



Foreign Corrupt Practices Act and Other Anti-Corruption Laws, Corruption Prevention, and Policy on Use of Foreign Dealers/Agents

General Information:

Section:	05 - Business Conduct	Version:	12.0
Policy Number:	05-02	Effective Date:	June 3, 2014
Policy Contact:	Steven Covey	Reference Policies:	01-07 Charitable Contributions , 01-08 Records Management , 04-01 Political Activities , 05-10 Gifts and Entertainment
Approved By:	Steven Covey		

Objective:

During the course of business, it is common for Navistar employees, as well as its sales representatives, agents, intermediaries, consultants, dealers, and distributors to interact with local and federal government officials, as well as with suppliers and customers. All persons acting on behalf of Navistar must comply with all applicable anti-bribery laws during these interactions, including the United States Foreign Corrupt Practices Act ("FCPA"), the U.K. Bribery Act, China's Anti-Corruption Law, the U.N. Convention Against Corruption, as well as laws in other countries. All Navistar employees, as well as any sales representatives, agents, intermediaries, consultants, dealers, and distributors who interact with local and federal government officials working on Navistar's behalf ("Navistar Parties") are prohibited from offering, promising to make or making payment, or providing Anything of Value directly or indirectly to any other party, including, but not limited to, any Government Officials or any Government Entity ("Government Parties") for the purpose of influencing the placement of contracts, the retention of business, obtaining a business advantage, or securing political or business concessions; nor may Navistar Parties provide Anything of Value directly or indirectly to any other party in connection with Navistar business for any other purpose, without the express written approval of the appropriate Vice President and the Law Department. Refer to [Navistar Defense Code of Conduct Policy 01-01, Business Courtesies Involving Government Customers](#), for policy specific to Navistar Defense.

Defined Terms:

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.

Facilitation Payment: Small, unofficial payment made with the purpose of expediting or facilitating the performance by a public official for a routine governmental action.

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, 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 or local 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.

OFAC: Office of Foreign Asset Control.

Third Party Due Diligence Process: The process used by Navistar, as may be modified from time-to-time, to evaluate the risk involved in doing business with a third-party prior to establishing a relationship with such entity.

Policy Statements:

General Practice

Navistar prohibits payments, offers of payment, as well as giving Anything of Value directly or indirectly to other parties, unless specifically allowed under [**Navistar's Gifts and Entertainment Policy 05-10**](#) for the purpose of influencing the placement of contracts, retention of business, obtaining a business advantage, securing political or business concessions, or inducing an employee of a Government Entity to perform a routine duty or service. The provision of Anything of Value by a Navistar Party to any other party for any purpose requires the prior written approval of the appropriate Vice President and the Law Department. Prohibited payments include, but are not limited to:

- Payments made to secure an improper advantage, including a decision to select Navistar to provide any products or services, or to provide Navistar with more preferential terms, including, but not limited to, providing any confidential,

proprietary, or competitor information that may provide Navistar an improper advantage;

- 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 or government instrumentality to affect or influence any act or decision thereof;
- Payments made to induce a Government Official to perform a routine duty or service, commonly referred to as "facilitating payments";
- Payments made to a charity designated by another party; and
- Gifts given to another party or their designee unless specifically allowed under [**Navistar's Gifts and Entertainment Policy 05-10**](#).

Third Party Representatives (including Agents, Consultants, Subsidiaries, Dealers, Joint Ventures, and Partners)

Engagement of the services of persons, entities, or firms that provide entree or liaison to further our business interests may be allowed if the following conditions are met:

- Due diligence background check is performed on the intended third party representative, including OFAC screening and completion of FCPA Due Diligence Questionnaire and Certification as set forth in the **Third Party Due Diligence Process Red Flag List (Attachment 1); Third Party Due Diligence Request for Information (Attachment 2); Third Party FCPA Diligence Review Process (Attachment 3); Third Party FCPA Due Diligence SBU Risk Assessment (Attachment 4); Third Party FCPA Due Diligence SBU Certification (Attachment 5); and Sample FCPA Policy (Attachment 6)**.
- Arrangements are properly conceived to be reasonable (at market rates) compensation (commissions, or fees to be paid under the particular circumstances); and
- Agreements are documented on official business records; and
- Agreements are implemented in writing for commensurate services, properly rendered, and are legitimate and in compliance with Navistar policy; and
- Agreements include audit rights for Navistar.

All third party representative agreements (including, but not limited to, commission agreements, retainer agreements, and success fee agreements) must meet the above conditions and receive the prior written approval of the Law Department and the appropriate Vice President of the Navistar group seeking to enter into the Agreement. Commission contracts which are likely to or do, in fact, result in aggregate commissions or fees over the term of the Agreement in excess of five percent of the value of the underlying sales agreement or \$1,000,000 are to be entered into or maintained only upon the prior written approval of the Law Department, the appropriate Vice President, and Navistar's President and Chief Executive Officer.

Additionally, where deemed appropriate by Navistar's Law Department, commission or fee contracts are to be approved by an opinion of reputable counsel retained by Navistar in the country in which such third party is a resident or will be performing services. To ensure the contract is legal and proper, the form of payment (particularly if it is to be made outside such country) must be allowable under all laws in regards to taxation, money laundering prevention laws, and exchange controls.

Employees must consult with local counsel (but only with assistance from Navistar's Law Department) regarding, and are required to follow, any local public disclosure and governmental filing requirements in connection with entering into and payments relating to commission or fee contracts.

