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Committee on Innovation, Competitiveness and Public-Private Partnerships

Working Party on Public-Private Partnerships

Second session

Geneva, 20-21 November 2018

Item 4 of the provisional agenda

Review of the Public-Private Partnerships work since the first session of the Working Party on Public-Private Partnerships on 21-22 November 2017

Economic Commission for Europe Declaration on a Zero Tolerance Approach to Corruption in Public-Private Partnerships Procurement

Note by the secretariat

The present document contains the ECE Declaration on a Zero Tolerance Approach to Corruption in Public-Private Partnerships Procurement aimed at facilitating the voluntary¹ implementation and dissemination of the ECE Standard on a Zero Tolerance Approach to Corruption in Public-Private Partnerships Procurement contained in document ECE/CECI/WP/PPP/2017/4 and adopted by the Committee on Innovation, Competitiveness and Public-Private Partnerships.²

¹ The ECE PPP standards, guiding principles, best practices, declarations and recommendations are adopted by acclamation by the ECE intergovernmental bodies – the Working Party on Public-Private Partnerships and the Committee on Innovation, Competitiveness and Public-Private Partnerships – and do not impose any obligations on member States as their implementation is entirely voluntary.

² The Standard was endorsed by the Working Party on Public-Private Partnerships at its first session on 21-22 November 2017 and was subsequently adopted by the Committee on Innovation, Competitiveness and Public-Private Partnerships at its twelfth session on 26-28 March 2018.

GE.18-14581(E)



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Work on the Declaration started in 2017 and a first draft was presented for information at the first session of the Working Party on Public-Private Partnerships in November 2017. At that session, the Working Party welcomed the draft Declaration and requested the secretariat to organise a session at the ECE International Public-Private Partnerships Forum in May 2018 to finalise the draft for adoption (document ECE/CECI/WP/PPP/2017/1, conclusion 2017-5.6). At a meeting of the Bureau of the Working Party on 10 January 2018, a drafting group was set up under the leadership of Mr. Alecos Michaelidis (Cyprus) and Mr. Steven Van Garsse (Belgium) to finalise the text of the Declaration at the Forum in May 2018 for submission to the Bureau for its consideration. An additional round of consultations with member States and other stakeholders took place on 26 March 2018, back-to-back with the twelfth session of the Committee on Innovation, Competitiveness and Public-Private Partnerships which took place in Geneva on 26-28 March 2018.

The Committee encouraged the Bureau of the Working Party and the secretariat to continue their consultations with member States and other stakeholders on the draft declaration, and to finalise the declaration for endorsement by the Working Party at its next session and adoption at the next session of the Committee (document ECE/CECI/2018/1, decision 2018-4b.3).

The draft Declaration was extensively discussed and finalised by the secretariat during the ECE International Public-Private Partnerships Forum on 9-11 May 2018, and in June 2018 the secretariat submitted it to the Bureau of the Working Party for its consideration.

At its meeting on 31 July 2018, the Bureau of the Working Party endorsed the Declaration, and requested the secretariat to submit it to the Working Party at its second session on 20-21 November 2018 for approval. It will be then submitted to the Committee for consideration of its adoption at its thirteenth session.

The Working Party is invited to endorse the Declaration and recommend to the Committee to adopt it at its thirteenth session in March 2019.

Preamble

Fully mindful of the challenges we face as public officials and stakeholders to the provision of public services and public goods, we acknowledge the:

- Magnitude of economic and social development that will be required, including the large sum of financing and increased public sector capacity that will be needed, to meet the United Nations Sustainable Development Goals;
- Unique contribution which Public-Private Partnerships, and ‘People-first’ Public-Private Partnerships specifically, can make to the achievement of these Goals;
- Risk that corruption left unchecked will demean our best efforts, compromise our officials and systems, and put in jeopardy all that we are striving for in SDG 16 and 17 and the ambitions of the Sustainable Development Goals as a whole; and
- Importance of fully supporting a zero-tolerance approach to corruption in Public-Private Partnerships Procurement as outlined in the ECE Standard.

Wish to make publicly, openly, and solemnly 21 commitments that will guide our actions and help to put an end to corruptive practices.

We namely commit:

Undertake a competitive tender

1. To *conduct* wherever possible an open, transparent, and fair competitive tender for projects in accordance with applicable law.

Comply with laws and a code of ethics

2. To *fully comply* with all pertinent laws and regulations, avoid conflicts of interest, ensuring that bidders and all other involved parties do the same, and encourage all bidders to have their own code of ethics and internal anti-corruption practices.

