

Legal Updates & News

Legal Updates

DOJ's Renewed Focus on Procurement Fraud: What It Means for You

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With recent increases in federal procurement activity – particularly in the areas of defense and homeland security – the U.S. Department of Justice is gearing up for a potential increase in procurement fraud investigations and prosecutions. This renewed emphasis on procurement fraud should be a reminder to all contractors to make certain that their compliance programs are up to date and effective by conducting a vigorous compliance audit.

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New Task Force to Coordinate Anti-Fraud Effort

On October 10, 2006, Deputy Attorney General Paul J. McNulty announced the formation of a National Procurement Fraud Task Force (“Task Force”). The Task Force will coordinate and strengthen federal efforts to detect and prosecute procurement fraud, which includes defective pricing, product substitution, misuse of classified or other sensitive information, false claims, grant fraud, labor mischarging, accounting fraud, fraud involving foreign military sales, conflicts of interest, and other ethical breaches. The Task Force will be chaired by Assistant Attorney General Alice Fisher, of the Criminal Division.

The federal agencies that will participate in the Task Force include the FBI, the Special Inspector General for Iraq Reconstruction and the Offices of Inspectors General (“OIGs”) for the Department of Defense, CIA, NASA, General Services Administration, the Civil and Criminal Divisions of the Department of Justice, Department of Homeland Security, Department of Energy, Department of Veterans Affairs, Nuclear Regulatory Commission, Small Business Administration, Social Security Administration, U.S. Postal Service, the Office of the Director of National Intelligence, National Reconnaissance Office, Department of State, Department of Transportation, Department of Treasury, Department of Housing and Urban Development, Department of Interior, and Department of Agriculture. In addition, all defense-related investigative agencies – Defense Criminal Investigative Service, Naval Criminal Investigative Service, U.S. Army-Criminal Investigative Command, and the Air Force Office of Special Investigations – will participate.

DOJ has identified the following initial priorities for the Task Force:

- Identification and prosecution of procurement fraud cases through coordination with U.S. Attorneys’ Offices and OIG field offices;
- Ensuring adequate resources are available to successfully investigate and prosecute procurement fraud cases;
- Standardization of “best practices”;
- Better coordination between agency auditors and investigators to ensure that red flags and badges of fraud are promptly reported to criminal investigators;
- Better identification and resolution of investigative and coordination issues;
- Specialized training for OIG agents and auditors on the development and prosecution of procurement fraud cases;
- Examination of existing laws and policies to determine if they need to be strengthened or changed;
- Development of strategies encouraging agencies to refer more cases for civil and criminal

- prosecution; and
- Better coordination of targeted civil, regulatory, and criminal enforcement actions.

Increase in Investigations and Prosecutions Is Likely

With this renewed emphasis on procurement fraud, the number and scope of procurement fraud investigations and prosecutions brought by the Department of Justice is likely to increase. It is also likely that the Department will increase the use of civil and criminal remedies for matters that traditionally have been handled as administrative contractual disputes.

The Task Force is modeled on several previous initiatives that have resulted in increased numbers of prosecutions, including a Corporate Fraud Task Force, established in response to revelations about Enron and other major corporations; a Hurricane Katrina Task Force, established to combat fraud relating to Hurricane Katrina and its aftermath; and a Campaign Finance Task Force, established to investigate allegations of wrongdoing in the 1996 election cycle.

The federal procurement laws are interpreted broadly to cover all manner of schemes to defraud the government. In some circumstances, a company can be criminally liable for fraud committed by one or more of its employees, even if the employees acted contrary to company policies and the company obtained no benefit from the fraud. Even when no criminal charges are brought, procurement fraud investigations often result in civil remedies, including fines and treble damages under the False Claims Act. Self-reporting known instances of procurement fraud and an effective compliance program can frequently mitigate the often disastrous impact of a procurement fraud investigation on a company. While the majority of government contractors believe their compliance programs are already adequate, if you have not recently conducted a robust compliance audit, you may not be able to identify those areas where your company is at risk.