

**ANTITRUST ISSUES IN GOVERNMENT CONTRACTS:
D.C. AND FEDERAL PERSPECTIVES
“Antitrust Enforcement”**

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SOURCES OF ENFORCEMENT

Sherman Act, 15 U.S.C. §1

- **contacts, combinations, conspiracies in restraint of trade**
- **horizontal**
- **vertical**
- **enforced by Antitrust Division**

Sherman Act, 15 U.S.C. §2

- **monopolization or attempt to monopolize**
- **enforced by Antitrust Division**



SOURCES OF ENFORCEMENT

Sherman Act, 15 U.S.C. §3

- **applies Sherman Act §1 to District of Columbia**
- **case law applies federal antitrust law generally to District of Columbia**

Federal Trade Commission Act, 15 U.S.C. §45 (§5)

- **conduct violating Sherman Act may be “unfair method of competition”**

Sources of Enforcement

- **Clayton Act , 15 U.S.C. 18 (§7)**
 - bars mergers and acquisitions with likelihood of substantial effect on competition
 - enforced by both Antitrust Division and Federal Trade Commission
- **DC Code**
 - §28-4502 (parallels Section 1 of Sherman Act)
 - §28-4503 (parallels Section 2 of Sherman Act)
 - §28-4506 (criminal) (was \$50,000 fine, now up to \$5,000/\$2,500; one year imprisonment)
 - §28-4507 (civil damages/injunction)



Sources of Enforcement

- **§28-4508 (private right of action)**
- **§28-4515 (federal court interpretations may be used as guide)**
- **enforced by Office of the Attorney General of the District of Columbia**
- **referrals from the Office of Procurement**
- **U.S. v. American Airlines and U.S. Airways**



TYPES OF VIOLATIONS IN PROCUREMENT/GOVERNMENT CONTRACTS

Criminal – per se

- **Penalties – Corporate: \$100,000,000 fine
Individual: \$1,000,000 fine; 10 years imprisonment**
- **Examples**
 - **price-fixing among competing bidders**
 - **bid-rigging by agreements to allocate contracts**
 - **product market allocation**
 - **sham bidders**
 - **kickbacks to other bidders/procuring agency**



TYPES OF VIOLATIONS IN PROCUREMENT/GOVERNMENT CONTRACTS

- **Certificate of Independent Pricing Determination**
- **American Recovery and Reinvestment Act of 2009**
 - **Antitrust Division Recovery Initiative**
- **Companion Statutes**
 - **18 U.S.C. §§1341, 1343 (mail/wire fraud)**
 - **18 U.S.C. §1001 (false statements)**



TYPES OF VIOLATIONS IN PROCUREMENT/GOVERNMENT CONTRACTS

Civil – rule of reason

- **Penalties – treble damages, injunction**
- **Examples**
 - **trade association coordination of bid activities**
 - **changing labor rates/personnel or other costs**
 - **false representation in bids (Truth in Negotiations Act “TINA”)**
 - **sharing confidential bid information (Procurement Integrity Act)**

TYPES OF VIOLATIONS IN PROCUREMENT/GOVERNMENT CONTRACTS

- **Companion Statute**
 - **False Claims Act, 31 U.S.C. §§3729 et seq.**
**(knowing submission of false claims for payment or
false record in support of claims)**