

**International PPP forum: “Implementing the United Nations  
2030 Agenda for Sustainable Development through effective,  
people-first Public-Private Partnerships”**

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**UNECE PPP for SDGs Guidelines  
on  
Zero Tolerance to Corruption  
in  
PPP Procurement**

**Draft prepared by the ZTC Project Team  
Circulated for further comments**

## **Status of the Guidelines**

***These guidelines are to be read as a draft version of the future UNECE Standards on Transparency and Integrity as the UNECE wishes to further develop these initial recommendations within the larger context of the SDGs and in particular with Objectives 9-10 and 16. Furthermore, these Guidelines on Transparency and Integrity will be fully aligned with the AAAA - Addis Ababa Action Agenda and its overall objective to involve all stakeholders, private and public whilst fostering renewed dialogue and trust building.***

***These Guidelines will be circulated for further input from the ZTC Working Stream team of experts and then shared, under the One UN concept, with other UN bodies. NGOs will be also consulted and the Guidelines will ensure that the work and initiatives of other institutions will be referred to in order to provide an accurate account of where the business community, Civil Society and other key stakeholders stand on the need for Transparency and Integrity. The final objective is to engage the UN Standard formal validation process, having developed comprehensive "Policy + Practical Recommendations" Guidelines for our Member States, ensuring alignment with the new 2030 Sustainable Development Goals***

## **Objectives**

***The overarching objective is to deliver to Member States, Guidelines which will contain Policy Recommendations, to allow decision makers and policy makers to assess in a simple yet efficient manner whether their current policy frameworks meet the proposed UN Standards on Transparency and Integrity and or whether further work and adjustments need to be implemented in order to ensure accountable and transparent processes to promote more PPPs as levers and a new focus on economic growth for People, Planet and Prosperity. Even if the UNECE primary focus is on PPPs for SDGs, as PPP is a form of procurement, any improvement to policy and legal frameworks on Transparency and Integrity for PPPs, will also benefit all forms of public procurements to the benefit of all ....***

***These Guidelines are also designed to ensure that any Transparency and Integrity Policy Standard is supported by Practical Recommendations. The later have been drafted based on Best Practices collated by UNECE private and public sector experts, on a world-wide basis and based on empirical evidence.***

***The UNECE is particularly proud of its capacity to access such a variety of quality sources of reliable information and data, which confer to its Recommendations a legitimacy very few other institutions can claim as the UNECE is non-conflicted in its interaction with Member States.***

## **Scope**

***These initial set of sample standards were designed to identify, define and prevent "corruption and bribery" active or passive, public or private, during any PPP procurement process from project origination up to final award.***

***The original focus was very much on tightening loopholes and identifying "entry points" of misconduct from the private and public side under PPP Procurement.***

***And whilst entire industries and sectors are still perceived as being prone to unethical business practices, the private sector has been prompt in responding constructively to these assumptions, public and other***

*private stakeholders have failed to recognize the pressure these industries are under, with unethical requests and sometimes extortion.*

*The new focus on SDGS creates for the UNECE an opportunity to cast in an entirely new light the need for” jointly dealing with corruption and bribery” as not one party can win alone. Focus needs to be on Good Governance and a new take on “Compliance”. It should not be benchmarked on a coercive basis, triggering an array of penalties but rather be balanced with incentives for compliance. The UNECE upcoming “Guiding Principle for Good Governance in PPPs for SDGS” is setting ambitious goals for its Member States, whilst expecting that renewed trust via dialogue and a shared vision on SDGs objectives, will incite the private sector to pursue its own efforts for more integrity and transparency. To its own benefit.*

*The UNECE ZTC Working Stream would thus request the permission to rename its Working Stream to Transparency and Integrity.*

#### **Format**

*Each of the proposed Standards include, a Transparency & Integrity Principle and Practical Recommendations. Once again, the objective of these Guidelines is to provide for policy makers with a Guide Book to assess in a dynamic way whether their current policy and legal frameworks account for the “T&I Principle” or “target issue to be addressed” or not. The Practical Recommendations provides an example based on Best Practices on how to implement measures to meet the T&I Principle. A PPP Procurement Milestones Chart is also annexed to highlight “possible entry points” of active or passive unethical behaviors both by public officials and private sector.*

#### **Definitions**

*The UNECE team of experts would like to salute the work performed by the NGO Transparency International identifying the various forms of unethical behavior whether active or passive and would like to refer our readers to their interactive Glossary on Transparency International web site.*

*Finally, we would like to use the following Project Life Cycle Chart\* to support our analysis of the importance of the Procurement and upstream phases in designing the most appropriate UNECE Transparency and Integrity Recommendations and Standards.*

#### **Sources and References**

*Beyond the expertise and experience collectively contributed by the experts within the Working Stream, these Standards also draw and highlight analysis performed by authoritative researchers and institutional stakeholders, a list of which is appended.*

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## ***Introduction***

The proposed Standards are particularly relevant for PPP Projects in the core Infrastructure Service sector including both public payment PPP (PFI PPP or availability payment where the public service is not fully transferred to the private party) and the Concession PPP family (where public service is under the full responsibility of the private partner recovering its investment entirely or mostly from users' fees).

**As mentioned further research and work needs to be carried out to focus more specifically on PPPs for SDGs, especially for the delivery of these infrastructure Essential Services.**

**The current proposed Standards are further divided into General Governance Standards of particular relevance for PPP and Standards more specific to each procurement phase.**

They include and develop PPP concepts, rules and guidelines originating from anti-corruption regulation published by international institutions and from procurement rules and policies from leading institutions, regions or States. Please refer to Sources and References.

