

Subpart 3.3 - Reports of Suspected Antitrust Violations

Parent topic: [Part 3 - Improper Business Practices and Personal Conflicts of Interest](#)

3.301 General.

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and *may* warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader *pricing*, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) *Contracting* personnel are an important potential source of investigative leads for antitrust enforcement and *should* therefore be sensitive to indications of unlawful behavior by *offerors* and contractors. Agency personnel *shall* report, in accordance with agency regulations, evidence of suspected antitrust violations in *acquisitions* for possible referral to-

(1) The Attorney General under [3.303](#); and

(2) The agency office responsible for contractor *debarment* and *suspension* under [subpart 9.4](#).

3.302 Definitions.

As used in this subpart-

Identical bids means bids for the same *line item* that are determined to be identical as to unit price or total *line item* amount, with or without the application of evaluation factors (*e.g.*, discount or transportation cost).

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by [41 U.S.C.3707](#) and [10 U.S.C. 3307](#) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by [subpart 9.4](#).

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) of this section identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that *may* evidence violations of the antitrust laws include-

(1) The existence of an "industry price list" or "price agreement" to which contractors refer in

formulating their *offers*;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or follow-the-leader *pricing*;

(4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;

(5) Division of the market, so that certain competitors bid low only for contracts awarded by certain agencies, or for contracts in certain geographical areas, or on certain *products*, and bid high on all other jobs;

(6) Establishment by competitors of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;

(8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive *offers* or the submission by one firm of *offers* for other firms; and

(9) Assertions by the employees, former employees, or competitors of *offerors*, that an agreement to restrain trade exists.

(d) Identical bids *shall* be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

(e) For *offers* from foreign contractors for contracts to be performed outside the *United States* and its *outlying areas*, *contracting officers* may refer suspected collusive *offers* to the authorities of the foreign government concerned for appropriate action.

(f) Agency reports *shall* be addressed to the-

Attorney General

U.S. Department of Justice

Washington DC 20530

Attention: Assistant Attorney General

Antitrust Division

and *shall* include-

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement *may* be communicated by telephone directly to

the Office of the Assistant Attorney General, Antitrust Division.