



Network India



# INTEGRITY PACT IN INDIA

Glancing Back and Looking Forward



### **Global Compact Network India**

Global Compact Network India (GCNI), registered as a non-profit society in November 2003, is the India Local Network of the UN Global Compact. The Global Compact is the largest voluntary corporate citizenship initiative in the world offering a unique platform to engage companies in responsible business behavior. GCN India is the first Local Network to be established with a pan-Indian membership, providing extremely relevant vehicle for Indian businesses, academic institutions and civil society organizations to join hands towards strengthening ten universally accepted principles in the areas of human rights, labour standards, environment and anticorruption.

### **Transparency International India**

Transparency International India (TII) is the accredited India chapter of Transparency International, an international civil society organization based at Berlin that has turned the fight against corruption into a worldwide movement. TII envisions a corruption free India where the poor do not lose their voice in the face of corruption, and make it their mission to support a committed effort to improve transparency and accountability through the broadening of knowledge and effective action for eradicating corruption.

### **About the Project**


GCNI and TII have been beneficiaries of the UK Prosperity Fund India Programme, with the goal of mainstreaming Anticorruption Collective Action in the development agenda of India.





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## LIST OF ABBREVIATION

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<b>ARC</b>	Administrative Reforms Commission
<b>BEML</b>	Bharat Earth Movers Limited
<b>BPCL</b>	Bharat Petroleum Corporation Limited
<b>CBI</b>	Central Bureau of Investigation
<b>CVC</b>	Central Vigilance Commission
<b>FAA</b>	Federal Aviation Administration
<b>GCNI</b>	Global Compact Network India
<b>GDP</b>	Gross Domestic Product
<b>HPCL</b>	Hindustan Petroleum Corporation Limited
<b>ICAO</b>	International Civil Aviation Organization
<b>IEM</b>	Independent External Monitor
<b>INR</b>	Indian National Rupee
<b>IP</b>	Integrity Pact
<b>MoU</b>	Memorandum of Understanding
<b>NDMC</b>	New Delhi Municipal Corporation
<b>ONGC</b>	Oil and Natural Gas Corporation
<b>PPP</b>	Public Private Partnership
<b>PSE</b>	Public Sector Enterprises
<b>PSU</b>	Public Sector Undertaking
<b>RTI</b>	Right to Information
<b>SEBI</b>	Securities and Exchange Board of India
<b>SOP</b>	Standard Operating Procedures
<b>SSI</b>	Small Scale and ancillary Industry
<b>TI-D</b>	Transparency International Germany
<b>TI-H</b>	Transparency International Hungary
<b>TII</b>	Transparency International India

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## FOREWORD

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The British High Commission is pleased to be associated with UN Global Compact Network India and Transparency International India in promoting the Integrity Pact.

The United Kingdom chaired the Open Government Summit in 2013. There, Prime Minister David Cameron set out the 'golden thread of conditions' which create a thriving country: the rule of law, the absence of conflict, strong property rights and institutions, and, of course, freedom from corruption. And the evidence is clear: corruption is bad for social and economic development, bad for business and bad for a country's reputation.

The United Kingdom is committed to tackling corruption and promoting transparency not only domestically, but also internationally, working with partners to increase transparency, identify illicit financial flows and return stolen assets, raise global standards, and promote sustainable growth. Since corruption is a problem for both government and business, we believe that working with business and civil society can only help us to tackle corruption and its causes.

The business impact of corruption is real. According to a 2013 survey by EY in India, more than 50% of respondents believed that they lost business to competitors because of the latter's unethical conduct. The World Bank estimates that over USD 1 trillion is paid in bribes each year, adding up to 10% to business costs globally. It is also estimated that corruption adds up to 25% of the cost of procurement contracts in developing countries. According to the OECD, 59% of foreign bribery cases occurred in infrastructure sectors and the majority of these bribes are paid to secure procurement contracts.

Transparency International's Integrity Pact is an important tool to help to create a level playing field for business and reduce the costs associated with procurement. The goal of the Integrity Pact is to reduce the chances of corrupt practices during procurement through a binding agreement between the procuring agency and bidders for specific contracts.

The primary objective of the Integrity Pact is to support companies who refrain from bribery by providing assurances that (i) their competitors will also not bribe, and (ii) that the procurement, privatisation or licensing agencies are committed to preventing corruption, including extortion, by their officials and to follow transparent procedures. A secondary benefit is that governments can reduce the high cost that corruption imposes on public procurement, privatisation or licensing.

The Global Compact Network India and Transparency International India have already done an impressive job in enlisting both Government and public sector support for the Integrity Pact in India. We congratulate them and also the many organisations who have committed to the Pact and the principles it enshrines. But there is more to do. Signing up is only the first step. More significant is the detailed effort to ensure compliance in letter and spirit and see greater participation from the private sector.

We are committed to supporting such initiatives and welcome this publication.

**Claire Tynte-Irvine**  
**First Secretary,**  
**Economic and trade policy**  
**British High Commission, India**

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## EXECUTIVE SUMMARY

Citing increase in procurement activities, the Central Vigilance Commission, in February 2015, issued an order, asking public sector banks, insurance companies and financial institutions to adopt Integrity Pact by April 30, 2015 and appoint Independent External Monitors to check corruption,<sup>1</sup> observing that over the years public sector banks, public insurance companies and financial institutions are increasingly undertaking major procurement activities. It was therefore imperative for them to make their procurement and contracting process fair and transparent by adopting Integrity Pact (IP) and appointing Independent External Monitors (IEMs). Central Vigilance Commission (CVC) has asked the banks, insurance companies and financial institution to send them a panel of four or five names of eminent retired persons who may be appointed IEMs.<sup>2</sup>

Prior to this the Government of India unilaterally terminated a Euro 556 million contract with the Anglo-Italian helicopter manufacturing company Agusta Westland on the 1st of January 2014 for breach of the pre-contract integrity pact on the basis of allegations of bribery. As also in March 2012 the Ministry of Defense cashed a bank guarantee put forth by the Israeli Military Industries and blacklisted six companies amidst allegations of bribery and breach of the pre contract integrity pact.<sup>3</sup>

The above examples are evidence of the expanding reach and impact of the Integrity Pact in India.

It has been improved and implemented on the ground by many of TI's chapters across the globe, in a wide range of sectors.<sup>5</sup> What makes it a unique tool is the introduction of an independent monitoring system under the leadership of subject experts and civil society, which ensures increased accountability of public resources. In Italy the tool has been applied at local government level. In countries like Bulgaria,

**Integrity Pact as a tool has seen success globally. In China for instance, there has been sectoral application of the tool in construction sector. In 2004 Chinese government took the decision to blacklist contractors convicted of bribery and barred their access to local construction market.<sup>4</sup>**

Romania, Czech Republic, Serbia, Guatemala and Peru, one of the key aspects of Integrity Pact, that is, monitoring has been adopted. Integrity Pact in a more complete form has been used in Argentina, Colombia, Ecuador, Germany, Mexico and Paraguay, as well as in Indonesia and Pakistan.

So what is the Integrity Pact and why the need for this publication. Developed by Transparency International (TI) during the 1990s, the Integrity Pact is a tool aimed at preventing corruption in public contracting. The Pact is essentially an agreement between a government or government department (at the national, sub-national or local level) and all bidders for a public contract. The Integrity Pact, as a tool to help governments, businesses and civil society is committed to fighting corruption in the field of public contracting.

This publication is meant to serve both as a guide and evaluative tool for better understanding of Integrity Pact implementation in India. It is designed to serve as a reference manual for Public Sector Undertakings (PSUs), who have adopted IP, and to build a case for adoption of IP in State Undertakings, based on experience of central PSUs. The publication, by way of sharing learnings/challenges/recommendations of PSUs, aims to encourage the private sector in adopting the IP tool in India. Finally the publication seeks to delve into the relevance of IP for the ever increasing Public Private Partnership (PPP) enterprises and suggests course correction for better implementation of IP in India. Given the low level of awareness among the vendors, the publication has also made an attempt to bridge the gap in awareness levels among vendors.

<sup>1</sup><http://cvc.nic.in/iembank25022015.pdf>

<sup>2</sup><http://economictimes.indiatimes.com/topic/Central-Vigilance-Commission>

<sup>3</sup><http://www.fcpaprofessor.com/a-focus-on-indian-pre-contract-integrity-pacts>

<sup>4</sup>[http://www.transparency.org/news/pressrelease/china\\_moves\\_against\\_bribery\\_in\\_construction\\_sector](http://www.transparency.org/news/pressrelease/china_moves_against_bribery_in_construction_sector)

<sup>5</sup>[http://issuu.com/transparencyinternational/docs/2010\\_integritypactswatersector\\_en/16](http://issuu.com/transparencyinternational/docs/2010_integritypactswatersector_en/16)



## INTRODUCTION

In emerging markets like India, public procurement constituting 25-30 percent of GDP, is one domain that has been marred by high levels of corruption.<sup>6</sup> Public procurement is prone to corruption at all stages of the procurement process from the stage of pre-tendering to post-award of the contract stage, and involves malpractices by range of stakeholders from bid rigging by companies to collusive or cartel bidding by contractors.

Government of India has issued guidelines to streamline the procurement process and aid in curbing graft in public procurement. However the multiplicity of guidelines and manuals, lead to limited and selective disclosure of information. In a scenario where facilitation payment is the norm, there is an absence of adequate monitoring mechanism and complaint handling / redressal mechanism.

Complicating the scenario further is the fact that each year government spends huge sums of money on public procurement – funding roads, bridges, schools, housing, water and power supply, other community improvements – involving vast expenditures and opportunities rife for corruption.

In this scenario Transparency International India advocated the adoption of Integrity Pact in 2003, an anti-graft tool that has been around since the 1990s, and had been applied in more than 15 countries in 300 separate situations. In India IP was first adopted in 2006 by Oil and Natural Gas Corporation (ONGC), a leading Oil and Gas company of the country. This was followed by Report on Ethics in Governance of the Second Administrative Reforms Commission (ARC), which recommended IP's adoption to make contracting process more transparent. Finally the IP tool got a real boost by Central Vigilance Commission (CVC) which issued its first circular on Dec. 4, 2007 recommending the adoption of Integrity Pact in all major procurement of central PSUs (Subsequent circulars with similar recommendation were issued on May 19 & Aug 5, 2008 and May 18, 2009).<sup>7</sup> The then Prime Minister in his address to CBI and State Anti-corruption Bureau on August 2, 2009 also mentioned IP as a tool to curb corruption. As a result, so far more than 95 PSUs have adopted IP, of which 49 have signed Memorandum of Understanding with Transparency International India.<sup>8</sup>

### What does Integrity Pact do?<sup>9</sup>

The Integrity Pact establishes mutual contractual rights and obligations to reduce the high cost and effects of corruption. It covers all contract-related activities from pre-selection of bidders, bidding, contracting, implementation, completion and operation. IP contains commitment to the effect that neither side will pay, offer, demand or accept bribes, or

collude with competitors to obtain the contract, or while carrying it out. Besides, bidders will disclose all commissions and similar payments made by them to anybody in connection with the contract. Sanctions will apply in case violations occur.

### Why Should a Company Sign Integrity Pact?

IP improves credibility of contracting procedures and administration in general by enabling companies to abstain from bribing by providing assurances to them that – (a) Their competitors will also refrain from bribing (b) Government bidding system and procurement will be absolutely transparent (c) Government will not only prevent corruption but also extortion by their officials, and follow transparent procedures. (d) It helps Government and companies to reduce high cost and maintain quality control. (e) It creates confidence and trust in decision making process, a more hospitable investment climate and public support in the country.

### What are Integrity Pacts Useful for?

1. IPs clarify the rules of the game for bidders and establishes a level playing field. The IP enables companies to abstain from bribing by providing them with assurances that their competitors will also refrain from bribing. In addition, they can feel confident that government procurement, privatisation or licensing agencies also commit to preventing corruption (including extortion) by their officials and to following transparent procedures.
2. Enables 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.
3. Creates confidence and trust in public decision making, beyond the individual impact on the contracting process in question, and fosters a more hospitable investment climate.
4. Empowers public officials determined to fight corruption and protects their good work in complicated projects.
5. Empowers civil society in its contribution to the integrity of public procurement processes.

<sup>6</sup>Government Procurement in India-Domestic Regulations & Trade Prospects". CUTS International. October 2012.

<sup>7</sup>A list of the circulars (and links) has been provided in Annexure 1

<sup>8</sup>For a complete list please refer to <[www.integritypact.in/download/1%20List%20of%20IP%20compliance%20PSUs.pdf](http://www.integritypact.in/download/1%20List%20of%20IP%20compliance%20PSUs.pdf)>

<sup>9</sup>For introduction chapter several published work on Integrity Pact were referred. Some prominent publications are 2006: Handbook for Curbing Corruption in Public Procurement, 2010: Integrity Pact in Water Sector: an implementation guide for the government, 2013: Transparency in Corporate Reporting: Assessing Emerging Market Multinationals

6. Increases the impact and effectiveness of resources when central or state funds are involved in local projects or when aid resources are used.

*In summary, IP helps 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.*

### 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. **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.** As a collaborative tool, the IP also manages something that the law rarely can: 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 exists to ensure everybody keeps their IP commitments. IPs also incorporate sanctions contractually, in addition to those already foreseen by the law, thus, IPs do not replace the law, but complement it. Finally, IPs contribute to increased access to information and accountability, and ensures proper implementation of procedures, thus increasing trust in the law and government bodies.

### 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.

#### 1. The IP as a clause within tender documents

This is a form of mandatory IP, where the undertakings by the bidders are incorporated into 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 a unilateral declaration and must be signed by all bidders who submit proposals.

#### 2. 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. In this sense, the contract is multilateral as it establishes obligations among all participants with regard to each other.

#### 3. The IP as a unilateral declaration: an integrity pledge

The bidder's and the government official's 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. 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.

### How to Select Contracting Processes in which to Apply an IP (Criteria For Project Selection)?

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

- 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 (state, national or international, combined with local funds, for example) and where different levels of transparency and accountability exist. The IP helps ensure raised standards.
- Projects where the risks (real or perceived) of corruption may threaten viability, or projects which are necessary but has 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.
- Very sensitive projects in terms of public opinion, or whose costs represent a big portion of the national or local budget.

### Benefits of Integrity Pacts

While Integrity Pacts help ensure clean operations on the part of contractors and public officials during the execution of a project, they also yield other benefits. Integrity Pacts provide enhanced access to information, increasing the level of transparency in public contracts. This, in turn, leads to greater confidence and trust in public decision-making, less litigation over procurement processes and more bidders competing for contracts.

Integrity Pacts can also encourage institutional changes, such as the increased use of e-procurement systems, simplified administrative procedures and improved regulatory action.

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.

IP enables the implementation of desirable law-abiding standards without additional legal reform, reduces conflict and distrust, and provides a channel for managing dissent. An independent monitor ensures the credibility and legitimacy of the contracting process, and offers all stakeholders oversight that would otherwise be denied to them. Monitors reassure the authority and all participants of the integrity of the process, and help to isolate it from political pressures.

### The Value of 'What Didn't Happen'

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 benefitted 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.

### 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 (refer Annexure 2).

The implementation cost of IP needs to be factored so as to protect the independence, credibility and efficacy of the monitor. There are different ways to finance IP implementation:

- The authorities' own resources. In this case, potential conflicts of interest need to be addressed and if the process is funded not through the public budget but from other resources, the source of the funds must be disclosed.
- Contributions from donors and project financiers. This may enable government agencies and NGOs to acquire the necessary capacity to implement IPs and may promote and facilitate the dissemination of lessons learnt.
- Through fees paid by the bidders. Under this scheme all bidders contribute the same amount (a fixed figure normally reflecting a certain percentage of the estimated contract value) as the cost of participating in the tender. It is important that all bidders contribute and that the amount be the same for each in order not to create inequalities.

**It is possible to combine some or all of these sources. A combination could help to reduce risks and concerns related to possible conflicts of interest in the funding of IPs. The IP for Mexico's La Yesca hydroelectric dam, for example, cost an estimated USD 68,000 – less than 0.01 per cent of the total project cost of USD 760 million.**

**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.**

## THIS PUBLICATION

Integrity Pact is the foremost Collective Action tool in Action, which creates a level playing field for business stakeholders. This publication essentially analyses the tool of Integrity Pact, developed and promoted by Transparency International globally, through the framework of UN Global Compact Management Model. The UNGC Management Model essentially comprises of six steps viz. Commit, Assess, Define, Implement, Measure and Communicate.<sup>10</sup>

### Each step is described in greater detail below:

<b>COMMIT</b>	Leadership commitment to mainstream the IP into strategies and operations and to take action in a transparent way	During this step, company publicly signals its commitment to stakeholders. Specifically, leadership commits to supporting the IP and making its principles part of the strategy, culture, and day-to-day operations of the company, with oversight provided by transparent governance structures.
<b>ASSESS</b>	Asses risks, opportunities, and impacts across issue areas of IP	Equipped with a commitment to the IP, the company assesses its risks and opportunities-in financial and extra-financial terms-as well as the impact of its operations and activities on the issue areas, on an ongoing basis in order to develop and refine its goals, strategies, and policies.
<b>DEFINE</b>	Define goals, strategies, and policies	Based on its assessment of risks, opportunities, and impacts, the company develops and refines goals and metrics specific to its operating context, and creates a roadmap to carry out its program.
<b>IMPLEMENT</b>	Implement strategies and policies through the company and across the company's value chain	The company establishes and ensures ongoing adjustments to core processes, engages and educates employees, builds capacity and resources, and works with supply chain partners to address and implement its strategy.
<b>MEASURE</b>	Measure and monitor impacts and progress towards goals	The organization adjusts its performance management systems to capture, analyze, and monitor the performance metrics established in the Assess and Define steps. Progress is monitored against goals and adjustments are made to improve performance.
<b>COMMUNICATE</b>	Communicate progress and strategies and engage with stakeholders for continuous improvement	During this steps, the company communicates its progress and forward-looking strategies for implementing its commitment by developing a Communication on Progress, and engages with stakeholders to identify ways to improve performance continuously.

