

138
30/6/23

“हिन्दी भाषा राष्ट्र निर्माण में सहायक है”

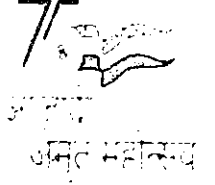
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No.IT&S/AN/174/GcM/23-24

Important Circular

Dated 28/06/2023

To

All sections of Main Office

All Sub Offices under PCDA(CC)

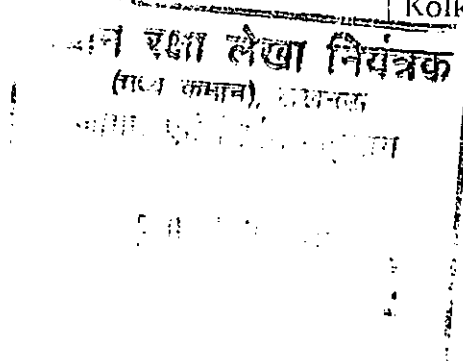
O A Cell
L134

Sub: Cartel Formation/ Pool Rates/ Bid Rigging/ Collusive bidding.

Quoting of pool rates/ Cartel formation, bid rigging/ collusive bidding is against the basic principle of competitive bidding and defeats the very purpose of open and competitive bidding. Such practices should be severely discouraged with strong measures. In this regard, the laid down provisions available in manuals, Instructions received from GeM IFA and other relevant study material are being provided, as indexed in appended table, for taking cognizance of the same and strict compliance.

Sl.No.	Subject/ Topic	Reference document being provided on the subject
1.	Cartel Formation/ Pool Rates/ Bid Rigging/ Collusive bidding.	Copy of email dated 08/06/2023 received from GeM IFA
2.	Cartel Formation/ Pool Rates/ Bid Rigging/ Collusive bidding.	Para 8.1.13 of Manual for procurement of goods-2022
3.	Cartel Formation/ Pool Rates	Para 4.18.1 of DPM 2009
4.	Collusions in Public Procurement	Research Paper of RTC Kolkata

Jt.CDA has seen.



रक्षा
Sr.A.O.(IT&S)

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~~4/21/3~~
Sr.A.O.(IT&S)

Email

PCDACC SECTT

Fwd: Cartel Formation / Pool Rates/Bid rigging/Collusive bidding

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Thu, Jun 08, 2023 05:04 PM

Subject : Fwd: Cartel Formation / Pool Rates/Bid rigging/Collusive bidding

To : MSECTION CCPCDA

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116

EDP

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(मध्य कमान) लखनऊ।

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Cc: advisor-bkm@gem.gov.in

Sent: Thursday, June 8, 2023 4:22:01 PM

Subject: Fwd: Cartel Formation / Pool Rates/Bid rigging/Collusive bidding

Dear Sir/Madam,

RTM.

Advisor (Defence) GeM vide trailing email dated 5 June 2023 has intimated that in one of the cases of a defence buyer, prices of rates of L1 to L4 were found to be very close and there were allegations of vendors being disqualified at technical evaluation stage. Accordingly, it has been recommended that indulgence in anti-competitive behavior or cartel formation may be checked by buyer department at their end as per extant rules and procedures. Further, all the buyers may be directed to adhere to Clause 8.1.13 of Manual for Procurement of Goods, issued by DoE under Ministry of Finance (w.e.f. 1st July, 2022).

It is directed that anti-competitive behaviour or cartel formation may be checked strictly and action to be taken accordingly.

