalf of the Government of Colombia with which it has no contractual or other formal relationship. No reliance should be placed on such observations.

Accordingly neither TI(UK), nor its Project Leader, Defence Contracts Specialist and Air/Defence Specialist can accept any responsibility for the consequences of any action claimed to have been taken in reliance on the contents of this Report or on any oral or written statements made prior to or incidentally to this Report.

2. DOCUMENT EVALUATION AND VISIT TO COLOMBIA

2.1 **Evaluation**. Initial document evaluation was undertaken by a team of three independent knowledgeable persons from TI(UK), whose CVs were reviewed and agreed by the Colombian Ministry of Defense: Mark Pyman (Project leader, TI (UK)), Patrick Brown (Defence Contracts Specialist) and Air Commodore Alan Waldron (Air/Defence Specialist). Work undertaken was based on the bid Preliminary Terms of Reference, dated January 2005, and supporting documents, as received by TI (UK) on January 13.

2.1.1. **Evaluation Rationale**. The report rationale was to assist in the reduction of bribery or corruption likelihood. Comments have been made directly where a particular corruption exposure was possible, and where any purpose/aspect was unclear and could thus be misinterpreted. In addition, 'Value for Money' improvements have also been noted as they may serve to reduce the scope for inappropriate usage of funds.

2.1.2. **Initial Review Timescale/Potential**. The bid documents were complex and reviewed by the team at very short notice. Full and detailed evaluation was not possible, but it is thought that the comments offered have the potential to mitigate the corruption risk and to improve value for money. The initial report, forwarded to Colombia at the end of January, was structured as a set of principal observations, separated into Operational, Commercial and Management aspects. Additional comments were made in Annexes.

2.1.3. **TPC/FAC Response**. Following receipt of the initial review, the comments were considered by both TPC and the Colombian Air Force (FAC). The latter responded with supplementary information agreeing with some of TI (UK)'s comments, rejecting others, or justifying their initial specifications. Further work based on these remarks was then undertaken by TI (UK). TI (UK) was then invited to Colombia to take issues forward with TPC, Colombian Government officials and the FAC. This document replaces all previous reports and communications.

2.2. **TI (UK) Visit to Colombia**. It was thought that the best way to deal with remaining issues would be for TI(UK)'s Air/Defence Specialist, Air Commodore Alan Waldron to visit Colombia which he did from 8 – 11 February 2005.

2.2.1. **Visit Format**. The visit format, arranged by TPC, consisted of three working days. Technical, contract and corruption aspects were discussed with the Director of TPC (Rosa Ines Ospina) and the co-ordinator (Luis Avella) during the morning of the first day. During the afternoon, an extended major meeting was completed with the FAC Commander, several other Generals, the Acquisition Project Leader, specialist military officials, Ministry of Defense officials, specialist contract

lawyers, one of the two Government appointed Independent Anti Corruption Assessors, Head TPC and supporting staffs. Prior to discussions during the afternoon of Day 1, the FAC completed an excellent briefing outlining numerous operational and technical areas relevant to the acquisition programme together with a clear indication of the desire for early aircraft delivery. The second day was taken up completely with FAC detailed discussions. The third day involved immediate feedback to TI (UK) and debriefs with TPC prior to departure to the UK

2.2.2 **Persons Consulted**. Persons consulted included:

JULIO MANUEL AYERBE – Independent Assessor

General EDGAR ALFONSO LESMEZ ABAD – Comandante FAC
Mayor General JORGE BALLESTEROS RODRIGUEZ - Gerente del Proyecto
Brigadier General RICARDO RUBIANOGROOT – Presidente Comité Técnico
Coronel LUIS FERNANDO MEDRANO JARAMILLO – Miembro Comité Técnico
Coronel JULIO RIVERA JIMENEZ – Miembro Comité Económico
Coronel JUAN GUILLERMO GARCIA SERNA – Miembro Comité Jurídico
Coronel GUSTAVO DE LA HOZ RENGIFO – Miembro Comité Técnico
Teniente Coronel RICARDO CASTRO PULIDO – Asesor Gerencia del Proyecto
Mayor CARLOS SILVA RUEDA – Asesor Gerencia del Proyecto
Capitán JOSE ERNESTO PARRA ACUÑA - Miembro Comité Técnico
Capitán ABELARDO MORENO LEMOS – Asesor Jefatura de Operaciones Logísticas
Teniente NELSON GARCIA HIROCHE – Miembro Comité Económico
Doctora MARIA DEL PILAR HURTADO – Secretaria General MDN
Doctora NURY BLOISE – Jefe Grupo Contratación Estatal MDN
Doctora IRMA TRUJILLO – Miembro Comité Jurídico
Doctora YOLANDA VERA – Asesora Financiera del Comité Económico
Ingeniero CARLOS SILVA BARRERA – Miembro Comité Económico

2.3. **Recommendations/Work Undertaken**. Numerous recommendations were made prior to the in-country meeting. It was most pleasing to note that much work appeared to have already been initiated by both the Colombian Government and the FAC to start to address some of the issues raised. However, only verbal or anecdotal confirmation of any change in status was available during the meeting. Recommendations are designed to facilitate change and it is acknowledged that some of the proposed revisions may have already been completed.

