

INTEGRITY PACT USED IN THE CASE OF THE BERLIN AIRPORT

between _____ and _____ [Company details]

Flughafen Berlin-Schönefeld GmbH
Flughafen Schönefeld
12521 Berlin Schönefeld

hereafter called the Principal

hereafter called the Bidder/Contractor

PREAMBLE

The Principal intends to award, under the procedures prescribed by law, a number of contracts for developing the present Berlin-Schönefeld Airport into the Berlin-Brandenburg International Airport (BBI). This concerns in particular architectural, engineering and construction contracts. The Principal attaches great importance to full compliance with all relevant laws and regulations, and the principles of economical use of resources, and of fairness and transparency in its relations with its Contractors.

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organisation, Transparency International (TI). Following TI's national and international experience, the Principal has appointed an external independent monitor who will, until the BBI is completed and put into service, accompany and monitor the tender processes and the execution of the contracts for compliance with the principles mentioned above.

§ 1 COMMITMENTS OF THE PRINCIPAL

- (1) The Principal commits itself to taking all measures necessary to prevent corruption and to observe the following principles:
 1. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of, a contract demand, accept a promise for or accept, for him/herself or a third person, any material or immaterial benefit to which he/she is not legally entitled.
 2. The Principal will, during the tender process, treat all Bidders alike, in compliance with the relevant provisions of the GWB and the *Vergabeverordnung* [regulations on procurement awards]. The Principal will in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.
 3. The Principal will exclude from the process any prejudiced persons, in accordance with the provisions of § 16 *Vergabeverordnung* (VgV).
- (2) If the Principal obtains information on the conduct of any of its employees which constitutes a criminal offence under the corruption sections, in particular the §§ 298, 299, 331-335 StGB, or if there should be a concrete suspicion in this regard, the Principal will inform the State Prosecutor's Office and in addition can initiate disciplinary or civil sanctions.

§ 2 COMMITMENTS OF THE BIDDER/CONTRACTOR

- (1) The Bidder/Contractor commits himself to take all measures necessary to prevent corruption. He commits himself to observing the following principles during his participation in the tender process and during the contract execution:
 1. The Bidder/Contractor will not offer, promise or give to the Principal, to any of the Principal's employees involved in the tender process or the execution of the contract, or to any third person any material or immaterial benefit to which he/she is not legally entitled, in order to obtain in exchange an advantage during the tender process or the execution of the contract.
 2. The Bidder/Contractor will not enter with other Bidders into any illegal agreement, which would constitute a violation of the relevant provisions of the Contract Award Regulations, § 16 VgV, the UWG, the GWB, the Anti-Corruption Law or the StGB. This applies in particular to agreements regarding prices, price components, prohibited price recommendations, the participation in recommendations or agreements concerning the submission or non-submission of bids, or similar conduct.
 3. The Bidder/Contractor will not commit any criminal offence against §§ 298, 299, 333, 334 StGB, or §§ 17, 18 UWG. Beyond § 18 UWG, the Bidder /Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained on diskettes or other data carriers.
 4. The Bidder/Contractor will, when presenting his bid, disclose any payments he has made, is committed to making or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder/Contractor will not instigate third persons to commit offences according to paragraph 1, sentence 2, numbers 1-3, or be an accessory to such offences.

§ 3 DISQUALIFICATION FROM THE TENDER PROCESS AND EXCLUSION FROM FUTURE CONTRACTS

- (1) If the Bidder, before contract award, has committed a serious transgression through a violation of § 2 or in any other form such as to put his reliability as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for a 'significant reason'.
- (2) If the Contractor, after the contract has been awarded to him, has committed a serious transgression through a violation of § 2 or in any other form such as to put his reliability as Bidder into question, the Principal is entitled to give notice of cancellation for a 'significant reason'.
- (3) If the Bidder/Contractor has committed a serious transgression through a violation of § 2 such as to put his reliability into question, the Principal is also entitled to exclude the Bidder/Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of damage. The exclusion will be imposed for a minimum of six months and a maximum of three years.
- (4) If the Bidder/Contractor can prove that he has restored the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.
- (5) A transgression in terms of the Nr.1-3 above is considered to have occurred if, in light of all evidence, no reasonable doubt is possible.

