

---

BY THE U.S. GENERAL ACCOUNTING OFFICE

**Report To The Chairman, Committee On  
Public Works And Transportation  
House Of Representatives**

---

**Actions Being Taken To Deal With Bid  
Rigging In The Federal Highway Program**

Billions in Federal funds are provided annually to the States for highway programs. Justice Department investigations have uncovered numerous instances when highway paving contractors have corrupted the competitive bidding process through bid rigging.

This report explores the methods used by contractors to rig bids and the numerous corrective actions taken by Federal, State, and industry organizations.

GAO believes these corrective actions are appropriate and should help deter this illegal practice.





UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

PROCUREMENT, LOGISTICS,  
AND READINESS DIVISION

B-211594

The Honorable James J. Howard  
Chairman, Committee on Public Works  
and Transportation  
House of Representatives

Dear Mr. Chairman:

This is the report you requested on bid rigging in the Federal highway program. It discusses the investigations conducted by the Department of Justice and the actions taken by the Department of Transportation and others in response to the bid-rigging scandal.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Donald J. Horan".

Donald J. Horan  
Director

GENERAL ACCOUNTING OFFICE  
REPORT TO THE CHAIRMAN,  
COMMITTEE ON PUBLIC WORKS  
AND TRANSPORTATION  
HOUSE OF REPRESENTATIVES

ACTIONS BEING TAKEN  
TO DEAL WITH BID  
RIGGING IN THE FEDERAL  
HIGHWAY PROGRAM

D I G E S T

Concern about reported bid-rigging scandals in federally funded highway programs caused the Chairman, House Committee on Public Works and Transportation, to ask GAO to summarize information on:

- Investigations conducted by the Justice Department concerning bid rigging in the Federal highway program.
- Actions taken by the executive branch and others in response to the bid-rigging scandal and GAO's assessment of their adequacy.
- Possible additional deterrents to discourage or reduce bid rigging on future contracts. (See pp. 25 to 27.)

The Department of Transportation manages, through its Federal Highway Administration, the various federally funded programs that provide assistance for highways. Federal funds are normally combined with State or local government funds to pay for highway projects. Interstate systems and safety construction projects are generally funded with 90 percent Federal funds. Most of the other highway projects are federally funded at 75 percent. State or local governments award the contracts and pay the contractors. These governments, in turn, are given Federal assistance funds for the work that has been completed. As of July 31, 1982, a total of about \$35 billion in Federal funds from several fiscal years was obligated for about 60,000 active projects. (See app. IV.)

BID-RIGGING INVESTIGATIONS

Since 1979 the Department of Justice and the Department of Transportation Inspector General have been investigating paving contractors. These investigations have resulted in criminal

prosecutions, convictions, fines, and jail sentences for conspiracies to rig bids on public highway and airport construction projects in 15 States. (See p. 7.)

The Justice investigations are continuing to provide evidence to grand juries in 18 States, and there is no end in sight. Thus far, Justice's investigations have been evolving from evidence gained in each case and, therefore, have expanded from State to State as the evidence dictated. Several of the States receiving the largest amounts of Federal highway funds were not included in these investigations. (See p. 7.)

In August 1982, Justice and Transportation created a joint committee to coordinate antitrust investigations of contract bid rigging. The committee is composed of senior managers of both departments. It is responsible for recommending the States or geographical areas targeted for future investigations. The committee will probably recommend starting investigations in most States that receive large amounts of Federal funds for highway projects. (See pp. 8 and 9.)

Officials at the Department of Transportation, Office of Inspector General, told GAO they are planning bid-rigging investigations in 20 to 25 more States during the next 2 years. As of January 1983, 13 of these had been started. (See p. 9.)

#### ACTIONS TAKEN TO DETER BID RIGGING

The Department of Transportation, the American Association of State Highway and Transportation Officials, and the National Asphalt Pavement Association have responded to the indictments and convictions of many highway paving contractors by taking actions intended to deter or reduce bid rigging. The following paragraphs summarize these actions.

Transportation has

--improved its technical guidance on the preparation and use of engineering estimates (see p. 11),

- surveyed State bidding procedures to recommend improvements (see p. 12),
- explored the use of computers as an evaluation and investigative tool (see p. 13),
- debarred contractors convicted of bid rigging (see p. 13), and
- established a telephone "hot line" (800-424-9071) to receive bid-rigging tips. (See p. 13.)

The American Association of State Highway and Transportation Officials prepared guidelines suggesting ways for strengthening bidding and contract procedures. It distributed these to the States in August 1981. These guidelines are designed to give the States a basis upon which they may build or add to their own antitrust review programs. The Association has also sponsored seminars on highway bid-rigging problems. (See p. 14.)

The National Asphalt Pavement Association has conducted 20 seminars nationwide to educate the industry on antitrust violations. It also gives members information on the bid-rigging scandals and suggests actions the asphalt paving industry should take to help bring bid rigging under control. (See pp. 14 and 15.)

State governments have also made changes in response to the bid-rigging scandals. For example, North Carolina and Virginia have enacted legislation making bid rigging a felony and providing penalties for those convicted of bid rigging. These States have also made changes to strengthen their procurement practices. In addition, they have negotiated monetary settlements with convicted contractors. In North Carolina the settlements totaled \$11.9 million and in Virginia they totaled \$1.2 million. (See pp. 16 to 22.)

### CONCLUSIONS

GAO believes the Justice convictions have focused attention on a nationwide bid-rigging problem that challenges the integrity of the competitive bidding process. GAO commends the efforts of the Department of Transportation's Inspector General in instituting investigations in 20 to 25 more States before the statute of

limitations expires. GAO believes the Federal Highway Administration's efforts to improve its guidance on reviewing contractor bids and proposals is appropriate. GAO also believes the vigorous corrective measures instituted by State governments are an important contribution to deterring bid rigging and recovering public moneys.

GAO believes that the actions taken by the Department of Transportation, State highway departments, and others in response to the bid-rigging scandal should help deter bid rigging on current and future highway contracts. Because many actions have not been completed, it is too early to determine how effective they will be in deterring collusion. However, in GAO's opinion, the actions taken were appropriate steps in attempting to bring bid rigging under control.

Because of the numerous actions that have been taken or planned to deter bid rigging, GAO is making no recommendations. (See p. 23.)

#### AGENCY COMMENTS

The Departments of Transportation and Justice, the American Association of State Highway and Transportation Officials, and the National Asphalt Pavement Association provided comments on a draft of this report. Officials from these organizations generally agreed the report accurately summarizes the bid-rigging scandals in the Federal highway program as they understand it. (See pp. 23 and 24.)

## C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	What is bid rigging?	1
	An example of how bid rigging takes place	2
	Federal funds for highway construction	2
	Sherman Act	3
	Federal review of highway projects	4
	Using computers to detect bid rigging	4
	Objectives, scope, and methodology	5
2	BID-RIGGING INVESTIGATIONS	7
	Results of completed cases	7
	Estimated cost of bid rigging	8
	The interdepartmental bid-rigging investigations coordinating committee	8
	Future investigations	9
3	ACTIONS TAKEN TO DETER BID RIGGING	11
	DOT actions to deter bid rigging	11
	Actions taken by the American Association of State Highway and Transportation Officials	14
	Industry association actions	14
4	EXAMPLES OF THE STATES' RESPONSES TO BID RIGGING	16
	North Carolina	16
	Virginia	19
	Extent of bid rigging	20
	Planned future responses	21
5	CONCLUSIONS	23
	Agency comments	23
APPENDIX		
I	Request letter from the Chairman, House Committee on Public Works and Transportation, dated August 10, 1982	25
II	November 9, 1982, interim response to the Chairman, House Committee on Public Works and Transportation	26
III	Legislation making bid rigging a felony in North Carolina	28

		<u>Page</u>
IV	Federal highway program status as of July 31, 1982	36
V	Letter from the Department of Justice, dated April 12, 1983	38
VI	Letter from the Department of Transportation, dated April 20, 1983	42

ABBREVIATIONS

AASHTO	American Association of State Highway and Transportation Officials
DOT	Department of Transportation
FHWA	Federal Highway Administration
GAO	General Accounting Office
IG	Inspector General

## CHAPTER 1

### INTRODUCTION

During the past few years, there has been an accelerating number of indictments and convictions of asphalt paving contractors for antitrust violations on contracts awarded under the Federal highway program. The illegal practice of conspiring to control or influence the contract bidding process is commonly referred to as "bid rigging." The Chairman, House Committee on Public Works and Transportation, requested our assistance in getting a better understanding of the seriousness of the problem and of the adequacy of the efforts to deal with it because of his concern over how these scandals may affect the highway program.

#### WHAT IS BID RIGGING?

Bid rigging is a conspiracy of two or more contractors to determine, before bidding on a public contract, which one will receive the contract. It is a blatant corruption of the competitive bidding process. Three common forms of bid rigging are: (1) complementary bids, (2) territorial allocation schemes, and (3) payments or the promise of subcontract work to control the bidding.