3. MAJOR OBSERVATIONS

Introduction: Many of the Major Observations in this part of the Report rely heavily on the appreciation of complex operational and technical issues. The TOR requirements for operational need, capability and numbers require clarity and precision. Inappropriate or poor specifications could easily lead to acquisition of airframes and/or systems that are poor value for money thus engendering a marked lack of transparency and an associated significant corruption risk. These observations are aimed at protecting against potential corruption, either at the bidding stage or throughout the contract life. The observations in Annex 1 underpin and elaborate the areas where the specification is not clear, and seek also to be helpful in raising for consideration areas for greater clarity and/or greater value for money.

3.1. **Core purpose and capability.** The bid Terms of Reference documents were considered unclear especially on core purpose and required aircraft capability. Whilst air to ground operations were addressed, air to air capability requirements were vague. Clarity was considered to be essential in order to inform bidders and ensure evaluators were clear on precise testing needs. Unless refined and expanded in the bid documents, this is considered to be a significant corruption risk. The following points illustrate how lack of precision in the specification can trigger a corruption risk

3.1.1 **Future Growth Potential**. In addition to refining the document to provide uniform guidance to bidders, it was also considered important for the FAC to consider any future long term growth potential. Whilst a performance may be acceptable to current operational regimes, the potential performance enhancements of target aircraft over 20 years (now revised to 30) was likely to be considerable. Also, in the ground attack role, it was unlikely that heavier payloads would be possible unless long term growth and capability were addressed. The corruption risk is that if the growth potential is not considered at the bid stage, later modifications may be at inflated prices and directed to a preferred contractor.

3.1.2. **Operational Analysis**. During discussions in Bogota, the FAC indicated that a full operational analysis covering aircraft requirements, capabilities, numbers and basing had been completed and subsequently approved by Ministry Officials. Two large volumes were produced (unsighted by TI (UK)). In order to provide assistance to bidders and transparency of requirements it was recommended that an unclassified synopsis be prepared for public and bidder use. Failure to provide a clear analysis of aircraft requirement and capability could be viewed as a significant corruption risk. It is understood that the FAC agreed to this.

3.1.3. **Recommendations**. In order to reduce corruption risk, it was recommended that:

3.1.3.1. All bid documents be refined to provide uniformity of information and total clarity.

3.1.3.2. Future growth potential (airframe, engine and systems) be considered by the FAC during the bid and evaluation process.

3.1.3.3. An unclassified synopsis outlining the operational analysis, and results determining aircraft capability and numbers be included as part of the bid documents

3.2. **Future Capability is insufficiently defined**. The team considered that foreseeable future capability needed to be more thoroughly addressed, or there was a risk of costly modifications later. Later costly modifications are one way in which a corrupt bidder can make a low cost initial offer but then make substantial profits afterwards on the later upgrades.

3.2.1 **FAC Perspective**. The FAC confirmed that a preliminary version of the bidding documents stated "**that the arms delivery system may be upgraded with future use armament"**. Also, that future capabilities were difficult to forecast since technological development was a key driver. Usefully the specification already incorporated a MIL-STD-1553 bus*]* thus enabling "Plug and Play" systems to be utilized in the future. Further, the FAC believed that operations were to be conducted in a relatively unsophisticated environment which did not necessitate leading edge technology.

3.2.2. **Future capability – Value for Money**. Whilst 1553 bus specification may well be appropriate, there may have been weapons, systems or capabilities that the FAC might consider in the future but could not be currently funded. Building in specifications during manufacture was viewed as cheaper than a large modification programme mid life. Weapons loads, and possibly capability, would therefore remain stagnant until an improvement programme was funded. If future capability was not to be considered it should be done so in the knowledge that it would probably be much more expensive to retrofit in the future.

3.2.3**. Way Ahead**. During discussions it was acknowledge by the FAC that there may well be a need for upgrades in the future (Sidewinder missiles being postulated). It was recommended that an analysis be conducted in order to determine what, if any, requirements were likely in the near to medium future so that consideration could be given to the inclusion of any aspects during the initial aircraft build as a value for money option. It is understood that the FAC agreed to do this.

3.2.4 **Recommendations**. It was recommended that:

3.2.4.1. An analysis be conducted to determine if any potential future requirements could be incorporated in the aircraft build and specified in the bid document, as a way of reducing corruption opportunities.

3.3 **Flight Simulation**. Whilst a requirement for training workstations was included in the specification together with a single CPT (Cockpit Procedures Trainer) there was a worrying lack of simulation for pilot training and operations. Virtually without exception, any new type entering service was preceded by the procurement of a synthetic trainer. Whilst expensive, it permits safe introduction to basic skills and crew cooperation; allows continuation and emergency training within a controlled environment; and, depending upon specification, the simulated delivery of weapons and mission rehearsal. Furthermore, in the event of unforeseen aircraft grounding, pilot skills could be maintained. Whilst this is not specifically an anti-corruption issue, it has the potential to give much greater value for money.

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3.3.1 **FAC Assessment.** The FAC verbally confirmed simulation would be included within the contract package.

