

# **U.S. Department of Commerce**

## **Office of Inspector General**

### **Office of Investigations**



## Detecting and Defeating Fraud







# Agenda

- **Defining Fraud**
- **Common Fraud Schemes and Red Flags**
- **Case Examples**
- **What Steps You Can Take**
- **How to contact us - DOC OIG**



# FRAUD – What is it?

**Although it can take on many forms, fraud is deception, through the misrepresentation or omission, of material facts for the purpose of illegitimate gain**





# 18 United States Code – Major Fraud

18 U.S. Code § 1031 - Major fraud against the United States:

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—

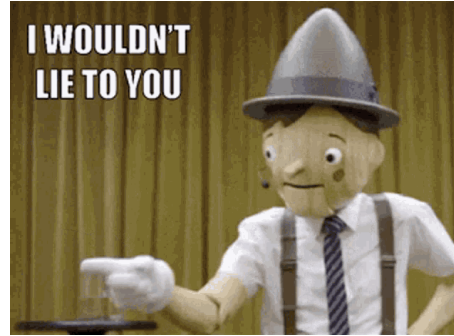
(1) to defraud the United States; or

(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance...is guilty...

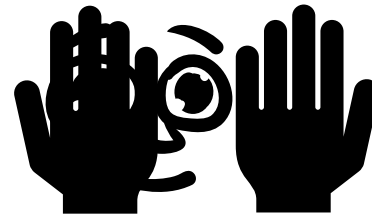


# FRAUD in its Simplest Terms...

Is the **LYING**,



the **CHEATING**,



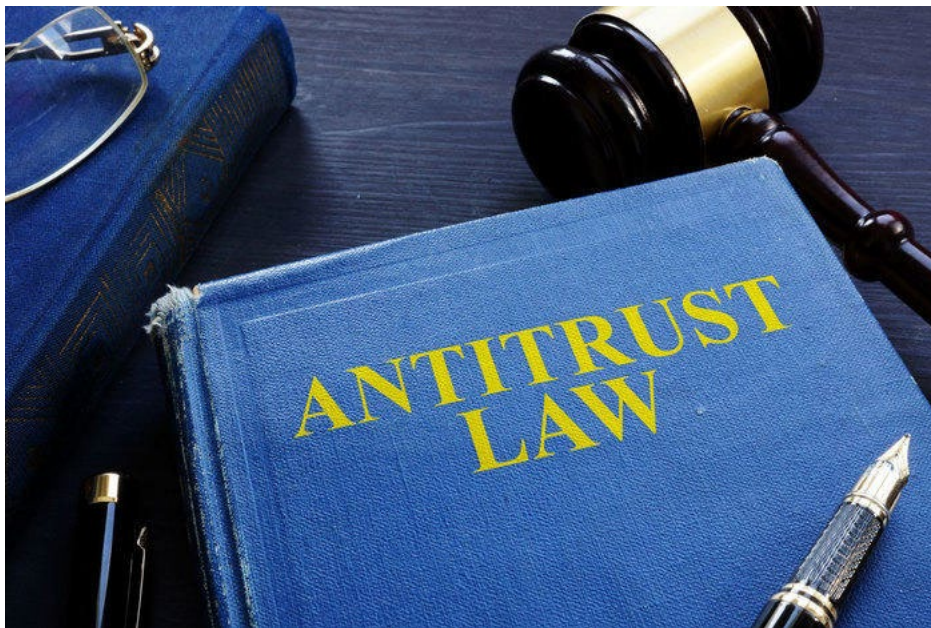
and the **STEALING**



# Common Procurement Fraud Schemes

Collusion - The Sherman Act: 15 U.S.C. § 1:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.



## Three Criminal Agreements

Price Fixing

Bid Rigging

Allocation Agreements



# FRAUD Schemes – Price Fixing

Price Fixing occurs when two or more competing companies agree to sell goods or services at an agreed upon set price.

This practice restricts price competition.

## Company Indicted in Price-Fixing Conspiracy

Thursday, August 8, 2024

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A federal grand jury in the Southern District of New York is charging Sioux Erosion Control with a price-fixing conspiracy in connection with construction contracts.

According to court documents, the indictment alleges that Shelton and Sioux conspired to maintain prices for products sold in 2023. Erosion control products are used on highway construction projects. It is alleged that the companies intentionally high-priced

## Former Interim President of Puerto Rican Steel Distributor Pleads Guilty to Eight-Year Price-Fixing Conspiracy

Friday, August 30, 2024

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For Immediate Release

Office of Public Affairs

An executive of a steel distributor in Carolina, Puerto Rico, pleaded guilty today to conspiring with competitors to fix prices for sales of reinforcing bar, or rebar.

