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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Guidelines for Fighting Bid Rigging in Public Procurement**

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The Guidelines will be published on-line on the [Compendium of OECD legal instruments](#).

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## *Guidelines for Fighting Bid Rigging in Public Procurement*

### 1. Introduction

Bid rigging (or collusive tendering) occurs when companies, that would otherwise be expected to compete, conspire (typically in secret) to raise prices or lower the quality of goods, services or works acquired through a bidding process<sup>1</sup>. Bid rigging is an illegal practice in all Adherents and can be investigated and sanctioned under the competition law and rules. In many Adherents, bid rigging is also a criminal offence. The OECD Recommendation on Fighting Bid rigging in Public Procurement [[OECD/LEGAL/0396](#)] recognises that “*collusion in public tenders, or bid rigging, is among the most egregious violations of competition law that injures the public purchaser by raising prices, reducing quality, establishing output restrictions or quotas, or sharing or dividing markets, thus making goods and services unavailable or unnecessarily expensive for public purchasers, to the detriment of final users of public goods and services, and taxpayers*”.

Public and private organisations often rely upon a competitive bidding process to achieve lower prices and/or better quality and innovation, which occur when companies<sup>2</sup> genuinely compete (i.e., set their terms and conditions honestly and independently). Bid rigging can be particularly harmful in public procurement, as it affects the State and taxpayers, diminishes public confidence in the competitive process, and undermines the benefits of a competitive marketplace. The risks of bid rigging and, therefore, the benefits of following these Guidelines, are relevant for both public and private procurement<sup>3</sup> entities when issuing tenders. The Guidelines contain general principles that need to be adapted to each procurement process and are not exhaustive.

### 2. Common forms of bid rigging

Bid-rigging conspiracies can take many forms, all of which impede the efforts of purchasers, such as national and local governments and state-owned enterprises, to obtain goods, services and works at the best value for money ratio. A common approach to a bid-rigging conspiracy is increasing the price or lowering the quality or innovation of the winning bid with the objective of increasing the profit that the winning bidders will gain.

For companies to succeed in colluding, they must agree on a common course of action for implementing the collusive agreement. Furthermore, they commonly monitor whether other companies are abiding by the agreement and establish a way to punish those that deviate.

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<sup>1</sup> In these Guidelines, the terms bidding process, procurement process and tender process are used interchangeably.

<sup>2</sup> In these Guidelines, the term “company” includes individuals who participate in a procurement process.

<sup>3</sup> In these Guidelines, the terms procurer/ procurement/ procuring/ purchaser/ purchasing/ contracting authority are used interchangeably.

Although companies may agree to implement bid-rigging schemes in a variety of ways, they typically use one or more of the strategies detailed below.

- **Cover bidding.** Cover (also called complementary, courtesy, token, or symbolic) bidding is a frequent way in which bid-rigging schemes are implemented. It occurs when companies agree to submit bids that involve at least one of the following: (1) a competitor submits a bid that is higher than the bid of the designated winner, (2) a competitor submits a bid that is known to be too high to be accepted, or (3) a competitor submits a bid that contains special terms that are known to be unacceptable to the purchaser. Cover bidding is designed to give the appearance of genuine competition.
- **Bid suppression.** Bid-suppression schemes involve agreements among competitors in which one or more companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winner's bid will be accepted. In essence, bid suppression means that a company does not submit a bid for final consideration. A scenario is a collective boycott, where potential bidders agree that no bids are submitted, with the aim of inducing the contracting authority to modify the tender specifications or to award the contract to one company without a tender.
- **Bid rotation.** In bid-rotation schemes, conspiring companies continue to bid, but they agree to take turns being the winning bidder. The way in which bid-rotation agreements are implemented can vary. For example, conspirators might choose to allocate approximately equal monetary values from a certain group of contracts to each company or to allocate volumes that correspond to the size or market share of each company.
- **Market allocation.** In market allocation schemes, competitors carve up the market and agree not to compete for certain customers, certain geographic areas, certain bids, or certain goods, services or works. Competitors may, for example, agree that they will not bid (or will submit only a cover bid) on contracts, or contract lots (parts), offered by potential customers, which are allocated to a specific bidder. In return, that competitor will not competitively bid for a designated group of customers allocated to others in the agreement.

