

# **INTEGRITY PACTS**

## **An implementation guide for government officials**

### **EXECUTIVE SUMMARY**

The Integrity Pact (IP) is a powerful tool developed by Transparency International (TI) to help governments, businesses and civil society fight corruption in public contracting. It consists of a process that includes an agreement between a government or government agency ('the authority') and all bidders for a public sector contract, setting out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes; nor will bidders collude with competitors to obtain the contract, or bribe representatives of the authority while carrying it out. An independent monitor who oversees IP implementation and ensures all parties uphold their commitments under the IP brings transparency and invaluable oversight to all stakeholders in a contracting process, from the authority to the public.

The IP clarifies the rules of the game for bidders, establishing a level playing field by enabling companies to abstain from bribery through providing assurances to them that their competitors will also refrain from bribery, and that government procurement, privatisation or licensing agencies will commit to preventing corruption (including extortion) by their officials, and to following transparent procedures. IPs are legally-binding contracts, breaches of which trigger an array of appropriate sanctions, including loss of contract, financial compensation and debarment from future tenders. These act as powerful disincentives to corrupt behaviour, ensuring IPs are never simply goodwill gestures. Rather, they enable governments to reduce the high cost and the distorting impact of corruption on public procurement, privatisation or licensing, and to deliver better services to citizens.

With this IP implementation manual, TI aims to help leaders and champions within their own governments across the world who are determined to overcome corruption in public contracting. This manual is a hands-on, practical guide to familiarise government officials in charge of public procurement processes with the Integrity Pact and to provide them with tools and ideas for its application.

### **Integrity Pacts contributing to success in public contracting**

A successfully implemented IP means that a contracting process was undertaken in a transparent and accountable manner, free from corruption and from delays caused by trouble, confusion and a lack of transparency. The social, economic and development goals of the project are achieved – or at least not impaired by corruption. As a side effect, trust in government and government officials is increased, and the reputation of all participants improved. If corruption does occur, it is detected and eliminated from the process: when tools such as IPs that are designed to identify corruption find it, they perform their job effectively.

In addition, the IP helps governments to mobilise public support for their own procurement, privatisation and licensing programmes and to avoid the high cost in trust and reputation caused by corruption in highly sensitive projects. Beyond the individual impact on the contracting process in question, the IP is also intended to build confidence and trust in public decision-making; to support a more hospitable investment climate; to empower public officials to restrain corruption and to protect their good work in complicated projects; and to empower civil society to contribute to the integrity of public procurement processes. IPs help to increase the impact and effectiveness of resources when federal or national funds are involved in local projects or when aid resources are used.

IPs also enable the implementation of desirable law-abiding standards without additional legal reform, reduce conflict and distrust and provide a channel for managing dissent. Through the use of an independent monitor, they help to ensure the credibility and legitimacy of the contracting process, and offer all stakeholders oversight that would otherwise be denied to them. They reassure the authority and all participants of the integrity of the process, and help to isolate it from political pressures.

As well as the commitment not to partake in bribery or extortion, an IP can include other obligations such as the requirement that bidders disclose all commissions and similar expenses paid by them to anybody in connection with the contract, or that government officials involved in the process adopt codes of ethics consistent with the IP. The IP establishes a monitoring mechanism and a process for determining the presence of violations, which carry sanctions as a consequence. The sanctions for bidders range from loss or denial of the contract, forfeiture of the bid or performance bond and liability for damages, to debarment from future contracts. Criminal, civil or disciplinary action should proceed against government employees.

The IP process has shown itself to be adaptable to many legal settings and is flexible in its application. Since its conception, the IP has been used in more than 15 countries worldwide. Being essentially a collaborative tool, it is built on trust and support and is therefore constructive. It also emphasises prevention, and so does not have the side effects of other corruption control tools, which often generate fear and distrust. IPs help to make projects viable. They are not an end in themselves, but are a means of supporting the appropriate completion of projects crucial for development and the satisfaction of basic needs in society.

## **Integrity Pact design and implementation**

### *Design*

The manual helps users to select the project and the contracting processes to which the IP should be applied, using criteria such as project impact and the stage that the contracting processes have reached. An IP may be suitable during some or all stages of the project; ideally, it should be applied to the full range of project activities and should cover all the phases of each contracting process. At the absolute minimum, the IP should start during the pre-bidding stage of a contracting process and continue until contract signature.

A key advantage of an IP is that it is a tool that can be implemented within the ordinary authority of contracting officials and bodies, with the support of civil society (one or several NGOs). The experience of TI chapters implementing IPs is very diverse and is in constant evolution. The distribution of responsibilities between the authority and the implementing NGO is arranged between them for each IP. Therefore it is not possible or desirable to offer a fixed formula for IP implementation. The process is always a learning experience in itself and there is no one-size-fits-all recipe that can be copied from one context to another. For this reason, this manual contains everything users need to know to tailor-make an IP for a particular project. What form should that IP take? Should signature be mandatory or voluntary? Should its content be mandatory or voluntary? The manual provides a step-by-step guide for before, during and after the bidding process.

Consistent with its practical approach, the manual makes reference to two main case studies: that of the IPs implemented in the El Cajón and La Yesca hydroelectric projects in Mexico, and the IP used in the enlargement of the Schönefeld Airport in Berlin, Germany (also known as the Berlin Brandenburg International Airport project).

The manual takes users through the conditions crucial to the successful design, set-up and implementation of an IP. Key among these are:

- The political will of the authority to use this tool to its full extent to reduce corruption and to reinforce honesty and integrity in government contracting.
- Getting the basics right: maximum transparency at every step leading up to the contract and throughout its implementation, and an adequate, well-designed contracting process.
- The use of an external independent monitoring system which verifies that the obligations in the IP are fulfilled and exercises the functions agreed to in the IP with regard to the tender process and contract execution.
- Multi-stakeholder involvement: civil society has a very important role to play in supporting governments implementing IPs. Although the dynamics in every context are different, civil society organisations are a source of expertise, legitimacy, credibility and independence. A sensible distribution of responsibilities between the authority and the civil society organisation (or NGO) with whom it is working is critical.

It is important to secure general support for an IP from all stakeholders – and to understand the reasons why they may be sceptical about it. The basis of gaining support lies in addressing these two dimensions. Objections may need to be overcome, such as fears of delay or added complication to the project. Most objections will be adequately addressed with timely information about the IP and its implications. The manual shows how to gain support for an IP, with emphasis on the importance of good communications about both a project and the IP itself, throughout the process.

