

UK Oil-Service Provider Petrofac Fined £77m for Bribes in Middle East

November 2, 2021 Shu Shu Wong, Jack Spence

PRACTICES Energy, Power and Natural Resources, Europe, Middle East and Africa, Oil and Gas Litigation

**co-authored by London Trainee Solicitor Jack Spence*

Earlier in the month, Petrofac Limited (“Petrofac”) was convicted for seven separate counts of failure to prevent bribery between 2011 and 2017 and was fined £77 million. The penalty was imposed after Petrofac admitted to using systemic bribery to secure multi-billion pound contracts in the Middle East.

Facts of the case

On 4 October 2021, Petrofac received a total financial penalty of £77 million, having entered into a plea agreement with the UK’s Serious Fraud Office (“SFO”) in relation to a series of bribes paid by ex-senior executives.

Judge Deborah Taylor, sitting in the Southwark Crown court, imposed the penalty comprising: a £47 million fine, a confiscation order for £23 million, and £7 million of the SFO’s costs.

Petrofac had pleaded guilty to several counts of failing to prevent bribery, an offence under Section 7 of the Bribery Act 2010, by having what Judge Taylor described as “wholly inadequate” policies and procedures which “allowed senior personnel involved in the corruption to override any attempts to bring the payments to corrupt agents to an end.”

The bribes related to a number of contracts, including a US\$21.4 million series of payments made in connection with a US\$1.7 billion EPC contract for the Jazan Refinery and Terminal Project in Saudi Arabia. A series of other payments were made in connection with contracts in Iraq, Saudi Arabia and the United Arab Emirates. In total, Petrofac admitted to failing to prevent the payment of US\$44 million in bribes in connection with contracts worth over US\$3.5 billion.

Following the imposition of the penalty, Petrofac announced a US\$275 million share placing and open offer on 26 October 2021. This was in part to fund the payment of the SFO penalty and also to facilitate a broader restructuring of Petrofac’s debts.

Remarks

The £77m penalty is the largest fine the SFO has imposed on a company following a conviction under the Bribery Act (although more has been paid under deferred prosecution agreements with the SFO). The offence of failing to prevent bribery under Section 7 of the Bribery Act will be made out if an employee makes a bribe and the employer does not have the defence of having adequate procedures to prevent such bribes from being made.

The SFO said Petrofac’s guilty plea demonstrates the company has accepted that its senior executives “acted deliberately and without conscience in the pursuit of greed. The company’s

failure to prevent this conduct distorted competitive market conditions and tainted the oil and gas industry.”

A key feature of the case was the sophisticated methods used by Petrofac’s senior executives to pay the bribes; disguising payments through sub-contractors, creating fake contracts for fictitious services, as well as making payments through multiple intermediaries in multiple jurisdictions. With the SFO declaring that it “will use all the powers at its disposal to root out and prosecute companies and individuals, whose criminal activity detrimentally affects the reputation and integrity of the United Kingdom,” the case acts as a reminder to companies, particularly those operating in the oil and gas sector, to ensure they have effective anti-corruption and bribery policies in place.