Tips for fighting bid rigging in public procurement

A checklist for those responsible for public procurement
If you suspect bid rigging, contact the competition authorities at once

If you suspect bid rigging, contact the Finnish Competition Authority or the competition officials of the Regional State Administrative Agencies without delay.

▶ Do not inform the bidders or anybody else of your suspicions.
▶ Make detailed notes of your suspicions and observations.

Telephone, e-mail and other contact information to the Finnish Competition Authority can be found from the agency’s website at www.kilpailuvirasto.fi.

The contact information for the competition officials of the Regional State Administrative Agencies can be found at www.avi.fi.

"Bid rigging is sought to be implemented in secret, to provide the buyer with the idea that the companies are in regular competition.

Detecting bid rigging is hence not easy"
The Competition Act prohibits bid rigging

Bid rigging consists of an unlawful agreement or arrangement whereby those who have bid on the sale or purchase of goods or offering of services act in collusion in the bidding contest to increase their profit. The cartel is sought to be implemented in secret, to provide the buyer with the idea that the companies are in regular competition. The detection of cartels is hence not easy.

Cartels are considered the most serious restraints on competition. They have long-standing harmful effects both on the structure of the market and the functioning of competition. Cartels limit the production of goods and services and decrease the alternatives available to customers. They also raise the prices to be paid for products compared to a competitive level. According to an estimate by the OECD, cartels may raise the prices of products by as many as tens of per cents.

This brochure describes features that may constitute signs of collusion. They are not always indicative of a cartel; other explanations may lie behind them. However, if features possibly pointing to a cartel emerge, there is cause for special vigilance.

Recognise the common forms of bid rigging

► **Cover bidding.** Competitors agree in advance on which of them will submit the winning bid. The other undertakings submit bids which are not meant to be successful.

► **Bid suppression.** Same as above, but some of the undertakings refrain from bidding at all.

► **Bid rotation.** Contracts are allocated – e.g. by the above-mentioned methods – between undertakings so that the value of the contracts received by each undertaking is roughly the same during a certain period, either absolutely or in relation to the size of the company.

► **Market allocation.** Undertakings agree on market allocation by geographical region or by certain class of customer, for example. Undertakings do not submit a bid at all or submit a cover bid for allocated regions or customers.
Tips for the detection of bid rigging

**Bidding process**

Certain phenomena and practice which may be considered unusual on a competitive market may indicate bid rigging. Those making procurements should be on guard to detect such clues.

It is only possible to detect some of the phenomena by observing earlier tender processes to find out whether unusual signs can be discerned from the behaviour of the undertakings in a longer perspective. For example, it should be investigated how often undertakings submitting or winning tenders have won or lost before.

Subcontracting agreements between competitors and such joint ventures and projects which have remained undisclosed to the party inviting the bids may give rise to suspicion.

**Signs which may be indicative of a cartel**

- Same undertaking wins the tender time after time.
- Undertakings seem to win tenders by turns.
- Bids are received from fewer undertakings than usual.
- An undertaking’s bid differs substantially from tenders submitted by the same undertaking to other similar bidding contests.
- The winning bidder subcontracts work to a competitor.

**Bidding documents**

Bidding documents may also indicate bid rigging. By comparing documents, references may be found to potential collusion between competitors in drafting the bids.

**Signs which may be indicative of a cartel**

- The bidding documents submitted by different bidders contain suspicious similarities, for example identical calculation or spelling errors, similar wordings or a uniform layout.
- References are made in the bid to the prices of competing undertakings.
- The bidding documents show that the bid has been changed at the last minute.
**Bidding prices**

It is advisable to compare prices or public price lists offered by the undertakings to other similar buyers. It is also good practice to compare the bids submitted by each undertaking the previous years.

If the losing bids are much higher than the winning bid, the parties may have agreed on cover bids. Prices of several bidders that are convergent and considerably higher than before may also indicate bid rigging. This is especially true if the price increases cannot be seen to be explained by cost increases.

**Signs which may be indicative of a cartel**

- The prices are similar year after year or suddenly become uniform without an apparent reason.
- The prices of all bidders suddenly increase without an apparent cost basis.
- Higher prices are collected from local than more distant clients.
- Prices plunge when a new or incidental bidder participates in the tender.
- Prices are substantially higher than the previous bid prices or public price list prices.

**Bidders’ behaviour**

Attention should always be paid to references of meetings or events in which competitors have had the opportunity to converse with each other. In such meetings, circumstances may be favourable for the creation of a cartel.

When dealing with the bidders, attention should also be paid to suspicious statements which may indicate that the undertakings have reached an understanding or agreed on prices or methods of commerce. Actions which might only benefit other undertakings may also indicate collusion between undertakings.

**Signs which may be indicative of a cartel**

- Representatives of undertakings meet before submitting bids.
- The manner in which bids are submitted indicates collusion (bids are e.g. submitted at the same time or by the same person).
- An undertaking submits a bid when it is obvious that it is incapable of successfully completing the contract.
- There are signs that the undertaking is aware of the competitors’ bids.
Tips for the detection of bid rigging

Bidding process
- Same undertaking wins the tender time after time.
- Undertakings seem to win tenders by turns.
- Bids are received from fewer undertakings than usual.
- An undertaking’s bid differs substantially from tenders submitted by the same undertaking to other similar bidding contests.
- The winning bidder subcontracts work to a competitor.

Bidding documents
- The bidding documents submitted by different bidders contain suspicious similarities, for example identical calculation or spelling errors, similar wordings or a uniform layout.
- References are made in the bid to the prices of competing undertakings.
- The bidding documents show that the bid has been changed at the last minute.

Bid prices
- The prices are similar year after year or suddenly become uniform without an apparent reason.
- The prices of all bidders suddenly increase without an apparent cost basis.
- Higher prices are collected from local than more distant clients.
- Prices plunge when a new or incidental bidder participates in the tender.
- Prices are substantially higher than the previous bid prices or public price list prices.

Bidders’ behaviour
- Representatives of undertakings meet before submitting bids.
- The manner in which bids are submitted indicates collusion (bids are e.g. submitted at the same time or by the same person).
- An undertaking submits a bid when it is obvious that it is incapable of successfully completing the contract.
- There are signs that the undertaking is aware of the competitors’ bids.