

17 January 2023

For Immediate Release

Competition Commission enhances model “Non-collusion Clauses” to strengthen protection for procurers against attempts to undermine competition

The Competition Commission (Commission) today published a revised set of model “Non-collusion Clauses” for procurers to incorporate in their invitation to bid documents and contracts. The newly added clauses require bidders to disclose information on their beneficial ownership which, in turn, will provide procurers with greater clarity as to the competitiveness of the procurement process.

Bid-rigging, market sharing and price fixing, which are considered to be serious anti-competitive conduct under the Competition Ordinance, may occur in any procurement process. They also typically result in procurers paying above the competitive rate or price for goods and services.

To reduce procurers’ exposure to anti-competitive conduct during procurement exercises, the Commission published the first set of model “Non-collusion Clauses” in 2017 for procurers to adapt and incorporate in their invitation to bid documents and contracts. The clauses comprised model non-collusion wordings that may be included in an invitation to bid, a model certificate for bidders to sign as part of their submission to declare that the bid was developed independently, as well as a user’s guide on such documents. In essence, the “Non-collusion Clauses” serve to warn bidders of the prohibition against, and consequences of, entering into anti-competitive arrangements, as well as to provide a clear and straightforward contractual remedy for procurers in the event that these clauses have been breached.

The revised set of model “Non-collusion Clauses” published today requires bidders to identify their beneficial owners. This will enable procurers to see whether there are common ownership links between companies which might otherwise appear to be submitting independently-prepared bids and competitive bids. Through its investigative work, the Commission has seen instances where a number of businesses have submitted what appear to be independent bids but which in fact have been coordinated due to the existence of a common beneficial owner. While not necessarily a contravention of the Competition Ordinance, such behaviour gives a misleading impression of the level of competition in a bidding process which the Commission considers it appropriate to address through these model clauses. Procurers will need to decide how to respond based on their procurement policy where companies disclose a common owner to another participant in the process.

A spokesman for the Commission said, “Since its launch in 2017, the model ‘Non-collusion Clauses’ have been used by an increasing number of procurers in both the public and private sectors, and have helped in safeguarding their procurement processes. By further requiring bidders to disclose beneficial ownership, procurers will be provided with a crucial piece of information when assessing the potential competitiveness of a procurement process.

We encourage all procurers in Hong Kong, whether in the public or the private sector, to adapt and incorporate the revised set of model ‘Non-collusion Clauses’ in their invitations to bid and formal contracts. They should also stay vigilant and report any suspected anti-competitive conduct to the Commission.”

The Commission calls on all parties who are aware of anti-competitive practices, including victims of such practices, to report suspected cases to the Commission by telephone at 3462 2118, e-mail (complaints@compcomm.hk), post, or in person at the Commission's office (by appointment only).

The revised model "Non-collusion Clauses" are available in English and Chinese on the Commission's website at <http://www.compcomm.hk>.
