



Detecting, Mitigating & Fighting Bid Rigging in Public Procurement

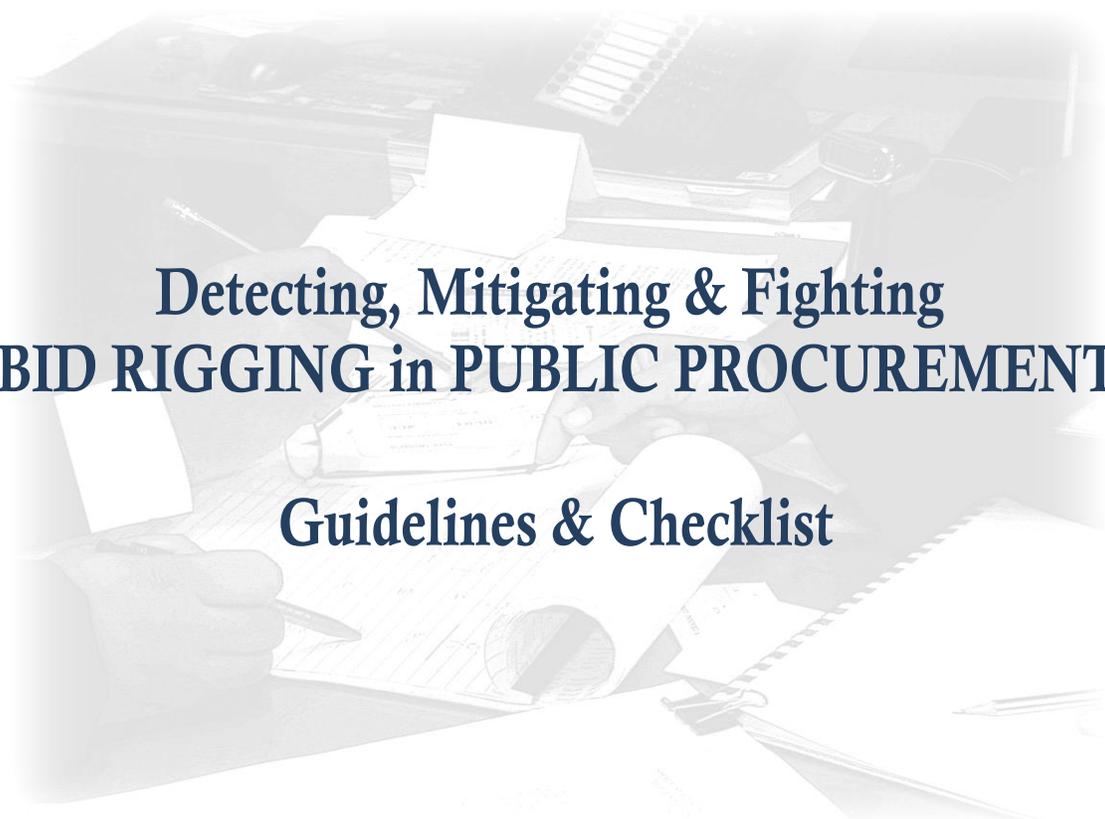


Guidelines & Checklist



GUIDELINES & CHECKLIST

Detecting, Mitigating & Fighting Bid Rigging In Public Procurement



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Foreword

The Fair Trading Commission, while seeking to promote and maintain fair competition, under the Fair Competition Act CAP 326C, is required to investigate and to prohibit all practices that disrupt or distort competition in Barbados. These practices include anti-competitive agreements of which price-fixing and bid rigging are specifically identified.

These practices, because they eliminate competition, can lead to uncompetitive prices and to over-spending by government. They also result in the delivery of poor quality goods and services and other procurement inefficiencies.

It is against this background that the Commission has prepared these Guidelines and Checklist which are intended to assist public sector departments in their preparation of tenders and in their selection of bids when procuring goods and services. The document outlines the importance of sound procurement processes and seeks to advise procurement officials on how to best design tenders to reduce the risks of bid rigging. It also identifies the signs which often appear when bid rigging is occurring.

It is hoped that the contents of this document will help to mitigate the risks of the occurrence of bid rigging in public procurement.

It is important to note that the document is produced for guidance purposes only. It is not a substitute for the Fair Competition Act nor the regulations and orders made under it. If persons have questions concerning the information therein they should contact the Fair Trading Commission.

**Sir Neville Nicholls,
Chairman, Fair Trading Commission**



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Introduction

The Fair Trading Commission's (the Commission) primary responsibility under the Fair Competition Act CAP 326C (the Act) is to promote, encourage and maintain competition in Barbados. This broad mandate requires the Commission to monitor the entire spectrum of domestic trade activity to detect and eliminate all forms of anti-competitive conduct.

To effectively achieve this objective, no major area of domestic business activity can be ignored. Public procurement, which in Barbados is estimated to account for about 7% - 8% of GDP is a key area of domestic trade activity and therefore cannot be excluded from the Commission's monitoring programme.

