

Spinelli and Pilosio: Why is the construction industry so vulnerable to corruption?

By [Joseph Spinelli and Jared Pilosio](#) | Wednesday, May 9, 2018 at 9:18AM



Construction firms have been at the center of many enforcement actions under the Foreign Corrupt Practices Act, including some of the biggest FCPA cases ever. Why is the construction industry so vulnerable, and how can companies protect themselves and their employees?

The biggest risks global construction companies must address are those associated with dealing with government contracts. In certain regions, bribery is almost a normal part of doing business and companies may have to partner with local firms that often have close relationships with government agents. These factors in particular increase the risk for construction companies of violating the FCPA.

Some construction companies have been repeat FCPA offenders. **Halliburton** paid the SEC \$29.2 million in disgorgement and penalties in 2017 for violating the FCPA's books and records and internal accounting controls provisions. The SEC said Halliburton gave business to a friend of an Angolan official.

In 2009, **Halliburton and its KBR subsidiary** had paid \$579 million to resolve an FCPA enforcement action for conduct in Nigeria.

In 2014, Japan's **Marubeni Corporation** pleaded guilty to eight FCPA charges, admitting it bribed Indonesian officials to win an electricity contract for itself and a partner, Alstom SA.

In 2012, Marubeni **paid** a \$54.6 million criminal penalty to resolve FCPA charges for its role as an agent of the KBR-led TSKJ Nigeria joint venture. It was charged in that case with conspiracy to violate the FCPA and aiding and abetting.

Among other construction industry-related firms involved in relatively recent FCPA enforcement actions are Brazil-based giant **Odebrecht**(2016), **PBSJ Corporation** (2015), and **Layne Christensen Company** (2014).

Those cases and others illustrate the special risks construction companies face. How then can companies effectively manage these risks?

This is best accomplished by conducting comprehensive risk assessments tailored to the construction industry, and then ensuring that identified risks are prioritized and addressed in the company's anti-bribery and corruption compliance program.

Special attention should be given to auditing gifts, entertainment payments, political contributions, charitable donations, facilitating payments and customer travel, as well as licenses and permits needed for construction projects. It should be noted that although some facilitating payments are permitted under the FCPA, such payments are prohibited under the U.K. Bribery Act 2010 and the Canadian Corruption of Foreign Public Officials Act. When made, facilitating payments should be reasonable, not excessive, and accurately documented in the company's books and records.

It's also imperative that companies conduct thorough due diligence on the third parties they do business with and risk rank them accordingly, making certain that enhanced due diligence is conducted on all high risk third parties.

Construction companies would therefore be well served to:

- Conduct an incisive bribery and enterprise-wide corruption risk assessment, which also identifies which licenses and permits are necessary for the projects the company will work on
- Conduct a gap assessment of the company's anti-bribery and corruption compliance program, ensuring that the policies and procedures of the program and associated controls specifically address the risks identified in the risk assessment
- Account for facilitating payments and determine what constitutes a reasonable payment

- Conduct due diligence on all contractors, subcontractors, agents, and suppliers and ensure that interval monitoring for these third parties is conducted annually
- Conduct training for the company's employees and the third parties it does business with, and make certain annual certificates of completion are signed and maintained
- Incorporate anti-bribery and corruption provisions into all third-party contracts that require compliance with applicable law and afford the company the right to audit payments to consultants and any third parties;
- Monitor and audit all corporate entertainment and gifts for all relevant parties, and
- Establish a confidential and/or anonymous telephone and web-based compliance hotline and publicize the hotline contact information in public places throughout the company and worksites.

Joseph Spinelli, above left, is a Senior Managing Director at Ankura, based in New York. He served as the first ever inspector general of New York State, and a special agent in the Federal Bureau of Investigation (FBI). In addition, he has served as a national partner in charge for several practices at a Big Four firm. He can be contacted [here](#).

Jared Pilosio, above right, is a Senior Associate at Ankura with over eight years of program management experience and an extensive background in leading cross-disciplinary and cross-stakeholder teams to define strategies and deliver practical solutions. He is based in New York. He can be contacted [here](#).

[1 Comment](#) | [Email Article](#) | [Permalink Print Article](#)

tagged [Due Diligence](#), [Halliburton](#), [Layne Christensen](#), [Marubeni](#), [Odebrecht](#), [PBSJ](#) |