

# Procurement Collusion ★ Strike Force ★

Coordinated national response to collusion  
and antitrust crimes in public procurement



## Combating Collusion in Public Procurement: Criminal Antitrust Enforcement & the PCSF Association of Government Accountants, Fraud Conference, November 22, 2021

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photograph by Carol M. Highsmith  
(LC-DIG-pplot-13822)

# **Sources of Investigative Leads**

## Law Enforcement/Agency Referrals

### Direct Complaints to the Antitrust Division

- Corporate investigations and audits
- Disgruntled employees
- Non-colluding competitors
- Civil lawsuits
- Leniency program

## **Investigative Tools**

Business records analysis

Interviews

Grand jury subpoenas (documents and/or testimony)

Cooperators

Knock & Talks

Search warrants

Consensual monitoring/recording

# Fraud Indicators

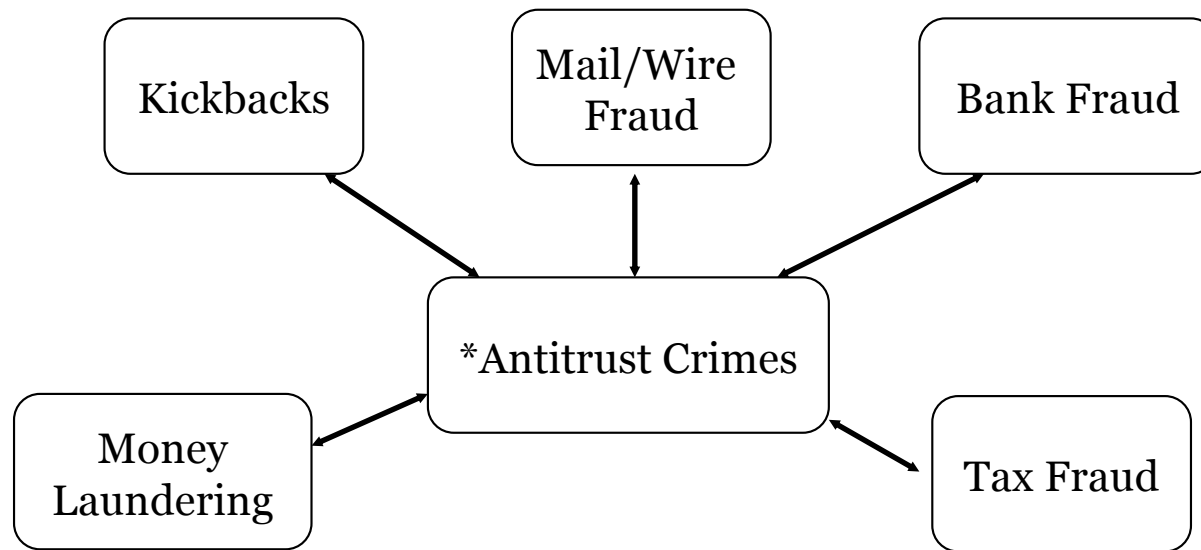
## Documentary

- Missing documents
- Copies vs originals
- Two sets of books
- Revisions without support
- Handwriting/signature discrepancies
- Excessive delays in providing documents

## Procurement Personnel

- Lack of separation of duties
- Refusal to take leave/train alternate
- Living beyond one's means
- Avoid audits
- Boast of status/wealth
- Government "owes" me
- Always favors one vendor

# White-Collar Fraud Cases



\* If antitrust activity is part of a larger white-collar conspiracy, Antitrust Division may prosecute all related conspiratorial conduct.

# **Federal Acquisition Regulation (FAR 48 C.F.R. § 52.203-2)**

Bid offeror must certify that:

- (1) Prices in the offer have been arrived at independently without consultation, communication, or agreement with any other competitor;
- (2) Prices in the offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other competitor before bid opening or contract award unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other competitor to/not to submit an offer for the purpose of restricting competition.