**The underlying objective is to propose Standards more or less of universal nature which are easy to understand, simple to apply and subject to "little or no judgment" in determining their effective implementation.**

**An additional objective is to inform and educate the stakeholders about ethical behavior and a culture of integrity and accountability shared by all for individuals, companies and institutions participating to the PPP procurement process.**

# GENERAL GOVERNANCE STANDARDS

## I. Avoidance of conflicts of interest and related undertakings

### **Principle**

Conflict of interest arises where a person mixes up or is confused by his/her roles. They may arise in a particular context as the result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Any conflict of interest which may arise for personal reason or institutional organization during the procurement process must be disclosed by the individual or institution as soon as it becomes aware of them.

Public and private sector participants to the procurement process, agents or personnel shall not abuse of their powers for private gain more particularly during exchanges and dialogue which may take place in a process of evaluating or optimizing the bids.

The bidder or any of its sub-contractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favor or disfavor to any person in relation to the contract.

### **Practical Recommendation**

*Creating a culture of Integrity and establishing principles of Transparency and Accountability are essential steps to generate a framework for Good Governance which subsequently contributes to building Trust between all stakeholders.*

*Ensuring that Ethical Codes of Conduct are in place as well as organizing related capacity building and training at all levels within public sector and administrations are the positive measures to generate the right appropriation process of what constitutes an ethical code of conduct. The negative measures are however necessary in as much as any infringement to the above Standards shall be sanctioned by criminal penalties. Ensuring a transparent, independent, efficient and quick procedure of enforcement shall be organized as well as ensuring the enforceability of related decisions are further recommended. Legally binding on all parties.*

*Ethical Code of Conducts need to be in place within the Public Sector and the Private sector, over the course of a procurement process, must show evidence of its adherence to similar/ Best Practices Ethical Codes of Conduct. And or accept to sign an Ethical Code of Conduct proposed by the Contracting Authority, as part of the Bidding Process.*

## II. Compliance with laws and Code of PPP Ethics

### **Principle**

Private and public sector participants to the procurement process shall comply with all applicable local and international laws and regulations and codes relating to anti-bribery and anti-corruption.

The tender documents shall explicitly refer to such applicable laws, regulations and codes and include an undertaking by the Public Authority and by the bidders to comply with them.

**Practical Recommendation**

*A Code of PPP Ethics clarifying the standards of behavior of public and private participants involved in the procurement process (individuals, companies, institutions) shall be made public, incorporating international best practices and become part of the bidding conditions and Terms of Tender. The Code of PPP Ethics shall be formally endorsed by the Public Authority on behalf of itself and the various units and committees involved in the process and by the bidders both for themselves and the various contractor advisors, consultants and contractors participating to the bidding process.*

*Further compliance with the principle of Transparency and Integrity strongly suggests that such Code of PPP Ethics be available on line for consultation, including by Civil Society.*

### **III. STANDARDS APPLICABLE TO UNITS, COMMITTEES AND BOARDS INVOLVED IN THE PREPARATION, EVALUATION AND AWARDING OF PPP PROJECTS**

**Principle**

The activity of preparation, evaluation, awarding and of resolving dispute in PPP procurement shall always be separated and organized by independent Units, Committees and Boards fully independent from each other.

Specialized Units, Committees and Boards shall be created at appropriate level commensurate with the needs and international best practices (national, local, sector specific depending of the nature and complexity of projects). The functions/responsibility and decision making process of those Units, Committees and Boards shall be made public and in all cases part of the bidding documents

Individuals including consultants, advisors and experts participating to those Units, Committees and Boards shall comply with the Code of PPP Ethics and shall not participate directly or indirectly, nor at the same time, to the activity of more than one of these Units, Committees and Boards. This prohibition shall remain valid for one year after termination of the assignment in any of these structures.

**Practical Recommendation**

*Role, Scope of Mission of these Independent Boards and or Units and Committees as well as related Code of Conduct must be clearly spelled out. Their Reporting Activity/ Timing of Deliverables etc. Accountability and Obligations must be measurable and consequences of non-compliance shall be made clear (penal and legal consequences). Terms & Conditions of Appointment should also be made available on line.*

## **STANDARDS RELATING TO THE PPP PROCUREMENT PROCESS**

### **IV. Probity Officer**

**Principle**

Probity Officers justifying of professional capacity, skills and independence and compensated in such a way that they will remain independent from all public and private parties involved in the procurement process,

shall be appointed for participating to the process, and more particularly to the proceedings of the evaluation committee, in all situations, where the procurement is divided in two stages including a multi criteria evaluation and in competitive dialogue situations.

The Probity Officer is not authorized to give any opinion on the evaluation. His/her main role is to control that the proceedings fully comply with the applicable procurement laws and standards and the Code PPP Ethics.

#### **Practical Recommendation**

*The Probity Officer reports must be comprehensive and should comment on all streams of communication. Again clear and measurable guidelines should be provided to the Probity Officer in terms of Role/ Scope of Mission/ Code of Conduct/Reporting Activity/ Timing of Deliverables etc. Accountability and Obligations as well as related penal and legal consequences should be spelled out. This Guideline and Terms & Conditions of Appointment should also be made available on line.*

*This Probity Report shall be part of the documents reviewed by the body in charge of approving the choice of the successful bidder. And as such this Probity Report will need to be accessible to a restricted audience at first (to be documented against leakage etc) and then by a court, in case of legal challenges.*

## **V. Fairness Auditor**

### **Principle**

Fairness Auditors justifying of professional capacity, skills and independence and compensated in such a way that they will remain independent from all public and private parties involved in the procurement process, shall be appointed for monitoring the process, and more particularly, the proceedings of the evaluation committee, in all situations, where the procurement is divided in two stages including a multi criteria evaluation and in competitive dialogue situations.

