



NETWORK BRAZIL

INTEGRITY IN THE CONSTRUCTION SECTOR

DISCUSSING THE CHALLENGES AND PROPOSING
SOLUTIONS TO THE INDUSTRY



This booklet was developed by Global Compact Network Brazil in partnership with Ethos Institute and companies of the construction sector. The purpose is to provide examples of emblematic cases of the main situations that may expose companies of the construction sector to solicitations of corruption, and therefore propose good preventive practices and responses to such scenarios. The intent is to have a learning tool that contributes to combat corruption, improve the business environment, and propose a new standard of conduct for all companies in the market, including public-private relations.

Important

The cases demonstrated are merely illustrative and not derived from any internal investigation of any of the participating companies.

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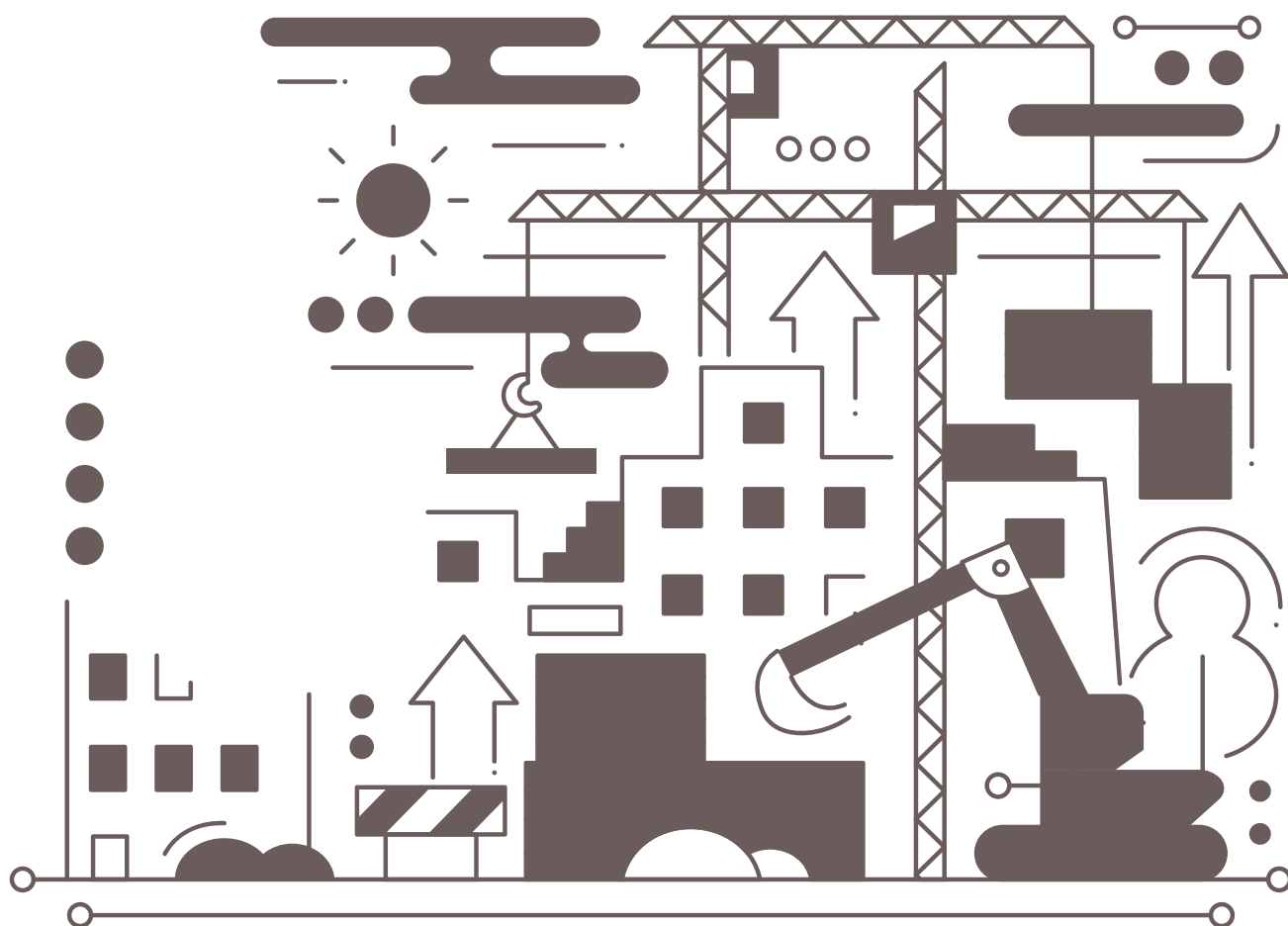
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MAY, 2018

INTEGRITY AS KEY WORD FOR BRAZILIAN CONSTRUCTION SECTOR

Dear partners,

One of the great obstacles that reduce the expectation of fulfilling the goals established by the United Nations 2030 Agenda involves combating corruption. In the beginning of the 2000's, the Millennium Development Goals (MDGs) already considered the negative impacts of illegal practices on the global social and economical progress. However, in 2015, with the introduction of the Sustainable Development Goals (SDGs), the issue became even more evident. If we consider the sustainable progress of emerging countries such as Brazil, it is threatened by so many cases of corruption in the public and private sectors.

Currently, there is an expectation that Brazil shall find solutions that prevent corruption. The private sector plays an essential role in this process, as it is also part of the problem. By being a protagonist of such change, Global Compact Network Brazil Global, by means of its Anti-corruption Working Group, has strived to engage companies and organizations to openly discuss the subject, sharing experiences and working together to face the reputational risks that may affect the market and the society.

In recent years, many of the corruption cases in Brazilian companies have been

observed in the civil construction sector. Besides the applicable punishment, the companies in the sector must also be protagonists in developing compliance actions, in order to avoid the recurrence of such cases.

Therefore, we expect that the resources and tools presented herein may incentive construction companies and entrepreneurs to face the irregularities in their practices and promote the prevention of misconduct regarding public procurement, in order to establish a healthier and more ethical connection between the public and private sectors.



DENISE HILLS

President of Global Compact Network Brazil



CARLO PEREIRA

Executive Secretary of Global Compact Network Brazil

MESSAGE FROM THE ANTI-CORRUPTION WORKING GROUP

Dear partners,

We know that, for a long time, Brazil has been facing a series of ethical issues and dilemmas in relations that involve the public and private sectors. However, in recent years, the problem was intensified. According to Transparency International, in 2017 the country saw drastic worsening of the Corruption Perception Index, dropping 17 positions when compared to the previous year, occupying the 96th place, the worst situations since 2013.

With the purpose of transforming this context, Global Compact Network Brazil has been promoting meetings of companies of several different segments to responsibly discuss their roles in the creation of a less corrupt market and, consequently, a more honest country. From the implementation of the Anti-corruption Working Group up to the workshops of the project to create collective actions to combat corruption in the private sector, Network Brazil has assumed the responsibility for the commitment of establishing favorable conditions so that participating companies and institutions were able to improve their programs and be aware to ethical issues in each one of their actions.

However, during the meetings and experience exchanges, we noted the need to focus out efforts in combating corruption and strengthening a strategic economic sector for the country: civil construction. Therefore, due to past mistakes and the great crisis of confidence faced by the sector, especially after the "Car Wash" operation, we invited the four main corporations of the field in Brazil to get together and create this document with the intent of disclosing information regarding the subject. Together, *Compliance*, Sustainability,

and Social Responsibility executives of Andrade Gutierrez, Camargo Corrêa Infra, Queiroz Galvão, and Odebrecht Engenharia e Construção elaborated fictitious scenarios containing case of structural and daily corruption that the sector may face and the possible ways to identify and to seriously combat them.

From this initiative, we expect to intensify our contributions to comply with the 2030 Agenda in Brazil and achieve Sustainable Development Goal (SDG) 16 – Peace, justice, and effective institutions – and the specific targets. The intent is to help creating companies that are effective and transparent in all levels, besides expanding and strengthening the participation of developing countries in global governance institutions. In this journey, we thank the participation of all companies and institutions that integrate the Anti-corruption WG, especially Ethos Institute, who believed in the need and potential of the action.

