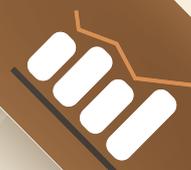


**TRANSPARENCY INTERNATIONAL-BULGARIA**

# **INTEGRITY INITIATIVE**



**TRANSPARENCY  
INTERNATIONAL  
BULGARIA**



**INDICATORS  
FOR TRANSPARENCY AND  
INTEGRITY UNDER PUBLIC  
PROCUREMENT PROCEDURES**

The present Manual is the main outcome document of the “Increasing Integrity through Advocacy: Counteracting Corruption in Public Contracting” project, implemented by TI Bulgaria with the financial support of the Siemens Integrity Initiative. The initiative is based on the settlements with the World Bank Group and the European Investment Bank and aims at creating fair market conditions for all market participants and fighting corruption and fraud through Collective Action and education and training.

More information on Siemens Integrity initiative could be found at [www.siemens.com/integrity-initiative](http://www.siemens.com/integrity-initiative)



TRANSPARENCY INTERNATIONAL-BULGARIA

HANDBOOK

„INDICATORS FOR TRANSPARENCY AND INTEGRITY UNDER PUBLIC PROCUREMENT PROCEDURES”

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## INTRODUCTION

Ensuring transparency and effective control over the assignment of public contracts in Bulgaria is an issue, which in recent years draws the attention not only of NGOs and experts working in the area of anti-corruption and good governance. Since 2007 it has become the focus of attention to a number of national and European institutions aiming at creation of a framework of rules and mechanisms for their application, which could lead to an effective, lawful and transparent use of public resources. The leading objective of the efforts of these institutions is building a system of rules that leads to maximizing the beneficial results for the community, that encourages development of free and loyal market competition and that minimizes the opportunities for corruption and abuse of public trust and funds of the taxpayers.

Distortion of procedures for assignment and execution of public procurement contracts is widespread phenomenon not only in Bulgaria but also in many countries in the European Union. In corroboration of this assertion is the current data obtained from the most recent comparative study on the national integrity systems, conducted in 25 European countries by the International organization Transparency International. The study "Money, politics, power: corruption risks in Europe" defines procurement as one of the issues that gives rise to the most serious concerns and requires the taking of a wide range of measures to limit the opportunities for corruption and the negative impact on the functioning of the institutions and on the business environment.

Spreading of these issues, related with execution of the public procurement, is increasing simultaneously with increase of amount of the funds being allocated through public procurements. Except the fact that public procurements are basic instrument for realization of national public expenditures, a big part of payments from the EU funds will be executed through public procurements, which determines new growth of distributed funds and increase of corruption pressure in the sector.

The data from the recent public reports of the Bulgarian institutions confirms the growing importance of the public procurement for carrying out business in the country. Over a long period of economic crisis and stagnation of business in various sectors of the economy, the resources allocated through public procurement are of key importance. According to data from the 2012 report of the Agency for State Financial Control the total amount of finances that have been object of an inspection are estimated at 9,862,896,203 BGN. Violations have been established in 88.70% of these funds (8,748,425,518 BGN). These violations are exercising a financial influence and here more than half a billions included for which no public procurement procedures have been carried out, despite the existence of all legal grounds.

In order these issues to be surmounted, transparency must be transformed into a guiding principle in awarding and execution of public contracts. In the last 10 years of its activity Association Transparency International Bulgaria was directing its efforts towards bringing to "light" the information on irregularities in this area, identifying main types of violations and analysing the main factors that have a negative impact. To understand the issue in all of its depth, it was necessary to define the limits of the matter, mechanisms of action, and the logic which contributes for the issue to become feasible.

As a continuation of its efforts over the past two years the Association Transparency International Bulgaria directs and focuses its activities on creation of a new tool not only for monitoring and assessment of issues associated with procurement, but above all - to create a tool for legitimate civil impact on the procurement process and execution of public contracts. Based on the experience of the international organization Transparency International, part of which is the Association Transparency International Bulgaria, the Integrity Pact in public procurement has been developed.

The Integrity Pact is a tool for corruption



prevention, providing an option for independent civil monitoring, which in collaboration of an external third party (in the face of an independent observer) would create additional safeguards for monitoring the execution of public contracts and promoting good practices in this area. Through application of this anti-corruption tool the Association Transparency International Bulgaria aims at raising to a new level the concept of public interest and for socially acceptable behaviour in the process of allocation and spending of public finances.

This understanding is based on the necessity for raising confidence in institutions and increasing transparency in the procurement of supplies and services in the public sector.

The pact regulates monitoring rules and specific commitments of the participants, which include: providing access to information, enabling a direct monitoring in all stages, guarantees for an effective sanctioning of participants (or their staff), whose behaviour contradicts the best practices and standards, stimulate for encouraging the participants to fulfill their obligations for openness and transparency in the process of execution of public contracts.

Association Transparency International Bulgaria applies this innovative tool for first time in three public bodies of the governmental administration that manage funds from the national budget and funds provided from the European Union. In the period from February 2012 to December 2013 the organization has closely observed public procurements, where the Integrity Pact was applied as a tool for monitoring and evaluation, within which contracting authorities were the Ministry of Regional Development and Public Works, Ministry of Health and Ministry of Labour and Social Policy.

This publication aims at presenting the experience of the pilot application of the Integrity Pact, as based on an assessment of its application, and the accumulated expertise in this area in recent years, to outline a set of indicators for transparency and

integrity in the management of public money spent through procurement. It aims at supporting the efforts of bodies, spending public resources, business and civil society organizations that endeavour to operate in accordance with leading standards in this area.



**PART ONE** PACT FOR INTEGRITY IN PUBLIC PROCUREMENT:  
NEW TOOL FOR PREVENTION AND FIGHT AGAINST  
CORRUPTION IN BULGARIA



01





# I. THE INTEGRITY PACT AS TOOL FOR PREVENTION OF CORRUPTION IN PUBLIC PROCUREMENT: CONCEPTUAL FRAMEWORK

The Pact for Integrity (Integrity Pact) is a tool developed by Transparency International in the 1990s. Its aim is to help public institutions and civil society in the fight against corruption and against inefficient management of public funds in the process of planning, preparation, announcement, conducting, awarding and execution of contracts. The Integrity Pact is a process of interaction between the state (or the public institution–contracting authorities), participants in the awarding procedure and in the contract execution and an independent observer. This process includes signing of a tripartite agreement for preventing unacceptable behaviour and performance of this agreement from the public procurement launching to its complete execution.

The pact provides for an independent civil monitoring on the activities of planning, announcement and awarding of the public procurements, serious commitments by the contracting authority and participants for avoiding corrupt practices and unacceptable misconducts, application of safeguards for meeting the obligations to the Pact, as well as sanctions for a breach of commitments to contract.

## MAIN OBJECTIVES OF THE INTEGRITY PACT

Applying this anti-corruption tool the Transparency International aims at new level of understanding of the public interest and socially acceptable behaviour in the process of distribution and spending of public finances. This conception is based on the necessity to increase confidence in the institutions and to enhance transparency in the process of awarding works, supplies and services in the public sector.

### **The main objectives of the Pact are the following:**

- Creation of effective guarantees for abidance the principles enshrined in the Constitution and laws of the Republic of Bulgaria for free economic enterprise and equal legal opportunities for doing business;
- Improvement of the business climate and enhancing the culture of interaction between economic operators in the process of carrying out their economic activities in real competitive environment and attracting foreign investments.



## WHY THE PACT IS APPLICABLE AND USEFUL TOWARDS PUBLIC PROCUREMENT

The Bulgarian social environment has been developed in the recent decades around different in nature and effectiveness efforts for creating norms and rules to regulate the transforming public relations. In this regard, the introduction of tools for public procurement, as well as other elements of the management practice of New Public Management in the Bulgarian system has led to a number of obstacles in adapting and synchronizing to the necessary extent.

The objective of public procurement, in accordance with the overall management philosophy, is to ensure the maximum effective expenditure of public resources, while preserving and promoting the environment for free competition, publicity, transparency and accountability in the actions of public bodies and contractors of public procurement.

However, practice shows that regardless of the existence of legislative efforts to create guarantees for effective application of the public procurement mechanism, some of the problems in the management of public funds continue to reproduce themselves. Without doubt, one of these problems is related to the practice of favouritism, political dependence, lack of transparency and accountability, which in long run constitutes an environment for corruption.

There is a high degree of mutual mistrust between the participants in public procurement awarding and execution procedures. While the corruption levels are in fact far lower than it can be measured through various forms of studies of public opinion, the belief that the whole public procurement practice is shot through with corruption dominates. These attitudes largely determine the behaviour of the different participants.

Both contracting authorities and contractors are convinced they are working in a corrupt environment. In this sense, corruption has received its legitimacy as the dominant means to reach scarce resources. Contracting authorities have deep doubt about the integrity of the potential contractors, and the contractors, in turn, are convinced that contracting authorities manipulate the terms of public procurement procedures so as to favour, by bypassing the law, certain contractors who are politically bound. The idea of political pressure as a factor in the development of public procurement practice is resistant.

In this sense, a tool as the Integrity Pact could aim not so much at building upon already existing and effectively functioning relationships, but to be a **corrective of part of the negative effects** that are being generated in the public environment due to partial and unconvincing application of the good governance model.

The Pact could be seen as a new level of quality of public affairs, directed towards achieving more **transparency and accountability in the actions of the contracting authorities and contractors**, as a collateral security for compliance with the law.

The Pact can be also seen as means for **compensating imperfections in the law**, as a method of ensuring more transparency and integrity in public procurement process. Under certain conditions, the Integrity Pact can be rationalized as a means to increase efficiency as well.

The Pact could successfully be shaped and implemented as a **tool for conflict management**. In this perspective, it could be utilized as an effective tool for determining eligible tools and methods for resolving any conflicts arisen in the course of preparation, awarding and execution of public contracts.



This is a tool that could **minimize the risks of illegal, but purposeful impact on the conditions of preparation, awarding and execution of public procurement**. In the absence of sufficiently effective corporate regulations within the business frontiers, and in the absence of internal rules within the administration, such an instrument would have to compensate the existing deficits.

It is important to note that because of the existing environment in Bulgaria the Integrity Pact could not be introduced in the same way everywhere. Its general philosophy and principles may be supplemented in each case, taking into account the specifics of the legal framework and the way of functioning of the administrative structures.

## INTEGRITY PACT AND INTEGRITY POLICY

The concept of Integrity Pact derives from the Integrity Policy developed by the Transparency International - model for effective anti-corruption behaviour, good public sector management and increase of confidence in the spending of public funds.

The Integrity policy sets the vision of an honest and effective management, presenting the general context in which efforts are made by public institutions and businesses to create an environment, limiting the circulation of various corrupt practices and models.

The Integrity Policy operationalizes the concept of integrity and reduces it to specific indicators in the field of public procurement, subjected to empirical identification and measurement at each stage in the process of awarding and execution of public procurement.

That is why TI - Bulgaria proposes to the relevant public institutions and participants in the procedures of awarding and execution of contracts, along with the application of the Integrity Pact, to implement their own policy for integrity, setting out the general framework and parameters of good governance.

In case the public institutions and the participants in the procurement procedures are ready to engage in concrete commitments aimed at prevention of corruption and unacceptable behaviour, they can choose to sign the Integrity Pact, that contains concrete guarantees for integrity.



## HOW DOES THE INTEGRITY PACT WORK

### **Risk areas, which may be influenced by the Integrity Pact**

Public opinion surveys show **three areas, which in the largest extent are identified as hazardous in the public procurement.**

Primarily, this is the **decision for launching the public procurement and the choice of method for its realization.** This phase of the procedure development depends entirely on the competence and priorities of the contracting authority and at the same time, it is subject at the least extent to a control. Even the development of the practice of preliminary control, to which Bulgarian legislation gradually strives for, could not effectively control this initial phase. Albeit partially, in the presence of a certain administrative capacity and well-structured strategy, the preliminary control could detect specific details in the requirements for the contractor which could secretly favour one or another of the potential candidates. In practice, this requires presence of a very serious expertise that in essence duplicates the activities of the institutions – contracting authorities.

The second critical stage, which was ascertained in the course of research and which is directly related to the applicability of the Integrity Pact, is defined by the **parameters of the contract for public procurement.** Irrespective of the presence of legal possibilities for conducting a genuine process of negotiation in terms of specific parameters for the execution of the contract, most often this phase of the process is reduced to a purely formal signing of a preliminary prepared contract. The potential of the contractual process as regards the creation of real guarantees for the quality of execution of the contract is not fully utilized. At same time, during this phase, the contracting authority and the contractor, and before that the other candidates are considered to be under the condition of an actual equality.

The third critical phase of the process to which the Pact could be of some significance, is **the performance of the contract.** With some exceptions, the contracting authority is not in possession of means to control the execution, except in respect of its outcome. In the implementation phase, the contractor essentially is subject of control by other bodies and institutions that do not always have an established contact with the contracting authority.

## STAGES OF INTERACTION BETWEEN PARTICIPANTS

Thematic targeting of the mutual commitments, undertaken through the Integrity Pact to these three stages of the process, would increase its effectiveness and would lead to higher level of applicability of the other provisions laid down in the agreement.



Thus, in terms of the stage of **procurement planning, the Integrity Pact** and the Integrity Policy provide for:

- a set of measures aimed at creating and strict compliance with the rules for a preliminary procurement planning as well as for planning the necessary budget, by abiding to mandatory transparency and the public character of the process;
- establish conditions for an objective selection of experts for technical and budgetary procurement planning with clear conditions and accessible results of the selection performed;
- publishing the planned (not yet launched) contracts, the stipulated budget envisaged for them, maximum period for payment etc.

At the **preparatory stage of the public procurement procedure**, the Integrity Pact and the Integrity Policy provide for:

- establishment of well-founded, publicly announced criteria for participation, by observing the rule not to set artificial constraints on potential participants;
- disclosure of criteria for selection of experts for preparation of public procurement procedures and provision of information ensuring that the requirements laid down are objective and independent;
- announcing the results of the experts' activities, etc.

Regarding **the stage of conducting of the public procurement procedure**, the Integrity Pact and the Integrity Policy provide for the following obligations of the participants:

- to abstain from possible manifestations of unacceptable behaviour;
- to provide the independent observer with information on all expenses related to their participation in the procurement procedure;
- to provide upon request other required information for the civil monitoring;
- to respond to suspicions of corruption and

other illegal practices and to inform the contracting authority and the independent observer about the results of internal checks carried out;

- to abstain from coordinating actions, distortion of competition or other manifestations of unacceptable behaviour contrary to good business practices.

These obligations correspond to the right of all participants:

- benefit from the findings, analyses and recommendations of the independent observer in order to carry out their own assessment of the legality and transparency of the procedure;
- to monitor the execution of the contract;
- to ask the contracting authority and the independent observer to take concrete actions to check controversial circumstances and to make binding recommendations to avoid unacceptable behaviour.

At the Stage of realization and completion of the contract, the Integrity Pact and policy provide for the independent observer and other participants in the Integrity Pact, at the discretion of the contracting authority, to be able to attend the performance of actual control activities related to the execution of the contract, including during the warranty period. The independent observer and at the discretion of the contracting authority, the participants in the Pact, have the right to attend all meetings between the contracting authority and the contractor in regard with the execution of the contract.

The concept of the Pact is the contracting authority and the joined bidders to delegate power to the independent observer as an expression of their unconditional trust towards the professional and moral qualities, objectivity and impartiality of the persons operating as an observer, to collect and process information about the participants at each stage of the procedure, to carry out direct observation over the actions of participants and to give opinions, conclusions and recommendations for implementation of rights and obligations established by the Pact.



## EXPECTED RESULTS FROM THE INTEGRITY PACT IMPLEMENTATION

The practice in different countries have applied the Integrity Pact, shows that the application of complex of measures for prevention of corrupt practices, unfair competition and unacceptable behaviour of the economic operators in the procedure of awarding public contracts, leads to **reduction of up to 30% of public expenditures for supplies and services.**

**The quality of performance of the contract awarded increases**, as each phase of the execution is directly monitored by an independent observer determined by the contracting authority and unconditionally accepted by the contractor, by its accession to the Pact, and in some cases - from other participants in the public procurement procedure.

**Time and resources are preserved** from undue triggered legal proceedings related with lodging an appeal against actions of the contracting authority at the different stages of the procedure, because, convinced in the lawful and transparent development of the procedure, being active participants in each stage of its execution, participants refrain from unfounded legal claims.

**The credibility of the government enhances** as well as its ability to create real guarantees for protection of the public interest and the rights and interests of businesses, including in area, traditionally highly risky for exertion of corruption pressure.

## GUARANTEES FOR THE PACT'S PERFORMANCE AND THE ROLE OF THE INDEPENDENT OBSERVER

Each legal provision would remain just a wish for welfare, if not sealed with the appropriate safeguards for its application. Therefore in the concept of the Pact underlies a system of legal guarantees for proper and timely implementation of the obligations of the participants in the procedure.

The main guarantee for implementation of the Pact is **the figure of the independent observer.** This in any case is a body, enjoying an international reputation and has proven with many years in the field of combating corruption that it is an independent, objective and impartial, that it has experts with undeniable professional and moral qualities at its disposal that would not make compromises when taking measures for prevention or counteraction offenses and publicly unacceptable business practices. The independent observer is chosen by the contracting authority and joining the Pact all participants unconditionally and irrevocably agree to assist the observer in their activities and in implementing his recommendations and decisions.



Furthermore, the Pact provides for a system of **incentives** for the participants in the procedure willing to join the Pact, as their inclusion in a special public register, active behaviour on the part of the contracting authority to promote among entities with similar profile in Bulgaria and in other countries the fact of the accession to the Pact, as well as opportunities to monitor the activities of the contracting authority and the contractor. The idea is the economic operators that choose to comply strictly with the law and not to undertake unacceptable behaviour, to directly benefit from this and at a following stage to prevail as preferred bidders for contractors.

Penalties are **envisaged** in case of unacceptable behaviour by participants in the procedure, joined the Pact. As such motivated removal from the register of participants to the Pact, notification of entities with similar profile for ascertained unacceptable behaviour, fines, suspension of further participation in the procedure can be established.

## WORLD EXPERIENCE

The Integrity Pact works successfully in leading economies such as Germany, Italy and the UK as well as in developing or emerging economies such as Latvia, Argentina, Colombia, Ecuador, Indonesia, Pakistan, etc. The Pact is introduced in 15 countries worldwide, and its models are constantly being improved based on the feedbacks, opinions and recommendations from a wide range of individuals and organizations.

Albeit there are Integrity Pact models already established, tested in time, proven as effective and well working, they are not mechanically applied in every country. The Integrity Pact models are adapted to the characteristics of the economy and the regulations of the public procurement procedure in the respective country in order to ensure applicability and efficiency.

The global assessment of the experience of different countries, have applied the Pact, shows that its concept can be very effective. One of the positive aspects of the concept of the Pact is precisely that it is flexible enough to adapt not only to different local legislation and requirements, but also to various degree of public institutions' inclination to adopt a similar approach. However, there are some basic principles and rules that retain the basic content of the tool Integrity Pact, as such, supported by TI.

By introduction of the Pact, Bulgaria had the opportunity to use the international experience as regard implementation of different models as well as the experience of various experts and institutions on the problem areas and weaknesses in the public procurement procedure.

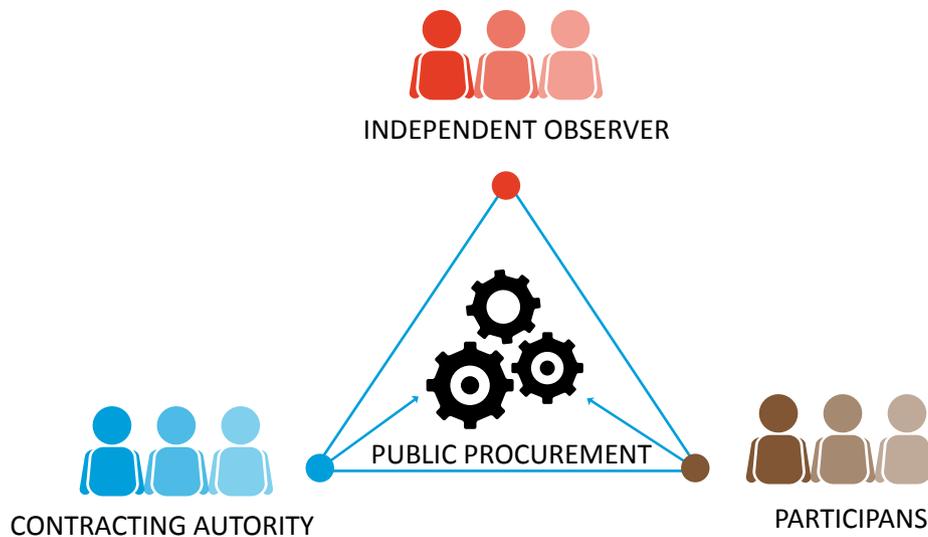


## II. SCOPE OF THE PILOT APPLICATION OF THE INTEGRITY PACT IN PUBLIC PROCUREMENT IN BULGARIA

The Bulgarian model of the Integrity Pact was created by the Transparency International – Bulgaria based on a number of expert assessments, sociological studies, analysis of Bulgarian legislation, comparative research and studies of foreign experience in the area of public procurement procedures for concessions and privatization. It is developed in accordance with the provisions of Bulgarian legislation and is an additional tool for increasing transparency and integrity in one of the most problematic areas in the government - the awarding and execution of public contracts.

