

# Corruption in construction

A number of recent surveys revealed that construction is one of the world's most susceptible industries for corrupt practices, particularly in relation to the procurement of projects in developing countries. Bid rigging in the construction industry has emerged as a key target of international competition watchdogs, and the UK is no exception, writes Dr Andrew Agapiou, a CIOB Ambassador

**H**ow many are aware of the extent of the problem in the UK and the implications for our sector? Over the last three years the UK's competition watchdog, the Office of Fair Trading (OFT) has been carrying out an investigation into bid rigging by construction companies in different parts of the country. By March 2007, 57 companies had been raided with the OFT uncovering evidence of bid rigging involving more than 1000 contractors participating in projects with a total worth of about £2.9bn.

Many investigations focused on procurement of public sector projects involving small

businesses bidding for small contracts; it has been estimated anti-competitive practices have cost the UK taxpayer an additional £500 million over the three year period.

It is no wonder that bidding processes are now under such close scrutiny, particularly those involving public sector projects.

What form does bid-rigging take in the construction sector? Well, it can involve 'complimentary pricing' or 'cover pricing' – a practice where supposed rivals agree to submit bids that they know upfront will not be accepted.

Other forms include 'bid suppression', where competitors withdraw from

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tenders and 'bid rotation', where all the rivals submit bids, but where the bidding is fixed so that each has a turn to win contracts.

What are the implications for construction companies involved in collusion and anti-competitive behaviour? Well, these can be severe under competition law and include: a fine of up to 10% of company turnover, and criminal prosecution of directors and employees dishonestly involved in the most serious types of collusion.

The term 'dishonestly' is quite significant here, as this would cover situations where people involved took active steps attempts to 'cover their tracks' (meeting in secret, false diary entries, destroying any records of the meetings, etc.).

Anyone convicted of collusion under competition law could receive a maximum of five years' imprisonment and/or an unlimited fine. In addition, company directors may also face disqualification



## Competition law compliance procedure

- Give staff proactive training on the competition rules
- Develop and maintain an active competition law compliance programme
- Establish clear lines of accountability and a mechanism for supervising and monitoring training and compliance
- Ensure that top management buys into the compliance system
- Be alert to the issue of contact with competitors and the risk of such contact being interpreted as an anticompetitive concerted practice
- Avoid the temptation to send clear messages of future bidding intentions via the bidding process
- Produce clear internal documentation explaining the reasons for steps taken and bid valuations

## Tell-tale signs of anti-competitive practices

- A limited number of competing bids
- Regular competition among the same companies
- Regular meetings and telephone calls between firms
- Fewer than the usual number of competitors
- Rotation of successful bidders
- Fewer complaints against a company continually winning
- Large margins between a winning bid and rival tenders
- Awarding of sub-contracts to losing bidders
- Drop in prices when new entrants appear

## Avoiding bid-rigging practices – a client's guide

- Review contracts awarded in the last few years to see if there is any cause for concern or any patterns in bid submissions between similar groups of bidders.
- Consider the implications for contracts in the process of procurement.
- Consider tightening the selection/prequalification process.
- Review any existing current select lists.
- Ensure that procurement and other staff are aware of the issues and are on the look out for suspicious actions



orders for up to 15 years.

For companies involved, some reduction in fine may be available in the form of the OFT's leniency programme, whereby members involved in cartel-type practices may have their financial penalty reduced substantially (at best, to zero) if they confess to the OFT at a very early stage and 'whistleblow' on the other cartel participants. The extent of reduction in fine depends mainly on how much more information the business in question provides to the OFT over and above what has already been established

through investigation.

To date, the OFT has so far taken action in a number of cases where anti-competitive practices have been found: in February 2006, for example, the OFT announced that it had fined 13 roofing contractors around £2.3 million in total (reduced to just over £1.55m after the effect of leniency applications) after they agreed to fix the prices for flat roofing and car park surfacing contracts in England and Scotland through collusive tendering. In total, 20 construction companies have now been fined more than

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£2.5 million. These companies could now face substantial claims for damages from customers who have suffered losses as a result of having to pay more for its contracts.

The OFT has confirmed that the construction and housing sector will remain a focus for investigations over the forthcoming years. In light of this, companies should consider, first, how they are going to reduce the risk of infringement, and secondly, what systems should be in place to deal with the prospect of an investigation being brought against both the company and its employees. An active competition law compliance programme will be of assistance here. In addition, having an active compliance programme in place can lead to reduced fines should an investigation bring to light any irregularities. This will also assist in avoiding the usual cartel-type behaviour.

Following on from the 2006 Chartered Institute of Building research into corruption within the UK construction industry, the Institute has delivered an online seminar on the progress and implications of the ongoing Office of Fair Trading (OFT) investigation.

You can view the CIOB webinar at [www.multichanneltv.com/ciob/](http://www.multichanneltv.com/ciob/)