

Integrity Pact Implementation in Mexico & lessons for the application of Defence Integrity Pacts

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TI UK – Defence Against Corruption programme**

I. Introduction

Integrity Pacts are an anti-corruption procurement tool developed by Transparency International. In the years since its inception, Transparency International UK's Defence Against Corruption programme has piloted the use of Defence Integrity Pacts as a tool to promote transparency and fight bribery and corruption in defence procurements. While Defence Integrity Pacts are still relatively new in their application, Integrity Pacts (pacts that are not specifically tailored for the defence sector) have been in use in various sectors since the late 1990s, and have been employed in hundreds of cases by Transparency International national chapters.

Transparency International Mexico (TIM) has been especially active in working with the public and private sectors in Mexico to run Integrity Pacts. One such experience was recently documented in the form of interviews with participating parties to an Integrity Pact for production and service of a major train line to run through the central Mexican Valley. Interviews were conducted with industry representatives from the bidding companies, government procurement officials, and civil society representatives from TIM. These interviews are an important source of first-hand Integrity Pact experience. They were conducted primarily with a view to shedding light on the process for parties interested in participating in an Integrity Pact or Defence Integrity Pact, and we hope that the experiences of those interviewed, recounted within, serves this purpose.

Interviewees were overwhelmingly positive in their assessment of their Integrity Pact experience, despite the appearance of some difficulties and setbacks during the course of procurement. Indeed, more than one of the interviewees suggested that the presence of the Integrity Pact pledges and the Independent Monitor were crucial in guiding the process through the most difficult periods. Additionally, all of the representatives interviewed expressed the view that the Integrity Pact gave assurances to all participants of the probity of the deal, as well as demonstrating this integrity to the citizenry through transparency.

Unfortunately the losing bidders did not respond to interview requests. It is important to note however that they were disqualified on technicalities rather than any suggestion of illicit behaviour. For a more detailed overview of the participants' experience, please see on the [Defence Against Corruption](#) website.

What follows is a series of highlights from the interviews.

II. Background

History

The Secretary of Communications and Transportation (SCT) chose to work with Transparency Mexico in 2005, to integrate an Integrity Pact into the contest for the provision of a Suburban Train to the Metropolitan Zone in the Valley of Mexico, Cuautitlan-Buenavista route. The Integrity Pact was designed to help eliminate corruption risk in this important deal through enhanced transparency in public policy and business, as well as to effect lasting change in the legal culture through the promotion of best practice.

The Pact required the convening entity (the SCT) and the bidders to pledge to refrain from engaging in corruption throughout the procurement process. Building on the goodwill of the convening institution and the bidders, this agreement led to a signed endorsement of the “Unilateral Declaration of Integrity.” Transparency Mexico was invited by the SCT to witness the development of the entire process, from base review, access to the “Information Room”, visits to the site, questions and answers about the process, qualifications of the participants, delivery and rating of the proposals, and the decision itself. Transparency Mexico designated an Independent Monitor to be present (or represented) at all events related to the bidding. The monitor gave a final report to the public.

Independent Monitor

The Independent Monitor was nominated by Transparency Mexico. Qualities they sought were a well-established record of professionalism, honesty and integrity, such that the monitor’s oversight would promote justice and neutrality.

The monitor had the following functions to fulfil:

- To observe every stage and act of the bidding process
- To propose mechanisms to make the process more transparent and fair
- To write a public report on what was witnessed. This was not a certificate of probity or legality, but rather a formal testimony to civil society, outlining the process, the measures adopted to avoid dishonest practices, and any necessary, timely observations and suggestions to improve future processes. The report is made public at the end of the process.

The Independent Monitor is not an inspector or auditor and did not pass judgment on the legality of the process.

In the case of the tender for the Suburban Train, Transparency Mexico designated engineer Jose Manuel Covarrubias as the Independent Monitor for SCT.

Voluntary Participation

Transparency Mexico’s participation to promote an honest, neutral, and transparent process, required that expenses incurred by the Independent Monitor (such as fixed expenses incurred as part of the organization’s central structure) be covered by the

institution soliciting their services and participation. This took the form of a donation. The cost of participation was symbolic in relation to the enormous benefit provided, in terms of enhanced probity and the fact that the successful firm has, in the eyes of the public, the full credibility of a fair and honest process.

A note on the disqualification of the first round

In the Suburban Train procurement, the first round of bidding was declared void after the technical offers of the two final bidders were deemed non-compliant with the Bidding Principles. Each bidder was told where they had shortfalls, and both resubmitted revised bids. Both of the revised offers passed the technical evaluation in the second round.

