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FBI, DOJ Focus on Anti-Competitive Conduct in Procurement

The U.S. Department of Justice (DOJ) [announced](#) on June 7, 2021, that a North Carolina engineering firm agreed to pay a \$7 million fine and \$1.5 million in restitution after pleading guilty to engaging in bid rigging and fraud in order to obtain contracts for infrastructure projects. The announcement is the latest indication that price fixing, bid rigging, and other anti-competitive schemes in federal contracting remain a high enforcement priority for DOJ and law enforcement agencies.

According to a May 12, 2021, FBI [report](#) outlining its efforts to target and prosecute federal contract fraud, federal investigators and prosecutors have opened more than two dozen grand jury investigations in the United States and overseas focused on illegal price fixing, bid rigging, and other procurement schemes. The FBI is among numerous agencies participating in the Procurement Collusion Strike Force (PCSF), a joint law enforcement effort launched in November 2019 led by DOJ's Antitrust Division to prioritize the identification and prosecution of bid rigging and other crimes in connection with public procurement projects. The training of inspectors general (IG), local prosecutors, and other procurement personnel is a major focus of the PCSF. In the past six months, more than 400 data scientists have been trained to identify "[red flags of collusion](#)," certain market conditions and pricing patterns that may signal anti-competitive conduct.

These developments highlight the importance of antitrust compliance for government contractors to mitigate enforcement risks, especially in connection with joint ventures and subcontracting arrangements that may invite scrutiny from contracting officers and federal agencies.

PCSF and Procurement Collusion Focus

The PCSF initially involved U.S. Attorney's Offices from 13 districts and has since expanded to 29 total U.S. Attorney's Offices and partners. In addition to DOJ and FBI, the PCSF involves IGs from multiple agencies including the U.S. Department of Defense, the General Services Administration, the U.S. Postal Service, the U.S. Air Force, and the U.S. Department of Homeland Security. The PCSF's focus is to deter, prevent, investigate, and prosecute unlawful collusion, antitrust crimes, and related fraudulent schemes in government procurement, grant, and program funding. The strike force's activities can also result in parallel civil enforcement actions under the False Claims Act (FCA), the government's primary remedy to combat fraud against the government.

The PCSF was inspired, in part, by the DOJ's criminal and civil [prosecution](#) of several companies for alleged bid-rigging and other anti-competitive conduct related to contracts to supply fuel to U.S. military bases in South Korea. In 2018, those companies were charged with criminal offenses as well as subject to civil liability under antitrust laws and the FCA. The defendants ultimately paid a total of more than \$350 million in criminal fines and civil damages. In April 2020, DOJ [announced](#) the resolution of additional related charges against South Korean defendants.

Other PCSF prosecutions include charges against defendants for allegedly rigging bids on a GSA auction of excess equipment. According to DOJ's June 7, 2021, announcement concerning the North Carolina firm, Contech Engineered Solutions LLC pleaded guilty to one count of violating the Sherman Act and one count of conspiracy to commit mail and wire fraud following a six-count indictment filed in the U.S. District Court for the Eastern District of North Carolina. The company admitted to conspiring to rig bids to the North Carolina Department of Transportation in order to fraudulently obtain contracts for infrastructure projects over a period

spanning nearly a decade until March 2018. A former Contech executive was charged as a co-defendant and remains under indictment.

Best Practices

The Biden administration is seeking to increase spending on federal and state infrastructure projects, which if successful may invite additional antitrust scrutiny of recipients of federal dollars.

For those bidding for government contracts, the important takeaways are:

- Make sure your corporate compliance program is up to date. In July 2019, the DOJ announced a [new policy](#) incentivizing new and more effective antitrust compliance programs. Companies found to have violated the antitrust laws may now be able to obtain a deferred prosecution agreement and avoid a felony conviction that could result in debarment, if they have a program in place that the DOJ concludes was designed for maximum effectiveness.
- Prime contractors and subcontractors should be mindful of antitrust laws when negotiating potential teaming agreements on federal contracts, especially if would-be partners are otherwise competitors. Companies that enter into joint ventures or mentor-protégé arrangements in the federal market should also be attentive to potential scrutiny.
- If your compliance program detects a problem with certain employees or activities, contact antitrust counsel immediately. The DOJ has a [leniency policy](#) that provides for complete immunity for the first company or individual to report a criminal antitrust offense. Those granted a leniency "marker" preserve their place in line while they cooperate with the DOJ's investigation. But time is of the essence because only the first to report receives leniency, and the race for leniency has sometimes been won by only a matter of hours.
- Ensure company employees involved in procurement contracting are aware of what to do and who to contact if they learn of potential wrongdoing. If they are asked to participate in a bid-rigging scheme, or suspect others of collusion, they should report what they have seen through appropriate reporting mechanisms. Government contractors subject to FAR 52.203-13 (Contractor Code of Business Ethics and Conduct) are also subject to mandatory disclosure obligations when they have credible evidence of certain violations of law. The PCSF has a link for reporting of violations on its [website](#) and a public hotline.

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