

INTEGRITY PACT

PREAMBLE

GUIDED BY THE UNDERSTANDING about the supremacy of public interest, acknowledging the need for transparency and for increasing confidence in the award procedures related to public works, public supply and public services,

AWARE of the threat that corruption poses to the effective absorption of EU funds and the trust in this process by undermining institutions, democratic values, ethical norms, justice, sustainable development and rule of law,

ADHERING to the principles laid down in European Union law in the area of public procurement and competition; in the Constitution, in particular freedom and equal opportunities to conduct a business, as well as the principles of publicity and transparency, free and fair competition, equality and non-discrimination enshrined in the Public Procurement Act,

IN ACCORDANCE WITH EU acquis and international law such as the Civil Law Convention on Corruption, the Criminal Law Convention on Corruption, the United Nations Convention against Corruption, the Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States in the European Union, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the guiding principles and values of good governance of public affairs and public property, justice, accountability, and equality before the law, as well as the need to promote zero tolerance for corruption,

CREATING PREREQUISITES for attaining the objectives of national legislation and the respective European and international legal acts and for ensuring effective anti-corruption behaviour, good governance of the public sector and increase of confidence in public spending, including by public and transparent procedures,

ROAD INFRASTRUCTURE AGENCY, head office in Sofia 1606, 3, Macedonia Blvd., UIC 000695089, represented by Doncho Atanasov, chairperson of the Management Board, Dipl. Eng., hereinafter referred to as the CONTRACTING AUTHORITY,

AND

TRANSPARENCY INTERNATIONAL – BULGARIA, UIC 121752288, with registered office and head office in Sofia 1463, 50 “Sandor Petofi” Str., fl. 1, represented by Kalin Slavov, Executive Director, hereinafter referred to as the INDEPENDENT OBSERVER of this INTEGRITY PACT

OPEN FOR ACCESSION



INTEGRITY PACT

In the course of awarding and executing a public procurement having as its object the design and construction of Struma motorway Lot 3.1 Zheleznitsa tunnel, with three lots, hereinafter referred to as „THE PUBLIC PROCUREMENT” or “THE TENDER”.

This INTEGRITY PACT is open for accession to all BIDDERS/CONTRACTORS in the procurement procedure from the time of its signature by the INDEPENDENT OBSERVER and the CONTRACTING AUTHORITY until the end of the procurement contract execution.

Accession may be done during either of the two phases: evaluation phase and contract execution phase, where the INTEGRITY PACT is open for accession by a bidder in the procurement procedure or a contractor for the execution of a particular lot of the tender. The accession shall be done by submitting a standard application form (Appendix No.1).

By acceding to the INTEGRITY PACT every bidder or contractor shall become irrevocably bound to fulfil with perseverance and in good faith the obligations set out in the PACT and shall benefit from the possibilities granted by it only insofar as in compliance with the spirit and principles enshrined in it.

HEREWITH THE PARTIES AGREE AS FOLLOWS:

PART ONE

RULES AND CONDITIONS FOR THE IMPLEMENTATION OF THIS PACT

I. PHASES OF CONDUCTING THE INTEGRITY PACT MONITORING

Article 1

The INDEPENDENT OBSERVER shall conduct the INTEGRITY PACT monitoring in the following phases:

1. Procurement procedure phase, including preparation of the tendering documentation, opening and conducting of the award procedure;
2. Execution of public procurement contracts phase.

Article 2

(1) In the procurement procedure phase, the INDEPENDENT OBSERVER:

- may take part in the preparation of the tendering documentation by attending meetings to that end;
- may request copies of the correspondence with other authorities related to the preparation of the tendering documentation, including reports of the Public Procurement Agency in performing its control functions pursuant to Article 232 et seq. of the Public Procurement Act (PPA);
- may require information about the expenses incurred for external experts (natural or legal persons) commissioned to carry out activities related to the preparation, award and execution of the public procurement;
- may take part in the public sessions of the committee under Article 103, para 1 PPA appointed by the contracting authority for the selection of bidders and review and evaluation of offers in the public procurement procedure;
- may obtain access to the order for the appointment of the evaluation committee and any amendments of the latter;

