

CONTRACT CONTAGION

CORRUPTION & RACKETEERING
WITHIN INTERNATIONAL OIL COMPANIES.
A NIGER DELTA STUDY

*THIS REPORT IS DEDICATED TO OUR DEAR FRIEND, WHO
WAS TRAGICALLY KILLED IN HIS LIFELONG PURSUIT;
HELPING OTHERS TO IMPROVE THE NIGER DELTA.*

*THIS IS AN IMPORTANT REMINDER OF THE DANGERS THAT
SOME OF US CURRENTLY CHOOSE TO FACE TO ENSURE THE
NEXT GENERATION DOES NOT HAVE TO.*

*WE HAVE A COLLECTIVE RESPONSIBILITY TO ADDRESS
TODAY'S CHALLENGES FOR A BETTER TOMORROW.*

*YOUR HONESTY, INTEGRITY AND DEDICATION
INSPIRED US ALL.*

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The publishing of this report was financially supported by the Embassy of the Kingdom of the Netherlands in Nigeria. The views presented in this report do not necessarily reflect the views of the Embassy of the Kingdom of the Netherlands or the Netherlands Ministry of Foreign Affairs.

1. EXECUTIVE SUMMARY

“THOSE WHO HAVE AUTHORITY TO INFLUENCE CONTRACTS ARE LIKE DEMI-GODS, YOU DON’T DARE CROSS THEIR PATH, IF YOU THREATEN THEIR INTEREST YOU ARE FINISHED...”

Individuals within operating subsidiaries of International Oil Companies (IOCs) have long stood accused of structural and organised corruption within their operations in Nigeria. However, the nature of such practices is opaque with current knowledge based on informal reporting as opposed to a strong understanding of facts, processes and individuals involved.

This issue is caused by people, not process. Individuals within IOC’s are able to abuse, manipulate and defraud internal company policies, procedures and procurement processes to divert contracts through loyalty networks for personal gain. These individuals have operated with impunity and consequently these methods have become accepted and entrenched within the oil-service sector in Nigeria.

The potential implications of IOC’s involvement with such practices are broad through their stock-exchange compliance requirements under the US FCPA and the UK Bribery Act. Considering that major IOC parent companies, operating through subsidiaries in Nigeria, are listed on either the New York or London Stock Exchanges, such implications could be severe, both in terms of reputation and financial penalties.

This investigation and report identifies seven different methods of contract racketeering administered by individuals occupying managerial and decision-making roles within the operating subsidiaries of IOC’s in the Niger Delta, Nigeria.

PROCESS	KEY PERSONS INVOLVED
CONSULTANCY/ THIRD PARTY RACKETEERING	<ul style="list-style-type: none"> • Staff or retired staff of NAPIMS (National Petroleum Investment Management Services (Nigeria)) • NCDMB (Nigerian Content Development & Monitoring Board) • IOC Management Study
TENDER RIGGING	<ul style="list-style-type: none"> • IOC Head of Department • Proxy (relative/ friend/ business-associate/ religious-member/in-law)
DIRECT EQUIPMENT PURCHASE SCHEME	<ul style="list-style-type: none"> • IOC staff member, also a representative of an OEM (Original Equipment Manufacturers) • Proxy (relative/ friend/ business-associate/ religious-member/in-law)
ONLINE PROCUREMENT RIGGING	<ul style="list-style-type: none"> • IOC Management Staff • Proxy (relative/ friend/ business-associate/ religious-member/in-law)
PROFIT-SHARING AND CONTRACT RECYCLING	<ul style="list-style-type: none"> • IOC Management Staff • Host community contractors
OUTSOURCING SCHEME	<ul style="list-style-type: none"> • IOC Manager responsible for procurement of contract staff. • Proxy (relative/ friend/ business-associate/ religious-member/in-law)
PERSONAL COMPANIES	<ul style="list-style-type: none"> • IOC Management Staff • Proxy (relative/ friend/ business-associate/ religious-member/in-law)

IN SUMMARY

- These individuals, in collusion with others, including government officials, have become gatekeepers to millions of dollars of oil-service contracts, generating huge personal fortunes whilst enriching and reinforcing their own patronage networks. Contracts are often awarded based on who you know, not what or how you operate and therefore the sector lacks incentives for service-firms to deliver a quality service, with less than favourable international perceptions of Nigeria being reinforced and not resolved.
- Extrapolating these practices across the majority of oil-service contracts awarded in Nigeria, the aggregate cost of the oil-service sector is likely to be hugely inflated, supporting unnecessarily high costs of extractive operations and directly impacting business profitability, shareholder wealth and international oil prices. More broadly, across IOC Joint Ventures and Production Sharing Contracts with the Federal Government, the inflated oil services sector is also likely to affect the level of taxation paid to the Federal Government, indirectly impacting funding of public services to citizens.
- The identified methods create a system that is resistant to change to a more transparent and competitive system whilst money flows through the patronage networks of key influencers and decision makers within IOCs.
- IOCs frequently emphasise the importance of business codes, conduct and ethics. Core values of honesty, integrity and trust frame their operations that “strive to encourage” competitiveness. These values communicate their responsibilities towards shareholders, customers, employees, business partners and society as a whole. The practices of certain individual positions identified are at odds with this approach to business.
- A corporate culture shift is required. High level IOC staff are wealthy and powerful people compared with the average citizen in Nigerian society. IOC Managers have the opportunity to become gatekeepers and stewards of values as opposed to contracts and patronage.
- Addressing the root of this issue will require IOCs to enforce and entrench their aspirational corporate behavioural values within their operational subsidiaries. The current organisational position seems to be one of acceptance, relying on the limited liability of the veil of incorporation to protect IOC Parent companies from the practices of their operating subsidiaries. This issue highlights the conflicts between a relationship-based culture and a systems-based approach of doing business.
- Outsiders are important to the process; to ensure that robust, rigorous, and regular internal audit processes are implemented by Independent & International Internal Auditors (objective to local corrupt practices) to justify and facilitate change independently and objectively. Senior management both in IOC Group Headquarters and Operating Subsidiaries must acknowledge that this is a significant issue with significant external implications on profitability and shareholder value. Proactive steps must be taken to move away from these practices, supported by Government, civil society and communities.
- Once Senior Management of IOC's and operating subsidiaries collectively agree to change and implement the aspirational operating values across an IOC Group, there will likely be a very positive knock-on effect across other industries, the public sector and Nigerian society as a whole.
- Addressing this structural, endemic and pervasive corrupt culture will increase IOC's reputation, perception, profitability and shareholder wealth (through cost-effective and results-based contracting), whilst supporting governance, environmental and social resolution efforts in a region that so desperately needs it.

2. INTRODUCTION

Individuals within International Oil Companies (IOCs) have long stood accused of structural and organised corruption within their subsidiary operations in Nigeria. However, the nature of such practices is opaque with current knowledge based on informal reporting as opposed to a strong understanding of facts, processes and personnel involved.

These processes are particularly damaging at the community level where people are often killed over contract awards, highlighting the very real risks of reinforcing deeply entrenched and currently accepted adverse business practices.

This culture of “take what you can” and “it’s my turn to take” within the Nigerian oil-service sector has created an environment that allows patrons to accumulate vast wealth administering the diversion of IOC oil-service contracts through personal patronage networks.

In a more general context of Nigerian public procurement, corrupt officials are often accused of using contract fraud to divert funds through loyalty networks to control the “democratic process”. Unfortunately, the wealth flowing through these networks creates substantial inertia to reform, reducing the likelihood of success of non-violent approaches to address these issues. In the Niger Delta, violence is often seen by many as the approach to challenge such a system. This is reinforced by enriched patronage networks acting violently against those who interrupt or compete for profit flows. The difficulties in challenging this well resourced and often violent network is a key reason why patronage based corruption remains a core operational business practice.

Supported by vast numbers of idle youth and economic gains derived from informal economies such as oil theft and illegal oil-refining, in the creeks of the Niger Delta, these practices have become accepted and entrenched. Proceeds are often diverted to fund election campaigns and purchase weapons, increasing the proliferation of arms in the region across election cycles, which in turn increases the state’s securitised response to protect the oil-infrastructure throughout the Niger Delta – the historical source of Nigeria’s wealth.

The purpose of this report is to highlight patronage-based corruption within IOC’s, to promote an understanding of the processes used to divert funds for personal gain; and to support reform efforts towards a more transparent and accountable oil sector within the oil-service sector in Nigeria. Unfortunately, it is these identified practices that continue to support a culture of greed and patronage within the elite of Nigeria. The IOC’s must get their own house in order if they are to request the same standards from Government partners.

The focus and reinforcement of these practices and behaviours, and the drive to accumulate vast individual short term wealth over long term collective development, traps the sector and the Niger Delta in a cycle that severely restricts positive social, political and environmental progress.

RESEARCH SCOPE

Our research and this report has identified and analysed seven different methods of contract racketeering administered by individuals within IOCs.

The findings in this report are based on 16 weeks of field research, undertaken over six months in 2014. A team of researchers performed key informant interviews across two IOCs and 17 oil-service companies operating in the Niger Delta. To ensure the safety of those interviewed, identities have been protected; this report does not ascribe any quotes to individuals. This is in keeping with SDN’s operational research process which seeks to identify trends and solutions without risk to those involved in the research process either as researchers or interviewees.

