DETECTING & PREVENTING BID RIGGING: VIEWS FROM THE OECD

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Who is the OECD?

Better policies for better lives

A Global Policy Network

To improve national policies
Create international standards
Raise living standards
OECD fast facts

- Established: 1961
- Headquarters: Paris
- OECD Centres: Berlin, Mexico City, Tokyo, Washington
- Members: 36
- Secretary-General: Angel Gurría (Mexico)
- Secretariat staff: 2,500

- Nearly 300 expert committees and working groups with participation of +120 countries
The OECD reaches far

36 member countries

New members: Latvia Lithuania

Key Partners: Brazil China India Indonesia South Africa

Ongoing accession talks with Costa Rica (almost there for Colombia!)
Why does public procurement matter?

… in 2015 it cost EUR 6.4 trillion in the OECD

Government procurement as share of GDP and of total govt. expenditures (2015)

Source: OECD National Accounts Statistics
Why does public procurement matter? 
... it is the way to deliver public services

Breakdown of government procurement spending in OECD countries (2015)

- Health: 30%
- Economic affairs: 17%
- Education: 12%
- Defence: 10%
- Social protection: 10%
- General public services: 9%
- Public order and safety: 4%
- Housing and community amenities: 2%
- Recreation, culture and religion: 3%
- Environmental protection: 3%
- Environmental protection: 3%

Source: OECD National Accounts Statistics
What is Bid Rigging?

• The OECD defines bid rigging as:

  “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 Guidelines, 2009)

• In all OECD countries bid rigging is illegal, and in 29 countries it is also criminal.
What are the Forms of Bid Rigging?

**Cover Bidding**
A competitor agrees to submit a bid higher than the bid of the designated winner or that contains terms that are known to be unacceptable to the buyer. It is a common form of bid rigging that gives the appearance of genuine competition.

**Bid Suppression**
Competitors agree to refrain from bidding or to withdraw a previously submitted bid so that the designated bidder will win.

**Bid Rotation**
Conspiring firms continue to bid, but they agree to take turns being the winning bidder.

**Market Allocation**
Competitors share the market and agree not to compete for certain customers or in certain geographic areas.
Corruption can involve only one company paying a bribe to a government official – not necessarily bid rigging.

Bid rigging must involve at least two companies that agree to avoid competition – not necessarily corruption.

But they can co-exist.

When corruption and bid rigging go hand in hand, it will be much harder to detect and prevent bid rigging.
Bid rigging is a real risk

- Competition authorities estimate that cartels charge 10% at least over the competitive price.

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<th>EU – DG Comp</th>
<th>US DOJ</th>
<th>UK OFT (now CMA)</th>
<th>Dutch NMa (now ACM)</th>
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<tr>
<td>Price Effect</td>
<td>10 – 15 %</td>
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- Empirical studies show that the overcharge can be even higher in bid rigging cases, 20% or more (Smuda (2015), Cartel Overcharges and the Deterrent Effect of EU Competition Law, Centre for European Economic Research Discussion Paper)

- Quality and range of offered goods decrease
Do market characteristics make collusion more likely?

### More likely
- High concentration
- Similar products
- Price transparency
- Companies of the same size
- Stable demand

### Less likely
- Many competitors
- Asymmetries in products and competitors
- Easy entry to the market
How to Fight Bid Rigging

• Effective cartel laws and regulations
• Effective leniency programmes
• Effective enforcement procedures and institutions
• Effective sanctions

And…

Raise awareness concerning the risks of bid rigging!
Competition agencies have a crucial role

Effective leniency programme

High rate of detection

Strong and effective sanctions

Transparent & predictable

Strong enforcement record is needed
Bid rigging is a criminal offence in 29 OECD members...

It can lead to:

- Fines;
- Jail time;
- Private litigation from harmed buyers;
- Blacklisting from tenders;
- Career and reputational harm.
Fighting bid rigging at the OECD


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<th>RECOMMENDATION</th>
<th>COMPETITION</th>
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<td>Recommendation of the Council on Fighting Bid Rigging in Public Procurement</td>
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17 July 2012

THE COUNCIL,

HAVING REGARD to Article 5 b) of the OECD Convention, December 1961;

HAVING REGARD to the Recommendation on the “Improvement of the Internal Control System: Preventing and Detecting Fraud and Corruption” and the Recommendation on the “Enhancing Integrity in Public Procurement”;

HAVING REGARD to the Recommendation on the “Enhancing Integrity in Public Procurement” and the Recommendation on the “Improvement of the Internal Control System: Preventing and Detecting Fraud and Corruption”;

HAVING REGARD to the Third Report on Fighting Bid Rigging in Public Procurement; and

HAVING REGARD to the Enforcement Priorities Report on Fighting Bid Rigging in Public Procurement;

Fighting Bid Rigging

Best Value for Taxpayers’ Money

Guidelines for Fighting Bid Rigging in Public Procurement

The Guidelines for Fighting Bid Rigging help to identify:

- Markets in which bid rigging is more likely to occur
- Methods that maximise the number of bids
- Best practices for tender specifications, requirements and award criteria
- Procedures that inhibit communication among bidders
- Suspicious pricing patterns, statements, documents and behaviour by firms
Some lessons from OECD reviews of competition in procurement

- Market studies are critical for competitive tenders
- Limitations on bidders by regions or nationality reduce competition and may facilitate collusion
- Transparency rules may facilitate collusion
- Joint awards, splitting contracts and sub-contracting may indicate collusion
Practical tips for companies

• Put in place a competition compliance programme

• Regularly train staff on the types of anticompetitive conduct to be avoided, and actions to take if such conduct occurs

• Review compliance of existing commercial agreements (including joint ventures and collaboration agreements)

• If the company has participated in a cartel, consider applying for leniency.

