



**A SPECIAL FORM OF CARTELS: BID
RIGGING IN PUBLIC PROCUREMENT –
PREVENTION AND DETECTION
THE OECD GUIDELINES FOR FIGHTING BID RIGGING IN
PUBLIC PROCUREMENT**

2nd APEC Regional Seminar of ANSSR Initiatives Against
Anticompetitive Practices for Ensuring Functioning of Open,
Transparent and Competitive Markets

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Sabine Zigelski
Senior Competition Expert
OECD



Main Points

Detecting and fighting cartels is a top priority of most competition authorities

- Two major instruments for detection
 - Leniency programmes
 - **Uncover bid rigging schemes in public (and private) procurement**
- Bid rigging can occur in any country and in any market
- Effective tools, such as the OECD Guidelines, help fight bid rigging and advise on uncovering bid rigging schemes and cartels

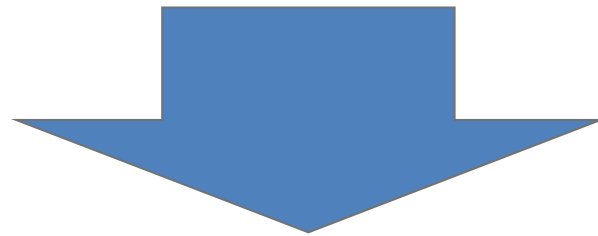


Why Worry about Bid Rigging?



Public procurement accounts for approx 15% of GDP in OECD countries, often much more in less developed countries!

Bid rigging can raise prices significantly (up to 20% or more)



POTENTIAL DAMAGES TO THE GOVERNMENT CAN BE SIGNIFICANT !!



INTERNATIONAL EXAMPLES

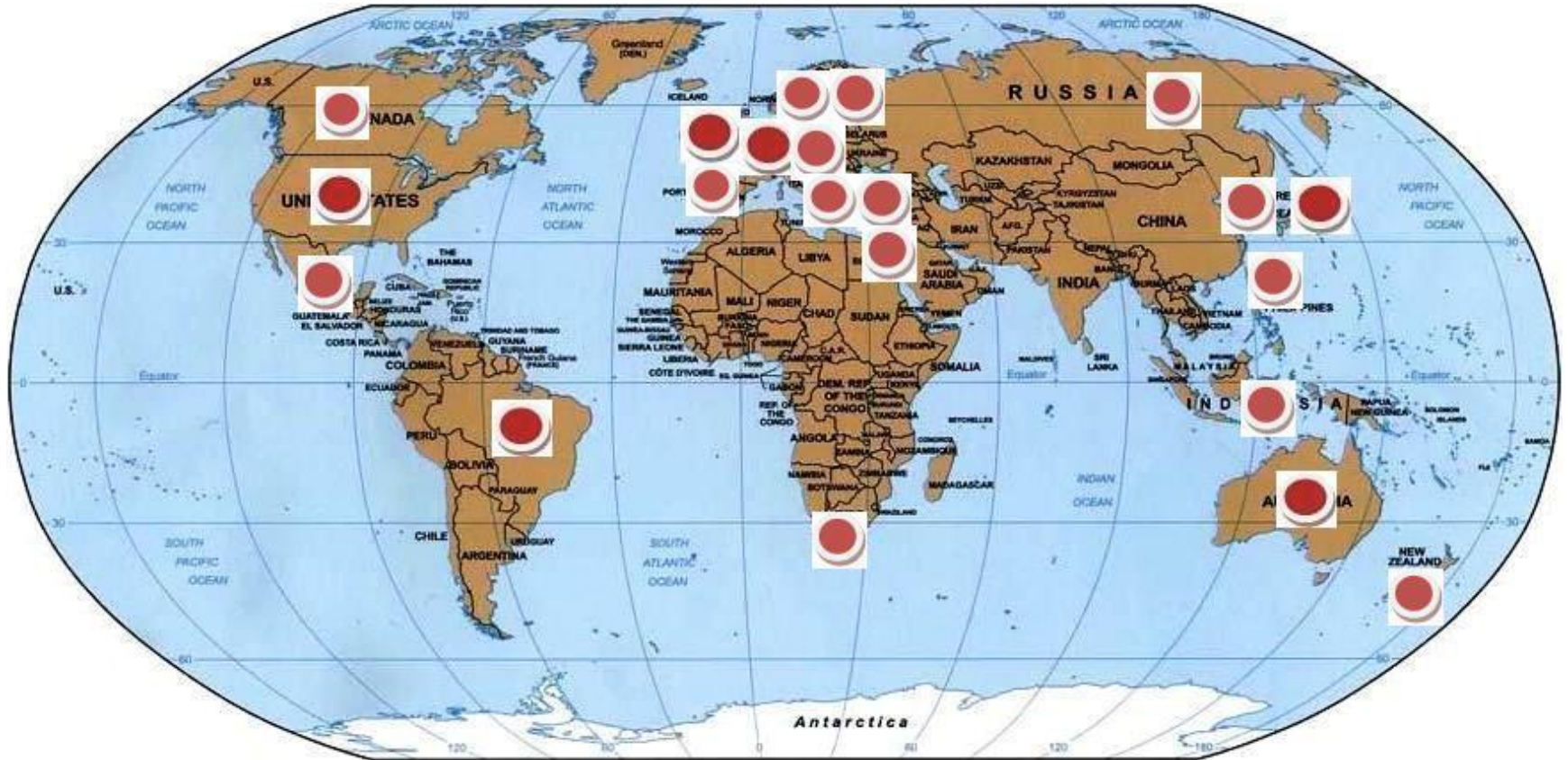
The improvement of procurement procedures led to significant savings in a number of countries (OECD 2003):

- 47% saving in the procurement of certain military goods in Columbia
- 43% saving in the cost of purchasing medicines in Guatemala
- USD 3.1 mn savings for the Karachi Water and Sewerage Board (Pakistan)

In the EU, the implementation of the EC Directive on Public Procurement in the period between 1993 and 2002 generated cost savings of between a little less than EUR 5 billion and almost EUR 25 billion.