Good reading and good practices!



**REYNALDO
GOTO**

Coordinator
of the Anti-
Corruption
Working Group

WHAT IS THE UN GLOBAL COMPACT?

Engage the private sector to create a more sustainable world. This is the key proposal of the Global Compact, an initiative of the United Nations (UN) to stimulate the commitment with practices that strengthen a more inclusive, equal, and responsible global market. In line with the implementation of the 17 Sustainable Development Goals (SDGs) up to 2030, the United Nations Global Compact elaborated 10 Principles to encourage companies and organizations to promote and respect human rights, labor rights, environmental protection, and anti-corruption.

Introduced in 2000 by the former UN Secretary General, Kofi Annan, this is the largest voluntary corporate citizenship initiative in the world, which currently counts on almost 13,000 signatory companies and organizations spread on 161 countries.

Official spokesman for more than 750 signatory Brazilian companies and organizations, Global Compact Network Brazil has been active since 2003 to effectively implement the SDGs and the 10 Principles in the national territory, promoting events, workshops, and collaborative actions lead by the private sector in a partnership with governments,

institutions, civil societies, and several UN agencies. Linked since 2011 to the United Nations Development Programme (UNDP), it is the third largest Global Compact network in the world, only behind the Spanish and French networks.

Around here, the promotion of sustainable development is all about learning, exchange of experiences, and the commitment of the signatory companies to engage in the following working groups: Water, Food & Agriculture, Anti-corruption, Human Rights & Labor, Energy & Climate, SDGs, and the Communication and Engagement Commission (CEC).



ANTI-CORRUPTION WORKING GROUP: COMPANIES TOGETHER FOR BUSINESS ETHICS

Corporate proper governance is the base for sustainable economy. But how to ensure that companies of several segments are aware and autonomous regarding the adoption of anti-corruption measures in the corporate environment? To ensure an alliance to combat illegal practices in the private sector, Global Compact Network Brazil created the Anti-corruption Working Group in order to join forces of business leaderships to implement the tenth principle.

The spaces created by the WG provide knowledge to develop compliance, good governance, and transparency strategies and tools that companies can use, favoring new practices and inspiring the entire private sector to cherish ethics in their businesses. The actions include meetings, workshops, and training sessions encouraged by the Global Compact and commanded by more than 70 companies and organizations that integrate the Group.

Besides identifying possibilities to promote collective actions, the Anti-corruption WG has been trying to expand the learning platforms and the dialog regarding the subject, by promoting meetings all around the country and disclosing valuable information in publications that broach issues such as prevention practices, risk mitigation, and opportunities to combat corruption.



UNDERSTANDING ANTI-CORRUPTION

COLLECTIVE ACTION

Although isolated corporate actions are required, they have been insufficient to promote sustainable development effectively, especially in the case of corruption, which is a delicate matter that involves risks for companies all around the world. In this scenario, collective action is an effective tool to combat corruption. According to the definition of the World Bank and its partners in document "FIGHTING CORRUPTION THROUGH COLLECTIVE ACTION: A guide for Business", collective action is defined as "a collaborative and sustained process of cooperation between stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors." The purpose is to aid companies to organize initiatives to face the competitive, economic, and ethical challenges imposed by corruption.

Therefore, the Global Compact implemented a project to promote Anti-corruption Collective Action *in the private sector* in order to join forces between governments, organizations, NGOs, and companies to act collectively against corruption. This project is part of the second funding round of the Siemens Integrity Initiative (SII), in a partnership between the Basel Institute on Governance, the UN Global Compact, and the Local Networks in four countries: Brazil, Japan, Kenya, and Nigeria. As a result, the countries promoted several dialogs and have advanced to develop tools to improve business transparency and integrity.

Containing corruption goes beyond condemnation and punishment: we must think of ways to diagnose, prevent, and discourage any form of corruption or bribery in corporations. With that in mind, the project stimulates corporate

leaderships to promote fair and equal conditions to all players in the market by means of anti-corruption collective action. Level the playing field for all players in the private sector, from small to large companies, and including the entire value chain, allows minimizing the probabilities of operations outside the rule of law.

With the participation of competitors and stakeholders, the project has provided a series of skills, abilities, strategies, and resources to identify challenges and opportunities to promote ethical and transparent commercial practices. In addition, the initiative has enabled permanent dialog between the public and private sectors, offering opportunities for the several stakeholders to create initiatives that stimulate ethical business principles, increasing the existing efforts to combat the corruption in the previously mentioned countries.



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INTRODUCTION

Combating corruption is one of the 10 principles of the **UN Global Compact**. The signatory companies commit to combat corruption in all forms, including extortion and kickbacks. The subject is also the focus of international instruments, such as the Anti-Bribery Convention, of the Organization for Economic Cooperation and Development (OECD), valid since 1999, which criminalizes bribery in international commercial transactions and foresees strict monitoring and follow-up to ensure effective implementation, and the United Nations Convention Against Corruption (UNCAC), from 2005, which prohibits corruption and obliges signatory States to take a series of measures to prevent and combat it.

Combating corruption is also an important factor for the advance of the **2030 Agenda** and fulfillment of Sustainable Development Goals, especially **SDG16**, which focuses on promoting peaceful and inclusive societies to allow sustainable development, promote access to justice for all, and build effective, responsible, and inclusive institutions at all levels.

Addressing the subject is essential, mainly, to achieve three goals:

- 16.3: Promote the Rule of Law, at national and international level, and ensure equal access to justice for all;
- 16.5: Significantly reducing corruption and bribery in all forms;
- 16.6: Developing effective, responsible, and transparent institutions at all levels.

Purpose

The release of the learning tool occurs in accordance with such international milestones and considers the deep transformation of the construction sector in Brazil, with significant changes that increase the transparency of corporate governance systems and, in some cases, with agreements signed with authorities, to establish a commitment to change conducts associated to severe sanctions to companies and individuals.

This publication demonstrates, before the Brazilian society, that the sector is taking seriously integrity and anti-corruption, and recognizes that the world has evolved and the values that rule the new human and institutional relations have changed. This is also a form of contributing with the evolution of the sector by educating companies of all sizes.

The purpose of the good practices included in the learning tool is to promote the improvement of the business environment for all, with clearer policies, and the creation and perpetuation of a healthy, sustainable, and honest environment, ensuring fair and transparent competition. Therefore, the intention is to establish, in the future, a new standard of conduct for all players in the referred market.

In the attempt to include the value chain related to the construction sector as well, the booklet also provides suggestions that involve more structural changes in public-private relations and amendment of laws, with the purpose of generating a deeper and long-lasting transformation.

Content

We selected thirteen (13) fictitious scenarios that provide emblematic examples of the main challenges, risks, and regulatory issues that the companies of the sector have to face in their daily activities. Each case includes a description of the context, followed by recommended responses. First, the scenarios present the measures to be adopted so the situation does not occur, that is, so that the company avoids being exposed to corruption proposals. Then, the measures to be adopted when corruption takes place are presented. At the end of each case, a chart is presented with suggestions of structural changes in the country that could contribute to reduce the probability of corruption demands as much as possible.

Public

This release is of interest to all companies that may be exposed to risks of undue advantage requests when conducting their businesses. It serves as support; a practical training tool that contains guidance regarding daily activities, with the purpose of making employees more aware and alert to potential risks of exposure to corruption and extortion, in order to prepare them to prevent such situations and qualify them to respond honestly and ethically to undue demands from customers, partner companies, and public agencies. The learning tool is also an instrument to promote clear and open discussion of the subject by several hierarchic instances of the companies of

the industry.

It is important to emphasize that the content is not exhaustive, is merely illustrative, and does not apply unrestrainedly to any situation. Still, it serves as guidelines regarding good practices and promotes the culture of constant thinking of the subject even in face of unexpected and unforeseen situations.

