

Integrity Pacts

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Tool summary

Developed by Transparency International (TI) during the 1990s, the Integrity Pact (IP) is a tool aimed at preventing corruption in public contracting. The IP is essentially an agreement between a government or government department (at the national, sub-national or local level) and all bidders for a public contract. It stipulates rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while executing the contract. Another key feature of the IP is that it introduces an independent monitoring system of public contracting processes under the leadership of civil society, which ensures increased accountability of public resources.

What is it?

The Integrity Pact process has two main components:

- *A written agreement between the government/government department and all bidders to refrain from bribery and collusion:* Bidders are required to disclose all commissions and similar expenses paid by them to anyone in connection with the contract. If the written agreement is violated then the IP describes the sanctions that shall apply. These sanctions include:
 - loss or denial of contract;
 - forfeiture of the bid or performance bond and liability for damages;
 - exclusion from bidding on future contracts; and
 - criminal or disciplinary action against employees of the government.
- *A monitoring system that provides for independent oversight and increased government accountability of the public contracting process:* Monitors are members of civil society or experts appointed by (and reporting to) the TI Chapter and its civil society partners. The independent monitoring system aims to:
 - provide oversight on corruption risks in the contracting process and the contract execution;
 - offer guidance on possible preventive measures;
 - respond to the concerns and/or complaints of bidders or interested external stakeholders and;
 - inform the public at large about the achievements or shortcomings in relation to the transparency and integrity of the contracting process.

In a specific contracting process, the IP is intended to accomplish two primary objectives:



- To enable companies to abstain from bribing by providing assurances to them that their competitors will also refrain from bribing, and government procurement, privatisation or licensing agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures.
- To enable governments to reduce the high cost and distorting impact of corruption on public procurement, privatisation or licensing.

The IP is also intended to create confidence and trust amongst citizens in public decision-making, a more hospitable investment climate and public support for the government's own procurement, privatisation and licensing programmes.

The IP tool is suitable for construction contracts and goods and services supply contracts. In addition, IPs can be used for the selection of:

- the buyer/recipient of state property as part of a government's state asset privatisation programme;
- consultants (engineering, financial, architectural or other);
- the beneficiary of a state licence or concession such as for oil or gas exploration and production, mining, fishing, logging and other extraction rights), or for government regulated services such as telecommunications, water supply and rubbish collection services.

Whenever possible, the IP should cover all the phases and activities related to the investment project, starting from the needs assessment and justification phase to the pre-selection of bidders, the bidding and awarding of the contract, the implementation of the project, and the project's completion and operation.

The IP tool has demonstrated itself to be adaptable to many legal settings and flexible in its application. Since its conception, the IP has been used in more than fifteen countries worldwide and has covered hundreds of public contracts in all types of sectors and at different levels of government.

The IP tool can be used by government, bidders and civil society. The initiative to include IPs in a public contracting process can come from any of these actors: a civil society organisation interested in monitoring a particular process¹; a government agency wanting to strengthen transparency and integrity of its procurement processes; or a private company or group of private companies that proposes the adoption of the IP in a collective effort to fight corruption.

¹ To date, the Integrity Pacts have been led by civil society mainly through the national chapters of Transparency International (TI). In order to benefit from the enriching experiences accumulated over the years, it is preferable to have TI play this role, either individually or together with other civil society partners.

How is it done?

The basic steps for the implementation of the Integrity Pact are:

1. An *agreement* for the implementation of the IP is the starting point: Regardless of where the initiative came from, an agreement should be established between the government procuring agency and the civil society organisation leading the monitoring. The purpose of this agreement is to confirm the political will to implement the IP, define the scope of the IP (i.e. which contracting processes will be subject to the IP) and describe the activities, roles and responsibilities of each of the parties involved in the procurement process.
2. Maximum *transparency* at every phase of the contracting process leading to the award of the contract and the project's implementation: Such transparency calls for extensive and easy public access to all the relevant information including needs assessment, design, pre-selection and selection of consultants, bidding documents, pre-selection of contractors, bidding procedures, bid evaluation reports, contract terms and conditions, contract implementation and supervision. For this, the Internet provides a nearly ideal platform. In certain circumstances, public hearings are also an effective complementary tool.
3. The *content of the Integrity Pact* should be agreed upon by the civil society organizations (CSOs) and the Government, and be included as part of the bidding documents. This pact is a contract between the government office (the "Principal") inviting the public tender and the bidders. The main elements of the pact are:
 - An *undertaking by the principal* that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in the case of any violation;
 - A *statement* by each bidder that it has not paid, and will not pay, any bribes in order to obtain or retain the contract;
 - An *undertaking by each bidder* to disclose all payments made to anyone in connection with the contract in question (including agents and other middlemen as well as family members etc.);
 - The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation, as well as the corresponding sanctions, *remain in force* for the winning bidder until the contract has been fully executed;
 - Bidders are advised to have a company *Code of Conduct* (clearly rejecting the use of bribes and other unethical behaviour) and a compliance programme for the implementation of a Code of Conduct throughout the company;
 - The use of *arbitration* as a conflict resolution mechanism, and acceptance that the arbitration panel can decide and impose sanctions;
 - A pre-agreed set of *sanctions* for any violation by a bidder of any part of its commitments or undertakings within the IP, including (some or all):

- denial or loss of contract,
- forfeiture of the bid security and/or performance bond,
- liability for damages to the principal and the competing bidders, and
- debarment of the violator by the principal for an appropriate period of time.

