



UNOFFICIAL TRANSLATION

INTEGRITY PACT

ON the “Execution of energy efficiency measures in public buildings and public lighting”, Action Statement no. 17 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;

PREMISE

Given that:

public procurement spending represents 10.5% of GDP¹, 97% of Italian citizens consider corruption to be an endemic problem² and the underground economy in Italy is estimated by Istat (the Italian National Institute of Statistics) to be equal to 13% of GDP³;

Integrity Pacts (hereinafter “IP”) are agreements signed by the Contracting Authority, the bidders and an Independent Monitor, who are bound to conduct themselves according to the principles of transparency and legality during the various stages of the public tendering procedure and performance of the contract;

within the scope of the IP, the Independent Monitor checks, monitors and publishes all stages of the public tendering procedure and performance of the contract;

IPs, such as this, serve the purposes of general interest established by European Union and Italian legal system, as expressly indicated in the Treaties and the Constitutional Charter;

these agreements aim at:

- preventing and combatting the phenomenon of infiltration by organised crime;
- preventing and curbing corruption and unlawfulness in public services and in the conduct of economic operators;
- fostering a culture of lawfulness by sharing behaviour criteria focused on integrity, accountability and mutual transparency;
- enhancing the forms of civic engagement and, more generally, the awareness of the role of civil society as the recipient of new reporting, transparency and communication tools;

to establish this IP, the relevant legal framework includes:

- the principles of the European Union concerning the free movement of goods, the right of establishment, the freedom to provide services, and the principles deriving therefrom, such as equal treatment, non-discrimination, transparency, proportionality and mutual recognition;
- European secondary law;
- special provisions in Italian national and regional legal system;
- the guidelines and other regulatory instruments approved by the Italian National Anti-Corruption Authority;
- best practices adopted in other European Union Member States;

the contents of this IP have been prepared based on the following guiding principles and criteria:

- simplification: regarded as a need to ensure an adequate balance between transparency, control and integrity objectives in relation to the public service and effectiveness, efficiency and quality objectives in relation to the public contracting activity. In this sense, the expenses arising from the application of the IP must not exceed what is required for the balanced pursuit of these objectives, and they are delivered by the parties in compliance with the principles of reasonableness and proportionality;

¹ See impact analysis of new public procurement legislation, available at: http://www.governo.it/sites/governo.it/files/AIR_CODICE_APPALTI.pdf.

² See the special survey on corruption carried out by Eurobarometer in 2013 and available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf.

³ The estimates refer to 2014. See: <https://www.istat.it/it/archivio/191377>.

- coordination with Italian national and regional legislation. This IP neither replaces nor duplicates the provisions of the law but, recalling the significant content therein, responds primarily to the need to reinforce and promote behaviour focused on the integrity of public service, of economic operators and civil society;
- involvement: regarded as both a guarantee that the commitments made with this IP represent the outcome of a process shared by the signatories, and as an objective to favour as much as possible the exercise of forms of civic control through transparent procedures, accessible information and continuously monitored results;

this IP has been prepared within the scope of the European Pilot Project *Integrity Pacts: Civil Control Mechanisms for Safeguarding EU funds*, promoted and financed by the European Commission - Directorate-General for Regional and Urban Policy and such financing covers in full the spending for the activities of the Independent Monitor, selected by the European Commission and Transparency International through a competition;

this IP is linked to the implementation of the “*Madonie Resilienti: Laboratorio di Futuro*” (“Resilient Madonie: Laboratory for the Future”) development strategy financed within the scope of the 2014-2020 EU Structural Funds implemented through Integrated Territorial Investment (ITI) and co-financed by the 2015 “Stability Law” within the framework of the Italian National Strategy for Inner Areas (*Strategia Nazionale Aree Interne* or *SNAI*);

with reference to the development strategy mentioned in the previous point, on 10 May 2017 the monitoring agreement was signed between Association Amapola, in its capacity as Independent Monitor, and the Union of Municipalities of the Madonie, in its capacity as Contracting Authority. The agreement regulates the mutual relations between the parties and will be delivered in copy to the bidders who, after reading, shall undersign it;