### *Implementation*

Implementation must be supported by a comprehensive communications strategy: bidders and potential bidders, contractors and sub-contractors need to understand their rights and responsibilities under the IP; regulators, government control agencies and other government departments also need to understand the IP and how it works so that they can provide support and participate accordingly; and citizens (the public) in general and communities with a stake in the project need to know an IP is in place, how it operates, what participation mechanisms it offers and how they can be used. Civil society organisations can play various roles in the implementation of the IP: as initiators, facilitators, lead implementers or as monitors themselves. At the very least, they are essential in providing channels of accountability from the monitor to the public.

Implementation also requires capacity, resources, leadership, commitment and credibility – as well as the ability to convene different audiences. A range of actors can support IP implementation, promotion and communication, such as other government agencies, industry associations, civil society organisations, donors and multilateral organisations.

In implementing an IP, the authority (with the support of a civil society organisation) assures that all activities foreseen in the IP process are actually carried out: the selection of the project and the contracting processes where it will be applied; the design of the IP process according to goals and circumstances; the choice of implementation arrangements; monitor selection, and – once all is ready – putting the IP to work throughout all contracting stages. TI's experience indicates that the pre- and post-bidding stages bear high corruption risks which are often overlooked, hence the utmost importance of considering these stages under the IP implementation process, and of having in place from early on measures to ensure the transparency and accountability of the contracting process.

## **The independent monitor**

The monitoring system and the role the monitor plays are crucial for IP success. Without the monitoring system, the advantages of the IP may not be realised. The main task of the independent monitor is to ensure the IP is implemented and the obligations for bidders and the authority included in it are fulfilled (i.e. there is no violation of the IP). The monitor is therefore the source of credibility and reassurance for both the authority and the bidders that the process will go as agreed. He/she is also a source of information for the general public, and builds trust among citizens in governmental procurement processes.

The manual explains how to select and support the independent monitor and ensure that he/she remains accountable. A number of different monitoring systems can be used: institutional/organisational or individual; collective or individual; private, governmental or non-governmental; and national or international. The monitor has access to all relevant information on the process and carries out a wide range of activities, including:

- the review and assessment of documents: the bidding documents, the bidders' proposals, the evaluation report, and contractor and audit reports, among others;
- participation in meetings, including public hearings;
- site visits to the project;
- communication with the authority, the NGO and the public according to the terms established in the monitoring agreement; and
- reporting his/her findings (including suspected corruption) to the parties in the IP, the authority, the NGO and the public.

## **The cost of Integrity Pacts**

The cost of implementing an IP may vary depending on the implementation arrangements, the activities included in the process and the complexity of bidding procedures. Whatever the case, experience has shown that they remain a very small percentage of the project costs and can be covered by different sources: the authority's own resources; contributions from donors or project financiers; bidders' fees, or a combination of these. There is no set figure, but on average, IPs cost between US\$ 50,000 and US\$ 200,000. The IP for Mexico's La Yesca hydroelectric dam, for example, cost an estimated US\$ 68,000 – less than 0.01 per cent of the total project cost of US\$ 760 million.

## **The value of 'what didn't happen'**

The IP is not a perfect tool: it is never possible to rule out corruption 100 per cent, and other complementary approaches should be implemented to strengthen an IP's impact, such as the effective intervention of control agencies and the timely prosecution of criminal offences. If not managed carefully, like any mechanism, the IP can be subject to abuse and be used for window dressing. Less than optimal IP implementation can still look 'good' but will not deliver the same results, thus undermining the impact of the tool.

The results and impact of IP implementation are difficult to measure, often because it is difficult to establish a causal relationship between 'what was done' and 'what didn't happen'. It is nevertheless possible to observe impact, through indicators including:

- The project ran as planned: bidding documents were observed; contractual agreements were upheld and enforced; and the project was successfully concluded.

- The project was visible, transparent and accountable. Information was shared with the public, and the participation of stakeholders was possible and effective.
- Conflict and complaints related to the bidding process and contract execution were minimised or adequately managed.
- There was an observable reduction in costs or prices compared to the original budget.
- The strategy facilitated the improvement of processes or the undertaking of reforms that benefited future projects at organisational and institutional (legal) levels.
- Corruption was detected and addressed, and savings were made as a result, or damage was prevented.

IPs are an invaluable tool for ensuring the public good, building public trust, helping guarantee project success and saving money. This manual puts this tool into the hands of any official seeking the best possible outcome for a particular public contract.

## B. THE INTEGRITY PACT

### B1. What is an IP? What are they useful for?

The IP is a tool developed during the 1990s by TI to help governments, businesses and civil society fight corruption in public contracting. It consists of an agreement between a government or government agency (hereafter referred to as ‘the authority’) and all bidders for a public sector contract.

The IP sets out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, and that bidders will not collude with competitors to obtain the contract, or bribe representatives of the authority while carrying it out. In addition, other obligations can be included, such as the requirement that bidders disclose all commissions and similar expenses paid by them to anybody in connection with the contract, or that government officials involved in the process subscribe to ethical commitments consistent with the IP. The IP further establishes a monitoring process and a process for determining the occurrence of violations, which carry sanctions as a consequence. The sanctions for bidders range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to debarment from future contracts. For government employees, criminal, civil or disciplinary action should proceed.

It is important to remember that an IP is both a document (a legal contract) and a process (a series of activities). This manual refers to both these aspects.

Since its conception, the IP has been used in more than 15 countries worldwide and has proven adaptable to many legal settings. Experience shows that four of the crucial elements for the successful design, setup and implementation of an IP are:

- 1) The **political will** of the authority to use this tool to its full extent to reduce corruption and to reinforce honesty and integrity in government contracting.
- 2) **Getting the basics right:** maximum transparency at every step leading up to the contract and throughout its execution, and an adequate, well-designed contracting process, are essential. Such transparency calls for extensive and 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 execution and supervision. If these basics are right, the job of the monitor is easier.
- 3) The use of an external **independent monitoring system** that verifies that the obligations in the IP are fulfilled, and exercises the functions agreed to in the IP with regard to the tender process and contract execution.
- 4) **Multi-stakeholder involvement:** Along with public and private sector involvement, civil society has a very important role to play in supporting governments implementing IPs, although the dynamics are different in every context. Civil society organisations are a source of expertise, legitimacy, credibility and independence. In addition, the correct involvement of actual and potential bidders will ensure ownership and responsibility.

