



# NAC Executive Insights

## Corruption

### Key Points

- Construction is ranked as a top industry with respect to corruption.
- Corruption challenges are not limited to under-developed or authoritarian countries.
- Corruption is defined as the abuse of entrusted power for private gain.
- A taxonomy of corruption is provided, and covers both petty and grand corruption.
- Bribery is the most common form of corruption and examples are provided.
- Potential signs of corruption in construction are highlighted to raise awareness.
- Several factors which increase the susceptibility of the industry to corruption are enumerated.
- Facilitating factors at the project level are discussed and the impacts on project performance outlined.
- A suggested company focus on corruption is outlined.
- Guidance for individuals to avoid corruption is provided.
- Emerging topics with respect to fighting corruption are identified.

### Introduction

This Executive Insight focuses on raising awareness and reinforcing attention to corruption, which may be one of the most corrosive factors impacting the construction industry. Corruption has been recognized as a significant concern and a recurring practice throughout the industry on a global scale. The industry has done much to raise awareness and increase focus on eliminating these practices.

Often ranked as one of the top two industries for corruption, along with the extractive industries (those involved in extracting minerals such as oil, gas, iron, gold, and copper through drilling, mining, and quarrying), much remains to be done. Importantly, this is not simply an owner or contractor side issue, but rather a much broader problem.

In this Executive Insight, the following topics are included:

- define corruption.
- assess where the U.S. is currently perceived to stand.
- discuss how prevalent corruption is in the industry today.
- examine some factors that make construction prone to corruption as well as motivating and facilitating factors.
- examine company-level efforts that are important in addressing the risk of corruption.

**Definition of Corruption**

Transparency International, a global movement working in over 100 countries to end the injustice of corruption, defines corruption as “the abuse of entrusted power for private gain.” Corruption includes bribery, extortion, fraud, cartels, abuse of power, embezzlement, and money laundering. Increased use of digital technology both supports corrupt endeavors as well as provides new tools such as artificial intelligence (AI) to discover and manage it.

While much attention focuses on corruption in public entities, corruption also exists in private entities. Table 1 is an extract from Transparency International’s 2020 Corruption Perception Index. The score for the U.S. is highlighted in yellow.

**The Corruption Perception Index (CPI) ranks countries “by their perceived levels of public sector corruption as determined by expert assessments and opinion surveys.”**

**Regarding the CPI score, the higher the score means LESS corrupt; the lower the score means MORE corrupt.**

**Table 1  
Corruption Perceptions Index 2020**

Country	CPI score 2020	Rank
Denmark	88	1
New Zealand	88	1
Finland	85	3
Singapore	85	3
Sweden	85	3
Switzerland	85	3
Norway	84	7
Netherlands	82	8
Germany	80	9
Luxembourg	80	9
Australia	77	11
Canada	77	11
Hong Kong	77	11
United Kingdom	77	11
Austria	76	15
Belgium	76	15
Estonia	75	17

Iceland	75	17
Japan	74	19
Ireland	72	20
United Arab Emirates	71	21
Uruguay	71	21
France	69	23
Bhutan	68	24
Chile	67	25
United States of America	67	25
Seychelles	66	27
Taiwan	65	28
Barbados	64	29
Bahamas	63	30
Qatar	63	30
Spain	62	32
South Korea	61	33
Portugal	61	33
Botswana	60	35
Brunei Darussalam	60	35
Israel	60	35
Lithuania	60	35
Slovenia	60	35

## Taxonomy of Corruption

Corruption is often divided into two categories:

1. Petty corruption
2. Grand corruption, including political corruption

A taxonomy of corruption is provided in Table 2.

**Table 2**

## Taxonomy of Corruption

Corruption may be present in many forms:

### 1. Fraudulent acts

- a. Fraud
- b. Deception
- c. Ghosting
- d. Front/shell companies
- e. Dishonesty
- f. Money laundering
- g. Collusion/collusive acts
  - i. Cartels
  - ii. Bid rigging
  - iii. Price fixing

### 2. Bribery acts

- a. Bribery
- b. Solicitation
- c. (Illegal) Lobbying
- d. Facilitation payments
- e. Kickbacks
- f. Influence peddling

### 3. Extortion acts

- a. Client abuse of contractors
- b. Abuse of power
- c. Intimidation and threats
- d. Coercion
- e. Blackmail

### 4. Discriminatory acts

- a. Favoritism
- b. Patronage
- c. Nepotism

### 5. Other

- a. Professional negligence
- b. Conflicts of interest
- c. Embezzlement

## Bribery

Among the various forms of corruption, bribery is the most common and most corrosive. It is the top form of corruption in the construction industry.