by accepting the IP, the signatories undertake to respect the rules of conduct and maintain behaviour in part already required, in violation of which both the law and the IP provide for financial penalties and other expressly indicated consequences;

this IP represents an essential part of the documents prepared within the monitored tender procedure, and its execution is a precondition of admission to the public tendering procedure, in accordance with Article 1, paragraph 17 of Law No. 190 of 6 November 2012;

each bidder identified as a Successful Bidder at the end of the tender procedure must undertake to include the obligation to expressly accept what is contained in this IP in the contracts to be entered into or already entered into with subcontractor economic operators and relevant third-party subcontractors who are involved, in any capacity, in the works and activities relating to the execution of the Project;

this IP is effective for the Contracting Authority from the moment of the preparation of the call for tender until the complete performance of the awarded contracts. The IP is effective for the economic operators from the moment of the submission of the bids to which it refers until the complete performance of the awarded contracts, unless extensions are agreed. For unsuccessful bidders, the IP is binding for the same period of the bids and offers submitted, until the final awarding of the contract;

the above constitutes an integral and substantive part of the IP, which be organised into chapters that examine specific requirements relating to:

1. Definitions;
2. Obligations of the parties;
3. Obligations between the parties;
4. Disclosure, transparency and accountability;

5. Violations;
6. Changes.

DEFINITIONS

It is understood that for the purposes of this IP the following definitions are adopted:

- **Monitored tender procedure:** the procedure relating to the following action: “Execution of energy efficiency measures in public buildings and public lighting”, Action Statement no. 17 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;
- **Contracting Authority:** Union of Municipalities of the Madonie as single central purchasing body;
- **Independent Monitor:** Amapola – projects for the security of persons and communities
- **Bidder:** each economic operator participating, individually or collectively, in procurement or selection procedures;
- **Successful Bidder:** each party awarded contracts or engagements by the Contracting Authority for the provision of works and services;
- **Subcontractor:** the assign of the Successful Bidder with whom a subcontract is entered into, for any amount, relating to or in any way connected with the execution of the contract associated to the monitored tender procedure;
- **Subcontract:** any subcontract in general, for any amount, entered into by the Bidder or Subcontractor, relating to works and/or services connected to the execution of the contract associated to the monitored tender procedure;
- **The enterprise chain:** the set of operators involved in any capacity (including with business relations other than those pertaining to contracts and subcontracts, independently of their position within the scope of the business organisation) in the cycle of implementing the works and activities of the contracted associated to the monitored tender procedure. This includes all operators that have entered into subcontracts linked to the main contract by a functional dependence, although concerning instrumental and/or ancillary activities; this includes, by way of example, the sub-contractual situations pertaining to freight, supplies of concrete, aggregates and similar, as well as provisions of intellectual services;
- **Conflict of interest:** concerns, for example, cases in which: 1) personnel from the Contracting Authority or from service providers acting on behalf of the Contracting Authority during the procedures or the contract execution phase; 2) members of the governing bodies of the Contracting Authority, who can influence the result of the procedure, despite not formally participating in it; 3) the bidders participating in the call for tenders; 4) the Successful Bidder and 5) the Independent Monitor may have, directly or indirectly, a financial/economic interest or other personal interest that could compromise the impartial and objective performance of their functions in the context of the monitored tender procedure and the execution of the contracts associated.

OBLIGATIONS OF THE PARTIES

Article 1 Obligations of the Contracting Authority

1. By accepting the IP, the Contracting Authority, in compliance with the regulatory provisions and its own anticorruption protocols and procedures, pledges to not request, accept or receive, directly or through third parties, sums of money, gifts, incentives or other benefits for the

purpose of favouring the selection of a specific bidder or adversely affecting the correct performance of the contracts. The Contracting Authority also pledges that the tender documents are prepared in such a way as to prevent any distortion of competition and guarantee the transparency of the procurement procedures and the equal treatment of all bidders.

