



**TRANSPARENCY
INTERNATIONAL**
the global coalition against corruption

MODEL MONITORING AGREEMENT AND INTEGRITY PACT FOR INFRASTRUCTURE

**An implementation guide
for civil society organisations**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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I. EXECUTIVE SUMMARY

Transparency International is the global civil society movement against corruption. One of the oldest weapons in our anti-corruption arsenal is the Integrity Pact, designed specifically to tackle corruption in public procurement – one of the biggest areas of corruption risk for governments.

Infrastructure procurement faces particular risk of corruption due to projects' complex contractual structure and size, frequent lack of transparency in the industry and government involvement, among other factors. Bribery, extortion and fraud can be difficult to detect and prevent.¹ Corruption in this sector can lead to high prices, poor quality and inappropriate infrastructure solutions, which can damage the economy and endanger the public.²

Our rapidly expanding global population coupled with extensive rural to urban migration is triggering massive demand for infrastructure investment around the world – the infrastructure needs outlined in the Sustainable Development Goals amount to US\$97 trillion.³ It is more important than ever that public investment in infrastructure is well directed and well protected, delivering fit for purpose, high quality and cost effective final products.

As focus on infrastructure investment intensifies, this guide seeks not only to update the Integrity Pact for today's world, but for the first time to demonstrate how it can be applied to a specific sector – infrastructure. The publication includes an analysis of the infrastructure cycle and the different types of risks that can arise in the different phases.

Drawing on current experiences of Integrity Pacts implemented for infrastructure projects across the EU, the Model Integrity Pact included in this guide has three noteworthy features. First, it supports a move to open contracting, envisaging a role for the Integrity Pact in moving beyond project-by-project transparency to broader openness. Second, recognising the huge size of contracts at play, the model sets high expectations for contractors. At the same time however, it recognises the advances the sector has made in recent years to improve its ethical performance and as such is flexible in its application. Third, the model envisages the communities most affected by the particular infrastructure being more involved in the process. Engagement of the public in general, and affected communities in particular, in the decision-making process at the earliest stages in the project life-cycle is crucial in ensuring that the public interest is prioritised and not undermined by corruption or undue influence.

The guide takes those interested in engaging in or leading an Integrity Pact through the different steps to decide whether to do so, and what to do if they go ahead. This includes considering resources and capacity, and choosing an appropriate project to monitor. Some challenging but fundamental questions are covered, such as appropriate funding sources, basic minimum conditions needed and managing reputational risks. The guide also includes model agreements underpinning the Integrity Pact that can be adjusted to particular country contexts. It can thus be used to comprehensively assess the desirability of implementing an Integrity Pact in a particular context, and determine how to get started.

II. INTRODUCTION

The Integrity Pact was first introduced in the 1990s and since then has been applied across the world. A revival in 2015, including the implementation of a pilot project across 11 countries in the European Union, enabled a further update of the approach and for further lessons to emerge. These lessons include a better understanding of where the Pact might be applied to best effect as well as lessons on the internal workings of the Integrity Pact. It was on this basis that this guide was developed.

This guide is for civil society organisations (CSOs) interested in monitoring infrastructure projects. It describes how they can create an effective process to monitor publicly-financed infrastructure projects of public interest by adapting a Model Monitoring Agreement and Model Integrity Pact for Infrastructure (together known as “Model Agreements”).

First, the guide describes the crucial need for increased transparency and integrity in public investments in infrastructure. It looks at a new initiative by open contracting and transparency CSOs to promote clean contracting through the adoption of five pillars, including independent civil society monitoring of specific publicly-financed projects.

Second, the guide explains how Integrity Pacts can be used to promote open and clean contracting, and describes a new approach to implementing Integrity Pacts for specific infrastructure projects. This involves a separate Monitoring Agreement between the contracting authority and the monitoring organisation being reached as early as possible to cover the early phases of the infrastructure procurement life-cycle. The Integrity Pact between the contracting authority and the bidders then enters into effect later on, during the tender phase of the procurement life-cycle.

Third, the guide gives an overview of the life-cycle of publicly-financed infrastructure projects, highlighting some of the processes that need to be in place to promote integrity and transparency.

Fourth, the guide explains the steps a CSO needs to take – through a collaborative effort with the contracting authority and input from affected communities and stakeholders – to implement an effective monitoring process through a Monitoring Agreement and Integrity Pact. These steps are:

1. identifying funding sources, capacity and resources
2. selecting the project
3. adapting the Model Agreements to the national context
4. selecting the monitoring activities
5. finalising the terms of the agreements

Fifth, the guide also includes, in the last three sections, the Model Monitoring Agreement and the Model Integrity Pact for Infrastructure. These two Model Agreements can be used as a starting point in guiding the process of defining the monitoring process. They can be used as comprehensive agreements to fit large and complex infrastructure projects. They can also be trimmed according to the capacity and resources of the monitoring organisation and/or to fit smaller infrastructure projects.

III. THE NEED FOR INCREASED TRANSPARENCY AND INTEGRITY IN THE INFRASTRUCTURE SECTOR

Increased transparency and integrity in the infrastructure sector is crucial because infrastructure investment is key to economic growth and sustainable development. Infrastructure provides the main framework under which an economy performs. It benefits all citizens, creates jobs and provides companies with growth opportunities. Infrastructure investment should also address the needs of affected communities⁴ and environmental concerns.⁵

The term “infrastructure” in this publication refers to physical infrastructure installations or networks. These can include airports, bridges, dams, drinking water supply systems and treatment facilities, power-generation plants and facilities, hazardous waste management facilities, hospitals, inland waterways, levees, ports, public parks, railways, roads, schools, solid waste management facilities, communications installations including broadband access, transit systems and wastewater flow systems and treatment facilities.

However, most, if not all, countries are falling behind in meeting their infrastructure development needs. The Group of 20 (G20) has estimated that a US\$1 trillion financing gap exists at present in the amount required to meet global infrastructure needs.⁶ In response, governments and financing institutions are calling for more private sector investment in infrastructure. The call for private sector investment will, in turn, lead to increased use of public-private partnerships (PPPs) as a vehicle for infrastructure projects, thus raising concerns that yield on private capital will be prioritised over the public interest.⁷ The increase in private investment to cover the financing gap may still fall short in meeting a country’s infrastructure investment needs. Therefore countries need to ensure that all infrastructure investments yield the promised benefits to the economy and society.

The economic and social impact of public investment, including public investment in infrastructure, critically depends on its efficiency, including developing effective ways to prevent and detect corruption. A recent study by the International Monetary Fund (IMF) compared the value of public capital and measures of infrastructure coverage and quality across countries. It found an average loss of 30 per cent of the investment due to inefficiencies in public investment processes.⁸ These inefficiencies are in part attributed to corruption. As the IMF study states, based on empirical studies, “corruption is associated with higher overall levels of public investment and lower levels of public investment efficiency”.⁹

Unfortunately, if not addressed through comprehensive and robust multi-stakeholder strategies, corruption will continue to result in significant losses in precious infrastructure investments. It is estimated that by 2030, the value of global construction output will increase by US\$8 trillion to reach US\$17.5 trillion per annum.¹⁰ The Construction Sector Transparency Initiative (CoST) estimates that close to US\$6 trillion of this investment could be lost annually through corruption,

mismanagement and inefficiency.¹¹ These losses will continue to result in untold costs to the environment, people's livelihoods and sometimes people's very lives.¹²

To address these grave obstacles to economic growth and sustainable development, international inter-governmental organisations such as the Organisation for Economic Cooperation and Development (OECD) and G20, international financing institutions such as the World Bank, global coalitions of CSOs and businesses have called for the adoption of policy frameworks and procurement processes that promote transparency and accountability in public procurement in infrastructure.¹³ A common theme in these recommendations is the need to increase the role of CSOs in promoting transparency, monitoring procurement processes and promoting the engagement of communities affected by infrastructure projects.

In response, CSOs with expertise in promoting transparency and accountability in public procurement are uniting forces to ensure that public contracting in general, and infrastructure investments in particular, do not suffer losses due to fraud, corruption and waste, and are accountable first and foremost to the public. On 29 November 2017, Transparency International, the Open Contracting Partnership (OCP), CoST, Hivos and Article 19 issued a collective agenda to end corruption in public procurement and infrastructure and support sustainable development.¹⁴

The initiative is based on five core pillars:

1. the adoption of open contracting data standards and monitoring systems
2. the independent civil society monitoring of specific projects using tools such as Integrity Pacts
3. effective and meaningful participation by affected communities in all phases of the public procurement process, including the pre-tender phase
4. a strong, professional and engaged civil society sector
5. a strong and credible sanctions regime

The collective agenda also calls for prioritising the adoption of these pillars in infrastructure investments. When reform-minded government actors are in place and large flows of money are being spent on high value infrastructure projects, a CSO is well placed to advocate for the adoption of strong open contracting and integrity principles, and to ensure that affected communities are engaged and have access to key information about the projects.

IV. CREATING OPEN AND CLEAN CONTRACTING IN PUBLIC INFRASTRUCTURE PROJECTS

In light of this context, Transparency International decided to look at how the widely-used Integrity Pact could be updated and adapted to incorporate “gold standards” in transparency and integrity with a focus on infrastructure projects important to the public interest. This publication is a result of this exercise.

Transparency International developed Integrity Pacts as a tool to prevent corruption in specific public procurements. An Integrity Pact is both a signed document and approach to public contracting that commits a contracting authority and bidders (including the winning bidder) to comply with best practice and maximum transparency. A third actor, usually a CSO, monitors the process and commitments made. Monitoring organisations commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis.

What makes Integrity Pacts special is that (1) they allow the monitoring organisation access to all data, processes and decisions related to the project, even when these are not made public; (2) they can lead to reforms and strengthening of transparency and integrity in public procurement without the need to pass laws and regulations; and (3) they are based on a collaborative relationship between the monitoring organisation and the contracting authority that can lead to capacity-building and sustainable institutional changes if the lessons from the project are extended.

Integrity Pacts have been used in 19 countries worldwide: Argentina, Bulgaria, China, Colombia, Ecuador, Germany, Hungary, India, Indonesia, Italy, Latvia, Mexico, Pakistan, Panama, Paraguay, Peru, Rwanda, South Korea and Zambia. They have been implemented at various levels and across numerous sectors.¹⁵ Integrity Pacts aim to help save taxpayer money, ensure that infrastructure projects and other public works are delivered efficiently, and close off avenues for illicit gain. Contracting authorities have attributed numerous benefits to Integrity Pacts, including:

- sharing of the oversight burden
- challenging routines, strengthening and modernising procurement institutions
- building trust from bidding companies
- increasing competition
- ensuring that the best bidder is selected
- reducing costs
- exercising effective control over the whole procurement process and all involved actors
- improving the reputation of the contracting authorities
- demonstrating the contracting authorities' vision and leadership¹⁶

This guide for CSOs presents a new Model Monitoring Agreement and a new Model Integrity Pact for Infrastructure (Model Agreements) that implement the second pillar of *The Clean Contracting Manifesto* – namely the independent civil society monitoring of specific infrastructure projects.¹⁷ It also provides guidance on how to design the monitoring process and adapt the Model Agreements

to national contexts. The Model Agreements incorporate the highest integrity and transparency standards available and are targeted toward infrastructure projects where there is high public interest, carefully selected by the monitoring organisation with input from the appropriate contracting authorities and stakeholders, as described in Section VII.

The updated and redesigned Model Agreements draw on lessons learned from on-the-ground experiences with Integrity Pacts, including some in infrastructure projects,¹⁸ and on major advances in the past few years in the areas of (1) open contracting principles and standards (such as the Global Open Contracting Principles, the Infrastructure Data Standard and the Open Contracting Data Standard); (2) technology (such as advancements in internet access, e-procurement systems and centralised online portals); and (3) civic participation (such as new social accountability approaches and increased engagement with affected communities). Based on these lessons a number of fundamental decisions were made in drafting this model Integrity Pact for infrastructure.

First, this guide proposes that a separate Monitoring Agreement between the applicable government agency in charge of the procurement (the contracting authority) and the monitoring organisation be reached as early as possible. Ideally, the Monitoring Agreement would enter into force well before the start of the tender phase, to cover the important decisions made in the early stages of the procurement life-cycle, such as decisions based on feasibility studies and impact assessments, land resettlement decisions, financing decisions, and decisions regarding delivery and procurement methods.

The Monitoring Agreement would clearly define the role of the monitoring organisation and the collaborative engagement between the contracting authority and the monitoring organisation. It would include a list of the monitoring activities and spell out specific duties of both parties with respect to those activities. It would also set out the steps to be taken when there are concerns about the procurement processes and potential violations of integrity and transparency commitments.

The contracting authority and the bidders for contracts related to the infrastructure project would enter into a separate agreement – the Integrity Pact. The Integrity Pact would ideally cover the pre-qualification and tender phase for the construction of the project. It would continue to apply to the successful bidders throughout implementation. As appropriate to the specific context, the Integrity Pact would spell out integrity and transparency commitments, including anti-corruption commitments, and the adoption of codes of ethics and compliance programmes to prevent personnel and third parties, such as agents and subcontractors, from engaging in wrongful conduct. The Integrity Pact would also include acceptance by the contracting authority and the bidders of the monitoring organisation's role.

The rationale for having two separate agreements – the Monitoring Agreement and the Integrity Pact – is based on the following:

1. A Monitoring Agreement signed during the early phases of the procurement life-cycle will allow the monitoring organisation to monitor the phases when the project is identified, appraised, and planned. It would also allow monitoring of the preparation of the specifications and tender documents. A study has found that corruption during the early preparation stage of the project cycle, when projects are appraised, designed and budgeted, may open doors for additional corruption later on.¹⁹
2. A Monitoring Agreement signed early on would also provide enough time prior to official tender launch for the contracting authority and the monitoring organisation to develop

implementation systems and processes for providing access to data about the project to the public in a user-friendly way.

3. The Monitoring Agreement would call for active engagement with the public and affected communities during the early phases of the project, such as through public hearings, events and communications. Engagement of the public in general, and affected communities in particular, in the decision-making process at the earliest stages in the project life-cycle is crucial in ensuring that public interest is prioritised and not undermined by corruption or undue influence.²⁰
4. Having two agreements provides greater clarity of the role and activities of the monitoring organisation and of the obligations of the parties to the Integrity Pact.

Second, this guide, along with the Model Agreements, also adopts a new approach which places emphasis on the role of the monitoring organisation in facilitating opening the whole procurement process to the public – meaning the whole delivery cycle and not just the tendering and contract award. The monitoring organisation would accomplish this through the collaborative adoption of open contracting standards developed by CoST and OCP. OCP's Open Contracting Data Standard (OCDS) is a standard for sharing information on all stages of the contracting process in a machine-readable format. The CoST Infrastructure Data Standard (IDS) is a list of data that includes both proactive and reactive disclosure over the life-cycle of a public infrastructure project.²¹

Annex I lists the main data disclosures (referred to sometimes as “data points”) for both standards. The two are highly complementary and mutually reinforcing. The OCP is currently close to finalising the development of an infrastructure extension for the OCDS in harmony with the IDS in collaboration with CoST. The harmonised standards will be referred to in this guide as the Open Data Standard for Infrastructure.

The benefits of adopting the open data standards for a publicly-financed infrastructure project of high public interest are (1) transparency through open data standards informs and empowers *all* citizens to monitor these important public projects, not just expert monitors; (2) open data helps ensure that governments receive value for money on their investments; (3) open data helps companies have a fair chance of winning public contracts; (4) once implemented for one project, the adoption of open data standards could be more easily extended to cover other projects or systematised to cover all procurements; (5) when coupled with an effective monitoring process, open data standards help bring accountability thereby improving trust between citizens and their government (6) the project data will always be accessible, even after the project ends, and can be used to promote greater efficiency in the future.

Through the Monitoring Agreement, the monitoring organisation will facilitate the adoption of the Open Data Standard for Infrastructure by forming a team consisting of the civil servants in charge of gathering information and data on the contracts, open contracting experts, and other stakeholders when appropriate. The team will map and develop a system to capture and publish important data in real time throughout the procurement and contracting life-cycle of the selected project. The team will then facilitate the transfer of the data into a user-friendly platform that all stakeholders could then use to monitor and raise concerns about the project. The process for adopting the Open Data Standard for Infrastructure is described in more detail below.

Finally, the Model Monitoring Agreement and Model Integrity Pact, found in Sections VI and VII of this guide, will be adaptable to various local contexts and types of infrastructure projects. The model clauses of both agreements are drawn from international open contracting, integrity and accountability standards and principles. These will be adapted, with local legal advice, to the legal

framework and principles of the country. They will also be adapted according to other considerations such as the level of buy-in on the part of the contracting authority or its overseeing agency, the needs of affected communities, the nature of the project, and the goals, capacity and resources of the monitoring organisation.

After the Model Agreements are adapted, the monitoring organisation and contracting authority will prepare a Memorandum of Implementation with details of the specifics of the monitoring process. This guide, in Section IX, outlines the major components of the Memorandum of Implementation. The Model Monitoring Agreement, the Model Integrity Pact and a recommended list of components for the Memorandum of Implementation allow flexibility and avoid a one-size-fits-all approach. Instead, they create a living tool that adapts to local opportunities and challenges.

V. THE SPECIAL NATURE OF PUBLICLY-FINANCED INFRASTRUCTURE PROJECTS

In this guide, we use the term “procurement” to refer to the whole life-cycle of publicly-financed procurement for infrastructure. The life-cycle covers initial project identification; appraisal through feasibility studies; project planning and the preparation of tender documents; evaluation of bids and award of contracts; contract implementation and management; and final auditing and evaluation. Major infrastructure projects, such as large-scale construction works, involve numerous contract awards and form a broader procurement cycle. For these projects, each phase is highly complex and time-consuming, more so than for other types of procurement.



Figure 1: The life-cycle of publicly-financed procurement for infrastructure

Corruption can occur in all six phases outlined in Figure 1. Bribery, collusion, extortion, cronyism, nepotism, patronage, embezzlement, abuse of functions, and trading in influence are common examples of corrupt acts in public procurements.²² Annex II includes a table of corruption risks in the different phases of an infrastructure project. It also proposes terms to include in the Model Monitoring Agreement and Integrity Pact to minimise those risks.

This section of the guide describes the six phases of publicly-financed infrastructure procurement. Although they appear in sequence, some elements, such as feasibility studies, design, development of the specifications and tender documents, financing decisions, and development of the budget may happen at different stages and/or simultaneously with other aspects of the pre-tender phases. For each phase, the guide offers some best practices to prevent corruption and protect the integrity of the processes. These best practices are by no means exhaustive – the footnotes include sources of information for further guidance.

Phase 1 – project identification phase

In this phase, a business case is often developed for the project. This is the information necessary to enable approval, authorisation and policy-making bodies to assess a project proposal and reach a reasoned decision. A detailed business case can be put in place for the preferred option after feasibility studies and options appraisals have been carried out. A business case may include a range of confirmations, assessments, critical dates, financial forecasting and plans for future stages.

Following on from this, governmental decision-makers review infrastructure action plans and strategy documents at the national level, and supplemental sector and sub-sector level strategies to identify priorities and potential infrastructure projects that target those priorities.²³ These priorities could include goals such as expansion of productive capacity, diversification of economic capabilities, improvement of social equity and quality of life, increased productivity, better competitive advantage, and reduction of greenhouse gas emissions.²⁴ The strategic infrastructure action plans and strategy documents can be at the national or sub-national level (in other words, regional, state, provincial or local). Ideally, the action plans and strategy documents should have been developed with input from stakeholders and the public through, for example, online platforms that inform and invite input on infrastructure needs and priorities.²⁵

In identifying projects, the contracting authorities and spending agencies should develop a “project profile” of a proposed project, which should include the needs to be addressed, its strategic priority, the proposed project’s objective, the planned activities to fulfil the project, and an estimated budget.²⁶ It should also include an assessment of other options for addressing the needs in other ways, such as by renovating an existing installation or network instead of building a new one. The project profile should then go to a first level of screening conducted by an independent body responsible for assessing infrastructure needs to assess the objectivity of the process and the proposed project’s consistency with the government’s strategic goals.²⁷

Often this phase happens through an organic and not very well-defined process. It may therefore be difficult for the monitoring organisation to get involved. If, as a result, monitoring at this early stage is not possible, and monitoring starts after some key decisions are made, the monitoring organisation should review the process and justification for those decisions and ensure that data related to those decisions is made available to the public under the Open Standard for Infrastructure.

Apart from consultation with stakeholders and the public, and an independent review of the proposal, there should also be regulation of lobbying to prevent the identification decision from favouring a particular interest group or individual. This regulation would include a lobbying registry, regulation of revolving doors, and ensuring the transparent and balanced composition of advisory groups.²⁸ Furthermore, there should be measures to prevent elected officials from choosing a specific investment that benefit contractors who contributed to their political campaigns such as banning certain types of political contributions, introducing limits and requiring disclosures of political contributions.²⁹

Phase 2 – project appraisal phase

Projects passing the initial screening should then be appraised for their economic, environmental and social feasibility with rigorous scrutiny of impact, costs and benefits. This process is usually based on economic, environmental and social feasibility studies, including land resettlement assessments.

To ensure integrity in this phase, the assessment studies need to be conducted by objective assessors and should either be conducted by independent external experts or by public officials subject to standardised assessment guidelines.³⁰ If a consultancy firm is to assess the feasibility of the project, a due diligence check should be carried out prior to their selection, and their selection should be carried out through a fair and transparent process. The studies, with the contact

information of those responsible for them, should be made public. In addition, there should be a public consultation process associated with the relevant feasibility studies.³¹ As with the identification phase, there should also be an independent review of the appraisal process, which a centralised ministry of finance or planning should undertake to ensure the information associated with the project is accurate and comprehensive, and the appraisal is objective.³² Finally, the feasibility studies should be made available to the public.³³

Phase 3 – project preparation phase

If, based on the appraisal outlined above, decision-makers decide to move forward with the project, a detailed project plan should be prepared. The decisions that need to be made during this phase, and the accompanying integrity safeguards, include:

- **Budget:** The appropriate government agency needs to prepare a detailed budget that should include multi-year forecasts tied to annual budgets, operations and management, if applicable, and recurrent and investment expenditures.³⁴ The budget should be based on a clear scope of requirements and up-to-date market price information. Depending on the nature of the contract, an appropriate level of contingencies should be included, such as coverage in case of a natural disaster. The budget and contingencies should be reviewed at critical stages throughout the life of the contract.³⁵ An independent body, such as a legislative budget committee, should conduct a formal review and approval process of the budget.³⁶
- **Delivery method:** Government decision-makers need to identify the most efficient delivery method for the infrastructure project – this can take the form of (1) a public works modality, with construction of the project fully carried out by a government entity for the public; (2) a public-private partnership with maximum private sector investment and participation; or (3) a hybrid approach.³⁷ The contract(s) can cover the design, build, operations, maintenance and/or financing of the project. Some of the factors that drive this decision are risk allocation, cost saving, availability of financing, and the level of control the government wants to retain.
- **Financing:** Government decision-makers should ensure that the development of the project, the capital expenditure, and contingencies have proper financing. In some cases it is also necessary to identify financial sources that will cover the maintenance and operations of the infrastructure asset. The structure and timing of financial provisions may impose constraints on the design and scheduling of the project and will be influenced by the nature of the project.³⁸ Domestic regulation should provide for closer scrutiny of banks that have a high level of interaction with the public sector.³⁹ Codes of conduct should also be in place for both banks and public officials involved in financing agreements.⁴⁰
- **Form of tender:** The government decision-makers also need to determine whether the tender phase will be open or restricted. Open or restricted procedures are the usual methods of procurement for infrastructure projects. Of the two, the open procedure is mostly used when competition is limited to few candidates, the specifications might be complicated, and a high level of technical expertise is required. The restricted procedure is generally used where there is a high degree of competition (several potential bidders) in the marketplace and the contracting authority wishes to draw up a short list of candidates.⁴¹

In complex infrastructure projects, a competitive dialogue procedure is sometimes used that is different to the traditional competitive process. The procedure aims to provide a certain amount of flexibility during the procurement of particularly complex projects, when the contracting authority cannot define the technical means capable of meeting the objectives

or specify the legal or financial make-up of the project.⁴² The contracting authority should also justify the use of this procedure and the justification should be made public. An independent oversight authority needs to scrutinise any decision to restrict the tender process. Finally, in special circumstances, such as in response to a natural disaster, a negotiated procedure to enter into contract with a single actor, bypassing a competitive tender, may be used. However, a high burden needs to be placed on the contracting authority to justify the use of this procedure under the applicable procurement law.⁴³

- Specifications and design of tender documents: During this phase, the contracting authority is responsible for the development of detailed technical specifications for the project and the design of the tender documents. Tender documents should include: the time and place of delivery of the bids; the evaluation criteria; the pre-qualification questionnaire (if applicable); pricing documents; draft contract terms; project specifications; and social, ethical and environmental criteria (if applicable).⁴⁴ This arguably is one of the most important tasks of the procurement processes and poses a high risk of wrongdoing. The development of technical specifications and the design of tender documents must not be restrictive or tailored to favour certain potential bidders. To ensure this is the case, there should be an independent assessor entity to address bidders' concerns regarding the specifications and design of the tender.⁴⁵ Where possible, there should be a tender template limiting over-specification. Expert groups or individuals should participate in the design of the tender documents and specifications to avoid restrictive specifications. The tender documents should be complete and based on site surveys.⁴⁶ The complexity and highly technical expertise needed may require the engagement of independent external experts. Ideally, the task should also involve consultation with end-users and other stakeholders.⁴⁷
- Evaluation criteria and evaluation committee: During this phase, the evaluation criteria for the bids should be established using a matrix or matrices that will prioritise value for money and other strategic goals. The evaluation criteria can be divided into selection criteria (to select bidders that are able to deliver on the contract) and award criteria (to select the best bid). The evaluation criteria and the related methodology need to be proportionate to the complexity of the project and non-discriminatory. Public procurement officials should also determine the composition of the evaluation committee, which should be appropriate for the subject matter of the contract. All members of the committee should sign a conflict of interest declaration.⁴⁸ In addition, the contracting authority should use separate red flag or data mining techniques to identify and investigate any possible undisclosed links between its staff and bidders.⁴⁹

In this project preparation phase, there must be adequate rules for all the public officials involved in decision-making that address conflicts of interest, protection of confidential information related to the planning decisions, specifications, and tender document design. Clear guidelines on the dissemination of public procurement information will also strengthen integrity and transparency at this phase and prevent certain actors from improperly obtaining more information.⁵⁰ Digitalising the dissemination of public procurement information also helps ensure simultaneous and equal access to information.⁵¹ Concomitant audits during this phase are another form of internal control to ensure integrity in the process.⁵² Lastly, the contracting authority responsible for project planning and design of the tender documents needs to have sufficient technical resources.⁵³

Phase 4 – tender phase

This phase covers the period from when the notice or invitation to tender is published to when the contract is awarded. The processes carried out during this phase should be aimed at ensuring that the winning bidder is the most qualified to deliver on the contract and meet the value for money and other goals. The steps in this phase include: short listing through pre-qualification, pre-bid-

conference, invitation to tender and clarification, bid opening, bid evaluation, bid evaluation report and the award of the contract.

