

2C.II Case story: Integrity Pacts

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“The Integrity Pact allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules.”

Transparency International's Integrity Pacts offer a good example of collaborative action to prevent corruption in public contracting. Originally called “Islands of Integrity,” the Integrity Pact (IP) is a tool developed during the 1990s by Transparency International (TI) to help Governments, businesses and civil society fight corruption in the field of public contracting.

What are Integrity Pacts?

The Integrity Pact consists of an agreement between a Government or a Government department (to which we refer here as the Authority) and any company bidding for a public sector contract. The agreement contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes of any sort, or collude with competitors to obtain the contract, or while carrying it out. Bidders agree to disclose all commissions and similar expenses paid by them to anybody in connection with the contract, with the understanding that sanctions will apply if they violate the agreement. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the Government.

Many companies and Government officials would rather not get involved in corruption. The Integrity Pact allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules and the assurance that the Government agency will not request bribes either. This allows Governments to reduce the high cost of corruption on procurement, privatization and licensing.

The IP has shown itself to be adaptable to many legal settings and flexible in its application. Since its original conception, this TI-developed tool has been now used in more than 14 countries worldwide and has benefited from the feedback of a variety of individuals and organizations.

The IPs, conceived for application to individual contracting processes, are initially aimed at providing transparency and preventing corruption within that particular process. However, in some circumstances, IPs have contributed to changes beyond those specific instances or have triggered wider change processes. Beyond the impact on the contracting process in question, the IPs are also intended to create confidence and trust in the public decision-making, a more hospitable investment climate and public support for the Government's own procurement, privatization and licensing programmes.

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Integrity Pacts at work

The IP concept is suitable not just for procurement, construction and supply contracts, but equally, for example, for the selection of engineering, architectural or other consultants, the buyer/recipient of state property as part of a Government's state asset privatization programme, the beneficiary of a state license or concession (such as for oil or gas exploration or production, mining, fishing, logging or other extraction rights), or for Government-regulated services (such as telecommunications, water supply or garbage collection services). The IP may cover the planning, design, construction, installation or operation of assets by the Authority, the privatization sale of assets and the issuing by the Authority of licenses and concessions, as well as corresponding services such as consulting services and similar technical, financial and administrative support. The Pacts are also suitable for private contracting. Nowadays, many companies perform substantial procurement activities that follow closely and even overtake those of the public sector.

Whenever possible, the IP should cover all the activities related to a contract, starting with the pre-selection of bidders, continuing with the bidding and contracting proper, and extending through the implementation, completion and operation of the contract. In fact, the IP protection can and should be applied to the following full range of activities concerning a particular investment, sale, license or concession:

- Feasibility and preparatory stages relating to the earliest alternative choice and design documents to prevent the possibility of a dishonest consultant misdirecting the entire preparation process for the benefit of certain contractors or suppliers;
- Selection of the main contractors/suppliers/licensees;
- Implementation of the main activity, which is the execution of the construction or supply contract (especially regarding compliance with contract specifications and all change and variation orders), until the final decommissioning and disposal of the project assets (especially for projects such as big dams or nuclear power plants).

What makes an Integrity Pact an Integrity Pact?

The Integrity Pact is more than just an attractive name. Each Integrity Pact has the following essential elements, without which they could not operate to achieve the goals set for them by Transparency International:

- A *pact* (contract) with a Government office (the principal) inviting public tenders from bidders for any type of contract related to goods and services;
- An *undertaking by the principal* that its officials will not demand or accept any bribes or gifts, with appropriate disciplinary or criminal sanctions in case of violation;
- A *statement* by each bidder that it has not paid, and will not pay, any bribes "in order to obtain or retain this contract";
- An *undertaking by each bidder* to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen, as well as family members);
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation, as well as the corresponding

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sanctions, *remain in force* for the winning bidder until the contract has been fully executed;

- The installation by bidder companies of a *code of conduct* (clearly rejecting the use of bribes and other unethical behaviour) and a compliance programme for the implementation of the code of conduct throughout the company;
- A *conflict resolution mechanism* (for example, arbitration) with the authority to impose sanctions;
- A pre-announced set of *sanctions* for any violation by a bidder of its commitments or undertakings, including some or all of the following:
 - ✦ *Denial or loss of contract;*
 - ✦ *Forfeiture of the bid security and performance bond;*
 - ✦ *Liability for damages to the principal and the competing bidders;*
 - ✦ *Debarment of the violator by the principal for an appropriate period of time.*
- An *independent monitoring system*, which can be performed with active civil society participation or any other structure with independence, accountability and credibility;
- A maximum of *transparency* all along the various steps leading up to the contract and throughout its implementation, with easy public access to all relevant information, including design, justification of contracting, pre-selection and selection of consultants, bidding documents, pre-selection of contractors, bidding procedures, bid evaluation, contracting, contract implementation and supervision.

