



**LEGAL COMPLIANCE**

**Dave Toolan**

# Key Issues - 2024

1. Antitrust
2. Fraud



# Recent Headlines - Michigan

*Feds investigate bid-rigging in Metro Detroit asphalt contracts*

*Detroit area asphalt execs agreed to secretly record others in bid-rigging scandal*

*Pontiac and Taylor asphalt companies plead guilty to bid rigging in federal court*

*Four Additional Defendants Plead Guilty to Bid Rigging in Michigan Asphalt Industry*

*FHWA Suspends Michigan Asphalt Paving Company and Two Officials*

Case 2:23-cr-20381-GAD-DRG ECF No. 1, PageID.1 Filed 06/30/23 Page 1 of 9

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
F. ALLIED CONSTRUCTION COMPANY, INC., )  
ANDREW FOSTER, and )  
KEVIN SHELL, )  
Defendants. )

Case: 2:23-cr-20381  
Assigned To: Drain, Gershwin A.  
Referral Judge: Grand, David R.  
Assign. Date: 6/30/2023  
Description: INFO USA V. F. ALLIED  
CONSTRUCTION COMPANY, INC. ET AL (NA)

**INFORMATION**  
Count I: 15 U.S.C. § 1  
Count II: 15 U.S.C. § 1

**INFORMATION**  
**COUNT ONE**  
**CONSPIRACY TO RESTRAIN TRADE**  
(15 U.S.C. § 1)

THE UNITED STATES OF AMERICA, ACTING THROUGH ITS ATTORNEYS,  
CHARGES:

**DEFENDANTS AND CO-CONSPIRATORS**

1. F. ALLIED CONSTRUCTION COMPANY, INC. ("ALLIED"), ANDREW FOSTER ("FOSTER"), and KEVIN SHELL ("SHELL") (collectively, "Defendants") are hereby made defendants on the charge contained in this Count.

2. During the period covered by this Count, ALLIED was a corporation organized and existing under the laws of Michigan, and engaged in the provision of asphalt paving services in the state of Michigan. During the period covered by this Count, FOSTER was ALLIED's President, and his job responsibilities included preparing, submitting, and causing to be submitted bids for asphalt paving services to potential customers. During the period covered by this Count, SHELL was ALLIED's Vice President of Estimating, and his job responsibilities

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# ***United States of America v. F. Allied Construction Company, Inc.***

**August 2023: F. Allied Construction Company Inc., its President, and Vice-President pleaded guilty to conspiring with two undisclosed companies to rig bids on asphalt paving projects.**

**January 2024: Asphalt Specialists LLC and its former Vice-President pleaded guilty to conspiring with AI's Asphalt Paving Company Inc. to rig bids on asphalt paving projects from 2013 - 2018. Asphalt Specialists LLC and its former Vice-President also pleaded guilty to conspiring with F. Allied Construction Company Inc. to rig bids on asphalt paving projects from 2017 - 2021.**

**January 2024: AI's Asphalt Paving Company Inc. and its President pleaded guilty to conspiring with F. Allied Construction Company Inc. to rig bids on asphalt paving projects from 2013 - June 2019.**

# Michigan Asphalt Paving Investigation

**“The Antitrust Division, DOT, and USPS investigated the case, as part of an ongoing federal antitrust investigation into bid rigging and other anticompetitive conduct in the asphalt paving services industry.”**

**“Asphalt paving is a key component of our transportation infrastructure, the division and our law enforcement partners will continue to prosecute corporations and individuals who undermine the competition that is crucial to responsible taxpayer spending and providing transportation services throughout Michigan.”**

**“Each conspiracy operated in much the same way: the co-conspirators coordinated each other’s bid prices so that the agreed-upon losing company would submit intentionally non-competitive bids. These bids gave customers the false impression of competition when, in fact, the co-conspirators had already decided among themselves who would win the contracts.”**

