



Suspicious of bid rigging – Report to the ComCo

This fact sheet is intended for federal, cantonal or communal purchasers. It includes important information on the new duty to report bid rigging.

Instruments for procurement agencies to combat bid rigging

If suppliers agree with each other on the price they are to offer and whom they wish to be awarded a procurement contract, they are entering into a *bidding agreement*, which is *unlawful* under competition law (bid rigging). Bid rigging increases prices by an average of 45%, makes companies inefficient, and stifles innovation. It therefore damages the economy and the public sector and means that people have to pay more in taxes. This is why the legislation on public procurement (Public Procurement Act, PPA) and the Intercantonal Agreement on Public Procurement (IAPP), revised in 2020, introduce measures against bid rigging. Public authorities can for example suspend the bidding procedure if there are sufficient indications that suppliers have entered into an unlawful agreement to restrict competition (Art. 43 para. 1 let. e PPA or IAPP).

Under Article 45 paragraph 2 of the PPA and the IAPP, public authorities or authorities with statutory responsibility must report any “suspicion of unlawful agreements affecting competition” (bid rigging) to the Competition Commission (ComCo). Federal, cantonal or communal procurement agencies, therefore **now** have a **duty to report** if there are sufficient indications of bid rigging.

What is the purpose of the duty to report?

Reports to ComCo of suspicious conduct increase the risk for companies that bid rigging agreements will be discovered and prosecuted. Reports of suspicious conduct therefore help to prevent bid rigging. Furthermore, they allow ComCo to uncover and take action against these agreements.

What are suspicious signs that suggest bid rigging is taking place?

A suspicion of bid rigging, that suppliers are in some way agreeing on their bids, that “something is not quite right”, can arise for a variety of reasons. Examples include companies offering the same or very similar prices for several individual items; bids that are substantially higher than expected or higher than for comparable projects in the past; bids that include inconsistencies (e.g. arithmetical errors); attempts by suppliers to obtain information on other bidders; the same suppliers always participating in the same tendering processes, but the contract always going to a different supplier. For more examples, see the *ComCo checklist “Submissionsabreden bekämpfen”* (only available in German, French, Italian).

Not all of these examples are clear evidence of a bid rigging agreement, and not all of these examples are in themselves sufficient to justify taking action under the law on public procurement. *The duty to report to ComCo applies if there are sufficient indications of bid rigging. It applies irrespective of whether procurement law measures are being taken or not.* Even if the indications may not be sufficient, i.e. if your suspicions are not especially strong, we recommend that you should report the matter to ComCo, so that any possible bid rigging can be

detected. We also recommend that you should discuss the situation with other public buyers at your own or another procurement agency. You can also call ComCo at any time for an informal discussion.

When should a suspicion be reported?

The earlier ComCo receives a report of suspicious conduct, the more the procurement agency and ComCo can do to prevent bid rigging. In most cases, ComCo can quickly provide the procurement agency with an initial assessment of the indications of bid rigging.

The procurement agency must not wait until it takes a measure under procurement law before reporting its suspicions to ComCo. Procurement and cartel proceedings are not linked and are conducted independently of each other. A report to ComCo will not stop the procurement procedure and has no influence on measures under procurement law. The procurement agency decides what form the procurement procedure takes.

What information must be reported to ComCo?

Any documents and other factors that substantiate the suspicion will help ComCo to assess the situation. If you prepare the information that you have so that it is as clear as possible, and if you provide a description of the procurement market concerned, this will make it easier for ComCo to assess the situation and provide feedback. But even information that has not been concisely prepared and documented can help. ComCo does not expect an expert competition law opinion.

The following documents are normally helpful:

1. Records made of the opening of bids – if these are not available, a summary with the names of the bidders and details of their bids (suspicious and unsuspecting bids).
2. Internal matters taken into consideration and documents from the procurement agency that indicate why the suspicion arose (e.g. checklists).
3. If available and potentially helpful to the assessment: differences from previous similar procurements (matters taken into consideration and documents).
4. Bids, insofar as they contain indications that there is possible bid rigging (for example very similar prices from different companies).
5. Invitations to tender from the procurement agency.

Who can report a suspicion to ComCo?

The procurement agency, the competent authority, and any body or person responsible for procurements can report suspicious conduct to ComCo. In our experience, it is helpful for communal, cantonal and indeed federal procurement agencies if they have one place in-house where they collect and discuss indications of bid rigging.

In what form and to whom should the suspicion be reported?

Sending the information online allows reports of suspicious conduct to be processed as quickly as possible (submissionsabreden@weko.admin.ch). Reports of suspicious conduct can also be sent by post to the ComCo Secretariat, Hallwylstrasse 4, 3003 Bern. You can also call the staff of the Construction Division in the ComCo Secretariat to discuss suspicions and any other questions you may have: Tel. 058 462 20 40.