

TAKING A CORPORATE STAND AGAINST PUBLIC CORRUPTION

Keynote Address by Larry Fisher
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Good afternoon. It is an honor and privilege to participate in this very substantive and timely Forum, and I start with only one real concern. Scanning the “Topics of Interest” section on the Forum’s web page, I noted such positive and up-beat items as Project Acquisition, Incentive Based Contracting and Industry Collaboration – the kind of things you would expect to discuss at a meeting such as this.

Unfortunately, I am here to talk about the more somber topic of corruption, which positions me as the proverbial skunk at the garden party. Add the fact that I am a lawyer, and I think you can understand my uneasiness.

But, popular or not, my message today is substantive and timely. It addresses our industry’s role in the global campaign against public corruption. More directly, I am talking about bribes paid to foreign government officials to secure business or other forms of regulatory advantage. These payments, long considered an unfortunate but acceptable cost of doing business, are far from trivial. For one thing, they are massive in scale. The private sector monitoring organization Transparency International estimates that corruption equals a full 3 percent of the world’s gross domestic product. What’s more, these practices are deeply corrosive, undermining fair competition, distorting economic investments, and depriving poor governments of resources they badly need to promote growth and development for their people. We believe that the time has come to end these practices.

Whether we know it or not, corruption touches us all, particularly affecting engineering and construction activities because of the nature and global scope of our business. Our firms make a critical contribution to international development. Working closely with governments and multinational companies, we design and build facilities and infrastructure that are essential to economic growth and the social well-being of hundreds of millions of people around the world. However, because of the huge economic investments involved, these same activities make us a prime target for bribery demands from corrupt officials.

In its most recent corruption perceptions survey, Transparency International rated “public works and construction” as one of the two worst sectors for corruption – the other being the “arms and defense” industry. These sectors were identified as having the (quote) “most flagrant corruption” (unquote) and for being (quote) “plagued by endemic bribery by foreign firms” (unquote). Other industries in which engineering and construction companies are active fared only marginally better, so not only is this a problem for us but also for many of our clients.

I cite these facts not to criticize our industry, or others, but to draw attention to the essential role we must play in the evolving global campaign against public corruption. In explaining why this is so important, I will make three major points:

- ◆ **First, the anti-corruption environment is rapidly changing, and we need to change with it.** More people are taking corruption more seriously than ever before, and this is dramatically changing the stakes for all concerned.
- ◆ **Second, our industry has a strong stake in effective reform.** Combating corruption is obviously the right and lawful thing to do. As I hope will become clear today, it is also in our collective business interest.
- ◆ **Third, we are well-positioned to make a real difference.** Stronger anti-corruption laws and enforcement are vitally important to the future success of anti-corruption efforts. But the real bulwark in this fight must be companies like ours that operate in the global market.

Let me turn then to the first of these points – the changing corruption landscape.

THE CHANGING ANTI-CORRUPTION LANDSCAPE

If not the oldest human vice, corruption manages a close second. Payments to government officials have long been considered an essential lubricant for business, in our industry and others. And many would argue, with justification, that in much of the world this corruption remains widespread and deeply entrenched.

Until very recently, responsible authorities in many countries have been willing to look the other way. Laws in many countries actively permitted bribery as a way to secure foreign business – although different rules applied at home – and even where there were legal prohibitions, these were rarely and unevenly enforced.

Over the past 10 years, numerous regional and global anti-corruption conventions have been adopted. In all major industrial countries, and many others, national laws have been strengthened. The World Bank and other international financial institutions are giving greater priority to corruption issues, and enforcement is getting much more serious attention from public prosecutors – and not just in the United States. The World Bank just last month agreed to accept bids only from companies with a no-bribes policy.

Unquestionably, the single most important occurrence of the past decade has been the “globalization” of American-style anti-corruption standards. Prior to 1998, most industrialized countries did not explicitly outlaw foreign bribes. Some even encouraged them by allowing companies to treat such payments as deductible business expenses. But this began to change in 1998 when more than 30 countries – including all of our major trading partners – implemented rigorous anti-bribery commitments mandated by the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Although still a work in progress, the legal framework abroad has changed and is now much closer to the U.S. model.

Last year saw another milestone in this global campaign when the U.S. joined over a hundred other nations in signing a new comprehensive U.N. convention on corruption. This historic undertaking, which must still be ratified by individual nations, greatly expands the OECD Convention. It includes new commitments to transparency in public works procurement and practical measures encouraging transnational enforcement and cooperation. The convention also establishes the first universal commitment to tough anti-corruption standards, applicable not only to OECD countries but also to so-called “demand” countries – that is, the countries whose officials demand bribes from international companies.