The Integrity Pact is entitled to increase transparency, accountability and integrity in public spending and thereby - to create confidence in institutions and businesses that adhere to the principles of good governance and fair market competition.

A special feature of the Bulgarian model of Integrity Pact is the set of emphasis on incentives that promote the commitment of parties in the anti-corruption initiative. Major incentive of the Pact is the White List that promotes the honest participants that fulfill their commitments under the Integrity Pact in public contracting.



### BASIC PRINCIPLES OF CIVIL MONITORING IMPLEMENTATION

**I. INDEPENDENCE**  
of the organization  
(and in particular of  
the team performing  
the monitoring) by  
execution of the activity

**II. PROFESSIONALISM**  
and adherence to  
the standards for a  
professional and expert  
approach at the activity

**III. Political  
IMPARTIALITY**

**IV. CONFIDENTIALITY**  
with the objective not to  
impair the lawful interests  
of the participants in the  
procedure



## MONITORING OF PUBLIC PROCUREMENT MAIN STAGES, SUBJECT OF MONITORING

### **1. Preparation of the public procurement**

- Planning of the activities of the organization and assessment of the needs from the performance of a specific activity (construction, delivery, services)
- Decision for conducting a procedure for public procurement
- Elaboration of the tender documentation

### **2. Conducting the competition procedure**

- Decision for the selection of committee to evaluate the tenders
- Open meetings of the committee
- Minutes of the committee's work
- Decision for selection of a contractor
- Signing a contract for execution of the public procurement

### **3. Execution of the contract**

- Fulfillment of the Commitments under the contract (meeting the deadlines, activities, results):
  - Transparency
  - Accountability
  - Effectiveness
  - Control
- Conformity of internal regulations
- Adequacy of the organizational system and resource security
- Availability of systems for management and control
- Implementation process and results

## MONITORING METHODS

### **I. DOCUMENTARY ANALYSIS**

- Study of the documents submitted according to the proper official channels by the institutions. The analysis of documents covers also their working versions, inasmuch specific recommendations and comments can be made in the course of their development.
- Conclusions and assessments are based on the final versions of the documents.

### **II. DIRECT OBSERVATION**

- Working meetings and
  - On site inspections
- For providing an assessment for the conduct of the tender procedure and contract execution (including site monitoring carried out by an authorized team of experts of the organization, in cooperation with the local monitoring team).

### **III. SOCIOLOGICAL RESEARCHES**

- Surveys and expert interviews of representatives of the sponsors and participants in the competition procedure to obtain their assessments on public procurement and on the effect of the application of the Integrity Pact.
- Media monitoring of publications on the subject - a necessary component in view of drawing up an assessment of the monitoring, reporting different viewpoints and positions in public discussions on the topic.



## OBSERVING THE INTEGRITY PACT

### KEY COMMITMENTS SUBJECT TO MONITORING

Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Article. ..., paragraph. ...</p> <p>.....</p> <p style="text-align: center;"><b>1</b> <b>2</b> <b>3</b></p>	<p>Contracting Authority</p> <p>Participants</p> <p>Contractor</p>	<p>Types of documents:</p> <p>- Generally valid documents for each PP;</p> <p>- specific documents, depending on the subject of the PP</p>	<p>Documents examination</p> <p>Site inspection</p> <p>Working meetings</p> <p>Sociological studies and media publications</p>
<p>Art. 4 (1) In order to assess whether the obligations under Art. 1 – 3 have been fulfilled THE PARTIES agree to provide the INDEPENDENT OBSERVER with access to such documents related to their participation in the award procedure as the INDEPENDENT OBSERVER considers necessary for the fulfillment of its obligations under the PACT, as well as to give response to the INDEPENDENT OBSERVER'S written questions under the conditions of confidentiality.</p> <p style="text-align: center;"><b>1</b> <b>2</b> <b>3</b></p>	<p>Everyone</p> <p>(Contracting authority, Participants, Contractor)</p>	<p>Strategic document for planning of the necessity to carry out activities</p> <p>Internal rules for the preparation of documentation</p> <p>Project documentation in the tender documentation for procurement contracts, with annexes and enclosures</p>	<p>Documents examination/</p> <p>Site inspections</p>
<p>Art. 5 (1) THE CONTRACTING AUTHORITY shall be bound to prepare and submit to the INDEPENDENT OBSERVER a list of the natural persons and legal entities (and of their directly involved employees), who take part in the preparation of the public procurement and execution of the awarded contract. Within three days counted from any change in this list, THE CONTRACTING AUTHORITY shall notify in writing THE INDEPENDENT OBSERVER about the resulting changes.</p> <p style="text-align: center;"><b>1</b> <b>2</b></p>	<p>Contracting authority</p>	<p>Orders for a working group on preparation of documentation</p> <p>Orders for selection of an external consultant to develop documentation</p>	<p>Documents examination</p>



Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Art. 6 (1) THE CONTRACTING AUTHORITY shall be bound to present to THE INDEPENDENT OBSERVER the planned and actual expenditures concerning the external staff (both natural persons and legal entities) regarding the preparation, and implementation of the public procurement.</p> <p>(2) The information under Paragraph 1 shall be provided upon request by THE INDEPENDENT OBSERVER in accordance with the need for reporting.</p> <p><b>1 2 3</b></p>	Contracting authority	Reporting or other document providing information	Documents examination/ Letter
<p>Art. 7 (1) THE CONTRACTING AUTHORITY shall be bound to inform THE INDEPENDENT OBSERVER about the members of the Awarding Commission appointed by THE CONTRACTING AUTHORITY.</p> <p>(2) In the notice THE CONTRACTING AUTHORITY shall state the professional biography of the people appointed by it.</p> <p><b>2</b></p>	Contracting authority	Order for composing the evaluation of candidates  Declarations for conflict of interest, completed by committee members	Documents examination
<p>Art. 8 THE CONTRACTING AUTHORITY shall be bound to present to THE INDEPENDENT OBSERVER the Evaluation Protocol and the Minutes from the work of the Awarding Commission. THE INDEPENDENT OBSERVER performs analysis and prepares its reports in a way which does not disclose any of the positions of the Commission's members.</p> <p><b>2</b></p>	Everyone  (Contracting authority, Participants, Contractor)	Report, minutes of the committee's work	Documents examination



Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Art. 9 THE PARTICIPANT agrees, that upon conclusion of the Commission's work, and upon demand by THE M INDEPENDENT OBSERVER, will grant the latter access to the documentation prepared for their participation in the tender.</p> <p><b>2</b></p>	Participant	Documentation regarding the proposal for application	<p>Documents examination</p> <p>Site examination</p> <p>Working meeting</p>
<p>Art. 10 (1) Upon request of THE INDEPENDENT OBSERVER, THE TENDERER shall be bound to submit a full, detailed and reliable list of the external staff (both natural persons and legal entities) and outsourced services that it used in the course of preparation, and participation in the public procurement procedure and during the execution of the awarded contract.</p> <p><b>2 3</b></p>	Participant	List of external employees	<p>Document examination</p> <p>Site inspection</p>
<p>(2) In case that contracting parties of THE TENDERER are legal entities, they shall exhaustively list name by name the people they will directly engage for accomplishing their obligations towards the tenderer.</p> <p><b>2 3</b></p>	Participant	List with the names/ information on legal persons	<p>Document examination</p> <p>Site inspection</p>
<p>(3) Upon request of THE INDEPENDENT OBSERVER, THE TENDERER shall be bound to submit a statement of its expenditure for the activities under para.1.</p> <p><b>2 3</b></p>	Participant	Report of expenditure	<p>Document examination</p> <p>Site inspection</p>



Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Art. 11. THE TENDERER agrees that when Art. 70 of the Public Procurement Act applies the detailed written reasoning of its offer shall be submitted to THE INDEPENDENT OBSERVER for the purpose of its analytic activity and preparation of reports.</p> <p style="text-align: center;"><b>2</b></p>	Participant	Written justification	Проверка на документи
<p>Art. 12 (1) THE TENDERER agrees that in case the Contract is awarded to it, THE CONTRACTING AUTHORITY shall provide THE INDEPENDENT OBSERVER with access to the awarded contract together with all enclosures and documents it refers to.</p> <p>(2) The rules of Paragraph 1 shall also apply to all amendments of and supplementations to the contract under Paragraph 1.</p> <p style="text-align: center;"><b>2 3</b></p>	Contracting authority	Contract for public procurement	Document examination Site inspection
<p>Art. 13 (1) THE PARTIES accept that the exchange of correspondence for the entire duration of the PACT, including at the implementation stage and within the warranty period, shall be accessible by THE INDEPENDENT OBSERVER. This obligation includes also statements, which the CONTRACTING AUTHORITY and the Contractor created and exchanged during the execution of the awarded contract.</p> <p style="text-align: center;"><b>2 3</b></p>	Everybody	Written correspondence (paper, e-mails)	Document examination Site inspection



WHITE LIST

**OF THE TENDERERS IN PUBLIC THE PROCUREMENT PROCEDURE**

**FOR „.....”,**

**contracting authority .....,**

**time for implementation .....**

The present WHITE LIST is elaborated as part of the Bulgarian model of INTEGRITY PACT in public procurement. It aims at providing publicity on the commitments of all parties in the public procurement process and who have acceded to the INTEGRITY PACT. By providing up-to-date information to society, all participants contribute to the increase of transparency and accountability in public procurements. The WHITE LIST represents a specific incentive for responsible business and contributes to the establishment of a fair competitive business environment in the country.

TENDERER	CONTRACTOR	TENDERERS/ CONTRACTORS WHO HAVE ACCEDED TO THE INTEGRITY PACT	WHITE LIST DELETION (reason and date of deletions)



Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Art. 14 (1) THE CONTRACTING AUTHORITY shall keep a WHITE LIST of the TENDERERS in the PACT.</p> <p><b>2</b> <b>3</b></p>	Everybody	White list	<p>Проверка на документи</p> <p>Проверка чрез достъп до интернет страницата</p>
<p>(2) THE CONTRACTING AUTHORITY shall write down the following in the WHITE LIST:</p> <ol style="list-style-type: none"> <li>1. The tenderers in the public procurement procedure;</li> <li>2. The tenderers, who have accessed the INTEGRITY PACT;</li> <li>3. The tenderer to whom the Contract has been awarded;</li> <li>4. The deletions made in the WHITE LIST and the reasons for them.</li> </ol> <p><b>2</b> <b>3</b></p>	Everybody	White list	<p>Проверка на документи</p> <p>Проверка чрез достъп до интернет страницата</p>
<p>(3) THE CONTRACTING AUTHORITY shall lead an active policy to promote the WHITE LIST and the principles of the integrity policy.</p> <p>THE CONTRACTING AUTHORITY maintains public access to the WHITE LIST by the means of its website and upon demand ... informs contracting authorities within the European Union about the registrations made in the list.</p> <p><b>2</b> <b>3</b></p>	Everybody	White list	<p>Проверка на документи</p> <p>Проверка чрез достъп до интернет страницата</p>



Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Art. 15 (1) THE PARTIES agree that if a contract is awarded to a TENDERER, THE INDEPENDENT OBSERVER shall be entitled to attend the meetings between THE CONTRACTING AUTHORITY and the Contractor, as well as the performance of actual activities related to the execution of the awarded contract.</p> <p style="text-align: center;"><b>3</b></p>	Everybody	<p>Information about the schedule of meetings</p> <p>Notification letters for scheduled meetings</p> <p>Documents related with the subject of the meeting</p>	<p>Document examination</p> <p>Site inspection</p> <p>Working meeting</p>
<p>(2) THE CONTRACTING AUTHORITY shall provide THE INDEPENDENT OBSERVER with a schedule of the activities related to the execution of the awarded contract, as well as with a schedule of the appointed meetings. Any amendments to the schedules shall be announced on the day of their occurrence.</p> <p style="text-align: center;"><b>3</b></p>	Contracting authority	Contract for public procurement	Document examination
<p>Art. 16 (1) In order to achieve the objectives of the PACT immediately after its signing THE TENDERER shall designate a person in a managing position, who shall be responsible for the application of the provisions of the PACT</p> <p style="text-align: center;"><b>3</b></p>	Everybody	Written correspondence (paper, e-mails)	<p>Document examination</p> <p>Site inspection</p>



Provision from the Integrity Pact	Participant to whom the clause of from the IP is applicable	Sources of information	
		Required documents	Methods for verification of the execution
<p>Art. 2 (1) THE PARTIES and their employees, including those who have not been assigned direct duties related to the preparation and implementation of the public procurement and the supervision of the execution of the awarded contract shall be bound to refrain from any misconduct.</p> <p><b>1 2 3</b></p>	Everybody	<p>Internal provisions</p> <p>Codes of ethics</p>	<p>Document examination</p> <p>Working meeting</p>
<p>Art. 17 (3) In the cases where a violation or misconduct or preconditions for it have been established, THE INDEPENDENT OBSERVER shall inform THE CONTRACTING AUTHORITY and/or THE TENDERER.</p> <p><b>1 2 3</b></p>	Независим наблюдател	Letters	
<p>Art. 18 (1) In the cases where misconduct represents a disciplinary breach THE CONTRACTING AUTHORITY and THE TENDERER shall be unconditionally bound to immediately initiate appropriate internal proceedings or clarifying the actions of their employees.</p> <p><b>1 2 3</b></p>	Everybody	Written notices for activities	Document examination



The Integrity Pact has been applied as a pilot tool for monitoring of public procurement procedures carried out by three institutions of central government - Road Infrastructure Agency, with principal Ministry of Regional Development, Ministry of Health and Ministry of Labour and Social Policy. The finances with which the procurements are being executed are provided by the national budget, co-financed by three operational programs: OP Transport, OP Regional Development and OP Human Resources Development. The observation period covers period from May 2012 to December 2013.

Contracting Authority: "Road Infrastructure"/ Ministry of Regional Development	
Subject of the public procurement	Planning and construction of the site: "Struma" highway, lot 2, section "Dupnitsa-Blagoevgrad" from km 322 +000 to km 359 +000
Value	298 935 000 BGN without VAT, financed by OP "Transport"
Implementation Period	22 months after the contract conclusion on 27/02/2013
Contracting authority – party to the Integrity Pact	Road Infrastructure Agency/Ministry of Regional Development (Ministry of Regional Development and Public Works, at the time of signing the Integrity Pact)
Tenderers of public procurement – party to the Integrity Pact	1. Actor "ASD, Greece 2. Consortium "Struma - Lot 2" (members: "Impreza" AD, Italy, "GBS Infrastructure Construction" AD, Bulgaria; "Patstroy-92" AD, Bulgaria (the contractor) Note: Independent support and explicit statement to join the Pact is presented by "HOCHTIEF Solutions' AG Bulgaria - part of the union" Struma 2012 ")



### Contracting Authority: Ministry of Health

Subject of the public procurement	Carrying out construction work in homes for medical and social care for children, 8 lots in the project Restructuring of homes for medical and social care for children from 0-3 years
Value	6 883 951 BGN without VAT for 8 lots funded by OP Regional Development
Implementation Period	Eight months after the contract conclusion on 08/01/2013
Contracting authority – party to the Integrity Pact	Ministry of Health
Tenderers of public procurement – party to the Integrity Pact	1. Unity "Radita-Stroycommerce" Ltd., Targovishte. 2. Consortium "Tehnokom" DZZD" Sofia (in composition:" Monolithic Construction "Ltd and" Bozhkov - Build "Ltd.) (contractor of lot 5 of the project for Pernik)

### Contracting Authority: Ministry of Labour and Social Policy

Subject of the public procurement	1. Procurement of a project management consultant; 2. Procurement of a consultant on European harmonization; 3. Procurement of an information technology consultant. (part of the project "Construction and commissioning of a national system of electronic data exchange in the field of social security for the purposes of Regulation № 883/2004 and 987/09 - EESSI")
Value	Project management - 30096 BGN; European harmonization - 10680 BGN, Information Technology - 30 096BGN, Funded from the OP Human Resources Development
Implementation period	01.07.2012 г. – 31.12.2014 г.
Contracting authority – party to the Integrity Pact	Министерство на труда и социалната политика
Tenderers of public procurement – party to the Integrity Pact	1. Dimitar Georgiev (IT consultant) 2. Bonislav Radev (project management consultant) 3. Vesselina Encheva (consultant on European harmonization)



## III. EVALUATION OF THE APPLICATION OF THE INTEGRITY PACT IN BULGARIA

### ACCESSION TO THE PACT

The Bulgarian model of an Integrity Pact in public procurement procedures was developed by the Association "Transparency International" in 2011. Taking into account that it presents a new tool for corruption prevention in public procurement, a relatively long period was intended for consultation of the prepared tool with representatives of public institutions and the business.

The process of promotion of the specific model of Integrity Pact was launched in January 2012 consisting of:

- a) working meetings with representatives of the political management bodies of the three ministries concerned;
- b) working meetings with experts from the units involved in preparation and controlling of public procurement, management of EU funds and the internal control units;
- c) meetings with business representatives - branch structures of businesses, business associations operating on the national and international level;
- d) public discussions with representatives of the ministries, of bodies for control and business organizations.

Within these meetings and discussions the positive experience of implementation of Integrity Pacts in other countries was debated, expected positive results from application of this anti-corruption tool in Bulgaria, as well as basic elements and rules for interaction between parties according to the developed Bulgarian model for Integrity Pact in public procurement.

The process of discussion, promotion and joining to the Pact ended in November 2012 with official signing of agreements for cooperation with the relevant ministries. Three separate Integrity Pacts were signed, based on which 5 selected procurements are being monitored and relevant procedures for accession to the Pact by the candidates in the monitored public procurements were opened.

This allowed the team of the Association Transparency International Bulgaria to proceed with round of negotiations, workshops and discussions with participants in public procurement procedures, aiming at their accession to the Pact.

#### Key findings

##### 1. Period of promotion of the Integrity Pact and accession to the initiative

The results of monitoring in this initial phase of implementation of the initiative shows that the process of promoting the concept, discussing the actual content of the document and the accession to the Pact can take a relatively long period of time. In the case of experimental implementation of the Integrity Pact in the Bulgarian context, this period ranged **from 4 months to 11 months**.

This stage can be carried out in a relatively **shorter period of time** in administrative structures, where there is a clearly defined unit, primarily responsible and having leading role for public procurement, and as such this unit is also responsible for implementation of cooperation initiatives in this field. In larger institutions with complicated administrative structure and many units with shared functions and responsibilities, exists the necessity for providing **a longer period of time** to coordinate the commitments for implementation of such an initiative. In this respect the possibilities for expressing different opinions from different departments and directorates (given different roles and responsibilities, which they are entrusted with) should be taken into account, the necessity for clearing the contradictions between them as well as the necessity for consideration of the document at the main administrative levels.



In addition, the process of discussion and accession to the Integrity Pact can be further extended **by the need for coordination between two or more structures** which are entrusted with an administrative autonomy, but it is necessary for them to cooperate in implementation of projects that are of major public importance or which are related with spending significant amount of public funds.

Confirmation of the aforementioned statement is at first, the case with the adoption of the Integrity Pact by the Road Infrastructure Agency, which principal is the Ministry of Regional Development (at the time of launching the initiative –Ministry of Regional Development and Public Works). In this case it was necessary to carry out consistent coordination of the Integrity Pact within the administrative structure of the Ministry of Regional Development and RIA, then - approving the agreed Integrity Pact by the Ministry of Regional Development again.

Secondly (in case of **financing from European funds**, it should be taken into account the necessity for coordination with the Managing Authority of the Operational program concerned. Coordination with the Managing Authority, which is located in another administrative structure also proved to be a factor that affects the duration of the process of discussing the initiative and making decision on its implementation.

The accession process of participants in the public procurement procedure has lasted for about three months.

## 2. Standby Commitment to Integrity Pact by the Contracting Authority

The results from the pilot implementation of the initiative showed clear differentiation of the levels in the administrative structures, that appreciate the positive potential of the Integrity Pact and are willing to engage in its experimental application. **The highest degree of involvement** in the initial stage manifests the highest management level in the administrative structure - ministers, cabinet members, members of the management board. The main reason for this positive attitude is rooted in the fact that the senior management level of the administrative structure realizes the necessity for a higher degree of transparency and through it - the potential for creation the confidence in the activities of the bodies they represent and manage. Management levels of public bodies have clear understanding that their work is subject of public interest. In this regard just the management levels of the contracting authority estimate the merits of implementation of such a tool which could provide them with more integrity and transparency. Furthermore, they realize the potential of the Pact as a tool for external monitoring through which they can exercise control over the work of their employees. Thirdly, the management levels of the contracting authority estimate that the external observation grants the opportunity for additional control over the contractor aiming at adherence to the obligations under the contract.

