



ALASKA REGIONAL CONFERENCE

JUNE 20-23, 2022 — ANCHORAGE

Procurement Collusion Strikeforce Briefing for 8(a) Small Businesses
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Procurement
Collusion
★ Strike Force ★

Coordinated national response to collusion
and antitrust crimes in public procurement



**Procurement Collusion Strike Force (PCSF) Briefing
For 8(a) Small Businesses
Anchorage, AK
June 21, 2022**

The views expressed in this presentation are not purported to reflect those of the United States Department of Justice



Procurement Collusion Strike Force (PCSF)

Launched in November 2019

Coordinated national response to collusion in public procurement that target government procurement, grants, and program funding at all levels of government—federal, state, and local

Objective: Harness the combined experience and expertise of the Antitrust Division, OIGs, U.S. Attorneys, and FBI to:

1. Deter antitrust and related crimes on the front end of the procurement process through outreach and training;
2. Facilitate more effective detection, investigation, and prosecution of conduct that undermines or distorts competition in the procurement process.



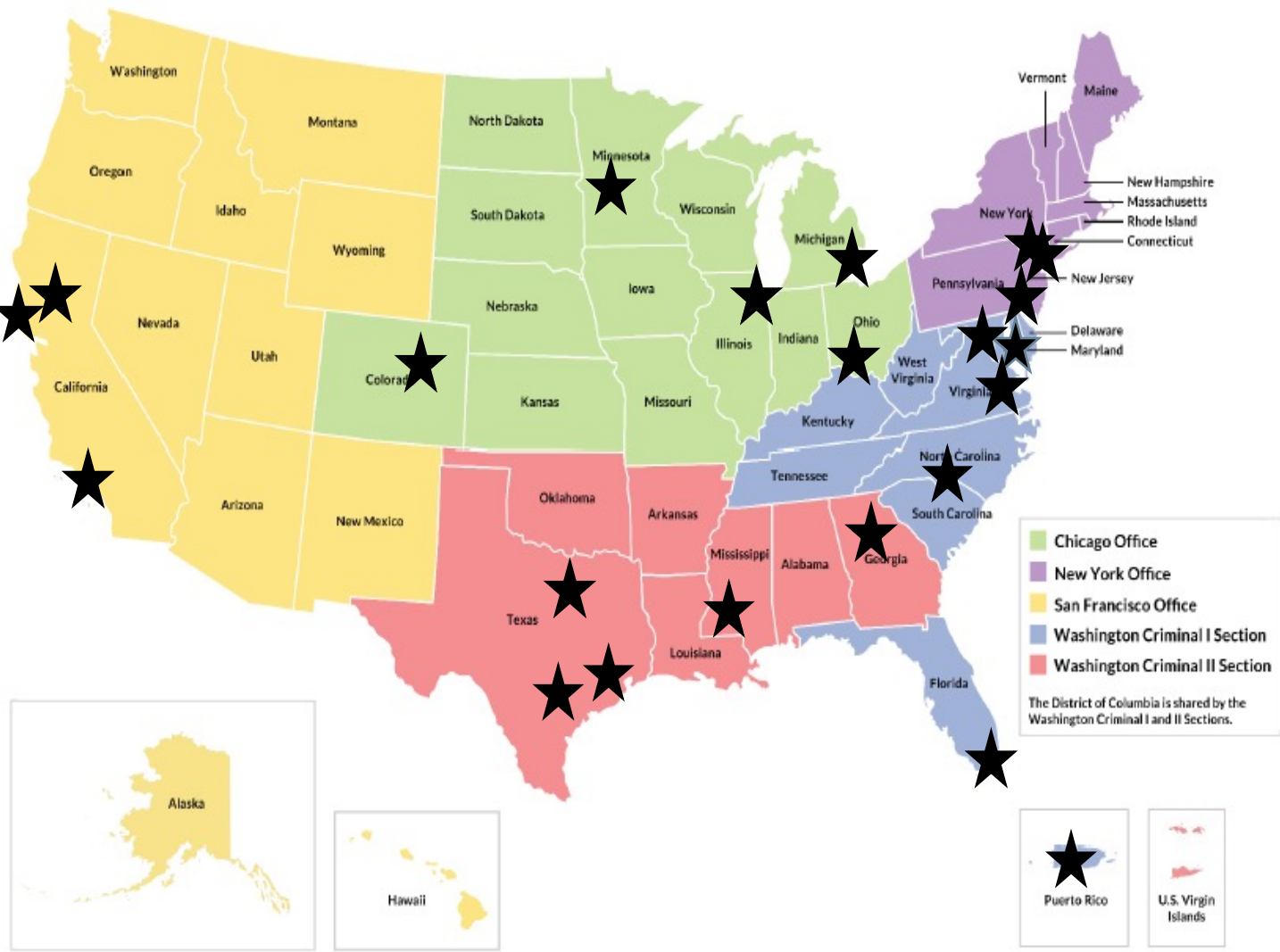
The Costs of Collusion

Why Do We Care?

