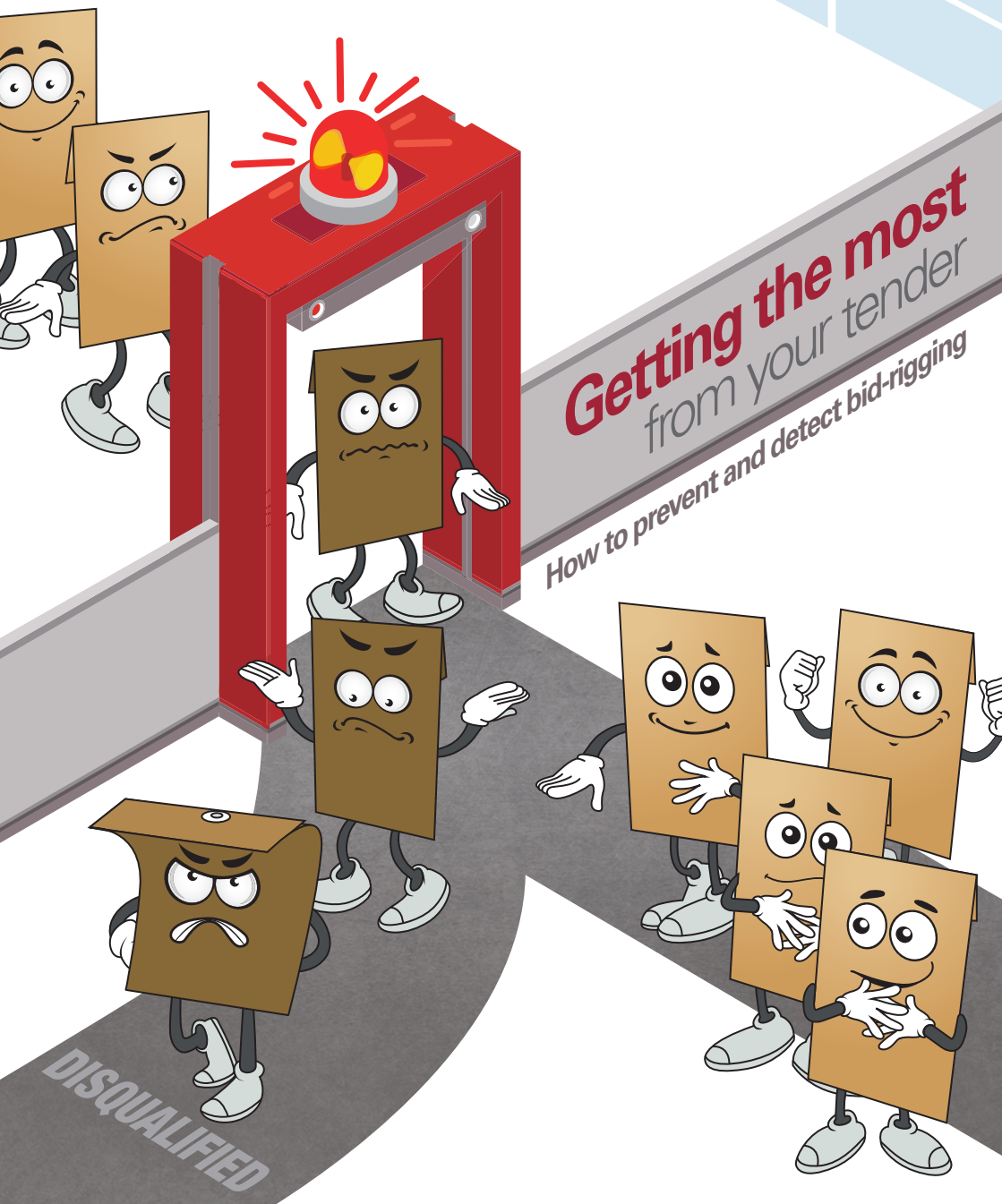




競爭事務委員會
COMPETITION
COMMISSION



Getting the most
from your tender

How to prevent and detect bid-rigging

DISQUALIFIED

GETTING THE MOST FROM YOUR TENDER

How to prevent and detect bid-rigging

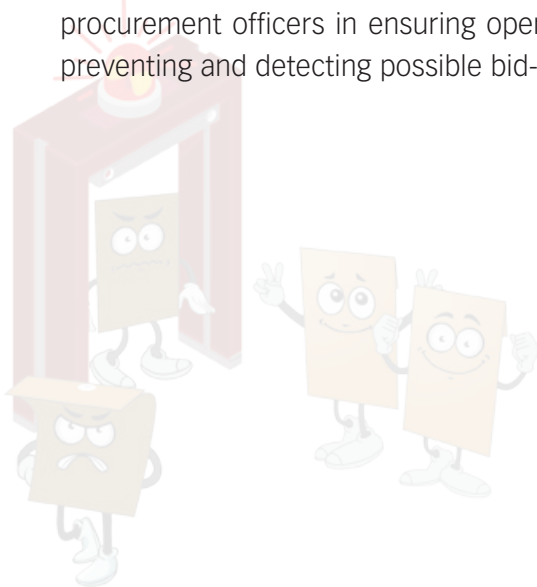
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1. INTRODUCTION

The goal of procurement is to get the highest quality products and services at the lowest possible price, that is, to get the best value for money. Vigorous competition among suppliers through an effective tendering process helps procurers realise this objective.