Most recently, last month’s G8 Summit reported optimistically on the progress made in fighting corruption and improving transparency. The group called for “rapid signature and completion of all necessary steps to ratify and implement the Convention” and, in a discussion of corporate initiatives, referenced the work we are doing with the World Economic Forum, which I shall describe in a moment.

The practical effect of these legal reforms, over time, will be to expose companies that engage in public bribery to multiple and coordinated enforcement. The risk of discovery will be higher for large-scale bribery, as more prying eyes watch for signs of nefarious business dealings. This already is a priority in the U.S., where federal authorities have long encouraged our companies to report bribery by foreign competitors. They have even turned to intelligence services to uncover evidence of unfair competition. Other countries can be expected to adopt similar practices in the future.

The risk of prosecution is likewise increasing, with more anti-corruption laws and more enforcement authorities willing to consider aggressive action. There already have been instances of coordinated enforcement by U.S. and European authorities, in at least one case triggering parallel criminal investigation in the demand country, as well as signs of more serious enforcement by other countries.

But that’s not all. Changes in the law are being matched by equally important shifts in business perceptions and practice. For the first time, leading companies from around the world are talking seriously about corruption and practical ways to reduce it.

OUR STAKE IN REFORM

This brings me to my second major point, which is that combating corruption makes good business sense.

As business people, the first thing we think about when talk turns to corruption is the legal system and the potential liability for our companies and people – including ourselves. Clearly, we have to protect ourselves and our shareholders, but that is only one dimension of the multi-faceted stake we have in reform. Global business also has a responsibility to support policies and practices that can create a brighter future for the countries in which we work. Anyone who has spent time in the developing world and seen the damage from corruption can understand the moral imperative.

But there is a third leg to this stool. Besides legal and moral grounds, there is also a compelling *business* case for reform. The business case is sometimes a little more difficult to see so let me elaborate on that point.

The business case for reform starts with bribery's substantial economic cost to ethical companies. Under the U.S. Foreign Corrupt Practices Act, or "FCPA," contracts requiring corrupt payments have been off limits to American companies for over a quarter century. Five years ago, most of our trading partners began moving toward similar anti-bribery rules, and there has since been steady progress toward "leveling the playing field" in international business.

Even so, ethical companies continue to pay a high price for refusing to engage in bribery. It is hard to know exactly how much business is lost, but by a U.S. Commerce Department estimate, from 1994 to 2002 as many as 474 major offshore contracts, valued at nearly \$240 billion, involved bribes to foreign officials. This is a conservative figure, limited to large-scale contracts identified by U.S. authorities, but it still represents an enormous amount of lost business opportunity. And with the preponderance of infrastructure projects on this list, no business sector has been affected more than ours.

New anti-bribery laws around the world are helping to reduce bribery in large-scale projects, but unless and until these laws are aggressively enforced and industry compliance is more widespread, honest companies will continue to suffer a competitive disadvantage.

Unfair competition is a major reason U.S. companies have been so active in the global anti-corruption campaign, but it is not the only one. Public corruption hurts economic progress and national development. As the World Bank observed in recent assessments of its international aid programs, increased financial development assistance can help reduce poverty only if poor countries have proper policies and governance structures in place. Corruption impedes this objective.

We need to recognize corruption for what it is. Officials who take bribes are stealing from their own people – not just money but governmental legitimacy and the hope of a better future. Their actions distort government decisions, waste scarce resources, and undermine public trust in political leaders and institutions. What's more, corruption makes it more difficult for governments to implement laws and policies, and to attract and hold essential foreign investment.

Clearly, efficient markets and effective government are indispensable to economic development and the business this generates for international companies. Just as important, corruption undercuts the rule of law on which our ability to do business and secure investments ultimately depends.

Growing foreign markets have created tremendous opportunities for our companies in recent years, and for many of us – particularly in the engineering and construction sector – they are essential to our success. But as globalization has created opportunities, it has also tied us more closely to the nations in which we do business. Local failures can now reverberate across the global economy, affecting not only immediate business prospects but overall market stability.

They can also threaten today's fragile consensus on globalization, a sound policy that has been very good for business but remains suspect in many quarters, especially in developing countries.

Finally, in the post-September 11 world, corruption is also intimately connected to our national security. Poor, repressive societies are a breeding ground for discontent and terrorism, and economic development remains our best and most practical response. The hope and objective is to foster economic growth as a foundation for social and political reforms. While the relationship between free markets, economic development and social stability is not new to U.S. policy, it is more explicit than ever before. And for the first time, U.S. foreign assistance is being tied directly to performance. Probably the clearest example is the new "Millennium Challenge" program, which gives funding priority to countries committed to essential civil society reforms.

