

## **IS IT POSSIBLE TO AVOID CORRUPTION IN PUBLIC BIDDING?**

**By Christian Gruenberg**

The answer is yes. Poder Ciudadano, Argentine chapter of TI, designed and carried out the "Programme for Transparent Contracting" (PTC), a preventative, simple, and economic system to avoid corruption in the bidding process.

Public bidding in most of the countries combine the following characteristics:

- a high level of discretion among public officials who make key decisions about the design of bidding documents and the spending of public funds.
- A context of low transparency that does not favour free access to public information.

In order to modify these conditions of high discretion and low transparency, the "Programme for Transparent Contracting" (PCT) combines two components: holding public hearings where the responsible authority convenes citizens, businesses, experts, and representatives of the opposition to express their objections and suggestions about the planned terms of the contracting; and the signing of an Integrity Pact wherein the government and all businesses competing for the project share a contract of reciprocal control to prevent the payment of bribes between the bidders and the State.

### Public hearings (PH)

The principle objective of the PH is to prevent conflict by allowing citizens, businessmen, ombudsmen, and legislators to voice their objections and suggestions about aspects of the project before suffering any consequences.

The PHs must be convened by the government. Once convened by the government there can arise two distinct situations: that a standard exists for public hearings, in which case the role of the national chapter will be to monitor the formal requirements of the process, i.e.: to publicise the meeting with reasonable notice of 15 to 30 days in advance, to open files containing relevant information about the bidding in question, to guarantee and allow free access to the files, etc. This was the experience of Poder Ciudadano with the City government of Buenos Aires to monitor the public tender for the design and construction of the underground project "H Line" with a total cost of US\$ 1.2 billion. But the situation can also arise in which a regulatory framework does not exist regarding PH. In this case, the national chapter will assume the role of training the government in the methodology of the PH in order to later monitor the preparation and execution of PHs. This was the experience of Poder Ciudadano with the Municipality of Avellaneda, where Poder Ciudadano was enlisted to monitor a public hearing to discuss the feasibility of the construction of a bridge financed by the World Bank. In this specific case, the municipality of Avellaneda did not have a standard for PHs. Thus in less than a month, Poder Ciudadano trained the municipality and then supervised the preparation and execution of the public hearing.

**The principal objectives of a PH are:**

- To achieve that the persons in charge of the decision rely on the greatest amount of information possible.
- To address the decision into the process of informing about the alternatives, opinions, concerns, and points of view related to the subject.
- To generate a channel of compromise between the authorities and the interested parties, where the latter ones participate on a basis of equality.
- To generate transparency and publicity about the issues which are debated.
- To involve addresses of the decision through their own participation.
- To obtain a decision of the greatest legitimacy for all addresses and interested parties.

**Committee of experts:**

For the PH the PCT will select and convene national and international experts to contribute a qualified and impartial opinion about specific aspects of the project to be bided upon, with the intention of providing observations and suggestions that optimise the design and execution of the project. With regard to the experts' participation, the personal opinions to which they subscribe will not include an institutional position of the TI chapter.

**Integrity Pacts (IP)**

The IP consist of a specific agreement between government calling a public contract and the companies participating in the bid. The government, assures transparency in designing the list of conditions and in the process of awarding the contract. It also guarantees that none of its public officials will demand and improper advantage. The participating companies commit not to offer bribes and to denounce the employees who attempt to extort the or their competitors in case a bribe is offered.

Through these mechanisms, the IP provides a clear normative system, determined by a contract that regulates the rights and obligations of the participants and modifies the incentives to act corruptly. Each competitor will be aware that there are clear rules to the game based on clean competition and will be controlled by the other players. This model helps break the complex scheme of political and economic interests found in societies where corruption is a structural phenomenon. It also allows for the creation of a new scheme of interests, in this case, in favour of integrity and transparency.

**The benefits of the model**

The combination of PHs and IPs benefits all groups involved in the bidding process: citizens benefit because they can count on a space that allows them to access an aspect of public contracting that earlier did not concern them. In this context, citizens can make observations that, although they are not binding, oblige the State to answer questions and to justify its decisions. Businesses benefit because a transparent market is generated with new game rules that simultaneously apply to the State and to all the bidders who participate in a public bidding. The State benefits because it receives ideas from all involved groups about

how to improve the efficiency of spending and to guarantee transparency in contracting before public opinion.

### **The five great advantages of the model**

- Its concept is broader; it focuses not only on corruption but also on the opportunity and suitability of spending.
- It saves money by preventing and avoiding the misuse of funds.
- It is not necessary to create a bureaucracy nor to modify laws.
- It clearly defines general rules of the game between society, the government and enterprises.
- It generates a transparent market for the enterprises.

Finally, if we consider the Klitgaard's well known formula for corruption ( $C=M+D-T$ ), the PCT helps to reduce discretionality and increase transparency, by monitoring the public bidding processes from the civil society.
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### **The challenge**

We believe that beginning with this concrete experience of Poder Ciudadano, the national chapters of TI should propose to their respective governments to adopt this model of control so that in the context of the large commercial agreements (MERCOSUR, ALCA, etc.) the governments consider the possibility of citizens participating in the supervision of public bidding.

If TI could replicate this experience through its national chapters, it is very likely that in the short term those governments that do not consider the participation of citizens in the large public contractings will find it very difficult to justify and legitimise their decisions before public opinion.