The Fairness Auditors shall be also appointed at the request of any of the parties claiming misprocurement.

The Fairness Auditor(s) is empowered to audit the full procurement process and shall issue a Report confirming compliance with the applicable procurement rules or otherwise issuing reservations about the process.

The Fairness Auditor Report shall always be part of the document reviewed by the body in charge of approving the choice of the successful bidder.

### **Practical Recommendation**

*Again clear and measurable guidelines should be provided to the Fairness Auditor(s) in terms of Role/ Scope of Mission/ Code of Conduct/Reporting Activity/ Timing of Deliverables etc. Accountability and Obligations as well as related penal and legal consequences should be spelled out. This Guideline and Terms & Conditions of Appointment should also be made available on line.*

## **VI. Standards for drafting the terms of reference for consultants and experts**

### **Principle**

The objective is to aggregate to the extent necessary the skills and experience of independent consultants and experts for each stage of the project from evaluation of the needs up to final award. Due consideration should be given to the documented capacity of consultants and experts to work within a team able to deal with the interactions of the studies in different areas which is one of the distinctive feature of PPP.

- Transparency: as much information as possible relative to the project is made available.
- Fairness: the same information should be received at the same time and evaluations are made based on the same criteria.
- Cost-effectiveness: costs should be minimized by requesting detail breakdowns easy to compare and providing for remuneration of the service adapted to the particular conditions of deliveries (such as cost plus, lump sum, schedules of rates and estimated quantities...).
- Avoidance of conflict of interest: independence from companies or institutions, financial or other having a potential interest in the Project. Mandatory reference to the Code of PPP Ethics.

#### **Practical Recommendation**

*Assessment of the reason to hire consultants and allocation of budgets in relation to the size, complexity and overall expected cost of the project ie a "Value for Money" approach on Consultants and a Guideline non TOR (Terms of References) are highly recommended to force more transparency in an otherwise opaque upstream decision which is known to be one of the early "entry points" of unethical behavior.*

*Further selection criteria and hiring process- TOR - would benefit from increased transparency for an optimal Reporting on Compliance and interaction with Civil Society. On line availability of TOR would be a plus.*

## **VII. Standards for drafting the consultancy and experts' contracts**

### **Principle**

Contracts based on standards and contract terms & conditions to be published from time to time by the government or international institutions.

Contract conditions permitting the Contracting Authority to adapt or to limit the scope of the services of the consultant or expert to a particular phase in the preparatory or tendering process.

### **Practical recommendation**

*Similar recommendation on documenting Terms & Conditions of Contract (including clear specifications in terms of deliverables and timelines & milestone reports etc) for Experts and Consultants with built-in bilateral flexibility and "appeals and arbitration" in case of disagreement. On Line availability would be a plus.*

## **VIII. Standards for monitoring consultants and experts**

### **Principle**

The Contracting Authority shall appoint a Project Officer with a large experience in dealing with consultants and experts for monitoring the activities of consultants and experts including their respective organization, human resources, relationship with the public sector and the stakeholders, control of the methodology for administrating the contract, drafting notes and reports and meeting the date or time lime for deliverables.

### **Practical Recommendation**

*Again clear and measurable guidelines should be provided to the Project Officer in terms of Role/ Scope of Mission/ Code of Conduct and interaction with Consultants and Experts /Reporting Activity/ Timing of Deliverables etc. Accountability and Obligations as well as related penal and legal consequences for non - compliance should be spelled out. This Guideline and Terms & Conditions of Appointment should also be made available by the Contracting Authority on line.*

## **IX. Transparency in tender notice and bidding documents**

### **i. Tender Notice**

The Tender Notice objective is to seek responsive candidates by ensuring the highest possible degree of public information in proportion to the purpose, nature, subject and value of the Public-Private Partnership project.

Tender Notices shall:

- be simple and accurate and contain all the main information relating to the tender and in particular the functional specifications which are the essence of PPP and are required by the objective and purpose of the Project in order to give sufficient information for any potential bidder.
- in all cases be published through information channels having the best chances to reach responsive candidates and in all cases on the website of the contracting authority.
- be published in a time frame permitting the bidders to have sufficient time to prepare their bids, taking into account the nature and complexity of the project and international best practices.

### **ii. Bidding documents**

All candidates shall have access to the same information and same documents for preparing applications and for participating in the procedure, as well as to information on the conditions and criteria for selection.

Guidelines and standardization of documents such as template contracts shall be issued taking into account both local and international laws, situations and best practices

Standardized bidding documents shall aim at enabling a common approach to undertaking PPPs across all sectors and provide a transparent process for the benefit of all stakeholders.

### **iii. Proportionality**

The tender procedure shall not include any requirements of technical, professional or financial capabilities which are disproportionate or excessive in relation to the requirements and feasibility of a Project at any of its stages.

### **iv. Integrity**

Bidding documents shall provide for the disqualification of a bidder when its bid may lead to a direct or indirect benefit to any current manager or employee of the Contracting Authority or to any manager or employee having left the Contracting Authority for less than two years or to any consultant or expert involved in the Project. Ex ante communication between a member or the Committee and any of the bidders and their advisors is prohibited unless disclosed and agreed by all bidders.

The document shall also indicate that the bidders shall refrain from influencing the awarding process through any direct or indirect contact with the Contracting Authority or with any member of the evaluation committee or any consultant or expert involved in the Project.

Each bid shall include a Code of PPP Ethics to be signed by each Bidder as a condition of acceptance of its bid.

