


What will we talk about today?



- Why are antitrust laws important?
- Conditions favorable to collusion
- Best Practices: What is a purchaser to do?
- Partnership for Competitive Purchasing:
How can the Antitrust Section help?

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OHIO ATTORNEY GENERAL

Why Are Antitrust Laws Important?



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OHIO ATTORNEY GENERAL

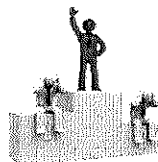
Why Are Antitrust Laws Important?

"[i]t is generally recognized that statutes dealing with competitive bidding in connection with the letting of public contracts are enacted for the benefit and protection of the public and not in the interest of the bidders."

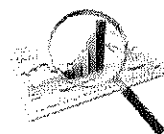
- 1939 Op. Att'y Gen. No. 115, vol. I, p. 138, 139

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Why Are Antitrust Laws Important?



- Promote competition within many different markets



- Promote economic growth



- Help in keeping vendors honest, and increase the quality, safety and selection of goods and services

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Why Are Antitrust Laws Important?



- Protection from an entity abusing market dominance



- Protection from improper acquisitions and mergers



- Protection from vendors working together to destroy the benefits of competition

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Antitrust Laws help keep

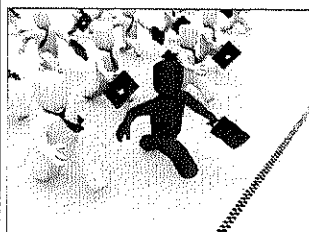
Competition

robust and thriving!



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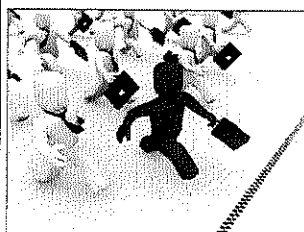
Benefits of Robust Competition



- Vendors are constantly competing against each other to sell particular products or services
- Vendors will not be able to take unfair advantage of buyers

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Benefits of Robust Competition



- Vendors will be obliged to offer their goods or services on attractive terms
- Vendors become more responsive and efficient in dealings with buyers
- Buyers can simply turn to another, better seller

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In a perfect world, competition would flourish and vendor collusion would not be a concern.

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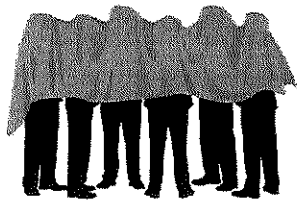
The Harsh Reality...



It's hard to tell the good guys from the bad guys

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Many vendors may seem to have your best interest in mind, but behind the scenes they could be working together to:



- Develop and conceal schemes
- Allocate Markets
- Lessen competition
- Increase prices

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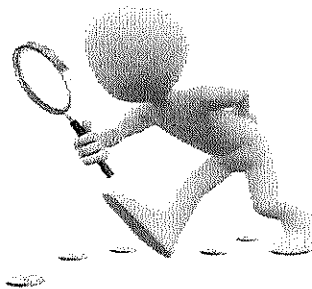
Antitrust violations are serious crimes...



...often costing tax-payers and companies thousands to millions of dollars.

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These conspiracies, by their nature, are secretive and very difficult to detect.



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Once vendors have decided to collude, the purchasing agent is the last person they want to know about their agreement



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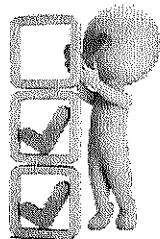
Even the most conscientious
purchasers can be victimized

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WHAT CAN A PURCHASER DO?

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Certain procedures can be
established to help
discourage anticompetitive
activity and stimulate
competition



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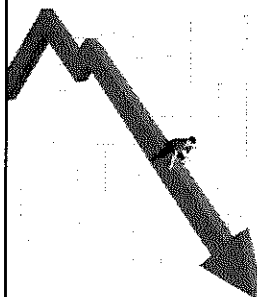
**Educate yourself about
the market!**

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CONDITIONS FAVORABLE TO COLLUSION

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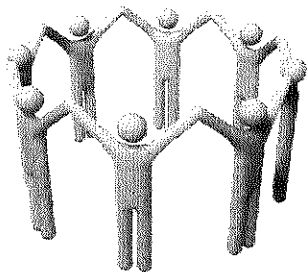
Susceptible Market, Product & Service Conditions



Bid rigging can occur in any situation, however there are some market conditions that make it easier to form, maintain, enforce or conceal collusive arrangements

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Collusion is more likely to occur when...




The group of bidders/vendors is small and stable

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Collusion is more likely to occur when...