From the outset, it has been expected that *civil society* in the respective country will play a key role in overseeing and monitoring the correct and full implementation of the IP. The legitimate confidentiality of proprietary information, to which civil society representatives will gain access, can be protected adequately through an appropriate contractual stipulation. While a clear and unrestricted oversight and monitoring role for civil society in any country is highly desirable, it is understood that in some countries the Government will not, at this time, be prepared to allow civil society such a role. In those cases, the oversight and monitoring function could be performed in one of several ways: through credible independent Government (or mixed) agencies or commissions, through an independent expert committee or through the ombudsman system, among others.

The IP can function only if all bidders submit to it. It is therefore highly desirable to make the *signing* of the IP *mandatory*. Some countries have chosen to make the signing voluntary, and then they begin a campaign to convince all bidders of the advantages of having an IP in place. However, the danger here is that if even one bidder refuses to sign, all the others will naturally withdraw their commitment, since the objective is, after all, the creation of a level playing field—for all players.

A fascinating and possibly highly relevant recent development is the use in several countries of the Internet for total *transparency of procurement*. In Mexico, all public procurement activities countrywide are recorded and made available in great detail through a website that is accessible to all. In Colombia, a State Contracting Information System (SICE) is meant to be widely accessible. Similar electronic information systems are being applied in Chile, Ecuador, Brazil, Pakistan and South Korea. The high degree of transparency achieved through this real-time access to public decision-making should reduce the opportunity for manipulation and should enhance the willingness of officials and bidders alike to commit to a corruption-free contracting procedure, such as through the IP.

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Finally, experience shows that the *political will* to reduce corruption and to revive honesty and integrity in Government contracting is a sine qua non for success. That is why we recommend starting any IP process by establishing the existence of that political will—at the highest available political level. Experience shows that it is often easier to establish that political will at the municipal level than at national level.

In judging the *suitability of the IP* model one should take into account that on 15 February 1999, the OECD Convention made bribing a foreign official a criminal act in all States that ratified the Convention. In most of those countries, the tax deductibility of bribes, which had been allowed previously, has been abolished. Bidders from many countries thus face a fundamentally different legal situation from the one they had operated under for years. They should therefore be prepared to enter into agreements designed to provide a “level playing field” for all competitors irrespective of whether they come from countries bound by the OECD Convention rules or not.

Why do we need an IP if we have anti-corruption laws? The persistence of corruption problems in public contracting despite laws that forbid it show the need for developing mechanisms that increase compliance with the law and make it more difficult to ignore it. In this sense, the IP does not duplicate the law but enables compliance to it by levelling the playing field and assuring the contenders that all parties will conform to the same patterns.

There is an increasing number of cases where all the essential principles of the IP are being applied. While there is some variety in the approach, the documents and the process, we have observed that aspects such as the independent monitoring, the enforceable sanctions and a genuine political will are key for the concept to work and to be rightfully considered an Integrity Pact.

Integrity Pact case stories

Integrity Pacts in more complete versions have been used and are currently being used in Argentina, Colombia, Ec-

uador, Germany and Mexico, as well as in Pakistan and Indonesia. Essential elements of the IP (like monitoring, for example) are being used in other applications in several countries, among them Peru, Paraguay and Bulgaria. In sum, over 14 countries through the efforts of our Chapters have implemented adapted versions of Integrity Pacts.

The global overview of experience indicates that the IP concept is sound and workable. One of the strengths of the concept is that it is flexible enough to adapt to the many local legal structures and requirements as well as to the different degrees to which Governments are willing to proceed along the lines set forth here. Nevertheless, within our experience up to now, these lines contain the essential elements that must appear in an IP in order to be designated as such and supported by TI.

Argentina

One interesting feature of the Integrity Pacts is that they can be implemented in less competitive situations (markets) by introducing transparency measures and even fostering participation and accountability. This is the case, for example, of the IP implemented in Argentina in 2003 for the supply of textbooks for the Ministry of Science and Education.

The Ministry of Education Science and Technology in Argentina (the Ministry) opened up a process to buy 3,315,000 textbooks at the high school level. The textbooks were to be distributed among the provinces in Argentina for 1,815,000 public school students with meagre resources. The first attempt at a procurement process took place in 2002. The process was designed to have a competitive pre-qualification stage where the books were to be selected by a committee. During this stage, various publishing companies expressed concerns regarding the evaluation criteria used to select the texts, the qualities of the experts involved in the selection process, and the procedure within the provinces. Based on these concerns, the process was later declared invalid.