## Methodology

After an exhaustive desk research on analyzing the impact of Integrity Pact in India, stakeholders were identified to whom structured questionnaires were sent, example nodal officers of Public Sector Undertakings, Independent External Monitors, Central Vigilance Officers, Compliance Officers and Vendors, followed by one-to-one interviews with some key stakeholders.

The execution stage involved seeking list of vendors from various PSUs who had signed the IP with Transparency International India in the year 2012-13 and 2013-14. Once the requisite information was collected quantitative and qualitative data analysis was conducted on different data sets. The focus was on eeking out red flags and charting out a way forward.

Recommendations from training workshops and conferences such as "Identification of Red Flags in Public Procurement" and "Business Case for Anti-Corruption - Call for Collective Action" provided a platform to interact with CMDs, Chief Vigilance Officers of PSUs and also some of the vendors. Data has been triangulated through these for the development of the final publication.

<sup>10</sup>For more information on UNGC's Management model please visit [https://www.unglobalcompact.org/docs/news\\_events/9.1\\_news\\_archives/2010\\_06\\_17/UN\\_Global\\_Compact\\_Management\\_Model.pdf](https://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2010_06_17/UN_Global_Compact_Management_Model.pdf)

India  
Pakistan  
Rwanda  
Hungary  
Germany



## IP Case Studies





## IP Implementation in Construction of Schönefeld Airport Project, Germany<sup>11</sup>



The Federal Republic of Germany and the States of Berlin and Brandenburg agreed in the early 1990s, soon after the reunification of Germany, to build a major new international airport near Berlin. The three authorities began efforts to devise a project model that would be able to obtain political and financial support. The privatization option that had been considered was dropped, and instead of moving the airport further out into the province (as had been considered earlier), it was decided to use the existing (former East-German) airport at Schönefeld, and to add runways as well as build a totally new terminal building and other infrastructure. Resistance from the immediate neighbours and nearby property owners delayed the final decision by several years, but by 2004 the authorities had determined to go ahead with the project, albeit on a more modest scale than originally envisaged, and totally within the public sector. For that purpose they formed a private sector company, the Flughafen Berlin-Schönefeld GmbH (FBS) – a limited company owned by the three public authorities, with the Mayor of Berlin as Chairman of the Board of Supervisors.

In late 1995 Transparency International – Germany (TI-D) had offered the new tool of the Integrity Pact (IP) to the relevant authorities, but they declined the offer summarily, arguing that applying the IP would be to admit publicly that there was a risk of corruption. Only weeks later, the first corruption allegations surfaced in the media and haunted practically every step of the process, forcing several modifications of the project's administrative and financial structures. Finally in 2001 all project agreements reached by that time, were cancelled. Although formal charges were never filed, several participants in the process, including some interested investors and contractors, were suspected of having employed corrupt means to make headway in the competition. In view of this

disastrous experience, and under instructions from the Mayor of Berlin to various state authorities (including FBS managers) to seek new ways to avoid corruption risks in large investment projects, the FBS management approached TI-D in early 2004 and asked for suggestions on how to contain corruption in this major investment project. TI-D offered a number of suggestions and again proposed applying an IP. Given the likelihood that contractors who had been involved in the previous process would again submit bids, TI-D emphasized the importance of appointing an independent external monitor, so as to shield FBS management effectively against potential efforts to undermine or circumvent correct procedures.

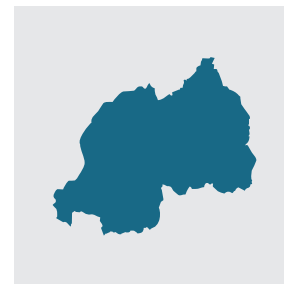
Over the following weeks, TI-D and FBS managers and staff worked together to develop a model IP that contained all the essential elements of an IP, adapted to Germany's legal context. Both parties concurrently searched for a suitable person to act as the IP monitor. Several candidates surfaced, and in January 2005, two experts were appointed by FBS. The team leader was a retired procurement official from the City State of Berlin, with a spotless record and strong commitment to integrity in procurement. The Berlin Airport IP monitor began work in 2005 and is engaged until the end of the project (i.e. the opening of the airport) and for six weeks afterwards.

Construction costs in the Schönefeld Airport Project were estimated at €2.4 billion, excluding the self-financed components from third party investors. The project covers approximately 1000ha and involves 3,000 workers. The terminal, once in operation, should be able to carry approximately 27 million passengers a year. The airport is expected to open in 2017.

<sup>11</sup>[http://integrity.transparency.bg/media/cms\\_page\\_media/2/Germany\\_1\\_1.pdf](http://integrity.transparency.bg/media/cms_page_media/2/Germany_1_1.pdf)



## Civil Society Procurement Monitoring (CSPM) Tool, Rwanda\*



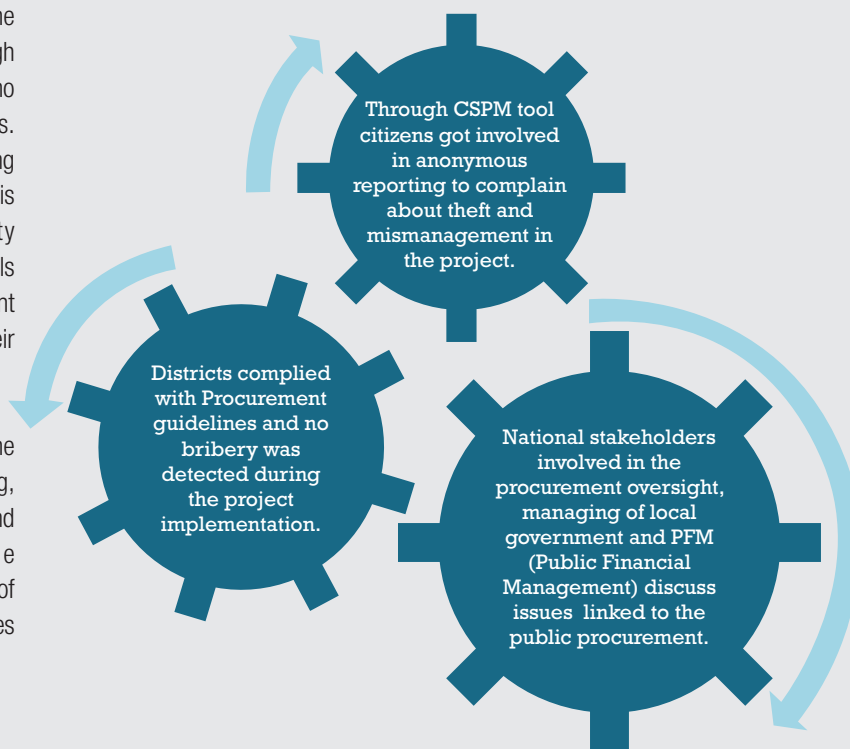
TI-RW introduced the Integrity Pact in 2012. In the first phase, IP was introduced to national governmental institutions and private sector associations that play a pivotal role in the infrastructure development in Rwanda. Subsequently, IP was rolled out in four out of the 30 administrative districts in Rwanda. Initially on a pilot basis, IP tool monitored two projects related to infrastructure and two related to water supply contracts. In the next step, another 7 projects were included in the IP scheme. Integrity pacts were signed between the local authorities and the bidders under the supervision of an independent monitor.

TI-RW advocated for the active inclusion of concerned citizens onto the implementation phase. Thus a new tool called Civil Society Procurement Monitoring (CSPM) tool, complimentary to the Integrity Pact, enhanced the process of procurement oversight through representatives from communities who are the stakeholders in the public projects. The Civil Society Procurement Monitoring (CSPM) tool is a web-based tool that is meant to support Civil Society Organizations (CSOs) and/or individuals who want to monitor public procurement for red flags for corruption in their respective countries.

CSPM is inbuilt in all the phases of the tendering process namely, planning, bidding, evaluating, implementation and monitoring. Each phase of the procurement process has a series of questions which help to find irregularities and provide tips on how to detect them

and recommendations on what to do when each red flag is found. The tool incorporates these red flags, tips and recommendations and prompts CSOs to take actions. After the implementation of the tool, private sector contractors reported much smoother running of the contracts that are being monitored by IPs compared to contracts that were not previously monitored.

Total contract value of USD 6.87 million has been audited so far under the Integrity Pacts. The resulting changes are not only at the level of individual projects but go beyond to systematic adjustments of the national public procurement framework due to the involvement of stakeholders at the national level.



\*The case study has been contributed by TI Rwanda

## Integrity Pact in a Council's Self-Funded Construction Investment, Hungary



In Hungary the Municipality of the XIII District City of Budapest was the first entity to sign Integrity Pact in a council's self-funded construction investment. Under these investments, the local government of the 13th district planned to spend 550 million HUF (USD 2.36 million) in order to modernize the mechanical and electrical system of the nursery's building. The investment includes the transformation of interiors, the insulation of the frontage by replacing the windows, insulation and static strengthening of the flat roof, as well as the renovation of the playground and its equipment.<sup>12</sup>

The contract was signed between Transparency International Hungary (TI-H) and the City of Budapest XIII District Council on April 2013. TI-H reviewed documents related to each phase of procurement process; 'Complete interior renovations, facade renovations and structural reinforcement of Boribon Nursery School', considering aspects of lawfulness, transparency and

the assurance of fair competition. The bidders joined the pact during the procedure. In addition, the municipality contracted an independent expert company to overview the public procurement process. The fee of the external monitors was funded by the Municipality.

After the successful implementation of IP by the XIII Budapest Municipality, Council of Ózd incorporated IP in its Water Supply Rehabilitation Project financed by the Swiss Contribution Office. In this project IP was signed by municipality as a contracting authority, the bidders, the independent external authority, the independent external monitors and TI Hungary as counselor and the managing authority of the anti-corruption tool. The fee of the external monitors was paid by Swiss Contribution Office. IP was also adopted by the Hungarian National Bank which incorporated IP in two procurements<sup>13</sup>.

IP signed for a self-funded construction investment of City of Budapest XIII District Council

Council of Ózd incorporated IP in its Water Supply Rehabilitation Project financed by the Swiss Contribution Office

Hungarian National Bank incorporated IP in two procurements

In the case of Hungary, the procurement act does not have any provision for barring bidders from its future tenders. However with the provisions of "transgression clause" IP bidders who are acquitted in other countries can be barred from participating in the tendering process.<sup>14</sup>

<sup>12</sup>[http://transparency.hu/Local\\_government\\_of\\_the\\_13th\\_district](http://transparency.hu/Local_government_of_the_13th_district)

<sup>13</sup>[http://transparency.hu/uploads/docs/handbook\\_on\\_the\\_integrity\\_pact.pdf](http://transparency.hu/uploads/docs/handbook_on_the_integrity_pact.pdf)

<sup>14</sup>[http://transparency.hu/uploads/docs/handbook\\_on\\_the\\_integrity\\_pact.pdf](http://transparency.hu/uploads/docs/handbook_on_the_integrity_pact.pdf)





## Integrity Pact for Transparency in Public Procurement Procedure, Pakistan



An open bidding process, monitored by Transparency International Pakistan (TI-P), resulted in savings of PKR187 million (USD 3.1 million) for the Karachi Water and Sewerage Board (KW&SB). This achievement has been the result of introduction of a no-bribe "Integrity Pact" and the Least Cost Selection Method into the tender for a consultant for the Greater Karachi Water Supply Scheme (K-III Project).

The Integrity Pact for Transparency in Public Procurement Procedures with the KW&SB include a formal no-bribery commitment by all the bidders. According to TI-Pakistan, "the pact's effectiveness rests on the binding commitment on all sides not to bribe, accept bribes, collude with other bidders, and to disclose all payments, and report violation of the Integrity Pact by other bidders during the bidding or execution

of the service". Recognition of the success of the Integrity Pact has taken root at the highest levels in the Karachi City District Administration.<sup>15</sup>

In the event of a breach of the Integrity Pact, sanctions come into force against bidders and officials, including liability for damages and blacklisting from future tenders.

The Greater Karachi Water Supply Scheme forms part of the 13-point Programme for Economic Revival of Karachi, and the Karachi city government applied the same transparent process in projects for the construction of three bridges on Sharea Faisal and other contracts. The introduction of IP streamlined the procurement process, enabled authorities to save on cost. It also helped authorities in saving time and ensuring timely completion of tendering process for the projects.

Finding merit in Integrity Pact, the instrument has been made mandatory in all public procurement contracts of PKR 10 million.<sup>16</sup> Following are some of the prominent contracts in which Integrity Pact was implemented

- 2012: Pakistan Telecommunication Authority and Transparency International Pakistan have signed an 'Integrity Pact' aimed at ensuring transparency in the auction of 3G licenses.<sup>17</sup>
- 2013: National Database and Registration Authority (NADRA) and Transparency International-Pakistan (TIP) signed a Memorandum of Understanding (MOU) for the implementation of Integrity Pact in all its procurement contracts.<sup>18</sup>
- 2013: Oil and Gas Development Company Limited signed a MoU with TI-P with an aim to reduce corruption in the procurement processes.<sup>19</sup>
- 2015: Integrity Pact has been included by the Pakistan Railways in the "Call for Proposal" of feasibility study for New Rail to be constructed between Peshawar and Jalalabad through LOI Shalman Valley.<sup>20</sup>



<sup>15</sup>[http://archive.transparency.org/global\\_priorities/public\\_contracting/integrity\\_pacts](http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts)

<sup>16</sup><http://www.business-anti-corruption.com/country-profiles/south-asia/pakistan/initiatives/public-anti-corruption-initiatives.aspx>

<sup>17</sup><http://www.dawn.com/news/771460/auction-of-1-5bn-3g-telecom-licences-pact-signed-to-ensure-transparency>

<sup>18</sup><http://pakistan.onepakistan.com.pk/news/city/karachi/193977-nadra-ti-pakistan-sign-mou.html>

<sup>19</sup><http://www.brecorder.com/fuel-a-energy/193:pakistan/1170727:ogdcl-ti-pakistan-sign-mou-for-implementation-of-integrity-pact/?date=2013-04-04>

<sup>20</sup>[http://www.pakrail.com/tender\\_files/4313\\_RFP%20for%20Peshawar%20-%20Jalalabad.pdf](http://www.pakrail.com/tender_files/4313_RFP%20for%20Peshawar%20-%20Jalalabad.pdf)



# Integrity Pact in India



In India, Integrity Pact was adopted for the first time in 2006. The Second Administrative Reforms Commission (ARC) in its IV Report on Ethics in Governance made the recommendation for IP's adoption in order to make contracting process more transparent. In India, Integrity Pact was adopted for the first time in 2006. The Second Administrative Reforms Commission (ARC) in its IV Report on Ethics in Governance made the recommendation for IP's adoption in order to make contracting process more transparent. IP implementation got a real boost after the Central Vigilance Commission (CVC) issued its first circular on December 4, 2007 recommending the adoption of Integrity Pact in all major procurements of central Public Sector Undertakings. The Prime Minister in his address on August 26, 2009 to CBI and State Anti-Corruption Bureau also emphasized on IP as a tool to curb corruption.

Vizag Steel, Indian Oil, Oil India, to name a few.

- Integrity Pact has an in-built flexibility and can be changed as per the requirement of the organization keeping the essence of the tool intact.
- Introduction of IP was able to save litigation cost for businesses.

Integrity Pact was adopted in by Ministry of Defense in 2006 on all contracts above INR 100 crores.<sup>21</sup> Indian defense expenditure for the current fiscal year (2014-15) is USD 40 billion, which accounts for 11% of the Gross Domestic Product (GDP) of India.<sup>22</sup>

Integrity Pact was first adopted in India by ONGC, a leading oil and natural gas company of the country in 2006

Integrity Pact was adopted in by Ministry of Defense in 2006 on all the contracts above INR 100 crores. The effect of Integrity Pact was felt in January 2014 when India cancelled INR 36 billion contract of procurement due to IP breach

In a recent circular by CVC, Banks and Financial institutes have been asked to adopt Integrity Pact.

Integrity Pact was first adopted in India by Oil and Natural Gas Corporation Limited (ONGC), a leading Indian oil and natural gas company in 2006. Till January 2015, there were over 95 companies and one municipality which had adopted Integrity Pact. Some of the unique features of Integrity Pact which have been enforced in India are

- Central Vigilance Commission (CVC) is the nodal agency for implementation of Integrity Pact in the country
- Once a Public Sector Undertaking adopts Integrity Pact, it is mandatory to include IP in all the contracts above the threshold value.
- Currently most of the heavy industries have adopted Integrity Pact such as Gas Authority of India Limited (GAIL),

Further to this, National Aviation Company of India (NACI) which was formed after the merger of Indian Airlines and air India also adopted Integrity Pact in 2008. The threshold value of the contracts coming under the purview of IP was INR 10 crores and above.<sup>23</sup>

One of the major challenges of in the implementation of Integrity Pact in India has been to convince the private sector to adopt IP. For the private sector Securities and Exchange Board of India (SEBI) approved a disclosure-based regime for listed companies with respect to non-ethical business practices. These disclosures would include the companies' conduct and governance being based on ethics, transparency and accountability.

