



HANDBOOK ON THE INTEGRITY PACT

Safeguarding EU funds against fraud
& corruption through the civil control
mechanism of Integrity Pacts

FOREWORD

This handbook seeks to provide a hands-on guidance to those contracting authorities and bidders who are willing to act for a more transparent public procurement market, by pursuing an integrity pact. Moreover, it is aimed at providing additional information to all those who wish to know more about this anti-corruption tool.

Currently, the European Union's institutions are also examining the possibilities of a broader use of integrity pacts as tools for safeguarding the EU funds. The European Union's Anti-fraud Office supported the implementation of a two-day conference, which took place in Budapest, in February 2014. The conference united participants from several countries who have already experience with the implementation of integrity pacts, and gave them the chance to exchange know-how and best practices. The main goal of the conference was to provide EU and national institutions, as well as the civil sector a deeper understanding of the IP as a tool for promoting integrity.



The present handbook, building on the know-how gathered at the conference, aims to present the use of integrity pacts in a practical way. In each of the specific issues raised, the hands-on expertise generated in Hungary, Latvia, Italy and Bulgaria is presented, so as to help coping with potential difficulties. Ultimately, our aim is to rely on good practices to promote the integrity pact, as a tool for safeguarding public funds, with special attention to EU funds, and thus foster a transparent spending of public money and a greater accountability of relevant institutions.

I. A FEW IMPORTANT ISSUES REGARDING THE ALLOCATION OF EU FUNDS

The European Union finances or supports a vast number of projects and programs, while also striving to strictly control the use of its funds, promoting that accountability and transparency are of key importance for EU citizens.

The question of EU financing is a rather complex one, given the existence of many kinds of programs and funds, managed by various institutions.

Support is given for the implementation of concrete projects, whose evaluation usually occurs following a call for applications. The EU does not usually cover the entire cost of the given project; some contribution is required by the successful applicant.

In the end of the day, a committee formed by 28 EU commissioners bears the political responsibility for EU funds spending to happen according to the rules. However, in majority of the cases, it is the EU member states themselves who manage the EU funds and the governments of these states are in charge of effectuating control mechanisms.

It is in the interest of us all that the use of EU funds happens fairly and adequately.

The separate public procurement regulations of each member state have a significant role in this issue, as they are also the ones which determine what regular

use means, when it comes to spending the sort of public money that EU funds are. In the case of EU funded projects, it is usually only after the submission of the proposal and winning the grant, that grantees find themselves facing all the difficulties the related public procurement procedures have, the inherent pitfalls, and delays.

It is important to realize that the European Union itself engages in public procurements: in order to be able to run its institutions and programs, it also publishes tenders for the delivery of services, goods or construction investments.

According to the relevant provisions of the Hungarian Public Procurement Act (Act CVIII of 2011, hereafter PPA), any organization which otherwise does not qualify as procurement contracting authority, has to still abide to the PPA and start a public procurement procedure in cases where:

- the estimated value of the procurement is equal to or above the EU public procurement threshold and the project is directly funded by the Union at least in 50%
- the estimated value of the procurement is below the EU public procurement threshold and equal to or above the national public procurement threshold and at least 75% of the project is directly funded by the EU.

On February 3, 2014 the European Union published its first ever Anti-Corruption Report, which dedicates an entire chapter to public procurement. The report highlights that public procurement is an extremely important element of the Union's economy: the procurements of the public sector (which can be in many cases financed by the EU) – whether goods, works or services – constitute around 20% of the Union's GDP. Public procurement, as well, is an area exposed to corruption risks.

According to a research commissioned by the European Anti-Fraud Office and conducted by Price Waterhouse Coopers ("Public procurement: costs we pay for corruption", October 2013), the overall direct costs of corruption in public procurement in 2010 in five key sectors in 8 Member States were estimated to be around 1,4 and 2,2 billion Euros, the 13% of the total project budgets considered.

The EU's report urges to strengthen the norms of probity in the public procurement, and it also formulates an array of recommendations to improve control mechanisms which now lack efficiency in many of the member states.

Transparency International developed a tool which enables civil sector to monitor the single procurement processes through civil control, thereby cleaning the public procurement market.



II. THE INTEGRITY PACT

In the international practices, the integrity pact (from now on IP) is a contract which is signed by the contracting authority, the bidders and an independent monitor for a public procurement procedure. Naturally, it can be used in any kind of procurement procedure, not only in public procurements (however, in this handbook the commonly used expression will be “public procurement”).

Within the IP, all parties agree that both the contracting authority and the bidders will refrain from any form of corruption during the public procurement procedure, and that they will provide all possible information to the independent monitor who is also in charge of observing the implementation of the contract, signed as a result of the procurement process. The monitor, in his turn, is allowed to employ various professionals with expertise relevant to the field of the public procurement.



