



**MIKE DEWINE**  
★ OHIO ATTORNEY GENERAL ★

# COMPETITION MATTERS

Fostering Fair Competition in the Marketplace



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## [Changes to Ohio's Antitrust Law – What Public Purchasers Need to Know](#)

Changes to Ohio's antitrust law, the Valentine Act, took effect on April 6, 2017. This edition of "Competition Matters" outlines the changes most likely to impact public purchasers.

### **1. Public-record exemptions**

Newly-added section 9.28 of the Ohio Revised Code applies to all public entities and exempts competitive bidding materials from the definition of a public record under Ohio's public records law before a contract is awarded. This provision applies to re-bid projects as well, and therefore it protects against disclosure of competitively-sensitive information if a project is re-bid.

Because public entities are no longer obligated under the public records laws to disclose such materials until the contract is awarded, unscrupulous vendors will be deprived of what was formerly an easy method of learning whom to contact in order to solicit a potential conspiracy.

### **2. Attorney General investigation disclosure exemptions**

Another important change to the Valentine Act relates to the public disclosure of information that the Ohio Attorney General's Office receives during an investigation. Previously, only information submitted in response to a subpoena by the Ohio Attorney General's Office had statutory protection under the state's antitrust law. Now, Ohio Revised Code (ORC) Section 1331.17 exempts from public disclosure any information received during an investigation by the Attorney General's Antitrust Section. As such, it will encourage voluntary cooperation by third parties and protect investigative targets from premature public scrutiny while an investigation is in progress.

### **3. Addressing conspiracies where vendors solicit public employees**

Until recently, the Valentine Act did not directly speak to situations where a vendor solicits the assistance of a public employee to rig a public bid or to otherwise circumvent a competitive procurement process. The Ohio General Assembly's revisions to ORC 1331.01 are designed to remedy this problem. The statute now declares such conspiracies to be violations of state antitrust law, and it provides the Ohio Attorney General with an important tool with which to upend these anticompetitive agreements involving taxpayer funds.

#### 4. Changes to criminal penalties

Other notable changes to the Valentine Act relate to criminal penalties. ORC 1331.99 enhances the penalties for violating the act from a first degree misdemeanor to a fifth degree felony. Moreover, if any of the following apply, the penalty is further enhanced to a fourth-degree felony: (1) the amount of the contract, or sale of goods or services, is \$7,500 or more, (2) the conspiracy relates to the sale of goods or services to or from a local, state, or federal governmental entity, or (3) the contract or sale of goods or services involves funding to or from a local, state, or federal governmental entity. The purpose of these revisions is to deter anticompetitive behavior that harms Ohio's consumers, especially when it impacts taxpayer-funded purchases.

The 2017 revisions to the Ohio Valentine Act launch a two-pronged attack on anticompetitive behavior in Ohio. They are designed to deter would-be wrongdoers from committing the violations in the first place and to better enable the Ohio Attorney General to bring actions when violations do occur.

#### [Canadian City's Procurement Woes Are Good Reminders for All](#)

In March 2017, the auditor general for the city of Toronto, Canada, issued a report titled "Detection of Warning Signs for Potential Bid Rigging Should be Strengthened." The report sounded the alarm that many red flags of collusion were present in the city's road paving procurements but were being ignored.

Some of those red flags were: domination of the city's paving contracts by a small and unchanging group of contractors; last-minute alterations to bids; sharp, unexplained price increases; and losing bidders being hired as subcontractors by winning bidders.

The Toronto paving contract irregularities have been turned over to Canadian law enforcement for investigation. Regardless of the outcome, the recommendations contained in the auditor general's report provide sound advice for every public entity. Those recommendations include:

- Maintain a robust and accurate database of bids, bidders, and subcontractors to aid in the detection of anticompetitive activity impacting the procurement process.
- Offer training on bid-rigging and other forms of collusion to all members of the procurement staff.
- Refrain from revealing the identities of prospective bidders who pick up bid packets. (Note: As reported in this edition of "Competition Matters," recent changes to Ohio's public records law permit Ohio public entities to take this advice.)
- Provide training and/or clear instructions to all public entity personnel on conflict-of-interest policies.
- Enhance the internal quality-control and testing processes as they relate to progress payments to contractors.

According to the auditor general's report, Toronto has spent over \$100 million annually on road paving and maintenance in recent years. If the allegations of collusion are true, that number may have been significantly higher than it would have been if competition had been allowed to work. Adopting the recommendations described above and addressed in the "[Competition Matters](#)" newsletter can make the

difference between fighting to recover illegal overcharges and never having been overcharged in the first place.

