

Construction firms fined for illegal bid-rigging

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The OFT has imposed fines totalling £129.5 million on 103 construction firms in England which it has found had colluded with competitors on building contracts.

The decision follows an OFT Statement of Objections in April 2008 after one of its largest Competition Act investigations.

The OFT has concluded that the firms engaged in illegal anti-competitive bid-rigging activities on 199 tenders from 2000 to 2006, mostly in the form of 'cover pricing'.

Cover pricing is where one or more bidders in a tender process obtains an artificially high price from a competitor. Such cover bids are priced so as not to win the contract but are submitted as genuine bids, which gives a misleading impression to clients as to the real extent of competition. This distorts the tender process and makes it less likely that other potentially cheaper firms are invited to tender.

In 11 tendering rounds, the lowest bidder faced no genuine competition because all other bids were cover bids, leading to an even greater risk that the client may have unknowingly paid a higher price.

The OFT also found six instances where successful bidders had paid an agreed sum of money to the unsuccessful bidder (known as a 'compensation payment'). These payments of between £2,500 and £60,000 were facilitated by the raising of false invoices.

The infringements affected building projects across England worth in excess of £200 million including schools, universities hospitals, and numerous private projects from the construction of apartment blocks to housing refurbishments.

Eighty-six out of the 103 firms received reductions in their penalties because they admitted their involvement in cover pricing prior to today's decision.

The OFT has also informed nine companies originally listed in its Statement of Objections that it will not pursue allegations of bid-rigging against them as it considers it has insufficient evidence to proceed to an infringement finding.

Related guidance issued today by the OFT in conjunction with the Office of Government Commerce cautions procurers against excluding the infringing firms from future tenders, as the practice of cover pricing was widespread in the construction industry and those that have already faced investigation can now be expected to be particularly aware of the competition rules.

Simon Williams, the OFT's Senior Director for this case, said:

'Our investigation has uncovered significant infringements of competition law on nearly 200 projects across England. Bidding processes designed to ensure clients and in many cases taxpayers receive the best possible choice and price were distorted, creating a real risk of increased prices. This decision sends a strong message that anti-competitive and illegal practices, including cover pricing, must cease. The OFT welcomes initiatives by the leadership of the construction industry to add weight to that message through a clear compliance code which we hope will help to embed more fully a culture of competition within the construction sector.'