According to court documents filed in the U.S. District Court in San Juan, Edgardo Sola Colon (Sola), of Toa Alta, Puerto Rico, is the president of a steel distributor in Puerto Rico and is a former president of another steel distributor in Puerto Rico. These companies are some of the leading wholesale distributors of rebar in Puerto Rico. Rebar is commonly required for residential and commercial construction projects on the island, and nearly all rebar distributed in Puerto Rico is imported from other countries or the continental U.S. Collectively, Sola's company and two other competitors controlled approximately 70% of the wholesale rebar market in the Commonwealth.

Between 2015 and 2022, including the period of reconstruction following Hurricanes Irma and Maria in September 2017, Sola conspired with competing companies and individuals to suppress and eliminate competition by fixing prices for steel products, including rebar, which were distributed to hardware stores, building contractors and other businesses and individuals in Puerto Rico, resulting in substantial profits to the conspirators.

Among other communications, Sola and his competitors exchanged WhatsApp chat messages in which they agreed on specific rebar prices, including price increases. For example, in December 2020 Sola sent to Juan Carlos Aponte, an executive at a competing company, a chat message with the price of Turkish rebar, and Aponte responded, "The position is the following: Platform \$33.95, 10 bundles \$34.50, Fewer than 10 bundles: \$34.95" before asking, "The question is are we on the same page?" Sola responded, "Yes, that is what I am doing."



# FRAUD Schemes – Bid Rigging

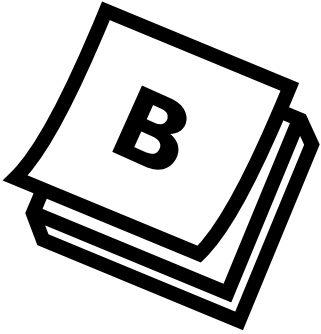
Bid Rigging is a practice in which competing parties collude to predetermine the winner of a bidding process.

Subcategories of Bid Rigging include:

- Bid Suppression
- Complementary Bidding
- Subcontracting Arrangements
- Bid Rotation

