

Bid Rigging under Competition Order 2015



Did you know?

According to the Organisation for Economic Cooperation and Development (OECD), anti-bid-rigging efforts through the improvement of procurement procedures has led to significant savings in a number of countries:

- Japan through reviewing of procurement procedures has resulted in a saving of up to 20% in the contract price of public procurement
- 47% of saving in the procurement of certain military goods in Colombia
- 43% saving in the cost of purchasing medicines in Guatemala

With healthy competition, businesses compete independently to offer more choices, better quality products and services at better prices for consumers, including government and business consumers. Public and private organizations rely on tendering process to achieve that end.

Tendering procedures are designed to provide competition in areas where it might otherwise be absent. However, the benefits of competition can only be achieved when bidders genuinely compete.

Bid rigging, or commonly known as tender collusion, occurs when businesses conspire to fix prices, lower quality of products or services or otherwise coordinate their bids by allowing one cartel members to 'win' the tender through pre-determination of winner. It refers to an agreement among some or all businesses to limit or eliminate competition during the tendering process.

Bid rigging, which is a form of cartel, is illegal and subject to Competition Order 2015.

Bid rigging can occur in any market where tender processes are used. When businesses collude, prices are inflated, choices reduce and consumers suffer as a result. Consumers including the government are at risk of purchasing goods and services at uncompetitively high prices. Government resources that could otherwise be used for other socially desirable purposes are wasted. Thus, it is particularly crucial for procurement officials to appreciate the importance of their role in detecting and fighting bid rigging and for them to be alert to possible signs of collusion in order to safeguard the competitive procurement processes.



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BID RIGGING

ANTI-COMPETITIVE AGREEMENTS

UNDERSTANDING AND DETECTING
BID RIGGING IN PUBLIC PROCUREMENT

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Common Types of Bid Rigging

1. Complementary bidding (also known as cover bidding)



This is the most common form of bid rigging where one or more bidders agree to submit bids with higher prices or less favourable terms than the "chosen" bidder, who is the designated winner.

2. Bid suppression (also known as bid withdrawal)

This involves one or more potential bidders agreeing to refrain from submitting a bidding or withdrawing previously submitted bid in favour of the designated winner.



3. Bid Rotation

Businesses take turn to be the winner, by agreeing who will submit the lowest bid. In this way, they all share in the ill-gotten gains of the cartel.



4. Sub-contracting tender to losing bidder



Bid rigging may also involve the successful designated winner entering into a sub-contracting agreement with the losing bidder or one that suppressed its bid as an exchange for being the successful designated winner.

Detecting Bid Rigging



Bid rigging can be very difficult to detect as agreements are usually reached in secret. However, some suspicious bidding patterns or bidders' conducts may be signs of collusion. Thus, it is crucial to be alert to the following:

1. Some suppliers unexpectedly withdraw from bidding or fewer suppliers than normal submit bids
2. Some companies seems to take a turns in winning bids
3. Certain companies always submit bids but never win
4. The same company always wins or loses a particular bid
5. A company bids much higher on some bids
6. Sudden and identical increases in price or price ranges by bidders that cannot be explained by cost increases
7. Identical mistakes in the bid documents or letters submitted by different companies, such as spelling errors
8. Bids from different companies contain identical miscalculations
9. Bids from different companies contain a significant number of identical estimates of the cost of certain items
10. Suppliers regularly socialise or hold secret meetings before submitting bids
11. Several bidders make similar enquiries to the procurement agency or submit similar requests or materials
12. Suspicious statement that indicate bidders may have reached an agreement

Nonetheless, it is important to note that such suspicion does not carry a proof of collusion but merely a call for further investigation.

Collusion is likely if ...

1. Few sellers of the product or service involved
2. Repetitive bidding
3. Products are more standardized
4. Products are not easily substituted as there are restrictive specifications
5. Competitors know each other well such as through trade associations
6. Bidders submit their bids in the same place

Although tender collusion can happen in any sector, it is more likely or easier to occur in one sector rather than another due to particular conditions of the sector or product involved, as described.

What can you do?

- ✓ Review procurement policies, especially where conditions exist that may be favourable for collusion to take place.
- ✓ Be pro-competitive in setting the tender requirements and conditions.
- ✓ Expand the pool of potential bidders.
- ✓ Keep all documents in relation to tender and do not tip off the bidders that a complaint has been made against them.
- ✓ If you have any reasonable ground to suspect that bid rigging has taken place or is about to take place, lodge your complaint to Competition and Consumer Affairs Department.