These techniques are not mutually exclusive. For instance, cover bidding may be used in conjunction with a bid-rotation scheme. These strategies may result in patterns that procurement officials can look for, using traditional and novel techniques (such as digital tools) to uncover bid-rigging schemes.

### 3. Compensation mechanisms

Bid-rigging schemes often include mechanisms to apportion and distribute the cartel profits among the conspirators. Compensation mechanisms may play an important role to discourage cheating or deviations from cartel agreements. For example, competitors who agree not to bid or to submit a losing bid may receive subcontracts or supply contracts from the designated winning bidder. Long-standing bid-rigging arrangements may employ more elaborate methods of assigning contract winners and monitoring and apportioning bid-rigging gains over a period of months or years.

Bid rigging may also include monetary payments by the designated winning bidder to one or more of the conspirators. These payments might take various forms, ranging from direct cash transfers to more covert methods facilitated by fraudulent invoices for goods, works or services that were never provided.

#### 4. Links between bid rigging and other unlawful conduct

Bid rigging can be combined with other conduct, including when there is a corrupt “insider” in the contracting authority, who can facilitate the operation and stability of a bid-rigging cartel. In return, they might receive financial or other rewards. Therefore, bid rigging can go hand-in-hand with other offences, like corruption and fraud. Such cross-overs between bid rigging and other unlawful activities requires educating law enforcement authorities about each other’s mandates, fostering close co-operation among them and securing incentives to self-report the offences (for example, through a leniency application in the case of bid rigging).

#### 5. Market characteristics that facilitate collusion

Although bid rigging can occur in any economic sector, certain supply and demand factors have been found to facilitate collusion. If some of these factors are present, contracting and competition authorities should be especially vigilant. Market characteristics are not always given: tender and contract design can shape the market.

##### Supply-side characteristics:

- **High market concentration.** Bid rigging is more likely to occur when there is a small number of relevant suppliers. The fewer the number of sellers, the easier it is for them to reach an agreement on how to rig bids.
- **Symmetry of market participants.** When companies have similar cost structures, capacities, research and development investments, market shares, and so forth, it may be easier to agree on a common course of action for implementing and sustaining bid-rigging schemes. Long-term symmetric market shares of competitors may be a sign of a market where collusion is in place and preserves market share stability.
- **Little or no entry.** When few companies have recently entered or are likely to enter a market because it is costly, hard or slow to enter, companies in that market are protected from the competitive pressure of potential new entrants. The barrier to entry may support bid-rigging efforts.
- **Economic shocks and declining markets** may also create incentives for suppliers to rig bids to replace lost revenue or earnings with collusive gains. However, declining demand may make collusion more challenging to sustain, as the incentive to defect and capture short-term gains increases in a shrinking market.
- **Industry or trade associations.** Industry or trade associations consist of members of an economic sector with common interests, usually joining together to further their legitimate commercial or professional goals, such as, to promote standards and innovation. However, they may also be used by company officials to meet and collude.
- **Identical or simple goods, works or services.** When the goods, works or services are identical, very similar or simple, they are likely to become interchangeable, and it is easier to reach an agreement to collude on a common price structure.
- **Few if any substitutes.** When there are few, if any, substitutes for the good, work or service that is being purchased (or when the contracting authority defines the object of the tender too narrowly), companies wishing to rig bids are more secure knowing that the purchaser has few, if any, good alternatives and thus their efforts to raise prices are more likely to be successful.

- **Little or no innovation.** Little or no innovation results in similar goods, works or services which helps companies reach an agreement and maintain it over time. Innovation increases a company's likelihood to gain an advantage over its rivals, which, in turn, makes it harder to sustain collusion.
- **Social homogeneity and shared attributes.** Homogeneity of social characteristics among professionals belonging to the same sector may facilitate cartel formation and preservation, e.g., through an increased sense of trust and familiarity in decision making. The presence of strong informal networks, notably through alumni associations, local business groups, sports and cultural associations etc., may serve as forums for collusion.