Regards,

AO (GeM Cell)
HQrs. CGDA

From: "CGDA Office" <cgda@nic.in>

To: "GEMIFA" <gemifa.dad@gov.in>

Sent: Monday, June 5, 2023 5:45:25 PM

Subject: Fwd: Cartel Formation / Pool Rates/Bid rigging/Collusive bidding

From: advisor-bkm@gem.gov.in
To: "Amitabh Ranjan Sinha" <sinhaamitabh.r@gov.in>, "Colonel Ajaypal" <dircoord.ec-dma@gov.in>, "VIRENDER SINGH" <finplgcoord-01@gov.in>, "Arvind Yadav" <arvind03@gov.in>, bkmunjai@gmail.com, "POOJA BHAT" <poojabhat.dad@hub.nic.in>, "CGDA Office" <cgda@nic.in>, "CGDA IFA" <cgdaifa.dad@gov.in>, "HQ ACCOUNTS" <hqaccounts.cgda@gov.in>, "LT.Col Kotor Koyu" <jttdir2d.dgafms@nic.in>, "VIRENDER SINGH" <finplgcoord-01@gov.in>, "PRASHANT DUBEY" <prashantdubey1.dad@hub.nic.in>, "GEMIFA" <gemifa.dad@gov.in>, "Gp Capt Rajat Shankar" <mmlgs.22@gov.in>, "H Dharmarajan" <h.dharmarajan@gov.in>, "Dr Pudi Hari Prasad" <jsesw@nic.in>, "IAF Helpdesk" <iaf.helpdesk@gem.gov.in>, "KI Inbarajan" <inbarajan-1516@icg.gov.in>, "I R Rao" <comdt-oscc@nic.in>, "JAGDEEP JAGDEEP" <jagdeep.hqr@gov.in>, "MAJ GEN M NATARAJAN" <mdechsh-mod@nic.in>, "KALYAN MOHANTY" <kalyan.mohanty@navy.gov.in>, "Mayank Tyagi" <mayankt.cgda@nic.in>, "Surg Capt Bhamidipati Vikas" <dirprov.dgafms@nic.in>, consultcgda2021gem@gmail.com, "VARUN NAYYAR" <varunnayyar.dad@nic.in>, "Manu Pandey" <manupandey.578@gov.in>, "A SRINIVASA REDDY" <blddgmcc-ap@bdl-india.in>, "BRIJESH SINGH" <brijesh.chauhan08@gov.in>, "PS IDAS" <psidas.dad@gov.in>, "DDG Coord Abhishek Azad" <ddgcoord-dgde@gov.in>, "Siddhartha Saxena" <dirbudget-ppfd.ids@nic.in>, "BRIJESH SINGH" <brijesh.chauhan08@gov.in>, "S K Singh" <jhelum.41@gov.in>, "Gp Capt Sunil Raj" <materials.xyz@gov.in>, "Res Trg" <jdres.ids@nic.in>, "Smt. Suman Sharma" <us-res1@desw.gov.in>, "V. Chaturvedi" <po-pic-mod@nic.in>, "LOKES PAI" <drproccpp.12@gov.in>
Cc: "P K Singh" <ceo-gem@gov.in>, "Rajiv Kumar Srivastava" <aceo-rksrivastava@gem.gov.in>, "Naveen Wadhwa" <advisor-di@gem.gov.in>, "PRAKASH MIRANI" <aceo1-gem@gem.gov.in>
Sent: Monday, June 5, 2023 3:35:53 PM
Subject: Cartel Formation / Pool Rates/Bid rigging/Collusive bidding

Respected Sir/Ma'am,
आदरणीय महोदय/महोदया,

1. GeM team keeps examining cases to find out collusion at various stages to bring in fairness and transparency in public procurement. In one of the cases of a defence buyer, prices of rates of L1 to L4 were found to be very close and there were allegations of vendors being disqualified at technical evaluation stage.

2. Investigations revealed that :-

a. Cartel between Six firms was indicative on terms of same IP address used for bid submission by these six bidders.

b. L1, L2, L3 and L4 , and two others used same IP address for submission of said bid that too **within time duration of 45 minutes by 5 bidders** .

c. L2, L3, L4 bidder had **quoted price in close proximity with L1.**

3. It is recommended that indulgence in anti-competitive behavior or cartel formation may be checked by buyer department at their end as per extant rules and procedures. Further, all the buyers may be directed to adhere to Clause 8.1.13 of Manual for Procurement of Goods, issued by DoE under Ministry of Finance (w.e.f. 1st July, 2022) as mentioned below :-

"8.1.13 Cartel Formation / Pool Rates/Bid rigging/Collusive bidding etc.: Quoting of pool rates/Cartel formation, bid rigging/collusive bidding is against the basic principle of

competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable

administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, on case to case basis, as decided by the competent authority.

Ministries/Departments may also bring such unhealthy practice to the notice of the 143 concerned trade associations like FICCI, ASSOCHAM, NSIC, etc. requesting them,

inter alia, to take suitable strong actions against such firms. The Ministries/Departments may also encourage new firms to get themselves registered to break the monopolistic

attitude of the firms giving pool rate/ forming cartel. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years

from participation in the tenders of the Purchaser."

Regards

सादर

Commodore B.K Munjal, VSM (Retd)
कमोडोर बी. के. मुंजाल , वीएसएम (सेवानिवृत्त)
Advisor (Defence)
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Government e-Marketplace
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Research Paper

Collusions in Public Procurement

Insights into cartels, bid rigging,
frauds and other corrupt
practices.

**REGIONAL TRAINING INSTITUTE,
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“There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the government.”

