Vendor Collusion in Public Contracting
Detection and Reporting
Two broad categories of business behavior that violate federal/state antitrust laws:

• Unilateral or monopolistic

• Collusive
Unilateral or Monopolistic Behavior

• Single firm with market power
• Example: Microsoft found liable for using its market power in computer operating systems to keep others from even trying to compete for customers.
Collusive Behavior

- Agreements among competitors not to compete, or to otherwise restrict competition
- Examples: bid-rigging, price-fixing, market allocation
Collusive schemes, like most fraudulent and deceptive activities are, by their very nature, difficult to detect.
Vendors often have very convincing explanations for their behavior.
Bid-rigging conspiracies often involve feigned competition -- vendors dividing up the business into assigned territories or allocated customers, sometimes protecting each other with “sham” bids.
Case Study #1

The Attorney General’s antitrust litigation involving commercial casualty insurance
The conspiracy...

Major US commercial casualty companies
Agreed:

No competition for incumbent accounts
What if the purchaser questioned the premium increases or lack of other quotes?
Broker stepped in to gather sham or “B” quotes...
Roberta,

Please fax back this "fake" quote.

Thanks,

Nicole

Please send me an email with an unattractive premium,
Informed public purchasers

Early detection
It is especially important to keep your eyes open for possible bid-rigging when well-publicized grants or other funding sources become available for public projects.
So, what should you look for?
Three categories of red flags

1. Market conditions
2. Vendor behavior and physical clues
3. Patterns
Case Study #2

Antitrust litigation by the Ohio Attorney General’s Office involving...
SCHOOL MILK
1993 – Confessions by Two Dairy Executives:

- Rigged bids on milk sales to public schools in SW Ohio
- Agreed not to compete with incumbent
- Submitted sham bids
The Ohio Attorney General’s Lawsuit:

- 451 public school districts in SW, SE and NE Ohio
- 13 dairies
The School Milk case illustrates the first Red Flag of Collusion...
Red Flag: Market Conditions

Some market conditions make it easier to form, maintain, enforce or conceal collusive arrangements.
Several features of the school milk market made it especially susceptible to anticompetitive activities. First: Homogeneity or...
“Milk is milk!”
Product homogeneity means:

- Little difference between competing vendors’ products
- Vendors compete mostly on price.
Thus, homogeneous products are more susceptible to bid-rigging, and other forms of collusion.
Is demand elastic or inelastic?

Can you switch?
Inelastic demand makes sellers more confident that buyers will put up with increased prices resulting from collusion rather than switch to another product.
What were the schools’ alternatives to milk?
Competitors Frequently Interacting
Being friendly and social is not inherently wrong but...

It provides OPPORTUNITY!
Group of Available Bidders is Small and Stable
Nothing disrupts a conspiracy faster than a new seller entering the market!
The Second Red Flag of Collusion:
Vendor Behavior and Physical Clues
Even the craftiest vendor drops an occasional bread crumb that can lead to detection.
Vendor Behavior - Examples

• Vendor submits its own bid and that of a competitor
Vendor Behavior - Examples

• Vendor makes reference – verbal or written – that he/she won’t be bidding because…

“…this isn’t my territory.”
Vendor Behavior - Examples

• Vendor(s) refrain from bidding for no apparent reason, even when invited to bid
Vendor Behavior - Examples

• Vendor(s) continue to bid, even though they never win
Vendor Behavior - Examples

• Winning bid increases significantly and unexpectedly from one year to the next
Vendor Behavior - Examples

• A vendor charges higher prices to local customers than to distant ones (may indicate a fixed local market).
Look for Physical Clues in the Bids in Addition to Vendor Behavior
Last-minute changes to the bid:

- Whiteouts
- Other physical alterations of the bid amount
Similarities in the appearance of competitors’ bid materials:

- handwriting
- unusual typeface
- stationary
- fax information
- grammar, punctuation or math errors
Physical clues may be found on the envelope or other packaging...
Simple math can be a bid-rigger’s downfall...
Vendor #1:
Quantity: 8,400 gallons
Unit price: $4.50/doz. or $11.97/gal.
Total amount: $37,800

Vendor #2:
Quantity: 8,400 gallons
Unit price: $4.68/doz. or $12.45/gal.
Total amount: $39,312
Due to the *identical* math error...

- Vendor #1 bid $37,800 instead of $100,548
- Vendor #2 bid $39,312 instead of $104,580
If electronic records are available, always check the metadata.

Competitors’ bid documents should not have the same author!
Red Flag: Patterns

Collusion often causes patterns to form – bidding locations, winners, award of subcontracts, etc.
What patterns do you see in the following examples?
### Example 1

3 Years of Bid Results:

<table>
<thead>
<tr>
<th>Year</th>
<th>Knox County</th>
<th>Licking County</th>
<th>Coshocton County</th>
<th>Muskingum County</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>Company C</td>
<td>Company A</td>
<td>Company D</td>
<td>Company B</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>Company A</td>
<td>Company D</td>
<td>Company B</td>
<td>Company C</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>Company D</td>
<td>Company B</td>
<td>Company C</td>
<td>Company A</td>
</tr>
</tbody>
</table>
What’s the pattern?

