

Publications

DOJ's and SEC's Latest FCPA Enforcement Action Demonstrates Need for Compliance Program Checkups

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On Friday, June 25, 2021, Amec Foster Wheeler Energy Limited (Amec), a global engineering firm headquartered in London, entered into a deferred prosecution agreement (DPA) with the U.S. Department of Justice (DOJ). The DPA stems from the DOJ's filing of an information that charged Amec with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). According to Amec's admissions in the DPA, between 2011 and 2014, Amec conspired with third parties, including a Brazil consultant and an Italian sales agent affiliated with a Monaco-based intermediary company, to pay bribes to decision-makers at a Brazilian state-owned oil company—Petrobras. The bribes were made to win an approximately \$190 million contract from Petrobras to design a gas-to-chemicals complex in Brazil. Amec paid approximately \$1.1 million in bribes in connection with the Brazilian contract and earned at least \$12.9 million in profits from the obtained business.

As part of the DPA, the DOJ imposed a criminal fine of \$18,375,000 against Amec. Moreover, Amec and its parent company, John Wood Group PLC, agreed to enhance their compliance programs and to report to the government on the implementation of their enhanced compliance programs.

Simultaneously with the DPA, based on the same bribery scheme, the U.S. Securities and Exchange Commission (SEC) charged Amec's American affiliate, Amec Foster Wheeler Ltd., with violating the anti-bribery, books and records, and internal accounting controls provisions of the FCPA. In its settlement with the SEC, Amec agreed to pay approximately \$22.8 million, which included the disgorgement of profits and prejudgment interest. The settlement includes potential set-offs for amounts that Amec agrees to pay to officials in the UK and Brazil, but includes a minimum potential payment to the SEC of \$10.1 million.

What's notable about the enforcement actions against Amec is not only that its relationships with third party agents resulted in FCPA violations, but that Amec had internal compliance controls in place that

sought to prevent those exact issues. In its Administrative Order, the SEC stated that “the bribes were made through third party agents, including one agent **who failed Foster Wheeler’s due diligence process** for prospective sales agents, but was allowed to ‘unofficially’ continue working on the project.” (emphasis added)

Amec also continued to use a third party agent that it thought had lost influence on the project, noting that, despite their loss of influence, the agent “can make life difficult for us if we do not pay [them].” Regardless of its reason for continuing to pay the agent, Amec made about \$13 million in profits from the agents’ misconduct in obtaining the Petrobras project for Amec.

As recently evidenced in the DOJ’s and SEC’s FCPA 2020 *Resource Guide to the U.S. Foreign Corrupt Practices Act*, the DOJ and SEC remain committed to prosecuting foreign corruption cases. Like many FCPA violators before it, Amec was held responsible for bribes paid through third-party intermediaries. Unlike some others, Amec had a compliance program in place that put those intermediaries through due diligence. In the end, Amec’s compliance program was ineffective, in that despite failing due diligence and red flags being identified, the intermediary was still retained and bribes were paid.

The message for businesses is clear: having internal compliance programs and accounting controls is, by itself, insufficient. Compliance programs should go through periodic check-ups, audits, testing, and refinement to ensure that they remain effective.

For further information about compliance programs, anti-bribery enforcement, or internal controls, contact Michael Oliverio, or your Vorys attorney.