



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Cancels & replaces the same document of 01 June 2010

Working Party No. 3 on Co-operation and Enforcement

PUBLIC PROCUREMENT/BID RIGGING ISSUES

-- Korea --

15 June 2010

The attached document is submitted to Working Party No. 3 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 15 June 2010.

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1. Certificates of Independent Bid Determination

1.1 CIBDs in Korea

1. Most of the agencies in Korea which are governed by the “Act on Contracts to Which the State is a Party”, such as Public Procurement Agency, Korea Water Resources Corporation, Korea Electric Power Corporation and Korea Land & Housing Corporation, request the companies bidding for government contracts to submit Certificates of Independent Bid Determination (CIBDs). A CIBD rule provides that bidders who are involved in bid-rigging schemes, offer money, valuables or entertainment to public officials, or bribe officials will be disqualified from participating in the concerned tender or suffer cancelation of contract. Currently, the request from procurement agencies for CIBDs is made at their discretion without any legal grounds. However, Ministry of Strategy and Finance of Korea is now planning to revise the “Act on Contracts to Which the State is a Party” in late 2010 to create legal grounds to mandate bidders to submit CIBDs to the procurement authorities in public procurement tenders.

1.2 KFTC authority over CIBD

2. As CIBDs are prepared by tendering authorities based on their internal guidelines, the Korea Fair Trade Commission (KFTC) does not have the authority over operation of the certificates. The KFTC, therefore, is not authorized, and has not tried, to investigate into or impose sanction for violation of the agreement under CIBDs.

3. CIBDs expressly stipulate in the text that those involved in collusive bidding will be disqualified for the future tenders. In this context, CIBDs may have effects on deterring bid riggings by reminding the bidders who might consider collusion of the potential risks accompanying bid-rigging schemes.

2. Bidder Disqualification and Leniency

2.1 Bidder disqualification

4. When the KFTC detects that bid rigging has occurred, it informs the procuring authority of the fact, and if the case meets certain criteria¹, may restrict the conspirators from participating in other tenders. However, the KFTC can only request the procuring authority to disqualify the conspirators for future tenders. It is totally up to the procurement agency to make a final decision whether to limit their future participation.

2.2 Leniency in bid rigging

5. As mentioned above, the KFTC requests tendering authorities to disqualify bid-rigging participants for future tenders if they are found to have rigged bids and face sanctions for the offence.

¹ On top of imposition of corrective measures, the KFTC may request procurement agencies to limit participation by bid-rigging conspirators in other tenders given the severity of the offence or frequency of violations. But, if a company has accumulated penalty points, five or higher, from bid-rigging participation for the last three years and is involved in collusion again, the KFTC, in principle, is required to request procuring agencies to disqualify the company for future tenders. (Penalty point for corrective warning is 0.5, for corrective recommendation 1.0, corrective order 2.0, surcharges imposition 2.5 and filing to the prosecution 3.0. If a company faces different corrective measures in a single case, only the highest penalty point among others assigned to different measures is counted.) (Guideline on Fair Tender Operation, revised on Oct. 27, 2008)

6. In the meantime, for bid-rigging participants, there is little incentive to apply for leniency if they are disqualified from future tenders anyway. In this sense, whether to request to limit participation of leniency applicants in future tenders can be an arguable issue.

7. In Korea, leniency applicants or cooperator in a cartel investigation can be exempted² from surcharges and other corrective measures that would otherwise be imposed, so it is likely that disqualification request as well will be exempted for them.

3. Incentives for Procurement Officials to Prevent Bid Rigging

8. According to Public Procurement Service, there is no policy in place to incentivize its officials to prevent bid rigging and not take bribes. But procurement officials are obliged to behave with integrity as public officials. If they are involved in bribery regarding public procurement tender, they are subject to criminal penalty under the laws prescribing duty of public officials.

² The first applicant who submits application before an investigation is launched is exempted from both surcharges and corrective measures. The first applicant who offers cooperation after an investigation is started benefits from surcharges exemption, and mitigation or exemption of corrective measures. And the second applicant who offers cooperation after initiation of an investigation benefits from 50% reduction in surcharges and mitigation of corrective measures.