3.3.2 **Simulation Considerations**. It was pleasing to note that the FAC indicated that contract adjustment to include simulation had already been initiated. However, there was no clear view of what simulation capability/system was required and how it would dovetail into the operational and training packages. Unless a clear and precise specification was formulated it was likely that any bidder would, under the terms of the contract, be able to supply a system that would not give the full operational and training benefits to the FAC. The requirement should also include, installation (and associated costs, including groundworks and buildings), commissioning, regular engineering and maintenance costs, software and hardware upgrades, through life support and training for instructors. It was recommended that the FAC urgently considers these aspects.

3.3.3 **Simulator Implications on Airframe Numbers**. Simulator use (depending upon type and capability) could reduce airframe flying requirements, especially for type conversion, routine training and operational rehearsal. This would impact on the minimum fleet numbers originally specified. It was recommended that the FAC considers the impact of simulation on fleet numbers.

3.3.4 **Operational Planning**. Whilst not simulation, it was clear that the original bid specified two operational planning tools and software for the main bases with deployed locations relying on conventional rulers, maps and manual inputs to the Multi Function Display (MFD) and systems. This

clearly significantly detracts from the operational readiness and capability of the airframe. It was strongly recommended that the FAC acquire sufficient mobile planning tools (laptop based?) to equip all deployed locations together with some (numbers unspecified) centrally held spare tools.

3.3.5 **Recommendations**: It was recommended that:

3.3.5.1. Precise simulation requirements (including operational, installation, running and upgrades) be specified.

3.3.5.2. The impact of simulation on fleet numbers be considered.

3.3.5.3. Sufficient mobile planning tools be acquired to equip all deployed locations together with spares (held centrally).

3.4. **Operational Evaluation.** Within the bidding documents package, the operational evaluation criteria were mostly based on simple measures of aircraft performance. It was considered that the very strong weight being given to relatively straightforward performance tests was a significant corruption risk. Relatively simple conclusions reached by operational staff that have a high weighting in the evaluation matrix are susceptible to being influenced by more senior officers, particularly where these are of a subjective rather than objective nature. It was also considered preferable to use these operational criteria as a yes/no requirement – i.e. not 'scored' - prior to entering the economic evaluation.

3.4.1 **FAC Perspective**. The FAC was content with the proposed procedure as the requirement was to evaluate performance within the operational use theatre (Colombian topography).

3.4.2 **Corruption and Capability Factors**. Operational evaluation, corruption risk and capability requirement generated considerable discussion. The open willingness of the representative from the Ministry of Defense and the Commander of the FAC to assimilate and consider complex options that could possibly contribute to the potential reduction of corruption and the improvement of capability was particularly helpful.

3.4.2.1. **Evaluation Process** It was recommended that a multi stage process with clear breaks between elements was preferable to a single assessment. It was also clear that there was no laid down requirement for aircraft capability or performance, ie the minimum specification acceptable for FAC operations. Of note, the FAC indicated that initial work had been along these lines, but they were advised against it was a potential corruption issue. *Commander* FAC helpfully indicated that he would raise the 'phased approach' at Ministerial level in order to attempt to change the current mechanism. It was recommended that, following

acceptance of specification of minimum performance and capability, candidate aircraft should be tested with a simple yes/no evaluation in order to confirm that they meet the laid down criteria. Testing could then progress to the more complex and detailed operational enhancement/value for money phase. The process could then move to the economic evaluation.

3.4.2.2. **Evaluation Component Weighting** Points awarded for each evaluation element were currently based on a single stage process. It was recommended that the points be reassessed in order to appropriately weight value for money and operational enhancements as the aircraft (if it had progressed to operational evaluation stage) would already have met the FAC's minimum requirements. Furthermore, it was considered that the weighting (70% to operations and 30% to economic) factors were inappropriate and a possible corruption risk, due to the potential for relatively 'simple' but biased operational assessments to overwhelm other elements of the assessment. The preferred option would be 50/50 or 40/60 to operations/economic. It is understood that Ministerial officials and the FAC were very receptive to the suggestions and would consider them fully. The aircraft testing and contract evaluation stages will require considerable independent oversight in order to ensure no corruption/pressure.

3.4.3 **Recommendations**. It was recommended that:

3.4.3.1. Specifications determining aircraft capability requirements with minimum levels acceptable to the FAC be produced.

3.4.3.2. The current single evaluation be split, ideally into phases: confirmation minimum specifications have been achieved; operational/value for money; economic.

3.4.3.3. Evaluations points be refined to address the requirements above.

3.4.3.4. Evaluation balance be adjusted away from 70%/30% (operational to economic) to 50/50 or 40/60.

3.5 **Prototypes.** It was considered that allowing prototype aircraft within the competition added a potential additional corruption risk to the contract, operational capability and cost.

3.5.1. **Original Contract Specification**. The original contract specification (Numeral 3.8.3) stated **"the Bidder must provide evidence of experience in the manufacturing and marketing of at least 12**

aircrafts with the same characteristics in the past 10 years". The FAC considered that this now effectively eliminated the possibility of acquiring prototype airframes.

