

Integrity Pact: Frequently Asked Questions & Answers

1. What is corruption?

Transparency International defines corruption as “the abuse of entrusted power for private gain”

2. Why does Integrity Pact needed In India?

- 1 India is perceived to be one of the most corrupt nations scoring only 3.4 out of ten and ranks 84th among 180 countries in Transparency International’s Corruption Perception Index (CPI) 2009. Existing anti-corruption organizations have had limited success in fighting corruption in India. Corruption hurts the poorest most.

Most people believe that corruption in India is rising at an alarming rate and the Government is doing little to check it. IP program is a way to supplement existing methods. It enables companies to abstain from bribing by providing assurances to them that (a) their competitors will also refrain from bribing, and (b) government bidding system and procurement will be absolutely transparent. Hence, IP is found to be a more effective for ensuring transparency and fighting corruption in public contracting. It helps enhance public trust in government’s contracting and improving the credibility of its contracting procedures and administration in general.

3. What is an Integrity Pact (IP)?

The Integrity Pact (IP) is an anti-corruption tool to help governments, businesses and civil society intent on fighting corruption in the field of public contracting and procurement. It consists of an agreement between a government or a government department (hereafter referred to as the Principal) and all bidders for a contract. The IP sets out their rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, and/or collude with competitors to obtain the contract, or while carrying it out.

Only those vendors/ bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification.

4. What are the essential ingredients of IP?

- Promise on the part of the Principal not to seek or accept any illegal benefit;
- Principal to treat all bidders with equity and reason;
- Promise on the part of bidders not to offer any illegal benefit to the Principal’s employees;
- Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act;
- Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;

- Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary; and/or any transgressions with any other company that may impinge on the anti corruption principle.

5. **Who are the players of IP?**

- a. The Company, i.e., Principal
- b. The vendors, i.e., Counter-party
- c. The Independent External Monitor (IEM)

6. **What is procurement?**

Procurement is the acquisition of goods and/or services at the lowest possible cost, in the right quantity and quality, at the right time, in the right place and from the right source for the direct benefit or use of corporations or individuals, generally *via* a contract.

7. **About CVC**

The Central Vigilance Commission (CVC), set up by the Government of India in February, 1964, as an apex vigilance institution to advise and guide Central Government agencies in the field of vigilance. It is free of control from any executive authority, monitoring all vigilance activities and advising the Central Government's various authorities in planning, executing, reviewing and reforming their vigilance work.

Realizing the importance of IP as a vigilance tool in controlling corruption in public contracting and procurement, CVC has, through its Office Orders No. 41/ 12/07 dated 04.12.07 and 43/12/07 dated 28.12.07 and Circulars No. 18/05/08 dated 19.05.08 and 24.08.08 dated 05.08.2008, recommended adoption of Integrity Pact to all the Secretaries to the GoI, all CMDs of PSUs and PSB, and all CVOs, and provided basic guidelines for its implementation in respect of major procurements in the Government Organizations. On May 18, 2009, it issued Standard Operating Procedure spelling out all the details.

8. **What is a PSU?**

PSU is a Public Sector Undertaking. These are both - the Central and the State owned enterprise. Oil & Natural Gas Corporation of India (ONGC), Steel Authority of India Ltd. (SAIL), Indian Oil Corporation Ltd. (IOCL) and Coal India Ltd. (CIL) are some of the giant PSUs of the Government of India.

9. **Why should a company sign IP?**

IP helps Government and companies to reduce high cost and maintain quality control. IP adoption creates public confidence and trust in decision making process, and also a more hospitable investment climate and public support in the country.

10. **Is it mandatory to adopt IP for a PSU?**

Adoption of IP is voluntary, but once adopted, it should cover all tenders / procurements above a specified threshold value and follow the Integrity Pact in letter and spirit.

11. **What is the duration of the IP between Principal and Bidders?**

The IP begins when both parties have legally signed it. It expires after 10 months of the last payment made under the contract. In a contract between Principal and Bidder, the Principal's IP is to be followed.

12. Whose threshold limit is to be followed?

In case IP is being implemented by the Principal and the Counterparty, it is the threshold limit of the Principal to be followed.

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15. Is it ok to exclude tenders from nomination basis from the ambit of IP?

There should be no exemption, even if it is needed (in certain cases), it should be examined on a case-to-case basis by the concerned PSU Management.

16. Is there any specific threshold limit for the PSU?

The threshold value for the contracts to be covered under IP should be decided after conducting proper ABC analysis. It should be fixed so as to cover 90-95% of the total procurements of the organization in monetary terms. Apart from all high value contracts, any contract involving complicated or serious issues could be brought within the ambit of IP by the management.

17. Who will be the focal point for the implementation of IP?

The Purchase/procurement wing of the organization would be the focal point for the implementation of IP. The Vigilance Department would be responsible for review, enforcement, and reporting on all related vigilance issues. It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.

18. What is an IEM?

Independent External Monitor (IEM) is the watchdog for smooth functioning of the IP program. IEM is responsible to ensure the credibility of the program.

19. What is the role of IEM?

An IEM can review independently and objectively whether and to what extent parties have complied with their obligations under the Pact. Accordingly, IEM would have access to all relevant documents, whenever required. Ideally, all IEMs of an organization should meet in two months to take stock of the ongoing tendering processes.