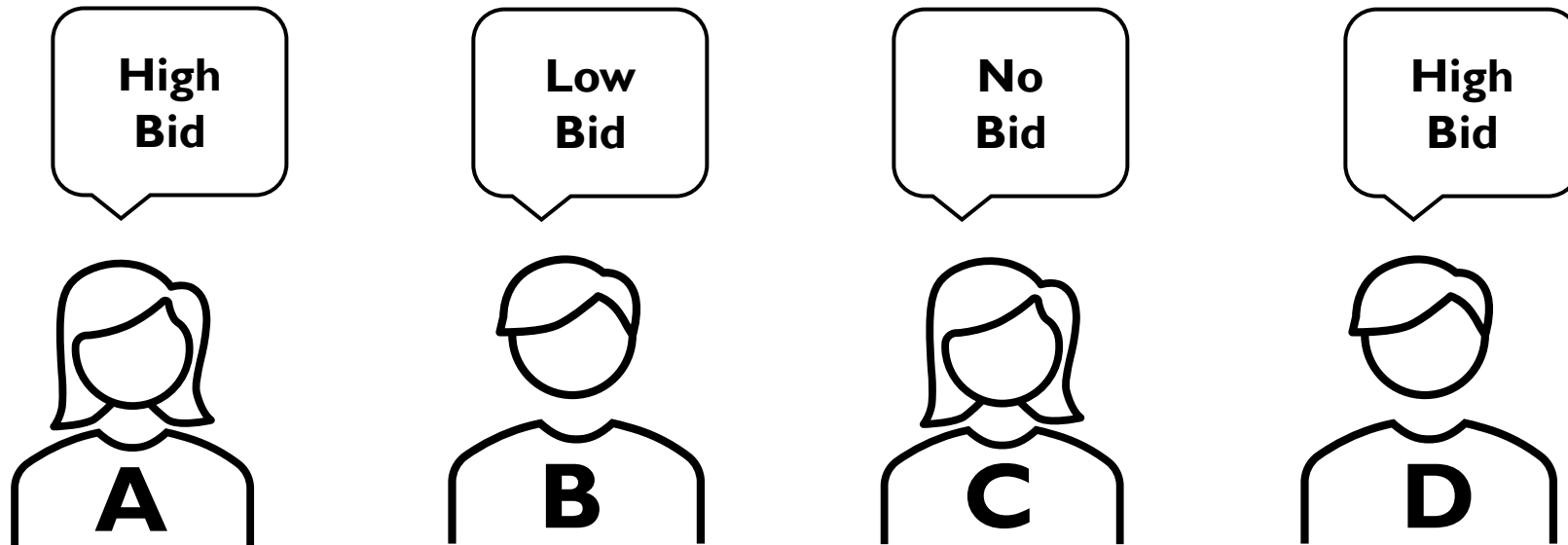


# FRAUD Schemes – Bid Rotation



**Contract I**

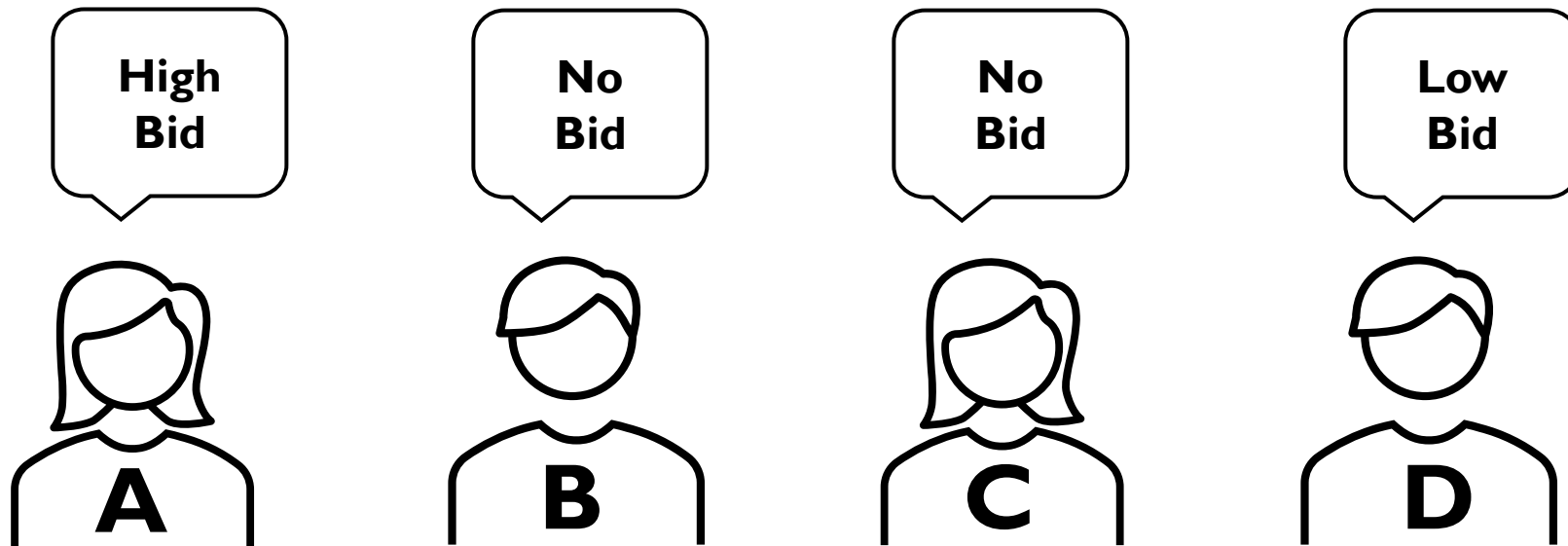
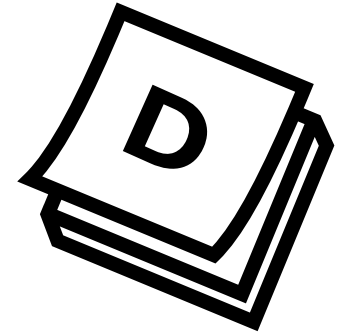
## Bid Rotation



