

Vendor Collusion in Public Contracting

Detection and Reporting



MIKE DEWINE
== ★ OHIO ATTORNEY GENERAL ★ ==

Two broad categories of business behavior that violate federal/state antitrust laws:



- Unilateral or monopolistic
- Collusive



Unilateral or Monopolistic Behavior

- Single firm with market power
- Example: Microsoft found liable for using its market power in computer operating systems to keep others from even trying to compete for customers.

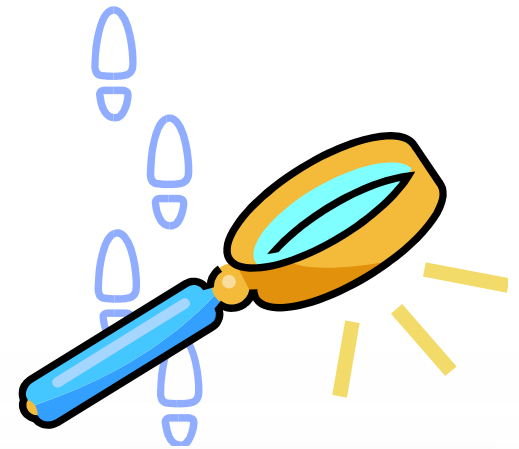


Collusive Behavior

- Agreements among competitors not to compete, or to otherwise restrict competition
- Examples: bid-rigging, price-fixing, market allocation



Collusive schemes, like most fraudulent and deceptive activities are, by their very nature, difficult to detect.



**Vendors often have very
convincing explanations
for their behavior.**



Bid-rigging conspiracies often involve feigned competition -- vendors dividing up the business into assigned territories or allocated customers, sometimes protecting each other with “sham” bids.



Case Study #1

The Attorney General's antitrust litigation involving commercial casualty insurance



The conspiracy...



Major US
commercial
casualty
companies



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Agreed:

**No
competition
for
incumbent
accounts**



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What if the purchaser questioned the premium increases or lack of other quotes?



Broker stepped in to gather
sham or “B” quotes...



Roberta,

Please fax back this "fake" quote.

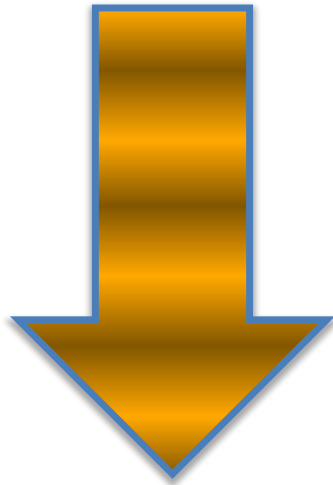
**Thanks,
Nicole**

Please send me an email with an unattractive premium,



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Informed public
purchasers



Early detection





It is especially important to keep your eyes open for possible bid-rigging when well-publicized grants or other funding sources become available for public projects.

So, what should you look for?



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Three categories of red flags



1. Market conditions
2. Vendor behavior and physical clues
3. Patterns

Case Study #2

Antitrust litigation by the Ohio
Attorney General's Office
involving...



SCHOOL MILK



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1993 – Confessions by Two Dairy Executives:



- Rigged bids on milk sales to public schools in SW Ohio
- Agreed not to compete with incumbent
- Submitted sham bids

The Ohio Attorney General's Lawsuit:



- 451 public school districts in SW, SE and NE Ohio
- 13 dairies



The School Milk case illustrates the first Red Flag of Collusion...





Red Flag: Market Conditions

Some market conditions make it easier to form, maintain, enforce or conceal collusive arrangements.



Several features of the school milk market made it especially susceptible to anticompetitive activities. First:

Homogeneity
or...



“Milk is milk!”



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Product homogeneity means:

- Little difference between competing vendors' products
- Vendors compete mostly on price.