In the initial stage of implementation of the initiative **the lowest level of commitment** to the experimental application of the Integrity Pact is the average level of the administrative structures. The reasons for this can be considered in two main directions. On the one hand, employees expect such a commitment to be an additional burden and obligation, which could not have a positive impact on the actions of the participants in the public contract and as a whole - on their implementation. In addition, the staff working in these administrative units, comprehend the fact that



responsibility for implementation of the commitments under the Integrity Pact will be theirs. Secondly, there should be recognition of the fact that the Integrity Pact is a tool for civil monitoring and therefore their actions will be subject to external monitoring. This, to a certain extent, puts them in a situation of a dual monitoring: on the one hand by the management of the institution in which they work and on the other hand by an external civil control (expression of a new understanding that modern administration must be transparent and accountable towards citizens).

The monitoring results over the subsequent stages of the observed public procurement procedure showed that the commitment of the executing levels of the administration to the Integrity Pact increases in the process of execution of the contract. The manifestation of interest precisely at this level is understandable, given to the fact that public officials have a direct concern for more effective control over the selected contractor. In this sense, public officials realize that the external monitoring can exert disciplinary impact on the contractor, moreover it is a further guarantee for attainment of the result sought by the public contract.

### 3. Standby Commitment to the Integrity Pact by Tenderers

The introduction of the Integrity Pact in public procurement is relatively unfamiliar anti-corruption initiative for the country. In this regard, the results from the experimental application highlighted two significant differences in the preconceptions and expectations of the initiative.

First, a significantly **higher degree of positive attitude, expectations and willingness to participate** in the initiative show representatives of foreign companies and business organizations, combining efforts of international and foreign companies than Bulgarian companies operating only on the national market. To a certain extent, the increased interest of foreign companies is explained by the fact that such initiatives for promoting ethical business are prevalent in a number of countries in which they operate (particularly in EU Member States), whereas for Bulgaria they are novelty which is not yet sufficiently publicized, discussed and has not yet acquired popularity. In addition, the foreign businesses realize the potential of the Integrity Pact as a tool for higher transparency in public administration. The representatives of foreign and international companies estimate the potential positive effect of the Integrity Pact (and that of the independent observer) in terms of possibility of exercising an impartial external monitoring over the administration.



General characteristics in the expectations of both the Bulgarian business and the international business is the lack of sufficient confidence and information whether the contracting authority will treat them as equal market participants and, particularly – will it impartially proceed their proposals in the tender procedures. In this sense, the business considers the Pact as a tool, which by civil external monitoring may contribute to adherence to the principles of fair market competition.

Secondly, a significantly **higher degree of positive attitude, expectations and willingness to participate** in the initiative manifest representatives of wholesale business than small- and medium-sized businesses. One of the explanations for such an attitude is that anti-corruption tools (such as the Integrity Pact) are proven and well known in the contemporary business management. This is particularly the case for companies that have a complex functioning and management structure where the presence of clear rules for ethical business is a tool for supervising the staff and for effective management of business resources as well as for strengthening/preserving the positions on the market. Last but not least, large firms assess the accession to anti-corruption initiatives in light of corporate image, which they seek and with which they want to prosper on the market.

The ensued results from the application of the Integrity Pact showed that companies from the middle and small businesses assess most adequately the effects of accession to the initiative at the stage of the contract execution. One explanation lies in the fact that when working with large and complex administrative structure the small business is not always able to justify and defend effectively its own demands (even when they are reasonable). In this sense, small- and medium-sized businesses see the Integrity Pact as a tool for mediation in disputes concerning the contract execution.

General attitude of all companies, regardless of the scale of their activities, is that the independent observer, as an unbiased third party to the Integrity Pact, can serve as a source of information, highlighting one of the stages that raises the most serious concerns for businesses –the evaluation of the offers. The results of the sociological research that the Association "Transparency International" held in 2011 confirmed such an attitude. For the business the process of evaluation is as a "black box", as they are not quite convinced that the outcome is a selection of the best proposal of the tenderers. Subsequent monitoring results showed that after completion of the procedure for contractor selection, the interest of the business to the procurement procedure decreases considerably.



## REALIZATION OF THE COMMITMENTS TO THE INTEGRITY PACT

### 1. Preparation of the procedure and elaboration of the tender documentation

The monitoring results regarding the preparation of the procedure and the elaboration of the tender documentation showed the following:

#### Providing access to information concerning the preparation of the procedure and the tender documentation

In general, the contracting authorities fulfilled their commitment to provide **access to the documentation regarding the preparation of the public procurement procedures** as well as to provide paper/electronic copy of the tender documentation (in accordance with Art. 4 of the Pact). The access to the documentation was provided later on - after the signature of the relevant cooperation agreements and Integrity Pacts.

The long period of coordinating the commitments to the Integrity Pacts lead to actual commencement of the monitoring after elaboration of the **tender documentation for respective public procurement procedure**. This predetermined the method by which the review of the prepared documentation was carried out - subsequent monitoring of the already elaborated documentation. Access to the decisions of the contracting authority and to the tender documentation was provided after the commencement of the procurement procedures.

The Contracting authorities **did not take advantage of the opportunity to provide access to the draft of the tender procedure documentation**. Although in one of the monitored procurement procedures there was no any tenderer and after two consecutive failed tenders changes have been made in the tender documentation, the contracting authority did not take an advantage of the opportunity to provide the observer with a preliminary access to the tender documentation before its publication. This deprived them to have the possibility to an additional external expert evaluation and from the opportunity to receive proposals for improvement of the documentation and to expand the access to it through its publication in specialized journals.

The review of the documentation provided revealed that **only one of the contracting authorities did take advantage to use services of an external consultant in the preparation of the tender documentation**, as the information about the contractor's name, the type of the procedure and the value of the contract is provided upon request of the observer (in accordance with Art. 5 and Art. 6 of the Pact). The other two contracting authorities have prepared the tender documentation, using the available capacity of the experts who work in the units involved in preparation and implementation of public procurements in the respective departments.

#### Accountancy

One of the clauses in the Integrity Pact (Art. 6) determines **an obligation for the contracting authority to submit a report on the expenses made for external expertise** (natural or legal persons) who are involved in the preparation, implementation and execution of the public contract.

As noted, only one of the contracting authorities made use of the services of an external consultant for development of the tender documentation. After a request for information from the observer, the **contracting authority provided an extract from the information data base** of the contracting authority for the name of the selected contractor, type of the procedure (direct assignment) and the contract value (14500 BGN).

The other two contracting authorities provided information about the employees who have worked on the tender documentation. Own administrative resources have been used in the process of its development-employees of the units, who have been involved in the preparation and execution of public procurement.



## Control mechanisms and application of professional and ethical standards

Contracting authorities have at their disposal inter-departmental acts, handbooks etc., regulating the control over the preparation and execution of public contracts. The tender documentation is subject to an external control by the Public Procurement Agency and by the Managing Authorities of the operational programs. However, the monitoring showed that there is still much to be desired in terms of the control effectiveness, through which to be ensured:

- **elimination of omissions in the tender documentation** (Note: although in one of the monitored cases it comes to technical failures caused by excessive work-load of limited number of staff, involved in the preparation of large amounts of documentation, the results lead to the conclusion that except for limited administrative resources, it also comes to an exercise of insufficiently effective control over the quality of the work results);

- **transparency and clarity in respect of the motives for making management decisions concerning the choice of procedure** (Note: in one of the monitored procedures it is not sufficiently clear, based on what reasons it was decided to choose a particular type of procedure, which on a next stage turns out to be one of the potential risks for a delay in the implementation);

- **transparency and clarity in defining the criteria for eligibility of candidates** (note: in one of the monitored procedures not enough reasons were clearly formulated for determining the eligibility criterion, which reduces the number of potential candidates only to individuals).

## 2. Conducting a procedure for selection of contractor and contract concluding

Monitoring results from the procedure for selecting a contractor showed the following:

### Providing access to the documentation related to the procedure. Providing written answers to questions posed by the observer (Art. 4, para 1)

Results from the monitoring showed that all three contracting authorities have fulfilled their obligations under this provision. Two of the ministries promptly responded to the questions received and requests for copies of documents and/or electronic provision of documents. Only one of the contracting authorities delayed provision of the documents requested and the replies to the letters sent by the observer. This is probably due to the administrative structure that requires coordination with several administrative units, taking a decision by the management college as well as coordination with the leadership of the Ministry and with the Managing Authority.

Based on the provisions of the Pact **copies of documents were provided or direct access to documentation was provided: tender documentation, decisions of the contracting authority regarding the procedure, composition of the evaluation committee, statements, correspondence** between the contracting authority and candidates, between the contracting authority and the selected contractor, contracts with the selected contractors, current schedules of activities (update where it was necessary of such activities and schedules is prepared at the time of the elaboration of this analysis).



Copies of the contracts were provided after conclusion of contracts for execution of the relevant public procurements. Considering the fact that the construction and supervision activities in one of the procurements concern implementation of one and the same construction site, the observer's experts demanded to be granted with an access to the contract for construction supervision. Such an access was not granted due to the fact that the public contract for construction supervision does not fall within the scope of the Integrity Pact. In this regard, the observer was invited to conclude a separate Integrity Pact for this procurement and to be officially constituted as an observer, to have a legal ground for obtaining access to the targeted document.

**Providing information on the composition of the committee for evaluation of offers. Providing access to the declarations of the members of the committee for circumstances that constitute a conflict of interest (art. 7, para. 1 and 3)**

All of the contracting authorities provided access to the information regarding the composition of the committees that assess the tender proposals. Decisions for the committee's composition and relevant declarations for conflict of interests were provided. The on-site inspection and access to the declarations of members of the committee indicated that the formal legal requirements are met. Subsequently, given the concrete circumstances, a change in circumstances for conflict of interests is not declared.

Here we should note that from researcher's point of view it is very important the legal requirements for declaration of a conflict of interest to be further developed in a comprehensive system for reporting, monitoring and verification of the data declared. This means that the public institutions have to create and implement policies for prevention and counteraction to conflict of interest. It is important for the data not only to be declared, but also its authenticity to be

validated by units, which have the power to carry out effective monitoring for compliance with the legal standards. In this regard it should also be noted that the contracting authority's administration does not enjoy the complete right for inspection of the data declared by the committee members, who are not the contracting authority's employees and are situated under the authority of another administrative body.

**Providing minutes and report on the committee's activities (art. 12)**

All of the contracting authorities fulfilled their commitment under this provision, which grants the observer an access to the records of the committee's activities, reports to the contracting authority for results of the work performed, decisions of the contracting authority for selection of a contractor.

The granted access to the documents was provided on time, and it should be emphasized that on the basis of these documents and the direct observation on the open meetings of the commission, the independent observer prepared a report on the monitoring over the procedure of contractors' selection.

**Providing access to the correspondence between the contracting authority and the participants (including the acts, which the contracting authority and contractor create and exchange during the execution of the contract) for the entire period of duration of the Pact (art. 13)**

All of the contracting authorities have provided access to the correspondence with candidates for public contracts. The provision of this access was executed through site visits, within workshops with representatives of the contracting authority or by providing hard copies or copying the electronic communication.

At the on-site examinations, the contractors of two of the observed public procurements also provided access to the correspondence with the contracting authority regarding the execution of the contracts.



### **Designation of a person in a managing position who shall be responsible for the application of the provisions of the Pact. (art. 16, para. 1)**

The designation of **persons who are engaged throughout the duration of the pact** – from the beginning of the public contracting procedure until its implementation, allows a more intensive communication to be maintained, as a result of which the required information to be provided in a significantly shorter period.

Monitoring on the application of this provision showed the following:

All the three contracting authorities designated contact persons in a managing position and in expert positions as regard the application of the Integrity Pact. They were explicitly designated and the lists of these persons and their contact details were provided to the observer.

One of the contracting authorities applied an approach, where the designated individuals were engaged in the implementation and monitoring of the Pact throughout the whole period from the launching of the public procurements until their execution.

The other two contracting authorities applied a different approach - given the different roles and responsibilities in the preparation and execution of the public contract, certain persons in management positions were designated **to be engaged in the implementation of the Pact only within the stage of the process for which they are authorized**. This decision led to a necessity for a kind of peculiar "reset" of the communication with the contracting authority after the selection of a contractor and the necessity for re-conducting workshops and discussions clarifying the purpose of the initiative and the specific commitments to the Pact. This, respectively, reflected negatively on monitoring of the implementation stage of public procurement contracts. In particular, until the beginning of November the observer was not informed and accordingly - had not had the opportunity to attend working meetings between the contracting authority and the contractor.

It should be noted, however, that the sequence of interaction between one of the contracting authorities and the observer was ensured due to **the personal involvement** of the person in management position and of the experts who were involved in the first stage of the preparation of the tender documentation, contractor selection and the conclusion of a contract.

Application of this provision by **the contractors**: only one of the contractors appointed persons for interaction in implementation the commitments under the Pact. This fact can be explained by the size and structure of the contractor's company - given the functional distribution of activities, this contractor had at its disposal the necessary number of experts to engage with this function. In the other contracts the main commitment to the Pact was implemented, when it was overtaken by the head of the company or by the individual who was contracted to carry out the service procured.

### **Conducting an internal monitoring (by designated employee to the Pact) for compliance with the Integrity Pact as well as with the related anti-corruption policy internal acts**

In accordance to Art.16, the employee in a management position designated by the contracting authority is ought to monitor the implementation of the commitments under the Pact. This monitoring can be carried out at its own initiative, at the initiative of the contracting authority and at the initiative of the observer.

As illegal actions of the personnel of the contracting authority have not been reported to the observer, a cause for referral of the responsible person has never arisen so far.

Also no specific information has been received so far for occasions initiated by the contracting authority which should be subject to an inspection.



Elements of monitoring for implementation of the commitments to the Pact exist, evidence to which is the fact that within the working meetings between officials of the contracting authority and the observer, information was provided on the execution of the public procurement, means of control applied over the contractors' activities, measures undertaken for informing the units in charge of prevention and counteraction of corruption.

However, it is noteworthy that more efforts are necessary for conducting full monitoring on the implementation of the Pact's commitments. Monitoring results show that the main initiative for communication and coordination in the implementation of the Pact (such as the publication of the White List on the website of the Ministry or to carry out checks on site) is of the independent observer.

Actions of **candidates / contractors** regarding this provision of the Pact - it should be noted that the development and implementation of policies for prevention and counteraction of corruption is not common approach among companies operating on the national market. The results of the ongoing initiative showed that only one of the bidders (foreign company) has a code of ethics, rules and operating procedures. They are designed and implemented as part of a more comprehensive policy for combating corruption and implementing practices of ethical business behaviour.

**Information for initiating appropriate internal proceedings by the contracting authority for clarification of actions of employees whose unacceptable behaviour constitutes a disciplinary offense (Art. 18, para. 1)**

Given the lack of information for employees' misconducts by the time of preparation of this analysis there are no grounds for such proceedings. The willingness of the contracting authorities should be noted (expressed during discussion of the draft of the Integrity Pact) for the inclusion of this clause in the document. It reflects a fundamentally new approach that allows achieving transparency in actions that have an inter-organizational nature.

**Refraining from any misconduct by parties and their employees, including those who have not been assigned direct duties related to the preparation and implementation of the public procurement and the supervision of the execution of the awarded contract. (Art. 2 para. 1)**

All the monitored contracting authorities have established control systems and internal departmental regulations, manuals, etc., which provide for legal and institutional framework for carrying out control over its employees. Considering the fact that they manage EU funds, detailed manuals and guidelines are at their disposal, which include measures for risk management and prevention of corruption. The work of employees is subject to both the internal institutional control and the control of the Managing Authorities of operational programs which funds they manage.



The representatives of the contracting authorities expressed assurance that the Pact is also seen as a tool for prevention illegal actions of employees. It should be noted that this is one of the positive effects of the Pact's implementation - it has a strong disciplinary effect on the employees of the contracting authority and on the contractor. Employees know that their actions are monitored and that it serves as a tool which prevents misconducts of individuals who are directly involved in the contract.

### 3. Contract execution stage

**Granted access to correspondence between the contractor authority and the participants (including in the execution of the contract) for the entire duration of the Pact (Art. 13)**

As it was noted already, all contracting authorities provided access to correspondence related to participation of **the candidates in the public procurement procedure**.

At the contract execution stage **only one of the contracting authorities provide such information** by copying electronic communication with contractors in connection with the meetings planned or with specific key issues of the nature of the contract.

**Two of the contractors** provided access to correspondence related to the contract execution. In one case, the independent observer had the opportunity to get acquainted with the correspondence and documents relating to the contract, based on a visit to the office of the contractor.

A significant attention should be paid to the case with other contractor who turned to the observer for assistance and provide access to correspondence with the contracting authority. It became apparent that for an extended period of time (from February to July 2013) the entity has not responded to the letter by which the contractor informed the contracting authority about an obstacle to further work on the contract and asked for assistance in solving problems.

This gave rise to the independent observer to carry out a visit to the office of the Contractor to carry out a review of the files related to the problem, and check the site to get acquainted with the current status of the activities. The observer reported the case to the contracting authority and had a working meeting with the leadership of the ministry. One of the main recommendations made by the observer



was that there is need of much more active and effective communication between the contracting authority and the contractor and efforts to promptly solve the problems.

**Ensuring access of the observer to meetings between the contracting authority and the contractor as well as access to the actions on the contract execution (Art. 15, para. 1)**

Only one of the three contracting authorities informed observer promptly of planned meetings and respectively - has taken real action to provide access to working meetings between the contracting authority and the contractor. Actions taken by the contracting authority, consisted of sending information concerning meetings between the contracting authority and contractors, information about workshops in a wider format related to the implementation of the project, information on the implementation of procurement activities and the implementation of project.

By November 2013 the other **two entities did not take concrete actions to inform the observer and to enable his presence** at the regular meetings and on-site inspections between the contracting authority and the contractor.

Nevertheless it should be noted that one of the contracting authorities has provided information on other workshops (which are part of another initiative aimed at increasing the transparency of the project, part of which is the particular public procurement contract observed). The format of these workshops did not include the contractor, but a wide range of institutions and non-governmental organizations interested in the project. In practice, participation in these meetings was the only opportunity to get acquainted with summary information on the progress of the activity in the public procurement observed. After holding a meeting with the observer (in November 2013) and raising the issue of necessity

for concrete action on the implementation of Art.15 of the Pact, representatives of the contracting authority expressed assurance that the observer will be informed about the planned meetings related to the contract execution.

At the initiative of the observer working meetings/ visits on site/were held with contractors. All five contractors cooperated, which, given the nature of the particular contract was done by access to documentation and evidences concerning the implementation of activities, providing performance reports, providing access to the work site.

It should be noted that three of the contractors preferred the provision of information to be made not directly through meetings between the observer and the contractor, and with the mediation of the contracting authority. This fact is indicative that contractors do not always see themselves as part of Integrity Pact, which operates autonomously.

**Designation of a person in a managing position who shall be responsible for the application of the provisions of the PACT. (art. 16, para. 1)**

The implementation of this clause of the Integrity Pact was already described in the previous part of this analysis. It should be noted that exactly at the contract implementation phase one of the most important results was noticed. In public bodies where a particular senior employee was directly engaged from beginning to the end of the public procurement procedure with the Integrity Pact commitments, the whole process of monitoring was conducted in compliance with the largest share of commitments under the Pact and in providing the most significant volume of information related to the contract execution.

In contracting authorities in which the responsible senior officials were changed (depending on the stage in which the contract was) a possibility exists



for communication interruption and cooperation delays in implementing the Pact throughout the process. The gap created was compensated by personal effort and commitment of the senior employee who participated in the first phase of the initiative.

In addition to these findings, it should be noted the factor "change in political leadership". From a research point of view the real situation provided an opportunity to assess this factor. Changes in high level management proved to be factor that has the potential to block or delay the work of the administration. This effect was also noted in the context of this pilot application of the Pact. The results of the monitoring showed that the composition of the team, including both persons in management positions and experts with executive functions, allows preserving the continuity in the activities related to the implementation of the Pact.

**Conducting an internal monitoring (by designated employee to the Pact) for compliance with the Integrity Pact as well as with the related anti-corruption policy internal acts**

The findings described in the previous section (about conducting the contractor selection procedure) are valid for the implementation phase of the contract.

**Information for initiating appropriate internal proceedings by the contracting authority for clarification of actions of employees whose unacceptable behaviour constitutes a disciplinary offense (Art. 18, para. 1)**

Given the lack of information for employees' misconducts by the time of preparation of this analysis there are no grounds for such proceedings.

**Refraining from any misconduct by parties and their employees, including those who have not been assigned direct duties related to the preparation and implementation of the public procurement and the supervision of the execution of the awarded contract. (Art. 2 para. 1)**

Given the lack of information for employees' misconducts by the time of preparation of this analysis there are no grounds for such proceedings.



## PROMOTION OF INTEGRITY PACT THROUGH WHITE LIST

One of the peculiarities of the Bulgarian model of an Integrity Pact is the existence of incentives for the implementation of the commitments undertaken by the participants. The positive approach was preferred to the imposing sanctions approach (including financial) given two groups of factors:

1) the negative impact of the economic crisis on the overall business environment in the country and the probability the approach of sanctions to create an additional burden to the business by participation in the implementation of this anti-corruption instrument;

2) lack of knowledge about the positive results that have been achieved on the basis of Integrity Pacts in other countries and the necessity for creation a favourable environment supporting a tool that has proven its positive impact.

These factors motivated the Association Transparency International to focus its attention on creating stimulus by which to encourage participation in the Integrity Pact and thus - to contribute to increasing transparency and integrity in public procurement.

