



TRANSPARENCY INTERNATIONAL - PAKISTAN

Strives to make Pakistan a better country to live in

Ensuring Transparency and Public Participation in Public Procurement in Pakistan

“Bureaucrats are public servants and bureaucracies are meant to serve the public. But as soon as a bureaucracy is established it tends to become independent and comes to regard the public as its enemy. Unfortunately most third world governments are plagued with this menace. The more the independence that it gains the less answerable is it to the public and the more corrupt does it become.”

Mention the word corruption in government and most people will immediately think of bribes paid or received for the award of contracts for goods or services, or to use the technical term - Procurement.

Few activities create greater temptations or offer more opportunities for corruption than Public Sector Procurement. Every department and level of government or government agency purchases goods and services, often in quantities and monetary amounts that is staggering and defies comprehension.

Corruption has been the cause of countless dismissals of senior officials and even the collapse of entire governments, as has been the case of Pakistan's previous four democratically elected governments.

The fight against corruption is and has been the declared goal of the present Government as well as all the past four governments in Pakistan. One can safely say that all the past governments were completely corrupt, but it is the common perception that the present government's declared intention to fight corruption seems relatively serious. It has to some extent backed up its intentions with action in the form of the National Accountability Bureau and simultaneously in its many reforms that it is trying to implement within the different sectors of the government.

The fight against corruption has also been the intended goal of the IFI's including the World Bank, the IBRD and the Asian Development Bank which is evident in their regular revision of their guidelines for selection and award of procurement contracts.

The Donors are not far behind in claiming this as part of their mandate when supporting programs involving Grants and Loans and does try to apply pressure on the government to control corruption while implementing their schemes.

The regulatory bodies such as the FIDIC, Pakistan Engineering Council and the Planning Commission of Pakistan like the IFI's and the DONOR Agencies for many years continued to stand by their guidelines in Procurement Procedures and when questioned continued to declare that in their guidelines there was no room for corrupt practices.- the guidelines were sacrosanct.

Most National governments swear by their procurement procedures as being Transparent and having the necessary checks and balances. Then the question can be asked of all the above organizations. Why is there still rampant corruption in procurement contracts not only in the eastern but as well as the western world and evidence that this corruption is ever increasing.

The above agencies whether governments, the IFI's, the Donors or the Regulatory bodies at most times find it very hard to accept the possibility that their Procurement Procedures are flawed. Till recently the word corruption was a taboo word seldom spoken of openly and it has taken a decade to shatter this taboo and make it possible for governments, IFI's and Donor agencies to consider corruption seriously and seriously make it a part of their agenda.

A soul searching has finally begun by many organizations, resulting in their looking closely at their own Procurement Procedures. Reviewing them solely with a view to eliminate or at least reduce the possibility of corrupt practices. Studying these documents and guidelines for selection and award of contracts, one easily comes to the conclusion that Non-transparent procedures and discretion was and remains a major factor. The

- World Bank -- 1997.
- FIDIC -- 2001,
- ADB -- 2002 and the
- PEC -- 2001

are some of the major organizations that have reviewed and revised their documents in the dates given along with.

Types of Procurement

Procurement basically includes three areas of purchase of goods and services,

- Contracts for Construction Works.
- Appointment of Consultants for Design and Construction Supervision and
- Contracts for Purchase of Goods & Equipment.

In public procurement, bribery, collusion and extortion are consensual crimes with the public at large as victim. Both givers and takers of bribes have every reason to keep quiet. Companies that have paid bribes, but not enough to win the contract, seldom call foul. Firms that have not bribed are often reluctant to lodge formal complaints even if they believe the successful bidder unfairly won.

What is now required is that the Rules and Conditions of Procurement should be based on open, competitive tendering with pre-disclosed evaluation criteria for selection and award, and citizen monitoring. This will not only give Transparency to the procedures but at the same time provide the necessary Checks and Balances -These are powerful deterrents to bribery.

TENDERING FOR WORKS & GOODS/EQUIPMENT.