Benjamin Franklin

Contents

I.	Preface	7
II.	Introduction	9
	Cartels and Bid-rigging	9
	Public procurers.....	10
	Detecting Bid Rigging In Public Procurement	10
	Look for markets that are more susceptible to bid rigging.....	10
	Look for opportunities that the bidders have to communicate with each other.....	10
	Look for indications that the bidders have communicated with each other.....	11
	Look for any relationships among the bidders after the successful bid is announced.	11
	Look for suspicious bidding patterns.	11
	Look for unusual behaviour.....	12
	Look for similarities in the documents submitted by different bidders.	12
	Case Study.....	12
	Learning Points.....	14
	Audit's Role in similar circumstances	15
III.	Public Procurement: Legal Framework	16
	Rules Governing Central Procurement.....	16
	Rules Governing Procurement by State Governments.....	17
	Monitoring and Vigilance.....	17
	Major Guidelines by the Supreme Court on Procurement.....	18
	Major Guidelines on Procurement Contained in the GFR.....	19
	Preference Policies in Public Procurement.....	21
	Preferential Treatment for the MSME Sector.....	21
	Preferential Treatment for Central Public Enterprises.....	22
	Indigenous versus Foreign Suppliers.....	23
	Weakness in the System.....	24
	Competition Law and associated statutory provisions.	32
	Genesis	33
	Competition Jurisprudence.....	33
	Bid-rigging under the Competition Act, 2002.....	34

Bid rigging is anti-competitive	34
The Public Procurement Bill, 2012.....	35
HIGHLIGHTS OF THE BILL	35
Comparison of laws and regulations regarding public procurement.....	38
Public procurement Acts and Bills in States:.....	39
Make In India.....	39
IV. Forms of bid rigging	41
Bid Suppression.....	41
Complementary Bidding.....	41
Bid Rotation.....	42
Subcontracting.....	42
Market allocation.....	42
V. Risk Assessment.....	43
Industry, Product and Service Characteristics That Help Support Collusion.....	43
Small number of companies.....	43
Little or no entry.....	43
Market conditions.....	43
Industry associations.....	43
Repetitive bidding.....	44
Identical or simple products or services.....	44
Few if any substitutes.....	44
Little or no technological change.....	44
Checklist for Designing the Procurement Process to Reduce Risks of Bid Rigging.....	44
Be Informed Before Designing the Tender Process.....	44
Design the Tender Process to Maximise the Potential Participation of Genuinely Competing Bidders	45
Define Entity's Requirements Clearly and Avoid Predictability.....	46
Design the Tender Process to Effectively Reduce Communication among Bidders	47
Carefully Choose Your Criteria for Evaluating and Awarding the Tender.....	48
Raise Awareness amongst Staff about the Risks of Bid Rigging In Procurement.....	49

VI. Checklist for Detecting Bid Rigging In Public Procurement.....	51
Look For Warning Signs and Patterns When Businesses Are Submitting Bids.....	51
Look For Warning Signs in All Documents Submitted.....	51
Look For Warning Signs and Patterns Related To Pricing.....	52
Look for Suspicious Statements at All Times.....	53
Look For Suspicious Behaviour at All Times.....	53
A Caution about Indicators of Bid Rigging.....	53
VII. Corruption and Bid-Rigging.....	55
How does a corruption scheme in procurement work?.....	55
What are the goals of any procurement-related corruption strategy?.....	55
Phases in the procurement cycle where corruption can take place.....	56
Procurement Plan.....	56
Advertisement.....	57
Bidding Documents.....	58
Short-Listing and Prequalification.....	60
Pre-Bid Conference.....	61
Bid Submission.....	62
Bid Opening.....	62
Bid Evaluation Committee.....	63
Bid Evaluation Report.....	63
VIII. Fraudulent bids.....	65
What is a fraudulent bid?.....	65
What is the purpose of a fraudulent bid?.....	65
How are fraudulent bids detected?.....	65
Ownership.....	66
Financial capacity.....	66
Technical capacity.....	67
Bid security.....	68
IX. Fraudulent Implementation.....	69
What is fraudulent implementation?.....	69
What is the difference between poor and fraudulent implementation?.....	69
Impacts of fraudulent implementation.....	69

	How is fraudulent implementation detected?	70
	Draft Contract.....	70
	Contract Delivery	71
	Contract Changes	74
X.	Role of Audit in Relation to Cases of Fraud and Corruption: CAG's Standing Order.....	76
XI.	Case Studies	77
	Acquisition of Helicopters for VVIPs.....	77
	Background.....	77
	Key findings and recommendations.....	77
	Ultra Mega Power Projects under Special Purpose Vehicles	78
	Background.....	78
	Findings and Recommendations	79
	Procurement of Stores and Machinery in Ordnance Factories.....	80
	Nalanda Factory.....	80
	Procurement by Factories.....	88
	Contract Management	91
	Internal Control	91
	Internal Audit and Vigilance.....	91
	Delegation of financial powers without Internal Audit and Vigilance.....	92
	Tender Purchase Committee exercising functions of Competent Financial Authority	92
XII.	Suggested readings and Bibliography:.....	94
XIII.	Annexure	96
	<i>I Similarity in Documentation submitted</i>	<i>96</i>
	<i>II Evidence of Collusion among different firms.....</i>	<i>97</i>
	<i>III Statement showing the details wherein firms quoted Identical Rates.....</i>	<i>102</i>

