



**COLORADO**  
Department of Health Care  
Policy & Financing

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# RFP Antitrust Laws and Bid Rigging

*Fact Sheet December 2022*

## Introduction

The purpose of this communication is to provide additional information regarding the upcoming Case Management Agency (CMA) Request for Proposal (RFP). The Department of Health Care Policy and Financing (Department) understands Case Management Redesign (CMRD) has influenced many changes for communities and providers throughout the State. Local and regional discussions have been encouraged, as these conversations may be both necessary and appropriately oriented to community planning purposes to minimize negative impact to members. Nevertheless, there are certain considerations we recommend all stakeholders be aware of as CMRD transitions to the competitive bidding process for case management contracts as required by House Bill 21-1187 at COLO. REV. STAT. § 25.5-6-1703(3)(a).

Colorado statutes implementing CMRD require case management agency contracts be awarded through the evaluation of competitive submissions pursuant to a Request for Proposals (RFP). Fair competition is essential to this RFP process.

To ensure both participants and the public benefit from open and fair case management agency selection, this fact sheet first provides an overview of antitrust laws related to bid rigging and addresses the penalties that may be imposed for their violation. Second, this fact sheet explains the most common types of bid rigging schemes prohibited by state and federal antitrust statutes. Last, the fact sheet outlines specific activities that are not permitted by competitors during the preparation and submission of RFP proposals.

## Overview of Anti Trust Laws

### What Laws Protect Colorado Citizens from Bid Rigging?

In general terms, bid rigging is fraud associated with bidding processes. Bid rigging of public contracts undermines the competitive process and impacts Colorado consumers, businesses, and the public. Bid rigging violations can be prosecuted in civil or criminal court. See 15 U.S.C. § 1 (bid rigging is a felony punishable by fine or imprisonment); COLO. REV. STAT. § 6-4-117 (bid rigging is a felony punishable by fine for a corporation and a fine or imprisonment



for an individual). The Colorado Attorney General has the authority to enforce state and federal antitrust statutes. See 15 U.S.C. § 15c; COLO. REV. STAT. § 6-4-111.

Colorado antitrust statutes address contracts obtained by fraud and conspiracies to commit bid rigging fraud. Specifically, Section 104 of the Antitrust Act states that, “every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce is illegal.” COLO. REV. STAT. § 6-4-104. Moreover, Section 106 of the Antitrust Act states that, “it is illegal for any person to contract, combine, or conspire with any person to rig any bid, or any aspect of the bidding process, in any way related to the provision of any commodity or service.” COLO. REV. STAT. § 6-4-106(1). Our Antitrust Act is broader than its federal counterpart. See 15 U.S.C. § 1.

## What Are Common Bid Rigging Schemes?

Bid rigging can emerge in multiple contexts. Ultimately, these violations create an agreement among competitors as to who will be the winning bidder. There are four basic schemes involved in most bid-rigging conspiracies.

- **Bid Suppression:** Bid suppression is what occurs when one or more competitors agree not to bid, or withdraw a previously submitted bid, so that a designated bidder will win.
- **Complementary Bidding:** Complementary bidding schemes are characterized by co-conspirators submitting token or “cover” bids which are intentionally high, or which intentionally fail to meet all the bid requirements in order to lose a contract. These cover bids are not designed as genuine, competitive bids. They are simply offered to give the illusion of a competitive environment.
- **Bid Rotation:** Bid rotation is when all or a subset of co-conspirators submit bids, but by agreement, take turns being the winner on a series of contracts. In this way, the winner is rotated among the conspiring parties.
- **Customer or Market Allocation:** Customer or market allocation schemes occur when co-conspirators agree to divide up customers or geographic areas. The result is that the co-conspirators will not bid, or will submit only complementary bids, when a solicitation for bids is made by a customer or in an area not assigned to them.

Subcontracting arrangements are often part of a bid rigging scheme. Competitors who agree not to bid or to submit a losing bid frequently receive subcontracts or supply contracts in exchange from the successful low bidder. In some schemes, a low bidder will agree to withdraw its bid in favor of the next low bidder, in exchange for a lucrative subcontract that divides the illegally obtained higher profits between them.



## How Does This Information Impact My Bid?

Case management agencies participating in CMRD are expected to submit competitive bid proposals that are fair and free of any type of agreement with competitors that could predetermine a winner of the bidding process. The following is a non-exhaustive list of activities that will disqualify a bidder from receiving a contract award pursuant to state and federal antitrust laws. Also, violations may be a civilly or criminally punishable offense.

*\*\*\*Evidence of bid rigging will be cause for immediate investigation and potential exclusion from the RFP process.\*\*\**

Some examples of prohibited activities include:

- Communicating the terms of your proposal to competitors. Such information exchange could include, but is not limited to, price, quality, or fulfillment terms;
- Modifying your bid proposal after learning about, viewing, or discussing a competitor's submission. If your bid proposal requires modification after submission, please contact HCPF to ensure the integrity of the bidding process. Justification for modification may be requested;
- Entering any form of arrangement with a competitor in which you agree in advance not to participate in the current RFP process or future RFP processes;
- Including in your proposal any term you know will pre-determine a winner or loser;
- Engaging in any activity, including through acquisition, joint venture, subtract or otherwise, that is designed to suppress competitive bid submissions;
- Submitting a big package that you understand or expect to be rejected based on advance knowledge of competing bid packages;
- Removing your bid package after submission if asked to do so by a competitor. Unexplained bid withdrawal may evoke follow up communication from the Department;
- Previewing and copying any aspect of a competitor's bid proposal;
- Agreeing to lose or win with any competitor. Similarly, you may not agree to lose or win with any competitor in exchange for future outcomes on subcontracts, RFPs, or other contractual arrangements;



- Agreeing with a potential competitor to not bid on a particular defined service area;
- Agreeing to accept or offer a subcontract with a competitor in exchange for your or their participation in the RFP process; and
- Agreeing to “take turns” with competitors as to who will bid for and/or win contracts subject to the RFP.

## Conclusion

We appreciate your cooperation to ensure CMRD achieves its goals to strengthen case management services across the State. Together, we can work towards fulfilling the Department’s mission of improving health care equity, access, and outcomes for all Coloradans.

As a part of our goal to ensure the integrity of the case management RFP, we are requiring that all bidders complete the non-collusion affidavit, which is included in the RFP materials which will be posted in later this month. This affidavit must be executed and returned in conjunction with the submission.

If you have any questions or concerns about the RFP process or the topics discussed herein, please contact our office.

## For more information contact

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