Contact us

Persons and companies interested in providing information regarding the use of the learning tool and/or who wish to contribute with suggestions of other scenarios and good prevention and response practices to undue advantage requests for possible future editions may contact Global Compact Network Brazil by means of the Anti-corruption Working Group (pacto.global@undp.org)



MESSAGE FROM COMPANIES THAT CONTRIBUTED TO THE PUBLICATION

Under the leadership of the Global Compact Network Brazil and in partnership with Ethos Institute, in the last few months, we have regularly discussed ways to create an anti-corruption initiative and self-regulation of the construction sector.

We learned with the past, and we are highly committed and engaged to transform this market. Therefore, we understand that a Collective Action is an effective tool to combat corruption in the private sector, and that it may be applied to suggest changes in the legislation and in the bidding system, by promoting good practices, awareness, creation of trust, and fair competition.

The release of this learning tool is another step in this journey, and we invite other companies of the sector to join us in this commitment, and we hope that the scenarios herein are able to guide, prevent, and mitigate the main risks of corruption faced by the sector, in order to create a new standard of ethic and honest conduct to be followed by all companies in the sector.

Andrade Gutierrez
Camargo Corrêa Infra
Construtora Queiroz Galvão
Odebrecht Engenharia e Construção

SCENARIO #1

A CUSTOMER REPRESENTATIVE DEMANDS UNDUE ADVANTAGE AS A CONDITION TO APPROVE A CONTRACT ADDENDUM

Description: Your company signed a contract with a client to develop a project. During the execution, your company requests additional pay due to legitimate subsequent changes in the project scope. The client representative informs that he shall only sign such agreement if your company pays him.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Remember that the more detailed the executive project, the easier it will be for your company to provide real budgets and schedules and mitigate future risks of corruption requests.
 - ▶ Be aware that, after signing the contract, you must be committed to executing the project in time and in accordance with the price and scope contracted. Therefore, your company is highly vulnerable to undue advantage requests if:
 - the contract does not include safeguards that discuss such risk; and
 - if your company's employees are not aware of the obligations and duties of the contract.
 - ▶ Know your clients. Perform due diligence in previous records of the client using online systems and the search mechanisms used by the compliance department and look for cases of undue advantage.
 - ▶ Reassess the probability of undue advantage demands in each phase of the project.
 - ▶ Develop a global action plan that includes safety issues and predict how to deal with the possibility of retaliation against company employees, contractors, and public and private patrimony in case of refusal to pay for undue advantage wherever your company operates.
 - ▶ Promote transparency, integrity, and ethical conduct among competitors and clients, by means of collective actions.
- Class entities are a good vehicle for such promotions. First of all, just ensure that such actions do not violate the antitrust law.
- ▶ Adopt a compliance policy that prohibits bribery and provide clear instructions on how to reject offers from agents to facilitate government relationships by means of kickbacks.
 - ▶ At the beginning of the project, offer compliance training to stakeholders, employees, and especially clients. Promote and disclose your compliance program at the work site, involving inspectors and client representatives involved in project activities. Ensure that all persons are aware of the commitment to integrity defined by your company.
 - ▶ The price offered for the project must also consider the costs of the company integrity program, which include fees and costs related to strict follow-up until the completion of the specialized consulting project (legal, technical, administrative, etc.), required to mitigate the risk of corruption according to the terms and conditions of the contract.
 - ▶ Whenever possible, ensure that the contract is based on recognized models, such as *Fundo de Investimento em Direitos Creditórios* (FIDC).
 - ▶ Whenever possible, ensure that the contract includes a risk matrix that clearly defines the responsibilities of each party.
 - ▶ Whenever possible, ensure that the

contract includes the following terms:

- Contractual provisions that:
- prohibit hidden and/or illegal payments; and
- allow the party exposed to undue requests to have the right to suspend or terminate the contract due to material violation or willful misconduct by the requesting party, and receive indemnity for the consequences of such request.
- A specific clause related to contract changes or variation (for example, clauses related to changes, suspension, interruption, termination, or suppression of the contract, force majeure, random events, etc.), including clauses related to financial aspects of the contract.
- Strict technical and financial terms and conditions (physical-financial schedule, strict conditions regarding the contract effective date, etc.),

including provisions related to payment of additional costs in case of unusual or unforeseen changes of contract conditions to avoid the possibility of extortion.

- Dispute settlement clause. Specify an arbitration center with history of actuation recognized by the market.
 - Clause to appoint an independent specialist to solve any disagreements between the parties.
- ▶ Although in Brazil public contracts are subscription contracts that do not allow demanding contractual clauses, promote the importance of the clauses mentioned herein in public hearings, impugnation of notice to bids, and requests for clarification to help promote the change in contract culture with Public Administration.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Refuse to pay undue advantages and inform the client representative about the criminal implications of such request.
- ▶ Inform the client representative about your company's compliance practices, including the prohibition to make payments that are not related to the services that have been formally contracted and approved.
- ▶ Use all channels available to inform your company's compliance department.
- ▶ Involve the legal department so that the company establishes the applicable legal measures to charge for any amounts

incurred, according to the terms of the contract.

- ▶ Assess how local authorities may react and how the legal authorities of the country in which your company is located may assist you.
- ▶ In cases in which the financing is extended or insured by the World Bank, other multilateral development banks, and/or other bilateral agencies, seek the support of such institutions immediately.
- ▶ In cooperation with the authorities (for example, the police or another relevant authority) whenever possible, collect

evidence to prove the request.

- ▶ Approach the local corporate associations and/or the Embassy to expose the situation and receive support. According to the case, seek additional support of relevant NGOs that may help exposing the issue.
- ▶ Contact your insurance broker and check if the request qualifies as breach of contract resulting in insurance coverage.
- ▶ If the pressure to pay bribery is too strong, assess the consequences of ending the project.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF CORRUPTION REQUESTS?

- ▶ Project details are essential to mitigate the risks of corruption. It should be mandatory to present the detailed engineering execution project before the project bid, allowing the elaboration of realistic budgets and schedules.
- ▶ The public contract law, or State-Owned Company Law (Law No. 13303/16), must require that contracts have clauses related to compliance. The law must also require public contracts to be based on widely-discussed models, such as FIDC.
- ▶ Study the possibility of having the public contract law include a clause that allows offering companies with certified internal compliance system to obtain higher technical scores in the bid assessment process.
- ▶ Study the possibility of establishing a tax incentive mechanism that benefits companies that invest funds and efforts in preserving and promoting integrity (for example, by developing a certified internal compliance system).
- ▶ For contracts with public power, the public contract law must foresee government bonds as guarantee.
- ▶ The public contract law must also consider the variable character of engineering projects. Ignoring such variability, by restricting contract amendments to totally supervening events, results in omissions regarding the variations and increases the risk of undue requests.
- ▶ Disputes must be solved quickly. Either by means of the Judiciary Branch and/or arbitration (for example, by creating a specialized jurisdiction).
- ▶ The prices that compose the base charts shall consider costs related to consultancy and follow-up to mitigate the risks of corruption.
- ▶ Contracts that foresee arbitration require tools to ensure that the parties comply with the arbitration decision.

SCENARIO #2

AGENT OR CUSTOMER REPRESENTATIVE REQUESTS UNDUE ADVANTAGE AS A CONDITION TO REESTABLISH PAYMENTS THAT WERE SUSPENDED WITHOUT ANY BREACH OF CONTRACT

Description: Your company was awarded with a contract to erect a dam for a government-owned company. The contract cover the supply and installation of equipment, for a period of 18 months. The payment deadline is 30 days after each measurement installment. An amount of 5% is retained and shall be paid at the end of the contract, after the Definitive Acceptance Term is signed.

The work has progressed according to the schedule and the payments, were made with little or no delay during the first 15 months. However, the payment due on the 16th month was delayed and no other monthly installment has been paid since. Considering that, according to Law 8.666/93, your company cannot interrupt the execution of the works until the delay amounts 90 days, and also that it is not easy to demobilize and re-mobilize your team without incurring high costs and engineering risks, your company decided to complete the work and supply all pieces of equipment and claim the payments due,

without success. During the acceptance inspection, the client presented a long list of pending issues and requested your company to provide many documents for analysis, although the tests conducted by your experts show that the equipment is working according to the contractual specifications.