3. UNDERSTANDING THE CONTEXT: CONTRACT CORRUPTION WITHIN THE NIGERIAN OIL SECTOR

“LET ME TELL YOU THE TRUTH, EVERY SUCCESSFUL CONTRACTOR HAS AN INSIDER OR A FRONT FOR SOME INFLUENTIAL BIG MAN IN THE SYSTEM. YOU CAN’T OPERATE WITHOUT SOMEONE GETTING A CHIP OUT OF THE VALUE OF THE CONTRACT.”

The 2009 U4 Anti-Corruption Resource Centre brief¹ identified six major corruption risk areas within the Nigerian oil sector: the awarding of licenses; the awarding of contracts; bottlenecks and inefficiencies; the role of bunkering; the exportation of crude; and importing refined product.

The contract award process is facilitated by both public and private actors, and therefore a holistic view of the contracting process is critical to understand and analyse the informal practices within IOCs that the investigation highlights.

This investigation has shed light over two of these areas; the awarding of contracts and indirectly, bottlenecks and inefficiencies within the contracting process that support certain corrupt practices.

IOC CODES OF CONDUCT

VALUE	DEFINITION
HONESTY	Truthful and sincere
INTEGRITY	To act with strong moral principles
TRUST	To believe in the reliability, truth or ability of someone or something
RESPECT	Due regard for the feelings, wishes or rights of others

Across the IOCs operating in Nigeria, IOC headquarters and Annual Reports frequently emphasise the importance of business codes, conduct and ethics. Core values of honesty, integrity and trust frame extractive operations that “strive to encourage” competitiveness. These values communicate IOC responsibilities towards shareholders, customers, employees, business partners and society as a whole.

The fact that this investigation has occurred points to a fundamental disconnect in values and behaviours between IOC Parent Companies and their operational subsidiaries. This is not an original notion; the International Institute for Environment and Development (IIED) identifies three broad sets of factors driving the complex challenges facing IOCs and their contractors in upholding their various responsibilities and international performance standards (e.g. ISO 9001 on quality)². One challenge in particular, “the inadequate implementation of systems and procedures to enforce standards and incentivise good performance”, highlights that the adoption of standards and systems on paper is not enough; they have to be implemented and enforced.

However, adoption, implementation and enforcement is a significant business challenge for IOC headquarters when dealing with cultural and contextual differences; company staff on the ground (within operating subsidiaries) “feeling that they lack the power to address corruption through contracting chains”³ and the enormity of the task to change deeply embedded, previously informal, practices and behaviours in favour of the aspirational behaviours to comply with IOCs responsibilities and performance standards.

It seems that IOCs, with operational subsidiaries registered in the countries of operation and tied to Government partnerships through Joint Venture agreements and Production Sharing Contracts, are struggling to tackle systemic and pervasive issues of corruption from within their own organisations.

BACKGROUND - OIL-SERVICE CONTRACTS

Oil-service contracts are procured by oil companies to third-party contractors. Whilst oil-service contracts are awarded by the oil companies, the Nigerian Government forms a major part of the award process under the Joint Venture (JV) agreements and Production Sharing Contracts (PSCs) held between the national oil-company, Nigerian National Petroleum Corporation (NNPC) and international oil companies.

For example in JV operations, NNPC approves all contracts or expenses over \$1 million. For PSCs, the National Petroleum Investment Management Services Agency (NAPIMS) approves anything over \$250,000⁴. (Note that JVs operate onshore and in shallow water by both local and international oil-companies. PSCs operate offshore, in the main by IOCs.)

NAPIMS is the most important subsidiary of NNPC, entering into contracts with oil-companies on behalf of the Nigerian Government. The above thresholds are relatively low compared to industry standards and therefore inflate the need for Government involvement throughout the contract award process. Several prosecutions under the U.S. Foreign Corrupt Practices Act (FCPA) show how corruption can infiltrate contracting procedures⁵.

The contract award process is often fraught with delays when dealing with Nigerian government agencies, resulting in a backlog of contract reviews and considerations. This environment can cause those in the queue to “grease the wheels” to ensure their contract is reviewed first, paying bribes to expedite the process.

Contracts above the already low thresholds are subject to a three-tiered approval process; NAPIMS, the NNPC Group Executive Council, and the NNPC Board. Top officials in these agencies, in charge of reviews, have become the gate-keepers of the award process, collecting bribes in return for contract awards⁶.

It should be noted that in 2004, NAPIMS took steps to implement an electronic marketplace (NipeX⁷) to enable NNPC to improve on its contract processing functions, facilitating an improved supplier selection and contract approval process. The essence and timing of this investigation, suggests that despite this system, there still remains improper practices concerning contract award processes and therefore further reform efforts must be encouraged, supported and facilitated.

The other side to the JV agreements and PSCs are the oil companies themselves; in order for bribes and kickbacks to be taken, bribes must first be offered and therefore both operating subsidiaries and international oil companies must be part of this complex issue.

Taking into account the above public element of the contract award process, private contract preparation and tender bids are likely to factor in the “costs” of the public award process, bottlenecks and inefficiencies. Therefore the consequent contracting system inherently does not support a value-for-money approach with the contractual process promoting inflation, un-competitiveness, and lacking incentives to deliver quality services.

If “preferential bidders” are only able to successfully navigate the contract award process, this will never stimulate a thriving open and competitive oil-services sector. The lack of competition stifles innovation within the industry, with market values bloated in reflection of the inefficiencies and additional “costs” of the contracting process.

“It is very complex to get approvals. The duration of tender - of course, Nigeria is the worst country for that. There is long duration of tender. The complexity of getting approvals is because of the number of agencies we have to face – National Petroleum Investment Management Services (NAPIMS), NNPC, Nigerian Content Development and Monitoring Board (NCDMB) and others⁸”.

This view reinforces the challenges facing Government Regulators, Agencies and IOC’s to reform both public and private arms of the contracting processes in the oil-services sector.

INTERNATIONAL IMPLICATIONS – FCPA & UK BRIBERY ACT

The potential implications of IOC's involvement with such practices are broad through their stock-exchange compliance requirements under the US FCPA and the UK Bribery Act. Considering that the major IOC parent companies, operating through subsidiaries in Nigeria, are listed on either the New York or London Stock Exchanges, such implications could be severe, both in terms of reputation and financial penalties.

THE US FOREIGN CORRUPT PRACTICES ACT

The FCPA applies to payments to induce or influence a foreign official to use his or her position “in order to assist...in obtaining or retaining business for or with, or directing business to, any person”⁹ (known as the Business Purpose Test).

Examples of actions taken to retain business are¹⁰:

- Winning a contract
- Influencing the procurement process
- Circumventing the rules for importation of products
- Gaining access to non-public bid tender information
- Evading taxes or penalties
- Influencing the adjudication of lawsuits or enforcement actions
- Obtaining exceptions to regulations
- Avoiding contract termination

Whilst prosecutors are limited to those payments only as opposed to internal activities within IOC subsidiaries, the approval of oil-service contracts must be approved by Government Agencies above certain thresholds. As noted previously, these thresholds in Nigeria are low and therefore it is likely that many oil-service contracts awarded would have gone through public approval and therefore may be liable under the FCPA.

In addition, the FCPA is broad reaching, not limiting its scope to listed parent companies but to subsidiaries also. The parent-subsidiary liability (parent company liable for bribes paid by the subsidiary) falls under two categories, firstly, “a parent may have participated sufficiently in the activity to be directly liable for the conduct – as for example, when it directed its subsidiary’s misconduct or otherwise directly participated in the bribe scheme.”¹¹ Secondly and more specifically to the context in Nigeria, a parent may be liable for its subsidiary’s conduct under traditional characteristics of agency control. The Department of Justice (DoJ) and Securities Exchange Commission (SEC) will take steps to evaluate the nature of control existing within the agency relationship. “If an agency relationship exists, a company is liable for the acts of its agents including its employees, undertaken within the scope of their employment and intended, at least in part, to benefit the company”¹². If an agency relationship between parent and subsidiary is established, the parent is liable for bribery committed by the subsidiary’s employees.

UK BRIBERY ACT

Similarly the UK Bribery Act has provisions to ensure those parent companies listed on the London Stock Exchange are liable to corrupt practices.

The term “bribe” refers to:

- The offering, promise or giving financial advantage to another person to induce or reward a person to perform a relevant function improperly
- The offering, promise or giving financial advantage when knowing or believing that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity

The following four prime offences relate to a function or activity that would be considered an offence under the Bribery Act ¹³:

- Two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage
- A discrete offence of bribery of a foreign public official
- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or business advantage (should an offence be committed, it will be a defence that the organisation has adequate procedures in place to prevent bribery)

The Bribery Act, similar to the FCPA has a broad international reach applying to situations involving foreign subsidiaries of UK companies.

Particularly, “a foreign subsidiary of a UK company can cause an offence; the parent company will become liable under section 7 [of the UK Bribery Act] when the subsidiary commits an act of bribery in the context of performing services for the UK parent” ¹⁴.

LOCAL IMPLICATIONS

With regard to the internal control environment within IOC subsidiaries, the current system of contract procurement incentivises over-inflated contracts and lacks incentives for quality service delivery, whilst supporting a system and culture of patronage with contracts being awarded based on who you know and who will benefit, not, what or how you operate. These practices reduce the confidence in the oil-sector, with less than favourable international perceptions of Nigeria being reinforced and not resolved.