Best practice is for the tender documents to be accessible as free downloads from a website.⁵⁴ Once the invitation or notice of tender is published, any changes that are made in the tender documents and the notices (for example date for receipt of tenders) need to be advertised. Additionally, all those who have expressed an interest in the contract need to be directly informed of any changes made to the tender documents. Material changes in the technical specifications, selection/award criteria and/or contract terms may require a cancellation of the process based on the applicable procurement law.⁵⁵

As a pre-qualification requirement, bidders could be required to produce independent certification of ethics and compliance programs or to meet other integrity standards. In the submission of bids for the contract, bidders should be required to include with their bids integrity assurances, including anti-corruption commitments, and confirmation that they have ethics and compliance policies and procedures. They should also disclose information about their ownership, including beneficial ownership, board members and shareholders. They should be required to disclose past convictions or debarments for wrongful conduct.⁵⁶ The bids need to be opened transparently, if possible, at a public tender opening event.⁵⁷ Contact between bidders and contracting authority staff needs to be restricted. Any clarifications or communications with bidders after bid submissions should be in writing. If the contracting authority has concerns about the clarity of the bid documents, it should consider re-launching the tender with the revised specifications, evaluation criteria, and/or instructions.⁵⁸

The contracting authority staff should conduct due diligence or a background check on the bidders to identify red flags. Notification of the award decision(s) should be given to all bidders, and the bid evaluation report should be accessible to the public. The chair of the evaluation committee should ensure that there is written justification for each score given in the bid evaluation. The scores and comments for each bidder should be presented in a written letter to the bidder and included in the evaluation report.⁵⁹

An independent and robust appeals process should be in place for aggrieved bidders.⁶⁰ Finally, all procurement personnel involved in this phase should be subject to a code of conduct that addresses unethical conduct, bribes or gifts, conflicts of interest, treatment of confidential information, treatment of abnormally low bids, and the duty to report wrongdoing.⁶¹

Phase 5 – construction phase

This phase covers the signing and performance of the contract(s), including oversight and monitoring of performance. Best practice calls for the adoption of formal mechanisms to involve the public in monitoring and implementation of infrastructure investments during the construction phase and upon completion.⁶² Essential elements of the draft contract cannot be negotiated prior to signature.⁶³ Change orders and contract amendments during performance of the contract should be monitored and, if above a certain monetary threshold, should be approved at a high level.⁶⁴

Contract amendments, and change orders (changes in performance that do not require a written amendments to the actual contract that are sometimes referred to as “variations”) pose a high risk of corruption. For example, a contractor, acting in collusion with project officials, can submit a very low bid to win a contract, knowing that promptly thereafter the officials will approve a change order to increase the price, allowing the contractor to recover its profit and fund bribes. Change orders often receive less scrutiny than the initial bidding and contract award process, making them a popular way

to fraudulently access funds.⁶⁵ As such, change orders should be subjected to higher and independent oversight.

In addition, amendments, change orders or variations that consist of additional and significant construction to be performed should be closely scrutinised to ensure these are not being used to bypass a competitive process. An independent review should be carried out on all change orders, variations or amendments to the contract to determine whether the additional work should be subject to a new tender process under the applicable procurement law.⁶⁶

During this phase, both government agencies and private sector actors need to be subject to comprehensive book keeping requirements. Audits and site visits should be conducted to assess the financial data and the performance of the contract, and to identify integrity and quality concerns, delays and cost overruns.⁶⁷ Finally, there should be oversight mechanisms in place to monitor the performance of the asset throughout its whole lifespan.⁶⁸

Phase 6 – Evaluation and audit phase

At the completion of the contract(s), the contracting authority and project managers should hold a review meeting to assess how the contract has performed against its original expectations.⁶⁹ This review should include the identification of successes and lessons learned from unforeseen risks and problems, and applied solutions. The review should include an examination of the success or failures of transparency and integrity processes. In addition, there should be a robust final financial audit. A final report, including the conclusion of the review meetings and the final accounting, should be made public.

Across all of these phases, governments should put in place systems that ensure a systematic collection of relevant data and institutional responsibility for analysis, dissemination and learning from this data. Relevant data should be disclosed to the public in an accessible format and in a timely fashion.⁷⁰ Transparency during all phases of public procurement for infrastructure helps inform and empower citizens, enabling them to hold decision-makers to account. Informed citizens and responsive institutions can lead to the reduction of mismanagement, inefficiency, corruption and the risks posed to the public from poor infrastructure.⁷¹ As discussed in Section IV, CoST and OCP have developed standards that guide government agencies in making essential data disclosures to the public.

PPPs and contracts that extend beyond the delivery of the infrastructure asset: A special case

Public-private partnerships (PPPs) are becoming very common vehicles for the delivery of essential infrastructure projects. They aim to mobilise private capital and know-how to supplement scarce public resources to meet the needs of infrastructure development. There is no internationally-accepted definition of a PPP. The term is used to describe a wide range of types of agreements between public and private sector entities, and different countries have adopted different definitions as their PPP programmes have evolved.⁷² They can include concession contracts,⁷³ management and/or operations and maintenance contracts.⁷⁴ They are nevertheless different from the type of public procurement processes described

above and as such any monitoring approach would have to be adjusted to take account of these differences.

Monitoring: CSOs will need added expertise to be able to monitor often complex PPP arrangements and to address the increased role and investment of the private sector actor. A monitoring organisation would also need a higher degree of buy-in from the private sector actor in this type of arrangement. Further, the level of resources needed to monitor this type of arrangement would likely be much higher because most PPPs cover management and/or operations and maintenance. Monitoring organisations may therefore have to monitor additional transactions and processes for a time period extending beyond the delivery of the asset. Monitoring organisations could agree to cover such activities for a specified period of time and not for the whole lifespan of the PPP.⁷⁵ Monitoring organisations could also agree to only monitor the procurement processes until the asset is delivered.

Transparency: In terms of transparency, the proactive and reactive disclosure requirements may need to be extended to cover management, maintenance and operations once building the asset is completed. The World Bank Group, CoST, and the Public-Private Infrastructure Advisory Facility published a Framework of Disclosure in Public-Private Partnerships⁷⁶, which includes post-procurement disclosure. The Framework is accompanied by two additional documents: Jurisdictional Studies and Good Practice Cases, which provide relevant background and resources that complement the goals of the Framework. CoST is collaborating with the World Bank to test its approach to transparency and accountability on PPPs in the infrastructure sector.

OCP has developed a PPP extension of the Open Contracting Data Standard.⁷⁷ It provides a standardised structure to model PPP data and information, and eventually publish it online in open data formats. This new tool allows stakeholders from government, civil society and the private sector to access structured PPP data and information in user-friendly formats to monitor service delivery performance, prevent fraud and corruption, analyse value for money, and identify new business opportunities.⁷⁸

Integrity: In terms of integrity, monitoring activities may also have to be extended to cover management, maintenance and/or operations depending on the type of PPP.

This guide focuses on build or design and build types of infrastructure contracts. However, further guidelines and tools can be developed to support civil society monitoring activities for PPPs that extend beyond the delivery of the asset into operations and maintenance or management of the infrastructure asset.

VI. DEFINING THE MONITORING PROCESS

Defining the monitoring process should be a collaborative partnership between the monitoring organisation and the contracting authority. In addition, as described more in the following sections of this guide, defining the process will require the input from additional key stakeholders.

Defining the monitoring process involves a number of steps: (1) identifying funding sources, capacity and resources; (2) selecting the project to be monitored; (3) adapting the Model Agreements to the national context; (4) selecting the monitoring activities; and (5) finalising the terms of the Model Agreements and the Memorandum of Implementation. While carrying out these steps to define the monitoring process, the monitoring organisation will make strategic decisions to optimise its role based on existing oversight mechanisms, local context, the nature of the project and the available capacity and resources.

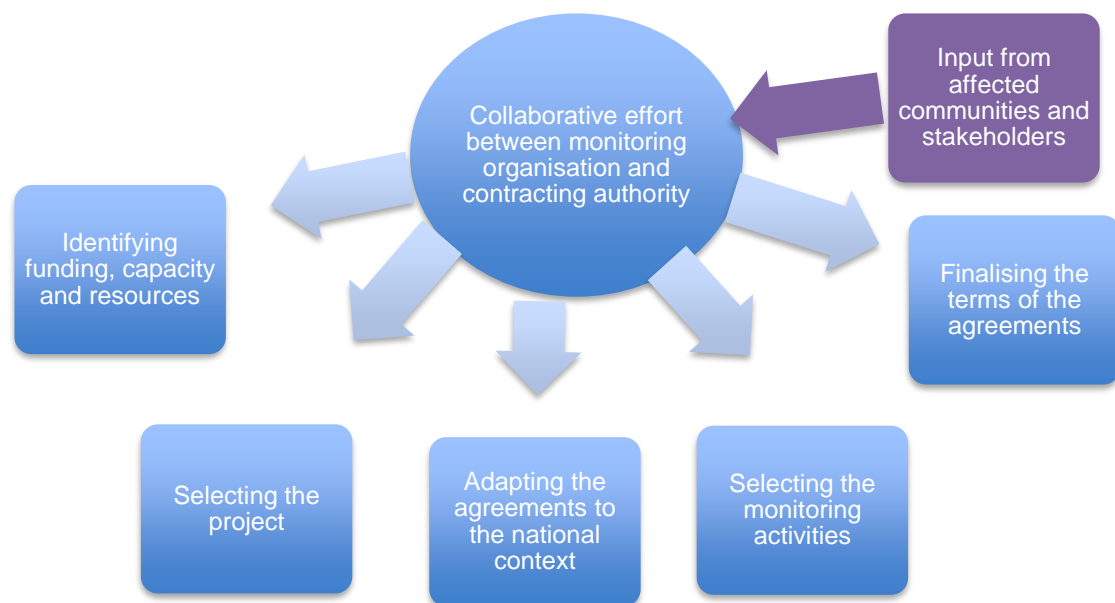


Figure 2: Steps involved in defining the monitoring process

A. IDENTIFYING FUNDING SOURCES, CAPACITY AND RESOURCES

Monitoring infrastructure projects of high public interest through an Integrity Pact will require significant funding, resources and capacity. Identifying the funding available and carefully reviewing the available resources and capacity will assist the monitoring organisation in the selection of the project and, later, in prioritising the monitoring activities.

The life-cycle of public procurements in infrastructure is usually much longer than other types of public procurements. To ensure effective monitoring for this type of project, the monitoring organisation will need to develop a solid multi-year budget and financing plan. There is no pre-defined formula for calculating how much the development and implementation of a monitoring process will cost. The costs will depend in large part on the conditions and characteristics of the selected project, its procurement processes, and on the existing capacity and resources of the monitoring organisation.

Funding sources: Sources of funding for the implementation of the Monitoring Agreement and Integrity Pact can vary. Donors, such as multi-lateral development banks, and infrastructure project financiers, such as banks or investors, may wish to provide financing for the design and implementation of the monitoring process to improve integrity and protect the investment.⁷⁹

The government can also fund the design and implementation as part of a reform action plan to strengthen transparency and integrity in public procurement in general, and infrastructure in particular. The monitoring arrangement should, however, not be financed directly by the contracting authority that is the subject of the monitoring, unless safeguards can be adopted to protect the independence and integrity of the process.

The monitoring process can also be financed through fees paid by the bidders, formally collected through a government agency or independent entity. To protect the organisation's reputation and independence, fees from bidders should never be paid directly to the monitoring organisation. Irrespective of who funds the monitoring activities, the monitoring organisation must remain independent. In Section VI.E.1 below, the guide covers ways in which the monitoring organisation can protect itself from reputational risk and liability, including with respect to funding sources.

Capacity and resources: The organisation should first identify which organisational resources and expertise are already available and which are missing. Transparency International's Integrity Pacts: A How to Guide from Practitioners suggests budget items and capacity needs that should be considered when mapping the resources that will be needed for the successful implementation of a monitoring process.⁸⁰ These include:

- **funds and expertise to carry out a risk assessment for the monitoring organisation.** Risks for the monitoring organisation can stem from: conflicts of interest; use of the model agreements as "window dressing"; mismanagement of non-public information; mismanagement of whistleblower complaints; lack of resources and capacity; bidder reluctance; and the potential eruption of a corruption scandal in the project.
- **human resources** to conduct the initial research and outreach to assess capacity, resources, funding and to select the project and monitoring activities; advocate and

negotiate of the terms of the agreements; carry out the monitoring activities; and implement communication and engagement strategies

- **legal counsel** to adapt the Model Agreements to the national legal framework; to advise on public procurement-related laws and regulations; and to advise on protecting the organisation from liability. The legal counsel selected should have expertise in domestic contract law, procurement law, access to information law, whistleblower protection law and other applicable laws. The legal counsel should also advise the monitoring organisation on how best to protect itself from reputational risk and liability
- in-house or outsourced **technical experts** including:
 - procurement experts
 - open data and analytics experts
 - electronic portal development experts
 - when needed, engineering experts to provide technical advice and/or conduct site visits
- **communications and citizen engagement resources** for engagement with the public and affected communities through public events, media, meetings and online portals or websites
- **logistical and administrative costs**, including travel costs to the project site

Pooling of resources: The implementation of the Model Agreements provides opportunities for the pooling of resources among national and international CSOs. The monitoring organisation should therefore identify similar initiatives in the infrastructure sector to, where possible, exploit synergies. This coordination would also help avoid duplication of effort. Additionally, other CSOs may have knowledge of specific projects in the infrastructure sector that should be considered for the selection of the project to be monitored.

A monitoring organisation should, for example, identify CSOs that would be interested in collaborating in the monitoring activities and/or in providing technical expertise such as: (1) in the adoption of the Open Data Standard for Infrastructure (for example, open contracting organisations); (2) in the evaluation of technical specifications (for example, professional associations or academies of civil engineers or architects and sector-specific associations); or (3) in the review of financial records (for example, accounting departments at universities or accounting firms). The monitoring organisation should explore opportunities with both domestic CSOs and international CSOs.

Transparency International can offer support based on the organisation's expertise with Integrity Pact implementation and its many transparency and anti-corruption initiatives. As the Model Agreements call for the implementation of the Open Data Standard for Infrastructure, OCP and CoST should be contacted early on to discuss potential collaboration, training, and/or technical advice. OCP has a free global helpdesk for anyone looking at implementing the Open Contracting Data Standard and its extension, which can be found at data@open-contracting.org. Engineers against Poverty and Partnership for Transparency Fund are other CSOs that may be able to provide information or access to resources and capacity.

Some areas in which CSOs could collaborate include in developing:

- training manuals and other tools for engaging affected communities in monitoring
- assessment tools to improve institutional transparency and accountability mechanisms
- assessment tools for conducting risk assessments of proposed infrastructure projects

- the creation of a network of experts, in particular engineers, open contract and procurement experts, that could help implement the agreements in different countries⁸¹
- training workshops on the adoption of the Open Data Standard for Infrastructure
- templates or standard electronic forms to gather data
- portals or platforms for the dissemination of open contracting data, monitoring and feedback from affected communities
- advocacy strategies for the Monitoring Agreement and Integrity Pacts
- liaisons with local NGOs that provide assistance to whistleblowers

An important type of pooling of resources is when the actual monitoring organisation that is party to the Monitoring Agreement is composed of a coalition of local CSOs. In Italy, for example, ActionAid has partnered with other organisations, Gruppo Abele and Monithon, to carry out training and civil society monitoring activities.

An example of pooling of resources can be found in Italy, where ActionAid, Transparency International – Italy and Amapola co-developed a website and tools to aid in monitoring activities in their four respective Integrity Pacts.

B. STRATEGIC SELECTION OF PROJECT

The monitoring organisation should conduct an initial scan and outreach to strategically select the project that will be the subject of monitoring. The selection process outlined in this section would be most applicable in countries with a great deal of planned investment in infrastructure resulting in a number of possible projects that could be selected for monitoring. The selection process, while desirable, may have to be modified in practice in other countries where there is a dearth of investment projects from which to pick. Also, the selection process will be less applicable where a CSO is submitting a proposal in a competitive procurement process to be selected as the monitoring organisation for a specific project.

Ideally, however, a monitoring organisation should consider the following factors when selecting a project for monitoring:

The public interest: The value of the project to the public interest should be the key driver in selecting a project to subject to monitoring. To gain the necessary buy-in and support for a monitoring process with the highest standards of transparency and integrity, public interest must be high. The resources invested in monitoring a project of high value to the public interest will likely bring direct benefits to the lives of the people and communities involved. Also, a civil society monitoring mechanism for projects of high value to the public interest will garner support of citizens and affected communities, and media attention. This will increase pressure on government institutions to accept civil society monitoring and adopt the highest standards of transparency and integrity. Finally, funding sources may be more accessible for such projects.

To assess the value to the public interest, the monitoring organisation should look at:

- whether the project will affect a significant number of people
- whether the project involves providing access to essential resources such as health services, electricity, protection from floods or other disasters, drinking water, employment or economic development in areas stricken by poverty
- whether there is already a high level of public interest in the project
- the projected cost of the project in relation to the total budget of the local government or public authority

In conducting the research on this question, the monitoring organisation should carry out media research and consult with affected communities to assess impact and interest. Furthermore, the monitoring organisation should review public interest priorities in government policies and action plans. This could be done through desk research and also by contacting governmental authorities such as parliamentary committees in charge of infrastructure policy and law-making, and agencies in charge of developing national or sub-national infrastructure action plans. If the project is part of a well-publicised national and/or state infrastructure investment policy or action plan, it will likely bolster government buy-in.

Buy-in from the contracting authority: Another key driver in the selection of the project will be the level of “buy-in” from the main contracting authority in charge of the project, and depending on the government contracting structure, the agency in charge of executing the contracts related to the project. Without the collaboration of reform-minded contracting authorities, a Monitoring Agreement and the accompanying Integrity Pact will be hard, or even impossible, to implement. In some instances, it may be the government body that oversees the contracting authority for a particular project that wants to impose a monitoring process on the contracting authority as a means to implement necessary reforms and increase public confidence and trust.

The monitoring organisation should reach out to the different government authorities in charge of infrastructure projects to inform them about the benefits of the approach and to assess their level of interest in participating.⁸²

Once the monitoring organisation identifies contracting authorities that are amenable to civil society monitoring, the monitoring organisation could discuss with them near-future projects of high value to the public interest that could be good candidates for monitoring. The driving questions should be: (1) is this contracting authority genuinely open to monitoring by a CSO? and (2) does the contracting authority oversee projects that really matter to the public interest? The monitoring organisation should also carry out adequate due diligence to assess the reputation and trustworthiness of the contracting authority.⁸³ Transparency International has prepared an advocacy brochure⁸⁴ which can be used when contacting contracting authorities.

Minimum threshold: In identifying potential projects for monitoring, the monitoring organisation needs to determine whether investing its resources will be worth the level of improvement in transparency and integrity for the project, and at the institutional level. The process for adopting the high standards of integrity and transparency can be incremental depending on existing standards and requirements and available resources and capacity. At a minimum, however, the monitoring organisation should be able to count on the contracting authority's commitment to give it full access to all the information related to the project so it can carry out the monitoring activities. In addition, the contracting authority should be willing to commit to not treating any data under the Open Data Standard for Infrastructure as "confidential". The creation of portals or platforms and the addition of data to them, however, can be accomplished through mutually agreed incremental steps. The contracting authority should also be able to make the Integrity Pact mandatory at least for the successful bidder(s) to contracts related to the project.

Corruption risk: The monitoring organisation should also evaluate the corruption risks that exist in infrastructure projects in the country.⁸⁵ The selection of the project will try to prioritise the geographic areas or sub-sectors more vulnerable to corruption.

To identify such areas or sectors, the monitoring organisation should look at whether there have been high profile cases of corruption in the infrastructure sector, and if so, in what sub-sectors or areas of the country. The assessment should not be based solely on risks in infrastructure projects contracted with national contracting authorities, but should also address risks in projects contracted with state and local contracting authorities as well as risks in both urban and rural areas.

In addition to looking at the geographical area and sub-sector, other factors that increase corruption risk in infrastructure projects are:⁸⁶

- the complexity of the transaction chains
- elements of design allowing for concealed changes in materials and workmanship
- the complexity of technical specifications
- the numerous types and levels of government involvement
- the uniqueness of the project, where cost and technical specifications would be hard to compare⁸⁷
- the extent of public officials' discretion over the investment decision
- the large sums of money involved
- the multiple stages and stakeholders implicated⁸⁸

Also, in large infrastructure projects, the risk of bid rigging and collusion in the tendering process is higher because the bidder must make a sizeable investment to win the project.⁸⁹ However, the size

and complexity of a project will have to be considered not only to assess corruption risk but also to determine the ability of the monitoring organisation to monitor the project given the capacity and resources available, as described in more detail below.

A monitoring organisation should keep in mind that a higher risk of corruption in a geographical area or sub-sector may mean that the contracting authority for that area or sub-sector will be less willing to enter into such a monitoring agreement. On the other hand, a history of corruption in an area or sub-sector may also mean that there is greater pressure from the public for the contracting authority to adopt reforms. The pressure for reform may also come from an overseeing government agency or branch.

Capacity and resources: After identifying the available resources and capacity as described in Section A, the monitoring organisation can determine whether potential projects are a good fit. For example, if a project is in a far-away location it will require increased travel expenses that could deplete financial resources. Whether the project will require a long-term, multi-year commitment will also inform whether the available resources are enough. It is therefore also important that the chosen project has as clear a scope and timeframe as possible.

The likelihood that the project will involve very complex transaction chains, with multiple contractors or major sub-contractors, will also inform whether the capacity and resources will be sufficient. In addition, the monitoring organisation's available expertise (for example, better access to knowledge of transportation procurement than renewable energy procurement) should inform the selection of the project.

Financing institutions: Financing institutions, such as multi-lateral development banks, lending institutions and investors, can be strong advocates for a monitoring tool such as this. Development banks have strong incentives to support civil society monitoring to protect investments in projects vital to development, such as infrastructure projects. Multi-lateral development banks often have their own access to information and integrity requirements and complaint mechanisms. A civil society monitoring arrangement can support and complement them.⁹⁰ Other financing institutions and investors can also be supportive of civil society monitoring to protect their return on investment.

Projects that are financed by institutions supportive of Monitoring Agreements and Integrity Pacts would likely make the negotiation and implementation of the agreements much easier to accomplish.

Level of buy-in from potential bidders: Potential bidders are companies that will likely be bidders for contracts related to a project. These include large multi-national construction companies and domestic construction companies. In some countries, the Integrity Pact may not be able to be made compulsory for the bidders to a project contract because of legal or other restrictions. In these situations, the bidders would ideally voluntarily agree to being monitored by a CSO and be willing to accept the integrity and transparency obligations in the Integrity Pact.

The monitoring organisation should reach out to potential bidders for projects under consideration to try to assess their level of buy-in. It is important to keep in mind that this engagement and outreach should be done in a way that does not create the perception of favouritism toward one potential bidder or a select few. To avoid this risk, bidders can be approached as a group through an open invitation to a public event or through business associations.⁹¹ This approach may also help in reaching out to numerous organisations that could be potential bidders simultaneously when it is not yet clear which companies will actually submit bids.

National and international business associations, if approached early on, may become important in gaining buy-in from both companies and contracting authorities by disseminating information about

the importance of the Monitoring Agreement and Integrity Pact in promoting fair tender practices and levelling the playing field for companies. Also, there may be industry collective action initiatives to promote transparency and integrity in the country. Collaboration with those initiatives, when possible, would help gain buy-in and active collaboration from private sector actors.⁹² Transparency International prepared an advocacy brochure for businesses that monitoring organisations can use for outreach.⁹³

Other factors to be considered in the selection of the project include:

- the likelihood that there will be media coverage that will enhance support for the monitoring activities
- the assessment of risk to the organisation posed by the specific project, including: reputation of contracting authorities and potential bidders; the likelihood of undue influence by political forces; and the potential for negative media coverage in opposition to the project
- whether the procurement process for the project will be restricted and the likelihood that it could result in a single source process and compromise the monitoring process
- the present stage of the project and whether it would allow the monitoring organisation and contracting authority time to collaborate on the implementation of the adoption of the Open Data Standard for Infrastructure, decide on a user-friendly public portal, and develop an effective communication and engagement strategy
- the potential for wider adoption, growth and sustainability of improved transparency and integrity processes for other projects and agencies
- whether the project is similar to a previous project in the same location, which may have shown indications of mismanagement⁹⁴

Transparency International and the EU Commission are carrying out a joint Integrity Pacts [pilot project](#) designed to protect structural and cohesion funds against fraud and corruption and enhance transparency, integrity and accountability in the processes. This project is referred to hereinafter as the “Integrity Pacts - Safeguarding EU Funds Project”. This initiative includes 17 public projects that are monitored by CSOs through Integrity Pacts. Some of the infrastructure projects include a motorway tunnel in Bulgaria, flood protection in Greece, a tramway in Latvia, riverside modernisation in Lithuania, and a railway line in Poland.