Products are more standardized with little differences between competing products

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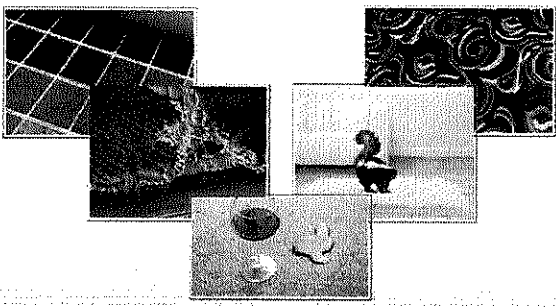
Price
it right

Thus, vendors compete mostly on price

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Non-Homogeneous Products


Example:



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Homogeneous Products

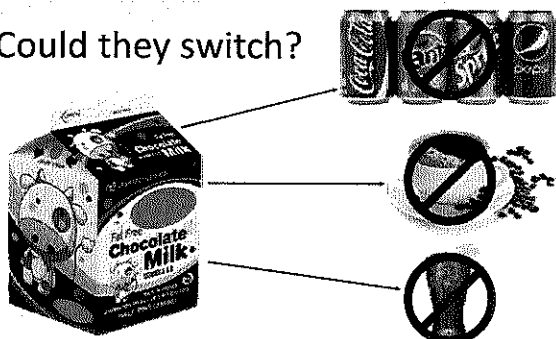
Example:



Collusion is easier when there are not a lot of other products that can be substituted for the product in question

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Could they switch?



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

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Collusion is more likely to occur when...
 there are frequent, repetitive bids for specific goods



Vendors become familiar with other bidders and future contracts provide the opportunity for competitors to share work

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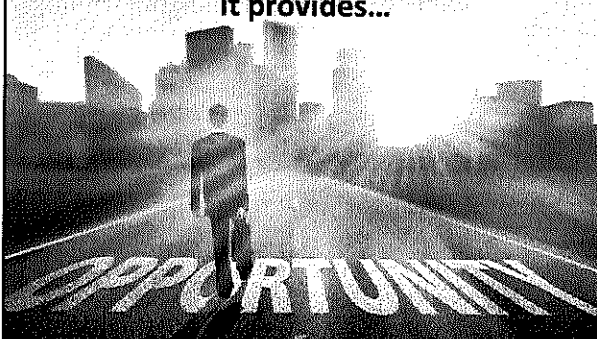
Collusion is more likely to occur when...



competitors know each other well, through social connections, trade associations, business contacts, or shifting employment

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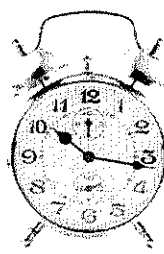
Being social is not inherently wrong, but it provides...



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Collusion is more likely to occur when...

Bidders frequently congregate in the same building or town to submit their bids. This is an easy opportunity for last-minute communications.



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VENDORS' COSTS AND PRICES

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Stay informed about...

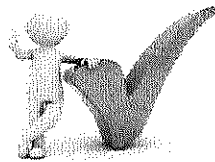
SURPLUSES

PRICES PAID
BY OTHER
AGENCIES

PRICING
TRENDS IN
OTHER STATES

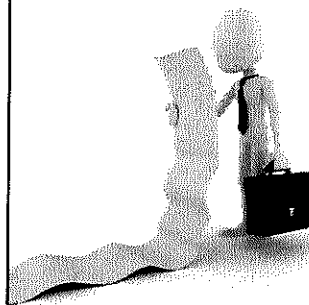
SHORTAGES

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Foster a larger bidder pool

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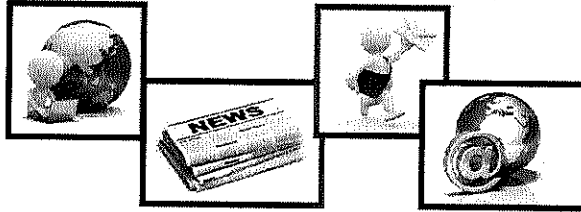
BUILD AND MAINTAIN A ROBUST POTENTIAL BIDDER LIST

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Collusive agreements are harder to reach, implement and maintain with each additional bidder added




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Inviting as many bidders through as many sources as possible will help reduce the ability for vendors to collude

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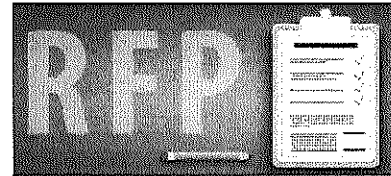