Given the significance of Government procurement activity, its prudent management represents a critical element of government's current expenditure programme and by extension Government's fiscal policy. Any activity therefore that significantly affects public procurement in a negative manner, is one that could also affect government's ability to maintain a sound fiscal policy.

Anti-competitive practices such as price fixing, market division, bid rotation and subcontracting agreements, are activities that can manipulate the procurement process and thereby negatively impact government's expenditure objectives. These practices, because they eliminate competition, can lead to over-spending by government, the delivery of poor quality goods and services to the public and other procurement inefficiencies.

Since public procurement activity embraces such a substantial volume of activity, it is critical to the efficient functioning of the economy. Hence any significant threat posed to it by anti-competitive activity necessitates that the Commission responds subject to its obligation under the Act to remove such threats. It is against this background that the Commission is seeking to introduce a number of measures to identify and eliminate anti-competitive activity that is likely to have a negative impact on government procurement expenditure.

These measures have been drawn from the experiences of more mature jurisdictions, and redesigned to address the type of anti-competitive conduct which can derail the objectives of competitive procurement in Barbados.



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Responsibility for Investigating Bid Rigging

The Commission addresses the issue of anti-competitive activity within the procurement process from its general responsibility to promote and encourage competition in Barbados as outlined in Section 5 (1) of the Fair Competition Act. The Act establishes the Commission's responsibility to identify and eliminate anti-competitive conduct or trading practices in contravention of the Act. Specifically the Commission's right to intervene with respect to bid rigging and other activities that would seek to determine the outcome of a tender is addressed at Sections 13 and 35 of the Act.

These sections categorically establish that it is a contravention of the Act to enter into agreements that would seek to influence the outcome of a competitive tender. The provisions speak specifically to the act of bid rigging or the act of agreeing on bids or tenders prior to their submission. These sections also deal with agreements such as price fixing, manipulating production or artificial market division which are agreements that may take place prior to the submission of bids and are aimed at deciding the terms on which the contracted work will eventually be carried out.

The Act establishes this conduct as unlawful and persons found guilty of engaging in such activity may face substantial fines. Based on the provisions established in Sections 5, 13 and 35, the jurisdiction of the Commission to investigate public procurement activity pertains specifically to trading activity between competing firms. In this regard, the Act focuses on enterprises (i.e. an individual, partnership or body (corporate or incorporate) engaged in business and NOT on government departments facilitating policy objectives.

The Commission does not have the authority to address the whole range of procurement activities. Activities involving the design of tenders, the examination of submitted bids and the selection of a winning bid, represent areas where there is the potential for manipulation of the tendering process. While fraudulent conduct in any of these areas can ultimately affect competition, they do so indirectly and are not specifically identified as conduct that is prohibited under the Competition Act.

The Commission's responsibility therefore with regard to illicit procurement activity under the Competition Act, is directed at those activities occurring while firms are actively competing to win the contract. Activities that may occur at this time would include agreements to: fix prices, subdivide markets, not submit bids, submit poor bids, and any other agreements designed to influence the outcome of the tender. The Act specifically mentions these activities as prohibited or unlawful conduct. Where activities involving the administrative aspects of the procurement process such as tender design or bid selection are also likely to affect competition, the Commission will act as an advocate in offering the necessary advice to national agencies, in an effort to avoid anti-competitive courses of action and to ensure compliance with the Act.



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What Is Bid Rigging?

Businesses often seek to employ strategies to manipulate the outcome of the tender process. These strategies can generally be classified as anti-competitive agreements. Anti-competitive agreements include any agreement, arrangement or understanding whether oral or in writing and whether or not it is intended to be legally enforceable, which has or is likely to have the effect of preventing, restricting or distorting competition.

Bid rigging is an anti-competitive agreement in which otherwise competing businesses seek to determine the outcome of a bidding process by agreeing among themselves which of them will submit the winning bid, and which will not. In effect they agree among themselves to eliminate competition and in so doing they deny the purchaser a competitive price.

Bid rigging is executed in several different ways. Some of the more common forms include:

- *Non-submission or withdrawal of bid* – refers to instances where one or more rival companies, from which submission of bids is expected or which have already submitted a bid, agree that they will refrain from bid submission or withdraw an already submitted bid. In so doing, they ensure that the bid of a rival will win.
- *Formal bid submission* – refers to cases where some rival companies agree that they will formally submit bids, which will include less attractive terms than the agreed winning bid. This strategy often creates the impression that the bidding process is competitive. It however often acts as a cover for high prices which are included in the bid with the seemingly reasonable terms.
- *Bid rotation* – refers to cases where rival companies agree to submit their bids, but they rotate among themselves which company will submit the winning bid. For example rivals may rotate the winner according to the size of the contract, with the idea being that each of them receives the same amount of contract work.
- *Subcontracts* – This represents a frequent form of bid rigging. Rival companies agree not to submit a bid, or knowingly submit a bid with no chance of winning, under an arrangement where they will in return be offered a subcontract from the successful bidder. This conduct while seemingly harmless eliminates competition between rival companies and in so doing leads to inefficiency.
- *“Prey” sharing* – This occurs in several forms, for example where rivals may refuse the opportunity to win a bid as a bargain for a subsequent favour or award. In such cases an agreed winner has to pay the agreed loser for not seeking to win the tender, or the predetermined winner may accept as a condition the payment of costs incurred by the other tenderers. These costs will often be included in the price.