The monitor follows closely all stages of the procedure and the implementation of the contract, and signals the eventual unlawful components to the parties. Within his duties is also the preparation of regular reports, which, according to the principles of the IP, are made publicly available.

This agreement represents an advantage, as clean and fair competition and more cost-effective procurements result in short- and long term success.

This solution, under the label “transparency pact” was for a time also part of the Hungarian PPA. For a while the detailed regulations were to be defined by an implementation decree.

However, the decree fuelled discussions, as the ministry envisioned this regulation in a way that the “transparency commissioners”, who were supposed to carry out the monitoring tasks, would have had to respond to professional and registration requirements – and these criteria were not in line with the concept of civil monitoring. Besides this problem, the new regulation would have represented also further administrative burdens and additional expenses as well. In the end, the whole initiative was removed from the regulation, and retained its “civil” role.

In the Italian case, integrity pacts are mentioned and recognized in the anti-corruption law, but the Code of Public Tenders does not explicitly provide for IPs. Moreover, restrictive interpretation of the law has caused legal disputes in the past. However, some particular provisions of the IPs have been included in the national legislation during the years, such as transparency in public procurement and introduction of the term “substantial connection” (see below) as a cause of exclusion of bidders.

1. Why is it good for the contracting authority to sign an integrity pact? And why is it good for the bidders?

Corruption undermines trust in public institutions. Accordingly, trust in public procurements and fair competition is also hindered. The use of the IP makes it possible to re-establish the trust: whoever is ready to expose its public procurement procedure to the scrutiny of an independent monitor, and through him to the public, has nothing to hide.

The IP helps all parties’ work in a process-embedded monitoring. In case any malpractice takes place, this does not necessarily imply that the whole project has to end. It is crucial in such cases that the irregularity gets discovered at the earliest possible stage, when it can still be fixed. Moreover, the IP is able to pinpoint systemic anomalies in a given contract-

ing authority’s functioning mode which, if corrected, will result in considerable improvement of all future procurement processes.

Bidders can also benefit of a public procurement carried out under an integrity pact. Guaranteeing fair play will motivate them to prepare the best possible offer, and consequently implement the contract in the best possible way – none of the bidders will enjoy secret advantages.

The integrity pact is a tool that does far more than simply promoting the advantages of good morals, ethical standards and fair-play. It also allows an independent party to observe the whole tendering process closely and propose activities that would affect the integrity, efficiency and effectiveness of both the contracting authorities and bidders. TI Bulgaria’s experience shows that the companies that are willing to accede to the IP are the ones which run an open and socially responsible business, and see the IP as an opportunity to promote this way of functioning.



In the preparatory phase of the procedure (from the identification of a need for procurement up to the moment of publishing a call for tenders) the contracting authority and the monitor constitute the parties of the IP. (Please note that in this handbook “call for tenders”, “bid”, “bidder” will be used, but obviously, the content is valid also for procedures consisting of more than one phase.)

In the bidding phase, the IP is joined by the tenderers, the persons making an offer for carrying out the task that the procurement is aimed at.

In the third, closing phase, which is the implementation of the contract signed by the winner of the public procurement procedure, only the successful Bidder, the Contracting Authority and the Monitor take part.

The Monitor ought to be an accountable, independent (civil) organization, with sufficient capacity and a controllable, adequate expertise. Transparency of the process through which the Monitor is chosen is essential in itself. One of the important aspects is that any sort of incompatibility or conflict of interests between the Monitor and the Contracting Authority or the Bidders is forbidden.

Sub-contractors of the Bidders can also join the IP.

In Hungary, all procurement procedures of the project named “Development of Ózd town’s drinking water supply infrastructure and distribution system and its sustainable control” were pursued with integrity pacts. In these IPs, the signing parties were the municipality as contracting authority, the bidders, the independent monitor, Transparency International Hungary as counsellor as well as the managing authorities and the development agency who deals with the program.

The municipality of the 13th district of Budapest has signed an integrity pact with Transparency International Hungary as monitor for the public procurement and the implementation related to the refurbishment of a nursery. Bidders joined the pact during the procedure. The municipality’s Ltd contracted an independent expert company who was in charge of conducting the public procurement procedure. The integrity pact was an inherent part of the contract between the municipality firm and the company conducting the public procurement.

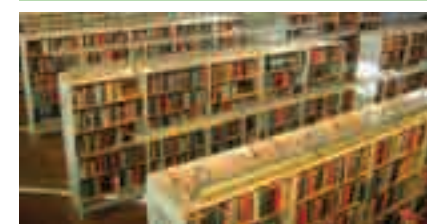


In Italy, the most relevant implementation of IPs relates to the Municipality of Milan, which has been adopting them in all public procurements since 2001. Bidders are obliged to sign them in order to participate in the tender. Transparency International Italy had the role of the monitor when the IPs were introduced. Other municipalities chose to implement IPs in specific sectors (e.g Municipality of Monza in the Health Sector).



