



FIGHTING BID RIGGING IN BRAZIL: A REVIEW OF FEDERAL PUBLIC PROCUREMENT

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Highlights from the review of Brazil's federal procurement framework

Public procurement plays a strategic role in a country's economy, and the quality of services that the government provides to its citizens. In 2020, Brazil spent around **BRL 35.5 billion** in the procurement of goods, services and works. In 2017, public procurement represented around **13.5%** of Brazil's total government expenditures and approximately **6.5%** of the country's GDP. Due to the size of the involved financial flows, public procurement is exposed to risks of collusion among suppliers as well as fraud and corruption.

Bid rigging is a form of collusion that involves companies that should be genuinely competing to win a contract, secretly conspiring to raise prices or lower the quality of offered goods or services during a bidding process.

Bid rigging in public procurement damages the outcomes and integrity of public-procurement procedures, and has a negative impact on public services and national economies. Studies show that bid rigging in public procurement can increase prices by 20%. This percentage can be even higher in certain cases. For example, a study by the Department of Economic Studies of the Brazilian competition authority, *Conselho Administrativo de Defesa Econômica* (CADE), estimated that a bid-rigging scheme investigated and sanctioned by the authority had increased the price of the product (revolving security doors) by 25%.

In Brazil, bid rigging is an administrative and a criminal offence and has long been an enforcement priority for CADE. Its unit dedicated to investigating bid-rigging cases has been extremely active over the last 10 years. From a civil-law perspective, cartel members can also be held liable for the damages they cause to public purchasers and third parties.

Against this background, Brazil requested the OECD's support to assess Brazilian federal public-procurement rules and practices in light of the OECD Recommendation and Guidelines on Fighting Bid Rigging in Public Procurement. On the Brazilian side, this project has been co-ordinated by CADE.

The report, which is the main outcome of the project, focuses on the federal procurement legal framework that was applicable at the time of drafting. A new federal procurement law, adopted in April 2021, and applicable from 1 April 2023, is also taken into consideration.

The report shows that Brazil's federal procurement regime acknowledges and attempts to limit bid-rigging risks. However, further efforts to make federal procurement more competitive would be useful, and the report proposes ways of achieving this objective.

The full results of the review are available at <http://oe.cd/fbr-bra> in English and Portuguese.

BRL 35.5 billion

approximate amount spent by Brazil in the procurement of goods and services in 2020



13.5%

of Brazil's total government expenditures in 2017

KEY FINDINGS AND MAIN RECOMMENDATIONS

Strengthen the public procurement work force

The role of public-procurement officials in the fight against bid rigging is key. Many bid-rigging cases are initiated following complaints from public-procurement officials, who are in the front line of the procurement process and are the best placed to detect suspicious conduct. Besides, public-procurement officials that are afforded know-how and flexibility to strategically plan and design contracting procedures are more likely to adopt initiatives that increase competition and reduce the risks of bid rigging.

Key recommendations

1. Improve **employment conditions** and fighting bid-rigging incentives for the public-procurement workforce and develop a **professionalisation strategy**, including training on fighting bid rigging.
2. **Improve and correct systemic inefficient practices** within the public-procurement workforce.
3. **Set up a comprehensive, long-term programme of capacity building** on fighting bid rigging for public-procurement officials (as well as other officials involved in fighting bid rigging, such as public prosecutors).

Be informed about the market

Market research helps a procuring entity understand supply solutions and capacity, and, on this basis, design tenders that are technically accurate, consider alternative and innovative solutions, foster competitive bidding while reducing the likelihood of collusion among the bidders.

Key recommendations

1. **Make the market survey step** of the preliminary technical study **mandatory** for all procurement processes (possibly with the exception of low value repetitive tenders, for which market research has recently been conducted) and adopt guidelines on how to conduct it.
2. Create **specialised market-research departments** inside the contracting entities, or ensure that public procurers have **sufficient resources and support** to conduct thorough market analysis through existing structures.
3. Make **mandatory the use of all sources of information** mentioned in Regulatory Instruction No. 5/2014 on price research and Regulatory Instruction No. 40/2020 on market surveys. **Other sources of information**, such as international experiences or local supply and demand conditions, **should also be considered**.

OECD Recommendation and Guidelines for Fighting Bid Rigging

The **OECD Council Recommendation on Fighting Bid Rigging in Public Procurement** calls for governments to assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

The **OECD Guidelines for Fighting Bid Rigging in Public Procurement** help public officials to reduce the risks of bid rigging, through the careful design of public procurement tenders, and to detect bid-rigging conspiracies during procurement processes.

The Guidelines are available in 26 languages at [oe.cd/gfbr](https://www.oecd.org/gfbr).



