

DOJ Puts Recipients of Federal Funds on Notice: New “Procurement Collusion Strike Force” to Focus Antitrust Scrutiny on Public Procurement and Grant Transactions

by Alex Hontos, John Marti, and F. Matthew Ralph

The Justice Department announced this week the formation of a new Procurement Collusion Strike Force, which will focus on “detering, detecting, investigating and prosecuting antitrust crimes, such as bid-rigging conspiracies and related fraudulent schemes, which undermine competition in government procurement, grant and program funding.” The DOJ touted recent indictments against foreign contractors selling to the U.S. military, and investigations by GSA, which operates Federal auction websites and several government-wide acquisition contracts—suggesting that contractors across the range of industries, foreign and domestic, are subject to scrutiny. There is no time like the present for organizations to review existing practices in this area.

The announcement contrasts the DOJ’s decreased emphasis on white-collar prosecutions, which are projected to drop to their lowest numbers in more than three decades. The DOJ appears to be prioritizing white-collar resources to root out misconduct in programs where the federal government doles out significant sums of money. The federal government spent \$550 billion in FY 2018 on contracts for goods and services—approximately 40% of all discretionary spending—and awards a similar amount to grantees. Deputy Attorney General Jeffrey A. Rosen emphasized the mission of the Strike Force: “To ensure taxpayers the full benefits of competitive bidding, experienced investigators and prosecutors with the necessary expertise will partner in this Strike Force to deter, detect and prosecute antitrust crimes and related schemes in government procurements.”

The Strike Force will be composed of constituents from the DOJ’s Antitrust Division, as well as representatives from the United States Attorneys’ Offices, FBI investigators, the Department of Defense’s Office of Inspector General, the U.S. Postal Service OIG, and various other federal OIGs. The Strike Force will investigate and prosecute relevant crimes, and “train” procurement officials and government contractors to identify and report suspicious conduct. The DOJ’s Antitrust Division posted a [video](#) on recognizing anticompetitive behavior, and the Strike Force launched a [publicly available website](#), which includes links to contact the Strike Force’s Tip Center with complaints and tips

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regarding potential antitrust crimes in the procurement and grant arena.

For organizations that receive federal contracts, now is a good time to review key Federal Acquisition Regulations (FAR) provisions related to anti-competitive behavior, such as:

- FAR 52.203-2 (prohibiting bid rigging and collusion)
- FAR 52.203-7 (prohibiting kickbacks)
- FAR 52.203-5 (prohibiting contingent fees)
- FAR 52.203-13 (requiring investigation and mandatory disclosure of violations)

It is also a good time to assess template Teaming Agreements and subcontracts, and to underscore with sales employees the rules in this area. Organizations that actively participate in procurement or grant processes should review the DOJ Antitrust Division's leniency program. The homepage for the program provides significant guidance, including FAQs, policies, and model leniency letters that exemplify how businesses can maintain compliance, and how they can best leverage the program to cooperate with the DOJ if an organization discovers misconduct within its ranks. Incarceration is on the table for executives caught in bid-rigging schemes, and organizations face treble damages for ill-gotten gains from price fixing. The DOJ appears ready to invest significant resources in combatting anticompetitive behavior involving government contracts and grants. Time will tell if the DOJ follows through and a press release becomes policy, but this week's announcement is a good reminder to organizations to reassess current practices and risks in this complex area at the intersection of industry and the government.