Complementary bidding occurs when a contractor, pursuant to an agreement with other contractors, submits a bid that is deliberately high and noncompetitive. Such a bid is designed to create the appearance of competition and to subvert the competitive bidding process by allowing a predetermined contractor (co-conspirator) to be the low bidder on the project. The motivation of a contractor that agrees to submit a complementary bid varies. The contractor giving such a bid may have no interest in the job; may be too busy at the time to do the work; may not have the bonding capacity to bid on the work even though it would like to do so; may be interested in only a portion of the work and, therefore, may elicit a promise of subcontract work in exchange for a noncompetitive bid; or may prefer a future project rather than the one presently being let for bids.

Territorial allocation schemes occur when companies allocate construction projects based on the proximity of the projects to a contractor's plant and prepare their bids accordingly.

Payments or the promise of subcontract work to control the bidding are made when one contractor either pays or promises subcontract work to other contractors for not bidding on the project or for submitting complementary bids. Of course, the payments are generally recouped in the higher price of the "winning" contractor.

In commenting on a draft of this report, the Department of Transportation (DOT) advised that division of available work is another common form of bid rigging.

#### AN EXAMPLE OF HOW BID RIGGING TAKES PLACE

Contractors gather at a hotel in the State capital where the bids submitted will be opened. The "real" bidding, or conspiring, is done the night before bid opening in illegal prebid conferences among the contractors. Usually through telephone calls between hotel rooms and informal visits, the low bidder is determined and the other contractors learn how high to bid the job so that they do not "win." In return, the contractors selected to be the low bidders agree to bid high on other projects that were arranged to go to other bidders. The next morning the bids are submitted to the State highway department for public opening later in the day. In this way the conspiring contractors can artificially inflate their bids, spread the business among themselves, and make a mockery of the competitive bidding process.

Many confirmed bid-rigging schemes have involved the allocation of highway projects by county. Under this method, a firm with an asphalt plant in the same county as the project often was allocated all the highway projects in that county. In other words, conspiring contractors that could compete for this work agreed to allow the firm with a plant closest to the work be the designated low bidder on projects in the county. Before contract award, the designated "winner" would call all the other contractors that had received bid proposal data on the project and obtain assurances from them that they would either submit a higher bid or refrain from bidding. The requesting contractor would return the favor on another project or give subcontracts on the project to one or more of the complementary bidders.

When multiple plants were located in a county, the firms divided the work among themselves according to company and project size. On some occasions, the companies rotated the projects among themselves.

In each case, the result was the creation of the appearance of competition while actually a conspiracy to rig the bids and corrupt competitive bidding practices was taking place.

#### FEDERAL FUNDS FOR HIGHWAY CONSTRUCTION

Federal moneys for highways are reflected in various programs which, when combined, make up the Federal highway program. These programs are separately funded by the Congress and are managed by DOT's Federal Highway Administration (FHWA).

FHWA consists of headquarters, regions, and divisions. The headquarters and regional offices provide guidance to the divisions. The divisions are the primary contacts with State and local transportation offices. There is one division office in each State, and it is almost always in the capital city.

Most Federal moneys for highways are earmarked for constructing, reconstructing, and improving roads. Contracts for these projects must be concurred in by the FHWA division administrator. However, the State or local governments award the contracts. States are responsible for providing the initial moneys to begin the projects. The States, in turn, receive Federal moneys for completed work. The project need not be completed before reimbursement starts, because progress payments are provided.

Furthermore, State and/or local funds must pay for a portion of the work. Interstate systems and safety construction projects are generally funded with 90 percent Federal funds, and most other highway projects are funded at 75 percent.

On July 31, 1982, a total of about \$35 billion in Federal funds was obligated for about 60,000 active projects. Because highway projects take a long time to complete, funds from several fiscal years are spent on many of these projects. The annual Federal funding level is substantially less than \$35 billion. For example, during fiscal year 1982, \$8.4 billion of Federal funds were provided for highway programs. Appendix IV sets forth a table showing the funds obligated and number of projects by State.

DOT advised that the above totals include contracts for right-of-way and preliminary engineering projects that are not competitively awarded and recommended the totals be limited to construction projects. However, revised totals were not provided, and we were told they are not readily available.

#### SHERMAN ACT

The Sherman Act is the principal law used to convict paving contractors guilty of an illegal activity, such as collusion. Section one of the act contains a prohibition against conspiracies in restraint of interstate trade or commerce. A violation of this act occurs when contractors agree to eliminate competition between or among themselves with regard to bidding for projects, i.e., allocating projects to each other. The following types of conspiratorial arrangements constitute violations.

--Instances when contractors agree not to bid on projects in another contractor's territory.

--An agreement to submit a higher bid on a project in return for similar or other favorable treatment in the future.

--An agreement to submit a higher bid in return for subcontracting work.

In each of these situations, independent business judgment has given way to joint action by two or more contractors. This subverts competition. Instead of competing for a contract, the contractors engage in rigging their bids as dictated by their prior agreement designating a particular contractor as the successful bidder.

### FEDERAL REVIEW OF HIGHWAY PROJECTS

The plans, specifications, and engineering estimates for highway projects are developed by State highway departments. These departments also determine the size and scope of each highway project. To be eligible for Federal funds, each project must meet the design criteria for Federal highway projects that are published by the American Association of State Highway and Transportation Officials (AASHTO). These criteria specify such things as highway width, grade level, and number of lanes.

When a project is ready to be advertised, the State highway department forwards the plans, specifications, and engineering estimates to the FHWA division representative for review and approval. Project plans are inspected by the division engineers and approved, if AASHTO criteria are met. The plans are then returned to the State to be advertised for bids. Generally, the State allows 4 weeks for receipt of bids. Bid opening is a public ceremony.

Before the contract award, the State sends the FHWA division a list of all bids received and a line-item breakdown of the three lowest bids. FHWA compares the bids with the engineer's estimate for the project and questions unusual items. FHWA's concurrence is required before the State highway department awards and begins to administer the contract.

### USING COMPUTERS TO DETECT BID RIGGING

Computers can be used to analyze contractor bidding patterns. Computer analyses have been used in some highway bid-rigging investigations. The analyses identified contracts that had a high probability of being rigged. The contractors identified were selected for additional investigation. One system that has been developed and is being installed in a State highway department is called the Bid Analysis and Monitoring System. This system is designed to process data generated by a bidding process, organize the data into a historical data base,

generate user-defined reports, and allow the data base to be queried to answer specific questions.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

In an August 10, 1982, letter, the Chairman, House Committee on Public Works and Transportation, asked us to study the competitive bidding practices with respect to highway and mass transit in the United States. (See app. I.) Our initial work disclosed that many actions had been taken to strengthen the procurement process and that the Justice Department investigations were continuing. We met with the Committee staff and discussed the results of our initial work. Our November 9, 1982, letter advised the Chairman that our report would cover the following topics (see app. II).

- Investigations conducted by the Justice Department concerning bid rigging in the Federal highway program.
- Actions taken by the executive branch and others in response to the bid-rigging scandal and our assessment of their adequacy.
- Possible additional deterrents to discourage or reduce bid rigging on future contracts.

Our work was performed in accordance with generally accepted government auditing standards. In doing our work, we talked to the officials responsible for highway construction projects and reviewed bid-rigging information at the following organizations:

- Department of Justice (Antitrust Division), Washington, D.C.
- The Federal Highway Administration and the Office of the Inspector General (IG) in the Department of Transportation, Washington, D.C.
- American Association of State Highway and Transportation Officials, Washington, D.C.
- National Association for Attorneys General, Washington, D.C.
- National Asphalt Pavement Association, Riverdale, Maryland.
- FHWA field offices in Washington, D.C.; Richmond, Virginia; and Raleigh, North Carolina.

We also visited two State highway departments to obtain their views on the bid-rigging scandal. We met with State

highway officials and attorneys general representatives to discuss bid rigging in their States and to find out what corrective actions had been taken.

We selected Virginia and North Carolina because: (1) many bid-rigging cases had been uncovered in these States and (2) the National Association of Attorneys General told us that the representatives of the offices of the Attorneys General in these two States were among the most knowledgeable on bid rigging in the Federal highway program.

Because the data needed to make reliable nationwide estimates of the pervasiveness and costs of bid rigging are generally not available, we did not pursue this issue.

## CHAPTER 2

### BID-RIGGING INVESTIGATIONS

Since 1979, the Antitrust Division of the Department of Justice and DOT's IG have been actively investigating highway paving contractors in about 20 States. According to Justice, investigations in 15 States have resulted in more than 200 criminal prosecutions involving both corporations and individuals. More than 90 percent of the completed cases have resulted in convictions, fines, and/or jail sentences.

#### RESULTS OF COMPLETED CASES

According to Justice, from December 14, 1979, through March 18, 1983, its Antitrust Division initiated 215 criminal prosecutions. These prosecutions involved 183 corporate defendants and 210 individual defendants in connection with conspiracies to rig bids on public highway and airport construction projects. The cases were in 15 States, and 174 cases were resolved through guilty pleas. These cases involved 148 corporations and 164 individuals. The courts have accepted nolo contendere (no contest) pleas for one case involving nine corporations and four individuals. Nine cases involving nine corporations and nine individuals are awaiting trial. In the 27 cases that have gone to trial, 13 corporations and 19 individuals have been convicted while 10 corporations and 16 individuals have been acquitted. The remaining four cases have been dismissed.

