



# Department of Justice

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**NEW YORK FOOD COMPANY AND PRESIDENT PLEAD GUILTY TO BID RIGGING,  
OBSTRUCTION OF JUSTICE, AND CONSPIRACY CHARGES**

WASHINGTON, D.C. -- A New York City food distribution company and its president today pleaded guilty to bid rigging, obstruction of justice, conspiracy to commit mail fraud and conspiracy to defraud the IRS for their role in five separate schemes to rig bids on frozen food, produce, dairy, and other products, the Department of Justice announced.

Nicholas A. Penachio of Mount Kisco, New York, and Nick Penachio Co. Inc. of the Bronx, New York, were charged in U.S. District Court in Manhattan with participating in schemes to rig bids on frozen food, produce, dairy, and other products supplied to the New York City Board of Education (NYCBOE), the New York City Department of Citywide Administrative Services (DCAS), the Nassau County (NY) Department of General Services, and the Newark (NJ) Public Schools.

Additionally Penachio and the company were charged with one count of conspiring to defraud numerous customers through a kickback and fraud scheme using the U.S. mail; one count of conspiring to defraud the IRS by filing false and fraudulent federal tax returns for four years, 1995-1998; and one count of obstruction of justice for causing the destruction of incriminating documents that had been subpoenaed by the grand jury.

Including today's filing, the Department's ongoing investigation of bid rigging, bribery, fraud, and tax-related offenses in the food distribution industry has resulted in the Antitrust Division's New York Field Office charging 27 individuals and 14 food companies with rigging

bids for the supply and delivery of food to various public and private customers in the New York metropolitan area.

Penachio's plea agreement with the United States requires him to join the U.S. in recommending a jail term of 41 to 71 months, and that he and his company pay \$4.2 million in restitution to victims of their crimes. The restitution payments would be distributed as follows: \$2.529 million to the NYCBOE; \$1 million to DCAS; \$100,000 to Nassau County; \$260,000 to the Newark Public Schools; and approximately \$300,000 to other victims. All recommendations are subject to court approval.

"Today's case demonstrates the Antitrust Division's commitment to protecting consumers," said John M. Nannes, Acting Assistant Attorney General in charge of the Department's Antitrust Division. "The Antitrust Division will prosecute aggressively all cases where taxpayers have been cheated out of the benefits of competition."

Penachio and Nick Penachio Co. Inc. were previously charged with rigging bids to the NYCBOE in separate indictments filed on May 31, 2000. Those charges will be dismissed after sentencing in this case.

The NYCBOE operates New York City's public school system, the largest in the United States. It services a student population of nearly 1.1 million, and serves approximately 640,000 lunches and 150,000 breakfasts every day. It is the second largest customer for food in the United States, behind only the Department of Defense. It receives the bulk of its funding from the federal, state, and city governments, most of the meals it serves are subsidized by the United States Department of Agriculture pursuant to the National School Lunch Act of 1946.

In addition to public schools, numerous private and religious schools also receive food under the NYCBOE's contracts, pursuant to programs that provide free or reduced-price meals to needy students. More than 80 percent of the students fed by the NYCBOE receive free meals; another 10 percent receive reduced-price meals.

DCAS is the New York City agency that conducts competitive bidding on behalf of other New York City entities, including those that run the public hospitals and jails. The Nassau County (NY) Department of General Services performs a similar function for Nassau County agencies. The Newark (NJ) Public Schools educate 44,000 students and serve more than seven million meals a year.

For Nicholas A. Penachio, the five bid-rigging counts, which violate 15 U.S.C. § 1, each carry a maximum penalty of three years of imprisonment and a \$350,000 fine. The two conspiracy counts, which violate 18 U.S.C. § 371, each carry a maximum penalty of five years of imprisonment and a \$250,000 fine. The obstruction of justice count, which violates 18 U.S.C. § 1503, carries a maximum of 10 years of imprisonment, a \$250,000 fine or both. All of the maximum fines may be increased to twice the gain derived from the crime or twice the loss suffered by the victim of the crime, if either of those amounts is greater than the statutory maximum fine.

The ongoing investigation is being conducted by the Antitrust Division, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation.

Anyone with information concerning bid rigging, bribery, tax offenses, or fraud in the food distribution industry or concerning bid rigging on any government contract should contact the New York Field Office of the Antitrust Division at (212) 264-0679 or the New York Division of the FBI at (212) 384-3252.

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