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Bid rigging generally has one common feature, that is, an agreement among participants to a tender, in which a winner is designated in advance. This conduct along with the other forms of procurement manipulation restricts or eliminates competition and leads to overspending by the contracting authority.

Agreements on price

In addition to the forms of bid rigging mentioned above there are other agreements which affect the outcome of a tender and also lead to excessive spending. Such agreements usually seek to increase or preserve the price for the provision of goods or services.

Agreements on price may take different forms including, preservation of fixed prices, determination or cancellation of price discounts, agreement on a procedure/formula of price calculation, observance of certain fixed price differences between different types or quantities of products, and observance of schemes determining minimal fees or prices.

Agreements to fix prices at above market levels are more effective where the agreement includes a significant proportion of the prospective bidders, or those bidders most able to provide the level of service required by the terms of the bid. This creates a situation where the purchaser's best choices may all be inflated-price bids.

Agreement between the low cost bidders may also be effective. Businesses may, for example, agree on the price for the "winning bid" while the other bids may be faulty or mis-specified, with an understanding that afterwards the rewards will be shared. In order to ensure that participants remain loyal to the agreement, businesses will also employ a control or disciplinary mechanism.

Agreements on market dividing

In market dividing agreements competing firms may allocate certain customers or groups of customers, goods or locality mutually. For example one rival will supply or offer its products only to the customers or customer groups assigned to it and it will not address the customers assigned to another member of the group.

In another cases rivals agree that they will sell their products only to customers in certain demographic groups or geographical areas and refuse to sell or offer inappropriately high prices to customers from geographical areas assigned by agreement to another company. For example, they may only submit formal bids, if these bids relate to clients or areas which have been assigned to them.



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Designing Tenders to Reduce Bid Rigging

While designing a tender one may unwittingly introduce terms of reference that may encourage or foster bid rigging in the market that one is trying to acquire materials or service from. It is therefore necessary that one is aware of the factors that are conducive to bid rigging, which are to be avoided, as well as those that deter bid rigging which should be embraced.

Develop prior information about the market

In designing the tender it is important to be vigilant and aware of the characteristics of the market from which goods or services are to be sourced. The importance of this prior knowledge allows one to determine where any special emphasis must be placed to encourage greater competition or reduce the risks of bid rigging.

Compile information on the supply and demand characteristics of the market including market prices and price changes, strengths of potential bidders, price and quality trends within the market and new developments such as cost of raw materials, new sources of supplies etc. Special consideration should be given to the:

- Size of the market or the number of potential suppliers in the market – if there is a small number of bidders then the potential for bid rigging increases as it is easier for fewer suppliers to reach an agreement.
- Standardised or simple products - The chances of bid rigging are greater if the products or services being purchased are standardised and simple, and do not change over time. Under these circumstances, it is easier to work out an agreement and to ensure it lasts a long time.
- Barriers to entry – If there are economic or legal restrictions to entering the market which make it costly, difficult or time consuming then those already in the market will worry less about new competition and be more prone to engage in bid rigging.

Investing time in learning about the products, suppliers and new developments in the marketplace, enables officers to design a more effective tender document. This is extremely important in situations where the factors mentioned above, which are prone to enable collusion, are present.

Knowledge of prices, costs, reputation of suppliers and a market's susceptibility to collusive conduct will ensure that officials are wise as to what are practical and feasible tenders. For example, where a market has a small number of bidders it should not be treated to further restrictions that are likely to reduce participation.



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Encourage participation in the procurement process

This is perhaps the strongest deterrent against bid rigging. A large number of efficient and enthusiastic competitors will greatly restrict the ability of any businesses to undertake a successful agreement to determine the outcome of the tender process.

Careful judgment must therefore be exercised to avoid discouraging qualified bidders. Unnecessary restrictions on the size, composition or nature of businesses can reduce the number of potential bidders. Bidders can also be discouraged if the cost of preparing their bid is high. For this reason, it is advisable to help keep costs low by:

- not changing bid forms unnecessarily
- not requiring information that is of little use
- allowing adequate time for bids to be prepared
- using electronic bidding systems, if possible.

In addition, allowing bidding on a portion of a large contract will permit small and medium-sized firms to participate. Similarly, allowing foreign firms to submit a bid will make collusion more difficult. Clear tender requirements make it easier for firms to understand what is expected of them. It also will be less costly to respond where there is no special need for interpretation of information and such factors may encourage additional firms to bid.

Avoid predictability in the tender process

Predictability makes it easier for firms to devise successful schemes to influence the outcome of the tender process.

The specifications for the tender would best be defined in terms of functional performance, where possible, rather than by reference to specific products. Allowing for alternative or innovative sources of supply can also make bid rigging schemes more difficult to implement.

Predictable purchasing patterns facilitate bid rigging schemes. It is therefore important to vary the scope of successive contracts by aggregating or disaggregating contracts. Consideration could be given, for example, to occasionally aggregating purchases with another government entity or disaggregating purchases to avoid predictability.