# Case Example – EPA Superfund Contract

- Fraud, kickback, and bid-rigging scheme
- Multi-million dollar contract to clean up EPA Superfund site
- Brought charges against:
  - Ten individuals
  - Three companies
- Prison sentences ranged from 5 months to 14 years
- \$6 million in restitution

Department of Justice  
Office of Public Affairs

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FOR IMMEDIATE RELEASE Tuesday, March 4, 2014

**Former Project Manager Sentenced to Serve Time in Prison for Role in Bid Rigging and Other Fraudulent Schemes Involving Two EPA Superfund Sites in New Jersey**

**Former Manager to Serve 14 Years in Prison**

Gordon D. McDonald, a former project manager for a prime contractor at two U.S. Environmental Protection Agency (EPA) Superfund sites in New Jersey, was sentenced today to serve 14 years in prison for participating in multiple bid-rigging, fraud, kickback and other fraudulent schemes involving two EPA Superfund sites in New Jersey, the U.S. Department of Justice announced today.

Department of Justice  
Office of Public Affairs

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FOR IMMEDIATE RELEASE Tuesday, August 9, 2016

**Former CEO of Canadian Hazardous Waste Treatment Company Sentenced to Serve 63 Months in Prison for Role in Kickback and Fraud Schemes Against the United States**

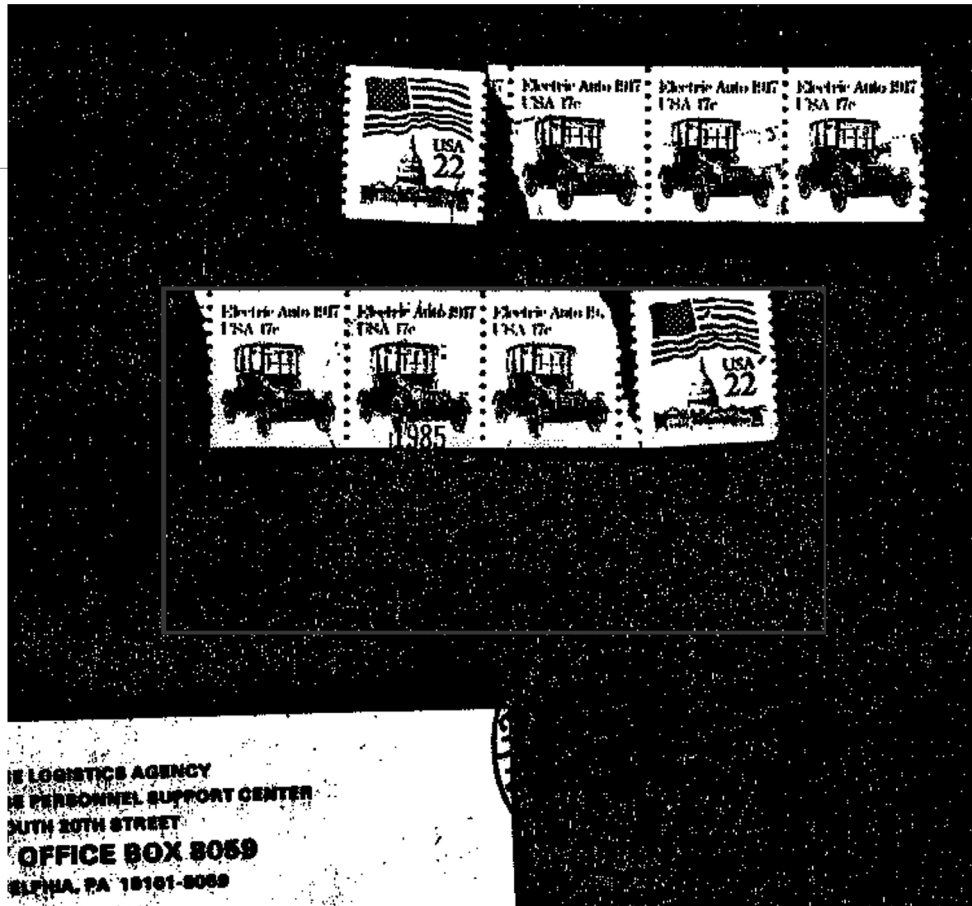
The former chief executive at Bennett Environmental Inc., a Canada-based company that treats and disposes of contaminated soil, was sentenced today to serve 63 months in prison in connection with the payment of kickbacks to obtain subcontracts at a New Jersey Superfund site overseen by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers, the Department of Justice announced today.



