

ClientAlert

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February 2014

A Rose by any Other Name: DOJ's FCPA Unit Brings Fraud and Money Laundering Charges Against Bechtel Executive

The variety of charges recently brought by the US Department of Justice's (DOJ) Foreign Corrupt Practices Act (FCPA) Unit against former Bechtel executive Asem Elgawhary signals that the DOJ is not only pursuing improper payments to foreign officials, but also company executives who solicit and accept improper payments. It also demonstrates the Unit's inclination to look for other crimes to charge when FCPA violations are unavailable. Bechtel was not charged, and the indictment details how Elgawhary evaded Bechtel's controls.

On Monday, February 10, 2014, the DOJ announced the indictment of former Bechtel Corp. executive Asem Elgawhary for mail fraud, wire fraud and conspiracy to launder money, as well as violation of federal tax laws. The charges were brought by the DOJ's FCPA Unit in coordination with the Internal Revenue Service's Criminal Investigation Unit. Notably, Elgawhary has not been charged with any violation of or conspiracy to violate the FCPA.

The eight-count indictment alleges that Elgawhary was assigned by Bechtel—a US corporation engaged in engineering, construction and project management—to lead a joint venture between Bechtel and Egypt's state-owned and state-controlled electricity company. Reminiscent of the charges brought against Albert "Jack" Stanley in 2008 related to the TSKJ Bonny Island joint venture, Elgawhary is accused of accepting kickbacks in association with awarding subcontracts on power projects. The indictment alleges that Elgawhary used his position in the joint venture to provide preferential treatment to three companies in the award of more than US\$2 billion in contracts in exchange for more than US\$5 million in kickbacks paid through third-party consultants, which Elgawhary transferred to offshore accounts.

The indictment enumerates Bechtel's compliance program and details how Elgawhary had falsely certified his compliance with those programs, placing Bechtel in the category of victim of Elgawhary's fraud, rather than co-conspirator in his scheme. According to allegations in the indictment, Elgawhary attempted to conceal the kickback scheme and the proceeds he obtained from it by falsely representing to Bechtel and the joint venture's board of directors that he had no knowledge of any fraud or suspected fraud involving the joint venture, and that there were no material violations of law to disclose in the joint venture's financial statements. When Elgawhary was interviewed by counsel for Bechtel in 2011, he denied ever having received money from power companies or their consultants and disclaimed control over any foreign bank accounts. Additionally, with the assistance of other employees at the joint venture, Elgawhary allegedly caused evidence about the kickback scheme to be destroyed.



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The charges brought by the DOJ's FCPA Unit against Elgawhary suggest two items of note:

First, the failure to find bribery of government officials will not necessarily halt an investigation by the Unit. Too often, companies conducting internal investigations find no evidence that an official has been bribed, and they look no further. But the wide array of laws available to the Unit—including mail and wire fraud, the Travel Act (which can be used to charge commercial bribery), and money laundering—counsel that financial irregularities should be fully investigated during internal reviews, even if a government official does not appear to be the beneficiary of the irregularity.

Second, the prosecution of Elgawhary demonstrates the value of strong pre-existing compliance programs, particularly in light of the DOJ's continued emphasis on the prosecution of individuals in FCPA cases. Not only can such a program help mitigate any potential corporate penalties, but it can also demonstrate to law enforcement that an employee, even a senior executive like Elgawhary, might be acting outside the scope of his authority, thus there is no corporate liability for the misconduct—and in fact, like Bechtel, the company might be a victim.

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