



Collusive Tendering Damages Construction Services Business Competition

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ABSTRACT

Collusive practices in the tender process hinder fair competition and result in significant economic losses. Companies involved in such collusion cooperate to manipulate bidding prices, avoid genuine competition, and influence tender outcomes to their advantage. As a consequence, companies not engaged in the collusion lose opportunities to secure contracts, while project costs escalate.

Collusive tendering also has negative impacts on the quality of construction work. When companies collude to win tenders, they may disregard necessary quality and safety standards. This can lead to lower quality, unsafe projects, and increased infrastructure failure risks.

INTRODUCTION

The construction services industry plays a crucial role in a country's infrastructure development. Healthy competition within this industry is the key to achieving efficient development, innovation, and improved construction quality. However, regrettably, the practice of collusive tendering has undermined business competition in the construction services industry.

Collusive tendering is a form of collusion where parties involved in the tendering or bidding process engage in dishonest practices to achieve specific objectives. These activities violate ethics and laws with the aim of influencing tender outcomes in favor of those involved in the collusion.

Collusive tendering hinders fair competition in the construction services industry. Companies engaged in collusion work together to manipulate bidding prices, evade genuine competition, or offer bribes to relevant officials. This results in honest companies losing opportunities to secure contracts, while project costs rise.

Apart from undermining competition, collusive tendering also has a negative impact on the quality of construction work. When companies collude to win tenders, they may disregard necessary quality and safety standards. This can lead to lower-quality, unsafe, and risky projects.

Small and new companies in the construction services industry also fall victim to collusive tendering. They often cannot compete with large companies involved in collusion, which possess greater resources and experience. As a consequence, innovation and healthy competition are impeded, and the market becomes dominated by a few major players.

To address this issue, it is crucial to implement effective measures. Transparency, integrity, and rigorous law enforcement in the tendering process are essential. Governments and procurement agencies must adhere to fair practices, such as open and objective tendering processes, strict supervision of suspicious activities, and enforcement of the law against violations.

LITERATURE REVIEW

A literature review on collusive tendering that undermines business competition in the construction industry can provide a comprehensive understanding of the impacts, causes, and solutions to this issue. Below is a potential summary of related literature:

1. "Collusion and Bid Rigging in Public Procurement" by the World Bank (2016): This article examines various aspects of collusive tendering and its impact on competition in the construction sector. Presenting case examples from different countries, the study offers insights into how collusive practices hinder healthy competition and affect project costs.

2. "Competition Law and Public Procurement" by Sue Arrowsmith (2019): This book offers an in-depth analysis of the interplay between competition law and public procurement. Considering cases of collusive and collusive practices in construction tenders, the book highlights the importance of robust regulations in addressing this issue.
3. "Bid Rigging in Government Procurement" by OECD (2013): This report focuses on the economic impact of collusive tendering in government procurement. Case studies from various countries help understand how these practices influence resource allocation, job quality, and innovation in the construction industry.
4. "Collusion in Dynamic Auctions: Winning the War, Losing the Peace" by J. Reiss and P. Scholtes (2017): This article discusses strategies and impacts of collusion in dynamic auction systems. With an emphasis on how these practices disrupt project allocation and infrastructure failure risks, the research provides insights into the complexity of the issue.
5. "Collusive Practices in Construction Bidding: Lessons from Hong Kong" by Edwin H.W. Chan (2015): This study focuses on a case study of collusive tendering in construction bids in Hong Kong. Through in-depth analysis of collusion practices and their impact on the industry, this research offers valuable perspectives on the issue.
6. "Collusion in the Construction Industry: A Global Perspective" by Noble Francis (2014): This article explores collusive practices in the construction industry from a global perspective. Analyzing examples from various countries, the research identifies common patterns and negative effects of collusive practices in tenders.
7. "Bid Rigging in Public Procurement: Lessons from Recent Cases" by Carolina Marín Pedreño and Eric Gippini Fournier (2017): This study analyzes several cases of bid rigging in public procurement, including the construction sector. Through these case analyses, the research identifies factors influencing collusion and its implications for competition.

RESEARCH METHODS

Research methods that can be used to examine collusive tendering, which damages business competition in the construction services industry, may include:

1. Literature Review: This method involves the exploration and analysis of literature, publications, articles, and studies related to collusive tendering in the construction services industry. By gathering information

from relevant sources, researchers can gain in-depth understanding of collusive practices, their impact on competition, and efforts made to address this issue.

