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Pumps, Pipes and Promises

**From dirty to clean pipes:  
A review of an anti-corruption agreement to prevent corruption in water  
and wastewater pipe supply in Colombia**

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**Abstract**

*In 2007, the independent “Ethics Committee” of the Colombian Pipe Manufacturers Anti-Corruption Sectorial Agreement<sup>1</sup> undertook its first monitoring to examine the regional water system “La Línea” which includes Santa Rosa de Lima and three other towns. This involved seeking information, asking for explanations and reporting findings to the responsible regulatory agencies and authorities. The current status of the project can be summarized as follows: The towns still don’t receive any water and the water supply system is not completed. Although pipes were bought, at an estimated cost of USD 1.5 M, there is no water flowing and the pipes are just piled-up along the road. It was impossible during the visit to find representatives of the utility supposedly running the scheme. Also, the company that was supposed to supervise the project declined to provide any information. In September 2010, the Vice Ministry official response was “The date that Santa Rosa de Lima will have water is uncertain”.*



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<sup>1</sup> In Spanish ‘Acuerdo para prevenir practicas de corrupción en las empresas fabricantes de tuberías y accesorios’

# INTRODUCTION

It takes two to bribe. Often it is private sector suppliers, including manufacturers and their agents that are asked, or take the initiative, to facilitate a bribe in return for the award of a contract. Many of these contracts are offered by the public sector, departments or their agencies, since it is mainly governments that invest in water, often borrowing from the international banks to do so. Wishing to do clean business, and seeing the business case for not paying costly bribes, a group of pipe manufacturers in Colombia, accounting for around 90% of sales in the country, have taken the initiative to try and clean up the business of making, selling (and buying) pipes.

It is a common scenario that frequently technical issues are used and manipulated to favor a certain supplier. This can increase costs, and reduce competition, creating opportunities for corruption. The 'preferred' supplier will be approached and asked for a payment. In the worst cases, where a large part of the available resources are spent on bribes, there may not be enough money left to complete projects and all the invested money and efforts are then lost, with no water coming out of the pipes to supply communities and households.

The devil is nearly always lurking in the detail. Pipes for water supply, management of storm and waste-water may look simple enough, but there are a huge range of different products on the market to suit different requirements and installation conditions. All types of pipes each have their advantages and disadvantages. In the specifications for investment projects, key factors include requirements such as resistance to pressure, rigidity, weight, size and local conditions of installation. Pipes are a long term investment and are not generally cheap. The cost of pipe typically accounts for 40% of the cost of water and wastewater infrastructure projects.

Discretion in the process of designing, planning and budgeting water and sanitation projects can provide a window of opportunity for corruption, especially where there is limited participation or ownership of citizens or supervising organizations. Some common situations encountered are:

- The specified type of pipe for a project does not optimize the use of the limited resources to the overall detriment of system sustainability.
- Public utilities make decisions without a completed design and without full financial analysis.
- Corruption is fed by inflated prices and discount pricing structures. Budgets are artificially increased with the use of highest list price of pipes.
- Unwanted options are eliminated without valid arguments.

**Box 1****Integrity Pacts**

The concept of the integrity pact was developed by Transparency International in the 1990s to help safeguard public procurement from corruption. It can be used by a government agency, or any other procurement body, in its procurement practice. Integrity pacts have already been implemented in several countries (including Argentina, Colombia and Mexico) and including infrastructure projects in the water and sanitation sector. Integrity pacts aim to reduce the chances of corrupt practices during procurement through a binding agreement between the agency and bidders for specific contracts. The pact is intended to reduce the high costs of corruption in public procurement, privatization or licensing.