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Use fair and
consistent methods
of communicating
with vendors to avoid
the appearance of
favoritism

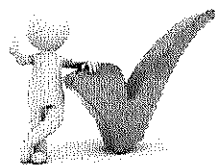


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Issue RFP's as early as possible

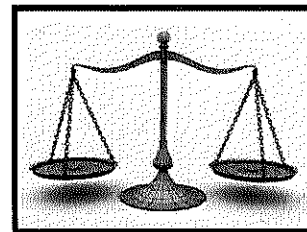
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**Think carefully about
your bid specifications**

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Balance your needs for quality, safety and
efficiency against your desire to obtain
competitive prices




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Bid specs
should be clear
and concise,
but not overly
restrictive


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Bid specifications should not be
tailored to one particular product or
supplier, with hopes of ending up with
a particular one

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Do not copy
specifications from
manufacturer's
literature or
websites



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Do not use brand names in
specifications unless you clearly add
"or equivalent."

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Structure your bid process to encourage honest bidders and discourage dishonest ones.

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Vendors may be discouraged from bidding if the cost of preparing a bid is too high.



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You can aid in keeping the costs of bidding low by:

- Not changing bid forms unnecessarily
- Not requiring information that is of little use
- Allowing adequate time for bids to be prepared
- Using electronic bidding systems, if possible

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Use Assignment Clauses in Contracts

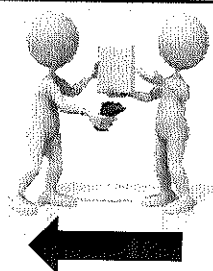
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Illinois Brick v. Illinois:

Buyers who deal with middlemen
can't recover antitrust damages

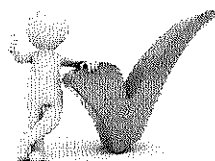


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Assignment clauses transfer a vendor's
antitrust claims to the buyer

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**Once your process is in
place, require
compliance!**

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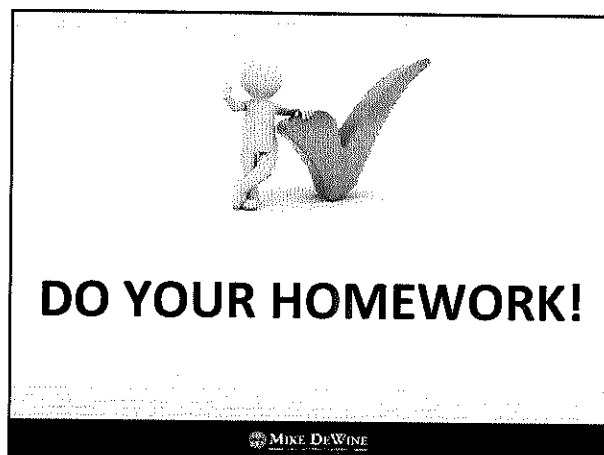
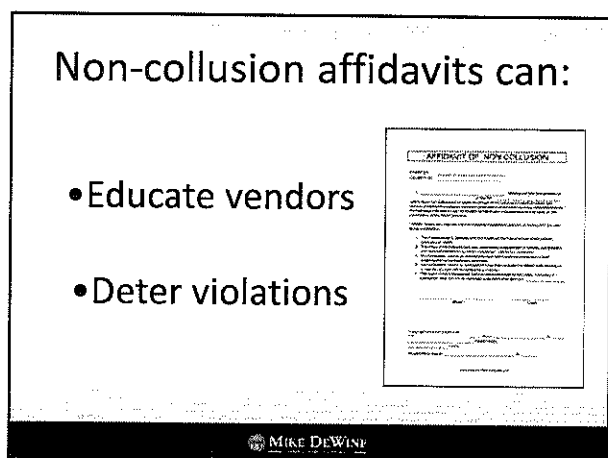
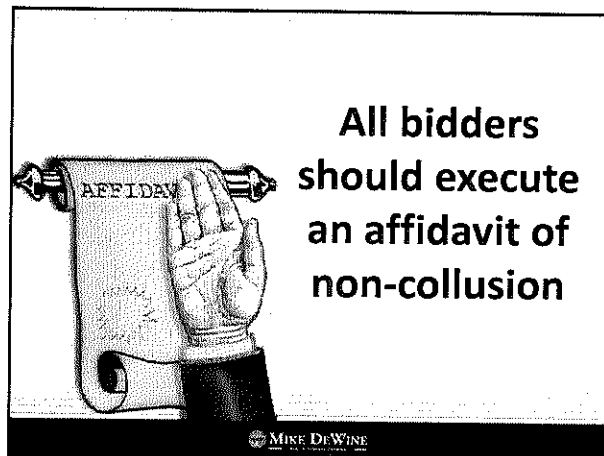
Require bidders to:

