



Do Strong Ethics Hurt U.S. Global Competitiveness?

Sometimes, but the long-term goal of ethics and transparency is gaining global support.

BY GAIL DUTTON

When engineering and construction giant Fluor Corporation enters a country, the first thing it does is make it very, very clear that the company does not pay bribes. Period. Like it or leave it.

At Fluor, "In all our contract documents, we have anti-corruption language, so clients know our stance up front," notes Lee Tashjian, vice president of communications and chairman of the Anti-Corruption Task Force for the Engineering and Construction sector of the World Economic Forum.

That policy has earned Fluor a reputation as an honest broker, even in environments where payoffs and back door deals are the norm. That serves the long-term corporate good and improves the local economy. That's the upside. The downside? Like other U.S. companies regulated by anti-corruption laws, Fluor sometimes loses contracts to bribe-paying international competitors.

Transparency International's 2006 Bribe Payers' Index

poll of 11,000 international business executives revealed that bribe paying by multinational corporations is disconcertingly high, despite growing numbers of international anti-corruption laws and industry standards.

Swiss business, which accounts for 1.2 percent of the world's exports, leads the list as the country least likely to pay bribes when doing business abroad. The U.S. was number nine (tied with Belgium), just ahead of tenth and eleventh ranked Japan and Singapore. Companies deemed most likely to pay bribes when doing business in India, China and Russia. The index didn't address such issues as nepotism or one-party rule that may affect transparency, or the willingness to publicly investigate corruption, which influences the perception of corruption.

U.S. publicly traded companies have been liable to the Foreign Corrupt Practices Act since 1977. The anti-bribery provisions of the FCPA, revised in 1998,

Voluntary Disclosure

Separate from the various cultural attitudes toward corruption, U.S. companies are governed by law that formally defines corruption which one expert summarizes as "using illegal means to subvert institutional goals." When improper conduct is alleged, companies have an obligation to investigate and, if true, to fix the problem.

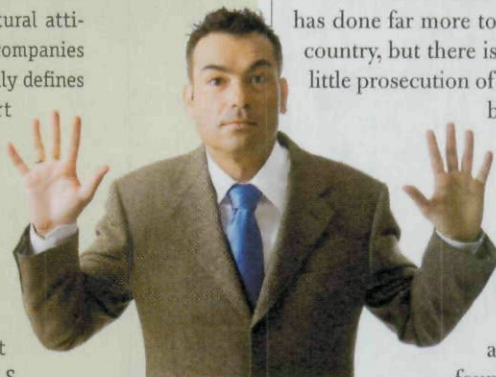
Voluntary disclosure is part of that fix, according to the U.S. Department of Justice. But, Lucinda A. Low, partner with Steptoe & Johnson LLP says, "the system needs adjustment. Enforcement officers expect companies to come in when they identify a serious issue, and they get credit when the decision to prosecute is made (or when penalties are levied). But," she cautions, "there's a very broad prosecutorial environment," that doesn't outline how voluntary disclosure affects that decision or penalties. Consequently, companies are questioning whether voluntary disclosure is in their best interests.

"The legal community is split," Manny Alas, partner and global co-leader of Foreign Corrupt Practices Act (FCPA) practices at PricewaterhouseCoopers says. "Voluntary disclosure may not put you in a better position." What everyone does agree on, though, is that you should remediate the problem promptly. As he says, "It's dangerous not to fix it."

make it unlawful for a U.S. person to make a payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. The meaning of foreign official is broad. For example, an owner of a bank who is also the brother of the minister of finance would count as a foreign official according to the U.S. government. There is no materiality to this act, making it illegal to bribe even a penny. The government focuses on the intent of the bribery more than the amount of it.

In theory, U.S. statutes are clear and prohibitive of bribing foreign officials for the sake of getting business. In practice, there are grey areas that make for ambiguity. And other countries are much less restrictive on their companies, despite protestations to the contrary.

One of the biggest problems is that "corruption remains pervasive," according to Ed Rial, leader, Foreign Corrupt Practices Act practice, Deloitte Financial Advisory Services. Despite a proliferation of anti-corruption policies and regulations, experts agree that few are rig-



orously enforced. According to Frank Vogl, one of the founders of Transparency International and a former head of communications for the World Bank. "The U.S. has done far more to enforce the laws than any other country, but there is very little enforcement and very little prosecution of companies that are alleged to pay bribes. U.S. policies have great rhetorical influence but little practical influence."

