

Tool: Guidelines for detecting bid rigging in public tenders

Purpose

- To assist procurement practitioners detect suspect bid rigging in a timely manner.
- To communicate to suppliers that bid rigging is an unacceptable practice in public procurement.
- To support competition authorities to investigate suspected cases of bid rigging.

Public Procurement
Principle: **Integrity**

Procurement Stage:
Tendering

Audience: **Policy Maker,
Procuring Entity**

Description

Bid rigging occurs when suppliers/bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Suppliers/bidders can eliminate competition in public procurement in many simple ways, for example:

- Cover bidding: a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- Bid suppression or withdrawal: a competitor agrees not to bid or to withdraw a bid from consideration.
- Market sharing: a competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.
- Bid rotation: competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined slice of the pie.
- Non-conforming bids: competitors deliberately include terms and conditions they know will not be acceptable to the procuring authority.

Although the schemes used by firms to rig bids vary, they all have one thing in common: the suppliers/bidders agree to eliminate competition so that prices are higher and public organisations pay more.

Procurement practitioners should look for evidence of anti-competitive bid rigging agreements throughout the tender process. The checklist provides detailed information to help procurement practitioners identify anti-competitive practices during the bidding process. Designed to be used by specialists and non-specialists alike, the checklist highlights seven areas for active vigilance.

Box: Generic guidelines for detecting bid rigging in public tenders

Look for markets that are more susceptible to bid rigging

The presence of certain factors increases the need for vigilance against bid rigging, including:

- Small number of suppliers/bidders. The probability of bid rigging is higher if there are few suppliers/bidders. Bid rigging requires suppliers/bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same suppliers/bidders are involved in repeated procurements.
- Standardised or simple products. The chances of bid rigging are greater if the products or services being purchased are standardized and simple, and do not change over time. Under these circumstances, it is easier to work out an agreement and have it last a long time.
- Little or no entry. If entry in a certain bidding market is costly, hard or time consuming, firms in that market are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

Look for opportunities that the suppliers/bidders have to communicate with each other

Suppliers/bidders need to know and communicate with each other to reach an agreement. Once suppliers/bidders know each other well enough to discuss bid rigging, they need a convenient location where they can talk. Of course, communications can occur by telephone, email, fax or letter, and they often do; however, many bid-riggers believe that they are less likely to leave evidence of their communications if they have face-to-face meetings. These meetings occur most often at, or in association with, trade association meetings, or other professional or social events. They are also likely to occur prior to the opening of the tender process.

Look for indications that the suppliers/bidders have communicated with each other

Bid rigging requires actual and often repeated communications between the suppliers/bidders. Procurement practitioners may hear or come across statements indicating that information may have been shared, such as a supplier/bidder having knowledge of another supplier/bidder's pricing, or not expecting to be the low supplier/bidder, or perhaps when a bidder refers to "industry" or "standard" practices or prices. Sometimes procuring authorities can infer that suppliers/bidders are communicating. For example, if one supplier/bidder picks up or submits bidding material for another firm, then some communication must have taken place between them. In other instances, a supplier/bidder may say something that indicates that certain non-public information, or an answer to a question, was learned through talking to another supplier/bidder.

Look for any relationships among the bidders after the successful bid is announced

In some cases, bidders may attempt to split the extra profit that is earned through bid rigging. This is especially true if one large contract is involved. Sometimes the winning firm may pay the other bidders directly; however, the 'profit split' can also be passed on through lucrative sub-contracts to do some of the work or to supply inputs to the project. Joint bids can also be used as a way to split profits.

Look for suspicious bidding patterns

Suppliers/bidders may have devised a scheme that reveals itself as a pattern over the course of many bids. For example, there may be a pattern to the winner (A, B, C, A, B, C), or it may be that the same supplier/bidder always wins bids of a certain type or size, or that some suppliers/bidders only bid in particular geographic areas. Perhaps a supplier/bidder never wins but keeps bidding; or a supplier/bidder wins whenever it bids, even if it bids rarely. A supplier/bidder may show a pattern of submitting relatively high bids for some tender offers and relatively low bids for other, similar tender offers. Pricing may be unusual. All bids may be unexpectedly high, or discounts or rebates may be unexpectedly small. Bids may also be different from previous, similar procurements, but the differences are unrelated to any change in the underlying economic conditions. Bid levels may change when a new supplier/bidder (*i.e.* one who has not bid in the past) submits a bid. Pricing may not make sense when you consider transportation costs to different locations.

Look for unusual behaviour

You would expect the winning supplier/bidder to accept the contract, so it could be considered 'unusual', for example, if the winner chose not to accept it, or withdrew before the award was made. Submitting a bid without normal detail or required documentation, or without the necessary information from suppliers/bidders, may also constitute unusual behaviour, as does a situation where the number of suppliers/bidders is unexpectedly small, with some normal suppliers/bidders not participating.

Look for similarities in the documents submitted by different suppliers/bidders

Bid-riggers sometimes have a single person prepare all the bids. Alternatively, a number of people may work on the bids, but they may work closely with each other. If you put the bid documents side-by-side, you may notice the same type of paper, the same postmarks, the same misspellings, the same handwriting, the same wording, the same alterations or changes, the same miscalculations or the same amounts. Eventually, most bid-riggers become careless and make mistakes.

What to do if bid rigging is detected?

Finding signs of possible bid rigging does not necessarily mean that bid rigging is occurring; it simply shows that there may be a problem. In this instance, the best thing for procurement practitioners to do is to contact the public authority responsible for competition enforcement and request it to investigate the signs detected. Procurement practitioners should also review the bidding process and the bids carefully, looking for any additional signs of possible bid rigging. Importantly, they should not tell any of the suppliers/bidders about their concerns, as this may result in the destruction of evidence. All detailed notes, records and documents should be kept safe.

Further Resources

Australian Competition and Consumer Commission (2009), [Cartels, Deterrence and Detection, A Guide for Government Procurement Officers](#), Commonwealth of Australia.

OECD (2009), ["Guidelines for Fighting Bid Rigging"](#) (available in 15 languages).

United States Department of Justice (n.d.), ["Price Fixing, Bid Rigging and Market Allocation Schemes: What they are and what to look for: An Antitrust Primer"](#).