### **Practical Recommendation**

*Access to e-documentation is considerably changing the landscape and offers unprecedented means to propose and manage a fully transparent process. The website of Transparency International for example, offers a step by step tutorial on how to proceed with an e-tender process. Another recent initiative via IIS is allowing another type of disclosure and monitoring process for public sector with partial interactive input from private sector. Interestingly both approaches empower public administrations and naturally create benchmarks in transparency and efficiencies between departments within a same country or some emulation between countries in a given Region.*

## **X. Standards for the Tender Evaluation Committee**

### **Principle**

Members of the Tender Evaluation Committees shall be appointed after giving due consideration to the particulars of the Project, the procurement method, the nature and timing of the evaluation process, and the skills and resources necessary for permitting the Committee to carry out a fair, independent and professional evaluation. Each member and the Committee shall be bound by the Code of PPP Ethics or to a charter to the same effect.

The aggregation of the respective technical, organizational, operational and financial background of the members shall be such that each Tender Evaluation Committee has the capacity to organize itself in order to be able to discharge its duty efficiently and free of conflicts of interest.

### **Practical Recommendation**

*Terms of Reference (TOR) in relation to selection Criteria as well as clear Scope and Mission, Code of Conduct as well as Reporting Obligations Guidelines should be spelled out and should be available on line. Consequences of non-compliance should also be documented.*

#### **i. Proceedings of the Committee**

The Secretary shall keep a record of the evaluation sheet used at each step of the evaluation process. A summary of the evaluation sheets shall be annexed to the report transmitted to the body in charge of approving the choice of the successful bidder.

The proceedings of the Committee and its recommendation for awarding the bid shall be recorded in a report signed by all its members and kept in safe custody.

### **Practical Recommendation**

*Terms of Reference (TOR) in relation to selection criteria of Members of the Committee as well as clear Scope and Mission, Code of Conduct including the Minutes of the nomination of the Secretary as well as*

*Reporting Obligations Guidelines should be spelled out and should be available on line. Consequences of non-compliance should also be documented.*

ii. Integrity

Upon acceptance of their appointment, each member shall disclose in writing, any existing or potential conflict of interest. He/she must continually monitor the risk of conflict of interest and if he/she feels that such a conflict crystallizes during its term of appointment, he/she must disclose it to the Chairman at short notice and resign from the Committee.

The Committee and each member of the Committee undertake to keep strictly confidential all information submitted by the bidders whether in writing, orally and otherwise. The Committee and each member shall organize itself in such a way that the confidential information is not divulged directly or indirectly to non-authorized person.

Upon acceptance of their appointment, each member shall sign a confidentiality agreement.

***Practical Recommendation***

*Each Member of the Committee has to sign a Confidentiality Agreement. Furthermore, the Agenda of each meeting of the Committee must include as a first Item "Declaration of Conflicts of Interest" and the Minutes must attest that the Secretary asked attendees to declare any potential or existing Conflict of Interest. A Guideline on what may constitute a Conflict of Interest or a potential Conflict of Interest should be provided by the Secretary to all Members of the Committee upon them joining the Committee.*

**XI. Qualification and evaluation process**

i. Prequalification, post-qualification and preselection

In all situations of two steps procedure and competitive dialogue, the number of candidates invited to bid shall take into account the cost of preparing and bidding.

With the exception of simple or repetitive Project where functional specifications are of standards nature, the number of candidates invited to bid shall be comprised between 3 to 6.

The purpose of prequalification and pre selection is to advertise the project to the largest number of potential bidders with sufficient information to allow the candidates to evaluate their interest for the project, to be informed of the criteria for prequalification and pre selection and if interested, to submit a complete bid and documentation with the objective of being pre-qualified or pre-selected.

Prequalified or pre-selected bidders shall be informed in the invitation to tender that the successful bidder will have to update the prequalification or pre selection documentation submitted and be required to provide additional evidence for complying with the criteria. It appears that the criteria having been taken into account for qualifying the bidder are not met, the bidder shall be disqualified.

***Practical Recommendation***

*Access to e-documentation is considerably changing the landscape and offers unprecedented means to propose and manage a fully transparent "Qualification and Evaluation Process". Abundant literature and e-tutorial offer a step by step tutorial on how to proceed with disclosure of the various phases of the Qualification and Evaluation Process. Another recent initiative via the Sif-IISS data base, is allowing another type of disclosure and monitoring process for public sector with partial interactive input from private sector. Interestingly both approaches empower public administrations and naturally create benchmarks in*

*transparency and efficiencies between departments within a same country or some emulation between countries in a given Region.*

ii. Competitive Dialogue Standards

- General standards

If permitted by law and in case of a particular PPP Project/ focus or expectations from this form of Procurement, and where the Contracting Authority may not have sufficient financial and technical expertise to evaluate the bids on the basis of the functional requirements, or when the Contracting Authority is not expecting a large group of bidders, a Competitive Dialogue procedure may be organized.

The purpose of the Dialogue is to identify and define the best means to satisfy the Public Authority objectives and needs. During the Dialogue, the Public Authority shall ensure inter alia, that all candidates are provided with the same information. The recourse or opportunity to engage into a Competitive Dialogue must be disclosed to avoid any “political” and or “technical” recourse from civil society and or bidders and or opposition. Competitive Dialogue should not be permitted for functional specifications, standards or norms, which are of the essence of the project and described as intangible in the Tender Documents. Unsolicited proposals of interest to a Public Authority may be managed with a great degree of care and consideration via a Competitive Dialogue or a formal new Tender.

Technical and financial solutions proposed by the candidates and all proprietary information submitted by a bidder, shall remain confidential and shall not be communicated to any other bidder.