In Latvia, Transparency International Latvia signed an agreement with the Minister of Culture and an agency that was responsible for pursuing the construction of mayor cultural infrastructures, such as the National Library. Once the agency ended its work as a result of the financial crisis of 2008-2009, the ministry became the sole partner of Transparency Latvia. The anti-corruption declaration and obligatory adherence to other rules of the IP agreement such as access to information were made inherent part of the tender documents. One of the bidders was excluded from further competition for not signing the anti-corruption pledge. The legal agreement has served as a guarantee for the continuation of the project during the change of the governments

and the changes of the government structures implementing the project in 2005-2014. In other cases in Latvia, involving smaller procurements with shorter implementation times, bidders were involved without additional bidding documents (such as the anti-corruption pledge), but invited for a public meeting prior to closing the bid in order to assure transparency and fairness of the process. Representatives of TI Latvia spoke at the meeting, calling for bidders to report any discrepancies observed in the process. Such procedure was implemented during procurements for purchasing travel agency services for the Foreign Affairs Ministry officials and choosing a PR agency for a campaign regarding the introduction of the Euro in Latvia by the Ministry of Finance. The latter IP didn’t have a written agreement even between the civil society monitor and the ministry; only oral agreements were made about the role of the civil monitor. The implementation was ensured through the publicity of this agreement, but a written agreement should otherwise be the kept as a norm in order to ensure integrity of all parties involved.



3. Rights and duties of parties

Duties of the contracting authority:

The Contracting Authority undertakes to make all reasonable steps so that its employees, institutions, business organizations do not promise or provide any illicit advantages to third parties, or other natural or legal entities and refuse any illicit advantage or the promise of it in the phase of preparation, during the conduction of the public procurement procedure or the implementation of the contract, in any direct or indirect way.

The Contracting Authority treats all Bidders in equal manner during the public procurement procedure. Inter alia, the Contracting Authority provides equal information to all Bidders during the procurement procedure, and it refrains from providing confidential information to either of the Bidders, which would aid in achieving advantages during the public procurement procedure or the implementation of the contract.

In case the Contracting Authority becomes aware of any crime related to the public procurement procedure, committed by an employee of the Contracting Authority, or if suspicion of such a crime arises, the Contracting Authority initiates a criminal, disciplinary or civil procedure.

In case any of the Bidders initiates a preliminary dispute settlement, the Contracting Authority is obliged to inform the Monitor of such, contemporarily with the other Bidders.

Duties of the Bidders:

The Bidder undertakes to do everything to prevent corruption.

The Bidder refrains from providing or promising any direct or indirect illicit advantage to third parties (including, but not exclusively the "Employees of the Contracting Authority", the Monitor and the persons in their circle of interest), in order to solicit the decision makers to take or avoid actions during the process.

Bidder undertakes to refrain from concluding any agreement which would harm relevant legal provisions, in particular those of the PPA, or those referring to fair competition or economic competition. This is particularly relevant for agreements concerning the price or elements of the price, forbidden offers, or participation in agreements regarding the submission or non-submission of offers.

The Bidder does not use in manners contrary to its purpose - for financial gains, advantages in competition, or personal gains - the information received from the Contracting Authority in the framework of the public procurement process, moreover, he/she will not provide such information to third persons.

Shared duties of the Contracting Authority and the Bidder:

During the public procurement procedure, the Contracting Authority and the Bidder



will not initiate (directly or indirectly) any payment related to the procedure, except for those payments which are occurring lawfully, in exchange of legitimate services.

Neither the Contracting Authority, nor the Bidder will take direct or indirect steps which would purposely influence the activity of the Monitor.

Duties of the Monitor:

The Monitor performs its duties independently from the Contracting Authority and the Bidders. Accordingly, Contracting Authority or the Bidder should in no way instruct, or alter the content of the reports issued by the Monitor.

The Monitor monitors all phases of the public procurement process, and during the inspections, is bound to check whether the Contracting Authority and the Bidders are acting lawfully and according to their duties formulated in the agreement.

The Monitor overviews and comments the documents produced as part of the public procurement process.

During the public procurement process, the Monitor controls the legality and transparency of the process, the preparatory phase and the implementation of the contract signed as part of the procedure.

The Monitor checks the documents that reach him through email or paper within a reasonable time limit.

The Monitor prepares reports during the public procurement process, which state whether the given phase of the process and the implementation of the contract fulfill the highest requirements of fairness and transparency. The reports are public.

4. Access to information

The participants of the IP openly agree to share the information related to the public procurement and contribute to its disclosure and proper accessibility. They undertake to treat this information according to its kind and stick to the legal provisions pertaining to it, or keep its secret or confidential nature.

To guarantee the transparency of the public procurement process, Contracting Authority and the Bidder grant access to the Monitor and its entrusted representatives to the documents and notes pertaining to the public procurement and its implementation within reasonable time. Moreover, they allow for



communication with their colleagues, and for the information about tasks entailed in the agreement to be handled as agreed on. The Contracting Authority and the Bidder are bound to this by the legal provisions, with the restrictions contained by these.