In total, fines of about \$44 million and jail sentences exceeding 44 years' actual incarceration have been imposed in these cases. Justice told us that these investigations are continuing with grand juries in 18 States and there is no end in sight. The investigations have been evolving from evidence gained in each case and, therefore, have expanded from State to State as the evidence dictated. They have not included several of the States that receive the largest amounts of Federal highway funds.

The following table shows, by State, the number of criminal cases, corporations indicted, and individuals indicted for conspiring to rig bids on public highway and airport construction projects between December 14, 1979, and March 18, 1983.

<u>State</u>	<u>Number of cases</u>	<u>Number of corporate indictments</u>	<u>Number of individual indictments</u>
Florida	11	9	5
Georgia	16	12	17
Iowa	3	3	4
Kansas	17	14	16
Nebraska	13	14	15
Kentucky	1	1	1
Maryland	4	3	1
Mississippi	2	2	1
North Carolina	38	25	40
Oklahoma	1	1	1
Pennsylvania	9	9	6
South Carolina	11	10	6
Tennessee	44	32	47
Texas	17	24	16
Virginia	<u>28</u>	<u>24</u>	<u>34</u>
Total	<u>215</u>	<u>183</u>	<u>210</u>

#### ESTIMATED COST OF BID RIGGING

Because of the many bid-rigging cases, the question is frequently raised: "How much additional cost resulted from bid rigging?" Our discussions with State and Federal officials disclosed that a precise answer to this question is not available. However, they generally agreed that bid rigging has resulted in additional costs for road construction and repair. Where bid rigging has been proven, they estimated the cost to be about 10 percent of the contract price. Various methods have been used to determine the cost of bid rigging when States negotiate settlements with contractors that have been convicted of or pleaded guilty to bid rigging. Additional information on the methods used and the settlements reached is shown on pages 20 and 21.

#### THE INTERDEPARTMENTAL BID-RIGGING INVESTIGATIONS COORDINATING COMMITTEE

In August 1982, Justice and DOT created a joint committee to coordinate antitrust investigations of bid rigging. The Committee's objective is to assist in the planning and direction of joint investigations of suspected bid rigging in construction programs financed wholly or partially with DOT funds. The Committee is composed of senior members of both departments and is cochaired by the Deputy Assistant Attorney General, Antitrust Division, and the DOT IG. FHWA, the Federal Bureau of Investigation, and the Federal Aviation Administration are also represented on the Committee.

The Committee plans to achieve its objective by

- disseminating investigative techniques,
- devising new investigative techniques,
- determining resource requirements,
- targeting States for future investigations, and
- maximizing State participation.

The Committee actions should result in investigations in most States that receive large amounts of Federal highway funds. Several of these States have not yet been included because the investigations have expanded from State to State based on the evidence obtained from ongoing investigations.

In February 1983, the Committee prepared a booklet entitled, "Suggestions for the Detection and Prevention of Construction Contract Bid Rigging." Justice advised that this booklet has been disseminated to State departments of transportation and State attorneys general.

#### FUTURE INVESTIGATIONS

DOT IG representatives told us that experience gained from completed investigations indicates that the period 1978-90 was the high point for bid-rigging activities. They said these activities began to taper off in 1980 when the indictments and convictions in Tennessee, Virginia, and the Carolinas were publicized. Because of the statute of limitations, the IG's office determined it was necessary to quickly start work in States that had received large amounts of Federal funds and had not yet been investigated. As a result, IG investigators are scheduled to conduct bid-rigging investigations in 20 to 25 more States during the next 2 years. As of January 7, 1983, investigations had already been initiated in 13 new States.

The IG prepared guidelines for use during these investigations. The guidelines are designed to reduce the amount of information that will be analyzed to make an initial determination concerning the likelihood of bid rigging within a particular State. The guidelines were developed using criteria or constants which were present in successful bid-rigging investigations. While this type analysis has proven useful, it only suggests where to look and is not sufficient to prove collusion. Thus far, the successful prosecutions have resulted from testimony of individuals directly involved in rigging bids.

These plans will involve a large commitment of investigative resources, including about 20 investigators from

the IG's office. The IG representatives believe these plans will reduce the time needed to perform these investigations.

An official of the Antitrust Division told us that if the investigations indicate that bid rigging has occurred in a State, then Justice will convene a grand jury to determine whether any contractors or officials should be indicted. This official also told us that the Antitrust Division plans to continue investigating bid rigging by following up on evidence gained in ongoing cases.

## CHAPTER 3

### ACTIONS TAKEN TO DETER BID RIGGING

Since the bid-rigging investigations began in 1979, many actions have been taken by DOT, AASHTO, and the National Asphalt Pavement Association to deter bid rigging. While no single action taken by these organizations will eliminate bid rigging, the concerted efforts of all involved should make it more difficult for contractors to rig bids. Following is a discussion of corrective actions taken.

#### DOT ACTIONS TO DETER BID RIGGING

Since late 1979, DOT has been aware of bid rigging on contracts for highway paving projects. Its actions to discourage this activity include

- improving FHWA's guidance on preparing and using engineering estimates,
- surveying State bidding procedures,
- using computers as an evaluation and investigative tool,
- debarring contractors convicted of bid rigging, and
- establishing a telephone "hot line" to receive calls from bid-rigging informants.

#### FHWA guidance in preparing and using engineering estimates

It should be possible to develop reliable engineering estimates because there is sufficient historical data on the cost of prior highway construction and repair projects. Engineering estimates are independently developed by State estimators. Before contracts are awarded, these estimates are used in a comparative evaluation of the bids. In December 1980, FHWA issued guidance for its division offices to use when reviewing bids before concurring in the States' award of contracts. FHWA refers to this guidance as a technical advisory.

Concerning the preparation of engineering estimates, the technical advisory recommended that the FHWA division offices maintain a file of previous bid prices by project line item according to type, size, and location. Another recommended procedure was to survey local market prices for labor, equipment, and materials. The advisory also recommended that divisions develop actual price trends by tracking recent contract awards to forecast future cost trends for upcoming work. The advisory also provides criteria for division offices' use when reviewing State proposals for contract awards to bidders that exceed the engineering estimate.

## Survey of State procedures

In December 1981, FHWA queried the States and its division offices on bidding procedures, use and disclosure of engineering estimates, and other contracting practices. FHWA prepared a report entitled "Bid Review and Evaluation State-of-the-Art." The purpose of this effort was to determine the current bid review and evaluation procedures of the State highway departments and FHWA division offices. Information gathered from the questionnaire was used to develop new guidance to inform these offices of methods available to improve or strengthen current bid review and evaluation procedures. Listed below are some questionnaire results.

- 39 States did not disclose the engineering estimates to potential bidders.
- 8 States did not release the names of potential bidders.
- 29 States had written debarment policies.
- 41 States maintained lists of qualified bidders.
- 39 States required potential bidders to complete prequalification statements.
- 14 States had taken actions to detect collusive bidding patterns.
- 13 States had taken actions to strengthen bid review and evaluation procedures.

During March through June 1982, a team from FHWA visited two States in each of its nine regions to study bid review and evaluation procedures. Both FHWA division and State highway department personnel were consulted. The information gathered on these visits was used to develop additional FHWA guidance on bid reviews and evaluations. The guidance was published in December 1982. It consists of many nonmandatory suggestions to strengthen contract administration policies and procedures. It discusses the following topics:

- Prebid considerations.
- Engineering estimates.
- Bid analysis and contract award.
- Postaward reviews.
- Debarment policy.

The guidance discusses steps that can be taken to stimulate competitive bidding and help division and State offices detect bid rigging before contracts are awarded.

### Use of computers

In September 1982, FHWA requested proposals for a study entitled "Development of a Computer Program To Detect Bidding Collusion." The proposed contract will last about 18 months and includes seven tasks, of which five are optional. FHWA expects a total of 39 staff-months to be expended on this effort. The work involves researching the existing data and computer facilities in five State highway departments. It also includes past and current work on detecting collusion and determining damages once collusion is proven. The winning contractor will develop a computer program for use by State highway departments to analyze past bidding, monitor future bidding, and alert the user to possible collusion or unusual bid patterns. At the option of FHWA, the contractor will provide consulting services to five State highway departments. FHWA received the proposals in October 1982 and plans to award a contract in the near future.

### Debarment of contractors

When a contractor is convicted of rigging a bid on a Federal highway project, FHWA issues its regional and division offices a notice of unacceptability for that contractor. This notice makes the contractor ineligible for contracts on highway projects financed with Federal aid funds for up to 3 years. In late 1981, FHWA prepared a list of unacceptable contractors. It distributes an updated version of that list to its regional offices each month. The regions distribute the list to division offices which, in turn, make the list available to the State highway departments. As of March 1, 1983, the list included 38 companies and 49 individuals that were identified as unacceptable.

DOT advised that since 1975, unacceptability actions have been taken against 104 companies and 96 individuals. It further advised that debarment regulations are being revised and final regulations are expected to be published within the next several weeks.

### Telephone "hot line"

On January 4, 1983, DOT announced it had established a telephone "hot line" as part of its continuing efforts to fight bid rigging. The "hot line" is to receive information from contractors, suppliers, or anyone with knowledge of bid-rigging activities. The telephone number is 800-424-9071 and is included in bid proposal packages for highway projects.