**Practical Recommendation**

***The current EU Directive on Competitive Dialogue is summarized under this Chart***

1. Conduct a traceable and transparent procedure respecting tenderers’ equal treatment.	6. Monitor a fair and optimized distribution of risks between the public contractor and private partner according to their respective capacities to cover or mitigate said risks, and prior definition of contract modification terms.
2. Ensure that steering and quick-decision capacities are well organized to enable responsible and fruitful dialogue without excessive delays.	7. Comply with the propositions and dialogue’s confidentiality, including intellectual property and know-how in whatever forms, and financial and contractual innovations.
3. Specify the rules for conducting Competitive Dialogue, thereby enabling tenderers to master the stakes of their dialogue participation with sufficient clarity.	8. Cease pointless and costly discussions with tenderers as soon as their solutions no longer appear liable to be selected at the final stage.
4. Specify, on the basis of operating specifications and/or project items and via a Competitive Dialogue, the principal issues on which the public contractor expects contributions from tenderers.	9. Provide compensation for unsuccessful tenderers according to their contribution and the project’s context.
5. Draw up, during the Competitive Dialogue, the operational program in terms of results to be	10. Call to remit final bids shall not constitute either a new consultation or a new negotiation.

achieved and requirements to be complied with, specifying the items which may or may not be modified.	
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## XII. Misprocurement and protests

If after all these early precautionary considerations and “fraud & corruption” risk mitigation measures, the quality of transparency of the Tender and Evaluation Process is questioned and or the accessibility of information, further consideration must be given to provide effective disclosure and protest mechanisms: these are major remedies against misprocurement and fighting corruption.

Disclosure mechanism include

- Whistle blower policies and guidelines including protection /guarantee of confidentiality and anonymity. Any such disclosure must be elevated to the Probity Officer and or Fairness Auditor independently nominated for the project. And or further elevated to a neutral independent body.
- The Public Authority must 30 days at least before the date of signing the PPP contract disclose to all the prospective bidders having contacted the authority and all the bidders, the name of the preferred bidder. During that period, any bidder who fails to be selected as well as prospective bidders justifying an interest, may protest for misprocurement.
- Legal frameworks must provide for application and lodging of complaints, fair and rapid hearing as well as provide valid and legally binding enforcement on all parties.

### ***Practical Recommendation***

If Whistle Blower policies or recourse to Probity Officers and or Fairness Auditors are not in place, the risk is that challenges and protest will be conducted in other fora ie via blogs internet etc which are extremely difficult for Public Authorities to manage in a transparent manner.

The protest must be filed with an independent authority or a court having the power to make an interim decision to suspend the awarding process if prima facie, the protest has sufficient merit, in this case, the independent authority or competent court may decide the cancellation of the procedure.

Otherwise, the Public Authority may proceed with the signature of the contract without prejudice of the right of any aggrieved bidder to initiate court proceeding for damages with a competent court.

## **Conclusion**

The UN Standard on Transparency and Integrity are being developed upon years of experience from practioners from both the Public and Private sector including inputs from Civil Society and Best Practices as they develop and stand the test of implementation .....

The single most important recommendation is for all stakeholders to spend as much time as possible upstream on the objectives and definition of a given project. The new focus on SDGs can only reinforce for

the need to consult. Not only is the “good preparation” in the best interest of the project itself from a technical point of view but early and upstream preparatory work guarantees a holistic approach and provides also for a critical appropriation process which most of the time experience proves, equates with long term success. And Good Governance.

## Sources and References

Key relevant information and recommendations that inform this work:

**UNECE** 2008 Guidelines

**UN 2015** Outcome document of the Third International Conference on Financing for development Addis Ababa Action Agenda AAAA

**Transparency International.** Web site. Glossary

**United Nation.** UN Convention Against Corruption (2003) Technical Guide

**World Economic Forum.** Strategic Infrastructure Steps to Prepare and Accelerate PPPs

**OECD.** Public Governance Review Integrity Framework for Public Investment

**OECD.** High Level Principles for Integrity Transparency and Effective Control of Major Events and Related Infrastructures.

**OECD** March 2016 Anti Bribery Convention

**CICA –FIDIC** Position Paper November 2009

**European Commission** (2014) Report from the Commission to the Council and the European Parliament. EU Anti-Corruption Report.

**COST 2012** - Construction Sector Transparency Initiative

**World Bank. 2011-** The world Bank Integrity Vice Presidency Curbing Fraud Corruption and Collusion in the Roads Sector.

## Practical Recommendations

Current Best Practices have been summarized under this Chart for easy identification and assessment of issues and mitigation measures.

- Avoidance of Conflicts of Interest and related Undertakings
- Compliance with Laws and Code of Ethics for PPPs
- Ethical standards applicable to units, committees and boards involved in the preparation and awarding of PPP projects
- Probity Officer
- Fairness Auditor
- Standards for drafting the terms of reference for Consultants and Experts
- Standards for drafting the consultancy and experts' contracts
- Standards for monitoring consultants and experts
- Transparency in tender notice and bidding documents
- Standards for the Tender Evaluation Committee
- Qualification and Evaluation Process
- Misprocurement and Protests

## ZERO TOLERANCE PPP CHARTER

### Introduction :

The purpose of this Charter is to be a pragmatic, quick and easy guidelines both to identify risk, give a first indication of proper behavior and provide a guidance to the existing supports and documentation existing.  
For sake of comprehension the Charter is reflecting the different phases of a PPP so that user can easily plug in for their own cases/questions.