**Contractors or Subcontractors**

# FRAUD Schemes – Bid Rotation

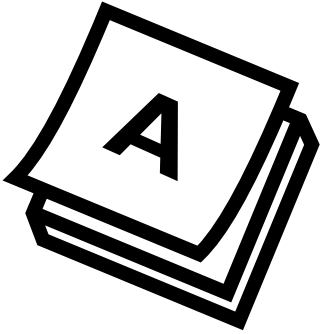
## Contract 2



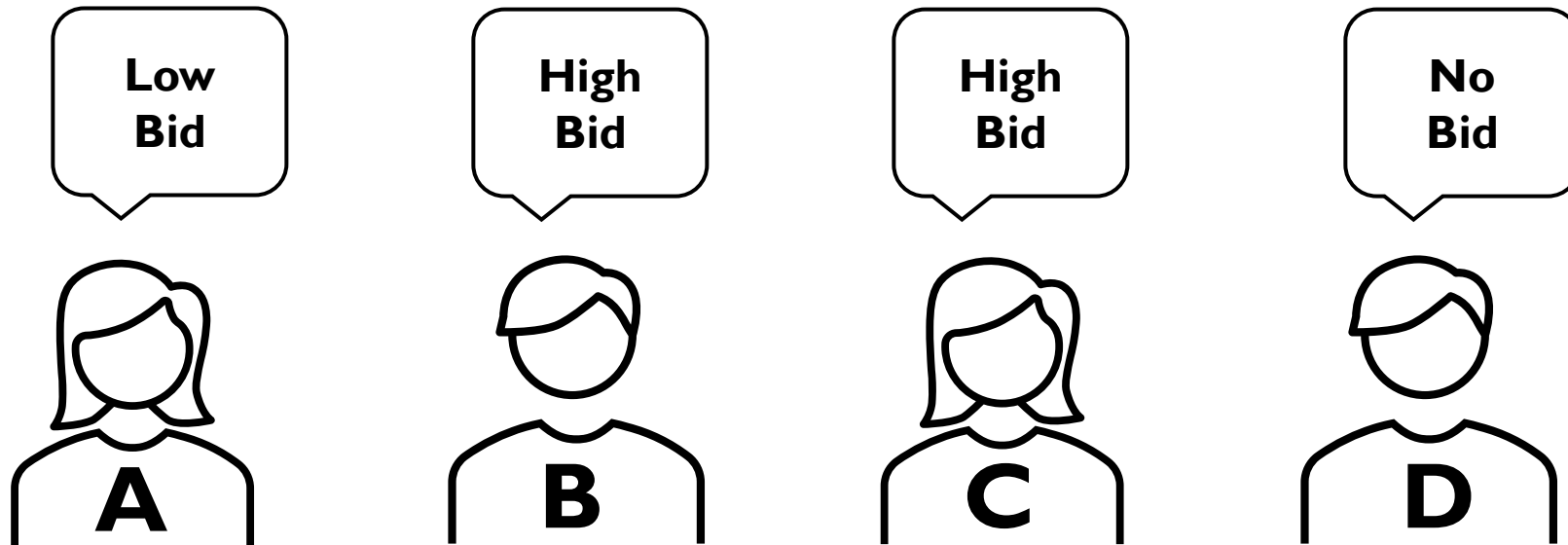
## Contractors or Subcontractors



# FRAUD Schemes – Bid Rotation



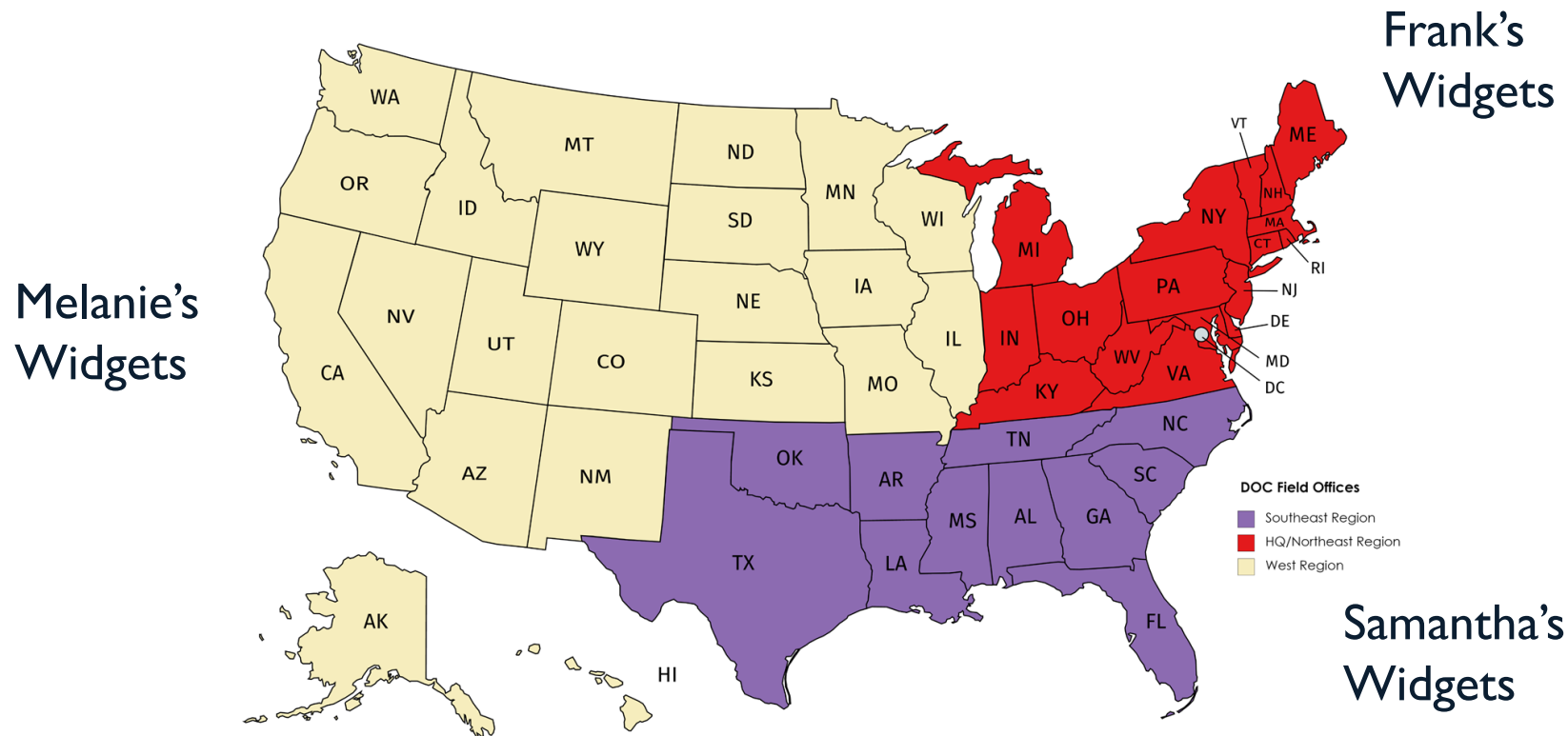
## Contract 3



## Contractors or Subcontractors

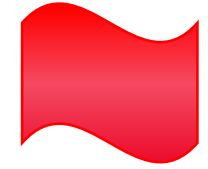
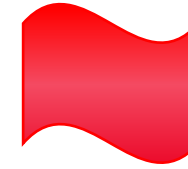
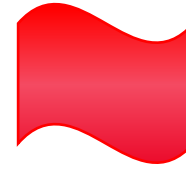
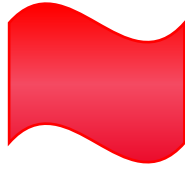
# FRAUD Schemes - Allocation Agreements

Allocation Agreements exist when competitors divide markets among themselves, such as by specific customers or types of customers, products, or territories.





# Red Flags – Price Fixing / Bid Rigging



**Prices for goods or services are not in line with market value**

**Contractor's Bids coming from the same Internet Protocol Address (IP)**

**Contractor's bids contain the same formats (font, size, spacing, etc...) and/or