

Anti-Corruption, Anti-Kickback, Anti-Bribery & Foreign Corrupt Practices Act

General Information:

Section:	Ethics and Business Conduct	Version:	2.0
Subsection:	Government Relations	Effective Date:	August 1, 2019
Policy Number:	01-04-01	Referenced Policies:	See References section below
Policy Contact/Owner:	Craig Ogata, Director of Contracts and Compliance		
Approved By:	Kevin Thomas, President		

Objective:

Navistar Defense ("ND") is committed to conducting its business ethically and in compliance with all applicable laws and regulations that prohibit improper payments to obtain a business advantage. All ND employees, contractors and Third Party Representatives must comply with all applicable anti-corruption, anti-kickback and anti-bribery laws, including the Foreign Corrupt Practices Act (FCPA), the U.K. Bribery Act (UKBA), Brazil's Clean Company Act, Mexico's Federal Law Against Corruption in Public Procurement, the Anti-Kickback Act of 1986 as well as laws in other countries when doing business in those jurisdictions, all company locations (including domestic and foreign business units), and all ND Third Party Representative locations.

Defined Terms:

Agreements - Includes, but are not limited to, commission agreements, retainer agreements, success fee agreements, sales agreements, dealer agreements, terms and conditions.

Anything of Value - Includes cash, gifts, gratuities, travel, meals, entertainment, and offers of employment; also may include event sponsorships, consultant contracts, and charitable contributions made at the request of, or for the benefit of, a government employee, their family, or other relations, even if made to a bona fide charity.

Government Officials – Broadly includes anyone working at, for, or on behalf of a government entity (as defined below), as well as any candidate for political office, a political party official or employee, or a political party, or any relatives or designees thereof. A Government Official also includes an officer, director, or employee of a non-governmental institution whose employees are treated, because of their status or other reasons, as Government Officials under applicable local or U.S. federal law, or any relatives or designees thereof.

Government Entity - Includes national, state, local or municipal governments or government departments, bodies, agencies, as well as "public international organizations" and political parties. "Public international

organizations" include any organization with two or more governments as members. Government Entity also includes "government instrumentalities" which includes government-owned or controlled commercial enterprises, without regard to whether such entity is wholly or partially government-owned or controlled.

Foreign Official - Any officer or employee of a non-U.S. government or any instrumentality of the government, or any person acting in an official capacity for or on behalf of the non-U.S. government or its instrumentality

Commercial Entity - All entities excluded from the Government Entity definition above, including, but not limited to, vendors, contractors, dealers, joint venture partners, and customers.

Third Party Representatives – Includes agents, intermediaries, consultants, suppliers, customers, joint ventures, subsidiaries and partners of Navistar Defense who act, or may act, on behalf of Navistar Defense.

Kickback - Means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Statement of Policy:

The Foreign Corrupt Practices Act (FCPA) of 1977 (15 U.S.C. § 78dd-1, et seq.) is a United States federal law and has two main provisions that address 1) accounting transparency requirements under the Securities Exchange Act of 1934, and 2) bribery of foreign officials.

The Act prohibits the payment or offering of anything of value directly or indirectly to a foreign government official, political party, party official or candidate in order to influence an official act of the person or government to gain an advantage. The Foreign Corrupt Practices Act anti-bribery provisions apply to U.S. citizens, nationals or residents and virtually any entity that has its principal place of business in, or is organized under the laws of the United States, "issuers," i.e., entities, U.S. or foreign, that have a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or are required to file periodic reports with the SEC, and to foreign persons or entities acting within the territory of the United States. US companies may also be held responsible for conduct by third parties acting on behalf of such persons or entities.

The Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) share enforcement responsibility for the FCPA. The DOJ is responsible for all criminal prosecutions under the statute and for civil enforcement against privately held companies as it relates to the anti-bribery provisions of the FCPA. The SEC has civil jurisdiction over publicly held companies as it relates to the books and records provisions of the FCPA.

See the NIC Global Third Party Due Diligence Policy for specifics regarding integrity requirements for engaging with third parties.

The Anti-Kickback Act of 1986 (41 U.S.C. § 51 et seq) was passed to deter subcontractors from making payments, and contractors from accepting payments, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or service of any kind.

FAR Subpart 3.502-2 "Subcontractor Kickbacks" requires contractors to have in place and follow reasonable procedures designed to prevent and detect violations of the Anti-Kickback Act in its own operations and direct business relationships. Examples include:

- company ethics rules prohibiting kickbacks by employees, agents, or subcontractors
- education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection
- procurement procedures to minimize the opportunity for kickbacks
- audit procedures designed to detect kickbacks
- annual employee declarations that they have violated no company ethics rules

FAR Subpart 3.502-3 “Contract clause” requires the contracting officer to insert FAR clause 52.203-7 “Anti-Kickback Procedures” into all federal government solicitations and contracts exceeding the simplified acquisition threshold, other than those for Commercial Items. The clause invokes the Anti-Kickback Act of 1986, and requires contractors to incorporate the substance of the clause in all subcontracts under contracts which will exceed the simplified acquisition threshold.¹

ND strictly prohibits bribery, kickbacks or other improper payments in any of its business operations. This prohibition applies to all business activities, anywhere in the world, whether they involve government officials or are wholly commercial. A bribe, kickback or other improper payment to secure a business advantage is never acceptable.