Extrapolating these practices across the majority of oil-service contracts awarded, the aggregate cost of the oil-service sector is likely to be hugely inflated. This supports unnecessarily high costs of extractive operations, directly impacting business profitability, shareholder wealth and international oil prices, assuming that part of these inflated costs are passed down the consumer chain. More broadly, across IOC Joint Ventures and Production Sharing Contracts with the Federal Government, the inflated services sector is also likely to affect the level of taxation paid to the Federal Government, indirectly impacting funding of public services to citizens.

Shareholders and international management of IOC's must pay particular attention to the identified schemes and practices in this report (specifically those involving Government Agency personnel approval) to identify such practices within operating subsidiaries and voluntarily disclose such practices to mitigate FCPA or UK Bribery Act prosecutions. IOCs potentially expose themselves to huge risks and future liabilities that will directly impact share value and corporate reputation.

Shareholders have an obligation to ensure that their agents, Senior Management of IOC's, take steps to mitigate such practices within subsidiary companies operating in resource rich countries, such as Nigeria.

4. CONTRACT RACKETEERING IN IOCS

“THE KICKBACKS THAT IOC EMPLOYEES COLLECT FROM THE CONTRACTORS INCREASE THE OCCURRENCE OF FAILURES IN THE SERVICES RENDERED TO THE COMMUNITIES. BOTH MIDDLE AND LOWER MANAGEMENT EMPLOYEES OF IOCS ARE INVOLVED IN THE CARTEL COLLECTING KICKBACKS... CONTRACTORS ARE MADE TO PART WITH A PERCENTAGE OF THEIR CONTRACT SUM. THIS IS CLEARLY NOT IN LINE WITH THE OIL COMPANIES AVOWED PROCUREMENT ETHICS AND CONTRACTORS CODE.”

The following infographics describe the key personnel and steps taken to fraudulently acquire or divert oil-service contracts, reinforced by anonymous quotes and explanations from those persons privy to the oil-service sector.

Our investigation identifies seven methods of contract racketeering within IOCs in the Niger Delta:

- Consultancy/Third Party Racketeering
- Tender Rigging
- Direct Equipment Purchase Scheme
- Online Procurement Rigging
- Profit Sharing and Contract Recycling
- Outsourcing Scheme
- Personal Companies

CONSULTANCY/ THIRD PARTY RACKETEERING

“THE TOP GUYS ARE JUST TOO GREEDY, THEY WANT EVERYTHING FOR THEMSELVES AND THEIR CRONIES. EVEN WITH THEIR FAT SALARIES AND ENTITLEMENTS THEY ARE NEVER SATISFIED. IT IS THIS GREED THAT IS PROPELLING THEM TO CORRUPTION AND CONTRACT DEALS.”

KEY PERSONS INVOLVED

- Staff or retired staff of NAPIMS (National Petroleum Investment Management Services) (Nigeria), NCDMB (Nigerian Content Development & Monitoring Board) & IOCs.
- The IOC representative is usually from the Procurement, Contract or Commercial Services Department or any other position of authority that generates and approves contracts. All these representatives are privy to privileged information (contract costs and prices) that allows this system to occur.

ANALYSIS & SOLUTIONS

This scheme, involving public officials, is particularly relevant under the scope of the FCPA & UK Bribery Act.

This type of racketeering is difficult to address with persons within IOC and Government agencies benefiting. However, advocating to raise thresholds for Government Agency approval (e.g. raise NAPIMS current approval threshold sum of \$250,000 to \$500,000 or \$1m in line with JVs) would mean that more contracts could be procured internally. An IOC can therefore deal with informal procurement issues internally with fewer contracts requiring additional approval from Government Agencies.

IOC Headquarters must scrutinise operational practices and behaviours regularly and incentivise operational subsidiary management to be stewards of organisational values and best practice. This is easier said than done and assumes that operating subsidiary Senior Management are not complicit in these practices.

IOC's must send a clear message across their Groups that adverse behaviours will not be tolerated. (Note that any investigation would have to be kept as objective as possible so not to be used as personal tools to remove competitor patrons). This could be achieved by supporting an internal audit process that is overseen by the IOC Group International audit function, as opposed to an internal audit function based in the operating subsidiary to maximise the independence and objectivity of such a process.

Across high audit risk areas, IOC's must ensure that adequate segregation of duties occur at key points in the procurement cycle, reducing the power (a single “gate-keeper”) has over the process.

Specific to this process, a procurement and operational audit by an International internal audit team could assess the individual relationships between IOC staff and consultant companies whilst reviewing a sample of consultancy companies to provide an independent assessment of competency and value for money. Please note, as proxies are often used it may be difficult to trace related parties to staff in an IOC, hiding the real beneficial interest groups and therefore an audit must focus on the procurement process to reduce incentives for this practice. However, this is also fully reliant on the enforcement action taken when auditors find incidences of fraud. Senior Management must be empowered to take appropriate action and IOC Group Senior Management must have authority to take action in certain situations to enforce group-wide policies over their operating subsidiaries.

Finally, across operating subsidiaries, an IOC Group should incentivise positive behaviour across the group by the adoption of a fair-play charter, laying the foundations to support a culture of fairness, as opposed to one of short term personal gain. This may seem idealistic, however, any of the above suggestions from IOC Senior Management could begin to communicate across staff that this issue has been identified and will be addressed. Consequently, staff will have to adjust their behaviours in the knowledge that they are being monitored.

1



Influential and well-connected individuals within and outside the oil sector incorporate a consultancy firm. Seen to be a legitimate technical, financial and relationship management service to contractors or service companies.



CONSULTANCY FIRM

2

Staff of IOE, in agreement with the special interests of NAPIMS and NCDMB, nominate the consultancy firm to the vendor (contractor).

CONSULTANCY FIRM



3

Contractor draws up consultancy agreement as nominated by NAPIMS and NCDMB special interests, outlining services to be rendered.



4

Within the consultancy agreement an agreed commission (around 10%) applied on the total contract price representing what will be paid to the special interest group.



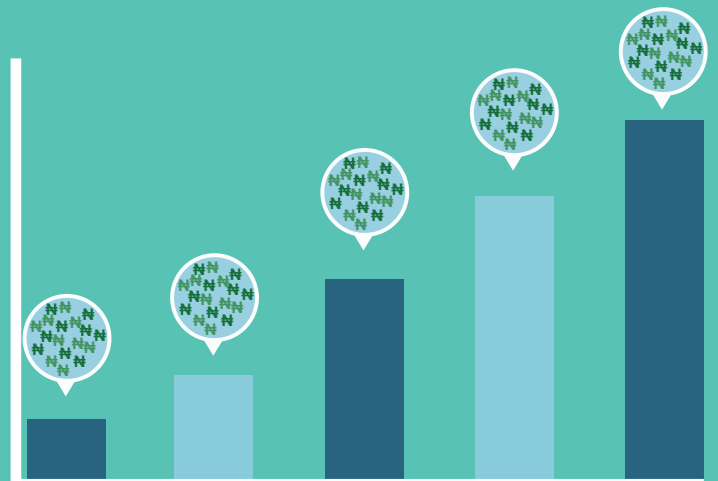
5

The commission represents a kickback to the special interest group in recognition of their "facilitation" and cannot be audited as it is not specifically identified in the consultancy agreement. The agreement is compliant with the procurement procedures of the contracting firm.



6

The kickback commission is paid on milestone completion of services rendered and distributed across the special interests group. The 10% commission is the price to "sole-source" or identify a "preferential bid".



TENDER RIGGING

“FOR ME, I HAVE REACHED THE LEVEL WHERE I DON’T BID FOR EVERY JOB THAT COMES. I EVEN REJECT SOME JOBS BECAUSE I CAN’T WASTE MY TIME ON SMALL DEALS, WHEN THE BIG DEALS ARE BY MY DOOR STEP.”

KEY PERSONS INVOLVED

- IOC Head of Department
- Proxy (relative/ friend/ business-associate/ religious-member/in-law)

ANALYSIS & SOLUTIONS

As this process has advanced, bidding rings have evolved with competition between rings often resulting in conflict. The key individual to a bidding ring is the inside person with privileged information (contracts manager/procurement officer/ Head of Department). In terms of bid processes, only the group with the insider issuing the contract will win the bid, not allowing other rings to participate. In essence, within each department there is a cabal that controls contracts.

As stated previously, IOCs must ensure that adequate segregation of duties occur at key points in the procurement cycle, reducing the power a single “gate-keeper” has over the process. These process must be subject to regular internal audits by an International Group internal audit team.

Specific to this process, IOCs could introduce a reverse bid process, where bids are collected before internal costings are calculated. If this approach was adopted, IOC staff involved would not be able to advise their proxies/agents on contract costs to rig the tender process.

In addition, and at the point of registration within IOC procurement systems, the names and Directors of the prospective companies should be made public with a strong emphasis on identifying conflicts of interest. Senior Management of both IOC Parent and Subsidiaries must be willing to enforce group organisation policies over individuals who have been identified as “gate-keepers” within operating subsidiaries. These individuals should be dismissed from the organisation with robust checks in place over individuals occupying key decision-making positions.