2. The Contracting Authority undertakes to require that all officers involved in the tender procedure, the awarding process and the performance of the contracts sign a declaration confirming:
 - a. the absence of any incompatibility with the duties to be performed or any reasons those duties should not be conferred upon them;
 - b. that in the course of the last 3 years they have not been engaged by any of the bidders;
 - c. the obligation to declare the occurrence of any situation of conflict of interest in relation to themselves, their spouse or partner, or relatives within the second degree, as well as:
 - persons with whom they have frequent dealings;
 - individuals and organisations whom they themselves or their spouses: have a pending judicial case against; or hold serious enmity towards; or have credit relationships with; or owe significant debts to;
 - individuals or organisations for whom they are guardians, representatives, attorneys or agents;
 - entities, recognised and unrecognised associations, committees, companies or establishments for which they act as directors, or managers, or in which they hold corporate or representative functions;
 - in any other case where there are grounds for opportunity and convenience.
 - d. that in the presence of any conflict of interest they will refrain from taking part in decisions and will report the matter to the person in charge of preventing corruption;
 - e. that until the completion of the contract they will not accept engagements from any economic entity that will receive, directly or indirectly, funds allocated for the works subject to monitoring (contractors, subcontractors, suppliers or consultants).

Article 2 Obligations of the bidders

1. By accepting the IP, the bidders pledge that they will not engage in – by any means or instrument, directly or through third parties – collusive conduct with other bidders or conduct aimed at illegally obtaining the contract and/or manipulating the procurement procedures or the correct performance of the contracts.
2. The bidders undertake to encourage internal measures to prevent corruption and foster integrity in their organisation.
3. By signing the IP, the bidders fully accept all the obligations and commitments listed in the same, including the penalties in case of violation, including those provided for the performance phase of the awarded contract.
4. By signing the IP, the bidders pledge that they are not affected by any of the grounds for exclusion set out in Article 80 of Italian Legislative Decree No. 50/2016 and they undertake to communicate to the Contracting Authority any involvement in criminal proceedings relating to the offences set out in Paragraph 1 or in violation of the content of Paragraph 4 of Article 80, even if not finally established. The bidder shall notify any actions undertaken following these criminal proceedings or pending investigations of violations.
5. By accepting the IP, after that the bids are opened in a public meeting, each bidder undertakes to provide the Contracting Authority and the Independent Monitor with the breakdown of any

economic relationships existing in the last 3 years with any other company participating in the call for tenders. Such economic relationships include:

- links in the corporate structure;
- subcontract and supply relationships;
- joint participation in other RTI (*raggruppamento temporaneo di imprese*, temporary grouping of companies) or ATS (*associazione temporanea di imprese*, temporary special-purpose consortium) calls for tenders.

In the absence of any of the above-mentioned economic relationships, each bidder undertakes to prevent the occurrence of any abovementioned relationships.

Article 3 Obligations of the Successful Bidder

1. The bidder identified as a Successful Bidder at the end of the call for tenders undertakes, following the final awarding of the contract, to have this IP signed by any of its own economic partners and subcontractors that will be involved in implementing the contract, at the time of their participation and prior to them starting their activity.
2. The Successful Bidder accepts that the provisions contained in this IP remain in force for the entire term of the procurement contract.
3. To fully implement the obligations aimed at guaranteeing the traceability of cash flows set out in Article 3 of the Law of 13 August 2010, no. 136, the Successful Bidder must transmit to the Contracting Authority, on a periodical basis agreed within the contract and on an electronic medium provided by the Contracting Authority, a report/list relating to the contracts entered into with and the payments made to any of the entities belonging to the enterprise chain (subcontracts, supplies, freight, consultancy). The report must contain the following elements: contractor company name, contractor VAT identification number, contract value, purpose of the performance, date the contract was signed, payment date, in compliance with the legislation in force on administrative transparency. The Contracting Authority or Independent Monitor may make such a list public and use it without any opposition to disclosing, accessing or copying it.
4. To fully implement the obligations set out in Article 53 Paragraph 16-ter, of the Italian Legislative Decree No. 165 of 30 March 2001, by accepting the IP, the Successful Bidder and the subcontractors confirm that they have not entered into and will not enter into in the future any employment or self-employment contracts with, nor have they engaged and will not engage in the future, former employees of the public administration who have exercised their public or contractual powers in relation to them, for the three years following the end of the relationship.