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

- 1) To clarify the rules of the game for bidders, establishing a level playing field by enabling companies to abstain from bribing by providing assurances to them that their competitors will also refrain from bribing, and that government procurement, privatisation or licensing agencies also commit to preventing corruption (including extortion) by their officials and to following transparent procedures.
- 2) To enable governments to reduce the high cost and distorting effects of corruption in public procurement, privatisation or licensing and to deliver better services to citizens.

In addition, the IP helps to:

- Enable governments to gather and mobilise public support for the government's own procurement, privatisation and licensing programmes and to avoid the high cost in trust and reputation attached to occurrences of corruption in highly sensitive projects.
- Create confidence and trust in public decision-making, beyond the individual impact on the contracting process in question, and foster a more hospitable investment climate.
- Empower public officials determined to fight corruption and to protect their good work in complicated projects.
- Empower civil society in its contribution to the integrity of public procurement processes.
- Increase the impact and effectiveness of resources when federal or national funds are involved in local projects or when aid resources are used.

In summary, IPs help to make projects viable. They are not an end in themselves, but are a means of supporting the appropriate completion of projects crucial for development and the satisfaction of basic needs in society.

## **B2. What are the advantages and limitations of implementing IPs?**

A key advantage of the IP is that it can be feasibly implemented within the regular scope of authority that contracting officials and bodies hold. Being essentially a collaborative tool, it is built on trust and support and is therefore constructive. It also emphasises prevention, and therefore lacks the side-effects of other corruption control tools, which can sometimes generate fear and distrust. Other advantages of the IP include:

- the implementation of desirable law-abiding standards without additional legal reform;
- the reduction of conflict and distrust and the provision of a channel for managing dissent;
- increased credibility and legitimacy of the process, through the monitor providing insight that the authority and other stakeholders would not otherwise have;
- reassurance to the authority and all participants that the process is running smoothly, with reduced political pressures; and
- civil society involvement as an active contributor to the integrity of the process.

IPs are, however, not without their limitations. Among the most significant are that:

- It cannot ensure ruling out corruption 100 per cent, and complementary approaches need to be implemented to strengthen an IP's impact, such as the effective intervention of control agencies and the timely prosecution of criminal offences.

- If not managed carefully, like any mechanism, IPs can be subject to abuse and be used for window dressing. Less than optimal IP implementation can still look 'good' on the surface but will not deliver the same results.
- **Will I scare away bidders by requiring an IP?**

In judging the suitability of the IP model, the contracting authority should take into account that since 1999, the OECD Anti-Bribery Convention makes bribing a foreign public official a criminal act in all states that have ratified the Convention; In recent years, new bribery laws and stricter enforcement are creating higher level of risks for companies who may welcome the IP as means of creating a level playing field. In addition, signatories of the 2003 UN Convention against Corruption (UNCAC) confirmed a worldwide commitment against graft and corruption. The Convention entered into force in 2003 and to date has been ratified by more than 140 countries. Corruption in many manifestations is also considered a crime within most national legislation frameworks. Bidders across the world thus face a fundamentally different legal situation from the one in which they operated for years. They should therefore be prepared to enter into agreements designed to provide a level playing field for all competitors, irrespective of where they operate. As seen in this section, there are many reasons why bidders may feel reluctant to sign such commitments. If that reluctance is linked to corrupt activities and this is a sufficient reason for a bidder not to participate in a tender, then their non-participation is a good outcome for the project. The government and the citizens of the country are better off if corrupt agents stay out of the contracting process.

- **Why is an IP valuable if there are good anti-corruption laws in place?**

Despite the existence of laws that forbid corruption, its persistence in public contracting shows the need for mechanisms that increase compliance with the law and make it harder to ignore. In this sense, an IP does not duplicate the law, but enables compliance by levelling the playing field and assuring contenders that all are acting under the same conditions. Being a collaborative tool, the IP also manages something that the law rarely achieves: a clearer view of how others are behaving, not only because the same agreement is signed by the other bidders and the authority, but because the monitor's job is to ensure everybody keeps their commitment to the IP. The IP also incorporates sanctions contractually, in addition to those already foreseen by the law, and therefore does not replace the law, but complements it. It provides for a verification mechanism of implementation and enforcement of its rules (the monitor). Finally, the IP contributes to increased access to information and accountability, and ensures the correct implementation of procedures, resulting in increased trust in the law and government institutions.

### **B3. What can IPs not do? When are they not suitable?**

Much of what IPs can do depends on their design, the activities implemented in the process of their application and the extent and coverage given to them. But there are also things that IPs cannot do:

- They do not entirely rule out corruption and without proper monitoring and careful implementation they may be not be as effective. When they incorporate sanctions, however, they can be applied for cases where corruption does appear.
- IPs are not meant to change contracting rules, although their implementation can certainly facilitate discussions about necessary reform.
- IPs do not change organisations themselves – but they can facilitate change.



- IPs are aimed at changing behaviour during the contracting processes they are applied to, and may facilitate change beyond these processes, but more needs to be done to achieve such change.
- They do not replace the role of control, oversight and regulatory agencies, but complement them.
- The increased participation of different stakeholders, including civil society, in the IP process does not release the government from responsibility for decisions made during the contracting process.
- Depending on how they are designed and at which stage of the contracting process they are implemented, IPs will work well for the actual tendering process and will have some impact on the previous stages, but are less effective if not fully in place by then. Specific transparency and accountability measures need to be in place during the budgeting and decision-making stages, to address corruption risks during those phases.

#### **B4. When and where do IPs work best?**

- **When should IPs be implemented?**

As it was mentioned before different contracting processes occur throughout the project cycle. Each of these processes therefore renders an opportunity to implement an IP. Within the project cycle, some contracting processes might take place during the project preparation phase (such as consultancies for the design, or the engagement of investment bankers to structure the project), while other contracting processes occur during the project implementation phase, such as the construction of infrastructure, or the privatisation of a state asset.

Ideally IPs should be implemented right from the beginning of a project, at the earliest phases of

policy-making and project planning, where needs are assessed, key decisions are made and project feasibility is considered. IPs should continue throughout the whole project implementation phase.