**Thus, homogeneous products
are more susceptible to bid-
rigging, and other forms of
collusion.**



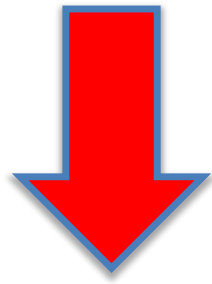
EXAMPLE:



Homogeneity
makes it easier
to control the
outcome.



Is demand elastic or inelastic?



Can you switch?



Inelastic demand
makes sellers more
confident that buyers
will put up with
increased prices
resulting from collusion
rather than switch to
another product.



What were the schools' alternatives to milk?



Competitors Frequently Interacting



Being friendly and social is
not inherently wrong but...

It provides

OPPORTUNITY!



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Group of Available Bidders is Small and Stable



**Nothing disrupts a conspiracy faster
than a new seller entering the
market!**



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The Second Red Flag of Collusion:

Vendor Behavior and Physical Clues



Even the craftiest vendor drops an occasional bread crumb that can lead to detection.



Vendor Behavior - Examples

- Vendor submits its own bid and that of a competitor



Vendor Behavior - Examples

- Vendor makes reference – verbal or written – that he/she won't be bidding because...

“...this isn't my territory.”



Vendor Behavior - Examples

- Vendor(s) refrain from bidding for no apparent reason, even when invited to bid



Vendor Behavior - Examples

- Vendor(s) continue to bid, even though they never win



Vendor Behavior - Examples

- Winning bid increases significantly and unexpectedly from one year to the next



Vendor Behavior - Examples

- A vendor charges higher prices to local customers than to distant ones (may indicate a fixed local market).



Look for Physical Clues in the Bids in Addition to Vendor Behavior



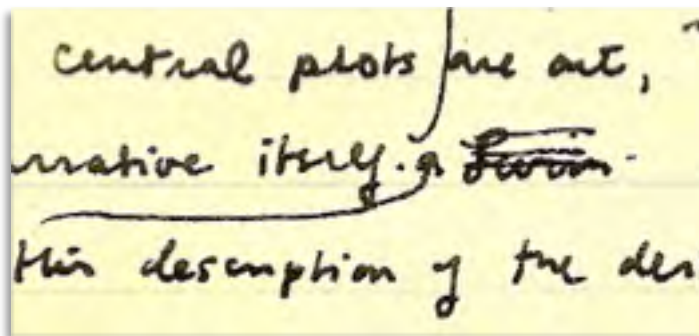
Last-minute changes to the bid:

- Whiteouts
- Other physical alterations of the bid amount

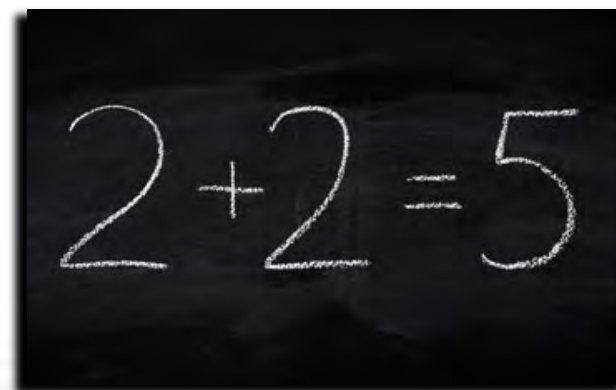


Similarities in the appearance of competitors' bid materials:

- handwriting
- unusual typeface
- stationary
- fax information
- grammar, punctuation or math errors