As a result, White List was created as part of the Integrity Pact in the public procurement. The aim of the White List is to give publicity to the parties' implementation of the commitments to the Pact, that joined the realization of the Pact and contribute to the enhancement of transparency and accountability in this process. The White List should be maintained by the contracting authority and shall reflect the updated information regarding: the total number of participants in the competition procedure for selection of contractor; participants who have joined the Integrity Pact and properly fulfilled their obligations to it; participants who were erased from the White List due to their failure to meet commitments to the Integrity Pact; information on the reasons for erasing participants in the Integrity Pact.

Association Transparency International developed and provided a model of a White List to the three ministries that have an obligation to publish the

document on their website, to update its content and to promote this tool. Access to the White List of the public contracts was provided by the website, which was specially created for the initiative: <http://integrity.transparency.bg/bg/biala-kniga/>; for dissemination of results in internationally scope was created a version of the website in English: <http://integrity.transparency.bg/en/white-list/>

### 1. Publishing the White List on the contracting authority's website (art 14, par.4)

Two ministries fulfilled promptly their commitment by publishing a White List on their websites.

Ministry of Health has published a White List prominently on its website, in the section "Current projects under the program Regional Development at the following address:

(<http://www.mh.government.bg/Articles.aspx?lang=bg-BG&pageid=468&categoryid=4663&articleid=5750>).

Road Infrastructure Agency has published a White List as part of the archived file on its website under section Legislation; subsection Documents at the following address:

[http://www.api.bg/index.php/bg/normativna-baza/dokumenti / file:///C:/DOCUME~1/HP7700/LOCALS~1/Temp/Rar\\$EX23.793/Biala.Kniga%20%28White.List%29/whitebook\\_1\\_bg.html](http://www.api.bg/index.php/bg/normativna-baza/dokumenti / file:///C:/DOCUME~1/HP7700/LOCALS~1/Temp/Rar$EX23.793/Biala.Kniga%20%28White.List%29/whitebook_1_bg.html).

Following the observers' comments about the obligation for promotion of the Integrity Pact through White List, the Ministry of Labour and Social Policy have published a White List on the official website address: <http://www.mlsp.government.bg>, in special text box (front page, right column).

Summarising the implementation of this provision of the Pact it could be concluded that all contracting authorities fulfilled their commitment to publish a White List on their websites.



## 2. Maintenance of information in the White List (art. 14, Para. 1 and Para. 5)

The content of the White List reflects the commitments to the Integrity Pact, as the participants who have joined to the Pact and who are fulfilling their commitments to the document have been included in the List. Considering the fact that the main clauses of the Integrity Pact are being implemented and no violations of the contract were established, the necessity for an update of the White List has not yet arisen (to erase a participant from the White List and indicating the reasons for that).

## 3. Realization of an active policy for promotion of the White List (art. 14, Para. 3)

In addition to the publication of the White List on the websites of the respective contracting authorities no other actions have been made for promotion of the document and as a whole for promotion of this approach aimed at creation of an environment that encourages transparency and accountability in the public procurement procedures. The ministries have not taken other additional initiatives (campaigns) for promotion the Integrity Pact and the White List as a tool for transparency and accountability in public procurement and have not yet taken advantage of the opportunities which these instruments provide for in other public contracts.

Exception in a positive way is another initiative of the Road Infrastructure Agency and the Ministry of Regional Development and Public Works, which is associated with setting up a committee to monitor the construction of the highway "Struma". In November 2012 RIA and Ministry of Regional Development and Public Works initiated establishment of a committee that includes representatives of the institutions which are involved in implementation, financing and control of the

project, local authorities and NGOs, interested or which have expertise in this area. Four sessions of the committee were held up to now. The readiness all the committee members periodically to be provided with summary of information on planning and implementation of this major infrastructural project could be assessed positively as a whole.

In summary, the results on the implementation of the commitments to maintain and publish a White List show that the contracting authorities adhere rather to a formalized approach (finding an expression in the fulfilment of the commitment to public the White List and the Integrity Pact on their website) than to take the opportunity to further develop this tool in a purposeful policy for stimulating candidates and for creation of more opportunities for transparency and accountability on the public procurement procedures.

The results show that the information in the White List and the Integrity Pact was published in different sections of the websites, which are not directly related to the subject of the public procurements. In general, this does not provide for an easy access for users, and in this sense -does not provide opportunities for promotion of the initiative for transparency in the public procurement, to which the respective ministry has joined.

The fact that generally the participants in the Integrity Pact were standing by their commitments shows that the proposed anti-corruption tool has the potential to enhance transparency, accountability and the control over the public procurement. In this regard, the White List has a potential and should be utilized more actively as a tool for creation of trust in the activities of public institutions and businesses in the process of spending funds through public procurement procedures. Furthermore, the White List and the Integrity Pact could be more effectively integrated into the overall framework for open government and to promote honest and competitive business environment in the country.



## IV. SUMMARY: KEY FINDINGS AND PROSPECTS FOR DEVELOPMENT AND APPLICATION OF THE INTEGRITY PACT

In summary, the results of the experimental pilot application of an Integrity Pact at 5 public procurement procedures with participation of three contracting authorities (RIA MRDPW, MH and MLSP) and 7 tenderers (self-involved companies and consortia, involving a total of 8 legal entities and 3 individuals) showed that the developed model can be successfully applied as a tool for prevention and counteraction of corruption in the country. The main positive impact is to be seen in two main directions:

- **increasing transparency** concerning the actions of the main actors involved in the preparation, awarding and implementation of public contracts regarding **all stages of the procurement procedure** (including stages that have remained hidden from public attention);
- **exercising of a more effective control** over the preparation, awarding and execution of the specific public contracts which are subject to monitoring. The Pact has a strong **disciplinary effect on the actions of everyone** involved in this process - both on the management and on the employees of the contracting authority as well as on the contractor. This is particularly seen clearly in contracting authorities which have assigned activities to specific employees regarding the implementation of the Pact from the launch of the procedure to the execution of the contract awarded.

Monitoring of results showed that there are underutilized opportunities for **popularization** of the fact that the institutions/businesses are **involved in the anti-corruption initiative and respect their commitments under the Integrity Pact**. In this respect the actions undertaken for publication of a White List with correct participants in the Integrity Pact are indicative. The publication of the White List was perceived but reduced to a rather formal obligation to publish a White List on the website of the contracting authority, as an opportunity this tool to be used for more active policy for promotion of integrity and transparency in the relationship business - institutions as well as for promotion of the progress made by committing to initiatives increasing transparency and public control over the spending of public funds - and thus to create confidence in the public institutions and the businesses;



Monitoring results showed a clear differentiation of the levels in the administrative structures of **the contracting** authority that appreciate the positive potential of the Integrity Pact and are willing to engage with its experimental introduction. **The senior management level** of the public bodies manifests the highest degree of involvement in the initial stage of the public contract, realizing the potential of building trust in the activities of the institutions they represent and manage.

Involvement in the implementation of the Integrity Pact increases in the executive levels of public bodies later - at the execution phase of the procurement contract. The manifestation of interest exactly at this stage is understandable as the officials are directly interested in exercising more effective control over the contractor and in achieving the most effective result from the contract.

Assigning responsibilities to the same team of employees who are involved throughout the application of the Pact (at all stages of preparation, awarding and execution of the contract) provides for a stricter compliance with obligations under the Pact and for maintaining consistency and a steady pace of the communication between the contracting authority and the independent observer.

As regard the engagement of the business it could be noted that results from application of the Pact outlined that at the initial stage of implementation of the contract big business companies and foreign companies show considerably higher degree of positive attitude, expectations and willingness to participate in the initiative, than SMEs.

Furthermore, the business manifests most significant interest towards the Integrity Pact and to the external civil monitoring at the stage related to contractor selection. After completion of the procedure for selecting a contractor, the interest of business to the public procurement and its implementation considerably decreases.



## **A. Common evaluation of the results from the introduction of the Integrity Pact in public procurement**

### **1. Transparency and Publicity**

The Integrity Pact serves as a tool for publicity and transparency regarding all key stages of the procurements, including their preparation. Application results show that stages of the process, which until now always remained hidden from the general public and the media, can be "enlightened" through the Integrity Pact. Indicative in this respect is the initial period in which the administration develops the tender documentation and by means of this - can determine the outcome of the next stages of the procurement. The independent monitoring carried out by a third party, allows for an information to be provided for the prepared public procurement procedure through the website of the observer (where news are being published, interim reports of the monitoring and updates of the White List under the Integrity Pact) as well as through the website of the contracting authority (primarily due to the requirement to publish a White List).

### **2. Identification and early warning of potential problems**

The Integrity Pact serves as a tool for identifying problems that can occur in subsequent stages of the contract implementation. In this respect the special importance of the monitoring in the initial stage should be emphasized (expert evaluation of the tender documentation), which can identify potential gaps and "bottlenecks" that hinder the performance of the contract and the achievement of the intended results. The results of the monitoring showed that the Integrity Pact can be utilized as a tool for an early detection of potential obstacles and respectively - for outlining of recommendations and undertaking actions to neutralize potential risks.

### **3. Encouraging the interaction between administration and business**

The Integrity Pact serves as a tool for surmounting deficits in communication and interaction between the contracting authority and the contractor. Although rare, sometimes different evaluations of the contracting authority and the contractor on the implementation of the public procurement contract might occur. The presence of a third party in the Pact - independent observer can prove a positive impact on the interaction between the two parties. The results of the monitoring present that when problems occur in the interaction between the two parties, the observers can play the role of a mediator that promotes impartial expert solutions for current issues and assists the cooperation with the main purpose to overcome them and to attain the final result - performance of the contract, by observing all the requirements of transparency, accountability and efficiency.



#### 4. Effective control over bidders / contractor in procurement procedure

Along with the increase of transparency and publicity, one of the most important advantages of the Integrity Pact is the highly disciplinary effect it exerts on the contractor. The presence of an external monitoring, especially on the phase of execution of the contract, serves as an effective tool for control over the abidance to the terms of the contract (and above all - concerning meeting deadlines and quality of the works, goods or services). The exercise of civil control, alongside with the control exercised by the contracting authority, renders a positive impact not only to the achievement of the planned results to the contract, but provides for an additional assurance to the contractor that its activity is properly evaluated by an independent, external to the public procurement person.

#### 5. Effective control over the administration of the contracting authority

The findings described in the previous point apply also to the contracting authority. Participation in such an initiative, based on the principles of transparency and control, has a strong disciplinary effect on the work of all levels of the contracting authority's administration. First, the implementation of an external monitoring has a positive impact on the senior levels of the institution - in this sense the Integrity Pact gives ground for enhancing the sense of responsibility in the management of the institution as well as for the achievement of the intended result of the contract. The Integrity Pact is a serious tool for exercising an additional control over the work of employees. This is particularly evident in cases where certain individuals in a managerial/expert position are directly responsible for implementation of commitments under the contract. In this sense it can be argued that the Integrity Pact is also a tool for increasing the personal commitment and responsibility of employees.

#### 6. Modernization of public administration

In addition to the above mentioned findings, it should be emphasized that the Integrity Pact is an anti-corruption tool which reinforces modernization of public administration. The Pact is an innovative tool that facilitates establishment of an understanding that activities of public administration are not just subject to a civic control, but also in this way it adequately meets the contemporary requirements for its functioning. Involvement in such kind of initiatives contributes not only to establishment of trust but gives additional credibility to public institutions and creates sentiment that administrative structures operate in accordance with the leading international practices.

#### 7. Promoting ethical business rules

Monitoring results showed that the Integrity Pact can be successfully used as a tool for wider dissemination of rules of business ethics, and hence - as a means which at a following stage has potential to exert an impact on reforming the business environment. Acceding to similar anti-corruption initiatives facilitates at first building of a new business image in which leading positions can be occupied by categories such as respectable business, socially responsible business, and modern business. Secondly, application of such an anti-corruption tool provides for gradual introduction in the practice of Bulgarian companies of rules of business ethics that serve also as an additional tool for monitoring over employees' activities in the company. Thirdly, adherence to the best practices enables businesses to perceive themselves as a participant of an equal value in legal and contractual relations with public institutions, and hence to protect their legitimate interests. Joining initiatives based on leading international practices gives ground for building confidence, which is essential for activity of full value not only on the national but also on the international markets.



## ***B. Evaluation of the concrete results of the implementation of the Integrity Pact in performance of the public procurements observed***

In particular the result of the monitoring conducted by means of the Integrity Pact can be referred to these positive effects:

### **1. Preparation of tender documentation**

The possibility for performing an analysis of tender documentation enabled identification of technical gaps in the tender documentation regarding the contract for reconstruction of homes for medical and social care for three year old children. The ascertained deficiencies were due not so much to unprofessional performance of duties from the ministry's experts, but rather to lack of sufficient administrative capacity of the unit, which prepares and executes contracts (note: at the time of observation three experts are entrusted with responsibility for preparation and implementation of contracts for hundreds of thousands of euro. Here it should be noted that some of the contracts are related with delivery of high-tech equipment, which affects the complexity of the requirements in the tender documentation). Regardless of measures taken for specification of correctly formulated requirements in the tender documentation and measures taken for notifying the participants in the procedure, certain risk still exists for appealing the procurement procedure and a delay of its implementation. The monitoring carried out gave reason to the independent observer to make a recommendation for extension of the unit of experts who are involved with preparation and execution of contracts, thus administrative capacity of the contracting authority can be developed to neutralize risks for appealing procedures for public procurement.

### **2. Conducting the tender procedure for selection of a contractor**

Due to the presence of the independent observer and the evaluation of the legality of the Commission's opening of bids for the construction of the highway "Struma" the possibility of appealing and blocking the procedure for selecting a contractor had been prevented (Note: due to presentation of a price offer in a transparent envelope, one of the participants was dismissed. The participant declared readiness to appeal before the competent institution the unjustified, in his assessment, dismissal). The provided opportunities for public access to the open meeting of experts of the Independent observer and media representatives allowed an impartial assessment to be made for compliance with the legal requirements both by the committee and by the participant. As a result, the unfounded doubt in the actions of the committee had been overcome, and probably - a delay/cease in the procedure due to any appeals. It should be noted that the delay in the contractor's selection and in the implementation of projects is an extremely important risk factor in the projects carried out at the end of the programming period with financing from the EU funds.



### **3. Performance of the public procurement contract**

During the monitoring of the execution of the contract for reconstruction of homes for medical and social care for children up to the age of 3, the independent observer ascertained presence of a discrepancy between the investment project and Quantity-value calculation/bill as well as necessity for further design actions as a result of recommendations to the contracting authority made by the Regional Service Fire Safety and Civil Protection (Note: this presumes purchase of materials and execution of activities that require additional payment, unforeseen in the contract). The created circumstances had led to loss of communication between the contracting authority and the contractor for a relatively long period of time, putting at risk the execution of the public procurement contract. Based on the Integrity Pact, the independent observer performed an on-site visit and a series of meetings with both parties and made him familiar with the specific facts. On this basis, recommendations were formulated for seeking a favourable decision. In this sense the Integrity Pact should be seen as a tool for mediation, which creates preconditions for limiting damages for both parties.

### **4. Early warning system**

Last but not least, the Integrity Pact should be seen as a tool of the system for identification of potential risks and early warning (early warning system). By ascertained deficiencies of the transition stage of the public procurement procedure, it can serve as a tool for identification of potential future risks, and accordingly - to serve as a starting point for making appropriate management decisions.



**In more general aspect, the results of application of the Integrity Pact showed that all actions related with awarding of the procurement should be taken based on a thorough analysis of all the consequences of management decisions, subject to the requirements of transparency, accountability, efficiency, open and fair market competition. In this regard, monitoring results showed also that it can serve as a tool for identifying issues which can be avoided in future public procurements:**

**1. In relation to the management decision for choice of type of procurement procedure - evidence of the necessity for a thorough assessment of the needs and correspondence with the result sought** is the decision to award a contract for engineering (which includes design and construction) for the construction of Lot 2 from "Struma". The choice for awarding a public procurement by engineering is motivated by an aspiration for intensifying the work on the construction site (which is especially important at the end of the programming period for the EU funds). Technical difficulties and obstacles in the implementation of this decision, however, lead to a different result – dependence of the contracting authority and the contractor on the actions of third parties (municipal councils, which should further expropriate land, archaeological excavations of unexplored terrain which should be carried out after public procurements, etc.).

**2. In relation with determination of eligibility criteria in the tender documentation** – it is necessary to be implemented an approach that does not limit the opportunities for competition among potential candidates, respectively –lays down conditions for timely and qualitative execution of the contract. Evidence for necessity of application

of a different approach is the public procurement for selection of consultants on a project for creation of an integrated information system in the field of social security. Determining the criteria for eligibility for candidates who are limited to individuals lead to impossibility for selecting a consultant on European harmonization in two consecutive procedures and to conduct a third procedure for selecting a contractor. This, in turn, created a risk of delay of the execution of activity which is interrelated with other activities and is directly relevant to achievement of the final result of the project.

**3. With regard to formulation of technical specifications in the tender documentation** – the attempts for developing technical documentation without prior coordination with other institutions in order to reduce time limits leads to gaps in the technical documentation. Proof of this are the differences in the requirements specified in the tender documentation procedure for building-repair activities in homes for medical and social care for children up to the age of 3, and requirements formulated by the National Fire Safety and Civil Protection Service. Trying to accelerate development of tender documentation and awarding of the public procurement, important requirements of the National Fire Safety and Civil Protection Service are not reflected in the tender documentation. Consequently this leads to signing of a contract where some materials and activities are not envisaged, without execution of which NSFAS could not authorize the usage of the renovated building. This, in turn, leads to necessity of performing expenditures, which are not stipulated in the contract and are a burden to the contractor, and as a whole creates a risk of non-performance of the contract within the deadlines.



Part II

PUBLIC CONTRACTING TRANSPARENCY AND INTEGRITY INDICATORS







## I. LEGAL FRAMEWORK AND SYSTEM OF COMMON TRANSPARENCY AND INTEGRITY INDICATORS

The considered system of indicators was defined as a result of a profound research on the transparency and integrity levels in the process of public contracting in Bulgaria in the period from 2007 to 2012. It was affected also by conclusions of the pilot application of the Integrity Pact by Association Transparency International Bulgaria from February 2012 to December 2013.

Systematization of indicators is a tool serving as a basis for effective monitoring and evaluation of the transparency and integrity policy in the public contracting process. The system of indicators is universal and can successfully be applied for civil monitoring through all stages of the public procurement process: preparation of tender documentation, conducting of tender procedure and at the end: contracting and execution of the public procurement contract.

One of the main purposes of the independent civil monitoring is to ensure conducting of public procurement where all the key requirements are respected: thus lawful, transparent and effective use of the public resources is achieved. Yet in the course of an independent civil monitoring and particularly in the assessment of the observed public procurements the observer should take account of the presence of two key assumptions:

1) Public procurement procedure can be entirely lawful but not transparent at all even though the public resources use is completely lawful, economical and effective.

2) Public procurement procedure can be entirely lawful, transparent and honest but to lead to uneconomic and inefficient spending of public resources. A range of indicators is necessary to be applied which should be the basis for complete, objective and professional assessment of the public procurement covering the whole process in its entirety: preparation, contracting and execution of the public procurement as well as the actions of the main actors: contracting authority, tenderers and contractor of the public procurement.

### ESTIMATION OF THE INDICATIVE VALUE OF THE PUBLIC PROCUREMENT

The accurate estimation of the value of the public procurement it is the most important task of great significance in the preliminary stage. The estimated value is the decisive factor that defines the type of the public procurement procedure and the applicable contracting rules. Incorrect calculation of the estimated procurement value provides a basis for evading the applicable rules of the Public Procurement Law in Bulgaria. According to this the following specific indicators should be pointed out:

- 1) Are there specific price-formation rules adopted by the contracting authority about calculation of the estimated value of the public procurement?
- 2) What are the requirements for the experts that are engaged in working out this part?
- 3) What kind of methodology is used for calculation of estimated value of the public procurement procedure?
- 4) Are there any comparative studies of prices of similar products and services elaborated? If yes – which market segments and participants are examined?
- 5) Is there any market research considering the correlation between quality and price regarding similar and analogical goods and services?
- 6) What were the requirements for the consultants engaged in the process if any?



## TYPES OF PUBLIC PROCUREMENT PROCEDURES AND COMMON TRANSPARENCY AND INTEGRITY INDICATORS

Types of public procurement procedures are regulated in the Public Procurement Law. Since 2012 this act has covered also the so called “small” procurement contracts which awarding was regulated until 2012 by the nullified Ordinance for the Award of Small Public Contracts (OASPC).

1. The most simple type of public procurement awarding refers to Article 14, Paragraph 5 of the Public Procurement Law – it is applicable in **respect of procurements** which have values less than: 20 000 BGN (for goods and services), 60 000 BGN (for works) and 66 000 BGN (for project competition). Nevertheless these values are not high, the circumstance that this type of awarding is not bounded with specific rules (except for the written contract between the contracting authority and the contractor), there are the same risks and deficits as in the other types of public procurement procedures even though the Public Procurement Law calls that awarding “expense of resources”, not a “public contract”.