In a reception organized by the client, the client introduces an agent who suggests that he can facilitate the acceptance of the work and equipment if you pay a commission of 5% of the amount due.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Ensure excellent contract management in order to avoid situations that allow undue approaches.
- ▶ Adopt a compliance policy that prohibits bribery and provide clear instructions on how to reject offers from agents to facilitate government relationships by means of kickbacks.
- ▶ Conduct internal training with practical situations, so that all employees involved in the negotiation for the execution of the works know how to identify situations of bribery or undue advantage requests and how to proceed in case such situations occur and, in case of doubts, request risk assessment to the compliance department.
- ▶ Ensure that the contract includes significant default interests over late payments and, if possible, discount for advance payments.
- ▶ At the beginning of the project, offer compliance training to all stakeholders, especially clients. Promote and disclose your compliance program at the work site, involving inspectors and client representatives involved in project activities. Ensure that all persons are aware of the commitment to integrity defined by your company.
- ▶ Assess the risk of all transactions with business partners, such as consulting companies and advisors.
- ▶ Avoid meeting alone with client representatives; whenever possible, count on another person and always

conduct meetings in the presence of third parties and formalize the discussions by means a meeting minute or, if not feasible, internal records right after the meeting.

- ▶ Whenever possible, promote the rotation of the executives involved in the process.
- ▶ Never accept any unrequested assistance

and do not accept agents who offer services related to payments to be made by Public Administration.

- ▶ Request periodical acceptance of works, according to stages defined in the contract, to avoid long lists of pending issues at the end of the contract.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Say no to the person who requested the bribery and avoid contact.
- ▶ Inform the client representative about your company's compliance practices, including the prohibition to hire agents for illegal purposes and make payments that are not related to the services that have been formally contracted and approved.
- ▶ Report immediately to the compliance department of your company for

additional support.

- ▶ Expose the person to the client and/or competent body as applicable, and check the reason for the approach.
- ▶ Suspend the execution of the works as soon as permitted by the law and use the right of performance security, if any, as in the case of private contracts.
- ▶ Take the case to arbitration or to the Judiciary branch and charge fine, interests, and other financial losses.





SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF CORRUPTION REQUESTS?

- ▶ The project must only be auctioned against budgetary guarantee for all funds required for execution. The efforts must be annual, eliminating monthly limitations that, many times, bring undesirable unpredictability to the project.
- ▶ The Law of Administrative Improbability must require that the contracting party provides sufficient funds for the complete execution of each stage of the work before signing the service order with the contractor.
- ▶ After the beginning of the project, the funds for the next six months must be deposited in a guaranteed account, in order to reduce the risk of client default, which could increase the risk of eventual undue advantage requests.
- ▶ The control and arbitration units must be empowered, with higher technical independence and no political influence, in order to allow quicker decisions.
- ▶ The public contract law, or State-Owned Company Law (Law No. 13303/16), must impose heavy administrative sanctions to the public agency who gives cause to interest payment.
- ▶ The public contract law must foresee the contractor's right to terminate the contract and charge the costs of demobilization if the pending payments exceed a given amount.
- ▶ The public contract law must foresee that the works shall not be completed by third parties, unless the costs of demobilization and all pending amounts are paid.
- ▶ For contracts with public power, the public contract law must foresee government bonds as guarantee.
- ▶ Disputes must be solved quickly. Either by means of the Judiciary Branch and/or arbitration (for example, by creating a specialized jurisdiction).

SCENARIO #3

UNREASONABLE LATE PAYMENTS, DURING ELECTION YEARS, RESULTING FROM INTERFERENCE IN THE MEASUREMENT PROCESS OF SERVICES EXECUTED

Description: The project contracted by the public power are in the first year of execution by your company, and there will be elections this year. On the first eight months, the measurements and approvals by the public power occurred as expected, and were paid regularly. As of the ninth month, the scenario changed. The public servant responsible for receiving the measurements, duly approved by the inspection company, created obstacles and innuendo. First, he created obstacles to meet the contractor employee at the scheduled time. Then, after receiving the data, he was emphatic to say that the assessment of such data was not in the list of priorities and that the public accounts were in crisis, insinuating that your company could "collaborate" to speed up the administrative process, as well as with the political campaign, even if this is not permitted by law.



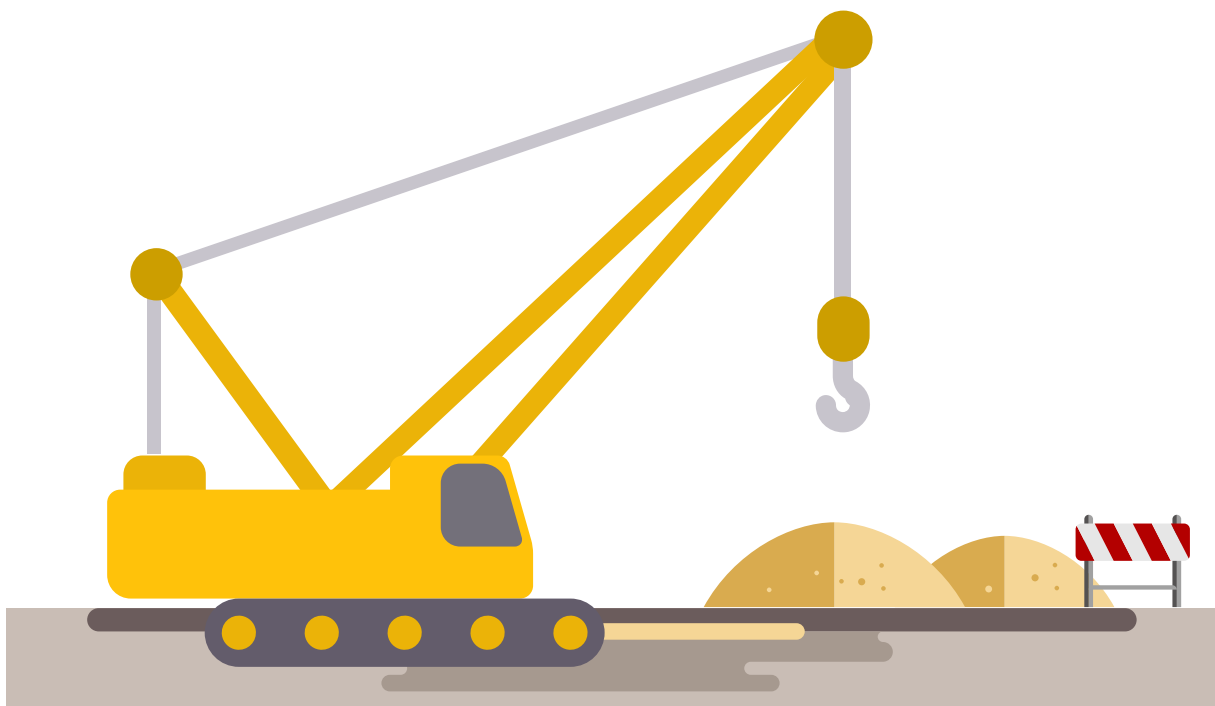
DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Adopt a compliance policy that prohibits any undue advantage, including, if possible, the implementation of a Government Relations Policy, and containing clear instructions regarding how to reject offers from agents to facilitate government relations by means of bribery.
- ▶ Conduct internal training with practical situations, so that all employees involved in the execution of the project know how to identify situations of bribery or undue advantage requests and how to proceed in case such situations occur and, in case of doubts, request risk assessment to the compliance department.
- ▶ At the beginning of the project, offer compliance training to all stakeholders, especially clients. Promote and disclose your compliance program at the work site, involving inspectors and client representatives involved in project activities. Ensure that all persons are aware of the commitment to integrity defined by your company.
- ▶ If possible, demand that the funds to be spent in the project are deposited in a guaranteed account and that your company is able to execute such guarantee by proving the execution of the services.
- ▶ If possible, ensure that the contract includes significant default interests over late payments and, if possible, discount for advance payments.
- ▶ Whenever possible, all contract must foresee an arbitration clause.
- ▶ Request periodical acceptance of works, according to stages defined in the contract, to avoid long lists of pending issues at the end of the contract.
- ▶ Ensure that all funds required to execute the project are foreseen in the budget.
- ▶ Avoid meeting alone with public servants; whenever possible, count on another person and always conduct meetings in the presence of third parties and formalize the discussions by means a meeting minute or, if not feasible, internal records right after the meeting.
- ▶ Create directives regarding behavior and relationship when delivering metrics for payment. These directives must be presented to the public power at the beginning of the contractual relation.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Say no to the person who requested the bribery and avoid contact.
- ▶ Inform the person about your company's compliance practices, including the prohibition to make payments that are not related to the services that have been formally contracted and approved.
- ▶ Report immediately to the compliance department of your company for additional support.
- ▶ Expose the person to the client and/or competent body as applicable, and check the reason for the approach.
- ▶ Specifically inform the public servant that your company does not condone with the insinuations.
- ▶ Report the public servant's attitude, informing the authorities that you agree to collaborate with the investigation/ collection of evidences in order to eliminate the practice of undue requests of the respective authority of government agency.
- ▶ If the authorities do not establish devices/ actions to mitigate the possibility of recurrence, suspend the execution of the works as soon as permitted by the law and use the right of performance security, if any.
- ▶ Take the case to arbitration, if foreseen in the contract.





SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF CORRUPTION REQUESTS?

- ▶ The project must only be auctioned against budgetary guarantee for all funds required for execution. The efforts must be annual, eliminating monthly limitations that, many times, bring undesirable unpredictability to the project.
- ▶ The Law of Administrative Improbability must require that the contracting party provides sufficient funds for the complete execution of each stage of the works before signing the service order with the contractor.
- ▶ After the beginning of the project, the funds for the next six months must be deposited in a guaranteed account, in order to reduce the risk of client default, which could increase the risk of eventual undue advantage requests.
- ▶ The control and arbitration units must be empowered, with higher technical independence and no political influence, in order to allow quicker decisions.
- ▶ The public contract law, or State-Owned Company Law (Law No. 13303/16), must impose heavy administrative sanctions to the public agency who gives cause to interest payment.
- ▶ The law must also foresee the contractor's right to terminate the contract and charge the costs of demobilization if the payments are delayed for more than a given period of time, or if the pending payments exceed a given amount.
- ▶ The law must foreseen that the works shall not be completed by third parties, unless the costs of demobilization and all pending amounts are paid.
- ▶ The legislation shall control donations from physical persons to election campaigns in case of conflict of interests related to public contracts.

SCENARIO #4

LACK OF CONTROL AND TRANSPARENCY IN INFRASTRUCTURE PROJECT EXPROPRIATION AND RESETTLEMENT PROCESSES

Description: Your company was hired by the public power to adapt the roads of an important part of the city. The public authority issued a service order claiming that some areas were not subject to impediments with expropriation, therefore allowing the beginning of the project. The public authority also promised to complete the remaining expropriations in the next six months. However, at the end of the first year of the project, only 40% of the expropriations were completed, causing significant delay to the project, which were supposed to be completed at the end of the second year. Having suffered great losses without perspective of recovery, and with difficulties to change contractual conditions that were unforeseen or missing at the moment the contract was signed, your company is studying the possibility of interrupting activities.

It is important to emphasize that, in this project, the public power was responsible for the expropriations, but faced a series of problems originated from poor registration. First, since the registration was made more than 5 years ago, in this period many families moved to the region. Secondly, due to considerable disclosure at the beginning of the project, several speculators started buying land in the region for a low value, with the intent of being financially indemnified at the moment of expropriation. Due to this situation, the funds destined to

expropriation were almost depleted, putting the entire project at risk.

In light of this context, a person introduced himself to your company as a representative of an informal association of residents, proposing a partnership to help solving the case in question. The person offered to facilitate the negotiations, as long as, in return, your company made monthly financial contributions to the association of residents.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ The public power must establish clear criteria to register the families who may receive expropriation/resettlement offers, ensuring that, in the future, no new families appear and claim indemnities due to expropriation. Such criteria serve as arguments for undue requests.
- ▶ The public power must use transparency tools, such as the Official Journal and widely circulated newspapers, in order to ensure that only families registered in areas of future resettlement are benefited. This action reduces the risk of families who do not live in the area to relocate with the purpose of being benefited by the program.
- ▶ Ensure that, before issuing the service order, the public power has assessed the results of the area expropriation study, approved such results formally, and guaranteed the funds required to indemnify the residents.
- ▶ Whenever possible, ensure that the contract signed by your company clearly foresees a deadline to settle the population, including penalties in case of non-compliance.
- ▶ Whenever possible, ensure that the contract includes a risk matrix that clearly defines the responsibilities of each party.
- ▶ Whenever possible, ensure that the contract includes the following terms:
 - Contractual provisions that:
 - prohibit hidden and/or illegal payments; and
 - allow the party exposed to undue requests to have the right to suspend or terminate the contract due to material violation or willful misconduct by the requesting party, and receive indemnity for the consequences of such request.
- ▶ A specific clause related to contact

changes or variation (for example, clauses related to changes, suspension, interruption, termination, or suppression of the contract, force majeure, random events, etc.), including clauses related to financial aspects of the contract.

- ▶ Strict technical and financial terms and conditions (physical-financial schedule, strict conditions regarding the contract effective date, etc.), including provisions related to payment of additional costs in case of unusual or unforeseen changes of contract conditions or the possibility of interrupting the project with indemnity.
- ▶ Dispute settlement clause. Specify an arbitration center with history of actuation recognized by the market.
- ▶ Clause to appoint an independent specialist to solve any disagreements between the parties.
- ▶ Although in Brazil public contracts are subscription contracts that do not allow demanding contractual clauses,

promote the importance of the clauses mentioned herein in public hearings, impugnation of notice to bids, and requests for clarification to help promote the change in contract culture with Public Administration.

- ▶ Develop a global action plan that includes safety issues and predict how to deal with the possibility of retaliation against company employees, contractors, and public and private patrimony in case of refusal to pay for undue advantage wherever your company operates.
- ▶ Adopt a compliance policy that includes principles of Human Rights, transparency, and corporate responsibility.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

-
- ▶ Ensure that the person responsible for the project is firm in case of undue advantage offers in exchange for facilitating the expropriation process.
 - ▶ Assess how local authorities may react and how the legal authorities of the country in which your company is located may assist you.
 - ▶ In cooperation with the authorities (for example, the police or another relevant

authority) whenever, collect evidence to prove the request.

- ▶ Approach the legitimate local associations to expose the situation and receive support. According to the case, seek additional support of relevant NGOs that may help exposing the issue.
- ▶ Use all channels available to inform your company's compliance department regarding the facts.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF CORRUPTION REQUESTS?

- ▶ The public contract law (Lei 8666) must be revised with the purpose of establishing conditions to change the contract drafts published in the notice to bid.
- ▶ The rules implemented must clearly include the responsibility of public agents for any measures adopted with patrimonial and criminal effects.
- ▶ The public contract law, or State-Owned Company Law (Law No. 13303/16), must ensure that the contract includes a risk matrix that clearly defines the responsibilities of each party involved.
- ▶ The public contract law must impose heavy administrative sanctions to the public agency who gives cause to interest payment.
- ▶ The public contract law must foresee that the works shall not be completed by third parties, unless the costs of demobilization and all pending amounts are paid.
- ▶ For contracts with public power, the public contract law must foresee government bonds as guarantee.
- ▶ Disputes must be solved quickly. Either by means of the Judiciary Branch and/or arbitration (for example, by creating a specialized jurisdiction).
- ▶ There must be clear rules to disclose expropriation registration to the population and to ensure transparency in the relationship between the parties.
- ▶ The practices related to the expropriation process must be improved, with clear registration and real estate valuation metrics.
- ▶ The project must only be started against budgetary guarantee for all funds required for the execution of the expropriations. The efforts must be annual, eliminating monthly limitations that, many times, bring undesirable unpredictability to the project.