Article 4 Obligations of the Independent Monitor

1. By accepting the IP, the Independent Monitor undertakes to perform its checking and monitoring duties in the proper manner, transparently and in accordance with the confidentiality clauses contained in the monitoring agreement.
2. The Independent Monitor pledges to not request, accept or receive, directly or through third parties, sums of money, gifts, or other benefits for the purpose of manipulating the results of its work.

OBLIGATIONS BETWEEN THE PARTIES

Article 5 Obligations necessary for the full application of the Integrity Pact

1. The Contracting Authority provides useful information and documents for the performance of the Independent Monitor's duties in accordance with the monitoring agreement. However, in implementing the contract, the Independent Monitor may make a direct request to the Successful Bidder or enterprise chain for whatever it requires in order to perform its duties.
2. The Contracting Authority and the Successful Bidder shall copy the Independent Monitor in any communication concerning the execution of the contracts associated with the monitored tender procedure.
3. The Independent Monitor shall be invited to all meetings between the Contracting Authority and the Successful Bidder regarding the execution of the contract and must receive a copy of the minutes, even if not in attendance. Regarding the procurement procedure, the Independent Monitor shall receive copies of the minutes of the Selection Committee and any relevant documents at the end of the procurement procedure.
4. The Contracting Authority must ensure compliance with the obligations and forms of advertising provided by law, particularly regarding data, information and documents relating to the procurement procedures and contracts associated with the implementation of the Tender. Documents and information concerning the procedures and contracts are published by the Contracting Authority on its own institutional website and on the website mentioned in article 8.
5. All information directly or indirectly connected to the tender is to be considered freely accessible by the Independent Monitor, and the Independent Monitor may at any time and on an informal basis ask the Contracting Authority, bidders and Successful Bidder for further information and data than already provided, in accordance with the confidentiality obligations provided for by the law.

Article 6 Reporting obligations

1. The Contracting Authority must report to its own Corruption Prevention Manager and to the Independent Monitor: any illegal request, claim or attempt by the bidders or third parties to influence, disrupt or distort the conduct of the procurement procedures and/or the execution of the contract associated with the monitored tender procedure; and/or any violation or attempted violation of the Integrity Pact of which it becomes aware.
2. The Bidders and the Successful Bidder must report to the Contracting Authority and the Independent Monitor: any illegal request, claim or attempt by the bidders or third parties to influence, disrupt or distort the running of the procurement procedures and/or the execution of the contract associated with the monitored tender procedure; and/or any violation or attempted violation of the Integrity Pact of which it becomes aware.
3. Illegal conduct can be reported, including anonymously, by using the instruments provided by the Contracting Authority and/or the system provided by the Independent Monitor. Such reports do not replace any obligations to report crimes to the relevant judicial authorities.

PUBLICITY, TRANSPARENCY AND ACCOUNTABILITY

Article 7 Role and involvement of civil society and the public

1. The Contracting Authority, bidders and the Successful Bidder accept that the local communities, including those organised in associations, are involved in monitoring the on-site implementation and that they may send relevant reports to the Independent Monitor. The information gathered from monitoring and from evaluating the reports submitted by the public

will contribute to increasing knowledge of the approach to the Integrity Pact and to improving its effectiveness as a social accountability mechanism to prevent corruption, improving the quality of the actions taken and increasing the public's trust towards government entities.