- may obtain information regarding the CONTRACTING AUTHORITY'S rules for preventing conflicts of interest as well as information about their application in practice in the context of the procurement procedure;

- may obtain information about the professional competence of the evaluation committee members regarding the subject matter of the procurement as well as information about any hierarchical relationships between them;

- may obtain access to all documents related to appeals of any phase of the procedure with which the CONTRACTING AUTHORITY avails;

- may conduct on the spot inspection in the CONTRACTING AUTHORITY'S office of the procurement procedure documentation, including all documents related to the work of the evaluation committee, after the decision for the selection of contractors for each lot and/or the decision to terminate the procurement procedure have become final;

- may obtain access to the documents provided by the bidders/selected contractors where the respective bidder/contractor has acceded to this PACT, following the terms and procedure set forth therein.

(2) Notwithstanding paragraph 1, the INDEPENDENT OBSERVER shall, upon their own discretion, check all documents and/or acts relevant to the procedure access to which is not restricted by law.

Article 3

In the execution of the public procurement contract phase, the INDEPENDENT OBSERVER:

- may obtain information about the schedule of the public procurement contract execution;

- may perform planned and unplanned on-the-spot checks;

- may request the CONTRACTING AUTHORITY to provide copies of documents related to the public procurement execution, including *inter alia* documents certifying the quality of execution, payments under contracts etc.;

- may attend scheduled and ad hoc meetings between the CONTRACTING AUTHORITY and the CONTRACTOR in relation to the execution of the public procurement contract. The CONTRACTING AUTHORITY shall provide timely information to the INDEPENDENT OBSERVER about the schedule of planned meetings and any changes thereto.

Article 4

In relation to the monitoring of the public procurement procedure phases set out in Article 1, items 1 and 2, the INDEPENDENT OBSERVER may, upon a written request to the CONTRACTING AUTHORITY, obtain a list of the natural and legal persons (and directly

involved staff) that take part in the preparation and award procedure. The CONTRACTING AUTHORITY shall notify the INDEPENDENT OBSERVER in due course about any changes in that list.

Article 5

(1) The INDEPENDENT OBSERVER shall provide to the CONTRACTING AUTHORITY the texts of the prepared reports prior to their publication, regardless of the public procurement phase which they concern.

(2) The CONTRACTING AUTHORITY may provide written or oral comments on the INDEPENDENT OBSERVER's reports within 10 days after receiving them.

Article 6

(1) The INDEPENDENT OBSERVER shall keep the information provided in the phases under Article 1, items 1 and 2 and may include it in its reports in a manner that precludes the identification of specific persons. Information about a specific person may be disclosed only with that person's express consent.

(2) All the information made known to the INDEPENDENT OBSERVER in the course of the discharge of its duties under this PACT shall be treated as confidential. The INDEPENDENT OBSERVER shall take due care to keep this information and refrain from providing unauthorised access to it to third parties.

II. RIGHTS AND OBLIGATIONS OF THE PARTIES

Article 7

(1) The PARTIES agree to observe strictly the Public Procurement Act and the applicable national and European legislation in the field of public procurement and financial management and control over EU funds at any stage of the public procurement procedure as well as to make every effort to achieve the aims of the law and the aims of this INTEGRITY PACT.

(2) The PARTIES agree to render active assistance to the supervisory, law protection and judicial authorities aware of the particular value of the protected public relations.

(3) The PARTIES agree to inform each other for all alleged or established violations or irregularities related to any stage of the preparation, award and execution of the public procurement.

Article 8

The PARTIES and their employees, including those who have not been assigned direct duties related to the preparation, implementation and supervision of the public procurement, shall refrain from any misconduct, pursuant to the objectives of this PACT.

Article 9

(1) The PARTIES undertake neither to initiate nor participate with the other bidders/tenderers or any third party in any concerted practices that breach competition rules for the purpose of obtaining for themselves or for third parties the award of the public procurement contract against the rules and principles of law and contrary to its objectives.

(2) The PARTIES agree that during the public procurement procedure and contract execution neither they, nor any of their employees shall take advantage of or accept for themselves or third parties any tangible or intangible benefit, which may influence their behaviour during the awarding and/or execution phases of the procurement, either from other bidders or contractors or associated persons.

