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The Integrity Pact

TI India's Efforts

TI India is pursuing the adoption of Integrity Pacts in various contracts and deals by various Government Departments and PSUs. Consequence to TI India's participation in seminars on integrity pact on May 10, 2005 in Bangalore with HAL's Chief Vigilance Officer and on May 27, 2005 in Ahmedabad with the initiative of the Gujarat Vigilance Commissioner, introduction of such integrity pacts are being considered by Sardar Sarovar Nigam, Hindustan Petroleum Ltd., etc. TI India's Mr B R Lall made presentations on Integrity Pact on Nov. 9-10, 2005 at the two refineries of the Chennai Petroleum Corporation Ltd.

ONGC is the first PSU to have signed a MoU with TI India and CVC on April 17, 2006.

www.tenders.ongc.co.in

Similar provisions are being made by other PSUs including the Power Grid Corporation and Indian Oil Corporation.

As a result of TI India Chairman Admiral Tahiliani meetings with the Indian Defence Minister and Secretary, a provision has been made in the revised Defence Procurement Procedure Manual 2005 for adoption of "Integrity Pact" in all defence contracts and procurements of more than Rs. 300 crores. The Civil Aviation Minister has also been requested for introducing this in all civil aviation contracts.

TI India will make a presentation to Railway Board shortly.

Introduction to Integrity Pact

It is the public procurement that most of the "grand corruption" occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition. "Islands of integrity" is a process in which voluntary agreements are made, involving bidders and the government, to restrict opportunities for corruption in a particular project.

The Integrity Pact (IP) was designed and launched by Transparency International in the 1990s with the primary objective of safe-guarding public procurement from corruption. It can be used by any procurement body in its procurement practice. The Integrity Pact has already been implemented in several countries and in large-scale infrastructure projects ranging from telecommunications to public transport.

Purpose

The goal of the Integrity pact is to reduce any (and almost ensure no) chances of corrupt practices during procurement through a binding agreement between the agency and bidders for specific contracts. It is intended to accomplish two primary objectives:

- To enable companies to abstain from bribing by providing assurances to them that (i) their competitors will also refrain from bribing, and (ii) the government procurement, privatisation or licensing agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures.
- To enable governments to reduce the high cost and the distortionary impact of corruption on public procurement, privatisation or licensing.

Thus, the Integrity Pact is a specific tool used to build transparency in public procurement, bidding or licensing process by both public institutions and private agencies. The establishment of such a fair and transparent basis for awarding contracts not only ensures efficiency but also helps in building public trust in government and the private sector.

The Key Elements

- A pact (contract) among a government office inviting public tenders for a supply, construction, consultancy or other service contract, or for the sale of government assets, or for a government license or concession (the Authority or the "principal") and those companies submitting a tender for this specific activity (the "bidders");
- An undertaking by the principal that its officials will not demand or accept any bribes, gifts, etc., with appropriate disciplinary or criminal sanctions in case of violation;
- A statement by each bidder that it has not paid, and will not pay, any bribes;
- An undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at time of tender submission or upon demand of the principal, especially when a suspicion of a violation by that bidder emerges;
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning bidder until the contract has been fully executed;
- Undertakings on behalf of a bidding company will be made "in the name and on behalf of the company's Chief Executive Officer";
- A pre-announced set of sanctions for any violation by a bidder of its commitments or undertakings, including (some or all):
 - Denial or loss of contract;
 - Forfeiture of the bid security and performance bond;
 - Liability for damages to the principal and the competing bidders, and
 - Debarment of the violator by the principal for an appropriate period of time.

Bidders are also advised to have a company Code of Conduct (clearly rejecting the use of bribes and other unethical behaviour) and a Compliance Program for the implementation of the Code of Conduct throughout the company.

Penalties for failure to implement IP - Officials are subject to penal action and bidders have to face cancellation of contract, forfeiture of bond, liquidated damages and blacklisting. Action will, however, not require criminal conviction but be based on "no-contest" after the evidence is made available or there can be no material doubts. Disputes in IP implementation are resolved by arbitration detailed in IP. Implementation Monitoring is a key aspect of IP implementation. Public access of all relevant information is a necessity. It calls for a forum in which representatives of civil society can discuss the contract itself. The concept of IP includes the existence of Private Sector Inspector General (IPSIG) which will be delegated with the rights of civil society to monitor the contract; suggested bodies are government office with non involvement, TI India or a credible NGO. The monitoring and supervising procedures are specified and at the conclusion of the contract a certificate of corruption-free is issued.