C. ADAPTING THE AGREEMENTS TO THE NATIONAL CONTEXT

This section briefly covers areas that a monitoring organisation needs to consider in adapting the Model Agreements to their national contexts.

1. ADAPTING THE AGREEMENTS TO THE NATIONAL LEGAL FRAMEWORK AND OTHER LEGAL AND RISK CONSIDERATIONS

The monitoring organisation must consult with legal counsel to assess whether the clauses proposed in the Model Agreements are in conflict with the requirements or provisions of existing laws and accountability mechanisms in the country. If conflicts arise, the language of the clauses should be adapted to be in harmony with existing laws and regulations. The monitoring organisation could, through this exercise, also identify potential advocacy initiatives to reform legal requirements. These initiatives could include pushing for reforms that would benefit *all* public procurements by strengthening transparency and accountability, and by allowing for increased participation by civil society. In addition, legal counsel can advise the monitoring organisation of the best ways to protect itself from reputational risks and liability when entering into a Monitoring Agreement and with respect to funding. Although not an exhaustive list, below are some issues on which the monitoring organisation should seek the advice of counsel:

Form of the Monitoring Agreement: The Monitoring Agreement could take the form of either a legally binding service contract, a grant agreement, or a non-legally binding Memorandum of Understanding (MOU). The monitoring organisation would need to explore, with the advice of legal counsel, which form of agreement would be most suitable based on the circumstances. This may depend on a number of factors:

- If the contracting authority is funding in full or in part the monitoring activities, the Monitoring Agreement may take the form of a binding contract, similar to a service contract, or a grant agreement. Depending on the proposed terms, a grant agreement would likely give less power to the contracting authority over the results of the monitoring activities and decisions. As above however, the risks associated with this form of funding should be carefully considered.
- If it were proposed as a legally binding service contract, the monitoring organisation would have to determine whether such an agreement would undermine the perception of independence of the monitoring organisation and/or subject it to potential legal liability and whether there are adequate safeguards to prevent this from happening. If it were proposed as a legally binding service contract or a grant agreement, there is also a question as to whether a monitoring organisation may unilaterally withdraw from the agreement should problems arise.⁹⁵ However, this risk may be addressed through a termination clause which would enable the monitoring organisation to exit the agreement under certain conditions.
- If the monitoring activities are funded by an agency that oversees the contracting authority, the Monitoring Agreement with the contracting authority may take the form of an MOU. The monitoring organisation would enter into a separate legally binding service agreement or a grant agreement with the overseeing government agency. If it is proposed as an MOU, a question will be whether it will be sufficient to ensure that the contracting authority will meet all obligations under the Monitoring Agreement. Past experience indicates that the following factors provide strong incentive for the contracting authority to comply with its obligations in an MOU: (1) the contracting authority's genuine interest in having a civil society monitoring

mechanism; (2) the publicity received for the monitoring process; and (3) the potential for the monitor's withdrawal for non-compliance.

The monitoring organization, with the advice of legal counsel, will have to decide which option is best to protect itself from reputational risk and liability and to achieve the goals of the monitoring process. It is highly preferable that the Monitoring Agreement be a non-binding agreement – an MOU – and that it be based on the contracting authority and monitoring organisation's mutual goals of strengthening the transparency and integrity of the procurement processes related to the project. The Model Monitoring Agreement in this guide is presented as an MOU and, as such, does not contain payment provisions or a dispute resolution mechanism.

Form of the Integrity Pact: Ideally, the Integrity Pact will be entered into as a legally binding contract and will be governed by contract law and principles in the country. It is also feasible that the Integrity Pact could be adopted through a formal administrative mechanism, rule or regulation and implemented and enforced through administrative and procurement law rather than contract law. In India and Mexico, for example, civil society monitoring of a form similar to an Integrity Pact has been integrated as a legal or regulatory requirement.⁹⁶ The Model Integrity Pact in this guide is presented as a legally binding contract and contains a dispute resolution mechanism and sanctions.

Harmonisation with domestic laws: The proposed clauses in the Model Agreements will need to be adapted to domestic contract laws and principles. In addition, the Model Agreements will likely need to be harmonised with other domestic laws governing procurements, administrative requirements and proceedings, anti-corruption laws, access to information laws, data protection laws, whistleblower protection laws and state/provincial laws where applicable.⁹⁷ The Monitoring Agreement and Integrity Pact should not, for example, provide for remedies not available under contract law or provide rights or impose obligations that are contrary to existing national laws and regulations.⁹⁸ They should also not contravene commitments under international instruments or regional directives such as EU directives. The Model Agreements identify clauses in which the legal standard will need to be adapted to existing national/local legal standards.

In adapting the Model Agreements, it is important to keep in mind that, in many cases, the Monitoring Agreement and Integrity Pact will set out or make reference to already existing legal obligations included in a number of separate laws and regulations. The added value provided by the agreements is that all obligations will be monitored by a CSO – the monitoring organisation. The monitoring organisation, however, in conducting its monitoring activities, cannot usurp or undermine the powers of existing oversight agencies. Thus, the Monitoring Agreement and Integrity Pact must also work in line with existing accountability mechanisms provided by law.

Voluntary obligations: In addition to already existing legal obligations, the monitoring organisation can propose the inclusion in the agreements of voluntary contractual obligations that adopt best practices and standards not yet incorporated into law. Thus, the clauses proposed in the Model Agreements can and should be adapted to fill public disclosure gaps and strengthen integrity processes. In Italy, for example, the monitoring organisation Amapola included into its Monitoring Agreement a clause that went beyond existing legal requirements requiring the successful bidder and the contracting authority to gather and publish, in an open format, data related to the contract and the payments made by the successful bidder to any of the entities in the enterprise chain, including subcontractors.⁹⁹

Clarity and completeness: All essential terms in the agreements should be set out in a complete and clear manner. Uncertainty and vagueness could lead to subjective interpretation, which results in disagreements over the terms of the agreements.¹⁰⁰ The terms in the Monitoring Agreement and the Integrity Pact need to clearly spell out all the agreed-to commitments by all parties. Furthermore,

the Model Agreements presented in this publication may not cover all obligations that would lead to improved processes and effectively prevent wrongdoing. The monitoring organisation should include additional obligations and monitoring activities that it believes would increase transparency and integrity for the selected project.

The process of adapting the Model Agreements to the legal context will be time-consuming and should be started as early as possible. Transparency International's Integrity Pacts: How to Guide from Practitioners offers helpful guidance on considering existing laws and accountability mechanisms with respect to accountability, transparency, and stakeholder participation in the procurement process.¹⁰¹ In addition, Section VI.E of this guide highlights specific considerations for the Monitoring Agreement with respect to independence, confidentiality, whistleblower protections, and withdrawal. Section VII highlights special considerations for the Integrity Pact with respect to the signatories, the obligations of the parties, the dispute resolution mechanism and sanctions.

2. THE PERSPECTIVE OF OTHER POTENTIAL STAKEHOLDERS

In Section VI.B, the guide identified a number of stakeholders that need to be engaged to select the project to be monitored: contracting authorities and other main agencies involved with infrastructure contracting, financing institutions and potential bidders. Once the project is selected, engagement with these and other key stakeholders will inform the terms and the goals of the agreements. Engagement with affected communities in a strategic way in the design of the monitoring process will be particularly helpful in establishing communication and participation strategies and to build trust and support.

Affected communities: "Affected communities" refers to those communities that are affected – either positively or negatively – by the construction of the infrastructure project. Affected communities can include communities that are displaced by or live in close proximity to the project site, the intended beneficiaries, and the workers and contractors/subcontractors engaged in the delivery.¹⁰² The term may also include communities that will be affected by disruption or changes in the economy, or effects on the environment caused by the project.¹⁰³ Engaging these affected communities can not only ensure that the procurement actually meets the needs of those affected, but it can also broaden the group of people motivated to identify irregularities in the procurement process and supply chain.¹⁰⁴ In addition, broadening the engagement of affected communities can ensure that the decision-making process is not captured by special interest groups.¹⁰⁵ Influence by those with vested interests in infrastructure decisions may result in negative return of productivity or excessive infrastructure, creating "white elephant" projects.¹⁰⁶

The monitoring organisation, in collaboration with the contracting authority, should identify the communities that the selected infrastructure project will affect. These communities may include households, consumer protection organisations, indigenous communities and citizen advocacy groups. Engagement with and participation of these communities from the time the Monitoring Agreement is being negotiated with the contracting authority will ensure that their needs, concerns and participation will be integrated into the agreements. Engagement with and participation of affected communities is paramount to introducing a public interest lens to monitoring and, potentially, to adding a social accountability component into the Monitoring Agreement and Integrity Pact.

In addition to reaching out to affected communities, the monitoring organisation could approach interested communities such as students, volunteers and retired individuals who may be interested in supporting outreach and monitoring activities.

Oversight institutions: The monitoring organisation should map out the existing oversight structure that applies to the project and all related procurement processes. It should then engage with the agencies or bodies that will play a role in supervising the procurement processes and contract implementation for the project. Engagement with these institutions will ensure that the monitoring organisation clearly defines its role with respect to oversight and accountability. Monitoring organisations to date have found that it is effective to oversee the existing accountability and oversight mechanisms – in other words, ensure that they are working properly – rather than duplicate the supervisory role of those other institutions. However, the monitoring organisation may detect areas where the oversight mechanisms are deficient or lacking due to low in-country capacity. In such cases, it may decide to take a more direct oversight role in cooperation with the body. More on these strategic decisions will be discussed below.

“We appreciate the IP project and see potential. We are only able to review about 2–3 per cent of tenders and usually the problems are in the ones we don’t get to! This project promotes the idea that the general population can ask questions, get answers, work together.”

Gediminas Golcevas, Public Procurement Office, Lithuania

Other governmental institutions: In addition to the main contracting authority and other agencies already engaged for the selection of the project, the monitoring organisation should also reach out to regional or local planning departments, which coordinate land use, resettlement, and other type of infrastructure planning. Regulatory agencies, such as environmental commissions, and utility regulators, could also be important stakeholders whose perspective and participation may be incorporated into the Agreements depending on the project.

The contract engineer: The role of the contract engineer is very important in infrastructure projects. The monitoring organisation should engage with the contract engineer(s) as soon as selected to support his/her/their supervisory role and to ensure access to important project information and meetings. The contract engineer(s) should also be required by the contracting authority to collaborate with the monitoring organisation in addressing concerns during the implementation of the contract. In Poland, the monitoring organisation Stefan Batory has found engagement with the contract engineer to be crucial in monitoring the construction of a railway line.

Media: Working with the media will be important to inform the public about the role of the monitoring organisation and the implementation of the Monitoring Agreement and Integrity Pact. If it did not do so during the selection of the project, the monitoring organisation should identify journalists who have covered infrastructure projects and corruption scandals in public procurement. The monitoring organisation will decide on the best time to reach out to media contact(s), depending on the local context and the timing of the negotiations with the contracting authority. Interest on the part of media outlets will inform the media communication strategies and timelines that will be incorporated into the Monitoring Agreement and Memorandum of Implementation.

Other potential stakeholders whose perspective may be considered in adapting the Model Agreements to the local context include: labour and trade unions or work safety advocates/regulators, major suppliers, environmental NGOs and investment policy-makers.

Transparency International’s How to Guide recommends carrying out a stakeholder analysis exercise to understand each stakeholder’s perspective and develop a strategy for engagement. It also provides sources of information on how to carry out the stakeholder analysis.¹⁰⁷

3. EXISTING DATA TECHNOLOGIES AND POTENTIAL FOR INNOVATION

As mentioned earlier, a priority for the monitoring organisation will be to work with the contracting authority to open up the project's procurement processes to the public, ideally by adopting the Open Data Standard for Infrastructure. In addition, the monitoring organisation will facilitate access by the public to project data through a centralised, user-friendly portal. Facilitating easy access to essential contracting data will allow for monitoring by **all** stakeholders and affected communities on an ongoing basis and not just by appointed monitors or experts. In addition, bringing in technical expertise to facilitate the adoption of the Open Data Standard for Infrastructure will help build local capacity for such standards to be adopted in a systematic way for other, or even all, procurements.

This goal will entail collaboration with the main contracting authority and all relevant government agencies in charge of the execution of the project to set up data systems and data sharing practices to provide machine-readable and quality reusable data to the public. Under the Monitoring Agreement, therefore, the monitoring organisation will set up a team – the Open Contracting Team – made up of (1) people charged with collecting information and data on the project from the different agencies, (2) individuals from the monitoring organisation, (3) technical experts and, (4) if appropriate, other stakeholders. The team will work to identify existing data gaps and determine the process needed to adopt the Open Data Standard for Infrastructure for the selected infrastructure project. When drafting the terms of the Monitoring Agreement and Integrity Pact, it will be useful for the monitoring organisation to have an understanding of the systems, platforms and portals already in place and the existing public data disclosure requirements for the project. This will help in identifying the best way to open up the procurement process to the public and incorporate the process into the agreements.

For example, in some countries, an e-procurement system for all public procurements would already capture and disclose a significant amount of data on infrastructure projects. Through the monitoring process, the Open Contracting Team would in that case map out what data would have to be supplemented to meet the Open Data Standard for Infrastructure. The e-procurement platforms in Mexico¹⁰⁸ and Ukraine¹⁰⁹ are examples of such a process. In Italy, the [OpenCoesione](#)¹¹⁰ portal contains information about any single project carried out to implement cohesion policy, and more specifically: funds used, places and categories, subjects involved and implementation timeframes. Users can either download raw data or surf through interactive diagrams itemised by expenditure categories, places and type of intervention, as well as have access to files on single projects and subjects involved. Data on the local economy and social context are provided as well.

Other countries, however, are still relying on highly decentralised systems that create silos of information that are difficult to navigate and that result in significant information gaps. The monitoring organisation should examine which systems, platforms and portals exist at different agency levels or for regional areas. Furthermore, the electronic record-keeping within institutions can be deficient and some of the data can be found only in paper documents. In such cases, the Open Contracting Team would have to devote more time, effort and collaboration with the contracting authority to map all the data and devise a system to capture it and publish it in a machine-readable format in a centralised location, either in a system wide-procurement portal, or in a portal created for the specific project. A way to gather the data, for example, may be to provide the parties to the agreements with forms or templates to be filled out with the required information in a standardised format.

In addition to collaborating with contracting authorities to adopt the Open Data Standard for Infrastructure, the Open Contracting Team will need to explore different ways to publish the data with the user in mind. This will require identifying existing portals in the country, the possible creation of a new portal, and early collaboration with and acquiring feedback from different stakeholders and

communities on desired features and functionality. As OCP states, “[c]ollaboration and engagement with those who use the information should underpin every open contracting intervention”. OCP provides useful guidance on how CSOs can approach an open contracting intervention.¹¹¹ The actual process and details will vary from country to country, situation to situation, and can be outlined and incorporated into the Memorandum of Implementation.

The monitoring organisation should also explore the feasibility of using business intelligence tools or monitoring portals to facilitate the monitoring of the selected project and engage citizen and stakeholders in the process. It would be very beneficial to combine a monitoring function with the dissemination of project information function in one single portal. The portal should also include a social accountability function to engage citizens and local communities to raise concerns, and provide information or feedback on the project.

Below are a few examples of ways in which CSOs have used data-driven technologies to disseminate information about public projects and also to monitor and engage citizens and stakeholders:

- In Italy, ActionAid, Amapola, and Transparency International Italy, in their capacity as monitoring organisations, created a website providing information to the public on the implementation of Integrity Pacts that promote transparency, monitoring and citizen and stakeholder participation in four publicly-funded contracts. The website is accessible, user-friendly and provides feedback channels.¹¹²
- The DoZorro monitoring portal in Ukraine is a platform where each link in the procurement chain (supplier, buyer, oversight body or citizen) may provide feedback to a state procurement entity or supplier, discuss and assess the conditions of a specific procurement, analyse procurements of a certain government authority or institution, and prepare and submit a formal appeal to the oversight bodies.¹¹³
- SindhupalCheck¹¹⁴ is an app for real-time citizen feedback on the effectiveness of constructing earthquake-resilient homes in Nepal. It enables community monitors to report on the success rate in implementing fixes to identified problems. At present, it is monitoring the construction of 784 homes and tracks the fix-rate of each stage of construction, including the number of problems found and resolved.¹¹⁵
- Cabrane¹¹⁶ is a platform that monitors public infrastructure projects in Tunisia. It not only gives access to all relevant information about these projects but it also gives the possibility to add new projects and ask for more accountability from authorities using open data. This platform uses new technologies accessible to all and fits into the global movement working toward e-governance and greater transparency of public infrastructure. To date, it provides information about 244 constructions projects and keeps track of cost, delays, access to information requests and the rate of response of each government agency.
- SISOCS (Sistemas de Informacion y Seguimiento de Obras y Contratos de Supervision or Monitoring System of Works and Supervision Contracts)¹¹⁷ is a platform for the publication and dissemination of information related to the delivery of public infrastructure projects in Honduras. Through SISOCS, a user can monitor the environmental and settlement impacts, physical progress and financial payments related to the projects, acquisitions, contract management, and geographic location of the projects. In addition, a user can download public information related to the projects. It has been designed to be user-friendly and meets the “three-click” test to access information on specific infrastructure projects. Redevelopment costs to adopt the platform in Malawi were US\$30,000.

Centralised portals: In examining the possibilities for information dissemination, monitoring and citizen engagement, the monitoring organisation should consider advocating for the creation of a centralised portal that would include other public procurements and the publication in that portal of

the disclosures required through the Open Data Standard for Infrastructure. A centralised portal would facilitate access to information and comparative analysis across projects. If the contracting authority and supervisory agency are not willing to devote the resources necessary to create a centralised portal, the monitoring organisation should consider ways in which their approach for the single project could be replicated and centralised for other procurement projects in the future.

A final note on the limitations of technology: In many countries access to the internet is still very limited. In such countries, and even in countries where the internet is accessible to many but not by the affected communities, electronic platforms may need to be complemented with other ways to provide the public with information about the project and solicit their input. These alternative communication channels include newspapers, television, radio, town halls and other organised events. The use of social media may also be an effective tool to reach citizens that would not likely make use of online portals. For example, CoST Malawi provides an SMS service that allows citizens to submit messages or photos about the concerns they have about their local infrastructure projects. Citizens can also use the SMS service to participate in a public radio debate by sending questions for a panel to answer.

A Nigerian CSO, the Public and Private Development Centre (PPDC), led an open contracting initiative which led to the creation of Budeshi, an online procurement platform that has made data available on 1,632 contracts from 20 public institutions, with a total value of more than 911 billion naira (close to US\$3 billion). PPDC successfully blends this online access with offline approaches, such as town hall meetings, to get feedback and involvement of citizens, especially those in remote rural areas.

D. SELECTION OF MONITORING ACTIVITIES

In defining the monitoring process to be implemented through the Monitoring Agreement and the Integrity Pact, the monitoring organisation should look carefully at the different monitoring tasks and prioritise them according to its available capacity and resources, the nature of the project, and the local context. This section proposes a list of monitoring activities that the monitoring organisation should consider and the factors it would examine for each one to determine whether the activity should be included in the Monitoring Agreement.¹¹⁸ The monitoring activities discussed in this section are divided as follows:

- 1) monitoring transparency and integrity in procurement processes and other Integrity Pact obligations
- 2) monitoring and facilitating the adoption of the Open Data Standard for Infrastructure for the project and providing real-time public access to contracting data in a user-friendly portal
- 3) engaging with affected communities and stakeholders and providing them with feedback channels
- 4) organising site visits to compare progress seen through data and actual physical progress on-site
- 5) reviewing the procurement data and information for red flags
- 6) addressing concerns of wrongdoing
- 7) training
- 8) communicating

This section provides some considerations for each monitoring activity that the monitoring organisation should examine to determine which activities are essential, which are desirable but would need substantial resources, and which tasks could be shared with the contracting authority.

The activities discussed are also linked to specific clauses in the Model Monitoring Agreement and Integrity Pact to facilitate the monitoring organisation's decision of whether the model clauses should be amended or removed.

1. MONITORING TRANSPARENCY AND INTEGRITY IN PROCUREMENT PROCESSES AND OTHER INTEGRITY PACT OBLIGATIONS

This activity can be found in clauses 4.6 to 4.8 of the Model Monitoring Agreement. The monitoring organisation's participation in and review of procurement processes and the Integrity Pact obligations is a core component of the monitoring role. Procurement processes refers to all procedures and processes throughout the life-cycle of the project – from identification to full performance and final evaluation, as described in Section V.

This endeavour would include attendance at meetings (where permitted and desirable from a risk management perspective) and public hearings and review of procurement processes and decisions related to the project. These processes and decisions, as explained in detail in Section V of this guide, include the:

- identification decision
- preparation of impact assessments (including economic, environmental, social and land resettlements assessments)
- feasibility study
- preparation of the budget
- decision on the delivery modality
- decision on the type of procurement process

- financing decisions
- development of the evaluation criteria and processes
- design and preparation of tender documents
- development of technical specifications
- decision-making processes for the pre-qualification of bidders
- call for bids
- submissions of bids
- pre-contract disclosures by bidders
- opening of the bids
- process of evaluating bids
- award decision
- contract and subsequent amendments to the contract
- change orders or any contract variations
- progress reports and audits
- final evaluation and accounting
- processes for preventing illicit conduct, conflicts of interest and ethical violations
- process for engaging independent consultants and assessors

The monitoring organisation will need to benchmark existing procurement processes with best practices in ensuring integrity such as those set out in Transparency International's Corruption in Public Procurement, A Practical Guide¹¹⁹ and the OECD's Integrity Framework for Infrastructure.¹²⁰ When gaps are detected in institutional or organisational processes, the monitoring organisation would issue recommendations to the contracting authority, the successful bidder and other relevant actors as appropriate to the circumstances to strengthen the process to prevent corruption and other wrongdoing. In this way, the monitoring organisation can help strengthen the institutional and organisational processes.

The Integrity Pact will contain integrity and transparency obligations on the part of the contracting authority with respect to procurement processes outlined above. In addition, the Model Integrity Pact contains obligations on the part of the contracting authority and the bidders and successful bidders to facilitate the adoption of the Open Data Standard for Infrastructure and – to be adjusted according to safeguards already in place – on the implementation of codes of conduct, rules, policies and procedures to prevent corruption and unethical conduct. Sections 4 and 5 of the Model Integrity Pact list all of these potential obligations. The monitoring organisation should monitor compliance with the final set of obligations contained in the Integrity Pact as part of its monitoring role. Production of regular monitoring reports is a core output of this activity.

2. MONITORING AND FACILITATING THE ADOPTION OF THE OPEN DATA STANDARD FOR INFRASTRUCTURE AND PROVIDING REAL-TIME ACCESS TO THE PUBLIC IN A CENTRAL, USER-FRIENDLY PORTAL

This activity can be found in clauses 4.1 to 4.3 of Model Monitoring Agreement and in clauses 4.5 and 5.12 of the Integrity Pact. Ideally, monitoring and facilitating the adoption of the Open Data Standard for Infrastructure and providing real-time access to contracting data in a user-friendly platform should be top priorities of the monitoring organisation. The examination of existing technologies and potential for innovation in Section VI.C.3. above provides the monitoring organisation with an idea of the level of effort, the type of collaboration, and the process entailed in carrying out this endeavour. In addition to facilitating the adoption of the proactive disclosure requirements, the monitoring organisation should also assess the quality and timeliness of responses to requests for information for reactive disclosures.¹²¹

The main contracting authority may be reluctant to provide the resources necessary to implement a system that captures and releases the contract data required under the Open Data Standard for Infrastructure. Early advocacy efforts to obtain this buy-in from the contracting authority can focus on:

- the reputational benefits to the contracting authority
- capacity-building that could provide more efficient and effective systems for all procurements
- the value of bringing all the information together coherently for better project design and execution
- the potential for innovative services and new business models that could use the data to benefit the public

Advocacy efforts may also involve the procurement oversight agency that sets the rules for the contracting authority. The monitoring organisation should also explore advocating for the codification of the Open Data Standard for Infrastructure through law or regulation. Should the contracting authority be unwilling or unable to immediately devote the resources to adopt the Open Data Standard for Infrastructure, the monitoring organisation should negotiate transparency goals that would be mutually acceptable and make the monitoring process a worthwhile endeavour.

It is also important to keep in mind that the gold standards in the Model Agreements, such as the adoption of the Open Data Standard for Infrastructure, can be achieved using an incremental approach depending on the available capacity and resources of the contracting authority and monitoring organisation. For example, certain data could be made available to the public right away, but other data could be added on as the systems for capturing the information are put in place.

With the support of OCP and CoST, the Africa Freedom of Information Centre (AFIC) in Uganda carried out a successful advocacy and collaborative effort with the Ugandan Public Procurement and Disposal of Assets Authority to adopt the Open Contracting Data Standard and Infrastructure Data Standard. Through advocacy during the country's Public Procurement Reform, AFIC achieved a legal mandate requiring the adoption of both standards.

3. ENGAGEMENT WITH AFFECTED COMMUNITIES AND PROMOTING SOCIAL ACCOUNTABILITY

This activity can be found in clause 4.4 of the Model Monitoring Agreement and clause 6.5 of the Model Integrity Pact. Engagement with affected communities throughout the monitoring process should also be included in the monitoring activities because it:

- promotes constructive multi-stakeholder dialogue
- builds citizen support for the project and the monitoring process
- builds trust between communities and public authorities
- informs the design of the online user platforms
- creates feedback loops essential to monitoring the project and improvements in platforms and processes

There are three main models of engagement with affected communities and promoting social accountability. In the first model, the monitoring organisation predominantly monitors the adherence of both the contracting authority and the bidders (including the successful bidder(s)) to the terms in the Monitoring Agreement and Integrity Pact. The monitoring organisation in this case represents the public good with the involvement of affected communities limited to reporting concerns either directly to the monitoring organisation or to oversight institutions.