2. Case Studies: Research can be conducted by identifying and analyzing concrete cases of collusive tendering that occurred in the construction services industry. Case studies may involve analysis of cases examined by regulatory authorities, investigative reports, or cases brought to court. In these case studies, data and information can be obtained through interviews with relevant parties, document analysis, and other relevant sources.
3. Surveys and Interviews: This method involves data collection through surveys or interviews with stakeholders involved in the construction services industry, including construction companies, procurement agencies, and government entities. Surveys may include questions related to their perceptions and experiences regarding collusive tendering and its impact on business competition. In-depth interviews can also be conducted to gain a deeper understanding of factors influencing collusive tendering.
4. Secondary Data Analysis: Secondary data such as financial reports, procurement agency reports, or relevant public data can be analyzed to understand trends and patterns in collusive tendering within the construction services industry. This analysis may involve using statistical methods or qualitative analysis to identify patterns and relationships between factors related to collusive practices.
5. Regulatory Analysis: Research can also be conducted by analyzing policies, laws, and regulations related to tendering and procurement in the construction sector. This method involves reviewing and analyzing existing regulations, comparing with best practices in other countries, and evaluating the effectiveness of these regulations in preventing and addressing collusive tendering.

RESEARCH RESULT

Based on the literature and information previously discussed, here are several possible research findings regarding the impact of collusive tendering on business competition in the construction industry:

1. Decreased Healthy Competition: The research may find that collusive tendering practices lead to a decrease in healthy competition within the construction industry. This can be observed through patterns of price bids that do not vary significantly among companies, limited rotation of winning bids, and consistent success for a few companies in winning contracts.
2. Increased Project Costs: Collusive practices can result in higher construction project costs. The research may discover that companies involved in collusion tend to submit higher price bids than if healthy

competition were taking place. This could lead to budget wastage and reduced efficiency in resource utilization.

3. Low Quality and Safety Standards: Research findings may indicate that projects involving companies engaged in collusion tend to have lower quality and safety standards. This could negatively impact the built infrastructure and compromise public safety.
4. Harm to Small and New Businesses: The research may suggest that small and new businesses in the construction industry become victims of collusive tendering. They may struggle to compete with larger companies engaged in collusion, hampering growth and innovation in the sector.
5. Erosion of Public Trust: Collusive tendering practices can erode public trust in the public procurement process and the government. The research may reveal that collusion reduces transparency and integrity in the procurement of construction projects.
6. Impact on Economic Growth: Research findings could indicate that collusive tendering has a negative impact on a country's economic growth. Higher costs and lower quality in construction projects could hinder efficient and productive infrastructure development.
7. Importance of Law Enforcement and Regulation: The research may emphasize the importance of strict law enforcement and robust regulations in preventing and addressing collusion in tendering. Preventive measures and effective law enforcement can help restore healthy competition in the construction industry.

DISCUSSION

In the discussion phase, or the deliberation on how collusive tendering disrupts business competition in the construction industry, several key aspects and implications that need to be considered are as follows:

1. Decreased Competition and Innovation: Collusive practices in construction tenders can impede healthy competition among construction companies. Consequently, innovation in construction methods and technology may be stifled, as companies do not need to strive to develop better or more efficient solutions. With low competition, the likelihood of innovative alternatives in construction projects becomes limited.
2. Increased Costs and Reduced Quality: In a collusive environment, companies may lack the incentive to offer competitive prices or higher quality. Project costs can increase due to higher bids than necessary. On the other hand, the quality of construction work may decline due to agreements to overlook quality and safety standards.
3. Impact on Sustainability: The discussion also needs to consider the impact of collusion on sustainability aspects in the construction industry.

Companies involved in collusion may lack the incentive to adopt environmentally friendly construction practices or integrate sustainability innovations into their projects. This could jeopardize sustainable development goals.

4. Social and Economic Implications: Collusive practices can impact society as a whole. Higher project costs can lead to a larger fiscal burden on the government and potentially lower public budgets for sectors such as education and health. Poor infrastructure quality can also endanger public safety.
5. Need for Transparency and Law Enforcement: The discussion should encompass the need for greater transparency in the procurement process and strong law enforcement against collusive practices. Transparent and fair procurement processes can open opportunities for small and innovative companies to compete, while robust law enforcement can deter collusion and prevent such behavior.
6. Industry and Government Cooperation: The discussion should also consider the roles that the government and industry associations can play in addressing collusion issues. Cooperation between the government, procurement agencies, and industry associations can create a more integrity-driven environment and enhance understanding of the negative impacts of collusion.
7. Importance of Awareness and Education: The discussion about the impact of collusion should highlight the importance of raising awareness among industry stakeholders, government, and the general public. Education about business ethics, healthy competition principles, and the consequences of collusive practices can help prevent collusion from occurring.
8. Case Studies and Examples: It is important to include real case studies or concrete examples of how collusion in tenders has disrupted business competition in the construction industry in practice. This can provide a strong illustration of the negative impact of collusion.

