

COMPETITION MATTERS

Fostering Fair Competition in the Marketplace



To submit a tip about bid-rigging or other collusion, call 614-466-4328 or visit www.OhioAttorneyGeneral.gov/Antitrust for the Antitrust Bid-Rigging Web Tip Form.

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[Bid-Rigging at Public Real Estate Foreclosure Auctions in Mississippi](#)

A foreclosure auction is a public sale of property triggered by the former property owner's inability to pay off a mortgage and other debt attached to the foreclosed property. This sale is meant to generate funds to pay off the outstanding financial obligations and, if possible, distribute the remaining funds to the former property owner. At auction, bidders are expected to compete for the foreclosed property. The more vigorous the competition, the more likely that funds will be generated to satisfy the relevant interests. Nevertheless, a public real estate foreclosure, like all auctions, may be susceptible to the bidders' anti-competitive practices.

In 2018, a federal grand jury in Mississippi indicted nine real estate investors for their roles in a conspiracy to rig bids at public real estate foreclosure auctions in violation of federal antitrust laws. According to court documents, the bidders would secretly meet ahead of time before an auction to determine which one of them would win certain foreclosed properties and arrange to have payments made and received in exchange for an agreement not to bid. The bidders engaged in this anti-competitive scheme at various times between 2009 and 2017.

By subverting the competitive bidding process, the bidders were able to cheat the foreclosure system by artificially lowering the price paid at auction for certain foreclosed properties.

To date, the nine real estate investors who engaged in the conspiracy to rig bids at public real estate foreclosure auctions in Mississippi have been sentenced in federal court to each serve four months in prison and pay fines that range from \$20,000 to \$48,000 and restitution, according to the United States Department of Justice.

If you suspect that a public real estate foreclosure auction has been impacted by this type of collusion or if you would like to speak with the Antitrust Section of the Ohio Attorney General's Office about any other type of anticompetitive activity, please call 614-466-4238.

The Case of the “Buffalo Billion” Bid-Rigging Scheme

When a request for proposal is tailored to give an advantage to certain competitors and ensure their success, the competitive bidding process is corrupted.

The competitive bidding process is designed to foster transparency in procurement, to provide bidders with a fair opportunity to compete for and potentially be awarded a bid, and to allow purchasers to receive the best value for the goods and services that they seek.

Bid specifications should not be tailored with the hopes of ending up with a specific supplier or product, but that is exactly what happened in the “Buffalo Billion” bid-rigging scheme in New York. Companies shared information about their experience and qualifications with the individual designated by the state’s governor to oversee the bids, and then the bid specifications were tailored to steer business to those companies.

In July, several defendants were convicted in federal court for rigging the bids on construction projects related to the Buffalo Billion initiative, the state of New York’s economic development program for communities located in upstate and western New York. Specifically, the individual designated to oversee the initiative, Alain Kaloyeros, conspired with the executives of two development firms, COR Development and LPCiminelli, to secretly manipulate the competitive bidding process so that contracts worth millions of dollars were unfairly awarded to those firms.

According to the evidence presented at trial, Kaloyeros shared information about upcoming projects with two executives at COR Development (Steven Aiello and Joseph Gerardi) and one executive at LPCiminelli (Louis Ciminelli) before the requests for proposals were issued, and those executives provided Kaloyeros with their firms’ experience and qualifications. Kaloyeros subsequently tailored the requirements of the bids so that only firms that matched the experience and qualifications of COR Development and LPCiminelli would have any plausible chance to be awarded the contracts. As a result, COR Development and LPCiminelli won contracts without much competition and under the false pretense of a legitimate competitive bidding process.

In December, a federal judge sentenced Kaloyeros to 42 months in prison, Aiello to 36 months in prison, Gerardi to 30 months in prison, and Ciminelli to 28 months in prison for their roles in the Buffalo Billion bid-rigging scheme. Additionally, the federal judge ordered Kaloyeros to pay a \$100,000 fine and Aiello, Gerardi, and Ciminelli to each pay a \$500,000 fine.