**ACTIONS TAKEN BY THE AMERICAN  
ASSOCIATION OF STATE HIGHWAY  
AND TRANSPORTATION OFFICIALS**

AASHTO, established in 1914, represents 52 highway departments from all the States as well as the District of Columbia and Puerto Rico. Its purpose is to foster the development, operation, and maintenance of a nationwide integrated transportation system for moving persons and goods in support of national goals and objectives. AASHTO has taken several actions to prevent or deter bid rigging on Federal and State highway projects.

In August 1981, AASHTO distributed to the States its "Suggested Guidelines for Strengthening Bidding and Contract Procedures." The guidelines, although not mandatory, present suggestions on prequalifying bidders and subcontractors as a means of identifying those individuals and organizations that are qualified to do the work.

The guidelines are divided into three sections. Subjects such as ownership and control of the firm, making false statements, engineer's estimates, competition, and debarment policy and procedures are covered in the first section. Section two includes suggestions on the acceptance of proposals, location of bid deposit boxes, and the opening and reading of bids. The third section deals with the audit and analysis of bids for antitrust violations and increasing competition by determining the most popular size and scope of various types of projects.

In May 1982, AASHTO and the National Highway Institute conducted an antitrust seminar for State attorneys general and highway department engineers. Subjects covered in the seminar included the historical perspective of bid rigging, discovery of violations, determining and computing damages to State and Federal Governments, trial preparation, the Federal Government's position, debarment and suspension procedures, and contractors' antitrust compliance program.

DOT advised that additional seminars on bid rigging had been held in Kansas and California.

AASHTO maintains and distributes to its members a list of contractors that have been debarred by the individual States. This information permits the States to avoid awarding a contract to a firm that has been debarred by another State or to take debarment action against a firm for antitrust violations committed in another State.

**INDUSTRY ASSOCIATION ACTIONS**

The National Asphalt Pavement Association represents the asphalt paving industry. The Association has about 860 members,

most of which are located in the eastern United States. During 1980, 1981, and 1982, the Association held 20 seminars on anti-trust law and the industry. Listed below are the dates and locations of the seminars.

August 15, 1980	Kansas City, Missouri
September 2, 1980	Little Rock, Arkansas
September 9, 1980	Tampa, Florida
September 15, 1980	Richmond, Virginia
September 18, 1980	Dallas, Texas
September 20, 1980	North Carolina
September 30, 1980	Atlanta, Georgia
October 8, 1980	Oklahoma City, Oklahoma
October 14, 1980	Charleston, West Virginia
October 23, 1980	Jackson, Mississippi
November 5, 1980	New Orleans, Louisiana
November 6, 1980	Baltimore, Maryland
November 11, 1980	South Carolina
November 24, 1980	Wichita, Kansas
December 8, 1980	Indianapolis, Indiana
December 16, 1980	Kansas City, Missouri
February 2, 1981	Harrisburg, Pennsylvania
March 25, 1981	Columbus, Ohio
June 19, 1981	Lexington, Kentucky
February 4, 1982	San Francisco, California

During the February 1982 annual meeting, the Association hired a prominent antitrust attorney to discuss the specifics of anti-trust violations and the Justice Department's attitude toward price fixing and bid rigging. The Association also discussed what role it could best perform in maintaining a healthy and competitive industry. The attorney recommended that the Association focus on countering the anticompetitive effects of the many debarments taking place in the industry and on improving the bidding procedures of the States.

In addition, the Association has developed reading materials and a film on antitrust violations which it has distributed to its members in an attempt to discourage collusion. The Association also has developed a code of ethics for its members which stresses competition and honesty as its goals and policies.

The Association believes that the entire asphalt industry should not be considered guilty of rigging bids. Despite all the convictions for bid rigging, the Association believes that the majority of asphalt paving contractors are honest.

## CHAPTER 4

### EXAMPLES OF THE STATES'

#### RESPONSES TO BID RIGGING

We visited North Carolina and Virginia to obtain information on and discuss the actions taken by State officials when bid rigging was uncovered on highway construction contracts in these States. We selected North Carolina and Virginia because Justice Department data showed both States had experienced many bid-rigging cases and their officials were knowledgeable about combating bid rigging.

Both States enacted legislation making bid rigging a felony and providing penalties. The States have adopted new procedures for handling the list of potential bidders. They have also taken actions to improve the engineering estimate of project cost and hired more estimators. They have taken steps to safeguard the engineering estimate so it is not accessible to contractors and have reached settlements with several guilty contractors. State officials told us all of the above responses are designed to thwart the crime of rigging bids.

While available records do not show the overall extent of bid rigging, indictments and convictions in most States where investigations were conducted indicate it was widespread and in some cases extensive. For example, in North Carolina, 24 contractors, which were awarded over 50 percent of the highway contracts from July 1975 to December 1979, were convicted of or pleaded guilty or no contest to rigging bids. Because both States responded to the bid-rigging scandal in their own ways, we have summarized their responses individually under separate captions.

#### NORTH CAROLINA

In North Carolina, investigations and testimony of guilty contractors disclosed that obtaining a list of potential bidders had helped them rig bids. The list allowed contractors to contact each other to determine which contractors were bidding and to arrange bid-rigging terms. This is the reason North Carolina no longer releases the list of potential bidders.

North Carolina considers the engineering estimate very important in determining whether to accept bids. The State uses its engineering estimate as a benchmark to evaluate bids. When the State's estimate was available to contractors that were rigging bids, it was used to determine the price contractors could charge without alerting the State to potential bidding irregularities. For example, if a bid-rigging contractor had the State's estimate and knew the State would accept a bid that

exceeded the estimate by no more than 10 percent, the rigged bids would be set accordingly. North Carolina has established new procedures to insure that the estimate is not available to contractors.

North Carolina established two new committees to improve its estimating process. The Engineer's Estimate Review Committee meets monthly to review the estimates and suggest ways to improve the estimating process. The Engineer's Estimate Audit Committee meets quarterly to audit the estimating procedures used and the estimates that were prepared. This committee reports its findings and recommendations directly to the North Carolina State Highway Administrator.

In addition, North Carolina is working to develop and increase the use of statistical analysis in its estimating process. It has hired two additional estimators to collect the data needed for this effort. The State is also working with a statistician from North Carolina State University to identify areas where statistical applications would be beneficial.

North Carolina's procedures for estimating, receiving, and reviewing bids have been thoroughly studied over the past 2 years. The State's Department of Transportation Internal Audit Section, the State Auditor's Office, and the Governor's Highway Contract Oversight Commission have conducted audits and studies.

Many suggestions for improvements also emerged from investigations by the State Bureau of Investigation and the Department of Justice.

In November 1980, the North Carolina Department of Transportation hired a consultant to review its contracting and estimating procedures and policies. The consultant developed 33 recommendations dealing with the engineering estimate, estimating personnel, use of computers in the estimating process, the bidding process, and contracting methods. The Department adopted several of the recommendations, such as increasing the number of estimators, putting all estimators in one section, eliminating bid pickup services, and trying new contracting methods. However, it did not adopt the consultant's recommendations to publish the engineer's estimate and list of potential bidders.

In June 1981, the Governor of North Carolina established a Highway Contract Oversight Commission to review the contracting procedures of the State's Department of Transportation. Several recommendations and suggestions were offered for improving the contracting process, including

--testing new types of contracts,

- considering the publication of the engineer's estimate,
- improving the estimating process,
- restricting publication of the list of potential bidders on a case-by-case basis,
- locating all bid deposit boxes on State property,
- allowing bidders to establish the maximum amount of work to be awarded to them at one bid opening,
- expanding working committees and forums with contractors to foster professional relations with them,
- continuing efforts to encourage bid competition,
- reviewing and analyzing bids to detect bidding irregularities, and
- continuing investigations and proceedings against all implicated contractors.

Before the bid-rigging disclosures, only the low bidder was required to sign an affidavit certifying that it had not colluded with others in preparing its bid. North Carolina now requires all bidders to submit such signed affidavits, or their bids will be considered nonresponsive.

North Carolina no longer provides a bid pickup and delivery service at the local hotel where paving contractors would meet before submitting bids. State officials believe that the gathering of contractors at the same hotel contributed to collusion. By providing the bid depository and delivery services, the State may have been unwittingly aiding the contractors that were rigging the bids.

In 1981, the North Carolina legislature passed a law making bid rigging a felony. A corporation convicted of rigging bids can be fined \$1 million and can be debarred from contracting with any governmental agency as either a prime contractor or subcontractor for up to 3 years. The law also provides that the court may direct the appropriate licensing board to suspend the convicted corporation's license for up to 3 years. Convicted individuals can be fined \$100,000 and given jail terms of up to 5 years. Also, a convicted individual may not serve on any contractors' licensing boards. In addition, the law provides recovery of treble damages from a party to bid rigging and provides up to 25 percent of the recovery to an informant. (See app. III.)

## VIRGINIA

Before July 1980, there was no criminal penalty for bid rigging in Virginia. Also, the State had few written rules governing debarment of contractors. The rules merely provided that it was against Virginia Department of Highways and Transportation policy to deal with parties that were guilty of antitrust violations.