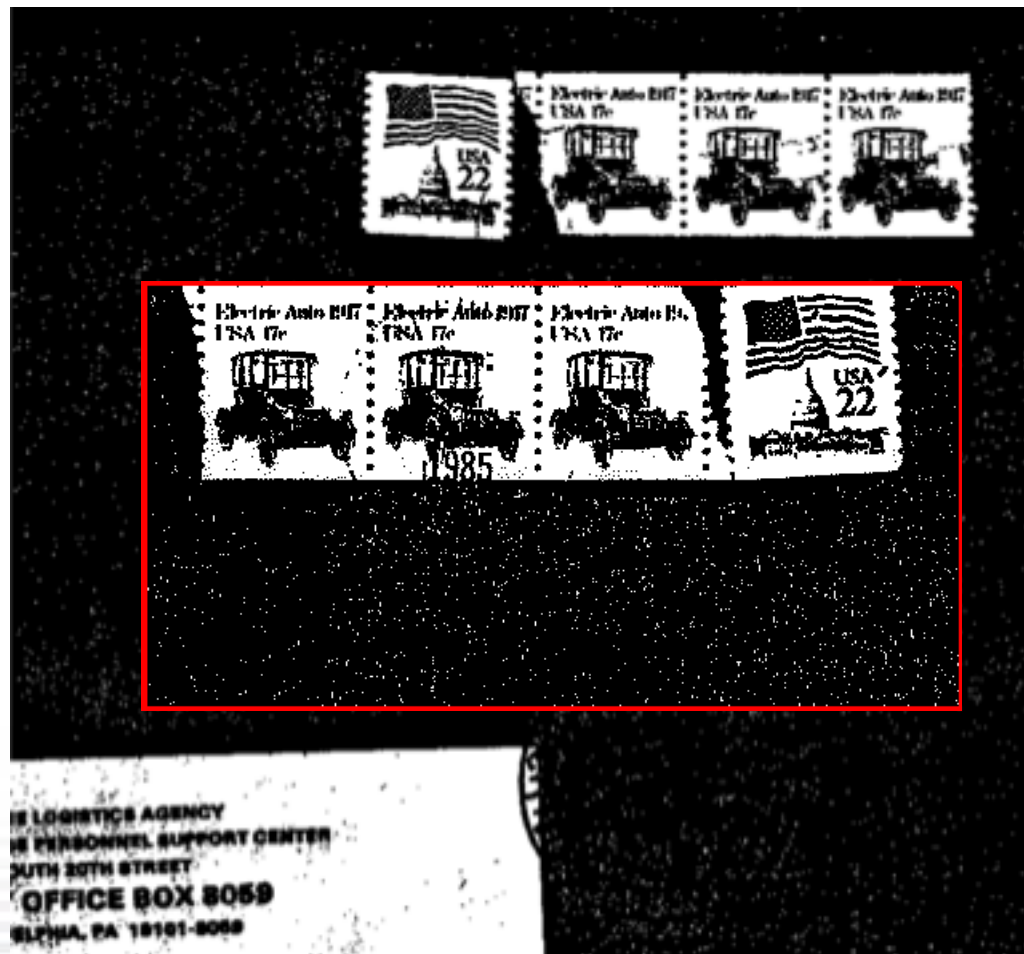


central plots are out,
native italy. a few
this description of the desi


$$2 + 2 = 5$$



Physical clues may be found on the envelope or other packaging...



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Simple math can be a bid-rigger's downfall...