III. EXCHANGE OF INFORMATION WITH BIDDERS/CONTRACTORS THAT HAVE ACCEDDED TO THE PACT

Article 10

The BIDDER/CONTRACTOR shall agree to provide, after the committee has completed its work, and upon request by the INDEPENDENT OBSERVER, to provide access to the documentation related to the public procurement procedure.

Article 11

(1) The BIDDER/CONTRACTOR undertake, upon request by the INDEPENDENT OBSERVER, to provide full, detailed and authentic list of externally hired persons (both natural and legal ones) and services employed in the course of preparation, participation and execution of the public procurement, including detailed information about the persons that the BIDDER/CONTRACTOR has specified as subcontractors and the circumstances that compel possible change of subcontractors.

(2) Where the counterparties of the BIDDER/CONTRACTOR are legal entities, they shall specify, name by name, all persons directly involved in the discharge of duties to the BIDDER/CONTRACTOR.

(3) Upon a request by the INDEPENDENT OBSERVER, the BIDDER/CONTRACTOR undertake to provide a report of the costs incurred in performing the activities referred to in paragraph 1 following a predetermined format.

(4) The BIDDER/CONTRACTOR shall agree that the periodicity of the reports is coordinated in advance to correspond to the periodicity of the reports of the INDEPENDENT OBSERVER.

Article 12

The BIDDER/CONTRACTOR shall agree that in the application of Article 72 PPA the detailed written justification of the offer be provided to the INDEPENDENT OBSERVER for the purpose of its analytical activity and drafting of reports, after the decision of the CONTRACTING AUTHORITY for the selection of the procurement contractor(s).

Article 13

(1) The BIDDER shall agree that in case a public contract is concluded, it shall grant to the INDEPENDENT OBSERVER access to the procurement contract, including annexes thereto and documents to which it refers.

(2) The rules set out in paragraph 1 shall apply to all amendments and supplements to the contract referred to in paragraph 1.

(3) Only those parts of the documents referred to in paragraph 1 that constitute information protected by law, and the information which is not the subject matter of this PACT shall be withheld.

Article 14

(1) The PARTIES undertake that for the whole period of validity of the PACT, including the execution and warranty period, the exchange of correspondence, including electronic one shall be accessible to the INDEPENDENT OBSERVER upon request. This duty shall extend to the acts that the CONTRACTING AUTHORITY and the CONTRACTOR draw and exchange in the course of the public contract execution in case the CONTRACTOR has acceded to the PACT.

(2) The INDEPENDENT OBSERVER shall draw up minutes of the meetings held and checks performed and shall provide these minutes to the CONTRACTING AUTHORITY.

IV. PROMOTING ACCESSION TO THE INTEGRITY PACT

Article 15

(1) The CONTRACTING AUTHORITY shall keep a WHITE LIST of all BIDDERS/CONTRACTORS.

(2) The CONTRACTING AUTHORITY shall enter the following information in the WHITE LIST:

1. the bidders in the public procurement award procedure;
2. the bidders that have acceded to the INTEGRITY PACT;
3. the bidders with whom public contracts have been concluded;
4. the exclusions made in the WHITE LIST and the reasons therefor.

(3) The CONTRACTING AUTHORITY shall promote the WHITE LIST and the principles of the integrity policy in ways it deems appropriate in view of its activity.

(4) The CONTRACTING AUTHORITY shall provide public access to the WHITE LIST, at least in the buyer profile, and may inform contracting authorities with similar profile in the European Union of the entries made thereto.

(5) The CONTRACTING AUTHORITY shall exclude BIDDERS/CONTRACTORS in cases when the INDEPENDENT OBSERVER has established a violation of the INTEGRITY PACT. The exclusion shall be made on the basis of reasons provided in writing by the INDEPENDENT OBSERVER to the CONTRACTING AUTHORITY.

(6) The INDEPENDENT OBSERVER shall publish on its website the Guidelines "INDICATORS FOR TRANSPARENCY AND INTEGRITY IN PUBLIC PROCUREMENT" for the purpose of providing detailed information about the mechanisms of the INTEGRITY PACT.

