



PROCUREMENT FRAUD: GOVERNMENT VULNERABILITY TO COLLUSIVE PRACTICES

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*The views expressed herein are not purported to reflect those of
the United States Department of Justice.*

THE HISTORICAL PERSPECTIVE

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”

– Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776





CARTEL MEETING | MAUI, HAWAII
MAR. 10, 1994



**HOW DOES
ANTITRUST
AFFECT
GOVERNMENTAL
OPERATIONS?**

Why are you here?

Why am I here?

**Why does this matter to
me and my organization?**



- **Large consumers of goods and services**
- **Frequent targets of antitrust criminal conspiracies**
 - School bus service
 - Municipal tax liens
 - Kickbacks, rigging of subcontracts at Superfund site
- **Procurement Process**

THE SHERMAN ACT

- “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”
- Prohibits agreements among competitors in restraint of trade or commerce.
- Price fixing, market allocation, and bid rigging are all criminal violations.



MAXIMUM CRIMINAL PENALTIES

- **Individuals**

- 10 years imprisonment;
and/or
- \$1,000,000

- **Corporations**

- \$100,000,000, twice
the gain, or twice the
loss, whichever is more



ADDITIONAL STATUTES ENFORCED: GENERAL FRAUD

- **Mail Fraud, 18 U.S.C. § 1341**
- **Wire Fraud, 18 U.S.C. § 1343**
- **Conspiracy to Commit Mail/Wire Fraud, 18 U.S.C. § 1349**
- **Conspiracy to Defraud, 18 U.S.C. § 371**
- **Aiding and Abetting, 18 U.S.C. § 2**



ADDITIONAL STATUTES ENFORCED: FRAUD AGAINST THE GOVERNMENT

- **Bribery of a Public Official, 18 U.S.C. § 201**
- **False Claims against the Government, 18 U.S.C. § 287**
- **Tax Fraud, 26 U.S.C. § 7201**
- **Theft/Bribery on Federally Funded Programs, 18 U.S.C. § 666**
- **Major Frauds, 18 U.S.C. § 1031**



ADDITIONAL STATUTES ENFORCED: RELATED TO THE INVESTIGATION

- **Perjury, 18 U.S.C. § 1621**
- **Subornation of Perjury, 18 U.S.C. § 1622**
- **Obstruction of Justice, 18 U.S.C. § 1503, 1510, 1512**
- **False Statements to the Grand Jury, 18 U.S.C. § 1623**
- **Witness Tampering, 18 U.S.C. § 1512**



CONDITIONS FAVORABLE TO COLLUSION

Where does this
happen?

- **Few sellers or buyers**
- **No readily available substitutes**
- **Standardized product—commodities**
- **Vendors repeatedly sell to same buyers**
- **Competitors have frequent contact**



THREE CRIMINAL AGREEMENTS

- **Price Fixing**
- **Bid Rigging**
- **Market Allocation**



PRICE FIXING

What is it?

An agreement:



- To raise, lower, or maintain prices
- Not to negotiate on price
- To limit discounts, rebates, or promotions
- On price formulas, price sheets, or guidelines

PRICE FIXING: AN EXAMPLE

- **A:** “Will you agree to raise your price for salted peanuts to \$1.99 a pound?”
- **B:** “Yes. Let’s raise the price at noon tomorrow.”



PRICE FIXING: THE INDICATORS

- ❏ **Competitors raise prices simultaneously**
- ❏ **Competitors eliminate discounts simultaneously**
- ❏ **Competitors refer to “industry-wide” prices or “industry price schedules”**
- ❏ **Price increase announcements similarly phrased or contain common errors**



BID RIGGING

What is it?

An agreement:

- **Bid Rotation**
 - Competitors agree to take turns being the low (winning) bidder
- **Bid Suppression**
 - Competitor agrees not to bid
- **Complementary Bid**
 - Competitor agrees to bid high

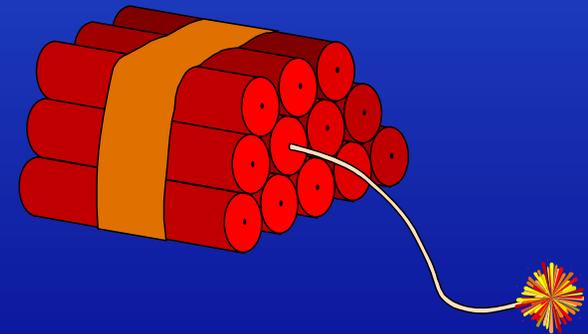


BID RIGGING: AN EXAMPLE

A: “I’d like to win the bid to demolish the Water Street Bridge. If I get the job for \$850,000, I can make some good money. Can you submit a comp bid?”

B: “**Sure. I’ll come in at \$900,000 if you’ll let me have the next one.**”

A: “Okay. I’ll plan on it.”