The circumstances surrounding this case are a stark reminder for public purchasers to:

- Review bids closely and look out for signs that vendors may be working together. To protect against illegal behavior, work to determine if vendors are engaging in anticompetitive activity and report anything unusual or suspicious. (See previous editions of “Competition Matters” for [patterns that can form if vendors collude](#), [physical clues of possible collusion](#), and [other red flags](#).)
- Ensure that consultants or others retained to prepare the bid specifications for their competitive solicitations do so impartially and not with a view to steering the business to any particular bidder.
- Pay close attention when well-publicized grants or other funding sources are available, such as the case with the Buffalo Billion initiative. Well-publicized funding sources may attract bad actors.

If you would like to speak with the Antitrust Section of the Ohio Attorney General's Office about anticompetitive activity, please call 614-466-4328.

Spotlight: Meet Colin Kelsey

Colin Kelsey recently joined the Ohio Attorney General's Antitrust Section as an investigator and began working as a speaker for the Partnership for Competitive Purchasing.

Q: How long have you participated in the Partnership for Competitive Purchasing?

A: I was assigned to take part in the Partnership for Competitive Purchasing when I began my employment with the office's Antitrust Section in July 2018.

Q: How important do you feel the program is and why?

A: I feel the program is extremely important. Our presentations are a great avenue to explain who we are and what we do. Educating public purchasers on red flags of collusion and other anti-competitive activity not only leads to meaningful referrals to our section, but it can also save taxpayers money by preventing collusion.

Q: What is your favorite part of your job?

A: In relation to the Partnership for Competitive Purchasing, my favorite part of the job so far has been doing my first on-site review. The partnership offers public entities an opportunity to have members of the Antitrust Section perform an on-site preliminary review of bids and purchasing records; scan the records; perform an in-depth review of the records back in our office; and inform the entity of whether we found any signs of vendor collusion. It is another way to help public entities protect taxpayer dollars.

The majority of our record review as investigators in this section occurs in electronic format, so the on-site review was also a great learning experience because it taught me how to handle and analyze hard-copy records.

Q: How can you assist Ohio public purchasers?

A: I can continue to assist Ohio public purchasers by taking part in the Partnership for Competitive Purchasing presentations and offering on-site reviews. I would also like to point out that the [Antitrust Bid-Rigging Web Tip Form](#) is available for Ohio public purchasers to bring matters to our attention. Ohio public purchasers — or anyone, for that matter — can submit referrals through that interface and the referrals can be submitted anonymously. However, if you wish to remain anonymous we ask that you provide as much information as possible. When we receive a promising tip, it's important that we receive enough information to proceed with an investigation or follow up with the complainant.

Ohio public purchasers can also file a complaint by calling our main office at 614-466-4328.

10 Signs of Possible Vendor Collusion

While most vendors are fair competitors, price-fixing and bid-rigging schemes can and do happen. Watch for certain red flags to help determine if vendors may be colluding.

Bid rigging occurs when competitors agree on who will submit the winning bid, how much they will bid, or any other terms of the contract.

Red flags of possible bid-rigging among vendors include:

1. Unexpected similarities in the bids of different vendors, such as documents all having the same unusual font, postage stamps, math errors, spelling errors, postmarks, fax number, or contact person.
2. Geographical patterns, where the same vendors consistently win the same geographical areas.
3. Bid rotation patterns, where different vendors win contracts in succeeding years in a predictable order.
4. For electronic bid submissions, similarities in the documents' metadata, such as the author's name.
5. Evidence of haphazard, last-minute changes to bids, such as white-outs, erasures, or other physical alterations that indicate the changes happened during a conversation among bidders (perhaps just moments earlier in a parking lot).
6. References to "industry-wide" or "association-set" price schedules and blanket statements such as "all the businesses in this industry charge the same" or "there's no difference in product, and that's why prices are the same."
7. Statements that a bid was a "courtesy," "token," or "cover" bid or that indicate advance, non-public knowledge of a competitor's pricing or the specifics of a competitor's bid.
8. A suggestion that the bidder has discussed prices with competitors or that it is the bidder's "turn" to win a bid or contract.
9. A reference to "my customer," "my contract," or "my territory" (except when referring to territories established by a distributor).
10. Any statements that a company has been meeting with its competitors (whether at a social outing, trade association conference, or business meeting) where pricing and contract specifics were discussed.

Keep in mind that these indicators may arouse suspicion, but by themselves, they are not proof of collusion.

If you have a suspicion about bid activity, report it through the appropriate channels in your organization and consider [submitting a tip](#) to the Ohio Attorney General's Office. The information you provide could help uncover a more widespread problem or warrant an investigation.