

COLLUSION IN PUBLIC PROCUREMENT



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Kyiv School of Economics, 28 February 2017

The views expressed herein are not purported to reflect those of the U.S. Department of Justice

What Is a Cartel?

When two or more horizontal competitors agree not to compete, they form a cartel





U.S. Penalties Are Significant

- ◆ Corporation
 - Up to \$100 million (£ 2.7 billion)
 - or
 - Twice gain to defendant; or twice loss to victim
- ◆ Individual
 - \$1 million (£ 27 million);
 - and/or
 - 10 years in prison



What Does Bid Rigging Look Like?



What is Bid Rigging?

An agreement among two or more competitors to:

- ◆ Predetermine the winning bidder
- ◆ Bid or not bid on a contract
- ◆ Arrange a payback for the losing bidders (money, subcontract, another project)

Types of Bid Rigging

- ◆ Bid Rotation
 - Competitors agree to take turns being the winning bidder
- ◆ Bid Suppression
 - Competitor agrees not to bid
- ◆ Complementary Bid
 - Competitor agrees to bid high

Bid Rotation

BY YEAR

	<u>Year "A"</u>	<u>Year "B"</u>
Bidder #1	Low	High
Bidder #2	High	Low

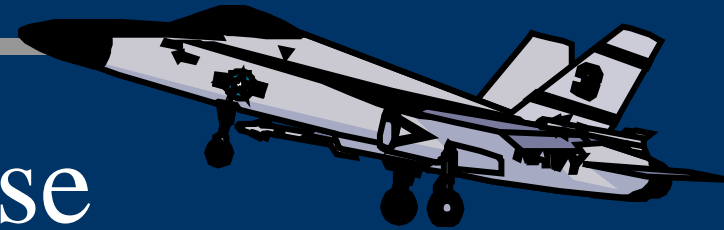
BY ITEM

	<u>Item "A"</u>	<u>Item "B"</u>
Bidder #1	Low	High
Bidder #2	High	Low

BY LOCATION

	<u>Area "A"</u>	<u>Area "B"</u>
Bidder #1	Low	High
Bidder #2	High	Low

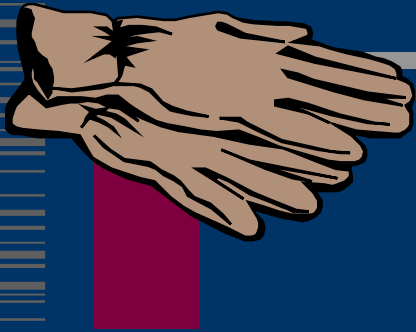
Aircraft Parts Case



	T-37 Nose Wheel		F-5 Main Wheel	
1985	Smith & Smith	\$275	Jay-Em	\$1000
1986	Jay-Em	\$455	Smith & Smith	\$1390
1987	Smith & Smith	\$465	Jay-Em	\$1416

“Price war is over.”

-- Presidents of Jay-Em and Smith & Smith, 1986



Military Gloves Case

Men's Outdoor Gloves

Firm A **\$10.00**

Firm B \$12.00

Firm C \$13.00

Firm D \$14.00

Men's Dress Gloves

Firm C **\$10.00**

Firm D \$12.00

Firm A \$13.00

Firm B \$14.00

Women's Outdoor Gloves

Firm B **\$10.00**

Firm C \$12.00

Firm D \$13.00

Firm A \$14.00

Women's Dress Gloves

Firm D **\$10.00**

Firm A \$12.00

Firm B \$13.00

Firm C \$14.00

Complementary Bid

Bidder #1 Low

Bidder #2 High

Bidder #1 awards subcontract or pays kickback to Bidder #2.

Typhoon Repair Projects Case

LIGHT TOWER

Deok Shin Corporation	\$134,000
Young Lae Corporation	\$145,850
BW Corporation	\$148,350

FOOTBALL FIELD

Cho Iron Works	\$126,000
Deok Shin Corporation	\$134,800
C.Y. Development Co.	\$138,300

BEACH PAVILLION AND CABANAS

BW Corporation	\$145,000
QL International Development	\$155,280
New Development Corp.	\$158,280

December 31, 1997

MR. [REDACTED], Director
Department of Parks and Recreation
Tiyán, Guam.

