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LATIN AMERICAN COMPETITION FORUM

Session III - Improving Effective Public Procurement: Fighting Collusion and Corruption

Contribution from the United States Department of Justice

18-19 September 2012, Santo Domingo, Dominican Republic

The attached document from the United States Department of Justice is circulated to the Latin American Competition Forum FOR DISCUSSION under Session III of its forthcoming meeting to be held on 18-19 September 2012 in Santo Domingo, Dominican Republic.

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LATIN AMERICAN COMPETITION FORUM

-- 18-19 September 2012, Santo Domingo (Dominican Republic) --

Session III – Improving effective public procurement: fighting collusion and corruption

-- CONTRIBUTION FROM THE UNITED STATES DEPARTMENT OF JUSTICE --

1. In May 2009, the U.S. Department of Justice's Antitrust Division ("Division") launched its Recovery Act Initiative ("Initiative") to help detect fraud in the award of economic stimulus projects resulting from the \$787 billion American Recovery and Reinvestment Act of 2009 ("Recovery Act"). The Initiative is a good example of a coordinated effort led by an antitrust enforcement agency to prevent, detect, and punish collusion and corruption in public procurement.

2. The Initiative was designed to help government procurement officials prevent collusion and fraud in the award of stimulus projects and to detect and prosecute any collusion and fraud that might occur. As part of the initiative, the Division trained procurement and grant officials, government contractors, and agency auditors and investigators regarding signs of collusion and fraud and assisted agencies in investigating and prosecuting collusion and fraud that did occur. The Division trained thousands of federal and state procurement and grant officials nationwide. In addition, consumers, contractors, and agencies could report suspicious activity and review information about U.S. antitrust laws through a Recovery Act Initiative website.

3. With the passage of the Recovery Act, the federal government committed substantial spending to needed goods and services to stimulate the economy. Given the significant amount of funds provided by the Recovery Act, there was the potential for an increase in procurement and grant fraud at both the federal and state levels. The Initiative was a broad effort combining federal, state, and municipal forces, and calling on prosecutors, investigators, procurement and grant officials, inspectors and auditors to play their part in preventing, uncovering, and prosecuting collusion and corruption.

4. The Federal Bureau of Investigation (FBI), for example, was actively involved in investigating potential fraud and public corruption involving Recovery Act funds. It worked closely with its law enforcement partners on the federal, state, and local level to combat Recovery Act corruption and fraud, and provided training and assistance to local law enforcement to monitor the use of government funds. The FBI increased its emphasis on government fraud investigations, including fraud relating to the Recovery Act. In addition, the FBI instituted a training initiative to provide FBI Special Agents and

Intelligence Analysts with an increased understanding and awareness of the vulnerability of stimulus funding to corruption and fraud. Finally, the FBI used its community relationships to increase public awareness and encourage reporting of Recovery Act corruption and fraud.

5. While prosecution of fraud, waste, and abuse is crucial, deterrence is also an essential component of the strategy to protect government resources. The Initiative trained government officials to prevent, detect, and report efforts by parties to unlawfully profit from the stimulus awards before those awards were made and taxpayer money was wasted. The Division has investigated and prosecuted schemes to undermine competitive bidding for government and commercial awards in a range of industries – everything from road building, to military hardware and fuel supplies, to sales of milk to public schools. The Division’s experience with such offenses indicates that when lucrative government contracts are at stake and need to be disbursed quickly, the potential risk of collusion and fraud increases dramatically. Importantly, however, our experiences also show that these risks can be substantially minimized when an early and strong emphasis is placed on prevention and detection.

1. “Red Flags of Collusion” Training

6. A key component of the Initiative was training agency procurement and grant officials, auditors, and investigators at the national, regional, and local levels on techniques for identifying “red flags of collusion” *before* the award of Recovery Act funds. This training taught procurement and grant officials to identify collusion warning signs through case illustrations and a four-step analytical process called “M.A.P.S.”

7. The M.A.P.S. analysis teaches procurement and grant officials to look for particular indicators as they assess four categories of information in connection with awarding a procurement or grant:

- MARKET – Procurement officials are taught to look for indicators of collusion as they determine how many vendors one would expect to compete for the contract and which vendors are best positioned to perform the contract.
- APPPLICATIONS – Procurement officials are taught to closely examine the proposals or applications submitted by the competing vendors and to look for suspicious similarities.
- PATTERNS – Procurement officials are taught to review the outcome of prior awards for the same product or service, in order to identify suspicious bidding and award patterns over time.
- SSUSPICIOUS BEHAVIOR – Trainees are taught to keep an eye out for suspicious behavior that indicates vendors may have colluded rather than competed for the award.

8. If procurement or grant officials discover any one or a combination of indicators (or “red flags”) in these categories, they are taught to report those findings to their Inspector General (“IG”) office, the Division, or other appropriate authority. Regardless of where an individual is in the spectrum of the procurement or grant process, the M.A.P.S. analysis has proven to be an effective tool to uncover indicators that parties are attempting to collude, or have colluded, to defraud the government on a contract or grant award.