- ▶ Victims: overcharged & defrauded
- ▶ Victims: aggregate harm in \$\$\$ and number of victims
- ▶ Conspiracies: lengthy in time and effect
- ▶ Conspiracies: often spread to other related goods/services



PCSF: Implementation and Execution



Department of Justice
 Antitrust Division
 22 United States Attorneys' Offices (USAOs)



Department of Defense OIG
 Defense Criminal Investigative Service (DCIS)



U.S. Postal Service OIG



General Services Administration (GSA) OIG



Department of Justice OIG



Federal Bureau of Investigation (FBI)



Department of Homeland Security (DHS) OIG



Air Force Office of Special Investigations



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❖ Selected Criminal Violations

1. Price Fixing Agreements
2. Bid Rigging Agreements
3. Allocation Agreements
4. Set-Aside Fraud



Price Fixing Agreements

- **Competitors agree to fix or otherwise determine the prices at which their products or services are sold**
- **Include agreements to:**
 - Charge the same price or raise prices together
 - Add fees or other surcharges
 - Eliminate discounts or have uniform discounts
 - Establish minimum or floor prices
 - Establish a standard pricing formula
 - Coordinate and not compete on other commercial terms (i.e., credit terms, warranties, etc.)



Warning Signs in Pricing

- Sudden and identical increases in price or price ranges that cannot be explained by cost increases
- Anticipated discounts or rebates disappear unexpectedly
- Similar transportation costs specified by local and non-local companies
- Attempts to “shop around” stonewalled



Bid Rigging Agreements

Competitors agree in advance who will win the bid.

Types of Bid Rigging:

- Bid Rotation or Allocation—competitors agree to take turns winning bids
- “Complementary” or “Cover” Bids—competitors agree to submit intentionally high bids, or otherwise unacceptable bids
- Bid Suppression or Limitation—competitors agree to refrain from bidding



Suspicious Bid Patterns

- Same company always wins or loses
- Certain companies only submit bids in certain geographical areas
- Companies appear to take “turns” winning
- Winning company subcontracts to losing company
- Regular suppliers/vendors fail to bid for work they typically perform, but continue to bid for other work
- Bids are much higher than estimates or previous bids
- Large differences between price of winning bid and other bids
- All companies end up winning the same amount of work over a series of bids



Allocation Agreements

Competitors agree to divide up a market, usually by geographic area, customer, or type of product.

May also include a bid rigging component to implement the allocation scheme.

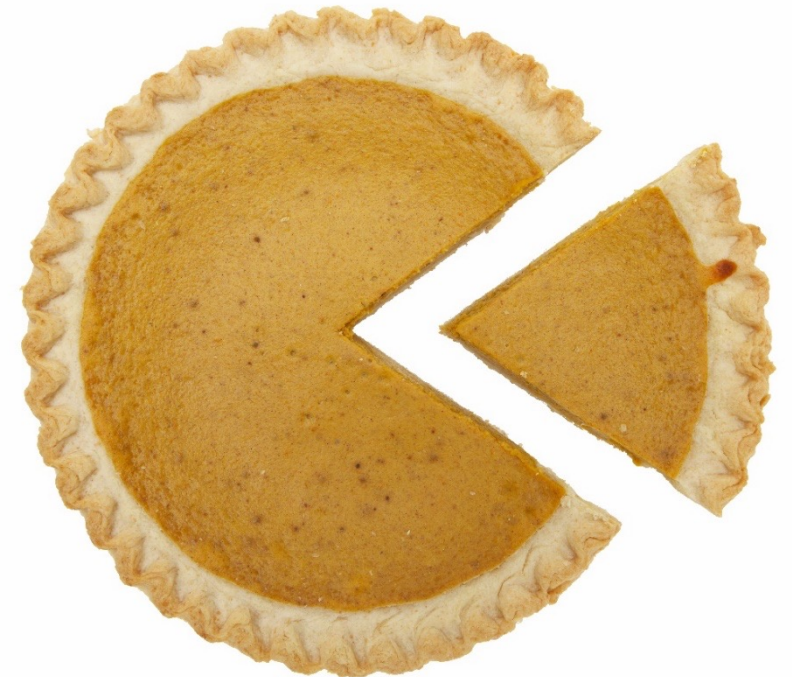


Photo credit: Thomas Northcut/iStock/Getty Images Plus



PCSF: Common Set-Aside Fraud Schemes

1. False certification of eligibility
2. Installation of a “figurehead”
3. Front company/undisclosed affiliate
4. Use of a “passthrough”



