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★ OHIO ATTORNEY GENERAL ★

COMPETITION MATTERS

Fostering Fair Competition in the Marketplace



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[Electronic Bidding Can Help Prevent Collusion](#)

An online bid process can help prevent anticompetitive conduct. It can also present data security challenges. We've outlined principles that can help you protect the information you collect.

Asking vendors to submit bid proposals electronically prevents competitors from gathering in the same place at the same time, which could create opportunities for collusion. Plus, electronic bidding can be more efficient for both your organization and bidders.

While using an online bidding process can eliminate opportunities for collusion, it does come with different risks. You can and should take preventative measures to lower your organization's risk of becoming a victim of cyberattacks or data breaches.

The Ohio Attorney General's Office advocates following five key principles of sound data security: 1. Take stock; 2. Scale down; 3. Lock it; 4. Pitch it; 5. Plan ahead.

Take stock: When using an online bid system, you should know what information your system holds, where it is held, and who has access to it. Only members of your organization should be able to see who has bid and what they've bid until the contract has been awarded.

Scale down: Only ask for relevant information in your requests for bids. When you only collect and store the most relevant information, you create less liability. Not only does scaling down the requested information help you, it also helps vendors save time and resources.

Lock it: Secure the online bid system, and control who has access to it. The Ohio Attorney General's Office recommends using a passphrase, instead of a password. A passphrase is an easy-to-remember combination of words that is longer and more complex than a traditional password. For example, a passphrase like \$toreB1dInfoH3r3 is relevant to the database you're accessing, making it easier to remember. Plus, the symbols, numbers, and capital letters increase the phrase's strength. In addition to passphrases, take precautions against malicious programs, also called badware, or more commonly, malware. Badware includes a host of software or programs installed on a user's computer without the user's consent or knowledge. Malware ranges from the relatively benign to more harmful types like viruses, Trojan horses, spyware, and other programs with malicious effects. Investing in anti-malware software or using a firewall can help prevent these programs from harming your system.

Pitch it: Once the information is no longer required, find a way to store the information securely or plan to delete it in accordance with your organization's records retention policies.

Plan ahead: As cybercriminals grow more savvy and technology changes, so do the risks. Even if you follow the five key principles of sound data security, you may still be vulnerable to data breaches. That is why planning ahead is important. Put together a plan on how you will handle a breach if one occurs. Planning now can ensure that you're ready to handle a future problem.

For more cybersecurity tips, visit the [Ohio Attorney General's website](#).

Non-Collusion Affidavits: More than Filler for Your Bid Files

Non-collusion affidavits serve valuable purposes and should be an integral part of every bid project file. In these sworn statements, a vendor confirms that it has not colluded with any other vendors in preparing the bid.

Non-collusion affidavits benefits fall into three general categories:

Education

Many bidders of various sizes are aware that collusion with competitors in the preparation or submission of a bid is illegal. However, some small companies and sole proprietors may not know that agreeing with one's competitors on price (or any other terms of sale) is a violation of state and federal antitrust laws.

If reading and signing a non-collusion affidavit informs even one potential bidder that all bids must be made independently, the document has served a valuable purpose. The result will be a better-informed pool of bidders and more successful competitive solicitations.

Deterrence

An affidavit can also help remind potential conspirators that they are required to swear to the truth of the document. Lying can carry criminal penalties. Falsification, making an intentionally false statement sworn to before a notary public, is a first-degree misdemeanor under [Ohio Revised Code Section 2921.13\(A\)\(6\)](#).

Remediation

A fully executed non-collusion affidavit can also be a valuable tool in holding wrongdoers accountable and securing a remedy for the harm they cause. It can be used in criminal prosecution or civil litigation against such a party.

First, a charge of falsification can be effectively combined with charges for violation of antitrust laws to strengthen a criminal case. Second, in the event the just-discovered illegal activity has been occurring for a significant period of time, the Attorney General or other counsel bringing civil antitrust claims may face statute of limitations problems. (Under Ohio law, the statute of limitations for recovery of damages on antitrust claims is four years.) However, courts often grant relief from the running of a statute of limitations when a party has engaged in fraudulent concealment of its unlawful acts. An intentionally false non-collusion affidavit can be an extremely valuable piece of evidence in establishing fraudulent concealment.

While some may consider requiring non-collusion affidavits as yet another item on a long list of items that a public entity has to keep on file, these documents serve multiple positive functions, ultimately making the market more competitive for Ohio taxpayers. As such, organizations should ensure non-collusion affidavits are a part of every bid package.

[SPOTLIGHT: Meet Beth Hubbard, Administrator of the Partnership for Competitive Purchasing](#)

Beth Hubbard, who coordinates the Attorney General's Partnership for Competitive Purchasing Program, regularly talks to public purchasers about the partnership and the services the Attorney General's Antitrust Section offers.

Q: How long have you served as administrator of the Partnership for Competitive Purchasing?

A: As of March 2018, it has been a year.

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

A: I have learned so much from my involvement in this program. I've been surprised to learn just how much harm can be caused by price-fixing, bid-rigging, and other kinds of collusion. I have also learned how far unethical vendors will go to cover up their illegal agreements. (We visit this topic in "[The Legal Side of the Moon](#)" from our December 2017 edition.) I feel that the program is a very important service that the Attorney General's Office offers to Ohio's governmental entities — from cities and counties to school districts and state agencies. By helping Ohio public purchasers detect suspicious bidding behavior — and maybe even help them recover the money that they were overcharged — we can make a real difference to the taxpayers of this state.

Q: What is your favorite part of your job?

A: I love contacting organizations and putting a plan together to provide them with what could prove to be very useful information and services to their organization.

Q: How can you assist Ohio public purchasers?

A: I am always available to assist with questions about registering for the Partnership for Competitive Purchasing. Also, if you belong to an organization that might benefit from hearing more about the partnership, bid-rigging detection, or protecting the purchasing process from bid-rigging, I can help schedule speakers from our Antitrust Section. Keep us in mind for your workshops, seminars, and yearly conferences!

I'd also encourage organizations to send me article suggestions for our "Competition Matters" newsletter. We're always looking for topics that *you* would like to hear about. I can be reached at Beth.Hubbard@OhioAttorneyGeneral.gov.

[Partner With Us 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, including cities, villages, universities, state agencies, public libraries, and school districts. Registration for the partnership is free and easy. Just visit the [Partnership for Competitive Purchasing](#) online. 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.