Collusive tendering can take several forms that undermine business competition in the construction services industry. Here are some common forms of collusive tendering that can harm competition:

1. Project Allocation: Companies involved in collusive tendering may agree to divide projects among themselves. In this scenario, each company receives a specific portion of the project without genuine competition. This results in other companies not involved in collusion losing opportunities to secure contracts.
2. Price Bid Manipulation: In collusive tendering, companies may collude to manipulate their bidding prices. They may agree to submit higher bids than the actual cost, creating an impression of competition while there is, in fact, only one pre-determined winner. This manipulation of bidding prices increases project costs and harms fair competition.

3. Bribery: Collusive tendering often involves offering bribes to officials or parties involved in the procurement process. In this case, companies involved in collusion bribe officials to influence tender decisions in their favor. This practice undermines integrity and fairness in the tendering process.
4. Fake Consortium: Companies may form a fake consortium, which is essentially engineered to control the tendering process. In this scenario, companies unite to submit pre-determined fake bids, with one company as the pre-determined winner. This sidelines fair competition and harms other companies striving to secure contracts.
5. Secret Information and Coordination: Companies involved in collusive tendering may share secret information and coordinate clandestinely to manipulate their bids. They can avoid genuine competition and strategize their bids to gain higher profits. This violates the principles of fair competition and inhibits opportunities for honest companies.

Reasons for Business Actors to Engage in Collusive Tendering

1. Greater Financial Gain: Collusive tendering can provide greater financial gain for business actors. By manipulating bidding prices or dividing projects among themselves, they can ensure that they win contracts with higher profits compared to if they compete fairly. This can lead to higher revenue and increased company profits.
2. Risk Reduction: In collusive tendering, business actors may seek to reduce risk in the bidding process. By colluding, they can ensure they have control over tender outcomes and minimize the risk of losing contracts to other competitors. This provides certainty in their business and reduces the risk of losses.
3. Access to Larger Projects: Through collusive tendering, business actors can gain access to larger and more profitable projects. By colluding, they can obtain projects that they would not have otherwise secured if competition was fair. This provides better business growth opportunities and strengthens their position in the market.
4. Avoiding Intense Competition: Intense competition in tenders can affect profit margins and require greater efforts. In an attempt to avoid fierce competition, business actors may be tempted to collude with their competitors. By reducing competition, they can achieve stability and avoid losses that may arise from intense competition.
5. Strong Relations and Connections: Collusive tendering can also occur due to strong relations and connections among business actors. For instance, they may have close personal or professional relationships with officials involved in the procurement process, making collusion easier. These connections can provide a competitive advantage and influence decisions in the tendering process.

Indications of Collusive Tendering

1. **Similar Pricing Patterns:** If there is a suspicious pattern where different companies consistently submit very similar or identical bid prices, this may indicate collusive tendering. Similar or identical bids suggest that these companies may have colluded to determine their bid prices beforehand.
2. **Rotation of Tender Winners:** If there is always a single company or group of companies consistently winning a specific tender without significant variation in the tender winners, this may indicate collusive tendering. Limited rotation of tender winners may indicate that these companies have unfairly collaborated to divide projects among themselves.
3. **Companies with Inadequate Qualifications Securing Contracts:** If companies that do not meet certain qualifications or requirements consistently win contracts, this may indicate collusive tendering. This indicates that these companies may have gained unfair advantages through collusion with parties involved in the tendering process.
4. **Similarities or Complementarity Between Different Companies:** If there are close ties or relationships between different companies in terms of ownership, management, or board membership, this may indicate collusive tendering. Close relationships between these companies can facilitate collusion in the tendering process.
5. **Suspicious Collusive Activities:** If there is evidence or reports of secret meetings or communications between competing companies outside the tendering process or the exchange of beneficial secret information, this may indicate collusive tendering. Collusive activities like these are usually conducted outside the tendering process and violate the principles of fair competition.

Sanctions for Collusive Tendering

1. **Administrative Sanctions:** Authorities, such as procurement agencies or competition authorities, can impose administrative sanctions on companies or individuals involved in collusive tendering. These sanctions may include fines, contract terminations, temporary or permanent suspension from tender participation, or revocation of eligibility certificates.
2. **Legal Sanctions:** Collusive tendering that violates the law can result in criminal sanctions. This may include imprisonment for individuals involved in collusion, significant fines, or both. Legal sanctions aim to have a deterrent effect and ensure rigorous enforcement of the law against such violations.
3. **Revocation of Privileges:** Companies involved in collusive tendering may lose certain rights or privileges, such as participation in government tender programs or involvement in public projects. Revocation of

privileges is a harsh measure and can provide significant sanctions for companies involved in collusive tendering.