III. Company Perspective

Interview with Jesús Esnaola (JE), director of CAF Group, the winning bidder

Mr Esnaola spoke of his desire for “a public and open tendering process” long before the Integrity Pact had been put into place, and felt that the Integrity Pact was extremely helpful in achieving this end. On the process, he said, “The tender has, overall, been transparent, and it has been good...because there was an organisation like TIM that was present throughout, which gave us at CAF a great sense of calm about how the process was developing. Like all complex processes, it has its difficult points and low points, but in the end, the presence of TIM and the Integrity Pact gave us a sense of security and peace of mind.”

“...it’s a very positive tool, without a doubt.” – Jesús Esnaola, director
of CAF group, the winning bidder

Asked if the Integrity Pact was effective, Mr Esnaola said, “I think so, I think the document is good, the process as a whole is good, but my only recommendation is that TIM [should] have the authority and means to do the work...TIM needs more resources... We understood throughout the process that there was someone accompanying the process; there’s no doubt that the presence of TIM gave us guarantees.”

Mr Esnaola saw benefits for everyone involved, especially the citizens of the Mexican Valley. “The saving isn’t for the government or for...the company – although our aim, clearly, is to make money as well – but for the Mexican families that live in the Valley... If we think of the value in terms of money that can be invested [elsewhere], then the social impact is huge and that’s why an Integrity Pact is involved.”

Finally, Mr Esnaola was asked what he would say to other bidders looking at potential Integrity Pacts in other countries. “I think it’s a very adequate tool and I think without doubt you should participate... it’s a very positive tool, without a doubt.”

IV. Government Perspective

Interview with Aaron Dychter, Deputy Minister of Transport

On why the Ministry of Transport requested the assistance of TIM on the Suburban Train contracting process, Mr Dychter said “We realised that working with the government of the state, the government of Mexico City and the federal government, we had the possibility of carrying out this very, very complex project, which required private investment and participation, plus federal resources...We were interested from early on in Integrity Pacts and in involving TIM, [who] fortunately decided to accept the project.”

Once the project had begun, Mr Dychter and other Ministry official began to appreciate the involvement of civil society more than they would have guessed. “We didn’t aim for it to be so complicated and long, but we’re talking about a complex process...It was precisely because it was so complicated that we began to appreciate the relevance and the importance of having an Independent Monitor and an Integrity Pact. Why? Because we had a first tender and after some time passed and we adjusted the terms of reference, and there were so many participants, and some stayed and some didn’t...We were able to talk it through with TIM, through the Independent Monitor who observed the process, so we had someone who we could reflect with.”

As the first bid had to be cancelled, the Integrity Pact became even more important. “We had to declare that the first process was abandoned. When this happened in a country like Mexico, with one of the most attractive and needed projects, this generates [sic] all kinds of suspicions. Even without our history TIM would be necessary, but given this history the chance to have society observe, witness the process, was important...We immediately launched a second contracting process and fortunately the same two bidders signed up. Each had been told where they had failed and this time both technical offers passed, were approved...In sum, in a complicated situation, involving a tender process and a project that had been awaited for many years, that’s when you need the positive impact of an Integrity Pact and an Independent Monitor.”

“I insist that the experience with [TIM] on the suburban train, again

long, complex as it was, was invaluable.”

– Aaron Dychter, Deputy Minister of Transport

Mr Dychter was asked how the losing bidder felt at the end of the process. “They were able to review the process and it was explained to them – and again the support of the Integrity Pact was crucial, because TIM could have abandoned us if we’d done something dirty. Without this oversight we would have run the risk of throwing this important project out.”

Of course, running an Integrity Pact is not without cost. Did this have an impact on the process? “We’re talking of a project of about US\$600 million. The payment to TIM, in

round numbers, was US\$100,000. This sum, compared with the total cost of the project and the benefits of having a project underway today with zero questions is absolutely minimal. But it's important not to just look at numbers. The other side of the process, especially as government, is that we have proper rules, norms that have to be respected, and I think the issue at the core is fairness. We are talking about promoting transparency, equity, ethical behaviour. If the question is whether by paying an honorarium to TIM we were breaking with equity, transparency, the ethics of someone; then I feel the answer is absolutely no. I insist that the experience with [TIM] on the Suburban Train, again long, complex as it was, was invaluable. We had an [Independent Monitor] who worked I don't know how many hours, but he worked hard. He read every document, had to be present in meetings, made notes, asked us for extra meetings to exchange points of view, assisted each meeting of the consultative council we invited him to. He was seriously committed, and I don't see anyway in which ethics, or transparency, were broken."