Transparency, accountability and specific corruption prevention activities can be undertaken at the beginning, when decisions are being made on how the contracting process will be conducted, what method to use, etc. The IP document itself is normally signed the moment the bidding stage starts, but activities around IP implementation can, and ideally should, cover the stages prior to and after the bidding process. Depending on the type of contract, it may be more or less feasible to include the monitoring of contract execution within an IP. In general, contracts of immediate execution (such as purchases, construction, or maintenance services) may be more suitable to being overseen by a monitoring system like the one included in an IP. In contrast, contracts of deferred or sustained execution (such as utility operation contracts) may be too complicated to monitor through an IP during the execution stage. Monitoring the contract through its execution stage will in any case mean ensuring that the obligations set forth in the IP are honoured, and need not include monitoring service delivery, performance or quality, which is more appropriate for auditing, supervision and other forms of monitoring delivery, such as social accountability tools.

It is useful therefore to have both project cycle phases and stages of contracting processes in mind, and remember that:

- 1) The IP can and should be applied to the full range of activities concerning a particular investment, sale, licence or concession.
- 2) Ideally, the IP should cover each contracting process, starting with the preparation of the earliest stages: the needs assessment, the consideration of alternative choices and the contract planning before the bidding starts. If not, a dishonest consultant can misdirect the entire preparation process for the benefit of some contractors or suppliers.
- 3) Ideally, the IP should extend until contract execution, meaning it should cover the implementation of the main activity (the execution of the construction or supply contract, especially compliance with all contract specifications agreed and all change and variation orders).
- 4) At the absolute minimum and only as an exception, when the above is not possible, the IP should start during the pre-bidding stage and last until contract signature.
- 5) Ideally, the entire project cycle should be subject to transparency and accountability measures that facilitate successful project completion. The IP may be suitable during some or all phases of the project, depending on the contracting processes involved and the types of contracts to be awarded.

- **To what types of contracts can IPs be applied?**

The IP concept is suitable not just for construction and supply contracts; IPs can be implemented for any type of contract and any type of project. The most relevant elements are the willingness and the capacity (political will) of the authority to implement them.

For example, an IP could be implemented in the selection of:

- the buyer/recipient of state property as part of a government's state asset privatisation programme;
- engineering, architectural or other consultants;
- the beneficiary of a state licence 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 drinking water supply and sanitation, etc.);
- complex and custom goods contracts (such as military or defence supplies);
- management contracts; and
- other service delivery contracts.

The contract and the IP may cover the planning, design, construction, installation or operation of assets by the authority, the privatisation sale of assets, the issuing by the authority of licences and concessions, as well as corresponding services such as consulting and similar technical, financial and administrative support.

- **Which processes to cover in an IP?**

In selecting projects and contracting processes where IPs are most necessary, the following ideas are useful:

- 1) If there are many projects in the agency, one must consider:

- Projects with more relevant social or economic impact – not just in terms of the contract value but the strategic importance of the project for the sector or the region, and where basic services to citizens are at stake.
  - Projects that use combined funds (federal, national or international, combined with local funds, for example) and where different levels of transparency and accountability exist. The IP helps ensure the lowest standards are raised.
  - Projects where the risks (real or perceived) of corruption may threaten viability or projects, which are necessary but have been questioned for corruption in the past.
  - Complex projects (politically, technically) where a third party's involvement could facilitate decision-making and trust in the process along the way.
  - Small-scale projects which deliver services to beneficiaries, who can be engaged in the monitoring process (these are ideal).
  - Very sensitive projects in terms of public opinion, or whose costs represent a big portion of the national or local budget.
- 2) In selecting the contracting processes within the project, start with the procurement plan/ pipeline and pre-select the processes for which to implement IPs. Take into account these criteria:
- An IP only makes sense in projects that feature bidding processes (competitive, open or restricted). It is of little use in direct contracting processes or single source contracts. Other transparency measures can be introduced in those processes. The point of the IP is the environment it creates for the relationship between the bidders and the authority, as well as among bidders. If there is only one contractor, there is little value added by this tool.
  - In large-scale projects which have a relatively high number of separate contracts, IPs can be applied to every contract. If it is not possible to include them all, select the most vulnerable. If there is a single main contractor, provide for checks on sub-contractors by including a clause covering subcontractors in the main IP or by implementing IPs to those subcontracting processes. If this is too complicated, it may be better to use other tools<sup>1</sup> to ensure transparency in subcontracting processes.
  - Major international contractors may have been exposed to IPs in other locations (making it easier for them to understand and accept IPs).

## C. INTEGRITY PACT DESIGN

As part of the IP process a number of activities associated with the contracting process will be implemented. These can take place before and/or after the IP is signed. The authority will also have to work on the form and content of the IP document.

For all the activities that are planned, and to identify what is needed to be done, three guiding principles will be helpful for the design of the IP process: transparency, stakeholder involvement and accountability.

Thinking about these elements throughout all project stages will allow different features to be introduced into the process, depending on the particular characteristics and circumstances of the project:

Transparency	What kind of information needs to be made public and when? What means should be used to disseminate or provide access to that information?
Stakeholder involvement	Which other stakeholders (can) have a say in the terms of the project? Other government agencies? Communities?
Accountability	Who is making decisions in this process, and how? Are those decisions and their basis being made public? Are the sources of funds used to finance this project being informed of its implementation?

## **C1. Getting ready and defining the IP scope**

As part of the IP implementation process, it is possible to integrate additional activities to the signature of the IP document. These activities will be useful in establishing sufficient understanding of the tool and consensus for signing it. They will also be useful in establishing understanding of the process, building legitimacy and compliance, and introducing greater transparency and accountability. The activities required depend on the scope of the IP and the stage of the contracting process, therefore:

- 1) Determine the possible options available at this particular stage of the contracting process: Has the decision to undertake the project already been made? Has the contracting process already started? The IP document only makes sense if the bidding process has not already started. If it has, it is too late and other transparency and accountability measures must be implemented. If not, the IP process and contents can start being designed (see page **Hiba! A könyvjelző nem létezik.**).
- 2) As the design process is underway, determine what needs to be achieved and how much authority is needed to make those decisions. Will someone else need to be involved?
- 3) Decide on implementing arrangements for the whole IP process – including the distribution of responsibilities between the authority and the NGO, and an appropriate monitoring system – and start involving possible stakeholders and participants by sharing information about the IP.

### **a) Should signature be mandatory or voluntary?**

Experience indicates that it is better that the signature of the IP be mandatory, i.e. only bidders who sign can participate in the bid. This guards the effectiveness of the IP and ensures a level playing field. An IP with voluntary signature can lead to a situation where not all participating bidders are subject to the same rules, thus rendering the IP ineffective.