## **The Not-So-Clever Criminal**

- Similar applications – handwriting; typeface; stationery; typos; mathematical errors
- Last-minute changes – white-outs or physical alterations to prices
- Vendor picks up an extra bid package for another vendor OR submits a competing vendor's bid





Bid:  
\$145,850.00

Bid:  
\$145,350.00

December 31, 1997

Department of Parks and Recreation  
Tiyon, Guam.

Subject: Repair of one Paseo Stadium Light Tower

Please find our estimate for the Restoration of one lighting tower at the Paseo Stadium damage by Typhoon Paka. The total amount of our estimate is **"One Hundred Forty Five Thousand Eight Hundred Fifty Dollars and 00/100 (\$ 145,850.00)"**. Including the supply and installation of Lighting fixtures and power hook up.

We sincerely hope that this is according to your requirement. Please give us a call us if you have any question. Thank you very much.

Sincerely,

"Please give us a call us if you have any questions."

December 31, 1997

Department of Parks and Recreation  
Tiyon, Guam.

Subject: Repair of one Paseo Stadium Light Tower

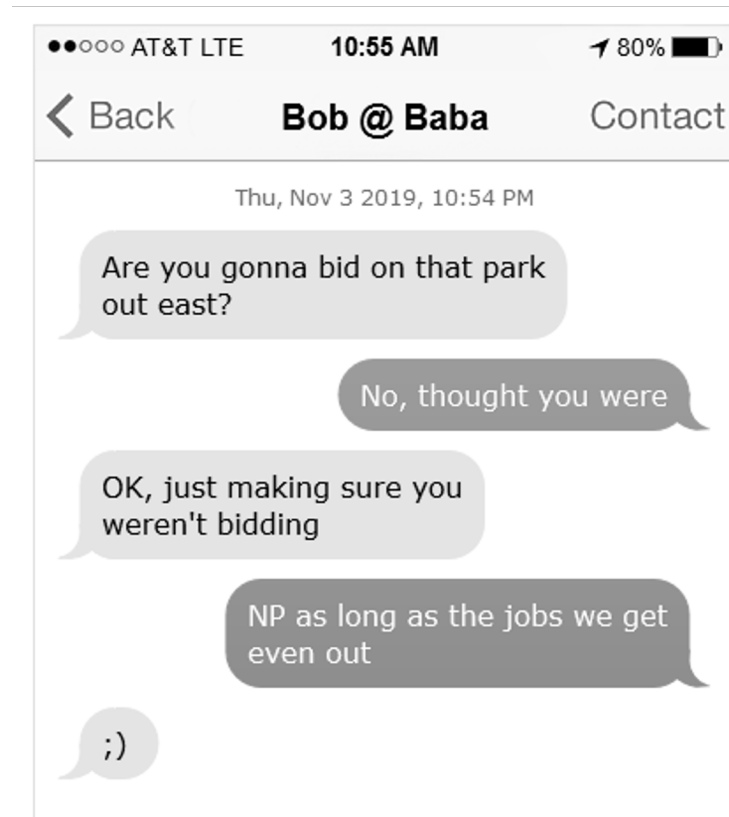
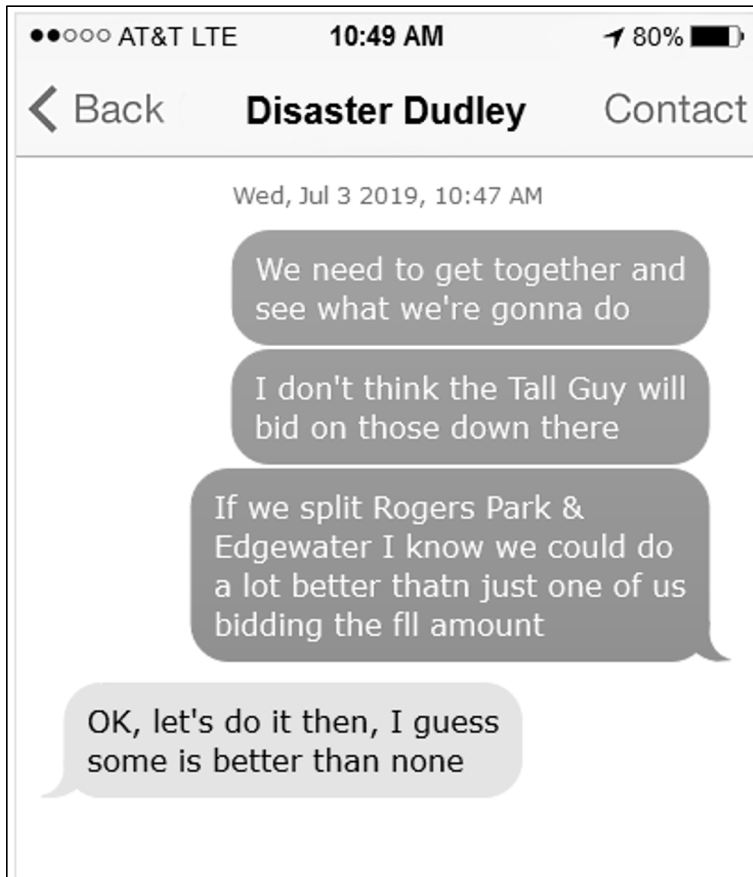
We submit here with our estimate for Repair and Restoration of one Lighting Tower at the Paseo Stadium that was damage by Typhoon Paka. The total amount of our estimate is **"One Hundred Forty Eight Thousand Three Hundred Fifty Dollars and 00/100 (\$ 148,350.00)"**. Including Labor, Materials and Equipment.