On a company versus company basis, American insistence in integrity does indeed mean that "there's some frustration when U.S. companies let bids," admits Jonathan Greenblatt, co-founder of Ethos Water and a former Commerce Department official during the Clinton Administration. "A lot would argue (our anti-corruption laws) work against us, that we miss out on a lot of deals," adds Richard W. Oliver, CEO, American Sentinel University and former VP at Nortel.

"Companies in strategically important industries—defense and telecommunications, for example—that want to make inroads in a country often do have to resort to bribery and incentives to endear themselves," to their hosts, according to Usha Haley, professor of international business, University of New Haven.

More often, though, dealing with corruption among potential clients or competitors is just time consuming and can be extremely difficult, Vogl says. "It takes more effort to get a deal done and you may find your competitive condition endangered."

Leveling the playing field in the corruption-plagued global construction industry thus became a personal challenge that Fluor CEO Alan Boeckmann laid before the World Economic Forum in Davos several years ago. The result is the Partners Against Corruption Initiative (PACI), created in 2004, to contain all forms of global corruption and bribery. So far, more than 110 companies from many nations and industries have certified that,

"they have taken steps to ensure that no person acting for us or on our behalf will engage in bribery."

But, anti-corruption isn't just American initiative. The United Nations, the Organization for Economic Cooperation and Development, the Organization of American States, the European Union and individual nations all have anti-corruption conventions. British Prime Minister Tony Blair strongly advocated bringing together companies and governments to discuss common problems.

That expanding global interest in anti-corruption efforts only underscores the necessity to maintain a good reputation. "If your business development goals get ahead of your ability to maintain your integrity, you've got a recipe for disaster, especially in new frontiers," insists Tom McCoy, executive vice president and

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chief administrative officer of Advanced Micro Devices.

Going into a new market, a company should "make it extremely clear that it will be a good corporate citizen but will not engage in corrupt practices," Vogl emphasizes.

But, change isn't easy or necessarily swift. "If a company really believes its success over time depends on having meaningful values, there comes a time when it may say, 'we won't do business here' and walk away," Vogl says.

Corruption costs money

Corruption, in its many forms, is a real dollars and cents issue. The World Bank estimates that costs incurred by corruption account for more than five percent of the global gross domestic product. The African Development Bank estimates that African economies lose \$150 billion per year to corruption. Obiageli Katryn Ezekwesili, Minister of Solid Minerals of Nigeria, says that country lost eight percent of its oil revenue over 30 years to "inflated contracts."

Beyond the effect to the local economy, "Bribery is really expensive," for corporations, too, comments Alexandra Wrage, president of TRACE International, a non-profit association specializing in anti-bribery due diligence. She equates paying bribes to putting a bull's eye on your company's forehead. People seeking bribes go to the most likely targets. "There's also an opportunity cost. It takes a great deal of time to negotiate a criminal contract, and they're not enforceable. Furthermore, there's a huge reputation issue. Companies don't understand how deleterious it is to them to have a reputation as a bribe-paying company."

But, what precisely is bribery? Is a \$200 bottle of wine with dinner bribery? What about the gift of a Waterman pen? Those things aren't likely to affect the outcome of a deal, but they may give the appearance of impropriety.

Facilitation payments are widely viewed as a form of small-time corruption—\$20 to process papers, for example—to ensure routine government activities. They are allowed by the U.S. Foreign Corrupt Practices Act, perhaps in a nod to the international business climate in the 1970s when the Act was passed. "In the 1980s, bribery was often equated with business sophistication," Wrage says. Execs would land in a country with a wad of \$20s, "to speed things up. But, McCoy says, "Small time corruption is like low-level cancer. Eventually it will kill you."

Some countries have passed legislation prohibiting facilitation payments and some companies also are banning them.