However, to avoid excessive rigidity and to preserve the substance and relevance of the contracting process, it is advisable that the requirement of IP signing be essential but amendable. So if a bidder forgets to sign the IP or misplaces it, the bid should be valid if, on

request by the authority, the bidder incorporates the document into other tender papers. What is important is the intention of the bidder to sign the IP, and that his/her commitment is clear and unequivocal. This is particularly valid for unilateral declarations or IPs filed as separate documents (see [page 12, 'C2. What forms can IPs take?'](#)).

It is always important to ensure that the bidders understand fully the extent of the commitment they undertake by signing the IP, even if it is mandatory. This is why sufficient effort should be invested in communicating and explaining the IP and its contents ([see the guidance offered on communication, page 37](#)).

#### **b) Should content be mandatory or voluntary?**

When an IP has mandatory content, it works as a standard document with the content pre-determined by the contract giver and not subject to negotiation with the bidders. When the content is voluntary, bidders are given the opportunity to discuss the terms of the IP and to propose modifications under certain restrictions. The latter is problematic, as negotiating the document with multiple parties reduces the quality and the strength of the undertakings, as well as affecting the level playing field, as negotiating powers and capacities among bidders may be uneven. The best option is therefore to establish a standard mandatory document. Where concrete, context-specific conditions indicate otherwise the best choice is that which adapts best to the culture, context and characteristics of the project, preserves the essence of the IP and provides for the most clarity and ease of management.

### **C2. What forms can IPs take?**

While form makes no difference to the legal effect of an IP, it has different effects on 'the process' and the signature requirements.

- **The IP as a clause within the tender documents**

This is a form of mandatory IP, where the undertakings by the bidders are incorporated into the tender documents and are agreed to when the bidders submit a tender proposal or participate in the prequalification stage. This form should also include a similar undertaking by the government. It is similar to the unilateral declaration (see below) and must be signed by all bidders who submit proposals.

- **The IP as a separate contract**

The IP is included as a separate contract from the bidding documents and its content can be determined as voluntary or mandatory by the authority (see previous section). It is the ideal form, as it makes very explicit that the undertakings include both contractual sides and all signatory parties: government authorities and all bidders. In this sense, the contract is multilateral as it establishes obligations among all participants and with regard to each other. This allows for some further 'legal engineering', such as creating entitlements for losing bidders in cases where corruption exists, which is not possible under unilateral declarations.

- **The IP as a unilateral declaration: an integrity pledge**

The bidders' and the government officials' commitments can also be contained in separate unilateral pledges. In this case it is highly desirable to assure that the pledge text is standard and identical to the document signed by the other bidders and other officials.

For these unilateral pledges to be fully considered an IP, the corresponding authority's undertakings must be submitted at the same time and be known to the bidders. Otherwise, the IP process would not acknowledge the demand-side of bribery and would not give the bidders further assurances that they will not be asked to pay bribes. The IP as a set of unilateral declarations is therefore possible and valid, but not optimal. However, there are ways to inject further strength into unilateral declarations, particularly with ample scope for the monitor to oversee the process and provide assurances of compliance to all participants.

### **C3. What do IPs consist of? What elements should be included?**

The essential elements of an IP are:

- **Signatory parties**

- 1) A government office (the authority) which is normally the entity inviting public tenders for contracts; in cases or countries where procurement decisions are made by a central procurement office, the IP may be signed by both the office in charge of procurement and the office that will administer the execution of the contract and operate the procured facilities.
- 2) All bidders participating in the tender.

- **Main obligations**

- An undertaking by the authority that its officials will not demand or accept any bribes, kickbacks, gifts, facilitation payments, etc., with appropriate administrative, disciplinary, civil or criminal sanctions in case of violation.
- An undertaking by each bidder that it has not paid, and will not offer or pay, any bribes, kickbacks, facilitation payments, gifts, etc. in order to obtain or retain the contract; along with the appropriate contractual, administrative, civil or criminal sanctions in case of violation.
- An undertaking by each bidder that it has not colluded and will not collude with other bidders in order to rig or influence the tender process in any way.
- An undertaking by each bidder to disclose to the authority and the monitor all payments made, or promised, in connection with the contract in question to anybody (including agents and other middlemen). This refers to payments made directly, as well as indirectly through family members, etc.
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation, as well as the corresponding sanctions, remain in force for the winning bidder until the contract has been fully executed.
- The explicit acceptance by each bidder that it will have to provide the same IP undertakings from all its sub-contractors and joint-venture partners.

- **Other possible obligations**

Including further obligations in the IP brings other activities and behaviour under the umbrella of what the monitor should oversee, and makes the IP sanction system operational in these cases as well.

*Other obligations for bidders:*

- Bidders can be advised or requested to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour) and a compliance programme for the implementation of a code of conduct throughout the company.
- The commitment by each bidder that the documents and information provided are truthful, and the acceptance of strict liability for misrepresentation, fraudulent representation or false declarations.
- A statement by the bidder that it has not been involved in conduct forbidden by the IP or any other related corrupt behaviour in the period prior to the bid (this can be 3-5 years, for example). If it were involved, the bidder is required to disclose the case and to show what it has done to address the issue and to correct the problem and its causes.
- A cap on payments to agents. Considering that agents and middlemen are often used (sometimes primarily) as instruments for paying bribes, the IP contains a stipulation that payments to agents must not exceed 'appropriate amounts for legitimate services actually performed'.
- When an IP is implemented in a consultancy contract, consultants should commit themselves not only not to pay bribes in order to obtain the contract, but also to design the project or project components in a manner that is non-discriminatory, assures wide competition and will not offer advantages to a specific bidder.
- The extension of the undertaking by bidders to other obligations, such as taxes and social security payments in connection with the bidding process.

*Other obligations for authorities:*

- Government officials of all ranks and hierarchy involved directly and indirectly with the contracting process can be requested to undertake an ethical commitment akin to the IP. This commitment can establish in further detail certain rules of interaction with the bidders during and after the tender process, including rules to manage potential conflicts of interest and put restrictions on future employment ('revolving doors', i.e. when an individual moves between public office and private companies, exploiting his/her period of public office for the benefit of companies previously worked for, or which he/she would expect to work for in the future).
- The authority commits to making public relevant contracting process information; this could include all information mandated by law and other additional aspects or elements considered relevant depending on the project. However, access to legitimately proprietary information should remain restricted; therefore this commitment must also include the undertaking by the authority not to disclose and to protect legally confidential information provided by the bidders.
- The monitor should be granted the same access to all information by the authority and the bidders, subject to a confidentiality agreement. If necessary (see **implementation arrangements on page 33**), similar access could be granted to a representative from civil society.