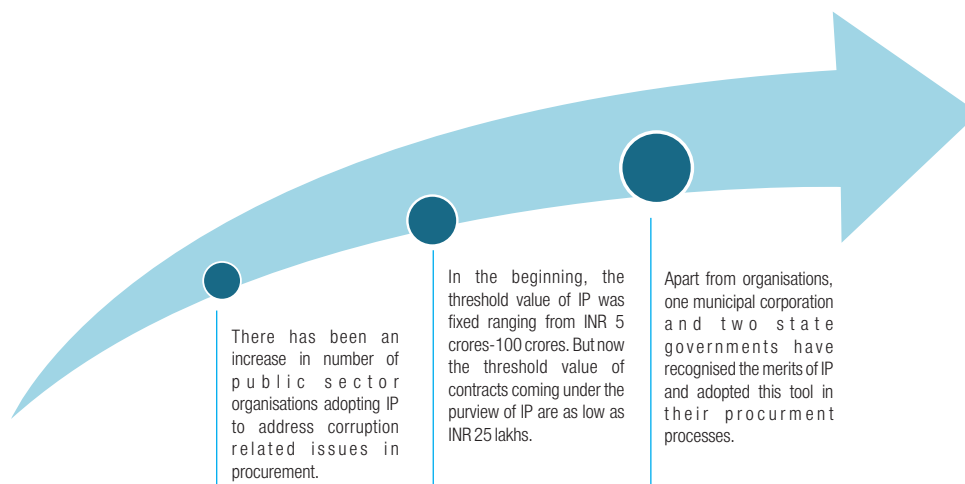
<sup>21</sup>[http://www.supremecourtcases.com/index2.php?option=com\\_content&itemid=135&do\\_pdf=1&id=21441](http://www.supremecourtcases.com/index2.php?option=com_content&itemid=135&do_pdf=1&id=21441)

<sup>22</sup><http://thediplomat.com/2015/03/is-indias-defense-budget-adequate/>

<sup>23</sup>[http://articles.economicstimes.indiatimes.com/2008-02-08/news/28381278\\_1\\_nacil-vendors-tender](http://articles.economicstimes.indiatimes.com/2008-02-08/news/28381278_1_nacil-vendors-tender)

## IMPLEMENTATION OF INTEGRITY PACT IN INDIA

In the changing business environment, where the recall value of a product and / or service by end users is associated with an ethical company, IP plays an important role in creating such a brand image. Since ONGC adopted the IP in 2006, there have been spurts of growth in adoption of IP in India and the tool is constantly evolving. The figure below denotes the progress of IP in India over the last decade.



There has been an increase in number of public sector organisations adopting IP to address corruption related issues in procurement.

In the beginning, the threshold value of IP was fixed ranging from INR 5 crores-100 crores. But now the threshold value of contracts coming under the purview of IP are as low as INR 25 lakhs.

Apart from organisations, one municipal corporation and two state governments have recognised the merits of IP and adopted this tool in their procurement processes.

### FOUR PILLARS OF INTEGRITY PACT

The four pillars of IP, as identified by stakeholders, are anti-bribery, reduction in procurement cost, vendor-bidder confidence and a business case of IP.

#### a) Anti-bribery

The aim of the Integrity Pact is to create a level playing field for every company. As a signatory of the IP, each bidder stands an equal chance to win the contract as the merit of the bidder decides the award of tender and not facilitation payment / bribery.

**In an article Deputy Chief Vigilance Officer of Kandla Fort observed that introduction of Integrity Pact has abstained companies from bribing as it provides an assurance against any form of corruption including “extortion” by concern procurement officials.<sup>24</sup>**

#### b) Reduction in Procurement Cost

Signing of IP enables the government and companies that sign IP to reduce cost of procurement.

**Mr. Vivek Mehrotra, Independent External Monitor (IEM) to ONGC said that “IP would reduce the cost as IEMs act as arbitrators and a substantial amount of litigation cost is reduced”.**

In the financial year 2013-14, 958 contracts of ONGC

were received and in every case IEMs investigated the case and advised on the recourse. If all the 30 cases had gone to court of law, the process could have been time consuming and litigation cost would have been much higher than cost incurred by IEMs towards investigations.<sup>25</sup>

The grievance redressal mechanism in the nature of Independent External Monitors (IEMs) under IP not only enables quicker and effective resolution of tender issues and complaints in a cost-effective manner, but also helps in inculcating faith and confidence among the vendors that they would be provided a level playing field in the whole bidding and contracting process.

#### c) Vendor/ Bidder Confidence

If a company signs IP, it pledges against bribery, this helps in creating an environment of confidence among the competitors.

**Mr. Sudhansu Sekhar of Linde India (Vendor to HPCL, BPCL) mentions: In case Integrity Pact is not signed than the bidding process becomes “uncompetitive”.**

**Lahmeyer International India Pvt Ltd (vendor to Neyveli Lignite Corporation Ltd.) mentioned “Integrity Pact is an excellent tool. Even if IP may not be the reason to bid for a PSU tender but when IP is involved, we have confidence that the tendering process will be fair”.<sup>26</sup>**

<sup>24</sup><http://www.siv-g.org/index.php/columnists/11-govindarajan-suresh/87-integrating-integrity-a-bottom-up-glory-for-good-governance> (<http://www.siv-g.org/index.php/columnists>)

<sup>25</sup>Interview was conducted with Mr Vivek Mehrotra, IEM, ONGC

<sup>26</sup>Contribution from the Survey of Vendors conducted to assess the implementation of Integrity Pact.

#### d) Business Case for IP adoption

Adopting IP has enabled PSUs to become more competitive and profitable. There is significant evidence that effective implementation of IP yields short-term and long-term benefits to both the Company and the vendors. The greatest advantage of adoption of IP is that it mitigates long drawn litigation and utilizes energy in productive pursuits within the organization.

**GAIL (India) invited fresh bids in case of procurement of bare line pipes for VDPL projects. This resulted in a reduction of INR 297.05 crores against the initial offer. In another instance, re-tendering in case of procurement of carbon steel bare line pipes for Dahej-Vijapur up-gradation project (DVPL-11) resulted in reduction of cost by INR 64.57 crores. Besides direct cost saving, minimization of delays in tender finalization as a result of IP has resulted in indirect cost saving.<sup>27</sup>**

The number of public sector companies embracing the anti-corruption tool of IP has been increasing at a steady pace. Public sector companies seem to have found merit in the implementation of IP. In the beginning, the threshold amount of the contracts came coming under the purview of IP was kept very high, which meant a restricted number of contracts under the purview of IP. However, over a period of time many PSUs have revised the threshold amount, thus increasing the number of contracts on which IP could be applicable.

### Integrity Pact and Defense Procurement

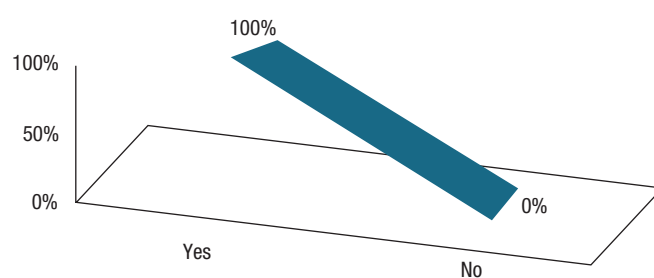
Defense Procurement Procedure Manual 2005 was revised to include "Integrity Pact" in all defense contracts and procurements for the value of more than INR 300 crores<sup>28</sup> to start with. In 2009, the Defense Procurement Procedure Manual was amended and the threshold value of the contract on which IP would be implemented was brought down to INR 100 crores.

### DIMINISHING THRESHOLD VALUE

The Central Vigilance Commission had in a circular dated 18.05.2009 communicated the Standard Operating Procedure for adoption of Integrity Pact in Major Government Department/ Organizations. As per the SOP 'the threshold value for the contracts to be covered through IP was to be decided after conducting proper ABC analysis and was to be fixed so as to cover 90 – 95% of the total procurements of the organization in monetary terms.<sup>29</sup>

Additionally as per Department of Expenditure instructions for the use of Integrity Pact in Public Sector undertakings vide OM 20.7.2011, the Ministry of Heavy Industries & Public Enterprises vide OM dated 9th September 2011 directed that all Central PSEs 'will in consultation with the Financial Advisers of the concerned Administrative Ministries shall decide and lay down the nature of procurements/contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions/contracts concluded by them.

For example though the threshold value for signing IP fixed by Ministry Of Defense for Defense PSUs is Rs. 20 crore, in keeping with the CVC guideline to cover 90% to 95% of the value of procurement, some Defense PSUs have a threshold value which varies and ranges from Rs. 2 crore to Rs. 20 crore. In another instance based on an ABC analysis BEML had fixed the threshold value for obtaining IP as above Rs. 5 crore and this was revised to above Rs. 2 crore based on Ministry of Defense (DP) directive on 05.09.2013.



Should state PSUs sign Integrity Pact

<sup>27</sup><http://www.integritypact.in/download/Assessment%20of%20Integrity%20Pact%20in%20IP%20compliant%20PSUs.pdf>

<sup>28</sup><http://jkvigilance.nic.in/Integrity%20Pact.PDF>

<sup>29</sup><http://cvc.gov.in/008crd013210509.pdf>

### Other prominent PSUs that have revised threshold value are:<sup>30</sup>

Name of the PSU	Threshold amount (Initial)	Threshold amount (Present)
Rashtriya Ispat Nigam Limited	INR 3 crore & 10 Lakh	INR 1 crore in all tenders & INR 5 lakhs in proprietary
Manganese Ore (India) Limited	INR 25 crore	INR 1 crore
Airport Authority of India	INR 50 crore Engineering & INR 10 crore for other	INR 25 crore Engineering & INR 5 crore for other
Telecommunication Consultants India Ltd.	started with INR 10 crore	INR 25 lakh
Chennai Petroleum Corporation Limited	INR 10 crore	INR 5 crore
Engineers India Limited	INR 5 crore	INR 1 crore
Tehri Hydro Development Corporation	INR 100 crore (work)	INR 50 crore (work, goods and services)
Hindustan Aeronautics Limited	INR 100 crore	INR 5 crore

### ADVOCACY TOWARDS ADOPTION OF INTEGRITY PACT AT STATE LEVEL

Currently two state governments have adopted Integrity Pact for their procurement transactions.

**Uttarakhand:** In November 2011, the Uttarakhand government announced the adoption of IP in its procurement transactions. All state procurement above the value of INR 25 lakhs were to come under the purview of IP.<sup>31</sup> Uttarakhand government has appointed an 'Integrity Officer' tasked with investigating the loopholes leading to corrupt practices and has the mandate to recommend ways to plug the loopholes.

**Rajasthan:** In the year 2012, Rajasthan government included adoption of Integrity Pact in the Rajasthan Transparency in Public Procurement Act, 2012. The Act does not provide for any threshold value for the adoption of IP and there is no provision of IEM, but this Act has laid down provision of earnest money viz. 'Bid Security':

- In case of open competitive two stage bidding with rate contract, bid security shall be 2% of the value of goods, services and works.
- In case of SSI (Small Scale and ancillary Industry), bid security shall be 0.5% of the quantity offered for the supplies.
- In case of sick industries, other than SSI, whose cases are pending with BIFR (Board for Industrial and Financial Reconstruction), the security money shall be 1% of the value of the bid.<sup>32</sup>

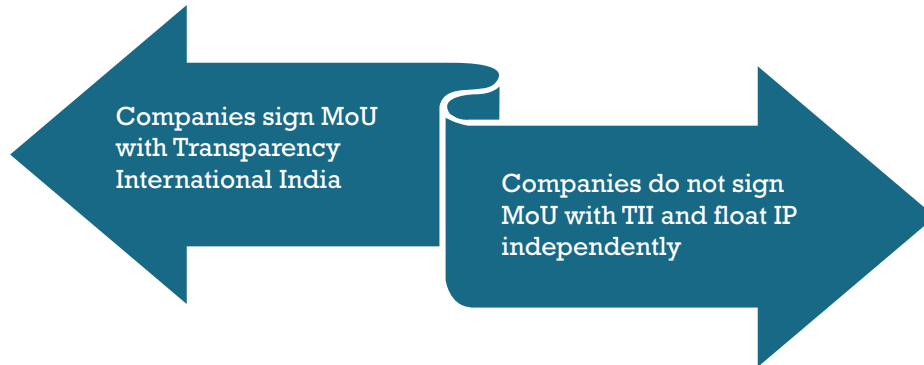
<sup>30</sup>Data of the threshold value has been collated by Transparency International India as per the information received by IP abiding PSUs.

<sup>31</sup><http://egovreach.in/social/content/khanduri-govt-pacesup-path-good-governance>

<sup>32</sup><http://riico.co.in/RPPT/salient%20features%20of%20RTPP%20rules.pdf>

## INTEGRITY PACT IMPLEMENTATION AND TII

Integrity Pact is a tool developed by Transparency International worldwide. In India ownership of implementation and oversight of the tool has been taken by the Central Vigilance Commission. At present, there are two forms of Integrity Pact implementation.



- Companies signed Memorandum of Understanding (MoU) with TII: 48 Central PSUs, one state PSU (Orissa Power Generation Corporation) and one Municipal Council, the New Delhi Municipal Council (NDMC) has adopted IP by entering into an MoU with Transparency International India (TII). RailTel Corporation of India Ltd is the latest PSU to adopt Integrity Pact.
- Companies adopting IP independently: There are 46 other organizations who have implemented Integrity Pact without entering into MoU with TII.

The difference between companies signing MoU with TII and companies implementing IP independently essentially are:

- Companies who have signed MoU route their grievances through TII
- Companies who have signed MoU with TII get opportunity to better understand the effective implementation of IP.
- TII trains staff on IP implementation and possible red flags in the procurement processes, including electronic procurement.



Steps to implementing IP

Since 2011 TII has been actively engaged in conducting training and capacity building workshops for all the stakeholders of Integrity Pact, namely Independent External Monitors (IEMs), Vendors (also sub-contractors) and Central Vigilance Officers (CVOs).

In the beginning IP training with different stakeholders helped in understanding the procurement issues in the country. Some of the issues were unique in the Indian context due to the powerful position enjoyed by the clerical staff. The first workshop titled 'Ethics in Business' was held in August 2011. In this workshop all aspects of corruption were discussed right from the current Indian scenario to judicial aspects and the international norms that India is required to follow to counter corruption.

In the initial stages Company Heads participated in the Training and Capacity Building workshops. As adoption of Integrity Pact was technical and concerned matters of vigilance, in subsequent years increasing number of companies nominated their Chief Vigilance Officers to participants in IP training and workshops. A realization of these trainings was that the actual implementers of IP were frontline managers who required capacity building, and so companies finally started designating their procurement managers for IP trainings.

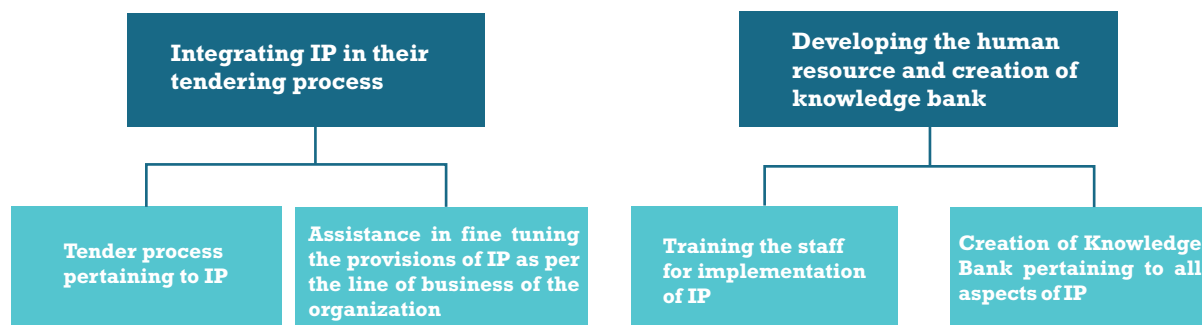
Training modules evolved to make the procurement managers understand working of the Central Procurement Portal, e-tendering and reverse auctioning. With the introduction of Information and Communication Technology, the procurement managers feel that 'nothing can go wrong' in the tendering process. But they are yet to realize that with the advancement of technology there have been various loopholes which have been discovered in the e-tendering process as well.

Along with the participants the training modules also evolved. In 2011 they started with understating the public procurement environment in India, then moved on to understanding the implementation bottlenecks, to recommendations for plugging the implementation and procurement gaps.



## HANDHOLDING FOR NEW MEMBERS

The specific assistance provided by TII to new signatories of IP is as follows:



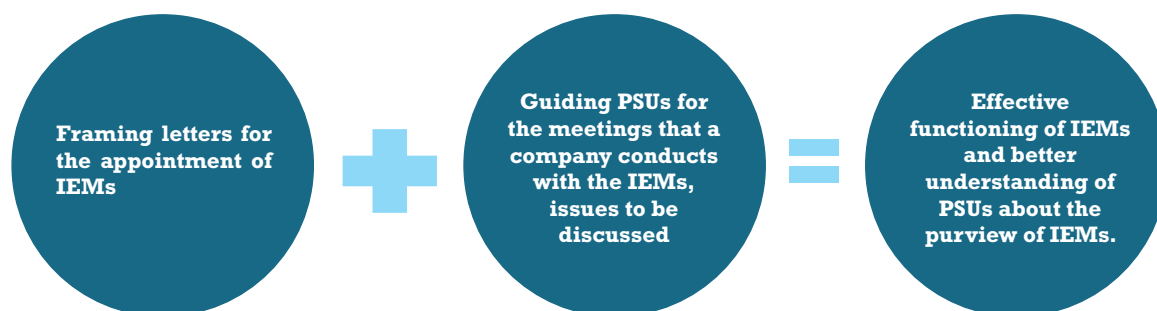
- **Structure of IP:** TII provides a draft structure of Integrity Pact that is required to be signed by the bidders as a pre-tendering condition. Currently, most of the PSUs have been using the structure used by SAIL as a model IP. Some of them, with the thought that IP cannot be changed, have not changed IP as per their use or required depending on the line of business of the entities. TII has been suggesting organizations to read the IP and fine tune it as per their operations. The essential features and obligations of the bidder, independent external monitors and sub-contractors need to be intact.

