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DOJ Procurement Collusion Strike Force Revs Up in 2022

Continuing its prolific run of indictments, guilty pleas, and convictions, on July 13, 2022, the U.S. Department of Justice (DOJ) Procurement Collusion Strike Force (PCSF or Strike Force) secured a guilty plea from a Texas military contractor for conspiring to rig bids on \$17.5 million in government contracts. Over the last six months, the PCSF has been operating at an impressive clip, reaffirming the message that in the government contractor world, attention paid to compliance is time well-spent.

Formed in 2019, the Strike Force is an interagency partnership that fuses DOJ Antitrust Division, Federal Bureau of Investigation (FBI), and U.S. Attorney resources to investigate and prosecute public procurement crimes. The DOJ's devotion of significant resources to the PCSF is a clear sign that government contracting, grants, and program funding are now top enforcement priorities.

The Strike Force has been especially active this year, filing and prosecuting a litany of bid-rigging, bribery, and fraud cases. Several investigations have already resulted in convictions, with the PCSF displaying its ability to successfully pursue conduct across all levels of government through effective interagency collaboration. In this Update, we survey the Strike Force's recent string of prosecutions, and offer practical guidance for companies that provide goods and services to federal, state, and local governments.

***United States v. Dornsbach, et al.* (U.S. District Court for the District of Minnesota)**

On March 9, 2022, a Minnesota concrete company and its CEO were indicted for allegedly conspiring to rig bids for concrete repair and construction contracts from 2012 to 2017 in violation of Section 1 of the Sherman Antitrust Act (Sherman Act). The conspiracy involved a bid rotation scheme where contractors conspired to submit intentionally losing bids and reached agreements about which company would win each contract. Local governments and school districts in Minneapolis bore the costs. This indictment reflects the Strike Force's willingness to pursue cases down to the local level.

***United States v. Kwon, et al.* (U.S. District Court for the Western District of Texas)**

On March 16, 2022, two South Korean nationals were indicted for allegedly rigging bids and fixing prices for repair and maintenance work at overseas U.S. military installations. In addition to facing Sherman Act charges, the defendants were also indicted on six counts of wire fraud for scamming the U.S. Department of Defense (DOD) through "false and fraudulent pretenses, representations, and promises." The scheme resulted in \$1.5 million in allegedly fraudulent international wire payments that originated in the United States. This investigation involved coordination between the DOJ, the U.S. Army, and the FBI, and showcases the broad geographic scope of the Strike Force. It also serves as a reminder that even overseas conduct can result in criminal liability.

***United States v. Yong* (U.S. District Court for the Eastern District of California)**

On April 11, 2022, a former contract manager for the California Department of Transportation (Caltrans) pled guilty for his role in a bid-rigging and bribery scheme involving improvement and repair contracts. Yong coordinated bids with his co-conspirators to determine which companies would submit noncompetitive or "sham" bids. He received more than \$800,000 in bribes and unlawful payments, including cash, wine, furniture, and home remodeling. Assistant Attorney General Jonathan Kanter stated that this was the first guilty plea in the Antitrust Division's ongoing investigation into bribery and bid rigging at Caltrans, signaling further indictments on the horizon. Kanter also stated that rooting out bid-rigging schemes that cheat the competitive bidding

process in transportation infrastructure will continue to be a top priority for the Strike Force.

***United States v. O'Brien, et al.* (U.S. District Court for the Middle District of Florida)**

On April 12, 2022, three Florida men were charged with conspiring to rig bids for customized promotional products sold to the U.S. Army, including hats, backpacks, and water bottles. For more than five years, the co-defendants allegedly arranged in advance who would win each bid. Two defendants were also charged with conspiring to defraud the United States. The defendants allegedly created shell companies and submitted sham bids to create the false impression of competition. According to the indictment, one defendant instructed his co-conspirators to "start writing these competing quotes like they are believable / real quotes Make one 49 cents at the end and another 89 cents at the end and so on and so on." Assistant Attorney General Kanter reaffirmed the Antitrust Division's commitment to prosecuting collusion and fraud cases by working closely with Strike Force partners. As shown by this case, the Strike Force is not limiting its enforcement purely to antitrust violations. It is also prosecuting other illegal conduct relating to the procurement process, such as fraud and bribery.