Prohibited Conduct

ND employees, contractors and Third Party Representatives are prohibited from offering, promising to make or making payment, soliciting, accepting or providing *Anything of Value* directly or indirectly to or from any other party, including, but not limited to, any Government Official, Government Entity ("Government Parties"), Commercial Entity, or agent for a Commercial Entity for the purpose of influencing the placement of contracts, the retention of business, obtaining a business advantage, or securing political or business concessions. In addition, ND may not provide *Anything of Value* directly or indirectly to any other party in connection with ND business for any other purpose where such transaction would violate applicable anti-bribery, anti-kickback and anti-corruption laws. These payments should not be confused with reasonable and limited expenditures for gifts, business entertainment and other legitimate activities directly related to the conduct of ND's business. See ND's Code of Conduct and policies listed under the References section below for more details.

Prohibited activities include, but are not limited to:

- Payments made to secure an improper advantage, including a decision to select ND to provide any products or services, or to provide ND with more preferential terms, including, but not limited to, providing any confidential, proprietary, or competitor information that may provide ND an improper advantage;
- Directly or indirectly offering, providing, soliciting, or accepting anything of value in return for favorable treatment in connection with a government contract or subcontract;
- Payments made to influence any act or decision of a Government Official in his or her official capacity;
- Payments made to induce another party to perform or fail to perform any act;
- Payments made to induce another party to use his or her influence with a Government Entity to affect or influence any act or decision thereof;

¹ As defined in FAR Subpart 2.1 and Part 13 - The 2019 simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

- "Facilitating payments" are small payments paid to foreign government officials to expedite or facilitate non-discretionary actions or services, such as obtaining an ordinary license or business permit, processing government papers such as visas, providing police protection, providing telephone, power or water service or loading or unloading of cargo;
- Offer of employment to a Government Official or relative of a Government Official made to influence an act or decision in his or her official capacity;
- Payments made to a charity designated by another party;
- Contributions made to international political parties or committees or to individual politicians;
- Gifts given to another party or their designee unless specifically allowed under ND Policy 01-07-01 Gifts, Business Courtesies and Entertainment.
- "Looking the other way", or not performing tasks that should otherwise be performed resulting in violation of laws; and
- Personal funds must not be used to accomplish what is otherwise prohibited by this Policy.

Personal Safety Payments

Personal safety payments are permissible under this policy. A personal safety payment is a payment to avoid imminent physical harm. Personal safety payments do not include payments made in response to commercial duress, or in response to threats to commercial, financial or other interests. If confronted with a situation in which you believe that there is an imminent threat to your health or safety, you must use your best judgment in determining whether to make a personal safety payment. If you reasonably elect to make a personal safety payment, you will not be subject to discipline under this policy. However, those payments must be immediately reported to ND's Compliance Department and CFO so ND can keep accurate books and records of any such payments made by employees.

Maintaining Accurate Books, Records and Accounts

ND requires the keeping of accurate books and records that, in reasonable detail, reflect the transactions and asset dispositions of ND, and the development and maintenance of a system of internal accounting controls including periodic audits. These requirements apply to all payments, not just sums that would be "material" in the traditional financial sense. False, misleading, incomplete entries in the Company's books, records, and other business documents, and accounts kept "off-book" in order to facilitate or conceal improper payments are prohibited. All payments on behalf of ND must be approved and supported with appropriate documentation in accordance with applicable Accounts Payable, Travel & Business Expense, and other policies (i.e. valid business purpose, agreement or contract, original vendor invoice, evidence of services rendered, etc.).

The following financial and accounting directives/processes have been implemented to help ensure ND's compliance with the FCPA and other laws and regulations:

- Periodical reviews of ND's books, records, and controls to ensure compliance with the requirements of the FCPA will be performed by ND's internal controls auditor.
- No employee or contractor shall falsify any accounting or other business record, and all employees or contractors shall respond truthfully and fully to any questions from ND's internal, independent or government auditors.

