



सत्यमेव जयते

**COMPETITION  
COMMISSION OF  
INDIA**  
**TOWARDS COMPETITIVE  
TENDERS**

**DIAGNOSTIC  
TOOL FOR  
PROCUREMENT  
OFFICERS**

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## FOREWORD

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It gives me immense pleasure to introduce “*CCI’s Diagnostic Tool – Towards Competitive Tenders*”. This has been developed by the Competition Commission of India (CCI/Commission) to help Departments / Organizations in reviewing their tender processes with regard to competitiveness and to take appropriate remedial actions.

Public procurement has an overarching economic and social significance in the overall context of good governance. It relates directly to the delivery of goods and services in various sectors such as health, education, defence, transport and infrastructure, etc. and affects the efficiency of the Government. Collusive tendering in the procurement can impose heavy cost on the public exchequer by increasing the cost of procurement significantly. On the other hand, competition in the procurement would reduce costs, incentivize innovation and promote allocative, productive and dynamic efficiencies.

The “*CCI’s Diagnostic Tool - Towards Competitive Tenders*” is a practical guide for procurement officials who can use it for review of their public procurement system. It has been prepared drawing from national and international policy documents as well as practical experience in cases dealt with by the Commission. We sincerely hope that the Diagnostic Tool will be useful in promoting and bringing about pro-competitive practices in the procurement and alert the organisations to possibilities of cartelisation and bid-rigging, if any.

The Competition Commission of India has been proactively promoting competition in all aspects of economic activities. Under the Competition Act, 2002, cartelisation and bid-rigging are prohibited and can invite heavy financial penalties. Departments and public organizations can make reference to the Commission in case they detect any suspicious behavior on this account.

**Devender K. Sikri**  
**Chairperson**

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## INTRODUCTION

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### About CCI

CCI is an autonomous statutory body that has been established under the Competition Act, 2002 (the Act) to prevent practices having adverse effect on competition, to promote and sustain competition in Indian markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. The Act prohibits anti-competitive behaviour, regulates combinations and provides mandate to the Commission to undertake advocacy of competition issues having an adverse effect on markets. Section 3 prohibits anti-competitive agreements. Section 4 prohibits abuse of dominance by enterprises or group of enterprises as the case maybe. Section 5 and 6 regulates combinations (mergers and acquisitions). Section 49 provides for Commission to take suitable measures for promotion of competition advocacy, creating awareness and imparting training on competition issues.

### Enforcement Role of CCI

The CCI has the power to impose penalties to deter enterprises in case of violation of the provisions of the Act. CCI is empowered under Section 27 of the Act to impose on each person or enterprises which are parties to anticompetitive practices, a penalty of up to 10% of the average turnover for the last three preceding financial years or three times of its profits for each year of continuance of such agreement in case of cartels. The penalty can therefore be severe, and result in heavy financial and other cost on the erring party.

### Advocacy Role of CCI

CCI aims to promote a culture of competition compliance and endeavours to achieve it through various seminars, workshops, etc. with central and state government, business chambers, consumer associations, academic institutions, professional bodies etc. CCI plays an important role in promoting competition law and policy. Government organisations are a key stakeholder of the competition ecosystem especially in the area of public procurement where competition leads to innovation, reduction in costs, efficiencies and value for money.

### CCI Advocacy in Public Procurement

Worldwide public procurement accounts for approx. 15% of the GDP. However, in India this figure is around 30%, owing to continued involvement in sectors such as railways, defence, healthcare and telecommunication. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure has prepared Manual for Procurement of Goods (The Manual) which serves as a guide book for procurement. Recently, while revising the Manual in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability, the Ministry of Finance, Government of India, in 2017 has included relevant provisions of the Act and explained bid-rigging (para 7.5.8; Appendix 2, para 5.0). CCI also through its competition advocacy mandate raise awareness and build capacity of officers engaged in public procurement at central as well as at state level for fighting bid-rigging in public procurement.

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## INSTITUTIONAL FRAMEWORK

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The public procurement system in India operates through a wide spectrum of rules, regulations and guidelines. Below is a look at some of the salient features of the institutional framework.