A bribe is money or favor given or promised in order to influence the judgment or conduct of a person in a position of trust. It also may be something that serves to induce or influence.

Bribery refers to a corrupt act that may involve “giving, promising, soliciting, accepting, or offering a benefit to lure or entice someone to act in an unethical or illegal manner” (as cited in the *Journal of Construction Engineering and Management*, August 2017). It may be supply side (those offering to pay a bribe) or demand side (those demanding or paying a bribe).

Enticements may include:

- Rewards
- Fees
- Loans
- Gifts
- Any supplementary advantage:
  - donations
  - special treatment
  - services

Examples of bribery in construction include:

- Paying a client’s representative to win a project or to eliminate other qualified bidders.
- Paying an official to obtain necessary permits and approvals without evidence that the required preconditions have been satisfied.
- Paying the client’s designer to design in such a way that only the briber’s firm can construct it (requirement for special equipment).
- Paying the owner’s representative or government inspector to have defective work accepted.
- Paying the owner’s representative to certify that non-existent work has been performed.
- Payment or other consideration or pressure to the project engineer or construction manager to withhold payment certification or approving an extension or time that is warranted.
- Payment by owner in a dispute to a judge, arbitrator, or witness for a favorable action.
- Payment by a joint venture (JV) partner to the owner to terminate the JV contract at an early stage and to award the contract to the paying party.
- Payment to the owner by a subcontractor who is overcompensated for work performed (or not performed) on the project.

## **Corruption in Construction — How Bad Is It?**

Corruption is widespread in the construction and engineering sectors, especially with respect to infrastructure projects. It may take place in both developed and developing countries. Any phase of a public or private sector project is susceptible. Corruption may be committed by any of the many corporate or individual participants in a project.

Some corruption offenses are committed knowingly and deliberately for personal or corporate gain; others are committed in the belief that it is necessary to undertake these practices in order to remain competitive or to retaliate against the corrupt practices of others. Some erroneously believe these practices are normal business acts and do not constitute criminal involvement.

Many individuals in the infrastructure, construction, and engineering sectors fail to recognize corrupt situations or, if they do recognize them, fail to appreciate the risks of becoming involved in corruption.

Potential signs of corruption in construction include:

- Goods or services in excess of project requirements or not required by the project.
  - Ten extra diesel generators or refrigerators, for example.
- Poor quality goods or services compensated at normal rates for industry standard.
- Suspicious invoices including duplicate, backdated, or unwarranted (no goods or services provided) invoices.
- Degraded quality or ethics focus.
  - Resistance to take required training.
  - Compliance activities deliberately reduced or resisted.
- Bias in procurement practices and unsupportable outcomes.
- Preference to deal only with one individual.
- Resistance to training backup for fear of exposing unethical actions.
- Reluctance to take annual leave, especially during “high value” periods.
- History of corruption.
  - “Bad apples are never only at the top of the barrel.”
- Checks and balances being regularly bypassed in the interest of expediency.
  - Controls not in place or ignored.
- Contemporaneous written records nonexistent.

## **Why Is Construction Prone to Corruption?**

Several factors increase the susceptibility of the construction industry to corruption and include:

- Lack of adequate transparency in selection processes
- Uniqueness
  - No two construction projects are the same making comparisons difficult and providing opportunities to inflate costs and conceal bribes.

- Scale of projects (especially mega-infrastructure projects)
  - Projects such as dams, airports, railways, and global scale power and extractive industry projects can cost tens of billions of dollars, making it easier to conceal bribes and inflate claims.
- Complexity of the work involved
- Complex transaction and supply chains
  - Delivery often involves many professional disciplines and tradespeople and numerous contractual relationships that make control measures difficult to implement.
- Work is concealed
  - Materials and workmanship are often hidden.
    - Steel reinforcing in concrete
    - Masonry covered with plaster
    - Cables and pipes enclosed in service ducts or buried
- Poor documentation and records
- Bureaucracy
  - Numerous approvals are required from government in the form of licenses and permits at various stages, each providing an opportunity for bribery (facilitation payments).
- Inadequate sanctions
  - Meaningful deterrence and penalties are absent.
- Inadequate professional ethical standards and training

## **Facilitation Payment**

A “**facilitation payment**” is the term often used in relation to payments made to officials so as to obtain or expedite services to which the payer is entitled (for example, the obtaining of contract payments which are due, import or work permits, or installation of telephone lines). The amounts which are paid are often quite small, yet the consequences of not paying can be serious. For example, a contractor may not receive a large contract payment due, or a delay in issuing an import permit could delay a project, which could increase the contractor’s costs and cause the contractor to have to pay liquidated damages to the project owner for delay.

