



NAC Executive Insights

Corruption During the Tender Phase

Key Points

- This Executive Insight complements the Executive Insight “Corruption.”
- Potential acts of corruption during the tender phase are provided to aid in education and development of effective mitigation measures.
- A sampling of acts of corruption during the tender phase provides real life insights.

Introduction

The Executive Insight:

- defines corruption.
- assesses where the U.S. is currently perceived to stand with respect to corruption.
- discusses how bad corruption is today.
- looks at some of the factors which make construction prone to corruption as well as motivating and facilitating factors.
- examines company-wide efforts that are important in addressing the risk of corruption.

This Executive Insight also:

- looks closer at potential acts of corruption in the construction industry, focusing on the tender phase.
- highlights a sampling of acts of corruption during the tender phase to provide real-life insights into its breadth, consequences, and impacts.

A companion Executive Insight explores corruption in the project execution phase, including dispute resolution, in a similar manner.

Potential Acts of Corruption

Potential acts of corruption during the tender phase encompass a range of actions by a host of potential offenders. The various acts may carry both criminal and civil penalties and include both the offending individuals as well as their organizations. Table 1 provides a set of examples to help readers understand the range of corrupt actions which may occur and to aid in designing effective corporate level anti-corruption measures beyond the training discussed in the Executive Insight, “Corruption.”

Table 1 Potential Corrupt Acts in the Construction Industry Tender Phase						
Action	Description	Project Phase	Potential Offenders			
			Owner	Contractor	Engineer	Others
Loser's fee	Prior to tender submission, the competing contractors secretly agree they will each include in their tender price an agreed additional sum of money representing the total estimated tender costs of all the competing contractors. Whichever contractor is awarded the contract will then divide this sum of money between all the unsuccessful contractors, who will thereby recover their tender costs.	Tender		All		Individuals involved
Price fixing	Contractors who routinely compete in the same market secretly agree to share the market between them. They will each apparently compete on all major tenders, but will in advance secretly agree which of them should win each tender. The contractor who is chosen by the other contractors to win a tender will then notify the others prior to tender submission as to its tender price. The other contractors will then tender at a higher price.	Tender		All		Individuals involved
Manipulation of pre-qualification	Contractor who wishes to be short-listed pays a cash bribe to the engineer to ensure that key	Tender		X	X	Individuals involved

Table 1 Potential Corrupt Acts in the Construction Industry Tender Phase						
Action	Description	Project Phase	Potential Offenders			
			Owner	Contractor	Engineer	Others
	competitors of the contractor are eliminated from the short-list.					
Bribery to obtain prime contract	An agent is appointed under a formal agency agreement which states that the agent will carry out specified services. The fee being paid to the agent, however, is grossly in excess of the market value of the legitimate services the agent is committed to provide. The agent intends to pay part of the commission to a representative of the project owner to ensure the contractor is awarded the contract.	Tender		X		Individuals involved; Agent
Bribery during sub-contract procurement	One of the Sub-contractors offers a free holiday to the procurement manager if the procurement manager awards the contract to the sub-contractor. The procurement manager does so.	Tender				Procurement manager, sub-contractor, individuals involved
Corruptly negotiated contract	A senior official initiates a project which could conceal a major bribe. To maximize the bribe, he ensures the design results in an unnecessarily large, complex project. He advises a major contractor that he will ensure that the contractor is awarded the project on a	Tender	Govt. official	X		Individuals involved

Table 1 Potential Corrupt Acts in the Construction Industry Tender Phase						
Action	Description	Project Phase	Potential Offenders			
			Owner	Contractor	Engineer	Others
	non-competitive basis if the contractor includes a large payment for him in the contract price. The contractor agrees, the contract is awarded, and the bribe is paid.					
Manipulation of design	Contractor bribes the architect to provide a design which only he can fully comply with. Contractor submits a price higher than it would have been had there been a genuine competitive tender. Architect recommends that the design is in the owner's best interests and that the compliant contractor be selected.	Tender		X	X	Individuals involved
Specification of overly sophisticated design	In negotiating a design-build contract, the contractor deliberately specifies an overly sophisticated and complex design. The contractor recognizes that acceptance of the more complex design will result in higher overhead recovery and profit.	Tender		X		Individuals involved
Inflation of resources and time requirements	Contractor deliberately exaggerates labor, equipment, and time required to complete the project. These exaggerated amounts are not the	Tender		X		Individuals involved

Table 1 Potential Corrupt Acts in the Construction Industry Tender Phase						
Action	Description	Project Phase	Potential Offenders			
			Owner	Contractor	Engineer	Others
	contingency against possible risk, but deliberate overstatements in order to support a higher lump sum price. Owner pays the excessive contract price.					
Obtaining a quotation only for the purpose of price comparison	Owner intends to contract with a preferred contractor. To ensure the contractor's price is a market price, he requests quotations from two other contractors, leading them to believe they have a chance of winning the project. The price of one of the other contractors is the lowest and is disclosed to preferred contractor, who matches it at owner's request. Other contractors waste their tender costs.	Tender	X			Individuals involved
Concealment of financial status	At the time of contract, the owner is in serious financial difficulty. He believes that it is quite likely he will go into receivership/bankruptcy prior to completion of the contract and be unable to pay the contractor in full. He does not disclose his financial status to the contractor.	Tender	X			Individuals involved
Intention to withhold payment	At contract, the owner intends in order to increase his profitability from the	Tender	X			Individuals involved