An integrity pact is a binding agreement between a procurement agency (usually government) and bidders for specific contracts. It enables companies to abstain from bribing, by assuring them that their competitors will also refrain from paying bribes. Government agencies also pledge to undertake to prevent corruption, including not seeking those bribes. The essential elements are:

- A pact (contract) is made between the government office inviting public tenders for a supply, construction, consultancy or other service contract, or for the sale of government assets, or for a government license or concession (the Authority or the “principal”) and those companies submitting a tender (the “bidders”);
- An undertaking by the principal that its officials will not demand or accept any bribes, gifts, etc., with appropriate disciplinary or criminal sanctions in case of violation;
- A statement by each bidder that it has not paid, and will not pay, any bribes;
- An undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at time of tender submission or upon demand of the principal, especially when a suspicion of a violation by that bidder emerges;
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning bidder until the contract has been fully executed;
- Undertakings on behalf of a bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”;
- A pre-announced set of sanctions for any violation by a bidder of its commitments or undertakings, including (some or all):
  - Denial or loss of contract;
  - Forfeiture of the bid security and performance bond;
  - Liability for damages to the principal and the competing bidders, and
  - Debarment of the violator by the principal for an appropriate period of time.

Bidders are also advised to have a company Code of Conduct (clearly rejecting the use of bribes and other unethical behavior) and a Compliance Program for the implementation of the Code of Conduct throughout the company.

*Source:* Based upon Gonzalez de Assis (2008).

## BUILDING TRUST: CREATING THE ANTI-CORRUPTION AGREEMENT BETWEEN COMPETITORS

The initiative developed by most of the Colombian pipe factories with the support of *Transparencia por Colombia* (the local chapter of the international NGO Transparency International) has been developing over more than 5 years (see Table 1). Increasingly recognized for its efforts as a qualified, independent, and impartial external actor (to the sector), *Transparencia por Colombia* has accompanied and encouraged the process, acting as a facilitator for all the collective work sessions and providing specialized information and methodologies. The agreement is a self – regulatory corporate tool which aims to create fair and transparent market conditions, through the definition between competitors- of clear and clean rules applicable to the sector. It is an example of an integrity pact (see Box 1). The agreement seeks:

- Specific, feasible and effective commitments that correct unfair competition practices in the business sector.
- Reduction in the economic costs generated by kick-backs.
- Collective monitoring actions for transparency and fair competition in state-related contractual processes.
- To develop practices for social corporate responsibility that promotes and encourages ethical transparent business environments in order to promote business sustainability.

2005	<ul style="list-style-type: none"> <li>• Nine key manufacturers, accounting for most of the pipe sales market, signed the agreement '<i>Acuerdo para prevenir practicas de corrupcion en las empresas fabricantes de tuberias y accesorios</i>'</li> </ul>
2006	<ul style="list-style-type: none"> <li>• Key meeting held with distributors to bring this part of supply chain under the agreement and process with distributors encouraged to sign up to the principles.</li> </ul>
2007 – 2008	<ul style="list-style-type: none"> <li>• Ethics committee starts to work with mandate to investigate perceived irregularities e.g. in tender documents and processes.</li> <li>• Independent ethics committee established with more capacity (time and expertise) including a salaried part-time engineer.</li> </ul>
2009	<ul style="list-style-type: none"> <li>• Book on corruption risks in design of water and sanitation projects published, launched at a major event to generate interest and distributed to over 1000 utilities, local governments and other offices.</li> </ul>
2010	<ul style="list-style-type: none"> <li>• Signature of the “Private Public Alliance” between the Ministry of water and Environment, the Anti Corruption presidential Office and <i>Transparencia por Colombia</i> to promote traceability and improve the visibility of public investment decisions in the sector</li> </ul>

**Table 1 Key phases and milestones in the development and implementation of the agreement**

## **BUILDING KNOWLEDGE: THE WORK OF THE AGREEMENT'S ETHICS COMMITTEE (*COMITE DE ETICA*)**

In the process of consolidation of the Agreement, the participating companies created a dual purpose Ethics Committee for:

- (i) the promotion and preservation of compliance with the agreement and
- (ii) the monitoring of suspect tenders in which companies wished to participate

The agreement's ethics committee is now comprised of a qualified civil engineer (working part-time and salaried) and two lawyers (working *pro-bono*). Their first role is to monitor that the signatory members of the agreement comply with the agreed rules. Sanctions for infringements can include withdrawing permission to use the agreement's logo, or a report to the webpage of the business association. The second role of the committee is to look at the market/ sector. Any member company can make a complaint (about another member company, or an issue in the sector) where they believe there may be a problem worthy of investigation to the ethics committee.