### [Tips for Preventing Anti-Competitive Activity](#)

Bid-rigging, price-fixing, and other antitrust violations by unscrupulous vendors can result in significant overcharges to public entities. With a few simple steps, however, you can help discourage anticompetitive activity and increase your chances of detecting it if it occurs:

- Keep an up-to-date list of potential bidders; 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.
- If something looks strange, ask bidders to explain.
- Retain bid and purchase records for at least five years, allowing for review.
- Do not reveal the names of prospective bidders or cost estimates before the contract is awarded.
- Join the Ohio Attorney General's [Partnership for Competitive Purchasing](#), and let us know about suspicious activity. Visit the Attorney General's website to register.

### [Beware of These 5 Scams Targeting Organizations](#)

Just as individuals can be targeted by scam artists, so too can organizations. Con artists regularly target businesses, public agencies, nonprofits, and other groups to try to get money or sensitive information from them.

Scams targeting organizations take many different forms, but five common variations are:

- **Fake emails from the CEO or boss.** In this scam, a con artist poses as the head of an organization and sends an email to an employee. The message instructs the employee to wire payment or to provide sensitive information, such as employees' W-2 forms. The employee thinks the message is coming from the boss, but it's actually a spoofed message coming from a con artist.
- **Phony invoices.** An organization receives a fax, phone call, or letter demanding payment for products or services it never agreed to purchase. The con artist who sent the bogus bill hopes someone in the organization will pay the invoice before realizing it is phony.
- **Utility shut-off scams.** Someone calls, claiming to represent an organization's utility company, and says the power will be shut off within hours unless the organization pays a few hundred dollars immediately. In reality, the caller is a scammer, and any money sent will be lost.
- **Overpayment scams.** In these scams, a con artist poses as a customer or client and "accidentally" sends the organization payment for more than the expected amount. Then the "customer" asks the

organization to return the overpayment by wiring the difference to a certain location. Ultimately, while the organization's payment is good, the "customer's" payment is not.

- **Ad scams.** A con artist contacts an organization and asks for payment to renew an ad listing (such as a Google ad), to cover advertising services the organization never purchased, or to keep an organization's listing from being pulled from Google or another location. The con artist hopes the organization will pay before realizing the scam.

To protect your organization, talk to staff members about the warning signs of a scam, including requests for wire transfers, prepaid cards, or gift cards. These are preferred payment methods for scam artists, because once payment is provided, it is very difficult to trace or recover the money.

Beware of unusual or unexpected invoices, emails, faxes, letters, or calls, especially those that demand payment or immediate action. Keep in mind that some messages that appear to come from someone familiar actually are sent by con artists in disguise. (For example, scam artists often hack email accounts or "spoof" caller IDs to trick people.) Encourage employees not to respond to suspicious calls or messages. Instead, ask them to address concerns with a supervisor or other staff member.

Additionally, make sure your organization's software systems and security protocols are kept up-to-date to reduce the chance of an intruder accessing your system.

If you suspect a scam, report it to the Ohio Attorney General's Office at [www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov) or 800-282-0515.

## [We're Looking for Partners to Keep Competition Healthy!](#)

Ohio Attorney General Mike DeWine's Partnership for Competitive Purchasing takes a proactive approach to bid-rigging detection. Our attorneys and investigators regularly work on issues related to anti-competitive activities, giving them the expertise to help you spot bid-rigging and price-fixing. The partnership offers reviews to analyze bid files for anti-competitive activities and answer your questions or concerns. This is not an audit, but a helpful on-site review to keep competition fair and healthy.

The partnership is a voluntary program open to all Ohio public entities — from cities to villages, from universities to state agencies, from public libraries to school districts. Registration for the partnership is free and easy. Just visit the [Partnership for Competitive Purchasing](#) page and select "[Enroll in the Partnership for Competitive Purchasing](#)" or call us at 614-466-4328.

## [We Welcome Your Questions](#)

We encourage you to suggest a topic or ask a question of the legal staff of the Ohio Attorney General's Antitrust Section. Questions will be addressed in future issues of "Competition Matters." (No individuals' or organizations' names will be published.) Please submit your questions or suggested topics to Beth Hubbard at [Beth.Hubbard@OhioAttorneyGeneral.gov](mailto:Beth.Hubbard@OhioAttorneyGeneral.gov).