SCENARIO #5

REQUEST FOR DONATION OF FURNITURE WHEN DEMOBILIZING CONSTRUCTION SITE IN BENEFIT OF THE LOCAL SOCIETY

Description: Your company is demobilizing the construction site after the execution of a project for the city hall. At the moment, the city hall itself requests the donation of the furniture at the construction site, claiming lack of basic operational items. There is not contract provision for such donation. Your company is in doubt regarding the reputation of the beneficiaries and suspects the eventual sale of items donated. The furniture consists of desks, lockers, air conditioning, computers, telephone sets, and multifunction printers.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Adopt a compliance policy that establishes criteria for donations, sponsorship, and unrequited payments.
- ▶ Establish an annual donation strategy plan in line with the company directives and policies and based on the principle of benefit to the society.
- ▶ Establish a donation authorization hierarchy matrix.
- ▶ Define processes to analyze the possible beneficiaries, what items may be donated, and what are the limits, eventual conflicts of interest, and legal restrictions related to the donation.
- ▶ Never accept any assistance from third parties to negotiate with the public agent.
- ▶ Establish separate functions between the operating area and those responsible for the donation activities.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Inform that the company has clear rules regarding donations and that the decision to proceed shall be submitted to the legal and integrity departments for analysis. The employees working at the site are not able to decide the matter themselves.
- ▶ Use all channels available to inform your company's compliance department, who shall clearly identify the beneficiary and ensure robust due diligence to before deciding on the donation.
- ▶ Assess the situation for possible conflicts of interest, such as "attached" bestowals or licenses.
- ▶ Involve different departments in the decision, such as compliance, legal, and sustainability. The more areas involved, the higher the assurance of independence and transparency.
- ▶ Keep an open mind to listen to the site manager and other employees, according to the case, regarding possible objections to the donation. They may have relevant information that indicates possible undue requests.
- ▶ Check if the donation is in compliance with the company policy and directives, and annual donation strategy plan, if any. Remember that the purpose of donations must be to benefit the society and not public authorities, offices, or the company management.
- ▶ Ensure that the person responsible for the process is firm in case of undue request that is not in line with the company principles.
- ▶ In case of undue request, specifically

inform the public servant that your company does not condone with such requests.

- In case of undue request, report the public servant's attitude, informing the authorities that you agree to collaborate with the investigation/collection of evidences in order to eliminate the practice of undue requests of the respective authority of government

agency.

- In case of proven undue request, answer the reasons for the refusal.
- If there is no undue request and the donation is according to the company policy and directives and approved by the areas involved, ensure subsequent follow-up of the object of donation, according to the value, with specific accounting, traceability, and audit.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- Public servants must undergo qualification training that present the legal donation mechanisms.



SCENARIO #6

UNION REPRESENTATIVE REQUESTS UNDUE ADVANTAGE TO AVOID STRIKES DURING CRITICAL PROJECT STAGES

Description: An union manager approaches an employee responsible for union relations in your company, requesting employment for persons indicated by him, as well as extra-official contributions for the union. In return, he promises to discourage the workers to start a strike.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Adopt a compliance policy that prohibits bribery and defines the concept of conflict of interests.
- ▶ Schedule meeting in written and forward the agenda and eventual documents to be presented to the compliance department for previous analysis and approval.
- ▶ If possible, attend the meetings with the union in the presence of a labor law expert.
- ▶ Promote meetings with the union, with the presence of union managers, to communicate the legal and integrity measures that must be respected in the relationship between the union and the company, and request that all sign the Term of Commitment of Conduct.
- ▶ Reassess the probability of future demands in critical phases of the project.
- ▶ Develop a global action plan that includes safety issues and predict how to deal with the possibility of retaliation against company employees, contractors, and public and private patrimony in case of refusal to pay for undue advantage wherever your company operates.
- ▶ Promote integrity, and ethical conduct among construction market companies, by means of collective action. Class entities are a good vehicle for such promotions. First of all, just ensure that such actions do not violate the antitrust law.
- ▶ Stimulate employees training, with more awareness regarding union matters. Address issues related to contribution and responsible donation.
- ▶ Avoid meeting alone with union representatives; whenever possible, count on another person and always conduct meetings in the presence of third parties, in order to inhibit undue request from any side - companies or unions. Formalize the discussions in a meeting minute, or if applicable, in formal internal records, right after the meeting.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Do not heed to the request. Answer to the solicitor informing the reasons for refusal.
- ▶ Immediately interrupt any conversations that violate legal or integrity policies, and formalize a letter exposing the facts.
- ▶ Report immediately to your company's compliance department.
- ▶ Report the union representative's attitude, informing the authorities that you agree to collaborate with the investigation/collection of evidences in order to eliminate the practice of undue requests of the respective authority of government agency.
- ▶ Record the reason for leaving the meeting in the respective minutes.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ The union must establish a minimum compliance program containing integrity rules and obligations in interactions with companies.
- ▶ A reporting channel must be established between private companies and control agencies that inspect trade unions.
- ▶ Promote better dialog and more transparency in relations between companies and trade unions.
- ▶ For works longer than one year, a public hearing must be arranged to establish agreements between the companies and trade unions that are valid for the entire duration of the project, therefore avoiding undue pressure and demands over time.

SCENARIO #7

OMISSION OF APPROPRIATE AND TIMELY INFORMATION AND CLARIFICATIONS BY PUBLIC ADMINISTRATION IN BIDDING PROCESSES

Description: In a public bid, the technical documentation included in the notice was provided in PDF format, therefore not allowing automatic and effective calculation by the bidders. In addition, the notice to bid contains several omissions and lack of specifications, which prevent estimating an assertive proposal. Your company is very interested in participating in the bidding process, and already requested files in formats that allow the referred calculations, and also raised several questions.

The answers to the questions raised were evasive and did not clarify the doubts. In many cases, regardless of many inquiries, the answers were simply "see notice to bid".

Your company was approached by a

consultant who offered to obtain the pending inside information after the end of the explanation period, and also to obtain the editable files from the Public Administration, which would benefit your proposal.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

-
- ▶ If any clarifications are required, ensure that your company always contacts the bidding commission in the appropriate manner, using the appropriate channels foreseen by the law. Record evidence of the regular nature of the contact.
 - ▶ Never accept any unsolicited assistance and, before any hiring, check your supplier, especially regarding origin, registration information, and legitimacy to provide the services offered.
 - ▶ Adopt a *compliance* policy that establishes clear instructions regarding the relationship with the public power and suppliers.
 - ▶ Maintain internal communication channels so that, in case of such situations, your employees are able to duly inform the company.
 - ▶ Whenever possible, be accompanied by another person and always conduct meetings in the presence of third parties and formalize the discussions in a meeting minute or, if not feasible, internal records right after the meeting.
 - ▶ Demand that the technical documentation and all information required to elaborate the proposals is provided to all bidders with equal content and format as of the publication of the notice to bid and/or explanation period, so that all bidders receive the information at the same moment, avoiding inside information.
 - ▶ Promote integrity, and ethical conduct among competitors and clients, through collective action. Class entities are a good vehicle for such promotions. First of all, ensure that such actions do not violate the antitrust law.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Say no to persons who offer inside information in public bids and avoid contact.
- ▶ Ensure that the person responsible for the project is firm in case of undue advantage offers in exchange for inside information.
- ▶ Use the communication channels provided by your company to inform the compliance department regarding the facts.
- ▶ Communicate the contracting Public Administration body regarding the facts, informing the name of the consultant, and clarify that the company does not condone with the situation.
- ▶ Report the consultant's attitude, informing the authorities that you agree to collaborate with the investigation/ collection of evidences in order to eliminate the practice of using inside information in public bidding processes.
- ▶ Immediately interrupt any conversations that violate legal or integrity policies, and formalize a letter to the consultant exposing the facts.
- ▶ Suggest changes to the notice to bid so that all bidders receive the appropriate information at the same time.
- ▶ Engage control and inspection agencies, and require compliance with the law by the Public Administration.





SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ Notices to bid must be pre-approved by control agencies. That is, the law must allow such institutions to act preventively.
- ▶ Complex processes must only be auctioned with the existence of an executive project (*see RDC [Resolução da Diretoria Colegiada]*) or by means of RDC with integral contract (with judgment of best technique.)
- ▶ The public contract law, or State-Owned Company Law (Law No. 13303/16), must impose heavy administrative sanctions to the public agencies in case of omission of relevant information that does not allow interested bidders to elaborate proposals to the Public Administration in equal conditions.
- ▶ Project details are essential to mitigate the risks of undue advantage requests and asymmetric information. It should be mandatory to present the detailed engineering execute project before the project bid, allowing the elaboration of realistic budgets and schedules by all competitors.
- ▶ The public contract law must require that contracts have clauses related to compliance. The law must also require public contracts to be based on widely-discussed models, such as FIDC.
- ▶ Study the possibility of having the public contract law include a clause that allows offering companies with certified internal compliance system to obtain higher technical scores in the bid assessment process.
- ▶ Study the possibility of establishing a tax incentive mechanism that benefits companies that invest funds and efforts in preserving and promoting integrity (for example, by developing a certified internal compliance system).

SCENARIO #8

COVERING COSTS OF PUBLIC AGENCIES TO ENSURE COMPLIANCE OF PROJECT DEADLINES

Description: An employee of an inspection public agency requests a small daily allowance to work during the weekends and speed up the analysis of a process of interest to your company.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Adopt a compliance policy that prohibits undue advantage (including bribery, payment of additional values, funds) and the clear instructions on how to reject offers from agents to facilitate relations in administrative contracts.
- ▶ Establish directives regarding the relationship with public agents, including the prohibition of payments of any amounts.
- ▶ Conduct internal training with practical situations regarding the relationship with public agents, so that all employees involved in the execution of the works know how to identify situations of bribery or undue advantage requests and how to proceed in case such situations occur and, in case of doubts, request risk assessment to the compliance department.
- ▶ Avoid meeting alone with public agents; whenever possible, count on another person and always conduct meetings in the presence of third parties and formalize the discussions by means a meeting minute or, if not feasible, internal records right after the meeting.
- ▶ Establish a clear policy on how to proceed for payments related to the execution of the works and ensure that financial and fixed fund control is according to such policy.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Say no to the person who requested undue advantage and avoid contact.
- ▶ Report to the contracting party and specifically inform the public servant that your company does not condone with the situation.
- ▶ Report the public servant's attitude, informing the authorities that you agree to collaborate with the investigation/collection of evidences in order to eliminate the practice of undue requests of the respective authority of government agency.
- ▶ Immediately interrupt any conversations that violate legal or integrity policies, and formalize a letter exposing the facts.
- ▶ Engage control and inspection agencies, and require compliance with the law by the Public Administration.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ Public servants must have access to ethical conduct training activities.
- ▶ The public contract law, or State-Owned Company Law (Law No. 13303/16), must impose heavy administrative sanctions to public agencies in such cases.



SCENARIO #9

EXCHANGE OF MARKET CONFIDENTIAL INFORMATION DUE TO PERSONAL RELATIONSHIP

Description: You accepted an invitation from a friend, who works at a competitor, for a cup of coffee and to discuss the local market. On the same day, a notice to bid was published in which possible both companies would be competing directly. When you received the information about the notice to bid, you were already on your way to the meeting.

During the coffee, your friend starts a conversation about the possible position of his company and asks about your price

estimates, which is directly in conflict with your company's strategy and undermines the competitiveness of the bid.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Adopt a compliance policy that prohibits anti-competition practices.
- ▶ Conduct internal training with practical situations that explain that attitudes that may be understood as configuration of cartel and clearly define which confidential subjects shall not be discussed with competitors.
- ▶ Instruct your employees regarding breach of confidentiality of subjects, such as participation in bids.
- ▶ Develop internal communication to clarify the subject, inform changes in market practices, and so that all employees act safely and according to moral integrity.
- ▶ Incentive senior management to define their position and lead by example.
- ▶ Ensure that the compliance and HR departments are independent to enforce the compliance policy, and that it applies to all company employees of all hierarchic levels.
- ▶ Whenever possible, be accompanied by another person and always conduct meetings in the third parties and formalize the discussions by means a meeting minute or, if not feasible, internal records right after the meeting.
- ▶ Record any interactions made with potential competitors.
- ▶ Schedule meetings officially and with specific agendas.
- ▶ Do not discuss confidential subjects in elevators, restaurants, taxis, airports, etc.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ If a confidential matter is addressed by the competitor, clearly define your position regarding the situation and interrupt the conversation immediately.
- ▶ Report the case to the compliance and legal departments and request instructions on how to document the case.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ The anti-competition booklet shall have more disclosure, with definition of confidential subjects that shall not be discussed by competitors.
- ▶ Disciplines such as Ethics and Citizenship must be part of the Basic Education school program. In addition, university courses must include studies on such dilemmas.



SCENARIO #10

EXCHANGE OF MARKET CONFIDENTIAL INFORMATION IN CLASS ASSOCIATION MEETINGS

Description: In a regular meeting with a class association of which your company is part of, the representative of another member company (company "XYZ") starts to disclose confidential information, such as, for example, the bidding processes that "XYZ" may participate and some prices used.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Adopt a compliance policy that prohibits anti-competition practices.
- ▶ Conduct internal training with practical situations that explain that attitudes that may be understood as configuration of cartel and clearly define which confidential subjects shall not be discussed with competitors.
- ▶ Whenever possible, attend class association meetings with another person, and formalize the discussions in a meeting minute or, if not feasible, internal records right after the meeting.
- ▶ Schedule official meetings with specific agendas and request clarifications in case of doubt.
- ▶ Instruct your employees regarding breach of confidentiality of subjects, such as participation in bids.
- ▶ Do not discuss confidential subjects in elevators, restaurants, taxis, airports, etc.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ If a confidential subject is addressed by a competitor, interrupt the meeting immediately and include the reasons in the meeting minute.
- ▶ Leave the meeting, registering the fact and the signatures of all participants in the meeting minute.
- ▶ Report the case to the compliance and legal departments and request instructions on how to document the case.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ University courses must include studies on such dilemmas.
- ▶ The anti-competition booklet shall have more disclosure, with definition of confidential subjects that shall not be discussed by competitors.
- ▶ The companies must adopt the practice of requesting information regarding the codes of ethics and conduct before joining any entities, as well as incentive that the codes of conduct of any entities of which they are part of are always up-to-date.
- ▶ As a governance rule, class entities must clearly state their objectives to the general public.
- ▶ Class entity meetings must always start with information regarding the prohibition of any anti-competition practices and emphasize that the purpose of the meeting is to discuss subjects related to the goals of the entity and not issues related to market competition or prices.