Reduce opportunities for information sharing between suppliers

In small markets regular communication between bidders is unavoidable and can often be used as a guise for anti-competitive agreements. Clear and precise information also reduces the need for explanations or clarifications among bidders.



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The procuring agency should be continually available to respond to queries as this allows not only a better monitoring of the process, but makes that agency the obvious option for questions and clarifications.

Communication between the entity and the bidders also provides more opportunities to ensure the integrity of the process, and also more capable of spotting unethical and suspicious practices. The need to reduce or eliminate information sharing between suppliers is important as communication is essential to the agreement for bid rigging. Consequently, it would be prudent if during the process officials:

- avoid bringing potential bidders together in face-to-face pre-bid meetings
- keep the identity of bidders undisclosed by using numbers, rather than names, to identify them and
- if possible allow bidding electronically.

Provide clear evaluating and award criteria

Despite the fact that the criteria for evaluating and awarding a winning bid affect the final stage of the tendering process they must be established at the design stage. These criteria explain to the bidder the basis on which the tenders will be evaluated and what they have to do to be the winner.

In designing the tender, it is important to have clear evaluating and award criteria. These serve to make the process transparent but also build confidence in the market thereby encouraging most if not all suppliers to participate in the process.

This also provides the opportunity for suppliers to be creative and innovative in their quest to meet the procuring entity's requirements. It is necessary that the criteria promote competition, by rewarding the best bidder. Only under such circumstances will bidders go to extreme lengths to surpass one's rivals.

Specifications should clearly describe all award criteria to encourage maximum participation. It is important to avoid preferential treatment of certain classes of suppliers, or of firms that currently have contracts up for renewal. Preferential treatment of some suppliers discourages participation by other suppliers.

Consideration should be given to allowing a broad range of experience among potential bidders. This will encourage small and medium-sized firms to participate. It is important also not only to provide clear award criteria, but also to ensure that the practice is executed according to the criteria set. Confidence in the process will be achieved over time when the awards are won fairly and demonstrably by the company best suited to deliver on the contract.



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Detecting Bid Rigging

There are a number of signs that may appear when firms collude in order to determine the outcome of a tendering process. The more aware one is of these signs, the more likely one is able to assist in detecting anti-competitive agreements such as bid rigging. Detecting bid rigging in public procurement focuses on any strange patterns of bidding in the market and warning signs that may be found in documents, pricing, statements or correspondence and behaviour.

Warning signs when bids are submitted

In concentrated markets it is easy for firms to organise who will win what. On many occasions firms usually do this on a sequential basis which may be identified over the course of many bid submissions. For example the same bidder may always win bids of a certain type or size, or perhaps a bidder never wins but keeps bidding; or a bidder wins whenever it bids, even if it bids rarely. A bidder may show a pattern of submitting relatively high bids for some tender offers and relatively low bids for other, similar tender offers. In many instances these tend to be indicators that something has gone wrong in the process and that bid rigging may be present.

Patterns to look for may be those that include one company who consistently wins bids but always subcontracts to smaller firms and companies that tend to withdraw unexpectedly with no clear reason for doing so. These types of unusual patterns may be an indication of something untoward as firms may be attempting to split among themselves profits derived from bid rigging.

Warning signs in documents submitted

Similar anomalies in documentation may also be a clear indicator of collaboration among firms. For example, the firms may utilise the same personnel to create the bidding document. This creates visible errors in the documents where they may use the same type of paper, the same misspellings, handwriting, wording, calculations and miscalculations and alterations to the documents.

Warning signs related to pricing

Most attempts to influence the outcome of a tender focus on the final price charged to the purchaser. The more prior knowledge of the market, the more likely one may be able to spot any peculiarities in price. For example one may observe that similar prices are quoted from different suppliers even though it is known that each supplier's cost may be different.

It is therefore important to look for price increases that cannot be explained by cost increases. Awareness of market trends with respect to input cost, such as changing energy prices, trade tariffs, imported raw material costs, all bear observing as being the drivers of the final prices charged.



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When losing bids are much higher than the one winning bid, it may be that the agreement is using a cover bidding scheme. A common practice in cover pricing schemes is for the provider of the cover price to add 10% or more to the lowest bid. Bid prices that are lower than known supply cost may be covers to secure contracts where increased prices and cost overruns could be claimed later.

In addition, prices higher than the engineering cost estimates or higher than prior bids for similar tenders may also indicate collusion.

Suspicious statements of coordination

One should be wary of statements especially in the press or those originating from industry meetings which may allude to “industry suggested prices” or other statements made in other fora.

Statements indicating that “we have reached an agreement”, “taken a decision”, or “come up with a plan”, all suggest that there has been some degree of coordination. In other instances, a bidder may say something that indicates that certain non-public information, or an answer to a question, was learned through talking to another bidder.

Suspicious behaviour

Suspicious behaviour like suspicious statements, indicate that there may be a measure of coordination ongoing between bidders. Where for example one bidder picks up or submits bidding material for another firm, then it is reasonable to assume that some communication, especially where none was necessary, would have taken place between them.