- **Staff Training:** TII, as and when required, has imparted training to the staff of the PSUs who are signatories to the IP. This training is in addition to the training and workshop that TII conducts across the country. TII also has a knowledge bank pertaining to IP.

- **Purview of IEMs:** Independent External Monitors are a new concept for the signatories. They do not have any idea about the approach they should take towards working with them. The first step is the offer letter that needs to be dispatched from the PSUs. TII has assisted a number of PSUs in framing letter for the IEMs. TII, time and again guides PSUs in conducting meetings with the IEMs.

*Additionally TII also provides assistance in*

- **Tender document:** TII assists new signatories of IP in gathering information which is required in the tender document E.g. including information and details of IEM in tender document.





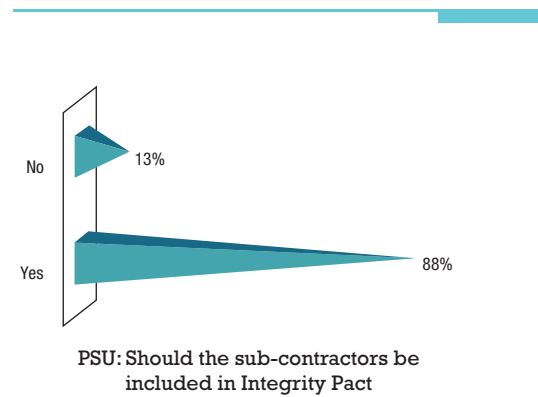
# INTEGRITY PACT: RESEARCH FINDINGS

Integrity Pact is an evolving tool and its implementation in India has been a journey fraught with several challenges and discernable learnings. Transparency International India conducted an impact assessment of Integrity Pact in 2011. GCNI and TII revisited these learnings in 2014-15 and facilitated a wider impact analysis for this publication, comprising of a larger cross-section of stakeholders. Findings suggest that the tool of IP has been effective in making the procurement process transparent, providing a level playing field, enhancing the confidence of the vendors and improving the brand image of the company.

## OBSERVATIONS FROM STAKEHOLDERS

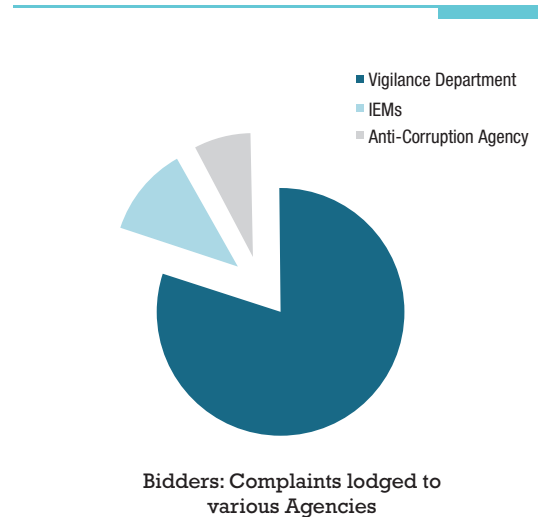
### PSUs

- Some PSU's said that IP should be more precise as there should be room for negotiation and changes so that the instrument comes in line with the operations of the adopted PSU.
- While some other PSUs desired that IP should be standardized, so that a uniform format is followed all along and to all types of procurement transactions.
- PSUs observed that IEMs, in many cases, are not approached to lodge tender related complaints. The vigilance departments are still popular among the bidders to compliant against the tendering process.
- Many PSUs opined that inserting IP in a single tender creates confidence towards the transaction.
- PSUs stated that IP has led to reduction in cost of the procurement process, but the profit (saving) is yet to be quantified.
- PSUs were keen that the contractors (bidders) should take complete responsibility of the tender and its transparency.



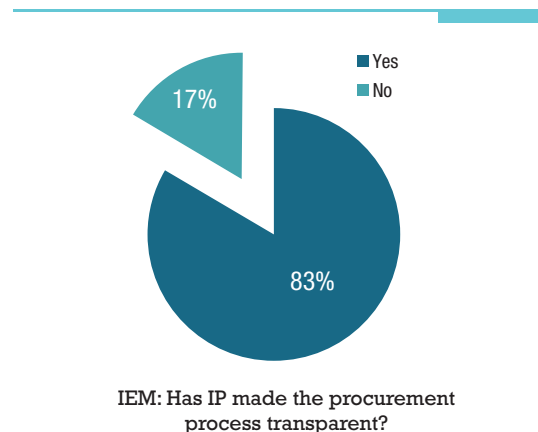
### Bidders

- Sub-contractors signing the IP are not a feasible clause for the bidders to follow as in most cases sub-contractors are selected after the bidder gets the contract and also there is no mechanism to oversee the implementation of Integrity Pact by sub-contractors.
- In case of any issue, over 80% of the bidders responded that they will register their complaint with the vigilance department, 12% of the responded said that they would approach Independent External Monitors (IEMs) and the remaining register their case with an Anti-Corruption Agency.
- Almost all the bidders said that in the absence of Integrity Pact they would still go ahead with the tendering process with the PSUs.
- Ranking of the PSUs was desired, however coming to methodology of the ranking the bidders were unable to give any specific views.
- Bidders hesitate to approach IEMs as they do not want to spoil their relation and business prospects with the Principal.
- Bidders suggested modification of IP so that IEMs have the guideline to monitor the payment timeline of the companies and play a pivotal role in post contract award period



### Independent External Monitors (IEMs)

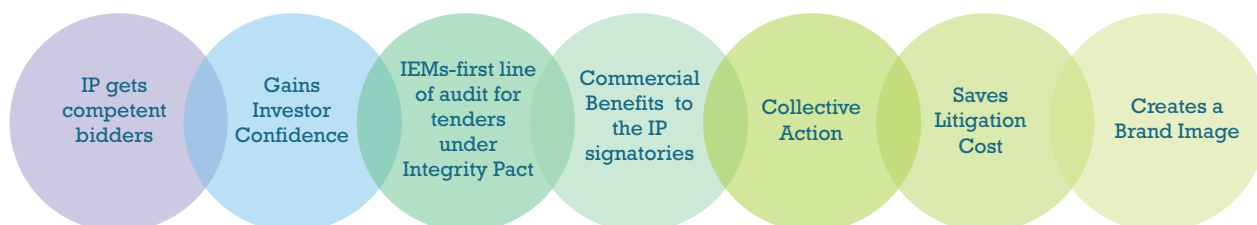
- Apart from IEMs of few leading PSUs, others say that they are not satisfied with the support that is being provided by the PSUs.
- The requirement of IP that IEMs should hold regular meetings with the management is far from reality.
- In some cases, it was observed that the Vigilance Department of PSUs and IEMs do not interact adequately.



## MERITS OF SIGNING INTEGRITY PACT

Integrity Pact, an anti-corruption instrument to curb procurement related corruption has been adopted across by leading public sector businesses in India. Based on their experience following are some of the merits (incentives) of the tool.

- As the company adopts Integrity Pact, it gives a clear statement that selection of successful bidder will be based on 'merit' and not through unfair means, thus creating a level playing field, and providing confidence to new bidders. In return, the tenderer gets numerous options for selection of the bidder.



- Ethical business conduct of the companies assists in instilling confidence among investors. Investors, in the past, have lost their money due to company's unethical practices. Example, in the case of Enron in the US and Satyam in India, stock prices crashed when wrongdoing got indicted and the investors lost practically everything after the company reported its indulgence in fraudulent practices. Integrity Pact gives an assurance that the companies do not desire to conceal any information, boosting investor confidence.

- Companies signing Integrity Pact, establish themselves as entities which do not indulge in unfair practices. This reputation helps them get a competitive edge over their counterparts. This competitive edge at times leads to preference been given in contracts, preferential terms and conditions in payments and re-negotiation on contracts, among others.

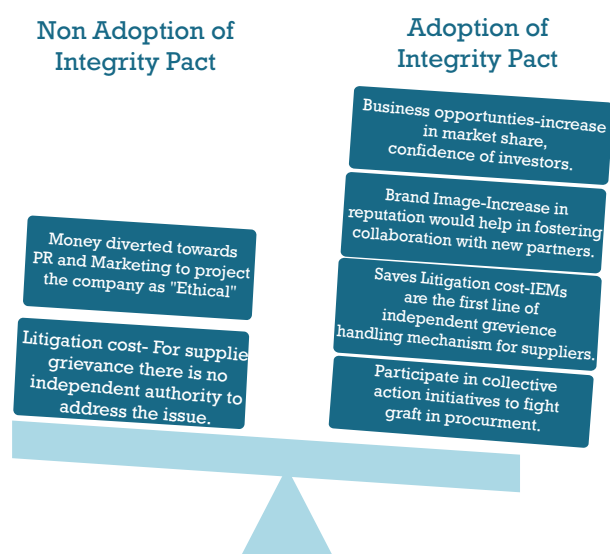
- Independent External Monitors (IEM) are an essential feature of Integrity Pact. In the Indian format of Integrity Pact, IEM have the responsibility of overseeing the tenders which come under the purview of IP. This acts as first line of audit of tenders.

- In case of any dispute or dissatisfaction of bidders, they can approach the IEMs. The role of the IEMs is to investigate the matter and submit their report to the management of the company. The investigation is independent and within a

stipulated time period. The bidders do not take legal recourse for such disputes which demands diversion of funds, thus saving litigation cost and unnecessary hassle.

- Signing Integrity Pact involves a pledge (assurance) from the bidders and contracting companies that they will not indulge in unfair practices. This creates a pool of like-minded entities who want to endorse clean business practices. These entities can come together and create a platform for dialogue, share best practices, thus act towards collective action in fighting graft in procurement.

In companies who do not adopt Integrity Pact, in absence of an independent body like the IEMs, bidders do not have the confidence that an independent investigation could be conducted by the company towards their complaints and irregularities in tenders.



## CHALLENGES IN IP IMPLEMENTATION

### GENERAL

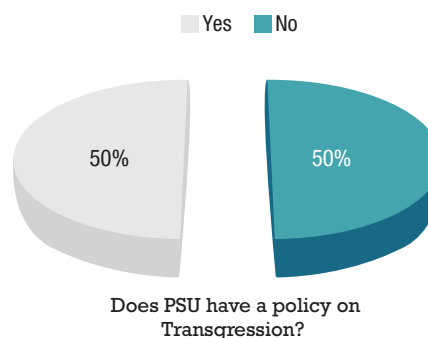
- IP was designed to make the contract process transparent, encourage healthy competition and create a level playing field. However after the contract is awarded IP does not oversee the implementation of the contract.
- IP is restricted to a transparent bidding process. It should also be applicable whilst the contract is being implemented as issues of integrity might emerge that IP can facilitate in resolving.
- IP is being implemented as a complaint based mechanism, i.e. once a complaint is received IEMs come in the picture. Also the vendors do not, in most cases, get an opportunity to place their side of the story, which leads to their victimization.
- The Standard Operating documents of Central Vigilance Commission and Ministry of Finance are not in sync. For e.g. In case of SOP issued by Ministry of Finance Integrity Pact extends for the period of five years after complete execution of the contract. Such kind of directive is not present in the SOP issued by the CVC.<sup>33</sup>
- In some cases a single company supplies a certain requirement. In case the supplier does not agree to sign IP what would be the way forward. This challenge is faced in tenders on nomination base.

### TRANSGRESSION

In the SOP put forth by CVC in May 2009, CVC stated that bidders should disclose any transgressions with any other company that may impinge on the anti-corruption principle. It further said that if Bidder(s)/Contractor(s), before award or during execution, has committed a transgression the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Bidders have to declare that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise in India that could justify their exclusion from the tender process. This principle finds resonance in the Ministry of Finance Circular of 2011 also. However:

- IP mentions that a company that has committed any wrongful deed anywhere in the world should be revisited. However the company structure could be a group holding which means that most of the companies have been acquired and brought under one umbrella. In such a scenario associated companies might not have same line of business.
- In case the company has an internal policy of banning the company guilty of transgression for ten years, which period should be followed – one given under IP or company policy.
- No guidance is provided in case the bidder who needs to be banned is the only vendor available.

- No company responded positively on the question of having a concrete transgression policy.



### INCLUSIONS, EXCLUSIONS AND CLARIFICATIONS ON IP CLAUSES

- In many cases the sub-contractors for any contract are not disclosed before the contract is awarded, some PSUs have opined that sub-contractors should be kept away from purview of IP and bidders / contractors should be held responsible for any wrong deed done by sub-contractor, other PSUs have opposed any move to take out subcontractors from purview of IP.
- In instances of a complaint received by an IEM, bidders should be given equal opportunity to present their case.
- In instances when no complaint is received a clear guideline could be laid that IEM should conduct random check of tenders.
- CVC issued a circular in 2009 and Ministry of Finance in 2011 for effective implementation of IP. These circulars need to be periodically revisited, in light of emerging operational issues, and corresponding changes made.
- Currently IEMs predominantly comprise of former civil servants, who might or might not have procurement experience, making it challenging for them to address the procurement issue. To complement their expertise business and technical experts need to be empanelled as IEMs.
- PSUs and the CVC do not consider anonymous complaints, which at times could be a window into procurement discrepancies. Mechanisms need to develop on how anonymous complaints can be explored.

### Others

- CVC has yet to give direction on investigations and to what extent an IEM can / should get involved.
- Private sector feels that IP should be made equitable as it currently favors the contracting companies and is disadvantageous towards the bidders and sub-contractors.
- In a number of Integrity Pact conferences and meetings private sector has said that in the ever evolving compliance environment Integrity Pact is just another compliance tool.

<sup>33</sup><http://www.fc paproffessor.com/a-focus-on-indian-pre-contract-integrity-pacts>

## CASE STUDY ANONYMOUS

In March 2013, Contracting party “X” released a global tender for the procurement of 50 Airfield Crash Fire Tender (ACFT) at a budget of INR 194 crores. ACFT are sophisticated special purpose vehicle to be used for firefighting services.

In September 2013, Bidder “A”, one of the bidders on the subject tender, approached Transparency International India (TII) regarding violation of Integrity Pact (IP) guidelines by “X” to favor the incumbent supplier, “B”.

By way of introduction, “A” is an \$ 8 billion Fortune 500 company and is the world's largest manufacturer of specialty vehicles including Airfield Crash Fire Tenders (ACFT). “A” has sold over 5000 ACFT's across 1500 airports globally and its ACFT fully meet or exceeds International Civil Aviation Organization (ICAO), Federal Aviation Administration (FAA) and NFPA performance standards.

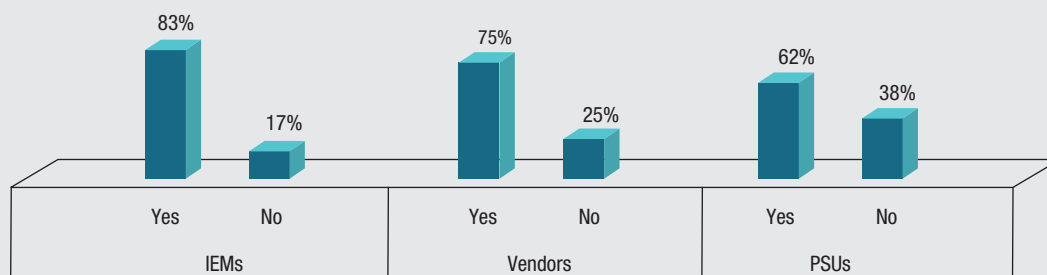
“B” has annual revenues of €738 million, “B” does not have an office in India and operates through a local dealer. India represents “B”'s largest international market (sold over 120 vehicles in India so far) and is very concerned about protecting it.

“A” informed TII that Integrity Pact was not released in case of this contract while other “X” tenders included the IP. “A” also informed that when “X” released the IP the previous transgression clause 4.1 was modified to restrict the number of years from 5 to 3 years to favor and save the incumbent supplier “B” from getting disqualified. It must be noted that “B” has been fined millions of dollars in a European country for cartelization in 2009. “X” also mentioned that “A” customized critical tender specifications to favor “B”.

Specifically, “B” was offering a vehicle which had never been tried and sold before and actually wanted to test it in the Indian market. It was also pointed out that the vehicle being offered was of a width of 2.6 meters which was below the standard width of 3 meters for the same water-carrying capacity as that of a standard 3 meters wide vehicle, and was therefore dangerously unstable, having a significantly lower center of gravity and would not satisfy the stability requirement of the tender. “X” also brought to the notice of TII and CVC of certain violation of its guidelines regarding adoption of the standard operating procedure for the Integrity Pact, in as much as, the Integrity Pact was circulated more than two months after opening of the technical bid in violation of the CVC's circulars in this regard with a view to favor “B” by enabling it to escape the rigors of a time bound transgression clause.

TII reviewed the case and advised “A” to approach IEM, CVO and CVC. Accordingly “A” wrote to IEM with a copy to TII. Considering TII's MoU with “X”, TII wrote to IEM strongly supporting the concerns raised by “A”. “A”'s prayer and TII intervention resulted in a full vigilance inquiry by the CVO of “X” under directions from the CVC.

The CVC inquiry vindicated “A” and TII's stand and “X” eventually cancelled the tender in March 2014. Vigilance also directed “X” to include 3 meter width and proven equipment requirement in the new tender. The head of the Evaluation Team was removed for the new tender.



Should foreign companies sign Integrity Pact?



## CASE STUDY OF ANDRITZ HYDRO

Andritz Hydro, a global supplier of electro-mechanical systems and services for hydropower plants, wanted to bid for Tender No- 281/BBMB/PHD/Dehar-409 of Bakhra Beas Management Board (BBMB). The bid was to design, manufacture, supply, erect, test and commission six sets of Micro-Processor Based Digital Type Electro Hydraulic Governors. On January 2, 2015, Andritz communicated to BBMB that it is ready to sign the Integrity Pact, a pre-requisite for entering into the tendering process, but with a condition to alter one of the clauses pertaining to the functioning of the Independent External Monitors.

The requested change was:

Section 8.2, presently read

**“He reports to the Chairman of BBMB”**

Change required:

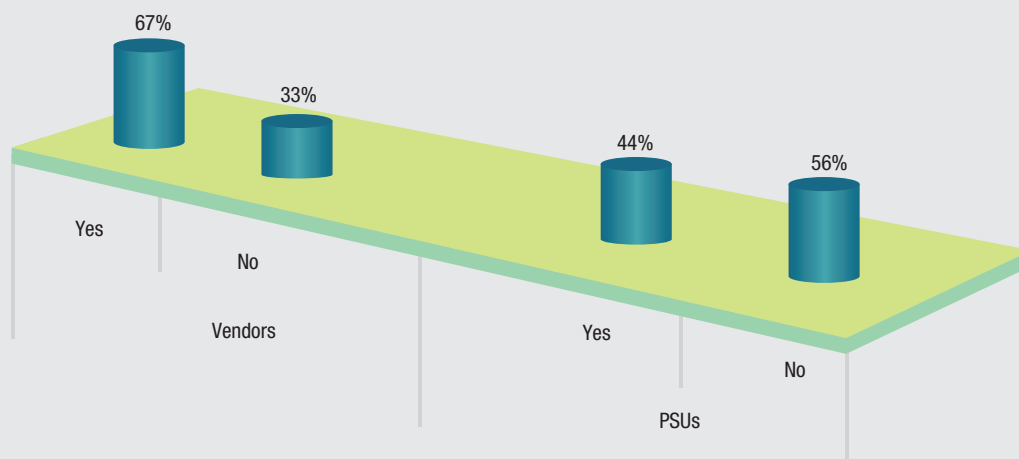
**“He submits reports to the Chairman of BBMB”**

The reasoning behind the change was, in the present form, clause 8.2 suggests that the IEMs are answerable to the Chairman, defeating the 'independent' nature of the role. The change in the clause of “submitting report” will ensure that the IEMs can work independently and it's the reports of the investigations that they undertake are submitted to the Chairman (the actual clause of Integrity Pact).

Andritz has approached Transparency International India (TII) to intervene, even though Bakhra Beas Management Board had not signed a MoU with TII. TII wrote a letter communicating the requirement to change clause 8.2 to maintain independence of the external monitors.

On January 12, 2015, BBMB communicated that Andritz should submit the bid as per the deadline but nothing was mentioned about the change in clause of IP. Nothing more is known and Andritz is still following up with BBMB.

However, in a similar case, when Andritz wanted to bid for a tender floated by NHPC, they found the same issue with the Integrity Pact clause. In this case NHPC accepted the change.



Should the format of Integrity Pact be changed?

# SIEMENS

## CASE STUDY SIEMENS

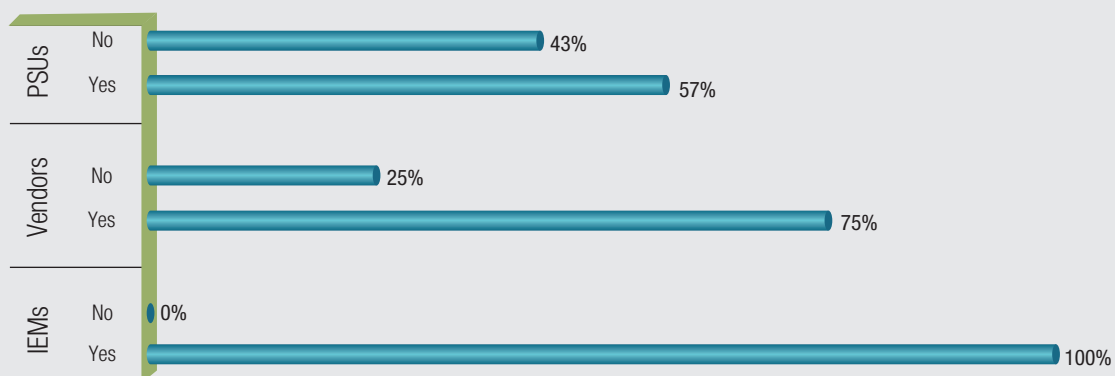
Siemens conducts regular training and certification workshops for their employees, a certain number of certificate courses are required to be undertaken by an official to hold important posts in the organization. This suggests that the heads of various departments acquainted with changes and innovations in their line of businesses are seen as an essential criterion in their appointments. As a company policy, in procurement, a qualified person has to generally obtain three certifications while being on the job, before s/he heads the department.

Comparing IP to Siemens business code of conduct:

- **IP as a mandatory instrument:** Siemens do not have a rigid policy pertaining to mandating the adoption of its own code of conduct. Siemens do not force its own code of conduct on any contracting party until and unless their code of conduct, in principle, does not match that of the company.

- **IP being a rigid instrument:** In case a vendor refuses to sign the Siemens code of conduct, the vendor is not removed from the suppliers list or blacklisted, instead the compliance team matches the code of conduct of the vendor and Siemens, finds the gap and then asks the qualified vendor to work only on those aspects, sign an undertaking or any other arrangement which do not compromise the ethical practices of Siemens.

- **Due Diligence come under the purview of the IEMs but is not strongly implemented:** When a contract is given to a vendor, Siemens as a practice, audits the books of accounts of the vendors (of the portion of funds which have been given by Siemens for contract related activities). Siemens, if required, on occasions does the auditing of vendors as part of due diligence process.

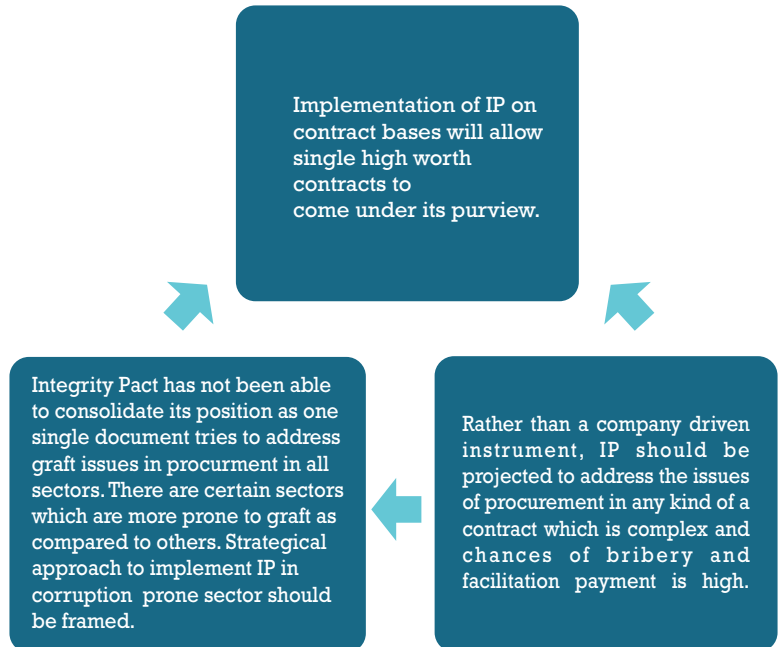


Should Private Sector sign Integrity Pact?

# WAY FORWARD: RECOMMENDATIONS

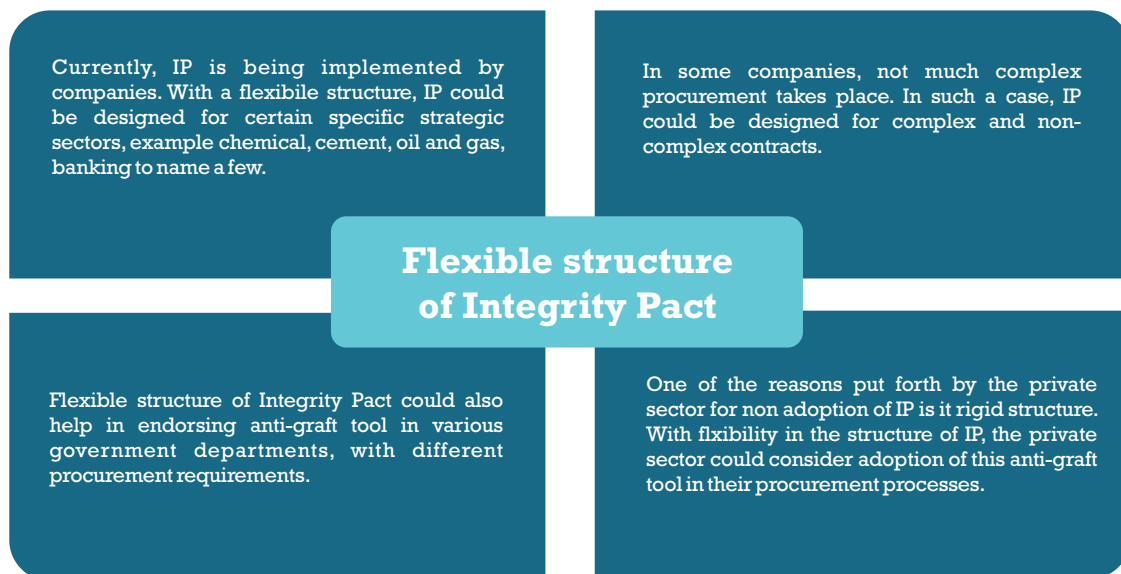
## ADOPTION OF IP

- **Rigid format/ structure of Integrity Pact:** In 2006 IP was adopted in India for the first time. Since then a lot of legislative changes have been made and India has adopted some other international anti-graft instruments. If the structure of IP is flexible a lot of changes could have been made to increase the effectiveness of the instrument.
- **Blank Implementation of Integrity Pact:** In India, Integrity Pact is implemented by companies in all its contracts over and above a certain amount of the contract value. The number of companies which have adopted IP is around 95, far less than the number of corporations which exist in the country. To increase the adoption of IP, provisions could be made to insert the clause of this anti-graft instrument in certain important and / or high worth contracts even though the contracting parties have not adopted Integrity Pact in their organizational capacity.
- **Sectoral adoption of IP:** IP needs to develop provisions for sectoral adoption of the tool. Certain important sectors such as chemical, cement, infrastructure, oil and gas, banking, among others that have complex procurement processes, should comply with IP so as to be more transparent in their procurement processes.



## Flexibility in Structure

Complexity, value of the contract and its impact on governace should be the consideration for adoption and implemenation of IP.



## CHANGES IN IMPLEMENTATION

Topics	Changes
Information to bidders	All registered bidders should be informed about details of tenders, and reminders sent through SMS, electronic mails.
Cartelization	<ul style="list-style-type: none"> <li>• Cartels are formed when people know who are quoting. IP address of bidders can be used to identify cartels in e-tendering process.</li> <li>• With the help of RTI Section 4 A, IEMs can check all the details related to tenders.</li> <li>• All decisions, including mode of purchases, minutes of all meetings have to be put up on the website.</li> </ul>
Empowerment of Contractors	With adoption of new technology, officers should to be trained who will then train vendors to handle new technology like e-tendering, reverse auctioning, etc.
Accountability	<ul style="list-style-type: none"> <li>• It is very important to see that defunct companies and special vehicles do not participate in the tendering process.</li> <li>• Audit trail of the bidders is important information which would help the contracting companies to do due diligence of the suppliers. Some of the private companies such as Siemens have an audit trail of their suppliers.</li> </ul>

## TRANSGRESSION

More clarity is required under the provision of Transgression under Integrity Pact

- The company found guilty of corruption or facilitation payment should be banned, but the date from which the banning should take effect is not clear.
- Internationally, in case a company owns up to the act of corruption or facilitation payment, a monetary fine is charged and the company's ban is relaxed, this provision should be incorporated in Integrity Pact in India.
- Integrity Pact is not very clear about 'previous transgression.' Severity of offence in getting a contract should be taken into consideration when a company is qualified for transgression.
- Many companies are banned just that they have a complaint against them. This accounts for victimization. Until a certain level of evidence is given or charges are proven, the company should not be banned and they should not incur any loss of business.
- In case a company voluntarily discloses incidence of bribery and facilitation payment then there should be enabling clause (it could have a certain penalty for the company but the company's commercial interest should not be hampered).

### Previous transgression

1. There needs to be clarity on the date of transgression. It is uncertain whether the vendor who is held for transgression needs to be proven guilty of the charge or only a report against the vendor is enough for their banning.
2. If the Bidder makes incorrect statement on transgression, they can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.<sup>34</sup>

The start date of transgression should be clearly defined in the IP, so that vendors are not nervous and uncertain about signing IP.

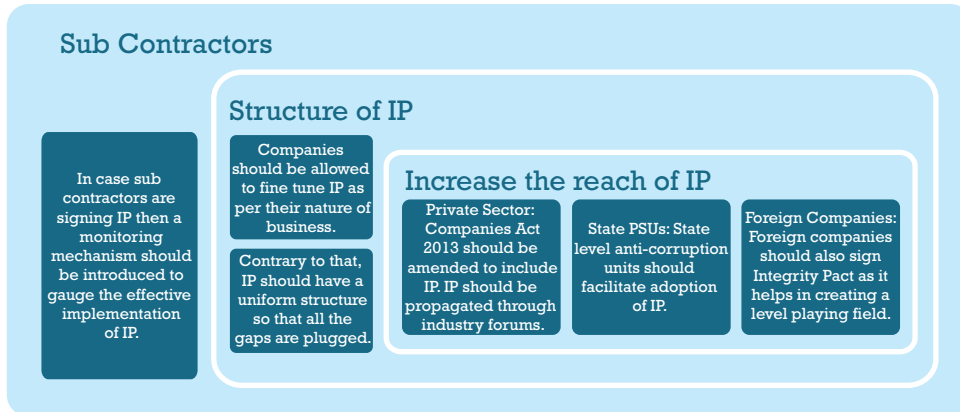
Currently, three years is the banning time in case a vendor has transgressed. IP should categorize transgression into degrees along with punishment under each category.

Further, in case a company owns up the act of transgression, provisions of financial penalty and waiver of ban could be considered.

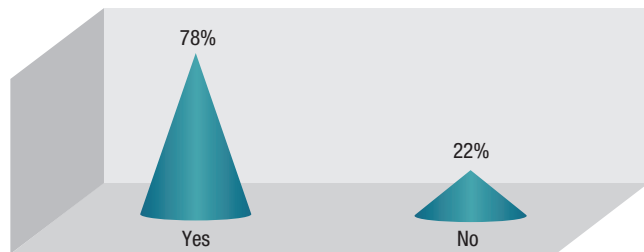
<sup>34</sup>Integrity Pact of Oil India Limited



## OVERALL RECOMMENDATION



- 1) Intellectual property of Principle and Bidder should not be compromised. Overseeing the implementation of the Non-Discourse agreement is a must.
- 2) The buyer must be cognizant of the intent in letter and spirit and adequate training needs to be imparted so that it's not a blind "sign it approach" towards Integrity Pact.
- 3) Many companies work through agents. The provisions of Integrity Pact should be framed in such a manner that it get the agents in its purview, especially for the Defense procurement sector.
- 4) Information is a key in bidding process. Business or personal connections between key individuals in the bidder and buyer should be declared up-front.
- 5) A certain number of IEM – management meetings should be made mandatory.

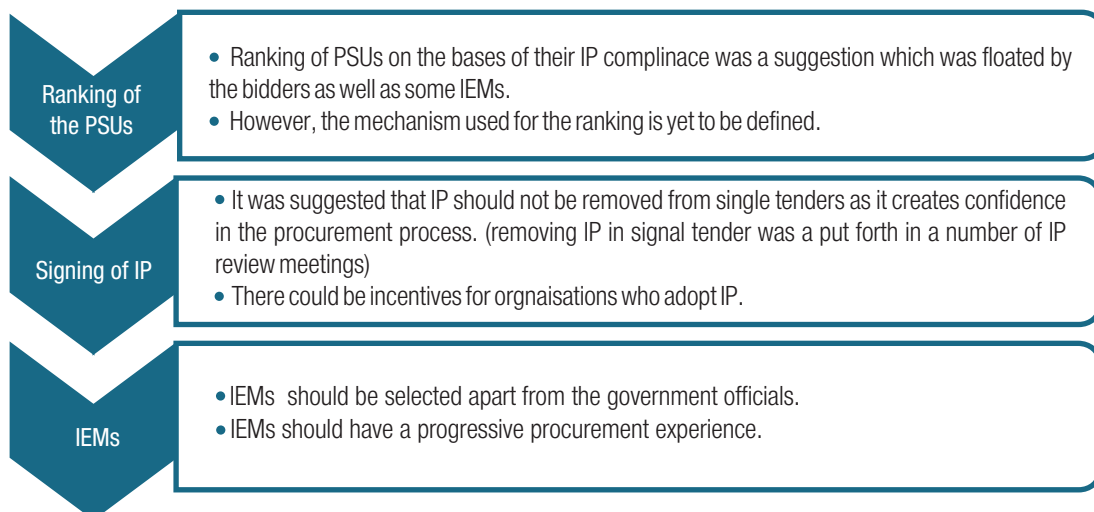


Should PSUs be ranked for effectiveness of Integrity Pact implementation

## PRIVATE SECTOR AND IP

The merits of IP have made the private sector to sit up and take notice of IP. However they suggest:

- Experienced private sector procurement officers to be inducted as IEMS by CVC.
- In case, the vendors are held for transgression, no opportunity is given for any explanation, they are straight away banned from the bidding process. It is recommended that vendors should be given a chance to explain the issue of previous transgression. Also, in case of minor issue, they should just be financially penalized and allowed to participate in the bidding process.
- Instead of a blanket IP for all type and kind of contracts and endorsing IP for all sectors, the instrument should be tailor made, keeping the principles intact, but suiting all the parties.



## RED FLAGS IN IP IMPLEMENTATION

It can be difficult for an IEM to know which deviations to look for in the procurement process. The following list of 'red flags' or indicators should raise concern. The presence of these 'red flags' does not prove corruption but should catalyse further investigation.<sup>35</sup>

### Personnel and Records

- Contracts are awarded at higher than market price to the same supplier without competition
- An unnecessary and unwanted middleman involved in a public contract and his addition has no obvious value to the performance of the contract rather complicate the issue
- Locals know the credibility of the officials and when s/he accepts or demands bribes
- Concurrent awarding of public contracts to poor performing contractors
- The former officials of the contracting company become suppliers
- Posting procurement official at the same place for a longer period, not able to rotate him/her due to external pressure
- No recorded minutes of the public bid-opening meeting
- Minutes of the public bid-opening meeting are not signed in the original form by those who attended the meeting
- There are delays between the public bid-opening and the dissemination of the minutes of the bid opening to all bidders
- Procuring entities fail to keep written records of the procurement process (i.e. written reports on bid evaluation process, minutes of the meeting, copies of submitted bids, correspondence of the bidders, etc.)
- Submitted bids contain corrections, deletions, over-writing or interlineations that changes key information (i.e. prices, validity period of the bid, etc.)

### Trends in bidding processes and Subcontractors

- Although IEMs primarily deal with individual procurement processes, when working with a single PSU over a series of contracts, an IEM should be on the lookout for potentially suspicious trends
- Awards rotate amongst a small group of bidders with the same small pool of bidders bidding each time
- The company shows an inclination to extend contracts rather than re-tender
- Bid prices drop significantly when new companies join what was otherwise a consistent small pool of bidders
- Supervisors accept, ignore or excuse poor quality work and then rehire the same company
- Bidders submit different quotes on separate contracts for the same line item in a short time span
- A PSU neglects to assign an IEM at the beginning of a new bidding process
- Unknown companies with no track record in doing government contracts serve as sub-contractors to foreign or local contractors
- Sub-contractor companies have an unclear ownership structure
- Sub-contractor companies do not have corporate facilities (i.e. headquarters, office space, etc.). The phone numbers provided are personal or answering services.
- The family members of senior government officials own or manage these companies that receive the contract

## PRE-TENDER STAGE

### 1

#### Choice of projects

- Projects chosen are generally large capital projects with significant discretionary spending rather than maintenance or incremental upgrades
- Project proposals are poorly defined, nonspecific or unnecessary
- No thorough needs assessment is completed or delivered, or it is ignored
- No long-term development or annual procurement plan is prepared for a project, or if there is, it is ignored
- No preliminary survey or adequate site investigations are conducted
- Contracts are divided (by time or project) so that the amounts are just below certain procurement or IP thresholds
- Contracts reflect a focus on inputs rather than outputs (as these are more easily tailored to specific vendors)
- Cost estimations are poor, generic or differ from market rates
- Projects are timed to occur at the end of the fiscal year when the company can claim a need to be 'urgent'
- 'Urgency' or 'emergency' is not adequately justified and is used to invalidate standard anti-corruption safeguards
- The contract includes work not necessary to complete the project

### 2

#### Advertisement of a tender

- Advertisement does not provide adequate information for a vendor to decide whether to bid
  - Advertisements are printed in special/limited editions rather than wide release issue
  - Advertisements are published in remote or minor newspapers rather than the central area of demand
  - There is no general advertisement and applications for tenders are only sent to a select group of vendors
  - Advertisement is released during a holiday
- Advertisement has not been posted on the Central Procurement Portal (CPP) of the Government of India

<sup>35</sup>The information collated in this section is in reference to TII's Public Procurement Manual and series of meetings and consultations with various stakeholders.

### 3 Tender design and prequalification

- Bid specifications, including technical or documental requirements, are unusually narrow (so as to favor a particular bidder, or to keep some bidder out), complex or vague
- Prequalification requirements are unreasonable with respect to project necessities (and may thus favor a particular bidder, or keep some bidder out)
- Bidding documents or process are non-standardized
- Evaluation criteria are subjective or unclear
- A vendor was consulted or aided in drafting the tender
- Many documents and copies are required for a bid, with one missing paper allowing for disqualification
- Evaluation criteria are weighted in favour of subjective parameters (e.g. architectural values) that were not adequately pre-announced
- Bidding documents are not made widely available

#### TENDER STAGE

### 4 Pool of bidders

- Unusually few or many bidders apply
- Bidders are not listed in telephone or business directories, or on the relevant site of the Ministry of Company Affairs
- There are multiple applications from new or unknown bidders
- Reputable or qualified bidders fail to bid
- Qualified bidders withdraw during the bidding process
- The bidders are all active in the same local trade circles or associations
- Bidders are registered in secrecy jurisdictions or owners/shareholders of the bidders are firms/companies rather than individuals
- Bidders have an opaque ownership structure
- Bidders have previously been blacklisted

### 5 Submitted bids

- Bids are identical or contain unusual similarities (e.g. phrases, typos, arithmetic errors, font, phone numbers, and addresses)
- Documents appear falsified, tampered or otherwise unprofessional (especially experience certificates, signatures, resumes, financial documents)
- Bid securities by different bidders are from the same financial institution, or were issued the same day or sequentially (based on serial numbers)
- Photocopied documents are provided rather than originals (particularly if they appear blurry, messy or otherwise possibly tampered with)
- Many bids, particularly from generally qualified vendors, appear incomplete or have high budget estimates
- A group of qualified bidders do not bid against each other or offer complementary bids on different parts of the contract
- Budgets or line items between bids are too close or too far apart (should differ by 1-10%). Budgets differ by consistent, even intervals (1%, 5%, etc.). One budget is significantly lower than all the others. Winning budget is very close to Principal's estimated budget. Numbers are round or too clean (Rs.300000/- rather than Rs.297982/-)

### 6 Bidding process

- Bid time period is unreasonably short (e.g. 3-4 days) and not in line with the period stipulated in the GFR
- Lowest evaluated bidder is disqualified or withdraws with poor justification
- The Principal's procurement rules or approach changes suddenly and/or significantly (rigid adherence to normally flexible rules, or the opposite)
- The Principal does not review all of the bids
- The Principal inconsistently requests clarifications or allows for exceptions among similar bidders
- A bidder receives very specific clarification requests, especially for budget concerns, that could be a pretext for renegotiation
- Bidders do not register any complaints against each other (especially when other "red flags" are present)
- Bidders register highly specific complaints against competitors, possibly suggesting leaked confidential information
- The award process, requirements or evaluation criteria are changed from the original tender
- Bidders are ruled qualified or unqualified without documentary support.
- Bidders who submit fraudulent, late or incomplete bids are not disqualified
- Anonymity of bidders is not properly guarded
- Rankings change after a supervisor or high-ranking official becomes involved in the process
- Different versions of the bid evaluation are present
- Process is tightly controlled by a small group
- Bidding process or evaluation times are extended without justification
- **Open-bidding meeting:** There is a failure to keep comprehensive written minutes, have minutes signed by all parties or release minutes without a delay. Discounts are not announced with bid disclosures. Some envelopes containing bids appear marked (small folds, tears). The location changes at the last minute without proper notice.
- **Rebidding:** Same ranking order is established as in the original bid. Bidders make significant price changes. Bidders withdraw rather than rebid. Due to alleged time constraints, a rebid is done in "snap" format.

### 7 Chosen bid

- The cost of the awarded bid is high relative to that paid by other procurers
- The contract is not awarded to the lowest qualified bidder
- Losing or withdrawn bidders become subcontractors
- Winning bidder is unknown, unqualified or without a track record
- The initial choice of a vendor is overruled by the IP compliant PSUs or withdraws by itself
- A price discount makes a bidder with a high price estimate into the winning bidder (particularly if the discount makes the budget very close to Principal's estimate or is not initially disclosed)
- Members of the bid evaluation committee do not have proper expertise to comprehensively evaluate bids

### 8 Bid Rigging

- All bids are higher than the projected cost
- Obvious cost difference between the winners' and the other bids
- Acceptance of abnormally higher / lower rates in the contracts
- Rebidding results show that the companies have the same ranking as the prior bidding or some bidders didn't submit any proposal at all

## EXECUTION STAGE

9

### Implementation

- Site tests or inspections are refused or delayed
- Significant user complaints or other indications of poor quality of work are detected (e.g. missing or poor quality material)
- Bills are poorly collected or lost
- Supervisors are provided with vague or oral (rather than written) responsibilities and instructions
- Supervisors frequently change
- Contractual verification procedures of work progress are not enacted
- Invoices are vague or amounts appear inflated
- There are incomplete records, such as a large number of missing documents, few site visits / reviews or no recorded contractor performance
- Change orders to the contract are frequent (often small amounts) and accepted by site engineer rather than seeking supervisor's approval
- The most economically priced brands included in the contract are not used
- Project updates and reviews include repetition, errors or photocopies of bidding documents in 'as-built' drawings
- Cost increases / overruns are not adequately explained
- Proper coordination between different wings like design, planning, execution etc. with proper accountability responsibilities for coordination are not done

10

### Personnel

- Poor performing employees are transferred into positions that appear to have a greater opportunity for corruption (e.g. more discretionary spending)
- Funds are awarded for 'project supervisor', subcontractor or middleman with vague, repetitive or unnecessary responsibilities
- Key employee or supervisor never takes leave or vacation during procurement processes
- Members of Principal and bidders have close personal or professional relationships
- Nominated consultant staff members are replaced with less qualified /experienced personnel
- Project officials live beyond their means
- Subjective parts of recruitment or promotion (e.g. interview) in the decision process are given inflated importance
- The same staff members are involved in award decision and contract supervision
- Supervising duties and financial oversight are not separated
- Decisions to be taken at higher level are not within time frame
- Approvals invariably are sought as a formality not prior to work with opportunity for application of mind by concerned authority / group

11

### Post-award contract

- Long delays occur during the contract execution
- A change in price or order follows the selection of a bidder
- Penalty clause and thorough project oversight is excluded from contract
- Contract includes allowances for variations not in the bidding documents
- The bid and contract contain significant dissimilarities in amounts, name, etc
- Subcontracting requirements are imposed on bidder after selection (rather than stipulated in the invitation to tender)
- Excessive or unjustified number of signatures needed for various payments or changes (thus lessening individual accountability)
- Post tender modifications and need and system of determining rates
- No safeguard taken through conditions, procedures and close internal scrutiny
- Hidden items not easily capable of being inspected such as earth work, grouting, river dredging etc. to be red flagged as quantum not verifiable
- No adequate authentic documentation of purchase, stock keeping & consumption giving complete trail for ensuring execution as per specifications

12

### Post Contracts Variations

- Quantities Variations: Some of the anomalies and problems encountered are as follows:
  - Bids floated and finalized are based on schematic drawings received from vendors without getting detailed engineering done resulting in abnormal variation in the tendered quantities and also execution of large number of extra items
  - Increase in the project cost and time
  - Overstay compensation to the contractors
  - Huge numbers of frivolous claims by the contractor, resulting in arbitration
  - Stoppage / slowing down of progress by non-payment of statutory wages by the contractor resulting in dispute with the clients for payment of labor cost escalation
  - Claims for payment of statutory taxes & duties imposed by Government, generally not considered or not clear in the bid documents

# INTEGRITY PACT AND OTHER TRANSPARENCY TOOLS

With the ever increasing emphasis on ethics and integrity, a business case for anticorruption has become popular amongst corporate and civil society at large. Businesses are investing in oversight policies and mechanism in response to changes in regulatory, accountability, transparency and governance requirements. Typically, these are translated into fine tuning the code of conduct, enabling whistle blowing, emphasizing integrity initiatives, rolling out of fraud awareness programme, improving charter of audit committee and encouraging reports of wrongdoings.

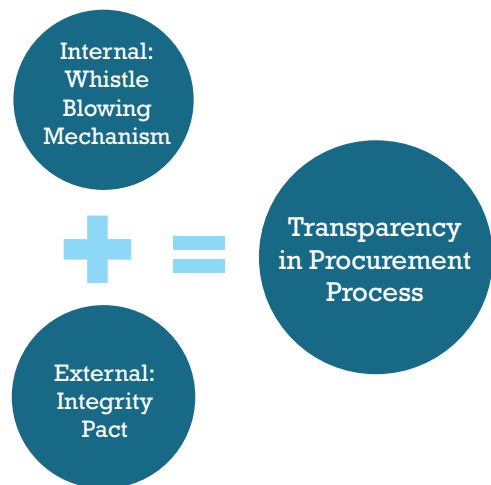
## WHISTLE BLOWING MECHANISM

The aim of adoption of Integrity pact is to make the procurement process transparent and corruption free, all sorts of internal as well as external irregularities should be address so that graft could be removed from procurement.



Whistle blowing is a process of making disclosures of any irregularities in conducting business by companies. Incorporating Whistle Blowing mechanism in the business operations of the company is an important recommendation given by Transparency International to all companies adopting the Integrity Pact. As per Transparency International Malaysia one of the essential ingredients of successful implementation of IP is a whistle blowing line and process.<sup>36</sup>

With the adoption of Integrity Pact, the instrument empowers the vendors (bidding in a tender) to approach an independent authority with their grievances. The vendors are not dependent only on the vigilance department and assigned officers to address their woes. Keeping the discussion to procurement, there are certain irregularities that can take place within the company. With the implementation of a whistle blower mechanism, the employees and other officials related to the procurement process/ division can report irregularities.



<sup>36</sup><http://site.ti-bjp.com.my/main/3000/index.asp?pageid=144983>

## CODE OF CONDUCT

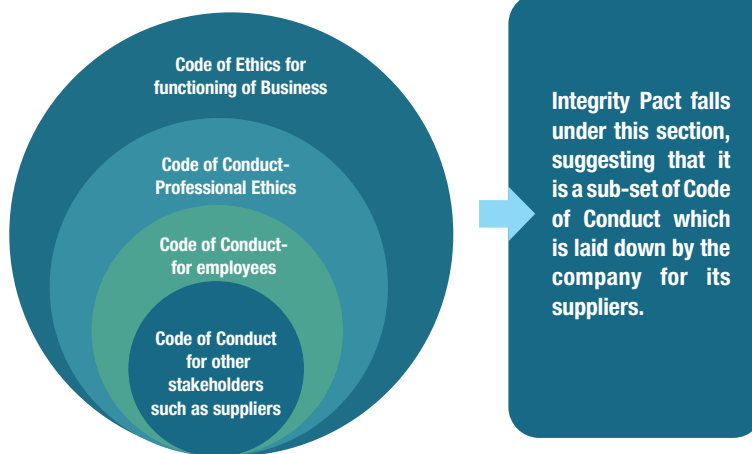
Code of Conduct is seen as one of the essential ingredients for the successful implementation of IP. This sentiment is reinforced by one of the Clauses of IP which reads as follows:-

### “Section 6: Company Code of Conduct

Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for implementation of the code of conduct throughout the company.”

Integrity Pact provisions advise the bidders and sub-contractors to have compliance process in place along with a Code of Conduct. However, there is no mechanism for overseeing the adoption of code of conduct by the suppliers. Also, it is not a mandatory provision for the implementation of Integrity Pact. Non-implementation of the code of conduct and compliance process does not affect the

credentials of the suppliers in the tendering process. Further, the suppliers who take the responsibility of the sub-contractors, in several cases, have not been able to make the sub-contractors sign the Integrity Pact.<sup>37</sup>



Integrity Pact falls under this section, suggesting that it is a sub-set of Code of Conduct which is laid down by the company for its suppliers.

Kinds of Code of Conduct for a Company

The following table tries to explore some of the features which most companies use in framing their code of conduct and its interplay with Integrity Pact, in the procurement process.

Features	Code of Conduct	Integrity Pact
<b>Handling confidential information of the company</b>	The company lays down clearly that internal and confidential information should not be disclosed. It is considered as an offence.	<ul style="list-style-type: none"> <li>In case a vendor comes to know that a particular vendor is benefited, s/he can lodge a complaint and ask for cancellation of the contract.</li> <li>In case a vendor complains to IEMs about such an occurrence, finding merit in the case, it will be investigated and report is submitted to the CMD of the company, leading to stringent actions. IP thus acts as deterrence for employees.</li> </ul>
<b>Financial Reporting, Anti-Corruption and Government Policies</b>	Code of conduct lays down the full reporting of the company's financials and other associated information which is relevant to the investors and other stakeholders.	Integrity Pact adoption needs to be done in a fashion that over 90% of the contracts come under its purview. This leads to a detailed disclosure of the tenders, especially disclosure and audit of "high-worth" tenders. The terms and conditions and entire tendering process are overseen by the IEMs.
<b>Reporting of Violations</b>	Code of Conduct allows for reporting of wrong doings in the company.	Adoption of IP and its essential feature of having an Independent External Monitor (IEM) facilitates and encourages bidders/ vendors to report irregularities in the tendering process.
<b>Responsibilities towards Suppliers</b>	Code of Conduct for the suppliers helps the bidders to know the expectation of the Principle (company). They act as per the standards laid by the company.	With the adoption of Integrity Pact, the companies give an independent platform for the suppliers / bidders to address their issues and concerns towards the bidding process. The suppliers are confident of the tendering process, as it is a competitive process and everyone stands an equal chance.
<b>General codes pertaining to ethics and honesty</b>	Code of Conduct for suppliers, employees and professionals lays down the expectation of the company from all the three stakeholders of their business. The overall crux is that the organization functions with high morals and practices ethics in its business operations.	Integrity Pact is more specific in that it lays down the Dos and Don'ts for the principle and bidders (including the sub-contractors) towards conducting a fair and transparent tendering process.

<sup>37</sup>This information could be confirmed from the survey of vendors and IEMs conducted jointly by Transparency International India and Global Compact Network India along with personal interviews with the IEMs.

## FULL DISCLOSURE AND REPORTING

Integrity Pact compliments the Compliance mechanism for procurement in companies.

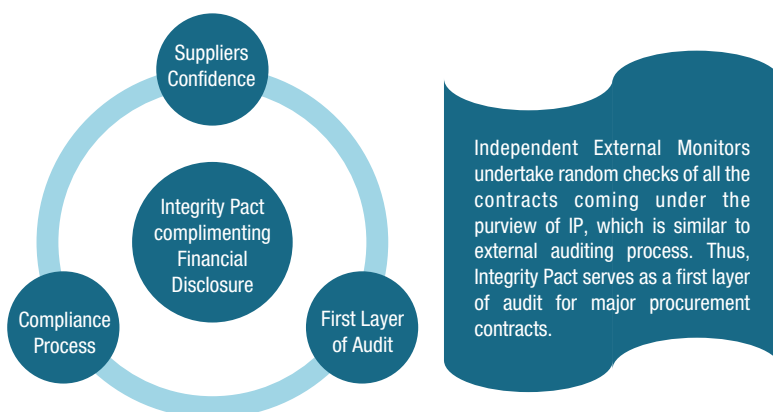
**Suppliers Confidence:** The purpose of full disclosure and reporting is to gain confidence amongst its stakeholders, in the similar manner Integrity Pact provides confidence to the suppliers that with a level playing field exists for the tendering process.

**Awareness of the Compliance process:** Sometimes the company website is not updated with the compliance process, so in case a supplier has any issue, they don't know whom to approach. As per the requirement of SEBI, Companies Act and other guidelines it is mandatory to disclose such practices. This facilitates the suppliers to know about the internal compliance mechanism. Integrity Pact is an external approach made by the suppliers in case of issues with the tendering process. After the investigation, the IEMs submit the report to the CMD of the company, who have the power to take decisions regarding the irregularities and levying penalties to concern person(s).

At the same time Integrity Pact lays down the Do's and Don'ts for the suppliers and sub-contractors. In case these are not followed then the consequences of the same also feature in IP, such as cancellation of the contract, blacklisting of the suppliers, to name a few.

**First Layer of Audit:** With the adoption of Integrity Pact, a substantial number of procurement contracts come under the purview of IP. This means, the proceedings of these contracts can be overseen by the Independent External Monitors. The significance of this oversight mechanism in procurement can be understood from the fact that around 25-30% of the Gross Domestic Product (GDP) of India is diverted towards procurement.<sup>38</sup> The funds involved are huge and overseeing the tendering process by the IEMs serves as a first line of audit of the procedure undertaken in procurement and judicious usage of funds.

Further an IEM is involved right from the pre-bidding process till the execution of the contract. This leads to scrutiny of the entire process, thus, complimenting the full disclosure for the companies by ensuring that the information furnished to the stakeholders regarding procurement has been checked by an independent monitor.

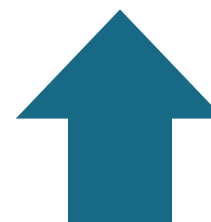


**New Companies Act 2013:**

Section 128(1) of the 2013 Act states that the 'Books of accounts' are required to show (a) all money received and spent and details thereof, (b) sales and purchases of goods, (c) assets and liabilities and (d) items of cost as may be prescribed.



Securities and Exchange Board of India (SEBI) in its Clause 49 of its Listing Agreement mandates "Disclosure includes compliance and accounting standards practiced by the company as well as relevant disclosures of interest of Board of Directors and Independent Directors in the company."



<sup>38</sup>[http://www.cuts-citee.org/pdf/Government-Procurement-in-India\\_Domestic-Regulations-Trade-Prospects.pdf](http://www.cuts-citee.org/pdf/Government-Procurement-in-India_Domestic-Regulations-Trade-Prospects.pdf)

## CONFIDENTIALITY / NON-DISCLOSURE NORMS OF INTEGRITY PACT

Integrity Pact as an instrument has been designed so that the interests of all the parties are safeguarded. If any stakeholder who is party to the contract does not see merit in the adoption of the instrument, they will not follow it. There are certain non-disclosure and confidentiality clauses in the Integrity Pact which ensures the business interest of companies signing IP is safeguarded.

**For the Principle:** The Company wants to protect vital business information. This could be leaking of information to contractors who use such information for suiting the tendering criteria of the company. With the adoption of Integrity Pact, now 'not sharing information' is not limited to be a 'good practice' but would lead to legal repercussions.

### Section 1. Commitments of the Principle

The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

**For the Contractors and Sub-Contractors:** The Independent External Monitors (IEMs) are authorized to ask for certain information towards overseeing or investigating a contract which is not already furnished by the contractors and (or) sub-contractors. To address this inhibition of the contractors, Integrity Pact has incorporated a provision which obligates IEMs to treat all the information provided by the contractors and sub-contractors, apart from the already disclosed information, as confidential and not be disclosed. In case disclosed, it could lead to legal implications.

### Section VII (VIII). Independent External Monitor/Monitors

The Bidder(s)/Contractor(s) accept that the Monitor has the right to access without restriction all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Subcontractor(s) with confidentiality.

#### Inhibitions of stakeholders

Safeguarding information of Bidder

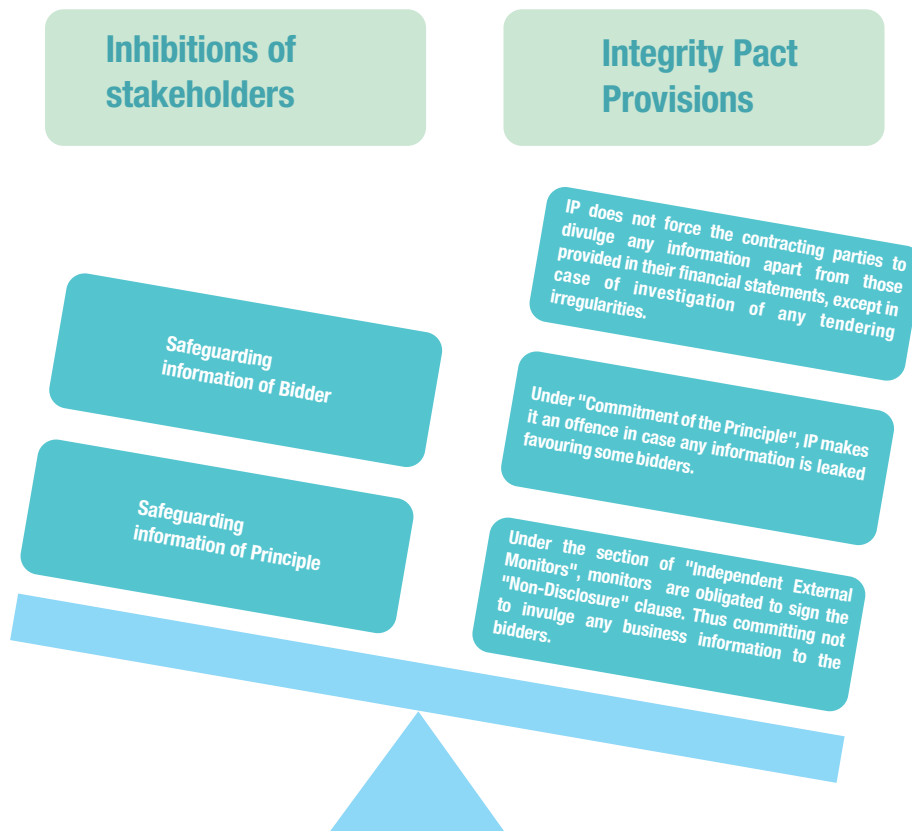
Safeguarding information of Principle

#### Integrity Pact Provisions

IP does not force the contracting parties to divulge any information apart from those provided in their financial statements, except in case of investigation of any tendering irregularities.

Under "Commitment of the Principle", IP makes it an offence in case any information is leaked favouring some bidders.

Under the section of "Independent External Monitors", monitors are obligated to sign the "Non-Disclosure" clause. Thus committing not to divulge any business information to the





# FREQUENTLY ASKED QUESTIONS

India ranks 85<sup>th</sup> among 175 countries in Transparency International's Corruption Perception Index (CPI) 2014. Most people believe that corruption in India is rising at an alarming rate and the Government is doing little to check it. IP enables companies to abstain from bribing by providing assurances to them that (a) their competitors will also refrain from bribing, and (b) government bidding system and procurement will be absolutely transparent. Hence, IP is found to be more effective for ensuring transparency and fighting corruption in public contracting. It helps enhance public trust in government's contracting and improving the credibility of its contracting procedures and administration in general.

## 1 Who are the major players of IP in India?

In India there are three major players of IP

- Central Vigilance Commission
- Ministry of Finance
- Transparency International India (civil society)

## 2 Who are the major stakeholders of IP?

There are three main stakeholders in IP

- The Company, i.e., Principal
- The Vendors/Bidder i.e., Counter-Party
- Independent External Monitor (IEM)

The other stakeholders on whom IP has an incidence are

- The Sub-contractors
- Government
- Civil Society

## 3 What is the duration of the IP between Principle and Bidder?

IP begins when both the parties have legally signed it. It expires for the Contractor 12 months after the last payment under the respective contract, and for all other Bidders 6 months after the contract has been awarded. If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by Chairperson of the Principal.

## 4 Who governs the implementation of IP in India in the Public sector?

In India Central Vigilance Commission (CVC) is the government body which oversees the implementation of IP.

## 5 What is the role played by CVC in adoption of IP?

IP is a standard document which is adopted by the Principle essentially with thirteen sections. However, in some cases, the Principle makes additions and deletion in certain sections of its IP. In such cases, it is mandatory for the Principle to take approval from the CVC for such alternations. Further, in case, the management does not take any step pertaining to complaints after the case has been investigated by the IEM, the IEM can seek the intervention of the CVC. Also, a vendor can also lodge its compliant directly to the CVC. CVC has the power to investigate such complaints.

## 6 What is the review system of IP?

According to CVC's circular, an internal assessment of the impact of IP shall be carried out periodically by the Chief Vigilance Officers (CVOs) of the organizations and reported to the CVC.

## 7 Ministry of Finance

The Ministry of Finance, Government of India in a circular, dated 19<sup>th</sup> July 2011, titled 'Use of Integrity Pacts by Ministries / Departments – Implementation of Administrative Reforms Commission' provided a draft of a Pre Integrity Contract. A perusal of this draft puts forth the following salient points:<sup>39</sup>

- Commitments to not engage in any form of bribery either directly or through any agents or third parties on the part of the bidder
- Commitments to not accept any form of bribes or demand any bribes and to treat all bidders fairly by the Buyer (Government)
- A declaration by the bidder that no previous transgression occurred in the last three years before the signing of the Pact with any other company in any country with respect to corrupt practices.
- Clause 6 of the Pact lays down sanctions for violation which include cancellation of the contract if awarded, confiscation of the security deposit, debarment, recovery of sums so illegally paid, applicable damages with interest, so on and so forth.
- The Buyer (Government) will appoint Independent Monitors in consultation with the Central Vigilance Commission to have an objective review of the implementation of the Pact.
- The Pact extends to a period of 5 years after complete execution of the contract.

<sup>39</sup><http://www.fc paprofessor.com/a-focus-on-indian-pre-contract-integrity-pacts>

## STAKEHOLDERS OF IP

### PUBLIC SECTOR UNDERTAKINGS (PSUs) (Principle)

#### 8 Who has adopted IP in India?

In India IP has been adopted by Government owned enterprises (Public Sector Undertaking - they can be owned by state as well as central government) and also by Ministry of Defense.

#### 9 Is it mandatory for the PSUs to sign the IP?

As per the Central Vigilance Commission circular dated 18/05/2009 adoption of IP is voluntary, but once the IP has been adopted, it should cover all the tenders / procurements above a specified threshold value and follow IP in letter and spirit.

#### 10 What is a threshold limit and who determines it?

The threshold value for the contracts to be covered under IP should be decided after conducting proper ABC analysis. It should be fixed so as to cover 90-95% of the total procurements of the organization in monetary terms. Apart from all high value contracts, any contract involving complicated or serious issues could be brought within the ambit of IP by the management.

#### 11 What is the pre-requisite for a PSU to implement IP?

- Clear understanding about IP implementation process
- Share the Code of Conduct policy
- Commitment to implement IP should be made by the Board and be reflected in the words & deeds of the Principal
- Principal should take steps to inform /communicate internal staff about IP's various aspects

#### 12 Is it ok to exclude tenders from nomination basis from the ambit of IP?

There should be no exemption, even if it is needed (in certain cases), it should be examined on a case-to-case basis by the concerned PSU Management.

#### 13 Who will be the focal point for the implementation of IP?

The Purchase/procurement wing of the organization would be the focal point for the implementation of IP. The Vigilance Department would be responsible for review, enforcement, and reporting on all related vigilance issues. It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.

#### 14 What is the role of Management/ Board after the IP has been adopted?

As per the clause of IP, in case of any Complaint received by External Monitors, they investigate the case and submit the report to the management within 8-10 weeks from the date of reference or intimation to them. The report of the IEM is reviewed by the management and the required steps (decisions) are taken on the complaint so received.

## BIDDERS/ VENDORS

### 15 Is it mandatory for the bidders to sign the disclaimer before submitting bidding documents?

Yes, it is a must for a bidder to sign the disclaimer at the time of submitting bidding documents. As per the IP clause, it is the responsibility of the bidders to get all its sub-contractors to sign the IP.

### 16 What is a Sanction?

Sanction is a process of taking action if anybody breaks the law. If any bidder breaks the commitment which he/she made at the time of submitting bidding documents, the concerned Principle can take action like black listing, forfeiture of deposit etc. against that bidder.

### 17 What are some of the sanctions that can be imposed on the bidder?

The contract would be terminated in case it is proven that the bidder indulged in bribery. In case a bidder is found to have committed transgression in the last three years, than the principle can decide to ban the company for a stipulated period of time; min is 6 months and max could be for 3 yrs. Further, the Principle is also entitled to recovery of invested funds (this is dependent upon the provisions of the IP).

- In case of disqualification of the bidder the Principle is entitled to demand and recover the damages equivalent to Earnest Money
- Deposit / Bid Security.
- In case of termination of the bidder, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

## INDEPENDENT EXTERNAL MONITORS (IEMs)

### 18 What is an IEM?

Independent External Monitor (IEM) is the watchdog for smooth functioning of the IP program. IEM is responsible to ensure the credibility of the program.

### 19 What is the role of IEM?

An IEM can review independently and objectively whether and to what extent parties have complied with their obligations under the Pact. Accordingly, IEM would have access to all relevant documents, whenever required. Ideally, all IEMs of an organization should meet in two months to take stock of the ongoing tendering processes.

### 20 What are the requirements to become an IEM?

IEM should be an eminent personality of impeccable integrity and reputation. It is desirable that the persons proposed possess domain experience of the PSU activities or the relevant field with which they may be required to deal.

## 21 Process of appointing IEM?

The CVC would approve the name of IEM out of the panel of names, recommended by the PSU concerned. While forwarding the panel, the PSU would enclose their detailed bio-data, including postings at least ten years prior to superannuation, special achievements, experience, etc., in Government sector. For PSUs having a large territorial spread or those having several subsidiaries, there could be more IEMs, but not more than two IEMs would be assigned to one subsidiary.

## 22 Duration of an IEM and the process of his/her removal?

The normal term of an IEM is three years. It could be renewed for another term with CVC's consultation. CVC is authorized to remove an IEM if it finds some fault in IEM's working.

## 23 Can one person be appointed IEM for more than one PSU?

A person can be appointed as an IEM at the most for two PSUs.

## 24 Are the IEMs entitled for any remuneration?

IEMs are entitled for remuneration equivalent to that admissible to an Independent Director in the organization concerned. This remuneration would be paid by the organization concerned.

## 25 Is there any legal obligation to follow the advice of the IEMs?

The recommendations of IEMs would be in the nature of advice and hence would not be legally binding. Finally, it is the Management's decision whether to accept the IEM's recommendation.

## 26 Is the IEM a replacement of CVO?

The role of the CVO shall remain unaffected by the presence of IEM. A matter being examined by the IEM can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him or directed to him by the Commission.

## 27 Can an IEM approach CVC directly?

Normally, an IEM needs to investigate a case and submit his/her detailed report within 8 to 10 weeks to the management. In case, the IEM is not satisfied with the management then he/she can approach the CVC on case to case basis.

## 28 What is the role IEMs?

Following are the major role of IEM:

- The most important role of the IEM is to investigate complaints. The IEMs investigate the complaint and submit a report to the CMD within 8-10 weeks from the date of receipt of such complaint. Anyone can submit a complaint related to the procurement/bidding process to IEM. In case, the IEM is not satisfied with the steps management has taken then he/she can approach the CVC and seek intervention. A Bidder can directly approach the IEM in case an irregularity is found.
- IEMs are responsible to check the tendering process of the contracts falling under the threshold value.
- In a suggestive role, IEMs can also recommend changes in the tendering process of the organizations.

### 29 In case of receipt of complaints, is it necessary to keep on hold the processing of tenders?

Advice of the IEM should be followed in such cases. The advice of the IEM should come in the public domain, suggestively through the company website.

### 30 If any complaint goes to CVO, IEM and court at the same time, who will deal with it?

Court's jurisdiction would be followed, unless it directs IEM or CVO to take a decision on the issue.

### 31 Do IEMs require prior approval to inspect the books of accounts and other financial material of the principle?

IEMs are empowered by virtue of IP to inspect the books of accounts. Principle needs to fully co-ordinate in providing the required (also demanded) material for investigation. This provision extends to vendors. IEMs are empowered to inspect the required documents of the vendors in case of investigation.

### 32 Do IEMs need to sign a confidentiality clause?

Yes, IEMs need to sign a confidentiality clause, wherein, they pledge not to disclose any information to which they have access to, of confidential nature from the organization's point of view. The confidentiality clause is part of most IPs.

## SUB-CONTRACTORS

### 33 Are the Sub-Contractors mandated to sign the IP?

As per the IP clause, it is the responsibility of the bidders to get all its sub-contractors to sign the IP. If a sub-contractor is involved in any form of corruption, the principle has the right to get the case investigated and if proven terminate the contract.

## CIVIL SOCIETY

### 34 Is there a role for civil society?

Civil society in the respective country expected to play a key role in overseeing and monitoring the correct and full implementation of the IP. Civil Society can do a social audit on the effectiveness of the implementation of IP. The legitimate confidentiality of proprietary information to which civil society representatives would gain access, can be protected adequately through an appropriate contractual stipulation.

## GENERAL

### 35 Why adopt IP, if there are existing anti-corruption laws in place?

Despite the existence of anti-corruption laws, the persistence of corruption related problems in public contracting shows the need to develop alternate mechanisms that increase effective compliance of law and make it harder to corrupt. In this sense, the IP does not replace the law, but enables its compliance by leveling the playing field, and assuring the contenders that all will behave under the same conditions.

### 36 Are there other sectors where IP can be adopted?

Yes, apart from procurement, IP can be adopted in other sectors. Below are the suggested areas where it can be adopted.

- The buyer/ recipient of the state property as part of a government's state assets privatization programme;
- Consultants (engineering, financial, architectural or other);
- The beneficiary of a state license or concession such as for oil or gas exploration and production, mining, fishing, logging and other extraction rights.
- It can also be extended to government regulated services such as telecommunications, water supply

### 37 Has Integrity Pact begin adopted in Private sector?

As of now, IP has not been adopted by the private sector.

### 38 Integrity Pact has been adopted by the Indian Defense Sector, how far has it reached?

The Defense Procurement Procedures (DPP) 2006 for the first time introduced a provision called pre-contract Integrity Pact (IP), in a move to eliminate 'all forms of corruption' in defense deals. Further, the DPP 2006 also made a provision of appointment of Independent Monitors (IMs), who would be responsible to examine any violations of pact, brought to notice by the buyer.<sup>40</sup>

<sup>40</sup>However, the DPP 2006 and also the DPP 2008, which upholds the same, did not mention the precise role and power of the IMs. To fill up the gap the Amendment-2009, has made the provision, giving precise role and powers to this oversight agency. Henceforth, IMs are authorized to scrutinize complaints with regards to violation of Integrity Pact, through the access to 'the relevant office records in connection with the complaints sent to them by the buyer.' It may be mentioned that the Ministry of Defense (MoD) had made certain amendments to the Defense Procurement Procedures 2008 (DPP 2008) to further promote the domestic industry to participate in defense production; streamline formulation of qualitative requirements; ensure greater transparency and accountability in defense procurement; and facilitate offset transactions.

According to Defense Procurement Procedures 2011, Integrity Pact is applicable on the procurement worth Rs 100 crores & above and in Defense Enterprises at Rs 20 crores & above.

## Annex 1

### **CIRCULARS ON INTEGRITY PACT Issued By CVC and other Ministries of Govt. of India**

Circulars	Link
CVC Circular 4 Dec. 2007	<a href="http://www.integritypact.in/download/CVC%20Circular%20%204%20Dec.%202007.pdf">http://www.integritypact.in/download/CVC%20Circular%20%204%20Dec.%202007.pdf</a>
CVC Circular 19 May 2008	<a href="http://cvc.gov.in/008vgI00108.pdf">http://cvc.gov.in/008vgI00108.pdf</a>
CVC Circular 5 Aug 2008	<a href="http://www.integritypact.in/download/CVC%20Circular%205%20Aug%202008.pdf">http://www.integritypact.in/download/CVC%20Circular%205%20Aug%202008.pdf</a>
CVC Standard Operating Procedure 18 May 2009	<a href="http://cvc.gov.in/008crd013210509.pdf">http://cvc.gov.in/008crd013210509.pdf</a>
GOI, Ministry of Finance, Circular for PSUs on IP 20 July 2011	<a href="http://www.integritypact.in/download/GOI,%20Ministry%20of%20Finance,%20Circular%20for%20PSUs%20on%20IP%20%2020%20July%202011.pdf">http://www.integritypact.in/download/GOI,%20Ministry%20of%20Finance,%20Circular%20for%20PSUs%20on%20IP%20%2020%20July%202011.pdf</a>
GOI, DPE Circular for PSUs on IP 9 Sept. 2011	<a href="http://www.integritypact.in/download/GOI,%20DPE%20Circular%20for%20PSUs%20on%20IP%209%20Sept.%202011.pdf">http://www.integritypact.in/download/GOI,%20DPE%20Circular%20for%20PSUs%20on%20IP%209%20Sept.%202011.pdf</a>
CVC Circular 2 February 2015	<a href="http://cvc.nic.in/iembank25022015.pdf">http://cvc.nic.in/iembank25022015.pdf</a>

## Annex 2

## IP implementation budget items



Give it a try  
and fill this in

ITEM	NOTES	EXAMPLE		
		Unitary Costs	Units	Total
<b>IMPLEMENTATION COSTS</b>				
Human resources (including time invested by staff & supervisors)	Estimate the number of staff, professionals and managers you will need to involve in the process, and how much time they need to invest. This will all depend on the IP duration, the project complexity and the number of contracting processes to cover. Note that the duration of the IP in turn depends on the type of project and the coverage of the monitoring. Include the time necessary to prepare and implement the IP, to communicate about it and to make all necessary reports. A detailed calculation of these costs is particularly important if the lead implementer role will be played by an NGO, or by a government institution in which additional staff need to be assigned.			
Outsourced technical expertise (external consultants other than the monitor)	These are specialised experts to complement the monitor. Water sector projects are usually highly technical and complex, so it is likely an array of expertise will be needed that a single person is unlikely to have. For example, if the main monitor is a civil engineer with expertise in water supply infrastructure and your project deals with the construction and operation of a water supply utility by private operators, you may need to add expertise in public-private partnerships and in legal and investment banking. Someone with expertise in utilities may also come in useful. These costs can be included as hourly fees or as part-time involvement from the required professionals.			
Logistical costs of activities & events (public hearings, training sessions, etc.)	Cover costs associated with implementing workshops, events and public hearings - including the location; any costs associated with event management; participants' travel costs, if necessary; translators if different languages are spoken, etc.			
Printing & publication of reports, brochures, communications etc.	In this and the next item, consider all costs associated with communicating about the IP process, how it works and its results before, during and after its implementation. Include all expenses related to the increased access to information that implementing the IP entails; for example, if you set up a special Internet platform to publish bidding documents or if you issue regular newsletters on how the project is advancing. These costs can be reduced by using existing infrastructure (e-procurement sites, the agency's or NGO's websites, a public radio programme or simply office information boards, etc.).			
Administrative & fixed costs	These may be absorbed differently depending on whether more implementing responsibilities are taken by the authority or by the NGO. They include all administrative and operational costs not included above (office rent, office supplies, electricity, etc.)			
<b>MONITORING COSTS</b>				
Monitor fees	Hourly fees can change depending on location and whether local or international fees apply. Usually the level of effort required is estimated in number of hours and an hourly fee is paid. To keep costs predictable and under control, a cap of a maximum amount can be established. It is important to include follow-up mechanisms to determine the actual number of hours worked.			
Monitor's expenses (travel, fixed costs, etc.)	This is particularly important if on-site visits are foreseen or if the project location is elsewhere than the agency headquarters.			
<b>TOTAL ESTIMATED IP COSTS</b>				



## Annex 3

### IMPACT ASSESSMENT SURVEY OF INTEGRITY PACT- 2014

#### Questionnaire for Bidders/Vendors/ Independent External Monitors/ Public Sector Undertaking/ Chief Vigilance Officer

1. Tell us about your experiences on IP and its implementation under the following rubriques:
  - a) Strengths of IP system
  - b) Weaknesses of IP system
  - c )Areas requiring improvement
  - d )Problems in implementation of IP system
2. Do you feel that suppliers of goods, services and consultancies are aware of IP? Yes/No
3. Do you feel that the Integrity Pact (IP) has helped in making procurement process more transparent? Yes / No
4. Do you think an IP compliant PSU should be exempted from signing IP document as a bidder? Yes/No
5. Is signing of IP documents once by each bidder sufficient than signing IPs for each bid? Yes/No
6. Is/ are contractor(s)/ bidder (s) extending adequate cooperation, support and facilities for the IEMs to discharge their responsibilities satisfactorily? Yes/ No
7. Is/ are contractor (s) / bidder(s), especially foreign bidders extending adequate cooperation and support to the PSUs in implementation of Integrity Pact programme? Yes / No
8. Do you think insistence on implementation of Integrity Pact serves no purpose in case of tenders awarded on nomination basis (single tenders)? Yes/No
9. Does your PSU has any policy to check Previous Transgression/banning policy? Yes / No
10. By what criteria does your PSU define/ interpret Previous Transgression?
11. Is there a need to exclude sub-contractor from the purview of IP? Yes / No
12. Is there a need to make contractor responsible for defaults of his sub-contractors? Yes / No
13. Do you feel that the Private Sector should also adopt the IP? Yes / No
14. According to you, what steps can be taken to persuade the private sector to adopt IP mechanism?
15. Do you think there is a need for state PSUs to adopt IP mechanism? Yes / No
16. Which institution in your opinion can help in appointing IEM for state PSUs?
17. Do you think foreign companies should also be required to sign Integrity Pact to operate in India? Yes / No
18. Do you think deviations in terms of non-compliance of Integrity Pact by foreign companies be allowed in certain cases? Yes / No
19. Do you feel the IEM(s) is/are duplicating the work of your vigilance department? Yes / No
20. Has PSU that you have interacted with made any modifications in model IP clauses while implementing IP? Yes / No
21. Do you think that there should be ranking of PSUs based on implementation of IP? Yes / No
22. Do you think that there should be some incentive for companies to comply with IP? Yes / No
23. Do you feel IEMs are providing good services? Yes/No
24. Do you think there should not be any direct association/interest of IEM in the PSU in which they are appointed? Yes / No
25. Has there been any instance for the same? Yes / No
26. What are your views about inclusion of IP in Public Procurement Bill?

27. Should IP be made mandatory in the emerging Public- Private Partnership (PPP) framework for most projects? Yes / No

28. In your views how far Integrity Pact is effective in dealing with emerging crony capitalism in India? And how can it be further strengthened to deal with the situation?

29. Are you satisfied with the role played by TI India in IP program? Yes / No

30. What are your suggestions with regard to role of TII in strengthening Integrity Pact?

### PSU and CVOs

31. Does the pre-condition of signing IP (with IP compliant PSUs) for participating in bidding an unnecessary hassle? Yes/ No

32. Have your PSU made any modifications in the Integrity Pact as far as implementation is concerned? Yes / No

33. Do you think signing MoU with Transparency International should be made mandatory for all PSUs? Yes / No

34. Please state briefly about benefits accrued due to implementation of IP in terms of-

(a) Has there been any reduction in cost of procurement/works? Yes / No

(b) Has there been any reduction in complaints against your officials' integrity and general improvement regarding integrity of your PSU? Yes / No

(c) Has the conduct of bidders/contractors become more ethical in not inducing/pressurizing the officials to indulge in corrupt practices? Yes/No

(d) Has there been any reduction/ elimination of instances of cartel formation by bidders? Yes / No

(e) Has there been any reduction in extraneous interferences in awarding and managing contracts? Yes / No

(f) Any reduction in instances of contractors going in for arbitration/legal proceedings to settle their claims/disputes?

35. Do you have a policy to check no Previous Transgression by the bidder occurred in the last three years with any other company in any country/banning policy? Yes / No

36. By what criteria does your PSU interpret/ define Previous Transgression?

37. Have the IEMs been adhering to the Non-Disclosure clause of the Integrity Pact? Yes/ No

### IEMs

38. Is monitoring of IP after the award of work effective? Yes/No

39. What measures can be taken to help IEM(s) to improve their level of services?

40. Do you feel IEM(s) should be given Secretarial assistance? Yes / No

41. Do you feel that there is a duplication of work carried out by the Vigilance department and the IEM? Yes / No

42. Does the Management of your PSU accept the advice of IEMs in all the cases? Yes/No

43. Do you feel the adoption of some technology would help in IP's effectiveness? Yes / No

44. Do you feel PSUs get enough support and guidance from CVC? Yes / No

### Bidders

45. Do you think IEMs play an arbitrator's role in facilitating transparency in procurement ? Yes/ No

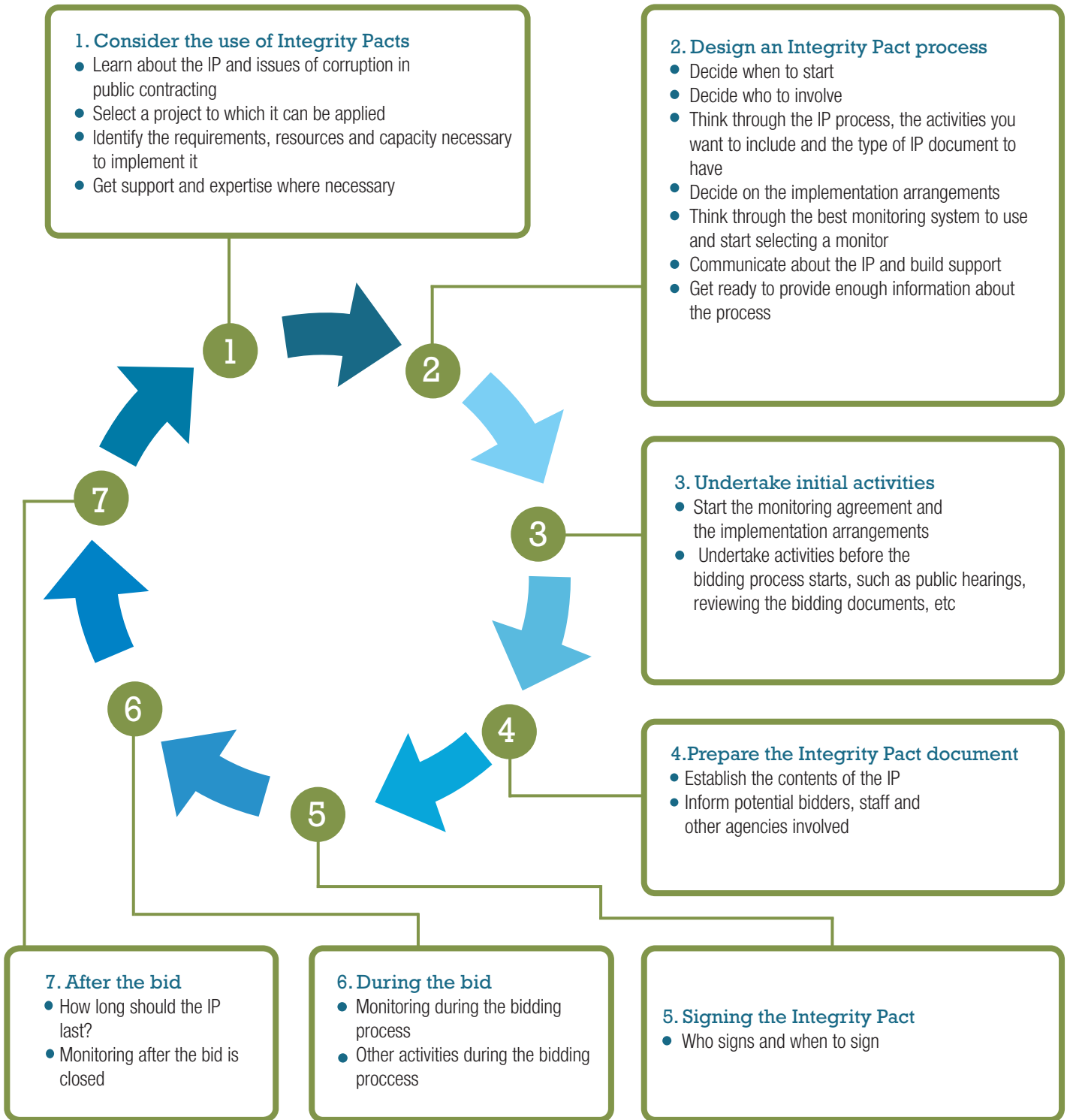
46. Do you think that in cases of your complaint against the PSU the IEMs are impartial in their approach? Yes/No

47. Do you think that the IEMs mechanism serves any purpose? Yes/No

48. Do you think that the mechanism of IEMs should be abolished? Yes/No

49. Do you think that the manner of appointment of IEMs needs alteration? Yes/No

# ROAD MAP TO INTEGRITY PACT IMPLEMENTATION<sup>45</sup>



<sup>45</sup>Integrity Pact in Public Procurement: An Implementation Guide. Transparency International. 2013



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