In the second model, the monitoring organisation is more engaged with affected communities beyond the reporting of concerns. Affected communities would be more actively involved through representatives that participate in discussions about the project with the monitoring organisation and the contracting authorities. In this model, the monitoring organisation would invest more time in discussing with the representatives the progress of the monitoring activities. For example, the monitoring organisation would present the monitoring reports and reports on site visits, and receive feedback from the affected community representatives. The affected community representatives could also potentially be consulted whenever problems arise to agree on a collective action plan.

In the third model, the monitoring organisation and affected community representatives jointly monitor compliance with the terms of the Monitoring Agreement and Integrity Pact. Both the monitoring organisation and affected community representatives have access to the required information, review documents, analyse the information and data, and undertake site visits. In some cases, the affected community representatives could even contribute to the preparation of the monitoring reports.¹²² In this model, the monitoring organisation should exercise care to minimise the risk of inappropriate conduct by local groups or individuals in carrying out monitoring activities that could be blamed on the monitoring organisation or the monitoring process. The monitoring organisation would need to provide training and clear rules on carrying out the monitoring activities. The rules would need to include the process for reporting concerns or red flags, the treatment of confidential information, and safety. The degree of control that the monitoring organisation would have over the activities of the local monitors would have to be clear to all, including the project managers and owners, the contracting authority, stakeholders and the public.

In each of the three models, there are some risks that need be considered and addressed. In the first model, limiting the engagement with communities to reporting concerns, although valuable and a good first step, offers little opportunity for multi-stakeholder dialogue and for building citizen support for the project and the monitoring process.

In the second model, more engagement with affected communities is secured which in turn offers more opportunities for dialogue and building citizen support. Nevertheless, the limited investment in affected communities in terms of capacity-building increases the dependence on the monitoring organisation, and limits the overall sustainability of the monitoring process and its extension to other projects.

In the third model, the joint monitoring and extensive engagement with affected communities offers great opportunities for dialogue and citizen support. However, this model has its own reputational, operational and legal risks. The reputational risks include, for example, the declaration of a perceived irregularity or a concern as a corrupt act and leaking such information to the media by the affected communities without following the procedures outlined in the Monitoring Agreement or the Integrity Pact. The operational risks include the time needed to build the capacity of affected communities to be able to undertake the monitoring activities, which could result in delays of the whole monitoring process. The legal risks include actions like the leakage of confidential information protected under law. It is therefore recommended that monitoring organisations adopting the third model should agree clear monitoring rules in writing with the representatives of affected communities involved in the monitoring. These rules would need to clearly outline the roles and responsibilities of each monitoring entity and guidelines aimed at mitigating the risks outlined above.

In all three models, feedback loops and the reporting of concerns by affected communities can be achieved through, for example, online portals, hotlines accessible through email and telephone, social media communications, and public gatherings such as town hall meetings. Some examples of social accountability components in monitoring infrastructure projects include:

- Under a Monitoring Agreement and Integrity Pact in Italy, ActionAid’s monitoring teams reached out to local organisations to include them in the monitoring activities. The monitoring teams identified local “civil monitoring champions”, carried out an assessment of knowledge and skills, and trained the civil monitoring champions through workshops. At present, the champions are not only going through the project documentation but they are also being trained on comparing the information on paper to what is happening on the site.¹²³
- CoST’s work in Honduras¹²⁴ provides an example of how affected communities are engaged in monitoring access to information and the physical progress of infrastructure projects. CoST works closely with CSOs and local grassroots organisations. There are over 300 municipalities and in every municipality there is a citizen transparency commission (CCT) that acts as a monitor for projects in their municipality. CoST works with CCTs to inform them about what they can expect in terms of transparency in projects and what their rights are in terms of how they can access information and what the information means. The CCTs also assist in monitoring projects in their locality, which has been very helpful in building scale. Many of these projects are in rural areas where it is hard for CoST to be present and monitor. The CCTs cross-reference procurement process disclosure performance against the IDS and against the legal requirements to see whether or not what is required to be disclosed is actually being disclosed. The CCTs also check in periodically with the project owners and contractors on site to oversee the progress of the project. The CCTs then feed the information back to the local secretariat in the country to inform on the progress of the project. This feedback loop led to a citizen group highlighting the illegal burning of materials on the roadside of a construction site. CoST Honduras reported the issue to the authorities, who stopped the illegal burning. CoST provides training for the citizen groups on the ground through a social accountability school.
- Another interesting example of promoting social accountability in infrastructure projects is the work of DevelopmentCheck.¹²⁵ DevelopmentCheck combines a reporting and training tool that helps local citizens to engage directly with service providers and government to make sure the projects that are supposed to benefit them are delivered as they should be. It strives to (1) give citizens a collective, instant and global voice; (2) shift the agenda from “problem-reporting” to “problem-solving” by emphasising the “fix-rate” achieved at the local level – what percentage of problems communities working with government and service providers have been able to fix; (3) create ownership for development outcomes at the local level; and (4) provide visibility on how effectively local development projects are being implemented.¹²⁶

Each monitoring organisation will determine the type of social accountability model to be adopted depending on capacity and resources and the local context. The factors that a monitoring organisation should consider in determining whether to add a social accountability component to monitoring are:

- any legal or regulatory restrictions, such as limits on the citizen groups' or organisations' access to confidential information or safety regulations regarding site visits
- the level of buy-in from the contracting authority to having citizen engagement in the monitoring
- the previous experience of CSOs with social accountability or citizen engagement
- the level of interest in promoting transparency and integrity on the part of existing citizen groups and organisations
- the value citizen engagement and/or monitoring in the particular type of project adds (for example, added value may be more easily shown when the project is building schools for communities in rural areas than when the project is an airport in the capital. Citizens will be more able to monitor schools being built in their locality than a complex construction project such as an airport; the cost of monitoring by the monitoring organisation will be reduced when local monitors are involved; and there will likely be more immediate local interest in schools)

It may also be that the contracting authority already has in place strategies for proactive community and stakeholder engagement. In Australia, for example, a few case studies show that contracting authorities are implementing such strategies. These agencies have found that proactive engagement with the community and stakeholders (including interface agreements with key stakeholders) throughout the life-cycle of the infrastructure project ensures that all parties are kept informed of project progress and any issues are promptly addressed.¹²⁷ In such cases, the monitoring organisation may decide to negotiate with the contracting authority its participation in the already planned outreach activities.

4. ORGANISING SITE VISITS

This activity can be found in clause 4.5 of the Model Monitoring Agreement and in clauses 6.4 and 6.5 of the Model Integrity Pact. For infrastructure projects, it is especially important to visit the site and compare the physical progress with what is being reported on paper. Such visits allow a monitoring organisation to identify irregularities with respect to materials, equipment and progress.

Government agencies will likely have in place quality assessment systems that incorporate site visits by engineering experts to ensure that quality standards are being met by the contractor and subcontractors at the site. Site visits by the monitoring organisation and/or representatives of affected communities are not meant to replace quality assessment mechanisms. Instead, they add an integrity and public interest lens that is vital to ensuring the contract execution is not compromised by corruption or unethical activities and that the affected communities' concerns are raised and addressed.

The site visits can take different forms but in all instances need to be coordinated with the contracting authority and done with the complete cooperation of the project owners and managers. This coordination should be incorporated into the Integrity Pact. The coordination with the contracting authority will be important to ensure the site visits complement the work by project supervisors and quality assessors engaged by the contracting authority.

The monitoring organisation and contracting authority should decide together who will conduct the site visits. If the contracting authority will be sending an independent and qualified engineering expert to assess construction progress and quality, there likely will be no need for the monitoring organisation to hire an engineer to conduct site visits. However, the monitoring organisation should send an individual with anti-corruption expertise and, when possible, the site visits should also include representatives of affected communities or be complemented with separate site visits by representatives of affected communities.

Scheduled site visits can be supplemented with "spot-checks" subject to safety considerations and approval from the contracting authority. The essential form and participants of the site visits should be negotiated and included in the Monitoring Agreement. Bidders' acceptance of site visits, and, if applicable, spot-checks, should be incorporated into the Integrity Pact. The schedule and other details of site visits can be agreed upon by the contracting authority and the monitoring organisation and included in the Memorandum of Implementation.

5. REVIEWING THE PROCUREMENT PROCESSES AND PROJECT DATA FOR RED FLAGS

This activity can be found in clause 4.9 of the Model Monitoring Agreement and clause 6.2 of the Model Integrity Pact. A step further will be to track all the processes and review all the data and documents to detect red flags of corruption. This arguably is the most rigorous and resource-intensive aspect of monitoring and should not be undertaken unless the capacity and resources are in place. Another consideration is that by agreeing to carry out such a deep review for red flags, the monitoring organisation may be deemed to provide a certain type of "assurance" that no corruption took place if it does not identify any red flags. This task, again, should not be undertaken unless clarity is reached among all parties and stakeholders on the role and limitations of the monitoring organisation with respect to actually detecting corruption or other wrongdoing.

Should the monitoring organisation decide to carry out this task, some monitoring tools have been developed to assist CSOs in detecting red flags, including:

- the Civil Society Procurement Monitoring Tool,¹²⁸ an interactive checklist to detect forensic red flags of corruption
- the Guide to Combating Corruption and Fraud in Development Projects¹²⁹ and the Bid Review Training Tool¹³⁰ created by the International Anti-Corruption Resource Center
- the Project Anti-Corruption System (PACS)¹³¹ developed by the Global Infrastructure Anti-Corruption Centre. This tool is an integrated and comprehensive system designed to assist in the prevention and detection of corruption in construction projects

One way to direct monitoring efforts to detect red flags when resources are not sufficient for an in-depth review of all data and documents is to conduct a risk assessment and focus the review on those processes/data/documents that pose a higher risk of corruption. For example, if based on assessment of the sector and experience to that point, there is a high risk of collusion among bidders or the submission of fraudulent bids, the monitoring organisation could devote more efforts to reviewing the processes in place for and actual documentation of the submission and evaluation of bids. If there is a high risk of embezzlement of funds through, for example, submission of fictitious invoices, the monitoring organisation could focus on reviewing the processes for reporting payments by the contractor and the data submitted. Also, the monitoring organisation could decide to carry out random spot-checks in different risk areas to deter corrupt behaviour.

Another way to reduce the burden on the monitoring organisation is to look at the controls the contracting authority already has in place and not duplicate those efforts if they are adequate. For example, if the contracting authority already requires periodic financial audits for the project, and those audits will be carried out by an independent and qualified person or entity, the monitoring organisation may decide not to do an in-depth review of the financial information for the project.

6. ADDRESSING CONCERNS OF WRONGDOING

This activity can be found in clause 5 of the Model Monitoring Agreement and clause 7 of the Model Integrity Pact. Throughout its monitoring activities, the monitoring organisation should be prepared at any time to address concerns about wrongdoing (such as ethical misconduct and corruption). Such concerns of wrongdoing can be detected by the monitoring organisation or raised by bidders, affected communities, individuals involved in the procurement processes and execution of the contracts, and any other stakeholders. As such, the monitoring organisation needs to decide on its role with respect to carrying out investigations and involvement in dispute resolution and decide on guidelines for coordinating and ensuring that the concerns are adequately addressed. The Monitoring Agreement and Integrity Pact must contain clear requirements on how concerns of wrongful conduct will be addressed, including to whom concerns will be forwarded, who will be in charge of investigating and addressing them, and a timeframe for doing so.

It is also important for the monitoring organisation to make it clear to the contracting authority, parties to the Integrity Pact, stakeholders and affected communities that it will not be monitoring or addressing project issues related to quality, delays and increased costs. The contracting authority will have full responsibility to ensure that such issues are addressed appropriately. However, the monitoring organisation should oversee the investigation of and response to such project issues because quality problems, delays or increased costs could be tied to corruption.

7. TRAINING

This activity can be found in clause 4.10 of the Model Monitoring Agreement. The monitoring organisation may provide training to government officials and parties to the Integrity Pact and/or affected communities and other stakeholders on best practices to promote integrity in the procurement processes and on the role of the monitoring organisation in overseeing them. Training would be highly recommended for officials and beneficial for the monitoring initiatives in countries where the concept of civil society monitoring is new and not very well understood. More targeted training on specific aspects of integrity and transparency could also be carried out. An example of this is training conducted by Transparency International Italy for the contracting authority, local public entities and public companies on effective whistleblowing channels and the protection of whistleblowers. Furthermore, if representatives of affected communities will carry out some of the monitoring activities, training of those representatives would likely have to be incorporated into the Monitoring Agreement. An example of this is the training carried out by ActionAid in Italy of its civil monitoring champions discussed in Section VI.D.3 above.

8. COMMUNICATING

The Model Monitoring Agreement contains proposed clauses on reporting and communications, clauses 7 and 8. The clause on the monitoring report sets out the minimum content to be included in such reports. A large part of the monitoring organisation's work entails closely coordinating and engaging with the contracting authority and bidder. The monitoring organisation however must be careful to balance their role with Integrity Pact signatories with their role as representatives of the public interest. In drafting any reports and communications, the monitoring organisation should at all times bear in mind the importance of its accountability to the public. This should influence both the presentation of the monitoring results and the format of the published "report". Public-friendly formats should be actively considered. Given the Integrity Pact set-up, there can be challenges encountered with signatories of the Monitoring Agreement or Integrity Pact in terms of how this information is presented. Negotiating such disagreements is a core role of the monitor. However, the monitor should actively work to avoid the risk of failing to communicate due to inability to manage such disagreements.

E. CONSIDERATIONS REGARDING THE MONITORING AGREEMENT: CONFIDENTIALITY, WHISTLEBLOWERS AND WITHDRAWAL

In addition to listing the monitoring activities to be carried out by the monitoring organisation, the Monitoring Agreement also sets out the obligations of the contracting authority with respect to supporting the monitoring organisation in carrying out these activities, such as giving the monitoring organisation access to all the project information. The Monitoring Agreement should also address how legitimate confidential information will be protected, whether the monitoring organisation will provide whistleblower hotlines, and the circumstances for the withdrawal of the monitoring organisation. The monitoring organisation should therefore carefully consider its role and obligations with respect to confidentiality, whistleblowers and withdrawal.

1. INDEPENDENCE

The monitoring organisation, with the advice of legal counsel, should carefully identify ways in which it can protect itself from reputational risk and liability. Although by no means exhaustive, below are some actions the organisation could take to reduce risk:

- The funding of the monitoring process should be from a source other than the parties to the Integrity Pact. This avoids a conflict of interest and the appearance of a conflict of interest and prevents a situation where payment can be withheld to influence monitoring activities or decisions.
- If payment for the monitoring activities needs to come in full or in part from contracting authority and/or the bidders, the monitoring organisation, with advice from legal counsel, must adopt effective safeguards into the funding agreement. The funding agreement should, when possible, be separate from the Monitoring Agreement. Some proposed safeguards to protect the monitoring organisation from reputational risk and liability are listed below. Whether these are sufficient should be determined on a case-by-case basis with the advice of legal counsel. Proposed safeguards include:
 - including in the funding agreement contractual clauses regarding requiring an independent and automatic process of payment, such as through a “basket” of funds to which the authority and all bidders contribute
 - providing for the funding through a grant agreement, which gives the government agency less power over the results of the monitoring activities
 - including in the funding agreement, as with the Monitoring Agreement, a safeguard clause that would allow the monitoring organisation to withdraw should there be concerns about reputational or other risks
 - making the funding agreement public and accompanied by an explanation of how the organisation will remain independent, such as by including commitments on the part of the monitoring organisation with respect to conflicts of interest (for example, prohibitions from working with bidders and contractors/subcontractors, and making public a declaration of interests and assets prior to and at the conclusion of monitoring process)¹³²
 - in general, carefully drafting the funding agreement to ensure that the monitoring organisation has sufficient power to act and react independently of the funding source
- Irrespective of where the funding comes from, it needs to be sufficient for the activities selected and to cover the expertise needed.
- Under the Monitoring Agreement, the monitoring organisation needs to have sufficient capacity, power and attributes to carry out the monitoring activities contained in the agreement.¹³³

- The Monitoring Agreement should include a safeguard clause that would allow the monitoring organization to unilaterally withdraw should there be obstacles in carrying out the monitoring activities or concerns about reputational or other risks.
- The monitoring organisation should conduct at least basic due diligence on the contracting authority and the main contractors.¹³⁴
- The monitoring organisation should develop clear guidelines for its employees and consultants on conflicts of interest,¹³⁵ protecting confidential information (see Section 2 below for more information on confidential information), whistleblower protections¹³⁶ (see Section 3 below for more information on whistleblowers), and should establish clear reporting lines to address concerns over misconduct.
- The division of responsibilities between the contracting authority and the monitoring organisation must be clear in the Monitoring Agreement and Memorandum of Implementation.
- The monitoring organisation should exercise care in hiring external experts, ensuring that they understand their responsibilities, have an impeccable reputation and the right technical skills and expertise.

2. CONFIDENTIALITY

The Model Monitoring Agreement has a proposed clause on confidentiality, clause 6. A similar clause is also contained in the Model Integrity Pact, clause 8. The monitoring organisation will be faced with a broad range of legal requirements around confidentiality that it will need to identify and deal with. These include, for example, personal data protected under data protection laws, confidentiality around procurement processes designed to protect fair competition, confidentiality around sensitive information relating to investigations and confidential information from businesses.

The monitoring organisation, with assistance from legal counsel, will also have to identify confidentiality requirements with respect to each of these. For example, they will need to identify what the law says with respect to the confidentiality of commercially sensitive information that could be contained in the procurement documents and information it will receive from the contracting authority. These include, for example, trade secrets, and commercially sensitive intellectual property.

The monitoring organisation must ensure that the people engaged in the monitoring process and exposed to confidential information are aware of their obligations and responsibilities, and comply with them. The monitoring organisation should also ensure that people not exposed to the confidential information understand legitimate confidentiality restrictions. Given all of the above, the monitoring organisation should develop and make public guidelines that its staff and consultants will follow on the handling of all confidential information.¹³⁷ These guidelines will have to be developed on a case-by-case basis but should address the following:

- an agreement with the contracting authority on how and to whom project information will be sent
- an agreement with the contracting authority on which secure location will be used to store project information
- an agreement with the contracting authority on how confidential information will be identified and marked
- the need to protect the organisation's electronic data from intrusions/hacking such as by:
 - maintaining strong passwords¹³⁸
 - adopting protections such as two-factor identification for accounts¹³⁹
 - automatically updating the organisation's computers with protection software
 - adopting protections from Spam and Phishing e-mails¹⁴⁰
 - conducting periodic risk assessments on data security¹⁴¹
 - encrypting laptop and phone hardware¹⁴²
 - creating a more secure website through HTTPS¹⁴³
 - sending sensitive information by using end-to-end encryption¹⁴⁴

In past negotiations of monitoring processes, contracting authorities have raised confidentiality as a primary concern. Acceptance of the monitoring process by the contracting authority will be facilitated if the monitoring organisation shows a strong understanding for and sensitivity to confidentiality.

When negotiating the terms of the Monitoring Agreement, the monitoring organisation should aim to ensure that the public has access to all proactive and reactive disclosures under the Open Data Standard for Infrastructure. In addition, it should ascertain whether exceptions under laws or rules for the disclosure of project information to the public are over-broad or vague. If this is the case, it should advocate for changes in the law and rules, in particular, with regard to the level of discretion given to public officials.¹⁴⁵

If feasible, the monitoring organisation should also add a provision in the Monitoring Agreement allowing it to question the classification of a document as “confidential” and ask for reconsideration. Ideally, the contracting authority should have in place an appeal mechanism for interested parties to question the withholding or redaction of a document based on a confidentiality determination.

Finally, in past Integrity Pacts and Monitoring Agreements, the monitoring organisation and its consultants or expert advisors have been asked to sign Non-Disclosure Agreements (NDAs). If this is not negotiable, the monitoring organisation should ensure that the NDA is narrowly tailored to protect information that should truly be protected under existing laws and for the public interest.

3. WHISTLEBLOWERS

The Model Monitoring Agreement contains proposed clauses on whistleblower hotlines, clauses 5.1 and 5.3. The monitoring organisation should decide whether to establish hotlines to receive information about potential wrongdoing related to the project. Setting up hotlines may in part depend on whether the contracting authority or an oversight agency has well-publicised, accessible and responsive hotlines in place that are trusted by the public. If an effective whistleblowing platform already exists, it could be linked to information disseminated to the public and stakeholders about the project.

Even if the contracting authority has hotlines in place to receive complaints or concerns, the monitoring organisation may decide it is important to provide additional channels for individuals to raise concerns. If it decides to provide a whistleblower hotline, the monitoring organisation should coordinate with the contracting authority on how and by whom concerns will be handled and decide on clear reporting lines and an appropriate timeframe for responses. These should be transparently communicated. Whistleblowers should know this before making a disclosure.

In addition, when adopting whistleblower hotlines, the monitoring organisation should fully understand its responsibilities toward the person raising the concern or allegation, including protecting the person’s identity, and how the concerns raised will be handled. The monitoring organisation should therefore also develop and make public guidelines on the protection of whistleblowers’ identities – including enabling anonymous reporting if possible – and handling information about allegations of wrongdoing.¹⁴⁶ In doing so, the monitoring organisation could identify local organisations that provide assistance to whistleblowers to (1) obtain advice on how to develop internal guidelines for responding to concerns or tips; and (2) to identify organisations to which it could refer individuals who are speaking up about wrongdoing for additional help such as legal advice.¹⁴⁷ The monitoring organisation itself should refrain from providing legal advice to the individuals calling in with information about potential wrongdoing.

4. WITHDRAWAL

The Model Monitoring Agreement has a proposed clause on withdrawal, clause 10. Clause 9.2 of the Model Integrity Pact provides that if the monitoring organisation withdraws, the Integrity Pact will terminate.

The monitoring organisation must protect its independence and integrity. An important way to do this is to include a clause in the Monitoring Agreement that allows the monitoring organisation to withdraw – in other words prematurely terminate the Monitoring Agreement and pull out of the project – under certain circumstances. The grounds for withdrawal incorporated into the Monitoring Agreement should include instances when:

- The contracting authority fails to provide timely access to project information necessary for the monitoring organisation to fulfil its monitoring duties.
- The contracting authority directly or indirectly impedes the fulfilment of the monitoring organisation's duties.
- The contracting authority does not take adequate corrective measures in a timely manner after potential corruption or other concerns have been identified or reported by the monitoring organisation.
- Any other circumstance that, if unaddressed, impedes the monitoring organisation in fulfilling its duties or creates unnecessary risks or danger.¹⁴⁸

The withdrawal process should also be clearly defined in the Monitoring Agreement. (The details can be included in the Memorandum of Implementation.) The process should include notification of the intent to withdraw to the contracting authority and allow the contracting authority reasonable time to respond and remedy the situation. Once the monitoring organisation makes the decision to withdraw, it should provide a public explanation for the withdrawal for two reasons: (1) it requires the monitoring organisation to exercise care in making the decision to withdraw, ensuring that it is justified; and (2) it creates an incentive for the contracting authority to abide by its commitments under the agreements.

F. CONSIDERATIONS REGARDING THE INTEGRITY PACT: SIGNATORIES, OBLIGATIONS, DISPUTE RESOLUTION AND SANCTIONS

The Integrity Pact between the contracting authority and all the bidders sets out the transparency and integrity commitments of the parties. Potential elements – to be adjusted according to context – include:

- commitments to refrain from misconduct, including corrupt practices, during the life-cycle of the project (this can be a reiteration of existing legal commitments)
- obligations to have adequate policies and procedures to promote compliance with ethical and integrity standards, including compliance by subcontractors and other third parties
- transparency and reporting obligations
- obligations to adopt reporting mechanisms and to protect whistleblowers
- extension of obligations to the successful bidder and the implementation phase
- acceptance by the parties of monitoring by the monitoring organisation
- treatment of confidential information
- dispute resolution mechanism
- sanctions for breach of the Integrity Pact

When possible, the standards and language in the Model Integrity Pact have been adopted from standards in international legal instruments such as the UN Convention Against Corruption (UNCAC) and standards or best practices proposed by international organisations and non-governmental organisations such as the World Bank, the OECD, Transparency International and the Global Infrastructure Anti-Corruption Centre (GIACC). The Model Integrity Pact provides model language based on the best standards and practices available and should, with advice from legal counsel and consultations with local stakeholders, be adapted to the local laws and context as described in Section VI.C above.¹⁴⁹

Before presenting the Model Integrity Pact below, following are a few additional considerations that need to be addressed with respect to some of the elements of the Model Integrity Pact.

1. SIGNATORIES

The beginning of the Model Integrity Pact presents the signatories to the agreement. In complex infrastructure projects, multiple government agencies will likely be involved. The monitoring organisation and contracting authority should consider which government agencies should be asked to be a party of the Integrity Pact. For example, there could be an agency in charge of supervising the execution of the contract that is different than the contracting authority.

Subcontractors: The Model Integrity Pact in this guide imposes on the successful bidders the responsibility of managing the relationship with subcontractors and other third parties to prevent corruption by these actors. It does so by imposing contractual, reporting and monitoring requirements. In many types of infrastructure projects, however, a significant amount of the work, or sometimes most of the work, will actually be carried out by subcontractors and not the prime contractors. In such cases, the contracting authority should require subcontractors that are in charge of a significant portion of the project to also become signatories to the Integrity Pact. These, for example, could be designated as “major subcontractors” with subcontracts meeting a certain value threshold and subcontractors required to accept the Integrity Pact obligations in the submission of their bids.

Mandatory or voluntary: Ideally, the Integrity Pact should be mandatory for all bidders. In some countries in the EU, however, this has not been possible based on analysis of current laws.¹⁵⁰ In the event the Integrity Pact cannot be made mandatory, it will be necessary to obtain voluntary acceptance of the Integrity Pact obligations by all bidders. One way to incentivise acceptance of the Integrity Pact is to be very clear about the obligations of the bidders up front to allow bidders to adequately price their participation into their bids. To motivate voluntary adoption, the monitoring organisation and contracting authority should also consider whether acceptance of the Integrity Pact could be introduced as a positive factor in the evaluation criteria for the bids.

