

18 December 2017

For Immediate Release

Competition Commission publishes model “Non-collusion clauses” for procurers to strengthen defence against cartel conduct

The Competition Commission (Commission) today published model “Non-collusion clauses” for procurement practitioners to incorporate in their tender documents and contracts so as to reduce the risk of being exposed to anti-competitive collusive conduct during the procurement process.

The model “Non-collusion clauses” comprise model non-collusion wording that may be included in an invitation to tender, a model non-collusive tendering certificate for tenderers to sign as part of their tender submission to declare that the bid was developed independently, as well as guidance on “Non-collusion clauses” in formal contracts.

Anti-competitive collusive conduct can occur in any industry or sector where tender processes are used. While bid-rigging may be the most commonly-known form of anti-competitive conduct in the tender process, other forms of collusive practices such as market sharing and price fixing may also be involved. These are considered as particularly egregious forms of anti-competitive conduct under the Competition Ordinance (Ordinance) harming consumers, businesses and the economy as a whole.

The purpose of incorporating “Non-collusion clauses” in tender documents is to alert tenderers of the prohibitions against, and consequences of, entering into anti-competitive collusive arrangements. Procurers may also consider including such clauses in their formal contracts with successful tenderers so as to provide contractual protections in the event that the tender process has been subject to collusion.

A spokesman for the Commission said, “Procurement officers play a key role in preventing collusive conduct and safeguarding effective competition in the tender process. As a further initiative of our advocacy campaigns on bid-rigging and market sharing, we published the model ‘Non-collusion clauses’ today with an aim to providing easily accessible references for procurers to strengthen defence against cartel conduct.

We encourage all procurers in Hong Kong, including public procurement officials and persons responsible for procurement in private entities to consider including “Non-collusion clauses” in their invitations to tender and formal contracts. Procurers who already incorporate similar clauses in their tender documents are encouraged to consider using the model as a supplement for their existing clauses to ensure they fully reflect the spirit and requirements of the Ordinance. Procurers and members of the public should also be alert and report any suspected cases to the Commission.”

In addition to the model “Non-collusion clauses”, the Commission has published a user guide to provide guidance on the use of such documents. These materials are available in English and Chinese on the Commission’s website at www.compcomm.hk.
