GIACC

Global Infrastructure Anti-Corruption Centre

TRANSPARENCY INTERNATIONAL (UK)

- <u>PACS</u> -

Project Anti-Corruption System

(Construction Projects)

Executive Summary

PACS - Executive Summary

1. Preventing corruption requires a comprehensive solution

1.1 Corruption on construction projects is a complex problem. It may occur in the form of bribery, extortion, fraud or collusion. It can take place during any phase of a project, including project identification, planning, financing, design, tender, execution, operation and maintenance. In each project phase, corruption may involve any one or more of the government, project owner, funders, consultants, contractors, sub-contractors, suppliers, joint venture partners, and agents. It may occur at any level of the contractual structure. Furthermore, corruption is concealed and those aware of it are either complicit in it or reluctant to report it. This makes it more difficult to detect.

1.2 There is no single or simple method by which to prevent such corruption. As with safety and quality issues, corruption should be addressed by the use of a comprehensive system which combines a number of integrated measures.

2. What is PACS?

The Project Anti-Corruption System (PACS) is an integrated and comprehensive system designed to assist in the prevention of corruption on construction projects. It uses a variety of measures which impact on all project phases, on all major participants, and at a number of contractual levels. PACS comprises:

- **The PACS Standards:** These recommend anti-corruption measures which should be used on construction projects.
- **The PACS Templates:** These provide the tools by which the measures recommended in the PACS Standards may be implemented.

3. Using PACS

A government, a public or private sector project owner, or a funder may use PACS as follows.

a)   It can assess its existing project anti-corruption measures against the PACS Standards.

b)   It can modify its existing measures in accordance with the PACS Standards.

c)   It can use some or all of the PACS Templates, appropriately customised, in order to implement its anti-corruption measures.

4. The PACS Standards

There are ten PACS Standards, each of which deals with a separate anti-corruption measure. Each Standard is summarised below. See the document "PACS Standards"[1] for the full measures.

PS 1:   **Independent assessment:** Independent scrutiny of the project owner, the funders, the main contractor, consultants, major sub-contractors, and all other major project players is essential if corruption is to be limited on a construction project. Consequently, PACS provides for the appointment of an independent assessor whose duty is to detect and report corruption for the duration of the project. In the case of a large and complex project, an independent assessor may be appointed specifically for that project. For smaller projects, an independent assessor may be appointed to monitor a number of projects. The independent assessor should be a person of integrity and be independent of all project participants. He should be nominated by an independent and reputable institution. On public sector projects, a separate body (for example, a regulatory authority) could appoint and pay the independent assessor. On private sector projects, the project owner could appoint and pay the independent assessor. The independent assessor

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[1] www.giaccentre.org/project_anti_corruption_systems.php

should be someone who has detailed experience and knowledge of the construction industry, and a working knowledge of the law of bribery and fraud and of how corruption can occur on construction projects.

PS 2:   **Pre-contract disclosure of information:** The provision of information at an early stage in the project process in relation to the main project players may help to reveal and so minimise the risk of corruption. Consequently, PACS provides that, at tender stage, the project owner and each applicant for a major contract should provide each other with relevant information (for example in relation to their principal shareholders, officers, financial status, agents, joint venture partners, major sub-contractors, criminal convictions and debarment). This information should be verified as accurate by the relevant chief executive and chief financial officer. It should also be reviewed by the independent assessor.

PS 3:   **Contractual anti-corruption commitments:** Anti-corruption obligations should be clear and have contractual effect. Consequently, PACS provides that the project owner and each applicant for a major contract should provide anti-corruption contractual commitments to each other which expressly cover the main types of corruption. Remedies should be specified in the event of breach of these commitments. Contractors should also exchange equivalent anti-corruption undertakings with their joint venture companies, major sub-contractors and agents.

PS 4:   **Government anti-corruption commitments:** Extortion by government officials can cause loss and delay to the project and to contractors and consultants. Consequently, PACS provides that relevant government departments should provide an anti-corruption commitment whereby the department agrees to take steps to minimise extortion by its officers, to appoint a senior manager to whom complaints of extortion can be made, and to publicise a list of fees and time-scales which should properly apply to government procedures. This commitment and list of fees and time-scales should be published on the project website.

PS 5:   **Transparency:** Greater transparency of project details may significantly reduce the risk of corruption. Consequently, PACS provides that, at the outset of the project, the project owner should set up a project website and disclose project information on that website on a regular basis and in an easily accessible and comprehensible form. The web-site should be maintained and updated for the duration of the project. The independent assessor should be under a duty to check the accuracy of the information disclosed. As the information is accessible by the public and other project participants, corruption is more likely to be discovered.

PS 6:   **Raising awareness:** Significant corruption on a project may be carried out by the staff of the project participants. Individuals should, therefore, be made aware of what constitutes corruption, and of the risks of personal involvement in corruption. Consequently, PACS provides that each organisation should:

- Post up anti-corruption rules at all project and site offices so that they may be seen by all relevant staff. These should specify and prohibit corrupt acts, and stress the risk of criminal and civil liability and dismissal from employment in the event of involvement in corruption.
- Provide or arrange anti-corruption training for relevant staff.
- Establish a gifts and entertainment policy and require staff to record such benefits given or received on a register.

PS 7:   **Funder involvement:** Corruption in the terms of financing can significantly increase the cost of projects. In addition, corruption on a project could be reduced if funders more actively monitored the way in which their funds are used. Consequently, PACS provides that funders should be engaged in the anti-corruption process. Details of the funding terms and conditions, and any changes to these, should be published on the project website. This would help to reduce the risk of corruption in the funding terms, as the public and competitors would be able to identify unusual features in the funding arrangements. The independent assessor should make regular reports to the funders on his activities, and report any suspected corruption to them. As a result, funders would be able to take or encourage active steps to deal with any suspected corruption before it takes place, or to investigate and prosecute corruption where it has taken place.

PS 8: **Compliance programme:** PACS provides that the project owner, each major contractor and each major sub-contractor should take all reasonable steps to ensure compliance by the company and its management and staff with the PACS Standards. In particular, it should nominate a manager who is responsible for ensuring compliance. This manager can combine this responsibility with other functions.

PS 9: **Reporting:** It is essential that safe and effective systems for reporting corruption are set up on the project. PACS provides for reporting in a number of ways:

- By the public: On the project website, members of the public should be provided with the contact details of the independent assessor to whom they may make reports of suspected corruption in connection with the project.

- By the project staff: The project staff should be provided with the contact details of the independent assessor to whom they may report corruption. Each organisation should also set up an internal system for reporting corruption.

- By the independent assessor: The independent assessor should be under a duty both to receive reports from the public and project staff, and to investigate those reports. He should also be under a duty to report suspicion of corruption to the project owner, the funders, other project participants, relevant professional associations and the criminal authorities.

PS 10: **Enforcement:** If corruption is to be deterred, there must be a real threat of enforcement, and all relevant individuals must be made aware of this threat. PACS provides that there should be remedies and penalties for corruption in relation to the project which can be enforced by the major project participants. These remedies and penalties may be statutory and/or contractual. They should apply from the outset of each party's involvement in the project. They should include employment penalties, disqualification from tender, termination of contract, withdrawal from tender or contract, and financial remedies. Each major project participant should be informed in writing of all remedies and penalties (including criminal, professional, commercial, contractual and employment) that may apply in relation to corruption on the project. The opportunity for enforcement is increased by the provisions for raising awareness (PS 6) and reporting (PS 9).

5. **The PACS Templates**

The PACS Templates may be used to implement the measures recommended in the PACS Standards. The following PACS Templates can be downloaded free of charge from GIACC's web-site[2]. The Templates can be used in their existing form, or may be modified to suit the requirements of the country and project.

Template 1:	Definitions
Template 2:	Independent Assessor Agreement
Template 3:	Disclosure Form
Template 4:	Disclosure Assessment Guide
Template 5:	Anti-Corruption Agreement
Template 6:	Notices of Breach
Template 7:	Anti-Corruption Procurement Requirements
Template 8:	Anti-Corruption Notice to Government
Template 9:	Anti-Corruption Government Commitment
Template 10:	Anti-Corruption Programme
Template 11:	Anti-Corruption Rules for Individuals
Template 12:	Anti-Corruption Training Manual
Template 13:	Project Transparency Policy
Template 14:	Benefits Register
Template 15:	Instructions to Project Owner for the operation of PACS
Template 16:	Instructions to Project Owner Joint Venture Members
Template 17:	Instructions to Funders
Template 18:	Instructions to Applicants

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[2] www.giaccentre.org/project_anti_corruption_systems.php

6.   **How does PACS work?**

6.1 **At the outset of the project:**
- The project owner:
  - appoints the independent assessor (who is nominated by an independent institution) to monitor the project for corruption (PS 1);
  - obtains a commitment from the relevant government departments to prevent extortion by its officials (PS 4);
  - establishes the project web-site on which all material project information will be publicly displayed (PS 5);
  - notifies the funders of the use of PACS, and of their obligation to allow funding details to be made public on the web-site (PS 7).

6.2 **During procurement phase:**
- The project owner sends to all applicants for major contracts for works and/or services:
  - a disclosure form completed by the project owner (PS 2);
  - an anti-corruption agreement signed by the project owner (PS 3).
- Each applicant for a major contract for work and/or services sends to the project owner, together with its pre-qualification or tender:
  - a disclosure form completed by the applicant (PS 2);
  - an anti-corruption agreement signed by the applicant (PS 3).
- The project owner and applicants:
  - assess each other's disclosure form for risks of corruption (PS 2);
  - comply with the commitments under the anti-corruption agreement (PS 3);
  - post up the anti-corruption rules at the project and site offices, and require their officers and employees to comply with these rules (PS 6);
  - appoint an integrity manager who is responsible for taking reasonable steps to ensure they comply with their anti-corruption commitments (PS 8).
- The project owner discloses information on the procurement phase on the project website (PS 5).
- Each party's integrity manager takes reasonable steps to ensure compliance with the anti-corruption commitments (PS 8).
- The independent assessor monitors the procurement phase for corruption (PS 1).
- Suspected corruption is reported (PS 9).
- Enforcement action is taken in respect of any corruption (PS 10).

6.3 **During execution phase:**
- The project owner and contractors:
  - comply with the commitments under the anti-corruption agreement (PS 3);
  - post up the anti-corruption rules at the project and site offices, and require their officers and employees to comply with these rules (PS 6);
  - provide anti-corruption training to their officers and employees (PS 6).
- The project owner discloses information on the execution phase on the project website (PS 5).
- Each party's integrity manager takes reasonable steps to ensure compliance with the anti-corruption commitments (PS 8).
- The independent assessor monitors the execution phase for corruption (PS 1).
- Suspected corruption is reported (PS 9).
- Enforcement action is taken in respect of any corruption (PS 10).

7. **Why use PACS?**

7.1 PACS is not a guarantee against corruption. However, the use of PACS will:
- discourage corruption;
- reduce the opportunity for corruption;
- increase the chance of identifying corruption.

7.2 Therefore, the use of PACS will help:
- reduce project costs;
- improve project quality;
- give funders some degree of assurance that their money is being properly spent;
- provide a level playing field for companies undertaking the work and services;
- reduce the risk of a project participant being a victim of corruption in that project;
- satisfy the public that corruption is being tackled.

8. **Will PACS interfere with other project procedures?**

The PACS Standards and PACS Templates have been designed so that they can, as far as possible, be applied to a project without materially affecting other project procedures or documentation. PACS is not a procurement system. It is designed to work with the project owner's existing procurement procedures and to monitor those procedures, and the whole project cycle, for corruption.

9. **What will it cost to use PACS?**

9.1 It is not possible to give a set figure for the cost of using PACS. Much of the cost of PACS will be a one-off expense, or a cost that will be considerably reduced as an organisation becomes more familiar with PACS. The likely cost elements of using PACS are as follows:

a) The legal costs in ensuring that the PACS measures and documentation are compatible with the relevant law and procedures. This will be a one-off expense. It is anticipated that the PACS measures and documentation will not require significant revision to be compatible.

b) The independent assessor's fees and expenses (PS 1). These can be tailored to suit the size of project. For smaller projects, the independent assessor can be appointed part time.

c) The costs of setting up and operating the project website (PS 5). Appropriate websites may already be available, so setting up costs may not be incurred. A project owner will be able to use the same format for different projects. The project information to be disclosed will be readily available. Consequently, the operation costs of the website should not be substantial.

d) The cost of an integrity manager (PS 8). This cost may be reduced by combining his duties with other duties relating to the project.

e) Management time in complying with the PACS measures as follows:
- Familiarising relevant staff with the PACS documentation;
- Completing and assessing the pre-contract disclosure (PS 2);
- Providing anti-corruption training to staff (PS 6);
- Setting up systems for reporting corruption (PS 9).

However, once an organisation is familiar with the PACS measures, and has established these systems, the management time in implementing and complying with those measures will be significantly reduced.

9.2 The project owner is likely to bear the cost of items 9.1 (a) to (c). Each of the project owner, and major contractors and sub-contractors would bear their own costs of 9.1 (d) and (e). On projects which are funded by development aid, the project owner's costs could be borne wholly or partly by funders.

10. **Is the cost of using PACS justified?**

It is believed that, on larger projects, the potential savings in project costs and the potential for minimising defective works which result from a reduction in corruption will significantly outweigh the cost of using PACS. The following factors should be considered:

a) The direct cost of corruption is considerable. As corruption is concealed, and as it will differ in extent from project to project and from country to country, it is not possible to assess the amount lost to corruption on any particular project. However, it is estimated that corruption can frequently add between 5% to 50% to the total project costs, can result in delays, and can adversely affect quality and safety. It is believed, therefore, that the use of PACS can save costs and improve project completion times, quality and safety. Consequently, provided that the cost of PACS is kept proportionate to the value of the project, these savings are likely to be significantly greater than the cost of using PACS.

b) The indirect cost of corruption is considerable. Corruption deters or prevents good quality companies from bidding for projects. Companies and individuals run the risk of criminal liability, civil liability, debarment, reputational damage, and fines. The use of PACS will reduce these risks.

c) It is regarded as a political, social and economic necessity to spend money to ensure proper safety and quality controls on construction projects. It should be regarded as equally necessary to spend money on anti-corruption measures.

11. **Improving PACS**

Suggestions on how PACS can be improved, and feedback on how PACS is being implemented, are welcome, and should be sent to Catherine Stansbury, Director, GIACC: catherine.stansbury@giaccentre.org

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