In practice, the following distinction is sometimes made between bribes and facilitation payments. A bribe is regarded as being a payment made to someone to act in a way in which she/he should not act (for example, by improperly awarding a contract to the bribing party or improperly releasing a party from a legal obligation), whereas a facilitation payment is regarded as being a payment (other than the fee required by law) made to a person to do something which she/he should already be doing (for example, issuing a visa or customs clearance that is properly due). However, although there may be this distinction, most countries treat the payment and receipt of facilitation payments as a form of bribery.

— *Anti-Corruption Training Manual*

## **Motivations for Corruption**

A range of motivations for corruption exists. Each motivation must be addressed in industry- and company-level training and oversight programs. Motivations include:

- Voluntary
- Level the playing field
- Extortion
- Normal business practice

## **Facilitating Factors (Project Level)**

Motivation and an industry already prone to corruption are further facilitated by a number of factors that exist at the project level. These facilitating factors warrant special attention and are logical points of attack in any company-level anti-corruption program. They include:

- The nature of projects (especially infrastructure projects)
- Contractual structure
- Diversity of skills and integrity standards
- Project phases



- Size of projects facilitates concealing or inflating costs
- Uniqueness of projects limits cost benchmarking
- Complexity of projects
- High standards and extensive (that is, hard to confirm) requirements
- Low supply-chain visibility
- Concealed work/difficult to verify work completed
- Lack of transparency
- Extent of government involvement
- Acceptance of the status quo
- Absence of project anti-corruption measures

## **Impacts of Corruption on Project Performance**

Corruption is corrosive and adversely impacts project performance. An open question is: “How much of today’s megaproject overruns derives from corruption?”

Known impacts on project performance from corruption include:

- Delayed delivery times and increased project costs.
- Reduced potential economy/financial feasibility of the project because sub-optimal projects are implemented.
- Reduced efficiency, favoring construction firms with corrupt relationships rather than the most efficient ones.
- Reduced quality of project performance or infrastructure services delivered to the public.
- Increased operating cost at a given level of service associated with higher costs in construction and operation and maintenance.
- Favors creation of monopolies and market concentrations.

## **Government and Industry Efforts to Address Corruption**

Governments and the construction industry worldwide have increasingly focused on preventing and combating corruption through numerous efforts and organizations. Common across these various efforts is a focus on:

- Ethical codes
- Whistleblower mechanisms and protections
- Comprehensive rules and regulations, increasingly aligned globally
- Increased enforcement efforts
- Stronger penalties, including criminal, sanctions/debarment, and financial

Many of these efforts support self-reporting and identification of corruption with deferred prosecution in exchange for robust corrective measures.

## **Company Focus on Corruption**

Prevention of corruption must build on a strong corporate commitment to ethical behavior. This commitment must be a centerpiece of a company's culture. The company culture must be supported by training and oversight.

The organization (owner, engineer, contractor, sub-contractors, and suppliers) should provide appropriate anti-corruption training to all relevant personnel, including:

- personnel responsible for implementing parts of the anti-corruption program; and
- personnel who could encounter corruption in relation to their duties.
  - It is important to recognize that these are not necessarily the most senior people.

### **Who is more susceptible to corruption?**

Stakeholders more susceptible to corruption are:

- Younger
- Not affiliated with professional bodies
- Less loyal to their organization
- Generally have lower levels of job satisfaction

Training should be appropriately focused and customized. The organization should identify:

- levels of corruption risks faced by different categories of personnel.
- categories of personnel who require anti-corruption training.
- types of training to be given to each category.
- content of each type of training.
- who will provide the training materials and training.
- when the training will be provided.
- how often the training will be repeated.
- the records of the training to be kept.

The purpose of the training is to make relevant personnel aware of and understand:

- the organization's anti-corruption policy.
- the organization's anti-corruption procedures with regard to their role.
- the risks and damage to them and the organization that can result from corruption.
- the types of corruption they may encounter.

- the circumstances in which corruption could occur in relation to their duties and how to recognize these circumstances.
- any necessary preventive and investigative actions needed in relation to any corruption risk or suspected corruption.
- how they can avoid corruption.
- how and to whom they should report any concerns.

This training should be provided to new personnel as soon as possible after they join the organization.

It is important for individuals to understand they may incur criminal liability even when:

- unaware that the activity was a crime (ignorance of the law).
- no personal gain was involved.
- bribe was paid by a surrogate (agent, subcontractor, affiliate) to another individual (spouse, friend, company where a beneficial interest exists) on his/her behalf.
- following instructions of a supervisor or believing actions were in the interests of the employer.
- fraudulent act performed by another individual on his/her behalf.
- the employee was pressured or threatened in order to commit the offense.
  - exception if they feared imminent physical harm.
- no money changed hands, but a future consideration was offered.
- bribe was offered but not paid.
- bribe was paid but intended action did not occur (contract not awarded).
- the action was considered normal business practice or necessary to be competitive.