We hope that the above quotation is satisfactory. Please give us a call us if you have any question. Thank you very much.

Sincerely,

"Please give us a call us if you have any questions."

# Investigative Tools



## Investigative Tools

28            10:17:21        **Adam (A-1 Dirt):** But the deal is—usually with Bob—Bob bids on  
29    the East Side and we bid downtown, and uh, the mountains and the West Side is what I bid  
30    on with Dudley at Disaster Dirt, you know. We generally leave Bob to the East Side and  
31    then we take that, but if you wanted to make a deal, you know, we could probably do a  
32    three-way deal, you know, with Bob, I'd have to talk to him, you know.

## Investigative Tools

33            10:18:39        **Chuck (CMG Dirt):** You know, if we all make a deal, we're all gonna  
34    get in higher. That's the only way to do it. It just don't make sense if we bid against each  
35    other. If I say I'm bidding on it, and then Adam is out—same thing. I mean, why should  
36    we bid against each other if we know I'm bidding it. If I'm out, I'll say, "I'm out. It's all  
37    yours." And then you know if he has more money to go or more balls to go, go for it.

## Investigative Tools

38            10:19:00        **Agent Smith:** Okay, it sounds like you guys have done this quite a  
39   few times?

40            10:19:12        **Adam (A-1 Dirt):** Oh yeah. Oh yeah.

41            10:19:20        **Chuck (CMG Dirt):** Yeah. We've made a lot of money doing this.

42            10:19:25:        **Adam (A-1 Dirt):** A lot of years.