• If your company is harmed by another, consider alerting the competition authority, and seeking damages.
LITERATURE

- OECD Recommendation on Fighting Bid Rigging in Public Procurement 2012
- OECD Guidelines for Fighting Bid Rigging In Public Procurement
- OECD Roundtable 2010 Collusion and Corruption in Public Procurement
- OECD Roundtable 2007 Public Procurement
- OECD Policy Brief 2008 Fighting Cartels in Public Procurement
  - All on http://www.oecd.org/daf/competition/fightingbidrigginginpublicprocurement.htm
- OECD Recommendation on Public Procurement 2015
- Procurement Toolbox
OECD Checklist for Detecting Bid Rigging

Section 1  –  Warning signs and patterns when business are submitting bids
Section 2  –  Warning signs in bid documents
Section 3  –  Warning signs and patterns related to pricing
Section 4  –  Suspicious statements
Section 5  –  Suspicious behaviour
Section 6  –  Cautionary note about indicators
Section 7  –  Steps to take when bid rigging is suspected
SECTION 1 – Clues in the way bids are submitted

• Look for patterns, such as:
  – Same bidder often wins.
  – A pattern in awards indicating bid rotation or geographic allocation.
  – Certain bidders fail to bid, withdraw bids, or always bid but never win.

• To see the patterns -> examine long period of time (historical data)

• Unnecessary joint bids or subcontracts.
SECTION 2 - Clues in Bid Documents

- Identical mistakes, addresses, forms or estimates.
- Indications of last-minute changes.
- Indications that bid is not genuine, such as lack of detail or failure to comply with required terms.
SECTION 3 - Clues in Pricing

- Unexplained price increases, or loss of discounts.

- Unexplained price differences between
  - geographic areas or
  - government agencies or
  - government purchasers and the private sector.

- Large price differences between winning bidder and other bidders.

- Unexplained identical prices or terms.
SECTION 4- Clues in Statements

- Indication of communication or agreement among bidders.
- Mention of “industry” or “standard” prices.
- Indication that certain customers or areas belong to a certain bidder.
- Indications that a bidder does not expect to win, or knows who will win.
- Concerns about having to sign a Certificate of Independent Bid Determination.
SECTION 5 - Clues in Behaviour

• Competitors meet privately, such as at trade association meetings.

• Bidder requests or submits competitor’s bid.

• Bidder tries to determine who else is bidding, and then, perhaps, changes bid.

• Several bidders make similar enquiries or requests of procurer.
SECTION 6 – Cautionary note about indicators

• Indications of possible bid rigging may have innocent explanations.
• Do not assume supplier is guilty based on clues.

SIMPLE TASKS:
• Compare all the documents, statements and behaviors during the tender procedure (big picture)
  – When receiving bid documents electronically – check the date, the hour, the sender, the metadata
  – Participants (winner/ loser/ withdrawing bidders), non-participants, ALSO trade associations
  – The price
  – Joint bidding, subcontracting
If you Suspect Bid Rigging:

- Keep all documents and detailed records of clues.
- Do NOT discuss concerns with bidders.
- Contact internal legal or audit staff, or manager.
- Contact competition authority.
- After obtaining advice, decide whether to proceed with tender.
OECD Tender Design Checklist

Section 1  –  Be informed about the market
Section 2  –  Maximise potential participation by genuinely competing bidders
Section 3  –  Define performance and avoid predictability
Section 4  –  Reduce communication among bidders
Section 5  –  Choose clear criteria for evaluating and awarding the tender
Section 6  –  Raise awareness among public procurement officials
SECTION 1 – Be informed about the market

• Determine if market characteristics make collusion more likely.
• Learn about suppliers and products.
• Contact other procurement offices.
• Get information about pricing trends.
• Learn about suppliers’ major costs.
• Look at similar, substitute products.
SECTION 2 - Maximise participation by genuine competitors

- Any conditions that restrict eligibility to bid should be limited, proportionate and necessary.
- Keep cost of preparing bids low, allow adequate time, consider electronic bids.
- If do-able, design the contract so that smaller firms can bid on at least a portion.
- Encourage entry by non-local and foreign firms.
SECTION 3 – Define performance and avoid predictability

- Specifications and terms should be clear, and centred on function and performance.
- Avoid predictability.
- Allow for substitute products.
- Allow for innovative solutions.
SECTION 4 – Reduce communication among bidders

• Try to keep the identity of bidders secret:
  – Avoid bringing bidders together in one place.
  – Do not identify bidders by name before, during or after the tender.
  – Do not disclose the number of bidders.
  – Use mail, telephone and electronic bidding where possible.

• Avoid disclosing competitive sensitive information.

• Avoid using industry consultants if they facilitate communication.

• Require Certificate of Independent Bid Determination.
SECTION 5 – Carefully choose evaluation and award criteria

• Clear and fair criteria encourage participation of bidders in future tenders.

• Criteria should reward innovation and cost cutting.

• Criteria should not favour incumbents or certain groups.

• Criteria should not discourage new bidders.
THANK YOU!

Questions?

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