5. Covering the Monitor's fees

There is more than one possibility for covering the Monitor's fees:

- all contracting parties (except for the Monitor itself) share the costs in equal manner
- only the Contracting Authority covers the costs
- a bigger part of the costs (a minimum of 50%) is paid by the winning Bidder, while the remaining part is shared in equal manner between the other Bidders.

In the case of the water supply rehabilitation project in the Hungarian town of Ózd, the costs of the integrity pact were covered by the Swiss Contribution Office (according to the agreements signed with the monitor and TI), while in the case of the Municipality of the 13th District of Budapest, the Municipality covered the fee of the Monitor from its own budget.

In Latvia, the financing of the civil society monitor has so far been done outside the formal procurement process, i.e. Transparency Latvia has borne the costs. For the monitoring of the construction of the National Library lasting more than 10 years, the civil society monitor has struggled with the lack of financial and human resources. For shorter monitoring exercises it is easier to ensure the quality and accountability from the civil society monitor without additional resources.

In the Italian case, initial monitoring by Transparency International Italy was carried out on a voluntary basis.

6. Sanctions

The IP has to contain the eventual legal consequences of a possible breaching of the agreement on behalf of the Contracting Authority or the Bidder. The sanctions have to be formulated proportionately with the understanding of the IP.

Such sanctions can be:

- future exclusion from the public procurement processes of the Contracting Authority,
- fine, financial sanction, penalty,
- public disclosure of the breaching of the contract.

It is important that breaching the IP is not the same as breaching the provisions of the PPA or other laws, though it is possible that an inappropriate behavior falls in both categories.

The Hungarian PPA does not provide possibility for the Contracting Authority to exclude the Bidder from its future tenders.

Latvia has a similar legal framework with some minor changes introduced lately.

Foreign practices advice to use penalty as a provision in the IP. This seems to be a viable way also in Hungary: stipulation of an appropriate penalty can be justifiable.

It is to point out that the mere possibility that breaching the contract can be disclosed to the public can be an effective prevention.

Instead of including sanctions, TI Bulgaria decided to use quite the opposite approach and supplemented the effect of the integrity pacts with the development of a "White list" of all participants, which have acceded the IP and followed its provisions. Three White lists were developed and uploaded to the Contracting Authorities' websites (one for each tender procedure monitored). Bidders found this approach highly motivating.



The IP adopted by the Municipality of Milan provides a wide range of sanctions: denial of contract, forfeiture of bid security and performance bond, compensation of damage to Municipality (8%) and other competitors (1%) and 5 year exclusion from Municipality bids. Since 2012 to 2013 the Municipality of Milan carried out 453 exclusions and collected 2,6 billion Euros through forfeiture of bid security and performance bond, most of exclusions and bonds referring to violation of IPs.

7. What to do if a breach of contract occurs

In case any party is notified that a Bidder, or a Bidder's employee, or the Contracting Authority or any of its employees has committed an act of corruption or that appears as corruption, or even if there is a suspicion of such an occurrence, authorities have to be notified.

In case the Monitor suspects that the Contracting Authority or the Bidder has not followed a provision of the signed agreement, the Monitor can take the following steps:

Monitor formulates the details of the breach in writing as soon as possible, and sends this report to the Contracting Authority.

In case there is suspicion of a crime, the Monitor is obliged to notify the criminal authorities.

If the Monitor becomes aware of an evident violation of the provision of Act LVVII of 1996 or that of the Treaty of the European Union, or even if he/she has a strong reason to suspect such a thing, he/she is obliged to notify the Contracting Authority. The latter will – on the basis of the PPA - notify the Competition Authority.

The reports prepared by the Monitor can be used by any entity, in legal procedures or during the settlement of disputed issues outside the court.

If it is the Monitor who harms any provision of the agreement, or the principles of bone fide and appropriate legal practice, the parties can cancel the contract.

The defaulting Party is bound to reimburse the entire damage caused to any other Party as a consequence of his/her breach.

The parties can disclose the matter of agreement and its breach – in case this occurs – along with the person committing the breach and the circumstances in which it occurred; by signing the contract, all Parties explicitly agree to this.

If the Monitor perceives a breach of the regulations set by the PPA, the steps to be taken (besides the notification of the Contracting Authority) may depend on the relevant legal background.

In Hungary, depending on the breach, the monitor has the possibility to turn to the Procurement Authority, the police or the public prosecutor.

In Italy it was the Contracting Authority itself to inform the Public Prosecutor Office in case of exclusions of companies due to violation of the IPs. In some cases this lead to criminal investigations and even convictions by Public Prosecutors against some companies.