20. Is there any legal obligation to follow the advice of the IEMs?

The recommendations of IEMs would be in the nature of advice and hence would not be legally binding. Finally, it is the Management's decision whether to accept the IEM's recommendation.

21. Is the IEM a replacement of CVO?

The role of the CVO shall remain unaffected by the presence of IEM. A matter being examined by the IEM can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him or directed to him by the Commission.

22. Why is it important to sign a MoU with TI India?

Integrity Pact (IP) is a tool developed by Transparency International. As such, TI India wants to sign a MoU to monitor IP's implementation regularly to ensure that it is implemented in letter and spirit.

23. What is the pre-requisite for a PSU to implement IP?

- i. Clear understanding about IP implementation process
- ii. Share the Code of Conduct policy
- iii. Commitment to implement IP should be made by the Board and be reflected in the words & deeds of the Principal
- iv. Principal should take steps to inform /communicate internal staff about IP's various aspects
- v. Appointment of a Nodal officer to deal with TI India on IP related issues
- vi. TI India should be consulted in case of changes /modifications proposed in the draft MoU & IP program
- vii. Approval of IEMs by CVC prior to MoU with TI India
- viii. Presence of Principal, Vendor and IEMs at the time of signing of MoU

24. What is the drafting process of an Integrity Pact

Drafts of the MoU and the Integrity Pact are to be prepared by the Principal as per CVC guidelines and approved by CVC and TI India. Thereafter, a MoU is to be signed between the Principal and TI India for obtaining a commitment from all senior officials of the Principal to implement the IP. In case there are subsidiaries of the Principal, they are also advised to follow their Principal's IP.

25. What are the benefits of IP?

PSUs

- Enhanced competition in bidding process – most efficient, best bidder wins bid
- Enhanced reputation and credibility
- Avoid time consuming lawsuits / blocking points after decision on supplier company
- Focus of business relationships on quality and reliability of goods and services

Government

- Incentives to be transparent
- Strengthened rule of law, increase credibility and political stability
- Higher investment levels from domestic and foreign investors
- Improve country's perception
- Better score in Corruption Perception Index (CPI)
- Effective governance mechanisms and more effective procurement.

Bidding Companies

- Better chance of fair selection as a supplier and enhanced access to markets
- Protection from legal penalties
- Saving of costs, formerly paid as bribes, and time in case of disputes
- Enhanced reputation
- Employees and competitors behave ethically and responsibly

Civil Society / Non-governmental Organizations

- Improved access to essential resources, such as health care, education and better social development if money is properly invested in the desired projects
- Social development
- Higher quality products and services, less risk of 'faulty' products and accidents
- Increased trust and confidence in business
- Consistent and fair enforcement of regulations
- Greater traction for their objective of more transparent environment and attention to combat corrupt practices

26. Why is an IP, if there are existing anti-corruption laws in place?

Despite the existence of anti-corruption laws, the persistence of corruption related problems in public contracting shows the need to develop alternate mechanisms that increase effective compliance of law and make it harder to corrupt. In this sense, the IP does not replace the law, but enables its compliance by leveling the playing field, and assuring the contenders that all will behave under the same conditions. Besides, TII is setting up a group of Resource Persons who can provide the necessary expertise in response to calls for help from the organizations promoting the IP.

27. Which are the other countries implementing IP?

Many countries around the world implementing Integrity Pact. India, Pakistan, Nepal and Bangladesh are among the South Asian countries.

28. When did TI India start to work on IP?

TI India Chairman Admiral (Retd.) R H Tahiliani, along with Mr. Michael Wiehen from TI Sectt., made a presentation for the first time in August 2001 to the Minister of State for Defence Shri Arun Singh. However, the ONGC was the first to adopt IP in 2005.

29. What is Sanction?

Sanction is a process of taking action if anybody breaks the law. If any bidder breaks the commitment which he/she made at the time of submitting bidding documents, the concerned Principal can take action like black listing, forfeiture of deposit etc. against that bidder.

30. Is it mandatory for the bidders to sign the disclaimer before submitting bidding documents?

Yes, it is a must for a bidder to sign the disclaimer at the time of submitting bidding documents.

31. Who can give a complaint to IEM?

Anybody can complain related to the procurement/bidding process to IEM.

32. If any complaint goes to CVO, IEM and court at the same time, who will deal it?

Court's jurisdiction would be followed, unless it directs to IEM or CVO.

33. Can a bidder complaint to IEM directly if he found any irregularity?

Yes, any bidders can complaint to the IEM directly.

34. In case of receipt of complaints, is it necessary to keep on hold the processing of tenders?

Advice of the IEMs should be followed at that time.

35. What role IEMs play on Tenders / Contracts on which no complaints are received?

IEMs roles start when any complain is received.

36. What is the review system of IP?

According to CVC's circular, an internal assessment of the impact of IP shall be carried out periodically by the CVOs of the organizations and reported to the CVC. Two additional reviews are envisaged for each organization in due course-

- (i) Financial impact review, which could be conducted through an independent agency like auditors;
- (ii) Physical review, which could be done through either an NGO or any specialized institution of tested credibility in the concerned field.

37. Is IP applicable to private sector?

Yes, IP can be adopted by the private sector. TI India is currently working on its effective application.