Project Phases	Description of the phase	Description of the Risks incurred	Zero corruption behavior	Guidance for support and documentation
1. Origination	Starts with the launch of public enquiries Ends when public /official decision to launch tender	<ul style="list-style-type: none"> <li>Public Enquiries <i>Corruption: launch a project for the benefit of few people or a specific group of people</i></li> <li>Expropriations <i>Corruption: Secure land at low cost prior to public enquiries or expropriation</i></li> </ul>	<ul style="list-style-type: none"> <li>Public enquiries are mandatory prior launching any PPP</li> <li>Public enquiries have to be official ones and as detailed as possible to avoid recourse against the project</li> <li>Expropriations have to be done according to defined, public and transparent legal rules</li> <li>Expropriation is the responsibility of public partner and have to be achieved prior to launching the PPP</li> <li>Independent integrity officer to be available from Day 1 and for the entire duration of the project.</li> <li>Integrity officer must be independent from PPP Unit and political circles</li> <li>No Project launch only because of</li> </ul>	<ul style="list-style-type: none"> <li>Official publication in identified media</li> <li>Ex European Journal and list of accredited media publications</li> <li>Expropriation Process explicitly available on an official website.</li> <li>Governance PPP Charter including selection &amp; nomination process of Integrity Officer</li> <li>To include Update &amp; Reporting Process</li> </ul>

			political election if not economically viable -Mandatory to have an approbation of the project by all ministries / services before launching the project ( technical , legal , finance , social , environment )	"Cost / Benefit Economic Analysis" as a base for securing approval from various Ministries & public stakeholders. Other suggestion is use of Tools such as the PPP Comparator developed by the Dutch government
	<ul style="list-style-type: none"> <li>Project definition <i>If the project is poorly defined the greater the risk of corruption during execution because it " opens up" opportunities of "negotiations" outside the PPP contract framework</i></li> </ul>		<ul style="list-style-type: none"> <li>Defined project : scope, public service required, evolution of service needs over time , performance, uses, social and environmental criteria, specificities have to be detailed extensively during project definition to provide the basis of the future PPP contract</li> <li>-Project structuring must not be driven by &amp; around "construction" issues only but also include operational issues &amp; delivery of service to end-users over the duration of the project.</li> </ul>	Tender Documents should include the PPP Project Definition
	<ul style="list-style-type: none"> <li>Financing of public bodies <i>Corruption: to favor low bids which will benefit of extra financing during construction through amendments of the contract</i></li> </ul>		<ul style="list-style-type: none"> <li>-Budget for the payment of the PPP Project (construction + operation phase) has to be approved before launching the project by highest relevant public authority in charge of public finance.</li> <li>-Buffer for unexpected extra cost</li> </ul>	Official Reporting Obligations on each PPP Project to include financial and disbursement disclosures.  Ex Reporting rules in the UK ( Home Office)

<p><b>2. Tendering</b></p>	<p>Starts with the appointment of the public body which will be in charge of the Tendering Process. Ends with sending out the Prequalification Tender Documents</p>	<ul style="list-style-type: none"> <li>• Selection of Public PPP Team <i>Corruption will come from lack of rules to handle the relation between public and private participants, as well as from lack of expertise. Political pressure to have the project completed or avoiding going to arbitrage may also generate a situation of corruption of civil servant or attempts to favor to a candidate / partner.</i></li> </ul>	<p>has to be pre-agreed by financial authorities</p> <ul style="list-style-type: none"> <li>-Public PPP Team has to be qualified, has to be empowered and support of the PPP Unit approved by all Ministries involved.</li> <li>-Public Team must be ruled by a Code of Conduct which is also to be applied to all stakeholders</li> <li>-Penalties and exclusion to be applied in case on non-respect of the rules</li> <li>-Creation of a dispute review board to solve issues with the private candidate / partners: Board to be made of min 2 qualified experts in PPP for administrative matters, engineering and technical matters and legal and financial matters.</li> <li>Each expert will be nominated for the duration of the PPP Project, by both parties public and private.</li> <li>Each expert will have the right to seek on the spot external expertise if they have not enough skills on specific issues</li> </ul>	<p>Tendering Process must be officially announced on the PPP Unit website or on the Ministry/ies respective websites.</p>
	<ul style="list-style-type: none"> <li>• Selection of Advisers <i>Corruption may come from conflict of interest ( advisers</i></li> </ul>	<p>-Advisers to be selected according to expertise and not only lowest price.</p>	<p>Terms of Reference &amp; Selection Criteria of Advisers to be published.</p>	

