

Part I Chapter 40 Noncollusion and Bid-Rigging

- A. Definition of Bid-Rigging.** The concerted activity of two or more persons to determine in advance the winning bidder of a contract let or to be let for government agency.
- B. Prohibited Activities.** It is unlawful for any person to conspire, collude, or combine with another in order to commit or attempt to commit bid-rigging. Unlawful bid-rigging includes:
1. Agreeing to sell items or services at the same price.
 2. Agreeing to submit identical bids.
 3. Agreeing to rotate bids.
 4. Agreeing to share profits with a contractor who does not submit the low bid.
 5. Submitting prearranged bids, agreed-upon higher or lower bids or other complementary bids.
 6. Agreeing to set up territories to restrict competition.
 7. Agreeing not to submit bids.
- C. Simultaneous Bids.** It is not unlawful for the same person to simultaneously submit bids for the same work or a portion thereof, as a proposed prime contractor and subcontractor.
- D. Noncollusion Affidavits.** All IFBs and RFPs should include the requirement for bidders and offerors to provide a noncollusion affidavit with their bids/proposals. A form of a noncollusion affidavit is found in the Appendix of Forms. The noncollusion affidavit should state whether or not the person has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years. The noncollusion affidavit should provide that the person's statement on the affidavit that he has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years does not prohibit a Commonwealth agency from accepting a bid from or awarding a contract to that person but it may be grounds for:
1. Rejection of the bid/proposal on the basis of lack of responsibility; and/or
 2. Suspension or debarment.
- E. Investigation.** Whenever a purchasing agency suspects that a bidder may have engaged in bid-rigging or collusion activity, the purchasing agency should refer the matter to its agency counsel who will, if the counsel also finds suspicious facts, forward the matter to the Office of General Counsel for referral to the Office of Inspector General or the Office of Attorney General.