On July 1, 1980, bid rigging was changed from a civil misdemeanor to a felony. The penalty is a \$5,000 fine and imprisonment for 1 to 5 years. Also, anticollusion certificates are now required for all bidders. The penalty for falsifying the certificate is a fine of \$1,000 and imprisonment for up to 12 months.

In March 1981, the Virginia Department of Highways and Transportation issued written policies and procedures for debarring contractors that violate antitrust laws. Debarment proceedings may be employed against any contractor that is convicted of bid rigging on any contract, public or private, or pleads guilty or no contest or is an unindicted coconspirator for any offenses indicating a lack of moral or ethical integrity. Debarment can be for a period of 36 months and can be extended for periods of 12 months, until the State believes a contractor meets the criteria of a responsible bidder.

In an effort to detect and deter possible bid rigging, Virginia has hired a consultant to help it identify potential bid-rigging cases. State officials believe that the key to stopping bid rigging is improving competition. Toward this goal, the State has adopted the AASHTO guidelines for strengthening bidding and contract procedures. The specifications used in its highway contracts have been simplified by removing jargon and other hard-to-understand language. This was done so that new contractors would not be at a disadvantage when competing with veteran contractors. Virginia has taken action to improve its engineering estimates. In addition, State officials told us that the estimating section has been expanded from two to seven employees and estimates are developed using actual costs instead of historical averages. Also, the State keeps engineering estimates under lock and key to prevent contractor access. Prequalification procedures have been strengthened so that more information is obtained on corporate officers and ownership and changes in officers and ownership. Another guideline adopted is that State employees no longer pick up bids from the local hotel where contractors gathered at bidding time and deliver them to the State highway department.

Virginia officials told us that by continuing to publicize the convictions of contractors, they hope to make State employees and contractors aware that bid rigging will not be

tolerated. The State has prosecuted those charged with bid rigging and debarred about 50 contractors.

### EXTENT OF BID RIGGING

The nationwide extent of bid rigging in highway construction contracts is unknown. The data necessary to develop a reliable estimate is not available on a nationwide basis. However, for some States, the extent of bid rigging can be estimated.

As an indicator of the pervasiveness of bid rigging in a State that has been working hard on the problem, the North Carolina Attorney General's Office noted:

"The general industry practice and rule was to 'rig highway bids' if they could be worked out and competitively bid only those highway projects which could not be worked out. The 'bidders list' was the blueprint which enabled the bid rigging to become so pervasive. Based upon those contracts of contractors that we have dealt with, for the period of July 1975 through December 1979, about 60 percent of all contracts awarded to those contractors were colluded. This amounted to approximately 40 percent of the dollar volume. Roughly, about three out of five of all contracts were colluded and about one out of three of all contracts over \$1 million were colluded."

Determining a reliable estimate of damages resulting from bid rigging is also difficult. Contractors have argued that the States have not been damaged because of bid rigging. However, prior experience of Virginia's antitrust attorneys and transportation officials in other States supported a practice of using 10 percent of the face value of a tainted contract as a good starting point for negotiating a damage settlement.

Virginia used the 10-percent guideline in its dealings with four contractors and settled for 6 percent of the face value of the tainted contracts, or \$1.2 million.

On the other hand, North Carolina selected three methods because it concluded that no single formula should be applied to all contractors that rigged bids. Some variables that North Carolina considered on a case-by-case basis include

- the extent a contractor cooperated with the investigation,
- the extent of profit or loss made on a tainted contract,
- the soundness of the contractor's financial position, and

--the adequacy of the contractor's accounting records to compute damages.

North Carolina selected the following four methods for determining its negotiating position on the amounts to be recovered from bid-rigging contractors.

1. 10 percent of the face value of the tainted contract.
2. One to three times the Federal fine.
3. Rigged contract profits less taxes and Federal fine.
4. 100-percent restitution for cash payments received for preparing complementary bids or not bidding.

Using these methods, North Carolina settled with 24 companies for a total of \$11,920,000. The following table shows the breakdown by method.

<u>Method</u>	<u>Amount of settlement</u>
1	\$ 232,000
2	1,600,000
3	8,300,000
4	a/ <u>1,788,000</u>
Total	<u>\$11,920,000</u>

a/This amount is estimated on the basis of the difference between the total and the sums of methods 1, 2 and 3.

#### PLANNED FUTURE RESPONSES

North Carolina believes the best protection against bid rigging is developing fair competition. The State is implementing different contracting procedures toward that objective.

A new concept involves grouping resurfacing projects into larger contracts to obtain better prices. This is called "clustering." Historically, resurfacing projects were priced in the \$200,000 to \$300,000 range. Clustering permits bids to be taken on an individual project or on a much larger group of projects under one contract. The group of projects increases the size of the contract to \$2 million or \$3 million. This larger contract is expected to attract more competition.

Sequential bidding is another concept that North Carolina analyzed as a possible means of increasing competition. Under this concept, on the day of the opening, bids are opened in a predetermined sequence. The bidders are permitted to establish

a ceiling on the total amount of work they will accept. When a bidder is successful on enough projects to reach its ceiling, subsequent bids from that bidder are disregarded. This enables a contractor to bid competitively on more projects than it can handle and yet have the assurance it will be awarded only the amount of work it can satisfactorily perform. The State expects to have this concept fully operational in the near future.

The North Carolina Department of Transportation is seeking changes to State laws that would allow it to explore, on a pilot program basis, other bidding methods, such as negotiated contracts.

Virginia officials told us that the key to controlling bid rigging is increased competition, developing accurate engineering estimates and comparing them to the bids received before contracts are awarded, and letting contractors know that bid rigging will not be tolerated by aggressively penalizing those convicted of rigging bids. Virginia plans to continue working in these areas where several corrective actions already have been initiated.

## CHAPTER 5

### CONCLUSIONS

The actions taken by the Justice Department in vigorously prosecuting contractors that have colluded to rig bids have focused attention on a nationwide problem that challenges the integrity of the competitive bidding process. The efforts of the DOT IG in instituting investigations in 20 to 25 additional States to preclude the expiration of the statute of limitations are commendable. FHWA's efforts to improve its guidance on reviewing contractor bids and proposals are appropriate. The vigorous corrective measures instituted by States like Virginia and North Carolina are also an important contribution to deterring bid rigging and recovering public moneys.

The actions taken by DOT, State highway departments, and others in response to the bid-rigging scandal should help deter bid rigging on current and future highway contracts. Because many actions have not been completed, it is too early to determine how effective these actions will be in deterring collusion. However, in our opinion, the actions taken were appropriate steps in trying to bring bid rigging under control.

As long as unscrupulous contractors believe they can corrupt the competitive bidding process to their own advantage, they probably will try to do so. While the industry may contend that the bid-rigging problem is now under control, government entities responsible for awarding contracts with public funds cannot relax their vigilance.

Because of the numerous actions taken or planned to deter bid rigging, we are not recommending additional actions.

### AGENCY COMMENTS

A draft of this report was reviewed by officials from DOT and Justice, AASHTO, and the National Asphalt Pavement Association. The comments received were considered in this report.

The officials generally agreed that the report accurately summarizes the bid-rigging scandals in the Federal highway program as they understand it. The written comments obtained from DOT and Justice are included on pages 38 to 45.

The National Asphalt Pavement Association advised it is concerned over the declining number of asphalt paving contractors resulting from smaller firms being unable to withstand debarment periods and being acquired by large companies. The Association pointed out that this could result in reduced competition on future highway contracts. While reduced competition may sometimes occur, we believe that debarment is an appropriate penalty for contractors convicted of rigging bids.

NOT advised that another action being taken by ~~xxxx~~ is an initiative to obtain the Federal share of restitution that bid riggers have paid to the States.

**JAMES J. HOWARD, N.J., CHAIRMAN**

ELLEN M. ANDERSON, CALIF.  
 ROBERT A. BOE, ILL.  
 JOHN B. BRENAN, LA.  
 NORMAN V. BRYANT, CALIF.  
 ELIJAH H. LEVYMAN, GA.  
 JAMES L. GIBBY, MISS.  
 HENRY J. DONAH, N.Y.  
 ROBERT W. EDGAR, PA.  
 MARLYN LLOYD BARNARD, TENN.  
 JOHN E. PARY, ILL.  
 ROBERT A. YENGE, MD.  
 ALLEN E. BITEL, PA.  
 BILLY LEE SWANE, GA.  
 RONNIE G. FLIPPO, ALA.  
 NECK JOE RAHALL, N. W. VA.  
 DONALD A. APPLEBATE, OHIO  
 DONALD W. ATCHISON, PA.  
 DONALD JOSEPH ALSOSTA, MISS.  
 WILLIAM HILL BENDER, TENN.  
 RON DE LUKE, VIRGIN ISLANDS  
 GUS SAHARE, ILL.  
 POPS L. P. GUNSA, AM. SAMOA  
 EDDY ROEMER, LA.  
 WAYNE DOWDY, MISS.  
 BARBARA B. KIDWELL, CONN.  
 BRIAN J. DONNELLY, MASS.  
 RAY ROBOVEREK, COLO.

