

THE COMMERCE ACT

HOW TO DETER BID RIGGING

Bid rigging, or collusive tendering, occurs when there is an agreement among some or all of the bidders as to which of them should win a bid. This prevents open and effective competition and can lead to increased prices and reductions in choice, innovation and quality. As a result, procurers (purchasers) are unlikely to achieve best value for money. Bid rigging is a form of cartel conduct and is prohibited by the Commerce Act 1986.

The Commerce Commission has produced guidelines to assist procurers to both recognise and deter this conduct. The guidelines can be found at www.comcom.govt.nz/anti-competitive-practices

The risks of anti-competitive conduct such as bid rigging in procurement can be mitigated by designing tenders in a way that minimises the likelihood of collusion. This fact sheet outlines ways that procurers can prevent bid rigging.

Learn about the market:

- Gather information about the products, suppliers and conditions in the marketplace, especially potential suppliers' prices and costs. Include information about prices in other geographic areas or for similar products.
- Collect information about past tenders.

Include anti-collusion clauses in your tender documents:

- Warn bidders that you will report all suspicions of collusion to the Commerce Commission.
- Require bidders where possible to sign a warranty that their bid has been independently developed and that there has been no communication with competitors about price, bid submission or terms of the bid. If such a warranty cannot be signed, seek disclosure of contacts had with competitors with regard to the bid.
- Require bidders to disclose any proceedings involving anti-competitive conduct in New Zealand or overseas involving the bidder, including related companies and senior management.
- Reserve the right not to award the contract if there are suspicions of collusion.

Some suggested clauses for inclusion in your tender documents can be found in Appendix 1 of the guidelines for procurers.

Ensure the largest number of potential bidders:

- The probability of bid rigging increases if you have a small number of potential bidders; accordingly, keep tender requirements clear and easy to follow, thereby encouraging more companies to bid.
- Think carefully about unnecessary restrictions on bidders that may eliminate companies that are in fact qualified for the job, and avoid preferential treatment of certain classes of suppliers, or companies that have contracts up for renewal, which can discourage other suppliers from bidding.

Bid rigging prevents open and effective competition and can lead to increased prices and reductions in choice, innovation and quality.

Make it hard for bidders to communicate and agree on a strategy:

- Avoid unnecessarily presenting the bidders with opportunities to communicate with each other (eg, at pre-bid face-to-face meetings or at site inspections). If pre-bid meetings are necessary, mitigate the risk of collusion by, for example, reminding attendees of their obligations under the Commerce Act.
- Keep the identity of bidders undisclosed to make it more difficult for cartel members to contact all bidders.

Provide training to staff:

- Training in the detection and deterrence of cartels for all procurement staff will help staff to design a procurement process that is less susceptible to collusive conduct. The Commission would be happy to discuss this with you.

Keep a database of past and present tenders:

- This will assist in the detection of bidding patterns. Collusive schemes may only be revealed when the results of tenders over a period of time are analysed.

To check for updates to this fact sheet visit: www.comcom.govt.nz/anti-competitive-practices

This fact sheet is part of a series looking at the Commerce Act and anti-competitive practices. The fact sheet How to Recognise Bid Rigging and other fact sheets in this series can be downloaded from www.comcom.govt.nz/anti-competitive-practices

CONTACT

Contact the Commerce Commission with information about possible breaches of the Commerce Act.

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Our Contact Centre during office hours on 0800 943 600

WRITE

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This fact sheet is a guideline only and reflects the Commission's view. The publication is not intended to be definitive and should not be used instead of legal advice. It is businesses' responsibility to remain up to date with legislation.

Only the courts can make an authoritative ruling on breaches of the Commerce Act.