Anti-Corruption Best Practices

Excellent anti-corruption practices exist in many industries, but the standouts tend to be in high-risk areas, like oil and gas and construction. The best have a few things in common:

- A clearly articulated anti-corruption policy that applies to everyone involved with the company, including partners, agents, representatives and employees.
- An anonymous reporting system.
- An appropriate disciplinary mechanism.
- A well-documented investigative response that shows clear resolution.
- Robust due diligence before retaining partners, agents or representatives and before acquiring another company.
- Financial accounting procedures to identify improper payments.
- Internal and third party audits.

Often, though, corruption is more subtle. Wrage, who specializes in training local intermediaries, is seeing an increasing level of sophistication in the questions. "Six or seven years ago, people considered bribery a victimless crime. Now they're saying they understand that and are discussing non-fiscal situations." Conflicts of interest like providing internships for an official's children or contracting with the official's brother-in-law and other conflicts of interest, as well as how competitive intelligence is obtained, are moving up on the list of concerns.

Clearly, the anti-corruption movement is gaining status as countries enter the global market. When TRACE International met with government officials in the Middle East and West Africa, many were seeing the international standards for the first time. Wrage says, "They were surprised at just how little it takes for companies to find themselves in the enforcement cross-hairs."

When building a new business in a region, AMD's McCoy recommends starting with

"Truly excellent people. People do business—not governments," he says. "The people present a company in terms of its values and products and corporate culture," and multinationals have built a culture that transcends national cultures. So early contacts, especially, must be from people who exude the company's ethical philosophy.

What U.S. execs forget is that they can be held responsible not just for the actions of their own employees, but also the conduct of foreign agents in their employ. "You can't (or shouldn't) simply pick these agents out of the phone book," warns Wrage.

Strong partners also may help protect companies against ethical abuse of extortion. For example, when planning a pipeline project in Chad, which is frequently identified as one of the most corrupt countries in the world, ExxonMobil partnered with the World Bank. "It was a very complicated partnership," Vogl recalls. "The World Bank put in certain funds, along with ExxonMobil. All revenues went through the World Bank and were earmarked for anti-poverty purposes." To ensure the funds actually were used to reduce poverty and not enrich the government or other pockets, the World Bank oversaw the transactions and exacted leverage that no corporation could.

Because of the focus on bribery, many companies are looking to see if they're adequately training employees

and if they're doing sufficient testing of those efforts to ensure that people are familiar with the regulations and laws.

Local challenges must be addressed if the training is to be taken seriously. For example, Wrage points out, "Bribery means something different in Dubai, Moscow and Nigeria." In Nigeria, she says, it means widespread petty graft, like tolls for walking a few hundred yards along a street. In Moscow, "it's a thug environment," in which not paying can mean your office is torched."

In Dubai, the issue is both more subtle and more complex. There's a powerful elite, she explains, and about 90 percent of citizens work for the government. As a foreign corporation, you're required to partner with a local, but since U.S. law frowns on partnering with government officials, that presents a conundrum. So, "If you want to work with a government official," Wrage says, "send a notice to his employer outlining what you want to do and that you don't believe there is a conflict of interest." Transparency is key to the situation, she emphasizes.

Training must consider cultural issues, too

"One mistake people make, especially in the U.S., is to look cultural issues as Westerners," notes George Haley, author of *The Chinese Tao of Business: The Logic of Successful Business Strategy*, director of the Center for International Industry Competitiveness and professor of marketing and international business, University of New Haven. "We've had a universal norm in the West," based upon the philosophy of Aristotle and Plato. Other ethics, however, evolved differently and manifest themselves differently, but may be just as strong."

Chinese ethics, for example, evolved completely independent of that philosophy, and are based upon contextual norms. It is easy to mistakenly assume Confucian codes are relative, Haley says, but they're actually very strict, and are based upon the hierarchical obligations in relationships such as ruler and minister, father and son, husband and wife, elder and younger siblings.

In this matrix, Haley explains, "Everyone on the right has a greater duty to the one on the left. It would be a significant transgression of ethics and duty for a minister to lie to his ruler, a wife to lie to her husband or a son to lie to his father, but the opposite is not true. A ruler may lie to his minister, a husband to his wife and a father to his son."

"Friendship is a fifth relationship. Outside those relationships, the only precept is not to disturb social harmony," which he defines as not creating trouble for the family. *WT*

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