

Honesty pays!

How to detect and give tip-offs about bid-rigging cartels
in public procurement.

The Asphalt Cartel - Sweden's biggest bid-rigging cartel

The biggest cartel so far uncovered in Sweden has become known as the 'Asphalt Cartel'. It was exposed after a tip-off to the Swedish Competition Authority. It transpired that the leading companies in the road paving sector had agreed in advance on the tenders each would submit in a large number of tendering procedures by central government, municipalities and the private sector. The companies divided the markets and customers between themselves and agreed on prices. The government, the municipal authorities and consequently the taxpayers incurred substantial losses as a result of the cartel's collaboration to keep price levels high. The Market Court found that the companies had infringed the competition rules and the companies were ordered to pay almost half a billion Swedish kronor (EUR 55 million) in fines.

Have you noticed anything odd about the tenders you received in a tender procedure for goods or services? Take your suspicions seriously. The oddities may suggest that companies have formed a bid-rigging cartel. This means that they agreed to divide the market between themselves or agreed on prices or other terms. Bid-rigging cartels eliminate competition and counteract the purpose of public procurement. The consequences are higher prices and lower quality. It is an important task for procurement officers to detect and reduce the risk of bid-rigging cartels. Central government, municipal authorities and county councils in Sweden purchase goods and services under public tender procedures for approximately SEK 500 billion (EUR 55 billion) every year. Your alertness may help the Swedish Competition Authority to stop cartels, enabling tax-payers' money to be used in the best way possible.

When companies circumvent applicable competition rules in tendering procedures, they often leave signs; signs which may be easy to spot with a little knowledge. The following pages include a checklist of twelve signs which suggest that companies may have formed a bid-rigging cartel - prohibited anti-competitive cooperation.

Twelve ways to detect bid-rigging cartels

If the answer to *any one* of the questions on this list is “yes”, it is enough to indicate that you may be the victim of a bid-rigging cartel. There may also be other signs of bid-rigging cartels which are not included in this list.

Do not hesitate to contact the Swedish Competition Authority if you recognise one or more of these signs during a tender procedure. We can help you do better business. The phone number for tip-offs is +46 (0)8-700 16 00. You can also send an e-mail to the Swedish Competition Authority, at konkurrensverket@kkv.se.

1 Suspiciously high prices?

If all or most of the tenders are significantly higher than the tenders in previous tender procedures, higher than the companies' list prices or higher than a reasonable estimate of the costs, some companies may have submitted courtesy tenders. This practice, also known as 'cover bidding', means that two or more companies agreed which one of the companies shall win the contract, and the other companies submit less favourable tenders just for the sake of appearance.

2 Suspiciously inconsistent prices?

A company submitting tenders that are significantly higher in some tender procedures than in others, without any obvious reason such as differences in costs, may suggest it is involved in a bid-rigging cartel. Companies may in this case have agreed on who is to win the contract, for example, for a particular product or contracting authority, or within a certain area.

3 Suspiciously big differences in prices?

If the difference in price between the winning tender and the other tenders is inexplicably big, it may suggest that some companies in the sector have formed a bid-rigging cartel to keep price levels up. The winning tender may have been submitted by a company that is not a member of this cartel and therefore is significantly lower than those from the companies in the cartel.

4 Suspiciously similar prices?

If several companies have submitted tenders with identical (or suspiciously similar prices), it may indicate that they have agreed to share the contract.

When a suspected boycott is a sign of a bid-rigging cartel

A central government authority conducted a tender procedure to conclude a contract with only one supplier. During the tender period, five different companies contacted the authority and asked for a meeting to discuss the conditions of the contract. The authority announced that such meeting could not take place until the deadline for submitting tenders had expired. No tenders were received. When the authority held the requested meeting with the companies; they explained that they were unable to submit tenders individually and that they wanted all five of them to be allowed to conclude contracts with identical prices.

This conduct is one example of a collective tender boycott, where the purpose was to divide up the market between the cartel members and thereby impede price competition.

5 Suspicious boycott?

If no tenders are received, there may be a coordinated boycott with the purpose of influencing the conditions of the contract. This suggests that the companies have agreed to abstain from submitting tenders. The aim of a coordinated boycott may, for example, be to divide a certain market between the members of a cartel.