#### Demand-side characteristics

- **Predictable demand.** A constant, predictable flow of demand from the public sector tends to increase the risk of collusion (e.g., there is a chance for everyone to have their turn winning a bid). Significant changes in demand may destabilise ongoing bid-rigging agreements.
- **Repetitive bidding.** Repetitive purchases, and in particular parallel or similar tenders within a short timeframe, increase the chances of collusion. The bidding frequency and similarity helps members of a bid-rigging agreement allocate contracts among themselves. In addition, the members of the cartel can punish a cheater by targeting the bids originally allocated to them.
- **Strong focus on price.** When procurers favour standardized offers in terms of quality, technology or commercial process, and focus essentially on price, agreements between companies are made easier, since price is usually a simple and straightforward criterion on which to collude.

## 6. Inter-institutional co-operation to fight bid rigging

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] sets forth that competition authorities should “provide or offer support to set up training” on bid rigging and “establish a continuing relationship” with procurement and other public authorities through formal and informal co-operation mechanisms. In addition, the legal framework should enable procurement data standardisation, and allow competition authorities to request and receive public procurement data. Concretely, competition authorities should consider taking the following steps to implement these provisions of the Recommendation:

- If relevant, engage with appropriate policy makers and, if necessary, propose changes to the legal framework to enable procurement data standardisation and allow competition authorities to request and receive public procurement data.
- Co-operate with procurement authorities to implement a regular training programme for public procurement officials on bid rigging and cartel detection, covering competition law concepts and requirements, the standardisation and collection of procurement information, the use of tools to identify bid-rigging patterns, bid-rigging sanctions, the applicable leniency policy and anonymous whistleblowers policies, the competences of the competition authority and how to contact them. If and when needed, external experts, academics and staff of other competition agencies may support the training.

- Issue guidelines on fighting bid rigging and best practices to promote competition in public procurement, in accordance with these Guidelines and the lists that follow.
- Establish co-operative inter-institutional relationships with other authorities as needed, such as procurement, audit and anti-corruption authorities, police officers who investigate economic and financial crimes, and criminal prosecutors. Set up working groups or other mechanisms for communication, to facilitate the detection of bid rigging, exchange experiences, specify which information may be exchanged and which assistance may be required in competition investigations, and/or enable exchanges of staff if desired.
- Sign and implement domestic and/or international co-operation instruments with any relevant authority or institution, such as agreements or other mechanisms to facilitate data sharing between competition and procurement authorities, while protecting confidential procurement data.

## Appendix A. Checklist for Designing the Procurement Process to Reduce Risks of Bid Rigging (“Tender Design List”)

There are many steps that procurement agencies can take to promote competition in public procurement and reduce the risk of bid rigging, including those described in sections 1 to 6 of the Tender Design List outlined below.

### 1. Be informed before designing the tender process

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] provides that relevant authorities should understand the features of the relevant market, conducting appropriate market research. Procuring authorities should, however, be mindful that collusion can affect and bias the results of market research.

Concretely, contracting authorities should consider taking the following steps:

- Determine purchasing needs accurately, focusing on the desired end result. In cases where it is not possible to satisfy requirements with goods interoperable with existing technological solutions, the tender should cover the entire life cycle (including, for example, spare parts, maintenance, and all other ancillary services), especially in cases where the value of the aftermarket is significant.
- Be aware of recent industry activities or trends that may affect competition for the tender.
- Determine whether the market in which they will purchase or the potential bidders have a history of collusion (for example, if there have been relevant enforcement decisions of the competent competition authority or potential bidders have been debarred from public tenders for having engaged in bid rigging), or the market has characteristics that could make collusion more likely.
- Collect information on actual and potential suppliers including in other regions or markets, the characteristics of their products, their prices, and, if possible, their cost factors. If possible, compare prices offered in procurement by other authorities or in the private sector.
- Collect information about past tenders for the same or similar items, recent price changes and trends, prices in neighbouring geographic areas, including abroad, and prices of possible alternative goods, works or services, if applicable.
- Contact other public sector procurers who have recently purchased similar items in the same region or country, or other regions or countries with similar characteristics, to improve understanding of the goods, works, or services offered in the market, and its participants.
- If they use external consultants to define the tender strategy and tender terms, these should be checked for any conflicts of interest and relationships with bidders. Consultants should sign non-conflict of interest declarations and/or confidentiality agreements covering the confidential aspects of their work. They should be qualified for the work assigned to them, trained in integrity and competition do's and don'ts, and required to report any suspicions of improper competitor behaviour or any potential conflict of interest.
- In the long run, develop in-house expertise on markets to reduce reliance on external advice, potentially through networks of procurement professionals.

- Ensure proper record-keeping of inputs received during market research and market consultation, to be able to analyse potential pre-tender collusion, or bias in the design of tender specifications.
- Consider consulting with the competent competition authority before launching a large value or volume tender to check for competition-related concerns.
- Do not publish the names of companies and prices found during market research, for example when advertising the tender.

## 2. Maximise the participation of genuinely competing bidders

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] provides that relevant authorities should promote competition by maximising participation of potential bidders by a series of initiatives, like transparent and non-discriminatory participation requirements and considering the aggregation or disaggregation of tenders. In a similar vein, the OECD Recommendation on Competitive Neutrality [[OECD/LEGAL/0462](#)] recommends that Adherents “*establish open, fair, non-discriminatory, and transparent conditions of competition in government procurement processes in order to ensure that no Enterprise, regardless of its ownership, nationality, or legal form is granted any undue advantage*”. The [Competitive Neutrality Toolkit](#) supports the implementation of this provision of the Recommendation by providing detailed advice on how to ensure a level playing field among potential bidders.

Concretely, contracting authorities should consider taking the following steps:

- Use simple, clear tender specifications.
- Open tenders to all potential bidders whenever possible.
- When issuing invitations to tender to specific companies, invite as many as possible and not always the same ones.
- Avoid any unnecessary restrictions that may reduce the number of qualified bidders. Minimum requirements should be relevant and proportionate to the objective, the size and content of the procurement contract. For example:
  - Avoid excessive turnover and prior experience requirements. Whenever possible, consider other relevant experience.
  - Avoid preferential treatment for a certain class, or type, of supplier. Do not favour incumbents (i.e., the current supplier) or state-owned enterprises.
  - Do not require disproportionate bank or other guarantees from bidders as a condition for bidding.
  - Offer payment terms, such as phased payments or shorter payment cycles to make it more attractive for small and medium sized companies to participate.
  - Reduce constraints on international or non-local participation in procurement whenever possible.
- Consider assessing the suitability of bidders to perform the contract (qualification of bidders) during the procurement process and not before, to avoid collusion among the pre-qualified group and increase the uncertainty among competitors as to the number and identity of bidders. Avoid a very long period of time between

qualification and award, as this may facilitate collusion, and, if possible, do not disclose the names of qualified bidders.