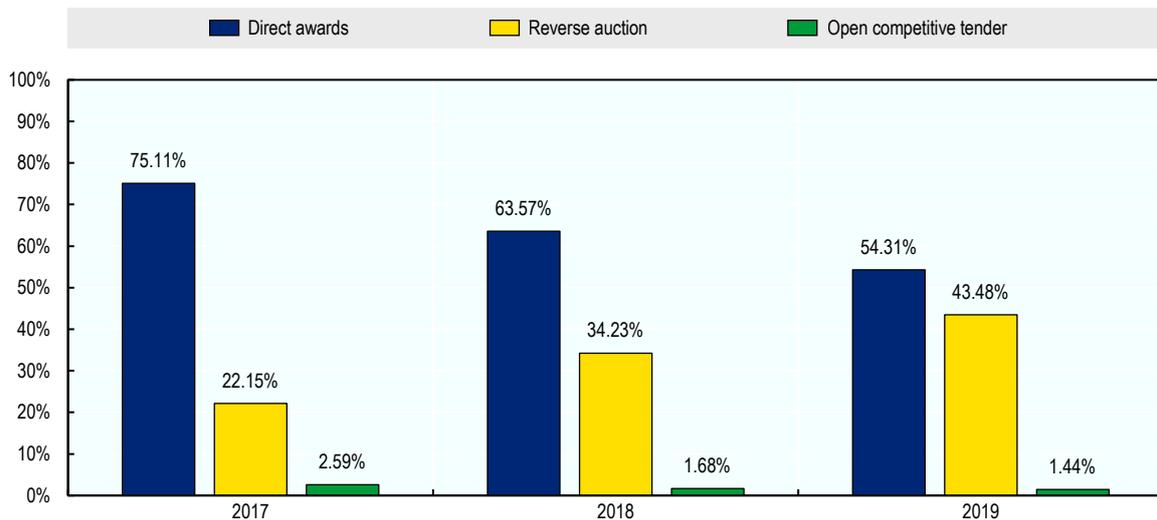
Maximise participation

Maximising the participation of bidders increases competition and reduces the risks of bid rigging. High rates of participation make collusion less likely, as the pool of bidders that would need to agree to a bid-rigging scheme is bigger and therefore agreement cannot easily be reached. Also, a high number of bidders increases the likelihood of obtaining value for money (as long as participation is genuine). More participation may be encouraged by reducing the costs of bidding in a tender, allowing foreign firms to participate, or limiting direct awards.

Key recommendations

1. **Tighten the conditions** under which **direct awards** can be used.
2. **Develop standard mandatory templates** for all types of procurement and all stages of the process, to make participation requirements clearer and more predictable for bidders.
3. **Standardise** the interpretation of **procurement rules**.
4. Consider options to relax rules on tendering by international companies and allowing for **increased independent participation** – rather than as part of a consortium – **of foreign companies** in tenders.
5. Be vigilant about the **competitive or anti-competitive nature of joint bidding and subcontracting**. CADE should engage in advocacy initiatives to inform public-procurement officials of the effects that joint bidding and subcontracting may have on the competitive conditions of tenders.
6. Make **e-procurement mandatory** and limit the exceptions to its use to cases where submission of physical samples or mock-ups are necessary.

Procurement methods in terms of contract value, 2017-2019



Note: The use of other procurement methods is insubstantial. Note that the contract data published in www.portaltransparencia.gov.br includes contracts concluded by the public entities with state-owned enterprises, which are exempted from the application of the public procurement laws and are, in general, directly awarded.

Source: www.portaltransparencia.gov.br/licitacoes?ano=2017.

Strengthen advocacy

Raising awareness about the fight against bid rigging is as important as strong and regular competition enforcement for preventing and deterring bid rigging. Advocacy initiatives addressed to both the public and the private sector have proven effective in the fight against bid rigging in many OECD jurisdictions. CADE and SEAE should take advantage of their advocacy powers and use them as often as possible.

Key recommendations

1. Encourage **CADE and SEAE** (the government Secretariat for the Promotion of Competition and Competitiveness) to **co-ordinate their advocacy efforts**.
2. CADE and SEAE could adopt a **more active advisory role** on public-procurement legislation and strategic, complex or high-value procurement procedures.

Detection and punishment

CADE's anti-bid-rigging enforcement activity has been outstanding, especially in investigations initiated in the context of the Car Wash investigation. There is, however, some room for improvement, in particular in relation to co-operation among the different enforcement entities, reports of bid-rigging suspicions by procurement officials and competition damage claims.

Key recommendations

1. **Provide clarity** about which behaviours CADE, public prosecutors, CGU (Comptroller General) and TCU (Federal Court of Accounts) each investigate. This could be done by issuing written guidance documents.
2. **Actively encourage public-procurement officials to report** any bid-rigging indication to CADE **before annulling** the procurement process and before the procurement entity starts an inquiry on the tender.
3. Develop the **technical skills and competences of civil courts** and judges dealing with **competition damage claims**.

From advice to action: OECD in-country work on fighting bid rigging

The OECD reviews national and sector-specific public procurement regimes, to guide and support countries in combatting collusive practices. As part of these reviews or independently, the OECD develops wide-ranging capacity building programmes on fighting bid rigging in procurement, including workshops and training manuals, for public procurement, budget and internal control officials.

Brazil (2021), Argentina (2019), Mexico (2018, 2017, 2016, 2012, 2011), Colombia (2014) have already undergone similar reviews, and reviews are currently ongoing in Peru and Ukraine.

Access all reviews at www.oecd.org/competition/bidrigging