SCENARIO #11

REQUEST TO SUPPORT SOCIAL PROGRAMS WITH CONFLICT OF INTEREST BY PUBLIC AGENCIES

Description: The mayor, who is also your client in a public project, requested your company to support a social program in a community near the project. The requests made by the mayor include payment in cash or deposit in the account of an NGO.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Ensure that your company has clear directives regarding relations with public agents, including issues related to social investments, and that prohibit credit to persons.
- ▶ Ensure that your company has clear directives regarding donations and sponsorship, and foresee rules for donations linked to contracts.
- ▶ Conduct internal training with practical situations regarding the relationship with public and third sector agents, so that all employees involved know how to identify situations of bribery or undue advantage requests and how to proceed in case such situations occur and, in case of doubts, request risk assessment to the compliance department.
- ▶ Prefer donation of material assets and ensure that the donation is compatible with the nature, policy, and directives of the company.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Check internally if the support to such type of program is in line with the company's social program strategy and if the case cannot be considered as undue advantage or conflict of interests.
- ▶ Analyze the request documentation to ensure the existence and legality of the social program, and perform robust due diligence regarding the beneficiary organization.
- ▶ If there is no undue advantage, conflict of interests, or any illegality, answer to the request with instructions regarding the institutional rules to proceed with the contribution, such as:
 - support formalization by means of a sponsorship instrument or term of donation;
 - signature of a memorandum of understanding between the parties with the presence of a commission or external party that ensures the transparency of the process;
 - direct payment to the NGO account;
 - requirement to provide the NGO and social program legal documentation;
 - requirement of accountability reports.
- ▶ In case of undue advantage, conflict of interests, or any illegality, do not make the payment.
- ▶ Justify the refusal for the request by referring to the company donation policy.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ Incentive the improvement of transparency mechanisms for final beneficiaries.
- ▶ Promote the adoption of integrity systems by Non-Governmental Organizations.



SCENARIO #12

REQUEST FOR ENTERTAINMENT TO PUBLIC POWER REPRESENTATIVES ASSOCIATED TO PROJECTS SPONSORED BY THE COMPANY

Description: Your company has a special private box in a large sports arena, in which the individual ticket costs 500 dollars. A public agent requested three tickets to the private box.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Have a clear policy regarding gifts, presents, entertainment, hospitality, and expenses, containing a limit per person participating in the event and specification regarding who can participate.
- ▶ Establish an authorization matrix that defines which company departments are responsible for assessing and responding to such requests.
- ▶ Conduct internal training with practical situations that reinforce such policy among employees, so that all employees involved know how to identify situations of bribery or undue advantage requests and how to proceed in case such situations occur and, in case of doubts, request risk assessment to the compliance department.
- ▶ Widely disclose the existence of the company policy regarding gifts, presents, entertainment, hospitality, and expenses.
- ▶ Regardless of having received a formal request, when starting activities contracted by the public power, schedule an early meeting to clarify the company policy regarding sponsorship with public agents. Read the code of conduct and explain the basic principles of the compliance and gift distribution monitoring policies.
- ▶ Ensure that giving tickets shall not generate conflict of interests or affect the decision to hire the company.
- ▶ Monitor the concession and distribution of gifts, presents, entertainment, hospitality, and other benefits.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ Request the solicitor to justify the request of such tickets by means of an official channel of the local government.
- ▶ In case of undue request or request incompatible with the company policy, deny the request and justify according to the company directives.
- ▶ Report the case to the compliance department and request instructions on how to document the case.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ Incentive the improvement of transparency mechanisms in sponsorship processes.
- ▶ Promote the adoption of integrity systems by Non-Governmental Organizations.

- ▶ Global Compact Guide on sports sponsorship.



SCENARIO #13

DELAY AND DIFFICULTY IN LICENSING ADMINISTRATIVE PROCESSES (ENVIRONMENTAL, LAND USE AND OCCUPATION, ARCHAEOLOGICAL HERITAGE AREAS)

Description: Your company started a bidding process to implement the contracted project. After the legal period, the responsible agency or agencies did not provide a formal position regarding the requirement requested. During a meeting with the analyst of the competent body responsible for the process, you are informed that the studies presented are inefficient and, to complete and also speed up the process, special consultancy indicated by him shall be contracted.



DEMAND PREVENTION: HOW TO REDUCE THE PROBABILITY OF THE DEMAND BEING MADE?

- ▶ Establish a structured compliance department and adopt a compliance policy that prohibits bribery and provides clear instructions on how to reject offers to facilitate relations with government agencies by means of bribery.
- ▶ As part of the compliance policy, foresee a clause that establishes that all consulting services must be contracted by means of technical and monitored competition.
- ▶ Request a formal meeting with the agency technical team and leadership, and not only with a single analyst. Avoid meeting alone with public managers or with the agency responsible for licensing; whenever possible, have another person and always conduct the meetings in the presence of third parties, and formalize the discussions by means a meeting minute or, if not feasible, internal records right after the meeting.
- ▶ Request formal positions regarding the technical and scientific inefficiency of the study presented.
- ▶ Schedule another meeting with the entire agency team and the consultancy team responsible for the studies to present the technical requirements.
- ▶ Reassess the probability of undue advantage demands during the administrative process together with the competent bodies.
- ▶ Develop a global action plan that includes safety issues and predict how to deal with the possibility of retaliation against your company, in case of refusal of the suggestion offered by the analyst wherever your company operates.
- ▶ The price offered for the project must also consider the costs of the company integrity program, which include fees and costs related to strict follow-up until the completion of the specialized consulting project (legal, technical, administrative, etc.), required to mitigate the risk of corruption according to the terms and conditions of the contract.
- ▶ Ensure that the contract includes a risk matrix that clearly defines the responsibilities of each party.



RESPONSE TO A BRIBERY DEMAND: HOW TO REACT IF THE DEMAND IS MADE?

- ▶ In case of undue request or request incompatible with the company policy, deny the request and justify according to the company directives.
- ▶ Inform the analyst regarding your company's compliance and contracting policies, which require registration and mapping of supplier integrity and prohibit contracts without complying with the protocol required, which includes technical competition between suppliers, certification, and regular bid.
- ▶ Use all channels available to inform your company's compliance department.
- ▶ Involve the legal department so the company can take all applicable legal measures.
- ▶ Involve the client to follow-up the case.
- ▶ Assess how local authorities may react and how the legal authorities of the country in which your company is located may assist you.
- ▶ In cooperation with the authorities (for example, the police or another relevant authority) whenever possible, collect evidence to prove the situation.
- ▶ Approach local corporate associations to expose the situation and receive support.



SUGGESTIONS: WHAT MUST CHANGE STRUCTURALLY IN BRAZIL TO ENSURE LOWER PROBABILITY OF THE TRAP?

- ▶ Promote the adoption of integrity/compliance systems by Governmental Organizations.
- ▶ Public servants must have access to ethical conduct training activities.
- ▶ Establish a reporting channel between private companies, government entities, and control agencies.
- ▶ The project must only be auctioned after obtaining the installation license.

CONCLUSION

These are some fictitious scenarios that companies of the construction sector may face at any moment. It is important to remember some of the main recommendations to reduce the probability of undue requests, such as:

- ▶ Avoid meeting alone with client representatives; whenever possible, have another person and always conduct the meetings in the presence of third parties, and formalize the discussions in a meeting minute or, if not feasible, internal records right after the meeting.
- ▶ Adopt a compliance policy that prohibits bribery, including, if possible, the implementation of a Government Relations Policy, and containing clear instructions regarding how to reject offers from agents to facilitate government relations by means of bribery or payments of any kind.
- ▶ In case of undue request, report the attitude of the public servant, inform third parties in line with your company's ethics policy, as well as directly to the legal and compliance departments, so that they inform the facts to the authorities, and collaborate with the investigation/collection of evidence in order to eliminate the practice of undue requests in the authority of government institution.
- ▶ Promote transparency, integrity, and ethical conduct among competitors and clients, through collective actions. Class entities are a good vehicle for such promotions. First of all, just ensure that such actions do not violate the antitrust law.

SUGGESTED READING



Anti-Corruption Risk Assessment Guide – UN Global Compact



A Practical Guide for Collective Action Against Corruption – UN Global Compact



Fighting Corruption in the Supply Chain – UN Global Compact



Ethics & Compliance in Construction – Brazilian Chamber of the Construction Work Industry (CBIC)



Combating the 10 most common excuses for corrupt behavior – Alliance for Integrity



Prevention to Corruption: Corporate Guide – Alliance for Integrity



Integrity Program: directives for private companies – General Comptroller's Office (CGU)



Ethos Indicators – Thematic Guide: Integrity, Prevention, and Combat to Corruption – Instituto Ethos



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