NETHERLANDS
COMPETITION AUTHORITY

BID RIGGING

DETECTING AND PREVENTING COLLUSION IN PROCUREMENT

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Introduction

You are in charge of procurement within your company, organization or government agency. You recently held a procurement exercise. All of the bids have been submitted. You pick the winner, and you are happy that everything went so smoothly. Or has it now?

Did you have that gut feeling that 'something just was not right'? And if you looked into those bids a little closer, wouldn't you say they look suspiciously a lot like each other? Did you notice a certain pattern or a recurring phrase in those bids, one you had not seen before? Or has anything else caught your attention?

If so, chances are that the bidders may have colluded prior to submitting their bids. That kind of collusion, called bid rigging, is illegal under the Dutch Competition Act, as it impedes competition. In addition, you end up paying too much.

This brochure has been specially written for you and your colleagues that deal with procurement and with the evaluation of offers and bids. It is geared towards procurers in corporate and government environments, irrespective of the type of procurement exercise.

This brochure helps you recognize the first signs of collusion or bid rigging between bidders in procurement exercises. You will know the risks that procurement exercises may entail, and the brochure gives suggestions on what you can do if you suspect any bid rigging.

Why this brochure from the NMa?

The NMa's aim is to make markets work. Firms are obviously free to make a profit, but only in a fair manner. That is why it is the NMa's duty to track down and stop violations of the Dutch Competition Act and those of the antitrust regulations in the EU Treaty.

The NMa makes sure that firms do not conclude any agreements that would harm you as a procurer. If firms (competitors) are in cahoots with each other in a procurement exercise, it means they are keeping the price artificially high without making any extra effort for you as the customer.

The economy benefits from healthy competition:

- It stimulates a broader selection of products, thereby increasing choice.
- Competition ensures you get value for your money, because firms have to compete on price and quality.

- Competition stimulates innovation, acting as an incentive for firms to be creative and to develop new products for their customers.
- Competition stimulates economic growth by increasing choice, innovation, and productivity.

Competition ensures that firms do their best to attract customers. And customers reap the benefits from those efforts – same goes for your company, organization or government agency.

Naturally, the NMa is not able to monitor and verify each and every transactions in the Netherlands. However, the NMa can help you recognize the signs that may indicate collusion in public procurement.

Cartels and collusive tendering

Cartels are a serious form of anticompetitive behavior. They are illegal, and the cartelists usually go to great lengths to keep their cartel a secret. Usually, the objective is to realize additional profits for the cartelists.

Bid rigging means that bidders collude by harmonizing their bids or offers. This often results in higher prices and/or lower quality. As a customer, you thus pay too much for too little.

In recent years, bid rigging has occurred in various industries, e.g. the large-scale bid-rigging scandal in the Dutch construction industry. If government tenders suffer from bid rigging, society as a whole is harmed, as all of us ultimately foot the bill as taxpayers.

Types of collusive tendering

The most prevalent types of bid rigging are bid suppression, complementary bidding and bid rotation, and market sharing.

- *Bid suppression or bid limiting*. Firms that would normally bid agree not to submit a bid or to withdraw their bids so that another firm can successfully win the contract.
- *Complementary bidding or cover bidding*. Firms bid an amount knowing that it is higher than that of the firm that is 'allowed to win'. Another variation is that the bids contain conditions that are certain to be unacceptable to the agency calling for the bids.
- *Bid rotation or market sharing*. Firms take turns being the designated successful bidder. Another variation is that firms share the market on a geographical basis.

Warning signs

If you are involved in procurement procedures, it would be wise to remain watchful of unusual circumstances or unforeseen events.

Signs with regard to *bid patterns*:

- Certain firms often submit bids in a certain region, but never seem to win.
- Fewer firms than usual have submitted bids, and firms you had expected to surely submit a bid have not.
- The winner often subcontracts its contracts or substantial parts thereof to its competitors.
- There is a striking pattern of winners, where one firm wins in one year, and another firm in the other, etc.
- Some of the bids are very brief and are not as detailed as you expected them to be.
- Prices are suddenly considerably lower if a certain competitor, too, submits a bid.
- The winner does not accept the contract, and subsequently works as subcontractor for the new winner.