2. The Contracting Authority and the Successful Bidder undertake to cooperate, without additional burdens, with the Independent Monitor in organising periodic training sessions and inspections of the worksites to ensure the direct involvement of the public in monitoring the execution of the works.
3. The Contracting Authority and the Successful Bidder undertake to take part in, without any additional burdens, periodic events to meet and consult with the public, involving, where necessary, other entities in the enterprise chain. In the course of such events, the results of the monitoring activities conducted by the Independent Monitor and the public, as mentioned in the above points, will be discussed.

Article 8 Project website and social networking

1. The Independent Monitor shall create a website in order to:
 - a. Make information on the progress and execution of the works and serviced usable by and accessible to civil society;
 - b. Publish periodic reports containing monitoring results;
 - c. Provide a space for users to interact; and
 - d. Make available a platform, capable of ensuring anonymity, for whistle-blowers both within and outside the public administration to report events of corruption;
2. The Independent Monitor and the Contracting Authority shall establish a digital tool to securely share and quickly exchange information, data and documents required by the IP.
3. The Contracting Authority and the Independent Monitor undertake to play a meaningful role, and be involved in specific meetings, regarding the implementation of a system to gather and publish in an open format data relating to the enterprise chain involved in the Project. The Independent Monitor will implement this system without any financial burden for the Contracting Authority and the Successful Bidder.

Article 9 Media relations

1. In the event of violations of the IP, without prejudice to the rules on the protection of intellectual property and personal data, as well as the need to not jeopardise any ongoing investigations by the judicial authority, the Independent Monitor may inform the media and public about:
 - a. The results of his/her activities;
 - b. The response mechanisms used by the Contracting Authority following reports of potential offences or violations of the obligations and commitments undertaken by signing the IP and the Contracting Authority's response timescales; and
 - c. Any reports to the relevant judicial authority.

VIOLATIONS

Article 10 Conciliatory approach

1. The Independent Monitor shall inform the Contracting Authority and the successful bidder (or the bidders until the final awarding of the contract) of any violations of the IP that come to its knowledge and, in agreement with the Contracting Authority, it shall communicate to those involved the corrective measures to be taken to eliminate, where possible, the causes of the violation.

2. Failure to implement the corrective measures will be reported by the Independent Monitor in the periodic reports on its activities. Violation of the obligations imposed by the IP and failure to implement the required remedies represent just cause to terminate the IP pursuant to Article 1456 of the Italian Civil Code, to which the Independent Monitor shall have recourse.

Article 11 Penalties

1. Bidders accept that should it be established that they have failed to comply with the obligations and commitments undertaken by signing the IP, the Contracting Authority shall apply, without prejudice to any liability otherwise provided by law, the following sanctions and penalties:
 - a. a formal notice to comply with the principle of collaboration that underlies the Integrity Pact;
 - b. publication of the notice mentioned in point a) on media capable of adequate dissemination;
 - c. exclusion of the bidder from the procurement procedure;
 - d. application of a fine in addition to the contractual provision between the parties of 1% of the contract; and
 - e. termination of the contract with forfeiture of the security deposit.
2. The Contracting Authority, which is responsible for overseeing the specific fulfilment of the obligations imposed by the IP, shall apply penalties following the violation of the IP ensuring there is adequate adversarial procedure and respecting the principle of proportionality regarding the seriousness of the violation committed.
3. The failure to respect the commitments undertaken by the Successful Bidder is, however, punishable and prevents the Independent Monitor from performing its activities.
4. The application of penalties does not replace additional remedies and penalties established by law in relation to public contracts, by other applicable laws, by the *lex specialis* relating to the tendering procedure or by specific contractual agreements. Pursuant to Article 1382 of the Italian Civil Code, the Contracting Authority reserves the right to claim compensation for any further damages suffered.
5. If, following the reporting of a violation, as mentioned in Article 6, the Contracting Authority does not inform the Independent Monitor within a short space of time what response mechanisms it intends to employ, or if the Independent Monitor deems those response mechanisms insufficient, the Independent Monitor will be free to inform the relevant judicial authority and withdraw from the agreement.

CHANGES

Article 12 Changes

1. Changes need to be made in writing and need to be signed by all parties.