

6 How to report collusive tendering

If you suspect or detect collusive tendering amongst firms, you can **lodge a complaint with the Commission**. You can do this by completing a Form CC1, with a description of the alleged conduct, and submitting this to the Commission.

The prescribed Form CC1 is available on the Commission's website.

The Commission will investigate the complaint and determine if collusive tendering indeed took place. Should this be the case, the Commission will refer the matter to the Competition Tribunal ("Tribunal") for adjudication.

If a firm is found to have contravened the Act, the Tribunal may penalise it by up to 10% of the firm's annual turnover in the Republic and its exports.

7 How to get redress

The Act provides that any person harmed by conduct found to be a prohibited practice may claim damages from the firm that engaged in such conduct.

This means that if you have fallen victim to collusive tendering, you can claim damages from the firm found to have engaged in this conduct. You will need a certificate from the Tribunal confirming that the conduct engaged in by this firm is prohibited collusive tendering. Thereafter you can bring a claim for damages in the civil courts.

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Towards a fair and efficient economy for all

How to prevent, detect and report collusive tendering



1 Preface

The Competition Act ("the Act") provides that the Competition Commission ("Commission") is responsible to implement measures to develop public awareness of the provisions of this Act. In line with the above, this brochure is issued by the Commission in order to help supply chain management practitioners to prevent, detect and report collusive tendering in the procurement process.

2 What is collusive tendering?

Collusive tendering, commonly called "bid rigging", is an agreement amongst competitors not to compete on the bids they submit after being invited to tender. For this purpose, firms will be regarded as competitors if they are in the same line of business.

Together with price fixing and market allocation, collusive tendering falls within the class of conduct referred to as "cartel activity".

Collusive tendering may take many forms, for example:

- complementary bidding: firms may agree on their bids in advance by deciding that one of them will submit the lowest bid or will submit the only bid containing acceptable terms;
- bid suppression: in this form, some firms may agree to refrain from bidding;
- bid rotation: firms may decide to bid high so that a predetermined bidder will win.

Supply chain management practitioners should note that collusive tendering is often accompanied by an

agreement to cede portions of a tender to the losing bidder should the tenders not be awarded as had been agreed upon by the firms involved.

All forms of collusive tendering are prohibited by section 4(1)(b)(iii) of the Act, which states that:

An agreement between, or concerted practice by firms or a decision by an association of firms is prohibited if it is between parties in a horizontal relationship and if it involves... collusive tendering.

3 Why do you need to know?

As a consumer of goods or services you are entitled to competitive prices and product choices. Collusive tendering undermines this right in that it:

- destroys the basis of competitive bidding;
- often leads to increased prices;
- often leads to reduced quality;
- stifles development and innovation; and
- is harmful to consumer welfare.

Preventing, detecting and reporting collusive tendering will help you to avoid falling victim to artificially high prices and/or reduced quality. If you do become a victim, this brochure will also help you take appropriate action.

Competition helps you to get value for money.

4 How to prevent bid rigging

4.1 Use non-collusion clauses

In compiling your invitation, you could draw bidders' attention to their obligation not to collude by including a clause to this effect and providing for a sanction for any violation of this clause

4.2 Request certificates of independent bidding

When inviting tenders, you could request bidders to certify that they prepared and submitted their bid independently of any other competing bidder.

4.3 Seek justification for a failure to bid

Where you expected a certain firm to bid and found it didn't, try to obtain the reasons why such firm did not bid. This could reveal an agreement between it and its competitors not to compete.

4.4 Look out for suspicious bidding patterns

Suspicious bidding patterns come in many forms. Some of these are listed below. Being aware of these patterns and dealing with them early can help prevent the harmful effects of collusive tendering.

5 How to detect collusive tendering

Collusive tendering is often present in bids which display one or more of the **following suspicious bidding patterns**:

- bids received at the same time;
- bids with similar or unusual wording;
- common mistakes across different bids;
- similar contact details across different bids;
- identical prices quoted in bids;
- prices with an equal difference between each bid;
- less detail than expected;
- failure to bid;
- lowest bidder not taking contract;
- drop in prices at entry of new or infrequent bidder;
- work subcontracted to a supplier that had a higher bid;
- last minute changes, such as reduced discounts; and
- suspiciously high bids without logical cost differences.