- Sign and submit non-collusion affidavits
- Provide a list of any subcontractors
- Complete a vendor questionnaire
- Meet all conditions imposed by the state

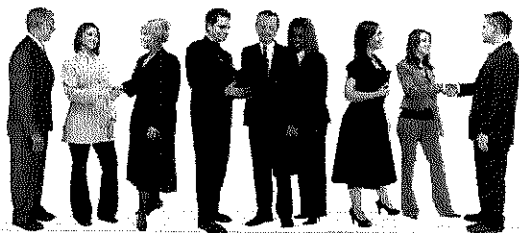


COMPLIANT

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Check with other agencies to determine whether a vendor is reliable and responsible.



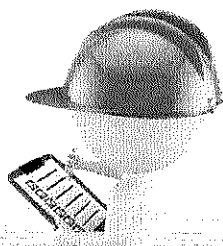
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Review all materials that you collect from vendors, even if they are routine.

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Follow up on questionable or incomplete answers in the vendor questionnaire

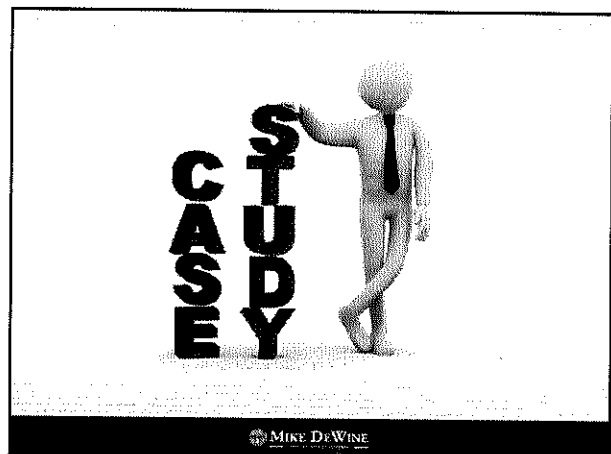
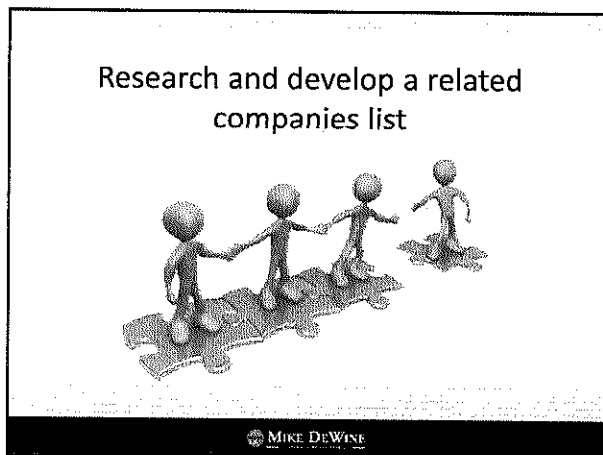


