

Cartel fraud in public procurement – What you need to know



Scotland Excel, Procurement Conference, 20 March 2024

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Enforcement

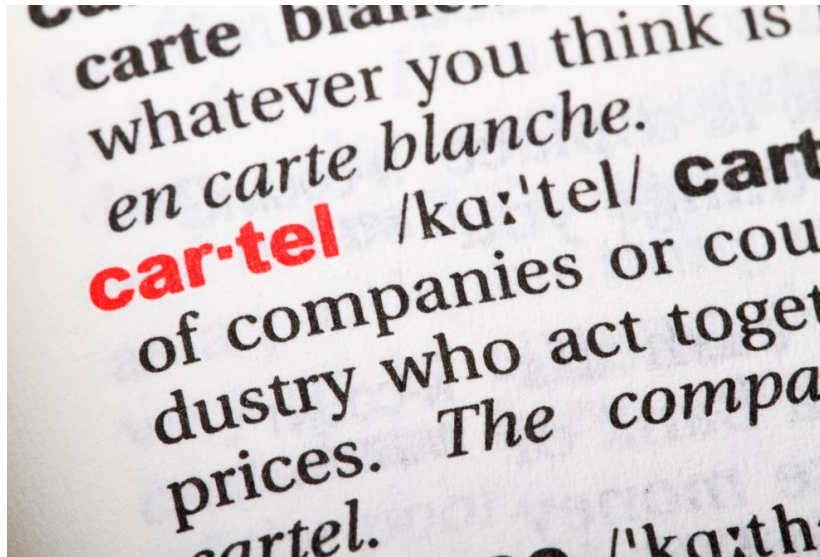
Sarah Hort – Principal Case Officer, CMA, Cartels Enforcement

CMA UK-wide remit



- Offices in:
 - Belfast
 - Cardiff
 - Darlington (established by 2025)
 - Edinburgh
 - London
 - Manchester (established by 2025)

Cartels....

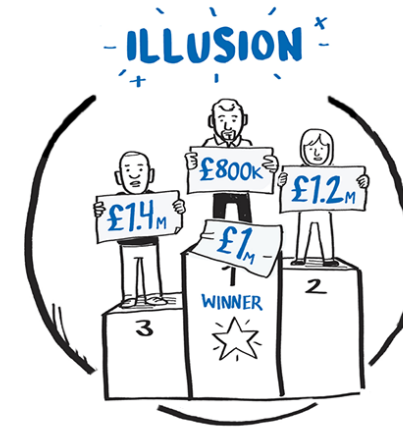


**closer to home than
you might think**



Fraud & Cartels

- Business cartels – conspiring to rig outcomes – are a type of fraud
- Combined with other crimes such as bribery and corruption
- Can involve public officials receiving financial or other rewards
- Compensatory payments between bidders
- False invoices issued to disguise such payments
- Bribes paid in cash
- CMA works closely with other agencies
- Economic strain increases risk of cartels



Importance of fighting bid rigging



- Bid rigging is a key risk in public procurement
- Gov spends around £300bn per year on public procurement
- Increasing importance of public procurement as we 'build back better' post pandemic
- Public procurers must be on high alert to anti-competitive practices

Cartel cases cross sectors

- Raft of recent cases- £136 million fines
- 28 Director Disqualifications
- 2 criminal convictions
- Damages claims
- Reputational harm
- Debarment risk
- 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

Bid-rigging

~~NO CONTEST~~

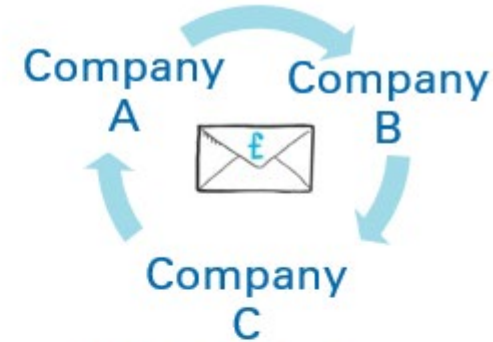
Bid Suppression

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

Demolition and asbestos removal case

CMA found 10 companies engaged in bid-rigging

- **Decision issued March 2023**
- **10 construction firms**
- **Total fines almost £60 million**
- **4 directors disqualified**
- Bid rigging in demolition and asbestos removal contracts
- Each involved in at least 1 of 19 contracts worth over £150 million affected
- Met Police Training College, Selfridges and Oxford University among those affected
- Compensation payments (5 firms)



Evidence: Bid rigging

Text messages/ WhatsApp/ Emails

- Text

- A: 'will be in a better position to talk abt Selfridges later today'
- B: 'Ok that's fine. Can you try ring me at about 12.30/1pm please as we need to know where we're going with this as no doubt still plenty to do before it goes in'
- B: "We obviously got the extension till Wednesday , can you give us a ring in the morning to discuss the numbers and what the plan is please'

- Email [next day]

- Email from A to B: headed 'Re Selfridges',
'Please find attached our tender proposal for the above, 'Please adjust terminology in red – this is not in the in the original pricing document [X] suggested you go some 8 % to 10 % above this..
'Also suggests going longer on your program – ours is 44 wks';

Evidence: Compensation Payments

Text

A: 'Offer for reading £50k each 'Placings to be agreed 'See if you can get agreement and we can talk later re budgets etc';

B: 'gis a shout when you can I have spoken to all'..... '4.9m excluding externals'

[some months later]

B: 'can I invoice you for reading less taplow 75 less 35 is 40k?'

