



Policy: 2.20 Antitrust Compliance Policy

I. INTRODUCTION.

The Sherman Act and the Clayton Act, the principal federal antitrust statutes, and the California antitrust counterpart, the Cartwright Act, prohibit agreements, combinations, and conspiracies amongst businesses, corporations and associations which result in a restraint of trade or constitute anti-competitive behavior. Associations such as CSDA are subject to close scrutiny under such antitrust laws because CSDA is a trade and professional association composed of independent special districts, other public agencies, public agency associations, and private businesses serving special districts. Members of CSDA consisting of independent special districts and other public agencies cannot be subject to federal or state prosecution or civil action, fine or injunction under the antitrust laws because of their status as public agencies. However, CSDA itself as a non-profit public benefit corporation, and its business affiliate members are subject to federal and state antitrust laws and face potential liability for violating the provisions of those laws. Penalties for violation of the antitrust laws are severe. Criminal liability can result in fines and imprisonment of individuals, and a court order dissolving an association or curtailing its activities. Civil liability consists of liability for damages in triple damages actions and can be enforced against CSDA and its members by both government agencies and private parties.

CSDA, as an association comprised in part of private business affiliate members who may be potential competitors for public agency business, faces potential federal and state antitrust liability if it is found to participate in or acquiesce in agreements made among business affiliate members that restrain trade or are anti-competitive. Business affiliate members may potentially engage in illegal anti-competitive agreements and behavior while attending CSDA programs and conferences and may interact with CSDA employees, directors and agents in the course of discussing such agreements. .

Such antitrust liability can result from participation by CSDA in certain activities conducted by its private business members which are statutorily presumed to adversely affect competition, and are referred to as per se violations. Such prohibited activities include price fixing, including any explicit or implicit understanding affecting the price of a member's product or service even if the understanding would benefit consumers; allocation of customers, markets or territories amongst potential competitors; agreements or discussions regarding



submitting bids or responses to requests for proposals which may constitute bid rigging; group boycotts; agreements to refuse to deal; and illegal tying arrangements by which the purchase of a product or service is “tied” to purchase of a related product or service. Any acquiescence by CSDA representatives in discussions regarding such activities can lead to liability.

In addition, potential antitrust liability for CSDA and its business affiliate members can result from any other agreement amongst private business affiliate members in which the anti-competitive effects of such an agreement outweigh the potential pro-competitive effects of such an agreement. Finally, CSDA as an association faces potential antitrust liability with respect to its association activities such as membership restrictions, standard setting, certification of members, and information sharing programs among private business members that may be found to have anti-competitive effects.

2. PURPOSE OF POLICY.

In light of the potential antitrust liability of CSDA and its business affiliate members, it is necessary for CSDA to develop an antitrust compliance policy for the purpose of: (1) advising and educating CSDA members, members of the Board of Directors, staff and consultants regarding potential violations of antitrust law that may occur in the context of the programs, services and conferences provided by CSDA to its members; and (2) mitigating to the maximum extent possible potential liability of CSDA, its directors, employees and agents from potential antitrust liability for anti-competitive agreements, combinations and actions performed by business affiliate members of CSDA while participating in CSDA programs, meetings and/or conferences.

This CSDA Antitrust Compliance Policy requires strict compliance with federal and state antitrust laws. The policy includes a description of prohibited activities which constitute per se violations of the antitrust laws. CSDA members should avoid discussing certain subjects as specified in this policy when they are together attending CSDA programs, conferences, and meetings of the membership, directors, and committees. This includes avoiding informal contacts amongst business affiliate members in the same industry in which “prohibited activities” as defined by this policy could potentially occur.

The policies also contain a description of actions that the association and its employees, board members, agents, and members may take to avoid antitrust liability, and provides for an investigation process with respect to any allegations of participation in prohibited activities which constitute a violation of these policies.



3. PROHIBITED ACTIVITIES.

The following prohibited activities apply to all CSDA programs and conferences attended by CSDA members including membership events such as the Annual Conference and General Manager Leadership Summit; all membership, board, and committee meetings of CSDA and CSDA affiliated chapters; any formal meeting or informal gathering of CSDA members that includes business affiliate members operating in competitive environments or at which CSDA employees, board members or agents may be present. Although CSDA regular voting members may individually be exempt from antitrust liability as public agencies, they are encouraged to adhere to these activity restrictions and to not be present during any informal gatherings or meetings at which any one or more of the following prohibited activities occur, in order to avoid any inference of CSDA participation as an association in such prohibited activities.

3.1 Any discussions amongst potential competitors of prices, fees or rates, or the levels of prices, fees or rates are prohibited.

3.2 Discussions amongst potential competitors of elements of a member's operations which might influence or impact raising, lowering or stabilizing prices, fees or rates are prohibited, including but not limited to:

- (a) Costs of operations, supplies, labor or services, and salaries and wages;
- (b) Allowance for discounts;
- (c) Terms and conditions of purchase and sale of products or services including credit arrangements;
- (d) Profit margins and markups;
- (e) Limitations and/or reductions in the supply of products or services.

3.3 Business affiliate members who are potential competitors shall not agree to any uniform terms of sale, warranties or contract provisions including prices, rates or fees.

3.4 Business affiliate members who are potential competitors shall not exchange data concerning fees, prices, rates, production, sales, bids, costs, salaries and wages, customer credit, or any other business practices unless made pursuant to a formal program or plan approved by association General Counsel.

3.5 Business affiliate members who are potential competitors shall not engage in discussions of division of territories or customers, or limitations on the



nature of business carried on, or products sold in particular areas. In addition, such members shall not agree with any competitors to divide up customers, markets or territories.