4. The CSO must select the *independent monitor(s)*: The monitor(s) should be highly respected people of unquestionable integrity, who possess professional expertise in the area of the contract. Most importantly the monitor(s) should not have any links whatsoever with the procuring agency or the bidding companies. The monitor(s) should report directly to the CSO.

Monitors should have *free access* to all relevant government documents, meetings and officials, and to all documents submitted by the bidders. They should review the tender documents, the evaluation reports, the award selection decision and the implementation supervision reports (technical as well as financial). Monitors will regularly report to the leadership of the government office and alert such office to any *corruption risks detected*. In addition, the monitors should suggest preventive/corrective measures to all parties.

Where any corruption risks are reported by the Monitor to the government office and no steps have been taken (or such steps are inadequate) within a reasonable period of time, then the Monitor is entitled to inform the public or the public prosecutor's office about this situation. In addition, the CSO must be entitled to *withdraw* from the IP process and explain in a public statement the reasons for the withdrawal.

Benefits

From the experience of Transparency International, Integrity Pacts:

- Enhance access to information, which increases the level of transparency and integrity in public contracting.
- Encourage an increase in confidence and trust in the public decision-making.
- Reduce the cost of public contracting (reported by authorities / comparing original budget estimate vs. actual cost, decline of litigation).
- Promote increased competition for public contracts (number of bidders).
- Allow for amendments in laws or regulations based on the corruption risks identified through using the IP tool.
- Induce greater media coverage of anti-corruption activities resulting in increased public awareness.
- Foster changes in the perception of citizens & bidders about the presence of corruption in public procurement.
- Facilitate institutional changes such as the introduction of e-procurement systems, simplification of administrative procedures, use of clear bidders

registers, effective regulatory action, and new practices by public officials such as using codes of conduct or ethics agreements.

The websites of TI and its national chapters provide several examples of where and how many of the above benefits have accrued as well as information on the design and implementation of IPs.

Challenges and lessons

- *Lack of real political will:* There is the risk of the IP being used by governments as a “fig leaf” to pretend there is transparency where there is none.. Clear commitments on the part of the government are needed as well as close follow-up by civil society to ensure there is compliance by the government.
- *Political changes/government shifts:* Changes in government positions can often undermine the success of an IP. Building extensive relationships with several “IP champions” at various levels within the government can limit this damage.
- *Limited technical expertise within TI Chapter/CSO on the sector covered by the contracting process:* Make sure the TI chapter/CSO leads the management of the IP process in terms of public information, formal counterpart to the government and bidders, etc and secures external experts who can support the technical review of the process.
- *Insufficient access to timely and reliable information on the contracting process:* Make sure that there is a clear commitment on how and when information should be disclosed, and specify that non-compliance will be a cause for withdrawal.
- *Lack of local independent experts:* It is not difficult to find excellent international experts (i.e. retirees) who can help.
- *Insufficient interest of the media to report on the results:* The media typically likes stories about scandals more than stories on anti-corruption efforts. Try to build an alliance with a strong actor within the media who understands the concept of the IP, will champion its work and report on the results of IPs. Training of journalists can be another option.

Key resources

Transparency International, Berlin.

http://www.transparency.org/global_priorities/public_contracting/integrity_pacts

☞ The TI website gives an elaborate description of the concept and process of Integrity Pact for public procurement and contracting purposes.

Transparency International –National Chapters

TI Argentina: Spanish

<http://www.poderciudadano.org/?do=temas&id=86>

TI Colombia: Spanish

<http://www.transparenciacolombia.org.co/HERRAMIENTAS/PactosdeIntegridad/tabid/88/Default.aspx>

TI Germany: German

<http://www.transparency.de/Konzept-und-moegliche-Anwendun.697.0.html>

TI Indonesia: Bahasa

<http://www.ti.or.id/en/tools/13/>

TI Latvia: English

<http://www.delna.lv/eng/?q=ful&story=151&sec=179>

TI Mexico: Spanish

<http://www.transparenciamexicana.org.mx/pactosdeintegridad/>

TI Paraguay: Spanish

http://www.transparencia.org.py/index.php?option=com_content&task=view&id=118&Itemid=206

☞ These websites of the various national TI chapters in their respective languages serve as a useful resource on country specific experiences with Integrity Pacts

Combating Corruption: A Private Sector Approach. Centre for International Private Enterprise Reform Toolkit. Washington. (2008)

<http://www.cipe.org/publications/papers/pdf/Anti-CorruptionToolkit0308.pdf>

- ☞ This toolkit introduces important concepts, explains how to address the underlying causes of corruption, and suggests concrete areas in which the private sector can lead governance reform. It includes: costs and causes of corruption; stages in the fight against corruption; demand-side and supply-side ways to fight corruption; case studies of anti-corruption programs in Bulgaria, Colombia, and Serbia.

