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Procurement Collusion Strike Force Secures First International Guilty Plea Agreement

*By John M. Hindley, David Hibey, James W. Cooper, Sonia Kuester Pfaffenroth, and C. Scott Lent**

The Antitrust Division of the Department of Justice announced that a Belgian security firm agreed to plead guilty to conspiracy to allocate customers, rig bids, and fix prices for defense-related security services contracts in violation of Section 1 of the Sherman Act. The authors of this article discuss the plea agreement.

The Antitrust Division of the Department of Justice (“DOJ”) recently announced that Belgian security firm G4S Secure Solutions NV (“G4S”) agreed to plead guilty to conspiracy to allocate customers, rig bids, and fix prices for defense-related security services contracts in violation of Section 1 of the Sherman Act. G4S also agreed to pay a \$15 million criminal fine as a penalty for receiving payments from the Department of Defense (“DoD”) during the course of the conspiracy. The parties to the plea agreement are awaiting the court’s approval.

Since April 2020, G4S has cooperated with the United States in the ongoing investigation into bid-rigging DoD security services contracts. On June 30, DOJ announced¹ that a federal grand jury returned an indictment against Seris Security NV (“Series”), a Belgium-based security firm, and three executives.

G4S’s guilty plea is an important milestone for DOJ’s Procurement Collusion Strike Force (“PCSF” or “Strike Force”), because it is the first guilty plea secured by the Strike Force in its current iteration against a foreign company. One recent precursor—DOJ’s prosecution² of Korean fuel suppliers in November 2018—served as the template for the current strike force. At least five³ South Korean-based companies have pled guilty to a bid-rigging conspiracy in connection with fuel-supply contracts with DoD.

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¹ <https://www.justice.gov/opa/pr/belgian-security-services-company-and-three-former-executives-indicted-bid-rigging-us>.

² <https://www.justice.gov/opa/pr/three-south-korean-companies-agree-plead-guilty-and-enter-civil-settlements-rigging-bids>.

³ <https://www.justice.gov/opa/pr/more-charges-announced-ongoing-investigation-bid-rigging-and-fraud-targeting-defense>.

Subsequently, in November 2019, DOJ announced the formation of a multi-agency Procurement Collusion Strike Force⁴ that is tasked with detecting, investigating, prosecuting, and deterring antitrust crimes such as bid-rigging and related fraudulent schemes in the grant, government procurement, and program funding areas.

In March 2021, DOJ announced⁵ its plans to apply the Strike Force internationally through “PCSF: Global,” an effort to build connections with foreign enforcement authorities and to prosecute collusion in bids involving U.S. funds spent abroad.

G4S INVESTIGATION

DoD maintains military bases in Belgium. To maintain the security of these bases, DoD contracts with third-party vendors for security services to provide guards that protect buildings, mobile monitoring of various locations, and electronic surveillance. G4S admitted that it conspired to rig DoD’s solicitation process for selecting a contractor that can provide adequate security for particular military bases.

According to the information⁶ filed by DOJ in the U.S. District Court for the District of Columbia, from spring 2019 through summer 2020, G4S and two unnamed competing Belgian companies, referenced only as Company A and Company B, conspired to suppress and eliminate competition for contracts involving the provision of security services in Belgium to various entities such as DoD and the North Atlantic Treaty Organization Communications and Information Agency (“NCI Agency”). The NCI Agency is funded in part by the United States.

Over the course of the conspiracy, G4S, Company A, and Company B agreed not to compete against each other for particular bid tenders and to either submit or withdraw bids in accordance with the agreed-upon plan. The agreement between the parties developed through meetings and communications via phone, text message, encrypted messaging applications, and email. G4S succeeded in securing a multi-million dollar contract with DoD.

⁴ <https://www.justice.gov/opa/pr/justice-department-announces-procurement-collusion-strike-force-coordinated-national-response>.

⁵ <https://www.justice.gov/atr/division-operations/division-update-spring-2021/pcsf-expansion-and-early-success>.

⁶ <https://www.justice.gov/opa/press-release/file/1406351/download>.

Subsequently, a federal grand jury in the U.S. District Court for the District of Columbia returned an indictment⁷ against former G4S Chief Executive Officer Jean Paul Van Avermaet and two former Seris executives—former CEO Danny Vandormael and former Director of Guarding & Monitoring Peter Verpoort—for participating in the conspiracy with G4S. The indictment also identifies four unnamed individuals (referenced as “Individuals 1–4”) with conspiring to allocate customers, rig bids, and fix prices for security services contracts on behalf of their companies. All individuals are Belgian nationals.

THE GOVERNMENT’S BROADENED APPROACH TO ANTITRUST ENFORCEMENT

In announcing this guilty plea, Acting Assistant Attorney General for DOJ’s Antitrust Division Richard A. Powers stated that the Strike Force “is committed to safeguarding public procurement at home and abroad from collusion that cheats American taxpayers out of the benefits of competition for critical goods and services.”

In addition, Powers emphasized that the Strike Force will continue to scrutinize “contracts to secure Department of Defense bases and installations abroad.” Further, Director Frank Robey of the U.S. Army Criminal Investigation Command’s Major Procurement Fraud Unit stated that his agency “will continue to pursue integrity in the contracting arena and work closely with the Department of Justice and other law enforcement agencies to prevent collusion and fraud.”

Consistent with the Strike Force’s intended multi-agency approach, this prosecution involved coordination between the FBI’s International Corruption Unit New York Field Office, the Defense Criminal Investigative Service’s New York Resident Agency and the Transnational Operations Field Office, and other European partners.

The Antitrust Division has a long history of prosecuting foreign actors who have engaged in anticompetitive conduct. The G4S prosecution demonstrates that the Strike Force has the resources and personnel to continue that tradition of robustly investigating foreign actors who violate U.S. law by conspiring to rig a government procurement process. The United States solicits bids and engages in government contracts in most countries throughout the world.

As this prosecution illustrates, foreign companies operating in the federal public procurement space must maintain robust and executable compliance policies and understand the consequences and expectations for companies engaging in a U.S. government procurement solicitation process.

⁷ <https://www.justice.gov/opa/press-release/file/1408166/download>.