Signs with regard to *pricing:*

- For unexplained reasons, the price is much higher compared to similar tenders in the same market or compared to previous tenders.
- The winner has an inexplicably large margin over its competitors in terms of price.
- Competitors openly exchange information with regard to price. This may occur very

subtly by using terms such as 'right' or 'reasonable' price.
- Local competitors submit higher bids in local tenders compared to tenders elsewhere, despite the fact that transport costs are much lower in the local contract.
- Competitors submit similar prices or adjust their prices and/or conditions more or less at the same time.

Signs with regard to *behavior*:
- Multiple bids share the same lay-out, have been printed on the same type of paper, or contain the same spelling errors.
- One or more competitors submit a joint bid, although at least one of them is fully capable of completing the assignment on its own.
- A bidder submits his bid (in person) and also submits the bid of another bidder.
- Right before the deadline, bidders held a meeting or were seen together socializing in an informal setting.

Phrases than may suggest bid rigging
- References to 'prices that have been set by the trade association', 'industry prices' or 'industry-suggested prices and conditions.'
- Explaining that price levels have been based on 'prices charged by competitor A', or on 'guidelines of the trade association.'
- Indicating that 'we only sell in region X and Y, because we do not sell in region Z'; a competitor is active in region Z.
- Statements that a competitor should not have made you an offer.
- Statements that it is 'a competitor's turn' to get a contract.
- Any statement about communication between the bidder and his competitors.

How do you prevent collusive tendering?

When you hold a tender, you may be able to reduce the likelihood of collusion by doing any of the following:
- Make sure you know the market. Proper preparation of the tender may involve carrying out a market scan. How many competitors are active in the market, what is their market area, and what is a good price?
- Set up the tender in such a way that multiple (including smaller) competitors are able to win it, for example by dividing the tender into several smaller parts.
- Do not give too much information. Do not disclose the identities of the bidder's competitors, nor what price you have in mind. Insofar it is possible, do not disclose the price of the winning bid, nor its components.
- If you hold a preparatory meeting, competitors are able to see who their potential competitors are. In addition, it may give them the opportunity to subtly signal one another, for example, about the price. Be sure to keep this in mind.

Additional suggestions
- Make sure that everybody within your organization that is involved in procurement (team members, bookkeeper, etc) knows about the possible signs that are listed in this brochure. Two heads are always better than one.
- Save documents and other pieces of procurement documents. This way, you will have for material for comparison.
- Encourage informal communication between the NMa and your staff when you are dealing with a tender in which you suspect possible collusion. The NMa can be of further help in recognizing signs.

What can you do if you suspect collusive tendering?

Trying to remain a secret is inherent to cartels, and they are thus difficult to track down.

- Therefore, remember the suggestions and signs in this brochure, and write it down whenever you notice anything 'suspicious'.
- Contact the NMa, and provide the NMa with as much information as possible.

If you suspect a cartel or bid-rigging, you can notify us thereof by contacting us:

- www.nma.nl
- Email: info@nmanet.nl
- Phone: +31-70-330-1306
- Mail: P.O. Box 16326, 2500 BH, The Hague, the Netherlands

Any information you submit to the NMa will be treated confidentially.

Do not let anybody outside your organization know that you have submitted information to the NMa, because evidence located at the cartelists' premises may then disappear.

It is NMa policy to:

- Never disclose the identity of complainants or individuals submitting tip-offs.
- Never comment on the investigations it is carrying out.
- Never disclose the names of firms or organizations that it is investigating.
- Never disclose any information to the media.

The NMa is sometimes legally required to disclose certain information, for example, to enable the 'violator' to prepare his defense.

What does the NMa do with your tip-off?

First, it is assessed whether there is indeed a possibility that the Dutch Competition Act has been violated. If so, the NMa may decide to further investigate the matter.

More information

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