**From:** Schrute, Dwight

**Sent:** Thursday, August 29, 2019 15:20

**To:** Glad, Daniel

**Subject:** Help Me Out

Sorry for the rush, but I need some help with the state paper bid. All I need is for you to sign, fill in shipment location, and submit to [procurement@stategov.com](mailto:procurement@stategov.com). Numbers are filled in already, 20% higher. LMK if you have Q's.

DKS

**From:** Glad, Daniel

**Sent:** Thursday, August 29, 2019 15:32

**To:** Schrute, Dwight

**Subject:** Help Me Out

D—if I understand you correctly, all I need to do is sign, you already put my prices higher, right?



**From:** Schrute, Dwight

**Sent:** Thursday, August 29, 2019 15:45

**To:** Glad, Daniel

**Subject:** Help Me Out

That's right. I owe you one for the next round.

...have been a long...

## Committed a Federal Crime?

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- A. No, they haven't submitted their bid yet, so there's no crime.
- B. No, it's a sale to a state agency, so it's not a federal crime.
- C. Yes, because they have agreed to rig this bid and rotate the next one.
- D. Yes, because they used email ("the wires"), they've committed wire fraud.

# Dunder Mifflin Paper Company

Description	Sheets/Ctn.	Sheets Ordered FY20 a	Notes for FY20 Paper Bid b	Shipment Dates c	Brand d	Unit Price Per Thousand Sheet e	Extended Total (axe)
<b>Digital Color Prod.</b>							
11. Digital 32# White Text 18x12	1500	217,500	Per Bid Specification #3	8/29/19-64ctn 12/2/19-64ctn, 3/4/20 -17 ctn.	Dunder Mifflin	\$5.00	\$1,087,500.00
12. Digital 32# White Text 17x11	2000	64,000	Per Bid Specification #3	8/29/19-32ctn	Dunder Mifflin	\$6.00	\$384,000.00
13. Digital 80# White Cover 18x12	1000	50,000	Per Bid Specification #3	8/29/19-32ctn 12/8/19-18ctn	---	NO BID	---
14. Digital 80# White Cover 17x11	1000	448,000	Per Bid Specification #3	8/2/19-160ctn 12/8/19-160ctn 3/4/20 -128 ctn	---	NO BID	---
15. Digital 60# White Cover 18x12	1250	60,000	Per Bid Specification #3	8/29/2019	---	NO BID	---
16. Digital 60# White Cover 17x11	1250	5,000	Per Bid Specification #3	8/29/2019	---	NO BID	---
17. Digital 24# White Text 17x11	2500	65,000	Per Bid Specification #3	8/29/2019	Dunder Mifflin	\$4.75	\$308,750.00
18. Digital 120# Silk Elite White cover 18x12	200	9,600	Per Bid Specification #3	8/29/2019	Dunder Mifflin	\$11.50	\$110,400.00

The below prices include all stipulations and requirements of Addenda No. 9(a)

Comments:

All prices FOB Scranton, net 90

# Gladco Paper & More

Description	Sheets/Ctn.	Sheets Ordered FY20 a	Notes for FY20 Paper Bid b	Shipment Dates c	Brand d	Unit Price Per Thousand Sheet e	Extended Total (axe)
<b>Digital Color Prod.</b>							
11. Digital 32# White Text 18x12	1500	217,500	Per Bid Specification #3	8/29/19-64ctn 12/2/19-64ctn, 3/4/20 -17 ctn.	Glad Mark Gold	\$6.00	\$1,305,000.00
12. Digital 32# White Text 17x11	2000	64,000	Per Bid Specification #3	8/29/19-32ctn	Glad Mark Gold	\$7.20	\$460,800.00
13. Digital 80# White Cover 18x12	1000	50,000	Per Bid Specification #3	8/29/19-32ctn 12/8/19-18ctn	Glad Mark Silver	\$9.75	\$487,500.00
14. Digital 80# White Cover 17x11	1000	448,000	Per Bid Specification #3	8/2/19-160ctn 12/8/19-160ctn 3/4/20 -128 ctn	Glad Mark Silver	\$9.75	\$4,358,000.00
15. Digital 60# White Cover 18x12	1250	60,000	Per Bid Specification #3	8/29/2019	Glad Mark Silver	\$9.75	\$5,850.00
16. Digital 60# White Cover 17x11	1250	5,000	Per Bid Specification #3	8/29/2019	Glad Mark Silver	\$9.75	\$4,875.00
17. Digital 24# White Text 17x11	2500	65,000	Per Bid Specification #3	8/29/2019	---	NO BID	---
18. Digital 120# Silk Elite White cover 18x12	200	9,600	Per Bid Specification #3	8/29/2019	---	NO BID	---

