

Annex 2

Guidelines for the Selection of Business Partners

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1 Objective and Scope of Application

The main objective of these Conduct Guidelines is to elaborate in more detail the principles described in the *Principles of Business Ethics*.

The *Guidelines for the Selection of Business Partners* shall serve as binding guidance for all Chief Executives and employees of GKW Companies.

GKW Companies and its employees are committed to fair and transparent relations with business partners. GKW Companies stand out for their good prices, their performance, the quality and qualification of their services and products and they expect the same from the business partners they commission.

Business partners of GKW may be classified in five different categories: the most important group of business partners are, of course, our clients. The second group includes companies with which GKW collaborates as partners in specific projects, so called, consortium partners. The third group is a group, which renders services to GKW, so called subcontractors and suppliers. The fourth group is composed of freelance experts in projects, namely freelance experts on the respective project's key expert positions. The fifth group is composed of representatives and/or all business partners, which are remunerated by a commission that is calculated on a percentage basis of the GKW contract value.

2 Principles

For the assessment / due diligence procedure, GKW follows a risk-based approach, which means that requirements differ according to the classification of the business partner into one of the four above-mentioned groups, the share assumed in the project and the extent of an eventual damage. The main objective of each assessment / due diligence procedure is to obtain information and records on the business partners and the owners (beneficial owners). For this purpose, specific questionnaires have been elaborated, which shall serve as supporting documents for risk assessment and due diligence. These questionnaires will be made available by the Compliance Officer.

2.1 Categories of Business Partner

Since requirements that have to be fulfilled by business partners differ according to their specific role, these Guidelines will follow the above-specified categorisation of Business Partners.

2.1.1 Clients

Usually, the group of clients comprises public clients (e.g. Ministries), state-owned companies (e.g. Project Implementation Units) or private clients.

The identification of Ministries or state-owned companies may generally be executed by consulting relevant national Internet sites. This applies, in particular, if projects are financed by Development Banks.

As far as private clients are concerned, identification should be carried out by pertinent documents, such as extract from the commercial register or the trade register. Any information obtained by business information providers/agencies may also be useful to obtain information on the company, on the persons acting on behalf of the company as well as on the owner of the company.

2.1.2 Consortium Partners / Association Partners

This group usually comprises companies, which, jointly with our company, work for the success of a project. As far as third parties' liability is concerned, i.e. the relationship to the client, joint and several liability is commonly agreed. As far as internal relationship within the association partners is concerned, liability is generally limited to the company's own portion in the contract. Due to contractual liability provisions, GKW usually only cooperates with large companies, which have already adequately and sufficiently demonstrated their skills and reliability in the past. These companies are often stock-exchange listed companies, where relevant information is publically available. For all other companies it is important to procure this type of information. You will be assisted in this procedure by specifically elaborated questionnaires, which will be made available by the Compliance Officer. For those companies, which have not previously collaborated with GKW, it is recommended to collect information and start an internet research on these companies to find out whether compliance-relevant incidents have occurred. If any such evidence exists, the intervention of the Compliance Officer will be required.

The decision to collaborate or not to collaborate with the company should then be taken based on a background research executed by a relevant service provider.

2.1.3 Subcontractors / Suppliers

Subcontractors carry out a variety of tasks for our companies. The scope of services rendered by subcontractors may comprise relatively simple tasks, for example, the work of a driver, but also highly complex and specialised engineering disciplines. Suppliers only play a minor role. They usually provide standardised products for office equipment.

Two types of subcontractors have to be differentiated in the scope of project business. For those subcontractors who have to be determined as business partners in the prequalification phase already, it will not be possible to get early cost estimates. It will then be particularly important to carefully evaluate the *Questionnaire for Due Diligence of Business Partners*.

Otherwise, the general rule applies that services will only be awarded to subcontractors / suppliers if there are at least two comparable cost estimates available to obtain a fair and transparent market price.

It will, however, be acceptable to depart from this principle if

- there is only one service provider available or
- urgent operational reasons call for this procedure.

Documentation of these exceptions is compulsory. Contracts with subcontractors / suppliers, which do not exceed a value of 20,000 EUR per calendar year may be directly awarded.