Table 1 Potential Corrupt Acts in the Construction Industry Tender Phase						
Action	Description	Project Phase	Potential Offenders			
			Owner	Contractor	Engineer	Others
	project by refusing to pay the contractor's 10 percent retention upon completion and to construct artificial counterclaims to set-off against the retention.					
Submission of false quotation	<p>Procurement manager of the contractor is required to hire cranes for one of the contractor's projects. Crane hire companies are giving significant discounts to their published prices for long-term rentals. The procurement manager and friends set up a shell company ('Craneco') registered in the names of the friends. Half the shares in Craneco are secretly held as nominee for the procurement manager. Craneco obtains a quote, including discount from a crane hire company, and the procurement manager obtains the published rate sheets (excluding discounts) from two other crane companies. Craneco supplies a written quote to the contractor to supply the cranes at a rate slightly lower than the published rates of the two of her crane companies, but at a higher rate than the rate</p>	Tender				Procurement manager; individuals involved

Table 1 Potential Corrupt Acts in the Construction Industry Tender Phase						
Action	Description	Project Phase	Potential Offenders			
			Owner	Contractor	Engineer	Others
	quoted to Craneco. The procurement manager uses the two rate sheets and the quote from Craneco as three competitive quotes, and awards the contract for the supply of cranes to Craneco. These documents are placed on the procurement file, creating the false impression that there has been genuine competitive pricing, and that the hire contract has been awarded to the cheapest supplier. Craneco makes a profit. The procurement manager does not disclose to the contractor his interest in Craneco. The contractor pays more for the rental than it would have done if the contract had been awarded, including discount, to one of the other crane hire companies.					

Examples of Corruption

While Table 1 provides general guidance and insight into corruption during the tender phase, Table 2 provides a selection of real examples in a varying set of contexts. The described actions occurred over extended periods in most instances and seldom were isolated events. The year of indictment or legal resolution generally occurred subsequent to the particular events in question. Examples include those resolved either through plea or conviction as well as more recent ones still pending. In those cases not yet closed, the examples represent charges and do not convey a determination of guilt.

The penalties have been simplified in the table and do not reflect loss of reputation, reduced opportunities, or employment actions beyond those identified. Table 2 provides the realistic discussion points for addressing corruption during the tender phase more effectively.

Penalties for the examples in this table range up to \$2.6 billion and 20 years.

Table 2 Examples of Corruption in the Construction Industry Tender Phase			
Party	Description	Year of Indictment/ Legal Resolution	Penalties
Engineer 1	Foreign Corrupt Practices Act (FCPA) violation associated with multiple executives and countries	2016	Company entered into deferred prosecution agreement and fined \$17.1 million. One-to-two-year sentences for two executives with \$10,000 fine.
Engineer 4	Bribes paid for confidential bidding information (Canadian hospital)	2018	CEO and others convicted with jail time and significant penalties
Engineer 5	Bribery of public officials to win contracts; bid rigging	2019	\$4 million fine
Contractor 9	Paying bribes for oil giant 1 contracts.	2016	\$2.6 billion; 77 executive plea deals
City Council 1	Aide to city council member received and		Pled guilty; maximum sentence 20 years, but cooperating for reduced sentence.

Table 2
Examples of Corruption in the Construction Industry
Tender Phase

Party	Description	Year of Indictment/ Legal Resolution	Penalties
	distributed over \$1 million in bribes and inducements for project approvals.		
Labor 2	Union head accepted bribes for union membership	2021	Five years
Hotel Management 1	Owner misrepresented employee qualifications and paid bribes for confidential bidding information. (Wire fraud; conspiracy to commit wire fraud)		Pending trial
Contractor 10	Attempted bribe of official of major metro line	2018	Trial pending
City Demolition Department 1	Head solicited bribes from contractors to be added to bid lists or receive confidential bidding information.	2018	Trial pending
Engineer 6	Bribery of foreign officials	2021	\$41 million (part of \$177 million multi-national settlement)

Conclusion

Corruption has been recognized as a significant concern and a recurring practice throughout the industry globally. The industry has done much to raise awareness and increase focus on eliminating these practices. Among the various forms of corruption, bribery is the most common and the most corrosive. It is the top form of corruption in the construction industry and is present during the tender phase.

References

Anti-Corruption Training Manual (Infrastructure, Construction and Engineering Sectors); Transparency International Global Infrastructure Anti-Corruption Centre, May 2008.

About the Author

Bob Prieto was elected to the National Academy of Construction in 2011. He is a senior executive who is effective in shaping and executing business strategy and a recognized leader within the infrastructure, engineering, and construction industries.

Although the author and NAC have made every effort to ensure accuracy and completeness of the advice or information presented within, NAC and the author assume no responsibility for any errors, inaccuracies, omissions or inconsistencies it may contain, or for any results obtained from the use of this information. The information is provided on an "as is" basis with no guarantees of completeness, accuracy, usefulness or timeliness, and without any warranties of any kind whatsoever, express or implied. Reliance on any information provided by NAC or the author is solely at your own risk.