Preface

Tender system, as the normal method of public procurement, works on the premise of competitive rate quoting, but cartel formation destroys this basic premise. The bidders join together and manipulate the rates and competitiveness is lost. There are various ways in which the manipulations are done: the cartel deciding who shall win the bid and others quote higher; the cartel decides on the quantity distribution among its members and each quote for his allotted quantity; and each quoting for his preferred location only or quoting lowest rate for that location. Cartels may operate with connivance of public servants.

Discussions in this paper centers around understanding the tenets of rigged tendering process whereby the citizens are deprived of their best value for money. We discuss in details the environment and the risk factors that encourage collusions. We briefly discuss the statutory framework and then move on to discuss step by step the process of scrutiny of fraudulent bids and the red flags that will help the auditor exercise his professional skepticism. There is also a checklist to help in identifying cases prone to Bid-rigging.

The objective of this research paper is to help audit teams gain a better perspective of various collusions that are found in public procurement and to provide them with resources for understanding and reporting such collusions.

Although we have taken every care to make this material exhaustive, interested readers may also look into the suggested reading list with this paper. Finally, we implore our readers to suggest ways for improving this material. They may also share with us interesting cases worth reviewing.



Principal Director

Introduction

Vigorous competition among suppliers helps governments to obtain the best value for money for the goods and services they procure. Conversely, when competition is curtailed – for example when suppliers engage in bid rigging – taxpayers' money is wasted as governments pay more than a fair price.

Bid rigging occurs in all types of industries and circumstances, and in all parts of the world. When bid rigging impacts public procurement, it has the potential to cause great harm to taxpayers. One reason for this is that public procurement is often a large part of a nation's economy.

Competition in public procurements are also compromised when public officials choose to forego fair and equitable policies and processes and favor a particular bidder whether for pecuniary considerations or otherwise.

This paper emphasizes primarily on cartels and bid-rigging although other corruptions are also discussed because they are often associated with cartels and bid-rigging.

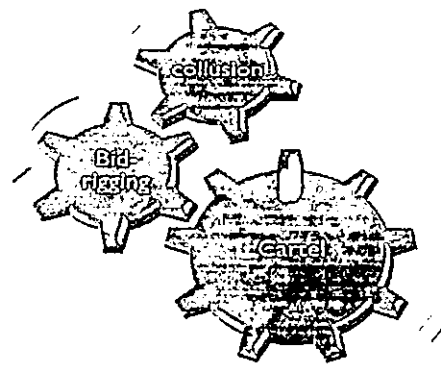
Cartels and Bid-rigging

Cartels are formed when companies collude with their competitors to increase or maintain prices, divide geographical territories, customers or projects between themselves, agree to limit production, and/or engage in bid rigging. Bid rigging occurs when bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Bid rigging is a form of cartel conduct. Bidders can eliminate competition in public procurement in many simple ways, for example:

- ❖ A competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- ❖ A competitor agrees not to bid or to withdraw a bid from consideration.
- ❖ A competitor agrees to submit bids only in certain geographic areas or only to certain public organizations.

Although the schemes used by firms to rig bids vary, they all have one thing in common – the bidders agree to eliminate competition so that prices are higher and the government pays more.

Cartels may consist of one or more anti-competitive agreements that direct how the involved parties will act (eg, a minimum price to be charged for a product or service, or no discounting), or in some cases not act (eg, not bidding on a tender). An anti-competitive agreement can be very informal (a 'nod and a wink') and still remain illegal. Although there are different types of



cartels, the aim of each is the same – to maximize the profits of cartel members, while maintaining the illusion of competition. When competitors engage in bid rigging (or other cartel conduct), a customer risk being overcharged for purchases. Cartel conduct can damage the welfare of citizens generally by raising prices, and also by negatively affecting other factors such as choice, innovation, quality and investment.

Public procurers

Government is a significant purchaser of goods and services. Public Procurement in India constitutes 30% of the GDP. To ensure transparency and accountability for this expenditure, the Government has established a general procurement policy based on the principles of best value for money over whole of life, and open and effective competition. Rules for substantial procurement by government departments require an open, competitive bidding process (tendering) as the norm. However, such a process will only work well when competitors act and price independently and honestly.

Detecting Bid Rigging in Public Procurement

While detecting bid-rigging is impossible in all cases, there are certain aspects that could be looked into for signs of possible bid-rigging and cartel formation:

Look for markets that are more susceptible to bid rigging.