- Officials involved in the contracting process are required, on a regular basis, to disclose their own and their family assets, so as to offer perspective if such officials acquire wealth from a source that cannot be explained.

#### *Other obligations for both bidders and authorities*

- The extension of the undertaking by the authority and the bidders to refrain from 'all other illegal acts'.
- The commitment by the authority and the bidders to report to the monitor any attempted or fulfilled breaches of the IP.

#### • **Sanctions**

Sanctions should be established as a consequence of violation of the IP clauses. The authority must have discretion in applying all or some of the sanctions, and in deciding on the severity of the individual sanctions, depending on the severity of the breach or violation.

These sanctions are contractual once they are included in the IP, which has two consequences:

- 1) They do not exclude, substitute or modify in any way the criminal, civil, disciplinary or administrative sanctions established by law, as these cannot normally be changed via a contractual arrangement.
- 2) They apply only to the signatory parties.

Some of the sanctions that should be included in an IP in case of breach by any of the bidders include:

- Denial or loss of contract, if the infringer is also the winning bidder. Exclusion from tender processes can be included for all bidders before the award has taken place.
- Forfeiture of the bid security and performance bond, where these have been requested as part of the tender.
- Liability for damages to the authority and the competing bidders. One way to establish this is by including a 'liquidated damages clause', which determines in advance the amount of money that a breach of contract would cost the infringer. The advantage of liquidated damages is that they save the often time-consuming procedures for establishing the appropriate amount and, if set at an appropriate level, they can act as a strong disincentive. This also shifts the burden of proof from the party claiming damages to the party who infringed the IP. An option can be included for either party to claim higher or lower damages if it can prove the actual damage exceeds (or falls short of) the level set in the liquidated damages clause.
- Debarment of the violator by the authority from contracting with the government (or just the authority) for an appropriate period of time. Debarment mechanisms can be set by law or regulation or on a contractual basis. If the country in question does not have a formal mechanism of debarment, it is enough to establish in the tender documents that a requirement for participation is not to have been excluded or debarred from other



contracting processes, or not to have had a contract terminated because of corrupt conduct or breach of an IP. However, a formal, transparent and accountable debarment process is ideal and if it is possible to establish, a database of debarred companies can allow other government agencies to utilise important debarment information across other agencies.

It is highly recommended that the sanctions and the process of imposing them are proportional to any breach, so as not to introduce unfairness to the IP. For example, the breach of secondary obligations may be a cause for exclusion from the tender or may give rise to a loss of 'evaluation points' within the tender, while breach of a primary obligation should give rise to the full application of sanctions.

IP breach by government officials is usually subject to disciplinary, administrative, civil and criminal sanctions that cannot be added to or modified contractually. The IP should therefore include a swift mechanism for the monitor to report wrongdoing to the appropriate control and prosecution authorities.

*What kind of evidence is required in order to be certain of a violation by a bidder, so as to trigger sanctions?*

Suspicion alone cannot be enough for imposing sanctions. Clearly, a criminal conviction for bribery is the most persuasive evidence, but a criminal conviction is rarely obtained, and in the event that one is, it usually comes much too late to be of any help in administering prompt sanctions. German practice, for example, is to treat a no-contest statement or an admission of guilt as equally valid. Recently evidence of a violation has been considered adequate if, 'on the basis of the facts available, there are no material doubts'. In any case, 'sufficient evidence' is enough to trigger action, especially if non-reparable damages need to be avoided.

Suspensions, 'red flags' (i.e. any piece of information that indicates a possible problem or risk of corruption) and other indicators should be enough to trigger investigations and other clarification efforts by the monitor and/or the authority. In the absence of a satisfactory explanation or clarification, or when it becomes clear that wrongdoing has occurred, this should be reported to the appropriate prosecution authorities and the IP's mechanism for imposing sanctions should be set in motion.

- **A monitoring system**

The inclusion and implementation of an independent, accountable and credible monitoring system is essential to the IP document. The monitoring system performs various essential functions within the IP:

- 1) It ensures that the IP obligations are fulfilled by all parties, therefore making the IP credible.
- 2) It performs crucial monitoring and oversight duties for the contracting process itself, and preferably for contract execution as well. These duties can be described in the IP or in a separate monitoring agreement.

A more detailed description of how a monitoring system can be implemented is in section 5 on page X.

- **Stakeholder participation**

The IP can provide means of stakeholder participation that ensure all relevant parties can contribute. This includes the communities affected by (or benefiting from) a project, potential bidders, other government agencies and authorities in charge of formulating policies relevant to the project, or development agencies, in addition to civil society organisations and the media and, through them, the public. This can be achieved by several means:

- Specially targeted public hearings or town-hall meetings. These can have different purposes, for example:
  - facilitate discussion with all potential, interested bidders and communities on the bidding documents and project specifications;
  - open question and answer sessions with all participating bidders on clarifications to the bidding documents; and
  - facilitate discussion with the community about the environmental and social impact and characteristics of the project; in many countries, this is beginning to be a requirement.
- Proactive access to information on the relevant stages of the process, the grounds for decisions, etc. As part of IP implementation, a particular information mechanism can be devised for this, for example, using the internet, radio or written media, depending on the most popular means of communication in a specific location.
- Civil society can also play an active role in enabling participation in the process by channelling information, representing citizenry and providing expertise and support in organising public hearings. It can also act as monitor and IP lead implementer (see Implementing arrangements, **page X**).

- **Dispute resolution**

Parties to an IP may have differences arising from its interpretation or implementation; to address these differences with due process, a dispute resolution mechanism can be included. In addition, it is not normally the monitor who is able to impose sanctions. These powers remain within the authority and with the corresponding dispute resolution body, should this be needed. In some countries, where special tribunals or judicial authorities have a mandate to deal with these or related issues, such mechanisms may not be necessary. Within these frameworks, the IP dispute resolution mechanism can play two fundamental roles:

- resolve disputes about the IP execution; and
- impart the sanctions set forth in the IP.