V. CONTROL OF THE INTEGRITY PACT IMPLEMENTATION

Article 16

(1) The PARTIES undertake that in case a public contract is concluded with a BIDDER, the INDEPENDENT OBSERVER may attend meetings between the CONTRACTING AUTHORITY and the CONTRACTOR as well as witness specific actions of the contract execution.

(2) A CONTRACTOR that has acceded to the PACT shall provide to the INDEPENDENT OBSERVER a schedule of the contract execution activities as well as a schedule of the planned meetings regarding the execution, including with the other participants in the construction. Changes in the schedules shall be communicated on the day they occur.

(3) A CONTRACTOR that has acceded to the PACT shall provide to the INDEPENDENT OBSERVER information about the subject matter of the public procurement contract.

(4) BIDDERS/CONTRACTORS that are parties to the INTEGRITY PACT may submit to the INDEPENDENT OBSERVER their reasoned opinion and/or reports on misconduct in the course of the procurement procedure or the contract execution.

Article 17

(1) To achieve the objectives of the PACT, immediately after signing it, the BIDDERS/CONTRACTORS and the CONTRACTING AUTHORITY shall designate persons in management positions who will be in charge of implementing the provisions of this PACT.

(2) The persons referred to in paragraph 1 shall conduct internal monitoring on the application of the rules set out in the INTEGRITY PACT and the related internal anti-corruption acts:

1. upon their own initiative;
2. upon the initiative of the CONTRACTING AUTHORITY, respectively the BIDDER/CONTRACTOR;
3. upon the initiative of the INDEPENDENT OBSERVER.

(3) The persons referred to in paragraph 1 shall notify in writing the INDEPENDENT OBSERVER of the results of the monitoring under paragraph 2.

VI. ACTION IN CASE OF MISCONDUCT

Article 18

(1) The INDEPENDENT OBSERVER shall recommend to the PARTIES measures to avoid and/or eliminate any violations in the course of the preparation and conduct of the public procurement procedure and the contract execution or in case of misconduct within the meaning of this PACT have been established.

(2) Misconduct shall be established by the INDEPENDENT OBSERVER case-by-case on the basis of their professional experience and all available data reviewed in their entirety and interlinkages and assessed against positive legal rules and the spirit and objective of this PACT and the legal framework which regulates it.

(3) In case a violation or misconduct is established or conditions for such incidents, the INDEPENDENT OBSERVER shall notify the CONTRACTING AUTHORITY and/or the BIDDER/CONTRACTOR.

Article 19

(1) The CONTRACTING AUTHORITY and the BIDDER/CONTRACTOR undertake unconditionally to immediately launch internal proceedings to clarify their employees' actions in those cases when the misconduct constitutes a disciplinary violation.

(2) The CONTRACTING AUTHORITY and the BIDDER/CONTRACTOR shall duly report to the competent authorities and assist them in exercising their control and sanctioning powers in case the violation or misconduct constitute an administrative violation or criminal offence.

PART TWO
STATUS OF THE INDEPENDENT OBSERVER

I. GENERAL PROVISIONS

Article 20

The CONTRACTING AUTHORITY and each BIDDER/CONTRACTOR under a public procurement contract that have acceded to this PACT shall agree that TRANSPARENCY INTERNATIONAL – BULGARIA exercises the functions of INDEPENDENT OBSERVER.

II. DUTIES AND OBLIGATIONS OF THE INDEPENDENT OBSERVER

Article 21

(1) The INDEPENDENT OBSERVER shall:

1. monitor actions under the phases referred to in Article 1, items 1 and 2 of the PACT;
2. assess compliance of the public procurement procedure with the legislation currently in force and the rules set out in this PACT;
3. make recommendations to avoid and eliminate established violations in the course of the awarding and contract execution phases;
4. monitor the actions of the CONTRACTING AUTHORITY and the CONTRACTOR in the course of the contract execution;
5. draw reports about the monitoring and make public the results of its work;
6. make general recommendations with a view to improving the efficiency and transparency of the CONTRACTING AUTHORITY's procurement policies and the BIDDER'S/ CONTRACTOR'S anti-corruption policies;

(2) The information accessible to the INDEPENDENT OBSERVER shall be used solely for the purpose of implementing this PACT. It shall be kept and processed confidentially and presented in summary analytical reports.