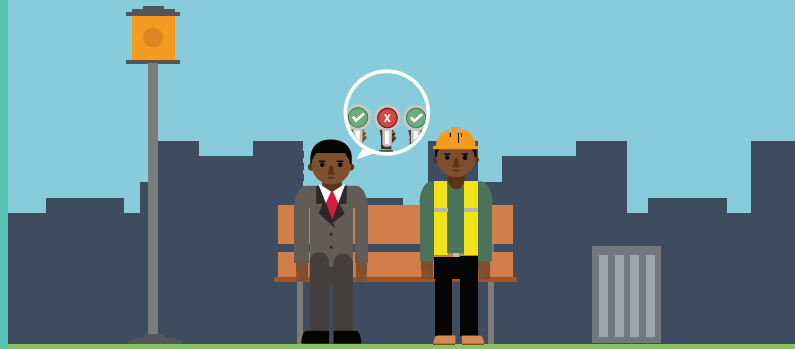
1

The Head of Department (**HoD**) generates a contract internally for a target proxy contractor.



2

An informal conversation occurs between **HoD** and **proxy** to agree the contract profit share, selection of other vendors (to ensure "an open" and competitive bid process).



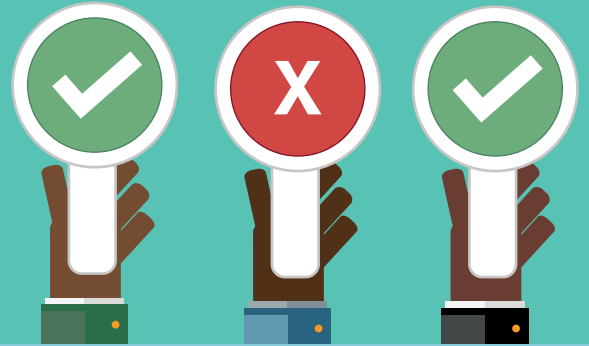
3

Proxy is requested to collate multiple lists of vendors or contractor names, those who are loyal and understand how the system and scheme works. This could range from 4-6 contractors who are registered in the department as "**preferred bidders**".



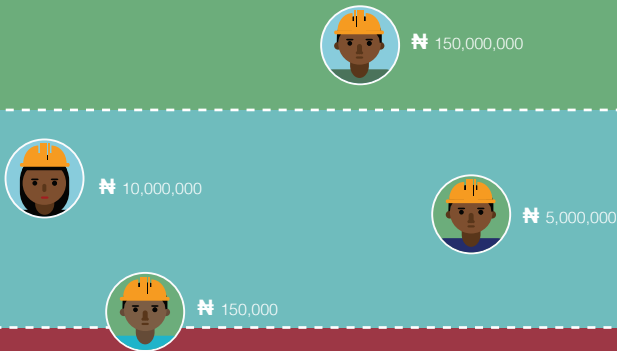
4

The group of contractors work together aware of the profit sharing arrangement, and present bids in satisfaction of the tender process in the knowledge that profit share will always be made across the group from the arranged winner of the bid.



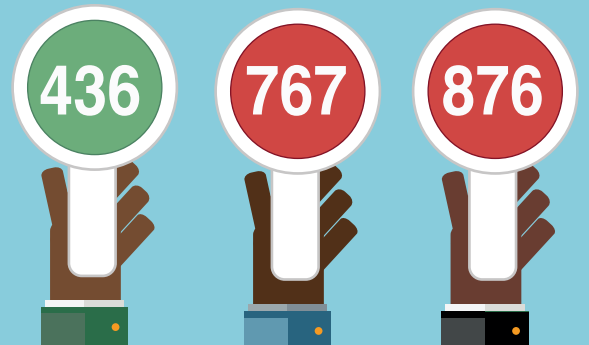
5

Either the contractors are told not to quote below a certain amount, or the proxy tells each contractor the quote value each bid needs to be. The group will even undertake site visits for capital projects. On return from site the tenders are handed to contractors with a deadline for submission.



6

Tenders are submitted and the lowest bidder wins the contract.



7

On contract execution and payment of the contract sum to the proxy, the proxy distributes the agreed fee across the bid group; this in return for continued loyalty and ongoing cooperation.



THE DIRECT EQUIPMENT PURCHASE SCHEME – SOLE SOURCING EQUIPMENT

“THEY (COMPANY STAFF) EXPECT SOME FORM OF IMMEDIATE GRATIFICATION IN THE FORM OF APPRECIATION AND KICKBACKS; AS SUCH THEY ENCOURAGE THE BUILDING OF PHYSICAL INFRASTRUCTURE BY CONTRACTORS. FOR EXAMPLE, IF I AM A STAFF OF THE COMPANY AND I INFLUENCE THE AWARD OF A CONTRACT OF 1 MILLION NAIRA, I EXPECT YOU TO COME BACK AND PAY ME SAY 50 THOUSAND NAIRA OR THEREABOUTS AS KICK BACK FOR AWARDEDING YOU THE CONTRACT. CONTRACTS THAT CAN EASILY BE COMPLETED AND MONIES SHARED ARE EASILY ENCOURAGED TO BE EXECUTED.”

KEY PERSONS INVOLVED

- IOC staff member, also a representative to an Original Equipment Manufacturers (OEM)
- Proxy (relative/ friend/ business-associate/ religious-member/ in-law)

ANALYSIS & SOLUTIONS:

Sole sourced procurement in any organisation is often required to facilitate expedited needs and some may argue that this approach is the only way to get work done quickly. However, the fact remains that this approach is not transparent and an IOC staff member directly benefits from this system. It would be advisable to operate a restricted tender approach to open this process up to a minimal level of competition where an evaluation of the quality and cost of the equipment and tools being procured can be assessed.

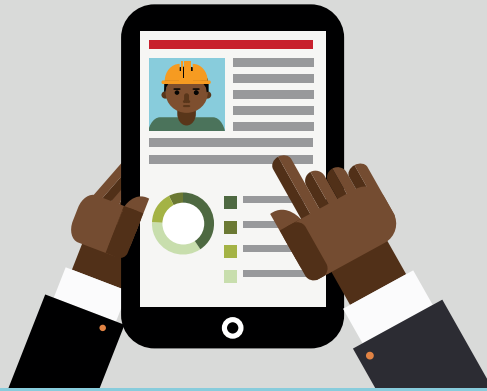
It is not uncommon for IOC staff to moonlight as representatives of OEM's in USA, Europe and Asia. This scheme is attractive through IOC procurement policies requiring local contractors to have international technical partners. These internal policies contrast with Nigerian local content law requiring that 75% of the contracted work force and equipment used in the oil and gas industry must be locally sourced. The Nigeria Content Development & Monitoring Board (NCDMB) has faced serious issues to enforce local content laws partially due to minimal local capacity, expertise and funds to invest in the manufacture of specialist equipment and tools required to service the oil and gas industry in Nigeria.

Therefore a robust conflicts of interest review must occur on an annual basis for every employee, highlighting risk areas and ensuring appropriate steps are taken to ensure that an individual is unable to work in a position where a conflict of interest could lead to personal gains being made.

In addition, and in contrast to the belief that all IOC staff are remunerated well, a review of pay structures may need to occur to deter those who take on conflicted appointments. However, it must be noted that no remuneration increase will deter those individuals motivated by greed and therefore measures must be put in place to ensure that individuals in decision making positions are limited in their authority through a segregation of duties, a robust review process and subject to a review by an International Group Internal audit team.

1

The direct purchase process relies on a “sole-sourcing” option or a “tender waiver” within the **IOC procurement systems** (no public tender required).



2

The **IOC manager** member submits an internal business memo to sole-source equipment from an **Original Equipment manufacturer (OEM)**. The IOC manager however, is also the **OEM** representative. Once approved, the contract is drafted to the **OEM**.



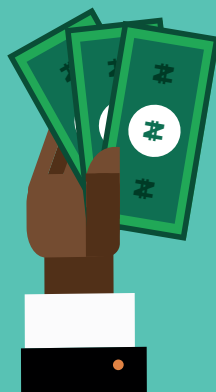
3

Contract negotiations will occur through a **proxy** representative of the **IOC Manager/OEM rep.**



4

A contract is issued to the **OEM**, from which the **IOC staff** member and proxy representative take a commission or kickback to secure the contract.



ONLINE PROCUREMENT RIGGING

“RIGHT NOW I’M IN LAGOS AND MY GUY IS DOING THE BID FOR ME. HE IS A STAFF IN CHARGE OF CONTRACTS IN HIS DEPARTMENT. THIS IS HOW THE GAME IS PLAYED, JUST DON’T FAIL ON YOUR OBLIGATIONS TO THEM AND YOU WILL NOT GET TIRED OF DOING JOBS.”