CONTINUATION SHEET		REFERENCE NO. OF DOCUMENT BEING CONTINUED H13H-85-B-8852		PAGE 6	OF 35
NAME OF OFFEROR OR CONTRACTOR Capital Ice Cream Wholesalers, Inc.					
ITEM NO.	SUPPLIES / SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
GROUP II - ICE CREAM PRODUCTS - ST ELIZABETH'S HOSPITAL, WASHINGTON, DC (100% SET-ASIDE FOR SMALL BUSINESS)					
	ICE CREAM, REGULAR, VANILLA, TYPE I, GRADE 1, GENERAL 10.0% MF (MIN)				
13	13711 BULK, 2 1/2 OR 3 GALLON CONTAINER FIBER/PLASTIC	6	GL	3.12	18.72
14	13717 BRICK, INDIVIDUALLY WRAPPED SLICES 32 SLICES PER GALLON FIBER/PLASTIC	6	GL	3.38	20.28
	ICE CREAM, REGULAR, TYPE II, GRADE 1, GENERAL 8.0% MF (MIN), CHOCOLATE, FRUIT, NUTS OR OTHER SUIJY FLAVORS				
15	13722 4 (FLUID OUNCE) CUP FIBER/PLASTIC	8,400	GL	4.68/oz 12.45/gal	39,112.00
	SHERBET, REGULAR, TYPE IV				
16	13733 4 (FLUID OUNCE) CUP FIBER/PLASTIC	4,400	oz	1.53/oz 4.07/gal	6,732.00
	NOVELTIES, TYPE VI, MIN 2 1/2 PL. OS.				
17	13738 CLASS 2, ICE BAR CONFECTION	20	oz	.83	16.60
ESTIMATED TOTAL GROUP II:				46,899.60	
UNLESS OTHERWISE INDICATED BY THE BIDDER/OFFEROR, ANY BRAND NAME CITED BY THE BIDDER/OFFEROR WILL BE PRESUMED TO CONFORM TO ALL THE REQUIREMENTS OF THE CONTRACT.					

STANDARD FORM 38 (REV 10-62)
Prescribed by GSA
FAR 48 CFR 53.111

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	ICE CREAM, REGULAR, VANILLA, TYPE I, GRADE 1, GENERAL 10.0% MF (MIN)				
13	13711 BULK, 2 1/2 OR 3 GALLON CONTAINER FIBER/PLASTIC	6	GL	3.12	18.72
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Vendor #1:

Quantity: 8,400 gallons

Unit price: \$4.50/doz. or \$11.97/gal.

Total amount: $8,400 \times \$4.50 = \$37,800$

Vendor #2:

Quantity: 8,400 gallons

Unit price: \$4.68/doz. or \$12.45/gal.

Total amount: $8,400 \times \$4.68 = \$39,312$



Due to the *identical* math error...

- Vendor #1 bid \$37,800 instead of \$100,548
- Vendor #2 bid \$39,312 instead of \$104,580



If electronic records are available,
always check the metadata.

Competitors' bid
documents
should not have
the same author!





Red Flag: Patterns

Collusion often causes
patterns to form – bidding
locations, winners, award of
subcontracts, etc.



What patterns do you
see in the following
examples?



EXAMPLE

3 Years of Bid Results

2013

Knox County:

Dillard Construction

Licking County:

Morgan Contractors

Coshocton County:

Roberts Renovations

Muskingum County:

Pratt Construction

2014

Knox County:

Pratt Construction

Licking County:

Dillard Construction

Coshocton County:

Morgan Contractors

Muskingum County:

Roberts Renovations

2015

Knox County:

Roberts Renovations

Licking County:

Pratt Construction

Coshocton County:

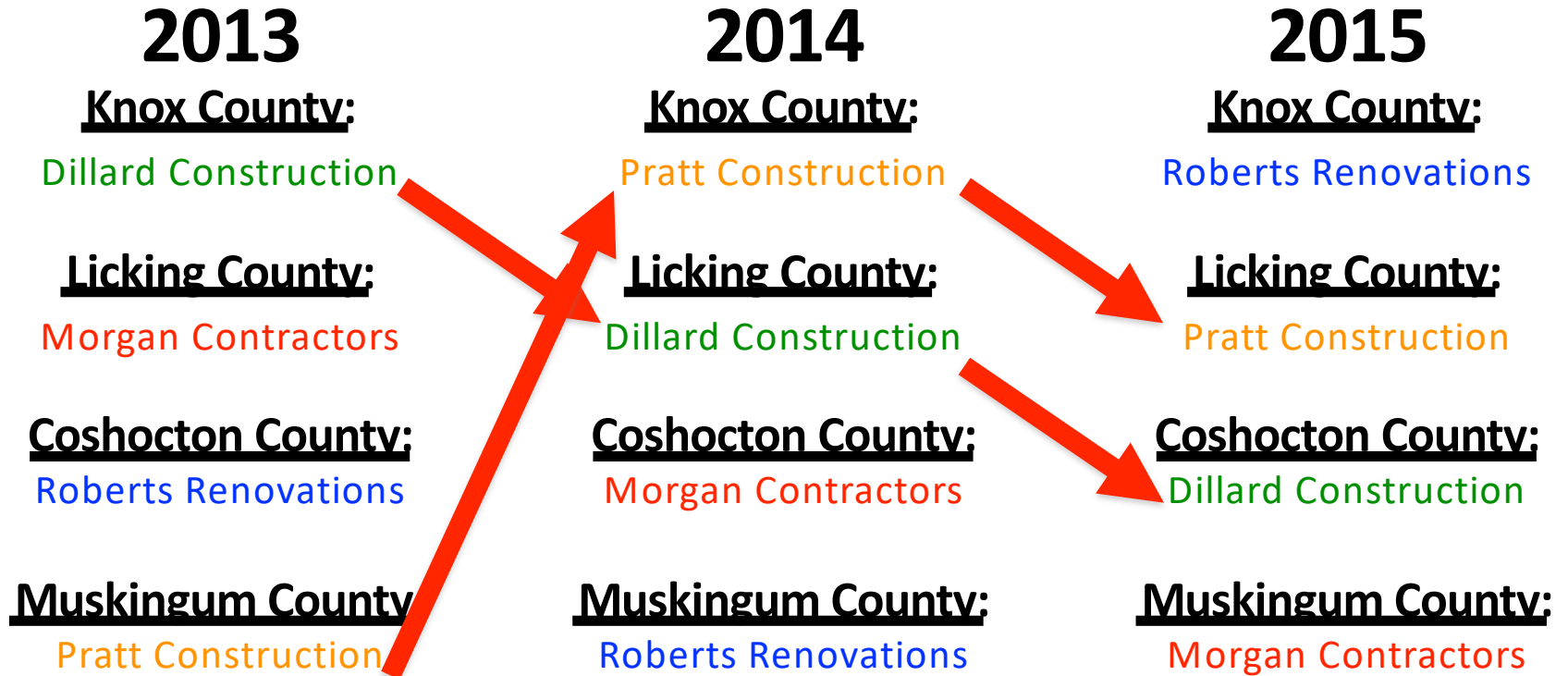
Dillard Construction

Muskingum County:

Morgan Contractors



What's the pattern?



Bidders are taking turns...