The presence of certain factors increases the need for vigilance.

The probability of bid rigging is higher if there are few bidders. Bid rigging requires bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same bidders are involved in repeated procurements.

The chances of bid rigging are greater if the products or services being purchased are standardized and simple, and do not change over time. Under these circumstances, it is easier to work out an agreement and have it last a long time.

If entry in a certain bidding market is costly, hard or time consuming, firms in that market are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

Look for opportunities that the bidders have to communicate with each other.

Bidders need to know and communicate with each other to reach an agreement. Once bidders know each other well enough to discuss bid rigging, they need a convenient location where they can talk. Of course, communications can occur by telephone, email, fax or letter, and they often do; however, many bid-riggers believe that they are less likely to leave evidence of their

communications if they have face-to-face meetings. These meetings occur most often at, or in association with, trade association meetings, or other professional or social events. They are also likely to occur prior to the opening of the tender process.

Look for indications that the bidders have communicated with each other.

Bid rigging requires actual and often repeated communications between the bidders. Procurement officials may hear or come across statements indicating that information may have been shared, such as a bidder having knowledge of another bidder's pricing, or not expecting to be the low bidder, or perhaps when a bidder refers to "industry" or "standard" practices or prices.

Sometimes procurement agents can infer that bidders are communicating. For example, if one bidder picks up or submits bidding material for another firm, then some communication must have taken place between them. In other instances, a bidder may say something that indicates that certain non-public information, or an answer to a question, was learned through talking to another bidder.

Look for any relationships among the bidders after the successful bid is announced.

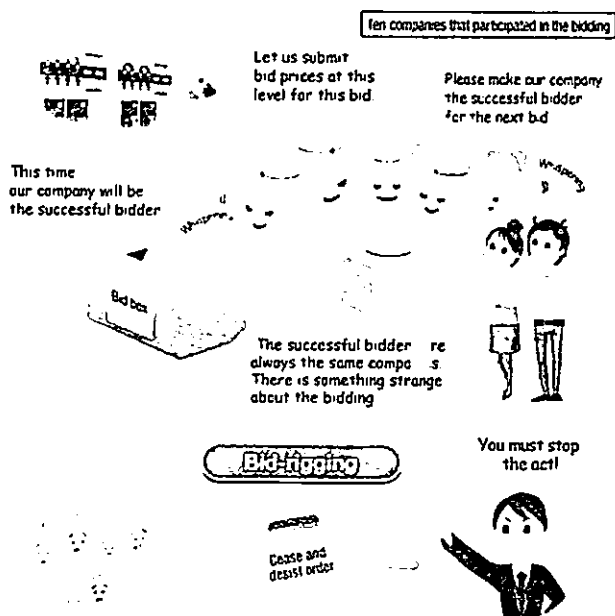
In some cases, bidders may attempt to split the extra profit that is earned through bid rigging. This is especially true if one large contract is involved. Sometimes the winning firm may pay the other bidders directly; however, the 'profit split' can also be passed on through lucrative sub-contracts to do some of the work or to supply inputs to the project. Joint bids can also be used as a way to split profits.

Look for suspicious bidding patterns.

Bidders may have devised a scheme that reveals itself as a pattern over the course of many bids.

For example, there may be a pattern to the winner (A, B, C, A, B, C), or it may be that the same bidder always wins bids of a certain type or size, or that some bidders only bid in particular geographic areas. Perhaps a bidder never wins but keeps bidding; or a bidder wins whenever it bids, even if it bids rarely. A bidder may show a pattern of submitting relatively high bids for some tender offers and relatively low bids for other, similar tender offers.

Pricing may be unusual. All bids may be unexpectedly high, or discounts or rebates may be unexpectedly small. Bids may also be different from previous, similar procurements, but the differences are unrelated to any change in the underlying economic



conditions. Bid levels may change when a new bidder (i.e. one who has not bid in the past) submits a bid. Pricing may not make sense when you consider transportation costs to different locations.

Look for unusual behaviour.

You would expect the winning bidder to accept the contract, so it could be considered 'unusual', for example, if the winner chose not to accept it, or withdrew before the award was made. Submitting a bid without normal detail or required documentation, or without the necessary information from suppliers, may also constitute unusual behaviour, as does a situation where the number of bidders is unexpectedly small, with some normal bidders not participating.

Look for similarities in the documents submitted by different bidders.

