



Competition Protection in Public Procurement
Office of Competition and Consumer Protection (UOKiK)

Toruń, 12 October 2012

Forms of bid-rigging

Difficulties in detecting collusion

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WHAT IS “BID RIGGING”?

- The OECD defines “bid rigging” as such:

“Bid rigging (or collusive tendering) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods or services for purchasers who wish to acquire products or services through a bidding process.”
(OECD Bid Rigging Guidelines, 2009)
- In all OECD countries bid rigging is illegal, and in some countries it is also criminal.





BID RIGGING - COMMON FORMS

Cover bidding

A competitor agrees to submit a bid that is higher than the bid of the designated winner or agrees to submit a bid that contains terms that are known to be unacceptable to the buyer.

It is the most common form of bid rigging as it gives the appearance of genuine competition.

Bid suppression

One or more companies agree to refrain from bidding or to withdraw a previously submitted bid.

Bid rotation

Conspiring firms continue to bid, but they agree to take turns being the winning (*i.e.*, lowest qualifying) bidder.

Market allocation

Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas.



JOINT BIDDING AND CONSORTIA

- Joint bids and temporary consortia are perfectly legitimate, but can be used to rig bids
- They should be allowed only if they have pro-competitive effects, for example when
 - Two or more suppliers active in different markets provide a single integrated service which none of them could supply independently;
 - Two or more providers active in different geographic areas submit a single bid for the whole of contract area; or
 - Two or more providers combine their capacity to fulfill a contract which is too large for each of them individually.



SUB-CONTRACTING

- It is one of the mechanisms which is frequently used to reward cooperation in a collusive agreement
- Concerns are highest when sub-contracting involves actual or potential competitors in the bidding process
- It should be allowed only if is necessary for the proper performance of the contract



HOW TO FIGHT BID RIGGING EFFECTIVELY

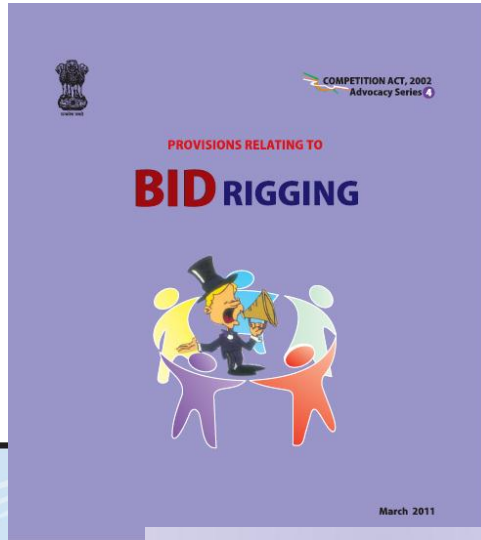
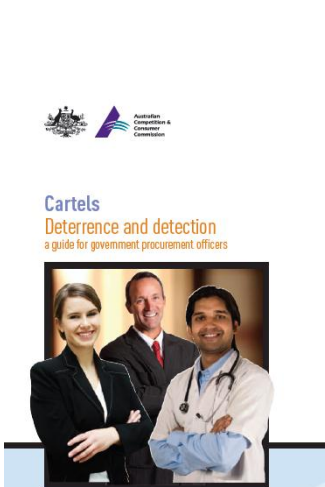
- Effective cartel laws and regulations
- Effective leniency program
- Effective enforcement procedures and institutions
- Effective sanctions

Other ways:

Raise awareness of procurement officials and bidders concerning the risks of bid rigging (Checklists and Guidelines)



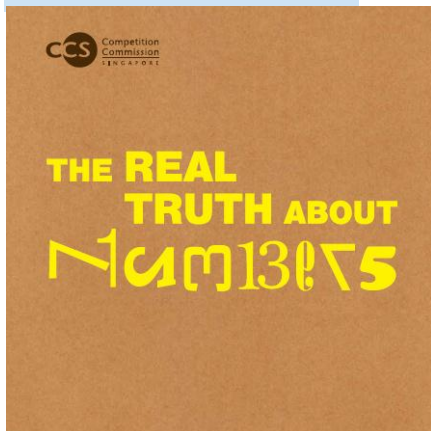
NCA's GUIDELINES FOR FIGHTING BID RIGGING



Twelve ways to detect bid-rigging cartels

Have you noticed anything odd about the tenders you received in a tender procedure for goods or services? Take your suspicions seriously. When companies circumvent applicable competition rules in tendering procedures, they often leave signs; signs which may be easy to spot with a little knowledge.