If mandatory or voluntary acceptance of the Integrity Pact by all bidders is not possible, the monitoring organisation and contracting authority will have to decide how or whether to move forward with the monitoring process. This decision will have to be made on a case-by-case basis. The monitoring organisation and contracting authority should also explore whether it would be beneficial to establish a monitoring process solely on the basis of the Monitoring Agreement. This might be feasible – it is happening in some countries where the Integrity Pacts cannot be made mandatory on all bidders, and Transparency International national chapters are able to gain access to all information about the bidders and the successful bidder through the contracting authority.

Another option is to make the Integrity Pact obligatory only on the successful bidder. In some countries, this will be seen as a positive step in an environment where you need to take small steps to accomplish real and sustainable reforms. Care needs to be taken however, to include the Integrity Pact in the initial tender documents and give notice to all bidders of the Integrity Pact obligations should they be awarded contracts. Otherwise, the imposition of the Integrity Pact after the award decision could be seen as a “material change” for the successful bidder and disrupt the entire procurement process.

Signature and acceptance: The monitoring organisation, in consultation with the contracting authority, also needs to determine on the best way to obtain the bidders’ signature/acceptance of the Integrity Pact. Acceptance by the bidders could be accomplished by the actual signing of the agreement by all the bidders. It is more common, however, to achieve adherence to the Integrity Pact through the submission of a declaration of acceptance or an accession statement by each bidder when submitting a bid or application for pre-qualification.¹⁵¹

2. OBLIGATIONS OF THE CONTRACTING AUTHORITY

Clause 4 of the Model Integrity Pact provides proposed obligations for the contracting authority (and other government agencies if applicable). It is derived from best practices and standards contained in international instruments and model codes of conduct. As such, the language will likely need to be adapted to existing codes of conduct, disclosure requirements and accountability mechanisms. Voluntary commitments to higher standards should be incorporated when possible. In this way, the Integrity Pact can be used to strengthen existing institutional transparency and integrity mechanisms, such as by including improvements to procedures addressing conflicts of interest, whistleblower protections, disciplinary processes, or the processes to respond to access to information requests.

3. OBLIGATIONS OF THE BIDDERS AND THE SUCCESSFUL BIDDER

The Model Integrity Pact, in clause 5, requires bidders to make anti-corruption assurances and adhere to reporting requirements. The Integrity Pact also requires bidders to have in place policies and procedures to prevent unethical conduct and corruption. As such the model Integrity Pact

represents the highest possible standards that could be applicable to bidders. Adjustments to the realities of the context are anticipated.

It is likely that large national and multi-national companies will be participating as bidders for contracts in infrastructure projects of high value to the public interest. As such, the expectation should be that they would be able to meet very high standards in terms of ethics and anti-corruption compliance programmes. Large multi-national corporations, for example, can be expected to have sophisticated anti-corruption compliance programmes and be able to implement project-specific policies and procedures in accordance with industry best practices. The Model Integrity Pact, clause 5.15, raises the bar high by incorporating best practices for anti-corruption policies and procedures based on Transparency International's Business Principles for Countering Bribery¹⁵² and 10 Anti-Corruption Principles for State-Owned Enterprises.¹⁵³ Depending on the project, the obligations can be trimmed or amended to fit small- or medium-sized domestic companies.

The Model Integrity Pact, in clause 5.19, also requires certification or other assurance by an independent assessor other than the monitoring organisation, of the adequacy of a bidder's anti-corruption compliance programme. Ideally, this requirement should apply to all bidders, but the monitoring organisation could be faced with the argument that such a requirement would discourage small- or medium-sized companies from submitting bids. This provision may therefore have to be amended to apply to only the successful bidder(s). It may also have to be removed depending on the adequacy of in-country assurance services, and the monitoring organisation's overall assessment of the context. Transparency International has published the Assurance Framework for Corporate Anti-Bribery Programs,¹⁵⁴ which sets out and explains the process for enterprises commissioning independent assurance. It also provides guidance on how, and under what circumstances, assurance can be beneficial. It is important to remember that independent assurance will not guarantee that a company will not engage in illicit or improper conduct. However, it would mean that the company has made a commitment to adopt reasonable policies and procedures to prevent corruption.

In terms of corporate transparency, the Model Integrity Pact provides that the anti-corruption policies and procedures (referred to in the Model Integrity Pact as the company's anti-corruption programme) should be made available to the public through its website (see clause 5.18 of the Model Integrity Pact). The Model Integrity Pact integrates transparency commitments for bidders including the disclosure information required under the Open Data Standard for Infrastructure. The Monitoring Agreement also requires the contracting authority to obtain from all bidders pre-contract disclosures including beneficial ownership information. These are also made public under the agreement. If feasible, more transparency requirements could be incorporated based, for example, on Transparency International's Transparency in Corporate Reporting criteria¹⁵⁵ and principle 3 of our 10 Anti-Corruption Principles for State-Owned Enterprises, such as more information on organisational structure and country-by-country payments.

In addition to requiring high standards of corporate anti-corruption compliance, the Model Integrity Pact also provides that the bidders accept and support (1) the role of the CSO as a monitor and (2) engagement with affected communities throughout the life-cycle of the project.

4. DISPUTE RESOLUTION

Clause 10 of the Model Integrity Pact provides some proposed language for the inclusion of a dispute resolution mechanism. The monitoring organisation, with advice from legal counsel, will have to decide which, if any, would be the best dispute resolution mechanism.

The dispute resolution mechanism adopted in an Integrity Pact can play two fundamental roles: (1) it provides a way to resolve disputes about the execution of the Integrity Pact; and (2) it provides for the application of sanctions set forth in the Integrity Pact. Not all Integrity Pacts need to include a dispute resolution mechanism because the right to address misconduct and impose sanctions will also lie with the contracting authority or other oversight authorities.¹⁵⁶ Some Integrity Pacts have not included a dispute resolution mechanism and have relied instead on disputes being brought by the parties through existing administrative or judicial channels. This has largely been in the case in Integrity Pacts being implemented in the EU.

Many Integrity Pacts have used arbitration (national or international) as a dispute resolution mechanism, especially when confidence is low with respect to other national dispute resolution bodies; international companies are involved; and/or when there is not a well-functioning national system of arbitration. Arbitration can often provide a faster conflict resolution mechanism than courts. However, in some cases, the cost of arbitration may be substantial.¹⁵⁷

International arbitration can be administered by an institution or be non-administered. It can take place in different venues and proceed under different rules. The selection of the international arbitration mechanism will be based on many factors such as the reputation of the arbitration institution, cost and enforceability.¹⁵⁸ Most importantly, to complement the mission of the Integrity Pact, the dispute resolution mechanism that is chosen should be independent, transparent and accountable. In particular, when possible, the selection process of arbitrators should be transparent. There should also be notification to the public of initiation of proceedings and there should be periodic reporting on the status of proceedings. There should be a mechanism to allow third party (stakeholder) contributions such as *amicus curiae*, and finally, the award or final decision needs to be made public.¹⁵⁹

A consideration for determining the inclusion of a dispute resolution mechanism or for selecting a dispute resolution mechanism should also be the likelihood that a dispute proceeding would lead to long delays in the project and high legal costs. Such delays and added costs could be blamed on the Integrity Pact and undermine its effectiveness and beneficial impact.

5. SANCTIONS

Clause 11 of the Model Integrity Pact covers sanctions. Strong sanctions provisions will motivate the parties to comply with the contractual integrity and transparency commitments contained in the Integrity Pact. The sanctions are contractual, which means that they cannot exclude, substitute or modify in any way the existing criminal, civil, disciplinary or administrative sanctions established by law and they apply only to the signatories of the Integrity Pact.¹⁶⁰ It is important, therefore, that the right standards for applying the sanctions be incorporated into the Integrity Pact. This should be based on the standard and level of discretion given to the decision-making body under the applicable law.

For example, with respect to the principle of proportionality (that sanctions be applied in proportion to the severity or frequency of the violation) and the level of discretion given to the deciding body, the appropriate standard will have to be identified and inserted into the terms of the Integrity Pact.

Also, the types of sanctions that can be incorporated into the Integrity Pact will also have to be adapted to national standards and laws. The Model Integrity Pact outlines a number of different sanctions to be applied to bidders or the successful bidder: (1) removal of a pre-qualification submission or bid if the procurement process is in the pre-award stage; (2) forfeiture of bid security or performance bond; (3) exclusion from pre-qualification list; (4) loss or termination of contract; (5) indemnification for any liability or loss to contracting authority and losing bidders; (6) liquidated

damages; and (7) debarment or exclusion from all future contracts of the contracting authority (or all government contracts) for an appropriate period of time.¹⁶¹ All of these will have to be vetted by legal counsel to identify potential conflicts or restrictions with national laws and to identify the correct standard to use for applying the sanction.

Some past Integrity Pacts have not included sanctions because it was not possible under the legal framework or it was deemed unnecessary because the law already provided a strong sanctions regime. The monitoring organisation should consider alternatives or supplements to existing sanctions such as benefits or bonuses for complying with the obligations contained in the Integrity Pact. In the case of Bulgaria, for example, strong sanctions are already imposed by law. A recent Integrity Pact between the Ministry of Health and Transparency International Bulgaria, instead of listing the sanctions again, provides for a white list to be managed by the contracting authority. The white list includes all bidders who are complying with the Integrity Pact and tracks removal from the list. Removal from the list happens when the independent monitor finds a violation of the Integrity Pact. It does not explicitly provide for exclusion from future contracts but the information on the white list is provided to similar contracting authorities in the European Union upon request.¹⁶² Another aspect to be explored is the possibility of mitigating damages when showing full cooperation with the monitoring organisation. This is an approach used, for example, by the suspension and debarment office of the World Bank.¹⁶³

If the Integrity Pact is breached by personnel of the contracting authority or other government authority party to the agreement, the monitoring organisation or a party to the Integrity Pact can refer the matter to the applicable oversight authorities (internal or external to the contracting authority depending on the breach). The government officials who are involved in the wrongdoing would then be subject to the applicable disciplinary, administrative, civil or criminal sanctions.¹⁶⁴

VII. THE MODEL MONITORING AGREEMENT

DISCLAIMER: This model is provided as guidance only. Professional advice should be taken to ensure that necessary amendments are made to this Model Monitoring Agreement to suit the requirements of the relevant parties and to reflect the law and circumstances in the relevant jurisdiction.

MODEL MONITORING AGREEMENT

THIS MONITORING AGREEMENT is made on _____ [insert date] between:

(1) _____
_____ (Hereinafter “contracting authority (ies)”)

[Insert name and address of main contracting authority, and if applicable, other agencies such as the agency in charge of execution of contracts for the project]¹⁶⁵

and

(2) _____
_____ (Hereinafter “monitoring organisation”)

[Insert name and address of monitoring organisation]

(Both hereinafter referred to as “the parties”)

PREAMBLE¹⁶⁶

Given that,

Public infrastructure investment such as [insert name of project] is vital to the public interest and is part of [insert national/state infrastructure investment policy];

To promote the integrity of, and fairness and public confidence in, the procurement process and to achieve transparency in the procedures relating to [insert name of project], [Insert name of contracting authority] is committed to having a civil society organisation monitor, [insert name of project];

Increased disclosure and civic participation in public contracting will have the effects of making contracting more competitive and fair, improving contract performance and securing beneficial development outcomes;

Public contracting needs to be conducted in a transparent and equitable manner, in accordance with publicly-disclosed rules that explain the functioning of the process;

The public has the right to access information related to the formation, award, execution, performance, and completion of public contracts;

Our public institutions are committed under Article 9(1) of the United Nations Convention Against Corruption to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption;

[Insert other applicable national and international principles and commitments, such as under the World Trade Organization (WTO)'s Government Procurement Agreement, EU Procurement Directives such as 2014/24/EU, Open Government National Action Plan commitments especially in regard to open contracting and public procurement reforms]

The parties agree to the following:

1. DEFINITIONS

For the purposes of this Monitoring Agreement, the following definitions apply:

- 1.1. "Affected communities" refers to local groups or other communities or organisations that will be affected – either positively or negatively – by the infrastructure project.
- 1.2. "Bidders" refers to an actor, or actors in a joint procurement bid, applying to pre-qualify or bidding for a project contract.
- 1.3. "Corruption" refers to the abuse of entrusted power for private gain including bribery, extortion, fraud, deception, collusion, bid-rigging, cartels, abuse of power, embezzlement, trading in influence, money laundering, or any similar activity.
- 1.4. "Conflict of interest" refers to situations in which (1) personnel from the contracting authority or from service providers acting on behalf of the contracting authority during the procurement processes or contract execution phase; (2) members of the governing bodies of the contracting authority who can influence the procurement processes or any decision with respect to the project; (3) the bidders participating in the procurement processes and the successful bidder; and (4) individuals working with the monitoring organisation may have, directly or indirectly, a financial interest or other personal interest that could compromise the objective and impartial performance of their functions with respect to the procurement processes, the contract execution of the project, and the performance of independent monitoring under the Monitoring Agreement. [Or insert definition contained in laws and regulations of the country]
- 1.5. "Contracts related to the project"¹⁶⁷ refers to contracts between the contracting authority [and other applicable government agencies] and another party in relation to the project, where that party is to perform consultancy services, works or supply materials or equipment.
- 1.6. "Integrity Pact" refers to the binding and enforceable contract entered into by the contracting authority and all bidders, including the successful bidder(s), for contracts related to the project, which sets out integrity and transparency commitments for all signatories.
- 1.7. "Life-Cycle of the project" refers to all the phases of the project: identification phase, appraisal phase, project planning and document design phase, tendering phase, implementation and contract management phase, and the evaluation and audit phase.¹⁶⁸
- 1.8. "Monitoring activities" refers to the activities listed in [] of this Monitoring Agreement, which the monitoring organisation.

- 1.9. “Open Data Standard for Infrastructure” refers to the Infrastructure Data Standard developed by the Construction Sector Transparency Initiative and the Open Contracting Data Standard, Extension for Infrastructure, developed by the Open Contracting Partnership.
- 1.10. “Open Contracting Team” refers to the multi-disciplinary and multi-stakeholder team organised and led by the monitoring organisation for the adoption of the [Open Data Standard for Infrastructure].
- 1.11. “Procurement processes” includes all procedures and processes designed to ensure transparency, fairness and integrity throughout the life-cycle of the project. Clause 4.7 of this agreement provides a listing of procurement processes. [A list can be added instead as an Annex to the agreement]
- 1.12. “Project” refers to [insert name of project].
- 1.13. “Pro-active disclosures” refers to all disclosures to be made public in real-time required under the Open Data Standards for Infrastructure.
- 1.14. “Reactive disclosures” refers to all information related to the project provided in a timely manner in response to requests for information filed with the appropriate government agency under the Open Data Standard for Infrastructure.
- 1.15. “Red flags” refers to any piece of information that indicates a possible problem or risk of corruption or other wrongdoing.¹⁶⁹
- 1.16. “Situation of concern” refers to any situation that could involve unethical or illicit conduct or mismanagement related to the project.
- 1.17. “Successful bidder(s)” refers to the bidders or bidder who are awarded contracts related to the project.
- 1.18. “User-friendly platform” refers to an online platform that will enable the public, including affected communities and stakeholders, to easily access all public information about the project in a centralised location.

2. SCOPE

This Monitoring Agreement applies to [insert name of project], including all underlying contracts and procurement processes and procedures. It will start on the date it is signed by the parties and be finalised upon final completion of [insert name of project], but no later than [if needed, insert time limit after which the monitoring organisation would not be able to continue monitoring for budgetary or other reasons].

3. OBLIGATIONS OF CONTRACTING AUTHORITY

- 3.1. The contracting authority will develop, with the assistance of the monitoring organisation, a system to collect, manage, simplify and publish, in a user-friendly platform, data regarding the formation, award, execution, performance and completion of all contracts¹⁷⁰ related to the project through the adoption of the Open Data Standard for Infrastructure.
- 3.2. For the purpose of meeting the obligation contained in clause 3.1 of this Monitoring Agreement, the contracting authority will designate employees with the expertise and authority required to be part of the Open Contracting Team.
- 3.3. The contracting authority will require all bidders to contracts related to the project to sign the Integrity Pact for the project and to fully cooperate with the monitoring organisation in fulfilling the monitoring activities, including providing access to all necessary information.¹⁷¹

- 3.4. The contracting authority will develop with the monitoring organisation a Memorandum of Implementation aimed at setting out strategies, guidelines and timeframes for the implementation of the monitoring activities set out in this Monitoring Agreement.
- 3.5. The contracting authority will send to the monitoring organisation in real time [or insert reasonable time period] all communications on the procurement processes related to project and notice of information or data received related the project.
- 3.6. The contracting authority will provide full access to all data and documents related to all phases of the life-cycle of the project to the monitoring organisation. The monitoring organisation should have access to all data and documents related to the project in real time or within [insert time frame] of receipt by the contracting authority.
- 3.7. The contracting authority will send to the monitoring organisation a list of all management staff involved in the procurement process for the project and of members of intra or inter-institutional committees involved in the procurement processes or decision-making.
- 3.8. The contracting authority will send to the monitoring organisation a list of all critical staff involved in the project implementation, including those liaising with the project's affected communities.
- 3.9. The contracting authority will implement and publicise hotlines for individuals to report anonymously [or confidentially]¹⁷² concerns related to the project.
- 3.10. The contracting authority will have in place processes to ensure the protection of whistleblowers who in good faith and on reasonable grounds¹⁷³ report situations of concern related to the project from any prejudice, including any type of retaliation, pursuant to [insert national whistleblower protection laws].
- 3.11. The contracting authority will notify the monitoring organisation of any situation of concern as soon as it becomes aware of it.
- 3.12. The contracting authority will respond to the monitoring organisation within [insert timeframe] on situations of concern raised and/or recommendations issued by the monitoring organisation for strengthening integrity and transparency. The response will describe actions that will be taken to address or remediate the situation of concern and/or address the monitoring organisation's recommendations.
- 3.13. The contracting authority, in coordination with the monitoring organisation, will engage with affected communities throughout the life-cycle of the project to seek information and feedback, and inform them of all decisions related to the project. The contracting authority will develop with the monitoring organisation a schedule of public hearings, meetings and events that will include affected communities. The schedule will be included in the Memorandum of Implementation.

4. MONITORING ACTIVITIES OF MONITORING ORGANISATION

The monitoring organisation will conduct the following monitoring activities related to the project:

- 4.1. The monitoring organisation will [lead/facilitate] the Open Contracting Team's work assisting the contracting authority to adopt the Open Data Standard for Infrastructure for the project.
- 4.2. The monitoring organisation will evaluate the contracting agency's adoption of the Open Data Standard for Infrastructure for the project, including real-time public access to proactive and timely access to reactive disclosures contained in the Open Data Standard for Infrastructure for the project.¹⁷⁴

- 4.3. The monitoring organisation will [lead/facilitate] the Open Contracting Team's work in providing real-time public access to contracting data under the Open Data Standard for Infrastructure for the project in a user-friendly platform.
- 4.4. The monitoring organisation, in coordination with the contracting authority, will engage with affected communities throughout the life-cycle of the project to inform them of monitoring progress and provide them with feedback channels.¹⁷⁵ The monitoring organisation will develop with the contracting authority a schedule of public hearings, meetings and events that will include affected communities and stakeholders. The schedule will be included in the Memorandum of Implementation.
- 4.5. The monitoring organisation will carry out site visits to compare progress seen through data with actual physical progress on-site.
 - 4.5.1. The monitoring organisation [may choose to/will] engage local or affected communities in site visits where appropriate.
 - 4.5.2. The site visits will include scheduled site visits and [may include] spot-checks.
 - 4.5.3. The monitoring organisation will coordinate with [insert Project Manager/On-site Contractor/Safety Manager] to ensure that site visits are not disruptive and have clear guidelines, including guidelines on safety and reporting.
- 4.6. The monitoring organisation will monitor compliance with all obligations contained in the Integrity Pact, including the obligations related to the adoption of the Open Data Standard for Infrastructure, and all ethics and anti-corruption assurances and commitments with respect to ethics and compliance codes of conduct, rules, policies and procedures.
- 4.7. The monitoring organisation will have access to and monitor all procurement processes related to the project. The procurement processes include:
 - 4.7.1. All meetings and public hearings related to the project. If the monitoring organisation is unable to participate in all meetings, it will obtain minutes of such meetings and hearings within [insert reasonable time period].¹⁷⁶
 - 4.7.2. The project's identification decision; preparation of impact assessments (including economic, environmental, social and land resettlements assessments); preparation of the budget; decision on the delivery modality; decision on the type of procurement process; financing decisions; development of the evaluation criteria and processes; design and preparation of tender documents; development of technical specifications; decision-making processes for the pre-qualification of bidders; call for bids; submissions of bids; pre-contract disclosures by bidders; opening of the bids; evaluating bids; award decision; contract and subsequent amendments to the contract; change orders or variations; progress reports and audits; final evaluation and accounting.
 - 4.7.3. The processes for preventing conflicts of interest and ethical violations.
 - 4.7.4. The process for engaging independent consultants and assessors.¹⁷⁷
 - 4.7.5. The engagement of independent consultants/experts by the contracting authority to provide assessments, design or technical advice related to the project.¹⁷⁸
- 4.8. The monitoring organisation, bilaterally or through formal reports, will issue to the contracting authority and the other parties to the Integrity Pact recommendations for strengthening the procurement processes and to promote compliance with the obligations contained in the Integrity Pact to prevent and eliminate risks of corruption.

- 4.9. The monitoring organisation will review all procurement data and information for red flags.¹⁷⁹ The procurement data and information will include all data disclosed through the implementation of the Open Data Standard for Infrastructure for the project, all submissions and disclosures pursuant to the commitments in the Integrity Pact, all financial reports, all payment information, project progress reports, reports from site visits, and audits.
- 4.10. The monitoring organisation will organise and facilitate training sessions with personnel of the contracting authority and bidders [and affected communities] [as necessary or as scheduled in Memorandum of Implementation] on the implementation of the Monitoring Agreement and Integrity Pact.

5. SITUATIONS OF CONCERN AND RED FLAGS

- 5.1. The monitoring organisation will adopt and advertise hotlines to receive reports from anyone, including members of the public, about situations of concern, including possible corruption, related to the project.
- 5.2. The monitoring organisation will investigate, make necessary enquiries and take appropriate action with respect to all situations of concern and red flags it has detected to determine if a violation of the Integrity Pact or other potentially unethical or criminal behaviour has occurred.
- 5.3. The monitoring organisation will not disclose to anyone the identity of any person who has reported a situation of concern to the monitoring organisation, unless the person who has made the report provides written consent for the disclosure of his/her identity, specifying to whom his/her identity may be disclosed. [This provision needs to be carefully reviewed against local/national requirements that the identity be disclosed in some circumstances (for example, criminal or other investigations and for due process reasons) and against applicable data privacy requirements (for example, ways to store data) for protecting the person's identity and personal data. Careful consideration also needs to be given to potential legal duties or responsibilities that can arise toward the individual making the report.]
- 5.4. The monitoring organisation will promptly report situations of concerns or red flags it has detected to [insert the appropriate contact in the contracting agency] and, if applicable, to any signatory to the Integrity Pact involved in the matter, without disclosing information protected under 5.3 or [insert applicable whistleblower protection law].
- 5.5. The monitoring organisation will monitor whether situations of concern or red flags raised with the contracting authority or signatory to the Integrity Pact are explained, resolved or addressed promptly and appropriately by the contracting authority or signatory to the Integrity Pact no later than [include time limitation].
- 5.6. In its monitoring reports, the monitoring organisation will report on actions taken to address situations of concern and red flags as set out in 7.4.
- 5.7. The monitoring organisation will promptly report wrongdoing to the [appropriate oversight/enforcement authority/disciplinary authority] when the monitoring organisation [reasonably believes] that the wrongdoing involves a violation of a criminal, civil or administrative law or regulation or an ethics rule.

6. TREATMENT OF CONFIDENTIAL INFORMATION¹⁸⁰

- 6.1. The parties to this Monitoring Agreement agree that there is a presumption in favour of transparency and disclosure regarding the information related to the project, including information in all contracts and documents.

- 6.2. The parties agree that the data disclosures made pursuant to the Open Data Standard for Infrastructure will not be deemed to be confidential information.¹⁸¹
- 6.3. For purposes of this Monitoring Agreement, confidential information means:
- 6.3.1. Information related to the planning of the project, preparation of the tender documents and submissions for pre-qualification or bids that if released in advance would prejudice the fairness and integrity of the procurement processes. [Insert applicable definition in national laws].
 - 6.3.2. Information that if disclosed would demonstrably lead to direct harm to the commercial interests of a party or parties to the Integrity Pact [or insert applicable standard under national law], pursuant to [insert applicable limited exemptions under laws].
 - 6.3.3. All personal data or sensitive data pursuant to [insert data protection law].
 - 6.3.4. [If applicable insert limited exceptions to disclosures based on national security concerns].
- 6.4. The parties will keep confidential all confidential information received from any source relating to the project and will use all reasonable endeavours to prevent their employees and agents, including technical and other experts and consultants, from making any disclosure of any such confidential information.
- 6.5. The parties agree to adopt a mechanism and guidelines to securely share information, data and documents pertaining to the project, which will be outlined in the Memorandum of Implementation.¹⁸²
- 6.6. Subject to clauses 6.3 and 6.4 the parties agree that all contracts related to the project will be disclosed to the public or summaries of the contracts will be made available to the public, which will include (1) the terms and conditions of all contracts related to the project and any related agreements or transaction documents; (2) any document or information arising out of or connected with the contracts related to the project, including performance of the contracts.
- 6.7. The parties agree that any information related to the ownership or beneficial ownership of the bidders or successful bidder to the contracts related to the project will not be deemed confidential information and will be disclosed to the public.