### Ministry of Finance Manual for Procurement of Goods, 2017

The Ministry of Finance revised its Manual for Procurement of Goods in March 2017. In doing so, it laid emphasis on principles of transparency, fairness, competition, economy, efficiency and accountability. A few key features of the Manual are as follows:

- Emphasis on designing of tenders to ensure ‘widest possible competition’ of bidders for the tender.
- Adherence to a Code of Integrity for Public Procurement (CIPP) which provides that procuring authorities as well as bidders, suppliers, contractors and consultant should observe the highest standard of ethics.
- Usage of limited tender / local sourcing / direct purchasing should be encouraged in very limited circumstances.

#### **Manual for Procurement of Goods 2017** **7.5.8 Cartel Formation/Pool rates**

“It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/ control true competition in a tender leading to “Appreciable Adverse Effect on Competition” (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts, if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.”

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## General Financial Rules (GFR)/ Delegation of Financial Power Rules (DFPR)

The GFR lays down procedure and rules of public procurement:

- Details of quantity, quality and type.
- Offers fair and transparent and legal procedure
- Procuring authority should take a correct and logical decision.

## Regulators

Central Vigilance Commission (CVC) – Issues guidelines and instructions to curb corruption in public procurement.

Comptroller and Auditor General (CAG) – Monitors the deficiency and violations in the procedures and mechanisms of public procurement.

Competition Commission of India (CCI) - Regulates competition – prevents and punishes anti-competitive behaviour by enterprises in bidding.

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## WHAT IS A CARTEL?

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Definition of cartel under Section 2(c) of the Act:

“Cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services.

A cartel therefore exists when businesses agree to act together instead of competing against one another. This agreement is designed to drive up the profits of the cartel participants, while maintaining the illusion of competition. Cartels have been discovered working in a wide range of industries. When such agreements have the effect of eliminating or reducing competition for bids or adversely affect the process of bidding, it is termed as bid rigging or collusive bidding.

### Types of Bid Rigging

**Bid coordination:** The bidders collude to quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices.

**Cover bidding:** Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.

**Bid suppression:** Bid suppression means that a company does not submit a bid for final consideration in support of the leader.

**Bid rotation:** In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature

**Market allocation:** Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.

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## WHAT IS A DIAGNOSTIC TOOL?

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The “*CCI’s Diagnostic Tool – Towards Competitive Tenders*” has been designed by the Competition Commission of India (CCI) to enable the organizations to evaluate their procurement systems and facilitate them to make their procurement systems more competitive. The objective is to build capacity in the organizations on competition law and its advocacy amongst central & state governments, local bodies, municipalities, public sector units and statutory bodies.

The Diagnostic Tool consists of sets of questions along with the gap analysis, improvement plans and references to the past cases decided by CCI. It also describes a range of methods for detecting suspicious conduct, to deal with it internally and to also file a reference with the CCI.

### Objectives of the Diagnostic Tool

This tool shall:-

- Equip officers with the information to appreciate various dimensions of the procurement processes.
- Provide a standardized diagnostic method and implementation guide to improve the quality of tenders.
- Detect anti-competitive behaviour amongst the participants of the tenders.
- Promote best practices developed to design tenders and bring competitiveness along with transparency, confidentiality, objectivity and efficiency in the tender processes.
- Help in capacity building of the personnel actually engaged in the procurement processes and sensitize them about the advantages of competition in procurement.

### Why use the Diagnostic Tool?

- To enable a robust procurement system in government organizations.
- To design tenders that results in value for money.
- To detect anti-competitive practices at early stage.
- To refer cases of bid-rigging to the CCI.

### Who will be using the Diagnostic Tool?

The diagnostic questions are to help the procuring agencies such as central government, state governments, municipalities, public sector units (PSUs) and other statutory authorities. The diagnostic questions are divided in four stages. These stages are planning, selection, execution and monitoring. These diagnostic steps may be applied at each stage. The diagnostic tool shall be applied by the officials involved in planning & tender design, selection, monitoring i.e. the Tender Committee (TC) also called the Tender Purchase or Evaluation Committee (TPC / TEC). It may however be noted that the questions contained in the Diagnostic Tool are not given in any order of priority and do not carry equal weightage.

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# Diagnositics at PLANNING Stage

## STEP 1 – Data Collection

The collection of the data of previous tenders on the subject matter of procurement will give an overview of the past procurement by an organization and the value of purchases. It will facilitate assessment of public procurement systems at planning and tender designing stage in future.