DON H. CLARKE, CALIF.  
 GENE SWYDER, KY.  
 JOHN PAUL HANSEN-SCHMIDT, ARK.  
 BOB SMYTER, PA.  
 BARRY M. GOLDWATER, JR., CALIF.  
 TOM MAGEEDORN, MISS.  
 ARLAN STANESLAND, MISS.  
 NEWT GIBBERICH, GA.  
 WILLIAM F. CLINER, JR., PA.  
 GERALD S. H. SOLOMON, N.Y.  
 HAROLD C. HOLLERBACH, N.J.  
 M. JOSE DECKARD, IND.  
 WAYNE R. BRIDMAN, CALIF.  
 JOE JEFFERS, KANS.  
 JACK FIELDS, TEX.  
 GUY SOLIHAN, N.Y.  
 E. CLAY SHAW, JR., FLA.  
 BOB MC EWE, OHIO  
 FRANK WOLF, VA.

SALVATORE J. D'AMICO, SPECIAL  
 COUNSEL AND STAFF DIRECTOR  
 RICHARD J. SULLIVAN, CHIEF COUNSEL  
 CLYDE E. WINKLE, CHIEF ENGINEER  
 LARRY REIDA, MINORITY COUNSEL

**Committee on Public Works and Transportation**

**U.S. House of Representatives**  
 Room 2105, Rayburn House Office Building  
 Washington, D.C. 20515

TELEPHONE: AREA CODE 202, 225-4472

August 10, 1982

The Honorable Charles A. Bowsher  
 Comptroller General of the United States  
 General Accounting Office  
 441 G Street, N.W.  
 Washington, D. C. 20548

Dear Mr. Bowsher:

The alarming number of bid rigging scandals, investigations, indictments and convictions in the paving industry over the last several years is of great concern to this Committee. We are particularly concerned over the impact of such scandals on the highway program.

We have been advised by your staff that a direct request letter, separate and apart from any legislative requirement, would be conducive to an expeditious approach for GAO to address our concerns. Accordingly, I am requesting that the General Accounting Office conduct a full and complete investigation and study of competitive bidding practices with respect to highway and mass transit construction in the United States. The results of this investigation and study should be reported to this Committee within one year of this letter or of any legislative mandate.

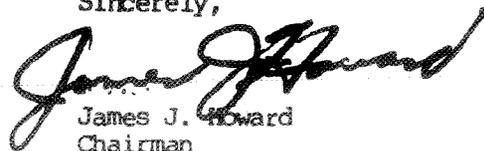
Specific concerns to be addressed should include, but not be limited to:

- how widespread and pervasive is the bid rigging;
- what methods and techniques are being used to rig bids;
- what are the costs and impacts of bid rigging; and
- what can be done to reduce or eliminate bid rigging.

Should you have any questions, please have your staff contact the Committee's Staff Director, Mr. Salvatore J.D'Amico (225-9532).

Every best wish.

Sincerely,

  
 James J. Howard  
 Chairman



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

PROCUREMENT, LOGISTICS,  
AND READINESS DIVISION

NOV 9 1982

The Honorable James J. Howard  
Chairman, Committee on Public  
Works and Transportation  
House of Representatives

Dear Mr. Chairman:

This is an interim reply to your August 10, 1982, request for a full and complete investigation and study of competitive bidding practices with respect to highway and mass transit in the United States. We have also met with your staff to discuss our work.

According to Department of Justice data, it has been actively investigating paving contractors in about 20 States. From December 14, 1979 through August 20, 1982, Justice's Antitrust Division initiated 177 criminal prosecutions involving 160 corporate defendants and 186 individual defendants in connection with conspiracies to rig bids on public highway and airport construction projects in 14 States. Over 140 cases, involving 117 corporations and 135 individuals, have been resolved through guilty pleas. Thirteen cases, involving 17 corporations and 18 individuals, are awaiting trial. In the 20 cases which have gone to trial, 10 corporations and 16 individuals have been convicted while 8 corporations and 11 individuals have been acquitted. In total fines of about \$37 million and jail sentences in excess of 37 years actual incarceration have been imposed in these cases to date. Justice indicates that these investigations are continuing with grand juries in 17 States, and there is no end in sight. Thus far, the investigations have been evolving from evidence gained in each case and have therefore expanded from State to State as the evidence dictated. The investigations have not included several of the States that receive the largest amounts of Federal highway funds.

On August 31, 1982, Justice and the Department of Transportation announced the formation of a joint committee to coordinate antitrust investigations of contract bid rigging. The committee will be comprised of senior managers of both departments. One of the responsibilities of the committee is recommending States or geographical areas for investigation. This change should result in investigations in States that receive substantial Federal funds for highway projects.

Officials of the Federal Highway Administration and the American Association of State Highway Transportation Officials have told us of their actions taken to deter or reduce bid-rigging in response to the indictments and convictions of many asphalt paving contractors. These actions include strengthening the procurement process and the current effort of the Federal Highway Administration in requesting proposals for the development of a computer program to detect bidding collusion.

Because of the continuing investigations by Justice and the actions being taken in response to the reports of the bid-rigging scandal, we believe our most effective contribution could be to prepare a report to you summarizing information on the following topics:

- Investigations conducted by the Justice Department concerning bid-rigging in the Federal Highway Program.
- Actions taken by the executive branch and others in response to the bid-rigging scandal and our assessment of their adequacy.
- Possible additional deterrents to discourage or reduce bid-rigging on future contracts.

Our goal is to provide you the report by March 1983.

Sincerely yours,



Donald J. Horan  
Director

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1981  
RATIFIED BILL

## CHAPTER 764

## HOUSE BILL 136

AN ACT TO REGULATE CONTRACTORS, SUBCONTRACTORS, AND SUPPLIERS IN DEALING WITH GOVERNMENTAL AGENCIES, AND TO MAKE COMBINATIONS IN RESTRAINT OF TRADE A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 133 of the General Statutes is amended by adding a new Article 3 to be entitled "Regulation of Contractors for Public Works", to be codified and to read as follows:

"§ 133-20. Definition.--(a) The term 'governmental agency' shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term 'person' shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term 'subsidiary' is used as defined in G.S. 55-2(9).

"§ 133-21. Government contracts; violation of G.S. 75-1 and G.S. 75-2.--Every person who shall engage in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of G.S. 75-1 and G.S. 75-2 shall be guilty of a felony under this section where the

combination, conspiracy, or other unlawful act in restraint of trade involves:

(a) a contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a governmental agency;

(b) a subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a governmental agency.

"§ 133-22. Conviction: punishment.--(a) Upon conviction of violating G.S. 133-21, any person shall be punished as a Class B felon. The court may also impose a fine of up to one hundred thousand dollars (\$100,000) on any convicted individual and a fine of up to one million dollars (\$1,000,000) on any convicted corporation. Any fine imposed pursuant to this section shall not be deductible on a State income tax return for any purpose.

(b) For a period of up to three years from the date of conviction, said period to be determined in the discretion of the court, no person shall be eligible to enter into a contract with any governmental agency, either directly as a contractor or indirectly as a subcontractor, if that person has been convicted of violating G.S. 133-21.

(c) In the event an individual is convicted of violating G.S. 133-21, the court may, in its discretion, for a period of up to three years from the date of conviction, provide that the individual shall not be employed by a corporation as an officer, director, employee or agent, if that corporation engages in

public construction or repair contracts with a governmental agency, either directly as a contractor or indirectly as a subcontractor.

(d) The court shall also have authority to direct the appropriate contractor's licensing board to suspend the license of any contractor convicted of violating G.S. 133-21 for a period of up to three years from the date of conviction.

"§ 133-23. Individuals convicted may not serve on licensing boards.--No individual shall be eligible to serve as a member of any contractor's licensing board who has been convicted of criminal charges involving either:

(a) a conspiracy in restraint of trade in the courts of this State in violation of G.S. 75-1, G.S. 75-2, or G.S. 133-21, or similar charges in any federal court or in any other state court;  
or

(b) bribery or commercial bribery in violation of G.S. 14-218 or G.S. 14-353 in the courts of this State, or of similar charges in any federal court or the court of any other state.

"§ 133-24. Suspension from bidding.--Any governmental agency shall have the authority to suspend for a period of up to three years from the date of conviction any person and any subsidiary or affiliate of any person from further bidding to the agency and from being a subcontractor to a contractor for the agency and from being a supplier to the agency if that person or any officer, director, employee or agent of that person has been convicted of charges of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges

in any federal court or a court of any other state.

A governmental agency may order a temporary suspension of any contractor, subcontractor, or supplier or subsidiary or affiliate thereof charged in an indictment or an information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of this or any other state until the charges are resolved.

The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency.

“§ 133-25. Civil damages; liability; release.--(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by W.S. 75-1 or G.S. 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into

the contract. The action shall be brought within three years of the date of accrual of the cause of action.

"§ 133-26. Reporting of violations of G.S. 75-1 or G.S. 75-2.--Any person having knowledge of acts committed in violation of G.S. 75-1 or G.S. 75-2 involving a contract with a governmental agency who reports the same to that governmental agency and assists in any resulting proceedings may receive a reward as set forth herein. The governmental agency is authorized to pay to the informant up to twenty-five percent (25%) of any civil damages that it collects from the violator named by the informant by reason of the information furnished by the informant. The information and knowledge to be reported includes but is not limited to any agreement or proposed agreement or offer or request for agreement among contractors, subcontractors or suppliers to rotate bids, to share the profits with a contractor not the low bidder, to sublet work in advance of bidding as a means of preventing competition, to refrain from bidding, to submit prearranged bids, to submit complimentary bids, to set up territories to restrict competition, or to alternate bidding.