- If, however, there are lists of pre-approved suppliers, make sure that suppliers can be added to them easily anytime, including during a procurement procedure before the deadline for the submission of tenders.
- Assess whether framework agreements (i.e., agreements on suppliers, prices and terms for making purchases in the future) risk creating or have created lock-in effects that may facilitate collusion, by limiting contracting authorities to buy exclusively from the approved suppliers under the framework agreement. When framework agreements are mandatory for contracting authorities, this can encourage suppliers to compete for a potentially large market, thus possibly reducing collusion risks at the initial bidding stage. In all events, consider not communicating the exact times and volumes of planned purchases under the framework agreement in advance, and focusing on quality versus price.
- Reduce the preparation costs of the bid by:
  - Providing all information on the contract, process of selection, mechanisms for deciding winners, among others, in the announcement of the tender. However, consider a balanced approach regarding the level of detail provided on the mechanism for deciding the winner, to discourage bid-rigging strategies.
  - Streamlining tendering procedures across time and products (e.g., use the same application forms, ask for the same type of information, use standardised general contract terms, etc.). Seek continuous improvements of the procurement forms and templates, based on experience.
  - Aggregating tenders, including, if necessary, through joint procurements with other contracting authorities, for similar goods, services or works, when the contracting authority expects that larger procurements may attract more bidders and more competitive bids. Make sure that such aggregation or joint procurement makes commercial sense and does not risk concentration of supply in the medium and long term nor prevents small and medium size enterprises from participating. In general, be careful to maintain a competitive supply chain.
  - Allowing adequate time to prepare and submit a bid. Consider publishing general information on future projects in advance on public procurement portal(s) and trade and professional platforms. Annual procurement plans should, if published, not include the exact estimated value and time of each tender.
- Whenever possible, allow bids on certain lots or objects within the contract, or on combinations thereof (package bidding), rather than bids on the whole contract only. For example, in larger contracts, consider tendering out contract lots (parts) that would be attractive and appropriate for small and medium sized enterprises, taking into account the OECD checklist for protecting competition when splitting contracts into lots.<sup>4</sup> In particular, in highly concentrated markets, where few bids are expected, avoid splitting tenders in a number of lots that match the number of potential bidders or are a multiple of the number of bidders. This can facilitate collusion by enabling the splitting of lots among bidders, especially if the value of those lots is similar.

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<sup>4</sup> [www.oecd.org/governance/procurement/toolbox/search/checklist-protecting-competition-splitting-contracts-lots.pdf](http://www.oecd.org/governance/procurement/toolbox/search/checklist-protecting-competition-splitting-contracts-lots.pdf)

- Require that bidders disclose if they, or their economic groups, have been fined or debarred from public tenders for bid rigging, in the past five years and consult available databases of debarred suppliers.
- Be flexible about the minimum number of bidders. Consider whether it is possible to obtain a competitive outcome from fewer bidders, rather than re-tendering, which is likely to make it clear that competition is scarce.

### 3. Define requirements clearly and avoid predictability

Drafting the tender specifications is a stage of the public procurement cycle which is vulnerable to bias, fraud and corruption. Specifications should be clear, comprehensive and not discriminatory to preclude any risk of favouritism or arbitrariness.

How tender specifications are written affects the number and type of suppliers that are attracted to the tender and, therefore, the success of the process. The clearer the specifications, the easier it will be for potential suppliers to understand them, and the more confidence they will have when preparing and submitting bids. Clarity should not be confused with predictability. Predictable procurement schedules and unchanging quantities sold or bought can facilitate collusion. Higher value and less frequent procurement opportunities, with irregular tender schedules and quantities, may increase the bidders' incentives to compete, as such tenders are more difficult to share among competitors.

Concretely, contracting authorities should consider taking the following steps:

- Define tender specifications as clearly as possible. Tender specifications should be independently checked before the tender is published, for example internally (within the contracting authority) and externally (with other public sector bodies), to ensure they can be clearly understood. They should not leave room for suppliers to interpret specifications after the tender is awarded.
- Use functional and performance specifications and state what is actually required, rather than how it is to be done or providing a description or a reference to specific brands or patents. This will encourage innovative solutions and value for money.
- Whenever possible, avoid setting national standards in tender specifications without recognising the possibility of equivalent international standards, thus encouraging foreign or non-local participation in the procurement procedure.
- Distinguish, whenever possible, between mandatory and voluntary standards and, if possible, allow offers based on other types of certification.
- Define specifications allowing for substitute goods, works or services, whenever possible. Alternative or innovative sources of supply make collusion more difficult.
- Avoid starting the tender process while the contract is in the early stages of specification. A comprehensive definition of the procurement need is key to good procurement. When this is unavoidable, for example for innovative projects, use applicable procurement methods that allow developing the solution jointly with the chosen suppliers, duly justifying the use of such methods.
- Avoid predictability in contract requirements: consider varying the size and timing of tenders. In general, avoid tendering out contracts with identical values at the same time or one after the other, as they can be more easily shared among competitors.

