

# DO YOU SUSPECT **COLLUSION?**

## CHECKLIST FOR POSSIBLE COLLUSION

This is a list of red flags. None of these indicators, individually or in combination, prove collusion. Rather, they identify situations which may justify further inquiry to discover whether collusion has occurred.

### CONDITIONS FAVORABLE TO COLLUSION

Certain market conditions increase the likelihood of collusion. Pay close attention to bids and bidding patterns under the following market conditions:

1. A small number of vendors dominate the market. The fewer the vendors, the easier it is to get everyone on the same page.
2. Tight specifications mandate no easy substitution of product. Fewer products make it easier for the vendors to coordinate.
3. The bids are for a standardized product. Fewer variables in terms of design, quality or service, make it easier to reach a common pricing scheme.
4. There are frequent, repetitive bids for specific goods. The more frequent the bids the more opportunity the vendors have to become familiar with each other.
5. Competitors regularly socialize with each other, through personal connections or trade associations.
6. Competitors regularly get together in the vicinity of procurement offices shortly before filing deadlines.
7. There is industry-wide resale price maintenance. Each manufacturer sets the price at which all of its distributors or resellers must sell the product to their customers. This could help manufacturers enforce collusion at the manufacturing level.

### SUSPICIOUS STATEMENTS OR BEHAVIOR

Sometimes vendors' behavior or the circumstances under which bids are submitted can create suspicion of collusion. Pay close attention to bids and bidding patterns if you see any of the following:

1. There are irregularities (e.g., identical calculation errors) in the physical appearance of the proposals or in the method of their submission (e.g., use of identical forms or stationery), suggesting that competitors had copied, discussed, or planned one another's bids or proposals. If the bids are obtained by mail, there are similarities of postmark or post metering machine marks.
2. A vendor requests a bid package for itself and a competitor, or submits both its bid and that of a competitor.
3. Two or more competitors file a "joint bid," even though at least one of the competitors could have bid on its own.
4. A vendor submits a bid when it is incapable of successfully performing the contract (This is likely a complementary bid).
5. A vendor brings multiple bids to a bid opening and submits its bid only after determining (or trying to determine) who else is bidding.
6. A bidder or salesperson makes a suspicious statement, such as:
  - a. A reference to industry-wide price schedules;
  - b. A comment indicating advance knowledge of competitor's bid/price;

- c. A statement that a particular contract "belongs" to a certain vendor;
- d. A reference to a "complementary," "courtesy," "token," or "cover" bid;
- e. Any other statement indicating competitors may have discussed prices/bids.

### SUSPICIOUS BIDDING OR PRICING PATTERNS

Certain bidding or pricing patterns appear inconsistent with operation of the free market and warrant further investigation:

1. Some bids are much higher than published price lists, previous bids by the same firms, or engineering cost estimates. This could indicate complementary bids.
2. Vendors who would be expected to submit bids do not do so. This could indicate an agreement to withhold bids.
3. Certain vendors never bid against each other.
4. Certain vendors bid frequently but never (or almost never) win.
5. There is a consistent percent margin (e.g., 10%) between the winning bid and the second bidder.
6. The same vendor has been the low/high bidder on successive occasions over a period of time without any apparent market advantage/disadvantage to account for the bid.
7. A certain vendor appears to be bidding substantially higher on some bids than on other bids, with no logical cost difference to account for the difference.
8. A bidder uses uniform shipping charges in various bids. Vendors would ordinarily be expected to charge less for shipping locally than to a distant site, absent an agreement.
9. A local vendor charges more for delivery than a distant vendor. This is counter-intuitive and could indicate that the local vendor has submitted a complimentary bid.
10. An apparent pattern of low bids appears, such as corporation "X" always winning a bid in a certain geographic area for a particular service, or in a fixed rotation with other bidders.
11. A successful bidder subcontracts to:
  - a. a vendor that won the bid but then withdrew,
  - b. vendor(s) that could/should have bid (e.g., picked up packets) but did not, or
  - c. vendor(s) that repeatedly submitted higher bids.
12. Competitors submit identical bids or frequently change prices at about the same time and to the same extent.
13. Bid prices appear to drop whenever a new or infrequent bidder submits a bid.