

Transparencia por Colombia

Award Winner of the “Anti-corruption Collective Action Competition for Practitioners”

Type of Organization: NGO

Country and Region: Colombia - South America

Project Name: Pipe Manufacturers Agreement

Submitted by: Alma Rocío Balcazar

I. Description of Initiative

In 2005, Transparencia por Colombia invited a group of pipe manufacturing companies affiliated with ACODAL (the Colombian Sanitary and Environmental Engineering Association) to subscribe to a voluntary “Agreement to Prevent Corruption and Bribery Practices within the Piping Market Sector.” The central purpose of this agreement (referred to here as the “Pipe Manufacturers Agreement”) was to establish a joint industry commitment to reduce bribery and other corrupt actions and to develop effective mechanisms for implementing this commitment.

The piping market sector is key to Colombia’s infrastructure development with respect to water supply and basic sanitation systems. The companies affiliated with ACODAL represent approximately 95% of the national market, and participate in essentially all public bids for piping for aqueduct and sewer systems. The customers are mainly municipalities and public service companies.

The Pipe Manufacturers Agreement is a formal document that establishes a set of defined policies, developed and adopted by the companies with guidance from Transparencia por Colombia which serves as permanent advisor to the initiative. The policies are based on the Business Principles for Countering Bribery developed by Transparency International working with a steering committee from business and civil society. Supporting companies commit to preventing bribery and other illegal action that could lead to a loss of public confidence, and to implementing practices that advance this policy.

Additional provisions in the Pipe Manufacturers Agreement address specific forms of bribery and related implementation issues. Notable provisions: (a) prohibit bribery in any form, whether direct or indirect; (b) address transitional issues, providing for gradual and progressive alignment of reference price and actual sale average; and (c) extend the anti-corruption commitment of the signatory companies to distributors and sales intermediaries. Additional provisions address responsibilities of the Legal Representative of each company, internal controls and audits, human resource practices, internal and external communications, and reporting and consultation.

Implementation is achieved through an “Ethics Committee” created by the companies, which functions as an oversight body responsible for administration and enforcement of the Agreement. The Ethics Committee has three independent members who operate pursuant to established regulations, duties and procedures.

This initiative, which is ongoing, is widely credited with helping to improve integrity and transparency in procurement in the piping sector. It’s voluntary, self-regulatory character has been an important key to the success accomplished to date.

II. Contribution, done by the initiative, to reduce corruption in its operating environment

Prior to this initiative, bribery was a common practice among bidders in the piping sector, considered by many as necessary to compete and gain access to greater market share. Very few companies had developed meaningful anti-bribery programs or devoted significant resources to systemically curtail bribery risks, and many felt that the problem was too extensive and deep-rooted to effectively combat. This has changed in two important respects. First, the piping initiative has created a practical mechanism for beginning to curb corruption. Second, and equally important, it has helped to counter scepticism about the ability of business leaders to affect the problem.

Although the initiative is still at a relatively earlier phase, with continual room for improvement, it has had a noticeable positive impact on attitudes and practice. An important reason for this is the initiative's self-regulatory character.

Bribery is difficult to prove, fight and penalize; its nature allows it to be easily disguised with legal procedures. Industry participants are best placed to overcome some of these challenges, and by coming together collectively to establish monitoring mechanisms and other means to effectively restrain bribery and discourage its incidence in entrepreneurial practices.

This self-regulatory approach has been effective because of the credibility that has come from direct involvement by the affected companies. It's credibility in turn has enhanced the reputational benefits for participating companies, encouraging them to join the Agreement and also increasing the leverage from the threat of exclusion for violations. Because the companies have a direct hand in developing standards and practices, there is also more confidence in their reasonableness and effectiveness.

Other important attributes have been the opportunity to question competitor practices, emphasis on prevention (as well as oversight and enforcement), practical advice available on good practices, and channels for raising concerns within the industry as well as with government and civil society.

III. Setup of the initiative

- Implemented mechanisms to ensure success of project
- Costs of initiative
- Use of auditing and enforcement initiatives

The key implementing mechanisms are the standards established in the Agreement and the independent Ethics Committee, described above. These structures, together with guidance and coordination provided through *Transparencia por Colombia*, have contributed to the project's success and credibility.

The piping agreement is pragmatic, focusing on "things that can be done" in terms of internal management measures and other preventive steps. This is in addition to discouraging what "should not be done," and developing a "reporting" attitude among competitors so that questionable situations are brought to the attention of and assessed by the appropriate monitoring body. The goal over time is to change basic attitudes and practices, so that integrity is the standard practice and "penalty" or other enforcement action the exception.

For said purpose, it is necessary for the system to have a body duly established by signatory companies, in the form of an Ethics Committee, responsible for the fulfilment of the Agreement, with duties such as (a) analyzing background information, (b) assessing if there is lack of transparency or not in a particular process when faced with apparent corruption situations, and (c) responding to reports or queries that come to its attention.

