

Public procurement and collusion

a plague everywhere

Prof. Alberto Heimler

SSPA, Roma

Bid rigging

- Bid rigging is an agreement between competitors over which firm will win a tender-often from government agencies .
- This agreement may be accomplished by one or more bidders agreeing to refrain from submitting bids, or by the bidders agreeing on a low bidder and then bidding above that firm's intended (and inflated) price.
- The tendering process is designed to promote fairness and ensure that the lowest possible prices are received. Bid rigging subverts this competitive process.

Forms of bid rigging

- ***Bid suppression.*** One or more competitors agree to refrain from tendering or to withdraw a previously submitted tender so that another company can win the tender.
- ***Complementary bidding.*** The competing companies agree among themselves who should win a tender, and then agree that the others will submit artificially high bids to create the appearance of vigorous competition.
- ***Bid rotation.*** The competitors take turns being the winning tender, with the others submitting high bids. The companies agreeing will generally try to equalize the tenders won by each over time. A strict pattern of rotation is often a clue that collusion is present.

Profit sharing mechanisms

- Bid-rigging schemes often include mechanisms to distribute among the conspirators the additional profits obtained as a result of the higher final contracted price.
- For example, competitors who agree not to bid or to submit a losing bid may receive subcontracts or supply contracts from the designated winning bidder in order to divide the proceeds from the illegally obtained higher priced bid among them

Markets likely to have cartels

- There are few firms, or only a few large important firms.
- History of little or no entry
- The firms are similar in cost structure, processes, goals, degree of vertical integration, or number of products produced (similar firms can agree more easily).
- The relevant product is homogenous, such as flour, sugar, or cement. In such a market an agreement on price can be relatively simple.
- The product does not have close substitutes. If it did, a price increase would drive customers to switch to the substitute. Not much technical progress either
- Customers will not or cannot significantly reduce the amount of product that they purchase, even if the price increases. That is, demand is inelastic at the competitive price (and the cartel can raise the price relatively easily).
- Demand is relatively stable throughout the year
- Information about sales transactions, that is, who sold how much to whom for what price, is widely available. The more such information that is available, the easier it is to police a cartel.
- Repetitive biddings

OECD checklist against bid rigging: architectural design

- 1) BE INFORMED OF MARKET DEVELOPMENTS BEFORE DESIGNING THE TENDER PROCESS**
- 2) DESIGN THE TENDER PROCESS TO MAXIMISE THE POTENTIAL PARTICIPATION OF GENUINELY COMPETING BIDDERS**
- 3) DEFINE YOUR REQUIREMENTS CLEARLY AND AVOID PREDICTABILITY**
- 4) DESIGN THE TENDER PROCESS TO EFFECTIVELY REDUCE COMMUNICATION AMONG BIDDERS**
- 5) CAREFULLY CHOOSE YOUR CRITERIA FOR EVALUATING AND AWARDED THE TENDER**
- 6) RAISE AWARENESS AMONG YOUR STAFF ABOUT THE RISKS OF BID RIGGING IN PROCUREMENT**

OECD checklist against bid rigging: how to detect bid rigging

- 1) LOOK FOR WARNING SIGNS AND PATTERNS WHEN BUSINESSES ARE SUBMITTING BIDS**
- 2) LOOK FOR WARNING SIGNS IN ALL DOCUMENTS SUBMITTED**
- 3) LOOK FOR WARNING SIGNS AND PATTERNS RELATED TO PRICING**
- 4) LOOK FOR SUSPICIOUS STATEMENTS AT ALL TIMES**
- 5) LOOK FOR SUSPICIOUS BEHAVIOUR AT ALL TIMES**
- 6) A CAUTION ABOUT INDICATORS OF BID RIGGING**
- 7) STEPS PROCUREMENT OFFICIALS SHOULD TAKE IF BID RIGGING IS SUSPECTED**

Some recent EU experiences

- UK: sept 2009, 103 construction companies were found to have engaged in cover pricing (side compensations to unsuccessful bidders)
fine: £ 130 million
- NL: 2005 100 construction companies in the Netherlands were found to have engaged in market splitting and bid rigging purposes.
Fine: EUR 76 million

Conclusion

- E-procurement is one of the options for avoiding bid rigging
- To avoid bid rigging it is not sufficient just to respect the law and economic analysis is very important
- SSPA is developing a curriculum in public procurement that combines economics and the law