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★ OHIO ATTORNEY GENERAL ★

COMPETITION MATTERS

Fostering Fair Competition in the Marketplace



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Investigating Possible Bid-Rigging in Sales of Aluminum Sulfate

The Ohio Attorney General's Office is investigating an alleged bid-rigging scheme affecting purchasers of aluminum sulfate, otherwise known as alum. Many municipalities and public entities that purchase alum may have fallen victim to this illegal conspiracy.

Alum is a chemical that is used to treat both waste and drinking water. Last year, an executive of one manufacturer pleaded guilty in federal court in New Jersey to creating and maintaining a bid-rigging and price-fixing scheme. This indictment, and the executive's eventual guilty plea, resulted in additional indictments of other executives and unleashed a flood of class-action litigation.

At this stage, the Ohio Attorney General's Office is gathering documents from municipalities and public entities that use alum to determine whether they were affected by the alleged conspiracy.

Municipalities are urged to contact the Ohio Attorney General's Office if they purchased alum or ferric acid between 1997 and 2010 for their wastewater or drinking water treatment.

According to the guilty plea and indictments, the alleged alum price-fixing and bid-rigging conspiracy worked like many other vendor-purchaser price-fixing conspiracies. In essence, competing alum providers would bid to sell their alum to various municipalities and public entities. Before those bids were made, however, the companies allegedly agreed amongst themselves who would win the bid (or at least who would submit the lowest bid, and thus most likely be the winner).

Bids designed to lose are called "sham" bids. Early indications suggest that the conspiracy may have involved the use of sham bids in order to give the false appearance of competition. These alleged activities may have cost Ohio taxpayers significant amounts of money in the form of artificially high prices paid by governmental entities for alum.

The Ohio Attorney General is authorized by law to represent municipalities and public entities in antitrust matters such as this one. If your municipality or other public entity uses alum, or another similar water treatment chemical called ferric acid, please contact the Ohio Attorney General's Antitrust Section at **614-466-4328** or email Alum_Investigation@OhioAttorneyGeneral.gov.

Your information is vital to helping the Ohio Attorney General's Office determine who may have been affected by this alleged conspiracy and the amount by which each may have been harmed. **Time is of the essence**, so we hope to hear from you soon.

Red Flag Series No. 3: Recognizing the Patterns that can Form if Vendors Collude

Recent articles in “Competition Matters” provided tips to public purchasers on spotting vendor collusion. Known as the “Red Flag” series, these articles explain the typical warning signs that accompany illegal activity in public bidding. This third installment focuses on patterns of activity that can result when vendors agree not to compete.

If vendors are bidding amounts or winning areas that seem illogical, this may signal a pattern of collusive behavior. These patterns would seem relatively easy to detect in theory but are often difficult to uncover because vendors can develop creative new ways to structure their illicit activities. Further, these agreements are almost always reached in secret and it can take several competitive bidding cycles to detect a pattern of behavior. By the time a public purchaser uncovers a pattern, the harm to the competitive process is already done. Colluding vendors might even change their scheme by the time a public purchaser uncovers the pattern, which underscores the difficulties of detecting patterns.

Still, there are many tips that public entities can use to detect patterns of collusive activity. Here are some examples of patterns to look for in the competitive bidding process:

- **Geographical patterns:** Are the same vendors consistently winning the same geographical areas? Do vendors appear to be winning and/or bidding on either side of geographical borderlines that have no logical explanation? For example, if two vendors bid all the way up to a county line, but neither crosses over into the other’s county, you should take a closer look at this activity. These types of behavior can indicate “market allocation” – entities agreeing to divide markets by geographic location.
- **Bid rotation:** In some cases, vendors rotate their bids and agree to take turns winning specific contracts. On the surface, having a different vendor win each year may seem competitive, but watch for situations where, despite a different bidder winning each year across a variety of contracts in a given geographical area, each vendor is actually winning these different contracts in succeeding years in some predictable order.
- **Equal value allocation:** This more complicated pattern is even harder to detect. It involves a group of vendors agreeing about who will win which contracts in such a way that, when the total value of each vendor’s contracts is tallied, each vendor receives contracts that are roughly equal in value. In this situation, all bidding companies end up winning the same amount of work over a series of bids.

Keeping these patterns in mind when reviewing bid submissions can help uncover collusive practices that might otherwise go undetected. Reviewing year-by-year contract awards and comparing them to similar contracts awarded by nearby public entities can reveal the patterns that form when vendors allocate contracts instead of competing for them. Compare notes with government purchasing agents in nearby geographical areas, especially if bidding behavior seems unusual in any way.

Early collusion detection is vital to preserving the competitive process. We encourage all procurement officials to report suspicious patterns of bid activity through appropriate channels in their organization and to consider submitting a tip (confidential if you wish) on our Bid Rigging Web Tip form. The information you provide could uncover a more widespread problem and, when warranted, we may conduct an investigation.

If suspicions arise, please submit an online tip to the Ohio Attorney General’s [Antitrust Bid Rigging Tip line](#) or call us at 614-466-4328.

The Informed Purchaser: Defining Market Allocation

Occasionally you may encounter terms or concepts unique to antitrust issues, competition, and schemes to exploit purchasers. In this installment of “The Informed Purchaser,” let’s talk about market allocation.

Market allocation schemes are simple and basic agreements that severely limit competition. For example, “I won’t sell in your market if you won’t sell in mine.” These agreements are made between competitors to divide up sales territories or customers. They are agreements not to compete and – just like price fixing – they are illegal under state and federal antitrust laws.

The markets can be divided up in a variety of ways, including:

- **By geographic area:** Company A agrees to take customers in the northern part of the state, and Company B takes customers in the southern part;
- **By customer type:** Company A will only bid on food contracts for colleges, and Company B will only bid on food contracts for primary and secondary public school systems; or
- **By product:** Company A will only bid on toner, and Company B will only bid on copier paper.

When bidders agree to divide up customers or markets, and agree that they won’t compete with each other for the business that they are not “supposed” to win, it is the customer that pays the price – and that price is almost always a higher one!

Get Free Help Detecting Bid-Rigging

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.

Request a Speaker

If you need a speaker for an upcoming meeting of public purchasers or vendors, consider contacting the Ohio Attorney General’s Antitrust Section.

We have attorneys and investigators available to present your group with a lively presentation that educates participants on the basics of antitrust law, giving real life examples of vendor misconduct impacting Ohio public purchasers.

Our program on the detection and reporting of vendor collusion has been presented recently to a variety of organizations across the state, including the County Commissioners Association of Ohio, the Ohio Association of School Business Officials, and the Ohio Township Association.

A presentation from the Ohio Attorney General's Antitrust Section also can help well-meaning vendors identify potential problems and ensure compliance with antitrust laws.

If you have an upcoming event and would like a speaker from our office to talk about the Attorney General's Partnership for Competitive Purchasing, bid-rigging detection, or other antitrust issues, contact Karen Pierson at 614-728-2493 or Karen.Pierson@OhioAttorneyGeneral.gov.

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 Karen Pierson at Karen.Pierson@OhioAttorneyGeneral.gov.

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