

Tool: Checklist to design tender methods to reduce bid rigging

Purpose

- To promote effective competition in public procurement and to achieve better value for money through targeting bid rigging risks in the design of the tender methods.

Public Procurement
Principle: **Integrity, Access**

Procurement Stage:
Pre-tendering

Audience: **Policy Maker,
Procuring Entity**

Description

Policy makers may use the checklist to design policies, practices and guidelines to minimise collusion and fight against anti-competitive behaviour in the procurement process. The legislated rules that govern public procurement, the way in which a tender is designed can act to hinder competition and help sustain bid rigging practices. It is critical that procurement regulations do not unwittingly facilitate collusive arrangements.

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

- **Cover bidding:** 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.
- **Bid suppression or withdrawal:** A competitor agrees not to bid or to withdraw a bid from consideration.
- **Market sharing:** A competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.
- **Bid rotation:** Competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined slice of the pie.
- **Non-conforming bids:** Competitors deliberately include terms and conditions they know will not be acceptable to the procuring authority.

Although the schemes used to rig bids vary, they all have a common point: the suppliers/bidders agree to eliminate competition so that prices are higher and public organisations pay more.

The presence of certain factors increases the need for vigilance against bid rigging, including:

- Small number of suppliers/bidders. The probability of bid rigging is higher if there are few suppliers/bidders. Bid rigging requires suppliers/bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same suppliers/bidders are involved in repeated procurements.
- Standardised or simple products. The chances of bid rigging are greater if the products, services or works being purchased are standardised, simple and do not change over time. Under these circumstances it is easier to work out an agreement and have it last.
- Little or no entry. If entry in a certain market is costly, hard or time consuming, suppliers/bidders are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

Professional training is important to strengthen procurement practitioners' awareness of competition issues in public procurement. Efforts to fight bid rigging more effectively can be supported by collecting historical information on bidding behaviour, by constantly monitoring bidding activities, and by performing analyses on tender data. This helps procurement (and competition) authorities to identify problematic situations. It should be noted that bid rigging may not be evident from the results of a single tender. Often a collusive scheme is only revealed when one examines the results from a number of tenders over a period of time.

Box: Checklist to design the tender methods to reduce bid rigging

Be informed before designing the tender process

Collecting information on the range of products and/or services available in the market that would suit the requirements of the purchaser as well as information on the suppliers/bidders of these products is the best way for procurement practitioners to design the procurement process to achieve the best "value for money". Develop in-house expertise as early as possible.

Design the tender process to maximise the potential participation of genuinely competing suppliers/bidders

Effective competition can be enhanced if a sufficient number of credible suppliers/bidders are able to respond to the invitation to tender and have an incentive to compete for the contract. For example, participation in the tender can be facilitated if procurement practitioners reduce the costs of bidding, establish participation requirements that do not unreasonably limit competition, allow firms from other regions or countries to participate, or devise ways of incentivising smaller firms to participate even if they cannot bid for the entire contract.

Define the requirements clearly and avoid predictability

Drafting the requirements is a stage of the procurement cycle which is vulnerable to bias, fraud and corruption. Requirement should be designed in a way to avoid bias and should be clear and comprehensive but not discriminatory. They should, as a general rule, focus on functional performance, namely on what is to be achieved rather than how it is to be done. This will encourage innovative solutions and value for money. How tender requirements are written affects the number and type of suppliers/bidders that are attracted to the tender and, therefore, affects the success of the selection process. The clearer the requirements, the easier it will be for suppliers/bidders to understand them, and the more confidence they will have when preparing and submitting bids. Clarity should not be confused with predictability. More predictable procurement schedules and unchanging quantities sold or bought can facilitate collusion. On the other hand, higher value and less frequent procurement opportunities increase the suppliers/bidders' incentives to compete.

Design the tender process to effectively reduce communication among suppliers/bidders

When designing the tender process, procurement practitioners should be aware of the various factors that can facilitate collusion. The efficiency of the procurement process will depend upon the bidding model adopted but also on how the tender is designed and carried out. Transparency requirements are indispensable for a sound procurement procedure to aid in the fight against corruption. They should be complied with in a balanced manner, in order not to facilitate collusion by disseminating information beyond legal requirements. Unfortunately, there is no single rule about the design of an auction or procurement tender. Tenders need to be designed to fit the situation.

Carefully choose your criteria for evaluating and awarding tender

All selection criteria affect the intensity and effectiveness of competition in the tender process. The decision on what selection criteria to use is not only important for the current project, but also for maintaining a pool of potential credible suppliers/bidders with a continuing interest in bidding on future projects. It is therefore important to ensure that qualitative selection and awarding criteria are chosen in such a way that credible suppliers/bidders, including small and medium enterprises, are not deterred unnecessarily.

Further Resources

OECD (2009), "[Guidelines for Fighting Bid Rigging](#)" (available in 15 languages).