

United States v. Bilfinger SE (S.D. Tex. 2013)

Nature of the Business.

Bilfinger SE is a German engineering and services company and majority owner of Bilfinger Berger Gas and Oil Services Nigeria Ltd. ("BBGOS"), a German company based in Nigeria.

Influence to be Obtained.

According to the DOJ's criminal Information, Bilfinger subsidiary BBGOS entered into a consortium agreement with entities affiliated with Willbros Group Inc. to bid on and perform the Eastern Gas Gathering System ("EGGS") project, a natural gas pipeline system in the Niger Delta designed to relieve existing pipeline capacity constraints. From 2003 and 2005, Bilfinger, together with the Willbros entities, used contractual payments, fraudulent loans, and petty cash obtained by fraudulent invoices to funnel money to two "consultants" for the purposes of bribing Nigerian officials to obtain and retain the EGGS contracts. In addition, Bilfinger provided loans to Willbros to make the corrupt payments when Willbros encountered difficulties due to an internal investigation.

Enforcement.

On December 9, 2013, Bilfinger entered into a three-year deferred prosecution agreement with the DOJ, pursuant to which it agreed to pay a fine of \$32 million. In addition to the monetary penalty, Bilfinger agreed to retain an independent compliance monitor for 18 months, with self-reporting to follow for the remaining duration of the deferred prosecution agreement.

In April 2017, Bilfinger disclosed that the DOJ had extended its 2013 DPA with the company. According to an April 2017 statement by the company, while "U.S. authorities believe we are taking the right steps regarding compliance . . . the maturity of the compliance system has not yet reached the desired level."

In 2006-2008, the DOJ and SEC brought proceedings against Willbros Group, its subsidiary Willbros International Inc., and seven Willbros employees for related conduct. The Willbros entities paid collective fines of \$32 million, and the Willbros individual defendants were subject to civil and criminal fines. Two individual defendants were also sentenced to imprisonment.

Key Facts

Citation. *United States v. Bilfinger SE*, No. 4:13-cr-00745 (S.D. Tex. 2013).

Date Filed. December 9, 2013.

Country. Nigeria.

Date of Conduct. 2003 – 2005.

Amount of the Value. Approximately \$6 million.

Amount of Business Related to the Payment. \$388 million.

Intermediary. Third-Party Consultants.

Foreign Official. Nigerian National Petroleum Corporation ("NNPC") officials; Officials of NNPC's wholly-owned subsidiary National Petroleum Investment Management Services; Officials of NNPC's majority-owned joint venture operator, Shell Petroleum Development Company of Nigeria, Ltd.; An official in the executive branch of the Nigerian government; The dominant political party in Nigeria.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer; Conspiracy; Aiding and Abetting.

Defendant's Citizenship. Germany.

Total Sanction. \$32,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Willbros Group, Inc.*; *United States v. Willbros Group, Inc.*; *United States v. Tillery*; *SEC v. Brown*; *United States v. Steph*; *United States v. Brown*.