§ 4 COMPENSATION FOR DAMAGES

- (1) If the Principal has disqualified the Bidder from the tender process prior to the award according to § 3, the Principal is entitled to demand from the Bidder liquidated damages equivalent to three per cent of the value of the offer (without options), up to 50,000 EUR.

ANNEX 1

- (2) If the Principal has terminated the contract according to § 3, or if the Principal is entitled to terminate the contract according to §3, the Principal is entitled to demand from the Contractor liquidated damages equivalent to five per cent of the contract value.
- (3) If the Bidder/Contractor can prove that the exclusion of the Bidder from the tender process or the termination of the contract after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder/Contractor must compensate for the damage only to the value of the amount proven. If the Principal can prove that the value of the damage caused by the disqualification of the Bidder before contract award or the termination of the contract after contract award is higher than the amount of the liquidated damages, it is entitled to claim compensation for the higher amount of damages.

§ 5 PREVIOUS TRANSGRESSIONS

- (1) The Bidder declares that no severe previous transgressions occurred in the last three years that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statements on this subject, he can be disqualified from the tender process, or the contract, if already awarded, can be terminated for a 'significant reason'.

§ 6 EQUAL TREATMENT OF ALL BIDDERS/CONTRACTORS/SUB-CONTRACTORS

- (1) The Bidder/Contractor undertakes to demand from all Sub-contractors a commitment consistent with this integrity pact and to submit it to the Principal before contract signing or, at the latest, before the Principal approves the sub-contracting.
- (2) The Principal will enter into an agreement with the same conditions as this one with all Bidders, Contractors and Sub-contractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this agreement or who violate its provisions.

§ 7 CRIMINAL CHARGES AGAINST VIOLATING BIDDERS/CONTRACTORS/SUB-CONTRACTORS

If the Principal obtains knowledge of conduct by a Bidder, Contractor or Sub-contractor, or by an employee of a Bidder, Contractor or Sub-contractor, which constitutes a corruption-related crime, or if the Principal has a concrete suspicion in this regard, the Principal will inform the State Prosecutor's Office.

§ 8 EXTERNAL INDEPENDENT MONITOR

- (1) The Principal appoints a suitably qualified external independent Monitor for the period until completion of the BBI project. The task of the Monitor is to review, independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions from the representatives of the parties and performs his functions neutrally and independently. He reports to the Principal's Management and the Chairperson of the Supervisory Board.

- (3) The Monitor has the right of access without restriction to all the Principal's project documentation. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unlimited access to his project documentation. The same is applicable to Sub-contractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/Contractor/Sub-contractor with confidentiality.
- (4) The Principal will provide the Monitor with sufficient information about all meetings among the parties related to the Project, provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties will offer the Monitor the option to participate in such meetings. With regard to meetings of the parties' decision-making bodies ('organs'), the right of the Monitor to participate will be determined by such organs.
- (5) As soon as the Monitor notices, or believes he notices, a violation of this agreement, he will inform the Management of the Principal and request the Management to discontinue or correct the violation, or to take other relevant action. In this regard, the Monitor can submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (6) The Monitor will regularly submit a written report to the Chairperson of the Supervisory Board of the Principal and, should the occasion arise, submit proposals for correcting problematic situations. The Chairperson of the Supervisory Board will transmit these reports in appropriate form to the members of the Supervisory Board.
- (7) If the Monitor has reported to the Chairperson of the Supervisory Board a substantiated suspicion of an offence against the corruption-related criminal laws, and the Chairperson has not, within reasonable time, taken visible action to proceed against such an offence or reported it to the State Prosecutor's Office, the Monitor may also transmit this information directly to the State Prosecutor's Office.

§ 9 CONTRACT DURATION

This agreement begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the respective contract, and for all other Bidders 12 months after the contract has been awarded.

§ 10 OTHER PROVISIONS

- (1) This agreement is subject to German substantive law. The place of performance and jurisdiction is the headquarters of the Principal.
- (2) Changes and supplements, as well as termination notices, must be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement closest to their original intentions.

Schönefeld, on the [date]

(Signature of the Principal)

(Signatures of Bidders/Contractors)