Bid-riggers sometimes have a single person prepare all the bids. Alternatively, a number of people may work on the bids, but they may work closely with each other. If you put the bid documents side-by-side, you may notice the same type of paper, the same postmarks, the same misspellings, the same handwriting, the same wording, the same alterations or changes, the same miscalculations or the same amounts. Eventually, most bid-riggers become careless and make mistakes. (See Annexure I)

Case Study

Diesel Loco Modernization Works (DLMW) is a unit of Indian Railways at Patiala, Punjab. It undertakes repair and maintenance of diesel locomotives. For this purpose, it regularly procures parts for the locomotives by floating tenders in which vendors approved by Research



Designs & Standards Organization (RDSO) of the Indian Railways can bid. The present case relates to Tender No. 201320510 which was floated by DLMW for procurement of feed valves used in diesel locomotives. The tender was opened on 27.04.2012. The Tender Committee evaluated the offers received from the opposite parties herein who were the only

bidders in the instant tender. It was noticed by the Committee that all the three RDSO approved vendors who are the opposite parties herein quoted an identical rates of Rs. 17,147.54 for the feed valves per piece. This rate was further found to be 33% higher than the last purchase rates.

The price-bids were as follows:

Sl no.	Particulars	M/s Escorts Ltd, Faridabad	M/s Faiveley Transport India Ltd, Hosur	M/s Stone India Limited, Kolkata
a.	Basic Price	17,147.54	14,534.52	14,674.28
b.	Add Excise	Inclusive @ 12%	@ 12% i.e. Rs. 1744.1424	@12% i.e. Rs. 1760.9136
c.	Add Cess on ED	Inclusive @3% on ED of 12%	@3% on ED i.e. Rs. 52.3243	@3% on ED i.e. Rs. 52.8274
d.	Sub Total	17,147.54	16,330.9867	16,488.02
e.	Add CST	Inclusive @5.25%	@5% i.e. Rs. 816.5493	@4% i.e. Rs. 659.52
f.	Total unit price in Rs.	17,147.54	17,147.54	17,147.54

From the above, it is indisputable that the total unit price quoted by all the opposite parties was Rs. 17,147.54/-.

The Tender Committee during evaluation and consideration of the bids suspected cartel. However, as per General Conditions of Contract for Stores Department it is provided that wherever all or most of the approved firms quote equal rates and cartel formation is suspected, railways reserves the right to place order on one or more firms with exclusion of the rest without assigning any reasons thereof. Accordingly, after considering the implications of e-tendering, the Committee decided to enter into negotiations with SIL. Consequent upon negotiations, SIL reduced its basic price and offered discount of Rs. 554.15/- each on basic price i.e. it offered revised basic rate of Rs 14,120.13/- each +ED+ CST as per its offer. At this stage, it may be observed that though the offer of EL was found technically suitable, its offer was passed over as it did not submit the cost of tender documents. Similarly, the offer of FTRTIL was found technically suitable, yet its offer was passed over as the firm did not accept the warranty clause as per IRS conditions of the contract.

The other aspect which further strengthens the finding of collusion is the examination of the cost of production of the valves vis-à-vis the bid price. In this connection, the DG (CCI) called for the cost audit report/ cost production data from the parties. From the information submitted, it was noticed by the DG (CCI) that EL's cost of each feed valves was Rs. XXX/- whereas it has quoted the basic price of Rs. 14,500/- in the present tender. In the case of FTRTIL, it was found that it had a cost of each feed valve of Rs. XXX/- against which it quoted the basic price of Rs. 14,534.52/- for the tender in question. Similarly, SIL's cost of each feed valve was Rs. XXX/- but it quoted the basic rate of Rs. 14,674.28/-. In these circumstances, when all the opposite parties have their manufacturing unit located at different places i.e. Haryana, West Bengal and Tamil Nadu with different cost of production, it was not possible to supply the feed valves at identical unit price of Rs. 17,147.54/-. Further, no justification or explanation was provided by the parties in this regard.

The DG (CCI) also examined the past conduct of these bidders with respect to the tenders invited by other railway zones. From the information so gathered, it was observed that though

the production cost of the feed valves of the opposite parties were different but they quoted nearly identical price in the past in different zones of railway and in some cases there was difference of bid price of merely 88 paise and/ or Rs. 9.14 paise as in the case of Tender No. 26111569 dated 11.10.2011 where EL and FTRTIL quoted identical price for supply of 54 feed valves @ Rs. 14,535.40/- and Rs. 14,534.52/- respectively. Similarly, in Tender No. 43110361A dated 17.10.2011 EL and FTRTIL have quoted Rs. 14,525.38 and Rs. 14,534.52 respectively to Southern Railway. As such, the action of the opposite parties in bidding nearly identical amount in the tender was found to establish that the three bidders have resorted to collusive biddings for supply of feed valves to the railways in the past. Thus, taking into consideration the past conduct of the three bidders, it is further established that the opposite parties were used to such practice of sharing the price data and had accordingly also resorted to similar practice of collusive bidding in the e-tender in the present case as well.