Most commonly, award of Contracts are usually manipulated in favour of a higher Bidder through collusion by increasing the lowest bids by artificially enhancing their Bid Prices

Members of Departmental Evaluation Committee under present Tendering System have assumed vast discretionary powers, prescribed under the authority of a clause in most evaluation procedures that states:

“Provided that a bid is substantially responsive, the Purchaser may waive any non-conformity or omissions in the bid that does not constitute a material deviation”.

The decisions under this authority are normally not above criticism and have caused serious problems with regards to Award of Contracts in the past. This discretionary power should be totally eliminated through a Transparent process of setting up specific evaluation Criteria for assessment of the Contractor's bids.

Considerations.

1. Standard Procedures for Procurement of Works, Goods and Consultants Should be prepared by a Public Procurement Regulatory Authority. These Documents should be Transparent, Non-discretionary and should be based on the Technical Competence of the contractor. The Award should then be considered on a competitive “Least Cost” basis.
2. Evaluation Committees for Pre-qualification, short listing and for Award of Contracts must be established. These committees must be separately set up for each contract (or for an Agency or for the Province). These committees must include independent experts from the private sector, from professional bodies, viz. Pakistan Engineering Council, Institute of Engineers of the Province, Association of Consultants, Association of Contractors, and Institute of Chartered Accountants all related to the technical and financial aspect of the contracts. To include for further Public participation, representatives of Transparency International - Pakistan and other Civil Society Organizations must also be included on these committees to act as watch dogs, monitors etc.
3. The Evaluation Reports of all Contract Awards must be made public either through the Internet (Client’s Web Site) or by public display for a minimum of 10 days under a Constitutional Provision. This should be done immediately on the announcement of a contract, so that any objections received either from the public or from participating competitors are then examined and a Re-Evaluation carried out if necessary. Only then should the contract be awarded to the lowest bidder.

Note: The publication of Evaluation Report will not only prevent the Evaluation committee from making wrong evaluations or manipulations but will also eliminate the necessity or possibility of filing of legal suits after the Contract Award by aggrieved competitors.

SELECTION OF CONSULTANTS.

The corrupt practices in Consultancy Contracts have been defined by the World Bank in their Standard Bidding Documents of 1998,

“as the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution, and fraudulent practice means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the client, and includes collusive practices among Engineering Firms (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.”

The FIDIC an International Association which issues Standard Bidding Documents following a study, published a report in 2000 on “Corruption in Consultancy Contracts” and also adopted by World Bank, ADB and PEC, says

"When a large public infrastructure project is being prepared the Consulting Engineer first of all has to receive the necessary information to apply for the job. In a second

phase he needs to be considered in a pre-qualification procedure in order to be put on a short list of normally six competitors, who will in turn be invited to submit bids. In his bid he has to detail how he will approach the task, what his special experience is and which of his collaborators he intends to put on the job. The offer will then be evaluated according to a predetermined set of criteria. The contract should be accorded to the contender best meeting the quality criteria."

The Present Tendering System for Selection of Consultants in Pakistan is:

- Step 1: All Consultant Firms are to be approved and licensed by Pakistan Engineering Council.
(Technical Competence requirement)
- Step 2: A Prequalification of Firms registered with PEC is then carried out by the Agency.
(Technical Competence requirement)
- Step 3: The Technical & Financial Bids are then invited from these Prequalified Firms.
- Step 4: An Evaluation Committee will evaluate the technical proposal with regards to the understanding of: project needs, methodology, work plan, time schedule, experience and qualification of personnel to be assigned, present work load and other pertinent aspects.
(Technical Competence requirement)
- Step 5: The employer will then open the financial proposals of the three top ranking consulting engineers in the presence of such consulting engineers who care to be present and will publicly announce the prices and terms of all three proposals.
- Step 6: The top ranking consulting engineer will first be invited to negotiate a contract with the employer. If agreement is not reached, the negotiations will terminate and the consulting engineer will be notified in writing to this effect by explaining the points of disagreement. A similar negotiation will then follow with the second consulting engineer and failing accord with the second, the third consulting engineer will be called in for the negotiations in a similar manner.

Unfortunately the above PEC Procedures for Selection even though fairly transparent in the matter of award, are seldom being applied by the various governmental departments and agencies. In addition these very same Procedures must also be modified to prevent manipulation by clients and the possibility of collusion..