Recordkeeping

All Navistar accounts, invoices, memoranda, and other documents and records must be prepared and maintained with strict accuracy and completeness. It is prohibited and will result in appropriate disciplinary action for accounts to be kept "off-book" in order to facilitate or conceal improper payments. All assets, liabilities, revenues, and expenses must be recorded, using the proper general ledger accounts, in the regular books of Navistar. All accounting records, expense reports, invoices, vouchers, and other business records must be accurately and fully completed, properly retained, and reliably reported and recorded. Refer to Policy [01-08 Records Management](#) for further guidance on records management, including maintenance and retention.

Red Flags

The following is a list of sample situations that may raise concerns under various anti-bribery and anti-corruption laws; this list is not intended to be exhaustive. Employees must be familiar with these situations. If employees encounter any of these red flags during the course of business, they must report them promptly through normal reporting relationships, or to the Navistar Compliance Hotline, or to the Compliance or Law Departments for immediate review.

1. Any persons or third parties who, or who may, represent, act on behalf of, distribute on behalf of, or supply to Navistar (or its customers/clients through Navistar) who:
 - engage in, or have been accused of engaging in, improper business practices;
 - have a familial or other relationship that could improperly influence the decision of a customer or government employee;
 - approach Navistar employees at or near the time of a contract or procurement decision and explain that he or she has a special arrangement with a Government Entity, employee, client, or potential client;
 - insist upon receiving a commission or fee payment before the announcement of a contract or procurement decision;
 - demand an extraordinarily high commission or fee for services (above market rates);

- request cash payment or payment “off-book” and/or refuse to sign a formal commission or fee agreement with Navistar;
 - request that payment for services be made to a country or geographic location different from where the third party resides or conducts business;
 - emphasize his/her/its "connections";
 - request additional commission or fees in order to “facilitate” services;
 - demand lavish entertainment, gifts, or travel before commencing contract negotiations or other services;
 - request a donation from a customer or a party in a position to influence any potential business advantage obtained or retained by Navistar;
 - request a payment to "overlook" potential violations of law;
 - request employment of a friend or relative;
 - request that Navistar make a payment to a numbered account instead of an account with a third party’s name (**Please note that payments to numbered accounts are permissible, but only if made in compliance with documented policies and procedures**);
 - refuse to complete Navistar's FCPA Due Diligence Questionnaire and Certification or otherwise refuse to make representations and warranties to Navistar regarding his/her/its interest in the underlying transaction or how any funds paid by Navistar to him/her/it will be used;
 - refuse to make representations and warranties to Navistar regarding his/her/its interest in the underlying transaction or how any funds paid by Navistar to him/her/it will be used;
 - have a reputation for paying bribes or a reputation for having a special relationship with foreign government officials; or
 - refuse to permit Navistar audit of finances and records.
2. Lack of transparency supporting documentation or inconsistent documentation for vendor expenses, particularly law firms, consultants, and travel agents.
 3. Invoices which appear to be non-standard or customized; invoices with higher than normal prices or fees, or which have inadequate matching or prices to particular goods or services.
 4. Comments suggesting a particular manner of conducting business is "the way business is done here."
 5. Large amount of petty cash transactions.
 6. Use of side letters.
 7. Use of a consultant who does not appear to possess capability to perform stated services.
 8. Use of a consultant whose office location does not "make sense" in light of service offerings.

9. Recommendation by a customer or Government Entity to use a particular consultant or distributor.
10. Any request that a commission or other fee payment be made in a third country or to another name or company different from the one earning the commission.
11. Any commission or fee payment that appears large in relation to the services provided.
12. Any request to use a specific sales representative, agent, intermediary, consultant, distributor, or supplier that is not typically used by or known to Navistar.

If you have questions or concerns regarding any of the above situations, or any other circumstances that seem unusual, you must consult with the Law Department.

Reporting

If an employee becomes aware of any conduct that he/she believes may violate this Policy, the employee must report the activity. The employee may report the activity through normal reporting relationships, through Navistar's Compliance Hotline, or through the Compliance or Law Departments.

Monitoring and Auditing

Navistar will periodically monitor compliance with this Policy through scheduled, as well as random, anti-corruption audits. All non-represented employees, and represented employees where applicable collective bargaining agreements allow such a certification, will be required to execute periodic certifications of compliance with the Policy, as well as attend and successfully complete training related to anti-corruption.

Consequences/Penalties

Employees must adhere to this Policy. Violations may result in criminal and civil exposure for Navistar and each employee involved, including imprisonment and other severe penalties. By law, fines imposed on individuals for violations of the FCPA cannot be paid by Navistar 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, Navistar will discipline employee violations, up to and including termination.

References

Refer to Policies [01-07 Charitable Contributions](#), [01-08 Records Management](#), [04-01 Political Activities](#), and [05-10 Gifts and Entertainment](#) for additional information regarding specific prohibited payments and records management.

Roles and Responsibilities:

Employees are responsible for reading, understanding, and complying with the statements in this Policy.

Employees are responsible for reporting instances or activities that may violate this Policy.

Employees are responsible for executing periodic certifications of policy compliance, as well as for attending and successfully completing training related to anti-corruption legislation.

The appropriate Vice President and the Law Department are responsible for pre-approving in writing all third party representative agreements including, but not limited to, commission or fee contracts.

The President and Chief Executive Officer, the appropriate Vice President, and the Law Department are responsible for pre-approving in writing any third party representative agreements including, but not limited to, commission or fee agreements in excess of five percent of the value of the underlying sales agreement or \$1,000,000.

The Compliance Department is responsible for auditing and monitoring compliance with this Policy through scheduled, as well as random, anti-corruption compliance audits.

The Law Department is responsible for providing advice and guidance to employees with regard to anti-corruption laws and regulations and assisting employees who are responsible for ensuring that Navistar enters into appropriate written commission or fee agreements with third parties.

Revisions and Approvals:

Appendices and Attachments:

N/A