2. Partnering with the IG Community and State Authorities

9. For prevention and detection efforts to be most effective, they must focus equally on training government procurement and grant officials to prevent, detect, and report both “pre-award” and “post-award” indicators. The “red flags of collusion” training offered by the Division focused on pre-award

collusion indicators – indicators that arise before a government award is made. Post-award fraud awareness training programs offered by the Department of Justice focused on illegal conduct that occurs after a government award is made, such as fraudulent charges to the government for manpower or materials that were not performed or used in the completion of the government project. Thus, as part of our Recovery Initiative, we worked with the Department’s Criminal Division to partner with the IG community and state authorities to combine our pre-award fraud training program with the traditional post-award fraud training provided by those offices.

10. The Division has had considerable success in partnering with the broad network of IGs for the numerous federal, state, and local agencies and state authorities who oversaw the distribution of Recovery Act funds. The Division approached these agencies with an offer to help train IG agents and auditors on pre-award fraud indicators and then to partner with those same agents and auditors to develop a strategy to jointly conduct pre- and post-award fraud awareness briefings for their agency procurement and grant officials; the offer to assist received a very positive response.

2.1. Partnering with Federal Agencies

11. On the federal level, the Division conducted or scheduled training presentations with 18 federal agencies that received Recovery Act funds. Working with the IG offices for those agencies receiving the largest volume of Recovery Act funding, the Division developed national strategies to partner on pre- and post-award fraud awareness training for agency procurement and grant officials nationwide. For example, working in partnership with the IG Office for the Department of Transportation (DOT OIG), the Division provided comprehensive fraud awareness training via webcast to all the 70-plus regional offices and over 2,600 employees of the Federal Highway Administration. The Division also conducted joint, in-person training sessions with DOT OIG around the country for other components of the Department of Transportation, such as the Federal Aviation Administration.

12. The Division has not, however, limited its attention to just those agencies receiving the most sizeable Recovery Act funding. It has also partnered with the IG offices of federal agencies receiving more modest Recovery Act funding, such as the Department of Veterans Affairs, to provide individual training to all of those persons who were specifically handling Recovery Act funds.

2.2. Partnering with the States

13. On the state level, we have worked with the National Association of Attorneys General (NAAG) and National Governors Association (NGA). In coordination with the NAAG and NGA, we worked closely with appointed state Recovery officials and state IG and attorney general offices to coordinate training for procurement and grant officials who distributed Recovery Act funds at the state and local levels. In all, we held antitrust training programs for 30 states and the District of Columbia. In addition to providing training to the states, the Division assisted states in their efforts to coordinate comprehensive bid-rigging and related fraud training programs that mirror the programs we provided in partnership with IG offices at the federal level.

14. In all, the Division made 298 training presentations to federal, state, and local officials. Through those presentations, we trained nearly 25,000 agents, auditors, and procurement and grant officials nationwide.

3. Troubleshooting Procurement and Program Funding Processes

15. Beyond our work with the investigative arms of the various agencies and states, our Recovery Initiative also focused on connecting our competition experts with agency program, procurement, and grant officials to engage in a dialogue about “best practices” that agencies could adopt to protect their

procurement and program funding processes and to maximize open and fair competition. As part of this long-term goal of the Initiative, the Division was invited to join federal and state agencies in brainstorming ways to further protect their proposed procurement processes for use of Recovery Act funds. For example, the Division was invited to meet with representatives from the Department of Commerce's Recovery Act Task Force to discuss the National Telecommunications and Information Administration's (NTIA's) Broadband Technology Opportunities Program (BTOP). Specifically, the Division was invited to advise the Task Force about the types of collusion and fraudulent schemes that may be employed to target BTOP funds. The Division provided insights to the Task Force on this issue based on its successful investigation and prosecution of collusion and fraudulent schemes used to target an existing government program with a structure similar to that envisioned for the BTOP.

4. Criminal Enforcement

16. The Department has also enhanced its relationships with the various federal and state IG offices and state authorities. These relationships were critically important when preventive mechanisms failed to adequately protect Recovery Act funds from collusion or fraud, as these agencies and states knew that the Department would help them investigate and prosecute any criminal conduct directed at thwarting competition for those funds.

5. Public Outreach

17. Understanding that the general public often serves as an excellent resource for identifying fraud, waste, and abuse of government funds, the Division invited the public to learn more about, and participate in, making the Recovery Initiative a success. Information about the Recovery Initiative is available to the general public on the Department of Justice web site at: http://www.usdoj.gov/atr/public/criminal/economic_recovery.htm. This web site provides the public with information about how to detect possible antitrust violations in connection with Recovery Act funds, including a printable version of the "Red Flags of Collusion" desk reference the Division distributes at training presentations and which agencies have incorporated into publication materials they send to Recovery Act fund recipients.

6. Conclusion

18. The Department of Justice is committed to deterring fraudulent and criminal conduct aimed at undermining the government's procurement processes and the economy at large, through swift and just prosecutions. The Division's Recovery Initiative is a good example of a focused program to provide government officials – at all levels of government – the tools they need to prevent these forms of fraud and collusive conduct before that conduct results in losses to taxpayers, and to detect and punish it when it has occurred.