The below prices include all stipulations and requirements of Addenda No. 9(a)

Comments:

All prices FOB Chicago, IL, net 90

### Dunder Mifflin Paper Company

Dunder Mifflin	\$5.00	\$1,087,500.00
—————	NO BID	—————
Dunder Mifflin	\$4.75	\$30,875.00
Dunder Mifflin	\$11.50	\$11,040.00

The below prices include all stipulations and requirements of Addenda No. 9(a)

Comments:

All prices FOB Scranton, net 90

### Gladco Paper & More

Glad Mark Gold	\$6.00	\$1,305,000.00
Glad Mark Silver	\$9.75	\$4,875.00
—————	NO BID	—————
—————	NO BID	—————

The below prices include all stipulations and requirements of Addenda No. 9(a)

Comments:

All prices FOB Chicago, IL, net 90

# What is the bid package?

- A. Nothing to see here, move along.
- B. The bids were filled out by the same person.
- C. Dunder Mifflin and Gladco are offering the same terms (FOB, net 90).
- D. The bidders appear to be carving up the line items.
- E. No difference in transportation costs.



# ❖ **Detecting Antitrust Violations**

Favorable Conditions for Collusion

Bid Patterns

Warning Signs in Pricing

Suspicious Statements and Conduct

## **Favorable Conditions for Collusion**

Few sellers

Limited number of qualified bidders

Difficult for new competitors to enter the market

Few substitute products

Standardized products

Repetitive or regularly scheduled purchases

## **Suspicious Bid Patterns**

- Same company always wins or loses
- Certain companies only submit bids in certain geographical areas
- Companies appear to take “turns” winning
- Winning company subcontracts to losing company



## • **Suspicious Bid Patterns**

- Regular suppliers/vendors fail to bid for work they typically perform, but continue to bid for other work
- Bids are much higher than estimates or previous bids
- Large differences between price of winning bid and other bids
- All companies end up winning the same amount of work over a series of bids

## **Warning Signs in Pricing**

- Sudden and identical increases in price or price ranges that cannot be explained by cost increases
- Anticipated discounts or rebates disappear unexpectedly
- Similar transportation costs specified by local and non-local companies
- Attempts to “shop around” stonewalled

## **Suspicious Procurement Processes**

- Procurement official regularly exempts competitive bidding because of “emergency” work
- Procurement officials associated with “consulting” vendors
- Procurement official has overly friendly relationship with one or multiple vendors

## What to Watch For: Suspicious Statements

- A customer or territory “belongs” to a supplier
- References to “respecting” the customers or territories of competitors
- References to “courtesy” bids or “throwing in a number”
- Use of same terminology or rationales by companies when explaining price increases
- Statements indicating advance knowledge of competitor’s pricing

## Other Suspicious Conduct and Behavior

Companies meet privately before bids

Company submits bid for work it cannot perform

Bids contain last minute changes

Procurement official regularly exempts competitive bidding because of “emergency” work

Invoicing for work awarded contains charges for “consulting” work (when not reasonably within scope of work)

Procurement officials associated with “consulting” vendors

## **Risk Factors to Consider**

1. Unknown / new contractor
2. Circumvention of the procurement process
3. Complex / technical product or service
4. Compressed timeline
5. Financial pressure (vendor or employee)
6. Insufficient or absence of QA oversight
7. Underqualified vendors
  - Lack of capacity / knowledge / qualifications