A 'No news on Reading so hold fire also figure was 65k not 75k'.

Notebook extracts

(a) 'Reading 65k or 75k ow'

(b) 'Reading 60 Erith - * (Barchester) 60 Cantillon 60 McGee'

Invoices for fictional logistical support services

Construction case

Concrete drainage products

- Decision issued in 2018 that 3 companies broke competition law
- CMA secretly recorded cartel meetings
- Fines over £36m
- 4 directors disqualified
- 1 criminal conviction



Price fixing evidence

“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



How to reduce bid rigging 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



Suspicious bidding information

Red flags

- Identical or very similar bids, perhaps in individual items within the bid, including identical mistakes
- Unusually high bids
- Less detail in bids than expected
- Signs of alteration/last minute changes or adjustments
- Clear gap between the winner and others
- Same increments between bids
- You don't get as many bids as you were expecting/likely bidder fails to tender

Suspicious bidders' behaviour

Red flags

- Lowest bidder does not accept the contract
- A bidder withdraws from the process
- Bids drop on entry of new/ infrequent bidder
- Successful bidder later subcontracts to a supplier that was “competing” for the tender
- Same supplier is often the lowest bidder
- Same suppliers submit bids but appear to take equal turns in winning
- Certain suppliers always submit bids but never win
- Suppliers submit joint bids even though at least one of them could have bid on its own
- One bidder lets slip knowledge of rival bids or that a contract “belongs” to a certain supplier/ suppliers “own” or are allocated certain areas

Collusion characteristics

Industry/service features that support cartels

- Small number of companies in an industry
- Little or no market entry
- Periods of economic upheaval or uncertainty
- Identical or interchangeable product or service
- Few if any substitutes
- Existing channels of communication between competitors

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

Bid-rigging screening tool



BIDVIEWER

Developed to identify bid-rigging and collusion

- Tested on live tender data
- Seeking further data to test and refine the tool
- The CMA keen to work in collaboration with public sectors bodies

Tender data required for tool

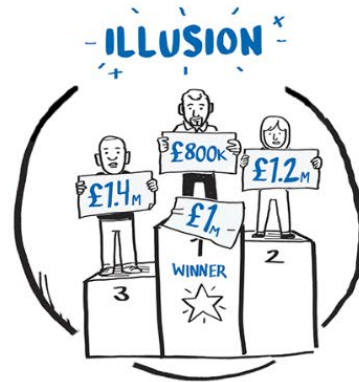
- Date of tenders
- Goods/works/services involved
- Location of tenders
- Expected value
- Bidders and their bids
- Winning bidder
- **Screens then applied to identify suspicious patterns based on “red flags”**
- **Data will be securely stored and in accordance with GDPR**

Where to find out more

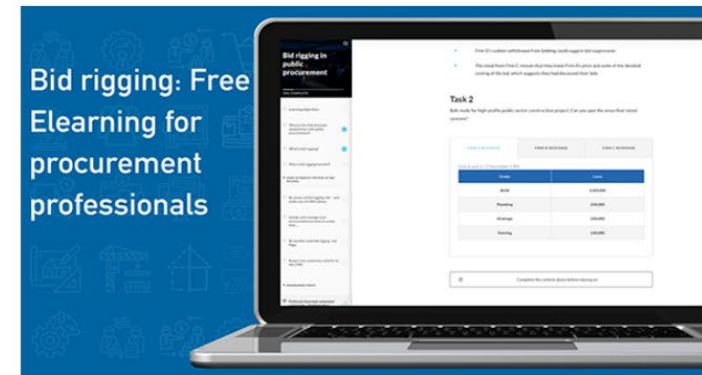
VISIT: gov.uk/cheating-or-competing

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



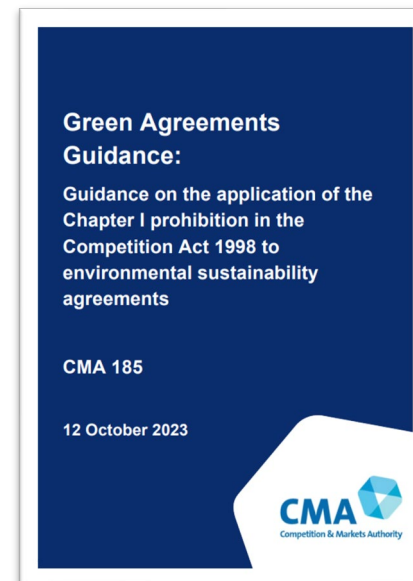
[Bid rigging risk: guidance for public sector procurers](#)