grammar mistakes**

**Projects are awarded to the same entity, sometimes by location or type of customer**

**The entity who is awarded the contract, then subcontracts the losing companies**

**Newly incorporated business suddenly bidding on complex projects**

**Complaints from other bidders**





# FRAUD Schemes – Cost Mischarging

Cost Mischarging are costs either claimed to the government, or incurred during assistance programs, that are not Allowable, Allocable, and/or Reasonable.

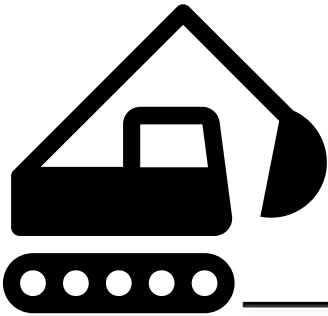
Labor and/or  
Material Mischarging

Middle Mile NOFO,  
Para IV, I  
“Funding  
Restrictions” (pg 32)



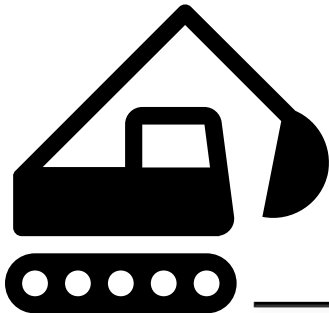
# FRAUD Schemes – Defective Pricing

Defective Pricing is when a contractor does not provide accurate or “current” pricing schedules or rates to the government. Contractors often deflect these inaccuracies as supply chain errors or “that was last year’s pricing”