Subject: Repair of one Paseo Stadium Light Tower

Dear Mr. [REDACTED]

Please find our estimate for the Restoration of one lighting tower at the Paseo Stadium damage by Typhoon Paka. The total amount of our estimate is **"One Hundred Forty Five Thousand Eight Hundred Fifty Dollars and 00/100 (\$ 145,850.00)"**. Including the supply and installation of Lighting fixtures and power hook up.

We sincerely hope that this is according to your requirements. Please give us a call us if you have any question. Thank you very much.

Sincerely,

[REDACTED]

President

December 31, 1997

MR. [REDACTED] Director
Department of Parks and Recreation
Tiyán, Guam.

Subject: Repair of one Paseo Stadium Light Tower

Dear [REDACTED]

We submit here with our estimate for Repair and Restoration of one Lighting Tower at the Paseo Stadium that was damage by Typhoon Paka. The total amount of our estimate is **"One Hundred Forty Eight Thousand Three Hundred Fifty Dollars and 00/100 (\$ 148,350.00)"**. Including Labor, Materials and Equipment.

We hope that the above quotation is satisfactory. Please give us a call us if you have any question. Thank you very much.

Sincerely,

[REDACTED]

Project Engineer

BPA Brush Clearing Projects Case

From 1996 through 1998, 20 projects:

Basin awarded 9 contracts: \$ 951,000

Best awarded 10 contracts: \$1,003,000

Only two competitors on 19 projects:

Basin owned by son

Best owned by father

In 1999 new bidder enters:

Bids 50% lower than Best and Basin

Mud Mountain Dam Case



Engineer's Estimate: \$20.5 M

ICOS Corporation of America: \$39.5 M

S.A. Healy Co./ICOS joint venture: \$41.6 M

Bencor/Petrifond joint venture: \$41.9 M

Bachy/Bauer/Raymond joint venture: \$42.3 M

Eisenhower Tunnel Case

Bidders	Bid Price	% Over \$4.2 Milion Estimate
Flatiron Paving	\$4.4 million	6%
Corn Construction	\$4.5 million	7%
Asphalt Paving	\$4.6 million	11%
Peter Kiewit	\$4.6 million	11%





