

SB21-165 CDOT Project Procurement Methods

Legislature 2020

<http://www.coloradopolitics.com/stories/138117b1e04e.html>
[fraud/article_0572f994-3263-11ea-b956-138117b1e04e.html](http://www.coloradopolitics.com/stories/138117b1e04e.html)

LEGISLATURE 2020 | First committee hearing takes on transportation and fraud

Joey Bunch, Colorado Politics
Jan 8, 2020



Colorado's State Highway 131 passes through Toponas
Photo by Jeremy Busak, courtesy of Wikimedia Commons

Colorado lawmakers raised questions Wednesday about whether contractors and vendors are fleecing taxpayers on road work. A report last June raised suspicions with auditors


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JBC Proposed RFI

Proposed RFI: The Department is requested to submit, with its FY 2021-22 budget request, an analysis, based on data from CDOT projects, that compares results obtained with CDOT's Alternative Delivery Systems and CDOT's conventional delivery systems. The analysis should compare the extent to which alternative and conventional systems are used on projects of various size, the amount of bidding competition, the extent to which successful bids are won by many or few members of CDOT's community of bidders, actual cost, the cost at contract award compared with the final cost, the extent to which final cost is altered by change orders originating with CDOT and by change orders resulting from contractor proposals, actual project duration, and the extent to which actual project duration exceeds planned duration. Other relevant criteria, including considerations that are difficult to quantify, may also be included.

Colorado Office of the State Auditor

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DEPARTMENT OF TRANSPORTATION
TRANSPORTATION COMMISSION
OPERATIONAL RISK AREAS

MAY 2019

PERFORMANCE AUDIT

- Difficult findings for CDOT

Colorado Office of the State Auditor

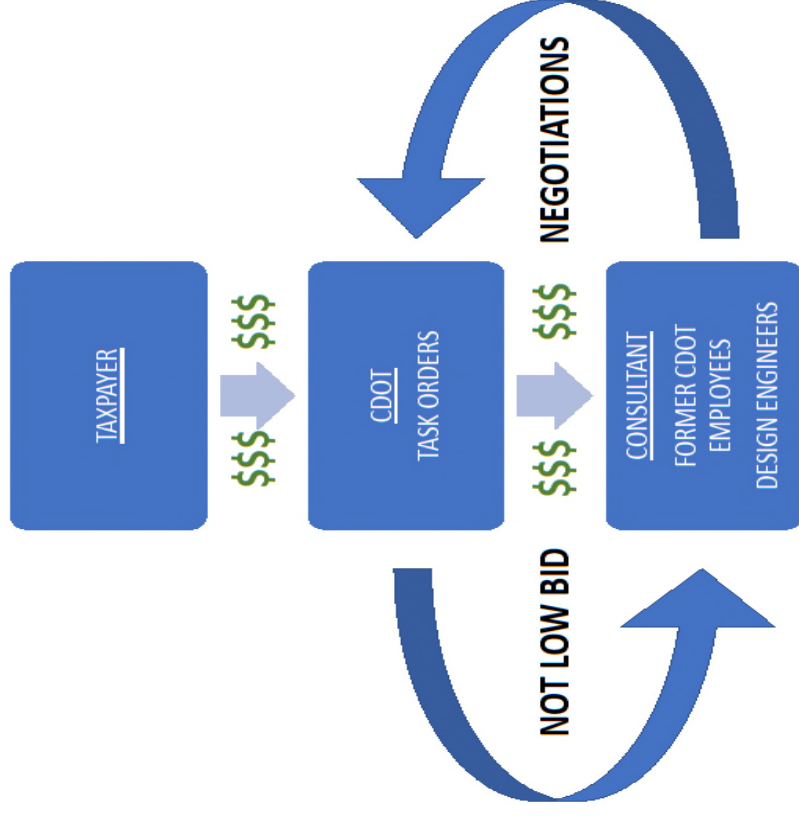
MASTER TASK ORDER CONTRACTS

The Department hires various consultants to provide both professional services, such as engineering, land surveying, and landscape architecture (among others), as well as personal services, which include goods and services that benefit the Department's operations, such as information technology consulting and real estate appraisal services (among others) [Sections 24-30-1402(6) and 24-50-502(2), C.R.S.]. The Department uses different types of contracts, including master task order contracts, which grant flexibility for the Department when it anticipates needing work to be developed and performed on multiple different projects within a general scope and requirements, but specific requirements are unknown when the contract is executed [State Controller Policy, Model Contracts, Section (1)(c)].