When suspiciously few tenders is a sign of a bid-rigging cartel

In a tender procedure conducted by a county council, very few tenders were received despite there being a large number of potential suppliers. It transpired that several companies had participated in a bid-rigging cartel where they had divided the market between themselves. Companies had agreed that some of them would submit tenders for county council contracts only while others would submit tenders only for private sector contracts. *The contracting authorities and contracting companies thus all received fewer tenders than they otherwise would have.*

6 Suspiciously few tenders?

If unexplainably few companies submitted tenders, it may indicate the existence of a market-sharing cartel. The purpose of such a cartel is to avoid competition within, for example, certain geographic areas. In such case, companies abstain from submitting tenders within one area so that a certain other cartel member can win the contract.

7 Suspiciously similar tenders?

If tenders refer to industry agreements that may affect the price, the companies may have agreed to apply, for example, common price lists, delayed payment fees or other sales conditions for the sector. Such agreements lead to higher prices and are generally illegal under the competition rules.

When suspicious patterns are a sign of a bid-rigging cartel

In the Asphalt Cartel, companies had divided the different public tender procedures and contracts between themselves. Companies that refrained from submitting competitive tenders were compensated in various ways by the winning company; for example by being allowed to work as subcontractors or by receiving financial compensation.

8 Suspicious patterns?

If the same company wins the contract every time it is renewed, there may be a market sharing agreement between the companies in the market. You should be observant about patterns, such as when the same company always submit the lowest tender in a certain geographic area or with a certain contracting authority. Another way in which companies illegally divide the market between themselves is when they take turns to submit the lowest tender.

When suspicious subcontracting arrangements are a sign of a bid-rigging cartel

Two companies participated in a bid-rigging cartel in several tender procedures for power line poles. The companies agreed, among other things, that the winning company would compensate the losing company by purchasing half of the poles from them.

9 Suspicious subcontracting arrangements?

If the company that won the contract assigns or subcontracts part of the contract to a competitor that submitted a higher tender in the same procedure, it may suggest a bid-rigging cartel. In this case, the companies may have agreed that the winner will compensate its competitors by engaging them as subcontractors to execute the work.

10 Suspiciously careless tenders?

If the winning tender is the only one that has been compiled in a thorough and detailed way, while the others have been drawn up more carelessly, it may suggest a bid-rigging cartel. In this case, only the winning company has devoted resources to submitting a thorough tender, while companies that deliberately lost the tender procedure did not devote any time or resources to compile their tenders.

11 Suspicious wording?

If there are similar oddities in several different tenders or in the questions that the companies ask the contracting authority, it may suggest that the companies are colluding. Look out for identical wording, identical errors in calculations or the same notepaper and standard forms.

12 Suspicious joint tenders?

A joint tender submitted by more companies than what is necessary to perform the assignment may be illegal.

How to reduce the risk of bid-rigging cartels

There are many ways in which contracting authorities can reduce the risk of cartel activity. Here are some suggestions to improve the preconditions for effective competition.

- 1.** The risk of bid-rigging cartels is reduced if it is possible for a company to submit a tender for a separate lot of the contract. Avoid the number of lots coincide with the number of companies that are expected to participate in the tender procedure, or the lots all being of equal value.
- 2.** If you need to have meetings with companies - arrange individual meetings. In order to reduce the companies contact areas and opportunity to meet before the deadline to submit tenders has passed, you should avoid inviting several companies to a joint meeting.
- 3.** Compare tenders from previous tender procedures with the current one and with tender procedures conducted in adjacent geographic areas. Look for patterns that may suggest the existence of bid-rigging cartels.
- 4.** Be prepared to vary the conditions of the tendering procedure when a contract expires; for example, by changing the geographic scope and the conditions of the contract. In this way you will make it more difficult for companies to divide the market by taking turns to win the contract.
- 5.** Network and have discussions with other contracting authorities purchasing similar goods and services so that you have something to compare with.
- 6.** Consider stating explicitly in the contract documents that bid-rigging cartels are prohibited and that suspected cartels will be reported to the Swedish Competition Authority.

Tip us off about bid-rigging cartels

We encourage you to contact us at the Swedish Competition Authority if you have any questions or suspect irregularities in a tendering procedure. You are entitled to remain anonymous if you give us a tip-off. If you wish to remain anonymous, you should call us first.

The phone number for tip-offs is +46 (0)8-700 16 00 (our switchboard) or contact us at www.konkurrensverket.se

You can also write to the Swedish Competition Authority, at SE-103 85 Stockholm, Sweden or send an e-mail to konkurrensverket@kkv.se.

**Help us detect bid-rigging cartels. If you suspect something,
please call the Swedish Competition Authority on +46 (0)8-700 16 00,
or e-mail us at konkurrensverket@kkv.se
For more information visit www.konkurrensverket.se**