When a Bidder is evaluated for its technical competency three times in the process of evaluation, there is no reason left for not awarding the Contract to the Lowest Bidder.

In 1997 the World Bank introduced a new method based on the "technical capability / ability" of the Consultants where the Technical Proposals of the consultants are evaluated and the contract is awarded on the basis of the "lowest cost" amongst the technically compliant tenders.

Under this method, a "minimum" qualifying mark for the "quality" is established. Proposals are invited from short listed Consultants. Consultants are then requested to submit Proposals in two envelopes. The Technical envelopes are first opened and evaluated. Those securing less than the minimum (arbitrarily decided by the client in advance) are rejected and the financial envelopes of the rest are opened in public. The "minimum mark" shall be stated in the Request for Proposal (RFP)

The firm with the lowest price shall then be selected, .thus the Consultants compete only on "cost."

Therefore, unless the Consultants are appointed on merit, and in a transparent manner taking "competitive costs" as the main criteria, the present corrupt practices will continue.

TI-PAKISTAN'S RECOMMENDATIONS.

1. In Pakistan all awards of Consultancy Assignments should follow the “Least Cost Selection” Method (LCS). This is the only system which will eliminate the self assumed discretionary authority of the evaluators. Collusive practices amongst bidders who establish joint venture only to attain the “First Position” in the evaluation of the technical Proposals will no more be fruitful. This procedure - the LCS method will not only provide the client with consultants with the necessary capabilities but at the same time will be cost effective.

Note: The argument given by some against this LCS Method is, that a specialist medical doctor (Consultants) should be paid his prescribed fee without negotiations. Therefore the Engineering Expertise of a Consultant if required should also be based on quality and not on Cost.

The reasoning is not true for on employing a Consultant Firm on an Engineering Assignments the expenses detailed by the Firm include overheads of the firm, social cost, Local and foreign transportation, lodging & boarding, surveys, Soil Investigations, supply of hardware, transport, office rent, communication etc. The fee of the Specialist Engineers required for the project normally **does not exceed 4-8 % of the total cost** put forward by the consultant as its cost..

However in case the services of a Specialist Engineers is required and where the technical expertise is not readily or commonly available, it can be processed under the **Single Source Selection Method**, where such experts are hired without competition due to the special engineering services that only they can provide. This is similar to the hiring of a Medical Specialist.

2. It is also recommended for Pakistan, that the client must declare its evaluation report prior to actual award of the Contract. This is the Procedural Law in Colombia where the evaluation Report of all Contract Awards are made public via the Internet for 10 days under a Constitutional Provision. All objections received from any sector including the competitors are then examined and the Re-Evaluation is carried out. Only then is the Contract awarded to the lowest bidder.

This as we mentioned earlier will prevent evaluators from making discriminatory evaluations and thus reduces the possibility of the filing of legal suits by aggrieved competitors.

To Summartize:

- Standard Procedures for Procurement of Works, Goods and Consultants Should be Prepared by a Public Procurement Regulatory Authority. These Documents should be Transparent, Non Discretionary and Based on Technical Competence and Award to be made on a :”competitive cost basis.”
- All Consultancy Contracts except Single Source Selection of Engineering Expert, are to be awarded on the basis of Competitive Bidding and on the “Least Cost Selection” Method. (LCS)
- Proposals must be submitted in two envelopes where invitations are invited from a short list derived from the Evaluation of Bidders based on their Technical Competence through Criteria submitted in advance to the bidders. A “minimum” qualifying mark for the “quality” is established and stated in the Request for Proposals (RFP’s)
- The Technical Proposal are opened first and evaluated. Those securing less than the “minimum qualifying mark” are rejected and the financial envelopes of the rest are opened in public.
- The Evaluation Report of all Contract Procurement Awards after being finalized by Government Department shall be made public on Internet Site for 10 days. All objections received from ANY

sector including the competitors are to be examined by the department and if necessary a Re-Evaluation must be carried out. Contract is then awarded to the lowest bidder and all documents on such award is also made public.

The firm with the lowest price shall then be selected for award of the contract.