The CCI finally went on to penalize M/s Escorts Ltd, Faridabad, M/s Faveley Transport India Ltd, Hosur and M/s Stone India Limited, Kolkata by Rs. 1.91 crore, Rs. 5.71 crore and Rs. 57.70 crore.

Learning Points

If we look into the above case, it had all the telltale signs which would indicate cartel formation and bid-rigging. There were Small number of bidders, Standardized or simple products and strong entry barrier. They were the vendors that were pre-approved by RDSO. CCI noted that proof for actual meetings, co-operation between bidders and price rigging were always indirect because of its clandestine nature. However, the pricing behaviors indirectly substantiate those facts. It may be noted that EL quoted an all-inclusive quote of Rs. 17,147.54/- per unit whereas the other parties viz. FTRTIL and SIL quoted basic prices of Rs. 14,532.52/- and Rs. 14,674.28/- respectively to reach a total unit price of Rs. 17,147.54/- which is identical to the all-inclusive quote of Rs. 17,147.54/- made by EL. It may be observed that though FTRTIL and SIL quoted different basic prices yet the total unit price reached by them was identical with each other as also with the quote made by EL. As the central levies i.e. Excise Duty and CST are to operate at a uniform rate, this mathematical feat was achieved by the parties notwithstanding different quoted basic prices by working backwards to reach identical quotes towards total unit price by using different CST rates. Additionally, the basic pricing did not have any relation to the cost data.

Also, it seems that the bidders never made any attempt to rectify the mistakes of their bids. Two of the three bidders tweaked their bids in such fashion that only one valid bidder remained in the game. In fact, one of the common strategy for cartels is that Complementary/ cover bids are filed by some of the bidders in response to a tender inquiry to provide comfort to the procuring authorities that there are various bids in response to the tender inquiry to avoid any question being raised on the absence of competition in the tender process. Such entities do not participate in the bid process to actually compete with the successful bidder but submit "complementary" or "cover" or "courtesy" bids only so that the procurement process does not get stalled due to lack of enough competition. Complementary bidding is done when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the acceptance of a procurer, but

are merely designed to give the appearance of genuine competitive bidding. Complementary bids tend to defraud procuring entities by creating a camouflage of genuine competition to conceal the inflated bid prices. The present is such text-book case, where EL and FTRTIL submitted complementary bids in response to the tender inquiry under consideration as they were not, as a matter of fact, competing with SIL in the procurement process.

Audit's Role in similar circumstances

Examination of the above case will show that most of the findings made by CCI could also have been made by Audit. Scrutiny of tenders would have revealed most of the fact. The cost audit report could have been obtained by emphasizing its need with the Management (sometimes as part of tenders, the management deserved the right to call for cost audit reports). However, Audit must be cautious as to not draw the conclusion that cartel and bid-rigging have indeed happened. Audit may point out the possibility of such cartel/bid-rigging and perhaps recommend that the matter be reported to the CCI.

possibility of reviewing the specifications to facilitate wider and adequate competition.

4.16.2 **Withdrawal of offer by L₁**: In case the lowest tenderer withdraws his offer, re-tendering should be resorted to as per the instructions issued by the Central Vigilance Commission. While retendering RFP may not be issued to the vendor who had backed out and EMD, if any, of such a firm should be forfeited.

4.16.3 **Procurement of bare minimum quantity in case of re-tendering**: In cases where it is decided to resort to re-tendering due to unreasonableness of the quoted rates but the requirement is urgent/inescapable and re-tendering for the entire quantity is likely to delay the availability of the item(s) jeopardizing the essential operations, maintenance and safety, negotiation may be held with the L₁ bidder for supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through re-tender, following the normal tendering process.

4.17 Signing of Contract/Placing of Supply Order

4.17.1 **Signing of Contracts/Placing of Supply Orders**: Once the CNC recommendations are accepted by the CFA or approval accorded by the CFA in those cases in which no CNC is held, the contract should be signed or the supply order placed, as the case may be, immediately. It must be ensured that the contract/supply order is as per the approved terms and conditions and the rates are correctly shown as finally negotiated and accepted by the CFA. Contracts/supply orders should be vetted by the IFA, wherever required as per delegation of financial powers, prior to acceptance of the purchase proposal by the CFA. Copies of the contract/supply order should be sent to all concerned, including the IFA, the audit authority and the paying authority, and their acknowledgement obtained. The format for Contract and Supply Order is given in Appendix E and D respectively.