However, some bidders may undermine procurement processes by colluding to eliminate competition. By conspiring with each other to pre-determine the outcome of tenders, bidders maximise their profits with minimal effort at the expense of customers. Bid-rigging cartels of this kind limit customer choices and lead to inflated prices and poorer quality goods and services. Bid-rigging cartels deprive customers of the benefits of competition.

Procurement professionals play a key role in the defense against and detection of bid-rigging cartels. This publication is designed to assist procurement officers in ensuring open and effective competition by preventing and detecting possible bid-rigging cartels.



2. HOW TO PREVENT BID-RIGGING

Bid-rigging cartels can occur in any market where tender processes are used. Procurement officers should be vigilant and take proactive steps to minimise the risks of bid-rigging in procurement.

▼ Learn about the market

A better understanding of the market you are procuring goods or services from is the first step to running an effective tendering process. Procurement officers should be aware of the main characteristics of the market involved and any recent industry activities or changes in company ownership that may affect competition in that market.

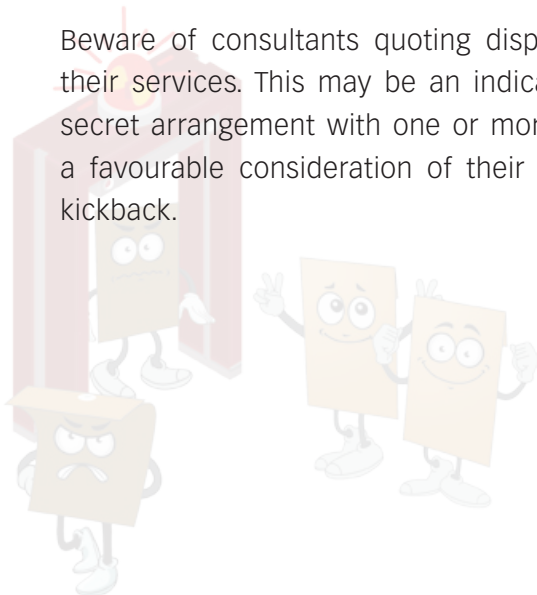
Inform yourself about the prices of the goods or services you are procuring. It is particularly useful to collect information on the published prices, if any, of potential bidders, prices in neighbouring markets and prices of possible alternative products or services. Information about your past tenders for the same or similar products or services may also be helpful.

\\ Consider the use of independent consultants

Consider whether the engagement of an external consultant is needed. Where that is the case, ensure that the consultant engaged is credible, independent and competent to review the potential bids. It is important to manage the risks that may be associated with the use of consultants who may have established working relationships with potential bidders. Do not disclose the identity of the consultant to potential bidders and ensure that the consultant has signed a confidentiality agreement and declared any potential conflict of interest in relation to the tender.

In high value projects, you may wish to consider engaging an additional independent consultant to audit the work of your consultant prior to awarding the contract.

Beware of consultants quoting disproportionately low prices for their services. This may be an indication that a consultant has a secret arrangement with one or more potential bidders to secure a favourable consideration of their bids in return for a financial kickback.



\ Raise employees' awareness of bid-rigging cartels

Appropriate training will strengthen procurement officers' awareness of competition issues in procurement and assist them to design a procurement process that is less susceptible to bid-rigging.

The presence of a bid-rigging cartel may not be detectable based on the results of one single tender but such conduct could be discernible in a number of tenders over a period of time. Therefore, developing a database that contains past and present bid results (including the details of unsuccessful bids) will help staff detect potential problems quickly. Similarly, by constantly monitoring bidding activities, by collecting historical information on bidding behaviour and by conducting analysis of bid data, procurement officers may be able to identify problematic situations and help rectify them.

Procuring organisations should review selected tenders periodically and establish internal procedures that encourage or require employees to report suspicions.

