

TRANSPORT FOR LONDON

AUDIT COMMITTEE

SUBJECT: TFL ANTI FRAUD AND CORRUPTION POLICY – APPLICABILITY TO SUPPLY CHAIN

DATE: 4 MARCH 2010

1 PURPOSE AND DECISION REQUIRED

- 1.1 At the TfL Board meeting on 21 October 2009, the Board approved a revised TfL Anti Fraud and Corruption Policy. The Board asked that a report be submitted to a future meeting of the Audit Committee explaining how the Policy applied to TfL's supply chain.
- 1.2 The purpose of this report is to provide that explanation. The Committee is asked to note this report.

2 BACKGROUND

- 2.1 The revised TfL Anti Fraud and Corruption Policy was approved by the TfL Board on 21 October 2009. The Board wished to understand how this Policy applies to TfL's supply chain.
- 2.2 The means by which the Policy is made applicable to TfL's supply chain is through the use of appropriate clauses in TfL's standard forms of contract with its suppliers as set out below.

3 TfL STANDARD FORMS OF CONTRACT

- 3.1 TfL has a standard form of contract for any engineering and construction work associated with TfL's Investment Programme. This is based on industry standard the New Engineering Contract 3rd Edition Form of Contract ('NEC3') and incorporating some TfL specific additions, the so called 'Z-clauses'. The NEC3 contract requires contractors and sub contractors to comply with all relevant TfL policies including business ethics. In addition, there are specific clauses covering conflict of interest, corrupt gifts, fraud and the payment of commission. There is a clause covering TfL's audit and inspection rights covering TfL's right of access to all records and senior personnel.
- 3.2 In addition, General Counsel provides a standard contract with guidance notes, for other non-engineering contracts. This standard contract also has clauses relevant to compliance with policies, conflict of interest, corrupt gifts, and the payment of commission and audit and inspection. The wording in both types of contract is the same or very similar.
- 3.3 Details of the relevant clauses from the NEC3 contract are set out in the Appendix 1 to this report.

4 CONTRACTUAL COMPLIANCE

- 4.1 TfL does not actively review compliance with these clauses, since to do so would require a significant resource. However, where TfL does become aware of a potential breach of these clauses (and hence the contract), TfL takes appropriate action to enforce the contract. In particular, Internal Audit carries out investigations into all allegations of fraud or corruption involving contracts.
- 4.2 In addition, the contract audits carried out by Internal Audit on an ongoing basis provide some assurance over supplier compliance with contracts. Some specific audit work is planned during 2010/11 which will include a review of compliance with contractual clauses within the supply chain.

5 CRIME AND DISORDER

- 5.1 The TfL Anti Fraud and Corruption Policy is specifically designed to address crime being committed against TfL and its staff.

6 EQUALITY

- 6.1 The Policy applies to all TfL staff, including agency staff and contractors. The contract clauses apply to suppliers and their staff.

7 RECOMMENDATION

- 7.1 The Audit Committee is asked to NOTE the content of this report.

8 CONTACT

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CLAUSES WITHIN THE NEC3 CONTRACT RELEVANT TO THE TFL ANTI FRAUD AND CORRUPTION POLICY

Compliance with TfL Policies throughout the Supply Chain

Clause Z9.2 states that “The *Contractor* undertakes that all its personnel and those of its Subcontractors and Indirect Subcontractors comply with all of the *Employer’s* policies and standards that are relevant to the provision of the *works*, including those relating to safety, security, business ethics, responsible procurement, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the *Employer* for personnel working at TfL Premises or accessing the *Employer’s* computer systems. The *Employer* provides the *Contractor* with copies of such policies on request.”

The footnote to this clause states that this is a “Standard clause that TfL require to promote compliance with TfL’s policies throughout the supply chain.”

Other Clauses Connected to Fraud and Corruption

Clause Z8 covers conflict of interest and states that:

- (a) “The *Contractor* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the *works* or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.” (Clause Z8.1)
- (b) “The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the *works* under this contract or any member of the TfL Group and shall work with the *Employer* to do whatever is necessary (including the separation of staff working on, and data relating to, the *work* from the matter in question) to manage such conflict to the *Employer’s* satisfaction, provided that, where the *Employer* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.” (Clause Z8.2).
- (c) The footnote to Clause Z8 states that this clause is a “Standard TfL corporate requirement to promote good corporate governance and ensure that TfL is not affected by a conflict”.

Clause Z11 covers corrupt gifts, fraud and the payment of commission. The clause states:

- (a) “The *Contractor* does not, and ensures that its employees, agents Subcontractors and Indirect Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the *Employer* or any member of the TfL Group nor favour any employee, officer or agent of the *Employer* or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with

- (b) employees, officers or agents of the *Employer* or any member of the TfL Group other than as a representative of the *Employer*, without the *Employer's* prior written approval.” (Clause Z11.1)
- (c) “If any fraudulent activity comes to the attention of the *Contractor* in relation to this contract the *Contractor* notifies the *Employer* by the most expeditious means available. The *Contractor* cooperates with the *Employer* in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under the contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Contractor* ensures that no fraudulent activity is committed by the *Contractor*, its agents, employees, Subcontractors or Indirect Subcontractors.” (Clause Z11.2)
- (c) “The *Employer* has the right to audit any and all such records necessary to confirm compliance with clause Z11.1 and Z11.2 at any time during the duration of this contract and during the 6 year period following expiry or termination of this contract. Breach of clause Z11.1 and/or Z11.2 shall entitle the *Employer* to terminate this contract and any other contracts between the *Contractor* and the TfL Group immediately.” (Clause Z11.3)
- (d) “In the event of any breach of this clause Z11 by the *Contractor* the *Employer* recovers any loss liability or damage incurred or suffered as a result of the breach of this clause by the *Contractor*.” (Clause Z11.4)
- (e) The footnote to Clause Z11 states that this is a “Standard TfL requirement. It ensures that members of the TfL Group do not receive corrupt gifts from the *Contractor*/Subcontractors or receive favours which could imply inducement or reward in return for favourable treatment. It also ensures TfL is notified of fraudulent activity”.

Records, Audit and Inspection

Clause Z10 covers TfL's right to audit contractors and sub contractors. Clause Z10.3 states that:

- (a) “The *Contractor* undertakes and procures that his Subcontractors and Indirect Subcontractors undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and/or any novated *Employer* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Contractor's* technical and organisational security measures for the protection of personal data, any aspect of the *Contractor's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* and any novated *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Contractor* and/or his Subcontractors and Indirect Subcontractors including, without limitation, the Records.”

Clause Z10.4 states that:

- (a) “The *Contractor* promptly provides (and procures that his Subcontractors and Indirect Subcontractors promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:
 - (i) granting or procuring the grant of access to any premises used in the *Contractor’s* performance of this contract, whether the *Contractor’s* own premises or otherwise,
 - (ii) making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
 - (iii) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer’s* and/or any novated *Employer’s* auditor and/or granting copying facilities to the *Employer’s* and/or any novated *Employer’s* auditor for the purposes of making such copies, and
 - (iv) complying with the *Employer’s* and/or any novated *Employer’s* reasonable requests for access to senior personnel engaged by the Contractor in the performance of this contract and/or the *works*.”