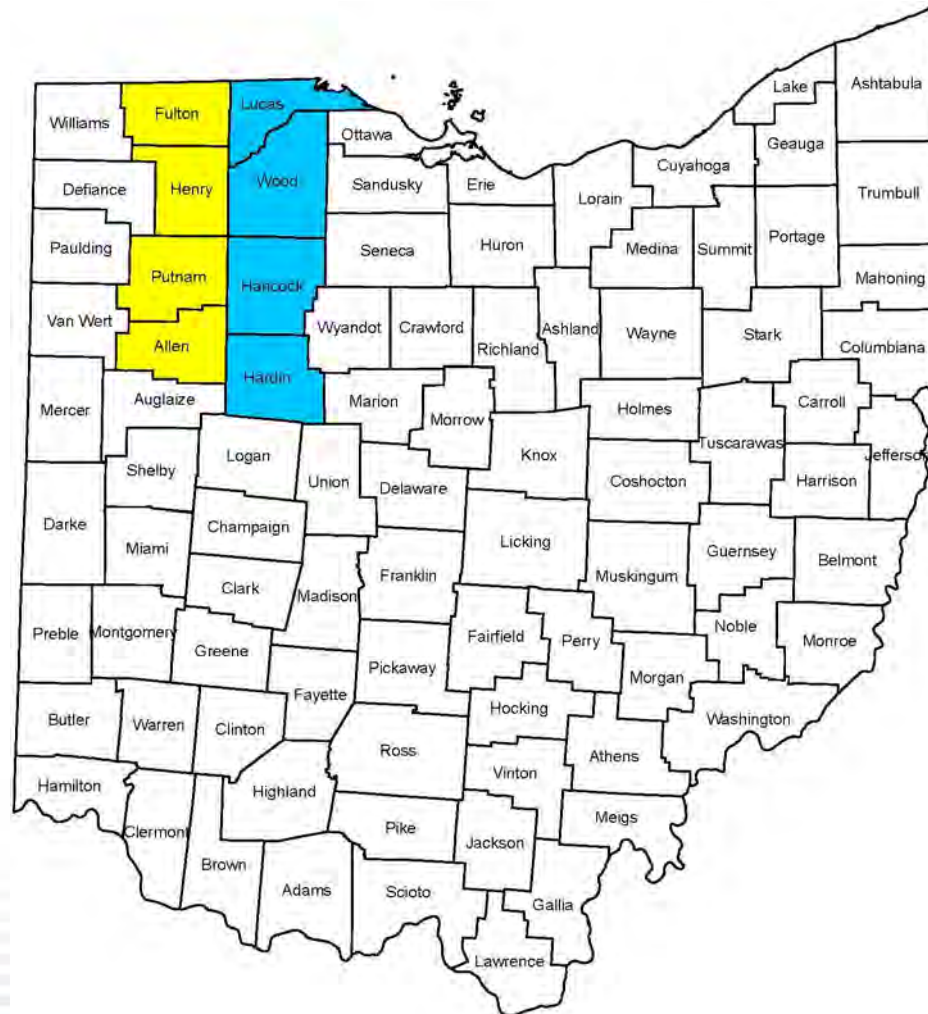
“BID ROTATION”



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Example 2

2015 Bid Results:



 = Company X

 = Company Y



What's the pattern?

The same vendors consistently win
on either side of a geographic
borderline that has no logical
explanation

Market allocation



Example 3 – Take a look at these bid results:

County	2015 Winner & Amount	2016 Winner & Amount
Butler	Jones Co. - \$100,000	Jones Co. - \$160,000
Clermont	Jones Co. - \$45,000	Smith Co. - \$40,000
Greene	Smith Co. - \$50,000	Jones Co. - \$90,000
Hamilton	Smith Co. - \$150,000	Wilson Co. - \$180,000
Montgomery	Wilson Co. - \$125,000	Smith Co. - \$150,000
Preble	Wilson Co. - \$75,000	Wilson Co. - \$70,000
Warren	Jones Co. - \$55,000	Smith Co. - \$60,000



What's the pattern?

Divided by
geography?



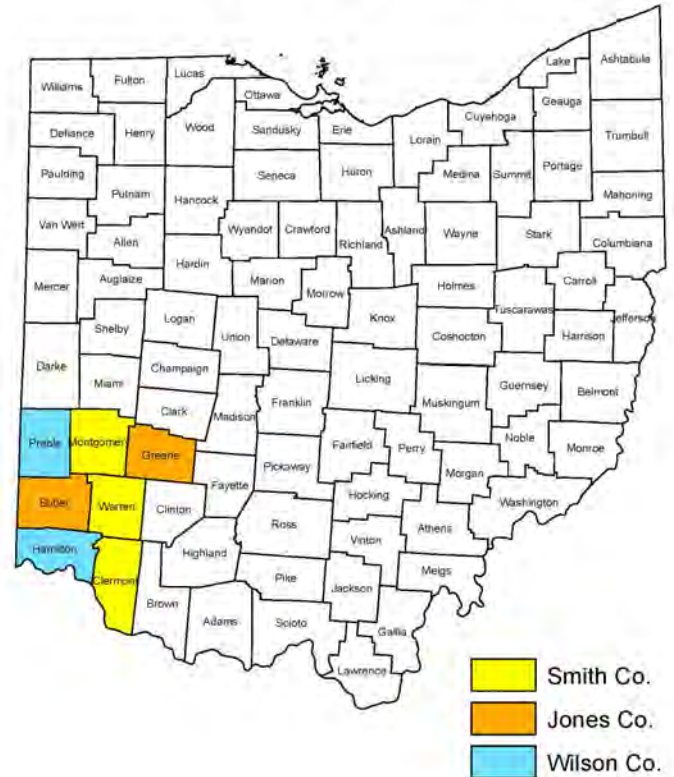
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No.

2015 Bid Results



2016 Bid Results



What's the pattern?



Winners
rotated in
some
orderly
fashion?



No.

County	2015 Winner & Amount	2016 Winner & Amount
Butler	Jones Co. - \$100,000	Jones Co. - \$160,000
Clermont	Jones Co. - \$45,000	Smith Co. - \$40,000
Greene	Smith Co. - \$50,000	Jones Co. - \$90,000
Hamilton	Smith Co. - \$150,000	Wilson Co. - \$180,000
Montgomery	Wilson Co. - \$125,000	Smith Co. - \$150,000
Preble	Wilson Co. - \$75,000	Wilson Co. - \$70,000
Warren	Jones Co. - \$55,000	Smith Co. - \$60,000



Let's analyze these results using a different tool:



**Total dollar amount awarded in 2015:
\$600,000**

**Total dollar amount awarded in 2016:
\$750,000**

**So, how much did each
bidder win?**



2015:

Smith

\$50,000

150,000

\$200,000

Jones

\$100,000

45,000

55,000

\$200,000

Wilson

\$125,000

75,000

\$200,000

2016:

Smith

\$40,000

60,000

150,000

\$250,000

Jones

\$160,000

90,000

\$250,000

Wilson

\$70,000

180,000

\$250,000



What's the pattern?

All bidding companies end
up winning the same
amount of work over a
series of bids



The more elaborate the
pattern, the harder it will be to
detect.

One bid rotation scheme
determined the winning bidder
by ...

The phases of the moon!



Case Study #3



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— OHIO ATTORNEY GENERAL —

Background:

- 2014-16
- Broome County, NY
- The conspirators: Bert Adams Disposal, Inc. and Taylor Garbage Service, Inc.
- Contracts affected: Residential, Business, and Municipal Waste Hauling Services



Formation of the Conspiracy

Just wondering if you would be willing to sit down sometime with Pat and I and talk about things in the battle field. I'd like to try to work out a plan to work with each other rather than working against each other. Because the customer is the only one that wins when we're at each other's throat. Give it some thought and let me know. BT

