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CICA Position Paper on Clause 15.6 “Corrupt or Fraudulent Practices” of the Multilateral Development Banks’ Harmonized Master Procurement Document (MPD) for Civil Works

Following a number of meetings between Multilateral Development Banks’ Head of Procurements and the Confederation of International Contractors’ Associations (CICA) which took place over the period 2006/2009, several adjustments to the General Conditions of Contract (GCCs) in the Multilateral Development Banks’ Harmonized Master Procurement Document (MPD) for Civil Works were agreed.

Discussion took place in Thessaloniki on November 2-3, 2009 between Multilateral Development Banks’ Head of Procurements, CICA and the International Federation of Consulting Engineers (FIDIC) on the **revision of the Multilateral Development Banks’ Harmonized Master Procurement Document (MPD) for Civil Works (revision August 2009), in particular its Article 15.6 “Corrupt or Fraudulent Practices”**.

An important disagreement persisted on GC 15.6 “Corrupt or Fraudulent Practices”.



GC 15.6 “Corrupt or Fraudulent Practices” provides notably that *“If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor’s employment under the contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Clause 15.2 [Termination by Employer]”*.

However, **GC 15.6 does not provide for similar rights to the Contractor, i.e. the termination of the Contract in case of determination of corrupt and fraudulent practices by the Employer [Termination by Contractor]**.

CICA made clear that CICA is in total disagreement on clause 15.6 of MPD.

CICA stresses the need to be “Two to Tango” to fight against corruption so as to take into account the three partners in WB-financed construction projects: the Engineer, the Employer and the Contractor.

¹ The **Confederation of International Contractors’ Associations (CICA)** represents the Construction Industry at the world level. The Worldwide Construction Industry, involving contractors of all sizes, represents a global turnover of US\$ 4.8 trillion and employs around 120 million employees.



The responsibilities and tools in regards with anti-corruption are not well balanced for the Contractors.

CICA points out that there should be a more balanced approach in MDBs' procurement standard documents to make provision for active tools for the Contractors to prevent and fight against fraud and corruption.

As for Article 15.6 of the revised MPD, CICA regrets the lack of reciprocity for Contractors as for their tools to fight corruption. Thereof, CICA proposes to include in this clause alternative proposals, such as:

- **The mirror clause:**
GC 15.6 shall allow for the symmetry to the treatment of fraud and corruption between the parties and thereof provides for similar rights to Contractors, i.e. the termination of the Contract by the Contractor in case of determination of corrupt and fraudulent practices by the Employer.
- **The possibility to involve a third party:**
The MPD shall allow for the possibility of proposing to use an external party to the Contract and the Country (upon whom the Parties must agree before signing the Contract), who is able to determine quickly (if necessary with interim measures) if any act of corruption occurred so as to give rise to the termination of the Contract.

CICA PROPOSALS

1. Providing the above mentioned arguments, CICA proposes to MDBs and FIDIC to re-discuss the revision of the MPD as for its current Article 15.6 "Corrupt or Fraudulent Practices".

2. More generally, CICA and its Member Federations, along with their National Federations and their Companies, are ready to **accompany MDBs to design and make provision in their procurement standard documents for active tools to Contractors to prevent and fight fraud and corruption.**