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		<p><i>working both for public and private stakeholders), breach of confidentiality clauses, lack of expertise in PPPs, retrocession of fees to civil servants.</i></p> <ul style="list-style-type: none"> <li>Project technical specificities <i>Corruption will come from a poorly defined scope of work, tender process and communication and dispute rules. All of these will create corruption opportunities which can be avoided and or solved quickly.</i></li> <li>Candidates selection criteria <i>Corruption may arise from "low price" offers on poorly defined scope or commitments which will be reopened after contract signature, deliberate few or subjective selection criteria or too vague to favor</i></li> </ul>	<ul style="list-style-type: none"> <li>- Adviser to sign Code of Conduct</li> <li>- Adviser to the public PPP Unit to be barred from taking part in any work for the private sector ( even as subcontractor to subcontractor of the PPP company )</li> </ul> <ul style="list-style-type: none"> <li>-Scope of Work has to be drafted by experimented engineers for technical part.</li> <li>-Scope of Work to identify exhaustive list of permits, process to secure permits, documents to be submitted to register permits according to local legislation</li> <li>-Scope of Work has to be the reviewed by legal financial, tax , and administrative experts to define process of communication and disputes resolutions, risk allocation, bankability of the project for a secured public service</li> </ul> <ul style="list-style-type: none"> <li>- Selection Criteria have to be objective and measurable</li> <li>-Criteria have to be "weighted"</li> <li>-Criteria have to be fair to avoid favoring one candidate</li> <li>-Clarification process of the criteria with the candidates has to be in the Tender Document. Such clarification has to be disclosed at</li> </ul>	<p>Scope of Work has to be the "architecture" of future PPP Contract</p> <p>Draft of PPP Contract to be annexed to Scope of Work</p> <p>Selection Criteria have to be published within Tender Documentation and have to be checked during the preselection phase but also rechecked before final signing of the PPP Contract ( Verification Process to be mentioned in the Tender Documentation )</p>
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		<p>one candidate, or specificities within the scope of work which will favor one candidate as the only one able to provide it. Corruption may arise also from candidate's non-compliance on technical, financial matters and on Compliance &amp; Ethics Rules.</p>	<p>the same time to all candidates. -Candidates have to present Ethic and Compliance references of their respective companies for the minimum past (3) years</p>	
		<ul style="list-style-type: none"> <li>• Unforeseen Situation Corruption may arise around unexpected event ( technical, or financial ) which could favor a candidate or bring pressure to quickly "resolve" issues</li> </ul>	<p>- Tender Documentation to include "Unforeseen Events" either under Scope of Work, proposing a formal process for "Management of un-anticipated events". Such process to be also included within the draft PPP Contract</p>	<p>Template PPP Contracts</p>
<p><b>3. Candidates Bidding Phase</b></p>	<p>Starts with the reception of "Prequalification Documentation" Ends with the reception of request for a "Best and Final Offer"</p>	<ul style="list-style-type: none"> <li>• Numbers of candidates to be selected "Less competition" generates higher risks of corruption.</li> </ul>	<p>- The minimum number of candidates to be selected has to be announced in advance in the Tender Documentation. No silent or vague process. - A minimum of "two candidates" helps keeping completion active. Only "one" requires to have defined very precisely the Tender requirements in order to proceed with just one candidate (European Competitive Dialogue for ex) and to "stick to them". No change of process during Bidding phase</p>	<p><a href="http://www.marche-public.fr/repondre-appel-offre.htm">http://www.marche-public.fr/repondre-appel-offre.htm</a> <a href="http://www.out-law.com/en/.../eu.../public-procurement-law-the-basics">www.out-law.com/en/.../eu.../public-procurement-law-the-basics</a> <a href="http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf">http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf</a></p>

		<ul style="list-style-type: none"> <li>Correspondence with candidates <i>Corruption arises from "non transparent communication" or on "non equal" basis with candidates</i></li> </ul>	<ul style="list-style-type: none"> <li>Whatever is the number of candidates selected, they must first comply with the Tender Requirements. Zero tolerance.</li> <li>If no candidate complies the Tender has to be cancelled.</li> </ul>	<p><a href="http://www.sigmaweb.org/publications/Public_Procurement_Tender_Evaluation_2011.pdf">http://www.sigmaweb.org/publications/Public_Procurement_Tender_Evaluation_2011.pdf</a></p> <p><a href="http://www.tmr.qld.gov.au/~media/busind/.../TI_PDS_Volume2.pdf">www.tmr.qld.gov.au/~media/busind/.../TI_PDS_Volume2.pdf</a></p>
	<ul style="list-style-type: none"> <li>Modification of requests during tender</li> </ul>	<ul style="list-style-type: none"> <li>System of correspondence with the candidates has to be previously detailed in the Tender requirements in a detailed manner. No silent or vague process</li> <li>Person in charge of correspondence has to be clearly identified, empowered and disclosed to the bidders in the Tender documentation.</li> <li>No verbal correspondence, no side conversation.</li> <li>All correspondence to be officially registered.</li> <li>Correspondence with one candidate has to be disclosed to all the others.</li> </ul>	<p><a href="http://www.pws.gov.nt.ca/pdf/publication/ProcurementGuidelines09/3.4%20ModifyingTender%20Information.pdf">http://www.pws.gov.nt.ca/pdf/publication/ProcurementGuidelines09/3.4%20ModifyingTender%20Information.pdf</a></p> <p><a href="http://www.fasken.com/files/Publication/2fbc1cb2-9607-480c-aa80-015f86c9a1c2/Presentation/PublicationAtt">http://www.fasken.com/files/Publication/2fbc1cb2-9607-480c-aa80-015f86c9a1c2/Presentation/PublicationAtt</a></p>	