Unusual behaviour may take the form of the winning bidder choosing not to accept the award of the bid or may withdraw before the award is made. Additionally, seasoned bidders may submit bids without basic required information or documentation. One should also be wary of unusually small numbers of bidders in an otherwise robust market.

Caution about indicators of bid rigging

The warning signs of bid rigging mentioned should not be taken as proof that firms are engaging in bid rigging. There may be several legitimate reasons for the above conduct. A regular pattern of suspicious behaviour over a period of time is often a better indicator of possible bid rigging than evidence from a single bid. Carefully record all information so that a pattern of behaviour can be established over time.



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In-house Programme for Detecting Bid Rigging

While it is extremely important to be able to design tenders to reduce opportunities for bid rigging and to be able to recognise the common warning signals of possible ongoing conduct, it is equally important to have a plan once you have identified suspicious conduct. That plan should allow you to record that information and communicate to the relevant authority.

First of all, where the procurement official observes suspicious information, it is necessary not to alert the suspected businesses as this may result in the destruction of evidence. It may simply be a false positive, in that the conduct may be completely coincidental and quite rational. If a bidder is incorrectly accused of illegal activity, they may become hesitant of participating in the process. It is therefore best to review the bidding process and the bids carefully, looking for any additional signs of possible bid rigging. Usually to a curious and knowledgeable observer more things become evident once you know what to look for. Review the market factors, the price, and costing history, and see if they support the suspicious signs noticed.

Prepare and keep safe, as detailed a note as you can on what you have observed, including copies of any suspected records and documents. This will be the type of documented evidence that may be needed at a later stage during an investigation. The procuring agencies will therefore also need to develop databases or reports that contain past and present bid results to assist in detecting potential problems quickly and help to rectify them. Information pertaining to the characteristics of past tenders (e.g., the product purchased, each participant's bid, the identity of the winner etc.) should be stored. In order to undertake the series of steps identified it is important that procurement officials be aware and cognisant of the type of activities associated bid rigging practices. Procuring agencies therefore need to prepare identified staff members to facilitate this programme. Those officers need to be exposed to the literature on the subject, and they need to facilitate cooperation with the Commission through which information and other intelligence could be shared. Once the procurement agency is certain that it has identified possible anti-competitive misconduct it must contact the Commission which is the agency responsible for investigating suspected cases of bid rigging.

The Commission has a complaints mechanism for agencies/firms to convey competition concerns. Under Section 5 of the Act, the Commission has broad authority to carry out inquiries or investigations related to the administration of the Act and to take action to prevent anti-competitive conduct. Once the Commission receives information about alleged anti-competitive practices of firms the Commission may initiate its own inquiry or investigation into an industry or the practices of a firm where it considers it appropriate to do so. The Commission will therefore begin an investigation into the matter, once it can validate the information received from the procuring agency. The investigation will be executed independently of the tender process, but the procuring agency will be kept informed of the general developments of the case and the outcome of the investigation.



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Designing Tenders to Reduce Bid Rigging

Be Informed Before Designing the Tender

Before designing your tender it is important to collect prior market information on the range of products and/or services supplied in the market as well as information on the potential suppliers of these products.

1. Identify the number of potential suppliers in the market and their relative market strengths, and be aware of the tendency of the market towards bid rigging.
2. Record the products of these suppliers, their prices and their quality.
3. Note any general price or cost changes occurring in the market and also be aware of the prices in neighbouring geographic markets.
4. Take note also of any recent trends/developments in product design and delivery.
5. Identify the bidders and winners of past tenders for the same or similar products.

Maximise the Potential Participation

Effective competition is enhanced when a sufficient number of credible bidders are able to respond to the invitation to tender and there is incentive to compete for the contract.

1. Do not specify minimum requirements that create an obstacle to participation, such as controls on the size, composition, or nature of firms. Specify minimum requirements that are proportional to the size and content of the procurement contract.
2. Do not require large monetary guarantees from bidders as a condition for bidding. Set amounts only so high as to achieve the desired goal of requiring a guarantee.
3. Reduce constraints on foreign participation in procurement whenever possible.
4. Reduce the preparation costs of the bid. This can be accomplished by:
 - Streamlining tendering procedures across time and products (e.g. use the same application forms; ask for the same type of administrative information).
 - Packaging tenders to spread the fixed administrative costs of preparing a bid.
 - Keeping official lists of approved contractors or certification by official certification bodies.
 - Allowing adequate time for firms to prepare and submit a bid. Consider publishing details of pipeline projects well in advance using trade and professional journals, websites or magazines.
 - Using an electronic bidding system, if available.
5. Whenever possible, allow bids on certain lots or objects within the contract, or on combinations thereof, rather than bids on the whole contract.
6. Do not disqualify bidders from future competitions or immediately remove them from a bidding list if they have failed to submit a bid(s) on a recent tender(s).



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Define Requirements Clearly and Avoid Predictability

How tender requirements are written affects the number and type of suppliers that are attracted to the tender. The clearer the requirements, the easier it will be for potential suppliers to understand them.

