



Bid Rigging & Market Allocation Schemes: Recognizing Anticompetitive Activities

May 2, 2016

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The Competitive Process

- Massachusetts consumers have the right to expect the benefits of free and open competition, i.e., the best goods and services at the lowest prices.
- The competitive process only works when competitors set prices or bids honestly and independently.
- Consumers are cheated when competitors collude and inflate prices. Antitrust laws protect competition.
- When competitors agree to fix prices, rig bids or allocate customers or sales territories, consumers lose the benefits of competition.
- The result may be artificially higher prices, lower quality, or restricted access to goods or services.



Federal and State Antitrust laws prohibit:

- Agreements that unreasonably restrain trade, including:
 - Price fixing, bid rigging and market or customer allocation
 - Concerted refusals to deal (group boycotts)
 - Tying arrangements (I'll sell you this only if you agree to buy this as well)
- Monopolization (using your market power to engage in predatory or exclusionary conduct)





Antitrust Laws and Enforcement



- **Penalties For Violating Antitrust Laws Are Severe**
 - Companies can be fined hundreds of millions of dollars and individuals can receive prison sentences.
 - A company can lose its right to do business in the State.
 - A company may lose its opportunity to bid for federal or state contracts.



What Constitutes an “Agreement”

- Agreements between competitors need not be in writing.
- Can be implied from one’s conduct or a conversation (i.e., parallel behavior accompanied by other indicators).
- Most antitrust cases involve an agreement between the parties that has been inferred from circumstantial evidence supporting a conspiracy.





Bid Rigging

- Bid rigging occurs when competitors conspire to raise prices when purchasers, including state or local government, seek to acquire goods or services by soliciting competing bids.



Bid Rigging

- Bid Rigging is an illegal agreement that restrains trade
 - It may be either a criminal or civil offense
 - It raises costs for the public and wastes taxpayers' dollars
 - It compromises what should be aggressive competition for business from the government based on cost and quality



Types of Bid-Rigging Schemes

- Bid suppression – an agreement between competitors to either refrain from bidding or to withdraw a submitted bid so that a designated competitor's bid will be accepted.
- Complementary Bidding – also called “cover” or “courtesy” bidding occurs when one or more competitors agree to submit bids that are either too high to be accepted or contain special conditions that will not be acceptable to the purchaser. This includes situations where a competitor did not intend on bidding but agrees to do so to “help out” a competitor.
- Bid rotation – In this scheme all conspirators submit bids, but take turns on being the low or winning bidder.
- Subcontracting – Competitors agree not to bid or to submit a losing bid in exchange for subcontracts from the successful low bidder.



Examples of Bid-Rigging Cases Handled by Our Office

- A fire alarm company unsuccessfully attempted to corrupt the bidding process for fire alarm systems in a dorm construction process by trying to convince competitors not to submit bids. The company paid a \$7500 fine and in a separate DCAM administrative action was debarred from competing for public contracts.
- A pest control company obtained confidential information from a public official regarding the amounts bid by competitors bidding for a contract. Each participant paid \$5000 in penalties and \$2500 in costs.
- The Attorney General's Office and other states reached multiple settlements with entities who corrupted the municipal bond investment market by allowing certain bidders to know their competitors' bids before submitting final bids.
- The Attorney General's Office stopped a practice in an energy market where a consultant encouraged clients to coordinate prices and quantities bid.



Customer or Territorial Allocations

- An agreement in which competitors divide markets among themselves:
 - Competitors agree to allocate customers among themselves; or
 - Competitors agree to allocate sales territories or geographic markets.





DETECTING ANTICOMPETITIVE SCHEMES

THE ROLE OF THE PURCHASING AGENT IN ANTITRUST ENFORCEMENT

- Front Line Defense - purchasing agents are the front line defense against bid rigging.
- Those with experience in a particular area of purchasing often develop hunches about suspicious patterns of bidding.
- In effect, comparing actual bids received to what your experience tells you should be the theoretical norm can enable an astute purchasing agent to conclude that something may be amiss, and closer review of the bids is warranted.
- Additionally, in talking with company reps, purchasing agents may pick-up valuable information or tips indicating something may be amiss in the process.



Warning Signs: Conduct That Might Indicate Collusion

- Collusive agreements are difficult to detect as they are usually reached in secret.
- **Take any idle rumor or comment which might indicate collusion seriously.**
- Suspicious behavior to look for:
 - Same company repeatedly wins a type of procurement, particularly if coupled with repeat unsuccessful bidders;
 - Bidders winning on fixed rotations;
 - Fewer competitors than normal bid on a project;
 - Bidders offering bids outside of covered territory (potential cover bids);
 - Bids that are much higher than published list prices, previous bids by same firm or cost estimates;
 - Bidder withdraws bid and later awarded subcontracting work by winner;



Warning Signs: Conduct That Might Indicate Collusion (cont.)

- Suspicious behavior to look for:
 - Bidder that bids substantially higher on some bids than others, with no cost difference to account for disparity;
 - Bid prices drop whenever a new or infrequent bidder submits a bid;
 - Large dollar differential between the winning bid and other bids;
 - Similarities among bids from “independent” bidders (e.g., bid irregularities, common misspellings or typos, handwriting, typeface, stationery);
 - Bid or price documents contain white-outs/changes indicating last minute changes;
 - Bidder submits bid it is incapable of performing (possible cover bid);
 - Bidder comes to bid opening with multiple bids and only submits after determining who else will bid;
 - Suspicious statements made by bidder or salesperson;



Warning Signs: Conduct That Might Indicate Collusion (cont.)

- Suspicious behavior to look for:
 - Bidder that always bids high or frequently (Is this a cover bid or simply a company that wants to remain on the bid list?);
 - Joint ventures that could have been bid separately;
 - Groups of bidders that never bid against each other;
 - Qualified bidders that fail to bid;
 - Identification of conflicts of interest that were not disclosed.
 - Line items are close among certain bidders but one bidder is higher on a crucial item (thrown bid);
 - Vendor who bids some years but not others
 - Different groups of contractors appear to specialize in federal, state or local jobs exclusively;



Warning Signs: Conduct That Might Indicate Collusion (cont.)

- Suspicious behavior to look for:
 - A particular contractor always winning in a certain geographical area;
 - A contractor appears unwilling to cross a particular geographic boundary for no apparent reason.
 - Identical bid amounts on a contract line item by two or more contractors. Some instances of identical line item bids are explainable, as suppliers often quote the same prices to several bidders. But a large number of identical bids, or identical bids on any service-related item, should be viewed critically.
 - Contractors previously convicted of bid rigging in other states who are operating in the state under review.
 - The successful bidder repeatedly subcontracts work to companies that submitted higher bids on the same projects or that picked up bid packages but did not submit bids;



Prevention

- Prevention can take many forms, but examples that may be useful include:
 - Working with vendors with antitrust compliance programs
 - Prequalifying bidders on large contracts
 - Requiring bidders to identify partners, parties with whom they have joint ventures, and major subcontractors and suppliers.



How do I report any concerns?

- If you suspect that an antitrust violation may have occurred please let us know.
- Our contact information:

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