- Payments will not be made into anonymous bank accounts or other accounts not in the name of the payee or of any entity known to be controlled by the payee.
- Fictitious invoices, over-invoices or other misleading documentation will not be used.
- Fictitious entities, sales, purchases, services, loans or financial arrangements will not be used.
- Check requests will be in writing and contain a complete explanation of the purpose and authority for the payment. The explanation will accompany all documents submitted in the course of the issuing process and will be kept on file.
- Payments to third parties will only be made in the country where a substantial portion of the related services are performed or the country from which the third party performing such services normally conducts business.
- Payments for any services rendered to ND by a government official (including an officer of a foreign government-owned or controlled commercial enterprise), including honorarium payments and reimbursement of expenses, will be made solely to the foreign government agency or instrumentality employing the individual. Such payments will be made by check directly to the foreign government agency or instrumentality, or by wire to its named bank account within the foreign government agency's or instrumentality's country, or by wire through its duly authorized correspondent bank within the U.S.
- Receipts, whether in cash or checks, will be deposited promptly in an ND bank account. Any employee or contractor who suspects the possibility that a bribe, kickback or over-invoice is associated with a particular receipt or that an understanding exists that all or a portion of a receipt will be rebated, refunded or otherwise paid in contravention of the laws of any jurisdiction, will immediately report that suspicion in accordance with the reporting procedures addressed below under "Reporting".

Reporting

In the course of doing business, issues may come up that require further review as they can be indicators of corruption. Some examples of Red Flags that ND and its Third Party Representatives should watch for are summarized in the Red Flag List (Attachment A). If you have a questions regarding whether a "Red Flag" is part of a transaction you are working on, please contact the Compliance Department immediately. Any employee, contractor, or Third Party Representative who becomes aware of conduct contrary to this policy must report it immediately in accordance with ND Policy 09-03-03 Reporting Complaints/Grievances & Suspected Violations and Non-Retaliation.

Procedure:

N/A

Scope, Governance and Accountability:

Scope

This policy applies to all ND employees, contractors and Third Party Representatives who conduct business on ND's behalf.

Roles and Responsibilities

All ND employees and contractors are responsible for:

1. Reading, understanding, and complying with the statements in this policy
2. Reporting instances or activities that may violate this policy
3. Attending and successfully completing anti-corruption training in conjunction with the annual ND Code of Conduct training/certification.
4. Executing periodic certifications of policy compliance in conjunction with the annual ND Code of Conduct training/certification.

ND's Compliance and Procurement groups are responsible for:

1. Performing initial and on-going Third Party Due Diligence.
2. Monitoring third party partners for changes in risk profile.
3. Auditing and monitoring compliance with risk mitigation plans.
4. Assisting with anti-corruption training development and presentation.

Corporate Compliance is responsible for:

1. Developing an anti-corruption training program.
2. Providing anti-corruption training to all employees and contractors
3. Auditing and monitoring compliance with this policy.

ND's Legal Counsel is responsible for:

1. Providing advice, guidance and interpretation to ND employees/contractors with regard to anti-corruption laws and regulations, prevention of corruption and internal policy.
2. Assisting and guiding employees/contractors who are responsible for ensuring that ND enters into appropriate written commission or fee agreements with ND third parties.

ND's President, COO and CFO, in consultation with General Counsel, are responsible for pre-approving in writing any third party representative agreements including, but not limited to, commission or fee agreements in accordance with ND policy 08-03-01 Financial Transaction Approval Authorities (FTAA).

Accountability

Violations of the FCPA, the Anti-Kickback Act and other regulations and statements within this policy are violations of both federal law and ND's Code of Conduct. Violations may result in penalties including monetary fines as well as possible debarment and suspension of ND from contracting with the USG and/or foreign governments. Each individual involved is subject to severe penalties, including monetary fines and imprisonment. By law, fines imposed on individuals for violations cannot be paid by ND and must be paid by the individual committing the violation. In addition to penalties that may be imposed by the laws of the countries where we operate, ND will discipline the employee or contractor committing the violation, up to and including termination.

References:

01-04-06 Government Investigations

01-03-05 Charitable Contributions

01-06-01 Conflicts of Interest – General

01-07-01 Gifts, Business Courtesies and Entertainment

09-03-03 Reporting Complaints/Grievances & Suspected Violations and Non-Retaliation

Revisions and Approvals:

Date	Version	Approver	Change Description
8/21/09	1.1	A. Massicotte/B. Patterson	Original ND policy 01-03 (“Foreign Corrupt Practices Act (FCPA)”)
8/21/09	1.1	A. Massicotte/B. Patterson	Original ND policy 2-02 (“Anti-Kickback Act”)
8/1/16	14.0	Darcy Morowitz, VP Internal Audit & Chief Compliance Officer	NIC policy 05-02 (“Anti-Corruption, Anti-Bribery Act”)
8/1/19	2.0	Kevin Thomas, President	Revise/update policy with additional information, consolidate topical information from “old” ND policies 01-03 and 02-02 and NIC’s policy 05-02, and update in conjunction with ND’s new policy formatting and structure.

Appendices and Attachments:

[Policy Attachment A - Red Flag List](#)