

Eyes wide open

by Hans Posthuma

... to catch bid riggers

IT DOESN'T HAPPEN very often, but when it does, bid rigging on public contracts can cost unwary purchasers and taxpayers millions of dollars.

Bid rigging schemes come in various guises, all designed to guarantee that a pre-selected bidder wins the contract at an inflated price. Variations include cover bidding (vendors agree to over-bid the firm chosen to win or include a factor that will disqualify them), bid suppression (other competitors agree to withdraw), bid rotation (competitors take turns being the winning bidder) and market sharing (competitors cede certain territories or clients to one another).

Purchasers can protect themselves, though. Anthony Niell, a senior investigator with the Criminal Matters Branch of the federal Competition Bureau helps procurement staff nationwide learn to design tenders that make rigging difficult and teaches them to spot suspicious signs when evaluating bids. "The conduct is covert and difficult to detect, ... we rely on purchasing agents to be aware," says Niell. His red flags include:

- a new bidder enters the market and prices drop;
- different bids contain the same irregularity, such as a spelling mistake or calculation error;
- the winning bidder subcontracts work to a competitor who submitted a higher bid;
- competitors submit identical prices;
- competitors have communicated with one another before the bid deadline;
- the lowest bidder declines the contract;
- a bidder knows what is in a competitor's bid;
- only one bidder contacts wholesalers whose products are needed for the project;
- competitors' bids arrive together;
- similar shipping/transport costs for both local and remote bidders;
- over time the same company consistently bids lower than all others; and

- bids come in much higher than cost estimates.

Purchasers who smell something suspicious can dig a little deeper on their own or refer the case right to the Competition Bureau. As the institution responsible for enforcing Canada's *Competition Act*, the bureau conducts criminal investigations into any anti-competitive behaviour. Those found guilty face fines and jail sentences of up to five years.

Niell says rigging is rarely an isolated incident. "Usually by the time the schemes reveal themselves through a suspicious pattern or a procurement person being really on the ball, we'll go in and find that the historical conduct is quite extensive," he says.

While all levels of government and the private sector are equally likely targets for bid rigging, Niell says certain industry characteristics make collusion easier – homogenous products such as asphalt or wood; pricing is highly consistent between suppliers; products with few substitutes; and industries with few companies offer less competition and easier communication. Historically, the construction industry is considered one of the most common perpetrators.

Fortunately, purchasers can take steps to make bid rigging more difficult, including ensuring that a large number of bidders enter the race and making the specifications of the contract broad enough to allow creative bidders to substitute different products to fulfill the project's requirements. The documentation should also include a Certificate of Independent Bid Determination, which requires bidders to disclose any communication they have had with other bidders. Finally, purchasers can ask the Competition Bureau for free advice or training seminars.

Front line procurement officers report little in the way of real problems, but attribute that in part to having solid procedures in place. For example, Neil Sentance, the director of Procurement Policy and IT Procurement at Ontario's Management

Board Secretariat, says he hasn't seen a rigged bid in his nine years in procurement. He feels the current bidding processes make it much harder for anyone to tamper with the system, citing electronic tendering and inter-provincial trade agreements as two factors that have resulted in greater transparency and accountability. "I'd like to think that we've collectively put in place structures for disclosure and transparency that send the signal, 'Don't even bother, because we're not going to tolerate it,'" he concludes.

George Butts, acting director general of Policy Risk Integrity Strategic Management at Public Works and Government Services Canada's Acquisitions Branch, agrees that bid rigging is serious, but uncommon. Part of the solution, he says, is communication. PWGSC's tender packages remind prospective bidders that purchasers watch for irregularities and that the consequences include anything from a rejected bid to criminal charges.

PWGSC manuals provide clear guidelines for spotting fraudulent elements in bids. Anything suspicious is referred to the director of the particular procurement group and to legal staff and, from there, to the Competition Bureau if necessary.

Lou Pagano, Toronto's director of Purchasing and Materials Management, also reports few problems with bids. Contracts issued by his department include a clause reminding bidders that rigging is a crime. Vendors certify that they have arrived at prices independently, have not disclosed information to competitors and haven't pressured any bidders with respect to submitting or not submitting bids.

Niell encourages anyone to draw on the bureau's expertise arguing that bid rigging is more prevalent than people think. "The trick is to nip it in the bud," he says, adding that the bureau offers an immunity program for whistle blowers. *MP*

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