3.5.2. **Prototype Uncertainties**. It was considered that there was considerable difference between a manufacturer that has produced aircraft with the 'same characteristics' and the manufacture of a brand new prototype airframe with new systems which, as a whole combat unit, are as yet unproven. Prototypes were considered most likely to bring with them a potentially high development risk and possibly cost over runs – neither of which were advantageous to the FAC when operational need and delivery timescales were considered. During discussions, it was understood that, considering the advantages and disadvantages of the option, the FAC would not take forward the use of prototype airframes.

3.5.3. **Recommendations**.It was recommended that:

3.5.3.1. Consideration be given to not including prototype airframes in the competition in view of the required operational need and delivery timescales.

3.6. **Tender Evaluation Matrix**. It was considered that, within the tender evaluation matrix, the economic (versus operational) weighting percentage was insufficient. Too high an operational weighting allows a corrupt operational assessment on a simple operational evaluation to unduly influence the entire evaluation result. Also, that within the economic criteria, a higher weighting value should be given to whole life costs.

3.6.1 **FAC Considerations**. It was understood that the FAC had already commenced work to assign greater weight to life cycle costs. Factors to be addressed included: flight hours costs (aviation fuel, maintenance, major component costs, structure life), and in theatre demonstration flights to confirm fuel consumption.

3.6.2 **Whole Life Costs – Additional Factors**. The work to address whole life costs over a 20 year period was welcomed. However, in addition to the major factors and components, other areas taking account of the cost of peripherals such as software, all consumables, documentation, mean time between failures, upgrades, engineering support etc etc should be included. The FAC indicated that they would seek, through diplomatic channels, experiences from nations currently using candidate aircraft. (AFTERNOTE: whilst not discussed, it is suggested that FAC also seek information on build quality).

3.6.3 **Recommendation**. It was recommended that:

3.6.3.1. Whole life costs be adjusted to include all factors contributing to the use of the aircraft, not just the major elements.

3.7. **Pre and Post Contract Award controls** It was considered that both the pre and post contract award phases outlined in the contract documents required further detailed work, especially to address the management of the main contract and the later support contracts. Poor contract controls are a major corruption risk.

3.7.1 **FAC Response**. The FAC indicated that Contract post award controls would be designed.

3.7.2 **Contract Monitoring – Additional Factors**. The introduction of a mechanism to administer and control post contract support was welcomed. Precise delegations, team compositions etc would need careful formulation and strategic oversight. Also, the process needed to be identified and approved at the earliest opportunity and at the highest level, with an exceptionally tight chain of control and the utmost degree of transparency being essential; as would day to day control of the contract, both pre and post award. It was further recommended that contract monitoring teams should be embedded within the project team at the earliest opportunity in order to assimilate methodology and background. Also, processes for implementing contract changes, determining penalties and recovering monies, routine audits (at all levels) and contract monitoring team supervision should be considered.

3.7.3 **Recommendations**. It was recommended that:

3.7.3.1. Contract monitoring teams be established and embedded within the Acquisition Team as soon as possible. They should continue in place after contract award.

3.7.3.2. Contract monitoring methodology, responsibilities and controls be refined and published.

3.8. **Offset Programme.** The offset programme was regarded as being a significant corruption risk. Cancellation of the programme could be considered.Should cancellation not be possible, the programme definition should be improved substantially, with much stronger evaluation methodology. Significantly improved post contract management and penalties would be required.

3.8.1 **Offset Requirement**. It was confirmed that the offset programme was a National requirement. It is understood that, following the initial TI (UK) comments, work has been initiated to tighten the offset mechanisms. However, it was unclear who would draft, approve, administer and control the process. These were important areas where transparency was

essential at the earliest stage and during the entire pre and post contract phases. It was recommended that consideration be given to: determining which person/organization would be charged with oversight/evaluation/control of the programme; liaison with bidders and potential offset organizations; approvals/adjustments/refusals mechanisms; responsibility/process for routine monitoring; timescales (implementation, life, exit); penalties for late implementation, early withdrawal, unapproved changes; mechanisms for offset changes etc.

3.8.2. **Recommendations**. It was recommended that:

3.8.2.1. Offset programme methodology, responsibility and controls be significantly tightened and published (see other document Sections for guidance).

3.8.2.2. Consideration be given to independent monitoring of implementation.

ANNEX 1 TO
TI (UK) COLOMBIA VISIT REPORT MARCH 2005

SUPPORTING OPERATIONAL OBSERVATIONS

1. **Introduction.** The major observations in the main body of this report are aimed at protecting against potential corruption, either at the bidding stage or throughout the contract life. The observations in this annex underpin and elaborate the areas where the specification is not clear, and seek also to be helpful in raising for consideration areas for greater clarity and/or greater value for money. Many additional observations were addressed during the in-country visit.

2. **Capability**. The bidding document 'Characteristics' called for day/night, air to ground and air to air operations. The precise CAPABILITY in each role was not defined, such as dash or penetration speed, agility, positive and negative g requirements, ordnance delivery and accuracy. The current and potential threats have not been defined.

2.1 **Stated Requirements**. Whilst some elements such as speed, positive "G" and armament delivery were characteristics defined for evaluation in trials **form 9** of the bid, the required minimum capability, performance and systems accuracy was not. Thus it appears that any aircraft would be appropriate as long as it met a few criteria. Although it may be possible to evaluate some of the more operational factors during flight tests, the test schedules should be the same for each candidate aircraft if an accurate comparison is to be made. Also, it was unclear how any manufacturers claims (requested during evaluation) could be substantiated without an integrated system test.