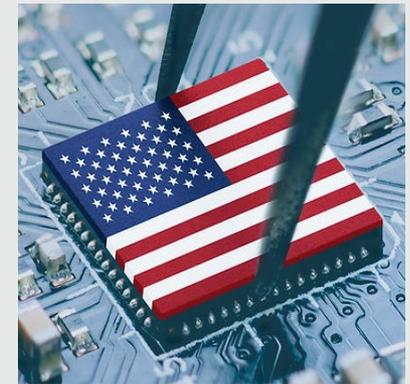


# PCTF Antitrust Initiative

- November 27, 2019: The United States Department of Justice (USDOJ) formed the Procurement Collusion Task Force (PCTF) to root out bid rigging, price fixing, and other forms of collusion in publicly-funded construction projects.
- “Criminal conduct has become tougher to detect with online bidding platforms, but investigators now are exploring ways to use data analytics, such as procurement data, to identify potential collusion and gather evidence.”
- “The USDOJ’s focus on the construction industry will grow exponentially if massive federal investment to rebuild America’s roads, bridges and tunnels becomes a reality.”
- Since its inception, the PCSF has initiated over 100 criminal investigations, trained over 31,000 people, and prosecuted over 65 companies/individuals involving over \$500MM contracts.
- **USDOJ: Contractors must have comprehensive compliance, training, and monitoring programs.**



American Recovery & Reinvestment Act



CHIPS Act

"The lingering challenge of supply chain disruptions from the COVID-19 pandemic has created an opportunity for criminals to fix prices and overcharge customers. The FBI and our law enforcement partners will continue to collaborate and investigate schemes that violate our antitrust laws and stifle our economic recovery."

**ASSISTANT DIRECTOR LUIS QUESADA**  
**FBI CRIMINAL INVESTIGATIVE DIVISION**



**FBI** FEDERAL BUREAU  
OF INVESTIGATION

# Antitrust Basics

**Collusion: mutual behavior among competitors that reduces competition.**

**(1) Price Fixing: agreement between competitors affecting the price.**

**(2) Bid Rigging: agreement between competitors affecting competitive bidding.**

**(3) Market Allocation: agreement between competitors to divide customers and/or markets.**

**Construction materials is a big target because of the low bid environment.**

**Significant Penalties: 10 years in prison, \$1MM personal/\$100MM corporate penalties, debarment, and civil liability.**

**Compliance benefits everyone!**

# USDOJ Red Flags – Collusive Bidding

- **Bidding Irregularities:** Decisions to bid or not bid seem illogical because certain competitors tend not to bid the same jobs, or bidders only bid in certain regions, or with certain customers or types of jobs, for no apparent reason.
- **Bidding Patterns:** Bids submitted by competitors are similar, change in similar ways, or contractors bid different prices under similar circumstances. Bidder behavior is different when new or infrequent bidders participate in a letting. If contractors submit non-competitive bids, those bids may be scrutinized as potential "cover" or "complimentary" bids.
- **Competitor Subcontracts:** Contractor awards a subcontract to another bidder, or a competitor that did not bid on the project.
- **Teaming Arrangements:** When there are not many well qualified bidders, teaming arrangements raise red flags if the agreements are perceived to reduce competition, e.g., teams between bidders that could bid alone, or exclusive teaming arrangements with unique subcontractors.
- In most cases, there is a legitimate business reason behind these decisions, so companies need to **carefully document** the business rationale for these bidding decision.



# Antitrust Compliance Policy



## ANTITRUST COMPLIANCE GUIDELINES ALWAYS!

- **Compete vigorously**, using public information and competitive circumstances to your best advantage.
- **Remember that appearances are important.** Don't say or write anything that you wouldn't want a judge or jury to see.
- **Remember that compliance is always in CRH's best interest.** No one is ever authorized to violate the law.
- **Ask your boss or a CRH lawyer** if you have any doubts. There are no dumb antitrust questions.

*CRH Americas Law Group – lawhelp@na.crh.com*



## ANTITRUST COMPLIANCE GUIDELINES NEVER!

- **Discuss with a competitor** prices or any terms on which you compete, or allocations of jobs, customers or markets.
- **Discuss with anyone** boycotting or refusing to deal with a supplier or customer.
- **Discuss with a competitor** whether or not you intend to bid or quote any particular project or customer.
- **Take any action just to hurt or retaliate** against a competitor.

*"There is never a good business reason to do the wrong thing."*

# Trust Your Instincts!

# Conducting Research About Competitors

**OFFERING MEMORANDUM** **CONFIDENTIAL**

**\$530,000,000**  
**AmeriTex**  
Pipe & Products LLC  
**AmeriTex HoldCo Intermediate LLC**  
**10.250% Senior Secured Notes due 2028**

AmeriTex HoldCo Intermediate LLC (the "issuer"), a wholly owned subsidiary of AmeriTex Holding LLC (the "Company"), is offering \$530,000,000 in aggregate principal amount of 10.250% senior secured notes due 2028 (the "notes"). The notes will mature on October 15, 2028. Interest on the notes will be paid semi-annually on April 15 and October 15 of each year, commencing on April 15, 2024.