# DoD Foreign Military Financing (FMF)

- Fraud and kickback scheme involving DoD's Foreign Military Financing Direct Commercial Contract program (FMF)
- Charged DoD contractor employee with various fraud charges
- Sentenced to 30 months in prison

Department of Justice  
Office of Public Affairs

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FOR IMMEDIATE RELEASE Monday, June 12, 2017

**Israeli Executive Sentenced to Prison for Defrauding the Foreign Military Financing Program**

A former executive of an Israel-based defense contractor was sentenced today to 30 months in prison for his role in multiple schemes to defraud a multi-billion dollar United States foreign aid program, the Department of Justice announced.

After being extradited from Bulgaria in October 2016, Yuval Marshak pleaded guilty to one count of mail fraud, two counts of wire fraud and one count of major fraud against the United States in U.S. District Court for the District of Connecticut on March 13, 2017. In addition to his prison sentence, he was ordered to pay restitution to the U.S. Department of Defense (DoD) in the amount of \$41,170 and pay a criminal fine of \$7,500.

"The Antitrust Division is committed to prosecuting individuals who, like Yuval Marshak, commit crimes that corrupt the competitive process," said Acting Assistant Attorney General Andrew Finch of the Justice Department's Antitrust Division. "Today's sentence reflects the seriousness of these crimes and should serve as a warning to those, wherever located, who scheme to defraud essential, taxpayer-funded programs."

# Korea Fuel Supply Case

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, November 14, 2018

## **Three South Korean Companies Agree to Plead Guilty and to Enter into Civil Settlements for Rigging Bids on United States Department of Defense Fuel Supply Contracts**

### **Three Companies Agree to Plead Guilty and Pay a Total of \$236 Million in Criminal Fines and Civil Damages**

South Korea-based companies SK Energy Co. Ltd., GS Caltex Corporation, and Hanjin Transportation Co. Ltd. have agreed to plead guilty to criminal charges and pay a total of approximately \$82 million in criminal fines for their involvement in a decade-long bid-rigging conspiracy that targeted contracts to supply fuel to United States Army, Navy, Marine Corps, and Air Force bases in South Korea, the Department of Justice announced today.

FOR IMMEDIATE RELEASE

Wednesday, March 20, 2019

## **More Charges Announced in Ongoing Investigation into Bid Rigging and Fraud Targeting Defense Department Fuel Supply Contracts for U.S. Military Bases in South Korea**

### **Two Additional Companies Agree to Plead Guilty and Enter into Civil Settlements; Indictment Against Seven Individuals Unsealed**

South Korea-based companies Hyundai Oilbank Co. Ltd. and S-Oil Corporation have agreed to plead guilty to criminal charges and pay a total of approximately \$75 million in criminal fines for their involvement in a bid-rigging conspiracy that targeted contracts to supply fuel to United States Army, Navy, Marine Corps, and Air Force bases in South Korea, the Department of Justice announced today. Hyundai Oilbank and S-Oil have agreed to plead guilty to an antitrust charge contained in a superseding indictment that was unsealed today.

The superseding indictment also charges seven individual defendants — associates, managers, and executives of companies that conspired to rig bids for fuel supply contracts — for participating in this bid-rigging conspiracy and in a scheme to defraud the U.S. government.

- Price-fixing, bid-rigging and allocation conspiracy
- Indictment alleged conspiracy caused over \$100,000,000 in losses
- Brought charges against:
  - 4 oil refineries
  - 1 logistics company
  - 7 individuals
- Over \$150 million in criminal fines
- Over \$205 million in separate civil settlements



Procurement  
**Collusion**  
★ Strike Force ★

Coordinated national response to collusion  
and antitrust crimes in public procurement



and antitrust crimes in public procurement  
coordinated national response to collusion

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Office of Inspector General