In Latvia the IP agreement foresaw similar rights of civil society monitor and likely obligations for the implementing parties. However, the strongest element within the agreement itself remains the breach of the IP, which has a potential of seriously damaging the public reputation of the party involved. TI Latvia considered leaving the IP once when a breach of public procurement procedure appeared – the ministry didn't apply fair competition rules and instead engaged in a single bidder negotiation procedure. This procedure was backed by the other government entities such as Procurement Oversight Bureau and the Cabinet of Minister, who made it "technically legal". Moreover, TI Latvia didn't find any direct corruption in this case. However, noting that this bad decision was taken in transparent manner (sharing of information is one of the corner stones of IP), TI Latvia didn't leave IP with the Ministry of Culture.

In TI Bulgaria's case, the breach of contract leads to two separate types of consequences. On one hand the IP provisions allow the independent monitor to approach the respective institutions and follow up on whether they have reacted in an appropriate manner. On the other hand any breach of contract leads to the respective part's exclusion from the "White list", which damages its image significantly.

In Hungary, Transparency International Hungary has developed a special visualization tool for the Ózd town project, which helps visitors of the municipality website to track easily the process of procurement and the project's current phase.

Transparency International Italy held seminars and masters in several universities, sometimes inviting the Mayor and the Vice-Mayor of Milan as testimonials. The experience of Milan Municipality gained publicity also thanks to public rewards, such as the award for transparency in public procurement in 2008, awarded by the Ministry of Public Administration.

8. Dispute resolution

The contracting Parties agree to strive to solve legal disputes stemming from the agreement or in relation to it in a peaceful manner.

When peaceful resolution is not possible, Parties can appoint a mediator to help resolve their dispute. However, the dispute resolution cannot threaten the timeliness of initiating legal proceedings. If the dispute resolution is concluded without success, the Parties can turn to the court or seek other legal remedy.

9. The role of publicity

In the methodology of the integrity pacts, publicity plays a central and important role. The independent organization which is in charge of monitoring the public procurement procedure and the implementation of the contract, uses multiple manners to inform, or in a given case, involve citizens into the process of monitoring.



TI Latvia held a view that the duty to inform about the project lies first and foremost with the implementing authority, i.e. the Ministry of Culture in the case of the construction of the National Library. However, the ministry lacked will and very often resources to ensure full and rich information sharing about this project.

In Bulgaria, Transparency International Bulgaria developed a targeted website, on which all relevant information and reports were regularly uploaded. The website also gives access to monitoring methodologies, guidelines and visual materials, which make the public procurement process easier to understand, especially for a wider public.

still be modified. If the Monitor joins only later than advised, this can lead to risks that should otherwise be avoided.

TI Bulgaria's experience shows that the earlier the point of including the independent monitor, the better the results achieved. Involving the monitoring party at the point of taking the decision for starting a tender procedure (even before the relevant documents have been developed) will lead to a stable implementation of good practices.

It is to be highlighted that time is needed for the Monitor to be able to do a satisfactory work, although this time shouldn't be unreasonably long. The timeframe is also a condition worth including in the agreement, and the Bidder should calculate with this when setting up the timetable of the implementation.

III. THE PROCESS OF PUBLIC PROCUREMENT AND THE IMPLEMENTATION OF THE CONTRACT

The inclusion of the Monitor has to occur in due time, that is, before the publication of the tender. Only in this case can the Monitor properly follow the full tendering process and its content. According to the procedural rules of the Contracting Authority, the Monitor has to be appointed when the need for procurement has already been identified, but the conditions of the tender and the bidders can

1. Signing the integrity pact

It is necessary to set up a kick-off meeting with the participation of the Bidder and the Monitor. The Contracting Authority should give a notification about the procurement both in person and in



writing (including the subject of procurement, the draft contracts related to the preparatory phase, the internal sources available for the preparation, the order of decision making, the estimated value of the procurement, its financial background, and the planned procedure). The Monitor comments the validity and feasibility of the plan, and gives a proposal on the monitoring, informing also about the persons participating in it. After the necessary negotiations and meetings, the Bidder and the Monitor sign the integrity pact.

In Hungary, the integrity pact related to the investment of the town of Ózd was signed in occasion of a festive event at the Embassy of Switzerland, in presence of the media. The Bidders could join the agreement at the moment of submitting their offer. (In previous procedures, signing the integrity pact was obligatory for Bidders).

In Latvia several IPs have been signed in a festive mode. For the agreement with the Ministry of Culture, an event was held in a spectacular place on the waterfront – the river Daugava in the middle of Riga, where the future Gallery of Modern Art was planned. Although publicity has its pivotal role, the most important goals should be to ensure that the parties signing the agreement understand its merits and are ready to implement it. Hence, the time and process that leads to signatures is very important.

All three IPs implemented in Bulgaria were signed by the Contracting Authorities and the Monitor at public events, in the presence of the media. The bidders were given the possibility to sign the IP accession form and either submit it with their offers, or do this at a later point. Since the integrity pacts were not very popular in Bulgaria and acceding to the pact was not obligatory, only few bidders submitted their IP accession forms with their offers. However, after a targeted information campaign, organized by TI Bulgaria, interest in the IPs rose significantly and in one of the monitored tenders all bidders acceded to the pact.

2. Preparation of the procurement

This phase starts when the need for procurement is formulated on behalf of the Contracting Authority, and it lasts until the start of the preparation of the tender.

The typical risks in this phase are:

- unrealistic estimation of the needs and financial possibilities,
- hiring a non independent consultant (conflict of interest),
- disclosure of confidential information,
- setting up of too short deadlines,
- choosing an inappropriate procedure (this can occur at the preparation of the tender as well),

- establishment of contact with potential bidders with the purpose of assessing the market.

In this phase, the Monitor controls that the planning of the procurement occurs according to the original needs and in line with the legal regulation, and also, that the persons or organizations participating in the planning are in line with the public procurement rules pertaining to conflict of interest.

In Hungary, prior to the monitoring of the public procurement by the municipality of the 13th district of Budapest, Transparency International Hungary has reviewed the procurement regulations of the municipality and called for some changes in it.

In early days of IP on the Construction of the National Library in 2005-2007, TI Latvia was able to work with the implementing agency on a number of smaller procurements that were done to prepare the construction works, and propose significant improvements.



3. Preparation of the tender

The Contracting Authority has to send all documents related to the project to the Monitor. The Monitor comments on these and controls requirements to avoid conflict of interests.

The risks typical of this phase are:

- preparation of an inadequate technical documentation,
- preparation of an unrealistic timetable,
- adaptation of the tender to suit one particular bidder,
- belated documentation of already occurred procedural elements,
- wrong estimation of the values.

In this phase it is necessary to decide whether Bidders have to join the integrity pact or signing is voluntary for them. If we opt for voluntary agreement, the risk that we run is that not all Bidders will join the pact, which could result in the Monitor not having all necessary information (agreement) to conduct full monitoring. It can raise serious concerns for example, if the Bidder who later on wins the competition has not signed the integrity pact. This can be solved if the contract signed as a result of the public procurement process contains an integrity clause.

In any case, if the given Bidder joins voluntarily, this means a deeper commitment towards the values of transparency, fair competition and accountability. If, on the other hand, it is compulsory for Bidders to join the integrity pact, it can happen that the Bidder forgets to add

the integrity pact to its offer and as a result of it, the offer becomes invalid. Still, compulsory joining means equal treatment and equal opportunities for all.

In the Ózd project of Hungary, there was a possibility for bidders to voluntarily sign the IP in the public procurement process pertaining to the construction investment. Adherence to the IP was possible by signing the declaration which was part of the tender documentation, declaring it as a part of the bid itself. All the bidders joining the competition within the project signed the declaration.

4. Preparation and publication of the call for tenders

In this phase, the Contracting Authority prepares the call and the tender documentation, bearing in mind the market settings.

The typical risks of this phase are:

- tailored call (professional and technical criteria favoring one particular firm),
- too tight deadlines,
- inclusion of subjective or otherwise wrong contract award criteria,
- unrealistic reference certificates or unreasonable set up of suitability criteria and their certification,
- incomplete, controversial or discriminative technical description or draft contract,

- inadequate specification of grounds for exclusion,
- setting up of exaggerated criteria for the offer- or payment certificate,
- missing responsible persons.

The Ministry of Finance of Latvia worked with the professional associations of Public Relations in order to prepare the tender that would avoid the above mentioned pitfalls. It served as an important announcement to the businesses that the government wants to carry out the tender in the best possible manner. The PR Association, for example, had a determining role in pinpointing candidates for the jury which evaluated the bids from a professional side.



5. Bidding phase

This phase stretches out from the publication of the call for tenders to the deadline of bidding. The typical corruption risks embedded in this phase are:

- flow of non-public information,
- inadequate disclosure of otherwise public information,
- cartelling or any illicit agreement between the Bidders which threatens competition,
- obligatory inclusion of a sub-contractor indicated by the Contracting Authority,
- Contracting Authority exercising influence on the bidders in any other manner,
- inadequate, discriminative modification of the call for tenders.

The duty of the Monitor is to control the offers in merit and in depth, as well as the modification of the call and the documentations, and the specific information.

When the IP was first published by the Municipality of Milan, Transparency International Italy revealed some distortions: some parts of the pact were missing, as for example the section where the obligations of the institutional side were stated. TI-Italy asked for explanations to the Major and the Directorates and finally the IP was restored according to the original version agreed on.

Under the advice of TI Latvia, the Ministry of Finance invited all potential bidders for the tender to carry out a PR campaign publicizing the introduction of the Euro. The ministry contacted the professional associations and issued a public invitation for this dialogue. The first meeting was well attended, but some members requested another meeting, since some players had not been present due to their lack of trust in this process. The ministry organized the second meeting. Both were attended by the civil society monitor who had a chance to ask bidders to report any irregularities.