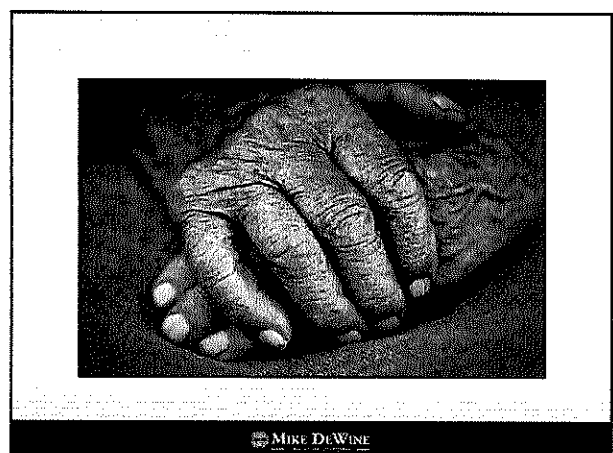
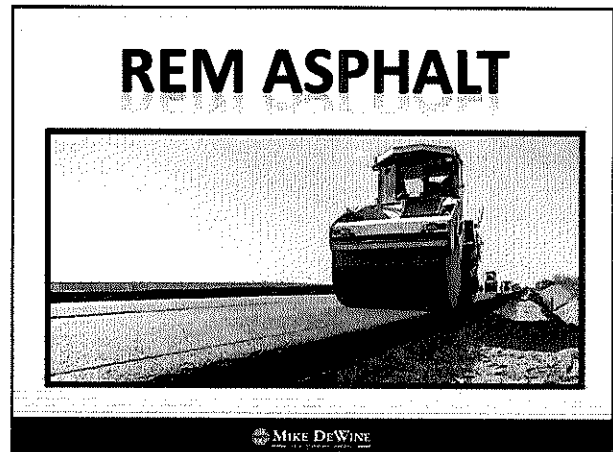
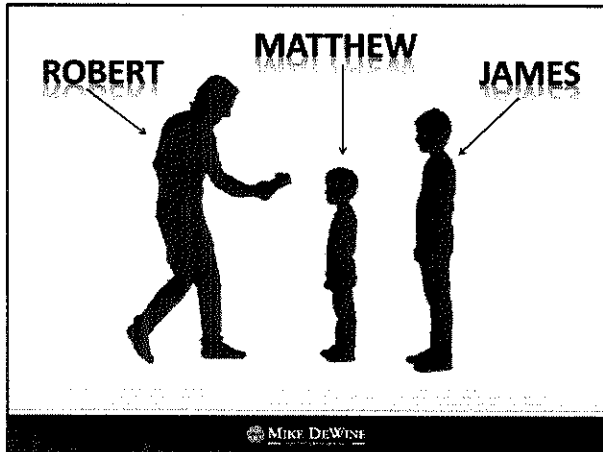
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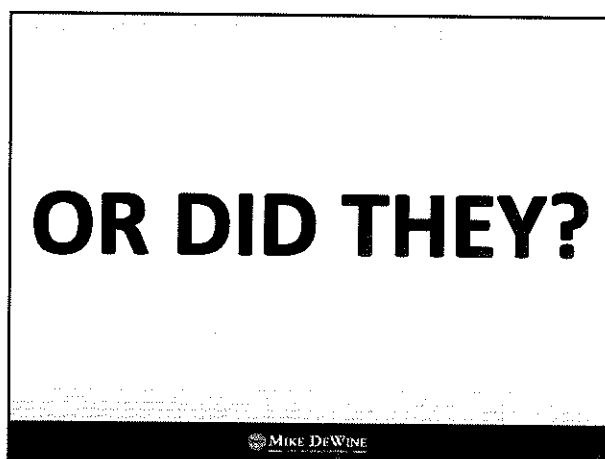
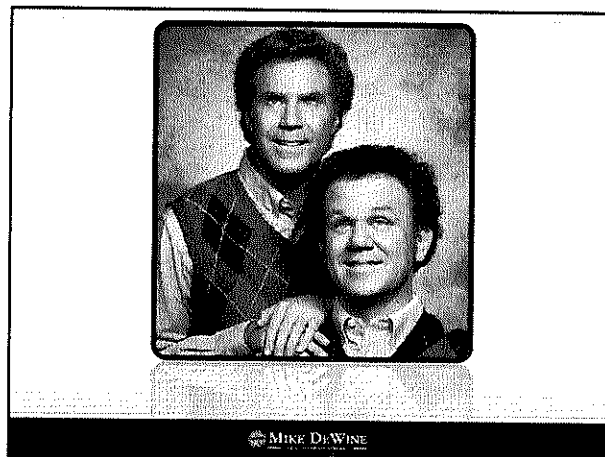


