

Competition Law and Public Sector Tenders: Bid Rigging Prosecutions

The full weight of competition law is being brought to bear on public sector tendering with potentially dramatic results; this follows the institution of criminal prosecutions for alleged bid rigging in relation to two public contracts in the waste collection and transport sectors.

Bid rigging occurs when two or more firms agree not to bid against one another for a tender or contract, or agree on their individual bids, or agree to allocate specific customers or types of customers or geographic areas to one another, such that competitors will bid or compete only on contracts offered by a certain classes of potential customers which are allocated to them.

Collusive tendering in public sector procurement is seen by the Competition Authority "*to be particularly harmful to society as it diverts funds that could be used to provide other worthwhile services to the public*" (Competition Authority Annual Report, 2008). Not surprisingly, the Authority's enforcement efforts have focused on bid rigging, in addition to its ongoing advocacy role (including its participation in the preparation of a draft OECD report on "Bid-rigging and Government Procurement").

In November 2008, following on from an Authority investigation, the Director of Public Prosecution (DPP) charged eight individuals on indictment in connection with alleged bid rigging offences contrary to Irish competition law. The accused are charged with entering into illegal agreements in respect of a tender competition for the provision of domestic waste collection services in County Mayo. Six defendants were sent forward to the Central Criminal Court. The trial of these cases by the Central Criminal Court has been set for June 2009.

Summary proceedings were initially commenced by the Competition Authority in October 2008 – only the DPP is empowered to bring proceedings on indictment - in Athenry District Court against three parties in connection with alleged bid rigging of a contract for hedge-cutting and vegetation clearance services put out to tender by Irish Rail. Jurisdiction was refused by the District Court on the basis that the case was too serious to be tried summarily, and so the case has been returned for trial to the Central Criminal Court.

If successfully prosecuted, each of the corporate defendants in these cases could face a fine of up to €4 million, or 10% of its annual turnover (whichever is the greater), and individual defendants could face similar fines, or up to five years' imprisonment, or both

O'Flynn Exhams has significant experience of advising clients in relation to competition law investigations across a range of sectors. For further information on how O'Flynn Exhams can assist you, please contact our competition law partner: [John P Gaffney](#)