Bid Suppression



Bidder #1: Low

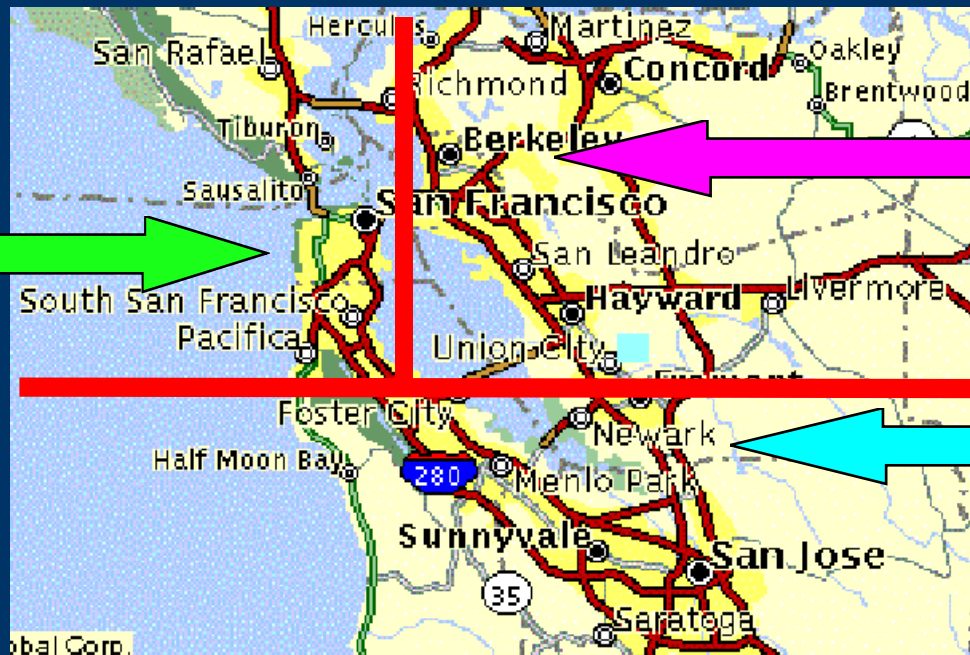
Bidder #2: No bid

Traffic Signals Case

Company B

Company C

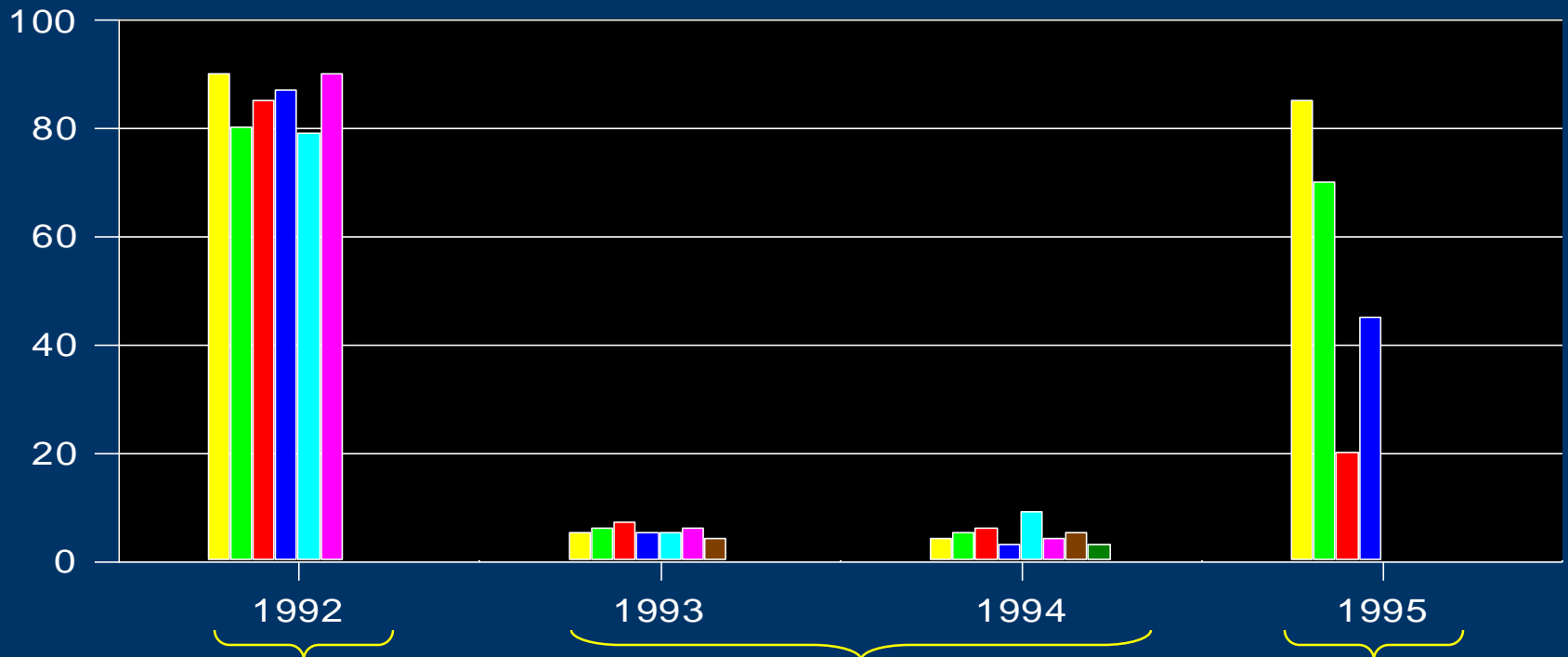
Company A



Timber Sales Case



Bid Premiums



Period of significant competition

Minimal or no competition.
No economic explanation.

Investigation begins.
Competition resumes.