Bidders taking turns:

“Bid rotation”
Example 2
2015 Bid Results:

△ = Company X

△ = Company Y
What’s the pattern?

The same vendors consistently win on either side of a geographic borderline that has no logical explanation.

Market allocation
Example 3 – Take a look at these bid results:

<table>
<thead>
<tr>
<th>County</th>
<th>2015 Winner &amp; Amount</th>
<th>2016 Winner &amp; Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Butler</td>
<td>Jones Co. - $100,000</td>
<td>Jones Co. - $160,000</td>
</tr>
<tr>
<td>Clermont</td>
<td>Jones Co. - $45,000</td>
<td>Smith Co. - $40,000</td>
</tr>
<tr>
<td>Greene</td>
<td>Smith Co. - $50,000</td>
<td>Jones Co. - $90,000</td>
</tr>
<tr>
<td>Hamilton</td>
<td>Smith Co. - $150,000</td>
<td>Wilson Co. - $180,000</td>
</tr>
<tr>
<td>Montgomery</td>
<td>Wilson Co. - $125,000</td>
<td>Smith Co. - $150,000</td>
</tr>
<tr>
<td>Preble</td>
<td>Wilson Co. - $75,000</td>
<td>Wilson Co. - $70,000</td>
</tr>
<tr>
<td>Warren</td>
<td>Jones Co. - $55,000</td>
<td>Smith Co. - $60,000</td>
</tr>
</tbody>
</table>
What’s the pattern?

Divided by geography?
No.
What’s the pattern?

Winners rotated in some orderly fashion?
<table>
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<th>2015 Winner &amp; Amount</th>
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<td>Smith Co. - $60,000</td>
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</table>
Let’s analyze these results using a different tool:
Total dollar amount awarded in 2015: $600,000
Total dollar amount awarded in 2016: $750,000

So, how much did each bidder win?
### 2015:

<table>
<thead>
<tr>
<th>Name</th>
<th>2015 Value 1</th>
<th>2015 Value 2</th>
<th>2015 Value 3</th>
<th>2015 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith</td>
<td>$50,000</td>
<td>$150,000</td>
<td>$200,000</td>
<td>$400,000</td>
</tr>
<tr>
<td>Jones</td>
<td>$100,000</td>
<td>$45,000</td>
<td>$55,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Wilson</td>
<td>$125,000</td>
<td>$75,000</td>
<td>$200,000</td>
<td>$225,000</td>
</tr>
</tbody>
</table>

### 2016:

<table>
<thead>
<tr>
<th>Name</th>
<th>2016 Value 1</th>
<th>2016 Value 2</th>
<th>2016 Value 3</th>
<th>2016 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith</td>
<td>$40,000</td>
<td>$60,000</td>
<td>$150,000</td>
<td>$250,000</td>
</tr>
<tr>
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<td>$160,000</td>
<td>$90,000</td>
<td>$250,000</td>
<td>$400,000</td>
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<td>$70,000</td>
<td>$180,000</td>
<td>$250,000</td>
<td>$400,000</td>
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</table>
What’s the pattern?

All bidding companies end up winning the same amount of work over a series of bids.
The more elaborate the pattern, the harder it will be to detect.

One bid rotation scheme determined the winning bidder by ...
The phases of the moon!
If bidding behavior doesn’t seem to make good sense for a vendor, collusion is a possible explanation.
Bottom line: It’s hard to tell the good guys from the bad guys.
So, what is the best barometer of possible collusion?
Your “gut” feelings about…

- Odd vendor behavior;
- Unexplained pricing anomalies;
- Bid results that just don’t seem to make sense.
If something in the bid file doesn’t look or smell right, report it!

Call the Ohio Attorney General’s Antitrust Section.
What else can you do to help deter and detect collusive activities by vendors?
Encourage your agency or political subdivision to sign up for the Attorney General’s Partnership for Competitive Purchasing
What do you need to know about the Partnership?

1. It is strictly voluntary.
2. There is no cost to the public entity for registration or on-site review.
3. Registrants can withdraw at any time.
4. Twice a year, an entity will be selected for an on-site review, and **NO ENTITY** will be selected more frequently than once every **FIVE YEARS**.
5. Selected registrants may defer review if resources are limited.
6. Limited number of products or services (determined in advance); Time period: five years or less.
7. Attorney General’s team will be on-site for no more than 5 days. We’ll need:

• Access to a person knowledgeable about the purchasing process,

• Ability to make photocopies if necessary.
8. Following the review, the public entity will receive:

- The results
- Tips for further safeguarding the bid process from unscrupulous vendors.
9. The review may lead to an investigation of the vendor(s) by the Attorney General’s Office, which may ultimately result in a recovery of the money the public entity was overcharged.
QUESTIONS?

Call Attorney General DeWine’s Antitrust Section
How to contact us

Ohio Attorney General
Antitrust Section
150 E. Gay Street, 22nd Floor
Columbus, OH 43215

Section Main Line: 614-466-4328