KEY PERSONS INVOLVED

- IOC Management Staff
- Proxy (relative/ friend/ business-associate/ religious-member/ in-law)

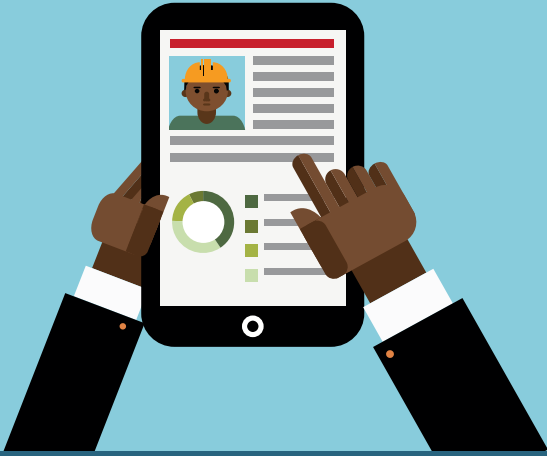
ANALYSIS & SOLUTIONS:

Similar to the Tender Racketeering process, the introduction of a reverse-bid process could help stymie this practice, where bids are collected before internal costings are calculated. If this approach were adopted, IOC staff involved would not be able to advise their proxies/agents on contract costs to rig the tender process. In addition this may effect change in behaviors, the adoption and enforcement of internal policies that address dishonest behaviors of employees, particularly those who attempt to rig procurement systems to divert company funds for personal gain.

Note that the security and password access of the IOC procurement system must be assigned and tracked to individuals of vetted contractor organisations who are accountable for the tenders submitted.

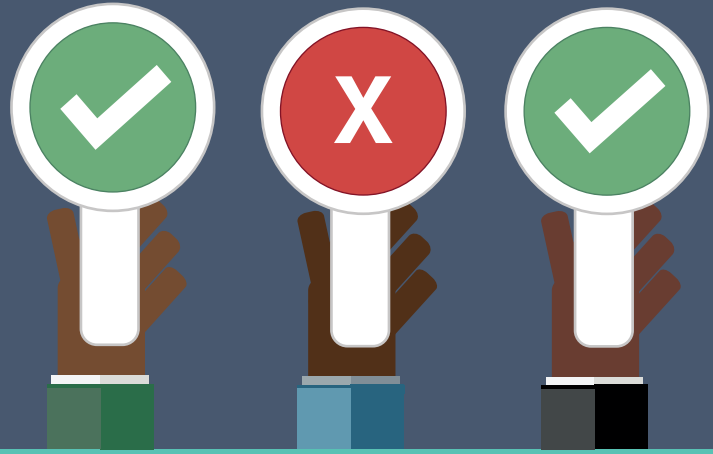
1

An **IOC department** generates a job to be procured through a tender process.



2

Contractors are invited to bid for the job.
E.g. **30** invitations to bid for **10** contracted jobs.
To comply with online internal procurement system competition requirements.



3

The **IOC Manager** identifies his/her favoured proxy contractor and negotiates a price; the contract kick-back percentage.



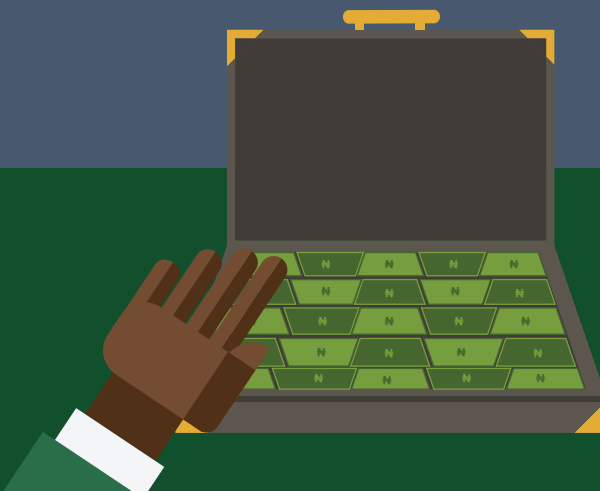
4

Once agreed, the proxy gives the **IOC manager** the online password to the online bidding procurement system. The **IOC manager**, knowing the contract value threshold, then accesses the bid system to rig the tender outcome.

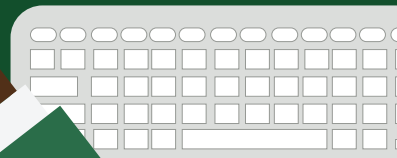


5

Once the tender winner has been announced, the contract is executed and the **IOC Manager** receives the kickback directly.



INDEX SYMBOL	COMPANY NAME	VAR %	HIGH
	WUTANG FINANCIAL	1.16	2.47
	VEHEMENT CAPITAL	0.98	0.67
	I KNOW A GUY	0.12	2.46
TDE	TOP DAWG	0.14	0.54
BBI	BAD BOY INCORP	1.56	1.56
ITV	INTERNATIONAL TV	0.43	2.45
GP	GLOBEX CORP	1.25	1.56
DT	DOUBLE TOASTED	0.53	0.67
UC	UMBRELLA CORP	2.56	3.45
ROC	ROC A FELLA	0.78	0.59
FAF	FIRST AND FIFTEENTH	0.23	1.90
LEV	LEVANTSTONE BPC	0.87	0.22



PROFIT-SHARING AND CONTRACT RECYCLING

“LOOK, IT IS NOT EASY FOR COMMUNITY CONTRACTORS TOO, I HAD TO GIVE THE HEAD OF A DEPARTMENT N2,500,000 TO GET A BIG JOB. INTERESTINGLY, THE SAME JOB HAS BEEN GIVEN TO TWO DIFFERENT COMPANIES BEFORE AND PAID FOR. WELL, IT IS MY TURN TO BENEFIT.”

KEY PERSONS INVOLVED

- IOC staff
- Host community contractors

ANALYSIS & SOLUTIONS:

This method is particularly pertinent to the issue of oil-spill clean-up as a consequence of poor delivery of clean-up contracts. If this contracting behaviour continues, the recycling of non-delivered clean-up contracts will cause further environmental degradation and internal conflict within host and surrounding affected communities that rely on the land for subsistence.

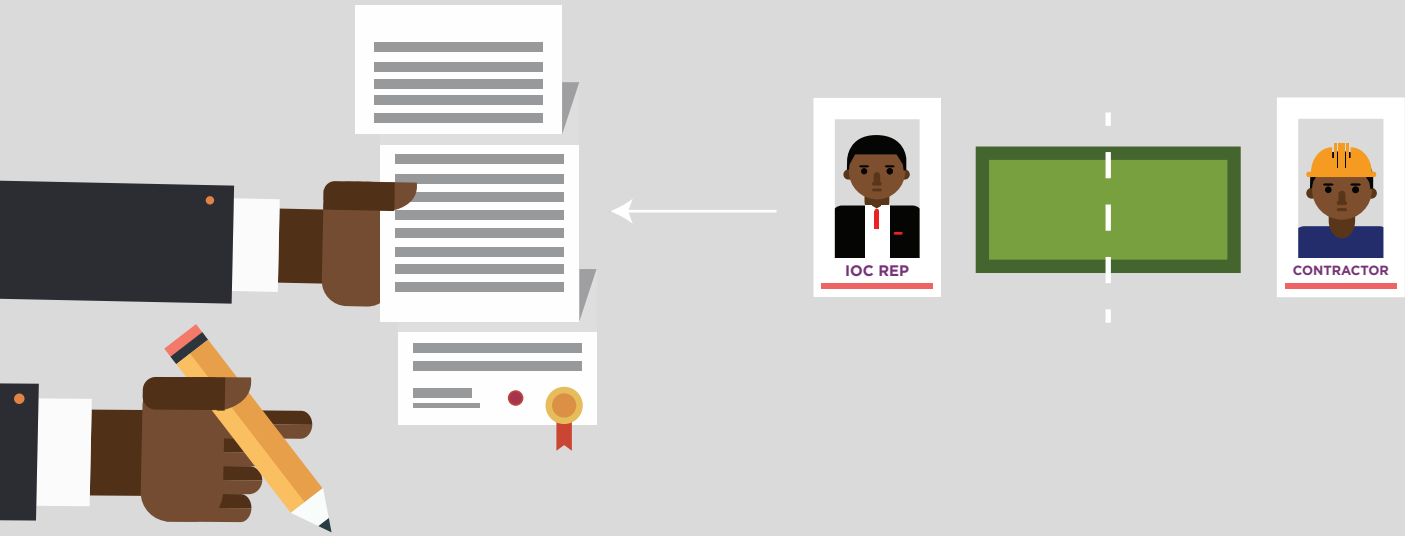
A procurement system, administered by individuals, that promotes quality service delivery would ensure that host community contracts are properly delivered in accordance with contract terms. Contracts must be performance-based with payments linked to milestones and the completion of contract objectives.

In addition, public disclosure (see appendix) to the community and civil society, identifying contract awards and scope of works could facilitate community based accountability where contractors are known and the contracted work monitored by communities until contract objectives are completed. Job completion certificates should include community and Civil Society validation that works have been completed, similar to the intention of the Joint Investigation Visit (JIV) to identify oil spills (albeit that JIVs are also subject to improper practices and manipulation). Note that the process is similar to existing citizen groups supporting and monitoring the delivery of public service contract delivery.

Taking this one step further, an IOC could provide an electronic platform, mapping and tracking all contractors operating in communities, ensuring that the information provided is detailed, accessible and understandable to community members (e.g. contractor name, value, contract objectives and timeframe for completion). The platform will give civil society the transparency needed to facilitate accountability of host community contractor jobs.

1

IOC staff issue a contract to a host-community contractor on a profit-sharing arrangement.



2

The contract is never completed, but job completion papers are signed and payments made. Our investigation shows that in some situations, the IOC is requested to pay cash up front before the contract is issued.