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- Imprecise Scopes of Work
- Misalignment of work specified in task orders
- Lack of Approved Labor Rates in Contracts
- Task Orders that Exceeded the Maximum Contract Amount
- Contracts Lacking End Dates and Proper Approvals
- Use of Improper Contract Type

Consultant Costs Efficiency and Accountability cont'd.



- CDOT's use of consultants in lieu of CDOT self-performance
- Questionable cost efficiency
- Little or no accountability
- Not Low Bid
- Subjective selection of consultants

24-92-103.5 Construction of Public Projects - Invitation for best value bids

24-92-103.5 Construction of public projects – invitation for best value bids

What bill changed the law in 2013? HB13-1292: Keep jobs in Colorado Act of 2013

Sponsors Rep Lee & Pabon and Sen Kerr & Nicholson

Cosponsors Reps Buckner, Court, Duran, Exum, Ferrandino, Fields, Fischer, Foote, Garcia, Ginal, Hamner, Hulinghorst, Kagan, Kraft-Tharp, Labuda, Lebock, Levy, May, McCann, McLachlan, Mellon, Mitsch Bush, Moreno, Peniston, Petersen, Primavera, Rosenthal, Ryden, Salazar, Schaler, Singer, Tyler, Vigil, Williams, Young, and Sens Aguilar, Carroll, Giron, Guzman, Heath, Hodge, Hudak, Jahn, Johnston, Jones, Kelbala, Morse, Newell, Schwartz, Steadman, Tochtrop, Todd, Urbarr

House Committee Votes State Affairs: 7-4 Finance: 7-6 Approps: 8-5

House Thirds 38-26-1

Yes - all House co-sponsors plus Geroch

No - Buck, Conti, Copam, DeGrosso, Dore, Everett, Gardner, Holbert, Humphrey, Joshi, Landgraf, Lawrence, Murray, Navarro, Nordberg, Priolo, Rankin, Sains, Scott, Sonnenberg, Stepiens, Swain, Szabo, Waller, Wilson, Wright

Excused - McNulty

Senate Committee Votes Finance: 3-2

Senate Thirds 20-15

Yes - all Senate co-sponsors

No - Balmer, Baumgardner, Brophy, Cadman, Crowder, Grantham, Harvey, Hill, King, Lambert, Lundberg, Marble, Renfroe, Roberts, Scheffel

Who pushed for the change? AFL-CIO

383 lobbyists registered w/ SoS on this bill

Monitoring: 200

Opposing: 92

Amending: 67

N/A: 4

Supporting: 20

CO Building & Construction Trades Council

American Federation of State, County, and Municipal Employees

CO AFL-CIO

United Transportation Union

Testimony

Prior to 2015, committee testimony is not available online. I reached out to the basement, and will update if I am able to get names of those who testified.

Background information

See Ed Sealoever's article on the bill below. The highlighted portion shows a possible reason behind going to "best value" was to give unions more business. Additionally, the state must state the reasons why it chose best value vs lowest bid. From our meeting, it seems like this does not happen.

*House committee takes up toned-down procurement bill" by Ed Sealoever, 4/8/13. https://www.bizjournals.com/denver/food/capitol_business/2013/04/house-committee-takes-up-boned-down.html

A Colorado legislative committee will get its first crack this afternoon at a bill that makes a number of labor-backed changes to the state's procurement system.

But thanks to weeks of negotiations between contractors' associations and the Colorado AFL-CIO, House Bill 1292 will be a very different — and much more business-friendly — measure than the one whose original draft inspired great concern among business groups.

"We acknowledge up front that the AFL-CIO has come a long way in meeting our concerns about the bill and has negotiated a lot of our issues," said Jeff Weist, a lobbyist for the Colorado Competitive Council, a contractor group. "The bill is a lot more business-friendly than the original proposal. The Public Contractors. "We knew that given the makeup of the Legislature, some version of the bill was going to pass. Compared to what they asked for, the AFL's objectives are relatively modest. It's reporting and enforcement of existing laws."

With HB 1292, sponsored by Democratic Reps. Pete Lee of Colorado Springs and Dan Pabon of Denver, scheduled for its first hearing in the House State, Veterans and Military Affairs Committee sometime after 1:30 p.m. MDT Monday, here's a look at the five major sections of the bill and how they've changed.

• One of the bill's main goals is to look at the state to enforce a 1930s-era law that requires all contractors on state projects hire at least 80 percent of their workforce from Colorado. The state does not enforce that provision now because the penalty is jail time for contractors, and HB 1292 would change that to a fine system administered by the Colorado Department of Labor and Employment (CDLE).

Contractors' main concerns revolved around enforcement of that clause. As the bill stands, CDLE officials will investigate only if a complaint is filed — and the investigation will not begin until after the contract is over, so that it does not slow work, Weist said.

• The bill also strengthens the state's existing ability to give a bidding disadvantage to any contractor from a state that offers bidding advantages to companies located in that state over companies from Colorado. This, said AFL-CIO political and legislative director Phil Hayes, is important to ensuring that Colorado taxpayer dollars are supporting Colorado companies.

The two sides agreed to define a Colorado contractor not just as one that has its headquarters in the state but also as one that has an office in Colorado and has paid unemployment taxes in the state in six of the past eight years.

That is key to ensuring major employers aren't denied state work just because they have an out-of-state parent company, Weist said.

• The most controversial clause of the bill originally was one that would have required the state to use "best value metrics" to select winning bidders for all major contracts. That would have meant that, instead of looking solely at the lowest bid amount, the state would consider also whether a contractor offered things such as health benefits and a training program — benefits that are more common at larger union shops.

HB 1292 now says that the state can consider best value metrics, or it can consider lowest-bidder or design-build options — and it must issue a statement with the request for bids why it chose its particular bidding design.

Hayes says this will be important in allowing department heads to decide the amount of benefit the state can receive if it is paying slightly more for work from a company that isn't cutting benefits or pay in order to win contracts.

• A fourth part of the bill bars the state from contracting directly with a foreign employer to do work overseas and requires that domestic contractors that subcontract any work to an overseas company report this and report why this was necessary within 20 days. This was not a controversial provision, and few changes to it were made, Weist said.

• Finally, the bill requires that contractors report the origin — domestic or foreign — of the five most expensive iron and steel products used in the project. Hayes said that it is important to know whether state tax dollars are going inordinately to foreign manufacturers, even though the bill contains no penalty for such purchasing.

Contractor groups said the original requirement to report the origin of all materials would have been burdensome, especially if they had to look into pre-assembled building components such as an air-conditioning system and discover from where all of its parts hailed. The new mandates will still require a good deal of paperwork but are not as stringent, Weist said.

Weist said late last week that contractors' groups were still mulling whether to support, oppose or be neutral on the bill.

Hayes said he would be very disappointed if any continued to oppose HB 1292 after all the compromises made on it.

"We're not claiming this creates a panoply of jobs," Hayes said. "It's about making sure we prioritize our tax dollars for supporting state businesses and supporting domestic manufacturing ... And I think this is a really good step in the right direction."

Innovation 1:

The RFP defines the requirement to submit "forward

[REDACTED]

CM/GC Services

CM/GC Services



Colorado Office of the State Auditor (Pg. 65)

MISALIGNMENT OF WORK SPECIFIED IN TASK ORDERS, TASK ORDER AMENDMENTS, AND MASTER CONTRACTS. The work described in 65 of the task orders (or related amendments), valued at about \$11.2 million, did not clearly align with either (1) the master contracts under which they were issued or (2) the original task orders that were amended. For example:

- For one contract with 57 task orders totaling \$6.6 million, the contract scope of work referenced public relations and media buying services, but also contained language written so broadly that the contractor could have provided virtually any type of service. Specifically, the contract stated that the “scope of work describes many tasks” and the “list is not intended to be exhaustive.”

Alternate Delivery / Bid Suppression /
No Transparency

Short list used without regard to
dollars; eliminates 90% of the
low bid market.

Colorado Alternative Delivery Projects						
CDOT CMGC Projects						
Project Name	Agency	Awarded Contractor	Start	Complete	Budget	
I-70 Eisenhower Memorial Tunnel 2400 v Switchgear Project	CDOT	Sturgeon Electric	Fall 2010	Winter 2011	\$ 3,500,000.00	
I-70 Twin Tunnels Eastbound & Westbound	CDOT	Kraemer / Obayashi JV	Spring 2012	Fall 2015	\$ 106,000,000.00	
Pecos Street Over I-70 Bridge Replacement	CDOT	Kiewit	Summer 2012	Fall 2013	\$ 18,600,000.00	
SH 266 & SH 71 Bridge Replacement North of Rocky Ford	CDOT	Kraemer	Summer 2012	Spring 2013	\$ 9,300,000.00	
I-70 Bridge Replacement in Dotsero	CDOT	Kraemer	Fall 2012	Fall 2013	\$ 9,300,000.00	
I-70 / Eagle Interchange	CDOT	Flatiron	Summer 2013	Winter 2014	\$ 14,000,000.00	
I-70 Pike Period Shoulder Lane Project	CDOT	URS / Lawrence	Summer 2014	Fall 2015	\$ 56,000,000.00	
US 34 Big Thompson Canyon	CDOT	Kiewit	Summer 2015	Summer 2020	\$ 250,000,000.00	
Grand Avenue Bridge in Glenwood Springs	CDOT	Granite / RL Wadsworth JV	Spring 2016	Fall 2017	\$ 125,000,000.00	
I-70 Vail Underpass	CDOT	Kraemer	Spring 2016	Winter 2017	\$ 30,000,000.00	
I-25 / Arapahoe Interchange	CDOT	Kraemer	Spring 2016	Winter 2017	\$ 66,000,000.00	
I-70 Hanging Lake Tunnel Garage Door Replacement Project	CDOT	Myers & Sons	Spring 2017	Winter 2017	\$ 1,500,000.00	
I-25 South Gap - Monument to Castle Rock	CDOT	Kraemer	Spring 2018	Spring 2021	\$ 350,000,000.00	
I-25 North Express Lanes - Seg 5 & 6 (SH 66 to Sh 402), K/IHC not low bidder, \$10 Million more	CDOT	RL Wadsworth / SEMA JV	2017	2019	\$ 250,000,000.00	
I-36 Church Ranch Blvd. - Repair sunken section, Kraemer	CDOT	Kraemer	Summer 7/2019	Fall 10/2019	\$ 25,000,000.00	
Note Change Order Below, C470 cost \$250 Millions-14 miles, 7 bridge crossings, 1 main interchange, on-curve--> \$12.85Million/Mile, Kraemer/IHC project same 14 miles, 3 bridge crossing, \$435 Million --> \$31.1 Million/Mile		See comments				
I-25 North Express Lanes DB - Seg 7 & 8 (SH 402 to Ft. Collins) - Change Order	CDOT	Kraemer / IHC JV	Spring 2018	Spring 2022	\$ 305,000,000.00	
I-7 Near Estes Park	CDOT	Kiewit	Nov. 2019		\$ 70,000,000.00	
Total					\$ 1,688,900,000.00	

CDOT DB Projects						
Project Name	Agency	Awarded Contractor	Start	Complete	Budget	
I-25, Ilex Street to City Center Drive	CDOT	Flatiron	Summer 2015	Summer 2019	\$ 63,000,000.00	
C-470 Express Toll Lanes	CDOT	Flatiron	Spring 2016	Summer 2019	\$ 210,000,000.00	
Central 70 P3	CDOT	Kiewit	Fall 2017	Summer 2022	\$ 1,200,000,000.00	
I-25 North Express lanes DB - Seg 7 & 8 (SH 402 to Ft. Collins)	CDOT	Kraemer / IHC JV	Spring 2018	Spring 2022	\$ 550,000,000.00	
Total					\$ 2,023,000,000.00	

Total Dollars \$ 3,711,900,000.00
 Kraemer \$ 1,441,300,000.00
 Kiewit \$ 1,547,600,000.00
 Kraemer + Kiewit \$ 2,988,900,000.00

81%

Over 80% of all alternative delivery projects (\$1.7 billion) have gone to [2] contractors. This is in the last 8 years.

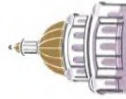
Kraemer \$ 891,300,000.00 53%
 Kiewit \$ 347,600,000.00 21%
 Kraemer + Kiewit = 73%

Kraemer \$ 550,000,000.00 27%
 Kiewit \$ 1,200,000,000.00 59%
 Kraemer + Kiewit = 87%

Contractor Pre-Qualification Requirements to Bid CDOT Work

- Annual Certified Audit
- Pre-Qual Financials
- Bid Bond
- Payment and Performance Bond
- Indemnification
- Insurance

Legislative Council Staff



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Memorandum

January 15, 2018

TO: Senator Ray Scott

FROM: Katie Ruedelbusch, Fiscal Analyst, 303-866-3001

SUBJECT: Overview of State Transportation Departments

Summary

In response to your request, this memorandum provides an overview of the state transportation department budgets. The memorandum highlights state populations, vehicle lane miles, transportation budget, total state budgets, and number of transportation department employees. The memorandum also highlights the specifications or standard requirements from several states.

Overview

State departments of transportation (DOTs) administer, develop, and maintain a state's transportation system and infrastructure. Most DOTs are responsible for roads, bridges, and other transportation modes, including public transit, rail, aviation, and ports. Some state DOTs also administer nontraditional functions, such as the department of motor vehicles and/or state patrol functions. Table 1 below compares the size of all state DOTs by the number of DOT employees.

Table 1
 Size of State DOTs in Full-Time Equivalents

2,000 or less	2,501 to 5,000	5,001 to 7,500	7,501 or more
Delaware	Alabama	Florida	California
Hawaii	Rhode Island	Kentucky	Illinois
Maine	South Dakota	Louisiana	Maryland
Montana	Utah	Arkansas	Missouri
Nebraska	Vermont	Colorado	Mississippi
New Hampshire	Wyoming	New Jersey	North Carolina
New Mexico	West Virginia	Virginia	North Dakota
New York	Indiana	Ohio	Pennsylvania
North Carolina	South Carolina	Oregon	Texas
North Dakota	Iowa	Tennessee	
Ohio	Mississippi	West Virginia	
South Carolina	Alabama		
Tennessee	South Carolina		
West Virginia	Alabama		
	South Carolina		

Source: American Association of State Highway and Transportation Officials.

Open records requirements: Pursuant to Section 24-72-202 (6/3/09), C.R.S., research memoranda and other final products of Legislative Council Staff are considered public records and subject to public inspection unless: a) the research is related to proposed or pending legislation; and b) the legislature requesting the research specifically asks that the research be permanently considered "work product" and not subject to public inspection, or if you think additional research is required and this is not a final product, please contact the Legislative Council Librarian at (303) 866-4011 within seven days of the date of the memorandum.

Comparison of State Departments of Transportation

Table 2 below compares several metrics of the Colorado Department of Transportation (CDOT) with several surrounding state DOTs.

Table 2
 State Transportation Departments

State	Population	Vehicle Lane Miles	Budget*	Departmental Employees (2016)	Consulting Engineering Costs
Arizona	7,171,646	144,959	Transportation: \$414,523,300 Total: \$14,842,878,600	4,548	\$78,300,000
Colorado	5,695,564	184,913	Transportation: \$1,783,538,544 Total: \$30,628,823,099	3,020	\$210,860,277***
Kansas	2,911,505	289,948	Transportation: \$1,102,401,000 Total: \$17,013,682,000	2,515	No response
Nebraska	1,929,268	193,712	Transportation: \$205,657 Total: \$9,191,427,418	2,146	\$33,606,011
New Mexico	2,095,428	161,015	Transportation: \$884,017,800 Total: \$6,300,000,000	2,448	\$39,196,426
Oklahoma	3,943,079	234,729	Transportation: \$165,853,359 Total: \$7,566,943,381	2,332	\$98,600,000
Utah	3,161,105	103,208	Transportation: \$1,813,000,000 Total: \$16,783,000,000	1,567	No response
Wyoming**	577,737	63,319	Transportation: \$358,845,123 Total: \$9,971,128,073	2,000	No response

Source: Legislative Council Staff

*Budget totals include both state and federal funds.

**Biennial budget cycle.

***Direct expenditures and expenditures charged to projects.

Specifications or Standard Requirements.

Specifications, or standard requirements, are the basic requirements governing the material, equipment and methods used in construction contracts. The federal government, along with most states and local governments, sets forth a variety of specifications. Currently, CDOT has approximately 206 specifications or standard requirements. Most state DOTs representatives contacted stated that their states have hundreds, if not thousands, of standard specifications. Appendix A provides links to the specifications from several surrounding states.