2.2 **Requirements and Assessment**. The FAC indicated that combat agility within the air to air environment was not required due to likely target performance. Weapons accuracy was now in the specifications and it was accepted that a full assessment of integrated airframes and weapons systems were unlikely to be achieved. It was recommended that penalty clauses be put in place to be enacted if bidder accuracy claims failed to meet their stated specifications.

2.3 **Recommendations**. It was recommended that:

2.3.1. Penalty clauses be inserted into the contract to be implemented if stated bidder performance/system accuracy is unachieveable.

3. **Turboprop and Turbofan Solutions**. Acceptance of both turboprop and turbofan solutions would complicate both operational and value for money assessments. Performance, capability and longer term potential for each power plant/airframe option differ. Clear combat effectiveness definitions are therefore crucial. Similarly, cost options are broad with the turbofan aircraft likely to be more expensive to acquire and to operate through life. This clearly impacts on initial capital purchase as well as support budgets. Also, it was unclear whether the 'minimum' requirement of 22 airframes was achievable (together with systems, training and whole life costs) within the stated Colombian budget.

3.1 **Requirement Clarification**. Helpfully, the FAC clarified that: the acquisition process was aimed at the aircraft currently available on the market; combined turboprop and turbofan solutions would not be accepted; airframes would have the specified characteristics within the assigned budget; all options were to be considered. However, CAPABILITIES of turbo prop and turbo fan aircraft differ – as do through life costs. Without a declared CAPABILITY required it was unclear how a balanced evaluation could take place. It was also understood that the budget was fixed and the aim was to get the most effective aircraft/systems within the available monies.

3.2 **Deployment/Numbers**. The FAC indicated that within the required operational deployments and numbers it was unlikely that there would be sufficient turbo fans offered by bidders. However, this could not be discounted and turbo fans therefore remained as possible candidate aircraft. Whilst acceptable, it is likely that through life costs would militate against turbo fan airframes. Similarly, the rationale for a 'minimum of 22' airframes acquisition was unstated

I. ***4. The Rationale for New Aircraft was Unclear.*** *Specification within the bidding documents that airframes must be new rules out possibly cost effective equipment cascading from supportive Governments or the open market. The evaluation criteria could equally well apply to used aircraft.*

4.1 **New Airframe Justification**. The FAC justification for new airframes lay, understandably, in the preference for low cost operations over a protracted period of time and the likelihood of no further major investment in the medium term

4.2 **Value for Money**. Whilst new aircraft may offer advantages over cascaded equipment, they do not always offer best value for money. The rationale for new/used should be stated together with any supporting logic for transparency reasons.

4.3 **Recommendation**: It was recommended that:

4.3.1. Analysis of new v used with value for money supporting data be included in the bidding document

5. **Inadequate Weapons Specifications.** It was considered that the bid documentation requirement concentrated on the airframe and only outlined the equipment/ systems; in particular it did not specify precisely the required weapon capability and accuracy.

5.1 **Bid Rationale**. The FAC considered, correctly, that evaluation would be difficult as it was unlikely that all competing aircraft would be equipped with the systems being considered/being offered. Additionally, however, the FAC indicated that *]* certification would be required on weapons system harmonization accuracy together with guarantees.

5.2 **Weapons Accuracy**. It was accepted that the trials aircraft were unlikely to be equipped with the potential weapons inventory and the certification for harmonization and accuracy was welcomed. However, there appears to be NO indication of the degree of accuracy REQUIRED by the FAC. Any system changes to gain a subsequent tighter accuracy would probably be expensive, guarantees/penalties should be considered. During discussions, it was subsequently understood that the FAC would use primarily dumb weapons but would integrate a laser capability post contract award. It was understood that dumb bomb accuracy requirements had now been included within the contract documents. However, it was unclear if gun accuracy had been addressed. If not, it was recommended that this be done. The FAC have also indicated that penalty clauses would now be included in case bidder declared accuracy was not achieved.

5.3 **Recommendation**. It was recommended that:

5.3.1. Unless already specified, gun accuracy requirements should be included in the TOR documentation.

6. Intentionally blank

7. **Inadequate Emphasis on Initial and Through Life Training.** Six IP pilot and 4 MTP basic conversion requirements were clear in the bidding documents. However, neither requirement for air to air combat nor the precise **standard** required at the end of the training was covered (this also applied to the initial conversion of engineering personnel). Unless clearly defined, it was possible that additional training would be required in country at additional cost and to the detriment of the planned FAC conversion programme. Also, the requirement to provide a minimum of 4 and a maximum of 10 workstations for engineering and pilot training was viewed as too simplistic. Additionally, the specification should include the requirement, and costs, for: hardware and software updating; the periodicity of updates; the design/approval authority for revisions; the availability for local revisions; and the IPR for software or hardware.