BID RIGGING: THE INDICATORS

- ❏ **Rotation of winning bids among competitors**
- ❏ **Same firm wins bids over time**
- ❏ **Losing firm receives sub-contract award**
- ❏ **Bid prices for all companies suddenly increase with no logical cost explanation**
- ❏ **Similarities in the actual bids--common errors, postmarks, fax numbers**



BID RIGGING: AN EXAMPLE OF PRODUCT ALLOCATION

Product One

Firm A \$10.00

Firm B \$12.00

Firm C \$13.00

Firm D \$14.00

Product Three

Firm C \$10.00

Firm D \$12.00

Firm A \$13.00

Firm B \$14.00

Product Two

Firm B \$10.00

Firm C \$12.00

Firm D \$13.00

Firm A \$14.00

Product Four

Firm D \$10.00

Firm A \$12.00

Firm B \$13.00

Firm C \$14.00



ALLOCATION SCHEMES

What are they?

An agreement:

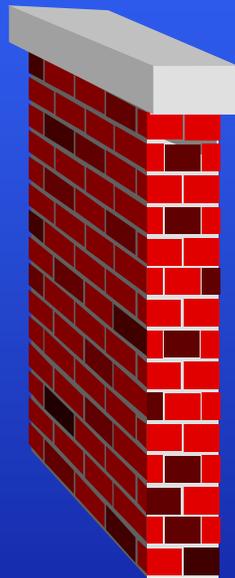
Not to compete for specific:

- Territories
- Customers
- Products
- Volume



ALLOCATION SCHEMES: AN EXAMPLE

- A: “We’re beating each other up, B. I’ll agree to stay out of the masonry jobs in Jonesville if you agree to let me have Smithville.”



B: “Sounds good. I’ll take Jonesville and you can have all the business in Smithville.”



ALLOCATION SCHEMES: THE INDICATORS

- ❏ **Competitors suddenly stop selling in a territory**
- ❏ **Competitors suddenly stop selling to a customer**
- ❏ **Competitor refers customers to other competitors**



ANTITRUST CASES

**Where do they come
from?**

What are the sources?



- **Employees**
 - Current, Former
 - Relatives
- **Suspicious patterns & incriminating remarks—
spotted by**
 - Customers
 - Purchasing Agents
 - Contracting Officials
 - Auditors
 - Law enforcement & investigators

ANTITRUST CASES

Where do they come
from?

What are the sources?



- **(Uninvolved) Competitors**
 - Invited into conspiracy
 - Industry talk about conspiracy
- **Corporate Leniency Program**

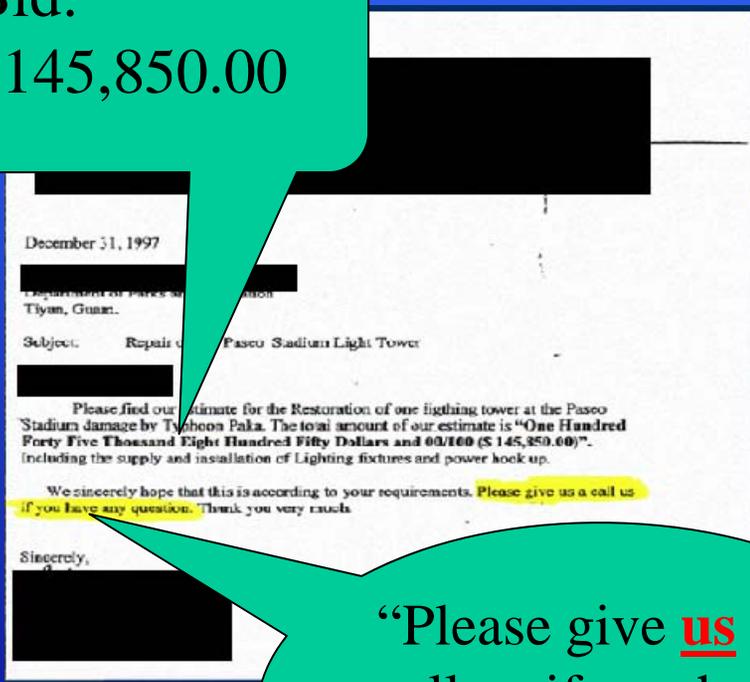
DETECTING ANTITRUST CRIMES

- **Similar handwriting, typeface, stationery, email address**
- **Last-minute changes – white-outs, physical alterations to prices**
- **Vendor picks up an extra bid package for another vendor OR submits a competing vendor's bid**