7. PREPARATION OF REPORTS AND COMMUNICATION WITH CONTRACTING AGENCY

- 7.1. The monitoring organisation will prepare and publish to the public periodic monitoring reports on its monitoring activities pursuant to the schedule included in the Memorandum of Implementation.¹⁸³ The monitoring organisation will submit to the contracting authority and any affected contractors a draft of all monitoring reports [insert number of days] in advance of publication, giving the contracting authority the opportunity to review and comment.
- 7.2. The monitoring reports will include at a minimum information on situations of concern that have arisen without the inclusion of information deemed to be confidential information or that could lead to retaliation against a whistleblower. The monitoring reports will also include any recommendation for preventing and eliminating risks of corruption given to the parties to the Integrity Pact and responses to the recommendation received within [insert timeframe] of when the recommendation was issued. Such reports will be made available through [website/portal].
- 7.3. The monitoring organisation and the contracting authority will hold periodic meetings on the progress of the monitoring activities pursuant to the schedule included in the Memorandum of Implementation.

- 7.4. The monitoring organisation will prepare a final report, which will be made available through [website/ portal].
- 7.5. The monitoring organisation will promptly notify the contracting authority of any conflict of interest or other circumstances that impedes fulfilment of the monitoring activities or other obligations under the Monitoring Agreement.

8. COMMUNICATIONS WITH THE MEDIA AND PUBLIC

- 8.1. The monitoring organisation will inform the media and the public about its role in monitoring the project under the Monitoring Agreement.
- 8.2. The contracting authority [may/will] inform the public and the media about its adoption of a Monitoring Agreement for the project.
- 8.3. The monitoring organisation and the contracting authority will agree on a schedule and rules for communications with the media, which will be included in the Memorandum of Implementation.

9. ENGAGEMENT OF TECHNICAL OR OTHER EXPERTS AND SERVICE PROVIDERS

- 9.1. The monitoring organisation may as it deems necessary engage technical or other experts or service providers to assist in the fulfilment of the monitoring activities and other obligations under this Monitoring Agreement.
- 9.2. The monitoring organisation will take all reasonable steps to ensure that all persons or organisations engaged by the monitoring organisation to assist in the fulfilment of the monitoring activities and other obligations under this Monitoring Agreement abide by the treatment of confidential information in clause 6 of the Monitoring Agreement.
- 9.3. The monitoring organisation will promptly notify the contracting authority of the engagement of all technical or other experts or service providers that will assist in the fulfilment of the monitoring activities and other obligations under this Monitoring Agreement.

10. WITHDRAWAL OF MONITORING ORGANISATION

- 10.1. The monitoring organisation may unilaterally withdraw from the agreement in all of the following situations:
 - 10.1.1. when the contracting authority does not provide the monitoring organisation with access to all of the information required to effectively carry out the monitoring activities
 - 10.1.2. when the contracting authority prevents directly or indirectly the monitoring organisation from performing its obligations under the Monitoring Agreement
 - 10.1.3. when, following the reporting of situations of concern or red flags, including potential illicit conduct, the contracting authority does not inform the monitoring organisation within [insert timeframe] what corrective measure it will take to effectively address the situation of concern or remedy the red flag
 - 10.1.4. when the monitoring organisation deems the contracting authority's corrective measure insufficient to effectively address and remedy a situation of concern or red flags

- 10.1.5. in any other circumstance that prevents the monitoring organisation from performing its obligations under the Monitoring Agreement or causes unnecessary risk to the well-being or integrity of the monitoring organisation or its employees and/or consultants
- 10.2. The monitoring organisation and contracting authority will agree on guidelines for the process of withdrawal of the monitoring organisation, including the timing of notice to the contracting authority, the contracting authority's right to respond, and timing of final decision to withdraw. These will be included in the Memorandum of Implementation.
- 10.3. The monitoring organisation will inform the media and the public of its decision to withdraw and the reasons for its withdrawal.

11. AMENDMENTS

Any amendments to this Monitoring Agreement can be made only in writing and with the consent and signature of all parties.

12. CONTACT INFORMATION FOR REPRESENTATIVES OF PARTIES

- 12.1. The contact person from the contracting authority for all matters related to this Monitoring Agreement is [insert contact information for representative of Contracting Authority].
- 12.2. The contact person from the monitoring organisation for all matters related to this Monitoring Agreement is [insert contact information for representative of Contracting Authority].
- 12.3. Parties agree to notify each other and the public of changes to contact information.

13. SIGNATURES

For the contracting authority

Date _____

Signature _____

For the monitoring organisation

Date _____

Signature _____

VIII. THE MODEL INTEGRITY PACT

DISCLAIMER: This model is provided as guidance only. Professional advice should be taken to ensure that necessary amendments are made to this Model Monitoring Agreement to suit the requirements of the relevant parties and to reflect the law and circumstances in the relevant jurisdiction.

MODEL INTEGRITY PACT

THIS Integrity Pact is made on _____ [insert date] between:

(1) _____
_____ (Hereinafter “contracting authority(ies)”)

[Insert name and address of main contracting agency, and if applicable, other agencies such as the agency in charge of execution of contracts for the project]

and

(2) _____
_____ (Hereinafter “bidders”)

[Insert names and addresses of “bidders”. The bidders could be required to accept the terms of the Integrity Pact through a Declaration of Acceptance or Accession Form submitted with their bids.]

(All hereinafter referred to as “the parties”)

Given that,

Public infrastructure investment such as, [insert name of project], is vital to the public interest and is part of [insert national/state infrastructure investment policy];

To promote the integrity of, and fairness and public confidence in, the procurement process and to achieve transparency in the procedures relating to [insert name of project], the parties are committed to adopting the highest standards of transparency and integrity set out below;

To promote the integrity of, and fairness and public confidence in the procurement process and to achieve transparency in the procedures relating to [insert name of project], [insert name of contracting authority] signed a [insert full name of Monitoring Agreement] with [insert name of monitoring organisation] to monitor compliance with this Integrity Pact;

Increased disclosure and civic participation in public contracting will have the effects of making contracting more competitive and fair, improving contract performance and securing beneficial development outcomes;

Public contracting needs to be conducted in a transparent and equitable manner, in accordance with publicly-disclosed rules that explain the functioning of the process;

The public has the right to access information related to the formation, award, execution, performance, and completion of public contracts;

The public has an interest in protecting public funds against possible fraud or corruption, increasing transparency and control of the spending of these funds;

The public and all parties to this agreement have an interest in increasing the public trust in and strengthening the reputation of contracting authorities and private sector actors involved in public contracts;

Integrity Pacts help ensure fairness in the procurement processes and create a level playing field for private sector actors bidding to obtain public contracts;

[Insert name of country]'s public institutions are committed under Article 9(1) of the United Nations Convention Against Corruption to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption;

[Insert other applicable national and international principles and commitments, such as under the WTO's Government Procurement Agreement, EU Procurement Directives, Open Government National Action Plan commitments especially in regard to open contracting and public procurement reforms; private sector commitments such as those contained in the UN's Global Compact or industry-specific commitments]

The parties agree to the following:

1. DEFINITIONS

- 1.1. "Affected communities" refers to local groups or other communities or organisations that will be affected – either positively or negatively – by the infrastructure project.
- 1.2. "Beneficial owners" refers to the people who ultimately own or control a legal entity or legal arrangement or benefit from property held or business transactions made by a legal person or legal arrangement.¹⁸⁴
- 1.3. "Bidders" refers to all actors, including both actors in a joint submission, applying to pre-qualify or bidding for a project contract.
- 1.4. "Conflict of interest" refers to situations in which (1) personnel from the contracting authority or from service providers acting on behalf of the contracting authority during the procurement processes or contract execution phase; (2) members of the governing bodies of the contracting authority who can influence the procurement processes or any decision with respect to the project; (3) the bidders participating in the procurement processes and the successful bidder; and (4) individuals working with the monitoring organisation may have, directly or indirectly, a financial interest or other personal interest that could compromise the objective and impartial performance of their functions with respect to the procurement processes, the contract execution of the project, and the performance of independent monitoring under the Monitoring Agreement.
- 1.5. "Corrupt practices" refers to the abuse of entrusted power for private gain including bribery, bid-rigging, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, or any similar activity.¹⁸⁵

- 1.6. “Life-cycle of the project” refers to all the phases of the project: identification phase, appraisal phase, project planning and document design phase, tendering phase, implementation and contract management phase, and the evaluation and audit phase.¹⁸⁶
- 1.7. “Monitoring Agreement” refers to [insert full name of Monitoring Agreement] signed on [insert date of signature].
- 1.8. “Monitoring organisation” refers to [insert name of monitoring organisation].
- 1.9. “Open Data Standard for Infrastructure” refers to the Infrastructure Data Standard developed by the Construction Sector Transparency Initiative and the Open Contracting Data Standard, Extension for Infrastructure, developed by the Open Contracting Partnership.
- 1.10. “Proactive disclosures” refers to all disclosures to be made public in real-time required under the Open Data Standard for Infrastructure
- 1.11. “Procurement processes” refers to all procedures and processes designed to ensure transparency, fairness and integrity throughout the life-cycle of the project, as described in the Monitoring Agreement, Clause 4.7.
- 1.12. “Project” refers to [insert full name of project].
- 1.13. “Reactive disclosures” refers to all information related to the project provided in a timely manner in response to requests for information filed with the appropriate government agency under the Open Data Standard for Infrastructure
- 1.14. “Situation of concern” refers to any situation that could involve unethical or illicit conduct or mismanagement related to the project.
- 1.15. “Subcontractors and other third parties” refers to the bidders/successful bidder(s) subcontractors, agents, consultants, suppliers, distributors, joint-venture partners, or any individual or entity that has some form of business relationship with the organisation.¹⁸⁷
- 1.16. “Successful bidder(s)” refers to the bidders or bidder that are awarded contracts related to the project.

2. SCOPE

This Integrity Pact applies to [insert name of project], including all underlying contracts and procurement processes and procedures, and will start on the date it is signed by the parties and be finalised upon final completion of [insert name of project] or when the Monitoring Agreement comes to an end.

3. HARMONISATION WITH NATIONAL LAWS

The Integrity Pact will be implemented without prejudice to existing laws in [insert name of country] including contract, procurement, privacy, administrative, regulatory, and freedom of information laws.

4. OBLIGATIONS OF CONTRACTING AUTHORITY

- 4.1. The contracting authority’s personnel, including all of its officials and staff, have not demanded or accepted, and will not demand or accept, directly or indirectly, any bribe or other improper benefit related to the project pursuant to [adapt and insert applicable national anti-corruption law].

- 4.2. The contracting authority will require all of its officials and personnel to be honest, impartial and efficient and to perform their duties to the best of their ability with skill, fairness and understanding, having regard only for the public interest [insert applicable procurement/admin law].¹⁸⁸
- 4.3. The contracting authority will provide access to all project information to the monitoring organisation pursuant to [insert full name of Monitoring Agreement].
- 4.4. The contracting authority will ensure that public contracting policies and procedures, including policies regarding information disclosure, decision-making processes, screening procedures and training for personnel, are publicly-disclosed and clearly explained on its website.¹⁸⁹
- 4.5. The contracting authority will develop a system to collect, manage, simplify and publish data regarding the formation, award, execution, performance and completion of all contracts related to the project through the adoption of the Open Data Standard for Infrastructure and in accordance with its commitments under the Monitoring Agreement.¹⁹⁰
- 4.6. The contracting authority will have in place a code of conduct for its personnel that adopts the standards contained in [insert applicable national code or international model code]¹⁹¹ and includes:
 - 4.6.1. a commitment by all personnel to fairness and impartiality
 - 4.6.2. prohibitions of bribery, improper gifts or benefits, conflicts of interest, and abuse of power
 - 4.6.3. requirements to declare assets and conflicts of interest¹⁹²
 - 4.6.4. rules on reporting conflicts of interest that arise in the course of the life-cycle of the project
 - 4.6.5. rules on political activities
 - 4.6.6. rules on the handling of confidential information
 - 4.6.7. rules on interacting with former officials¹⁹³
 - 4.6.8. rules on interacting with government upon leaving the public service
 - 4.6.9. a duty to report violations of the code of conduct to an independent and appropriate authority
 - 4.6.10. disciplinary proceedings and appropriate sanctions for any violation of a provision contained in the code of conduct
- 4.7. The contracting authority will conduct annual training for all personnel involved in the project on the requirements of the code of conduct.
- 4.8. The contracting authority will require all personnel involved in the project to fill out declarations of assets and conflicts of interest. These will be published on an [annual, semi-annual basis] on [website/portal]. [This clause should be included in the agreement only if the publication of the declarations is required by law in the country].
- 4.9. The contracting authority will require all personnel involved in the project to report any violation of the code of conduct to [insert main contact at contracting authority for project and Ethics Manager]. [Main contact at contracting authority] will within [insert timeframe] report the violation to the monitoring organisation.
- 4.10. The contracting authority will make a timely publication of its justification for restricting in any way the procurement process related to the project.
- 4.11. The contracting authority will report [insert timeframe] to [insert competent law enforcement authority] and the monitoring organisation any evidence, allegation or reasonable grounds for suspicion of unlawful or criminal activity related to the project.

- 4.12. The contracting authority will require all bidders to make the following “pre-contract disclosures” when submitting a bid:
 - 4.12.1. a list of the bidder’s board members, officers and principal, and [specify over what percentage of shares] shareholders
 - 4.12.2. a list of all beneficial owners, including level of ownership and description of how ownership or control is exerted¹⁹⁴
 - 4.12.3. a report of its financial status
 - 4.12.4. a list of all joint venture partners and major subcontractors, and likely subcontractors for contracts related to the project
 - 4.12.5. all criminal convictions, open investigations and debarments of the bidder and its owners, directors and relevant managers
 - 4.12.6. all political contributions by bidders to elected officials involved in decision-making related to or with any influence on the project
 - 4.12.7. a certificate of independent price determination¹⁹⁵
- 4.13. The contracting authority will make a timely publication in [insert website/portal] of all pre-contract disclosures made by the bidders.
- 4.14. The contracting authority will carry out due diligence based on pre-contract disclosures and other information to ascertain corruption risks or past misconduct before making the decision to award the contract(s) to a bidder(s).
- 4.15. The contracting authority will maintain and make available to the public a register of gifts and hospitality received by its personnel related to the project.
- 4.16. The contracting authority will maintain records and minutes of all meetings and hearings related to project.
- 4.17. The contracting authority will implement and publicise hotlines for individuals to report anonymously [or confidentially]¹⁹⁶ a situation of concern related to the project to the contracting agency.
- 4.18. The contracting authority will have in place processes to ensure the protection of whistleblowers who in good faith and on reasonable grounds¹⁹⁷ report a situation of concern related to the project from any prejudice, including any type of retaliation, pursuant to [insert national whistleblower protection laws].
- 4.19. If the contracting authority should become aware of a potential violation of the obligations under the Integrity Pact, it will promptly notify the monitoring organisation, carry out an investigation, safeguard evidence, and take prompt remedial action.
- 4.20. To ensure that the whistleblower working for/with the contracting authority does not suffer retaliation in case his/her identity is uncovered, the contracting authority guarantees that they will not retaliate against whistleblower.
- 4.21. The contracting authority will ensure that all reactive disclosures under the Open Data Standard for Infrastructure are made in a timely manner and are fully responsive subject only to narrowly tailored exceptions in accordance with [insert national or state access to information law or international standard].

5. OBLIGATIONS OF BIDDERS/SUCCESSFUL BIDDER

- 5.1. Bidders accept that all obligations and rights under the Integrity Pact extend to the successful bidder(s) throughout the life-cycle of the project.

- 5.2. Bidders/successful bidder(s) have not paid [may include a time period, for example in the past five years] and will not offer or pay anything of value, directly or indirectly, to a public official in order to obtain or retain business, including any business or contract related to the project, or to influence improperly the procurement processes related to the project.
- 5.3. Bidders/successful bidder(s) have not and will not engage in any collusive practice to influence improperly the procurement processes related to the project.¹⁹⁸
- 5.4. Bidders/successful bidder(s) have not and will not participate in any corrupt practices in relation to the project.
- 5.5. Bidders/successful bidder(s) commit that all information provided to the contracting authority and the monitoring organisation will be truthful and not contain fraudulent or false claims or misrepresentations pursuant to [insert national fraud/false claims law].
- 5.6. Bidders/successful bidder(s) will disclose to contracting authority in its bid whether any of its principal shareholders, senior officers or senior managers has any actual or potential conflict of interest related to the project. Bidders/successful bidder(s) will immediately disclose to the contracting authority any actual or potential conflict of interest that surface during the life-cycle of the project.
- 5.7. Bidders/successful bidder(s) have not made, and will not make, directly or indirectly, any payment related to the procurement processes or the project except to the extent that such payment is legitimate compensation for legitimate services. Payments to subcontractors and other third parties must not exceed appropriate amounts for legitimate services actually performed.¹⁹⁹
- 5.8. Bidders/successful bidder(s) will not deliberately, with willful blindness, or recklessly, carry out, authorise, condone or be party to:
 - 5.8.1 provision of works, materials, equipment or services which are not of the quality and quantity contractually required
 - 5.8.2 concealment of defective work, material, equipment or services
 - 5.1.1 payment for non-existent or defective work, material, equipment or services²⁰⁰
- 5.9. If bidders/successful bidder(s) have engaged in any misconduct described in clauses 5.1 to 5.8 in the past, bidders will provide the contracting authority with proof of adequate remedial action.
- 5.10. Bidders/successful bidder(s) will ensure that its personnel, subsidiaries and related companies subject to its control or determining influence comply with clauses 5.1 to 5.8 of this Integrity Pact and are subject to the bidders/successful bidder(s)' anti-corruption policies and procedures outlined in clause 5.15.
- 5.11. Bidders/successful bidder(s) will take reasonable steps to prevent subcontractors or other third parties from engaging in conduct described in clauses 5.1 to 5.8 of this Integrity Pact. These steps include:²⁰¹
 - 5.11.1. maintaining an up-to-date database of all subcontractors and third parties
 - 5.11.2. conducting risk-based due diligence on all subcontractors or other third parties²⁰²
 - 5.11.3. putting in place protocols for approvals by management of engagement of subcontractors and third parties
 - 5.11.4. requiring through contract that all subcontractors or other third parties have adequate anti-corruption policies and procedures as described in clause 5.15
 - 5.11.5. requiring through contract all subcontractors or other third parties refrain from engaging in any misconduct as described in clauses 5.1 to 5.8

- 5.11.6. requiring through contract that all subcontractors or other third parties maintain adequate books and records of all transactions related to the project
 - 5.11.7. including in all its contracts with all subcontractors or other third parties [this may be limited to major subcontractors] the right of the successful bidder [and contracting authority] to conduct an audit of all transactions related to the project²⁰³
 - 5.11.8. including in all its contracts with all subcontractors or other third parties [this may be limited to major subcontractors] the right of the monitoring organisation to have access to information about all transactions related to the project, including access to personnel for interviews
 - 5.11.9. providing anti-corruption risk-based training or requiring that subcontractors or other third parties provide adequate anti-corruption training to all personnel involved in the project
 - 5.11.10. reasonably and proportionally monitoring its business relationships related to the project
- 5.12. Bidders/successful bidder(s) commit to providing to the contracting authority all information required to meet proactive and reactive disclosure requirements of the Open Data Standard for Infrastructure.
- 5.13. Bidders/successful bidder(s) will report to the contracting authority all payments made, or promised, related to the project including payments related to supplies, licensing, services, and taxes. This requirement includes all payments to subcontractors or other third parties. All payments to subcontractors or other third parties will specify currency and method of payment and describe the legitimate services or supplies provided.²⁰⁴ Successful bidder(s)'s reports on payments will separate labour costs from payments made for materials and equipment.
- 5.14. Bidders/successful bidder(s) will provide to contracting authority all information related to the completion of the awarded contract, including all progress reports, risk assessments, and information regarding subcontracting arrangements.
- 5.15. Bidders/successful bidder(s) will commit to having in place [at the latest at point of contract signature] an anti-corruption programme that clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent corruption from occurring in all activities under its effective control.²⁰⁵ These will include:
- 5.15.1. a clear commitment from the organisation's leadership to ethical conduct and to an anti-corruption policy and programme
 - 5.15.2. code of conduct or ethics applicable to all employees and employees of related entities, including directors, officers, employees and contracted parties such as agents, lobbyists and other intermediaries
 - 5.15.3. a process for holding the leadership and employees accountable for violations of the anti-corruption programme, with applicable sanctions
 - 5.15.4. periodic risk assessments that form the basis of the anti-corruption programme
 - 5.15.5. a prohibition of all forms of corruption, including bribery, facilitating payments, trading in influence, nepotism, favouritism, clientelism or patronage, fraud, money laundering and abuse of conflicts of interest
 - 5.15.6. a policy prohibiting its employees from soliciting, arranging or accepting anything of value intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances
 - 5.15.7. policies and procedures to identify, monitor and manage conflicts of interest

- 5.15.8. a prohibition on the bidder/successful bidder(s), its employees, agents, lobbyists or other intermediaries from making direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining unfair advantage in business transactions and public disclosure of all of the bidder/successful bidder(s)'s political contributions.
 - 5.15.9. a prohibition on the use of charitable contributions and sponsorships as a subterfuge for bribery and public disclosure all its charitable contributions and sponsorships
 - 5.15.10. a policy and procedures to ensure that all gifts, hospitality and expenses are bona fide. The enterprise should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence or reasonably be perceived to influence improperly the outcome of procurement decisions or actions, and business transactions
 - 5.15.11. the maintenance of adequate and accurate books and records of all financial transactions
 - 5.15.12. risk-based financial audits and other audits and controls, including accounting controls, to counter corruption risks²⁰⁶
 - 5.15.13. an incident management plan
 - 5.15.14. effective internal and external communication of the anti-corruption programme and anti-corruption training for all employees tailored to risks, functions and seniority
- 5.16. Bidders/successful bidder(s) will adopt internal reporting mechanisms for employees and stakeholders to report misconduct. This will include:
- 5.16.1. the leadership's encouragement of employees and stakeholders to report misconduct and commitment to protecting those who do so
 - 5.16.2. accessible and reliable channels to report misconduct, guaranteeing confidentiality or anonymity
 - 5.16.3. procedures that ensure thorough, timely and independent investigations of reports of misconduct
 - 5.16.4. protection for people reporting misconduct from all forms of retaliation, with transparent procedures for investigating retaliation complaints²⁰⁷
- 5.17. Bidders/successful bidder(s) will appoint a project-specific Compliance Manager and provide the contracting authority and monitoring organisation with the manager's name and contact information.
- 5.18. Bidders/successful bidder(s) will make public through its website its anti-corruption policies and procedures within [insert timeframe].²⁰⁸
- 5.19. Bidders/successful bidder(s) will obtain certification or assurance of their anti-corruption programme from an independent, experienced and reputable firm or organisation.²⁰⁹
- 5.20. If bidders/successful bidder(s) should become aware of a potential violation of the Integrity Pact, it will promptly [or insert time period] notify the contracting authority and the monitoring organisation, carry out an investigation, safeguard evidence, and take prompt remedial action.

6. ACCEPTANCE BY ALL PARTIES OF MONITORING OF THE PROJECT BY THE MONITORING ORGANISATION AND OF ENGAGEMENT WITH AFFECTED COMMUNITIES

- 6.1. All parties agree to accept and fully collaborate with the monitoring organisation as it conducts the monitoring activities and reporting duties outlined in [insert full name of Monitoring Agreement].
- 6.2. All parties agree to provide the monitoring organisation with timely access to all information related to the project.
- 6.3. All parties commit to providing a complete response to the monitoring organisation's requests for information and questions within [insert timeframe].
- 6.4. All parties commit to providing the monitoring organisation with access to individuals for interviews and to the project site to assess compliance with the obligations contained in this Integrity Pact.
- 6.5. All parties accept and support engagement by the monitoring organisation and contracting authority with affected communities throughout the life-cycle of the project, including the affected communities' (or their representatives') attendance at public hearings and meetings, access to all public information, receipt of monitoring reports and participation in site visits.
- 6.6. All parties commit to cooperating with the monitoring organisation through participation in surveys, interviews or focus group discussions for the purpose of monitoring and evaluating the effectiveness of the Integrity Pact.

7. SITUATIONS OF CONCERN

- 7.1. Should either the contracting authority or bidders/successful bidder(s) become aware of a situation of concern, they will promptly report it to the monitoring organisation and the appropriate contact for the parties to this Integrity Pact.
- 7.2. The parties will promptly and appropriately address any situation of concern raised by the monitoring organisation no later than [include time limitation] and report to the monitoring organisation on the remedial action(s) taken.
- 7.3. The contracting authority and bidders/successful bidder(s) will promptly report wrongdoing to the [appropriate oversight/enforcement authority/disciplinary authority] when they reasonably believe that the wrongdoing involves a violation of a criminal, civil or administrative law or regulation or an ethics rule.

8. TREATMENT OF CONFIDENTIAL INFORMATION

- 8.1. The parties to this Integrity Pact agree that there is a presumption in favour of transparency and disclosure regarding all the information related to the project, including information in all contracts and documents.
- 8.2. The parties agree that the data disclosures made pursuant to the Open Data Standard for Infrastructure will not be deemed to be confidential information.
- 8.3. For purposes of this Integrity Pact, confidential information means:
 - 8.3.1. Information related to the planning of the project, preparation of the tender documents and submissions for pre-qualification or bids that if released in advance would prejudice the fairness and integrity of the procurement processes. [Insert applicable definition in national laws].
 - 8.3.2. Information that if disclosed would demonstrably lead to direct harm to any of the parties' commercial interests [or insert applicable standard under national law], pursuant to [insert applicable limited exemptions under laws].
 - 8.3.3. All personal data or sensitive data pursuant to [insert data protection law].

8.3.4. [If applicable insert limited exceptions to disclosures based on national security concerns].

- 8.4. The parties will keep confidential all confidential information received from any source relating to the project and will use all reasonable endeavours to prevent their employees and agents, including technical and other experts and consultants, from making any disclosure of any such confidential information.
- 8.5. Subject to clauses 8.3 and 8.4, the parties agree that all contracts related to the project will be disclosed to the public or summaries of the contracts will be made available to the public which will include (1) the terms and conditions of all contracts related to the project and any related agreements or transaction documents; (2) any document or information arising out of or connected with the contracts related to the project, including performance of the contracts.
- 8.6. The parties agree that any information related to the ownership or beneficial ownership of the bidders/successful bidder to the contracts related to the project will not be deemed to be confidential information and will be disclosed to the public.

