
DAF/COMP/WD(2013)117

ROUNDTABLE ON EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS

Procurement,²⁵ which identified many indicators of possible collusion. In 1984, a DOJ official noted that such “instructional programs have proven fruitful, and have led to a number of successful prosecutions.”²⁶

18. One example is a case in which two vendors rigged the bids for the sale of nylon filaments to a federal prison, where prisoners used them to make paint brushes. Auditors discussing the matter over lunch became concerned that each bidder had been awarded half the contracts in each year, and they reported their concern to the DOJ. The DOJ investigated and successfully prosecuted the vendors and their executives for bid-rigging.²⁷ Another example is a case in which ostensibly independent bids were accompanied by letters containing a common typographical error (“Please give us a call *us* if you have any question.”). Federal officials overseeing the contracting had attended training by the DOJ and recognized the significance of the common error. fues for

20. The DOJ also teaches procurement officials the Red Flags of Collusion warning signs grouped into categories with the acronym MAPS.³² The M is Market; trainees are taught to consider the structure of the market and its susceptibility to collusion. The A is Applications; trainees are taught to look for suspicious similarities in bids or proposals, such as common typos. The P is Patterns; trainees are taught to look for suspicious patterns in bidding and awards. They should consider both whether awards are oddly unchanging over time and whether they change in a predictable manner. And the S is Suspicious Behavior; trainees are taught to examine what vendors say and do for signs that they may have colluded.

21. U.S. law provides that: “If the head of [a federal] agency [engaged in procurement] considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the [DOJ] for appropriate action.”³³ The implementing regulation³⁴ states that “[a]ny agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect” and “identifies behavior . . . sufficiently questionable to warrant notifying” the DOJ. Questionable behavior includes: market conditions, e.g., “an industry price list or price agreement to which contractors refer in