3.6 Business affiliate members who are potential competitors shall not engage in any discussions relating to a boycott, which means agreeing with potential competitors not to deal with certain companies or public agencies. A boycott includes but is not limited to discussion among competitors regarding blacklisting, or unfavorable reports about particular potential competitors or public agencies, including their financial situation.

3.7 Business affiliate members who are potential competitors shall not engage in any discussions with the intent to prevent any CSDA member from purchasing supplies or services from, or selling services and/or supplies to a member's competitor.

3.8 Business affiliate members who are potential competitors shall not discuss customers who are public agencies and CSDA members with any potential competitors.

3.9 Business affiliate members who are potential competitors shall not engage in any discussions regarding methods or terms of compliance with the provisions of Requests for Proposals ("RFP's") or Requests for Qualifications ("RFQ's") for products or services requested by public agency members of CSDA. In addition, such members shall not discuss with potential competitors any terms and conditions with respect to a Bid Proposal to be submitted to a public agency CSDA member issuing a Notice Inviting Bids for the construction, acquisition, improvement, maintenance or repair of a public facility or publicly owned real property.

3.10 Business affiliate and associate members who are potential competitors shall not engage in any discussion regarding or institute any tying arrangement to sell, fix a price, or grant a discount or rebate for purchase of a product or service on the condition that the purchaser also purchase a related product or service from that member, and not a potential competitor.

4. ACTIONS TO AVOID ANTITRUST LIABILITY.

4.1 All employees, board members and agents of CSDA and all CSDA members, whether regular voting members, business affiliate members, or associate members, shall adhere to this Antitrust Compliance Policy while attending any CSDA program, conference, event, meeting, or any informal gathering occurring at any such events.



4.2 Each CSDA member should share this Antitrust Compliance Policy with their respective board members, management staff and consultants and ensure that such policy is understood.

4.3 At any CSDA conference, event, educational program, meeting, presentation, or informal gathering attended by an employee, board member or agent of CSDA, or members of CSDA, where discussion borders on one or more of the prohibited activities described in Section III hereof, all representatives of CSDA should request that the discussion be terminated and that such request be made a part of the record of such meeting or event if such a record is being kept. If such discussion continues all CSDA representatives and members should excuse themselves from the meeting, event or gathering and request that the record of such meeting or event, if any, reflect that fact and the reason for the departure as a perceived violation of this policy. All such instances shall immediately be reported to the CSDA Chief Executive Officer. The Chief Executive Officer will consult with association General Counsel and determine whether an investigation should be conducted pursuant to Section 4.8 of this policy.

4.4 Antitrust reminders shall be included in all written materials circulated in advance of meetings, presentations, or other CSDA programs at which discussions of prohibited activities specified in Section III of this policy may potentially occur.

4.5 CSDA staff shall monitor CSDA events, programs, seminars, meetings and informal gatherings for potential violation of this policy.

4.6 CSDA, as an association, will continue to emphasize the following pro-competitive activities:

- (a) Member education on industry developments and applicable legal and regulatory constraints;
- (b) Reporting of legislative and regulatory action of importance to members and active support or opposition of such legislation when appropriate in the interest of the membership;
- (c) Education of members, the public and the media about special districts and the products and services offered by special districts as well as business affiliate and associate members of the association;
- (d) Conduct standard setting, accreditation, and certification programs



to ensure quality, efficiency, transparency and accountability in the furnishing of public services. Such association activities will be limited to CSDA's public agency members.

4.7 CSDA encourages employees, members of the board, and CSDA regular, business affiliate and associate members to file complaints or reports about any perceived prohibited activity as defined by this policy. All such complaints should include specific facts supporting any allegation of such prohibited activity.

4.8 Upon investigations of allegations of prohibited activity, the Chief Executive Officer may request that a person submitting a complaint alleging prohibited activity pursuant to this policy provide his or her name and contact information and provide the names and contact information for any persons who could help substantiate the claim. However, this information is not required in order to submit a complaint.

Upon receiving a complaint of prohibited activity under this policy, the Chief Executive Officer will commence an investigation of the allegations. The Chief Executive Officer may request the assistance of association General Counsel and/or any outside consultant in evaluating an allegation of prohibited activity or conducting such an investigation of prohibited activity pursuant to this policy. Such an investigation shall be completed and a report prepared of the results of the investigation within sixty (60) days from the date of the complaint.

If, upon completion of the investigation, the Chief Executive Officer finds that prohibited activity as defined by this policy may have occurred at a CSDA sponsored event or program, the Chief Executive Officer shall make such findings in the investigative report and include recommended actions to prevent the continuance or recurrence of such prohibited activity. The Chief Executive Officer shall also consult with association General Counsel as to whether such prohibited activity should be reported to the United States Department of Justice in order to mitigate potential antitrust liability of the association. The Chief Executive Officer shall submit the final investigation report including findings and recommendations to the Board of Directors of CSDA for action. The Board of Directors may impose discipline on a member found to have violated these policies, which discipline may include termination of membership. Any action taken by the Board of Directors pursuant to the investigation report shall be deemed final.

4.9 If any CSDA employee, board member, agent, consultant, or member has questions about the activities of CSDA and/or its members and his or her individual responsibilities under the antitrust laws and this Antitrust



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Compliance Policy, CSDA encourages you to seek advice and counsel from CSDA staff and General Counsel, or from counsel of your own choice. Any questions about this Antitrust Compliance Policy should be directed to CSDA's Chief Executive Officer.

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