2.1.4 Freelance Experts

Freelance experts carry out a variety of tasks for our companies. The scope of services rendered by freelance experts may comprise relatively simple tasks, for example surveyor or draftsman, but also highly complex and specialised engineering disciplines, deputy team leader or team leader.

Three types of freelance experts have to be differentiated in the scope of project business.

1. Experts with clearly defined tasks or deliverables, non-key experts;
2. Experts exposed to a higher risk of fraud and corruption, namely bid evaluators, resident engineers and site supervisors;
3. Experts on Key Expert Positions, as specified by the respective project's terms of reference, key experts' CVs are relevant for technical bid evaluation, key experts' replacement requires clients', IFI's or donor's approval, key experts manage small teams of non-key experts, cover or coordinate an essential field of expertise.

Type 2 and 3 have to participate in mandatory compliance training. Type 3 is subject to adapted due diligence and ethics checks.

2.1.5 Representatives

GKW reserves itself the right to work with representatives, particularly in those countries where GKW has not a branch office or subsidiary of its own. Representatives support the company during proposals, contract negotiations, and project execution. Due to the business model, representative agreements are considered to be in a high risk category. The Managing Director and the Compliance Officer will have to be involved, not only in the scope of contract initiation but also in the supervision of this type of business relationship. Special rules have to be laid down in writing. Contracts with representatives will follow the *FIDIC Model Representative Agreement*, particularly in terms of remuneration.

2.2 Legal Forms of Business Partners

GKW is obliged to know its business partners, i.e. relevant documents have to be available, which confirm the existence of the business partner. In case of natural persons, this is relatively easy to prove by contact data or bank details. As far as legal persons are concerned, this may be somewhat more difficult depending on the company's country of origin. In this particular context, special care has to be taken to procure information or documents either from official sources for example from administrations or from trustworthy sources, which are publicly accessible, such as compulsory publications in newspapers.

2.3 Risk-Based Due Diligence

There is no doubt that risk-based assessments / due diligence procedures are required. However, different requirements will be imposed depending on the type of services rendered. A business partner, e.g. a subcontractor whose services are limited to supporting activities within the project (for example rental of office facilities), will not be subject to the same requirements as a representative who supports GKW in the difficult phase of proposal preparation.

Nevertheless, the general rule applies: the less reliable the source from which the information has been obtained, the higher the risk, i.e. the more efforts will have to be made to obtain reliable information on the business partner.

This general rule does not apply in the contractual relationships with representatives. Due to the business model they follow, representatives are classified in the highest risk category. In any case, the Compliance Officer will have to be involved in the contractual negotiations with representatives and in the current procedure of contract supervision.

For all other business partners, one basic rule applies: personal and financial data from the business partners should be procured and business partners may also be compelled to submit references. These business partners should then be contacted officially. Moreover, it is recommended to collaborate with an internationally operating commercial information provider. In very special cases, it may also be appropriate to seek the assistance of service providers, which are specialised in the field of background research work.

The main objective of these due diligence procedures on business partners is to obtain secured information on the person (either natural or legal person) and to minimise all risks associated with contractual relationships.

	ODA Funding	Non-ODA Funding
Project outside EU, >€20k	Due Diligence: Partner, Sub-Consultant, Key-Freelancer, Agent	Due Diligence: Client, Partner, Sub-Consultant, Key-Freelancer, Agent Human Rights Check: Project

2.4 Additional Requirements

Apart from the above-mentioned requirements, financing agencies or clients themselves may impose requirements, which eventually influence the selection of business partners. In this particular context, the World Bank and other Development Banks are to be mentioned, since these organisations ask for self-declarations on eventual interdependencies between employees working in the tendering companies and the World Bank. These requirements have to be fulfilled as well, since any false or misleading information in tender documents or contracts may be considered as “sanctionable practices” and may lead to serious consequences with the Development Banks.

2.5 Contract Management

In the course of ongoing contractual relationships, it should be ensured that contracts are documented in writing and that all contract amendments are also documented. Compliance clauses will be made available by the Compliance Officer. Contracts will have to detail all services, and appropriate checks, as well as approval/acceptance of services will have to be defined and requested. Provisions made in the QM-System and in the Financial Guidelines will have to be complied with. As a basic principle, all contracts, which provide for commissions, will have to be agreed upon with the Compliance Officer in advance.