**The following common Transparency and Integrity indicators should be pointed out here:**

- Publicity of information – is the information about the procurement included in the summary for Public Procurement Agency data base?
- Is there enough accurate and genuine information at the web site of the institution which is able to motivate more candidates to participate in the public procurement contracts?
- Does the Internal Procurement Rules of the institution contain rules for this mode of awarding procedure and how they contribute to the economical and efficient spending of public amounts? Do these rules if any provide sufficient transparency of process?
- Is there any working mechanism that controls the contract execution?

2. The next type of public procurement **procedure consists of awarding made by public invitation**. The financial thresholds for this procedure are between 20 000 and 66 000 BGN (for goods and services) and between 60 000 and 264 000 BGN (for works) without VAT. This requires specific caution to the method and purpose for incurring such a public spending. This type of public procurement is not defined as a “procedure” regarding the Public Procurement Law. That is why the common procurement rules considering the procurement procedures in the Public Procurement Law are not applied here. There are specific rules defined in Chapter 8 of the Public Procurement Law which regulate the contractor selection in such a procurement procedure.



The main requirement is the choice of a contractor to be preceded by compulsory collection of offers by publishing a Public Procurement Notice (Invitation) to an unlimited number of persons. There is no statutory requirement collecting bids to be preceded by a special act of the contracting authority - decision or order. There is a standard Public Procurement Notice template that is used regardless of the contracting authority, the subject of the contract and performance requirements.

**Като основни индикатори за прозрачност и почтеност тук могат да бъдат посочени:**

- Is the notice filled in accordance to the template and signed by authorized person?
- Is the notice published in the Public Procurement Portal and in the buyer profile; is the information quite accurate and correct?
- Is it announced in the press – does the announcement contain enough accurate and correct information comparing to the Public Procurement Notice itself?
- Did the contracting authority send the Public Procurement notice to specific persons and what were the reasons; did the contracting authority change or add some information in the Public Procurement Notice?
- Is there contract execution control mechanism established and applied?

The offers in this type of public procurement awarding are obtained, considered and assessed by specific persons appointed by the contracting authority. Even in case these persons are more than one, they are not a commission according to the law which means that the provisions of the Public Procurement Law for assessment committee are not applicable here except of the requirement to fulfil a declaration according to Article 35, Paragraph 1 and 2 of the law.

**В тази връзка специфични критерии за прозрачност и почтеност могат да бъдат:**

- Are there rules for offers evaluation confirmed before the beginning of the procedure?
- Are there minutes where the proceedings and the results are recorded and is it accurate enough?
- Is the record of the proceedings confirmed by the contracting authority?
- Is there a written contract between the contracting authority and the contractor?
- Was the summary considering public procurement sent to the Public Procurement Agency?
- Is there any mechanism regulating to the contract execution?



3. The next type of public **procurement awarding is a procedure of simplified rules** regulated in Art. 14, Paragraph 2 of the Public Procurement Law and other relevant provisions of the PPL. This particular case brings some alleviations which are explicitly underlined in the law. The main purpose is to accelerate the public procurement awarding process.

**The following common Transparency and Integrity indicators should be pointed out here:**

- Are there any other persons who participated in the open sessions of the public procurement commission except the main participants and their legal representatives, mass media representatives, as well as NGOs and what were the grounds for their admittance?
- Is the contracting authority introduced the requirement for participation guarantee and performance guarantee and what were the methods of guarantee calculation?
- Is there mechanism for monitoring of the contract execution established?

According to the analysis of the public procurement procedure types, it is noteworthy that all the aforementioned indicators can be related to the relevant stages of public contracting.

Consideration of these specific indicators at the stages of the public procurement could make the procedures more transparent, could moderate different attitude to them and most importantly - to contribute to economical and efficient spending of public resources. Although seemingly the thresholds and values in these procurement procedures are not particularly high, these regimes are the main means of circumventing the Public Procurement Law and for misusing and wasting of public resources.

4. The most aggravated type of public procurement awarding is **to conduct the public procurement procedure with no simplified rules**. This contracting method refers to the regulations of the Public Procurement Law with no exceptions or alleviations.

Considering the fact that the Integrity Pact should be applied to procedures of great public significance or to those of great value the last type of public procurement procedure will be the main subject of the current article. (Look the indicator tables enclosed at the end of the text).

## EX-ANTE CONTROL

The attitude and the conduct of the contracting authority toward the ex-ante control of the public procurement awarding indicates the level of transparency and integrity in the particular contracting authority.

**The following Transparency and Integrity indicators should be pointed out here:**

- Did the contracting authority whose procedure falls within the scope of this control, send the draft procurement documents to the Public Procurement Agency?
- Did the contracting authority take into consideration the recommendations made by the Public Procurement Agency if there was some kind of inaccuracy?
- In case that the contracting authority did not take into consideration the recommendations did the contracting authority motivate the rejection toward Public Procurement Agency and what were the arguments for the denial together with its character and contents?



## II. TRANSPARENCY AND INTEGRITY INDICATORS AT THE STAGE OF NEEDS ASSESSMENT AND ACTIVITY PLANNING

Public procurement preparation is the first stage of the whole process of management of planning and using the public resources. The character of the preliminary phase predetermines no access (or at least a limited one) for outer observers which makes this stage of the process less visible. According to a wide range of researches, analysis and reports, this stage is identified as one of stages with highest corruption risk. The next two examples confirm this statement:

1) In 2007 Transparency International Bulgaria did a comparative research that includes monitoring and assessment of 79 public procurement procedures where the contracting authority was a public or local authority institution. The result shows that 15,18 per cent of all the cases the institutions' representatives tried to evade public contracting procedure. In the other 21,51 per cent of the cases there were irregularities during the preparation stage.

2) The Public Financial Inspection Agency report for 2012 established the following facts: there were 310 cases where public institutions lying under control of the Agency signed contracts for the amount of 510 213 665 BGN without conducting public procurement procedures even there were all the legal grounds to. According to this the Agency, that have the controlling power referring the budget, financial-economic and accountant activities of public bodies, concludes that these violations are that significant that break the transparency and integrity principles, the free and loyal competition, the equal treatment and non- discrimination. According to these examinations the Agency considers that these violations discredit the economical, effective and efficient public resources use.

Both researches conducted by independent methods and covering comparatively long period where the existing public procurement legislation has been applied confirmed systematic attempts to evade the law or rules violation by authorities that use public resources. Not only the specific reports and analysis but also a range of mass media publications

are evidences of practices in which contracts are concluded of that value that allows the participants to evade the public contracting.

That is why it is extremely important to focus this preparatory phase of the activity of public bodies operating with public funds. The main risks and deficits are necessary to be identified before the transparency and integrity indicators concerning preparation, contracting and execution of the public procurement procedure to be defined.



## DEFICITS AND RISKS IN THE PROCESS OF ACTIVITY PLANNING

Leading priority goal of public spending is the efficient implementation of public functions of public bodies (as contracting authorities). During this process the contracting authorities have to obey two requirements: 1) to expend public resources in the most cost-effective manner and 2) to obtain the best quality of the public services and goods.

The experience shows that often resources are planned and used without any analysis of the needs or any necessity proof for using these resources. The main reasons are the following:

1) Applying the historical principle for planning and using public resources (despite the intentions for implementation the programming planning of in the public bodies. Actually the historical principle has priority in the process of elaboration of financial plans for public resources use lying on the basis of the funds allocated in previous years).

2) The availability of financial resources from European funds or programs which should be used for certain eligibility period.

The main risks in the process of public resources management are related to non-transparent, non-effective and non-adequate planning and spending. At this stage the main risks in public resources planning and spending, including for amounts spend via public procurement, are the following:

- Lack of the strategic vision for the institution development;
- Elaborating strategic priorities by small group of inner experts detaching all the stakeholders concerned;
- Lack of sequence and sustainability of the institution's development policies due to often management changes;

- Lack of capacity for forecasting, planning and implementation of activities;

- Reticent institution proceedings and low level of transparency regarding the strategies' development and the development of specific action plans for realization of activities planned.

In the recent years there has been a permanent tendency to work out development strategies for public bodies' functioning. This tendency is a result to a great extent of the requirements concerning the EU funds management. All this involves a clear strategic framework about the aims, tasks and effects expected of the EU funds using. That is why the overall assessment of planning tendency should be positive. However the strategic activity planning is often a result of the outer management models introduced but not of the understanding of permanent conception for necessity of effective management or of the common consent about the necessary development directions.

In the activity planning process, however, these deficits have negative impact on the sustainability of the strategic priorities outlined for development of certain institution or for development of the society environment where this institution operates. Relatively low level of transparency and the lack of consensus on key strategic priorities subsequently reflect on the process of planning of specific measures for implementation of the strategies, as well as on the financial aspects of the performance.



## TRANSPARENCY AND INTEGRITY INDICATORS IN NEEDS ASSESSMENT AND ACTIVITY PLANNING STAGE

At the stage of activity planning the contracting authorities are obliged to set up all the preconditions for the adequate execution of their aims and functions obeying the Transparency and Integrity requirements. The following activities may serve as transparency and integrity indicators:

**1. Adequate needs assessment based on a proper analysis of the necessity of execution of main public functions.**

**2. Planning of the annual activity, based on adequate needs assessment. Activity planning expressed in concrete activities with clear financial indicators for their realization.**

**3. Publicity of information about activities which are object of public contracting (Annual procurement forecast in the Public Contracting Register).**

**4. Creation and maintaining of public resources management and control systems. Development of an integrity policy and introducing it in the public body's internal rules.**

### **1. Needs assessment and elaboration of strategic directions for institution development**

Needs assessment and elaboration of strategic directions for institution development include the following actions:

**1.1. Engagement all the interested stakeholders in the process of elaboration of institution's strategic priorities** i.e. experts from the institution, outer experts, partners and other consumers of the public services produced by the relevant institution.

**1.2. Engagement of wide range of experts** (not only the inner ones but the outer ones) **in the process of needs assessment.** This is crucial precondition for sound assessments and taking into consideration of all the opinions and positions that would be base for elaborating an adequate and profound need analysis.

### **Implementation format – Transparency and Integrity Indicators**

1A. Expert counsels possessing sufficient expert capacity set up.

1B. Public counsels, which have real access to information and possibility to take participation in the relevant discussions set up.

1C. Introduction of practice of carrying out periodical discussion forums about strategic development directions (round tables, conferences, expert groups etc.)



## 2. Planning of the annual activities

Planning of the annual activities includes:

2.1. Drawing up a complete plan which includes the whole information about the particular actions that are subject of public procurement procedures, terms, financial resource amount, etc.

2.2. Timely provision of information to the Public Procurement Register, maintained by the Public Procurement Agency.

## 3. Publicity of information

Publicity of information includes:

3.1. Implementation of information policy, which is based on regular and timely dissemination of information through publication of notices in the media; organization of press conferences for the media; publication of information and draft documents on the website of the institution.

### Implementation format – Transparency and Integrity Indicators

3A. The information released on the internet site should be: correct and precise; should unambiguously point out the requirements, conditions and terms about the public procurement; should be visible and quick findable to readers in an easy and convenient way to use.

3B. Writing and broadcasting messages containing qualitative and correct information which should motivate more potential contractors to take part in the public procurement procedure.

3C. Arrangement of press conferences.

## 4. Management and control system of the public resources spent. Integrity policy in the public body.

The transparent and effective functioning of any public body is one of the main preconditions for transparent, lawful and effective management of the public resources including ones spent by public procurement procedures. This is a part of the administrative capacity which should be maintained by any public body. According to the contemporary conceptions of good management, the development of the administrative capacity should be based on the following points: 1) clear functioning rules; 2) availability of clearly defined administrative structures responsible for execution of the main activities; 3) presence of adequate management and control system and 4) well qualified staff for execution of the activities with high level of expertise. It should be mentioned in addition to this the necessity of basic policy in encouraging the honest and responsible labourers behaviour.

Before outlining the transparency and accountancy indicators in public procurement we should concentrate on the availability of system for management and control of the public resources based on the principles of professionalism, development of the expert potential of the employees (hence the expert potential of the whole public body) but also applying the ethical standards in the working process based on conscientious, honest and responsible behaviour.

The availability of such kind of system is a result of obeying legal rules and standard regulations outlining the execution of working duties. It is also a result of the following measures:

1) Clearly **defined units and employees** responsible for control if the existing rules are respected

2) Presence of **clear competencies for controlling and imposing sanctions** if there is rules violation.



3) Presence of **Rules of ethical behaviour** as well as presence of **training system and exchange of experience** on the matters related to ethical problems solving through the working process.

The Honest Policy is a crucial addition to the management and control system of the public resources. Every public body applying the transparency and integrity principles should introduce Honest Policy in its area of activity. The Honest Policy represents a specific supplementary component of the legal regulations and procedures of the public body functioning. It needs to be applied in the existing functions, procedures and structures of the public administration increasing their inner coherence. Its practical application involves setting up a **standard system which would optimize particular functions, responsibilities and competences in the various structures of the public administration**. The implementation of honest management rules does not mean there would be new restrictions for the employees of the administration or for the potential participants in the public procurement procedures. The honest policy fulfils itself through increasing the inner connections between the existing regulations and internal rules. It should integrate the organization's requirements to the public body functioning, Codex of behaviour for public employees, good management practices and approved ethical standards with the political process of defying the priorities and planning the efforts of their achievement. In its entirety the honest policy participates in good management principles increasing the level of effectiveness reached by the honest and responsible management of the public procurement. The integrity through the complicated social processes of nowadays public management is expressed in:

- Honest and explicit announcement and implementation of the government priorities and plans;
- Providing conditions for guaranteeing the employees' loyalty both in public and private sectors;
- Introducing a durable practice for correct relations between partners;
- Conscientiousness in execution of the

engagements and making systemic efforts in establishing the culture of explicitness and dialogue;

- High degree of coincidence between the declared objectives and the means used.

#### **Implementation format – Transparency and Integrity Indicators**

To achieve such a policy of integrity in the management of the funds spent through public procurement, the public body can apply the following set of tools for integrity policy implementation:

- 4A. Defining a standard for public presentation of the plans prepared.
- 4B. Establishing rules and criteria for selection of expert engaged in preparation of public procurement procedures and their execution.
- 4C. Defining rules and conditions that guarantee equal treatment of the potential bidders.
- 4D. Defining clear requirements related to potential bidders in a particular public procurement.
- 4E. Counteracting the conflict of interests and malpractice.
- 4F. Presence of system for signals from citizens.
- 4G. Presence of a system for reporting by employees in the relevant public institutions, and existence of internal rules for protection of corruption whistle-blowers.
- 4H. Setting up a possibilities for independent civil control.



### III. PUBLIC CONTRACTING TRANSPARENCY AND INTEGRITY - SPECIFIC INDICATORS

#### STAGE I. PREPARATION OF THE PUBLIC PROCUREMENT PROCEDURE

From a legal point of view the whole process of preparation, tendering and execution of the public procurement starts with the preparation of the public procurement procedure (indicated with P in the tables below). Making this official decision to conduct a public procurement procedure is just the beginning of a long process which final aim is achievement of certain public interest.

##### **The risks**

The main risks that appear at this stage of the procedure could be described as follows:

1. Defining a scope of activity, subject to public procurement procedure, that is not completely relevant to the necessary result including:

a) some activities are not included in the public procurement procedure in order to spent part of the public resources without conducting a public procurement procedure;

b) delay of timely decision to start the public procurement procedure then at later stage launching another type of procedure “justified” by force majeure circumstances;

c) artificial separating of the activities with the purpose of not conducting public procurement procedure or separating the public procurement into several procedures;

d) technical gaps, mistakes or contradictions in the tender documentation which are result of lack of administrative capacity or were intended to;

e) defining unreasonable high requirements for participation that reduces the number of bidders;

f) defining a number of specific requirements that limits the trade competition which gives groundless advantages to certain candidates.

2. Choose of experts working on the tender documentation who:

a) do not possess the necessary experience in the public procurement matters and more specifically in preparation of tender documentation;

b) do not have qualification relevant to the subject of the procurement;

c) there is a conflict of interests or another kind of situation that may influence on the impartial fulfilment of their duties (e.g. there is no independence from the public body leadership or possible impact from outer persons or bodies that may be potential bidders etc.);

d) do not obey the confidentiality requirements which may result in information leaking to particular bidders.



## DECISION TO CONDUCT PUBLIC PROCUREMENT PROCEDURE (P1)

### **General description**

The decision for conducting a public procurement procedure should be made by legally authorised person. It should be based on: 1) compliance with strategic priorities of the public body; 2) analysis of the public procurement necessity including availability of public resources for such procurement.

### **Actions for guaranteeing transparency and integrity**

When the public body is ready to secure transparency of the public procurement awarding it should use all the information channels to secure information access to as possible wider range of stakeholders interested in the particular public procurement. This range includes:

1. The Public Procurement Agency which has monitoring and control functions in public procurement. This Agency also maintains the Public Procurement Register – basic source of information for potential bidders.

2. Mass media as a mediator of information concerning planning and preparation of public procurement procedures. In this case the information should be disseminated to two types of media:

a) specialized in the subject of the particular procurement and;

b) mass media of national/regional scope.

3. Civil organizations that may exercise functions of independent observer. There are two types of organizations that should be taken into consideration:

a) expert organizations specialized in public procurement matter;

b) organizations working in the area related to the subject of the particular public procurement procedure.

### **Applicability of the Integrity Pact**

As part of Transparency policy at this stage of the procedure the public body should invite an external independent observer and to initiate concluding of Integrity Pact as an observation tool. The Integrity Pact concluded indicates the following transparency and integrity indicators:

1. The Integrity Pact secures a wide framework for cooperation and possibility for adequate observation at any stage of the public procurement procedure including the possibility for observation of the preparation stage.

2. Appointment of management and expert staff who have direct responsibility for fulfilment of the public body engagements regulated in the Integrity Pact.

3. Setting up an observation mechanism which secures possibility of adequate assessment of the engagements execution:

a) conducting regular meetings between the contracting authority and the independent observer

b) providing access to the documentation concerning the preparation and decision making process about the public procurement procedure launching.



## Deficits (D)

## Transparency and Integrity Indicators (I)

### P1 – D1:

The decision is made without direct link to the institution's strategy

### P1 – D2:

The decision is made without analysing the concrete necessity of public procurement awarding, and without any assessment of the correlation between the result expected and the amounts envisaged

### P1 – I1:

Providing publicity of the information about the decision by:

- informing the Public Procurement Agency about the decision;
- publishing the information on the contracting authority website
- providing information about the decision to mass media by publishing press releases or arranging press conferences

### P2 – I2:

Regarding to the content, the information published on the contracting authority website should comply with the following qualitative indicators:

- explicit and correct wording of messages;
- the information should reflect unambiguously the relevant requirements, conditions and information about the public procurement;

### P1 – I3:

Regarding to the content the information published by mass media should also comply with the following qualitative indicators:

- explicit and correct information;
- the information should motivate potential bidders to participate in the public procurement procedure;

### P1 – I4:

Setting up permanently acting public counsels which:

- observe the common activity of the institution;
- have free access to information related to the public body functioning;
- take part in discussions and deliberations and have the right to make recommendations and suggestions;
- have relatively constant members while the opportunity of including new ones exists;
- work on the base of established rules and mechanisms for cooperation with the public body.

### P1 – I5:

The contracting authority allows access of independent civil observer to conduct monitoring of particular public procurement procedures of significant public interest:

- by an invitation to civil organizations which are specialized in independent observance;
- which are ready to establish cooperation framework that would guarantee an effective civil monitoring resulting in cooperation agreements, observation agreements or integrity pacts.



## SELECTION OF EXPERT TEAM (ASSIGNATION TO OUTER EXPERTS) FOR PREPARATION OF TENDER DOCUMENTATION (P2)

### **General definition**

The contracting authority should assign an expert or a team of experts to prepare the tender documentation. This particular duty should be assigned to: 1) an expert or a group of experts who work in the contracting authority structure (if there is well qualified staff) or 2) an outer expert or a team of experts (in the case when the contracting authority has not relevant capacity to prepare the tender documentation).

### **Actions to guarantee transparency and integrity**

The choice of experts who shall prepare the tender documentation should be based on two main indicators:

1) Professional background and expertise:

a) related to the subject of the public procurement as well as;

b) enough professional experience and legal knowledge in the public procurement matters.

2) Obeying ethical standards which guarantee conscientious, responsible and honest execution of the professional duties.

3) Independency while executing the assigned tasks.

The assignment of experts who will prepare the tender documentation should be made on the base of these three indicators. In addition the contracting authority should take into account if it has adequate expert capacity (does it have enough qualified experts who are able to prepare the tender documentation) and if not – does it have enough financial resources for assigning this activity to outer experts.

### **Applicability of the Integrity Pact**

The Integrity Pact is applicable to all the requirements listed above as it may serve as a tool for execution control by:

1. Arranging regular working meetings between the contracting authority and the independent observer about performance checks.

2. Providing access to the whole documentation and any related to it evidentiary material.



## Deficits (D)

### P2 – D1:

Insufficient expertise in pre-paration of tender documentation (both in general legal requirements for this kind of procurement procedure and about the subject of the particular public procurement).

### P2 – D2:

Fluidity of la-bour in the units specialized in preparation and conducting of public procurement procedures.