Article 22

(1) For the purpose of fulfilling its obligations under Article 21, the INDEPENDENT OBSERVER shall be entitled to:

1. attend, through its employees and/or experts, the performance of certain actions in the cases provided for in the PACT;
2. request and inspect documents related to the preparation of the public procurement procedure that are kept by the CONTRACTING AUTHORITY, BIDDER/CONTRACTOR or third parties when they have committed thereto;
3. make inquiries in writing to the CONTRACTING AUTHORITY and the BIDDERS/CONTRACTORS on specific issues of interest;
4. request that the CONTRACTING AUTHORITY and the BIDDERS/CONTRACTORS conduct internal inquiries for establishing possible violations;
5. conduct anonymous surveys regarding the tender procedure among the employees of the CONTRACTING AUTHORITY and the BIDDERS/CONTRACTORS who are directly involved in the public procurement as long as the Parties agree that these surveys are relevant for obtaining additional information on the application of this PACT and the course of the preparation, award and execution of the contract. The surveys shall be conducted in compliance with the standards of confidentiality of the answers;
6. make recommendations to terminate actions that contradict the rules of acceptable conduct and/or violate the principles of fair competition, publicity and transparency, equality and non-discrimination;
7. address the competent authorities in case there is evidence to suggest a criminal offence or administrative violation has been committed;
8. in case a dispute arises between the CONTRACTING AUTHORITY and the BIDDERS/CONTRACTORS, the INDEPENDENT OBSERVER shall assist in the recourse to mediation or other similar means for resolving the dispute.

(2) All the information that has come to the INDEPENDENT OBSERVER'S knowledge in the discharge of its powers under paragraph 1 shall be treated as confidential and the

INDEPENDENT OBSERVER shall exercise due diligence to protect it and not to provide unauthorised access to it to third parties.

(3) The information that has come to the INDEPENDENT OBSERVER'S knowledge shall be kept for not longer than two months after the final report under this PACT has been drawn up.

Article 23

During the period of validity of the PACT, including the public procurement execution, the CONTRACTING AUTHORITY and the BIDDERS/CONTRACTORS undertake to render full assistance to the INDEPENDENT OBSERVER in compliance with its status and specific rights and duties under this PACT as well as to take action in accordance with its recommendations, having regard to applicable law, provisions that regulate financing of project activities and their internal rules and procedures.

III. ACCOUNTABILITY OF THE INDEPENDENT OBSERVER

Article 24

(1) The INDEPENDENT OBSERVER shall draw up at least an introductory (one or more) interim and a final report on its work reflecting the phases of the preparation, award and execution of the contract.

(2) The final report of the INDEPENDENT OBSERVER shall comprise summary information about the periodic reports and its assessment of the compliance of the procurement procedure with the legislation in force and the rules set out in this INTEGRITY PACT.

(3) The INDEPENDENT OBSERVER shall publish its reports on its website following the verification procedure under Article 5, in compliance with the rules of the Personal Data Protection Act.

PART THREE

MISCELLANEOUS

Article 25

For the purpose of this PACT, the Parties shall agree that:

1. MISCONDUCT means:

a) Any conduct that may negatively influence the assessment and motivation of the CONTRACTING AUTHORITY and/or its employees, the BIDDER/CONTRACTOR or third parties, including conduct that formally does not violate the law but is incompatible with good practices, moral and the objectives and spirit of this PACT.

b) A BIDDER/CONTRACTOR, the CONTRACTING AUTHORITY or their employees, counterparties or subcontractors providing, outside the official procedures therefor, information that has become known to them in the context of the application of this PACT or the public procurement procedure to a BIDDER/CONTRACTOR, the CONTRACTING AUTHORITY or a third party.

2. A BIDDER/CONTRACTOR a party to the INTEGRITY PACT means a bidder or tenderer within the meaning of § 2, items 19 and 50 of the Additional Provisions PPA, respectively the selected contractor that has acceded to this INTEGRITY PACT.

3. PARTIES to the INTEGRITY PACT are the CONTRACTING AUTHORITY that has taken the decision to open public procurement award procedure, the BIDDERS/CONTRACTORS that have acceded to this PACT, and the INDEPENDENT OBSERVER.