The Model Draft of the Integrity Pact

1. In the Bidding Stage

- Upon the announcement of a bid offer, the IP is explained to Bidders in a "Letter of Special Note for Bidding."
- Registration of bid submission:
 - Only Bidders that submit the "Bidders' Oath to Fulfill the IP", which contains no-bribery commitment, are qualified to register their bid submission.
 - A related government official submits the "Principal's Oath to Fulfill the IP."
 - Bidders are encouraged to institute a "Company Code of Conduct", and incentive on qualification evaluation is provided.
 - Information on the bidding is publicized.
 - Information on the bidding is publicized.

2. In the Contract Concluding and Execution Stage

- When signing a contract, both parties also sign the IP as a "special condition for contract," containing the same contents as the pre-signed Oath,"
 - Bidders shall not offer bribe, gifts or entertainment to any related government official to influence a bid.
 - The Principal and the concerned official shall not take bribes.
 - In case of violation of the IP, Bidders shall be subject to disqualification from submitting bids, or termination of the contract.
 - No punitive actions shall be taken against anyone who reports inside corruption.
 - Bidders are encouraged to institute a "Company Code of Conduct" and a Compliance Program for the implementation of the Code of Conduct.
 - Bidders cooperate with the IP Ombudsmen in monitoring activities.
 - Operation of IP Ombudsmen System

- Public hearings in three stages
- Protection and rewarding of anyone reporting inside corruption
- Organization of the IP Operational Committee

3. The Operation of the IP and its Intended Targets

Procedures of the IP Implementation

- The Company and NGOs shall jointly implement the IP and the IP Ombudsmen will monitor the process. Since trust between the companies and the government is important for the successful implementation of the IP, the Integrity Pact Movement began while trying to develop it into legislation. Important issues regarding the IP are decided by the IP Operational Committee.
- Major Tasks of the IP Operational Committee:
 - Choice of projects for monitoring the IP;
 - Reporting, hearing, and inspecting the IP projects;
 - Education and public relations on the IP; and
 - Other tasks necessary for the implementation of IP.

4. Detailed Programs about the IP

1. Bidder's Submission of the Oath to Fulfill the IP

When there is an official notice about a bid for construction, technical services, or procurement, bidders are informed about the IP.

When submitting a bid, the representatives of the Bidders sign the "Oath to Fulfill the IP", as a condition for qualifying to bid.

At the time of the contract signing, the winning bidder and Principal sign the IP containing the same terms in the aforesaid Oath as a "Special Condition of the Contract."

Major contents of the Oath to Fulfill the IP (Company)

Executives and employees of Bidders (including sub-contractors and consortium partners)

- shall not engage in bid rigging, illegal price-fixing or any other fraudulent behaviors by bestowing favors on any particular persons;
- shall not offer any bribe, gifts or entertainment in the processes of bidding, concluding and executing the contract to any of the concerned government official;
- shall, in the case of any findings of violation of the IP, accept the restrictions to the qualification for bidding, termination of contract or other punitive measures.
- shall cooperate with the IP Ombudsman in monitoring activities
- shall prohibit any forms of bribery and bid rigging, and endeavor to institute a Company Code of Conduct that mandates the termination of any violator of the IP and a company regulation that anyone reporting inside corruption shall not be subject to any retaliatory acts.

2. Encouragement of Company Code of Conduct and Provision of Incentive on Qualification Evaluation

When submitting a bid, Bidders are encouraged to institute the Company

Code of Conduct and a company regulation to protect anyone reporting inside corruption. Among the Bidders that submit the Company Code of Conduct, the company with outstanding Compliance Programs for the Code of Conduct will be given positive points to be considered in the evaluation of its qualifications.

Company's Code of Conduct - The company shall adopt a Code of Conduct on banning bribery and implementing compliance Programs to put the Code into practice. The Code of Conduct should include, inter alia, the following:

- Clear definitions and prohibition of all forms of bribery and bid rigging;
- Rules on offering of gifts, entertainment, travel fees, and money contributions;
- Education on the Code of Conduct throughout the company; Internal and external audits and inspections, and sanctions against violators (including dismissal);
- Provisions against any retaliatory acts upon anyone reporting inside corruption
- To provide an incentive for Bidders to submit the Company Code of Conduct, it is suggested that the Government should adopt an amendment to the standards for qualification evaluation.