3. HOW TO DESIGN AN EFFECTIVE TENDERING PROCESS

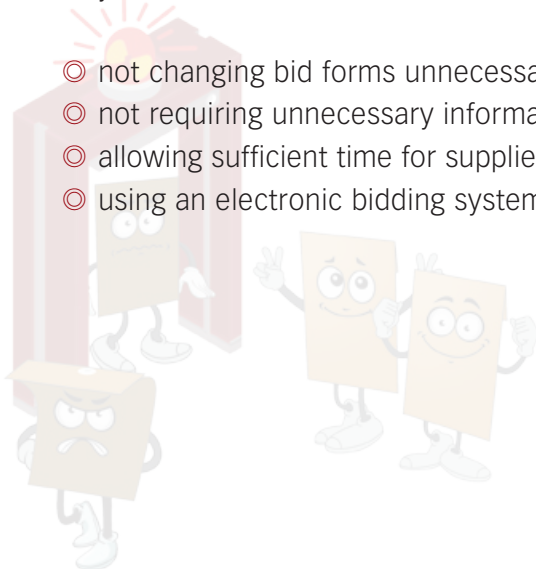
There are certain measures procurement officers can take when designing the tendering process to encourage competition and lessen the risk of bid-rigging.

\\ Maximise potential participation of bidders

The greater the number of credible bidders that are able to participate in a tender, the more effective the tendering process will be and the less likely bid-riggers can successfully agree among themselves or determine the outcome of the tender.

To facilitate participation in tenders by bidders, it is advisable to keep the costs of bidding low. This can be achieved in a number of ways, such as:

- ⊙ not changing bid forms unnecessarily
- ⊙ not requiring unnecessary information
- ⊙ allowing sufficient time for suppliers to prepare and submit a bid
- ⊙ using an electronic bidding system, if possible.



Unnecessary restrictions on the size, composition or nature of businesses who can tender may reduce the number of qualified bidders and should therefore be avoided. Any minimum requirements should be proportional to the size and content of the procurement contract.

Another way to encourage more participation is to allow bidding on a portion of a large contract so that smaller bidders can participate. In addition, allowing companies from other regions or countries to participate in a tender will make bid-rigging more difficult.

\ Minimise communications among bidders

Procurement officers should limit communication among bidders and avoid bringing potential suppliers together, for example by holding pre-bid meetings. The identity of bidders should also be kept undisclosed by using numbers, rather than names, to identify them.

\ Ensure clarity but avoid predictability

Generally speaking, the clearer the tender requirements, the easier it will be for bidders to understand and prepare bids. However, clarity should not be confused with predictability. Predictable purchasing patterns facilitate bid-rigging cartels. Procurement officers may consider varying the size and timing of tenders by aggregating or disaggregating contracts.

\\ Allow alternatives

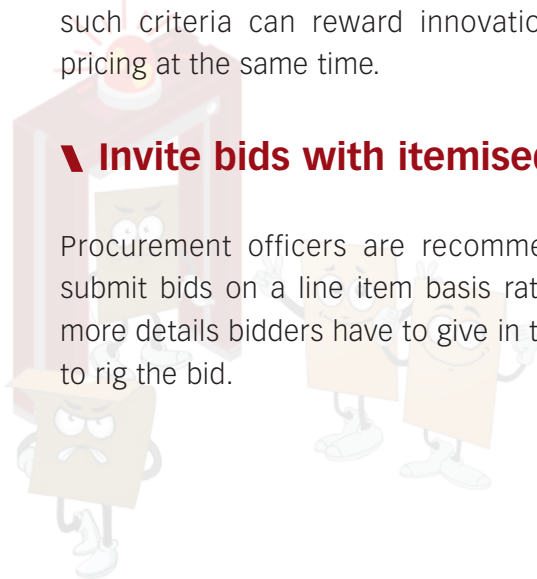
Tender requirements should be defined in terms of functional performance, rather than by reference to specific technologies or brands of products. Allowing for substitute products, alternative sources of supply or innovative solutions can make bid-rigging more difficult.

\\ Set selection criteria carefully

The decision on what selection criteria to use affects not only the current bids, but also the pool of potential credible bidders who will continue to take part in future bids. It is important to avoid preferential treatment of certain types of suppliers as this will discourage participation by other suppliers. Qualitative criteria should be chosen in such a way that credible bidders, regardless of their size, are not deterred unnecessarily. When properly used, such criteria can reward innovation and promote competitive pricing at the same time.

\\ Invite bids with itemised costs

Procurement officers are recommended to require bidders to submit bids on a line item basis rather than lump sum bids. The more details bidders have to give in the bids, the more difficult it is to rig the bid.



\\ Include an anti bid-rigging clause in tender documents

Procurement officers may also consider including anti bid-rigging clauses in tender documents and request bidders to sign an anti bid-rigging declaration when submitting bids.

4. HOW TO DETECT BID-RIGGING CARTELS

Bid-rigging cartels can be difficult to detect as they are generally carried out in secret. There are no simple indicators of the existence of a bid-rigging cartel but there are warning signs which may lead to early detection.