7.1 **Training Adjustments**. It was understood that work to define the standard training profile required by pilots and technical personnel was in hand. The FAC indicated that work was now underway to refine the detailed requirement for computer based training aids. Additionally, advisory services for one year in-country for 2 instructor pilots had already been included at no additional cost. Whilst welcomed, the documents should also determine the exact STANDARD that factory trained FAC pilots should achieve before returning to Colombia. It was recommended that the exact flying training profiles and graduation standard from factory courses for the first pilots should be very carefully considered and bidding documents adjusted accordingly.

7.2 **Recommendation.** It was recommended that:

7.2.1. All training profiles and graduation standard from factory courses should be considered and bidding document refined if necessary.

8. **Threat and Protection/Countermeasures Requirement Unclear.** Potential threat and required protection/countermeasures was considered to have been inadequately defined. Whilst MAWS (Missile Approach Warning System) and the use of flares was addressed, there was no indication of a requirement for the use of chaff dispensers or IR (Infra Red) countermeasures. Also, there was NO indication of how missile details for the Defensive Aids Suite would be stored, transferred to the aircraft's systems or more importantly upgraded. This was a sensitive intelligence matter and could involve costly and very short notice software revisions. Similarly, the precise capability of aircraft armour and fuel/component protection was not specified.

8.1 **Operational Threat**. It was confirmed, verbally by the FAC, that the major in-theatre aircraft threat was from IR missiles and non conventional weapons (hand made). For this reason the use of chaff had not been considered, although provisions had been made for future installation if required.

8.2 **Defensive Aids**. Defensive aids selection was viewed an important factor and the use of IR jammers should be considered, if only to be rejected. However, there was NO indication of how the systems were to be supported and upgraded following threat change. This was assessed as a most important operational factor which could be very costly if ignored. It was understood that the FAC preference was for flares. It was recommended that the FAC determine mechanisms, costs and funding required to upgrade the Defensive Aids Suite (DAS) with timely software data and revised flare characteristics to counter new threats.

8.3 **Recommendation:** It was recommended that:

8.3.1 DAS support and upgrade mechanisms and funding be determined.

9. **Requirement to Limit Aircraft and Support to 20 Years Unclear.** Combat and attrition uses and losses notwithstanding, modern aircraft normally have at least a 30, and more probably a 40 year life. Cascading combat aircraft to the training role was also, at times, a cost effective solution. Cost amortization therefore over a 20 year period would not appear to give value for money.

9.2 It is understood that the FAC have extended the operational life potential to 30 years.

10. **Aircraft Specifications Fail to Consider Future Growth.** The Terms of Reference appear to be focused very much on today's requirements and do not consider the likely threats or potential aircraft performance requirements in the future. Capability expansion of hardware, software and systems were considered important factors in through life airframe operation. An example was the currently specified intercept air speed (220 kts), which was likely to be too low in the future.

10.1 **Military Standards**. The FAC confirmed that a requirement for Plug and Play systems will be added, as described in MIL-STD 1553, thus facilitating the future addition of weapons.

10.2 **Growth Potential**. Whilst it was accepted that it would be impossible to identify future weapon requirements in the long term, any such systems that are being considered by the FAC should be addressed so that any airframe build factors can be determined and incorporated during airframe construction if they provide value for money. However, the potential growth of the aircraft (airframe, engine etc) should also be considered. Manufacturers may not wish to discuss long term potential. This could be that there is unlikely to be any growth left in their airframe or systems, or that any upgrades would be costly and therefore lucrative for the Company. Clarity in order to achieve best operational profile and value for money was suggested**.**

10.3 **Recommendation.** It was recommended that:

10.3.1. Growth potential (and likely costs) be explored with bidders to ensure best operational and monetary value in the future.

11. **Value for Money .** Value for money could have received more consideration. The basic (essential) requirements were unclear. Future upgrades in aircraft, systems, or support facility performance were considered likely to be expensive. Of particular importance were: consideration of whole life

costs; post warranty costs; logistics support post 2 year warranty; all software and training upgrades; and planning for unforeseen contingencies.

11.1 **Life Costs**. Work to determine life costs had been undertaken by the FAC using estimated costs per flown hour including all maintenance, materials and man hour factors. Software upgrade requirements for training systems like CBT would now be further expanded, particularly the requirements for work stations. However, post warranty and ALL through life costs were important factors which should be considered in order to give best value for money.

11.2 **Recommendation**. It was recommended that:

11.2.1 Post warranty and ALL through life costs be explored/confirmed in order to achieve best value for money assessment in the economic evaluation

12. **Internal Baseline Cost Comparison Omitted.** An internal baseline cost comparison appears not to have been considered.

12.1 **Comparison Confirmation**. It was confirmed that the FAC had conducted a prior marketing study that foresaw the acquisition of 24 aircraft. The study was adjusted to consider initially turboprop aircraft. With turbofan aircraft more expensive, the decision was subsequently made on a minimum baseline requirement of 22

13. **Electronic Documentation Not Considered.** Bidding documents do not consider electronic documentation which many air forces are starting to use. Whilst document formats and media were considered to be very much an FAC decision, it would be expensive and disruptive to transfer from paper to electronic systems halfway through airframe life.

13.1 **Media Clarification**. The FAC confirmed that documentation will now be required in electronic format. Whilst there are many advantages to the new format, it was considered essential that there was a full support and upgrade system in place and funded during the life of the contact. It was recommended that the FAC specify precise requirements, determine costs through life and mechanism/costs for upgrades.

