



DEPARTMENT OF JUSTICE

The Procurement Collusion Strike Force: A Whole-of-Government Approach to Combating a Whole-of-Government Problem

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**Remarks as Prepared for the
American Bar Association Section of Public Contract Law's
Public Procurement Symposium**

Washington, DC

October 13, 2021

I. INTRODUCTION

Thank you for the kind introduction, and good morning, everyone. It's a pleasure to be joining you virtually, though like many of you—I wish we could be together in person. I appreciate the invitation to speak with you today at the Public Procurement Symposium. Each year, the Symposium explores issues relevant to federal, state, and local government contracting, drawing insights from colleagues at the forefront of the procurement industry.

It was just two years ago, at the 2019 Symposium that Richard Powers, the Antitrust Division's Deputy Assistant Attorney General, took to the stage in San Diego to reintroduce our criminal enforcement program.¹ He described the mission of the Division to investigate, charge, and prosecute criminal corruption of the competitive process in all areas of the American marketplace—including government procurement. Out of that calling and mission, the Procurement Collusion Strike Force was born. Today, we approach the second anniversary of the PCSF and our integrated, and now global, effort to drive at the heart of collusion that targets public procurement. It is an appropriate time to reflect on what we've accomplished and outline our enforcement priorities going forward.

I serve as the Director of the Procurement Collusion Strike Force, and it is an honor to be here representing the Antitrust Division of the Department of Justice, and kicking off this year's Symposium and what I trust will be a robust conversation covering current issues and challenges across the public contracting sector—including collusion and fraud risks, compliance efforts, and enforcement trends. As public contract lawyers and professionals, your work in the Section of Public Contract Law and dialogue with the Antitrust Division advances the discourse on public procurement issues and ways to ensure ethical practices in the public procurement space.

II. COLLUSION AND COMPETITION IN PUBLIC PROCUREMENT

This discourse is significant for us, because the Antitrust Division's mission is to promote and maintain competition in the American economy—including safeguarding taxpayer money spent in public procurement. When the markets function properly—with robust competition, free of the corrosive impact of collusion—consumers benefit with lower prices, varied options, and increased innovation. The same is true for the government itself when it is a customer, as it often is, spending hundreds of billions of taxpayer dollars each year to secure goods and services.

To put some numbers on it, in FY2019, the federal government spent more than \$586 billion—about 40% of all discretionary spending—on contracts for goods and services. And this number represents only direct, federal spending. It does not include federal funds that flow to the state and local

¹Richard Powers, Deputy Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Remarks at the American Bar Association Public Contract Law Section's 2019 Procurement Symposium (Oct. 25 2019), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-richard-powers-delivers-remarks-american-bar>.

level—where those funds build infrastructure like roads, bridges, airports, public schools, public transit, water treatment plants and pipes, to name a few. When you factor in the additional CARES Act funding to address the COVID-19 public health crisis and the support for economic recovery, the numbers spike. Grant funding, in particular, has increased exponentially due to the COVID-19 pandemic, along with increased government spending for goods and services. These numbers give perspective to the significance of government dollars at all levels and to the national economy.

Losing even a fraction of this money to anti-competitive or collusive criminal conduct is incredibly costly. The Organization for Economic Cooperation and Development estimates that were we to successfully eliminate bid rigging from public procurement, our cost savings would be 20% or greater. Reducing illegal and anticompetitive collusion in procurement could save U.S. taxpayers tens of billions of dollars per year—approximately \$117 billion in FY 2019 alone, based on the OECD statistic.

It is more than just faithful stewardship of the public funds. Protecting the American consumer and taxpayer through ensuring competition in the market is also a priority of this administration. Earlier this year, President Biden issued an Executive Order that calls for a whole-of-government approach to address various aspects of unfair competition in the economy.² These instructions and encouragements were reinforced by a memorandum drafted by Associate Attorney General Gupta to the Antitrust Division.³ We stand at an exciting and unprecedented time of opportunity for the Antitrust Division to lead the way in vigorously enforcing the existing laws and working with various agencies to partner well in this endeavor. The Procurement Collusion Strike Force embodies the ideals of working cooperatively with other agencies and sets a model for whole-of-government efficiencies in aggressively protecting competition.

III. PCSF: OUR MISSION AND MODEL

The PCSF is the Justice Department’s coordinated, national response to collusion in public procurement. It is an interagency partnership dedicated to deterring, detecting, investigating, and prosecuting antitrust crimes and related schemes that target government procurement, grants, and program funding at all levels of government—federal, state, and local. Key partners include: The Antitrust Division, several U.S. Attorney’s Offices in strategically important locations, as well as national law enforcement partners. And we are well suited to the current global environment because the PCSF is a virtual strike force that mobilizes resources in a district-based model for outreach and training, and to conduct joint investigations and, ultimately, prosecutions. We have 22 districts that are staffed both locally and remotely, and with Division

² Exec. Order No. 14036, 86 Fed. Reg. 36,987 (July 9, 2021).