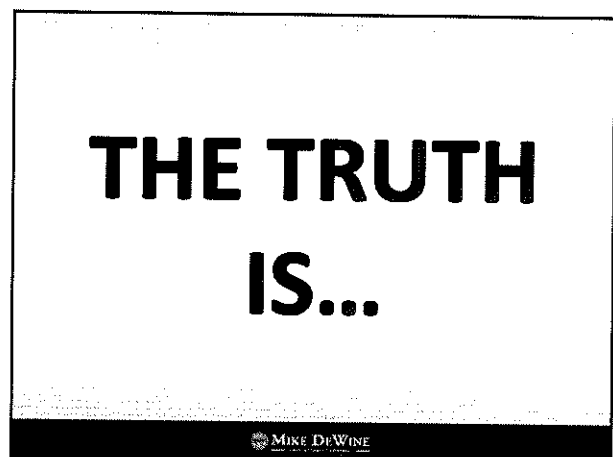
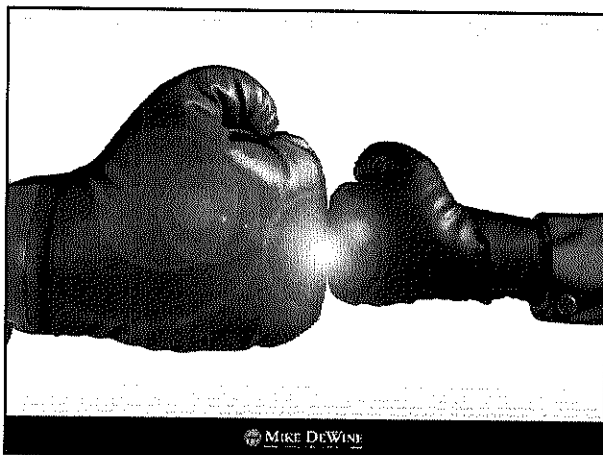
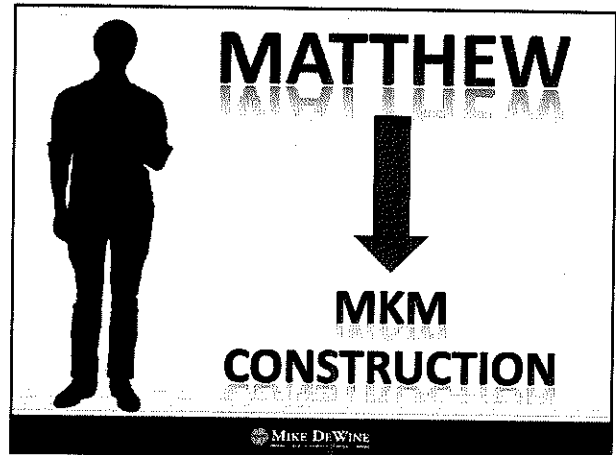
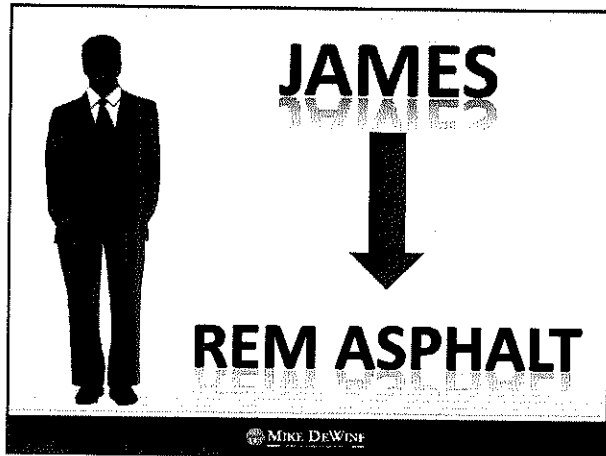
Do some research to gain more insight into the background of vendors. (i.e. has the vendor been indicted or convicted of a crime?)

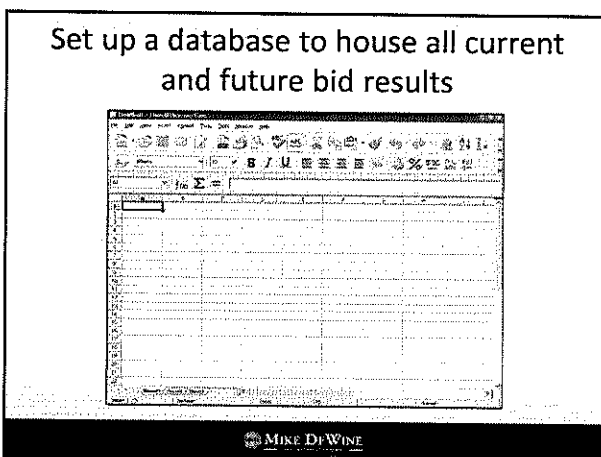
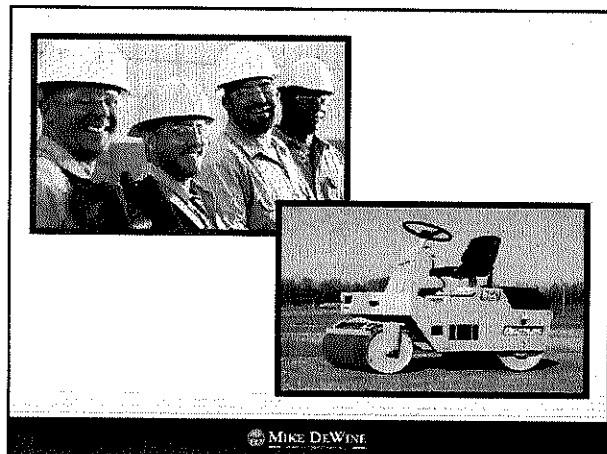
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WHY?