13.2 **Recommendations**. It was recommended that:

13.2.2 Precise documentation/media requirements, costs, routine operation and upgrade mechanisms be specified and funding identified.

ANNEX 2 TO
TI (UK) COLOMBIA REPORT MARCH 2005

CONTRACTUAL AND COMMERCIAL OBSERVATIONS
CONTRACTUAL OBSERVATIONS

1. **Introduction**. For document completeness, contractual and commercial observations, originally forwarded at the end of January 2005, but not discussed at the meeting in Columbia, are included. They are raised for consideration by the Ministry of Defence.

1. **Law.** Clause 1.3 states that the law applicable for selection and contract is Colombian but there is an implication that this is for routine operation of the process. Section 4 discusses procedures for arbitration termination etc. but does not define ultimate legal authority. Use of plain language where possible would be wise.

2. **Bidders Payment Post Contract.** This vital area is not covered except that the Bonds and Performance Guarantees run, without extension to contract, beyond the contract period. The key issues here are Variation Orders, discussed under 'Post Contract Stage' and the cost of the 20-year logistic support guarantee.

3. **Unusual Terms.** The anti-corruption measures are clearly unusual. Clause 3.1.3.2 is interesting and requires a representative/proxy *domiciled* in Colombia and *with* power of attorney. The rationale for this is unclear and it is suspected that major contractors would be very uneasy with the requirement – it could well be that this will need revision following the Preliminary Informative Hearing.

4. **Access To Information.** Clause 23 mandates the release of information covered by copyright and/or confidentiality agreements to the Supervisor. There is no mention of confidential i.e. classified, material. It needs to be made clear that all the information released to the Supervisor, duly protected, will be made available to the Project Manager and Office. Indeed it would be preferable if the Clause merely referred to those appointed by the Ministry to exercise control etc.…

5. **Exchange Rate.** Clause 64 stipulates the currency as being the US Dollar – where conversion has to take place e.g. for the payment of local services by the Contractor or payment by the Ministry, then the exchange rate valid at the time of conversion should be used i.e. exchange rate fluctuations are the liability of the party making the US Dollar payments.

6. **Pricing.** Clause 3.4 requires that the prices be fixed and firm. Clause 32.2 requires the Contractor to take liability for and accept the risk of any cost rises in equipment specified in the bid.

7. **Decision To Re-Start Process.** Clause 1.7 states that Bidders who have already acquired the TORs do not have to acquire them again – clarification is needed on the acquisition of possibly revised TORs and whether a further payment has to be made.

8. **Personal Risk.** Risks to be covered under Clause 1.18.1 are unclear.

9. **Finance.** It is noted that there is a requirement for both a Bid Bond and insurance as a Performance Guarantee. Rough calculations show that the Government is fully covered with the proposed payment schedule allowing insurance equity. The procedures for the calling in of the insurance cover, and for non-performance fines, are laid out but would need very careful process control if ever activated. The individual liabilities of entities being part of a consortium and/or the apportionment of performance guarantee insurance is not clear. The guarantee, like the Bond, is provided by the consortium and should be valid for the 2 years post final delivery specified for consortium existence.

10. **Delivery Evaluation.** The delivery evaluation criteria fails to include penalty clauses for late delivery, manufacture to incorrect specification, or failure to maintain serviceability factors.

11. **Offsets.** Whilst there is provision for a Framework Agreement on Offsets prior to contract award, it is not clear what the actual Offset Agreement (Contract) will look like.
Clause 4.2 refers to an 'obligation' on the part of the Supplier and 'verifiable economic benefits' but there is no mention of monitoring the performance of any Offset arrangements beyond 30% half way through the procurement contract. Similarly, failure to deliver does not appear to be a reason for termination and/or penalty.

12. **'Nature, Object and Scope of the Agreement' (Ref Annex 3 Contract minute of the Terms of Reference).** The section 'Nature, Object and Scope of the Agreement' from page 77 onwards, is imprecise:

> Clause 1 fails to address through life costs and is unspecific about the 'guarantees required by the Columbian air force'
>
> Several definitions in Clause 4 e.g. Amicable Technical Composition, Conciliation and Arbitration Tribunal, do not cover the selection and payment of the mediating entity.

Clause 5 covers ready use spares only and fails to address longer term, ideally through life, items.

Clause 7 covers the 2-year initial warranty, but fails to consider the longer term. The 2 year period is unclear - is it a 24 month period upon contract commencement? Since delivery is over a protracted period does it mean that some aircraft will be under warranty when others are not ? Annex 2A, however, is more specific and indicates an 18 month warranty per aircraft. Furthermore there is no penalty clause on warranty should the aircraft fail to perform to the 'originally specified contract' it should state that all remedial work will be completed free by the contractor, or the FAC recompensed for work done. Finally, as some of the equipment integration will probably be specific to type and operator, the Intellectual Property Rights (IPR) for that integration should be allocated (ideally to the FAC in case of disposal sales).

Clause 20 fails to address long term responsibilities for IPR provision, and costs of procurement, for updating all training materials, especially in electronic and hard copy formats.