Defence Against Corruption & Defence Integrity Pacts, Transparency International, UK.

<http://www.defenceagainstcorruption.org/index.php/defence-integrity-pacts>

- ☞ On the pages of this website one can find an introduction to Defence Integrity Pacts, template and guidance, documents for practical implementation of Defence Integrity Pacts, information on the role of The Independent Monitor, an assessment of how Defence Integrity Pacts help, and an overview of experience to date with Defence Integrity Pacts and with Integrity Pacts in general.

Fighting Corruption Through Collective Action: A Guide for Business. World Bank Institute (2008)

<http://info.worldbank.org/etools/antic/Guide.asp>

- ☞ This practical Guide explains Collective Action, its benefits, and how to use it to fight corruption. It is intended primarily for use by anyone with responsibility for a major project or market, and who operates in an environment where corruption is, or may be present. Others who may benefit from this material include senior executives, company board members, government officials, civil society and others directly or indirectly affected by the adverse effects of corruption on business and society.

Procurement Handbook: Curbing Corruption in Public Procurement – Experiences from Indonesia, Malaysia, & Pakistan. Transparency International. (2006).

http://www.transparency.org/publications/publications/other/procurement_handbook

- ☞ This Handbook for curbing corruption in public procurement is meant to be a basic introduction for all stakeholders to the challenge of overcoming corruption in the field of public procurement. It's intention is to provide the readers with real world examples of successful actions that have been taken against corruption in a variety of Asian countries. The Handbook is downloadable as a pdf file.

Survey on Integrity Pacts in the Public Sector. Transparency International Korea (2003).

<http://www.defenceagainstcorruption.org/index.php/defence-integrity-pacts>

☞ This downloadable pdf file contains the English version of the report that captures Korea's experience with Integrity Pacts in all its details

Case studies

The "Social Witness": Monitoring Integrity Pacts in Mexico

Transparencia Mexicana, the TI's National Chapter in Mexico, has implemented more than 65 IPs with the independent monitoring process by using a monitor known as a "social witness". The case of "El Cajón" hydroelectric plant illustrates how a social witness can make an impact. In the case of "El Cajón" which was billed as Mexico's most important infrastructure project of the decade, the use of the IP covered the bidding process for various engineering works on the 1,228 GWh hydroelectricity plant in 2002/2003. The federal government, via the Federal Electricity Commission, had accepted for the first time that a CSO could provide independent monitoring of a bidding process in the energy sector. The monitoring was undertaken by Transparencia Mexicana through an expert known as the "Social Witness".

Find a description of the "El Cajón" Integrity Pact in page 43-44 of the pdf downloadable in the following link:

http://www.offnews.info/downloads/corruption_in_practiceIT2005.pdf

The Integrity Pact facilitating a discussion on ethics in public procurement: the experience of Colombia: Transparencia por Colombia has introduced IPs in more than 60 major procurement processes in different industry sectors. Their method of introducing IP's involves discussing in advance with the public servants and bidders the corruption risks that may arise during the contracting process, securing in this way the buy-in from all participants from an ethical perspective. Measures to prevent those risks are agreed upon between the parties and included in the IP document signed by the bidders and the authority, and in an "Ethics Declaration" adopted by the public officials involved in the bidding processes.

Find a description of this approach in the Inter American Development Bank's conference paper, "Integrity pacts: A Tool for Seeking Probity in Public-Sector Contracting" available as a downloadable PDF file on:

<http://www.iadb.org/Leg/Documents/Ticol%20Eng.pdf>

Information is also available in “The Experience of the Systemic Implementation of Integrity Pacts for Public Contracting in Colombia” taken and translated from *Transparencia y Probidad Pública: Estudios de Caso en América Latina*, Facultad de Derecho Universidad de Chile, 200, Pg 145-160.

The Integrity Pact in the Schönefeld Airport project in the city of Berlin, Germany: civil society monitoring of a highly complex project

In 2004, Transparency International Germany was invited to introduce the IP tool to a project for the design, construction and operation of a new major international airport near Berlin, since the first stage of the project had been halted after allegations of corruption. The IP was seen by the Authorities as a tool that could help to protect the project from corruption risks and enhance the Authorities’ credibility. Since the inclusion in 2005 of IPs in all the project’s contracting processes, there has been not a single allegation of corruption. Further information is available on:

<http://info.worldbank.org/etools/antic/detail.asp?ID=1>

World Bank Case Studies

This World Bank sites describes numerous IP case summaries from different sectors, including construction, aerospace, utilities and water

<http://info.worldbank.org/etools/antic/CaseStudies.asp>