Some PATTERNS become apparent when multiple bid results are viewed together

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EXAMPLE

3 Years of Bid Results

2013	2014	2015
<u>Knox County:</u> Dillard Construction	<u>Knox County:</u> Pratt Construction	<u>Knox County:</u> Roberts Renovations
<u>Licking County:</u> Morgan Contractors	<u>Licking County:</u> Dillard Construction	<u>Licking County:</u> Pratt Construction
<u>Coshocton County:</u> Roberts Renovations	<u>Coshocton County:</u> Morgan Contractors	<u>Coshocton County:</u> Dillard Construction
<u>Muskingum County:</u> Pratt Construction	<u>Muskingum County:</u> Roberts Renovations	<u>Muskingum County:</u> Morgan Contractors

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What's the pattern?

2013	2014	2015
<u>Knox County:</u> Dillard Construction	<u>Knox County:</u> Pratt Construction	<u>Knox County:</u> Roberts Renovations
<u>Licking County:</u> Morgan Contractors	<u>Licking County:</u> Dillard Construction	<u>Licking County:</u> Pratt Construction
<u>Coshocton County:</u> Roberts Renovations	<u>Coshocton County:</u> Morgan Contractors	<u>Coshocton County:</u> Dillard Construction
<u>Muskingum County:</u> Pratt Construction	<u>Muskingum County:</u> Roberts Renovations	<u>Muskingum County:</u> Morgan Contractors

Bidders are taking turns...

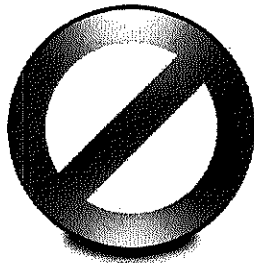
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"BID ROTATION"

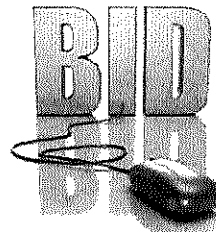


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What not to do...

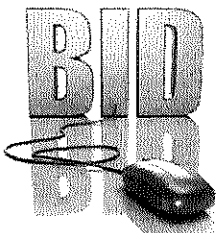


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Do not volunteer your list of prospective bidders that received invitations to bid or picked up bid packets

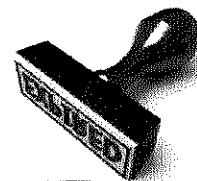
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Comply with public records laws, but don't offer as a matter of course

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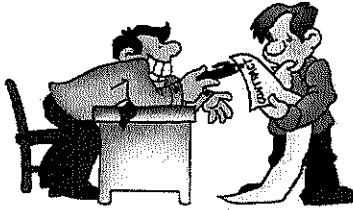
Do not use contract extensions in order to continue purchasing from a vendor after a contract term expires



EXPIRED

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Do not award open-ended contracts with no estimate of usage or a time frame for the life of the contract



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Do not seek lump sum bids if you can get line item bids.

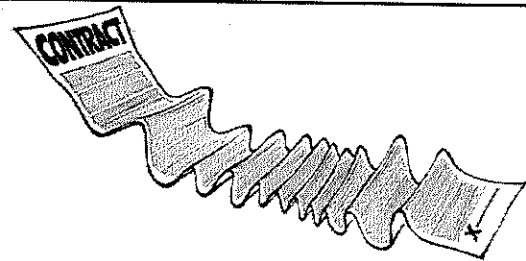
Item #	Item	Unit	Estimate	Low Bid	Low Bidder	Current	Change	Change	Change
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102	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
103	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
104	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
105	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
106	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
107	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
108	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
109	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
110	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
111	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
112	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
113	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
114	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
115	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
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119	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
120	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
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123	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
124	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
125	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
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133	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
134	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
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136	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
137	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
138	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
139	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
140	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
141	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
142	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
143	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
144	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
145	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
146	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
147	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
148	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
149	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00
150	REPAIR AND MAINTENANCE	EA	1	100.00	100.00	100.00	0.00	0.00	0.00

MIKE DeWINE

Unless required, the Engineer's estimate should not be disclosed prior to the award of the job



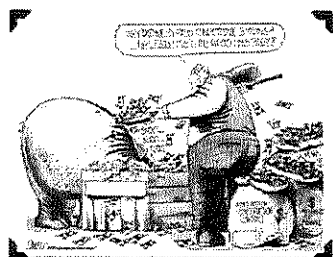
MIKE DeWINE



Do not break the value of a contract down into small amounts that fall under the legal limits in the interest of expediting the process. In most cases, similar products and services, purchased from the same vendor should constitute one contract.

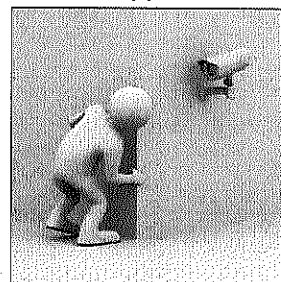
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Do not make competitive bidding the exception – make it the rule!



MIKE DeWINE

What else can you do to help deter collusive activities by vendors and detect them if they happen?



MIKE DeWINE

Encourage your agency or political subdivision to sign up for the Attorney General's



PARTNERSHIP FOR COMPETITIVE PURCHASING

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What do you need to know about the partnership?



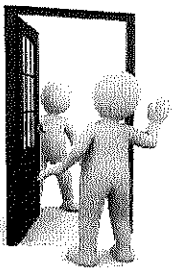
1. It is strictly Voluntary

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2. There is **NO COST** to the public entity for registration or on-site review



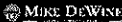



3. Registrants are able to withdraw at any time



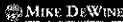


4. Twice a year, an entity will be selected for an on-site review, and **NO ENTITY** will be selected more frequently than once every **FIVE YEARS**






5. The selected registrants may defer or postpone the review if resources are limited



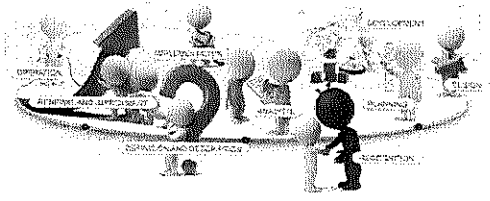
6. Limited number of products or services (determined in advance); Time period; five years or less



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7. Attorney General's team will be on site for no more than 5 days. We will need:


- Access to a person knowledgeable about your purchasing processes
- The ability to make photocopies if it is necessary



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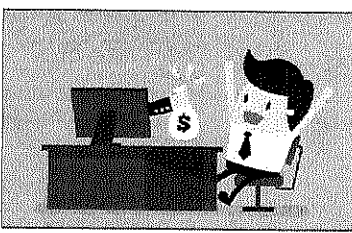
8. Following the review, the public entity will receive:

- The Results of our review
- Tips for further safeguarding your bid processes from unscrupulous vendors

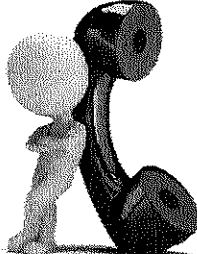


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9. The review may lead to an investigation of the vendor(s) by the Attorney General's Office, which may ultimately result in a recovery of overcharged monies that were paid by the purchaser(s).



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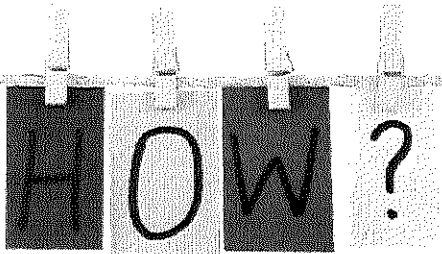
If you have any questions
about the review or
anything that seems odd,
you can always call Ohio
Attorney General Mike
DeWine's Antitrust
Section


 **MIKE DeWINE**

Three final words...

REPORT REPORT Report

 **MIKE DeWINE**



 **MIKE DeWINE**




CALL US!

EMAIL US



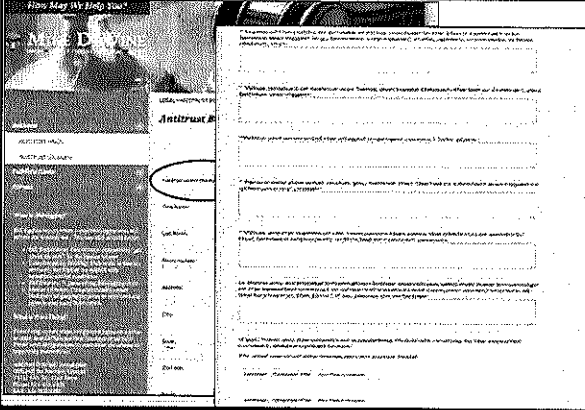
 **MIKE DeWINE**




OR...

Report a tip anonymously at:
www.ohioattorneygeneral.gov
 (Antitrust Bid-Rigging Web Tip Form)

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...or call:
1.800.282.0515

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QUESTIONS?



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