\\ Suspicious signs in documents submitted

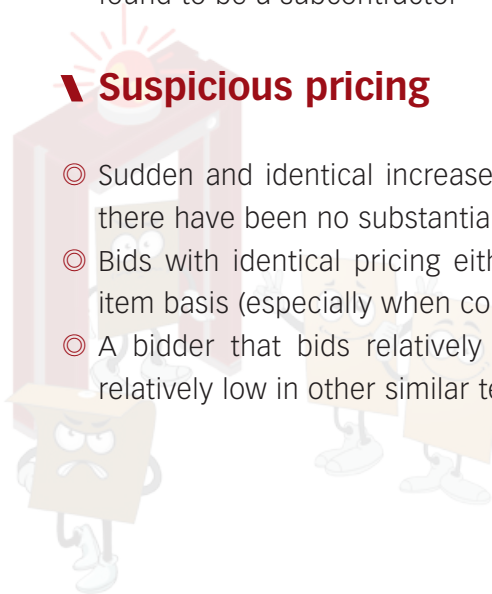
- ◎ Bids containing identical wording, particularly if the wording is unusual
- ◎ Bids containing the same handwriting or typeface or using identical forms or stationery
- ◎ Bids containing the same errors e.g. spelling mistakes or mistakes in calculations
- ◎ The same amendments being made to bids from different bidders
- ◎ Last minute amendments made to bids without clear reasons
- ◎ Packaging from different companies has similar postmarks or post metering machine marks

▼ Suspicious bidding / winning patterns and behaviour

- ⊙ Regular bidders fail to bid on a tender they would normally be expected to bid for, but have continued to bid for other tenders
- ⊙ Bids that are suddenly withdrawn
- ⊙ A bidder submits both its own and a competitor's bid and bidding documents
- ⊙ A pattern of winning bidders revealed over time (bids being won in a pattern such as A, B, C, A, B, C, or particular bidders always winning contracts of a particular type or size)
- ⊙ A bidder that never wins but keeps on bidding
- ⊙ A bidder that rarely bids but always wins when it does so
- ⊙ The winning bidder repeatedly subcontracts work to unsuccessful bidders or potential competitors for the bid
- ⊙ The winning bidder does not accept the contract and is later found to be a subcontractor

▼ Suspicious pricing

- ⊙ Sudden and identical increases in price by most bidders while there have been no substantial cost increases
- ⊙ Bids with identical pricing either on a lump sum basis or line item basis (especially when continued over a period of time)
- ⊙ A bidder that bids relatively high in some tenders but then relatively low in other similar tenders



\ Other red flags

- ⊙ Indications that the bidders have communicated with each other (e.g. one bidder having knowledge of a competitor's bid)
- ⊙ Suspicious statements indicating that bidders may have reached an agreement (e.g. bidders justifying their prices by referring to 'industry suggested prices', use of the same terminology by various bidders when explaining price increases)
- ⊙ Bidders meet privately before submitting bids, regularly socialising together or appearing to hold regular meetings
- ⊙ A new company enters the market and bids at a much lower price (i.e. the new bidder may have disrupted an existing bid-rigging cartel)

5. WHAT TO DO IF YOU SUSPECT BID-RIGGING

Bid-rigging cartels are inherently anti-competitive and will contravene the Competition Ordinance. The Competition Commission (Commission) takes bid-rigging cartels very seriously and accords priority to such conduct in its investigations and enforcement.

If you suspect bid-rigging, keep all documents in relation to the tender and keep notes of any conversations you have with the bidders and other relevant parties (e.g. consultants).

Businesses and the public are invited to report to the Commission any suspected bid-rigging cartel. The Commission will accept complaints and queries in any form, including those provided to the Commission directly and/or anonymously or through an intermediary (such as a legal adviser).

A complaint can be made to the Commission by:

- ◆ Completing an Online Complaint Form available on the Commission's website www.compcomm.hk
- ◆ Email: complaints@compcomm.hk
- ◆ Phone: +852 3462 2118
- ◆ Post: Competition Commission
Room 3601, 36/F, Wu Chung House
213 Queen's Road East
Wanchai, Hong Kong
- ◆ In person at the Commission's office (by appointment only).

The Commission will generally preserve the confidentiality of any confidential information provided to the Commission.

Do not alert the bidders to the fact you have made a complaint to the Commission. Where bid-rigging cartels have occurred, tipping off wrongdoers may lead to the loss of evidence and greatly reduce the likelihood of the Commission being able to successfully investigate the complaint.

6. MORE INFORMATION

To learn more about the Competition Ordinance and the Competition Commission's work, please visit our website www.compcomm.hk.



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Disclaimer

The information provided in this booklet is for general reference only. It does not provide an exhaustive guide to the application of the Competition Ordinance (Ordinance). For a complete and definitive statement of the law, refer to the Ordinance itself. The Competition Commission (Commission) makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and powers conferred on the Commission under the Ordinance.

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