

Bid Rigging – As a Horizontal Agreement

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According to the classical economics, the purpose of participants of the market economy is to get the highest profit with competing 1) in the most qualitative product or service, 2) in the least expenses, 3) in the highest price or the maximum sale. It provides the fair competition, free market, the development of the entrepreneurship, the satisfying of consumers, the growth of the gains, the rise of life standards and generally, the living and progress of the economy. But there are some obstacles arising in this sphere which considered as unlawful activities according to the legal system of countries. One of them is the horizontal agreement. A horizontal agreement is an agreement between competing firms in the same industry, which may result in reduced competition. Firms enter into agreements, which may have the potential of restricting, distorting competition. Agreements could be formal written documents or oral understandings, whether or not enforceable by legal proceedings. [2] Horizontal agreements are those among competitors. A particularly pernicious type of horizontal agreements is the cartel. [1, p.197] So agreements between two or more enterprises that are at the same stage of the production chain and in the same market constitute the horizontal variety. An obvious example that comes to mind is an agreement between enterprises dealing in the same product or products. But the market for the product(s) is critical to the question, if the agreement trenches the law. [5] The appropriate act which regulates this sphere has taken care to define the relevant market. To attract the provision of law, the products must be substitutes. If parties of the agreement are both producers or retailers (or wholesalers), they will be deemed to be at the same

stage of the production chain. [4] The act presumes that the four types of agreements between enterprises, involved in the same or similar manufacturing or trading of goods or provision of services have an appreciable adverse effect on competition. These four types of agreements between enterprises are as described here under:

1) Agreements regarding prices: These include all agreements that directly or indirectly fix the purchase or sale price.

2) Agreements regarding quantities: These include agreements aimed at limiting or controlling production, supply, markets, technical development, investment or provision of services.

3) Agreements regarding bids (collusive bidding or bid-rigging): These include tenders submitted as a result of any joint activity or agreement.

4) Agreements regarding market sharing: These include agreements for sharing of markets or sources of production or provision of services by way of allocation of geographical area of market or type of goods or services or number of customers in the market or any other similar way.[7]

Businesses often aim to create strategies to manipulate the outcome of the tender process. So Bid rigging (or collusive tendering) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods or services for purchasers who wish to acquire products or services through a bidding process. [6] 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 ex-

pected 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.

- Subcontract - 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 pre-determined winner may accept a condition the payment of costs incurred by the other tenderers. These costs will often be included in the price. [3]

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.

Bid rigging can be particularly harmful if it affects public procurement. [3] Such conspiracies take resources from purchasers and taxpayers, diminish public confidence in the competitive process, and undermine the bene-

fits of a competitive marketplace.

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 behavior

Warning signs when bids are submitted

In concentrated markets it is easy for firms to organize 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 document submitted

Similar anomalies in documentation may also be a clear indicator of collaboration among firms. For example, the firms may utilize 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.

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 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 behavior 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 behavior 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 behavior 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 behavior can be established over time. [3]

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Xülasə

Açar sözlər: üfuqi saziş, hərraclarla bağlı sövdələşmələr, ümumi formalar, hərraclarla bağlı sövdələşmələrin aşkar olunması.


Bəzən bir bazarda fəaliyyət göstərən rəqiblər hərracların nəticələrini manipulyasiya etməyə çalışır və bu məqsədlə strategiyalar yaradırlar. Hərraclarla bağlı bu sövdələşmələr normal şəraitdə rəqabətdə olmalı olan subyektlərin alıcılar, hərrac yolu ilə məhsul və ya xidmət əldə etməyi arzulayanlar üçün qiymətləri qaldırmaq və ya məhsul və xidmətlərin keyfiyyətini azaltmaq haqqında gizlicə razılaşmasıdır.

Резюме

Ключевые слова: горизонтальное

соглашение, картельный сговор на торгах, общие формы, обнаружение картельных сговоров на торгах.

Конкуренты часто стремятся создавать стратегии, чтобы фальсифицировать результат тендерного процесса. Сговор на торгах происходит тогда, когда конкуренты, которые в противном случае должны были конкурировать, тайно сговариваются, чтобы поднять цены или снизить качество товаров или услуг для покупателей, желающих приобрести товары или услуги на конкурсной основе.



*“Law is order,
and good law
is good order”*

-ARISTOTLE