Collect preliminary data of the past tenders issued on the subject matter of procurement during the last 3- 5 years. Data may also be collected, if available, for similar tenders issued in the past by any other unit of your organisation. If data is not available, then you may skip this step and proceed to Step 2. This data may be collected in the following format:

Number of past tenders on the subject matter of procurement:

Value of Tenders (Amount in INR):

<b>Tender 1</b>	<b>Tender 2</b>	<b>Tender 3</b>	<b>Tender 4 &amp; so on...</b>
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Nature of Tender - Work Contract / Consultancy Service/ Purchase of Goods

Type of Tender: Multi Stage/ Limited/ Turnkey/ Single Tender

## STEP 2

Apply the Diagnostic Questions to the selected tenders.

- 1. Market Information:** - The market analysis helps the procuring agency to get a clear picture of the market and facilitates appropriate designing of the tender. Information may be collected on the relevant parameters (such as characteristics of the product, number of suppliers, size of the market, prevailing prices, prices in neighboring areas, prices of substitutes etc.).

**(a) Whether market information on the subject of procurement was collected before inviting bids?**

YES     NO

<b>Risk</b>	<b>Likely Consequences</b>	<b>Action</b>
Not conducting market analysis on the subject of procurement	Poor tender design. This in turn could lead to a loss to the exchequer.	The procuring agency must endeavour to at least collect essential information on the prevailing prices, price of substitutes and information on past tenders for similar products to understand the market conditions that are conducive to cartelisation and bid rigging (see box on page 16).

2. **Directly awarding work:** - Direct award to suppliers on nomination basis should not be encouraged as it inhibits competition. Effective competition can be enhanced if sufficient number of credible bidders participate in the tendering process. It is also imperative to receive the requirement from the user department promptly in order to give procuring division sufficient time to design the tender and also give time to the participating firms to prepare and submit their bids. Delays in assessment of need may lead to shortcut procurement procedures that dilute transparency and prevent achievement of value for money. It may also lead to delays in delivery of goods. Paucity of time is often given as a reason for direct award of contract.

(a) **Whether you have directly awarded work to suppliers without following the process of tendering?**

YES     NO

Risk	Likely Consequences	Action
Directly awarding contract to supplier without bidding	<ul style="list-style-type: none"> <li>• May lead to delay in performance and cost overruns.</li> <li>• Further, awarding a contract in such fashion may also run afoul of the CVC guidelines on the same.</li> <li>• Credibility of the PSU affected.</li> </ul>	A tender process should be conducted to ensure propriety in the award process and for getting the best value for money. This has also been observed by the Hon’ble Supreme Court of India

The Hon’ble Supreme Court in *Nagar Nigam, Meerut v. Al Faheem Meat Exports Private Limited* [(2006) 13 SCC 382], stated that:

“...The law is, thus, cleared that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid, and there is total transparency. In our opinion this is an essential requirement in democracy, where people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence....”

3. **Single vendor/ very few vendors situation-** Sometimes, against advertised / limited tender cases, the procuring entity may not receive a sufficient number of bids and / or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. This may be due to the fact that i) The procurement was not satisfactorily advertised and sufficient time was not given for submission of bids; ii)

The qualification criteria were restrictive; and iii) Prices are unreasonable in comparison to market values. In all such cases :-

1. The procuring authority should ensure that specifications are developed to ensure value for money, level playing field and wide competition in procurement. The procurement agencies should spell out the specifications in a vendor neutral manner. (e.g. not specifying a brand of a product, or not specifying names of particular firms as examples in the tender etc.).
2. The procuring agency must follow the provisions given at Para 1.10 of the ‘Manual for Procurement of Goods 2017’ where the provisions of mandatory procurement of certain class of products from certain agencies (e.g. Micro Small & Medium Enterprises, Khadi & Village Industries Commission, Pharma CPSE, Domestically Manufacturers etc.). These are offered as positive discrimination to achieve social objectives such as the promotion of these industries. These may at times be restrictive / lead to single vendor situation.
3. The procuring agencies should not apply conditions that are restrictive and unreasonable that require NOC, (e.g. getting NOC from a manufacturer / getting certification from only one particular agency/ testing) etc.
4. The procuring agencies should not apply professional, technical and financial conditions or terms of reference that may be disproportionate to the need identified or made to tilt in favour one or a group of vendor(s) or contractor(s) to artificially restrict competition. Care must be taken to ensure that conditions such as size, composition or nature of firms, monetary guarantees do not become too restrictive to create obstacles to participate in the bids.

