

Defence against Corruption project Background paper

Application of Integrity Pacts (IPs) in the Public sector in Mexico – how they work May 2006

Introduction

As part of the initiative to introduce Integrity Pacts into Defence tendering, TI(UK) spoke with Eduardo Bohórquez and Gabriela Ramirez Quijada of Transparencia Mexicana (TI Mexico) on their extensive experience with using Integrity Pacts. Although these are not in the defence sector, the Mexican experience is a useful guide to how they work generally.

1. General

Transparencia Mexicana (TM) has done about 30 Integrity Pacts (IPs) over the last 4 years. These pacts have covered a total contract value of about \$9.2 billion. These Integrity Pacts are special to Mexico, in particular because Mexico does much of its public procurement on the internet via e-auctions. About 22,000 auctions of the federal government are conducted each year. Companies have the right to enter these auctions, and so the IP has to be adapted so it can work in this more 'automated' environment.

See list of IPs and companies in Appendix 1. No companies made no formal notifications of problems with any IP.

2. What form does the IP take?

There is a contract. Bidders sign a general collaboration agreement with the government entities in which Transparencia Mexicana (TM) applies the IP methodology, and also sign an addendum to this agreement to specific the acquisition name, social witness name and other characteristics. It fits in with the e-auction process.

There is a strong emphasis on the role of the Independent Monitor, who is called the 'Social Witness' in the TM approach. This person physically attends all the meetings and is an expert of the theme of the acquisition process. The Social Witness also reviews the 'terms of reference'. This covers the technical, legal and the financial requirements. This is equivalent to the Statement of requirements and the technical specification in military terminology.

TM place great importance on withdrawing from the process if they believe the conditions are not in place for a clean procurement. There has been one example, to do with the contracts for advertising Mexico's image abroad. This was a suite of 7 contracts, and TM was not convinced of the probity of the deal and so withdrew. It resulted in the

resignation of the Minister for Tourism. In addition, they may withdraw if they find the Terms of Reference questionable. Or they may decide to investigate the concern further, and if it is substantiated then they withdraw very publicly.

TM requires the bidders to sign the Integrity Pacts and they sometimes require the relevant Government Minister to sign personally. Formally, the Government invites TM to choose and to appoint a Social Witness.

3. The Social Witness

Social Witnesses are usually people who are eminent in their own fields, who are viewed as having good morals, and are independent of any conflict of interest. TM currently have 20 such people. An example of one such witness is the Dean of the faculty of engineering at the major university.

Members of this group have their own knowledge networks, so they can tap into other knowledge if they need it as part of their social witness role. In addition, they operate together as a network, with TM's encouragement and support, so they can learn from each other. They are all chosen by TM. The TM Board plays a very active role in finding such people.

The social witnesses are all paid for their role. The public would view non payment with suspicion ('where are they getting their remuneration from?') and so TM place great importance on seeing that they get paid. The amount is less than a full commercial rate but is nevertheless substantial. They are paid about \$185 US dollars per hour, with a cap of \$5000 per month. An average IP will use about 50 to 90 hours, and could last over the course of a year.

TM have found four different ways of funding the Social witness.

- The bidders and the government all contribute into a special fund, and the SW is paid from this fund.
- The State assumes the cost of the SW
- TM assumes the cost of the SW. This happens where TM withdraw
- A clause is introduced into the procurement contract whereby the successful bidder is invited to pay for the social witness

So far, about 70% of the 30 that TM have done have been funded by the State. Usually the State funds it through an agency who pay the money to TM, who in turn pay it on to the SW. About 25% of the cases have been funded by the winner. TM has paid for the others. The funding of the Social Witness is an 'intense' discussion at TM.

4. Demand for Integrity Pacts

TM gets about more than 500 demands in the 3 past years to do Integrity Pacts. They only agree to do about 10 each year, being the ones that they believe will have the largest social impact.

5. Risks

The major risk to TM is to their reputation. IPs are only one of the things that they do, and they do not want to see an issue over a single contract damage their overall reputation. They are aware of the legal risk, but see it as much less significant than the reputational risk.

They are well aware that there are many ways in which a corrupt bidder or government official can influence the outcome without the independent finding it. They believe that by having the independent and by bringing media exposure to it – through choosing it as one to apply the IP and SW to – the pressure on the bidders and the government is much higher and therefore the risk of corruption is lower.