9. AMENDMENTS/TERMINATION

- 9.1. Any amendments to or termination of this Integrity Pact can be made in writing and with the consent and signature of all parties.
- 9.2. This Integrity Pact will automatically terminate upon the withdrawal of the monitoring organisation under the Monitoring Agreement.

10. APPLICABLE LAW AND DISPUTE RESOLUTION

- 10.1. This Integrity Pact will be governed by [insert applicable law – usually the law of the place of contract execution].
- 10.2. In the event that the parties have a dispute about the execution of any of the requirements under the Integrity Pact, the parties commit to try to settle the dispute through negotiation and dialogue. If necessary, they will refer the matter of the dispute to [insert mediation venue]. The monitoring organisation [can/will] participate in the mediation process as a facilitator.
- 10.3. Any dispute between the parties in relation to or arising out of this Integrity Pact that cannot be resolved through negotiation or mediation will be submitted to [arbitration or applicable administrative or judicial body]. [If arbitration: The arbitration will be held in [insert venue] under [three arbitrators appointed pursuant to [insert rules for appointment] and will be governed under the arbitration rules of [insert name or rules]. The language of the arbitration will be [insert language].]²¹⁰

11. SANCTIONS

- 11.1. If, on the basis of the facts available, the contracting authority or [applicable dispute resolution body or applicable authority] finds that [there is no reasonable doubt or other applicable standard] that a bidder/successful bidder has breached any of the clauses in this Integrity Pact, the party in breach will be required to remedy the violation to the extent possible through an external audit, termination of involved individuals, and/or the termination of subcontracts.
- 11.2. If, on the basis of the facts available, the contracting authority or [applicable dispute resolution body or applicable authority] finds that [there is no reasonable doubt or other applicable standard] that a bidder/successful bidder has breached any of the clauses in this Integrity Pact, the following sanctions can be applied by the contracting authority or [applicable dispute resolution body or applicable authority] in proportion to [the gravity of the

breach, the frequency of the violation, and the remedial actions taken by the party in breach or other applicable standard of proportionality]:

- 11.2.1. removal of a pre-qualification submission or bid if the project's procurement process is in the pre-award stage
 - 11.2.2. forfeiture of bid security or performance bond related to the project
 - 11.2.3. exclusion from the pre-qualification list if the project's procurement process is in the pre-award stage
 - 11.2.4. loss or termination of contract related to the project
 - 11.2.5. indemnification for any liability or loss to contracting authority and losing bidders related to the project
 - 11.2.6. damages in the amount of [__]% of the contract value up to [insert cap] – and [increase in] % of contract value after the award of contract²¹¹
 - 11.2.7. debarment or exclusion from all future contracts of the contracting authority [or all government contracts] for an [insert appropriate period of time. Time period can be in proportion to severity of violation or subject to complete remediation and adoption of strong compliance programme]²¹²
- 11.3. The sanctions provided for in this Integrity Pact do not exclude, substitute or modify in any way criminal, civil, disciplinary or administrative sanctions established in the contracts for the project or otherwise provided by law.

12. JOINT AND SEVERAL LIABILITY

[If applicable and depending on national laws, add a clause regarding joint and several liability of partners in joint venture or consortium submitting bids.]

13. CONTACT INFORMATION FOR REPRESENTATIVES OF PARTIES

- 13.1. The contact person from the contracting authority for all matters related to this Integrity Pact is [insert contact information for representative of contracting authority].
- 13.2. The contact persons from the bidders/successful bidder(s) for all matters related to this Integrity Pact is [insert contact information for all representatives of bidders/successful/bidder(s)].
- 13.3. Parties agree to promptly notify each other and the public [through website or portal] of changes to contact information.

14. SIGNATURES

For the contracting authority

Date _____

Signature _____

For the bidders/successful bidder(s)

Date _____

Signature _____

IX. ELEMENTS OF THE MEMORANDUM OF IMPLEMENTATION

The Model Agreements were drafted to be adaptable to the size and complexity of infrastructure projects, the existing commitments and obligations of stakeholders and to the capacity and resources available to the monitoring organisation. The clauses proposed in the Monitoring Agreement cover all of the monitoring activities that could be carried out in any infrastructure project. These could be prioritised, trimmed down and simplified should the according to available resources and capacity. For smaller projects, dealing with a single agency and contract with one major contractor for example, the monitoring activities would be less taxing and it may therefore be feasible to implement all of them.

The requirements for the contracting authority in the Monitoring Agreement would be similar for all infrastructure projects. The clauses in the Model Integrity Pact with respect to integrity and transparency requirements can be trimmed and simplified depending on the size and complexity of the project.

The Memorandum of Implementation, setting out the details of how the monitoring activities will be carried out, will be different depending on each project's complexity and local context. Because the Memorandum of Implementation will differ from project to project, this guide does not present a detailed model that can be adapted to all situations. However, based on the Model Monitoring Agreement and the Model Integrity Pact, the Memorandum of Implementation will likely include the following components:

- schedule of public hearings, meetings and events with affected communities and stakeholders
- list of members of Open Contracting Team
- schedule of milestones to be met by contracting team to achieve adoption of Open Data Standard for Infrastructure and the creation of a user-friendly portal or website. See [OCP Guidance](#); See [CoST Guidance](#)
- schedule of pro-active disclosures (for example, real-time disclosures, disclosures at project milestones, regular disclosures)
- schedule and responsibility for press releases and statements about the project and monitoring process²¹³
- list of all key meetings and hearings regarding procurement decisions that the monitoring organisation will attend
- schedule of meetings between monitoring organisation and contracting authority to review monitoring progress (these can include main contractors after contracts are awarded)
- schedule and form of site visits
- schedule and form of monitoring reports
- schedule of meetings between monitoring organisation and contracting authority to review progress of monitoring activities
- schedule, form and participants in training activities carried out by monitoring organisation
- mechanism and guidelines to securely share information, data and documents that could contain confidential information
- process for withdrawal of the monitoring organisation (including timing of notice to the contracting authority, a right to respond, and timing of final decision to withdraw)

ANNEX I – LIST OF COST AND OCP DISCLOSURES

CoST Infrastructure Data Standard

Project data for proactive disclosure

PROJECT PHASE	PROJECT DATA	CONTRACT PHASE	CONTRACT DATA
Project Identification (6 items)	Project owner Sector, subsector Project name Project Location Purpose Project description	Procurement (13 items)	Procuring entity Procuring entity contact details Procurement process Contract type Contract status (current) Number of firms tendering Cost estimate
Project Preparation (7 items)	Project Scope (main output) Environmental impact Land and settlement impact Contact details Funding sources Project Budget Project budget approval date		Contract administration entity Contract title Contract firm(s) Contract price Contract scope of work Contract start date and duration
Project Completion (6 items)	Project status (current) Completion cost (projected) Completion date (projected) Scope at completion (projected) Reasons for project changes Reference to audit and evaluation reports	Implementation (6 items)	Variation to contract price Escalation of contract price Variation to contract duration Variation to contract scope Reasons for price changes Reasons for scope and duration changes

Project Information for reactive disclosure on request

Project	Contract
Identification & Preparation Multi-year program & budget Project brief or Feasibility study Environmental impact assessment Resettlement & compensation plan Project officials & roles Financing agreement Procurement plan Project approval decision	Procurement Contract officials & roles Procurement method Tender document Tender evaluation results Project design report
Completion Implementation progress reports Budget amendment decision Project completion report Project evaluation report Technical audit reports Financial audit reports	Contract Contract agreement, conditions Registration & ownership of firms Specifications & drawings
	Implementation List of variations, changes, amendments List of escalation approvals Quality assurance reports Disbursement record or Payment certificates Contract amendments

DISCLOSURES THROUGH OCP'S GLOBAL OPEN CONTRACTING PRINCIPLES

Governments shall require the timely, current, and routine publication of enough information about the formation, award, execution, performance, and completion of public contracts to enable the public, including media and civil society, to understand and monitor as a safeguard against inefficient, ineffective, or corrupt use of public resources. This would require affirmative disclosure of:

1. contracts, including licences, concessions, permits, grants or any other document exchanging public goods, assets, or resources (including all annexes, schedules and documents incorporated by reference) and any amendments thereto
2. related pre-studies, bid documents, performance evaluations, guarantees, and auditing reports
3. information concerning contract formation, including:
 - a. the planning process of the procurement
 - b. the method of procurement or award and the justification thereof
 - c. the scope and specifications for each contract
 - d. the criteria for evaluation and selection
 - e. the bidders or participants in the process, their validation documents, and any procedural exemptions for which they qualify
 - f. any conflicts of interest uncovered or debarments issued
 - g. the results of the evaluation, including the justification for the award
 - h. the identity of the contract recipient and any statements of beneficial ownership provided
4. information related to performance and completion of public contracts, including information regarding subcontracting arrangements, such as:
 - a. general schedules, including major milestones in execution, and any changes thereto
 - b. status of implementation against milestones
 - c. dates and amounts of stage payments made or received (against total amount) and the source of those payments
 - d. service delivery and pricing
 - e. arrangements for ending contracts
 - f. final settlements and responsibilities
 - g. risk assessments, including environmental and social impact assessments
 - h. assessments of assets and liabilities of government related to the contract
 - i. provisions in place to ensure appropriate management of ongoing risks and liabilities
 - j. appropriate financial information regarding revenues and expenditures, such as time and cost overruns, if any

ANNEX II – TABLE OF CORRUPTION RISKS AND RELATED TERMS IN AGREEMENTS

The Model Monitoring Agreement and Model Integrity Pact contain clauses that address corruption risks in all phases of the procurement life-cycle. These include:

- clauses that provide reporting and response steps for situations of concern and red flags
- clauses that provides swift mechanisms to report wrongdoing to authorities
- clauses that require the adoption of the Open Data Standard for Infrastructure for all phases to disclose important contracting data to the public and a portal that would allow monitoring by all stakeholders
- clauses providing for the withdrawal by the monitoring organisation if situations of concern are not adequately addressed
- clauses on periodic reports from the monitoring organisation evaluating the integrity processes in place for all phases and including recommendations for strengthening them
- clauses requiring conflicts of interest to be disclosed by all parties
- clauses providing for sanctions in the event of violation of the Integrity Pact by the bidders/successful bidder(s).

In addition, the following table²¹⁴ provides a list of corruption risks in each phase and specific clauses in the agreements that address those risks.

Phase	Corruption risk	Monitoring Agreement and IP clauses
Project identification	The initial identification of the project is influenced by the interests of an individual, company, organisation or public official and not aligned with objectives for the public good.	<p>*Monitoring Agreement includes participation of affected communities in and monitoring of public hearings and/or meetings regarding identification of project. These would include discussions on needs for the project, possible alternatives such as repairs or updates instead of new infrastructure, possible undue influence, choice of location, and impact on communities.</p> <p>*Monitoring Agreement includes engagement with the media and affected communities during this phase to disseminate information and invite feedback.</p> <p>*Integrity Pact requires bidders to disclose past political contributions to elected officials with influence on project identification decisions.</p>
	Lack of transparency during identification process.	*Monitoring Agreement calls for the disclosure of data relevant to identification phase based on the Open Data Standard for Infrastructure.

Appraisal phase	Feasibility studies, and social, economic and environmental impact assessments are biased.	<p>*Monitoring Agreement provides that the monitoring organisation will monitor the processes for carrying out the assessments and feasibility studies, including the selection of independent experts who will carry them out, and provides for channels to report concerns.</p> <p>*Monitoring Agreement calls for public disclosure of social, economic and environmental impact assessments and the person(s) responsible for the assessments based on the Open Data Standard for Infrastructure.</p> <p>*Monitoring Agreement includes engagement with affected communities during appraisal phase to address their concerns and provide accountability.</p> <p>*Integrity Pact requires codes of conduct or rules and sanctions to prevent and sanction improper influence during appraisal process.</p>
Planning and document design phase	Actors receive more or early information on planning and design as an improper favour.	<p>*Monitoring Agreement calls for codes of conduct or rules to sanction the improper use of confidential procurement information by public officials.</p> <p>*Integrity Pact calls for bidders to have policies and procedures to forbid employees from improperly gaining access to information that will give them an unfair advantage and to promptly report wrongdoing.</p>
	The design of the tender documents and specifications is restrictive or tailored to favour bidder/bidders.	<p>*Monitoring Agreement provides that the monitoring organisation will examine tender documents and specifications, with expert assistance if needed, to detect problems.</p> <p>*Monitoring Agreement and Integrity Pact ensure there are proper channels for complaints from potential bidders/losing bidders about the design of the tender documents.</p>
	Non-competitive procedures are not justified and provide an unfair advantage to one bidder/company.	<p>*Monitoring Agreement provides that contracting authority will publicly report its justification for a restrictive procurement process.</p> <p>*Monitoring Agreement provides that monitoring organisation will evaluate justification for restrictive procurement process.</p>
Tendering phase	The winning bidder is not the most qualified due to improper influence/collusion/bid-rigging during the tendering phase	<p>*Integrity Pact binds contracting officials and bidders to adhere to ethical conduct during the tendering phase.</p> <p>*Integrity Pact requires all bidders to have in place an adequate ethics and anti-corruption</p>

	and/or is not committed to act ethically and with integrity.	<p>compliance programme as a pre-qualification or bidding requirement and requires independent assurance of such programme.</p> <p>*Integrity Pact requires all bidders to produce pre-contract disclosures regarding governance and ownership structure, including beneficial ownership information, and previous violations of ethical or anti-corruption rules/laws, to allow for due diligence.</p> <p>*Integrity Pact requires the contracting authority to make the pre-contract disclosures information available to the public.</p> <p>*Monitoring Agreement provides that the monitoring organisation, with expert advice if needed, will be present at meetings regarding tendering phase and evaluate technical, financial and qualitative criteria for selection of pre-qualified bidders and awardee.</p>
Implementation phase	False reporting of costs associated with materials, labour.	<p>*Monitoring Agreement provides for site visits by monitoring organisation, technical experts, and/or local communities to observe the progress of the project.</p> <p>*Monitoring Agreement provides that monitoring organisation and contracting authority will agree on the creation of a portal that will help monitor in real-time the advancements in comparison to costs, including variations and reasons for the overrun.</p> <p>*Integrity Pact prohibits false or fraudulent claims.</p> <p>*Integrity Pact calls for the successful bidder to separate labour costs from payments for materials and equipment.</p>
	Cutting corners in construction or delay due to corrupt practices.	<p>*Monitoring Agreement provides for site visits by monitoring organisation, technical experts, and/or local communities to observe the progress of the project.</p> <p>*Monitoring Agreement provides that monitoring organisation and contracting authority will agree on the creation of a website that will help monitor in real-time the on-site advancements in comparison to reported costs.</p> <p>*Monitoring Agreement provides that monitoring organisation will raise situations of concern with successful bidder and expect explanation and/or remediation of problem. Monitoring organisation can also investigate the concerns to determine cause.</p>

	<p>Improper payments made to public officials by subcontractors and third parties such as subcontractors and agents for licensing, permits etc.</p>	<p>*Integrity Pact provides that contractor will disclose all payments made related to project including payments made by third parties such a subcontractors.</p> <p>*Integrity Pact requires successful bidder to manage relationships with subcontractors and all parties to prevent subcontractors and third parties making improper payments.</p>
<p>Evaluation and audit phase</p>	<p>False reporting of payments; off-the-books payments.</p>	<p>*Integrity Pact prohibits fraudulent reporting of payments.</p> <p>*Integrity Pact requires contracting authority and successful bidder to have effective systems of internal controls and financial reporting including financial risk assessments, maintaining accurate books and records requirements, and financial audits.</p> <p>*Monitoring Agreement provides for review of processes including final evaluation and audit.</p> <p>*Integrity Pact requires successful bidder to report all payments made related to project including all payments by its subcontractors and third parties.</p>

ANNEX III: LIST OF RESOURCES FOR CSOS

- Construction Sector Transparency Initiative, Guidance Note 6, [Designing a Disclosure Process](#)
- Construction Sector Transparency Initiative, Guidance Note 7, [Designing an Assurance Process](#)
- Construction Sector Transparency Initiative, Guidance Note 8, [CoST and the Open Government Partnership](#)
- Construction Sector Transparency Initiative, [Infrastructure Data Standard](#)
- European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015.
- International Anti-Corruption Resource Center, [Guide to Combating Corruption and Fraud in Development Projects](#), last updated in 2018.
- Global Infrastructure Anti-Corruption Centre, [Resource Centre](#)
- Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8.
- John Hawkins for Evidence on Demand, [How to Note: Reducing Corruption in Infrastructure Sector](#), May 2013.
- International Anti-Corruption Resource Center, [Guide to Combating Corruption and Fraud in Development Projects](#)
- International Anti-Corruption Resource Center, [Bid Review Training Tool](#)
- [International Infrastructure Support System](#) (IISS) – Developed by the Sustainable Infrastructure Foundation in association with a number of multi-lateral development banks, this is aimed at improving project preparation.
- Neill Stansbury, Exposing the Foundations of Corruption in Construction, Transparency International's [Global Corruption Report](#), 2005.
- OECD, [Getting Infrastructure Right – A Framework for Better Governance](#), 2017.
- OECD, [Integrity Framework for Infrastructure](#), 2016.
- Open Contracting Partnership, [The Open Contracting Journey](#)
- Open Contracting Partnership, [The Open Contracting Global Principles](#)
- Open Contracting Partnership, [The Open Contracting Data Standard](#)
- Public-Private-Partnership in Infrastructure Resources Center, The World Bank Group, [Public and Private Partnerships](#), accessed on 16 February 2018.
- Transparency International, [Assurance Framework for Corporate Anti-Bribery Programs](#), 21 June 2012.
- Transparency International, [The Business Case for Integrity Pacts: How Citizen Monitoring Benefits You](#)
- Transparency International, [The Case for Integrity Pacts: Engaging Civil Society for Better Procurement Outcomes](#)
- Transparency International, [Curbing Corruption in Public Procurement](#), 2014.
- Transparency International, [Global Corruption Report 2008 – Corruption in the Water Sector](#)
- Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016.
- Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#), 15 April 2014.
- Transparency International and the Water Integrity Network, [Integrity Pacts in the Water Sector: An Implementation Guide for Government Officials](#), 15 March 2010.
- Transparency International, Open Contracting Partnership, Hivos, Construction Sector Transparency Initiative and Article 19, [From Open to Clean Contracting: A collective agenda to end corruption in public procurement and infrastructure and support sustainable development](#), 29 November 2017.
- Water Integrity Network, [Integrity Management Toolbox](#), last updated 29 March 2016.

- Water Integrity Network, [Water Integrity Good Practices](#), last updated 31 January 2018.
- World Bank, [Curbing Fraud, Corruption and Collusion in the Roads Sector](#), 2011.
- The World Bank Group, CoST, and the Public-Private Infrastructure Advisory Facility [Framework of Disclosure in Public, Private Partnerships](#)

ENDNOTES

¹ http://www.giaccentre.org/why_corruption_occurs.php

² <https://www.npr.org/2012/08/29/160231137/chinese-blame-failed-infrastructure-on-corruption?t=1535705324082>

³ <http://blogs.worldbank.org/ppps/forecasting-infrastructure-investment-needs-50-countries-7-sectors-through-2040>

⁴ The term “affected communities” is discussed in more detail below in Section VI.C. The definition of what is covered by “infrastructure” in the text box is derived from American Society of Civil Engineers, [2017 Infrastructure Report Card](#) and grades the United States’ state of infrastructure based on 16 categories: Aviation, Bridges, Dams, Drinking Water, Energy, Hazardous Waste, Inland Waterways, Levees, Ports, Public Parks, Rail, Roads, Schools, Solid Waste, Transit and Wastewater. The OECD also includes communications installations as part of “infrastructure”. See OECD, [Economic Infrastructure, Common Reporting Standard \(CRS\) Codes](#), p. 2.

⁵ European Bank for Reconstruction and Development, [Why Infrastructure Development Needs More from the Private Sector](#), 9 March 2017.

⁶ Transparency International, Open Contracting Partnership, Construction Sector Transparency Initiative, Hivos and Article 19, [From Open to Clean Contracting: A collective agenda to end corruption in public procurement and infrastructure and support sustainable development](#), 29 November 2017, p. 5; see also McKinsey Global Institute, [Bridging Global Infrastructure Gaps](#), June 2016.

⁷ C20’s [2017 Statement on Investment](#)

⁸ International Monetary Fund, [Making Public Investment More Efficient](#), June 2015, p. 1.

⁹ International Monetary Fund, [Making Public Investment More Efficient](#), June 2015, p. 34.

¹⁰ Petter Matthews, [This is Why Construction Is So Corrupt](#), 5 February 2016.

¹¹ Petter Matthews, [This is Why Construction Is So Corrupt](#), 5 February 2016.

¹² OECD, [Preventing Corruption in Public Procurement](#), 2016.

¹³ See the [OECD’s Recommendation of the Council on Public Procurement, Integrity Framework for Public Infrastructure](#); the World Bank’s [new procurement framework](#) which calls for enhanced transparency and integrity measures for Bank-financed projects; the B20’s [Recommendation to the G20](#) highlighting the critical role for the private sector in mitigating the risk of corruption and increasing efficiency in procurement for infrastructure; and the C20’s call for an [“observatory on infrastructure and the SDGs”](#).

¹⁴ Many communities are affected by an infrastructure project, including those displaced by or negatively affected, intended beneficiaries, and the workers and subcontractors engaged in delivery. Transparency International, Open Contracting Partnership, Construction Sector Transparency Initiative, Hivos and Article 19, [From Open to Clean Contracting: A collective agenda to end corruption in public procurement and infrastructure and support sustainable development](#), 29 November 2017, p. 3.

¹⁵ Transparency International, [The Case for Integrity Pacts: Engaging Civil Society for Better Procurement Outcomes](#), p. 2.

¹⁶ *Ibid*, p. 2.

¹⁷ Even though the focus is on the second pillar, the work of the monitoring organisation on a single infrastructure project would ideally also help build capacity to extend all of the clean contracting pillars to cover whole public procurement systems.

¹⁸ Transparency International commissioned two learning reviews in 2015 and 2016 to capture how Integrity Pacts had been implemented in practice and draw lessons for the future.

¹⁹ See Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue 2015:8, p. 30. She recommends that efforts to improve transparency and integrity should focus on the procedures surrounding decision-making during project preparation. She identifies four essential steps in project preparation and the measures needed to strengthen them and help reduce corruption and inefficiency: (1) project development and initial screening; (2) formal project appraisal; (3) independent appraisal review; and (4) project selection and budgeting.

²⁰ Even though in many countries citizen inclusion in infrastructure decision-making is uncommon, there is a growing recognition that it is a crucial component to ensure that sustainability and public interest goals are met. The OECD’s framework for infrastructure governance recommends the adoption of a

consultation process early on so that decisions benefit from real stakeholder engagement. OECD, [Getting infrastructure right – a framework for better governance](#) (2017), p. 1 and 26-27. An Inter-American development bank survey found that in Latin America and the Caribbean only 23 per cent of respondents said they had been consulted on infrastructure projects in the past, as opposed to 79 per cent in the us and Canada. Sixty-one per cent of those surveyed in the region said they would like to be consulted in the future. Luis Miguel Castilla, [private investors and citizen engagement: keys to a thriving, sustainable infrastructure sector?](#), 13 April 2017. For an interesting policy paper on citizen engagement in infrastructure decision-making in the UK see dialogue by design and UCL transport institute, [infrastructure and the citizen](#), policy paper, June 2015. For the benefits of such inclusion in developing nations see [citizen engagement in public service delivery](#)

²¹ [Engagement Agreement between the Open Contracting Partnership and the Construction Sector Transparency Initiative](#), January 2016.

²² OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 4. A good listing of common corruption, bribery, fraud, collusion and bid-rigging schemes in public procurement can be found in [Procurement Monitoring Guide: a Tool for Civil Society](#), p. 13-19.

²³ Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8, p. 3.

²⁴ See for example, Australian Government, Department of Infrastructure and Transport, [Infrastructure Planning and Delivery, Best Practice Case Studies](#), Volume 2, February 2012.

²⁵ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 7.

²⁶ Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8, p. 1; this cites studies conducted in 2006 and 2009 finding that the forms of corruption most harmful for development outcomes are (1) corruption that influences the project appraisal, design and budgeting process by diverting investment toward projects with low returns and toward new constructions at the expense of maintenance, and (2) corruption during project implementation that results in substandard construction that shortens the life of projects and reduces the rate of return.

²⁷ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 7. Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8, p. 1.

²⁸ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 8.

²⁹ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 8.

³⁰ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 8.

³¹ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 9.

³² Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8, p. 4.

³³ CoST's [Infrastructure Data Standard](#) states that some data on environmental and land resettlement impact should be proactively disclosed, and that the feasibility study, or project brief, and the land resettlement and environmental and social impact assessments, should be reactively disclosed.

³⁴ Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8, p. 4.

³⁵ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 12.

³⁶ Jill Wells, [Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation](#), U4 Issue March 2015:8, p. 4.

³⁷ OECD, [Getting Infrastructure Right – A Framework for Better Governance](#), 2017, p. 23; For a description of the range of possibilities with respect to private sector participation see: <https://ppp.worldbank.org/public-private-partnership/agreements>

³⁸ For a description of factors affecting financing decisions see European Commission's Directorate General XVI, [Understanding and Monitoring the Cost-Determining Factors of Infrastructure Projects, A User's Guide](#), p. 4.

³⁹ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 8.

⁴⁰ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 8.

⁴¹ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 18.

⁴² European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 20.

⁴³ This is a departure from the core principles of openness, transparency and competition and is a very exceptional procedure. The burden of proof for the circumstances allowing for the use of the negotiated procedure rests with the contracting authority. European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 19.