3

The contract is re-issued and recycled to another contractor to ensure “key interest groups” within the host community are kept “employed”.



OUTSOURCING SCHEME - THE PROVISION OF CONTRACT STAFF TO IOCS

“LISTEN, THIS IS NOT ABOUT COMPETENCE OR QUALITY, OF COURSE THERE ARE COMPETENT PEOPLE ALL OVER THE PLACE. IT IS MORE ABOUT CONNECTION – WHO YOU KNOW – MAN KNOW MAN SYSTEM, YOU UNDERSTAND? YOU CAN PUT THE BIGGEST BRANDS OUT OF BUSINESS IF YOU HAVE THE RIGHT CONTACTS.”

KEY PERSONS INVOLVED

- IOC Manager responsible for procurement of contract staff

ANALYSIS & SOLUTIONS:

The investigation noted that within IOC departments there is a broad trend of homogenous contract staff with regard ethnicity and close relations to IOC Managers.

This method supports the principal of individual loyalty as opposed to competence. Therefore the point of registration within IOC procurement systems, is that the names of directors of the prospective service companies are made public.

A robust conflict of interest process must be undertaken on an annual basis for all staff contracted through external workforce providers. An internal audit should highlight risk areas and ensure that appropriate steps are taken when conflicts arise. The process should seek to identify individuals within IOC's who permit this process, placing emphasis on those roles being the stewards of competence as opposed to gate-keepers to employ family & friends alike.

Work-force contractors should be audited either internally or externally on an annual basis. A sample of staff should be physically identified, matching credentials with their job role whilst providing an assessment of whether the department is fit for purpose. This would support an approach where each contractor hired fills an identified job role and business need.

In general, the IOC recruitment process must focus on identifying potential employees and contract staff who are loyal to the IOC vision & mission. Regular internal staff reviews and appraisals must take place, linking staff performance and remuneration review to actions that supports specific IOC department aims and objectives, as opposed to loyalty to an individual superior within a department.

1



A company is registered for the purpose of providing outsourced individual contractors to an **IOC**.



CONSULTANCY FIRM

2



A spouse, close relative or trusted friend of the **IOC Manager** serves as the **Managing Director**, whilst **IOC** staff are silent partners with family members or friends as **Company Directors**. **IOC Managers** are therefore able to secure employment of relatives and related persons.



3

For every individual contractor identified in the contract a mark-up is applied, with the beneficiary being the **IOC Manager** responsible for the procurement of individual contractors.



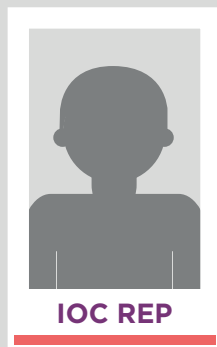
4

Contract terms can be **6 months to 3 years**. At the end of every month when salaries are paid, the mark-up is deducted and paid directly to the **IOC manager**.



5

Contract staff procured are used to replace IOC retiring staff or vacant positions within **IOCs**.



PERSONAL COMPANIES

“ANYTIME THERE IS SOME LEVEL OF SHAKE UP IN THE SYSTEM, KNOW THAT SOME TOP MANAGERS ARE TRYING TO SETTLE SCORES OR OUTDO ONE ANOTHER. ORDINARILY, ISSUES OF CORRUPTION IN CONTRACT SERVICES ARE NOT A PRIORITY BECAUSE; IT IS ALMOST AN ACCEPTED KIND OF NORM.”

KEY PERSONS INVOLVED

- IOC Head of Department
- Proxy (relative/ friend/ business-associate/ religious-member/ in-law)

ANALYSIS & SOLUTIONS:

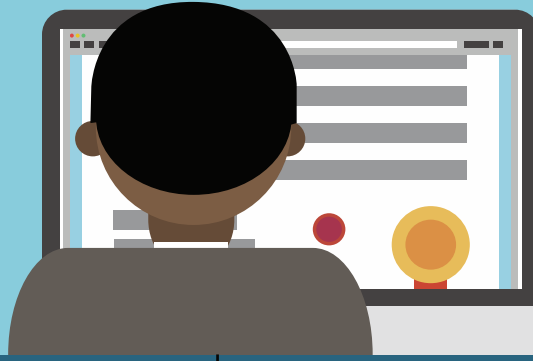
Our research has indicated that when an employee becomes a threat to this process, those involved do not hesitate to take drastic action to ensure this process is maintained. The employee, in fear of the consequences of betrayal, is incentivised to keep to their agreed employment terms. Therefore a solution has to be sensitive to the drastic actions taken by the persons involved.

As mentioned in the previous method, the IOC recruitment process must focus on identifying potential employees and contract staff who are loyal to the IOC vision & mission. Regular internal staff reviews and appraisals must occur, linking staff performance and remuneration review to actions that support the specific IOC department aims and objectives as opposed to loyalty to an individual superior within a department.

These positions must be open to scrutiny from a robust International team of internal auditors, ensuring that high risk areas are regularly reviewed and monitored. IOC's must investigate and dismiss identified “gate-keepers” to remove suspected individuals and send a clear message across the Group that these behaviours will not be tolerated.

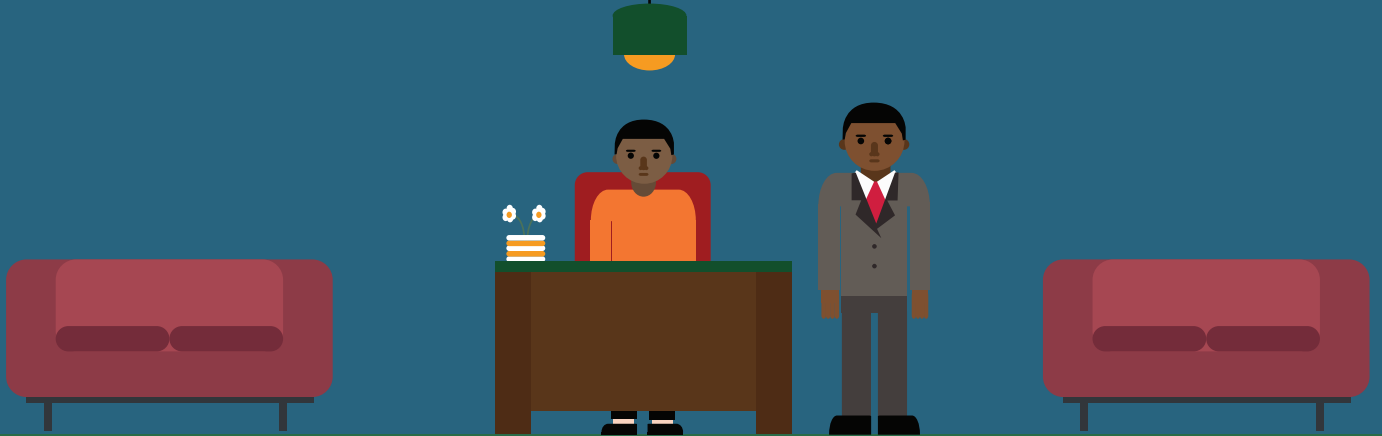
1

A **proxy** of **IOC** management staff registers a company. That company is registered as an **IOC** approved vendor or contractor within the **IOC** procurement system.



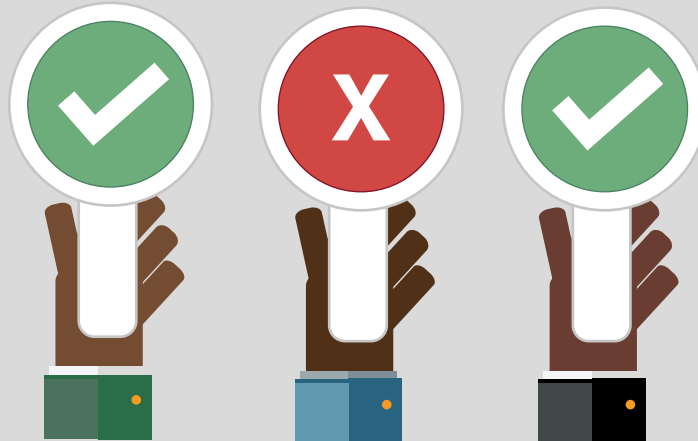
2

A loyal individual is employed to run the company, not related to the **IOC Manager**, and therefore it is difficult to link back to the staff involved.



3

Contracts are diverted to the company through a “**competitive**” tender process administered by the **IOC manager** that favours the company. The proxy or employee executes the contract on the **IOC manager’s** behalf.



4

The employee is paid a monthly salary - enough to buy loyalty and to continue this process.



5. TRANSFORMING TO A BETTER PRACTICE

IOCs must adhere and comply with a variety of performance standards and best practices frequently discussed in public forums through IOC public relation messages and media engagements. Unfortunately the reality is different; the apparent level of corruption identified within IOC oil-service procurement and commercial departments suggests that Senior Management accept this culture, despite continued practice around implementing with aspirational values and best-practice.

However, this issue presents an opportunity for IOCs to address the current culture and to support reform towards a more transparent, accountable, efficient and effective oil industry. A change that will enhance profitability and shareholder wealth (through cost-effective contracting), whilst supporting governance, environmental and social resolution efforts in a region that so desperately needs it.