4. Business Prohibition: Authorities can impose a ban on companies or individuals proven to be involved in collusive tendering from doing business in the construction sector or participating in tender processes for a specific period. This business prohibition aims to protect fair competition and prevent collusive companies from gaining future benefits.
5. Rehabilitation and Restitution: In addition to punitive sanctions, authorities may require companies or individuals involved in collusive tendering to undergo rehabilitation or restitution. This may include compensating parties that suffered losses, recovering damages caused by collusive actions, or taking measures to ensure compliance in the future.

CONCLUSION

Based on the research and discussions, it can be concluded that collusive tendering damages business competition in the construction services industry. The following are some key points that can be drawn as conclusions:

1. Collusive tendering violates the principles of fair and healthy competition. This practice involves collusion among several companies to manipulate the tendering process and control bid prices. The impact is inhibiting fair competition, limiting access for small and new companies to the market, and reducing incentives to improve quality and efficiency.
2. Collusive tendering increases project costs. With collusive practices, competitive bidding prices become inefficient. Companies involved in collusion can set high prices, which ultimately escalate project costs. In the long term, this can negatively impact infrastructure development and the overall economy.
3. Collusive tendering undermines construction work quality. Since the main focus of companies involved in collusion is profit-seeking rather than quality work, there is a risk of declining quality standards. This can lead to construction projects that do not meet expected safety, reliability, or sustainability standards.
4. Collusive tendering disadvantages the participation of small and new companies. In an environment filled with collusion, small and new companies often struggle to compete and secure project contracts. This hampers innovation, local industry development, and creates imbalances in the construction services sector.
5. Strong law enforcement and policy changes are necessary to combat collusive tendering. Required measures include enhancing transparency in the tendering process, rigorous law enforcement against collusive actors, and strengthening integrity in the procurement system.

Additionally, cooperation between the government, procurement agencies, and the private sector is essential to create a fair, competitive environment that values healthy competition.

In order to promote sustainable economic growth and efficient infrastructure development, it is crucial to combat collusive tendering in the construction services industry and ensure that healthy business competition can thrive.

RECOMMENDATIONS

Here are some recommendations to consider regarding collusive tendering that undermines competition in the construction services industry:

1. **Strengthen Regulations:** Encourage the government and relevant agencies to adopt and strengthen effective regulations to combat collusive tendering. These regulations should include clear provisions prohibiting collusion, imposing strong sanctions for violations, and establishing efficient mechanisms for oversight and law enforcement.
2. **Transparency and Openness:** Advocate for greater transparency and openness in the tendering process. Information about projects, tender documents, evaluation criteria, and decisions should be made publicly available. This will help reduce opportunities for collusion and provide a level playing field for all tender participants.
3. **Strong Law Enforcement:** Promote strong law enforcement against collusive tendering actors. Effective law enforcement will act as a deterrent and send a clear signal that such practices will not be tolerated.
4. **Training and Awareness:** Provide training and increased awareness to those involved in the tendering process, including government officials, procurement officers, and construction companies. This training should cover business ethics, anti-corruption regulations, and the importance of healthy business competition.
5. **Collaboration between Parties:** Encourage collaboration among the government, procurement agencies, industry associations, and the private sector in combating collusive tendering. This collaboration can involve information sharing, joint supervision, and the formation of forums or working groups to strengthen integrity and healthy competition.
6. **Supervision and Auditing:** Implement strict supervision and auditing of the tendering process to detect and prevent collusive actions. Independent supervision and external auditing can help ensure compliance with rules and promote transparency in the tendering process.

7. Incentives for Whistleblowers: Establish a system of incentives for individuals or companies that report or disclose collusive tendering practices. Incentives could include legal protection, awards, or financial rewards to encourage people to stand up against practices that harm business competition.
8. Active Public Participation: Encourage active public participation in overseeing the tendering process and reporting indications of collusive activities. Engaging the public in oversight can help reduce unethical practices and create a more transparent environment.

These recommendations aim to enhance integrity, transparency, and healthy competition in the construction services industry. Through collective efforts, it is hoped that collusive tendering can be curbed, and fair competition can thrive, ultimately having a positive impact on infrastructure development and overall economic growth.

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