The reliability and credibility of the monitoring body is closely related to the effectiveness of its performance, in addition to the seriousness and responsibility when making decisions or when taking positions with regard to particular situations brought to its attention. Other essential elements are that the members of the supervisory body be independent, have adequate authority and resources to conduct their responsibilities, and operate pursuant to clearly-defined standards and procedures. These elements, and especially independence, are critical to the credibility of the body and ultimately the initiative.

The Ethics Committee receives claims or reports about situations in which Agreement standards might have been breached. Claims or reports typically relate to specific alleged irregularities in public tendering processes, particularly in the aqueduct and sewerage systems market sector. The most common complaints relate to alleged irregularities with the conditions established to participate in the tendering process, which may favour one bidder over others, without considering the technical analysis justifying said requirements.

The Committee also is responsible for evaluating the criteria of rationality, proportionality and periodicity of sponsorships, as well as for verifying the application of price policy measures based on the information furnished by the companies and required by the Committee.

From the beginning, participating companies agreed to share funding costs for the Agreement in equal parts. *Transparencia* also contributed in-kind resources as well as a co-funding allocation, to help advance the initiative and establish a model for other sectors. *Transparencia por Colombia's* in-kind contribution included guidance on certain technical and other complex issues in the Agreement, as well as facilitation support through meetings, visits to companies, parallel collection of information, and design and coordination of work sessions.

Today, all companies make an annual contribution to the initiative covering the following items:

- *Transparencia por Colombia's* technical assistance.
- Expenditures on logistics for the monthly meetings.
- Ethics committee operations.

The total amount is approximately 20,000 to 30,000 US dollars per year.

IV. Achieved results / impact for businesses and society

1. The Pipe Manufacturers Agreement has raised the public profile of this issue and contributed to a reduction in the incidence of bribery.
2. This progress is reflected in specific measures at participating companies: (a) 80% of the total employees now have an anticorruption clause in their contracts and the companies assign approximately 1.26 hours per semester on employee training for implementation of the Agreement, which with other measures reflect the practical commitment of the companies to create an anticorruption culture; (b) 56% of the sales representatives and distributors of the companies have joined the Agreement, through subscription to anticorruption commitments; (c) approximately 90% of the companies have provided an abstract from the Board Director minutes formally stating support of the Agreement directives, and many also address this commitment in their Annual Reports.
3. Companies have recognized that the investment of time and human and financial resources in ethical programmes and designing adequate bribery preventing systems will increase the reputation and social recognition of businesses as trust-generators within the market.

4. 4. The Ethics Committee, using a mainly preventive approach, has publicized actions as a warning to third parties about possible irregularities.

As an example of this process, in October 2007, one of the signatory companies presented a complaint to the Committee. The complaint alleged that a public services company of Santa Rosa de Lima had suspended a tender process for pipes for an aqueduct and started a new tender process for the same project with changed specifications that had the practical effect of doubling the cost. After a detailed study, the Ethics Committee found that the technical reasons given to justify the change were not convincing, as they were "ignoring other materials available in the country and abroad that were perfect substitutes and that could even provide significant savings."¹ Based on the results of its analysis, the Committee formally requested that the procurement body involved suspend the tender process, arguing that by failing to permit free and fair competition, the tender was essentially predestined to a single bidder.²

The Committee analyzed this case globally, beyond the fact of penalizing one of the companies of the Agreement. The practical effect of this oversight approach was to:

- Alert companies and others about this practice and the threat to fair and transparent procurement;
- Warn financing entities about the risks threatening their investments;
- Attract the attention of the control agencies to the suspected irregularities;
- Contribute to public education about the importance of transparency in the contracting process;
- Reinforce knowledge about the Agreement within the sector; and
- Draw media attention to transparency concerns in the tender process.

V. Replicability to other sectors/companies

This initiative is fully suited for use in other sectors, and this was part of *Transparencia por Colombia's* original purpose in advancing the Agreement. Our experience working with pipe manufacturers in Colombia is being replicated in the water sectors in Argentina and Brazil. Similar initiatives also are advancing or being considered in other sectors in Colombia, including for books, security systems, medical device and other industrial sectors, and private security services.

VI. What is new and innovative about this initiative

Innovative elements, described above, include (a) the voluntary self-regulatory approach, (b) emphasis on prevention, and (c) reliance on an independent Ethics Committee for implementation.

VII. Why should other practitioners learn about your initiative?

This is a very promising approach to collective action, for reasons noted.

¹ Declaration of the Ethics Committee in the Santa Rosa de Lima case. Tender No RLL 002/2007-Santa Rosa de Lima - Bolívar, Colombia, Bogotá, March 14, 2008.

² *Idem.*