PCSF: Common Set-Aside Fraud Schemes

Identify concerns

- Individuals represent multiple companies
- Shared addresses or equipment
- Limited involvement from disadvantaged owner or owner has a handler
- Unusually high use of subcontractors/repeated use of same subcontractor



PCSF: Set-Aside Fraud Enforcement

- Knowing violation of regulations
- misrepresentation & concealment vs. technical violation
- Benefit to ineligible third party
- Common defenses
- Recent Antitrust Division prosecutions



Penalties Are Significant

Criminal Penalties

- **Individuals:**
Incarceration up to 10 years
- **Corporations: Fines up to \$100 million or twice gain/loss**

Other Penalties

- **Restitution paid to identified victims**
- **Because plea or conviction is based on beyond a reasonable doubt standard, debarment from federal and other contracts is often a foregone conclusion**



Results of Antitrust Division Efforts

JUSTICE NEWS

FOR IMMEDIATE RELEASE

Former Caltrans Contractor Pleads Guilty to Bid-Rigging and Bribery

First Guilty Plea in Ongoing Investigation

A former contract manager for the Caltrans Central Valley District pleaded guilty today for his role in a bid-rigging and bribery scheme involving the construction of the Central Valley Expressway in California.



Monday, April 11, 2022

and Bribery

ortation (Caltrans)

lty today for his role in a



Federal Acquisition Regulation (FAR 48 C.F.R. § 52.203-2)

Bid offeror must certify that:

- (1) Prices in the offer have been arrived at independently without consultation, communication, or agreement with any other competitor;
- (2) Prices in the offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other competitor before bid opening or contract award unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other competitor to/not to submit an offer for the purpose of restricting competition.



Suspicious Bids and Proposals: Mandated Reporting

The Federal Acquisition Regulations, [48 CFR § 3.303](#), requires federal agencies to report any bids or proposals that evidence a violation of the antitrust laws. Such “[p]ractices or events that may evidence violations of the antitrust laws” include:

- (2) A sudden change from competitive bidding to identical bidding;
- (3) Simultaneous price increases or follow-the-leader pricing;
- (4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
- (5) Division of the market, so that certain competitors bid low only for contracts awarded by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;



Suspicious Bids and Proposals: Mandated Reporting

- (6) Establishment by competitors of a collusive price estimating system;
- (7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;
- (8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and
- (9) Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.



PCSF: Whole-of-Government Approach

Executive Order on Promoting Competition in the American Economy, Section 2

- (f) Agencies can influence the conditions of competition through their exercise of regulatory authority or through the procurement process. See 41 U.S.C. 1705.
- (g) This order recognizes that a whole-of-government approach is necessary to address overconcentration, monopolization, and unfair competition in the American economy . . .



PCSF: Focus on Small Business Procurement

Our focus is on investigating, charging, and prosecuting conduct that undermines and distorts the procurement process, *including conduct found in government set-aside programs.*

Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government calls for the elimination of barriers to full participation by underserved communities.



PCSF: Set-Aside Enforcement Efforts

- PCSF-hosted training
- Outreach to agencies
- District teams include agents with set-aside fraud expertise
- PCSF complaints and investigations



The Leniency Program

- Unique investigative tool to Antitrust Division
- First company and/or individual to self-report its involvement in criminal antitrust offense may obtain immunity from prosecution by the Antitrust Division
- Applicant provides ongoing cooperation to assist Division in prosecution of co-conspirators
- Additional information about the Leniency Program is available at www.justice.gov/atr/leniency-program



Reporting Suspected Violations

- To report suspected antitrust violations that affect government procurement, grant, and/or program funding, please contact the **Procurement Collusion Strike Force** at:
<https://www.justice.gov/atr/pcsf-citizen-complaint>





Questions?

Please contact the **Procurement Collusion Strike Force** at
<https://www.justice.gov/atr/pcsf-citizen-complaint>

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