TM find a significant issue is the conflict sometimes between ‘getting best value’ and integrity. Many things they could say would lead to better value, and sometimes this does happen. However, it can also be the case that the decision is just one that they disagree with (eg the building of a big new dam) and they have decided that it is not their role to question the requirement, only to ensure the integrity of the procurement. Equally, some value for money comments will be seen as having an influence on the competitive picture; again they have concluded that this is not their role and that they should confine themselves to reviewing integrity issues only.

6. Defence contracts

TM does not implement IPs on defence contracts. This is for two main reasons. First, because of the free trade agreement between the USA, Canada and Mexico many of the defence procurements are not open competitions. Second, defence is not a major social priority in Mexico. For example, a single social programme costs 6% of the national budget, whereas defence only takes up about 1%. TM has concluded that because they focus on having a social impact then defence is not a priority for them.

7. Conclusion

Integrity Pacts have been extensively used in Mexico over the last three years – with demand for them by the Mexican Government far exceeding supply. Crucially, Mexican IPs have been characterised by a ‘social witness’, who attends all the meetings, is an expert on the theme of the acquisition process, and reviews the ‘terms of reference’. The social witness is key to the Mexican IP’s success in ensuring enhanced transparency and accountability in competitions.

Appendix 1

Government Entity	Year	Sector	Integrity Pact	Completed or On Going	Hours dedicated to IP	Intern'l Enterprises (bidders)	Funding (mexican pesos)
Gobierno del Distrito Federal (Mexico City Government)*	2001	Services-Insurance	Hiring of the Transport Insurance Program	C TM withdrew from the IP	no record	no record	TM withdrew from the IP
Comisión Federal de Electricidad (Federal Electricity Comission)*	2001	Services-Insurance	Hiring of the Integral Insurance Program 2001-2002	C	no record	no record	no record
Secretaría de Hacienda y Crédito Público (Treasure Ministry) e Instituto de Protección al Ahorro Bancario (Institute for the Banking Savings Protection)*	2001	Finance	Procedure of sale of the representative actions of the 100% of the share capital of Bancrecer, S.A. (Privatisation)	C	no record	no record	no record
Secretaría de Hacienda y Crédito Público (SHCP) e Instituto de Protección al Ahorro Bancario (IPAB)*	2001	Finance	Procedure of sale of the representative actions of the 100% of the share capital of Aseguradora Hidalgo S.A. (Privatisation)	C	no record	no record	this IP was paid by the winner bidder
Compañía de Luz y Fuerza del Centro (Ligth and Power Company)*	2002	Services-Insurance	Hiring of the Insurance Program	C TM withdrew from the IP	no record	no record	TM withdrew from the IP
Comisión Federal de Electricidad (Federal Electricity Comission)*	2002	Electric power infrastructure	Operation, routine and greater maintenance of the system of fuel unloading by monobouys	C	100	none	this IP was paid by the government entity
Comisión Federal de Electricidad (Federal Electricity Comission)*	2002	Services-Insurance	Hiring of the Integral Program of Securing 2002-2003	C	35	none	this IP was paid by the government entity

Comisión Federal de Electricidad (Federal Electricity Commission)*	2002	Infrastructure	Road access construction first stage, excavations and treatments of the hallway of entrance and exit deflection of the Hydroelectric dam "El Cajon"	C	100	none	this IP was paid by the government entity
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Comisión Federal de Electricidad (Federal Electricity Commission)*	2002-2003	Electric power infrastructure	Construction of the hidroelectric dam "El Cajon"	C	148	Construcoes E Comercio Camargo Correa S.A. / Constructora Andrade Gutierrez S.A. / General Electric International Operations Company, Inc.	this IP was paid by the government entity
Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the National Public Relations Services	C TM withdrew from the IP	107.5 for all the IP's of this entity		TM withdrew from the IP
Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the National Publicity Services	C TM withdrew from the IP			TM withdrew from the IP
Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the Publicity Services for Northamerica and Canada (mexican markets)	C TM withdrew from the IP			TM withdrew from the IP
Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the Publicity Services for Europe (mexican market)	C TM withdrew from the IP			TM withdrew from the IP

Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the Publicity Services for the Latin América and Caribe mexican markets	C TM withdrew from the IP			TM withdrew from the IP
Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the National Marketing Services	C TM withdrew from the IP			TM withdrew from the IP
Consejo de Promoción Turística de México (Mexican Tourism Promotion Council)*	2003	Tourism	Procedure for Hiring the Marketing Services for the Northamerican market	C TM withdrew from the IP			TM withdrew from the IP

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Caminos y Puentes Federales de Ingresos y Servicios Conexos (CAPUFE)*	2003	Communications and Transports Infrastructure	Procedure for hiring a Firm to Administrate the electronic toll system	C	68	Sainco de México, S.A. de C.V. subsidiary of the Group Abengoa (Spain)	this IP was paid by the government entity
Comisión Federal de Electricidad (Federal Electricity Comission)*	2003	Energy Infrastructure	Liquefied natural gas distribution service in Altamira, Tamaulipas.	C	26.25	Gas del Litoral, S.A. de C.V., a subsidiary of the the group Royal Dutch Shell	this IP was paid by the government entity
Consejo Nacional para la Cultura y las Artes (Arts and Culture National Council)*	2003	Computer	Acquisition of computer equipment	C	57		none
Instituto Federal Electoral (Federal Electoral Institute)*	2003	Services	Production of the electoral voting ID	C	91	none	this IP was paid by the government entity
Secretaría de Comunicaciones y Transportes (Transports and Communication Ministry)	2003	Transportation Infrastructure	Concession for the construction of the Suburban Train	On going	In this IP we have been working since june 2003	On going	On going

Secretaria de Seguridad Pública(Public Security Secretariat)	2003	Services-Insurance	Hiring of the Insurance Program	C	109	none	this IP was paid by the government entity
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Hiring of the Second stage of the digital satellital connectivity	C	57	none	this IP was paid by the government entity
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Hiring of the Third stage of the digital satellital connectivity	C	57	none	this IP was paid by the government entity

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Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Allocation to support for the construction of infrastructure for public service of local basic telephone and long distance residential type (rural zone)	On going	46	none	this IP was paid by the government entity
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Concession for the orbital geostationary position 77° West and associated frequency bands	c	44	SES Americom, Inc	this IP was paid by the winner bidder
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Concession for the use, exploitation and operation of the frequency bands of the satellital espectra for radiocommunication system	On going	In this IP we have been working since april 2004	On going	On going

Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Concession for the use, exploitation and operation of the frequency bands of the satellital spectra for radiocommunication system	On going	In this IP we have been working since april 2004	On going	On going
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Concession for the use, exploitation and operation of the frequency bands of the satellital spectra for radiocommunication system	On going	In this IP we have been working since april 2004	On going	On going
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2004	Telecommunications Infrastructure	Concession for the use, exploitation and operation of the frequency bands of the satellital spectra for the telecommunications system	On going	In this IP we have been working since april 2004	On going	On going
Comisión Federal de Electricidad (Federal Electricity Comission)*	2004	Services-Insurance	Hiring of the Insurance Program 2004-2005	C	46	none	this IP was paid by the winner bidder and the government entity (50%50%)

Government Entity	Year	Sector	Integrity Pact	Completed or On Going	Hours dedicated to IP	Intern'l Enterprises (bidders)	Funding (mexican pesos)
Municipio de Saltillo (Saltillo Municipality)	2004	Infraestructure	Hiring the services for integral cleaning of residual water	C	169	Degremont, S.A. de C.V. -group Mexico- (Degremont, France)	this IP was paid by the winner bidder

Comisión Federal de Electricidad (Federal Electricity Commission)*	2004	Energy	Hiring the services of natural gas provision in the zone of Baja California, Mexico, until an amount of 60.992 Gigacalorias per day	C	81	Sempra Energy LNG Marketing Mexico S. de R.L. de C.V.	
Consejo Nacional para la Cultura y las Artes (Arts and Culture National Council)*	2004	Computer Services	Acquisition of computer equipment	C	95	none	\$410,650.00 this IP was paid by the government entity
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2005	Telecommunications Infrastructure	Hiring services for the e-Mexico Data Center operation	On going	In this IP we have been working since february 2005	On going	On going
Secretaria de Comunicaciones y Transportes (Transports and Communication Ministry)	2005	Infraestructure	concession for the construction and operation of the superhighway Monterrey-Saltillo	On going	In this IP we have been working since march 2005	On going	On going