We intend to use the net proceeds from the offering (i) to repay the amounts outstanding under our existing Revolving Credit Facility, Term Loan A and Senior Subordinated Notes (each as defined in "Use of Proceeds"), (ii) to make a distribution to the Company for distribution to its members, (iii) to pay fees and expenses related to the foregoing and (iv) for general corporate purposes. See "Use of Proceeds."

Prior to October 15, 2025, on one or more occasions, we may redeem some or all of the notes at a price equal to 100% of the principal amount of the notes to be redeemed, plus the "make-whole premium," as described in this offering memorandum. Prior to October 15, 2025, we may, on one or more occasions, redeem up to 40% of the notes with an amount equal to the net proceeds of certain equity offerings at the redemption price set forth in this offering memorandum. On or after October 15, 2025, on one or more occasions, we may redeem all or a part of the notes at the redemption price set forth in this offering memorandum.

If we experience certain change of control events, the holders of the notes will have the right to require us to purchase their notes at a price equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to, but not including, the date of repurchase. If we or our restricted subsidiaries sell assets and do not use the proceeds for specified purposes, we may be required to use the net proceeds of that sale to offer to purchase notes at a price equal to 100% of the principal amount thereof plus accrued and unpaid interest to, but not including, the date of purchase.

The notes will be guaranteed (each, a "guarantee" and together, the "guarantees"), jointly and severally, on a senior secured basis by the Company and each of our subsidiaries that are co-borrowers under or guarantee the ABL Facility (each, a "guarantor" and together, the "guarantors").

The notes and the related guarantees will be secured (i) on a first-priority basis by substantially all of the issuer's and the guarantors' assets (other than the Priority ABL Collateral (as defined herein) and (ii) on a second-priority basis by the Priority ABL Collateral which secures the ABL Facility on a first priority basis, in each case subject to exceptions described herein. The obligations under the ABL Facility will be secured by a second-priority lien on the Priority Notes Collateral (as defined herein).

The notes are the issuer's and the guarantors' senior secured obligations. The notes and the guarantees will be equal in right of payment with senior indebtedness of the issuer and the guarantors (without giving effect to collateral arrangements of secured indebtedness). The notes and the guarantees will be senior in right of payment to any subordinated indebtedness of the issuer and the guarantors. The notes and the guarantees will be effectively senior to unsecured indebtedness of the issuer and the guarantors, with respect to, and to the extent of, the value of the collateral securing the notes. With respect to the collateral securing the notes, the notes and the guarantees will be (i) effectively subordinated to secured indebtedness of the issuer and the guarantors (including obligations under the ABL Facility) secured by first-priority liens on the Priority ABL Collateral, with respect to, and to the extent of the value of, the Priority ABL Collateral securing such indebtedness and (ii) effectively senior to the secured indebtedness of the issuer and the guarantors (including obligations under the ABL Facility) secured by second-priority liens on the Priority Notes Collateral, with respect to, and to the extent of the value of, the Priority Notes Collateral securing such indebtedness. The notes and the guarantees will be effectively subordinated to secured indebtedness of the issuer and the guarantors secured by liens on any assets that are not part of the collateral securing the notes, with respect to, and to the extent of, the value of such assets. In addition, the notes will be structurally junior to any indebtedness or obligations or any preferred equity of the issuer's subsidiaries that are not guarantees.

The notes will be issued only in registered form in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. We do not intend to apply for listing of the notes on any securities exchange or for inclusion of the notes on any automatic quotation system, and currently there is no public market for the notes. Holders of the notes will not have the benefit of any exchange or registration rights.

**Investing in the notes involves a high degree of risk. Please read "Risk Factors" beginning on page 28 of this offering memorandum.**

**Offering price: 99.825% plus accrued interest, if any, from October 5, 2023.**

We have not registered, and do not intend to register, the notes or the guarantees under the Securities Act of 1933, as amended (the "Securities Act"), any other federal securities laws or the laws of any state. The initial purchasers named below (collectively, the "initial purchasers") are offering the notes only to persons reasonably believed to be qualified institutional buyers under Rule 144A of the Securities Act ("Rule 144A") or to non-U.S. persons outside of the United States in compliance with Regulation S of the Securities Act ("Regulation S"). See "Plan of Distribution" and "Transfer Restrictions" for additional information about eligible offerors and transfer restrictions.