**(a) Whether past tenders on the subject matter of procurement has led to a single vendor / limited vendor situation?**

YES     NO

Risk	Likely Consequences	Action
Unclear/ Restrictive specification/ mandatory provision for procurement/ NOC conditions / Stringent financial and technical terms and conditions/ terms of reference stipulated	This leads to a situation where a few bidders may be able to compete and qualify for bidding. (see footnote 7 below)	<ul style="list-style-type: none"> <li>• Conduct high level review financial and technical conditions.</li> <li>• Review the manner of defining the specification of product/ services</li> </ul>

- 4. Combined packaging of tenders:-** The packaging of tenders helps in spreading the fixed costs of preparing a bid. Regular procurement opportunities and repetitive bidding increases the chances of collusion as it helps

members of a bid rigging agreement allocate contracts amongst themselves. Tenders should be carried out at irregular intervals, and for dissimilar amounts and quantities, making collusive agreements difficult to reach.

**(a) Whether procurements have been made by packaging of two or more tenders?**

YES     NO

<b>Risk</b>	<b>Likely Consequences</b>	<b>Action</b>
Not 'packaging' tenders wherever possible	<ul style="list-style-type: none"> <li>• Risk of collusion increases.</li> <li>• This is so because in a packaged tender, the winner takes all and there is accordingly, less scope for bid rigging</li> <li>• Increases cost of preparation of tender.</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct regular review the Procurement Plans of the organisations to promote packaging / slicing of the contracts to reduce predictability.</li> <li>• Wherever possible bids should be allowed on certain lots or objects within the contract, or on combination thereof rather than whole contract only, to make it attractive for small and medium sized enterprises.</li> </ul>

**5. Pre-qualification criteria:** - The clause for pre-qualification / registration is introduced to ensure a ready list of suppliers for faster procurement. This list must be updated continuously or at least once in a year to ensure that entry of new firms are not barred for a long period of time. There is no need to have pre-qualification process for regular procurement process. The technical evaluation can serve as pre-qualification. The information on the list of registered bidders should be made available on the Central procurement portal as it makes it easy to access information and promotes competition in the long run.

**(a) Whether any lists of the suppliers have been updated?**

YES     NO

<b>Risk</b>	<b>Likely Consequences</b>	<b>Action</b>
Having registration / pre-qualification for participating in tenders	<ul style="list-style-type: none"> <li>• Narrow supplier base</li> <li>• Entry restricted to new players</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a review of the list of registered / pre-qualified bidders.</li> <li>• Check whether new suppliers are inducted at regular interval and if not, reasons thereof. (See footnote 4 below)</li> </ul>

**6. Disclosures required to be made:** Disclaimers and disclosures regarding prior transaction creates awareness amongst the bidders about their duties and also helps in reducing the possibility of cartels as it encourages voluntary compliance. The disclosure of independent bids should include an undertaking that no consultation, contract, arrangement or understanding with any competitors directly or indirectly has occurred with regards to prices; methods, factors or formula used to calculate, intention to submit or not submit a bid; the submission of a bid that is non-conforming; the quality, quantity, specification of delivery particulars of products or services to which this call for bid relates; the terms of the bid etc.

**(a) Whether the following disclosures inserted in the tender document:**

**(i) Disclaimer that all suspected instances of collusion will be reported to the procuring authorities**

YES  NO

**(ii) Disclosure to inform all sub-contracting arrangements including those made after the contract with the competitors and notification to the procuring agencies if winning bidder assigns contract to a competitor.**

YES  NO

**(iii) Signing a warranty confirming that the bids have been developed independently from their competitors.**

YES  NO

**(iv) Disclosure of any prior conduct involving anti-competitive behaviour, in India or overseas.**

YES  NO

<b>Risk</b>	<b>Likely Consequences</b>	<b>Action</b>
Non insertion of requirement of disclaimers and disclosures in the tender's terms and conditions	May lead to a situation where the PSU is unaware of the collusion.	The tender document should be revised accordingly to include all such required disclosures and disclaimers. This will safeguard the procuring agencies in future litigations and also facilitate better implementation of the contracts.