Avoid conflicts of interest

3. To *stop* conflicts of interest and shed light on all types of ‘hidden’ relationships, connections, and personal interests throughout project identification, preparation, procurement, and implementation that may allow persons or institutions to exert improper influence or obtain improper gain from public projects.

Disclose full information

4. To *proactively disclose* clear, complete and meaningful information throughout project identification preparation, procurement, and implementation; make use of relevant modern technologies to organize and disseminate project information, and be available, open and responsive to enquires by citizens, the media, auditors, and other stakeholders.

Coordinate effectively and improve decision making within governments

5. To *establish* and *empower* Public-Private Partnerships units and other relevant administrative bodies so that clear chains of decision making are established that are independent, delineated, and complement each other, providing efficiency, sufficient oversight on approvals and other checks and balances on the Public-Private Partnerships decision-making process.

Hiring consultants and experts

6. To *ensure* that advisors on projects are: retained through a transparent process and with a track record for providing unbiased professional advice; committed to the principle of people first Public-Private Partnerships and prevented from influencing the decision making process in favour of their own commercial interests; proactive in avoiding situations that compromise their role; and required to disclose any interests that might be in conflict with their independent professional advisory role.

Whistle-blowing

7. To *protect* all persons who have the courage and desire to come forward with information about abuse of power or malfeasance in the process.

Unsolicited proposals

8. To *treat* with caution all proposals that are not initiated by public authorities and go forward only after using an open, transparent and fair competitive tender.

Tender notices and bidding document

9. To *encourage* maximum competition amongst bidders through sufficient and consistent information sharing and require a minimum number of tenders to be received.

Pre-qualification process

10. To *create* fair and non-onerous conditions that encourage participation amongst potential bidders being mindful of the risks to the competitive process arising from complicated or costly procedures that would create barriers to entry.

Dialogue-based public-private partnerships procurement

11. To *maximise* the benefits from available procurement procedures to achieve the best possible deal for the public, while protecting against opportunities for abuse of the process, corruption, and/or collusion arising from those approaches.

Confidentiality and maintenance of information

12. To *protect* and *preserve* the competitive environment of the tender including the confidentiality, integrity and safe custody of information and documents related to the proprietary interests of individual bidders.

Tender evaluation committee

13. To *appoint* the right people to evaluate submissions, commit every member to a code of ethics and standard of behaviour in the carrying out of their responsibilities, and remove those that do not comply.

Integrity and fairness mechanisms

14. To *establish* and *strengthen* systems of checks and balances including auditing functions such that the process from project identification through implementation is fair and transparent and demonstrates that the Government is carrying out its responsibilities according to the highest standards of integrity.

Bonus (Premium):

15. To cautiously *regulate* the use of bonuses or providing other incentives that increase the risk of corruption, e.g. during the financial closure of the contract.

Embed zero tolerance approach to corruption in public-private partnerships contracts

16. To *develop* standard clauses on disclosure, transparency, accountability and anti-corruption arising from the ECE Standard on a Zero Tolerance Approach to Corruption in Public-Private Partnerships Procurement and encourage contracting authorities to include the same in all Public-Private Partnerships related contracts.

Demonstrating support

17. To *adhere to* this Declaration by sending a communication to the ECE which will be posted on its website. This is open to all governmental entities responsible for Public-Private Partnerships activity at national, regional and sub-regional levels.

Contributing materials to increase our knowledge

18. To *send* to the ECE information on experiences of corruption and the areas where there are special risks of corruption in Public-Private Partnerships and contribute to the collection and incorporation of this information into a “typology of corruption in Public-Private Partnerships” that can be used, *inter alia*, as a training module for further capacity building in this area.

Training and capacity building

19. To *undertake* the necessary training and capacity building to successfully implement the ECE Standard on a Zero Tolerance Approach to Corruption in Public-Private Partnerships Procurement.

Implementation

20. To *consult* with stakeholders on how best to implement the Declaration and ECE Standard on a Zero Tolerance Approach to Corruption in Public-Private Partnerships Procurement.

21. To *organize* informal meetings for government officials, including from different countries, to discuss corruption issues in Public-Private Partnerships and how to overcome them effectively.

Concluding remarks and follow-up

22. Our support for these commitments is strong and ongoing and we wish to pursue the following actions that will demonstrate, mobilize, and further our support for this Declaration and its intent.
