



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

PROTECTING A FREE AND FAIR MARKET

Antitrust Review Program

WHEN COMPETITORS DON'T COMPETE

Government entities can be victimized unknowingly by anti-competitive activity when they seek bids for public projects.

Bidders sometimes illegally communicate or collude with each other during the competitive bidding process. The Ohio Attorney General's Antitrust Review Program helps local governments protect themselves and taxpayers from this type of activity.

Below are specific examples of anti-competitive activity.

Price Fixing: When competitors for a contract agree on a price or other financial terms for their products.

How to spot it:

- Prices remain identical for long periods of time.
- Prices go up, but those increases don't seem to be caused by inflation or increases in the costs of materials.
- Prices are different in different places for no apparent reason.
- Vendors announce unusually similar price increases almost simultaneously.

Bid Rigging: When competitors agree on which firm will submit the winning bid for a project.

There are different forms of bid rigging:

BID SUPPRESSION: When one or more competitors agree to clear the way for a designated bidder to win a contract.

How to spot it:

- The same company always wins a particular type of bid in a certain geographic area.
- Unusually few competitors submit bids.
- Qualified bidders refuse to bid.
- After withdrawing a successful bid, a company is awarded subcontracting work by the new winning bidder.

COMPLEMENTARY BIDDING: When bidders submit bids that obviously are too expensive or are riddled with unrealistic special conditions. In other words, these are bids that bidders know will be rejected.

How to spot it:

- A company repeatedly bids significantly higher on some bids than on others.
- A bid is much higher than published price lists, a previous bid by the same firm or engineering cost estimates.
- Entry of a new or infrequent bidder causes bid prices to drop.
- A bidder subcontracts work to competitors who submitted unsuccessful bids on the same project.

BID ROTATION: When competitors take turns submitting the lowest bid on projects.

How to spot it:

- A different bidder wins a contract each time.
- The same bidders continually submit bids and appear to take turns winning each time.

Market Division: When competitors divvy up customers or geographic areas and agree to stay away from one another's markets or customers.

How to spot it:

- Bidders refer to an "area" or "territory" (e.g., "I can't bid on your project because you're not in my territory.")
- Qualified bidders refuse to bid.

If you notice any of these practices or any other suspicious contracting conduct, please contact the Antitrust Section at **614-466-4328**.

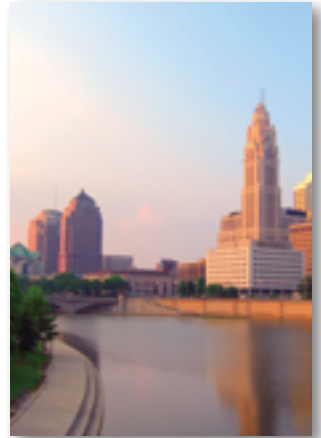
HOW TO PREVENT ANTI-COMPETITIVE ACTIVITY

The best way for an entity to protect itself from anti-competitive activity is to take the following precautions:

- Maintain a list of effective bidders and solicit bids from as many competitors as possible.
- Require bidders to identify partners, subcontractors and joint ventures in their bids.
- Require non-collusion affidavits with every bid.
- Ask bidders to explain and justify their prices if something looks unusual.
- Retain bid and purchase records for at least five years to allow for review.
- Do not reveal the names of prospective bidders or cost estimates before awarding the contract.
- Register to participate in the Attorney General's Antitrust Review Program and report any suspicious activity to our office.

HOW WE CAN HELP

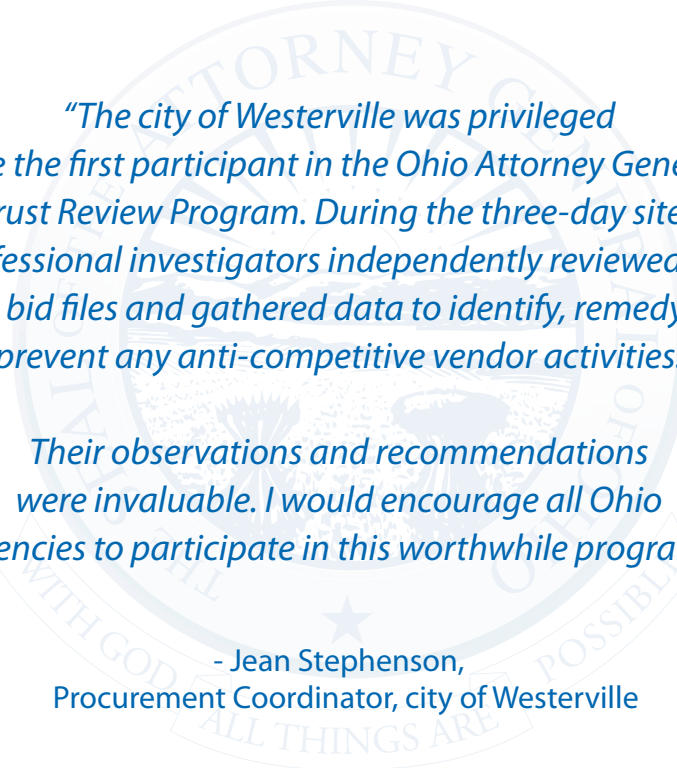
The Antitrust Review Program identifies and prevents anti-competitive activities that hurt public entities and taxpayers. Because anti-competitive schemes such as bid-rigging and price-fixing may be carefully and cleverly concealed, our staff is trained to spot questionable activity that may go unnoticed by even the most astute public purchasing officials.



The Antitrust Review Program is voluntary. Any state agency, government entity or political subdivision may participate by registering with the Attorney General's Office online at www.OhioAttorneyGeneral.gov/Antitrust or by calling the Antitrust Section at **614-466-4328**. The Antitrust Review Program is free for public entities. At least once per quarter, attorneys from the Attorney General's Antitrust Section schedule an on-site antitrust review of a selected public entity. Entities that believe they have evidence of anti-competitive activity may be given priority.

If selected, participants will be asked to make available bid documents and purchase records for the preceding several years. Our antitrust attorneys will work on-site to analyze purchasing documents for signs of anti-competitive activity. Sufficient evidence of these signs may lead to formal investigation of the contractor(s). Wrongfully used funds may then be recovered for that government body.

This analysis is not an audit, but a way for public officials to be certain that they are the best possible stewards of government funds.



“The city of Westerville was privileged to be the first participant in the Ohio Attorney General’s Antitrust Review Program. During the three-day site visit, professional investigators independently reviewed the city’s bid files and gathered data to identify, remedy and prevent any anti-competitive vendor activities.

Their observations and recommendations were invaluable. I would encourage all Ohio agencies to participate in this worthwhile program.”

*- Jean Stephenson,
Procurement Coordinator, city of Westerville*



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