## Case References

Commission has dealt with number of cases in which it found bidders in contravention of the Act while observing the following market conditions which are conducive of cartelization and bid rigging:

1. Small number of companies: A fewer number of companies is likely to incentivize them to collude as the chance to monitor the behaviour of all the players in a cartel is also easier. *In Re: Aluminium Phosphide Tablet Manufacturers*<sup>1</sup>, Commission noted that there are only four manufacturers of Aluminium Phosphide Tablets in India which are quoting identical prices for last eight years and sales were restricted only to the government agencies which made collusion not difficult.
2. Identical products or services with few substitutes: When the products are very similar and substitutes are fewer, then the higher the degree of certainty possessed by the bidder that the purchaser has fewer options to source from alternative mediums. This encourages them to reach agreement on a similar or identical price structure. *In re: suo-moto case against LPG cylinder manufacturer*<sup>2</sup>, Commission noted that bidding companies (LPG cylinder manufacturers) in instant case knew that their product is unique in design and specification as prescribed by the oil companies (procurers) and there is no substitute, giving them opportunity to collude.
3. No significant fluctuations in the demand for the product: In *M/S Bio-Med Private Limited*<sup>3</sup>, tender is floated every year during annual pilgrimage of Hajj for the purchase of meningitis vaccine which is required in the month of August/September to be administered upon the pilgrims and there are only three suppliers of the vaccine. This steady flow of the demand facilitates collusion as the suppliers have time and opportunity to work out an agreement.
4. Little vitality in the marketplace: This would mean that the same firms remain dominant due to the inability of newer firms to have any impact. Accordingly, the same player bid time and again for the same tenders. In *Reference Case 01 of 2012*<sup>4</sup>, suppliers were Directorate General of Supplies & Disposals (DG S&D) registered rate contract holders of Polyester Blended Duck

<sup>1</sup> *Suo Moto Case No 02/2011*, decided on 23/04/2012; available at: [http://www.cci.gov.in/sites/default/files/Case2of2011MainOrder\\_0.pdf](http://www.cci.gov.in/sites/default/files/Case2of2011MainOrder_0.pdf)

<sup>2</sup> *Suo Moto Case No. 3 of 2011*, decided on 24/02/2012; available at: <http://www.cci.gov.in/sites/default/files/LPGMainfeb2.pdf>

<sup>3</sup> *Case No. 26 of 2013*, decided on 04/06/2015, available at: [http://www.cci.gov.in/sites/default/files/262013\\_0.pdf](http://www.cci.gov.in/sites/default/files/262013_0.pdf)

<sup>4</sup> *Reference Case No 01 of 2012*, decided on 06/08/2013, available at: [http://www.cci.gov.in/sites/default/files/012012\\_0.pdf](http://www.cci.gov.in/sites/default/files/012012_0.pdf)

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Ankle Boots of governing specifications and were repetitive bidders and conversant with the tender awarding methodology helping suppliers to collude.

5. Industry associations: These are often used to promote pro-competitive activities that further the cause of their constituent firms. However, they can and are, used to also indulge in anti-competitive acts. Quoting of identical prices by bidders followed by their meeting of trade associations makes relevant factor in inquiry of bid rigging. *In Re: Western Coalfield*<sup>5</sup>, Commission noted that identical price bids by the bidding firms engaged in sand and coal transportation followed by their association, Central India Mining and Transport Association (CIMTA), demanding higher prices in the tenders floated by the Western Coal Fields Ltd. makes such demand of CIMTA a relevant factor in the inquiry of bid-rigging.
  
6. Common or Related Directors: Common or Related directors amongst the bidding companies have been frowned upon by the Commission. *In Re: M/S Sheth & Co.*<sup>6</sup>, Commission apprised itself of the fact that bidding firms engaged in manufacturing and supply of ‘CN containers with disc for 81mm bomb’ were closely related through common or related directors, thereby, making it conducive for them to engage in concerted action, by quoting identical/ similar prices in response to the ordinance factories tenders as it is governed by the principles of mutual understanding and benefit.

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<sup>5</sup> Case no. 34 of 2015, decided on 14/09/2017, available at: <http://www.cci.gov.in/sites/default/files/34%20of%202015.pdf>

<sup>6</sup> *Suo Moto Case No. 04 of 2013*, decided on 10/06/2015, available at: [http://www.cci.gov.in/sites/default/files/04201327\\_0.pdf](http://www.cci.gov.in/sites/default/files/04201327_0.pdf)

In *Foundation for Common Cause v. PES Installations Pvt. Ltd. And Anr.*<sup>7</sup>,

Commission while acting on information filed by an NGO alleging three firms (bidders) had rigged bids in tender floated by the Hospital Services Consultancy Corporation (HSCC) for the procurement of equipment at the Sports Injury Centre, Safdarjung Hospital, New Delhi.