**Jane’s Trench Service bid \$12.00 per linear foot**

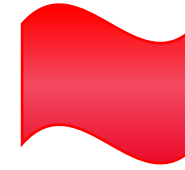
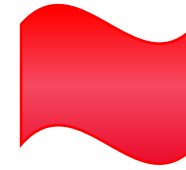
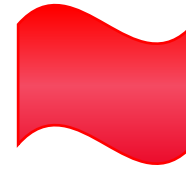
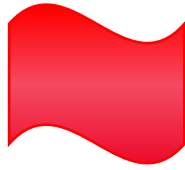
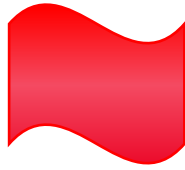
$$400 \text{ linear foot} \times \$12.00 = \$4,800$$



**Invoices \$18.00 per linear foot citing outdated pricing schedule or other excuse – “Covid”**

$$400 \text{ linear foot} \times \$18.00 = \$7,200$$

# Red Flags – Price Fixing / Bid Rigging



**Contractor unnecessarily delays the submittal of certified costs to the government**

**Contractor costs are based on very old data or appear to be based on very vague data**

**Contractor has an extremely high general and administrative rate compared to its peer companies**

**Costs submitted are abnormally high compared to past contracts for the same goods or services**

**Contractor refuses, delays, or is unable to provide supporting documentation for costs**

**Contractor does not disclose significant cost issues that will reduce contractor costs after proposal**

**Contractor submits costs for payment that do not match with normal expenses for that specific contract performance**



# FRAUD Schemes - Bribery

Bribery - offering, giving, soliciting, or receiving of any item of value as a means of influencing the actions of an individual holding a public or legal duty.

Remember bribery is not one sided. It also includes if a public official demands something of value for an official act.





# FRAUD Schemes – Fraud in Negotiations

Fraud in Negotiations - False Representations made by an offeror which the government relied upon to make a decision during contract negotiations.

Two more criminal offenses usually accompany this scheme:

1. False Statements – Fictitious Certifications, Ghost Employees, Illegal Labor Practices
2. Mail/Wire Fraud – Bidding is done by snail mail, email, or uploaded to a portal via the internet



# FRAUD Schemes – Fraud in Negotiations

Middle Mile NOFO, Part VI “Federal Award Administration Information”, paras D6 & 7 (pg 44-45)...Buy American and Small and Minority Business, Women’s Business Enterprises, Labor Surplus Area Firms.

Pursuant to 2 C.F.R. § 200.321, any eligible entity that receives an award must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.







