

4 Recommendations

*Transparency International*¹



A sign stands at the construction site of Sydney's new office and retail centre, the World Square. An annual report released in March 2004 by a government-commissioned taskforce set up to prosecute unions and employers alleged widespread corruption in the construction industry, prompting federal Workplace Relations Minister Kevin Andrews to say 'the culture of unlawfulness and thuggery and intimidation still exists in the building industry'. (GREG WOOD/AFP/Getty Images)

Governments bear the greatest responsibility for ensuring the honest and transparent management of public funds. Governments must put in place rules on public contracting that meet minimum international standards. Transparency International's Minimum Standards for Public Contracting (see page 4) provide a global baseline.

Putting in place the right rules is not enough, however, given the widespread tolerance of corruption within the construction sector and given the frequent failure to enforce laws. Fortunately, actions to curb corruption within the sector are already being taken, by companies themselves, by the banks and export credit agencies (ECAs) that fund infrastructure projects, by civil society and by governments. A few of these initiatives, such as Transparency International's Integrity Pact and the effort by leaders of some of the world's largest construction companies to agree on corporate anti-corruption principles, were outlined in Chapter 1 (see pages 9–27).

None of these actions by itself will change the situation. Both public and private actors, and the banks and ECAs that finance projects, need to work together to eliminate corruption. This chapter addresses recommendations to the different actors involved in the sector which, if followed with rigour, could materially reduce corruption.

The recommendations distinguish between private and public clients because when it is public money that is being used to fund a project the standard of probity must be absolute. However, they acknowledge an overlap between the two spheres: a public contract is unlikely to be executed by the winning company exclusively, but rather by a web of subcontractors with potential for corruption at each private-to-private subcontracting level.

Many of the recommendations are not exclusive to the construction sector, but there are features of the sector, such as its size, complexity and importance to broader service provision, that render them all the more urgent.

1. Actions for clients (public and private sector)

(The term 'client' means the developer or owner of a project, and includes government departments and agencies in the case of public works).

- 1.1 Implement a code of conduct which commits the client and its employees to a strict anti-corruption policy.
- 1.2 Allow a company to tender for the client's projects only if the company has implemented a code of conduct that commits the company and its employees to a strict anti-corruption policy.
- 1.3 Maintain a blacklist of companies that have been found guilty of corruption. Alternatively, adopt a blacklist prepared by an appropriate international institution. Do not allow a blacklisted company to tender for the client's projects for a specified period of time after the offence (see page 59).
- 1.4 Require the use of a project integrity pact during both tender and project execution phases (see page 22).
- 1.5 Where not covered by integrity pacts, ensure that all contracts between the client and its contractors and suppliers require the parties to comply with strict anti-corruption policies.

2. Additional actions for public sector clients

(The following recommendations summarise Transparency International's Minimum Standards for Public Contracting, see page 4).

- 2.1 Public contracts above a relatively low threshold should be subject to open competitive bidding. Exceptions must be limited, and clear justification must be given for selecting any other method.
- 2.2 The contracting authority must provide all bidders, and preferably also the general public, with easy access to information about tender opportunities, selection criteria, the evaluation process, the terms and conditions of the contract and its amendments, and the implementation of the contract and the role of intermediaries and agents. Confidentiality should be limited to legally protected information.
- 2.3 In order to give a potentially aggrieved competitor the opportunity to challenge the award decision, a reasonable amount of time must be allowed between publication of the contract award decision and the signing of the contract.
- 2.4 Internal and external control and auditing bodies must be independent and functioning, and their reports should be accessible to the public. Any unreasonable delays in project execution should trigger control activities.
- 2.5 Contract 'change' orders altering the price or description of work must be monitored at a high level.
- 2.6 The contracting authority should separate functions, and ensure that responsibility for demand stipulation, preparation, selection, contracting, supervision and control of a project is vested in separate offices.
- 2.7 The contracting authority should apply the standard office safeguards, such as the four-eyes principle and rotation of staff in sensitive positions. Staff responsible for procurement processes should be well-trained and adequately remunerated.

3. Actions for construction and engineering companies

- 3.1 Implement a code of conduct that commits the company and its employees to a strict anti-corruption policy (see page 49 on the WEF initiative and page 40 on the FIDIC initiative). The code should contain management, training, reporting and disciplinary procedures.
- 3.2 Employ effective due diligence on agents, joint venture and consortium partners, subcontractors and suppliers, so as to be reasonably certain that they will not engage in corrupt practices in connection with the company's business.
- 3.3 Ensure that all contracts between the company and its agents, joint venture and consortium partners, subcontractors and suppliers, require the parties to comply with strict anti-corruption policies.
- 3.4 Where possible, enter into sector-wide and project-specific integrity pacts (see page 43 on Integrity Pacts). The pacts should be independently monitored, and should contain enforceable sanctions. In appropriate cases, relevant government departments and financing institutions should also join in the pact.