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<p>achment/7e445bb7-03fe-4cb3-99fc-00d4c72a4477/Duty_of_fairness_privilege clauses negotiation in RFP tenderin.pdf</p> <p><a href="http://vosdroits.service-public.fr/professionnels-entreprises/F32198.xhtml">http://vosdroits.service-public.fr/professionnels-entreprises/F32198.xhtml</a></p> <p><a href="http://www.acheteurs-publics.com/marches-publics-encyclopedie/avis-rectificatif">http://www.acheteurs-publics.com/marches-publics-encyclopedie/avis-rectificatif</a></p>	<p>checked if it does not benefit one candidate prior to being disclosed.</p> <ul style="list-style-type: none"> <li>- Minor modification has to be disclosed to all candidates in writing at the same time in the same way.</li> <li>- Timing of sending modification to the candidates has to provide sufficient extra time for all of them to adapt their bids</li> <li>- Public authority not to impose "no update" to the bids in case of modification</li> </ul>		<p><b>Starts with the reception of the "Best and Final Offer"</b></p> <p><b>Ends with the PPP contract signing</b></p>	<p><b>4. Attribution</b></p>
<p><a href="http://www.eib.org/epec/g2g/iii-procurement/31/314/index.htm">http://www.eib.org/epec/g2g/iii-procurement/31/314/index.htm</a></p> <p><a href="http://www.procurementclassroom.com/">http://www.procurementclassroom.com/</a></p> <p><a href="http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,contentMDK:20062543~menuPK:84284~pagePK:84269~piPK:60001558~theSitePK:84266~isCURL:Y,00.html">http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,contentMDK:20062543~menuPK:84284~pagePK:84269~piPK:60001558~theSitePK:84266~isCURL:Y,00.html</a></p> <p><a href="http://www.eib.org/epec/resources/guide-to-guidance-en.pdf">http://www.eib.org/epec/resources/guide-to-guidance-en.pdf</a></p>	<ul style="list-style-type: none"> <li>- No vague Selection criteria</li> <li>- Subjective criteria, "if &amp; when" necessary to be ranked low with minimum weighting</li> <li>- No modification of Selection criteria during Bidding Phase</li> <li>- Bids to be evaluated by people with skills in line with official Selection criteria (and not on criteria selected by evaluators)</li> <li>- Evaluation to be done by independent bodies</li> <li>- Time of bid evaluation to be announced in the Tender requirement and to be in line with the complexity of the</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluation of the offers</li> </ul> <p><i>Corruption may arise from accepting intentionally very low offers because of poor selection criteria. Also poor unfair weighting &amp; comparison between candidate offers</i></p>		

			<ul style="list-style-type: none"> <li>- Tender and the skills of the evaluators.</li> <li>- All evaluation process and decision to be officially registered</li> <li>- No communication between evaluators and bidders: communication to go only through the designated persons.</li> </ul>	
<ul style="list-style-type: none"> <li>• Optimization of the best offer received</li> </ul> <p><i>Corruption may arise from the modification of a bid during the "Optimization Phase"</i></p>	<ul style="list-style-type: none"> <li>- Optimization process to be strictly defined in the Tender requirement.</li> <li>- Optimization request must be done in writing to all the candidates</li> <li>- Clarification must not change the bid of the candidate</li> <li>- Optimization of the bid must not change its scope nor its price, nor the risk allocation between private and public partners unless permitted under the Tender documentation</li> </ul>	<p><a href="http://circulaire.legifrance.gouv.fr/pdf/2012/05/cir_35257.pdf">http://circulaire.legifrance.gouv.fr/pdf/2012/05/cir_35257.pdf</a></p> <p><a href="http://bpp.worldbank.org/public-private-partnership/">http://bpp.worldbank.org/public-private-partnership/</a></p>		
<ul style="list-style-type: none"> <li>• Financial Close</li> </ul> <p><i>Corruption may arise from a modification to a bid which would be mandatory to satisfy financial requirements</i></p>	<ul style="list-style-type: none"> <li>- No significant modification of the bid nor tender documentation/ requirements to be accepted because of lenders / financiers requirement</li> <li>- Exclusivity of financiers to the</li> </ul>	<p>Terms of Tender must clarify Financial requirements at all stages of the Bidding Process.</p>		

	<ul style="list-style-type: none"> <li>- bidders to be excluded</li> <li>- Level of financiers' commitments to be clearly defined in the Tender requirements</li> <li>- List of conditions precedent to access to financing to be exhaustively and officially declared in bidders final offers.</li> </ul>		<ul style="list-style-type: none"> <li>o Management of supplier</li> <li>o Permitting</li> <li>o Land ownership</li> <li>o Social/union issues</li> <li>o Process and check lists</li> <li>o Accounting, Tax, customs duty</li> <li>o Period of answers</li> </ul> <p>Have to be clearly defined in the contract so that the Public partner does not change the rules in the course of execution and to allow ongoing monitoring of the global performance of the private partner</p>	<p>PPP Unit to receive Technical and Financial Reports on the Project. These Reporting Obligations to be included in the PPP Contract.</p>
<p><b>5. Construction</b></p>	<p>Starts with PPP Contract signing Ends at Reception of the Works</p>	<ul style="list-style-type: none"> <li>• Monitoring of the works process</li> </ul>	<ul style="list-style-type: none"> <li>• Arbitration, settlement of disputes / litigations <i>Corruption risk is higher when dispute resolution may last so long that private partner cannot afford it financially</i></li> </ul>	

	<ul style="list-style-type: none"> <li>• Dialogue between Private and Public partners</li> </ul>	<p>See 2 above : a Partnering PPP Committee has to be set up during Tender phase and implemented at contract signature within the consultation process described in the PPP contract, including dispute resolution principles to avoid claims and arbitration cases</p> <ul style="list-style-type: none"> <li>- Status of PPP company have to be governed by E&amp;C rules ,</li> <li>- Shareholders have to disclose sources of funds</li> <li>- No remuneration of Equity to be permitted before completion of the works</li> <li>- No compensation for Equity in case of suspension or termination without discount on remuneration</li> <li>- All subcontractors must follow same ZTC rules as lead contractors ???</li> </ul>		
	<ul style="list-style-type: none"> <li>• Shareholders <i>Corruption risk is higher when shareholders have no obligation of "anti-corruption" behavior or can sell shares without approval of Public Partner ???</i></li> </ul>			
	<ul style="list-style-type: none"> <li>• Subcontractors</li> </ul>			
	<ul style="list-style-type: none"> <li>• Arbitration, settlement of disputes / litigations</li> <li>• Changes to the tax environment</li> <li>• Nationalization</li> </ul>			
<p><b>6. Operation</b></p>	<p><b>Starts with the Reception of the works</b> <b>Ends with the completion of Contract</b></p>			
				<p>Long term Operational and Financial Reporting Obligations to the PPP Unit.</p>