

No Bidding Around: The Competition Bureau Targets Bid-Riggers in 2017

January 9, 2017

Over the past few years, we have written and presented extensively about how Canada's Competition Bureau has cracked down on price-fixing and [bid-rigging](#) in [Canada's construction](#) industry. In December of 2016, the Bureau announced that as a result of several recent discoveries of illegal bidding practices, it will be intensifying its efforts to identify and prevent bid-rigging, with a particular focus on provincial and municipal infrastructure projects.

Public contracts constitute the majority of infrastructure projects in the country. With an expected increase in federal spending for such projects in 2017, the amount of bidding activity will also certainly increase. While that represents a great development for the construction industry, it also raises the spectre of possible illegal bidding activity.

Bid-rigging, at its simplest, is an agreement or arrangement between two or more parties in which one or more of them agrees not to submit a response to a call for tenders, or agrees to withdraw a bid in favour of a would-be competitor. Other examples may include: artificially-priced bids, 'cover' bids, and bid-cycling. In essence, bid-rigging might be said to involve any practices beyond simply individually submitting a bid to perform the work.

The possible penalties for bid-rigging are severe. A conviction by the Bureau could result in a court sentencing the guilty party to up to 14 years and/or to a fine of an unlimited amount.

If convicted of bid-rigging, a company could be further penalized by the Government of Canada's *Ineligibility and Suspension Policy*. The Policy provides for an automatic 10-year ban on awards of federal contracts or real property agreements with the government for a party convicted of a s.47 offense under the *Competition Act*.

The Bureau's 'crackdown' and related education courses have been running for years now. However, bid-rigging activities persist. An ongoing investigation into a 2008 infrastructure project in Quebec has, to-date, resulted in 83 criminal charges being laid against 13 individuals and 11 companies. So far, those charges have resulted in the following outcomes:

- In January of 2016, one of the companies involved pleaded guilty to bid-rigging and was ordered to pay a fine of \$35,000. The same company had already paid a \$149,000 settlement to the municipality that issued the tender as part of an out-of-court settlement.
- In October of 2016, another of the companies pleaded guilty to bid-rigging and was ordered to pay a \$100,000 fine for its role in the conspiracy. The company signed an alleged unlawful agreement pursuant to which it accepted payment of \$25,000 in exchange for an agreement not to submit a bid for the project.

The trial of the remaining defendants is expected to proceed in spring of 2017.

The Bureau's increased efforts will include education programs for municipalities, as well as the introduction of economic algorithms

which will be used to screen procurement data and identify problem bids. The Bureau believes that both efforts will assist governments at all levels to more easily identify and prevent bid-rigging activity.

Companies that believe they may have engaged in bid-rigging activity are well-advised to seek legal advice about the Bureau's immunity and leniency programs. [Please click](#) here for an explanation of those programs.

A proactive approach is even better: developing a company-wide *Competition Act* compliance program may help reduce the risk of an inadvertent violation of the Act, may assist a company in its defence to bid-rigging charges, and could reduce penalties to senior management charged with bid-rigging for the acts of their employees. Please [click here](#) for more details about compliance programs.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations, the reader should seek professional advice.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035