5.1. Submission of tender, tender opening

The Monitor controls the way how tenders are submitted.

Typical corruption threats:

- tenders are not submitted regularly.
- belated or non-sealed tenders are received and their invalidity is not recognized.

The Monitor's duties entail controlling the tender opening and in case of electronic tender submission, the necessary safeguards.

The tender opening can often be one of the most visible events during the entire procedure, often taking place in the presence of bidders and accompanied by high media attention. It is perfectly possible that a rigged tender appears as a good one at this stage. Therefore this can by no means be the only event and procedure that the IP's civil society monitor attends and evaluates.

5.2. Evaluation and review

The Contracting Authority is responsible for setting up the evaluation committee for the tenders received. The Monitor's duty is among others to control conflict of interest criteria concerning the members of the committee. The Monitor takes part at the tender opening, and the meetings of the evaluation committee.

The usual corruption threats of this phase are the following:

- the conditions for submitting missing/supplementing documents are not regularly set up,
- the conditions for the above do not comprise everything,
- unlawful modification of the bid,
- uncertain, unreal commitments on behalf of the contracting parties,
- conflict of interests between the members of the evaluation committee,
- the evaluation takes place in an irregular manner,
- evaluation and decision making are non-transparent,

- due to subjective evaluation criteria, the winning tender is not the most advantageous one,
- tenders submitted by certain bidders are declared invalid unfoundedly,
- the evaluation process unfoundedly declared inefficient,
- exclusion of certain bidders on the basis of non-realistic formal criteria,
- inadequate notification about the process's invalidity or the decision itself,
- tender declared unsuccessful due to financial constraints, quickly followed by the publication of a new call.

According to the experiences of TI Latvia, this is a very critical part of the process, where the civil society monitor needs to have resources and expertise to be part of the procedures. When evaluating the bids for travel agency services for the Ministry of Foreign Affairs in Latvia, a rather complicated formula was introduced. Although there were no signs of special shady deals, TI Latvia was not completely sure if the tender was fair, since the same agency who did the work before, won again. In addition to winning repeatedly, the agency was owned by a high ranking public official in the ministry.

The civil society monitor needs to be ready with the answers when losing bidders ask specific questions about the procedure. Questions can pertain to any part of the procedure, and the monitor needs to have credible answers ready.

Surveys implemented by TI Bulgaria show that bidders consider the evaluation phase most exposed to corruption. This is the phase at which the process seems most closed and transparent. Having an independent monitor at this point was considered very useful by the bidders, since it helped improve their trust in the process and ensure that no malpractice occurs.



6. Contracting

Risks in the contracting phase:

- contracting takes place with disregard to the call for tenders, the documentation, or the content of the bid,
- uncertain, unrealistic commitments on behalf of the contracting parties,
- involvement of previously unspecified sub-contractors,
- the implementation of the contract starts already before it being signed,
- infringement of the contract standstill period.

During the phase of contracting, the Monitor:

- follows whether the content of the contract is in line with the content of the original call for tenders, and the bid,
- controls whether the contract contains the same sub-contractors as the ones specified in the winning bid,
- assesses possible amendments of the contract.

During the implementation of the IP on the Latvian National Library construction, the government of Latvia twice has accepted a procedure that lead to a non-transparent award of the contract, allowing the contractor to apply negotiation procedure. The justification for these included reference to national security and an extraordinary situation. Technically these procedures were legal, but TI Latvia has expressed doubts about their legitimacy.



7. Implementation of the contract

In this phase the winning bidder implements what is stipulated in the contract, according to the manner and timeframe specified in it.

Typical risks:

- applying subcontractors who are not the ones specified in the contract,
- implementation below the standards undertaken,
- unjustified modification of the subject of the procurement, or increase of its value, overpayments,
- inclusion of some of the bidders among the sub-contractors taking part lawfully in the implementation,
- change of the winner and the implementing party,
- delay of the contracting authority in controlling that the implementation is in line with the content of the contract,
- non-transparent implementation,
- failure in paying sub-contractors.

During the implementation, the Monitor follows up on whether the winning bidder

is abiding to the contract. Depending on the type of the procurement, the Monitor can perform on the spot- control, which has to be made possible by all the parties. The Monitor controls whether the payments are taking place in a timely manner.

In the IP signed with the 13th district of Budapest, public procurement experts of Transparency International Hungary are continuously reviewing the phases related to public procurement. Still, the civil organization has issued a call for tenders prior to the preparatory phase, to recruit also an independent engineering expert, who would help in monitoring the engineering-related issues emerging during the public procurement process, and the implementation of the contract itself.