#### 4. Reduce communication among bidders and share information carefully

The efficiency of the procurement process will depend on the chosen tender procedures but also on how the tender is designed and carried out. Transparency is indispensable for a sound procurement procedure to aid in the fight against corruption. Transparency should be achieved in a balanced manner, in order to avoid facilitating collusion by disseminating information beyond legal requirements.

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] provides that relevant authorities should design the tender process so as to avoid revealing the identity of bidders to each other and use, to the extent possible, electronic procurement systems for all stages of the procurement process.

Concretely, contracting authorities should consider taking the following steps:

- Resolve the interested suppliers' queries on the tender process and specifications on-line and anonymously. Share significant information provided in response to a query promptly and anonymously with all potential bidders.
- Limit as much as possible communications between bidders during the tender process. For example, if the bidders need to do a site inspection, avoid gathering the bidders in the same facility at the same time.
- Electronic means should be used for all stages of the procurement process, if feasible. Bidders should not be able to identify each other.
- Require bidders to disclose in their bid their corporate structure and ownership, including the beneficial ownership, the names of their joint contractors and/or subcontractors, if applicable. Bidders should also be required to disclose ties with other companies that are relevant to the particular tender (for example, whether the bidder would be purchasing products from another bidder).
- Avoid, wherever possible, a public opening of bids and do not disclose the identity or number of bidders to other market participants during the tender process.
- Carefully consider what information is disclosed to bidders at the time of the bid opening.
- When publishing the results of a tender, carefully consider which information is published and avoid disclosing competitively sensitive information as this can facilitate the formation of bid-rigging schemes. Public procurement officials should be trained on the treatment of commercially sensitive and confidential information.
- Even if external consultants are used to set the tender specifications, the procurement process should be conducted in-house.

#### 5. Carefully choose the criteria for evaluating and awarding the tender

Bid evaluation and contract award criteria affect the intensity and effectiveness of competition in the tender process.

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] provides that relevant authorities should design tender specifications, and selection and award criteria that improve the intensity and effectiveness of competition in the tender process.

Concretely, contracting authorities should consider taking the following steps:

- Consider the possible impact that the choice of award criteria could have on future competition.
- Consider whether contract award criteria other than price or in addition to price (quality, innovation, delivery times, length of warranties, after sales service, operational savings etc.) can yield a better outcome, make collusion more difficult and/or encourage the development of innovative supply solutions in the future. Price-based award criteria are more appropriate when the qualitative characteristics of the good, work, or service are easily defined.
- Whenever possible, add criteria to resolve any tie between bidders. Investigate the reasons for any identical bids and, if necessary, consider re-issuing the invitation to tender.
- When the tender is split into lots, avoid requiring that a bidder may win only one or only a specific number of lots. Such limitation can facilitate the splitting of contracts among bidders (especially if the value of the lots is similar), and/ or deter participation, as companies may not bid if they can win only few lots. However, limiting the number of lots that a single bidder may win can protect future competition, especially in markets where there is a risk that lots will be won by a single bidder, such as markets with few operators, high entry barriers, and switching costs.
- Use a reference price only if it is based on thorough market research. Do not publish the reference price but keep it on file and make it available to other authorities that may need to know, like competition authorities or public sector auditors.
- Reserve the right to cancel the procurement if the bidding outcome is not competitive.

## 6. Clarify bid rigging risks in the tender documents

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] provides that relevant authorities should require all bidders to sign an attestation, such as a certificate of independent bid determination, that the bid submitted is genuine, non-collusive, and made with the intention to accept the contract if awarded, and include in the invitation to tender a warning regarding the sanctions for bid rigging.