Commission noted that the evaluation committee of bids after opening the bids changed the operation cost and maintenance cost after realizing that detailed estimates were never prepared for the complete work as tender design and specification were uncertain. Commission observed that earlier INR 10 crores were allocated for the quoted product with warranty of 5 years, Comprehensive Maintenance Cost (CMC) for 5 years and operational and running cost for 10 years but the contract was given at INR 16 crores with 5 years warranty and 5 years of operation cost.

Commission held that in case where tender specifications, terms and conditions and estimated cost are uncertain, firms tend to collude and manipulate the entire bidding process to their advantage. Wide variations in bid prices quoted by the firms and initial cost estimates projected in Notice Inviting Tender (NIT) shows that firms had taken advantage of lack of expertise with HSCC. A better tender design and better cost estimation would have avoided a situation where winning firm was awarded contract at price almost 142% more than the estimated cost of bid.

Moreover, HSCC combined conventionally two different segments i.e. Modular Operation Theatre (MOT) and Medical Gas Manifold System (MGMS) into one and asked bidders should have a relevant experience in both the segments resulted in elimination of competent suppliers specializing in one single field. This qualification criteria led to single vendor type of situation also.

<sup>7</sup> Case No. 43 of 2010, decided on 16/04/2012, available at: <http://www.cci.gov.in/sites/default/files/432010.pdf>

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# Diagnositics at SELECTION Stage

## STEP 1

Organizations should adopt policies to review past tenders for particular goods or services periodically to discern any suspicious pattern, especially in industries susceptible to collusion. For this purpose collecting and collating information on past tenders such as the product purchased, each participants bid, and the identity of the winner should be collected for a period of time and also within the various units of an organization to understand if the vendors are colluding by bid rigging (see box on types of bid rigging on page 8)

At the selection stage i.e. when the tender has been floated or made public, information may be collected on the subject matter of procurement for the winning bidder and other participating bidders over the past two to five years and across various geographical / regional units of the organization (if available). In case if no information is available, then skip to Step 2.

The data may be collected in the following format:

Tender 1	Tender 2	Tender 3	Tender 4 and so on...
Winning Bidder	Winning Bidder	Winning Bidder	Winning Bidder
Bidder 2	Bidder 2	Bidder 2	Bidder 2
Bidder 3	Bidder 3	Bidder 3	Bidder 3
Bidder 4	Bidder 4	Bidder 4	Bidder 4

## STEP 2

**Apply the following diagnostic question to the selected tender**

- 1. Electronic Bidding:** - The Government of India has issued guidelines to upload the tenders electronically on the website [www.eprocure.gov](http://www.eprocure.gov) or specific departmental websites for this purpose. Encouraging procurement agencies to use electronic bidding systems makes it accessible to a wider group of bidders. It enables the bidders to download the tender schedule free of cost and submit bids online.

**(a) Have the tenders been uploaded on the Central Public Procurement Website or any departmental website (e.g. for Railways etc.)?**

YES    NO

Risk	Likely Consequences	Action
No Electronic bidding	<ul style="list-style-type: none"> <li>• High Cost of Tender process</li> <li>• Delays</li> <li>• Lack of transparency</li> <li>• Narrow supplier base</li> </ul>	Shift to electronic bidding

**2. Confidentiality:-** The bid selection process should be confidential and the mode of submission of the bid physically in office should be discouraged as it may lead to last minute communication or deal making of the potential bidders. The bids should be received in a sealed envelope

**(a) Is the selection process confidential?**

YES  NO

**(b) Does it limit communication between bidders during tender process?**

YES  NO

**(c) Is the identity of the bidders and value of the bid guarded, at least until after the contract has been awarded?**

YES  NO

Risk	Likely Consequences	Action
Non Confidentiality	<ul style="list-style-type: none"> <li>Enables signaling between bidders</li> <li>Deal making between firms</li> </ul>	Consider carefully what information to reveal at the time of bid opening. Only such information should be revealed to the bidders that is essential.

**3. Pre- Bid Conference-** Pre- Bid conferences must be made in non-routine circumstances (Complex / first time / build to order types of procurements). The pre - bid meeting brings the potential suppliers together, which may lead to collusion.

**(a) Do you plan to hold pre bid conference to clarify doubts of the potential bidders?**

YES  NO

Risk	Likely Consequences	Action
Pre Bid Conference	Gives chance for potential bidders to meet.	In case pre bid conference is not required give opportunity to bidders to seek clarifications through e mail. The clarifications given to one bidder should be intimated to all the bidders and exhibited on the Central Public Procurement Portal.

**4. