



Memorandum

Date: December 10, 2019

Subject: INFORMATION: Audit Announcement | Assessing Competition in Highway Procurement | Project No. 19P3002P000
Federal Highway Administration

From: Charles A. Ward 
Assistant Inspector General for Audit Operations and Special Reviews

To: Federal Highway Administrator

Congress allocated over \$305 billion for surface transportation for fiscal years 2016 through 2020,¹ which was preceded by an allocation of over \$105 billion for fiscal years 2013 through 2014.² A substantial portion of these funds are used for highway construction. The current law advocates for the use of cost reduction practices in project delivery.

Federal law generally requires States to award contracts for Federal-aid highway projects through competitive bidding,³ which can reduce costs incurred in procurement contracts. Nonetheless, concerns about anticompetitive practices in highway procurements have existed for decades. For example, in 1983, the Government Accountability Office (GAO) provided an overview of bid rigging and recommended corrective actions in the Federal highway program.⁴ More recently, the Department of Justice (DOJ) announced the formation of a Procurement Collusion Strike Force that will target anticompetitive practices in Government procurement.⁵

We have identified fraud, including anticompetitive practices, as one of the eight areas in highway projects that require further action to ensure that funds are

¹ Pub. Law No. 114-94.

² Pub. Law No. 112-141.

³ 23 U.S.C. § 112; 23 CFR §§ 635.104, 635.112.

⁴ GAO, *Actions Being Taken To Deal With Bid Rigging in the Federal Highway Program* (PLRD-83-78), May 1983.

⁵ DOJ, *Justice Department Announces Procurement Collusion Strike Force: A Coordinated National Response to Combat Antitrust Crimes and Related Schemes in Government Procurement, Grant and Program Funding* (DOJ Press Release No. 19-1,189), November 2019.

spent effectively.⁶ Moreover, we determined that some contract award practices used by State departments of transportation increase bidding risks,⁷ and that policies and procedures ensuring bid price reasonableness are inadequate.⁸ In general, highway procurement includes a number of features that make it susceptible to successful and continuous anticompetitive practices.

Because of the importance of competition in highway procurement and the low number of studies that have attempted to assess it, we are initiating this audit. Our objective is to inform the Federal Highway Administration's (FHWA) guidance for preventing and deterring anticompetitive practices. Specifically, we will (1) assess competition in procurement for Federal-aid highway projects using statistical methods, (2) provide estimates of the effects on contract costs when certain anticompetitive practices occur, and (3) identify opportunities to improve FHWA's guidance.

We plan to begin the audit shortly and will contact your audit liaison to schedule an entrance conference. We will conduct our work at the Department of Transportation (DOT) Headquarters and other sites as needed. If you have any questions, please contact me at 202-366-1249, or Betty Krier, Chief Economist, at 202-366-1422.

cc: DOT Audit Liaison, M-1
FHWA Audit Liaison, HCFB-32

⁶ *Management of Cost Drivers on Federal-aid Highway Projects* (OIG Report No. CC-2003-109), May 2003.

⁷ *Lessons Learned from ARRA: Improved FHWA Oversight can Enhance States' Use of Federal-Aid Funds* (OIG Report No. ZA-2012-084), April 2012.

⁸ *FHWA's Federal Lands Highway Program Lacks Adequate Processes for Thoroughly Evaluating Contract Bid Prices* (OIG Report No. ZA-2015-002), October 2014.