Mr Dychter continued on the Independent Monitor: "The monitor really is beneficial to any process of this type, because he helps in some way to keep the process on track – you are always involved in the detail, and the monitor can observe the whole context."

Finally, Mr Dychter shared his views on the importance of the Integrity Pact in moving towards a more transparent style of procurement: "I'm not recommending this tool as something that should be used once in a while to correct something that is being observed or that society is worried about at that time; or as some kind of certification or something. No, what I'm saying is that we should think of it in a structural way. If we are going to use this tool it's because we require society to participate, to observe, to see that things are done properly and see them in time, if not by an Integrity Pact, then by some other means, but the point is that society can be present. At the moment, with the history in our country, we are making efforts, and learning, and I think the Integrity Pact is a tool to move forward. We need the tool today, the presence of the Independent Monitor, project by project, but if we add up these experiences, consistently over time, it will become something structural that guides our behaviour. And this means putting it on the agenda of society so that at the level of each municipality, society demands and creates the incentives for a more transparent process."

V. Civil Society Perspective

Interview with Transparency International Mexico (TIM)

TIM has participated in 51 Integrity Pacts, 43 of which were complete at the time of interview. The organisation felt the Suburban Train project was especially challenging, due to the magnitude of the deal (with a projected investment of US\$600 million over 30 years) and the involvement of multiple levels of federal government: "technical and financial complexities were quite significant compared with other Integrity Pacts." As the (CAF) group pointed out, Mexico is among the 15 largest economies in the world, and the communication and transport sector to which this deal related has played an increasingly important economic role, currently at an annual average growth rate of 6.5%.

On the issue of Integrity Pact funding, "there are three forms of financing for an Integrity Pact:

- 1) Government funding: the soliciting party decides to absorb full costs of the Integrity Pact.
- 2) Winning bidder funding: the soliciting partner decides that the winning bidder will absorb the cost of... the Integrity Pact (if the amount awarded by the Memorandum of Understanding is sufficiently large enough to justify it). This is established in the bidding terms of reference.
- 3) Co-funding: both the soliciting partner and the winning bidder absorb 50% of the cost of the expenditures... of the Integrity Pact. This is established in the bidding terms of reference.”

Finally, TIM explained how the initial involvement in Integrity Pacts works: “The government invites Transparency Mexico specifically to participate in the implementation of Integrity Pacts. If, after a few high level meetings, we consider that our collaboration could be useful, we sign a Memorandum of Understanding and an addendum in which we establish the particularities of our involvement. From that moment, we work with the government entity that solicited us, in internal meetings with the public officials directly involved in the bidding, as technical, legal, or financial advisers. The Independent Monitor (IM), designated by Transparency Mexico, participates in these meetings.”

Interview with José Manuel Convarrubia Solis, Independent Monitor

Mr Solis, the engineer chosen as the Independent Monitor on the Integrity Pact, feels the bidding process was “a clear example of the suitability of Integrity Pacts when it comes to guaranteeing transparency, justice, and equity in the presence of the bidders, despite any difficulties they might present...All bidders were treated fairly, in strict compliance with the Principles of Bidding. Even declaring the first round to be void wasn’t an obstacle because the same bidders participated in the second round of bidding; a winner was chosen and the project completed.”

Still, the undertaking was not without complications. “It was difficult because the first round was declared void due to the first two bidders’ lack of conformity with some of the Principles of Bidding requirements.” But “they revised the documents of the offer with the evaluation teams, to be sure that both reports were correct.” Ultimately, “The bidders, just like the government agency, had great respect for the Independent Monitoring process.” Evaluating the process even with the benefit of hindsight, Mr Solis insists, “Looking back on my participation as the Independent Monitor, analysing how the process developed and got results, I wouldn’t have done anything differently.”

VI. Summary

Interviewees were overwhelmingly positive in their assessment of their Integrity Pact experience. The independent monitor in particular was greatly valued, the presence and oversight of which allowed parties to discuss problems and issues arising from a complex process with a neutral and independent person, as well as giving the participants a sense of peace of mind regarding the probity of the competition. Value for money was cited as excellent. Added legitimacy of the process in the eyes of the public was regarded as a significant benefit. Integrity Pacts were regarded as facilitating best practice, and as helping to institutionalise and help create incentives for a more transparency process.