For the second attempt, the Ministry invited Poder Ciudadano, Transparency International’s Chapter in Argentina, to introduce transparency into the process and to

guarantee abundant and fair participation from all interested publishing houses.²

TI added three elements to the process:

First, an Integrity Pact among all participating publishing companies and the Ministry was implemented. The Pact introduced a level playing field by determining the same rules for all contestants. Its main purpose was to reduce the incentives and opportunities for bribery and corruption in this process.

Second, a public discussion of the textbook selection criteria (terms of reference) and of the bidding documents (procurement process design) was arranged. This knowledge was introduced by providing all bidders with access to the draft bidding documents and by facilitating their discussion within a workshop specially designed for that purpose. Although the results of the discussion were not mandatory for the Ministry, all suggestions for changes were accepted and introduced.

Third, rules to manage conflict of interest among the selection committee members were established. This included both a mechanism to identify potential conflicts of interest and conflict of interest management guidelines. The identification mechanism consisted of a sworn declaration by the committee member that included: research and academic history, teaching experience, positions held in public agencies and private businesses, publications, relationships with publishing companies (work, ownership, etc.) and the sources of copyright royalties. These declarations were made public on TI's website. This allowed for any participant to indicate the existence of a conflict of interest in a selection committee member. It also enabled the Ministry to implement the rules and to exclude members that could not qualify.

In terms of the process design, some important elements stand out from this case:

- The existence of a pre-qualification stage designed to introduce competition into an otherwise non-competitive bid.

- The bidding process, because of the nature of the goods to be procured, focused mainly not on prices but rather on quality determined by the contents of the textbooks and their pedagogical strengths. The bidding was part of the pre-qualification process undertaken by the award committee members.

- The introduction of transparency measures at various levels through:

- ◆ *The intervention of a third party and independent actor (TI Argentina) with a specific facilitator role;*
- ◆ *The agreement on the ground rules included in the Pact and in the guidelines for conflict of interest management;*
- ◆ *The availability and access to information equally guaranteed for all participants and the public and in all relevant aspects of the process (including conflict of interest situations);*
- ◆ *The involvement of participants in the process (workshop, discussion of terms of reference and conflicts of interest situation); and*
- ◆ *The enforcement of the agreed rules (for example, through the effective exclusion of committee members in conflict of interest situations).*

The results of the process, as reported by the TI Chapter in Argentina,³ are as follows:

- 48 publishing companies participated in the process and signed the Integrity Pact.

- Participating bidders presented in total 631 books, from which:
 - ✦ *51.66 per cent were among those recommended by the committee;*
 - ✦ *19.96 per cent were not among those recommended by the committee;*
 - ✦ *28.33 per cent did not match the conditions established under the terms of reference.*

- The contract awards resulted in the following distribution:
 - ✦ *48.21 per cent of the participating bidders had at least one book selected;*
 - ✦ *Two publishing houses were awarded 15.3 per cent and 14.7 per cent of the total selection respectively;*
 - ✦ *Only two bidders had only one book awarded (0.3 per cent of the total selection), and three bidders had contract awards for two books each.*

Colombia

The Colombian Chapter of Transparency International (Transparencia por Colombia) has implemented more than 60 Integrity Pacts in a wide variety of sectors. In this opportunity we will refer to one of the cases in the telecommunications sector, a sector that is perhaps far less competitive than the school textbooks just explored in the Argentinean case.

In our Colombian case, an Integrity Pact was implemented within a bidding process called “Compartel,” a rural communications project that aimed at providing access to telephone services in poor and distant rural areas.⁴ We focus

here on one specific process within this project called Compartel I. The bid took place in 1999 to contract the operators and suppliers of 6,500 public telephone access points.

The telecommunications market in Colombia was opened for private investment in 1993, allowing foreign and national investors to receive equal treatment. Telecom, the then state-owned monopolist provider of long-distance telecommunications service, and the project Compartel sought specifically to open competition and investment opportunities to the rural and distant area markets.

The goals of the IP as spelled out by the TI Chapter were:

- To increase the transparency of public bids, generating trust and credibility on all stakeholders;
- To create a voluntary cultural change among participants, to help them modify their behaviour to meet the ethical standards and the legal standards spelled out in Colombian law;
- To agree on rules of the game in order to level the playing field between the contractor and the public agency;
- To produce information on the corruption risks map identifying vulnerabilities, common and special elements among different bidding processes.

The Ministry of Communications invited TI Colombia to implement an Integrity Pact in the Compartel project when the terms of reference were ready for the Compartel I process. Therefore, in this case the process could not start with a participatory discussion of the terms of reference. However, with the support of experts, the Chapter revised the terms as a precondition to participate in the process. The process included:

“The IP had eased some of the concerns the [bidders] had in entering the market.”

1. The discussion and signature of a voluntary Integrity Pact, which included disclosure by the winner, under a confidentiality agreement, of all payments made to third parties on the occasion of the contracting process;
2. The implementation of an ethics declaration signed by the officials and advisors from the Ministry involved in the process. This declaration laid out a range of prohibitions for public officials to follow, regulating possible current and future conflicts of interest.