- An Evaluation Committee for Pre-qualification and Award of Contracts shall include at least two departmental members, and a minimum of three independent experts, (One each from the Pakistan Engineering Council, Institute of Chartered Accountants and FPCCI)
- The “Integrity Pact” should be made an integral part of all the tenders.

The Integrity Pact

1 Definition

Integrity pacts are agreements signed by all direct participants in a public-resource-contracting process in order to strengthen the transparency. Involve Public participation in bidding process to ensure fairness, and probity of the chosen contractual modality.

Each pact seeks to bring together different groups of citizens to accept a shared regulatory systems linked with a regimen of rewards and punishments above and beyond those already provided for in the local legal framework, thereby giving an ethical value-added option to the framework.

2 General Purpose

Together with other tools designed for the same purpose, the Integrity Pact seeks to contribute to a transformation of the structural conditions of public-resource contracting, which is seen reflected on indicators such as:

- Adequate structuring of the project;
- Public discussion of the tender documents;
- Transparency in bid evaluation, giving priority to fulfillment of the spirit of the law versus punctilious compliance with the law's purely form-related aspects;
- Commitment by executors to accountability policies;
- Acceptance of the precedence of the collective interest over the private;
- Presence of social control mechanisms; and
- Statement accepting rules and results by participants and
- Provides complete access to information.

2.1 Specific Objectives

- To increase transparency in public bidding and contracting processes, generating confidence and credibility among public officials, bidders, and public opinion in general with respect to the honesty and transparency with which these processes are carried out.
- To generate a voluntary cultural change on the part of those involved to align their behavior in accord with the ethical principles and legal framework governing society. (It is hoped that the methodology associated with the application of this tool will reinforce within the participating public institutions the consolidation of an environment favorable to honesty in the development of public contracting and that it will reinforce within the bidders and contractors themselves confidence in the possibility of participating in said contracting within a framework of fairness and the desire to carry out their part of the process in that same spirit.- In principle giving them an equal playing field)
- To agree upon rules of the game that would contribute to achieving a better balance of power between the winning company and the public officials handling the contract, particularly in the cases of the large Contract, privatizations and concessions.
- To produce empirical data for a map of corruption risks detailing the environment within which public-resource investment is carried out, by analyzing the shared elements and the peculiarities of the different bidding and contracting processes in terms of the vulnerabilities identified.

2.2 Methodology for the Implementation of Integrity Pacts

The following subsections present the principal stages associated with the implementation of an integrity pact. These stages do not necessarily appear in linear fashion

- **Identification of Resources**

In order to initialize and guide the signing of an integrity pact, it is essential to identify and secure in a timely manner the resources of all types (technical, human, financial, administrative, and cooperative) needed in order to move ahead responsibly with the task. In TI Pakistan recommendations in the K-III contract with KWSB, the resources have been made available from various sources, including experts' voluntary contribution of their work, international technical cooperation, and contributions by private organizations, contract participants and the client themselves who were **themselves interested in promoting the transparency** of the selection and award process.

- **Realization of Political Will**

The successful implementation of the Integrity Pact” demands the corresponding unambiguous and effective political will on the part of those entrusted with making public-sector expenditures. This political will should be translatable into at least the following three results:

- 1) the directorship team of the public institution entrusted with conducting the bidding or contracting process shares information on the relevance and feasibility of applying the Integrity Pact as an ideal mechanism for strengthening the transparency of that process;
- 2) the highest authority governing the public bidding or contracting process expresses to all participants his or her ethical commitment to protecting the probity of that process and invites all of them to proceed in accordance with the same spirit; and
- 3) the participating Client signs an agreement with Transparency International Pakistan to formalize the farmer's commitment to the implementation of an Integrity Pact.

- **Construction of an Ethical Commitment Declaration by Public Officials**

The intention being to stimulate a systemic cultural change that commits those involved personally to the observance of ethical principles and respect for the public good, the public officials who have any level of responsibility in conducting the bidding or contracting and who can therefore impact the objectivity and transparency of the decisions made during that process should participate in workshops or discussions in order to draw up the map of corruption risks covering the various stages of the process and their own vulnerabilities in this context and in order to define beforehand the specific action and commitments that will allow them to protect themselves and the bidding process itself from these corruption risks. In addition, an agreement should be reached as to the exact rewards and punishments that will be applicable in cases of fulfillment and non-fulfillment of the commitments so acquired.

