



## JUSTICE NEWS

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## Government Contractor Agrees to Pay \$8.4 Million to Resolve Claims Related to its Failure to Disclose Cost or Pricing Data

The Department of Justice announced today that PowerSecure, Inc. (PowerSecure), located in Durham, North Carolina, has agreed to pay \$8.4 million to resolve allegations that it violated the False Claims Act arising from its failure to provide certified cost or pricing data when negotiating rates with the U.S. Army Corps of Engineers (USACE) in connection with a sole source contract for the repair and restoration of Puerto Rico's power grid following the damage caused by Hurricane Maria in September 2017.

The Truth in Negotiations Act (TINA) was enacted in 1962 to help level the playing field in sole source contracts – where there is no price competition – by making sure that government negotiators have access to the cost or pricing data that the offeror used when developing its proposal. Here, the United States alleged that PowerSecure violated the False Claims Act by knowingly failing to disclose cost or pricing data, as required by the TINA, regarding the rates that PowerSecure had used for “basecamp services” on a recent restoration project in Florida and Georgia following Hurricane Irma. The United States further alleged that PowerSecure failed to disclose cost or pricing data relating to labor and equipment costs in violation of TINA. The settlement resolves allegations that PowerSecure’s failures to disclose this information caused USACE to agree to inflated rates for labor, equipment and basecamp services.

“Where government contractors seek the award of a sole source contract, they have an obligation to be fully transparent with the government regarding the basis for their proposed pricing,” said Principal Deputy Assistant Attorney General Brian M. Boynton, head of the Justice Department’s Civil Division. “This settlement demonstrates the department’s commitment to holding accountable those who knowingly violate this important safeguard against the misuse of taxpayer funds.”

“With the recent passage and destruction of Hurricane Fiona serving as a backdrop, this settlement demonstrates our resolve to ensure that individuals and companies fully comply will all laws and regulations relating to the provision of disaster relief,” said U.S. Attorney Stephen Muldrow for the District of Puerto Rico. “This settlement also underscores the Justice Department’s use of all enforcement remedies at its disposal, including not only criminal and administrative penalties, but also civil enforcement actions as reflected by the settlement in this case.”

“This settlement is an example of the need for transparency and accountability in proposed pricing when negotiating sole source contracts,” said Acting Inspector General Sean O’Donnell for the Department of Defense. “Our auditors and investigators are committed to protecting the integrity of the procurement process through cooperation with our partners at the Department of Justice.”

“I appreciate the continued partnership with our law enforcement partners and the Justice Department’s Civil Division,” said Inspector General Joseph V. Cuffari for the U.S. Department of Homeland Security. “DHS OIG is committed to robust oversight of the federal acquisition process, and this settlement sends a strong message to individuals intent on procurement fraud.”

“DCAA appreciates the opportunity to support the Justice Department and our law enforcement partners by providing expert financial assistance regarding enforcement of the Truth in Negotiations Act,” said Defense Contract Audit Agency Investigative Support Division Chief Michael Mandolfo. “This interagency cooperation provides a strong safeguard for the warfighter and taxpayer.”

The resolution obtained in this matter was the result of a coordinated effort between the Justice Department’s Civil Division, Commercial Litigation Branch, Fraud Section, and the U.S. Attorney’s Office for the District of Puerto Rico, with assistance from the Defense Criminal Investigative Service, the Department of Homeland Security Office of Inspector General, and the Defense Contract Audit Agency.

The matter was handled by Trial Attorney Jason M. Crawford of the Civil Division and Assistant U.S. Attorney David O. Martorani-Dale for the District of Puerto Rico.

*The claims resolved by the settlement are allegations only and there has been no determination of liability.*