The agreement aims to enhance transparency and to promote fair and free competition between competitors. The ethics committee monitors compliance with the agreement and monitor public tenders looking for certain warning signs (see Box 2). It is this simple step, asking for documents to be in the public domain, which is probably the most useful. In the experience of the committee, it is the design stage of projects that is most critical, and where corruption can be 'written into' projects, but where it can also be uncovered and redressed through detailed scrutiny of the documents and focusing on wherever inadequate reasons are given for the decisions taken and investments proposed. The Colombian procurement law requires the existence of technical studies that support the investment decisions of public resources.

The agreement's ethics committee provides an outlet for complaints by the companies – when they think a tender process or decision may be unfair – which is speedier than the official judicial channels. The official agencies that can look into such cases tend to be very slow and don't have the knowledge to monitor water systems so when a decision is reached it will be too late to influence the outcome.

### **Box 2            Some warning signs of possible corruption**

- Investment decisions (e.g. in tender documents) do not appear related to proper criteria and available supporting information. Hiding behind technicalities is often an over-specification of requirements, or attempt to favor one producer of a specific pipe.

- Inadequate arguments: for example in a recent case, ductile iron was specified on the grounds that it was required to prevent illegal connections to the system. However, in practice research showed that this pipe could be 'hacked into' just as easily as others.
- Large discounts e.g. differences between list and real prices

In some cases the work of the ethics committee has not been able to ensure corrective actions where infringements have been spotted, but nevertheless, its work is seen as vital in making it harder to be corrupt with more chance of being spotted. This prevents problems in other locations. The media including newspapers and radio play an important role here in getting out the message and encouraging people to be more careful. There are also cases where the ethics committee's intervention has led to direct and timely improvements in tender processes. In one case, where a manufacturer was approached to pay a bribe before issue of the tender, subsequent complaints led to a modified tender process (reverse auction) where the complainant was successful, perhaps because competitors had made deals to pay bribes and thus driving up their costs. The worst examples tend to be in provinces that are flush with oil money such as a project where selected pipes were imported at prices 30-40% higher than they would have cost on the domestic market. Here, a compromise was reached where there was a commitment made to open competition in the future.

For monitoring suspect tender processes, the ethics committee asks for information and explanations, requests corrective actions, presents formal complaints and participates in public hearings. The agreement, with the backup of Transparencia por Colombia, has presented recommendations to regulatory authorities to mitigate the risks of corruption specifically in the processes of conceptualization, technical design and contracting out of construction and/or extension of water and sanitation systems in the country. The recommendations made have included:

- Fair procurement of pipes by public utilities through strengthening of procurement processes.
- Policies and mechanisms of transparency strengthened in public Utilities
- Verification of existence of proper studies for projects
- Obligatory nature of the RAS<sup>2</sup> which sets norms and standards in the country.
- Development of a specific system for publication of the prices of the pipes and others material for the construction of water and sanitation systems in the country.
- Separation of pipe supply and works contracts
- Promoting social control in project supervision and operations of utilities.

Enforcing the RAS is certainly one way to restrict the discretion of the utility for selection of suppliers and to improve the quality of designs.

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<sup>2</sup> RAS: Reglamento técnico normativo del sector de agua potable y saneamiento básico

## **BUILDING INFLUENCE: POLICY SETTING BY REGULATORS AND CONTROL AUTHORITIES**

A demonstration of the importance of building capacity to influence policy makers is the recent signing of a “Private – Public Alliance” between the Ministry of Water and Environment, Transparencia por Colombia and the corporate participants in the Agreement, to promote traceability, improve visibility of public investment decisions and, ultimately, to foster bidder plurality and transparency. It specifically aims to mitigate corruption risks in consulting contracts worth in excess of USD 50 million in total for the preparation of studies and detailed technical design of water supply and basic sanitation systems throughout the country.