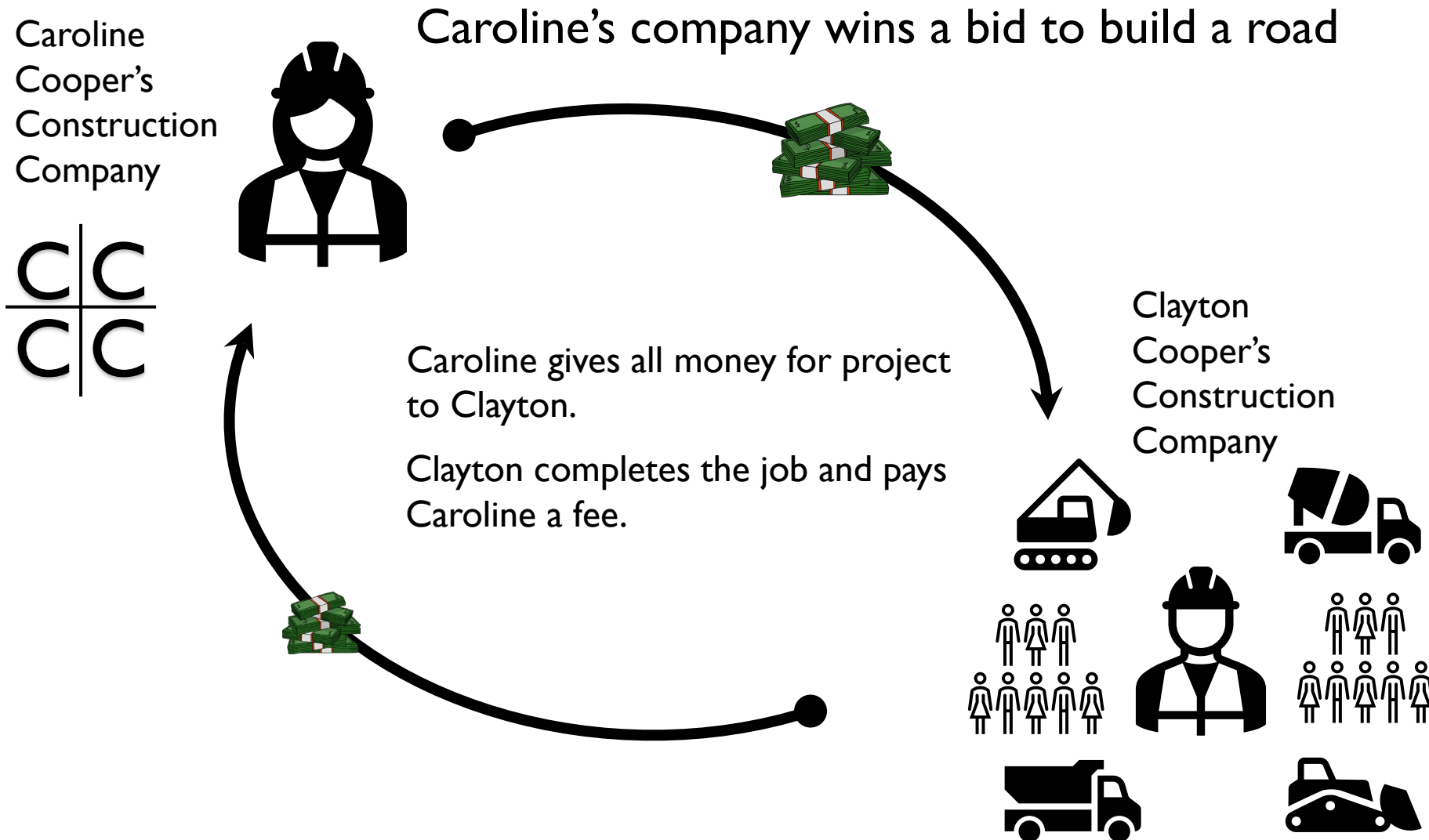
# FRAUD Schemes – Pass Through

Pass Through – When a majority owned firm hires or creates a certified Small / Minority / Women Owned Business or Labor Area Surplus Firm to provide services, but in reality, a non-certified or majority firm performs the work.

The certified business “passes” the work and money to the majority owned firm and is paid a “fee” in return.

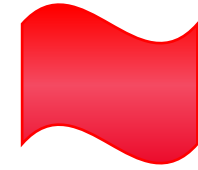
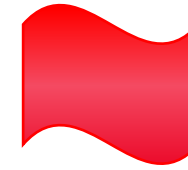
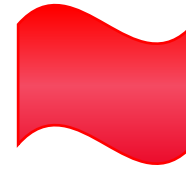
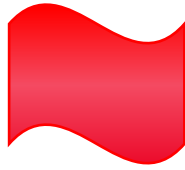


# FRAUD Schemes – Pass Through





# Red Flags – Bribery & Fraud in Negotiations



**Same poorly performing company winning bids**

**Unreported conflicts of interest (Cooper and Cooper Construction???)**

**Newly incorporated business suddenly bidding on complex projects**

**Company does not have the personnel, equipment, or expertise to complete the project**

**Limited range of the invoice numbers and dates**

**Same addresses, names, law firms, listed on incorporation documents**

**Family members' names listed on incorporation documents**

**Addresses for business come back to residential homes**





# What Can You Do to Combat FRAUD

## Design Anti-Fraud Strategies into the Program

NTIA has started this for you...

Certifications – require robust certifications and representations, throughout the lifecycle of the grant or financial assistance, at all recipient/subrecipient levels, based on material requirements of the grant. – **The word Certification shows up 50 times in the MM NOFO**

Access to Records – ensure NOFOs and award terms/conditions include provisions for direct access to the full contents of grant-related information from grantees and subrecipients by the Department and the OIG.

Make it impossible for the recipients of the assistance to claim they were uninformed of the program's requirements





# What Can You Do to Combat FRAUD

## Foster an Anti-Fraud Environment Within Your Agency

Middle Mile NOFO, Part VIII, Sections G-H, which covers “Transparency, Accountability, And Oversight Required” and “Unauthorized Use of Funds”.

G.2.a: Support Disclosures - Recipients of financial assistance originating from the U.S. Department of Commerce, including NTIA, shall timely disclose, in writing, to the OIG and awarding agency, whenever, in connection with the award, performance, or closeout of this grant or sub-award thereunder, the recipient has credible evidence that a principal, employee, agent, or sub-recipient has committed:

A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733) (Lincoln’s Law)

G.3: Whistleblower Protection which states “Recipients, sub-recipients, and employees working on this grant award will be subject to the whistleblower rights and remedies established under 41 U.S.C. § 4712.”