³ Memorandum from Assoc. Att’y Gen. Vanita Gupta on Promoting Competition in the American Economy (Jul. 9, 2021), <https://www.justice.gov/asg/page/file/1410836/download>.

trial attorneys, AUSAs, and agents from our national law enforcement partners.

This is a strategic partnership. The PCSF was designed with two primary objectives:

The first objective is to deter antitrust and related crimes on the front end of the procurement process through outreach and training. The PCSF works to leverage interagency collaboration—utilizing that whole-of-government approach to ensure that bidding and award processes are fair, open, and competitive; and to eliminate potential barriers to full and equal participation by underserved communities and individuals in public procurement.

The second objective is to facilitate more effective detection, investigation, and prosecution of conduct that undermines or distorts competition in the procurement process. When collusion impacts public contracting, it corrupts the integrity of the process by which the government buys goods and services, and the costs are borne by American taxpayers.

Therefore, the PCSF is committed to protecting competition in the procurement process at all levels of government—federal, state, and local—because, truly, the effects of collusion are felt at all levels. Public procurement often pertains to goods and services that have incredible economic and societal impacts—transportation, roads, hospitals, schools, and defense. With the current levels of pandemic and disaster recovery spending, and, potentially, increased infrastructure spending, faith in the public procurement process is as essential as ever. Promoting effective competition builds faith in the credibility of our governing systems, provides opportunity for continued economic growth, and is essential for the well-being of our democracy.

Fundamentally, this work matters. Procurement collusion undermines confidence in government and costs the American taxpayers. And I think that’s especially true for my colleagues who work in state and local government. It’s long been cliché to refer to “limited resources” in the local government space, but in the last 18 months, state and local governments have been particularly resource constrained. Besieged by the continuing COVID-19 pandemic, which in many areas has been followed by a summer of crises and weather disasters—ranging from wildfires in California and the west, to Hurricane Ida wreaking havoc on path that started in Louisiana and continued through the Ohio River Valley to the Northeast. Indeed, nearly 1 in 3 Americans live in a county that declared a weather-related disaster in the summer of 2021,⁴ which, aside from

⁴ Sarah Kaplan and Andrew Ba Tran, *Nearly 1 in 3 Americans Experienced a Weather Disaster This Summer*, THE WASHINGTON POST, Sept. 4, 2021, <https://www.washingtonpost.com/climate-environment/2021/09/04/climate-disaster-hurricane-ida/>.

the incomprehensible human toll, resulted in the need for significant public spending to rebuild and recover.

Any violations in this area also have significant impact in financial harm for the American taxpayer. But the harm doesn't stop there. Procurement collusion spreads intangible harm in ways that cannot be measured in a spreadsheet, but are just as damaging to our system of ordered liberty. I'm speaking to you today from Chicago, where I once served as an Assistant Inspector General, working to root out fraud, waste, and abuse in the city's government. In that role, and in my time since as a federal prosecutor here, I have seen firsthand how collusion and corruption are corrosive. Whether it's in a city on the shores of Lake Michigan, or in locations in the United States or abroad, collusion and fraud erode and deplete the public's faith in public institutions and services. That is fundamentally bad for democracy.

These cases matter, too, because of the victims. Victims of procurement collusion are often vulnerable victims—localities beset by poverty, for which every tax dollar is precious, or those that provide critical services to vulnerable members of our society. In a recent Antitrust Division investigation in the Midwest,⁵ which focused on one city, and one construction trade, the scope of potential victims hurt by the bid-rigging scheme included public-school districts, from one dedicated to serving children with special needs to another that serves a student body that almost entirely qualifies for free lunches. Other victims included local park districts, social services charities, and colleges, universities, and community colleges. Finally, there were defrauded state and federal agencies. That's one investigation, in one city, in one construction trade.

Therefore, pursuing procurement collusion has been, and will remain, a top priority for the Division. This is why the PCSF stands ready, able, and willing to investigate and prosecute procurement fraud at any level.

IV. PCSF: OUR ENFORCEMENT PRIORITIES

Given the importance of competition in public contracts and the mission of the PCSF, I'd like to turn now to our enforcement priorities and how the PCSF—through its members at the Antitrust Division, in twenty-two U.S.

⁵ See Press Release, U.S. Dep't Justice, Commercial Flooring Company Pleads Guilty to Antitrust and Money Laundering Charges (Aug. 30, 2021), <https://www.justice.gov/opa/pr/commercial-flooring-company-pleads-guilty-antitrust-and-money-laundering-charges>; Press Release, U.S. Dep't Justice, Former Vice President of Commercial Flooring Contractor Charged With Bid Rigging (Apr. 3, 2019), <https://www.justice.gov/opa/pr/former-vice-president-commercial-flooring-contractor-charged-bid-rigging>; Press Release, U.S. Dep't Justice, Commercial Flooring Contractor Agrees To Plead Guilty To Bid Rigging (Aug. 27, 2020), <https://www.justice.gov/opa/pr/commercial-flooring-contractor-agrees-plead-guilty-bid-rigging>; Press Release, U.S. Dep't Justice, Commercial Flooring Contractor Agrees to Plead Guilty to Antitrust Charge (Aug. 19, 2019), <https://www.justice.gov/opa/pr/commercial-flooring-contractor-agrees-plead-guilty-antitrust-charge>.

Attorney’s Offices, and at the seven national law enforcement partner agencies—has risen to the task during our first two years. Our ongoing investigations run the gamut, from local, single-district conduct pertaining to a single bid, to multi-district, nationwide, or even international conduct that targets a dozen or more agencies, and contracts worth millions of dollars—some in the nine figures. I’m limited in what I can say about our ongoing investigations, but I can talk about what is public in PCSF and illustrative Antitrust Division investigations to date—charged cases—to demonstrate our enforcement approach and priorities.

Like I said earlier, our focus is on investigating, charging, and prosecuting “conduct that undermines and distorts the procurement process.” So, what does that entail? It includes the traditional antitrust crimes, *per se* violations of the Sherman Act—bid rigging, price fixing, and market allocation affecting government procurement at any level. The Sherman Act has been, is, and will remain our lodestar.

But our focus also includes prosecuting other competition-corrupting crimes uncovered during our investigations. So, on the eve of our second anniversary, I’d like to spend a few minutes today talking about the Division’s work specifically regarding two of those areas in which the PCSF has trained its spotlight: First, I’ll highlight our work against procurement collusion and fraud in government programs that are designed to facilitate the participation of underserved communities and individuals—which is commonly termed “set-aside fraud.” I’ll then turn to some of our work regarding infrastructure spending and what we are anticipating in the days ahead.

A. Set-Aside Fraud

The federal government has a series of programs—at least one of which is more than a century old—designed to provide opportunities to disadvantaged communities to participate more fully in public procurement, which is an important part of the economic life of the United States.⁶ The Administration recognized that government contracting and procurement opportunities should be available on an equal basis to all eligible providers of goods and services. Therefore, President Biden issued an executive order in January of this year that, among other things, calls for the elimination of barriers to full participation by underserved communities.⁷

But as long as these programs and their noble goals have existed, there have been those who greedily sought to take advantage of the programs by participating when ineligible or otherwise undermining the programs. Combatting collusion and fraud in these programs is some of the most important work the PCSF is doing. By focusing on maintaining the integrity of these programs to ensure that they will continue to serve disadvantaged and

⁶ Buy Indian Act of 1910, codified at 25 U.S.C. § 47.

⁷ Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

underserved communities, we advance economic justice and build a more free and fair economy for everyone.⁸ The PCSF does its part through outreach, responding to tips from a variety of sources, and conducting thorough investigations. Often, these are complicated, tough cases, but our agents and prosecutors are committed to working them.

To illustrate this point, I will provide a recent example of our work in this space. We opened an investigation into set-aside construction contracts out of San Antonio valued at approximately \$250 million.⁹ These set-aside contracts were intended for service-disabled veteran-owned small businesses. The investigation revealed that one individual, who owned several construction companies and was not an eligible veteran, attempted to thwart the set-aside program by conspiring with others to place a disabled veteran as a figurehead in the company in order to win the set-aside contracts. This is set-aside procurement fraud. The companies were not qualified to win the contracts—even with the figurehead—because the companies ultimately remained under the financial and operational control of someone else—someone who was not a veteran and did not qualify for the program.

To date, two of the coconspirators have pleaded guilty. A grand jury indicted the remaining coconspirator in March. He faces charges for conspiracy to defraud the government and eight counts of wire fraud. Of course, he, like all defendants, is presumed innocent until proven guilty beyond a reasonable doubt. These types of charges demonstrate our commitment to holding individuals accountable when they cheat the government procurement process—and rob opportunities from those injured in service to our country.

B. Infrastructure

Second, I'd also like to take a moment to talk about our work in the infrastructure space. Infrastructure— and topic much in discussion these days—is essential to the economic and societal structures of American life. It is through infrastructure—the roads we drive on, the sidewalks our children play on, the public transit or bike lanes we use during our commute—that citizens often have their closest connections to the functioning of government. Given its impact for Americans and the vast amount of government resources currently devoted to infrastructure—this is also an area that deserves increased attention from the public contracts bar. The increasing amounts of government spending that may be authorized to meet the needs of the country present an ample opportunity—an attractive target—for greed to override

⁸ See Vanita Gupta, Assoc. Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Remarks at Georgetown Law's 15th Annual Global Antitrust Enforcement Symposium (Sep. 14, 2021 2019), <https://www.justice.gov/opa/speech/associate-attorney-general-vanita-gupta-delivers-remarks-georgetown-law-s-15th-annual>.

⁹ Press Release, U.S. Dep't Justice, Former Construction Company Owner Indicted for Defrauding Federal Program Intended for Service-Disabled Veteran-Owned Small Businesses (March 17, 2021), <https://www.justice.gov/opa/pr/former-construction-company-owner-indicted-defrauding-federal-program-intended-service>.

ethical conduct. This risk demands focused deterrence and aggressive enforcement, which is why this is and continues to develop as an area of focus for the PCSF.

To provide three recent examples of our work in this area:

- In February 2020, a Connecticut insulation contracting company and one its owners pleaded guilty to bid rigging and fraud. They conspired with other insulation contractors to rig bids and engage in other fraud on contracts for installing insulation around pipes and ducts on construction projects at universities, hospitals, and other public and private facilities. In total, there have been five convictions connected to this \$45 million scheme.¹⁰
- In June of this year, an engineering firm in North Carolina pleaded guilty to rigging bids and defrauding that state's department of transportation. The engineering firm was involved in a scheme through which it made sure that it won certain infrastructure contracts without competing. Those contracts related to the construction of drainage structures underneath and around paved roads, bridges, and overpasses.¹¹
- Even more recently, just a few weeks ago, a concrete contractor pleaded guilty to rigging bids on public concrete repair and construction contracts in Minnesota. The conspiracy, which lasted for nearly five years, involved submission of rigged bids to local governments and school districts in the Minneapolis-St. Paul area so that a predetermined contractor won the business.¹²

These three examples illustrate that the Antitrust Division, the PCSF, and its law enforcement partners, are working to hold accountable the companies and individuals who subvert and distort, and who operate in secret, to avoid competition in the public contracting space. Together, we are taking direct aim at the extra costs procurement collusion adds to the government's bottom line—whether it is the 20% OECD estimate or otherwise. But prosecuting is the second part of the PCSF's mission. I'd like to circle back and emphasize our first mission: deterrence—preventing collusion and preserving

¹⁰ Press Release, U.S. Dep't Justice, Insulation Contracting Firm and Co-Owner Plead Guilty to Antitrust and Fraud Charges (Feb. 3, 2020), <https://www.justice.gov/opa/pr/insulation-contracting-firm-and-co-owner-plead-guilty-antitrust-and-fraud-charges>.

¹¹ Press Release, U.S. Dep't Justice, Engineering Firm Pleads Guilty to Decade-Long Bid Rigging and Fraud Scheme (June 7, 2021), <https://www.justice.gov/opa/pr/engineering-firm-pleads-guilty-decade-long-bid-rigging-and-fraud-scheme>.

¹² Press Release, U.S. Dep't Justice, Concrete Contractor Pleads Guilty to Rigging Bids for Public Contracts in Minnesota (Sept. 28, 2021), <https://www.justice.gov/opa/pr/concrete-contractor-pleads-guilty-rigging-bids-public-contracts-minnesota>.

competition within government procurement for the benefit of the American people.

V. CONCLUSION

And it is here, that you have a role to play. You stand on the frontlines, too. If you're in private practice, you're well positioned to advise your clients—companies and other participants in procurement that sell goods and services to the government—of their role in ensuring that competition flows freely and that entities remain on the right side of the enforcement line. You can join the work of my colleagues and I in helping educate and deter crimes before they start. For our part, since the Strike Force's inception, we have trained over 17,000 special agents, attorneys and prosecutors, investigators, analysts, auditors, data scientists, and procurement officials. As my colleagues will describe during the panel discussion, it is more imperative than ever before that companies make smart business decisions regarding ethical, lawful conduct. As you'll hear, it can start with you, and how you advise your clients about their creating a culture of compliance, one that starts at the top. Compliance with the law is good for business and good for the nation. The current alignment of incentives is a constellation—one that enhances enforcement, protects government purchasers and taxpayers, and benefits government contractors who conduct business ethically and legally.

In closing, I'll note that the goal of every law enforcement agency is to deter crime to the point that we put ourselves out of a job. Until then, we are doing the work of educating and enhancing deterrence; and when that unfortunately is not enough, we stand ready with an integrated, national team of federal agents and prosecutors prepared to investigate and prosecute collusion in the procurement space on behalf of the American people. Thank you for your time today, and best wishes for a successful Symposium.