

DOJ's Procurement Collusion Strike Force Priorities Highlighted By Bid-Rigging Qui Tam Settlement

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by Kirk Schuler and Sam Bolstad

In an [article](#) published late last year, Dorsey reported on the Department of Justice's announcement regarding the formation of a new Procurement Collusion Strike Force. The Strike Force focuses on the nexus between antitrust and public procurement, with the stated aim of targeting antitrust crimes "such as bid-rigging conspiracies and related fraudulent schemes." If there was any question whether DOJ was serious about targeting such conduct, a recent DOJ settlement suggests it is.

In a [press release](#) last week the Department announced a \$29 million False Claims Act settlement to resolve allegations that three corporate defendants rigged the bidding of an auction to buy a government loan on the cheap. The underlying lawsuit accused defendants Hybrid Technology LLC, Hybrid Tech Holdings LLC (collectively, "Hybrid"), and Ace Strength International of rigging bids for the right to acquire a \$168.5 million nonperforming loan from the Department of Energy ("DOE"), which was secured by the assets of now-bankrupt Fisker Automotive Inc. and Fisker Automotive Holdings Inc. (collectively, "Fisker"). Hybrid submitted the sole bid, for \$25 million, and won the nonperforming Fisker loan. The *qui tam* action was filed by FAH Liquidating Trust, the successor to the official committee of unsecured creditors of Fisker, and its legal counsel William R. Baldiga. As successful relators, the Trust and Baldiga will receive \$5.2 million of the \$29 million settlement.

The lawsuit more specifically alleges that Hybrid was one of three bidders that made it to the final stage of the DOE's auction process, the live auction. The other two bidders were Wanxiang America, Inc. ("Wanxiang") and WM GreenTech Automotive Corp. ("GTA"). Hybrid allegedly communicated with Wanxiang to discourage Wanxiang from bidding, including phone calls between Hybrid and Wanxiang executives while the live auction was taking place. Hybrid allegedly repeated that conduct with GTA, and was successful in dissuading both Wanxiang and GTA from bidding such that Hybrid won the auction with its sole bid for \$25 million.

Hybrid faced the threat of liability under the FCA for allegedly making false statements

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and submissions to the government about Hybrid's independent participation in the auction, per the lawsuit's allegations. As a precondition to participating in the auction, the lawsuit alleges Hybrid was required to state that it would "act independently" as a bidder, that its "bids would be submitted in good faith," and that its participation in the auction would be "conducted in accordance with the law." After having won the auction, the lawsuit alleges Hybrid signed a Loan Purchase Agreement with DOE wherein Hybrid further represented it would continue to abide by the law and that its prior statements of independence, good faith, and legal conduct, remained "true and correct in all material respects." The lawsuit alleges Hybrid's collusion with Wanxiang and GTA rendered Hybrid's statements and representations to DOE false.

This particular case was not the direct result of the Department's new Procurement Collusion Strike Force, as the investigation into Hybrid preceded its creation. But the case is symbolic of the conduct targeted by the Strike Force, and serves as a reminder that the Department is willing to team up in other ways—here with the relators and a "coordinated effort" led by the Civil Division, the District of Columbia U.S. Attorney's Office, and DOE's Office of Inspector General—to root out anticompetitive behavior involving government contracts. Moreover, to avoid attracting the attention of such authorities, including the Department's Procurement Collusion Strike Force, organizations in the public procurement space that are involved in joint ventures or that are collaboratively working with business partners should be mindful of the antitrust issues that can surface at the intersection of industry and government contracts.