

Procurement risk & bid-rigging

– What you need to know



Sean McNabb, Director, Cartels Enforcement
Scotland Excel webinar, 10 October 2022

The role of the CMA



- UK's primary competition and consumer law enforcement agency
- Formed out of functions of the OFT and CC
- Responsible for promoting business competition in the UK
- Offices in London, Edinburgh, Cardiff and Belfast + NW and NE

Aims of the day

- Bid-rigging in public procurement explained
- Red flags to be alert to
- Steps to reduce bid-rigging risk
- Role of the CMA
- Powers of Investigation + cases
- Partnership working
- CMA e-learning + further info
- How to report

Cartels explained



Importance of fighting Bid-rigging



- Scottish Gov has ambitious plans for Scotland's future with spending power of £13.3 billion (2019 – 20)
- When done well – public spending supports local economic growth and creates jobs
- But anti-competitive practices can undermine innovation and fair competition
- Public procurers must be on high alert esp. in current economic climate

Collusion cases cross sectors

- Raft of recent cases- £76 million fines
- 24 Director Disqualifications
- 2 criminal convictions
- Damages claims
- Reputational harm
- But awareness of risk still seems low



Powers of investigation



- 'Dawn raids'
- Interviews
- Requiring companies to provide us with documents and information
- Surveillance Powers
- Covert Human Intelligence Sources
- Communications Data

3 core types of cartel conduct

Price fixing



Agreeing with competitors what price you will charge, or what discount you will give, to avoid having to compete with each other

Market sharing



Agreeing not to go after a competitor's customers, or deciding which territories each business will 'take'

Bid-rigging



Agreeing with other businesses how much you will bid in a tender, and who will have the lowest bid so that they win the contract

Also:

- Exchanging commercially sensitive pricing information
- Agreeing to limit production

Bid-rigging

~~NO CONTEST~~

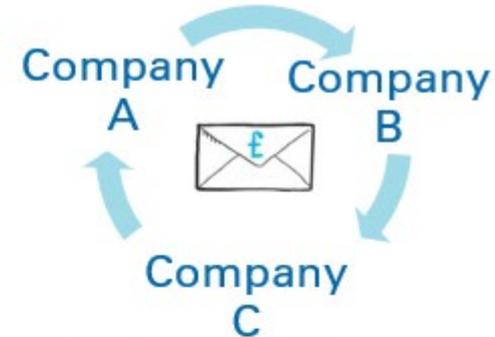
Bid Suppression

Firms agree not to submit a bid at all so there is less competition



Cover Pricing

Firms who don't want the work discuss with competitors to submit inflated 'cover' prices



Bid Rotation

Firms take it in turns to 'win' contracts



Market Allocation

Firms agree to divide up customers or geographic areas

Evidence: Case close to home



Evidence: Cover-bidding

Email evidence



“Attached is version to send to [company 1 director] ... This is about (x)% over our base price ... ask him to log up and send with covering email...”

“he (the commercial property agent) wants us to quote this [...] job, but do you want to do a crappy plan and exorbitant cost for us... This is what we need another (bid) for. It needs to be rubbish and ultimately not work.”

Evidence: Price fixing and market sharing

“But guys... look at all our financial numbers, we’ve all had a good year... And that’s come about by all sitting here and [being] patient.”

Secretly recorded evidence from cartel meeting



Demolition & asbestos removal case

CMA has provisionally found 10 companies engaged in bid-rigging

- 19 contracts worth over £150million
- Contracts included Met Police Training Centre, Oxford Uni and Selfridges
- Compensation payments (£500K in one instance)
- 8 companies admitted participation
- 2 companies contesting finding



Case ongoing

How to reduce risk

4 steps to take:

1. Be aware of what bid rigging is – make use of CMA advice
2. Design and manage your procurement process in a way that reduces the risk of bids being rigged
3. Recognise ‘red flags’ - the different kinds of suspect activities/patterns of behaviour
4. Know how to report suspicious activity to the CMA



NEVER CONFRONT A SUPPLIER - this risks tipping them off to a possible investigation

How to reduce risk

Design and manage your procurement process in a way that reduces the risk of bids being rigged

- Don't limit number of eligible bids
- Shop around when inviting bids
- Ask for bids to be broken down
- Avoid tender list management that incentivises firms to bid
- Keep records for comparison purposes
- Insist on competitive process for sub-contracting
- Seek information on associated companies/subsidiaries
- Include warnings about competition law in tender documents
- Obtain signed declarations of non-collusion

Procurement data

CMA has digital forensics expertise to interrogate procurement data to look for signs of bid rigging

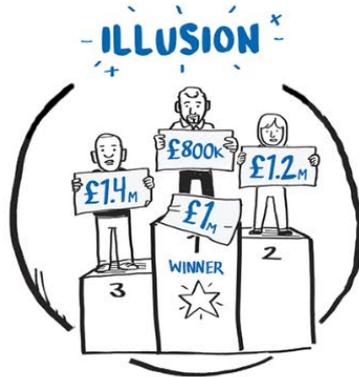


Where to find out more

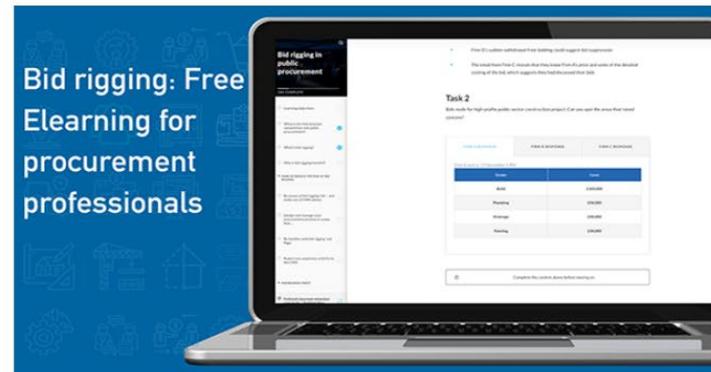
VISIT: gov.uk/cheating-or-competing

Our Cheating or Competing campaign page houses:

- New, free e-learning module on bid-rigging dangers
- Quick guide with advice for public procurers
- Series of animated explainer films and reporting info



[Bid rigging risk: guidance for public sector procurers](#)



[E-learning module on bid rigging in public procurement](#)

How to report to us



CALL THE CARTELS HOTLINE ON
020 3738 6888

Alternatively, report via
email: cartelshotline@cma.gov.uk

Questions