Concrete Case



<u>Bid Items</u>	<u>Company A Bids</u>	<u>Company B Bids</u>
4000 psi w/plasticizer	\$51.00/yd.	\$51.00/yd.
4000 psi	\$47.00/yd.	\$47.00/yd.
3000 psi	\$45.00/yd.	\$45.00/yd.
2500 psi	\$44.00/yd.	\$44.00/yd.
8 sack grout	\$59.00/yd.	\$59.00/yd.
12 sack grout	\$79.00/yd.	\$79.00/yd.

Investigating Bid Rigging



Criminal Antitrust Investigations

Methods and Tools Used in the United States:

- Search Warrants (aka Raids)
- Undercover Informants
- Audio & Video Recordings
- “Knock and Talk” Interviews
- Witness Interviews and Testimony
- Document Subpoenas
- International Assistance Requests

Sources of Cases

- ◆ Employees
- ◆ Customers/Purchasing Agents
- ◆ Competitors
- ◆ Leniency Program



Conditions Favorable to Collusion

- ◆ Few sellers
- ◆ Opportunities for competitor contacts
- ◆ Standardized (commodity) product
- ◆ Restrictive bid specifications-limiting bidders
- ◆ Repetitive purchases

Identifying Possible Bid Rigging

Look for:

- ◆ Bid patterns over time
- ◆ Non-competitive pricing
- ◆ Sham bidders
- ◆ Clues in bid documents
- ◆ Vendor comments



Bid Patterns

- ◆ Rotation of winners
- ◆ Small number bidders who split work equally
- ◆ Same firm wins bids over time
- ◆ Bidders only win in certain geographic areas
- ◆ Fewer than normal competitors bidding

Non-Competitive Pricing/ Sham Bids

- ◆ All bid prices increase without justification
- ◆ Large difference between winning and losing bids
- ◆ Winning bid substantially above agency cost estimate, its own published price lists
- ◆ Company bidding substantially higher on some bids than others
- ◆ Losing bidder can't perform the contract
- ◆ Losing bidder receives subcontract

Clues in Bid Documents

Look for similarities in bid documents:

- ◆ Identical calculation, grammar, or spelling errors
- ◆ Identical handwriting, font, stationery
- ◆ Identical postmarks, return addresses, fax numbers, e-mail addresses



Vendor Comments

- ♦ Use of “we”
- ♦ A particular customer, territory or contract “belongs” to a certain vendor
- ♦ Statements that a bid was a “courtesy,” “complementary,” “token,” or “cover” bid
- ♦ “I can get you more bids.”

Discourage and Detect Collusion

- ◆ Solicit as many reliable bidders as you can
- ◆ Require sealed bids
- ◆ Date and time stamp the bids
- ◆ Require certification of independent price determination

Discourage and Detect

- ◆ Retain all documents
- ◆ If prices or bids don't make sense, make your vendors explain and justify
- ◆ Become familiar with your market
- ◆ Ensure that employees are familiar with signs of bid rigging

Exercise: Electrical Construction Contracts

Contract No. 1

A - \$1,800,000

B - \$1,944,000

C - \$2,088,000

D - \$2,232,000

Contract No. 2

C - \$800,000

B - \$1,100,000

D - \$1,800,000

Contract No. 3

D - \$650,000

B - \$800,000

A - \$1,000,000

Contract No. 4

B - \$1,800,000

A - \$2,100,000

D - \$2,100,000

C - \$2,300,000

Contract No. 5

C - \$1,000,000

A - \$1,500,000

B - \$1,900,000

D - \$1,575,000

Contract No. 6

D - \$1,150,000

B - \$1,510,000

A - \$1,525,000

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B - \$1,100,000

D - \$1,800,000

Contract No. 3

D - \$650,000

B - \$800,000

A - \$1,000,000

Bid Amount Difference = \$144,000

Contract No. 4

B - \$1,800,000

A - \$2,100,000

D - \$2,100,000

C - \$2,300,000

Contract No. 5

C - \$1,000,000

A - \$1,500,000

B - \$1,900,000

D - \$1,575,000

Contract No. 6

D - \$1,150,000

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A decorative graphic consisting of a vertical line of thin horizontal stripes on the left side, a thick horizontal line near the top, a vertical red rectangle on the left, and another horizontal line with a red rectangle at its right end on the right side.

QUESTIONS?