### P2 – D3:

Conflict of inte-rests referred to employees of the contracting authority

### P2 – D4:

Lack of effec-tive actions for ascertaining conflict of interest related to employees.

### P2 – D5:

Conflict of interests concerning outer experts who are engaged in the preparation of tender documentation.

### P2 – D6:

Lack of tools preventing conflict of interests concerning outer experts.

## Transparency and Integrity Indicators (I)

### P2 – I1:

Justification for the choice of experts (inner or outer) who are assigned to prepare the tender documentation.

### P2 – I2

Indicators for experts selection.

- a) adequate professional expertise and sufficient professional experience regarding public procurement awarding as well as in the subject of particular public procurement;
- b) strict observation of ethic regulations based on conscientious, responsible and honest execution of the professional duties.

### P2 – I3:

Conducting effective control over experts' work. The factors that contribute to the adequate control over the quality of the experts' work engaged in preparation of tender documentation are:

- a) nominating a unit or a manager who will exercise control over quality of the work of the contracting authority employees;
- b) nominating a unit or a manager who will exercise control over quality of the outer experts' work;
- c) involving high qualified independent outer experts/organisations.

Note: If the public procurement procedure concerns a very complicated subject, requiring a great amount of financial resources or it is of significant public interest a supplementary monitoring mechanism is necessary to be established. It will help conducting an adequate outer expert control over the work of the experts engaged in preparation of tender documentation. Existence of this indicator is important not only in executing the duties assigned but also in prevention of corruption. A similar mechanism is applied in the World Health Organization where expert commissions are engaged in defining referent indicators that work as tools for correcting or indicators for comparison with parameters established by experts preparing tender documentation.

It is noteworthy that control should be exercised not as possibility for intervention in the experts' work but as a tool that will contribute to achievement of a better result of the experts' work which corresponds to the main objective of the public body.

### P2 – I4:

Available system for conflict of interests management based on:

- a) regulations insisting declaration of conflict of interests including procedures regulating withdrawal and substitution;
- b) maintenance of data base regarding the employees including information about declared/registered conflict of interests;
- c) unit/officials who have the power to exercise control – including to maintain the data base consisting of conflict of interests documentation; to carry out examinations or investigations; to take due measures to eliminate irregularities as well as to provide methodological guidance.

Note: It is important to underline that the conflict of interests monitoring should be applied not only to the institution' employees but also to the other legal entities that are potential participants or have participated in the preparation of tender documentation. It happens that these particular persons/legal entities not only prepare the tender documentation but exercise a function of mediator of potential contractors. They may set specific parameters of the tender documentation or may violate the confidentiality principle furnishing particular potential bidders with information.



## PREPARATION ON THE TENDER DOCUMENTATION (P3)

### **General description**

The preparation of the tender documentation is that kind of activity that defines all the requirements about public procurement execution as well as the subject and criteria that should be fulfilled by the bidders. It should respect two key requirements: 1) defining a set of characteristics of the public procurement subject – specific indicators for execution of the procurement which realizing should lead to the final result set by the contracting authority; 2) defining an assessment methodology – based on selection criteria guaranteeing choice of a bidder who suits in a maximum possible degree to the requirements of the contracting authority and who can accomplish the purpose of the public procurement.

### **Applicability of the Integrity Pact**

At this stage the Integrity Pact is applicable through possibility of expert assessment on the draft tender documentation. It may allow:

1. Conducting a verification and certification that procedures and rules are respected;
2. Drawing up recommendation about elimination of irregularities, gaps and other technical mistakes in the documentation which may result negatively at the following stages of the procedure or may be obstacle to the highest possible result of the procurement execution.



Deficits (D)	Transparency and Integrity indicators (I)
<p><b>P3 – D1:</b> Gaps in documentation made due to lack of administrative capacity or by unwilling technical mistakes.</p> <p><b>P3 – D2:</b> The parameters of the activity do not provide necessary quality and achievement of the result needed.</p> <p><b>P3 – D3:</b> The parameters of the activity do not provide for effective use of the financial amount envisaged.</p> <p><b>P3 – D4:</b> Too specific parameters are set out that limits the trade competition and put particular candidates in more advantageous position.</p>	<p><b>IP3 – I1:</b> Choice of that kind of procedure which proceeding allow reaching of information about public procurement to a maximum wide range of potential contractors.</p> <p><b>P3 – I2:</b> Defining a set of characteristics of the public procurement subject as well as explicit indicators for public procurement execution which correspond to the principles of free and loyal competition.</p> <p><b>P3 – I3:</b> Defining an assessment methodology that will allow fair choice of contractor who will provide the good/service/construction works in a manner that it will meet the contracting authority purpose and public interest.</p> <p><b>P3 – I4:</b> Working mechanisms for inner and outer control over quality of the documentation exercised in several levels:            a) inner institutional monitoring exercised by controlling units and experts who are employees of the contracting authority;            b) control exercised by the Public Procurement Agency (by the Managing Authority of an operational program co financed by EU funds);            c) monitoring exercised by outer experts over the quality of the documentation.</p>



## STAGE II: CONTRACTOR SELECTION PROCEDURE

The contractor selection procedure (indicated with C in the tables below) is the most overt stage of the process of preparation and conducting the public procurement procedure. This is the reason why all the media agents and the candidates in the public procurements show great interest in it. It is easy to explain regarding the fact that the whole information about the public procurements and the participants in the procurement procedure becomes easy to access for a wide range of people. Last but not least this is the time where external observers and media agents are allowed to attend the outdoor meetings of the commission. According to the legal regulations the outdoor meetings are accessible to all the participants in the procedure, media agents as well as to non-governmental organizations that are interested in observation of the public procurement procedure. The contractor selection procedure consists of several key actions that are of great significance regarding the result of the entire process:

1. Submission of offers by the participants.
2. Appointment of assessment commission to examine the participants' offers.
3. Opening the offers (public sessions of the commission).
4. Evaluation of bids (working sessions of the commission).
5. Selection of contractor of the public procurement and concluding the public procurement contract.

### The risks

Основните рискове, които съществуват в тази фаза от The main risks at this stage of the process appear in certain matters:

1. As regard to the offers' submission – gaps in contractor's work organization may allow: a) inaccurately registered documentations concerning the submitted offers in the register (violation of the regulations and rules for registering the participants' offers; enabling persons or units which are not authorised to receive offers.); b) violation of the offers' storage requirements which may allow writing, changing or removal of offers or a pieces of the enclosed documentation (it refers to the entire process from receiving the offers till the end of the assessment procedure). In addition to those risks it should be added at "mirror aspect" the following possibilities: c) participants' attempts to evade the requirements for deadline to submit the offers; d) attempts for supplementing or changing the documentation and the appendixes.

2. Appointment of the assessment commission to examine the participants' offers – it is important the following three criteria to be guaranteed: a) professional experience, qualification and knowledge of the commission members that allows the selection procedure to be conducted according to the legal requirements and the desired result of the public procurement to be obtained. b) conscientiously fulfilment of the professional duties based on principles of honesty, responsibility and impartiality and strictly obeying ethical rules during the commission proceedings; c) a secured independency of commission members during the execution of their obligations (including guarantee against external interference by both the contracting authority and any of participants in the public procurement procedure or other third parties).



### 3. Opening the offers (public sessions of the commission).

This key activity may be defined as one of the most overt and less charged with corruption risk due to the possibility of public access to the open sessions of the commission. The public sessions of the commission are two: the first one is that of announcement of the participants who have submitted offers and checking the contents of the offers against the requirements defined; and the second one is that of opening the price offers. Regarding the character of this activity the main deficits are related to attempts to circumscription of transparency and publicity of the commission proceedings through: a) belated or none announcement of information concerning of the public session of the commission with purpose to restrain possibilities for observance the commission proceedings; b) gaps in providing possibilities to observe the commission proceedings (like restricting specific categories of persons to attend the meeting despite all the legal possibilities); c) suppressing some of the gaps in the documentation noticed by the commission members; d) negligence in dealing with offers (breaking the rules concerning the offers opening and keeping all their contents; disarranging the offers of different participants; lack of signature over the offer etc.); e) gaps in the records of the commission proceedings (omission of facts that should be reported by the commission).

4. Assessment and rating of offers (working sessions of the commission) – according to the business this is the crucial stage of the public procurement procedure when most often violations are made. As long as the contracting authority considers the contract execution stage as the most critical stage of the procedure, business representatives believe the stage of assessment of offers is the most charged with corruption risk. According to social research made by Transparency International, investigating the extent of these problems in the public procurement procedures, about 55,4 per cent of the business representatives consider this stage as the most discreditable. Grounds for this can be found at: the specific character of this stage that allows the least visibility of the actions of the Evaluation Committee (of course it is based on the necessity for undisturbed work and less external pressure); in addition it should be mentioned that the proceedings at this stage determine to a great extent the procedure final result. The most significant and the most frequent risks during the offers assessment process are: a) suspending participants on formal grounds; b) requirements for additional documentation without being necessary; c) determining unrealistically short terms to present additional documentation; d) offers assessment contradicts to the requirements laid down in the evaluation methodology; the assessments are not well-justified; e) violating the confidentiality rules (information from offers is provided to participants or third parties; outer persons are allowed in the commission sessions); f) violating the documents preservation rules (external persons have access to documentation; documentation which is part of the offers is taken away, changed or supplemented); g) violating rules for declaration of conflict of interests (undeclared conflict of interests by some of the commission members; not taking actions against commission members that are known to be in conflict of interests).



5. Selecting the contractor of the public procurement – this is the last stage of the procedure for competitive tendering. The practice shows that there are a few cases of violation of the common rules at this phase. Nevertheless the following risks for illegal actions should be mentioned here: 1) ungrounded refusal to conclude contract with the contractor selected by the commission and termination of the procedure; or) an attempt to manipulate the commission decision with purpose a favourite candidate of the contracting authority to be selected. Regarding the first case it should be taken into account the grounds and concrete circumstances for of the contracting authority refusal to conclude contract with the contractor selected. It could be the last procedure possibility for the contracting authority to emend illegal actions of the evaluation commission, gaps in its proceedings or any other inaccuracies that affect not only the contracting authority but also the public interest – selecting a contractor of a public procurement who can deliver the necessary service/goods/ construction works according to the preliminary approved methodology for offers assessment. In this case it's not about corruption action but about correction of deficits arisen in previous stages of the procedure that seeks to prevent from negative consequences in the future. The other case is where the contracting authority attempts to influence over the commission decision with the purpose his favourite candidate to be selected even though it does not suit the requirements. Such kind of action could be a corruption indicator. In order to be prevented such a misfeasance the following should be guaranteed: a) publicity of information about all the contracting authority motives and actions; b) well-timed information provision to all the tenderers in the procedure about the final results; c) possibility for control over the contracting authority operations regarding conformity with the law.

## SUBMISSION OF OFFERS BY THE PARTICIPANTS(C1)

### **General description**

The filing respectively – the registration of the offers submitted by the candidates should be preceded by enough public information revealed by the contracting authority concerning the offers submission like the term, the place and the correct address. After fulfilling this requirement the process goes in two main directions: 1) filing respectively – registration of the offers submitted; 2) preservation of the offers;

### **Applicability of the Integrity Pact**

At this stage the Pact is applicable by:

1. Observation of the whole process of filing and registration of the offers received.
2. Inspection concerning the fulfilment of the requirements for preservation of the offers.
3. Controlling the confidentiality of the information.
4. Making recommendations about gaps removal and setting up a control system.
5. Preparation an observation report that should be presented to the contracting authority, the participants of the Integrity Pact and any other interested stakeholders including non-governmental organizations and mass media.



<b>Deficits (D)</b>	<b>Transparency and Integrity Indicators (I)</b>
<p><b>C1 – D1:</b> Gaps in the paperwork turnover system that allow:</p> <ul style="list-style-type: none"> <li>a) issuance of a verifying document without all the necessary requisites: incoming number, date and the exact time when the offer has been filed;</li> <li>b) possibility offers to be filed by non-authorized persons and after the deadline;</li> </ul> <p><b>C1 – D2:</b> Gaps in preservation of offers that allow writing, changing or removing offers or their appendixes.</p> <p><b>C1 – D3:</b> Bidders' attempts to file offers after the deadline or to change/supplement already filed offers.</p> <p><b>C1 – D4:</b> Bidders' attempts to get access to the other bidders' documentation.</p>	<p><b>C1 – I1:</b> Setting up and maintenance of a paperwork turnover system and a public procurement register that excludes any possibility of errors in the offers filing or falsifying the already filed offers.</p> <p><b>C1 – I2:</b> Strictly following the regulations for registration including issuing of documents that verify filing of the offers with the relevant requisites – incoming number, date and the exact time.</p> <p><b>C1 – I3:</b> Applying rules for preservation the offers that:</p> <ul style="list-style-type: none"> <li>a) are relevant to the approved regulations for classification, numbering and preservation of the filed offers which prevent from disarranging the documents from different offers;</li> <li>b) allows authorized access only for the commission members according to the rules for access to the offers and commission proceedings;</li> <li>c) guarantees that the offers would not be substituted, rewritten or destroyed;</li> <li>d) guarantees the confidentiality (prevention of leak of information away from the commission – towards tenderers, the contracting authority or third parties).</li> </ul>



## DECISION FOR COMPOSITION OF THE ASSESSMENT COMMISSION (C2)

### **General description**

The decision for composition of the assessment commission contains two main components: 1) defining the requirements for competences and qualifications of the members of the commission relevant to the subject of the public procurement; 2) making an official decision for appointment of the commission members.

### **Applicability of the Integrity Pact**

At this stage the Pact is applicable by:

1. Inspection of the documentation for appointment of the commission members.
2. Proofs for professional qualification, expertise and labour experience which should be taken into consideration during the process of selecting the members of the commission.
3. Declarations for conflict of interests.
4. Appointment of employees who should be responsible for the Integrity Pact implementation as well as for check of irregularities.



### **Deficits (D)**

#### **C2 – D1:**

The specialists that are appointed are not enough qualified and do not possess the needed experience:

- a) the employees do not have the necessary expertise in the subject matter of the public procurement or
- b) do not have experience on general legal requirements related to public procurement procedures

#### **C2 – D2:**

The specialists' independence during the proceedings is not guaranteed (their decisions are bound by the contracting authority, external influence from bidders or third parties);

#### **C2 – D3:**

The anti-corruption system is not reliable or there is none at all:

- a) the conflict of interests is not officially declared;
- b) the data declared in the declarations for conflict of interests is not inspected;
- c) the irregularity signals filed by commission members, employees or external persons are not considered.

### **Transparency and Integrity Indicators (I)**

#### **C2 – I1:**

Establishment and applying criteria for selection of experts qualified in the subject of the public procurement procedure and experts who possess legal competency in the public procurement matters.

#### **C2 – I2:**

Setting up and maintaining a data base consisting of information considering experts qualified in matters that regularly are subject of public procurement procedures. This data base should contain all the information about their qualification and ethical standards including all the facts about undutiful execution of the official's duties, conflict of interests etc.

#### **C2 – I3:**

Ex-post evaluation of the quality of work of the experts.

#### **C2 – I4:**

Establishing and applying rules for independency of the commission members while doing their duties that shall restrict any influence of external factors including from governing bodies of the contracting authority, bidders or third parties.

#### **C2 – I5:**

Setting up and maintaining system for prevention and counteracting corruption that includes:

- a) strict application of rules for declaring conflict of interests;
- b) appointing a unit or employees that are responsible for inspection of the data declared;
- c) well-functioning mechanism for checking signals as well as another mechanism for protection of persons alarming about irregularities.



## OFFERS OPENING (PUBLIC SESSIONS OF THE COMMISSION)(C3)

### **General description**

The opening of the offers occurs at public sessions of the commission. The basic components of this activity are: 1) appointment of a date for the first public session of the commission where the tenderers' offers should be opened; 2) inviting the tenderers, representatives of mass media, non-governmental organizations that conduct monitoring over the session of the commission; 3) conducting the first session of the commission where the offers should be opened; 4) when the first stage of assessment is completed the commission should appoint the date for the second open session where the price offers of tenderers that comply with the requirements should be opened; 5) inviting the interested parties to observe the session; 6) holding an open session to open the price offers.

### **Applicability of the Integrity Pact**

The Pact is applicable at this stage by:

1. Providing possibility for monitoring the public session of the commission.
2. Providing possibility for additional check of the documentation concerning commission composition, conflict of interest statements, and professional biographies of the commission members.
3. Providing possibility to get access to the commission reports.
4. Providing possibility for checking the tenderers' offers' (especially when some of the tenderers do not agree the commission findings).
5. Drawing up a monitoring report that should be submitted to the contracting authority, the participants of the Pact or any other interested parties as well as to mass media.



Deficits (D)	Transparency and Integrity Indicators (I)
<p><b>C3 – D1:</b> Lack of publicity regarding to the commission sessions: a) the authority does not provide information about the date, the time and the place of the session; b) belated information</p> <p><b>C3 – D2:</b> Preventing monitoring over the commission sessions by removing persons who have the right to attend the meetings.</p> <p><b>C3 – D3:</b> Admitting persons who do not have the legal right to attend the commission sessions.</p> <p><b>C3 – D4:</b> Omissions in the commission proceedings expressed in: a) violations of the requirements for opening the offers; b) violations of the requirements for confidentiality concerning the offers' contents; c) gaps in the minutes with commission findings from the public session</p>	<p><b>C3 – I1:</b> Taking timely actions to announce the date, the time and the place of the public sessions which will allow all the interested parties including the mass media and observers to attend the meeting by: a) publishing of information on the contacting authority's site at least three days before the public session; b) sending invitations to interested parties – the bidders, public institutions, non-governmental organizations, observers; c) providing mass media with information (the national ones, the regional and ones specialized in the particular area).</p> <p><b>C3 – I2:</b> Arranging the commission operations according to the provisions of the law when: a) the session is opened; b) the tenderers are made familiar with the decision of the commission appointment; c) the commission members make their conflict of interest statements; d) registering all the attending persons—representatives of tenderers who have submitted offers, representatives of other institutions who are engaged in the financial process, control or are indirect beneficiaries; representatives of non-governmental organizations who conduct the monitoring or journalists.</p> <p><b>C3 – I3:</b> Obeying the requirements for offers opening and checking for compliance: a) opening the offers in the order they were filed; b) compliance of requirements for unpacking the offers, which provide storage of all components of the offers; c) opening of offers in a manner which prevents mixing, displacement and other shortcomings in the examination of the documents of respective bids; d) examining the offers' contents by the commission members and putting signature on it by commission members and by bidders representatives as well; e) announcement of the offers' contents (announcing aloud the presence of the required documents and their requisites) including providing transparency of the action to all the participants at the meeting; f) appointing commission member/members to keep the record of the session, to write down completely and thoroughly the commission findings during the public session (note: in certain cases it is possible a video/audio record to be made).</p> <p><b>C3 – I4:</b> Publishing the information from the public session that includes: the main participants, the subject of the public procurement, the desired results; the commission deadline; permitted by law information on the proposals (are the requirements for offers' contents, price and any other requisites respected).</p>



## OFFERS ASSESSMENT (WORKING SESSIONS OF THE COMMISSION). FINAL RANKING OF THE TENDERERS (C4)

### **General description**

The offers assessment is made in closed working sessions of the assessment commission where the following activities should be taken: 1) reviewing the technical compliance of the offers (check if the requirements for the documentation content are respected; technical get-up of the documents etc.); 2) technical proposal assessment (respectively assessment of the price offer); 3) requesting tenderers to submit additional documents if necessary; 4) making a complex assessment of the offers, respectively – final ranking of the tenderers; 5) elaboration of records concerning the commission operations (preparing minutes about the commission sessions according to the legal regulations); 6) elaboration a report about the commission's proceedings.

### **Applicability of the Integrity Pact**

At this stage the Pact is applicable by:

1. Providing access to the information concerning the commission operations including: a) access to the records of the commission including access to detailed information about the assessment grounds and the assessments sheets; b) access to the bidders' offers (if necessary); c) access to the report of the commission's proceedings.
2. Examination if the legal regulations concerning the conflict of interests management are respected: a) providing access to the conflict of interests statements of the commission members; b) providing information about the contracting authority policy in this area; c) providing information about specific measures taken to manage conflict of interests (the inspections done and the respective results etc.).
3. Examination of signals concerning the commission members or employees actions that violate the legal regulations (exert influence on the commission members, partiality for some of the tenderers, violating the confidentiality requirements etc.).



## Deficits (D)

### C4 – D1:

Suspending tenderers due to formal grounds that are corrigible (lack of signature, stamp, translation of document etc.).

### C4 – D2:

Setting requirements for submission of additional documents that are not necessary

### C4 – D3:

Determination of unrealistically short deadlines for submission of additional documents and evidences.

### C4 – D4:

Lack of objectivity and impartiality in commission members proceedings (the assessment requirements laid down by the methodology are not kept; there is no justification for the assessments; identical proposals are assessed in different way etc.).

### C4 – D5:

Violating the confidentiality rules by:

- a) leaking information from the offers towards other tenderers or third parties;
- b) leaking information about the commission proceedings including stands and assessments of commission members.

### C4 – D6:

Violating the rules for access and preservation of offers by:

- a) providing external persons with access to documentation;
- b) taking away, changing or rewriting pieces of documents that are parts of the offers.