1. Define your requirements as clearly as possible in the tender offer. Specifications should be tested before final issue to ensure they can be clearly understood. Try not to leave room for suppliers to define key terms after the tender is awarded.
2. Use performance or functional specifications and state what is actually required, rather than providing a product description. Allow for substitute products.
3. Avoid going to tender while a contract is still in the early stages of specification: a comprehensive definition of the need is a key to good procurement.
4. Avoid predictability in your contract requirements by aggregating or disaggregating contracts so as to vary the size and timing of tenders.
5. Work together with other public sector procurers and run joint procurements.
6. Avoid presenting contracts with identical values that can be easily shared among competitors.

Reduce Opportunities for Communication Among Bidders

Procurement officials should be aware of the various factors that can facilitate collusion. Communication is critical for bid rigging, therefore all necessary precautions should be taken within the legal parameters set, to reduce this.

1. Invite interested bidders to dialogue with the procuring agency rather than among themselves on the technical and administrative specifications of the procurement opportunity.
2. Avoid unnecessary pre-bid meeting which may bring potential suppliers together.
3. A requirement that bids must be submitted in person provides an opportunity for last-minute communication and deal-making among firms.
4. Utilise where possible electronic bidding, to reduce contact between bidders.
5. When publishing the results of a tender, carefully consider which information is published and avoid disclosing competitively sensitive information as this can facilitate the formation of future bid rigging schemes.
6. Beware of using industry consultants to conduct the tendering process, as they may have established working relationships with individual bidders. Instead, use the consultant's expertise to clearly describe the criteria/specification, and conduct the procurement process in-house.
7. If, during the procurement process, you are assisted by external consultants, ensure that they are properly trained and that they sign confidentiality agreements.
8. Whenever possible, request that bids be filed anonymously (e.g. consider identifying bidders with numbers or symbols) and allow bids to be submitted by telephone or mail.



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9. Require bidders to disclose all communications with competitors. Consider requiring bidders to sign a declaration confirming that they arrived at their prices independently.
10. Require bidders to disclose upfront if they intend to use subcontractors, which can be a way to split the profits among bid riggers.
11. Be particularly vigilant about joint bids, especially by firms which have been convicted for collusion. Joint bids can be a way to split profits among bid riggers.
12. Include in the tender offer a warning regarding the sanctions in your country for bid rigging.
13. Indicate to bidders that any claims of increased input costs that cause the budget to be exceeded will be thoroughly investigated.
14. Ensure that industry consultants are subject to a reporting requirement if they become aware of improper competitor behaviour or any potential conflict of interest.

Carefully Choose Criteria for Evaluating and Awarding the Tender

The decision on what selection criteria to use is not only important for the current project, but also in maintaining a pool of potential credible 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 bidders are encouraged to participate.

1. Evaluation criteria other than price (e.g. product quality, post-sale services, etc.) need to be described and weighted adequately in advance in order to avoid post-award challenges. Utilise criteria that can reward innovation and cost-cutting measures, along with promoting competitive pricing.
2. Avoid any kind of preferential treatment for a certain class, or type, of supplier.
3. Do not favour incumbents. Ensure as much anonymity as possible throughout the procurement process to counteract incumbent advantages.
4. Do not over-emphasise the importance of performance records. Whenever possible, consider other relevant experience.
5. Whenever possible under the legal requirements governing the award of notices, keep the terms and conditions of each firm's bid confidential.
6. Educate those who are involved in the contract process (e.g. preparation, estimates, etc.) about strict confidentiality.
7. Reserve the right not to award the contract if it is suspected that the bidding outcome is not competitive.



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Detecting Bid Rigging in Public Procurement

Warning Signs When Bids are Submitted

Certain bidding patterns and practices are at odds with a competitive bidding process and suggest the possibility of bid rigging. It is important to be able to identify unusual patterns in the ways that firms bid and the frequency with which they win or lose. These help to indicate whether bid rigging is occurring.

1. The same supplier is often the lowest bidder.
2. Regular suppliers fail to bid on a tender they would normally be expected to bid for, but have continued to bid for other tenders.
3. Some suppliers unexpectedly withdraw from bidding.
4. Certain companies always submit bids but never win.
5. Each company seems to take a turn being the winning bidder.
6. Two or more businesses submit a joint bid even though at least one of them could have bid on its own.
7. The winning bidder repeatedly subcontracts work to unsuccessful bidders.
8. The winning bidder does not accept the contract and is later found to be a subcontractor.

Warning Signs in Documents Submitted

Signs of a bid rigging conspiracy can be found in the various documents that companies submit. Carefully compare all documents for evidence that suggests that the bids were prepared by the same person or were prepared jointly. Some of the signs include:

1. Identical mistakes in the bid documents or letters submitted by different companies, such as spelling errors.
2. Bids from different companies contain similar handwriting or typeface or use identical forms or stationery.
3. Bid documents from one company making reference to other competitors' bids or using another bidder's letterhead or fax number.
4. Bids from different companies contain identical miscalculations.
5. Bids from different companies contain a significant number of identical estimates of the cost of certain items.
6. The packaging from different companies has similar postmarks.
7. Bid documents from different companies indicate last-minute adjustments, such as erasures or other physical alterations.
8. Bid documents submitted by different companies contain less detail than would be necessary or expected, or give other indications of not being genuine.
9. Competitors submit identical tenders or the prices submitted by bidders increase in fixed increments.



