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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BENJAMIN W. MCCULLOCH,  
Defendant.

No. 4:22-CR-00007-RRB

**SENTENCING MEMORANDUM**

The United States, by and through undersigned counsel, recommends the following sentence:

**INCARCERATION .....12 MONTHS**  
**SUPERVISED RELEASE ..... 3 YEARS**

Govt. Sent. Memo.  
United States v. McCulloch  
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**FINE.....NONE REQUESTED**  
**RESTITUTION..... \$101,402.00**  
**SPECIAL ASSESSMENT..... \$500**

Defendant Benjamin W. McCulloch pleaded guilty to one count of conspiracy and four counts of providing kickbacks arising from his participation in a scheme to artificially inflate bids for construction projects at Fort Wainwright and split the extra money with his co-conspirator. The United States agreed to recommend a sentence at the low end of the applicable Guidelines range, which is 12-18 months. The United States therefore recommends a sentence of 12 months. This sentence is sufficient, but not greater than necessary, to satisfy the applicable sentencing criteria.

**FACTS**

Defendant McCulloch pleaded guilty to one count of conspiracy and four counts of providing kickbacks. McCulloch admitted to conspiring with Kevin Mahler to artificially inflate bids for construction work at Fort Wainwright, a U.S. Army base in Fairbanks, Alaska.

Between March 2016 and March 2021, the U.S. Army awarded contracts to various prime contractors for construction services and maintenance at Fort Wainwright. During that period, McCulloch owned a subcontractor which provided flooring construction services. Mahler was a project manager who worked for a prime contractor that utilized McCulloch’s subcontracting services. McCulloch and Mahler conspired to provide kickbacks to one another related to Fort Wainwright flooring contracts by artificially

inflating the prices McCulloch charged Mahler's company for flooring services. McCulloch agreed to pay Mahler approximately half of the ill-gotten gains from the inflated contracts. McCulloch paid the agreed-upon half of the kickbacks to Mahler in the form of cash and goods and kept the remaining half for himself.

Beginning in March 2017, McCulloch provided kickbacks totaling at least \$47,563.22 to Mahler. This amount included a 2017 Ford Explorer worth at least \$45,164. From September 2018 to December 2019, McCulloch provided at least \$32,021.87 in kickbacks to Mahler. This amount included Apple Watches, TVs, a camera lens, binoculars, exercise equipment, and cash. From January through April 2020, McCulloch provided an additional \$1,816.98 in kickbacks to Mahler. And starting in July 2020, McCulloch provided at least \$20,000 worth of kickbacks to Mahler. This included a \$16,499 ATV and cash.

McCulloch pleaded guilty to the above on September 19, 2022.

### **GUIDELINES CALCULATION**

The United States agrees with the Probation Officer that the total offense level is 13, that McCulloch falls within criminal history Category I, and that the applicable Guidelines range is **12 to 18 months**.

### **STATUORY CRITERIA AND CONCLUSION**

The 18 U.S.C. § 3553(a) factors support a sentence of 12 months imprisonment.

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**1. Nature and circumstances of the offense**

The U.S. Army invests a great deal in Alaska each year, including at Fort Wainwright, to ensure the safety and security of the country and its servicemen and women. Much of this money goes to construction projects aimed at upgrading and modernizing Army facilities so that the Army and its servicemembers are well positioned to meet ever-evolving challenges. Using taxpayer money, the Army often hires local contractors for these projects, which creates jobs and benefits the local economy. McCulloch took advantage of the numerous contracting opportunities at Fort Wainwright, and the trust placed in him by U.S. taxpayers, to enrich himself with taxpayer money. This factor justifies a sentence of 12 months.

**2. History and characteristics of the defendant**

As described above, McCulloch conspired with Mahler to use his business to cheat the United States and funnel taxpayer money into his own pocket. This was not a one-off violation: McCulloch’s scheme lasted at least three years and involved multiple U.S. Army contracts. The fact that he repeatedly committed the same crime shows a lack of remorse and justifies a sentence of 12 months imprisonment.

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**3. The seriousness of the offense, promotion of respect for the law, and just punishment**

As described above, McCulloch took advantage of the public's trust and flouted the law to enrich himself from artificially inflated bids on government contracts. Therefore, a sentence of 12 months imprisonment is appropriate.

**4. Adequate deterrence and avoidance of unwarranted disparities**

A sentence of 12 months imprisonment is appropriate to deter similarly situated individuals from taking advantage of the U.S. Army. When taxpayer money is siphoned off by individuals seeking personal gain, that affects the government's ability to carry out its functions and pay for various services. It also erodes the public's trust in the government. When that taxpayer money involves U.S. Army funds, it harms the Army's ability to keep its servicemembers, and the country, safe. The United States recommends a 12 month sentence in order to send a strong message to others that stealing U.S. Army funds will not be tolerated.

**5. Protection of the public from further crimes**

The United States concedes that this is not a significant factor in determining McCulloch's sentence given his criminal history.

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## 6. Restitution

McCulloch has agreed to pay \$101,402 in restitution, which represents the portion of the kickbacks and inflated contract prices that he kept for himself.

## 7. Conclusion

For these reasons, the United States recommends that McCulloch be sentenced to 12 months imprisonment and 3 years of supervised release. The United States also recommends, pursuant to McCulloch's plea agreement, that the defendant pay \$101,402 in restitution and \$500 in special assessment fees.

RESPECTFULLY SUBMITTED February 9, 2024 at Fairbanks, Alaska.

*/s Nolan J. Mayther*  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2024 a true and correct copy of the foregoing was served electronically on all counsel of record.

*/s Nolan J. Mayther*