ADDRESSING THE ISSUE – INTEGRITY & LOYALTY VS GREED & PATRONAGE

The fraudulent contract racketeering methods identified in this investigation consistently identify pervasive negative behaviours across individuals within IOC's that result in the abuse of IOC systems for personal gain; key staff significantly lack personal and professional integrity, are motivated by greed and generate wealth through personal loyalty networks.

Unfortunately, it is not the first time that lack of integrity, loyalty and greed have been identified as behaviours identifiable in resource-rich, but governance-poor regions like the Niger Delta.

Whilst IOC's cannot be absolved of their responsibilities to ensure that the internal control environment is robust and systems are in place to identify fraudulent practices, the systems are only as good as the individuals in charge of their administration.

Junior staff are unable to operate to aspirational corporate values when career progression appears convoluted and difficult to achieve without adhering to the current system. Key "gate-keeper" positions are reserved for those who conform to the current system, protecting the enormous individual benefits flowing to certain individuals. Those who want to do the right thing are unable to do so as the channels to whistle-blow are few and far between.

Implementing a lasting solution to this issue is extremely difficult with patronage networks providing considerable inertia to reform. However, the issue is not insurmountable, but requires IOC Senior Management to first acknowledge that there is an issue that needs to be addressed, and then be willing to tackle complex dynamics and relationships within their own organisations and operating subsidiaries.

Acknowledging that this issue is extremely sensitive to address, a controversial solution may be to offer amnesty to individuals who voluntarily come forward in return for continued employment and a change in behavior. This may seem like the perpetrators get away with previous practices without being punished, however, there is the reality that those benefitting are also those valuable to IOC's with regard to oil-industry knowledge, contacts and experience. If you dismissed all perpetrators, you could be left with significant managerial gaps which is likely to compound the issue as the organisation struggles to operate efficiently in the already complex and difficult operating environment of the Niger Delta.

The key trend identified is that this issue is caused by people and not process. Individuals within IOC's are able to abuse, manipulate and defraud internal systems and processes to divert contracts through loyalty networks for personal gain. These individuals have operated with impunity and consequently these methods have become accepted and entrenched within the oil-service sector in Nigeria.

Addressing the root of this issue will require IOC's to enforce and entrench the aspirational corporate behavioural values, previously identified, within their operational subsidiaries. The current organisational position seems to be one of acceptance, relying on the limited liability of the veil of incorporation, to protect IOC Parent companies from the practices of their operating subsidiaries. It should be noted that this issue highlights the conflict between a relationship-based culture and a systems-based approach in doing business.

There appears to be a significant disconnect between IOC parent companies and their operating subsidiaries, in particular the difficult process to ensure that operating subsidiaries and the subsequent contracting chain adopts, implements and enforces performance standards. IIED's report¹⁵ highlights that the procurement process can support the implementation and encourage uptake of performance standards across the contracting chain. The procurement process can be used as a means of promoting and incentivising positive behaviours away from the current embedded system of patronage.

It is within institutions and corporations that behaviours can be collectively addressed, facilitating and reinforcing positive behaviours reflected in the operating practices of IOC's. The routine and repetition of performing tasks in accordance with identified corporate values contributes to supporting the integrity of an individual staff member who is able to value a collective process; one underpinned by mutual respect of the organisational vision and mission, as opposed to greed and personal gain.

IOC Management staff are wealthy and powerful people compared with the average citizen in Nigerian society, often parachuting into political office following a career working in the oil sector. These individuals have the opportunity to become gatekeepers and stewards of values as opposed to contracts and patronage.

Perhaps once Senior Management of IOC's and operating subsidiaries collectively agree to change and implement the aspirational operating values across an IOC Group, there may also be a very positive knock-on effect, across other industries, the public sector and Nigerian society as a whole?

6. REGULATORY CONTEXT

The internal and external regulatory context of a particular environment is crucial to ensure procurement systems are able to operate transparent and competitive mechanisms.

The goal of any contract procurement system, public or private, is to obtain value for money, facilitate an efficient procurement process and ensure quality services are obtained ¹⁶. (Please see appendix for a detailed explanation of procurement international best practice). However, as identified the key persons responsible for administering these systems within IOC's do not act in a way that facilitate and support the goals procurement; those individuals are able to manipulate the procurement process for their own personal gain.

In terms of the external context, it is important to be able to resolve disputes when they arise through traditional dispute resolution methods, for example, courts, mediation, arbitration etc. However, in a weak regulatory context, such as Nigeria, enforcement of contracts can be complex due to inadequate methods of resolving contract disputes. How can an IOC enforce clauses in a contract that appear unenforceable in the legal context? Often negotiated settlements outside of the courts need to be made to avoid lengthy legal disputes, often around payment of works despite non-completion or adequate service delivery.

The contracting culture within the Niger Delta is not incentivised to deliver contracts on time and to an acceptable standard. The consequences of this, especially in the oil and gas industry, is poor oil pipeline maintenance, oil spills, and a culture of impunity within staff and contractors allowing such informal processes to occur. Therefore one of the fundamental solutions to this problem will be to support efficient and effective dispute resolution methods to ensure contract clauses can be enforced promoting a culture of quality and competitiveness throughout the sector. However, this issue is challenging across the general business context of Nigeria and has been discussed for decades. In the absence of a strong regulatory environment, robust and effective alternative dispute resolution methods must be utilised to ensure that short term solutions to these issues can be implemented effectively.

There is opportunity to reform within the context of the proposed Petroleum Industries Bill (PIB). Whilst the current draft (as at the time of writing) of the PIB requires strengthening in terms of its environmental and structural components, its presence opens up an opportunity for a unique set of conversations that can be used to address the issues presented in this report. If new legislation is to be passed to the benefit of Nigeria as a whole, supporting a more transparent and competitive Oil industry, it is imperative to ensure that this legislation tackles current norms, entrenched and accepted practices and flow of funds through patronage networks. The PIB must ensure that a more dynamic, open and competitive industry is created, placing emphasis on results-based and target-led service delivery as opposed to procuring services based on “who you know” and “how much you can pay”.

7. CONCLUSIONS & RECOMMENDATIONS

The system of “take what you can” and “it’s my turn to take” is deeply entrenched in the Nigerian oil-industry. Informal patronage processes within the oil-service sector are accepted, with patrons accumulating vast sums of money through the diversion of IOC oil-service contracts. The enormity of wealth has created a vast criminal network of patronage enabling huge quantities of money to flow through the Niger Delta, difficult to change to a more transparent and competitive system without disrupting the wealth of key influencers and decision makers.

The culture of operating through patronage networks, facilitated through the identified methods of diverting IOC funds for personal gain, only reinforces these practices and behaviours as acceptable processes.

The issue is widespread and therefore requires collective action to reform and transform the oil-service sector into a cost effective, high quality and competitive environment stimulating employment and quality within local contractors.

To achieve such significant reform, a holistic approach is required. These changes will not be achieved in the short term, however, proactive steps to curtail adverse behaviours and entrench corporate organisational values throughout the IOC group chain will lay the foundations for the next 30 years of oil production in Nigeria.

Outsiders are important in this process; our investigation highlighting the need to ensure that robust, rigorous, and regular internal audit processes are implemented by International Group Internal Auditors to justify and facilitate change independently and objectively. Senior management both in IOC Group Headquarters and operating subsidiaries must acknowledge that this is a significant issue with serious external implications on profitability and shareholder value. There must be proactive steps taken to move away from these practices, supported by Government, civil society and communities.

Showing that action is being taken will spur support and gather momentum towards an oil sector in Nigeria that is profitable but achieves its profits through just practices, whilst emphasising quality delivery and competence of all staff members. As the oil sector is such a large employer in the Niger Delta, taking these proactive steps within the corporate walls, will have knock on effects across secondary and tertiary industries, whilst the standards that individuals (members of Nigerian society) hold themselves too increase, incentivising and promoting individual integrity, competence and quality with loyalty to the IOC Group as opposed to short term personal gain.

To ensure this issue is properly tackled, reform of public and private sectors must be coupled, with linking issues properly understood to ensure realistic and actionable solutions can be identified and implemented. Consolidating the solutions identified throughout this report, our recommendations shall be four-fold; to the Nigerian Government, IOC shareholders, IOCs (Senior Management & Operating Subsidiaries) and Civil Society/Host Communities, addressing the State, private and personal facets of Nigerian society.

TO THE NIGERIAN GOVERNMENT

- Reduce Government Agency involvement in the contractual approval process by increasing contract approval thresholds to reduce bottlenecks and bureaucratic inefficiencies. Specifically, raise the threshold requiring NAPIMs approval to above \$500,000.
- Request procurement audits from IOCs below thresholds to ensure that those contracts procured directly by IOCs are in line with National policy.

TO SHAREHOLDERS OF INTERNATIONAL OIL COMPANIES AND GLOBAL REGULATORS

- Shareholders and international management of IOC's must pay particular attention to the identified schemes and practices in this report (specifically those involving Government Agency personnel approval) to identify such practices within operating subsidiaries and voluntarily disclose such practices to mitigate FCPA or UK Bribery Act prosecutions. IOC's potentially expose themselves to huge risks and future liabilities that will directly impact shareholder value and corporate reputation.
- Shareholders must ensure that their agents, IOC Senior Management, act appropriately to address such issues and take steps to mitigate such practices within subsidiary companies operating in resource rich countries, such as Nigeria.