"§ 133-27. Noncollusion affidavits.--Noncollusion affidavits may be required by rule of any governmental agency from all prime bidders. Any such requirement shall be set forth in the invitation to bid. Failure of any bidder to provide a required affidavit to the governmental agency shall be grounds for disqualification of his bid. The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency.

"6 133-28. Perjury; punishment.--Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class E felon.

"4 133-29. Gifts and favors regulated.--(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) has a contract with a governmental agency; or
- (2) has performed under such a contract within the past year; or
- (3) anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- (1) preparing plans, specifications, or estimates for public contract; or
- (2) awarding or administering public contracts; or
- (3) inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) preparing plans, specifications, or estimates for public contracts; or
- (2) awarding or administering public contracts; or
- (3) inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any

contractor, subcontractor or supplier or officers or employees thereof.

(d) . This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift.

"§ 133-30. Cost estimates; bidders' lists.--Any governmental agency responsible for letting public contracts may promulgate rules concerning the confidentiality of:

- (1) the agency's cost estimate for any public contracts prior to bidding; and
- (2) the identity of contractors who have obtained proposals for bid purposes for a public contract.

If the agency's rules require that such information be kept confidential, an employee or officer of the agency who divulges such information to any unauthorized person shall be subject to disciplinary action. This section shall not be construed to

require that cost estimates or bidders' lists be kept confidential."

Sec. 2. The second sentence of G.S. 75-1 is rewritten to read as follows: "Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy shall be guilty of a Class B felony."

Sec. 3. If any provision of this act or the application of it to any person or circumstances is held invalid, the invalidity does not affect any other provision of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. This act shall become effective 60 days after ratification and shall be prospective in its application.

In the General Assembly read three times and ratified, this the 2nd day of July, 1981.

JAMES C. GREEN

---

James C. Green

President of the Senate

LISTON B. RAMSEY

---

Liston B. Ramsey

Speaker of the House of Representatives

FEDERAL HIGHWAY PROGRAM  
STATUS AS OF JULY 31, 1982

<u>State</u>	<u>Number of projects</u>	<u>Obligations</u> (000 omitted)
Alabama	1,031	\$ 695,248
Alaska	281	294,066
Arizona	411	292,489
Arkansas	653	403,847
California	5,567	3,104,365
Colorado	672	445,299
Connecticut	1,110	614,535
Delaware	347	171,900
District of Columbia	516	205,061
Florida	1,442	1,595,650
Georgia	2,004	1,334,780
Hawaii	256	383,055
Idaho	485	207,375
Illinois	2,898	1,307,940
Indiana	1,794	430,371
Iowa	902	303,092
Kansas	1,096	390,658
Kentucky	1,656	703,909
Louisiana	1,089	874,998
Maine	549	104,101
Maryland	1,052	1,581,823
Massachusetts	693	743,295
Michigan	2,199	1,065,172
Minnesota	801	534,963
Mississippi	770	269,343
Missouri	1,197	651,953
Montana	885	256,905
Nebraska	773	218,670
Nevada	203	294,834
New Hampshire	404	122,037
New Jersey	1,679	752,254
New Mexico	509	400,356
New York	2,393	1,963,440
North Carolina	1,312	689,588
North Dakota	305	129,448
Ohio	1,874	1,084,833
Oklahoma	602	334,901
Oregon	851	610,491
Pennsylvania	5,344	2,626,869
Puerto Rico	326	124,420
Rhode Island	424	128,553
South Carolina	1,025	275,160

**APPENDIX IV**

<u>State</u>	<u>Number of projects</u>	<u>Obligations</u> (000 omitted)
South Dakota	549	147,252
Tennessee	1,550	540,307
Texas	1,521	1,634,677
Utah	671	376,681
Vermont	393	91,504
Virginia	1,159	739,019
Washington	1,605	1,116,084
West Virginia	841	1,048,725
Wisconsin	1,171	271,469
Wyoming	293	131,466
<b>Total</b>	<u><u>60,133</u></u>	<u><u>\$34,819,231</u></u>



## U.S. Department of Justice

APPENDIX V

April 12, 1983

Washington, D.C. 20530

Mr. William J. Anderson  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Anderson:

This letter will respond to your request for the comments and suggestions of the Department of Justice on the General Accounting Office (GAO) report entitled "Actions Being Taken to Deal With Bid Rigging in the Federal Highway Program."

Overall, we found this report to be very thorough, balanced and well written. Our comments and suggestions are primarily directed at certain material in the first two chapters.

In Chapter 1, pages 1 and 2, under the heading "What is Bid Rigging," the term bid rigging is generally described and several common forms of the practice are explained. We believe these examples and the explanation of what a complementary bid is could be described more precisely to conform to the Antitrust Division's (ATR) investigative experience. For example, three forms of bid rigging which were most commonly found in ATR's investigations involved (1) complementary bids, (2) schemes to allocate construction projects based on the proximity of projects to a contractor's plant ("territorial allocation schemes"), and (3) agreements between contractors involving monetary inducements in the form of cash payoffs or subcontract work that were reached in order to influence or control the bidding on certain projects.

While these descriptions are similar to those used in the report, they describe more precisely the nature and scope of activity embraced by various forms of bid rigging. The term "territorial bids" is really a misnomer for the allocation of projects in a geographical area for which bids were ultimately rigged. Under the antitrust laws, an allocation scheme, even if not carried out by submitting rigged bids, as well as an actual agreement to rig the bids, which is a form of price fixing, could constitute separate, independent offenses. The term "territorial bids" as used in the introduction (page 1), if read literally, does not describe an antitrust offense.

We also suggest a broader description to replace "payments to control the bidding" because this clause is too narrow to convey the scope of activity that was covered by the inducements contractors provided to each other to obtain cooperation in setting up projects. In fact, monetary inducements are a manifestation of bid rigging or an overt act undertaken in the course of implementing a bid rigging scheme; such inducements do not constitute bid

rigging per se. As used on page 1 of the report, the "payments to control the bidding" is used to mean only actual cash payoffs. This interpretation is supported by the additional explanation of the clause on the top of page 2. ATR's experience has shown, however, that while payoffs in cash occurred, the promise of subcontract work on the project being rigged or on some future project (in exchange for a complementary bid or refraining from bidding) was probably more common and more valuable to conspiring contractors than cash payoffs. For this reason, we suggest enlarging the description of this form of bid rigging.

Finally, on page 1, we had some difficulty with the explanation of the term "complementary bid." First, a company submitting a complementary bid does not necessarily agree to do so because it has no interest in the work; and second, this practice is not limited to creating the appearance of competition for another contractor so much as it is to insure that he is the low bidder. We suggest that this term be described more precisely to convey not only what a complementary bid is, but its purpose and motivation. For example, the term might be described as follows:

A complementary bid is a bid submitted on a project by a contractor pursuant to an agreement with others (contractor(s)) which is deliberately high and noncompetitive. Such a bid is designed to create the appearance of competition. Its purpose is to subvert the competitive bidding process by allowing a predetermined contractor (co-conspirator) to be the low bidder on the project for which the complementary bid is submitted. The motivation of a contractor who agrees to submit a complementary bid may vary depending upon the objective(s) of the conspirators. A contractor giving such a bid may have no interest in the job; he may be too busy at the time to do the work; he may not have the bonding capacity to bid the work even though he would like to do so; he might be interested in only a portion of the work and instead of bidding the entire project, elicit a promise of subcontract work in exchange for his non-competitive bid; or he might prefer a future project rather than the one presently being let for bids.

We believe that this definition provides more dimension to the term than the one in the report. It will educate the reader at a very early and important point in the report to the fact that bid rigging is engaged in for a variety of reasons and takes a variety of forms. It will emphasize the insidious effect of this practice, namely, that it corrupts and undermines the competitive bidding process and it will alert the reader to the subtle fact that bid rigging is not necessarily a one-dimensional crime.

Our remaining suggestions are relatively minor and focus primarily on how certain subjects are described. These suggestions may reflect more of a sensitivity on our part to the terms of art ATR discovered in its investigations and the characterization of certain behavior than any substantive shortcoming with the report. Nevertheless, our suggested revisions, which are underscored, are offered with the idea of refining certain descriptions:

- a. Page 2, An Example of How Highway Bid Rigging Takes Place, beginning with the second sentence:

The "real" bidding or conspiring is done the night before bid opening by means of illegal prebid conferences among the contractors. Usually through a series of telephone calls between hotel rooms and informal visits or rump sessions, the low bidder is determined and the other contractors learn how high to bid the job so that they do not "win." In return, the contractors selected to be the low bidders agree to bid high on other projects that were arranged to go to other bidders. The next morning the bids are submitted to the state highway department for public opening later in the day. In this way the conspiring contractors can artificially inflate their bids, spread the business among themselves, defraud the state and totally undermine the competitive bidding process.