Concretely, relevant authorities should consider taking the following steps:

- Request that bidders submit a signed certificate of independent bid determination and disclose any communications with competitors. Reserve the right to reject bids where such a certificate is missing, or if the bidder indicates that they communicated with competitors.
- In addition to a warning regarding the sanctions for bid rigging (including fines, possible debarment, possible criminal sanctions and the right to claim damages for cartel harm), provide information on the applicable leniency programme in the tender documents.
- Make use of anonymous reporting mechanisms for third parties (such as company employees, public procurement officials and/or citizens), such as a whistle-blower system kept by procurement or competition authorities. Provide information on such whistleblowing mechanisms in the tender documents. Explain where and how complaints may be submitted (and, if available, provide contact details) and ensure confidentiality.

## Appendix B. Checklist for Detecting Bid Rigging in Public Procurement (“Bid-Rigging Detection List”)

Bid-rigging agreements are difficult to detect as they are typically negotiated in secret. It is necessary to look for clues such as unusual bidding or pricing patterns, or something that the bidder says or does. It is important to be on guard throughout the entire procurement process, as well as during market research.

The OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] provides that competition authorities should partner with procurement and other relevant authorities to raise awareness of red flags for bid rigging.

Red flags can include those mentioned in sections 1 to 5 below.

### 1. Warning signs in bidding patterns

Certain bidding patterns and practices suggest the possibility of bid rigging. Bidding patterns and the frequency with which firms win or lose tender offers can indicate bid rigging. Subcontracting and joint bids can also raise competition concerns. The following are examples of warning signs:

- The same supplier is often the successful bidder.
- There is a geographic allocation of winning tenders. Some bidders win in only certain geographic areas.
- Regular suppliers fail to bid on a tender they would normally be expected to bid for but become subcontractors or continue to bid for other tenders.
- Some suppliers unexpectedly or frequently choose to withdraw submitted bids.
- Certain companies always submit bids but never win.
- Companies seem to take turns at winning.
- Two or more companies submit a joint bid even though in the past they have bid in similar tenders independently and/or in practice the contract is fulfilled by one of them.
- A consistent group of bidders submits incomplete or non-responsive bids.

### 2. Warning signs in tender documents

Bidding documents of competitors should be checked for indications that they were prepared by the same person or were prepared jointly. The following are examples of warning signs:

- Identical mistakes in bids submitted by different companies, such as spelling and/or grammar errors or miscalculations, sorting documents or items in the wrong order or incorrect numbering of pages. Also, the bidders fail to correct mistakes when requested by the contracting authority.
- Identical bids, bids with similar format or metadata. Authorities should be able to access digital versions of bids. Warning signs may include bids from the same IP address, documents from different bidders created by the same author, and/or documents from different bidders created at or near the same time.

- The same person submits bids for competitors.
- Bid documents from one company make express reference to competitors' bids or use another bidder's details, such as mailing or e-mail address, letterhead, or telephone number.
- Bids from certain bidders are incomplete (such as missing a bank guarantee) or erroneous despite the fact that they submitted a complete bid in similar previous tenders.
- Different bids contain identical estimates of the cost of certain items or offer identical ancillary terms, like insurance and warranties.
- Bids indicate matching adjustments.
- Bids contain less detail than would be necessary or expected, or give other indications of not being genuine.
- Competing bids are submitted together or within a very short time frame.
- The sequence in which competitors submit bids is always the same in different tenders.
- Bidders share the same address and/or office space, have the same insurance intermediary and/or undertake financial obligations on behalf of each other.

### 3. Warning signs related to pricing

Bid prices can be used to help uncover collusion, if they suggest that companies may be co-ordinating. The following are examples of warning signs:

- Sudden and/or identical bid price increases that cannot be explained by cost or market price increases.
- Anticipated price discounts disappear unexpectedly or are significantly reduced.
- Price discounts are below those usually offered in other bids in the same market.
- Prices remain the same over a long period of time, though the market or the tender terms have changed.
- Identical pricing when prices were previously different.
- The differences in the prices submitted by bidders are regular and repetitive across different tenders, or there are indications of a mathematical formula to calculate different bid prices.
- A large difference between the price of a winning bid and other bids, or the second and subsequent bids are close in value.
- A supplier's bid is much higher for a particular contract than that supplier's bid for another similar contract.
- The winning bid far exceeds the estimated value of the project.
- There are significant reductions from past price levels after a bid from a new or infrequent supplier (i.e., the new supplier may have disrupted an existing bidding cartel).