4. The communication between the PARTIES shall be conducted in writing or via e-mail. A register of all communications, including e-mails, shall be kept. For the purpose of this PACT, the register may be the archive that the parties usually keep.

Article 26

(1) This PACT shall take effect in relation to the CONTRACTING AUTHORITY and the INDEPENDENT OBSERVER from the date of its signature, and for the BIDDERS/CONTRACTORS individually upon a declaration for acceding to it following a predetermined model (Appendix No. 1).

(2) The declaration referred to in paragraph 1 shall contain unconditional and irrevocable will for acceding to the INTEGRITY PACT, in the form and with the content announced by the CONTRACTING AUTHORITY and the INDEPENDENT OBSERVER, without any arrangements or reservations.

(3) The declaration referred to in paragraph 1 shall be made in writing in duplicate by the person mandated to represent the BIDDER/CONTRACTOR in the public procurement procedure, one copy for the CONTRACTING AUTHORITY and one copy for the INDEPENDENT OBSERVER. The declarations made by the BIDDERS/CONTRACTORS and the PACT shall be kept at least for the period of keeping the documentation of the procurement award procedure and contract execution.

Article 27

The PACT shall cease to have effect from the time of notifying the Public Procurement Agency of the execution of the contracts, or in case of a final decision terminating the procurement award procedure, or after terminating the public works contracts but not later than expiry of Contract no. 2015CE16BAT098 with the European Commission.

Article 28

The CONTRACTING AUTHORITY undertake to provide at a specified address for correspondence a certified copy of the PACT signed by it and the INDEPENDENT OBSERVER to every person that accedes to the PACT in the course of the public procurement procedure, together with a certified list of all signatories.

Article 29

The CONTRACTING AUTHORITY shall, when opening the PACT for signature, publish in the Buyer Profile section on its website the text of the PACT.

Article 30

All disputes pertaining to the implementation and interpretation of this PACT in the course of the awarding procedure and contract execution shall be resolved through negotiations. The PARTIES undertake that prior to referring their dispute to court, they shall make every effort to resolve it through extrajudicial alternative methods of settling disputes such as mediation, with the assistance of the INDEPENDENT OBSERVER.

Article 31

The applicable substantive law is the Bulgarian law and the European and international legal acts referred to in the Preamble of this PACT as long as they contain directly applicable provisions. This PACT shall be interpreted in accordance with the founding principles, spirit and objectives of these laws.

IMPLEMENTING THE OBJECTIVES AND PRINCIPLES laid down in Part One of this INTEGRITY PACT and under the conditions set out in Parts Two and Three, in accordance with the applicable law,

This October 16th, 2017

The CONTRACTING AUTHORITY and the INDEPENDENT OBSERVER express their will to apply the INTEGRITY PACT in its entirety as regards all actions in the course of preparation, award and execution of the contracts for the design and construction of Struma motorway Lot 3.1 Zheleznitsa tunnel, with three lots.

FOR THE ROAD
INFRASTRUCTURE AGENCY:

FOR TRANSPARENCY
INTERNATIONAL BULGARIA:

Signature:.....
(Doncho Atanasov, Dipl. Eng.)

Signature:.....
(Vanya Kashukeeva-Nusheva,
authorised representative)

APPLICATION FOR ACCESSION TO THE INTEGRITY PACT

TO THE ATTENTION OF

ROAD INFRASTRUCTURE AGENCY
(CONTRACTING AUTHORITY)

TRANSPARENCY INTERNATIONAL –
BULGARIA (INDEPENDENT OBSERVER)

APPLICATION FORM

Submitted by (name of the Tenderer), (seat and address of management), UIC..... (if any), represented by (name), (position of the legal representative)

DEAR LADIES AND GENTLEMEN,

By submitting the present application I wish and give the irrevocable consent on behalf of „.....“ represented by me to access the INTEGRITY PACT signed on 16.10.2017 between the ROAD INFRASTRUCTURE AGENCY and TRANSPARENCY INTERNATIONAL – BULGARIA acknowledging the obligation to fulfill with perseverance and in good faith all obligations set forth in the INTEGRITY PACT.

I declare that „.....“ shall benefit from the possibilities given by the INTEGRITY PACT entirely and only in the morale of the principles supported by it.

Date:

Sincerely,

(name & signature)