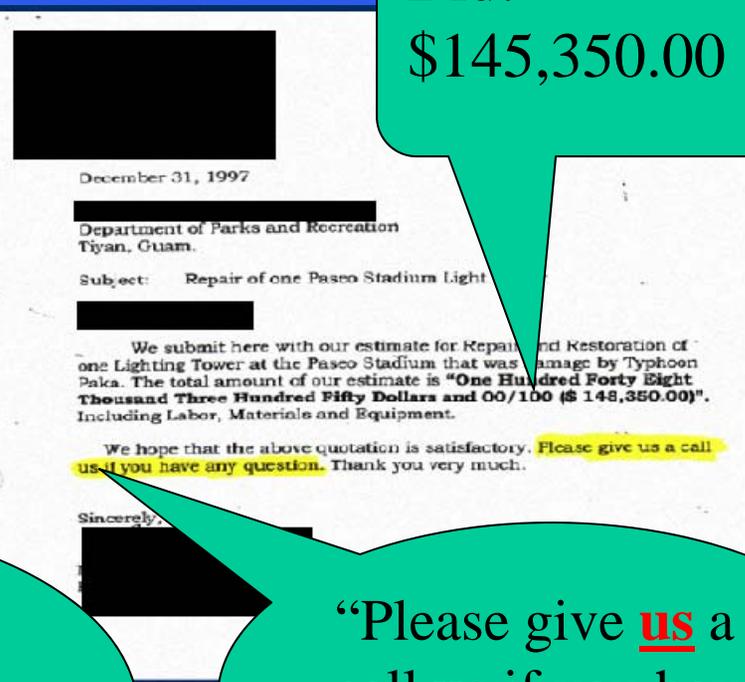


DETECTING ANTITRUST CRIMES: SIMILAR ERRORS SUBMITTED BY “COMPETITORS”

Bid:
\$145,850.00



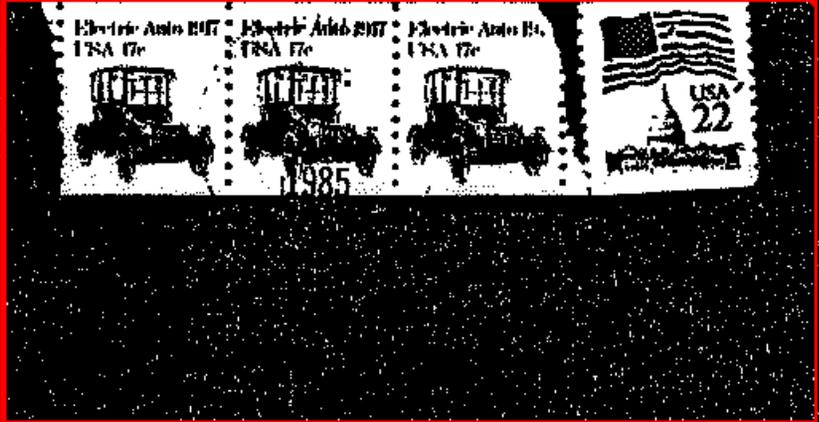
Bid:
\$145,350.00



“Please give us a call us if you have any questions.”

“Please give us a call us if you have any questions.”





THE LOGISTICS AGENCY
THE PERSONNEL SUPPORT CENTER
SOUTH 20TH STREET
OFFICE BOX 8059
PHILADELPHIA, PA 19101-8059



ANTITRUST IN THE DIGITAL AGE

- **Same basic fraudulent conduct**
 - E-commerce: Recent case regarding agreement to fix prices using pricing algorithms
- **Other flags of possible collusion:**
 - Metadata & IP addresses
 - Copy-paste errors, identical misspellings, identical typos
 - Same math errors, formulas in spreadsheets



DETECTING ANTITRUST CRIMES: SUSPICIOUS PATTERNS

- **Vendors take turns as the winning bidder**
- **Winner subcontracts out work to losing bidders**
- **It all evens out**
- **The same guy always wins—or loses**
- **Unusually high bids from all bidders**
- **Fewer than normal number of bidders**



DETECTING ANTITRUST CRIMES: SUSPICIOUS BEHAVIOR

- **No-Chance Bidder**
 - Bids submitted by vendor known to lack ability to perform.
- **Betting Bidder**
 - Vendor brings multiple bids to an opening or submits bid once other bidders are determined.
- **Loud-Mouth Bidder**
 - Suspicious statements.



CORPORATE LENIENCY POLICY

- **Corporations: no criminal charges**
 - Formal, written policy
- **Open to one corporation per conspiracy**
- **Two types**
 - Part A – no investigation
 - Part B - open investigation
- **No treble damages, no joint & several liability in civil cases**



For more information, *see* <http://www.justice.gov/atr/public/criminal/leniency.html>

GENERAL REQUIREMENTS FOR LENIENCY

- **Full cooperation**
- **Restitution commitment**
- **Not leader/organizer**
- **Admission of criminal conduct: corporate act**
- **Terminate participation, upon discovery, in the cartel**



WHAT YOU CAN DO TO DISCOURAGE COLLUSION

- **Examine bid files**
 - Same phrasing
 - Same return address
 - Same price calculations or errors
- **Listen & report!**
- **Effective compliance programs**
 - For more information, *see U.S.S.G.*, Chapter 8; DAAG Brent Snyder's speeches, *Leniency in Multi-Jurisdictional Investigations: Too Much of a Good Thing?* (June 8, 2015), and *Compliance is a Culture, Not Just a Policy* (Sept. 9, 2014)



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