TO SENIOR MANAGEMENT OF INTERNATIONAL OIL COMPANIES

- Perform annual procurement audits of operating subsidiaries. Auditors should be international or external to the operating country (to support an independent and objective process) with audit reports communicated directly to IOC senior management as part of the internal audit process.
- Reinforce business and operating values throughout the group subsidiary chain. Operating subsidiaries must be fully accountable to values, internal performance standards and international standards. There must be greater accountability of operating subsidiaries to IOC parent companies
- Support an internal accountability mechanism that promotes business values and a culture that incentivises high quality and performance related delivery. Link this to a robust whistle-blowing mechanism
- Adopt or reinforce a Group wide whistleblowing policy and mechanism that enables whistle-blowers to report anonymously into Group headquarters, outside of operating subsidiaries - support an internal accountability process that is "self-policing"

TO OPERATING SUBSIDIARIES OF INTERNATIONAL OIL COMPANIES

- Should behaviours continue to persist, remove incompetent individuals, specifically those that are internally identified as "gate-keepers" to the identified patronage processes. Enforcement of internal policies that identify and remove negative behaviours

must occur to support a culture shift that aligns operating subsidiaries to parent companies.

- The IOC recruitment process must be reviewed, focussing on identifying potential employees and contract staff who are loyal to the IOC vision & mission. Regular internal staff reviews and appraisals must take place, linking staff performance and remuneration review to actions that support specific IOC department aims and objectives, as opposed to loyalty to an individual superior within a department.
- Review electronic procurement systems in light of findings of this investigation.
- At the point of registration within IOC procurement systems, make public the names and directors of the prospective service companies.
- Discontinue the sole-purchase system to procurement in favour of a limited competitive tender method, to open up the majority of contracts to scrutiny and competition.
- Introduce a reverse-bid process – the bid is collected before internal costing is performed. This process will minimise or interrupt the opportunities for managers lacking integrity to inform their agents, proxies and bidding rings of contract values.
- Introduce an electronic platform, mapping and tracking all contractors operating in communities, ensuring that the information provide is detailed, accessible and understandable to community members (e.g. contractor name, value, contract objectives and timeframe for completion).

TO LOCAL CIVIL SOCIETY ORGANISATIONS AND HOST COMMUNITIES

- Advocate for public disclosure of all contract awards and tender results within a host community to support a transparent contracting process.
- Support existing community-based budget and service monitoring groups to promote high quality and cost-effective contract delivery within host communities.
- Support IOCs to map and track community based contractors by collating information to be uploaded onto an IOC maintained electronic mapping platform.

APPENDIX – PROCUREMENT INTERNATIONAL BEST PRACTICE

The goal of any contract procurement system, public or private, is to obtain value for money, facilitate an efficient procurement process and ensure quality services are obtained ¹⁷. In addition, a procurement system must comply with (or at least work towards) social and environmental business objectives, in line with business operating principles. Note that this is usually relevant to public procurement systems, however also appropriate in the context of the environmental and socio-economic issues in the Niger Delta.

Private companies, especially large listed multi-nationals are obliged to support a best practice approach to procurement, in-line with a range of global guidelines and listing compliance procedures.

Procurement best practice defines a set of procurement objectives that are delivered by three key underlying principles; transparency, competition & equal treatment.

Transparency refers to the idea and practice of openness, and is supported through a competitive process. Competition within the procurement system ensures that the IOC is able to obtain the best terms possible for the contract by requiring the bidders to put forward the best offers they can to win the contract. The very nature of competition can “inject a transparent approach into all aspects of the procurement process, supporting the various objectives (identified below) that are promoted by the principle of transparency” ¹⁸.

The objectives to which a procurement system or process is guided is summarised in the table right ¹⁹ :

OBJECTIVE	PURPOSE
VALUE FOR MONEY	<ul style="list-style-type: none"> • Ensuring the goods, works or services are suitable. This means both: i) that they can meet the requirements for the task in question and ii) that they are not over-specified (“gold-plated”) • Concluding an arrangement to secure what is needed on the best possible terms (which does not necessarily mean the lowest price) • Ensuring the contracting partner is able to provide the goods, works or services on the agreed terms
INTEGRITY	<p>Avoiding corruption and conflicts of interest. To avoid practices of:</p> <ul style="list-style-type: none"> • Awarding contracts on the basis of bribes • Awarding contracts to firms in which one has a personal interest • Awarding contracts to firms in which one’s friends, family or business acquaintances have an interest • Awarding contracts to political supporters (e.g. to firms who have provided support; or to regions which have voted or a particular political party)
ACCOUNTABILITY	Provide a means to establish whether the procuring entity is meeting its objectives
EQUAL OPPORTUNITIES & EQUAL PROVIDERS	<p>Equal treatment of those participating in the system by:</p> <ul style="list-style-type: none"> • Limiting the opportunities for the procuring entity to make discretionary decisions that could be abused to favour particular firms (for example, a firm that has paid a bribe or – from the perspective of opening up markets – a national firm) • Encouraging firms to have confidence in the process and thus encouraging the best firms to participate in the procedure
FAIR TREATMENT OF SUPPLIERS	To ensure that procedural fairness and due-process is upheld. To which suppliers have right to have their case heard before a decision is made that affects them adversely, and/or a right to know the reasons for such decisions
EFFICIENT IMPLEMENTATION OF INDUSTRIAL SOCIAL AND ENVIRONMENT POLICIES*	Going beyond the mere acquisition of goods, works or services. E.g. to support the economic development of disadvantaged groups or society or regions of the country by setting aside contracts for those groups or regions
OPENING UP LOCAL MARKETS TO INTERNATIONAL TRADE AND EXPOSURE*	To open up procurement systems to international competition to facilitate the development of domestic sectors through competition and innovation. Please note that local content laws may restrict this objective
EFFICIENCY	The procurement process is carried out without unnecessary or disproportionate delay or waste of resources for the procuring entity, and also without unreasonable costs for suppliers

* Relevant to Public Procurement systems, however in the context of IOCs in the Niger Delta, where there are often blurred lines between IOC and Government (especially with regard Corporate Social Responsibility and public Service delivery), it would be important that these objectives were also a consideration within IOC procurement processes.

The specific design of a procurement system is often weighted towards specific objectives, in alignment with business objectives. Note that conflicts exist between certain objectives, e.g. accountability and value for money; the additional costs in ensuring accountability can restrict value for money. However, companies must find a balance to ensure that their procurement system is context specific, robust and fair, achieving procurement objectives through transparency, competition and equal treatment.

REFERENCES

- ¹ Gillies, A. 2009. Reforming corruption out of Nigerian oil. [pdf]: [www.U4.no](http://www.u4.no/publications/reforming-corruption-out-of-nigerian-oil-part-one-mapping-corruption-risks-in-oil-sector-governance/). Available at: <http://www.u4.no/publications/reforming-corruption-out-of-nigerian-oil-part-one-mapping-corruption-risks-in-oil-sector-governance/> [accessed on 4 June 2014].
- ² Wilson, E. J. Kuszewski, J. 2011. "Shared value, shared responsibility", see <http://pubs.iied.org/16026IIED.html>
- ³ Ibid.
- ⁴ Ibid.
- ⁵ "In 2008, Albert Jackson Stanley of Kellogg, Brown and Root, a US oil service company, pled guilty to paying around \$180 million in bribes to NNPC, the Petroleum Ministry, and other government officials. This was to secure four contracts, together worth over \$6 billion, to build liquefied natural gas facilities. Case documents illustrate how aspiring contractors used fake consultancy firms to channel payments to government, manipulated their own company's financial systems to acquire extra cash, and distributed payments to representatives designated by those at the highest levels of government". Ibid and US District Court of Southern District of Texas (2008) US v. Albert Jackson Stanley. Plea Agreement.
- ⁶ Ibid
- ⁷ <https://www.nipexng.com/irj/servlet/prt/portal/prtroot/com.sap.portal.navigation.portallauncher.anonymous>
- ⁸ <http://www.thisdaylive.com/articles/total-bemoans-high-cost-of-oil-and-gas-projects-in-nigeria/187306/>
- ⁹ 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a)
- ¹⁰ U.S. Foreign Corrupt Practices Act Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, A Resource Guide to the FCPA, 2012, [pdf] <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>
- ¹¹ Ibid
- ¹² Ibid.
- ¹³ <http://www.transparency.org.uk/our-work/business-integrity/bribery-act>
- ¹⁴ Ibid.
- ¹⁵ Wilson, E. J. Kuszewski, J. 2011. "Shared value, shared responsibility", see <http://pubs.iied.org/16026IIED.html>
- ¹⁶ Arrowsmith, S. Treumer, S. Fej , J. Jiang, L. 2010. Public Procurement Regulation: An Introduction. [pdf]: Available at: <https://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/publicprocurementregulationintroduction.pdf> [accessed on 2 May 2013].
- ¹⁷ Arrowsmith, S. Treumer, S. Fej , J. Jiang, L. 2010. Public Procurement Regulation: An Introduction. [pdf]: Available at: <https://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/publicprocurementregulationintroduction.pdf> [accessed on 2 May 2013].
- ¹⁸ Ibid.
- ¹⁹ Ibid.