Due to the longevity of the National Library project, TI Latvia could contribute to the construction of the library mainly during the implementation phase. One of the most important elements has been to ensure that the contractor sticks to the agreement in terms of financial obligations. It is often the case in construction projects in Latvia that companies request additional payment with no real grounds, and the government and municipal entities grant this request, due to corrupt ties or simply because of a lack of alternative to finish the construction project, which is vital to the city (example of a bridge construction in Riga, Latvia, where the municipality never agreed to implement IP and the Auditor General found several severe violations). The Ministry of Culture has stated that the presence of the civil society monitor has helped to withstand the pressure from the constructors' side to give in on financial matters.

project in which reports would be issued about the public procurement process and the implementation.

The typically corruption-infested occurrences and those which can be considered more serious cases of irregularities are very often the same, while in other times they are connected with each other.



IV. THE IP'S PRESENT AND FUTURE

The integrity pact, as a tool to foster transparency in public procurement, features among the OECD's best practices concerning public procurement.

IPs have by now been used in more than 15 countries, in over 300 cases. Experience suggests that IPs can make the biggest difference when it comes to high-value investments, as these are the ones that are most susceptible to corruption, can be politically sensitive or have a big societal impact.

It is needless to say that not even the IP has the power to annihilate corruption everywhere, but it can, nevertheless, drastically decrease its occurrence. It is important that adequate and informative materials are prepared about the IP, and it is worth holding trainings for the participants as well. Eventual conflict of interest-situations or other clashes have to be noticed on time and dealt with accordingly.

Transparency International Hungary has prepared an e-learning material to inform and brief every single employee/colleague in the institutions signing IPs, and make them able to understand and use the IP in an informed manner. Right use of this tool is very important, because if used improperly, the IP can easily become a mere appearance-measure, and an additional administrative burden.

In Milan, the signing of the IP was preceded by several information sessions with private sector associations and companies in order to inform them about the new instruments and requirements.

The Monitor of the IP has to be an independent entity. Financial and professional independence can be expected the easiest from a civil society organization. In any case, the Monitor's role is boosted by that of the public as well. Real public control lessens the pressure on the Monitor and guarantees a strong control mechanism.

Integrity pact can work very well when additional trust is needed in the process. For example, when timing is an issue, legal appeals against the tender results can stall the process and even destroy the project itself. Such IPs then allow the public contracting agency to learn and spread the lessons learned.

The Monitor issues a report with the frequency specified in the IP, about the development of the implementation, the possible occurring irregularities and corruption threats.

At the closing of the project, the Monitor prepares a comprehensive closing report about its activities.

The Parties should agree in advance about the frequency and stages of the

One of the important questions is: can IP reduce corruption? The answer is yes, if the public procurement rules provide a good framework without significant loopholes, if the general management running the tenders is adequate and if there is a genuine will on behalf of the top leadership, including the political forces, to ensure fairness and integrity. If there are suspected strong illegal networks in a particular area of business, preexisting complex and nontransparent project approval procedures, strong political influence elements and so on, IP elements can still be used, but they will not suffice to ensure a fair and transparent deal. Access to information by an independent monitor is definitely one of the tools that can be used.

use of IP as a soft criterion in allocating funds, as the use of IP is in itself a sign of commitment to transparency and fair play in the public sector as well as the private one.

The IP is not a goal in itself, rather only the beginning of the road. The more choose it, the bigger the change that can be achieved in everybody's life.



However, an important question still remains: how can integrity pacts be converted into social contracts? How can their content be defined in a way that the broader strata of society also becomes able to control the spending of public funds? How could the members of IP find their ways to engage the public?

It is, of course, impossible to use the IP in all public procurements, but an increase in its popularity can bring about a real change towards fair competition, through the influence that it has on public opinion.

The European Union can take a big step in this direction, if it decides to set the

Written by: Alíz Szloboda, JD, program manager, Transparency International Hungary

Co-authored by:

Chiara Putaturo, project manager, Transparency International Italy

Inese Voika, anti-corruption expert

Michaela Rajkova, financial manager, Transparency International Bulgaria

Peer reviewed by:

Anita Németh, JD, lawyer, public procurement expert, professor at the Law faculty of Eötvös Loránd University

Tünde Tátrai, JD, public procurement expert, professor at the Corvinus University of Budapest

Translated by:

Maria Barna, project manager, Transparency International Hungary

Sponsored by:

European Anti-Fraud Office



This publication is supported by the European Union Programme Hercule II (2007-2013). This programme is implemented by the European Commission. It was established to promote activities to combat fraud affecting the EU's financial interests, including cigarette smuggling and counterfeiting. (for more information see http://ec.europa.eu/anti_fraud/about-us/funding/index_en.htm)

The present handbook reflects the authors' view and the European Commission (OLAF) is not liable for any use that may be made of the information contained therein. The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

© 2014 Transparency International Hungary

Falk Miksa u. 30.

1055 Budapest

Hungary

<http://www.transparency.hu>