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- ⁴⁴ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 31-33.
- ⁴⁵ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 9.
- ⁴⁶ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 9.
- ⁴⁷ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 22.
- ⁴⁸ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 86.
- ⁴⁹ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 45.
- ⁵⁰ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 9.
- ⁵¹ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 9.
- ⁵² OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 9.
- ⁵³ OECD, [Getting Infrastructure Right – The Ten Key Governance Challenges and Policy Options](#), 2017, p. 4; OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 8.
- ⁵⁴ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 36.
- ⁵⁵ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 36.
- ⁵⁶ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 10.
- ⁵⁷ Transparency International, [Curbing Corruption in Public Procurement](#), 2014, p. 16.
- ⁵⁸ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 47.
- ⁵⁹ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 46.
- ⁶⁰ Transparency International, [Curbing Corruption in Public Procurement](#), 2014, p. 16.
- ⁶¹ OECD, [Integrity Framework for Public Infrastructure](#), 2017, p. 7.
- ⁶² OECD, [Getting Infrastructure Right – The Ten Key Governance Challenges and Policy Options](#), 2017, p. 7.
- ⁶³ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 48-49.
- ⁶⁴ Transparency International, [Curbing Corruption in Public Procurement](#), 2014, p. 16.
- ⁶⁵ International Anti-Corruption Research Center, [Guide to Combating Corruption and Fraud in Development Projects, Potential Scheme: Change Order Abuse](#), last updated in 2018.
- ⁶⁶ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 48-49.
- ⁶⁷ Transparency International, [Curbing Corruption in Public Procurement](#), 2014, p. 16.
- ⁶⁸ OECD, [Getting Infrastructure Right – The Ten Key Governance Challenges and Policy Options](#), 2017, p. 12.
- ⁶⁹ European Commission, [Directorate-General for Regional and Urban Policy, Public Procurement Guidance for Practitioners](#), 2015, p. 50.
- ⁷⁰ OECD, [Getting Infrastructure Right – The Ten Key Governance Challenges and Policy Options](#) (2017). p.10.
- ⁷¹ Construction Sector Transparency Initiative, [CoST Better Value from Public Infrastructure](#), accessed 15 Feb. 2018.
- ⁷² Public-Private-Partnership in Infrastructure Resources Center, The World Bank Group, [Public and Private Partnerships](#), accessed 16 February 2018.
- ⁷³ Concessions involve a contractual arrangement between a public authority and an economic operator (the concession holder). The latter provides services or carries out works and is remunerated by being permitted to exploit the work or service. In the EU, [Directive 2014/23/EU on the award of concession contracts](#) aims to provide clearer rules on concession contracts to promote transparency, integrity and fair competition. For more information see European Commission, [Concession Contracts – Partnership Between the Public Sector and a Private Company](#), updated 16 February 2018.
- ⁷⁴ The term “management contract” has been applied to cover a range of contracts from technical assistance contracts through to full-blown operation and maintenance agreements and so it is difficult to generalise about them. The main common features are that the awarding authority engages the contractor to manage a range of activities for a relatively short time period (2-5 years). Management contracts tend to be task-specific and input- rather than output-focused. Operation and maintenance agreements may have more outputs or performance requirements. Public-Private-Partnership in

Infrastructure Resources Center, The World Bank Group, [Management and Operating Contracts](#), accessed 16 February 2018.

⁷⁵ The average lifespan of a PPP is between 20 and 30 years, although some can cover shorter periods. PPP Knowledge Lab, [PPP Contract Types and Terminology](#), accessed 15 February 2018.

⁷⁶ World Bank Group, CoST and Public-Private Partnership Advisory Facility (2015), [Framework of Disclosure in Public Private Partnerships](#).

⁷⁷ See <http://standard.open-contracting.org/profiles/ppp/latest/en/extensions/ppp/>

⁷⁸ Marcela Rozzo and Norma Garza, [Public Private Partnerships Transparency and Accountability: Where is My Data?](#) Governance for Development Blog, The World Bank, 9 May 2017.

⁷⁹ Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 29.

⁸⁰ Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 29.

⁸¹ In-country expertise may be needed in many instances because much of the documentation will be in the local language. Initiatives to train in-country experts when there is limited availability may be a good way to increase in-country capacity.

⁸² These could include national government agencies such as departments of transportation, health, urban affairs, education, housing and energy and/or provincial or local governments such as municipal school districts or state hospital agencies.

⁸³ For guidance on how to carry out basic due diligence see International Anti-Corruption Resource Center, [Guide to Combating Corruption and Fraud in Development Projects](#), [Five Due Diligence Background Checks](#).

⁸⁴ Transparency International, [The Case for Integrity Pacts](#), 2016.

⁸⁵ For more information on corruption in public procurement in infrastructure see Neill Stansbury, Exposing the Foundations of Corruption in Construction, Transparency International's [Global Corruption Report](#), 2005, p. 36, identifying 13 features that make construction particularly prone to corruption. For a more detailed description of corruption and fraud schemes, see the [Anti-Corruption Training Manual](#) developed by the Global Infrastructure Anti-Corruption Centre (GIACC), jointly with Transparency International UK; and the [Guide to Combating Corruption and Fraud in Development Projects](#), published by the International Anti-Corruption Resource Center.

⁸⁶ For practical guidelines for identifying and mitigating the risk of corruption in the infrastructure sector see John Hawkins, [How to Note: Reducing Corruption in Infrastructure Sector](#), May 2013.

⁸⁷ Neill Stansbury, Exposing the Foundations of Corruption in Construction, Transparency International's [Global Corruption Report](#), 2005, p. 37.

⁸⁸ OECD, [Integrity Framework for Public Infrastructure](#), 2016, p. 4.

⁸⁹ UN Global Compact, [A Guide for Anti-Corruption Risk Assessment](#), 2013, p. 25.

⁹⁰ See, for example, Asian Development Bank, [Member Fact Sheet on Thailand](#), 2016, p. 3 (partnering with a non-governmental organisation to develop an Integrity Pact to fight corruption in public contracting); World Bank Group, [Social Accountability e-Guide, Section on Integrity Pacts](#)

⁹¹ Once the Monitoring Agreement and Integrity Pact are finalised and adopted, a monitoring organisation may have to adopt internal guidelines for communications with bidders to ensure that the engagement does not create a perception of bias or favouritism.

⁹² See, for example, [PACI Building Foundations for Transparency](#) in India.

⁹³ Transparency International, [The Business Case for Integrity Pacts](#), 2016.

⁹⁴ For more guidance on the selection of the project see Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 32; and Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 18.

⁹⁵ For both forms, the liability, intellectual property, logo use, dispute settlement and termination clauses are usually the ones which need a closer look of the monitoring organization's legal counsel.

⁹⁶ See, for example, Mexico's acuerdo por el que se establecen los lineamientos que regulan la participación de los testigos sociales en las contrataciones que realicen las dependencias y entidades de la administración pública federal (accord establishing the guidelines for social witness participation in contracting carried out by dependencies and entities of the federal public administration), publicado en el diario oficial de la federación (published in the official journal of the federation), 16 December 2004.

⁹⁷ For more information see Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 49.

⁹⁸ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 49.

⁹⁹ Monitoring Agreement Between Amapola and the Union of Municipalities of Madonie and Its Single Central Purchasing Body, signed on 20th May 2017, Article 2(m).

¹⁰⁰ Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 35.

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- ¹⁰¹ Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 8-9.
- ¹⁰² [Clean Contracting Manifesto](#), p. 3.
- ¹⁰³ The second part of the definition of “affected communities” used in this guide was adapted from the United Nations Institute for Disaster Risk Reduction’s [Guide on Terminology](#)
- ¹⁰⁴ [Clean Contracting Manifesto](#), p. 3.
- ¹⁰⁵ OECD, [Getting Infrastructure Right – A Framework for Better Governance](#), 2017, p. 26-27.
- ¹⁰⁶ OECD, [Integrity Framework for Infrastructure](#), 2016, p. 4.
- ¹⁰⁷ Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 16.
- ¹⁰⁸ <http://gob.mx/contratacionesabiertas/home>
- ¹⁰⁹ <https://prozorro.gov.ua/>
- ¹¹⁰ <http://www.opencoesione.gov.it/progetto/en/>
- ¹¹¹ <https://www.open-contracting.org/implement/#/>
- ¹¹² <http://www.monitorappalti.it/>
- ¹¹³ <https://ti-ukraine.org/en/projects/innovative-projects/dozorro-en/>. For a description of the beneficial impact of that the ProZorro and DoZorro systems have brought to procurement in Ukraine, visit <https://www.open-contracting.org/2018/01/12/learning-insights-latest-impacts-emerging-ukraines-prozorro-reforms/>
- ¹¹⁴ <https://sindhupalcheck.developmentcheck.org/about>
- ¹¹⁵ <https://sindhupalcheck.developmentcheck.org/>
- ¹¹⁶ <http://www.cabrane.com/>
- ¹¹⁷ <http://www.insep.gob.hn/sisocs/>
- ¹¹⁸ For further guidance on the elements to be included in the Monitoring Agreement see Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 34; Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#), 15 April 2014, p. 80-81, 95.
- ¹¹⁹ Transparency International, [Corruption in Public Procurement, A Practical Guide](#), 2014
- ¹²⁰ OECD, [Integrity Framework for Infrastructure](#), 2016
- ¹²¹ For a list of participating countries in the Construction Sector Transparency Initiative visit this [webpage](#). For the countries that have committed to implementing or have implemented Open Contracting Partnership’s Open Contracting Data Standard visit this [webpage](#).
- ¹²² The three models of social accountability have been developed by Mahmoud Farag, Social Accountability Coordinator, Transparency International.
- ¹²³ <https://vimeo.com/247051989>
- ¹²⁴ <http://www.constructiontransparency.org/cost-honduras-agreement-with-transparency-commissions?forumboardid=118&forumtopicid=118>
- ¹²⁵ <https://developmentcheck.org/>
- ¹²⁶ For more examples of the social accountability component to monitoring infrastructure projects see <https://saeguide.worldbank.org/infrastructure>
- ¹²⁷ Australian Government, Department of Infrastructure and Transport, [Infrastructure Planning and Delivery, Best Practice Case Studies](#), Volume 2, February 2012, p. 9 and 10.
- ¹²⁸ <http://monitoring.coalitionforintegrity.org/>
- ¹²⁹ <http://guide.iacrc.org/>
- ¹³⁰ <http://iacrc.org/resources/>
- ¹³¹ http://www.qiacentre.org/project_anti_corruption_system_home.php
- ¹³² Transparency International and the Water Integrity Network, [Integrity Pacts in the Water Sector: An Implementation Guide for Government Officials](#), 15 March 2010, p. 94.
- ¹³³ Transparency International and the Water Integrity Network, [Integrity Pacts in the Water Sector: An Implementation Guide for Government Officials](#), 15 March 2010, p. 94.
- ¹³⁴ For guidance on how to carry out basic due diligence, see International Anti-Corruption Resource Center, [Guide to Combating Corruption and Fraud in Development Projects, Five Due Diligence Background Checks](#).
- ¹³⁵ These could include, for example, the prohibition to work with the contractors or sub-contractors involved in the Project; the prohibition to work with any bidder or any of their sub-contractors during an established period of time after the tendering phase; the requirement for employees and consultants to disclose assets, conflicts of interest or potential conflicts of interest through a public declaration prior to and after the conclusion of the monitoring process; and the requirement to immediately report conflicts of interest should they arise during the monitoring process. Transparency International and the Water Integrity Network, [Integrity Pacts in the Water Sector: An Implementation Guide for Government Officials](#),

15 March 2010, p. 94. For sample general guidelines for non-profits see National Association of Non-Profits, Ethics and Accountability, [Conflicts of Interest](#).

¹³⁶ For an example of a Transparency International Chapter that has set up whistleblower hotlines see Transparency International Ireland's, [Speak Up Helpline Webpage](#). Transparency International – Ireland has also established a dedicated [centre](#) that provides assistance to whistleblowers.

¹³⁷ See Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 28.

¹³⁸ See, for example, recommendations from [Last Pass](#), and [Diceware](#)

¹³⁹ Two-actor identification is explained [here](#). Here is a [list](#) of all websites that at present support two-factor identification.

¹⁴⁰ This [website](#), for example, allows users to check their emails for viruses.

¹⁴¹ Risk assessments assist in identifying concerns, likelihood and impact of data security risks and find organisation-wide solutions. They should be periodic and a standing requirement.

¹⁴² Hardware encryption can protect your information in the event a laptop or phone is stolen.

Programmes that encrypt hardware include [BitLocker](#) and [Veracrypt](#)

¹⁴³ [Here](#) is an explanation of what HTTPS is and what it protects.

¹⁴⁴ [PGP](#) is one of the most common ways to do this. Lavabit and ProtonMail also have encryption on their servers but emails sent outside of those servers will not have the same level of encryption. These guidelines on protecting confidential information were derived from notes from Transparency International, Integrity Pact Webinar of Safety and Security, 16 August 2017.

¹⁴⁵ For a discussion of the term “commercially sensitive information” see Cindy Kroon, [Diving Deeper Into Commercial Confidentiality](#), 19 September 2016. See also Gavin Hayman, [The More the Merrier, How Much Information on Government Contracts Should be Published and Who Will Use It?](#), 21 August 2015. For a practical guide on making government contracts available to the public while addressing legitimate concerns about confidentiality see Charles Kenny, [Publishing Government Contracts: Addressing Concerns and Easing Implementation](#), 10 November 2014.

¹⁴⁶ See Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 42, 48.

¹⁴⁷ Transparency International Ireland, for example, has an independent [Transparency and Legal Advice Centre](#) specialising in providing legal advice to anyone who wishes to disclose wrongdoing, particularly under the Protected Disclosures Act 2014. Transparency International's [Advocacy and Legal Advice Centres \(ALACs\)](#) provide free and confidential legal advice to witnesses and victims of corruption.

¹⁴⁸ Transparency International and the Water Integrity Network, [Integrity Pacts in the Water Sector: An Implementation Guide for Government Officials](#), 15 March 2010, p. 95.

¹⁴⁹ For more guidance on stakeholder involvement see Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 36.

¹⁵⁰ In TI's Integrity Pacts - Safeguarding EU Funds Project, it was not possible to make Integrity Pacts mandatory for all bidders in any of the 17 EU Funds projects except for those in Italy. In some cases it was possible to make the Integrity Pact compulsory for the successful bidder. In other cases, for example in Bulgaria, the Integrity Pact was optional even for the successful bidder.

¹⁵¹ The Integrity Pact between the Ministry of Health and Transparency International Slovenia was entered into by each bidder submitting an accession form to the contracting authority and the independent monitor.

¹⁵² Transparency International, [Business Principles for Countering Bribery](#), 2013.

¹⁵³ Transparency International, [10 Anti-Corruption Principles for State-Owned Enterprises](#), 2017.

¹⁵⁴ Transparency International, [Assurance Framework for Corporate Anti-Bribery Programmes](#), 2017.

¹⁵⁵ Transparency International, [Transparency in Corporate Reporting](#), 2016.

¹⁵⁶ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 44.

¹⁵⁷ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 45.

¹⁵⁸ For more information on international arbitration clause see Paul D. Friedland, *Arbitration Clauses for International Contracts*, Second Edition, 2007.

¹⁵⁹ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 45.

¹⁶⁰ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 41.

¹⁶¹ For more on debarment or exclusion, see Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 41. There is a growing acceptance of exclusion

as a sanction in the EU and other regional and national frameworks. However, where there is acceptance, each jurisdiction will have its own standards for the application of exclusion of bidders from government procurements. For example, under the EU procurement directives, there is a distinction between “mandatory” and “discretionary” exclusion. Mandatory exclusion will usually happen if a company is *convicted* of an offence and the exclusion will generally be for a certain number of years. Waiting for a conviction may not be feasible under an Integrity Pact. According to a legal memorandum written for Transparency International, “a mandatory Integrity Pact would be based on the discretionary exclusion ground based on grave professional misconduct of the economic operator and the exclusion ground based on the need to preserve independence of the contracting authority”. Legal Memorandum to Transparency International from Ashurst LLP, 22 April 2016, Section 2.4. The standard for exclusion for grave professional misconduct is if “the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct”. *Id.*, Section 2.1. The standard for exclusion on the need to preserve the independence of the contracting authority is “if the economic operator has undertaken to unduly influence the decision-making process of the contracting authority to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.” *Id.*

¹⁶² Integrity Pact between the Ministry of Health and Transparency International-Bulgaria, Article 14.

¹⁶³ World Bank, [Office of Debarment and Suspension](#), Report on Functions, Data and Lessons Learned, Second Edition, 2015, p. 9.

¹⁶⁴ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 42.

¹⁶⁵ In addition to the traditional parties to the agreements, other parties may be contracting parties, or countersigning parties – such as the donor that provides the funding for the project, the managing authority that manages the funds out of which the project is financed, a supervisory body of the contracting authority, or other government body that may control the legality of the project. While this may increase their engagement, ultimately the more complicated the agreements are, the less efficient they will be. Other options to ensure engagement can be pursued. For example, an early draft of your agreements can be circulated for comments and suggestions. Transparency International, *How To Guide*, p. 34-35.

¹⁶⁶ Text of preamble derived from [Global Open Contracting Principles; UNCITRAL Model Law for Public Procurement, UNCAC, Article 9, WTO's GPA](#). Some partners in Transparency International's Integrity Pacts: Protecting EU Funds Project have also found it useful to mention the constraints of the contracting authority in the preamble. For example, in Italy, the contracting authority's need to abide by the concept of proportionality was inserted in the preamble. *Covenant of Integrity Between ___ and ___ Related to POR FSE 2014/2020 Axis 1 "Occupation" and 3 "Education and Training" (OT 8 and 10)*, 2016, Lombardie, p. 1.

¹⁶⁷ The scope can include all contracts related to the project. If the number of contracts will be significant and make it hard for the monitoring organisation to monitor all, the scope can be limited to just all major contracts and subcontracts by adding a minimum monetary value.

¹⁶⁸ See Section IV of this guide; OECD, [Integrity Framework for Public Infrastructure](#), 2016.

¹⁶⁹ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 42.

¹⁷⁰ A more specific list of all pro-active disclosure can be provided. For guidance see the [Infrastructure Data Standard](#) and the [Global Open Contracting Principles](#)

¹⁷¹ As mentioned earlier, there may be legal or other restrictions that make it difficult to make the Integrity Pact compulsory on all bidders. In this case, the monitoring organisation and contracting authority would have to decide how to proceed based on the factors discussed in Section VI.F.

¹⁷² Some whistleblower protection laws or rules may require the identity of whistleblowers to be disclosed during investigation or proceedings to meet due process requirements. Anonymity may therefore not always be guaranteed in all jurisdictions.

¹⁷³ See UNCAC, Article 33.

¹⁷⁴ The main or broad data points under the Open Contracting Data Standards, such as those contained in Annex I, could be attached to the Monitoring Agreement or Memorandum of Implementation.

¹⁷⁵ For more guidance on complementary citizen monitoring, see Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 42.

¹⁷⁶ A list and timeline of key meetings/hearings that the monitoring organisation needs to attend can be added as an addendum. These could include, for example, the opening of the pre-qualification and bids, and meetings related to the evaluation of the pre-qualification and bids. In some countries, attendance at

some meetings, such as bid evaluation committee meetings, may not be allowed. In Romania, for example, the monitoring organisation cannot participate in any meetings related to the evaluation process. Under current procurement law, only dedicated external procurement experts that are part of the evaluation committee can participate in these meetings. However, the contracting authority has agreed to provide the monitoring organisation with the procurement folder (once the evaluation process has finished) and the monitoring organisation will provide input based on the documents published by the contracting authority.

¹⁷⁷ A more specific listing of all processes could be added as an addendum or schedule. See, for examples, GIACC, Independent Assessor Agreement, Schedules A and B, listing all assessor duties with respect to pre-qualification, tender, nomination, pre-contract disclosures, major contracts and subcontracts, work services, materials and equipment, and claims.

¹⁷⁸ See [Case Study in Vanuatu](#) for the importance of assessments being carried out independently and impartially.

¹⁷⁹ For more guidance see Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 34; Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 80-81, 95.

¹⁸⁰ The standard for the treatment of confidential information was derived from the World Bank's [Guidance on PPP Contractual Provisions](#), 2017 Edition, p. 99 and based on guidance from OCP.

¹⁸¹ CoST deliberately avoided including disclosures in the IDS that would include commercially sensitive types of information because it is not in the public interest to release it. For example, completed bids are not disclosed. A summary of essential components in the bids is sometimes disclosed, but on a reactive rather than in a proactive basis.

¹⁸² Special guidelines will likely be needed for the sharing of some highly sensitive data and documents with the monitoring organisation, such as the preliminary scores of the bids, or the actual bids, while the reviewing commission or entity is still assessing them. For example, the sharing of this information through email or the taking of this information outside of the contracting authority's offices may be prohibited and access to them may have to be restricted to in-person review at the evaluation site.

¹⁸³ See GIACC [Independent Assessor Agreement](#), Schedule C for sample schedule of reports.

¹⁸⁴ For other definitions of "beneficial owners" see https://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf; FATF Guidance: "natural persons who ultimately own or control the legal entity and/or the natural person on whose behalf a transaction or activity is being conducted"; EU 4th Anti-Money Laundering Directive; For a listing of definitions in different jurisdictions see: <https://www.loc.gov/law/help/beneficial-ownership/disclosure-beneficial-ownership.pdf>

¹⁸⁵ GIACC, [Contract Terms](#), p. 2.

¹⁸⁶ See OECD, [Integrity Framework for Public Infrastructure](#), 2016.

¹⁸⁷ World Economic Forum, Partnering Against Corruption Initiative, [Good Practice Guidelines on Conducting Third Party Due Diligence](#), 2013.

¹⁸⁸ For other sample language on the duties of procurement officials see OECD's 2009 [Tool: Code of Conduct for Procurement Practitioners](#)

¹⁸⁹ See UNCAC, Article 10(e).

¹⁹⁰ A list of broad data points to be disclosed under the IDS and the OCP principles could be added as an Annex to the Monitoring Agreement/Integrity Pact/or Memorandum of Implementation. See **Annex I**.

¹⁹¹ The ethical obligations can be more specifically listed. For international standards applicable to codes of conduct of public officials see: [Council of Europe, Recommendation No. R\(2000\) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials](#); the UN's [International Code of Conduct for Public Officials](#); [Sample Codes compiled by the OECD](#). For a code of conduct specifically designed for procurement officials see, OECD's 2009 [Tool: Code of Conduct for Procurement Practitioners](#); for a Code of Ethics specifically tailored for project managers (from the private sector and public sector) see the [International Project Management Association's Code of Ethics and Professional Conduct](#)

¹⁹² See UNCAC, Article 9(e).

¹⁹³ See UNCAC, Article 12(e).

¹⁹⁴ See UNCAC, Article 12(c).

¹⁹⁵ Standard derived from [GIACC, PACS Standard Number 5, Pre-Contract Disclosures](#); and the U.S. Federal Acquisition Regulations at https://www.acquisition.gov/far/html/Subpart%203_10.html; https://www.acquisition.gov/far/html/52_200_206.html#wp1141983

¹⁹⁶ Some whistleblower protection laws or rules may require the identity of whistleblowers to be disclosed during investigation or proceedings to meet due process requirements. Anonymity may therefore not be always guaranteed in all jurisdictions.

¹⁹⁷ See UNCAC, Article 33.

¹⁹⁸ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 40.

¹⁹⁹ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 40.

²⁰⁰ See [GIACC, PACS Standard Number 5, Pre-Contract Disclosures](#)

²⁰¹ For anti-corruption best practices that apply to national and multi-national construction companies see: [Transparency International's Business Principles for Countering Bribery](#); [10 Anti-Corruption Principles for State-Owned Enterprises](#); World Economic Forum; [OECD Guidelines for Multi-national Enterprises](#)

²⁰² See [WEF/PACI: Conducting Third Party Due Diligence](#) for standards in third party due diligence.

²⁰³ See Transparency International UK's [Managing Third Party Risk: Only as Strong as your Weakest Link](#) on best practice for third party management in an anti-corruption compliance programme.

²⁰⁴ Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 40.

²⁰⁵ Standards derived from [10 Anti-Corruption Principles for State-Owned Enterprises](#) [Transparency International's Business Principles for Countering Bribery](#)

²⁰⁶ See UNCAC, Article 12(f).

²⁰⁷ For components of internal reporting mechanism see Transparency International, [Business Case for Speaking Up: How Internal Reporting Mechanisms Strengthen Private Sector Organisations](#), 31 July 2017.

²⁰⁸ See Transparency International, [Transparency in Corporate Reporting – Assessing Emerging Market Multi-Nationals](#), 2016, p. 16 for an explanation of this corporate transparency requirement.

²⁰⁹ See Transparency International, [Assurance Framework for Corporate Anti-Bribery Programs](#), 21 June 2012, for more guidance.

²¹⁰ As noted earlier, the dispute resolution mechanism that is chosen should be independent, transparent and accountable. In particular, when possible, the selection process of arbitrators should be transparent. There should be notification to the public of initiation of proceedings and there should be periodic reporting on status of proceedings. The award or final decision needs to be made public, and there should be a mechanism to allow third party (stakeholder) contributions such as amicus curiae. Transparency International, [Integrity Pacts in Public Procurement: An Implementation Guide](#) 15 April 2014, p. 45.

²¹¹ As noted before, all sanctions provisions have to be vetted by local legal counsel. For example with respect to damages, in English law, a fixed sanction for breach that is not a genuine pre-estimate of contractual damages, may be considered a "penalty clause" and deemed ineffective. Legal Note from Admas Habteslasie and Emmanuel Sheppard to Transparency International, 13 November 2017, p. 7. Such problems can be addressed, by, for example in this case, relying solely on indemnification or by providing for a bonus or financial benefit if the obligations under the Integrity Pact are met instead of damages. Conversation with Eva Anderson, Transparency International, Defence and Security Programme, 6 December 2017.

²¹² See guidance in Section VI.F.5 for special considerations with respect to debarment or exclusion.

²¹³ Transparency International, [Integrity Pacts: A How to Guide from Practitioners](#), 18 May 2016, p. 31.

²¹⁴ This table is loosely based on the table in the OECD's [Integrity Framework for Public Infrastructure](#), 2016.

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