The ethical commitment declaration resulting from this exercise describes the obligations acquired by participating officials and constitutes the starting point from which the institution's highest authority can then formally call upon all of the bidders together to sign the Integrity Pact based upon the commitment to probity already affirmed by the clients /institution's officials.

- **Public Discussion of Tender Documents for Contracts**

The most important moment for the success of the integrity pacts is one that, of course, could be handled separately but which, because of the “added value” that it

gives to the process, should always be programmed as part of the implementation methodology of every Integrity Pact. The important moment to which we refer is the **public discussion of the tender documents** or terms of reference with the participation of those involved and selected experts on the topic in question, in order to ensure that the rules of the game are clear, equitable, feasible, and transparent. Various mechanisms can be used for this discussion, such as qualified public hearings, meetings called with specific interest sectors, the posting of the specifications on the Internet in order to receive and respond to all the pertinent observations, and/or discussion of the specifications with the bidders themselves (as is in fact stipulated by Pakistan law). Furthermore, TI-PAKISTAN commits to consulting about the tender documents with independent experts who, under protection of a confidentiality agreement, will give their opinion as to the specifications clarity, transparency, and fairness of the procedures and the contract itself.

- **Working with Bidders Themselves**

Based on the general elements of the Integrity Pact and on the items covered in the declaration of the participating public-sector officials, any parties interested in taking part in the process as bidders should draw up their own map of corruption risks in order to identify the vulnerabilities that are present and the counter measures that they must take to gain confidence in the transparency of the contracting process -totally in keeping with existing Laws and Procedures of the country and even their own recommendations.

It is important that each bidding firm's management prepare the corruption risk analysis and the firm's recommendations on countering anticorruption commitments during special meetings with personnel within their own enterprise and who are expected to be involved in the preparation of the proposal. This will ensure that the head of the company, the person who will ultimately be signing the Integrity Pact, is supported by the strength of the ethical commitments therein assumed by the company's employees. Whenever possible, it is convenient that the bidder develop inside its company an ethical code - A Code of Conduct..

A pivotal aspect of this exercise is the bidders agreement to the sanctions (and as will be seen later in the present study, the sanctions are not necessarily fines) to which they have agreed to become subject to if they fail to observe the provisions of the integrity pact, and bidders' identification of and agreement on the deliberative body that will serve as an Arbiter for such cases of possible non-observance and will allow them to hand down decisions in a more expeditious and transparent manner than the country's traditional juridical system.

- **Signing the Integrity Pact**

The results of the corruption risk analysis are integrated into the text of the Integrity Pact itself, which will be signed by the highest authority of the contract-tendering organization together with the highest-level representative of each of the bidding enterprises or companies.

The text of the Integrity Pact flushes out the commitment negotiated and signed between the public-sector authorities and the bidding firms, in providing for a given accepted regulatory system with its possible rewards and punishments, thereby generating the trust and confidence necessary, so that all parties can acknowledge, value, and protect the probity of that contracting process.

- **Monitoring evaluation and awarding**

Perhaps, this is the most sensitive stage in the process, since here is where risks derived from the possibility of incorrect information arises or, from the need for interpreting when, either tender documents have failed to be clear enough or, when reviewing the evaluation reports, bidders contend that there are flaws in the evaluation. Transparency International - Pakistan would then follows up on this stage as an observer reviewing procedures and studying reports, observations, the related discussion and answers, in order to express its concerns to the public entity when, as per its own judgment, the decisions that are being made may attempt to go against the transparency and fairness of the process.

- **Regular Issuance of Public Statements**

It is important to promote the fairly regular issuance of public statements by the signers of the Integrity Pact so that participants, in advancing from stage to stage in the contract process, may publicly confirm their satisfaction with the probity of the process up to that point, based on the information available to them. Providing for such statements at every stage of the process makes it easier along the way to ascertain the exact moment at which any possible doubt may have begun to arise as to the cleanness of the process.

These statements also allows for a public update on the progress of the process and to improve the general perception by citizenry of the characteristics and quality of the process. This is an important step toward increased project legitimacy and the .validity of the Transparency in the process