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

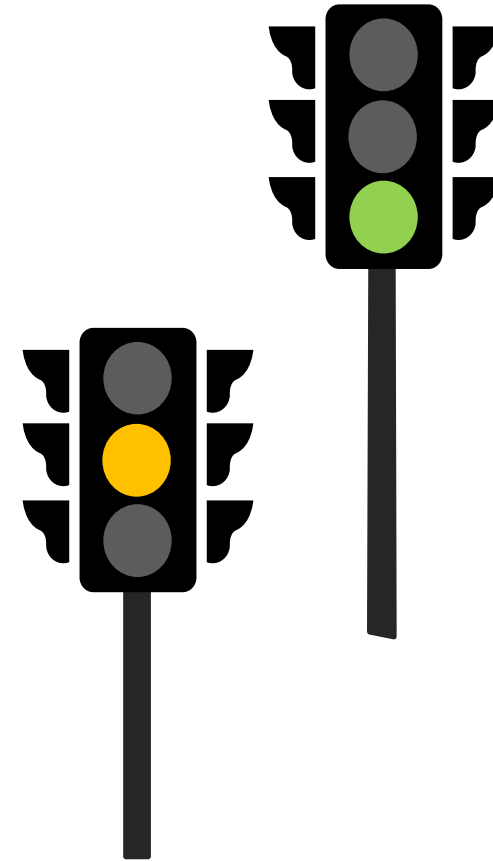
Green Agreements Guidance

- Guidance published Oct 2023, gives firms greater clarity about agreements addressing environmental sustainability including climate change



Examples of what can be done

- ‘No problem examples’ - section 3, for example:
 - Creation of industry standards
 - Setting industry-wide environmental targets
 - Agreements to do something jointly which none of the parties could do individually
- ‘Be careful examples’ - section 4
 - Agreements that result in an increase in price, reduction in choice, quality or output
 - **However**, can proceed if they benefit from an exemption



Direct engagement with CMA



- **Open-door policy for prospective environmental sustainability agreements**
- **Incentives – no fines**
- **Conditions**
 - The CMA did not raise any concerns, or any concerns that were raised by the CMA have been addressed
 - The parties did not withhold relevant information from the CMA which would have made a material difference to its initial assessment under the open-door policy
- **Contact: SustainabilityGuidance@cma.gov.uk**

How to report to us



CALL THE CARTELS HOTLINE ON
020 3738 6888

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

Questions

Q - Is bid rigging more likely if contractors know who they are bidding against - e.g. does quick quotes among contractors on a framework - so on these do we need to be even more vigilant.

A - If contractors know who they are bidding against, it of course does not mean that there is bid rigging going on, but it is perhaps one factor to bear in mind, particularly if you see any other conduct or issue which raises your suspicions.

Q - Do you know the reason it's so prevalent in specific fields, i.e. construction? Is it because it's high value contracts?

A - We have seen bid rigging occur in a wide variety of industries and to encompass low value contracts. It is correct that some industries do seem to come to our attention more often than others, there might be a variety of reasons for that. However, as discussed common factors in bid rigging practices are where there are:

- a relatively small number of firms competing in the industry (or there are generally the same firms regularly bidding against each other in tender exercises);
- where it is a homogenous product or service involved and where the main way in which the companies compete against each other is through price; and
- there are opportunities for the competitors in an industry to meet with each other

Q - Do you investigate charities as well as companies registered on Companies House (e.g. in social care these are quite common)?

A - The conduct does not have to be limited to companies registered on Companies House for the CMA to be able to investigate.

Q - I was thinking the same question - also in the separate context of Scottish Government grant applications

A - Please refer to the answer above.

Questions

Q - What percentage of suspicions that are reported to you result in any investigation? You must have administrative priorities.

A - It is very hard to give a percentage figure in this way. We have a large number of queries raised with us, some of which do not even amount to suspicions of cartel conduct. We do look at matters with regards to administrative priorities but that being said, any suspicions brought to our attention will be taken very seriously and as stated before some of our investigations have concerned comparatively low value contracts and small sectors.

Q - There are a few public sector framework agreements in place which cover demolition or asbestos. Is there any information available as to how the organisations who set up the frameworks e.g. Scotland Excel or Crown Commercial have responded to the bid rigging that CMA has covered today? Going forward are any suppliers fined for the bid rigging continuing to participate in the frameworks?

A - How individual bodies such as Scotland Excel or Crown Commercial respond to the CMA's Decisions is really a matter for them. However, as discussed, the Procurement Act 2023 is bringing in a mandatory prohibition on businesses that are subject to a finding by the CMA that they were engaged in cartel conduct (such as bid rigging) from tendering for public sector contracts. Scotland Excel or Crown Commercial are best placed to advise on how that might apply to any of their frameworks.