3. Principal's Oath to Fulfill the IP

When a Bidder submits the Oath to Fulfill the IP, the chief of Principal reciprocates by tendering to the Bidder the "Oath to Fulfill the IP" signed by both himself or herself and a concerned government official.

Major Contents of the Principal's Oath to Fulfill the IP

- The official in charge of the concerned bidding, concluding or execution of contract and his/her senior
- shall not demand or accept bribe, gifts, entertainment or other amenities from Bidders;
- shall cooperate with the IP Ombudsmen in monitoring activities;
- shall not engage in any retaliatory acts upon anyone reporting inside corruption; and,
- in case any violation of the IP is disclosed, shall accept punitive sanctions.

4. Limitation to the qualification to Bid for violations of the IP - The contract may also contain a "Special Condition of Contract" that requires those Bidders that have rigged a bid, or bribed a concerned government official in the process of bidding, concluding or executing a contract, to be deprived of their qualification to submit bids placed by the company for up to a specified period.

General Standards on the Limitation of Qualification to Bid

Major Contents of the Principal's Oath to fulfill the IP

The official in charge of the concerned bidding, concluding or execution of contract and his/her senior

- Disqualification from bidding for a specified period - Bidders that have been favoured in a bid, won a bid, or had faulty construction approved by bribery.
 - Disqualification from bidding for a specified period - Bidders that have offered bribes for the purpose of winning favor in the bidding, or of faulty execution of the contract.
 - Disqualification from bidding for a specified period - Bidders that have offered money to public officials in relation to a bid, or concluding or execution of a contract, even though there are no evidence of winning favour in the bidding or faulty execution of the contract.
5. Termination of Contract for Violation of the IP- If it has been established that Bidders have bribed a government official in relation to a bid, or concluding or execution of a contract, part or all of the contract shall be canceled or terminated,
- with the provision that, if construction is under way at the time of disclosure, the Principal shall make the decision in due consideration of the scope, period, and progress of the concerned construction.
6. Three-stage Public Hearing on the Contract Process -
- the project plan,
 - the Second Stage - procedures of selecting a contractor, and
 - the Third Stage - inspection results on the execution of the contract.

The public hearings are organized by the IP Ombudsmen.

The IP Ombudsmen draft specific plans for, and manage, the public hearing. Principal and Bidders should willingly cooperate in explaining the procedures and publicizing information regarding the public hearing.

7. Publicizing Detailed Information on the Bidding Procedure in the OPEN (Online Procedures Enhancement for civil applications) System on the Internet. To make searches for major projects easier, measures are to be taken to group the projects in various categories.
8. Operation of IP Ombudsmen System to monitor the process of the IP implementation.
Tasks and Authority - Ombudsmen review, inspect and monitor all documents related with the project proposal, bidding, contract, construction inspection and through the completion of construction;
Organize public hearings by stages on the plan, bid, and execution of contracts for major projects;
Demand corrective measures or audits on issues affected by unjust practices;
Participate in the IP Operational Committee
Composition and Qualification - A team of persons, with one as Chief Ombudsman, with respectability, integrity and expertise in the relevant discipline, and are recommended by NGOs like TI India.
Position and Term of Office: Serving in the capacity of a private citizen to act independently However, the IP Ombudsman should not hold any concurrent job. He/she may make public announcements under consultation with IP Operational Committee on their activities, but should not publicize or disclose on their own accord, any information or documents obtained during their

work as IP Ombudsmen for personal purpose or gain.
Regulations for IP Ombudsmen Operation shall be adopted to assert the authority of Ombudsmen and the obligation of all government and other concerned officials to cooperate with them.

Protection and rewarding of those reporting Inside Corruption - To uproot and prevent the occurrence of corrupt practices, it is important to encourage disclosing such practices. Any officials who make such disclosures should be protected from retaliatory acts, such as harassment or disadvantage in promotion considerations. To encourage such citizens to report such practices, there should be a "Regulation on Rewards for the Reporting of Corrupt Practices.