



# DESIGNING TENDERS TO REDUCE BID RIGGING

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH



*Tender design can play an important role in preventing bid-rigging, whilst at the same time increasing the likelihood of detection. Procurers are, therefore, key players in this effort. The OECD Guidelines aim to consolidate current best practice in this area and the OFT hopes they will become an essential part of every procurer's toolkit.*

2 John Fingleton, Chief Executive of the Office of Fair Trading,  
United Kingdom.

# 1. HELPING GOVERNMENTS TO OBTAIN BEST VALUE FOR MONEY

The primary objective of an effective procurement policy is to obtain goods and services at the lowest possible price or, more generally, to achieve the best value for money. Vigorous competition among suppliers helps governments realize this objective. However, the formal rules that govern procurement, the way in which an auction is carried out and the design of the auction itself can all act to hinder competition and help promote or sustain bid-rigging conspiracies. Bid-rigging conspiracies waste taxpayers' money and cause governments to pay more than a fair price.

Bid rigging occurs in all types of industries and circumstances, and in all parts of the world. When bid rigging impacts public procurement, it has the potential to cause great harm to taxpayers. One reason for this is that public procurement is often a large part of a nation's economy. In many OECD countries it amounts to 15 per cent of the gross domestic product, and in most developing countries, it is substantially more than this. Experience also shows that bid-rigging conspiracies can last decades and impact many markets.

Whenever the formal rules governing public procurement make communication among rivals easy, there is an increased potential for collusion among bidders. While collusion can emerge in both procurement and other markets, it is critical that procurement regulations do not unwittingly facilitate collusive arrangements. Balancing transparency requirements with the goal of vigorous competition is an important consideration in this regard.

*These Guidelines are an excellent benchmarking tool and a good resource for use by procurement agencies when designing tendering processes. Following the Guidelines will help ensure that tendering processes result in competitive outcomes and that taxpayer money is spent efficiently.*

**Melanie L. Aitken, Interim Commissioner of Competition, Canada.**

The risks for competition in public procurement can be reduced by careful consideration of the various procurement features and their impact on the likelihood of collusion. Designing auction and procurement tenders to minimize collusion may contribute significantly to the fight against anti-competitive behaviour. A well-planned process can reduce or even eliminate the ability of bidders to reach a collusive agreement.

The OECD has developed a methodology to help governments improve public procurement by fighting bid rigging. Drawing on the experience of more than 30 jurisdictions, the *OECD Guidelines for Fighting Bid Rigging in Public Procurement* assist procurement officials to design tenders that will discourage bid rigging. The Guidelines help to identify:

- markets in which bid rigging is more likely to occur so that special precautions can be taken
- methods that maximize the number of bids
- best practices for tender specifications, requirements and award criteria
- procedures that inhibit communication among bidders.

The Guidelines provide a comprehensive strategy for the design of tenders to hinder bid rigging. They can be applied in a decentralized manner across government at both national and local levels.

## 2. WHAT IS BID RIGGING?

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

- 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.
- A competitor agrees not to bid or to withdraw a bid from consideration.
- A competitor agrees to submit bids only in certain geographic areas or only to certain public organizations.

Although the schemes used by firms to rig bids vary, they all have one thing in common – the bidders agree to eliminate competition so that prices are higher and the government pays more.







### 3. DESIGNING EFFECTIVE PUBLIC PROCUREMENT PROGRAMS

The OECD Guidelines include a *Checklist for Designing the Public Procurement Process to Reduce the Risks of Bid Rigging*, which provides detailed information for procurement officials on how to design an effective process. Developed for use by specialists and non-specialists alike, the Checklist highlights the following strategies:

#### 1. Look for markets that are more susceptible to bid rigging.

The presence of certain factors increases the need to take special precautions in designing public procurement procedures.

**Small number of bidders** - The probability of bid rigging is higher if there are few bidders. Bid rigging requires bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same bidders are involved in repeated procurements.

**Standardized 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.

## 2. Learn about the market.

By taking the time to learn about the products, suppliers and conditions in the marketplace, procurement agents are better able to design effective procurement processes, especially when market characteristics make collusion more likely. It is particularly useful to gather information about potential suppliers' prices and costs, including prices in other geographic areas or for similar products.