This checklist sets out twelve signs which suggest that companies may have formed a bid-rigging cartel. Do not hesitate to get in touch with the Swedish Competition Authority if you recognise one or more of these signs.

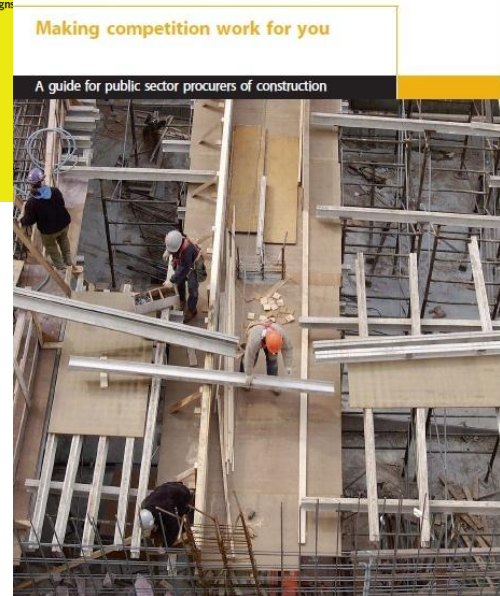


入札談合等関与行為防止法について

入札談合等関与行為の排除及び防止並びに職員による入札等の公正を害すべき行為の処罰に関する法律

- 入札談合等関与行為防止法の制定及び平成18年の改正の経緯
入札談合等関与行為防止法は、国・地方公共団体の職員が入札談合に關与する、いわゆる官製談合を防止するために、平成14年7月に議員立法により制定され、平成15年1月から施行されました。
同法施行後、東京府、新潟市、日本道路公団の入札談合事件において、本法に基づく、公正取引委員会が改善措置要求を行ったほか、刑法の総論入札妨害罪、談合罪で刑法機關が発見される事例も生じる等、いかなる官製談合事件が、国・地方現行も多くみられる状況であったことを踏まえ、平成18年12月、閣議決定案に対する附帯決議の導入、入札談合等関与行為の範囲の拡大、法適用対象となる発注機関の拡大等を内容とする改正が行われ、平成19年3月14日から施行されています。

公正取引委員会





OECD GUIDELINES FOR FIGHTING BID RIGGING



GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH



DESIGNING TENDERS TO REDUCE BID RIGGING

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH



DETECTING BID RIGGING IN PUBLIC PROCUREMENT

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH



OECD GUIDELINES FOR FIGHTING BID RIGGING

Source

Best practices in OECD countries

Better tender design

Help procurement officials design public tenders to reduce bid rigging (Design Checklist)

Tougher law enforcement

Help procurement officials detect bid rigging when it occurs (Detection Checklist)



CHECKLIST FOR DESIGNING TENDERS

- Learn about the market and about your suppliers
- Maximize participation of potential bidders
- Define requirements clearly and avoid predictability
- Reduce communication among bidders
- Raise awareness of the risks of bid rigging, provide training



CHECKLIST FOR DETECTING BID RIGGING

Procurement officials should be alert for:

- Opportunities that bidders have to communicate with each other
- Relationships among bidders (joint bidding and sub-contracting)
- Suspicious bidding patterns (e.g. ABC, ABC) and pricing patterns
- Unusual behavior
- Clues in documents submitted by different bidders



WHERE TO FIND THE OECD GUIDELINES?

Web link: www.oecd.org/competition/bidrigging

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Translations available in 25 languages!



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