ENR - Feds' Bid Rig Crackdown

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Feds' Bid Rig Crackdown Targets Construction, Among Others

November 27, 2019

Mary E. Powers

The U.S. Justice Dept. has launched a multipronged effort to root out bid-rigging, price-fixing and other forms of collusion in construction and other sectors on local, state and federal government funded contracts, which it says undermines competition in procurement.

Officials say investigations will also cover projects funded by private owners. The department's Antitrust Division now has a strike force that includes prosecutors from that office and 13 U.S. attorneys' offices, as well as FBI investigators and those from inspectors general offices in four federal agencies.

They will jointly pursue procurement-related criminal probes and prosecutions in a pilot effort. "We will look at all forms of collusion affecting victims," one official told ENR.

U.S. attorneys in central and eastern California, Colorado, Florida, Georgia, Illinois, Michigan, New York, Ohio, Pennsylvania, Texas, Virginia and Washington, D.C., are involved.

For Affordable Multifamily in Gypsum

Belle Enterprise Real Estate Capital LLC, the commercial and multifamily investment subsidiary of Interstate Community Investment Inc. recently closed a \$20.6-million Finance Mac loan to create Phase I of Spring Creek Apartments, an affordable multifamily property at 7501 Sunny Ave in Gypsum, Colo.

As the Vail Valley increasingly becomes a year-round destination, Spring Creek Apartments will help address the increased demand for affordable housing in the area.

"Despite business and population growth in the Vail Valley, the area has seen very little new apartment construction over the past decade, making Spring Creek Apartments a particularly valuable addition to the community," said Ned Huffman, president of Bellweather Enterprise.

This first phase of Spring Creek Apartments will include 130 garden-style homes in a mix of one-, two- and three-bedroom units. The project is expected to bring between 30% and 60% of the area median income (AMI) construction is underway and slated for completion in summer 2021.

Once fully developed, the Spring Creek community will consist of 461 apartments, townhouses, duplexes and single-family homes. A clubhouse and park facility will include a leasing office, community room and business and fitness centers. The complex will also include community gardens and walking trails to connect residents with the Eagle County multi-use trail system. Amenities will be available to town residents as well.

Anthea Martin, senior vice president of Bellweather Enterprise in the Denver office, arranged the 24-month interest period on the loan by a 15-year fixed rate. FEB Flynn and Jeff Spaniel, a fixed rate of 3.3% was secured for the transaction.

RUSH - TIME VALUE NEWSPAPER

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S 64
P 2

Construction Among Targets in Feds' Bid Rig Crackdown

By Mary Powers, ENR
The U.S. Justice Dept. has launched a multipronged effort to root out bid-rigging, price-fixing and other forms of collusion in construction and other sectors on local, state and federal government-funded contracts, which it says undermines competition in procurement.

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They will jointly pursue procurement-related criminal probes and prosecutions in a pilot effort. "We will look at all forms of collusion affecting victims,"

The division is training government officials to structure procurements to avoid illegal activity and spot fraud signs. It also is training contractors and industry associations to recognize and deter considered criminal, take appropriate steps and invest in up-front compliance programs.

Online bidding platforms have made detection tougher, but investigators now are exploring ways to use data analysis programs.

Assistant Attorney General Malika Delrahim

The division is training government officials to structure procurements to avoid illegal activity and spot fraud signs. It also is training contractors and industry associations to recognize and deter considered criminal, take appropriate steps and invest in up-front compliance programs.

Assistant Attorney General Malika Delrahim

Chief executive officer, [redacted] that happens, private notes, [redacted] construction is likely to suffer."

DOJ hopes a closer focus on construction will help identify leads to investigate and prosecute.

The antitrust division's criminal enforcement arm has prosecuted industry bidding cases recently.

In July, DOJ said that Paul M. Camarota Jr., president of an insulation contractor, pleaded guilty in U.S. District Court in Bridgeport, Conn., to rigging bids on insulation jobs at universities, hospitals and other public and private projects in Connecticut and elsewhere, the third conviction in an ongoing sector probe.

DOJ said conspirators discussed prices and agreed on bids that inflated customer costs by about 10% to conceal their actions, ongoing from 2011 until 2018, they executed bid-rigging and fraud schemes using burner phones.

"This plea is a warning to contractors engaged in bid rigging and fraud that they will be held accountable," said Assistant Attorney General Malika Delrahim at the time.



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CDOT Revised Plan Set...



Thank you

End of the Presentation