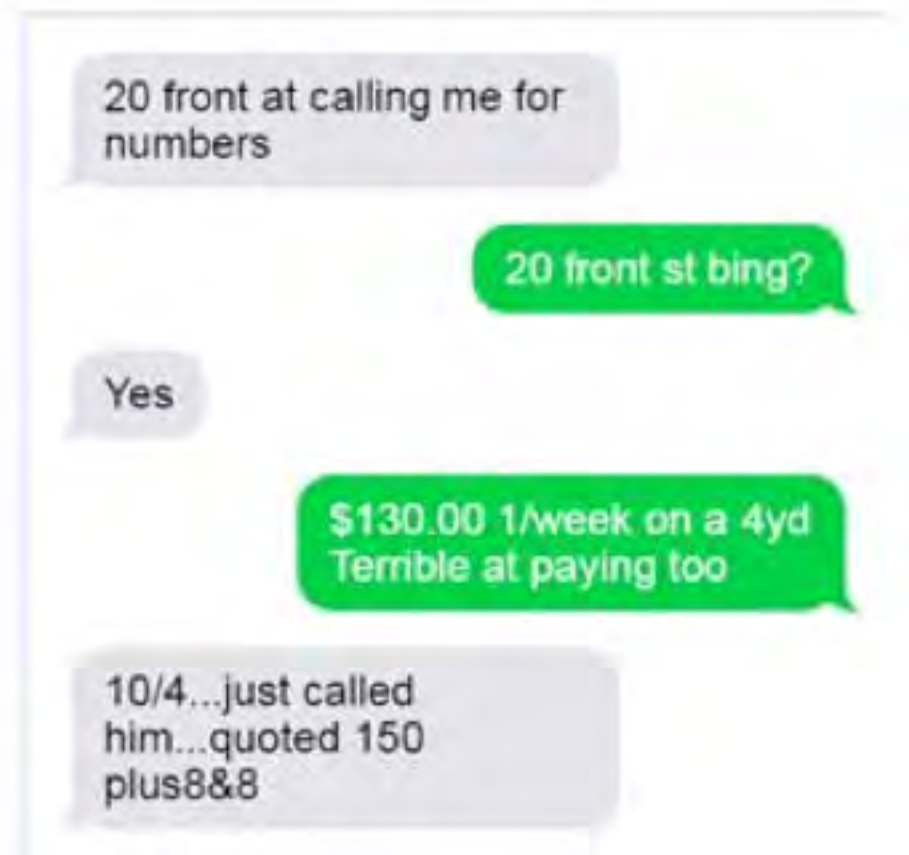
Yes anytime just tell me where I got to meet you



Price-fixing Agreement



Bid-rigging and Sham Bidding



The Outcome – April 9, 2018

- Bert Adams Disposal/owner - class E felony (\$1 million penalties);
- 2 Bert Adams Disposal employees - misdemeanor (\$37,500 each in penalties);
- Taylor Garbage Service/owner - \$550,000 penalty

Case Study #4



Background:

- 2012-17
- Mississippi
- The conspirators: Real estate investors
Kevin Moore, Chad Nichols, and Terry Tolar
- Affected transactions: Public real estate
foreclosure auctions



The Conspiracy

**Moore, Nichols, and Tolar
agreed in advance which of
them would win each property.**



The Conspiracy

Conspirators that agreed not to bid received payments.



The Impact

- Sale prices of auctioned foreclosure properties suppressed;
- Homeowners, creditors, and taxing authorities received lower proceeds.



The Outcome – April 10, 2018

- Moore, Nichols, Tolar – pled to felony Sherman Act violation;
- Sherman Act violation – maximum of 10 years in prison, \$1 million fine



**Can a business violate
the antitrust law by
agreeing with someone
other than a competitor?**





**As of April 2016, R.C.
1331.01(C)(2) was
amended to clarify the
scope of who can
commit a criminal
Valentine Act violation.**



When a public contract is awarded by competitive selection, a violation may be committed by:

- Two or more bidders/potential bidders; or
- One or more bidders/potential bidders AND “any person affiliated with a public office.”

Fact patterns that may fall within the new language of R.C. 1331.01(C)(2):

- Vendor bribes government purchasing employee;
- Government employee/official “fixes” the bidding process to throw business to a relative.



What are the criminal penalties provided in Ohio's Valentine Act?



R.C. 1331.99

Fifth degree felony UNLESS:

- Amount of commerce involved is \$7,500 or more;
- Transaction involves purchase/sale by local, state, or federal governmental entity; or
- Transaction is wholly or partly funded by local, state, or federal governmental entity.

If any of the foregoing apply ➡ Fourth degree felony

The Takeaway:

If you suspect vendor
collusion,
call the Ohio Attorney
General's Antitrust Section.





Anyone can report a tip anonymously at:

www.ohioattorneygeneral.gov

Or call: 1-800-282-0515



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**We are happy to
partner with other law
enforcement agencies
- or -
to take the referral and
handle it from there.**



Questions



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How to contact us

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Section Main Line: 614-466-4328



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