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Signs Related to Pricing

Bidders may manipulate prices not only to ensure a particular winner, but to increase prices across the group so that which ever firm wins it will receive greater returns, with the plan to reward the losers. Look for patterns that suggest that companies may be coordinating their efforts such as price increases that cannot be explained by cost increases.

1. Losing bids are much higher than the winner's bid, conspirators may be using a cover bidding scheme.
2. Bid prices that are higher than the engineering cost estimates or higher than prior bids for similar tenders. The following may be suspicious:
 - Sudden and identical increases in price or price ranges that cannot be explained by cost increases.
 - Anticipated discounts or rebates disappear unexpectedly.
3. Identical pricing can raise concerns especially when one of the following is true:
 - a. prices were the same for a long period of time,
 - b. prices were previously different from one another,
 - c. increased prices are not justified by increased costs, or
4. A certain supplier's bid is much higher for a particular contract than that supplier's bid for another similar contract.
5. There are significant reductions from past price levels after a bid from a new or infrequent supplier, this may be a coordinated attempt to eliminate the new supplier.
6. Local suppliers are bidding higher prices for local delivery than for delivery to destinations farther away.

Suspicious Statements

When working with vendors watch carefully for suspicious statements that suggest that companies may have reached an agreement or coordinated their prices or selling practices.

1. Spoken or written references to an agreement, consensus or understanding among bidders.
2. Statements suggesting "industry suggested prices", "standard market prices" or "industry price schedules".
3. Statements indicating that certain firms do not sell in a particular area or to particular customers.
4. Statements indicating that an area or customer "belongs to" another supplier.
5. Statements indicating advance knowledge of competitors' pricing or bid details.
6. Statements suggesting a firm's success or failure in a competition for which the results are yet to be published.
7. Statements indicating that a supplier submitted a courtesy, complementary, token, symbolic or cover bid.
8. Use of the same economic or legal terminology by various suppliers when explaining bid issues.



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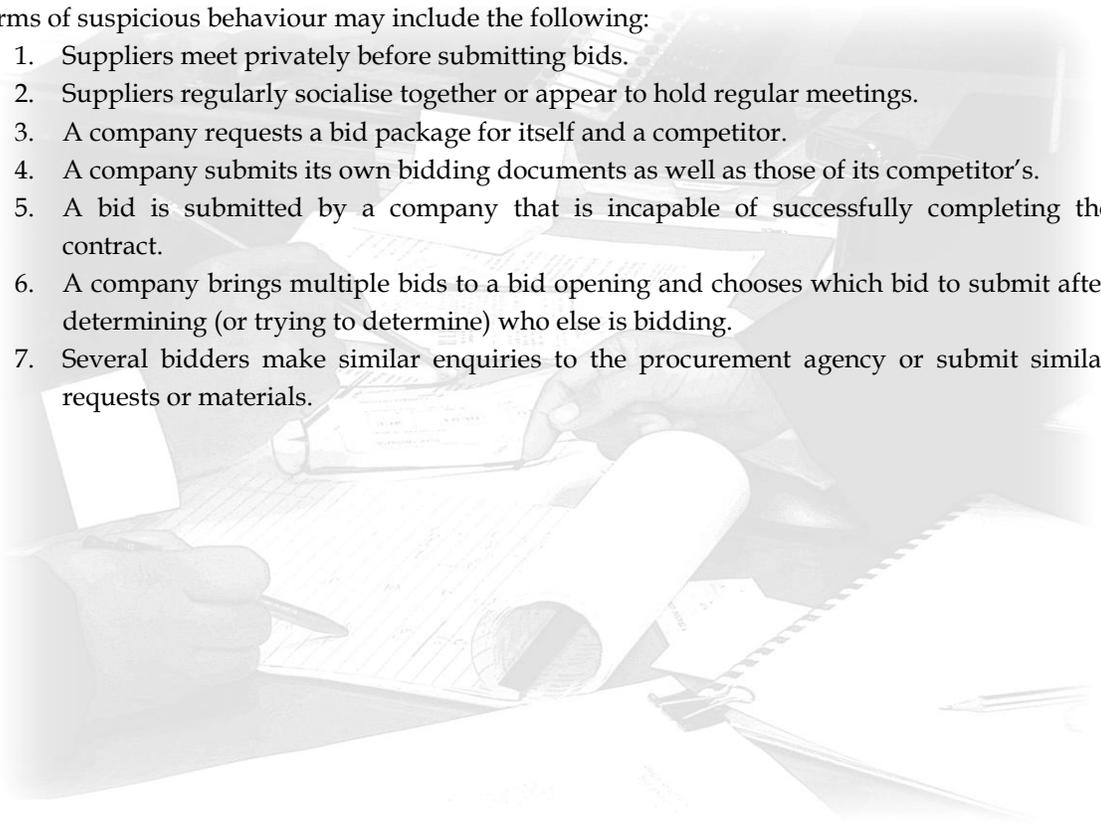
9. Questions or concerns expressed about the implications of not completing statements requiring independent bid determination.
10. Cover letters from bidders similarly refusing to observe certain tender conditions or referring to discussions, perhaps within a trade association.