- Local suppliers are bidding higher prices for local delivery than for delivery to destinations farther away.
- Similar transportation costs are specified by local and non-local companies.
- Only one bidder contacts wholesalers for pricing information prior to a bid submission.

#### 4. Suspicious statements

Some statements may suggest that companies may be colluding. Such statements include:

- Spoken or written references to an agreement among bidders.
- References to “industry suggested prices”, “standard market prices”, “industry price schedules” or “fair competition”.
- Statements indicating that certain companies do not sell in a particular area or to particular customers.
- Statements indicating that an area or customer “belongs to” another supplier.
- Statements indicating advance non-public knowledge of competitors’ pricing or bid details or foreknowledge of a company’s success or failure in a tender for which the results have yet to be published.
- Statements indicating cover bidding.
- Use of the same terminology by various suppliers when explaining price increases.
- Bidders ask questions or express concerns about certificates of independent bid determination, or indications that, although submitted, they are not taken seriously.
- References to discussions within a trade association.

#### 5. Suspicious behaviour

Forms of suspicious behaviour indicating that suppliers may be co-ordinating could include the following:

- Suppliers meet before submitting bids.
- Suppliers regularly socialise together or appear to hold regular meetings.
- A company requests tender documents or information for itself and a competitor or competitors.
- A company submits both its own and a competitor’s bid.
- A bid is submitted by a company that is incapable of delivering the contract.
- A company tries to determine who else is bidding.
- Several bidders make similar enquiries to the procurement agency.
- Several bidders use the same consultants to help prepare their bids.
- The winning bidder subcontracts work to unsuccessful bidders.

- The winning bidder does not accept the contract and is later found to be a subcontractor.

## 6. A caution about indicators of bid rigging

The indicators of possible bid rigging described above identify suspicious bid and pricing patterns as well as suspicious statements and behaviours. They should not however be taken as proof that companies are engaging in bid rigging as in some cases the suspicious statements and behaviours may not result from collusive behaviour. For example, a company may have not bid on a particular tender offer because it was too busy to handle the work. High bids may simply reflect a different assessment of the cost of a project.

Nevertheless, when suspicious patterns in bids and pricing are detected or when procurement agents hear odd statements or observe peculiar behaviour, it is good practice to check serious suspicions of bid-rigging with the relevant competition authority.

## 7. Steps that procurement officials can take

There are a number of steps that staff in contracting authorities can take in order to help uncover bid rigging or if bid-rigging is suspected. These include:

- Have a working understanding of competition law requirements on bid rigging, as well as of broader competition law concepts and restrictions.
- Make inquiries if prices or bids do not make sense, making sure that inquiries do not alert bidders that they are being suspected of bid rigging, to preserve secrecy and prevent the destruction of evidence.
- Do not discuss any bid-rigging concerns with third parties, and particularly with suspected suppliers (e.g., in the hope of getting a better offer).
- Keep all documents, including bid documents (both winning and losing bids), correspondence, contracts etc, in a database with access rights for designated public sector officials only.
- Keep a detailed record of all suspicious behaviour, statements and bidding patterns, including dates, who was involved, and who was present and what precisely occurred or was said. Notes should be made during the event or while they are fresh in the public procurement official's memory to provide an accurate description of what happened.
- Periodically review the history of tenders for particular goods, works or services over time, to discern suspicious patterns, especially in industries susceptible to collusion. A pattern of suspicious behaviour over a period of time is a better indicator of possible bid rigging than suspicions about a single tender process.
- In case of any bid-rigging concerns, contact the relevant competition authority, potentially after consulting with the internal legal and/or compliance department(s).
- After consulting with the internal legal staff and possibly the competition authority, consider whether it is appropriate to proceed with the tender.
- Be especially vigilant while procuring items in markets particularly prone to collusion.