- (a) A sector integrity pact is an agreement between companies working in the same sector to act with integrity when they compete against each other in tendering for projects.
- (b) A project integrity pact is an agreement between the participants in a specific project to act with integrity in relation to that project. A project integrity pact can have the following two components:
 - (i) The pre-qualification and tender integrity pact is between the client, designer and all bidding companies.
 - (ii) The project execution integrity pact is between the client, designer, certifier and the appointed company.

4. Actions for international financial institutions, banks and export credit agencies

- 4.1 Agree to provide finance or guarantees in relation to a project only if all key participants have implemented codes of conduct that commit them to a strict anti-corruption policy.
- 4.2 Agree to provide finance or guarantees only in relation to projects that are to be placed through competitive tender or a transparent procurement process.
- 4.3 Undertake greater due diligence to try to ensure that there is no corruption in relation to the project. Increase staff time and resources for supervision. Require full disclosure in relation to payments to agents and other intermediaries.
- 4.4 Maintain a blacklist of companies that have been found guilty of corruption (see page 59). Alternatively, adopt a blacklist prepared by another international institution. Deny project finance or credit support to blacklisted companies for a specified period of time after the offence.
- 4.5 Require the use of a project integrity pact (see page 49) during both tender and project execution phases.
- 4.6 Introduce reliable whistleblower protection.
- 4.7 Make all documentation relevant to the planning, approval and implementation of a project available to the public in a timely manner.

5. Actions for trade and professional associations

- 5.1 Publicly speak out against corruption.
- 5.2 Increase awareness amongst the association's members of corruption and its consequences through publicity and training.
- 5.3 Implement a code of conduct that commits the association's members to a strict anti-corruption policy. The code should provide a disciplinary mechanism under which members who breach the code are sanctioned.
- 5.4 Support the development and implementation of industry-wide anti-corruption mechanisms.

6. Actions for auditors

Undertake greater due diligence during audits to try to ensure that companies and clients are not engaging in corrupt practices.

7. Actions for shareholders

7.1 Question the boards of companies and clients to ascertain whether the companies are at risk from the consequences of corrupt practices.

7.2 Refuse to invest in companies and clients that do not operate effective anti-corruption policies.

8. Actions for government

8.1 Support the development and implementation of the above actions.

8.2 Support the undertaking of the following actions by an independent international body or bodies:

- (a) The development and management of an international externally audited ethical standard that construction companies and clients can achieve if they adopt effective anti-corruption policies. Companies that breach the standard would lose their accreditation for a fixed period. Tender lists for public works would eventually include only companies that have the accreditation in place.
- (b) The development and management of an accreditation procedure for independent assessors. Independent assessors would be skilled individuals who monitor the pre-qualification, tender and execution of projects to ensure as far as possible that they operate in an environment free from corruption. Independent assessors could be appointed under the contract, under integrity pacts, or by alternative appointment mechanisms.
- (c) The provision of a corruption reporting service which would:
 - (i) receive reports on corrupt activities
 - (ii) pass these reports on to the appropriate authorities in the relevant jurisdiction
 - (iii) follow up reports with the relevant jurisdictions to ensure that they are being dealt with
 - (iv) publicise reports of corrupt activities on their website.
- (d) The operation of a public, transparent and effective blacklist of companies that have participated in corrupt activities.

8.3 Ensure that a specialist corruption investigation and prosecution unit for the construction industry is operational and effective. If no such unit exists, establish one that:

- (a) is staffed by personnel with experience of the construction sector
- (b) is multidisciplined, containing engineers, forensic auditors, quantity surveyors, programmers and lawyers
- (c) has jurisdiction throughout the country
- (d) has powers to search premises, seize documents and interview witnesses
- (e) cooperates with the law enforcement agencies of other countries
- (f) cooperates with anti-money-laundering authorities
- (g) investigates all cases upon receipt of compelling evidence from companies, individuals, NGOs and dispute resolution tribunals
- (h) prosecutes cases where the investigation results in sufficient evidence
- (i) publicises prosecutions and convictions.

8.4 Improve the effectiveness of anti-money-laundering mechanisms so as to make it more likely that bribes paid in relation to construction projects are identified in the international banking system.

8.5 Sign, ratify and enforce the United Nations Convention against Corruption, and actively comply with the OECD Anti-Bribery Convention.

9. Actions for civil society organisations

9.1 Monitor the tendering and execution phases of public sector projects to try to ensure they are free from corruption. To do so, demand access to information relating to projects.

9.2 Work with the media to publicise concerns about corruption in the construction sector.

10. Actions for all participants

10.1 Work to increase transparency in the construction sector. The greater the transparency, the more difficult it will be to conceal corruption.

10.2 Report corrupt practices to the authorities, and to any applicable trade or professional association.

Note

1. Transparency International (UK) has since September 2003 been leading an anti-corruption initiative in the construction sector, which involves working with the industry to eliminate corruption, and developing and promoting the anti-corruption tools and actions presented here.