

November 11, 2019

DOJ ANNOUNCES A NEW STRIKE FORCE TO COMBAT ANTITRUST MISCONDUCT IN GOVERNMENT PROCUREMENT

To Our Clients and Friends:

On November 5, 2019, the U.S. Department of Justice announced the creation of the **Procurement Collusion Strike Force** to combat antitrust violations and other crimes affecting government purchasing and programs at the federal, state, and local levels.

Assistant Attorney General Makan Delrahim, head of the Antitrust Division, explained that the new Strike Force will have dedicated prosecutors from the Antitrust Division and U.S. Attorneys' Offices, personnel from Inspector General offices (including the Department of Defense and the General Services Administration), and FBI special agents assigned to 13 districts located in the District of Columbia and eleven states. AAG Delrahim said these Strike Force teams will be tasked with investigating and prosecuting suspected procurement misconduct using a variety of federal laws, including antitrust, False Claims Act, and other statutes governing fraudulent behavior in the procurement process.

As part of this effort, the Strike Force is training U.S. Attorneys' Offices, Inspector General offices, and state and local government procurement officials about indicia of potential collusion during the procurement process. The Strike Force also intends to train government contractors and trade associations to raise awareness of the potential penalties for criminal and civil antitrust violations—including significant fines for corporations and imprisonment for individuals. The Strike Force is also soliciting whistleblower complaints about potential procurement violations through a new **web-based reporting system** and plans to invest in improved data analytics to detect potential irregularities in government procurement data.

The Strike Force builds on DOJ's successful deployment of strike forces in the past targeting specific enforcement priorities. The **Health Care Fraud Strike Force**, for example, has been in operation for more than a decade and resulted in charges against more than 4,200 defendants involved in nearly \$19 billion in Medicare program billings. More recent initiatives have focused on **elder fraud** and **organized crime**. These strike forces have generally proven successful in concentrating federal enforcement resources on a high priority issue, thereby creating pressure for prosecutors to deliver cases. As a result, we expect to see substantially increased enforcement activity around government procurement over the next 12 to 18 months.

We expect the new Strike Force to be an enforcement priority given the Antitrust Division's increasing activity in government procurement over the past year. At present, more than one-third of the Antitrust Division's 100-plus open grand jury investigations involve public procurement or conduct that included the government among its potential victims. And when these cases result in criminal resolutions, DOJ has been aggressive in leveraging the False Claims Act and other federal laws to secure additional

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damages for alleged harm to government agencies. In two recent cases involving military fuel contracts and generic pharmaceuticals, DOJ obtained civil damages for harm to government agencies that dwarfed the criminal fines imposed for the underlying antitrust violation. We expect this approach to be replicated by the Strike Force teams and, when a criminal conviction is obtained, offenders may face debarment as well as substantial fines and damages.

Companies involved in government procurement should use this opportunity to revisit their antitrust policies and training programs to mitigate any legal risks that result from DOJ's increased enforcement efforts.

Gibson Dunn will be hosting a webcast on Wednesday, December 4th at 12:00pm EST to discuss the Procurement Collusion Strike Force in more detail, including (i) the risk factors and red flags in competitive bids that may attract attention from the new Strike Force teams and (ii) proactive steps that in-house counsel should be taking now to prepare for DOJ's increased enforcement efforts.

To register, please click here:

<https://gibsondunnevents.webex.com/mw3300/mywebex/default.do?siteurl=gibsondunnevents>



Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Antitrust and Competition, False Claims Act or Government Contracts practice groups, or any of the following authors:

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