The notes are a new issue of securities with no established trading market. The issuer does not intend to list the notes on any national securities exchange or automated quotation system.

The notes will be ready for delivery in book-entry form only through the facilities of The Depository Trust Company ("DTC") for the accounts of these participants, including Euroclear Bank S.A./NY, an operator of the Euroclear System, and Clearstream Banking, *société anonyme*, on or about October 5, 2023, which is the fifth business day following the date of confirmation of orders with respect to the notes and the date of this offering memorandum (each settlement cycle being referred to as "T+5"). See "Plan of Distribution."

**The initial purchasers expect to deliver the notes on October 5, 2023.**

*Joint Book-Running Managers*

**BoFA Securities** **US Bancorp**

**Offering Memorandum dated September 28, 2023**

- The United States Department of Justice and Federal Trade Commission both acknowledge that companies need to obtain information regarding their competitors in order to compete in modern markets.
- A company can gather information about a competitor's prices, sales, backlogs, margins, products, and markets if the company collects that data from public sources.
- It is lawful, for example, to use publicly available bid documents, information from subcontractors/suppliers, and information from mutual customers to obtain information about a competitor's prices, sales, backlogs, products, and markets.
- Technology companies now sell programs to estimate that information.
- Companies should never seek to obtain or discuss this type of information directly from their competitors.

## **Some Smart People Say Stupid Things**

**“My fellow competitors, it looks like Velocity is ready to start producing product and compete with all of us. I have attached a copy of a project that they quoted below market pricing. Let's work together on the fight against Velocity.”**

## Recent Case – Z&Z Asphalt

On October 31, 2022, Nathan Zito of Z&Z Asphalt pled guilty to attempting to monopolize the market for highway crack-sealing services in Montana and Wyoming.

- Zito approached a competitor about a “strategic partnership” where the competitor would stop bidding on projects in Montana and Wyoming if Zito’s company stopped bidding on projects in Nebraska and South Dakota.
- Zito proposed paying \$100,000 to the competitor and developed a plan to disguise the scheme.
- Zito told the competitor that their revenue streams would be more stable, and their margins would be higher, if they agreed not to compete.
- Zito was sentenced to 6 months detention and a \$27,000 fine on March 29, 2023.



## **Recent Case – Contech Engineered Solutions LLC**

**On May 11, 2021, Contech Engineered Solutions LLC, which manufactures pipe and other construction products, pled guilty to bid rigging, mail fraud, and wire fraud.**

- Contech paid a \$7.0MM fine, \$1.5MM restitution, and agreed to cooperate with the criminal prosecution of a former executive.**
- From 2008 to 2019, Contech conspired with Pomona Pipe Products, Inc. to rig bids on construction projects in North Carolina by submitting complimentary bids even though Contech certified that its bids were submitted without collusion.**
- Jury convicted the former executive, and he was sentenced to 18 months of imprisonment on September 7, 2022.**

## Recent Indictment – Kamida, Inc.

**On March 9, 2022, the United States Department of Justice (USDOJ) indicted Kamida, Inc., which performs concrete work, for rigging bids on projects in Minnesota.**

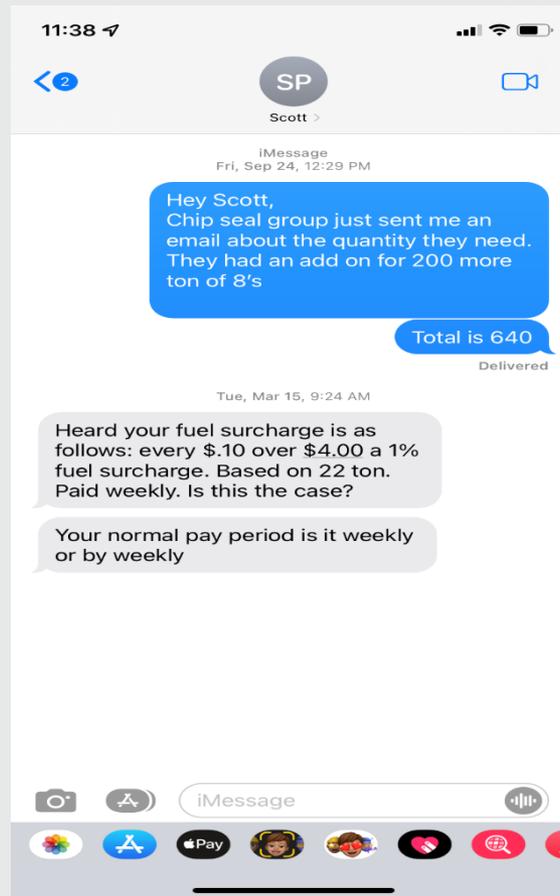
- **USDOJ also indicted Kamida’s Chief Executive Officer.**
- **Kamida’s competitor pled guilty to the bid rigging conspiracy in 2021 and testified that it provided complimentary bids for Kamida.**
- **USDOJ: “Bid rigging is not a victimless crime; it reduces competition and charges taxpayers the difference. This indictment shows that the FBI and our partners are committed to investigating those who try to cheat the system for their own gain.”**
- **On May 10, 2023, a federal jury acquitted Kamida’s Chief Executive Officer.**