Knowledge of the prices that have been submitted in recent tenders for the same or similar products, as well as familiarity with recent trends in the market, help procurement officials to recognise what is acceptable and what is not.

## 3. Encourage strong participation by bidders.

If the design of the tender process encourages participation by many bidders, then the chances of bid rigging are reduced. While the use of conditions can help to eliminate those firms that are unqualified for the task, careful judgment should be exercised in this regard, so as not to discourage qualified bidders. Unnecessary restrictions on their size, composition or nature can reduce their number. Bidders can also be discouraged if the cost of preparing their bid is high. For this reason, it is advisable to help keep costs low by:

- not changing bid forms unnecessarily
- not requiring information that is of little use
- allowing adequate time for bids to be prepared

- 8 • using electronic bidding systems, if possible.



In addition, allowing bidding on a portion of a large contract will permit small and medium-sized firms to participate. Similarly, allowing foreign firms to submit a bid will make collusion more difficult.

## **4. Have clear requirements and allow for unpredictability in the tender process.**

It is recommended that tender specifications be defined in terms of functional performance, where possible, rather than by reference to specific products. Allowing for alternative or innovative sources of supply can also make bid-rigging schemes more difficult to implement. Clear tender requirements make it easier for firms to understand what is expected of them and may encourage additional firms to bid.

Predictable purchasing patterns facilitate bid-rigging schemes. It is therefore important to vary the scope of successive contracts by aggregating or disaggregating contracts. Consideration could be given, for example, to occasionally aggregating purchases with another government entity.

## **5. Limit communication among bidders.**

Bid rigging requires bidders to communicate with each other. If the procurement process is designed to make it difficult for potential bidders to identify their competitors, then bid rigging becomes more difficult. It is therefore good practice to:

- avoid bringing potential bidders together in face-to-face pre-bid meetings
- allow bidding by mail, by telephone, or electronically
- keep the identity of bidders undisclosed by using numbers, rather than names, to identify them.

Governments can also require those who bid for government contracts to submit a *certificate of independent bid determination*. Certificate rules typically require a statement under oath from each firm confirming that there has been no collusive behaviour, whether through inappropriate communication between competitors, disclosure of bid prices or encouragement to rig bids. Certificates help remind bidders of their obligations not to collude. They can also be a way of emphasizing the penalties for bid rigging. Depending on the form of the certificate and the relevant country's legal requirements, a false certificate may provide an independent basis for prosecution.

## **6. Evaluate the criteria for awarding contracts.**

The probability of bid rigging increases if you have a small number of potential bidders. It is therefore vital to consider the impact of the design of the procurement process on the number of bidders over the long term. Specifications should clearly describe all award criteria to encourage maximum participation. It is important to avoid preferential treatment of certain classes of suppliers, or of firms that currently have contracts up for renewal. Preferential treatment of some suppliers discourages participation by other suppliers. Consideration should be given to allowing a broad range of experience among potential bidders. This will encourage small and medium-sized firms to participate.

## **7. Provide training to procurement staff about bid rigging.**

Appropriate training will help procurement staff to design a procurement process that is less susceptible to bid rigging. Similarly, development of a data base that contains past and present bid results will assist staff to detect potential problems quickly and help to rectify them. The local competition agency may be able to assist in these efforts and help to review the data. Informal interviews with bidders who have stopped participating in tenders, or who have lost a number of bids, may also aid in identifying design problems.



## 4. WHERE CAN I FIND THE OECD GUIDELINES?

The *OECD Guidelines for Fighting Bid Rigging in Public Procurement* can be downloaded from the OECD's Competition homepage:  
[www.oecd.org/competition](http://www.oecd.org/competition)



For further information about the Guidelines for Fighting Bid Rigging in Public Procurement, please contact:

Ken Danger  
Competition Division  
OECD  
2, Rue André Pascal  
75016 Paris France  
Tel: +33 1 45 24 82 50  
Fax: +33 1 45 24 96 95  
Ken.DANGER@oecd.org

Antonio Capobianco  
Competition Division  
OECD  
2, Rue André Pascal  
75016 Paris France  
Tel: +33 1 45 24 98 08  
Fax: +33 1 45 24 96 95  
Antonio.CAPOBIANCO@oecd.org

[www.oecd.org/competition](http://www.oecd.org/competition)