Not all IPs need to include both functions in the dispute resolution mechanism.

Many IPs use arbitration (national or international) as a dispute resolution mechanism. Why arbitration rather than a national jurisdiction court?

- When international companies are involved:
  - Relying on the jurisdiction of a northern country is likely to be unacceptable to authorities in a southern country; similarly, relying on the national jurisdiction of a southern country is likely to give little comfort to bidders from northern countries; thus the consensual choice of arbitration.
  - Where a well-functioning national system of arbitration exists and commands the confidence of international companies, submitting a dispute to it will save time and costs.

- Even if only national companies are involved:
  - Arbitration and other 'alternative dispute resolution mechanisms' can often provide faster conflict resolution mechanisms than courts, and may be able to clarify conflicts at an earlier stage.
  - Where such an accepted national arbitration system does not exist, the parties can provide for 'international arbitration by the ICC Arbitration Court under the rules of the International Chamber of Commerce' (or a similar internationally accepted arbitration institution).

However, in some cases, the cost of arbitration may be substantial and this should always be explored before agreement on arbitration is secured.

A crucial aspect of the dispute resolution mechanism, whatever form it takes, is that it should be independent, transparent and accountable. For these reasons, the following are important considerations when agreeing the rules of arbitration:

- The selection process for the arbitrator(s) should be undertaken with objectivity; most often, selection by a third party is the optimal solution. The option most preferred is that each party nominates one arbitrator and those two designate a third.
- With regard to transparency, at the very minimum, the notification of initiation of procedures should be made public, as should the arbitration award or final decision.
- Consistent with the IP's nature and goals, the arbitration agreement should ideally enable third party contributions (i.e. *amicus curiae*).<sup>2</sup>
- The agreement should also establish clearly the applicable law and the place of session; ideally the applicable law should relate to the place of contract execution.

#### • Other features

##### 1) Whistleblower protection

The IP can also contain measures to protect whistleblowers. Among these are:

- The requirement that internal regulations and commitments to protect employees and officials who report wrongdoing from being fired or sanctioned in any way, be established by both the authority and the bidders.
- The implementation of anonymous communication mechanisms for the monitor to receive reports of wrongdoing, such as a hotline.

##### 2) Information disclosure

The IP can also determine special information disclosure mechanisms, such as the internet and public hearings. In addition, the IP can be very useful in establishing the disclosure of documents and special information, even in cases where the law does not require it (but has also not forbidden such disclosure). For example, the publication of draft bidding documents, questions and answers, grounds for the award, actual awarded contracts, change orders and renegotiated agreements is not required by law, but can be agreed in the IP if the law does not forbid it.

The IP can also determine special mechanisms for making information public, such as a dedicated internet site, a local newspaper or the use of radio or TV for certain procedures.

## **E. THE MONITORING SYSTEM**

The monitoring system and the role of the monitor him/herself are crucial for Integrity Pact success. Without the monitoring system, the advantages created by an IP may be unrealised. The monitor scrutinises the process closely and guards the implementation and enforcement of the IP. He/she is the source of credibility, reassuring both the authority and the bidders that the process will go ahead as agreed, and is a source of information for the general public, building trust in the contracting process.

### **E1. What are the monitor's functions?**

The main task of the independent monitor is to ensure the IP is implemented and the obligations of bidders and the authority included in it are fulfilled (i.e. there is no violation of the IP). In order to perform this task, the monitor can undertake a number of activities:

- Examine documents, reports and all preparatory work by the authority during the bidding process, in order to detect corruption risks.
- Examine and give his/her view on the tender documents before they are issued, including watching out for specifications that may be biased in favour of one or more bidders.
- Facilitate, promote and take part in public hearings.
- Participate in meetings held by the authority and potential bidders.
- Review the questions and answers exchange, to verify the answers and that they are equally available to all bidders.
- Organise, lead or facilitate meetings, training sessions, etc. where the IP is explained, and produce supporting materials.
- Attend the closing of the tender to verify that the established procedure is rigorously followed.
- Examine bidders' proposals to check and compare the evaluators' assessment and judge its accuracy.
- In the case of a failed tender, fulfil all these functions again.
- Review the award decision document to verify it is duly substantiated, and attend the award notification meeting if applicable.
- Inspect construction sites, visit the contractor's offices and review contractor reports to identify signs of possible irregularities during contract execution
- Review content and procedure for contract changes during implementation.
- Keep contact with local communities or the end users of the goods or services contracted, to collect information or complaints about contract execution that might flag corruption.

- Communicate with the senior management of the authority and the NGO about his/her findings and where necessary, to the prosecution authorities.
- Receive and deal with complaints related to the IP and offer clarification.
- Report on the monitoring process to the parties in the IP, the authority, the NGO and the public, following the designated process.
- Suggest avenues for improvement of the contracting process, based on his/her work.

The monitoring performed through the IP does not necessarily include service delivery monitoring or quality control: including these may make the monitor's task more difficult and may eventually lead to a conflict of interest, as in principle during the contract execution the monitor guards the integrity of the auditors and supervisors who are overseeing quality and delivery. During the contract execution stage, most corruption risks are associated with bribery and kickbacks to secure positive audit and oversight reports, so it is good to have a third party watching. It is therefore advisable to focus the functions of the monitor on ensuring that the duties set forth in the IP are fulfilled, and on protecting the transparency and integrity of the contracting process.

#### • The role of civil society

As previously mentioned (see page X) civil society organisations (CSOs) can play various roles in IP implementation: as initiators, facilitators, lead implementers or as monitors themselves.

When civil society has the expertise to act as monitor, it is particularly well placed to play this role given its independence both from bidders and the authority, and its sole incentive to protect the public interest. Even if civil society does not have the required expertise 'in-house', it can reach out for expert support for a particular IP process, combining specific expertise with its own institutional capacity. In this situation, the expert monitor would sign the monitoring agreement with the NGO.

The role of civil society is fundamental for the credibility of the monitoring system. Even when a lack of capacity or other circumstances are non-conducive to civil society taking on the monitor's role, at a minimum it is essential in providing channels of accountability for the monitor to the public. For this reason, when the monitoring agreement is signed with the authority, it should clearly specify an accountability line between the monitor and civil society and, through this channel, to society at large.

## **E6. How should the monitor proceed if corruption occurs or is suspected?**

The monitoring agreement should clearly indicate the procedure to follow in case of indications or suspicions of corruption. Whatever the procedure chosen, it should guarantee that the monitor has the capacity to react independently provided the agreed process has taken place.