4.18 Cartel Formation / Pool Rates

4.18.1 **Cartel Formation/Pool Rates**: Sometimes a group of tenderers quote identical rates against a rate contract tender. Such Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies, MRTP Commission, National Small Industries Corporation etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Ministries/ Departments may also

examine the desirability of bringing such unhealthy practice to the notice of the concerned trade associations like FICCI, ASSOCHAM, CII, etc. requesting them, *inter alia*, to take suitable strong action against such firms. New firms should also be encouraged to get themselves registered for the subject goods/services to break the monopolistic attitude of the firms forming cartels. All requests for making reference to outside agencies, such as Registrar of Companies or trade associations, are to be made to the Ministry of Defence.

4.19 Procedure to be Followed for Procurement of Stores Involving Validation/Testing

4.19.1 **Circumstances in Which the Procedure is to be Followed:** Due to constant changes in technology, various weapons, equipments, ammunition, etc., which are already in service, need to be replaced by newer variants or upgraded/refurbished/re-equipped/modified/overhauled to incorporate advancements in technology. This may necessitate validation trials/testing of upgraded/refurbished/re-equipped/modified equipment, if considered necessary by the Service Headquarters concerned. The procedure set out in this paragraph would be applicable to cases processed at the level of the Ministry of Defence/Service Headquarters only and should be suitably indicated while seeking AON. Such cases will not be treated as new introduction into Service.

4.19.2 **Categories of Cases:** The cases to be processed under the provisions of this paragraph would generally fall into the following category:

a) Procurement of upgraded new versions of equipment, ammunition, vehicles, etc., which are classified as stores that can be procured from the revenue head, provided these conform to the existing laid down QRs and meet the prescribed performance parameters or certain enhanced parameters which have been incorporated as an amendment to the existing QRs.

b) Upgradation, refurbishment, re-equipment, modification, Technical Life Extension, Overhaul, etc. of weapon platforms/systems/aggregates which can be carried out under the provisions of this Manual and as per the existing orders. The upgradation, refurbishment, re-equipment, modification, overhaul, etc. may be carried out at OEM's premises abroad or in India, or partially in India and partially at OEM's premises abroad, or even at a venue such as a Repair Overhaul Plant (ROH) where the requisite facilities are available, which may neither be in India nor at the OEM's premises, provided it is certified by the OEM as having the technical capacity/capability.

4.19.3 **Procedure to be Followed for Procurement of Stores:** For procurement of items mentioned in paragraph 4.19.2 (a) above, the Service

Manual for procurement of Goods - 2022

and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts throughout the year.

8.1.8 Deleted

8.1.9 Special Conditions applicable for Rate Contract- Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:

- i) ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl is mentioned without any commitment.
- iii) The purchaser reserves the right to conclude one or more than one rate contract for the same item.
- iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.
- v) The purchaser has the option to renegotiate the price with the rate contract holders.
- vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
- vii) The purchaser and the authorized users of the rate contract are entitled to place online supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.
- viii) The rate contract will be guided by "Fall Clause" (as described later in this chapter).

8.1.10 Parallel Rate Contracts: Since, the rate contracts concluded are to take care of the demands of various Departments and Organizations, PSUs, Autonomous Organizations etc. spread all over the country, generally a single supplier does not have enough capacity to cater to the entire demand of an item. Therefore, the rate contracts are concluded with different suppliers for the same item. Such rate contracts are known as Parallel Rate Contracts.

8.1.11 Conclusion of Rate Contracts including Parallel Rate Contracts- Techniques for conclusion of rate contract is basically identical to that of ad hoc contract (as discussed in Chapter 7 of the Manual). Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms & conditions as applicable for rate contracts. In the first instance, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. Efforts should be made to conclude parallel rate contracts with suppliers located in different parts of the country. For the sake of transparency and to avoid any criticism, all such parallel rate contracts are to be issued simultaneously.

8.1.12 Deleted

8.1.13 Cartel Formation/ Pool Rates/Bid rigging/Collusive bidding etc. Quoting of pool rates/Cartel formation, bid rigging/collusive bidding is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, on case to case basis, as decided by the competent authority. Ministries/Departments may also bring such unhealthy practice to the notice of the

concerned trade associations like FICCI, ASSOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong actions against such firms. The Ministries/Departments may also encourage new firms to get themselves registered to break the monopolistic attitude of the firms giving pool rate/ forming cartel. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders of the Purchaser.

8.1.14 Fall Clause: Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (seven) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by concerned purchase organization etc.

The provisions of fall clause will however not apply to the following:

- i) Export/Deemed Export by the supplier;
- ii) Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
- iii) Sale of goods such as drugs, which have expiry date;
- iv) Sale of goods or services at lower price on or after the date of completion of sale/placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.

8.1.15 Performance Security: Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, Department shall consider obtaining Performance Security @ 5% (five percent) of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

8.1.16 Renewal of Rate Contracts: It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out.