The organization should appoint an appropriate person to be responsible for overseeing the implementation of the training program and ensuring all relevant personnel are trained in a timely manner. The training program may be in person, online or remote, or a hybrid.

In respect to business associates:

- The organization should identify categories of business associate that represent more than a low corruption risk.
- Based on this assessment, the organization should confirm that the business associate is taking appropriate steps to verify that the business associate is providing anti-corruption training to its staff and appoint an individual responsible for assuring the business associate training has been provided to all relevant personnel.

- The organization should keep records which include the procedures in relation to the training requirements of its business associates and the steps taken by the organization to implement this procedure. These become important if there is a subsequent breach.

### **Unaware or willfully blind?**

In some instances a contractor may not have directly provided a bribe, but has benefitted from it being paid. In most jurisdictions the contractor could be treated as equally culpable. Examples may include:

- An agent or local representative using part of a fee to pay a bribe for winning a contract.
  - Telltale signs – exorbitant agent fees or large success fee agreements.
- Payment by a JV partner.
  - Telltale signs – client preference to deal with the partner rather than the JV.
- Payment by a key subcontractor to ensure the desired prime contractor has won the bid.
  - Telltale signs – extremely close relationship between subcontractor and key procurement official, often exhibited by timely inside information.
- Payment by JV partner or key subcontractor’s overseas affiliate (parent or sister companies) on behalf of the project firm.

Suspecting corruption and not acting or having willful blindness are not inoculating.

## **Guidance for Individuals**

What is a person to do? How does one avoid being caught in the web of corruption and criminally liable?

Some straight forward guidance includes:

- Act at all times honestly and without deception.
- Do not knowingly, with willful blindness, or recklessly do or participate in any activity which involves:
  - Offering, giving, demanding, or accepting any bribe or other improper advantage.
  - Participating in any dishonest or deceptive activity in relation to any pre-qualification, tender, or selection process.
  - Providing, concealing, or approving work, materials, equipment, or services which are not of the quality and quantity required by the contract.
  - Providing false, inaccurate, or misleading information.
  - Willfully withholding information.
  - Making or submitting false, inaccurate, misleading or exaggerated records, invoices, claims, applications for variations or extensions of time, or requests for payment.

- Dishonestly refusing or failing to approve, or delaying approving, work, materials, equipment, services, invoices, claims, applications for variations or extensions of time, or requests for payment.
- Dishonestly refusing or failing to pay, or delay in paying, sums due.
- If a director or officer or in any management responsibility:
  - Make diligent and proper inquiries regarding any suspicion of corruption.
  - Take reasonable preventive measures to stop corruption for which the company may be liable.
  - Do not instruct, authorize, or condone, expressed or implied, any corrupt activity.

## Emerging Concepts and Issues

Social pressures and new technology are shaping the ever evolving anti-corruption landscape. Four areas worth identifying in this Executive Insight are:

1. Chief Integrity Officer and relationship to ESG (environmental, social, and governance) (emerging concept)
  - a. Envisioned to support the CEO and board in shaping corporate culture and creating an organizational environment in which people are happy and proud to work—not just because they are complying with the law, but because they are making a positive contribution to society.
2. Application of artificial intelligence (AI) to Big Data in corruption identification
  - a. In bureaucracies, “paper is power.” The digitalization of data facilitates transparency. AI opens the door to predicting corrupt practices.
  - b. Examples include identification of irregular credit card usage, petty cash excesses, unanticipated invoices (size, frequency, vendor), and goods and services purchases of unanticipated items or in unanticipated quantities.
3. Data integrity and misuse/misappropriation of data
  - a. Data has increasing value and is subject to a growing set of data privacy regulations as well as proprietary value. The corrupt misuse of data or misappropriation for other than its intended use represents a growing area for potential corruption.
4. Securing the ledger with “blockchain,” a system of recording information in a way that makes it difficult or impossible to change, hack, or cheat the system. A blockchain is essentially a digital ledger of transactions that is duplicated and distributed across the entire network of computer systems on the blockchain.
  - a. As concerns grow on ensuring secure digital supply chains, blockchain technology is emerging as a possible answer.
  - b. Blockchain also holds promise in securing data and data rights in the growing use of digital twins and their extension into enterprise asset management.

## References

1. *Anti-Corruption Training Manual (Infrastructure, Construction and Engineering Sectors)*, Transparency International, Global Infrastructure Anti-Corruption Centre
2. *Journal of Construction Engineering and Management*, August 2017
3. Transparency International, [transparency.org](https://www.transparency.org)

## 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.

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