The reaction should also be proportionate. Vague indications (suspicions) of corruption are different from clear evidence that corruption has taken place. In the first case it is necessary

to provide for further investigation and should doubts remain, notify the investigation authorities. In the second case, recourse to the investigating authorities should happen immediately.

- **Action with regard to the authority**

It can be helpful if the authority is informed about the suspicions or possible wrongdoing and has the opportunity to undertake early corrective measures or further preventative action. However, to sustain the independence of the monitor, it should be made clear that should the authority not react, or not react sufficiently or swiftly enough, the monitor will proceed to inform the investigation authorities.

- **Action with regard to the prosecuting authorities**

The monitor should always have the capacity and the duty to notify the investigating and prosecution authorities when there is a clear indication of corruption, and should also be entitled to refer to them when there are only suspicions which cannot be clarified through his/her own powers, or when the authority, having been given the opportunity, has not reacted effectively.

- **Action with regard to the public (media)**

The possibility of informing the public about a detected corruption case is a powerful tool that should be used with prudence. The monitor should have this capacity, but in cases where the investigating or prosecution authorities have been involved, information made available to the public must not jeopardise the investigation.

## **E7. Access to information and confidentiality of the monitor**

Just as it is important that the monitor be granted full and unrestricted access to information related to the contracting process by the authority and the bidders, it is necessary for the monitor to commit to preserving the confidentiality of legally protected information (proprietary information). Both elements must be described clearly as within the powers and duties of the monitor, in the monitoring agreement.

Such confidentiality requirements must also be extended to any experts supporting the monitor.

## **F. IMPACT AND TROUBLESHOOTING**

### **F1. What is success?**

Success in IP implementation means that the contracting processes were carried out in a transparent and accountable manner, free from corruption. The project was effectively brought to completion and the contracting processes required were free from delays caused by trouble, confusion and a lack of transparency. Success is that the social, economic and development goals of the project were achieved (or at least not impaired by corruption). Success is that as a side-effect of the strategy, trust in government and government officials increased and the reputation of all participants was improved. Success is also when corruption is detected and eliminated from the process, i.e. the tools designed to prevent corruption find it and perform their job effectively.

#### **a) The impact an IP can have**

The results and impact of IP implementation are difficult to measure and identify, often because they mean that 'nothing bad happened'. It is also often difficult to establish a causal relationship between 'what was done' and 'what didn't happen'. Measuring and observing the impact is nevertheless possible.

Based on the experience of TI chapters in implementing IPs, observable indicators of success exist. Only in rare cases can it be assumed that the sole cause is IP implementation, but they do show IP impact:

- 1) Things run as planned: the requirements of the bidding documents were observed by the bidders; contractual agreements were upheld and enforced; and the project was successfully concluded.
- 2) The project was visible, transparent and accountable. Information was shared with the public, and the participation of stakeholders was not only possible, but effective.
- 3) Conflict and complaints related to the bidding process and contract execution were minimised or adequately managed.
- 4) There is an observable reduction in costs or prices compared to the original budget.
- 5) The strategy facilitates the improvement of processes or the undertaking of reforms that benefit future projects at organisational and institutional (legal) levels.
- 6) Corruption is detected and addressed, and savings are made as a result or damage is prevented.

#### **b) Communicating success**

Success as here described is difficult to demonstrate. It is often the case that no news is good news. However, communicating success is an important element of having achieved it, because it enables reward and recognition from society, bidders and peers, regulators and other government agencies. Some of the impact of the strategy comes through having communicated its outcomes.

## **F2. Risks and possible problems**

### **a) Conflicts of interest**

Conflicts of interest hinder independence and neutrality, and affect the legitimacy and credibility of the parties involved in IP implementation and therefore they should be properly managed. There is a risk of conflicts of interest between and among all actors participating in an IP process: the monitor, the bidders, the authority and the NGO.

Among key measures to address conflicts of interest are:

- Request that NGOs and monitors must not have been involved in politics or have had any contractual or business relations with the parties involved in the contracting process for a reasonable period of time before and after their duties in IP implementation take place.
- Include in the monitor's contract a statement of absence of conflicts of interest.
- Establish clear criteria for selecting monitors and implementers that exclude those who could have conflicts of interest. It is usually advisable to engage professionals who do not derive their main income from business or contracts with potential bidders or authorities, or to rule out professionals interested in pursuing a political career.

### **b) Managing public information**

Just as access to information is critical to the monitor's role and the impact of the IP, it is also important to protect proprietary information which, on the basis of the public interest and the principle of 'do no harm', has been protected by law.

In this sense it is possible that the NGO acting as lead implementer and the monitor sign confidentiality clauses that assure the authority and the bidders that legitimately confidential information will be appropriately protected.

Although a communications strategy is necessary for successful IP implementation, such a strategy must be careful not to expose the IP process and the monitor's role to undue political pressure.

### **c) Window-dressing**

Like any strategy, the IP can be subject to abuse (or indifference). If wrongly implemented, it can give an appearance of credibility without this being backed by a serious implementation strategy. In particular, IPs implemented en masse, across many contracts (by virtue of the law), and without proper monitoring face this risk. To minimise it, it is important to have an empowered and independent monitor capable of flagging up this situation should it happen, and of withdrawing from the process. In the absence of such a monitor, a truly independent media can help by exposing inappropriate use of the IP.

### **d) Addressing bidder reluctance**

It is important to distinguish between reluctance originating from lack of information and understanding of the IP, and reluctance originating from fear of the IP. Ensure that information, training and clarification are given to bidders so they can make informed decisions about participating. If potential bidders have been properly informed of the IP and



the way it works, the authority should accept their non-participation in the bid if they so chose. Bidders who refuse to sign to IPs send the wrong signal, and if the reason for their reluctance is because they are otherwise interested in corrupt deals, then the IP has had its intended impact.

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<sup>1</sup> This is the requirement that contractors and sub-contractors have (and enforce through a compliance system) a code of conduct, such as TI's *Business Principles for Countering Bribery* or similar tools.

<sup>2</sup> Third party contributions, or *amicus curiae*, refer to interventions by individuals or organisations that are not parties to the dispute. Because of their expertise, or their interest in the matter subject to discussion, their contribution to the process (in the form of a testimony or expert submission) would be admitted in some cases and under certain rules.