# What Can You Do to Combat FRAUD

**Develop a comprehensive anti-fraud strategy plan that can easily be implemented across the entire agency**

**Conduct Anti-Fraud Training and Awareness** – consider mandating anti-fraud training, tailored to the grant requirements, subrecipients, and all employees on a recurring basis

Implement a system for employees to register potential conflicts of interest

Insist on group decision-making for procurement contracts – no single person should have overall control – No Single Point of Failure

Conduct due diligence on all suppliers to ensure they have a proven track record and have the resources/experience required to deliver the offered goods and services

Identify the required steps and timelines required to effectively respond to identified instances of fraud

**UNREPORTED FRAUD DOES NOT GET  
BETTER WITH TIME**



# What Can You Do to Combat FRAUD

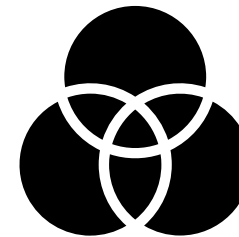
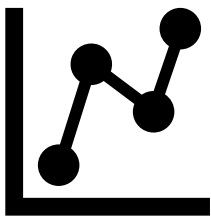
**Institute activities that promote fraud identification and identification of crime conducive climates**

**Robust Data Collection and Analysis Program** – Develop an overall strategy to proactively identify fraud by collecting and formatting data useful for making decisions, reporting, compliance monitoring, and fraud analysis.

Ensure employees have proper knowledge, skills and training to perform data analysis.

Conduct data mining to identify suspicious activity or transactions, including anomalies, outliers, and other red flags in the data.

Maintain a well designed and tested system of checks and balances or internal controls



# What Can You Do to Combat FRAUD

**Continuously evaluate your plan so you can adapt to emerging fraud trends**

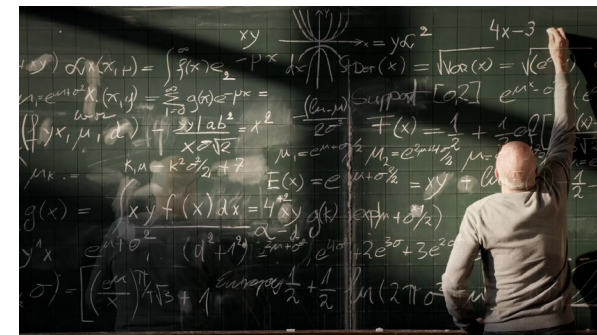
**Use your analysis of identified instances of fraud to improve your strategic plan, enhance training, adjust your data collection and analysis.**

Share newly identified trends with employees and stakeholders: NTIA, FPOs, OIG, other grant recipients (States' Broadband Offices)

Encourage employees to share fraud mitigation practices from their perspective

Change internal control measures to better adapt to emerging trends and technological advances

Use the results of investigations and/or prosecutions to enhance fraud detection and evidence collection





# What Can You Do to Combat FRAUD

## We need your help!

- You see the day-to-day activities for potential red flags
- You have the relevant documentation in your possession
- You are the subject-matter experts
- Your actions in overseeing your state's Broadband grant programs can greatly impact how incidents of fraud are remedied

**If you see (hear, suspect) something, say something. Your programs, mission, and taxpayer funds are at stake.**





# QUESTIONS



9/13/2024



# OIG.DOC.GOV



## OFFICE OF INSPECTOR GENERAL

U.S. DEPARTMENT OF COMMERCE

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### Top Management Challenges

This annual report represents OIG's current assessment of the Department's programs and activities and the most serious management and performance challenges facing its respective bureaus.

[Read the latest report ▶](#)[Semiannual Report to Congress](#)[2020 Census | NOAA Reading Rooms](#)

### Recent Releases

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07.31.2024

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[NOAA's Office of Space Commerce Efforts to Provide Space Situational Awareness Services Have Been Delayed and Need a Realistic Schedule](#)

07.30.2024

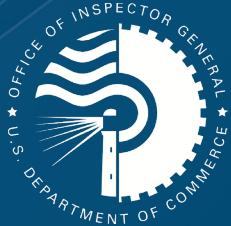
[Semiannual Status Report on NTIA's Broadband Programs](#)

[Hotline & Whistleblower Protection](#)

[Pandemic Relief Oversight](#)

[Disaster Relief Oversight](#)

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9/13/2024

# Presenters'

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