As a side component of this approach, communications using media including newspapers and the radio can play an important role in the dissemination of the anti-corruption messages of the Ethics Committee.

## **SELF-REGULATION: COMPANIES PUTTING THEIR OWN HOUSE IN ORDER**

Across the companies involved in the agreement, 96% staff now have an anti-corruption clause in their contracts. Companies are also required (and are supported) to provide training each year to their staff on how to deal with corruption and implement the principles of the agreement. A key current initiative is also to try and reduce the discounts offered by manufacturers (see Box 2). The market leader for plastic pipe is expected to reduce discounts shortly, which most likely would then be followed by others. Careful efforts have to be made to ensure that the agreement does not infringe competition law in this respect which obviously does not allow cartels to set prices.

### **Box 3            How pricing discounts can open the door to corruption**

Projects are designed by consultants, who use published list prices to prepare project budgets including for specified pipes. Budgets are therefore based on these (high) prices and loans and investments accordingly. However in practice, all companies are willing to sell at large discounts. The largest discounts are found in the market for plastic pipe, related to the longer supply chains of agents and distributors, and can be up to 60% but a more normal range is 30-50%. This margin can end up funding corruption, and the agreements are working to try and reduce the discount margins to reduce the space for corruption. Monitoring this margin is a key indicator for the agreement and it has been seen to go up and down over time. Although there are genuine reasons for discounting, this needs to be done in such a way that projects benefit from lower costs and savings are reinvested in projects serving more people.

## SUSTAINING THE INITIATIVE

Arguably the most important strength of the initiative is that it is largely local (while recognizing that the concept of integrity pacts was picked up from elsewhere) and has not received any significant external funding. Implementation of the agreement is funded by the pipe manufacturing companies through an annual fee (USD 5.000 per Member Company). Generally, this fee is considered to be good value for money. The alternatives are paying bribes, or expensive lawyers to contest decisions. Value for money will continue to be the crux. According to one factory manager the ethics committee must continue investigating cases and delivering results in terms of preventing corruption and leveling the playing field. Costs have also been kept under control with efforts gradually extended over time. Putting in place the funding through fees for a partially remunerated ethics committee was an important step.

## CONCLUSIONS AND OUTLOOK

Why do companies continue to participate? There are several reasons:

- It's an effective channel to apply pressure on public agencies.
- Claims and actions taken encourage companies to continue.
- Competitors act based on an anti corruption set of rules.
- It feels safer to denounce as a collective
- Proper environment to collectively generate solutions to discourage corrupt practices
- It gives companies an effective way to generate quick actions
- It fosters civilian oversight

Over time, the agreement has generated a regular dialogue with the supervisory bodies such as the Presidential program against corruption<sup>3</sup> and control entities such as the Contraloría and Procuraduría. Also, the agreement has created a constant dialogue between the competitors in an environment of trust, creating a prospect of free and fair competition. The recent signing of the Private Public Alliance between the Ministries of Water and Environment, Housing and Land Development, the Anti Corruption Presidential Office and Transparencia por Colombia aims to further promote of the agreement and proper and visible public investment decisions. This is therefore an interesting time for the initiative given the recent change in government and its apparent early commitment to make corruption more difficult, the main aspects of the Private Public Alliance are:

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<sup>3</sup> In Spanish 'Programa Presidencial de Lucha Contra la Corrupción'.

- Sufficient and timely access to information on projects at the design stage, the status of each project and making consultants accountable for their designs;
- Sufficient and proven design and argumentation resulting from technical studies based on objective rationale to reduce discretionary decision making. This condition opens the door for the promotion of free and fair competition.
- The contracting entity must respect the conclusions of the duly supported studies and technical designs while promoting bidder plurality and transparency.

## REFERENCES

María González de Asís, Donal O’Leary, John Butterworth and Per Ljung (2008) Improving Transparency, Integrity and Accountability in the Water and Sanitation Sector. World Bank Institute and Transparency International.

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