



Transparency International UK

## Defence against corruption project

### Short note on: Defence Integrity Pacts

#### Introduction

According to the US Department of Commerce, defence procurement accounts for about 50% of all bribes paid in the world. In response to this challenge, defence establishments are now increasingly confronting the issue, and taking the lead in fighting corruption. In doing so, and overcoming the practical hurdles involved, they can become a model for the rest of Government.

TI(UK) is working with proactive, reformist governments to apply 'Defence Integrity Pacts' to defence procurements. This note explains briefly what Defence Integrity Pacts are and how they contribute to cleaner defence procurement. Integrity Pacts are being successfully used in other industries, such as telecoms, electricity, construction, municipal supply contracts, but have only recently started to be applied in the defence sector.

#### What are Defence Integrity Pacts?

Integrity Pacts vary from country to country, and sector to sector, to suit national and sectoral needs. However, there are three main features:

- A **contract**, in which all the bidders and the Government agree to certain, specified no-bribery pledges, and the bidders agree to enhanced disclosure rules. In addition, the bidders agree to sanctions, particularly withdrawal from the tender, in the event that they are found not to abide by the agreed pledges
- The use of an **Independent Monitor(s)**, who ensures that all the parties abide by their commitments under the pact. This usually includes the use of an independent technical expert who reviews the tender documents for bias and corrupt influence, and who is available to bidders in case of concern or complaint
- More **public transparency** of documents and process. In this way it is easier for civil society to have an input, and to see that the principle of transparency is being undertaken

The contract includes some or all of the following:

- Pledge and undertakings by bidders not to offer or accept bribes
- Pledge and undertakings by the government, their consultants and advisers. The anti-bribery part of the pledge is comparable to that signed by the bidder

- Disclosure of details of agents or intermediaries. This disclosure may only be of the name and services contract of the agent, but may also require disclosure of payments to and from the agent
- The appointment of an independent monitor or monitoring team. Access by the monitor to all meetings and unrestricted access to all material documents
- Publication of some or all of the documents, evaluation criteria, bidders' proposals and the detailed results of the evaluations. In some cases, public hearings for discussions of the bid
- Bidders agree to withdraw if there is evidence of breach of the pledge. Further sanctions may involve exclusion from bidding for subsequent contracts

The template pact document is being updated from case to case as experience is developed with them. Transparency International (UK) is also working with a defence company and a well-known legal firm to further strengthen the usability of the core document. Pacts are specific to each country, and thus their content may be more extensive in some areas and less extensive in others.

### **The Independent Monitor**

The Principal appoints the Independent Monitor. How this is done is important, as it is essential that the Monitor's independence is not compromised by the nature of the appointment. Where the Monitor is a person or body outside of government, this may be done through a letter of appointment, setting out the role including, inter alia, the formal independence of the monitor from all parties, the obligation to publish all findings, and their being held harmless by the government for any claims against them.

The choice of the Independent Monitor is very important, and depends greatly on national circumstances. It could be an independent anti-corruption government body in the country, or a highly respected person, e.g. a former judge or senator, a highly respected academic, a professional independent assessor, or a civil society organisation.

Whichever individual or organisation is selected, there are three main tasks for the technical expert:

- To review the Statement of Requirements, Technical Specification and evaluation methodology to ensure there is not a corrupt bias or uncertainty which could be an opening for corrupt influence.
- To be available to the bidders to assist in questions or complaints about any of the above documents or any technical aspect of the process
- To attend the evaluation panels so as to be able to offer assurance that the detailed technical evaluation criteria were indeed evaluated correctly.

### **How do Defence Integrity Pacts help?**

Integrity Pacts work on several levels to support the procurement process:

- They supplement weak laws, by making contractual requirements, for example of greater disclosure of information
- They attract more bidders by providing independent technical scrutiny

- They give more confidence to bidders through a visible effort at clean procurement, eg a route for complaints to be realistically addressed.
- They reduce the costs of contracts
- They supplement weak or slow enforcement by strengthening the sanctions. They are applicable at the time of the tender, rather than after award
- They can be developed to provide independent assurance throughout the *execution* phase of the contract as well as the tender phase
- They strengthen public confidence, and serve to temper the public cynicism that can surround large, secretive contracts. The defence procurement process often has a poor reputation, is subject to political influence internally and externally.

### **Experience to date with Integrity Pacts**

The experience of Integrity Pacts dates from their development in the 1990s in some dozen countries, for example South Korea, Germany, Chile, Argentina, Ecuador, Mexico, Colombia, Italy. In several Latin American countries they have become an established tool of addressing corruption in government procurement. Integrity Pacts are being developed for global application within the Construction and Engineering Industry, eg, in the construction of the new Berlin airport.

Defence Integrity pacts are being developed by Transparency International in countries where the Defence establishment is keen to build the integrity of their organisation. This work started with an extensive engagement with the Defence Ministry in Colombia, and is currently being developed in Latvia and Poland. In addition, other Transparency International Chapters are working with their national governments. In South Korea, Integrity Pacts are about to become a regular anti-corruption tool in major procurements, with a specific ombudsman office set up for the purpose. Integrity Pacts are beginning to be applied on defence procurements in India. This is an important step forward: India was the largest importer of defence products in 2005.

Developing Defence Integrity Pacts is 'Work in progress'. We believe that the evidence so far, is positive in the defence procurement arena. Integrity Pacts are not, however, a panacea: for example, they do not address structural issues like reform of the procurement organisation, or legal issues. They must be used as part of a broader defence anti-corruption strategy.

### **Contacts**

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