In the case of Compartel I, all bidders signed the Pact. Two aspects of the process design specially stand out:

1. The intervention of a third independent party (TI Colombia) acting as facilitator to introduce transparency measures in the process, with experts providing input on substantial aspects of it;
2. The discussion promoted by TI around the Integrity Pact, its process and consequences. This enabled the participants to talk about the risks in the process and take explicit steps against them. For example, the ethic declaration signed by the officials contained explicit measures that guarded them from situations that would concern how they handled the information on the process.⁵

In all other aspects, the process continued as foreseen and originally designed. Once the contract was awarded, there were no allegations from any of the participants on violations of the Pact or any acts of corruption. The monopolist participated competitively in the bids and was disqualified for presenting a bid without matching the bid terms.

When bidders who lost were interviewed,⁶ they underscored the role that the IP process played in en-

couraging them to participate in the bids. In one case, the bidder specifically expressed that it was their first time bidding on a public contract and that the IP had eased some of the concerns they had in entering the market.

Clearly, in a less competitive sector like this, there are few players, and these same few appear even at the international level. Therefore, the incentive to collude may be higher than in other sectors. This may also be problematic in terms of corruption prevention as the costs of whistle-blowing are higher in less competitive markets. This means that measures to prevent horizontal collusion need to be in place. The Integrity Pact itself provides mechanisms to enforce sanctions in case of breach. The contract winner's disclosure of payments to agents or other involved parties also raise the hurdle to corruption. However, in this case, there have been no signs or allegations of collusion.

Germany

The experience so far in Germany illustrates how the IP can work in settings where governance and law enforcement standards are perceived to be stronger. While this case, to the date of publication, is still ongoing, it shows the type of tools at hand for concerned stakeholders.

Berlin-Schönefeld Airport (FBS) and Transparency International Germany have joined together to introduce a no-bribes Integrity Pact to prevent corruption and illegal transactions in the course of a major expansion for FBS to become the Berlin Brandenburg International Airport (BBI). This is the largest and most significant infrastructure project in eastern Germany, anticipating a total investment of ca. EUR 2 billion between 2005 and the planned opening of BBI airport in 2010.

The Integrity Pact is effective immediately for tendering procedures for selecting suppliers, construction companies, planning, engineering and consulting companies. It is valid for the duration of orders. Should the bidder violate the regulations of the Pact in the course of the selection process, the bidder can be excluded from tendering for FBS. In addition, the bidder and contractor

are threatened with significant fines in case of violations, including lump sum damages of up to 5 per cent of the contracted sum. In some cases, higher damages are possible. The bidders are also obligated to insist that subcontractors maintain the terms of the agreement.

TI Germany assisted FBS in developing the concept but does not participate in the monitoring activities. The monitoring activities are performed by two independent monitors who contracted with FBS for that purpose. The monitoring agreement includes a clause to manage confidential information.

More information

More detailed information is available electronically through Transparency International's website: <http://www.transparency.org>. There you will also find updated and new materials regarding Integrity Pacts and Anti-corruption in Public Contracting.

contacts that enhance TI's resources and networks.

2 For more details on this case, see Poder Ciudadano (2004).

3 Ibid

4 For a complete report, consult: <http://www.transparenciacolombia.org.co>. We have selected here only one of those cases, and therefore the whole of the experience is not reflected here.

5 This meant both confidential information and information that legitimately would concern other bidders.

6 Interviews performed by Juanita Olaya during 2001 for Transparency International.

Endnotes

1 Transparency International (TI) is an international not-for-profit, non-governmental organization devoted to curbing corruption worldwide. TI is also politically non-partisan. Since its foundation in 1993, TI has earned widespread recognition for its achievement in placing the fight against corruption on the global agenda. The challenge of keeping the issue at the forefront of global consciousness is a leading element of TI's continuing mission. TI is committed to building, and working with, broad coalitions of individuals and organizations to curb corruption and introduce reforms. Rather than focusing on "naming names" and denouncing corrupt individuals, governments or companies, TI tackles corruption at the national and international levels by building stronger integrity systems. The coalition-building approach brings relevant actors together, from government, business, academia and the professions, the media, and the diversity of civil society organizations. Internationally, the movement's main aim is to infuse transparency and accountability into the global value system as generally recognized public norms. The International Secretariat works with the private sector and with international organizations, such as the OECD, to strengthen the policy and legal framework for international business. While the International Secretariat leads the organization's international agenda, more than 85 national chapters spearhead TI's grassroots involvement within their respective countries. TI has approximately 60 staff at the International Secretariat offices in Berlin and London. In addition, a team of experienced professionals volunteers time, expertise and extensive