Clause 22 should contain penalty elements in the event that the provided aircraft, equipment (air and ground), software and spares do not work as per contract, or are provided outside of the agreed contract provision specification.

Clause 29, whilst addressing 'day of delay', fails to define to what that refers; this could be a whole airframe or a small retaining screw. It is also unclear whether it refers only to hardware or also to software. Similarly, the Clause fails to consider the performance of the aircraft on delivery (and for a subsequent undefined period) as well as spares and support equipment delivery.

Clause 32.1 fails to consider the costs, timescales and responsibilities for the continued upgrading of software. This could well be a major cost in the future, especially as modern defensive suits are used.

Clause 56 is poorly worded. Allocation of blame normally means that one party has to pay - invariably this means that the Government finds the costs. This might be inappropriate at times and could be prevented by tighter wording.

13. **Positive Aspects of Note.** There is much that is good in the documentation and the following items are worthy of particular note:

Third Parties: There is provision for third party advice.

Pre-Bid Process: Clause 1.8 stresses due diligence of interpretation on behalf of the Contractor but great care will need to be taken that a Bidder has not been given incorrect information.
Tender Process: The Preliminary Informative Hearing and the Hearing for Clarification of TORs (Clauses 1.10/1.11) are sound. Similarly the dissemination of questions and answers is good practice.
Bid Costs: The responsibility of the Bidder, whether successful or not.
Evaluation Process: No communication is allowed during this process.
Reasons for Rejection: Clause 1.20 is comprehensive and includes anti-corruption detail.
Prices: These are to be firm and fixed.

COMMERCIAL OBSERVATIONS

14. **Pre-Selection.** The pre-selection specification is so loose that there would not appear to any pre-determined favourite. However, Section 3 details 'Capacity to Contract' criteria (150%) which would tend to favour very large organisations.

15. **Weighting of Government Bids** The rationale for the inclusion of an additional score of 3% for bids generated by government bids is unclear since other elements of the TORs refer to Bidders who must have manufactured the airframes.

16. **Cost Saving Negotiations.** A further round (or rounds) of negotiations, culminating in 'best and final' offers would be useful following the trials and clarification discussions in order to refine any contractual factors as well as to seek to drive down costs. This is also a major value for money consideration. **Afternote**: It may need to be checked whether subjective assessments and negotiation rounds are contrary to Colombian Law.

17. **Post Contract Stage**. The key item post contract is the logistics contract current implication is that the successful Bidder will get this contract but it would be preferable if the Bidder was required to offer the 20-year guarantee but that the Ministry was not bound to accept the terms

TENDER EVALUATION CRITERIA

18. **Main Contract.** Whilst there are clearly defined criteria for evaluating operational performance, the validity of the formulae, presumably borrowed (from a Contractor ?) have not been examined in any detail – there is a suspicion, however, that evaluation can only be subjective despite the formulae. It is not clear how differing performance/functionality characteristics of electronic systems are to be evaluated.

19. **Offset Contract.** The criteria for the evaluation of the Offset proposals are unclear, and need considerable work. For example, the Offset proposal, whilst

subject to economic evaluation, appears to be subject to negotiation at the 'Framework' stage *after* the preferred Bidder has been publicly identified.

SCOPE FOR CORRUPTION

20. **Confidential Information.** Clause 1.14.1.c needs to address the issue of the dissemination of 'confidential' information at the bid phase. If not, then the clause could be used as justification for not keeping all parties equally informed.

21. **Lack of Project Management Procedures.** There has been repeated mention of the need for proper procedures and processes for the routine management of the contract and for dealing with variations (see 'Audit Trails' below). These procedures will not only reduce the risk of overrun and overspend but also severely curtail opportunities for abuse.

22. **Authorised Payments.** Whilst there is provision for payment of salaries/fees to Colombian citizens the accommodation/travel/subsistence costs paid on the behalf of personnel under training, the Supervisor and Project Manager need to be agreed and transparent. There needs to be a separate clause stating that costs for other personnel visiting the Contractor's country e.g. Generals/Senior Officials, are not to be borne by the Contractor.

23. **Employment & Financial Interest.** It will be very difficult to enforce in the long term but no official associated with either the main, logistics or offset contracts should be allowed employment with any of the Contractors involved. Practicality might suggest that cookie cutters of the (equivalent) rank of Lieutenant/Captain and 2 years be applied. There will be a plethora of (sub-contracting) companies created out of the three contracts and no official, or a close relative, should buy or receive shares in any of the companies.

24. **Audit Trails.** The process whereby the Draft TORs and Technical Specifications are modified and firmed up prior to the start of the actual bid process needs to be strictly controlled. Similarly any variations to contract require a similar process. Processes should define the whole operation of the Supervisor, Project Manager, State Contracting Group and Project Office and include the levels of authorisation required for various functions, the supporting analysis needed and the witnessing and transcription of most meetings with the Contractor or his representative.

25. **Anti-Corruption Form 7.** Clause One comments regarding Bidder anti corruption is sound, but the penultimate paragraph on page 135 could be tightened. Whilst observing the laws of the Republic of Colombia in country is clear, it could be construed that payment could be made outside of the National boundaries.