## Recent Case – Argos USA LLC

**On January 4, 2021, Argos USA LLC, which manufactures cement and concrete, pled guilty to conspiring to fix prices, rig bids, and allocate markets for the sale of concrete.**

- Employees of Argos and several other concrete companies coordinated the issuance of price announcements, allocated projects, coordinated fuel/environmental surcharges, and fixed prices.**
- Argos paid a \$20MM criminal penalty.**
- Argos was required to institute new compliance program.**

# Recent Competitor Text



# Fraud

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# Fraud



## UNITED STATES OF AMERICA

U.S. Department of Justice  
Southern District of Ohio  
CIVIL INVESTIGATIVE DEMAND  
Documentary Material & Interrogatories

TO: The Shelly Company  
80 Park Drive  
Thornville, Ohio 43076

Civil Investigative Demand  
No. CID-23-SDOH-7

This Civil Investigative Demand (the "Demand") is issued pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, in the course of a False Claims Act investigation to determine whether there is or has been a violation of 31 U.S.C. § 3729. The False Claims Act investigation concerns allegations that The Shelly Company ("Shelly" or "You") made (or caused to be made) false or fraudulent claims for payment to the United States and/or the State of Ohio under or related to federally funded highway construction contracts, as well as whether Shelly made or used false records and statements material to such claims. Specifically, the investigation concerns whether Shelly submitted false records or made false statements regarding the results of contractually required mix design or quality control testing.

This Demand requires you to provide documents and answers to the attached written interrogatories to the Federal Government. This is the original of the Demand; no copies have been served on other parties. The information and documents provided in response to this Demand may be shared, used, and disclosed as provided by 31 U.S.C. § 3733.

### Document Requests:

In accordance with the Definitions and Instructions set forth in **Attachment A**, You are required by this Demand to produce any and all documents in your possession, custody or control responsive to the document requests set forth in **Attachment B**.

You must make this material available to Assistant United States Attorneys Matthew J. Horwitz and Linda M. Mindrutiu, who have been designated as the False Claims Act custodians in this case. Mr. Horwitz and Ms. Mindrutiu may be contacted at (513) 684-3711 if you have any questions. These documents shall be produced no later than thirty (30) days from the receipt of this Demand at U.S. Attorney's Office for the Southern District of Ohio, 221 E. Fourth Street, Suite 400, Cincinnati, OH 45202, or at another time or location to be mutually agreed upon by yourself and the False Claims Act custodians. The production of documentary material in response to this Demand must be made under a sworn certificate in the form printed in this Demand.

- **Fraud is an intentional misrepresentation made, directly or indirectly, in connection with the performance of a contract or compliance with a regulation.**
- **Fraud is a crime even if there is little or no damage to the owner of the project.**
- **Concealment of a fact that should have been disclosed can be fraud.**
- **Quality Control Testing.**
- **Disadvantaged Business Enterprises.**

## Recent DBE Fraud Case – Philadelphia, PA

- **False Claims Act against Hercules-Vimas Joint Venture, LLC related to a bridge project.**
- **USDOJ asserted that a DBE subcontractor, Vertech International, failed to perform a “commercially useful function” on the project.**
- **March 2, 2023: The Sherwin-Williams Company agreed to pay \$1.0MM to settle allegations that it participated in the fraud scheme.**
- **Sherwin-Williams supplied paint materials directly to a non-DBE painting subcontractor on the project but sent the invoices for the paint to Vertech, even though Sherwin Williams knew that Vertech was supposed to be serving as the DBE painting subcontractor on the project.**





THANK YOU!