***United States v. Stephens* (U.S. District Court for the Eastern District of Texas)**

On May 20, 2022, a military contractor was indicted for rigging bids in Texas and Michigan and for defrauding the United States. The contractor allegedly formed agreements with multiple co-conspirators to give the false impression that they were competing for contracts. According to the indictment, the defendant rigged eight military contracts and received more than \$15 million in unlawful payments from the government.

***United States v. Envistacom* (U.S. District Court for the Northern District of Georgia)**

On June 23, 2022, a federal grand jury returned an indictment against Army contractor Envistacom LLC, and two of its executives, for participating in a \$7 million fraud scheme. The defendants allegedly conspired to secure and submit quotes from third-party companies that were intentionally higher than Envistacom's proposals, with the goal of ensuring that Envistacom would win the contracts while concealing the reality that they were coordinating the quotes. Following the trend of the Strike Force pursuing interagency collaboration, the investigation involved the Antitrust Division, the U.S. Attorney's Office for the Northern District of Georgia, the Army Criminal Investigation Division (CID) Major Procurement Fraud Field Office, and the Defense Criminal Investigative Service (DCIS). This case showcases the PCSF's ability to pursue complex cases, leveraging the resources of several different agencies.

***United States v. Michael Angelo Padron* (U.S. District Court for the Western District of Texas)**

On June 30, 2022, the owner of several construction companies was convicted for defrauding the United States by obtaining \$240 million in contracts designated for service-disabled veterans. To qualify for government contracts set aside for disabled veterans, defendant Michael Angelo Padron held out an unnamed co-conspirator as the owner of his construction company. However, Padron was exercising financial and operational control over the company, which disqualified him from receiving these benefits that were set aside for businesses owned by disabled veterans. This case demonstrates that false certifications, such as those required to qualify for small business set-asides, can and do result in criminal penalties. Companies should be diligent in ensuring that they do not pursue government funding or benefits for which they do not actually qualify.

***United States v. John "Mark" Leveritt* (U.S. District Court for the Eastern District of Texas)**

On July 13, 2022, military contractor John "Mark" Leveritt pleaded guilty to rigging bids on government contracts from at least May 2013 through April 2018 in Red River Army Depot in Texarkana and the U.S. Army Contracting Command (ACC) in Warren, Michigan. According to the plea agreement, the defendant "admitted

to falsely representing himself to be an employee of one business so that he could obtain government contracts that were set aside for qualifying businesses that were required to be owned and operated by certain categories of minority, disadvantaged or disabled persons." To help secure these contracts, Leveritt kicked back numerous benefits to a government procurement employee, including "tickets to a 2011 World Series game, tickets to two college football games, two expense-paid family vacations to Las Vegas, donations to youth sports teams coached by the government employee and approximately 100 meals at restaurants." Commenting on the guilty plea, U.S. Attorney Brit Featherston for the Eastern District of Texas stated that "[w]hen thieves take advantage of the taxpayer and of those persons trying to compete fairly for contracts, their felonious acts undermine the confidence built into the contracting process."

Key Takeaways

The PCSF's high level of activity in the first half of 2022 should send up a flag of caution for government contractors. Specifically, three trends emerge from this recent string of cases.

1. **Compliance at the Forefront.** Companies would be wise to ensure that they have up-to-date and robust compliance protocols to deter unlawful conduct and avoid criminal exposure. The PCSF's increase in activity should motivate companies to continue to monitor and review their compliance and oversight programs.
2. **Targeting Misconduct at All Levels of Government.** The Strike Force has proven its ability to prosecute criminal activity at every level of government. So far this year, it has announced indictments and secured convictions for anticompetitive activity occurring on the local, state, federal, and international levels. Whether companies are contracting with local schools or the U.S. Army, the PCSF is intent on enforcing antitrust and fraud laws across the board. This is made possible by significant cross-departmental collaboration, including working with military investigators, state prosecutors, and other federal agencies to coordinate investigations and prosecutions.
3. **Thinking Beyond the Sherman Act: Bribery and Fraud Also on the Menu.** The PCSF has been successful in prosecuting complex fraud and collusion cases, even when they do not fit as traditional antitrust causes of action. For example, several cases filed this year did not allege a violation of the Sherman Act. The PCSF will pursue bribery and fraud cases to protect the integrity and efficiency of public procurement.

The authors wish to acknowledge Summer Associate Rebecca Human's contributions to this Update.

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