

## AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION (ARTBA)

### POLICY ON COMPLIANCE WITH LAWS PROMOTING COMPETITION

ARTBA policy emphasizes that all association members must adhere to the federal and state laws, and ethical standards, relevant to the transportation design and construction industry. Thus, ARTBA encourages its members to fully recognize the importance of compliance with legal requirements, particularly antitrust considerations, not only wherever they are located and/or do business, but also as importantly, at ARTBA meetings.

ARTBA is a federation whose members—many of whom compete with one another—plan, design, construct and manage transportation infrastructure projects or provide materials, supplies or services used in these endeavors. Thus, ARTBA and its members are particularly sensitive to their responsibilities under both federal and state antitrust laws, which are designed to promote competition and which severely penalize those who engage—usually collectively—in anti-competitive business practices.

Both federal and state antitrust laws address and very often prohibit one or more of the following:

- Any understanding or agreement, written or oral, formal or informal, express or implied, among competitors with regard to prices, terms or conditions of sale, distribution, volume of production, division of territories, allocation of customers, and bidding conduct that could constitute cover or complementary bidding, bid suppression, bid rotation or other forms of bid-rigging;
- Exchange or collection and dissemination among competitors of information regarding current prices or pricing methods, or the exchange or collection of such information that could facilitate or constitute cover or complimentary bidding, bid suppression, bid rotation or other forms of bid rigging;
- Exchange of cost or bidding information for the purpose, or with the probable effect, of increasing, maintaining or stabilizing process or bids or reducing competition in the marketplace with respect to the range or quality of products or services offered;
- Collective attempts to prevent any person or business entity from gaining access to any market or customer for goods or services, or collective prevention of any business entity from obtaining a supply of goods or otherwise purchasing goods or services freely in the market;
- Agreements or understandings among competing firms with respect to their current bids or bidding practices, selection of products for purchase, their choice of suppliers, or the prices they will pay for supplies;
- Unfair methods of competition and unfair or deceptive acts or practices such as false or misleading advertising; and
- Price discrimination (or differentiation) between purchasers of commodities of like grade and quality if such activity substantially lessens competition.

Certain collective activity between members, such as a legitimate joint venture or a mentor/protégé program, may be permitted under antitrust laws, depending on the particular circumstances. If a member is involved in such activity, they should review it with their own legal counsel to ensure compliance with all laws, including antitrust.

In light of antitrust laws, ARTBA must exercise appropriate caution when holding its meetings and developing and conducting its programs and activities. By following the rules set out below, ARTBA seeks to minimize the legal risks both to ARTBA and its members:

- ARTBA staff, counsel and members will not tolerate or authorize any activity or discussion concerning current or future prices, pricing methods, or bidding conduct that could lead to cover or complimentary bidding, bid suppression, bid rotation or other forms of bid-rigging, production levels, sales, profits, market share, geographical allocation of markets, boycotts, restrictions on or refusals to deal with one or more suppliers, customers for related businesses, transportation rates, future intentions regarding credit matters of other members or companies or similar matters that may be interpreted as violations of any applicable antitrust or competition law;
- ARTBA's structure, bylaws and methods of operation are well defined and designed to serve the interests of the entire industry and the public, and shall be periodically reviewed;
- ARTBA's antitrust policy shall be distributed prior to all major ARTBA meetings for members and staff to review and reference as appropriate.
- Each ARTBA meeting (including committees, divisions, councils, task forces, etc.) will, upon request, have its written agenda reviewed and approved in advance by ARTBA's legal counsel to which the participants shall adhere;
- ARTBA's legal counsel shall, upon request, attempt to attend (or participate via phone), when available, ARTBA Board of Director meetings and Executive Committee meetings. Outside of such meetings, ARTBA's legal counsel shall also be continually available to the members and staff for consultation, review and guidance on antitrust and other legal issues; in instances where ARTBA's legal counsel is unable to attend meetings, ARTBA staff present at the meetings shall advise ARTBA's legal counsel as appropriate.
- There shall be a written record (minutes) of all ARTBA meetings (including committees, divisions, councils, task forces, etc.) which shall be reviewed, upon request by ARTBA's legal counsel;
- ARTBA's contracts and substantive correspondence or documents concerning such subjects as business practices, statistics, standards, certification, individual members and membership, which have or may have legal implications shall be reviewed by ARTBA's legal counsel before distribution;
- Non-members seeking admission and members being considered for expulsion shall be treated in accordance with the procedures set forth in ARTBA's by-laws;
- With the exception of fundraising activities, which shall otherwise be conducted in accordance with applicable state and federal law, correspondence among ARTBA members regarding ARTBA events and activities shall be distributed by ARTBA staff rather than directly between or among the members;
- ARTBA letterhead stationery shall be distributed by staff only to ARTBA members who are current officers or who are authorized to use letterhead for external correspondence;
- Statistical data on past market information that is not publicly available, whether collected by ARTBA or an outside entity retained by ARTBA, shall be collected in such a manner that assures the anonymity of each reporting member's data. Statistical data shall not be collected that could be used to facilitate collusive pricing or restrictive business practices; and
- Dues schedules shall be designed so that members cannot thereby determine sensitive sales or profit information about any other member.

Legally troublesome association activities are often not clearly separable from acceptable ones. Therefore, it is critical that ARTBA have resources for advice and guidance to which it can turn whenever a legally sensitive matter arises. In order of importance, these resources are:

- You, the person reading this policy — Your responsibilities begin with a thorough understanding of this document, and continue during every contact you have with ARTBA itself, its members and other interested parties. For example, if you are approached at an association social function by a competitor who wants to discuss a potentially sensitive topic under the antitrust laws, you have a responsibility to yourself, your company and ARTBA to change the subject, object to this behavior and walk away. Further, if you are sitting on an ARTBA committee, division, council, task force, etc. that proposes an activity that you believe may be legally sensitive; you should refer it to ARTBA senior staff or ARTBA's legal counsel immediately for an opinion. If you have a concern about an ARTBA activity, voice it early and directly to ARTBA senior staff or ARTBA's legal counsel. You and your ARTBA colleagues must remain vigilant in these matters.
- Legal counsel — ARTBA's legal counsel's responsibility is to ARTBA. While each member's own legal counsel may advise on antitrust or competition law problems for that member's own use, ARTBA's legal counsel must look at these matters from the association or collective perspective. ARTBA's legal counsel cannot protect the interests of ARTBA without a thorough understanding of the planned activities of ARTBA and its members. This information often comes from ARTBA staff, however, ARTBA's legal counsel also depends upon the members to be aware of and promptly advise counsel of matters they believe may pose legal problems.
- Association staff — Although not experts in antitrust and competition law, the ARTBA staff have varying degrees of sensitivity to circumstances surrounding ARTBA activities which may give rise to antitrust concerns and can help members recognize when ARTBA's legal counsel should be consulted.

Finally, if despite these policies and resources, an ARTBA member becomes involved in activities or discussions that it believes are or may be illegal, that ARTBA member should withdraw from participation, announce the objection and promptly inform ARTBA's legal counsel.

This statement recognizes that ARTBA, like all associations, operates within a complex web of antitrust laws designed to assure open competition. This requires the diligent efforts of you, the member, ARTBA's legal counsel and ARTBA staff to obey said laws and avoid any situations which might violate them.