

Procurement Collusion Red Flags

Antitrust enforcement in the public procurement sector is a top priority for the Justice Department. The DOJ's Procurement Collusion Strike Force is targeting (and training other government personnel to identify) behavior and patterns that may signal collusion. In our experience, where the DOJ sees "red flags" like the ones below, they may investigate.

Competition Conditions Ripe for Collusion

- Limited number of qualified bidders
- Difficult for new competitors to enter the market
- Few substitute products
- Standardized products
- Repetitive or regularly scheduled bidding opportunities/purchases
- Rush or emergency work

Warning Signs in Pricing

- Identical increases in price or price ranges that cannot be explained by cost increases
- Disappearance of anticipated discounts or rebates
- Winning bidder is noticeably lower than other bidders without explanation

Suspicious Bid Patterns and Behavior

- Winning bidder subcontracts to losing bidder
- Winning bids rotate across set of bidders (companies appear to "take turns" winning)
- Same company always wins or loses
- Bid prices are much higher than estimates or previous bids/similar work
- Certain companies only submit bids in certain geographical areas, for certain customers, or for certain products (ex: Company A always bids on Army contracts; Company B always bids on Navy contracts)
- Regular suppliers/vendors fail to bid for work they typically perform, but continue to bid for other contracts/awards with similar work
- Multiple companies each end up winning the same amount of work over a series of bids

The Government may consider the above factors and circumstances "suspicious" conditions, indicating possible collusion in procurement. While the presence of one or more factors do not necessarily mean misconduct has occurred, they may draw Government scrutiny.

Key Contacts



Craig P. Seebald

Partner

Washington
+1.202.639.6585
cseebald@velaw.com



G. Zachary Terwilliger

Partner

Washington
+1.202.639.6568
zterwilliger@velaw.com



Lindsey R. Vaala

Counsel

Washington
+1.202.639.6523
lvaala@velaw.com