

## DOJ's Procurement Collusion Strike Force One Year Later: Cracking Down on Bid Rigging in the Government Procurement Process

Litigation Alert

**11.19.2020**

In November 2019, the Department of Justice's (DOJ) Antitrust Division announced a new, multi-agency task force charged with identifying, investigating, and prosecuting bid-rigging in the government procurement process. Since then, the Procurement Collusion Strike Force (PCSF) has trained more than 500 federal, state, and local government agencies in detecting government procurement bid rigging, which has resulted in the opening of several grand jury investigations.

Earlier today, as the PCSF marks the one year anniversary of its creation, Miller & Chevalier members [Lauren E. Briggerman](#) and [Alex L. Sarria](#) interviewed the newly appointed Director of the PCSF, [Daniel W. Glad](#), regarding the PCSF's impact on the government procurement world thus far, its focus going forward, and "red flags" that commonly indicate the presence of anti-competitive conduct.

Over the next year, as the PCSF moves shifts from training agencies to investigating and potentially prosecuting bid-rigging in the government procurement space, contractors should be mindful of such red flags, which include the following:

- Markets with few vendors available to provide goods or services to the government
- Markets involving commoditized products and services with little or no variation in quality or technical capability amongst offerors
- Similarities between proposals, including similar typographical or technical mistakes, contact information, or document properties that indicate common creators
- Patterns in bidding or awards, such as rotating winners, awardees subcontracting to losing vendors, or consistent reductions in the number of offerors for a requirement
- Conditions favorable to collusion, such as the presence of offerors that clearly are not technically capable of performing, statements that indicate awareness of a competitor's prices or likelihood of winning a competition, or industries where competitors frequently team or otherwise cooperate with one another through business, trade, and social organizations.

To avoid inadvertently engaging in such conduct, contractors should carefully examine their antitrust and procurement compliance programs to ensure they are structured to effectively prevent and detect potential antitrust violations. The need for an effective compliance program is especially acute in light of the [new compliance policy](#) issued by the Antitrust Division last year. The policy for the first time allows the Antitrust Division to consider the effectiveness of a company's compliance program when deciding whether to bring criminal charges. While many of the "red flags" the PCSF has identified could be indicative of collusive conduct, it is important to acknowledge that they also are common-place conditions in many industries and may be the product of legitimate and lawful business conduct. Therefore, having a robust compliance program that is calibrated to the needs and realities of your company's industry is the most effective way to head off a potential antitrust violation and ultimately demonstrate compliance in the event of a DOJ investigation or prosecution.

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