No single factor is more important to the creation of this hoped-for virtuous circle of development reform than a reliable rule of law, and it is here that the battle against corruption is being joined. Nations with honest and transparent governments stand the best chance of attracting and retaining foreign investment, thereby growing their economies and reaping the social and political benefits that follow. Conversely, for those governed corruptly, the virtuous circle becomes a vicious one, deterring investment, stifling economic development and undercutting civic reform.

For all these compelling reasons, business has a major stake in reform.

Nearly two years ago, Fluor's chairman and CEO, Alan Boeckmann, was asked to participate in a special session on the "supply side of corruption" at the World Economic Forum's annual meeting in Davos. The panel participants discussed at length the problem of corruption and the essential role for international business in helping to find practical solutions.

One important result was a groundbreaking commitment to develop guidelines for combating corruption in the engineering and construction industry. Under Forum auspices, a multinational task force was charged with establishing benchmark "Business Principles" in time for the January 2004 annual meeting. Care was taken to make sure a truly representative working group was formed, with members drawn from Europe, Asia and the Middle East, as well as North America. The task force also worked very closely with two leading NGOs (non-governmental organizations) – Transparency International and the Basel Institute on Governance, whose director also chairs the OECD working group on corruption reform. Most importantly, the effort benefited from a commitment and involvement at the highest levels from all of our companies.

I am pleased to report that last January, the task force produced a model set of industry-specific "Business Principles" that we believe are as reasonable and balanced as they are comprehensive. Fluor joined 18 other international engineering and construction companies in signing and adopting the principles, committing our companies to a "zero-tolerance" policy on bribery and taking necessary steps to ensure effective compliance with this policy. In coming months, we will be releasing a supplemental advisory document to help with this process.

The Davos signing was an important first step for our industry. Although our 19 companies represent only a portion of engineering and construction business worldwide, together we account for more than \$70 billion in annual revenues. Other companies have since adopted the business principles, and increasing participation will be a task force priority over the coming year.

THE BUSINESS CONTRIBUTION

This brings me to the final point. What should the contribution of business be in this endeavor? We face a challenge here. Are we going to treat corruption as one of those things that will always be with us, like death and taxes, or will we make combating corruption a top priority? One thing we should do for sure is to redouble our support for governmental and private-sector anti-corruption initiatives. As a practical matter, though, our commitment must start at home – with the zero tolerance policy on bribery and an effective program for implementation, as outlined in the engineering and construction business principles adopted last January.

At Fluor, we are now actively engaged in the fight against global corruption for the legal, the moral and the business reasons I have described. Davos has provided us with the unique opportunity to help devise the most practical and effective anti-corruption program possible.

Important as they are, our rhetorical statements in support of the global anti-corruption campaign are only a starting point. It's one thing to acknowledge change; quite another to act on it. Tolstoy said that, "Everyone thinks of changing the world, but no one thinks of changing himself." In a similar vein, I once saw a bumper sticker that read, "Change is good. You go first."

Above all, we need stronger corporate controls. We must ensure that our companies adopt the culture and tools necessary to turn aspiration into daily practice. This is much easier said than done, especially for large multinational companies with a diverse work force and varied interests. Fortunately, there is much in recent U.S. compliance practice – general as well as specific to the FCPA – that can inform this undertaking. And, of course, our engineering and construction business principles are an essential guide.

Many "best practices" from innovative corporate compliance programs can be adapted to improve the effectiveness of anti-corruption measures. Some relate to compliance formalities, such as internal "certification" requirements and third-party contract protections. Others are more process-oriented; for example, tighter organizational structures (especially for offshore affiliates), better employee training and more rigorous vetting and oversight for agents and business partners. Specifics, of course, will vary by company and circumstance. The larger point is that making good on our anti-corruption commitment will mean a new focus on the nuts and bolts of compliance.

It is not enough for us to be against corruption. Rather, we need to be fully engaged in the global campaign to eradicate it. And we need to do so on multiple levels – financially, by continuing to support leading advocacy groups; politically, by encouraging our governments to stay focused on corruption reform; intellectually, by contributing our considerable knowledge

and practical experience to the front-line efforts; and, most especially, by updating and improving our best practices.

It's the prudent thing to do, it's the right thing to do and it's very much in our own business interest. What's more, it's becoming increasingly clear that it *can* be done.

Thank you.