Suspicious Behaviour

It is important to take note of conduct which is somewhat unusual for companies who should otherwise be significant competitors. These could be signs that bid rigging plans are being made.

Forms of suspicious behaviour may include the following:

1. Suppliers meet privately before submitting bids.
2. Suppliers regularly socialise together or appear to hold regular meetings.
3. A company requests a bid package for itself and a competitor.
4. A company submits its own bidding documents as well as those of its competitor's.
5. A bid is submitted by a company that is incapable of successfully completing the contract.
6. A company brings multiple bids to a bid opening and chooses which bid to submit after determining (or trying to determine) who else is bidding.
7. Several bidders make similar enquiries to the procurement agency or submit similar requests or materials.





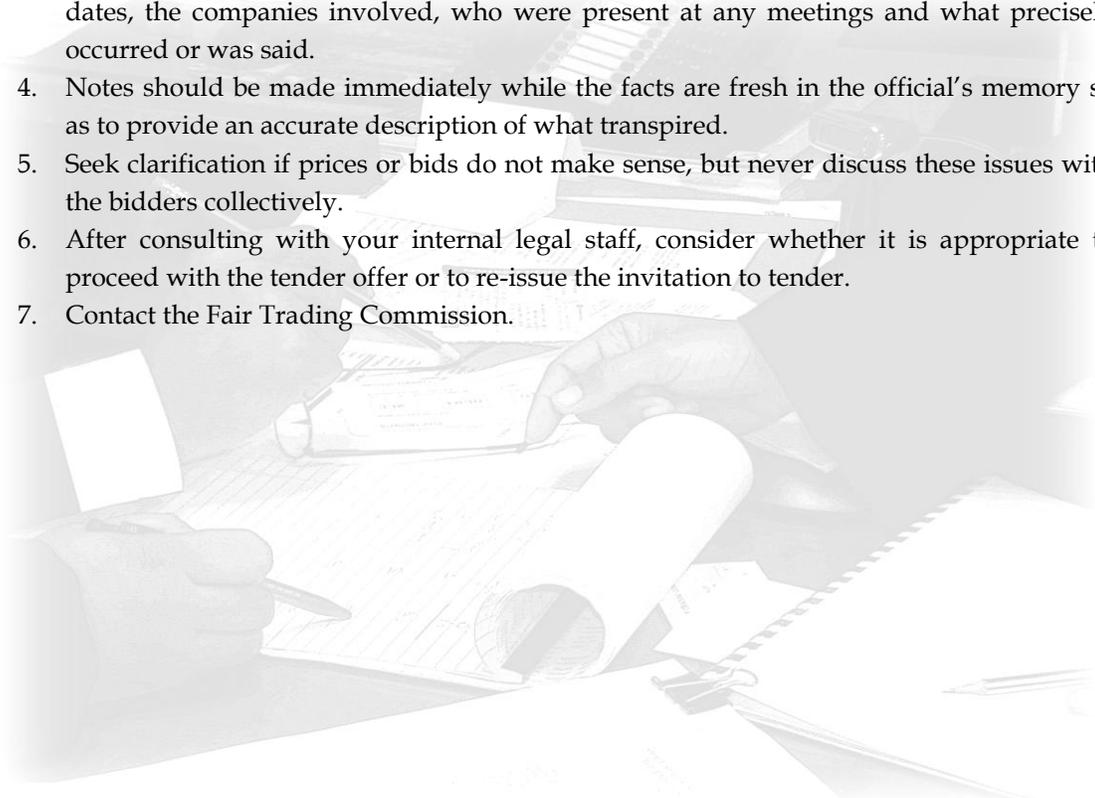
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Responding If Bid Rigging Is Suspected

If you suspect that bid rigging is occurring, there are a number of steps you should take in order to help uncover it and stop it. Familiarise yourself with the common signs of bid rigging and the steps to take once you spot these signs.

1. Do not discuss your concerns with suspected participants.
2. Keep all documents, including bid documents, correspondence, envelopes, etc.
3. Revisit and make a detailed record of any suspicious behaviour and statements including dates, the companies involved, who were present at any meetings and what precisely occurred or was said.
4. Notes should be made immediately while the facts are fresh in the official's memory so as to provide an accurate description of what transpired.
5. Seek clarification if prices or bids do not make sense, but never discuss these issues with the bidders collectively.
6. After consulting with your internal legal staff, consider whether it is appropriate to proceed with the tender offer or to re-issue the invitation to tender.
7. Contact the Fair Trading Commission.





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Good Hope, Green Hill, St. Michael, Barbados. BB12003

Tel: 246-424-0260. Fax: 246-424-0300. Website: www.ftc.gov.bb