### C4 – D7:

Violating the rules for conflict of interests of commission members by:

- a) not stating conflict of interest of commission members;
- b) not taking actions against persons who are known to be in conflict of interest

## Transparency and Integrity Indicators (I)

### C4 – I1:

Application of uniform standards of treatment of all participants, without use of formal grounds for their removal.

### C4 – I2:

Defining reasonable deadlines for submission of documents and other evidences that support tenderer's proposal.

### C4 – I3:

Strict application of the objectivity and impartiality criteria considering the actions of the commission members (obeying the assessment requirements according to the assessment methodology, expert justifications for the assessments etc.).

### C4 – I4:

Taking measures against violations of the confidentiality rules by:

- a) defining strong rules for preservation of the offers' documentation and
- b) following the rules and procedures for access to offers' documentation.

### C4 – I5:

Implementation of policies and procedures for declaration of conflict of interest as well as drawing up rules and procedures and appointment of employees that conduct monitoring over the implementation of the rules for management of conflict of interests situations.

### C4 – I6:

Recording the commission proceedings by:

- a) writing down all the commission members' stands concerning the offers assessments;
- b) writing minutes of the commission sessions where all the stands, notes and commission members' opinions are correctly written down;
- c) following the legal requirements for commission's minutes requisites (like signatures, stamps etc.);
- d) following the legal requirements for preservation the documentation of the commission operations;
- e) compliance with legal requirements for record keeping related to the work of the commission;
- f) providing access to the motives of the commission members for assessment or suspending of the tenderers;
- g) preparation of report about the commission work and ranking of tenderers;
- h) providing access to the commission report.



## DECISION FOR CONTRACTOR SELECTION/TERMINATION OF THE PUBLIC PROCUREMENT PROCEDURE AND LAUNCHING A NEW ONE.

## CONCLUDING A CONTRACT WITH THE SELECTED CONTRACTOR (C5)

### **General description**

The decision for selection of contractor made by the contracting authority and concluding the public procurement contract, respectively – the termination of the public procurement procedure is the final phase of the procurement procedure. Making this decision includes: 1) accepting the assessment commission report; 2) adopting an official decision for selection of contractor; 3) providing tenderers with information about of the final results and the decision for selection of contractor taken; 4) concluding a contract with the contractor selected.

### **Applicability of the Integrity Pact**

The Pact is applicable here by:

1. Verification of observation of the legal regulations: a) providing access to the contracting authority decision and the referent motives for contractor selection/termination of the procedure; b) in case of committed violations by the commission – providing information about the administrative measures taken.
2. Providing publicity of the information concerning the conducted procedure and the final decision made by the contracting authority.
3. Receiving feedback from tenderers about legality, transparency and integrity of the assessment commission work and the contracting authority's actions.
4. Drawing up monitoring reports – providing the reports to the participants of the Integrity Pact, other interested parties, non-governmental organizations and mass media representatives.



Deficits (D)	Transparency and Integrity Indicators (I)
<p><b>C5 – D1:</b> Actions for timely provision of information about the decision to bidders are not taken.</p> <p><b>C5 – D2:</b> Attempts to exercise an influence over the commission decision with the purpose another tenderer preferred by the contracting authority to be chosen.</p> <p><b>C5 – D3:</b> Unjustified refusal to conclude a contract with the candidate selected by the commission and termination of the procedure.</p>	<p><b>C5 – I1:</b> Taking a motivated decision about selection of contractor/taking a motivated decision about termination of the procedure.</p> <p><b>C5 – I2:</b> Timely announcement of the decision taken by: 1) informing the participants in the procedure; 2) informing the non-governmental organizations - observers; 3) informing mass media; 4) publishing the information in the contracting authority web site.</p> <p><b>C5 – I3:</b> Providing publicity of information concerning the procedure conducted and the contracting authority’s decision. Providing opportunity to get acquainted with the results of the commission proceedings including with the documentation of the procedure in compliance to the applicable legal regulations.</p> <p><b>C5 – I4:</b> Taking due administrative measures to conclude a contract with the selected tenderer. In case of violation – taking measures to examine the legality of the assessment commission actions as well as taking measures to start a new procedure.</p> <p><b>C5 – I5:</b> Concluding a contract with the selected contractor obeying all the legal regulations about not making changes to the contract content.</p>



## ESTAGE III:

# EXECUTION OF THE PUBLIC PROCUREMENT CONTRACT

### General description

The execution of the public procurement contract is the final phase of the process aimed at achievement of the main purpose – timely and qualitative accomplishing the subject of the public procurement (construction works, goods supplies or services) – this stage is indicated with CF in the tables below).

The main activities through this stage are: 1) creation of the project management team; 2) setting up a technical cooperation mechanism between the contacting authority and the contractor's team (including the schedule for working meetings, teamwork rules, conducting working meetings concerning the progress etc.); 3) creation of conditions for execution of the contract, which are committed to the contracting authority (depending on the content of the public procurement it could range over a variety of subjects – providing permit documents or a licence, access to the building site, engineering and informational cooperation etc.); 4) setting up monitoring and control mechanisms (working meetings, planned on-the-spot checks, sudden on-the-spot checks, inspection of the documentation etc.); 5) payment according to the contract conditions.

### The risks

The results from the social research conducted by the Transparency International Bulgaria before the pilot implementation of the Integrity Pact shows that this phase is considered as the most risky one by the contracting authority. The main risks through the contract execution can be systemized in two main groups: a) not covering the subject of the public procurement including bad performance of the stipulated activities; 2) performance the actions behind the terms pointed out in the contract. Due to this it is of great importance monitoring to be conducted not only by the contracting authority but also by an external observer. This outer control

could be exercised by other controlling institutions (like Managing Authority of the Operational program co-financed by EU funds). However it is of great importance an independent civil monitoring to be conducted over the contract execution stage. Often the civil monitoring turns out to be the key factor (both for the contracting authority and the contractor) for comprehending that they are two parties of the contract that should serve in public interest in view of the fact that public recourses have been allocated via the contracting authority budget.

### Applicability of the Integrity Pact

At this stage the Pact is applicable by:

1. Verification of contract performance by: conducting on-the-spot checks, working meetings with the contracting authority, working meetings with the contractor, documentation checks.
2. Arranging public discussions with controlling institutions' experts, non-governmental organizations and other interested parties.
3. Announcement of the monitoring results: publishing of current information or a summary considering the execution of the contract (pieces of news, reports etc.) in the Internet and organizing press-conferences.
4. Preparation and circulation of monitoring reports that should be presented to the participants of the Integrity Pact or other interested parties as well as to non-governmental organizations and mass media representatives.



## Deficits (D)

### CF1 – D1:

Lack of control for respect of the contract provisions:

a) on-the-spot checks are not conducted;

b) signals received about violations or non-compliance of contract provisions are not taken into consideration;

c) the quality of the goods, services and construction works is not checked up;

### CF1 – D2:

Failure to take prompt actions due under the contract, indifference and / or slowness in carrying out actions by the contracting authority.

### CF1 – D3:

Changing the contract provisions (concluding annexes infringing the law etc.): adding annexes to the contract claiming unforeseen circumstances that unreasonably prolong the execution terms, increase the value and/or save stipulated actions.

### CF1 – D4:

The contracting authority pays higher cost for the goods or services than the average for the market or than costs defined in the contract.

### CF1 – D5:

The contracting authority does not perform timely payments due.

### CF1 – D6:

The contracting authority invoices and pays goods/services that in fact are not accomplished/delivered.

### CF1 – D7:

The contracting authority does not impose forfeit for delay or bad quality/performance.

## Transparency and Integrity Indicators (I)

At this key stage of public procurement execution the contracting authority is obliged to set up a management and control system that guarantees achievement of contract deliverables in compliance with the public interest. The main components of this system are the following:

### CF1 – I1:

Establishment of a management team consisting of officials with clearly defined obligations directly engaged in work for supervision of the contract execution.

### CF1 – I2:

Elaboration of schedule for monitoring that includes:  
a) working meetings considering the progress;  
b) on-the-spot checks;  
c) inspection of documentation and assessment of proofs related to contract execution.

### CF1-I3:

Conducting monitoring over the contract execution applying basic methods as:

a) working meetings considering the progress in the contract execution;

b) on-the-spot checks;

c) inspection of documentation, certificates and other evidences related to the contract performance.

### CF1 – I4:

Establishment of a monitoring committee that consists of inner and external experts from non-governmental organizations-observers, other interested parties and mass media representatives.

### CF1 – I5:

Providing publicity of the information concerning the contract execution by:

a) regular provision of information to mass media and other interested parties about the interim results achieved;

b) publishing the information on contractor authority's web-site;

c) carrying out common on-the-spot checks;

d) providing information to mass media.

### CF1 – I5:

Setting up an internal control and assessment system for work of the employees engaged with control and monitoring of the contract execution.

METHODOLOGY FOR CIVIL MONITORING  
OVER PUBLIC PROCUREMENT THROUGH  
APPLICATION OF INTEGRITY PACT







Guaranteeing transparency in public procurement in Bulgaria is a systemic problem. Distortion of procedures for awarding and execution of contracts is widespread. This phenomenon grows bigger simultaneously with the increasing amount of funds allocated through public procurement procedures. Besides being the main tool for national public expenditures, public procurement procedures shall be carried out for large amounts of EU funds spent in Bulgaria, which determines the growth of resources procured and corruption pressure in the sector. The feeling that public procurement is the main method to maintain political corruption grows stronger in the society which is another aspect of the problem. This is one of the main reasons for decline of confidence in political parties and government institutions. Transparency should become a guiding principle of public procurement awarding and contracts execution so these problems could be overcome.

It is necessary the gaps in public procurement to be clearly defined which would allow outlining relevant approaches for their mitigation. Corruption offenses concerning public procurement should be exposed to the public gaze. To get a better understanding of the problem it should be analysed in all its scope, including the mechanisms and the logic that make it possible.

## BASIC COMPONENTS OF THE METHODOLOGY FOR CIVIL MONITORING

The independent civil monitoring should be conducted on the base of methodology consistent with several main factors:

1. The legislation in the respective country.

2. Practice in the implementation of national legislation and specifics of the national and regional context where the public institutions and the business operate.

3. Leading standards, programmes and principles of the international institutions and non-governmental organisations that have the know-how in monitoring of public procurement.

The methodology for civil monitoring over public procurement should be developed in accordance with the national legal frame (Public Procurement Law) but also with the EU procurement rules and principles. In addition the monitoring should be based on the supplementary legal grounds like: cooperation agreements between the monitored institution and the observing organization as well as specific contracts laying down the rules and procedures for monitoring of any single procurement procedure.

What is more it is necessary the rules for cooperation to be clearly defined and established. This includes establishing official contract regarding the specific project or procurement contract, concluding a cooperation agreement under which the observer gains access to all the documentation obeying the political impartiality and confidentiality rules.

An essential aspect of monitoring is to mobilize civil support and to engage local, regional and international non-governmental organization as well as national and regional mass media.



## MONITORING METHODS

Civil monitoring is carried out by the following methods:

1. Documentation analysis which includes: examination and assessment of documents that should be officially provided by public bodies. The analysis shall cover also working versions of documents as far as this could help defining particular comments and recommendations in the process of their elaboration. The conclusions and assessments are based on documents' final versions.

2. Direct monitoring and on-the-spot checks for assessment of the whole public procurement process which includes on-the-spot checks carried out by authorized expert team of the organization in collaboration with local monitoring teams.

3. Sociological methods and researches;

3.1. Media monitoring – a key component necessary for compilation of monitoring assessment that takes into account all the different points of view expressed in the public discussions related.

3.2. Sociological researches and assessments of the tenderers – expert interviews, inquiries among the tenderers in the procurement procedure aiming to get their assessment concerning the conducted procedure.

## PRINCIPLES OF THE INDEPENDENT CIVIL MONITORING

1. Independence of monitoring organization (especially the monitoring team) during the monitoring process.

2. Confidentiality in order not infringing legitimate interests of the participants in the procurement procedure.

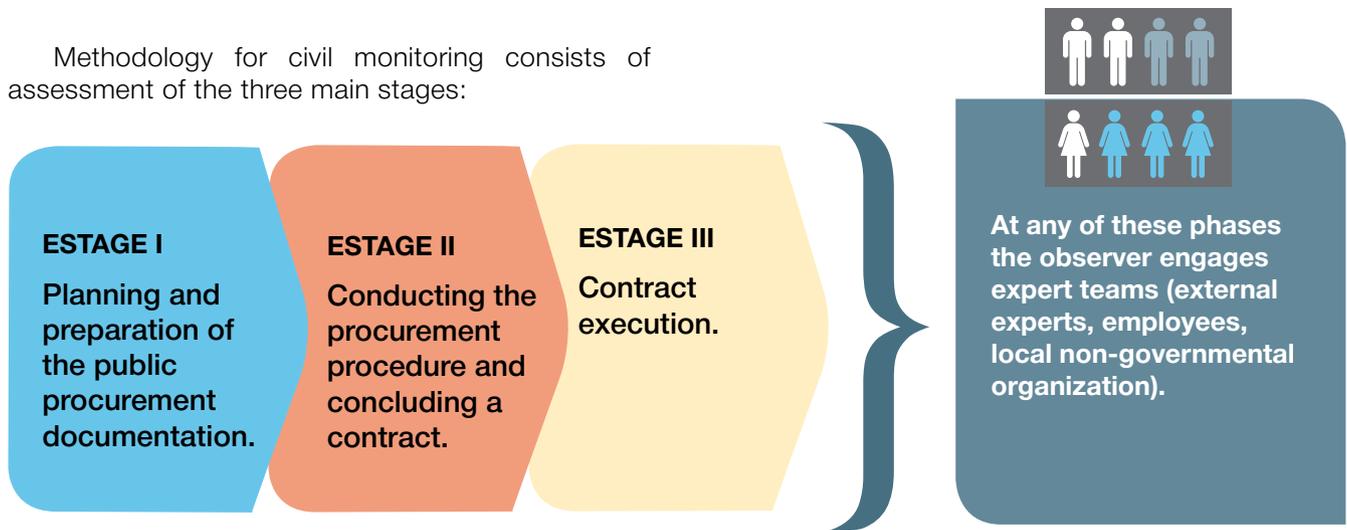
3. Political impartiality of the monitoring and expert assessment.

The whole process of monitoring and assessment finishes with an official monitoring report that contains an assessment about respect of the criteria for transparency, publicity, equal treatment and non-discrimination through the procedure monitored.



## MONITORING PHASES

Methodology for civil monitoring consists of assessment of the three main stages:



## MONITORING SCOPE

The monitoring methodology includes monitoring and assessment of:

### **I. TRANSPARENCY AND PUBLICITY OF THE PUBLIC PROCUREMENT PROCEDURE**

It includes an assessment of transparency and publicity during the process of activity planning and preparation of the public procurement documentation, conducting the procurement and concluding procurement contract as well as the contract execution stage. The quality of procurement deliverables is not a matter of assessment. According to the legislation the quality control is exercised by the competent state authorities and specialized organizations in works supervision that are engaged for this activity.

The assessment of the aforementioned phases should be based on three particular assessment indicators:

1. Publicity of procurement procedure and access to information.
2. Transparency of procurement procedure, equal treatment and non-discrimination.
3. Conflict of interest management.

The indicators are elaborated on the grounds of Article 2, Paragraph 1 of the Public Procurement Law.

### **II. FULFILLMENT OF COMMITMENTS UNDER THE INTEGRITY PACT**

Subject to monitoring and evaluation is fulfilment of the commitments of the parties (contracting authority, tenderers, and contractor) who joined the Integrity Pact.



## SOURCES OF INFORMATION

### I. Documentation analysis.

Conducting the monitoring and assessment should be based on official documentation and public sources of information only.

The main types of documentation and pieces of information are:

#### 1. AT THE PHASE OF PUBLIC PROCUREMENT PLANNING AND PREPARATION OF RELEVANT PROCUREMENT DOCUMENTATION:

1.1. Plans and decisions of the contracting authority that justify the necessity of taking action for public procurement preparations and procurement awarding.

1.2. Decisions of the contracting authority to assign the activity of elaboration the public procurement documentation.

1.3. The drafts of documents as well as the approved public procurement documentation.

#### 2. AT THE PHASE OF CONTRACTOR SELECTION PROCEDURE

2.1. Decisions for commission composition.

2.2. Other documentation related to the procedure – invitations concerning the offers opening sessions etc.

2.3. Conflicts of interests statements.

2.4. Documents proving that the contracting authority applies conflict of interest's management policy (is the authenticity of the data declared checked?).

2.5. Data from expert interviews and sociological methods for participants' feedback (inquiries among the tenderers, institutions' representatives and others). These data aims at assessment if the procedure is conducted in compliance with the applicable law regulations, if it is transparent, etc.).

2.6. Media publications concerning the particular public procurement.

#### 3. AT THE PHASE OF CONTRACT EXECUTION:

3.1. Contract execution documentation provided by the contracting authority.

3.2. Contract execution documentation provided by the contractor.

3.3. Other documentation provided by the tenderers who have joined the Integrity Pact.

3.4. Expert interviews data and sociological data concerning survey among the participants (assessments if the procedure is conducted in compliance with the law regulations, if it is transparent, etc.).

3.5. Media publications concerning the particular public procurement.

### II. Direct monitoring and on-the-spot checks

This kind of monitoring should be conducted at the second and third phase of the public procurement procedure: contractor selection procedure and contract execution stage.

In the second phase – contractor selection procedure – direct monitoring is conducted by expert team attending the commission's sessions on the base of cooperation agreement and the Integrity Pact signed.



At this phase the observers keep a record (minutes) in which they should write down:

1. Commission composition.
2. Tenderers in the procurement procedure.
3. Attendance of external persons including mass media representatives.
4. Basic observations and findings about public procurement proceedings – relevant to the monitoring work.

The main findings, summaries and conclusions from monitoring at this phase shall be documented and recorded in monitoring minutes.

Monitoring over the contract execution phase is conducted by on-the-spot checks and documentation analysis.

The on-the-spot checks are made by monitoring teams that carry out:

1. Regular inspections (on a monthly basis).
2. Sudden inspections.
3. Extraordinary inspections (based on irregularity signals or other emergency by decision of the monitoring organisation).

The conclusions at this phase of the procedure are reported by:

1. Filling check lists that are specifically elaborated for the particular public procurement.
2. Writing a minutes/report of the inspection carried out.

### III. Sociological methods and researches allowing accumulation of the information about:

3.1. Media monitoring over publications related to the monitored procurement procedure. It is an essential component for establishment monitoring assessment which reflects different points of view and public discussions concerning the monitored procurement procedure. In this regard the content analysis method should be mentioned here as basic method for identification the issues in the area as well as for identification of problems concerning execution of the particular public procurement procedure.

3.2. Sociological researches and evaluations made by the tenderers.

3.2.1. Expert interviews.

3.2.2. Surveys among the public procurement tenderers who should evaluate the public procurement proceedings.

3.2.3. Surveys among citizens regarding the final results, issues and other receivables concerning the public procurement.

## MONITORING TEAMS

The monitoring team shall be specifically composed for every single public procurement procedure. They consist of external and inside experts/employees of the monitoring organization. The team should consist of at least:

1. Jurist.
2. Experts in the field of the specific public procurement subject.
3. Experts/ representatives of local non-governmental organizations.
4. Experts/ representatives of the Transparency International.



## MONITORING PHASES

The teams apply all the methods defined for monitoring of the phases 1, 2 and 3 in their chronological order. In accordance with the specific subject and scope of the public procurement a detailed monitoring description shall be developed describing:

1. Applicable monitoring methods.
2. The type and the volume of the information accumulated and analysed.
3. Writing of the monitoring report in chronological order.
4. Monitoring results (product – report, analysis, monitoring records, minutes, etc.)

## MONITORING REPORTS

Monitoring report should be elaborated on the basis of observations of all the phases of the public procurement procedure. It consists of summary information about:

1. The approach and monitoring methodology applied.
2. Legal analysis/information about the public procurement documentation analysis.
3. Conducted on-the-spot checks regarding the public procurement awarding and execution.
4. Sociological research results, analyses, summary of the conducted media monitoring, experts interviews and assessments etc.
5. Evaluation of the Integrity Pact implementation.

## PRESS-CONFERENCES

To present the monitoring findings press-conferences are organized as follows:

1. An opening one where the initiative and the monitoring objectives are presented.
2. Press-conference presenting the interim results.
3. Press-conference presenting the final monitoring results.
4. Extraordinary press-conferences.

## WEB-SITE

Information concerning the monitoring carried out should be published on the observer web-site where the following information could be found:

1. Regularly updated information about the monitoring.
2. The upcoming events.
3. Interim and final monitoring reports.
4. Other research results concerning the monitoring.

The monitoring information should be published in Bulgarian language and depending on to the capacity of the particular observer – in English (the whole text or a summary of it).