- b. Page 3, beginning with the second sentence from the top:

Under this method, a firm with an asphalt plant located in the same county as the project often was allocated all of the highway projects in that county. In other words, conspiring contractors who otherwise might be able to compete for this work agreed to let a firm with a plant closest to the work be the designated low bidder on all projects in his "territory" (county). Before contract award . . . .

- c. Page 5, Sherman Act, beginning with the second sentence:

Section One of the Act contains a prohibition against conspiracies in restraint of interstate trade or commerce. A violation of this Act occurs when contractors agree to eliminate competition between or among themselves with regard to bidding for projects, i.e., allocating projects to each other. The following . . . .

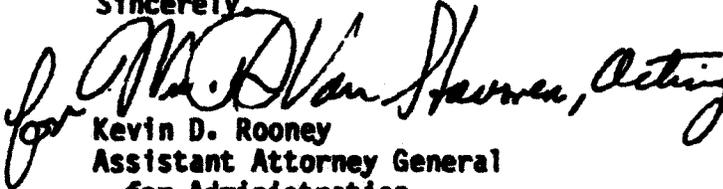
- d. Pages 11-12, Chapter 2, Investigations by the Department of Justice: Enclosed please find more current statistical data than that identified on these two pages of the report.
- e. Page 15, The Interdepartmental Bid Rigging Investigations Coordinating Committee. We suggest adding the following statement at the beginning of the last paragraph:

The Committee has already prepared a booklet entitled Suggestions for the Detection and Prevention of Construction Contract Bid Rigging which has been disseminated to state departments of transportation and state attorneys general.

A copy of the booklet is enclosed for your review and use.

We appreciate the opportunity to provide our comments and suggestions and hope they will be useful in finalizing the report. Should you desire to discuss further any of the matters presented in our response, please feel free to contact me.

Sincerely,

  
Kevin D. Rooney  
Assistant Attorney General  
for Administration

Enclosures

GAO note: Page references in this appendix refer to the draft report.



**U.S. Department of  
Transportation**

**Assistant Secretary  
for Administration**

**400 Seventh St., S.W.  
Washington, D.C. 20590**

**APR 20 1983**

**Mr. J. Dexter Peach  
Director, Resources, Community  
and Economic Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548**

**Dear Mr. Peach:**

**We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) draft report, "Actions Being Taken To Deal With Bid Rigging in the Federal Highway Program." dated March 15, 1983.**

**While the report did not contain any recommendations, we were asked to provide comments regarding its "factual accuracy." These comments are contained in our reply.**

**If we can be of further assistance, please let us know.**

**Sincerely,**

  
**Robert L. Fairman**

**Enclosures**

**DEPARTMENT OF TRANSPORTATION COMMENTS ON THE GAO  
DRAFT REPORT, "ACTIONS BEING TAKEN TO DEAL WITH  
BIDRIGGING IN THE FEDERAL HIGHWAY PROGRAM"**

1. **Federal Pro-Rata Share of Restitution Payments.** A significant initiative taken by FHWA is the effort to restore to Federal accounts the Federal pro-rata share of restitution paid by bidriggers to the States. Since the original overcharges on Federal-aid projects which were rigged involved some proportion of Federal-aid reimbursements, it is appropriate to return a share of the restitution payments made to the Federal accounts affected. The Comptroller General has recognized this right in a series of opinions, see 57 Comp. Gen. 577 (1978), 47 Comp. Gen. 309, and B-162539 (Oct. 11, 1967). Tennessee has sued to resist making such reimbursements. However, reimbursements have been paid, or negotiations are successfully proceeding, with the other States currently affected including North Carolina, Virginia, Illinois, Georgia, Florida, South Carolina, Texas, Nebraska, and Kansas. Recognition of this initiative might be appropriate on pages v, 19, and/or after 23.
  
2. **Bidrigging Investigations.** Throughout the draft report reference is made to bidrigging investigations conducted by the Department of Justice (DOJ) without mention of the Department of Transportation (DOT) Inspector General's (IG) participation in these investigations. Since these investigations were and are being conducted by the DOT IG and the DOJ, it is recommended that the report state that investigations were and/or are being performed by the DOT IG and the DOJ. Specific places in the report where these changes should be made are as follows:

<u>Page</u>	<u>Paragraph</u>
i	2
ii	2
iii	1
vi	2
8	1
11	1
14	1

3. **"Hotline" for Bidrigging Tips.** On page v of the report one of the actions identified as being taken by the FHWA is the establishment of a telephone "hotline" to receive bidrigging tips. Actually, this was an Office of the Inspector General (OIG) initiative in which the existing OIG "hotline" number was given wide publicity. It is recommended that this item be shown as an IG initiative on page vi rather than an FHWA action item on page v. Also, on page 23 of the report, as part of Chapter 3, Actions Taken To Deter Bidrigging, reference is made to the "hotline" as one of the DOT actions taken to deter bidrigging. Since the "hotline" was an IG initiative, it is recommended that the first paragraph of Chapter 3 on page 18 be revised in part to read as follows.

"... many actions have been taken by FHWA, DOT IG, AASHTO, and the National Asphalt Pavement Association to deter bidrigging."

4. **Number of Active Construction Projects.** In the first paragraphs on pages ii and 5 the report states that as of July 31, 1982, a total of about \$35 billion in Federal funds from several fiscal years was obligated for about 60,000 active projects. The 60,000 projects stated in the report include all projects authorized by FHWA, such as right-of-way, preliminary engineering, Section 18, and construction projects. Because only construction projects are let by competitive bids, it is recommended that only construction project totals be listed. For example, during 1979, 6,859 projects were awarded with a total contract value of \$8.6 billion. Also, along these lines, it is recommended that the table in Appendix IV to the report be revised to list only construction projects.
5. **Actions Taken to Deter Bidrigging**
  - a. On pages iv and 18 the report identifies actions taken by the FHWA and by DOT, respectively, to deter bidrigging. One item that should be added as another action taken is the issuance on December 17, 1982 of an FHWA Technical Advisory titled "Guidelines on Contract Procedures with Emphasis on Bid Reviews and Evaluation."
  - b. On pages v and 24 the report states that the guidelines suggesting ways for strengthening bidding and contract procedures which were prepared by the American Association of State Highway and Transportation Officials (AASHTO) were distributed to the States in October 1981. Actually, these guidelines which were developed by the AASHTO task force on estimating and bidding procedures were distributed to AASHTO member States on August 21, 1981.
6. **Common Forms of Bidrigging.** On page 1 under the section titled "What Is Bid Rigging", three common forms of bidrigging are identified. A fourth common form of bidrigging is "division of available work" and it is recommended that it be added to the report. Under this approach, firms predetermined the particular percent of available work each firm would receive for the year or else they divided on a rotational basis which firm would be the low bidder on the upcoming projects.
7. **Sherman Antitrust Act.** It is recommended that the first sentence of the second paragraph on page 5 be revised as follows:

"The Sherman Antitrust Act is the principal law used to convict contractors guilty of an illegal activity such as collusion".
8. **Bid Advertising Period.** At the top of page 7 under the section titled "Federal Review of Highway Projects", the report states that generally, the State allows 6 weeks for receipt of bids. The FHWA regulations in 23 CFR 635.107 require that projects be advertised a minimum of 3 weeks prior to the opening of bids. While the FHWA encourages the use of a longer advertising period for large and/or complex projects, the overall average length of the advertising period is closer to 4 weeks than the 6 weeks stated in the report.

9. **Actions Taken By AASHTO To Deter Bidrigging.** In the second paragraph on page 25 reference is made to an antitrust seminar conducted in May 1982 by AASHTO and the National Highway Institute. The report should also mention other bidrigging conferences in Overland Park, Kansas and most recently in Sacramento, California. These conferences were sponsored through the joint efforts of AASHTO and the National Highway Institute for the same purpose.
10. **Revision of Debarment Regulations.** Other action being taken that should be mentioned in the report is the revision of the debarment regulations applicable to Federal-aid contractors. The Department, acting with FHWA initiative and deep involvement, has proposed regulations (see 47 Federal Register 55700-8, December 12, 1982) which would tighten existing provisions and expand the range of authorized actions. Major proposals include application of debarments on a Department-wide basis, more clearly defining debarment authority against suppliers and affiliates, and authorizing suspension actions against firms and individuals upon indictment with only optional hearing. It is expected that final regulations will be published within the next several weeks. Notation of this action might be appropriate, at pages v, 19, and/or 23 of the report.
11. **Debarment of Contractors.** On page 23, the report states that as of January 1, 1983, the FHWA list of unacceptable contractors included 40 companies and 52 individuals. Recent figures on FHWA unacceptability actions indicate that as of March 1, 1983, some 38 companies and 49 individuals were unacceptable. Since 1975, unacceptability actions had been taken against 104 companies and 96 individuals. (These numbers are less than the number of convictions since many convictions did not involve a Federal-aid project and unacceptability jurisdiction was therefore unavailable).
12. **Federal Review of Highway Projects.** The first paragraph under "Federal Review of Highway Projects" on page 6 of the report could be misleading in implying some greater FHWA involvement in non-Federal-aid projects than is the case. To be more accurate, it is recommended that the third sentence of the paragraph be introduced with the phrase "To be eligible for Federal-aid participation" and that the noun "criteria" in that sentence be qualified with the adjective "design".

GAO note: Page references in this appendix refer to the draft report.