Bid Rigging Cases Affecting Public Procurement





What is Bidding?

- Bidding is a way to buy or sell goods or services through a tender or an auction.
- When purchasing, the bid is usually awarded to the low bidder.
- Every country has laws and rules establishing procedures.





What is Bid Rigging?



- Any agreement between bidders that limits or reduces competition in a tender.
- The agreement may be between a bidder and a potential bidder that does not actually submit a bid.
- The agreement may be written or oral.
- The agreement may work well and last a long time, or only happen once.
- In most countries, all bid rigging agreements are illegal, and in some countries criminal.





Bid Rigging – Common Forms

Cover bidding

A competitor agrees to submit a bid that is higher than the bid of the designated winner or agrees to submit a bid that contains terms that are known to be unacceptable to the buyer.

It is the most common form of bid rigging as it gives the appearance of genuine competition.

Bid suppression

One or more companies agree to refrain from bidding or to withdraw a previously submitted bid.

Bid rotation

Conspiring firms continue to bid, but they agree to take turns being the winning (*i.e.*, lowest qualifying) bidder.

Market allocation

Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas.



Bid Rigging v. Corruption

- Corruption can involve only 1 company paying a bribe to a government official.
- Bid rigging must involve at least 2 companies. They must agree on how to avoid competition.
- But, corruption can involve bid rigging.



Markets More Susceptible to Bid Rigging

- Small number of companies in the market
- Little or no entry
- Stable market conditions
- Industry associations
- Repetitive bidding
- Identical or simple products or services
- Few if any substitutes
- Little or no technological change



How to Fight Bid Rigging Effectively

- Effective cartel laws and regulations
- Effective leniency programme
- Effective enforcement procedures and institutions
- Effective sanctions

Other ways:

Raise awareness of procurement officials and bidders concerning the risks of bid rigging (Checklists and Guidelines)



OECD Guidelines for Fighting Bid Rigging

Source

Best practices in OECD countries

Better tender design

Help procurement officials design public tenders to reduce bid rigging
(Design Checklist)

Tougher law enforcement

Help procurement officials detect bid rigging when it occurs (Detection Checklist)



OECD Checklist for Designing Effective Tenders

1. Learn about the market and suppliers.
2. Maximise participation of potential bidders.
3. Define requirements clearly and avoid predictability.
4. Reduce communication among bidders.
5. Carefully choose criteria for evaluating and awarding tender.
6. Raise awareness of the risks of bid rigging by providing training.



Certificates of Independent Bid Determination

Certificates of Independent Bid Determination (CIBD) typically require each bidder to sign a statement under oath that:

- it has not agreed with its competitors about bids,
- it has not disclosed bid prices to any of its competitors and
- it has not attempted to convince a competitor to rig bids.

Successfully used by United States and Canada. Other jurisdictions, such as Brazil, are following.



OECD Checklist for Detecting Bid Rigging

1. Suspicious bidding patterns
2. Warning signs in submitted documents
3. Clues in pricing patterns
4. Suspicious statements
5. Unusual behaviour

Note that suspicions and clues do not prove bid rigging -- they should be brought to the attention of appropriate officials for investigation



Example – U.S. Storm Damage Repair Case

- Two companies submitted bids to repair damage done when a typhoon hit Guam.
- The cover letters from both end with identical words: “Please give us a call us if you have any questions. Thank you very much.”
- By noticing the identical wording, including the extra “us” in both letters, the procurement official uncovered the bid rigging.



Example – U.S. Gloves Case

- Four firms bid on 4 types of gloves (women's dress gloves, women's outdoor gloves, men's dress gloves, and men's outdoor gloves).
- Each type of glove was a separate contract.
- Procurement official suspected bid rigging when he noticed that each of the 4 firms won one contract.



Example – Canadian Bus Services Case

- Two bidders submitted bids that were similar.
- After award, the bidder who received only a small portion of the award (losing bidder) telephoned procurement official.
- In the conversation, losing bidder indicated that he knew the amounts bid were close.
- Procurement official suspected bid rigging because the bids were sealed (secret).



Conclusion

- Bid rigging can occur in any market in any country
- Bid rigging causes great harm to the Government and its citizens
- Public procurement officials are the Competition Authorities' natural allies
- The OECD Guidelines and training materials are crucial to the fight against bid rigging



Where can I find the OECD Guidelines?

Paper copies available here and:

Web link:

www.oecd.org/competition/bidrigging



Person in charge at the OECD:

Antonio Capobianco - Antonio.Capobianco@oecd.org

Translations available in 24 languages! (Russian, Chinese, Spanish, Malay, Indonesian ...)



Questions?

Thank you for your attention!



Sabine Zigelski

Senior Competition Expert

Competition Division, Directorate for Financial and
Enterprise Affairs

2, rue André Pascal - 75775 Paris Cedex 16

Tel: +33 1 45 24 74 39 – Fax: +33 1 45 24 96 95

sabine.zigelski@oecd.org || www.oecd.org