# ENCLOSURES



04



## APPENDIX N°1

### **INTEGRITY PACT**

(General model drawn up by Transparency International)

...../name, seat and address of management, UIC of the contracting authority /represented by /position, name, surname and last name, personal ID number/ hereinafter referred to as the CONTRACTING AUTHORITY,

AND

...../name, UIC, seat and address of management/ represented by/position, name, surname and last name, personal ID number/ hereinafter referred to as the INDEPENDENT OBSERVER of this INTEGRITY PACT

OPEN FOR ACCESSION

In the period from..... to.....the present INTEGRITY PACT to all tenderers in the public procurement procedure with subject ....., launched by...../description of the contraction authority act/

Accession should be carried out by submitting a standard application form (Appendix No. 1) addressed to the CONTRACTING AUTHORITY and the INDEPENDENT OBSERVER.

By its accession each of the TENDERERS irrevocably undertakes to fulfil with perseverance and in good faith the obligations determined by the INTEGRITY PACT and shall be entitled to take benefit from the opportunities granted by it entirely and only in the spirit of the principles supported by it.

### **PREAMBLE**

GUIDED BY THE UNDERSTANDING of the supremacy of public interest, taking into account the necessity for transparency and for enhancement of the confidence in the awarding procedures related to public works, public supply and public services, as well as realizing the threat that corruption poses to the foundations of the contemporary state organization by undermining institutions, democratic and ethical values and justice, and by jeopardizing sustainable development and Rule of Law;

AIMING the observance of the principles stated in the Constitution, and mostly the principles of freedom of economic initiative and equal legal opportunities for conduct of businesses, as well as the principles for publicity and transparency, free and loyal competition, equal treatment and non-discrimination provided for in the Public Procurement Act;

IN ACCORDANCE WITH THE ACHIEVEMENTS of the international and European law, incorporated in the Civil Law Convention on Corruption, the Criminal Law Convention on Corruption, the United Nations Convention against Corruption, and the Convention on Combating Corruption, in which the European Communities public servants and European Union member-states employees are involved, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and their leading principles and values of good governance of public affairs and public property, justice, responsibility and legal equality, as well as necessity to encourage the culture for rejection of corruption;

CREATING PRECONDITIONS for achieving the objectives of the Public Procurement Act and the respective legal acts of the international and European law and ensuring efficient anti-corruption behaviour, good governance of the public sector and enhancement of the confidence in public funds expenditure.



THE PARTIES AGREE UPON:

## **PART ONE**

### **RULES AND CONDITIONS FOR IMPLEMENTATION OF THIS PACT**

#### **I. RIGHTS AND OBLIGATIONS OF THE PARTIES**

Art. 1 (1) THE PARTIES accept to strictly observe the Public Procurement Act at all stages of the public procurement, as well as to exert all efforts to achieve its goals and the goals of this INTEGRITY PACT.

(2) THE PARTIES accept to render active assistance to the supervisory, law protection and judicial authorities, as they realize the particular value of the protected public relations.

Art. 2 (1) THE PARTIES and their employees, including those who have not been assigned direct duties related to the preparation and implementation of the public procurement and the supervision of the execution of the awarded contract shall be advised to refrain from any misconduct.

(2) THE PARTIES commit to recommend to all parties, with whom they are in contractual relations in connection with the awarding process and execution of the awarded contract that they should refrain from any misconduct. As security for performance of this duty the parties may include in contracts concluded clauses governing the responsibility for failure.

Art. 3 (1) THE PARTIES shall be bound neither to initiate, nor to participate in practices of coordinated actions with other tenderers that violate the competition rules, with purpose of gaining for themselves or a third party a contract awarded against the rules and principles of the Public Procurement Act and in contradiction to its objectives.

(2) THE PARTIES declare that during the awarding procedure and the execution of the awarded contract neither they, nor any of their employees shall take advantage of or accept for themselves or third party any tangible or intangible benefit, which may influence their behaviour during the awarding process, either from the other tenderers in the procurement procedure and the contractors, or from their related parties.

Art. 4 (1) To assess whether the obligations under Art. 1 – 3 have been fulfilled THE PARTIES agree to provide the INDEPENDENT OBSERVER with access to such documents related to their participation in the procurement procedure as the INDEPENDENT OBSERVER considers necessary for fulfilment of its obligations under the PACT, as well as to give response to the INDEPENDENT OBSERVER'S questions under the conditions of confidentiality.

(2) The obligation of the CONTRACTING AUTHORITY under Paragraph 1 refers to the documents, composed in pursuance of the Public Procurement Act, as well as the documents composed according to the internal regulations adopted by the CONTRACTING AUTHORITY with respect to the preparation and execution of public procurement. The obligation does not concern the documents, which the CONTRACTING AUTHORITY has made publicly available.

Art. 5 (1) THE CONTRACTING AUTHORITY shall be bound to prepare and submit to the INDEPENDENT OBSERVER a list of the natural persons and legal entities (and of their directly involved employees), who take part in the preparation of the public procurement and execution of the awarded contract. Within three days counted from any change in this list, THE CONTRACTING AUTHORITY shall notify in writing THE INDEPENDENT OBSERVER about the resulting changes.

(2) THE INDEPENDENT OBSERVER shall keep the information and this information can be included in THE INDEPENDENT OBSERVER'S reports in a form that prevents the identification of any particular individual. Any information about a specific individual can only be announced once the consent of the person concerned has been obtained.

Art. 6 (1) THE CONTRACTING AUTHORITY shall be bound to present to THE INDEPENDENT OBSERVER the planned and actual expenditures concerning the external staff (both natural persons and legal entities) regarding the preparation, and implementation of the public procurement.



(2) The information under Paragraph 1 shall be provided upon request by THE INDEPENDENT OBSERVER in accordance with the need for reporting.

Art. 7 (1) THE CONTRACTING AUTHORITY shall be bound to inform THE INDEPENDENT OBSERVER about the members of the Commission for review, evaluation and awarding of the tenders, appointed by THE CONTRACTING AUTHORITY.

(2) In the notice THE CONTRACTING AUTHORITY shall state the professional biography of the people appointed by it.

(3) The Conflict of Interest Declarations of the Commission members shall be enclosed to the notice.

Art. 8 THE CONTRACTING AUTHORITY shall be bound to provide THE INDEPENDENT OBSERVER with the report, and the Minutes from the Awarding Commission proceedings respectively, including dissenting opinions. THE INDEPENDENT OBSERVER shall proceed with its analysis and prepare the reports in a way that prevents the disclosure of specific standpoints and opinions of particular members of the Commission.

Art. 9 THE TENDERER hereby agrees to provide THE INDEPENDENT OBSERVER with access to the documentation prepared in relation to its participation in the public procurement procedure once the work of the Awarding Commission has been finished and upon request from THE INDEPENDENT OBSERVER.

Art. 10 (1) Upon request of THE INDEPENDENT OBSERVER, THE TENDERER shall be bound to submit a full, detailed and reliable list of the external staff (both natural persons and legal entities) and outsourced services that it used in the course of preparation, and participation in the public procurement procedure and during the execution of the awarded contract.

(2) In case that contracting parties of THE TENDERER are legal entities, they shall exhaustively list name by name the people they will directly engage for accomplishing their obligations towards the tenderer.

(3) Upon request of THE INDEPENDENT OBSERVER, THE TENDERER shall be bound to submit a statement of its expenditures for external expertise, incurred in relation to the preparation of its participation in the public procurement procedure.

(4) THE TENDERER hereby accepts that the regularity of reporting shall be in conformity with the regularity of reporting of THE INDEPENDENT OBSERVER.

Art. 11. THE TENDERER agrees that when Art. 70 of the Public Procurement Act applies the detailed written reasoning of its offer shall be submitted to THE INDEPENDENT OBSERVER for the purpose of its analytic activity and preparation of reports.

Art. 12 (1) THE TENDERER agrees that in case the Contract is awarded to it, THE CONTRACTING AUTHORITY shall provide THE INDEPENDENT OBSERVER with access to the awarded contract together with all enclosures and documents it refers to.

(2) The rules of Paragraph 1 shall also apply to all amendments of and supplementations to the contract under Paragraph 1.

(3) Only information protected by the law shall not be submitted under para.1.

(4) For the purposes of Paragraph 1, THE CONTRACTING AUTHORITY and THE TENDERERS shall maintain record keeping, in which they shall keep the written documents, including those exchanged electronically.

Art. 13 (1) THE PARTIES accept that the exchange of correspondence for the entire duration of the PACT, including at the implementation stage and within the warranty period, shall be accessible by THE INDEPENDENT OBSERVER. This obligation includes also statements, which the CONTRACTING AUTHORITY and the Contractor created and exchanged during the execution of the awarded contract.

(2) THE INDEPENDENT OBSERVER shall keep minutes of the conducted workshops and inspections.



## **II. ENCOURAGEMENT FOR ACCESSION TO THE INTEGRITY PACT**

Art. 14 (1) THE CONTRACTING AUTHORITY shall keep a WHITE LIST of the TENDERERS in the PACT.

(2) THE CONTRACTING AUTHORITY shall write down the following in the WHITE LIST:

1. The tenderers in the public procurement procedure;
2. The tenderers, who have accessed the INTEGRITY PACT;
3. The tenderer to whom the Contract has been awarded;
4. The deletions made in the WHITE LIST and the reasons for them.

(3) THE CONTRACTING AUTHORITY shall lead an active policy to promote the WHITE LIST and the principles of the Integrity Policy.

(4) THE CONTRACTING AUTHORITY shall maintain public access to the WHITE LIST through its website and shall inform upon request contracting authorities within the European Union having a business profile similar to its own about the information registered by it in the WHITE LIST.

(5) THE CONTRACTING AUTHORITY shall delete the registration of the particular TENDERER when THE INDEPENDENT OBSERVER has found a violation of the INTEGRITY PACT regulations.

## **III. SUPERVISION OF THE IMPLEMENTATION OF THE INTEGRITY PACT**

Art. 15 (1) THE PARTIES agree that if a contract is awarded to a TENDERER, THE INDEPENDENT OBSERVER shall be entitled to attend the meetings between THE CONTRACTING AUTHORITY and the Contractor, as well as the performance of actual activities related to the execution of the awarded contract.

(2) THE CONTRACTING AUTHORITY shall provide THE INDEPENDENT OBSERVER with a schedule of the activities related to the execution of the awarded contract, as well as with a schedule of the appointed meetings. Any amendments to the schedules shall be announced on the day of their occurrence.

(3) THE CONTRACTING AUTHORITY shall also provide THE INDEPENDENT OBSERVER and THE TENDERERS in the PACT with information about the operation of the subject of the PUBLIC PROCUREMENT.

(4) The tenderers in the INTEGRITY PACT are entitled to send reasoned opinions of their own to THE INDEPENDENT OBSERVER.

Art. 16 (1) In order to achieve the objectives of the PACT immediately after its signing THE TENDERER shall designate a person in a managing position, who shall be responsible for the application of the provisions of the PACT.

(2) The person referred to in Paragraph 1 shall carry out an internal monitoring with respect to a violation of the INTEGRITY PACT, as well as to the internal statements related to the anti-corruption policy upon:

1. its own initiative;
2. initiative of THE CONTRACTING AUTHORITY;
3. initiative of THE INDEPENDENT OBSERVER.

(3) The person shall notify the legal representative under Paragraph 1 of the results from the monitoring under Paragraph 2.



#### **IV. MEASURES IN CASE OF MISCONDUCT**

Art. 17 (1) THE INDEPENDENT OBSERVER shall recommend the parties measures for prevention and elimination of violations in the procurement procedure or acts of misconduct within the meaning of this PACT.

(2) The presence of misconduct for each particular case shall be assessed by THE INDEPENDENT OBSERVER on the grounds of its professional experience and all data at its disposal, taken into account in its entirety and mutual interaction and assessed on the basis of positive law as well as according to the morale and objective of this PACT and the legal framework it is based on.

(3) In the cases where a violation or misconduct or preconditions for it have been established, THE INDEPENDENT OBSERVER shall make recommendations towards the prevention or avoidance of such and /or to request respectively by the CONTRACTING AUTHORITY or by a TENDERER to fulfil its obligations under Art. 20

Art. 18 (1) In the cases where misconduct represents a disciplinary breach THE CONTRACTING AUTHORITY and THE TENDERER shall be unconditionally bound to immediately initiate appropriate internal proceedings for clarifying the actions of their employees.

(2) THE CONTRACTING AUTHORITY and THE TENDERER shall report in due time to the competent institutions and assist them in exercising their supervisory and sanctioning powers when the breach or occurrence of misconduct constitute an administrative or a criminal offence.

### **PART TWO STATUS OF THE INDEPENDENT OBSERVER**

#### **I. GENERAL PROVISIONS**

Art. 19 THE CONTRACTING AUTHORITY and EACH TENDERER, who has acceded this PACT, hereby agree that “TRANSPARENCY INTERNATIONAL – BULGARIA” can exercise its functions as THE INDEPENDENT OBSERVER.

#### **II. RIGHTS AND OBLIGATIONS**

##### **OF THE INDEPENDENT OBSERVER**

Art. 20 (1) THE INDEPENDENT OBSERVER shall:

1. observe the procurement procedure;
2. assess the conformity of the procurement procedure with the requirements of the current legislation and with the regulations of this PACT;
3. make recommendations for prevention and elimination of established violations within the award procedure;
4. make public the results from its work.

(2) The information available to THE INDEPENDENT OBSERVER shall be used entirely and only for the purposes of the reports prepared by it. The information shall be kept and processed in statistical form under the conditions of confidentiality and shall be presented in summarized analytical reports.

Art. 21 (1) In order to fulfil its obligations referred to in Art. 23 THE INDEPENDENT OBSERVER shall have the following rights:



1. To attend the performance of the particular activities in the cases, provided for in this PACT through its employees and/or experts;

2. To demand and inspect documents relevant to the preparation of the award procedure, which are in the possession of THE CONTRACTING AUTHORITY or a TENDERER or a third party under this PACT.

3. To address written enquiries to THE CONTRACTING AUTHORITY and THE TENDERERS regarding specific issues of interest for it;

4. To alert THE CONTRACTING AUTHORITY or THE TENDERER on the event of establishing possible violations and to ask for conducting of internal inspection;

5. to conduct anonymous surveys among the employees of THE CONTRACTING AUTHORITY, of THE TENDERERS IN THE PACT or any of their contracting parties;

6. To make recommendations for discontinuation of activities contradicting to the rules of acceptable behaviour and of unfair competition;

7. To approach the competent institutions in the cases where the probability of a committed crime is high.

(2) All the information, which has become known to THE INDEPENDENT OBSERVER in the course of exercising of its powers referred to in Paragraph 1 shall be treated by it as confidential and THE INDEPENDENT OBSERVER shall exert the due diligence to protect it and not to provide third parties with access to it.

(3) The information under Paragraph 2 shall be kept by THE INDEPENDENT OBSERVER no longer than two months from the preparation of the final report under the Pact.

Art. 22 For the duration of this PACT, including during the performance of the awarded contract, THE CONTRACTING AUTHORITY and THE TENDERER agree to fully support THE INDEPENDENT OBSERVER within the limits, provided for in accordance with its status and its specific rights and obligations under this PACT.

### **III. REPORTING**

#### **OF THE INDEPENDENT OBSERVER**

Art. 23 (1) THE INDEPENDENT OBSERVER shall prepare at least an introductory, intermediate and final report on its activities.

(2) The final report of THE INDEPENDENT OBSERVER shall include summarized information from its periodic reports and its assessment of the compliance of the public procurement procedure with the requirements of the current legislation and the rules of this INTEGRITY PACT.

(3) THE INDEPENDENT OBSERVER shall publish the reports it has drawn up on its website after their preparation in accordance with the Personal Data Act.

### **PART THREE**

#### **MISCELLANEOUS**

Art. 24 For the purposes of this PACT:

1. MISCONDUCT shall be:

a) Any behaviour, which can negatively influence the judgment and motivation of THE CONTRACTING AUTHORITY, of its employees, of THE TENDERER or of third parties including behaviour permitted by law, but incompatible with the good practices, morale and the purposes and spirit of this PACT;



b) Sharing with the TENDERER, THE CONTRACTING AUTHORITY or third parties of information that became known in the course of performance of this PACT or within the award procedure or during the performance of the awarded contract by a TENDERER, THE CONTRACTING AUTHORITY, their employees, contracting parties or subcontractors.

2. TENDERER in the INTEGRITY PACT shall be a participant in the award procedure or a contractor of the awarded contract, which has joined this INTEGRITY PACT.

3. PARTIES to the INTEGRITY PACT shall be: THE CONTRACTING AUTHORITY, which has adopted the decision for opening of the public procurement procedure, the INDEPENDENT OBSERVER and those TENDERERS who have submitted application to accede to the PACT.

4. The communication between the PARTIES shall be made in writing or via e-mail. A register shall be maintained for all communications, including the ones exchanged electronically. For the purposes of this PACT a register shall also include the register of documents normally maintained by the parties.

Art. 25 (1) This PACT shall become effective in the presence of a statement of will of its acceptance made under a form (Appendix No. 1 to this PACT) by at least one of the tenderers in the public procurement procedure.

(2) The statement of will under Paragraph 1 must contain an unconditional and irrevocable will to accede the INTEGRITY PACT with no arrangements or reservations made regarding the form and content announced by THE CONTRACTING AUTHORITY and THE INDEPENDENT OBSERVER.

(3) The statement of will under Paragraph 1 shall be made in writing by the person authorized to represent the tenderer in the award procedure and shall be submitted to THE CONTRACTING AUTHORITY and THE INDEPENDENT OBSERVER in two identical copies. The statements of will made by the TENDERERS and the PACT shall be kept for at least the same period as the period for keeping the documentation regarding the implementation of the public procurement and the execution of the awarded contract.

Art. 26 The Pact shall expire on ..... at the latest.

Art. 27 After expiration of the term for accession, THE CONTRACTING AUTHORITY shall be bound to send an original of this PACT signed by it and THE INDEPENDENT OBSERVER to each of the acceded parties to the correspondence addresses stated by them in the course of implementation of the award procedure together with a certified list of the acceded parties.

Art. 28 By the opening of this PACT for signing THE CONTRACTING AUTHORITY shall publish on its webpage the text of this PACT and shall provide a copy thereof to each person who is willing to buy or has already bought the documentation. Along with the text of the pact there shall be submitted information for THE INDEPENDENT OBSERVER, on the basis of which the conclusion regarding the professional qualifications, reputation and impartiality of THE INDEPENDENT OBSERVER were made.

Art. 29 Disputes regarding the interpretation and fulfilment of this PACT shall be resolved by the PARTIES by negotiations.

Art. 30 The governing substantive law shall be the Bulgarian law as well the European and international legal acts referred to in the Preamble of this PACT, when they contain directly applicable provisions. The interpretation of this PACT shall be made in accordance with their founding principles, objectives and morale. IN PURSUANCE OF THE OBJECTIVES AND PRINCIPLES laid down in Part One of this INTEGRITY PACT and under the terms agreed upon in Part Two and Part Three, in accordance with the governing law, today ..... CONTRACTING AUTHORITY and the INDEPENDENT OBSERVER declare their intent to apply the INTEGRITY PACT in its entirety regarding all actions in the course of selection, awarding and execution of the public procurement with subject ....., opened with Decision No. ....of..... the CONTRACTING AUTHORITY.

FOR THE CONTRACTING AUTHORITY: .....

FOR THE INDEPENDENT OBSERVER .....



## APPENDIX Nº 2

### **Application form for accession to the Integrity Pact**

TO THE ATTENTION OF:

.....

CONTRACTING AUTHORITY

.....

INDEPENDENT OBSERVER

### **APPLICATION FORM**

Submitted by .....

.....

(name of the Tenderer, seat and address of management, UIC, legal representative)

DEAR LADIES AND GENTLEMEN,

By submitting the present application I wish and give the irrevocable consent on behalf of „.....  
.....“ represented by me to accede to the Integrity Pact signed on ..... between the  
“Contracting Authority” and .....”Independent Observer” acknowledging the obligation  
to fulfil with perseverance and in good faith all obligations set forth in the INTEGRITY PACT.

I declare that „.....“ shall benefit from the opportunities given by the INTEGRITY  
PACT entirely and only in the spirit of the principles supported by it.

Date:.....

Sincerely:.....

(representing the Tenderer ” .....“)



## APPENDIX N°3

### MEDIA MONITORING SUMMARY REPORT

Media	Publications/written materials			Summary	Classification of the Indicators			
	Date	Headline	Author		Bad fulfilment, non-delivery of the contract quantities (C1a)	The two parties amend the contract provisions by mutual consent due to extraordinary circumstances (C1b)	The terms defined in the contract are broken (C3a)	The accomplished activities/ supplies do not correspond to the preliminary announcement (C5a)

#### **LEGEND:**

C1: Control over contract fulfilment and quality of the goods/services conceded

Indicators:

C1a: The contractor is sanctioned by the contracting authority for not fulfilling the agreement and not supplying the stipulated quantities.

C1b: The two parties amend the contract provisions by mutual consent due to extraordinary circumstances – like getting the price higher, reduce the quantities and the required qualities of the goods or/and services.

In according to extraordinary circumstances the two sides sign annexes concerning additional supplies and services that unreasonably prolong the term for procurement fulfilment as well as getting the price higher without announcing a public procedure (C3)

Indicators:

C3a – The terms defined in the contract are broken.

C5 – The subject of the public procurement is substituted. The contracting authority pays the expenses of these goods/ services that are not the subject of the contract.

Indicators:

C5a – The accomplished activities/ supplies do not correspond to the preliminary announcement.





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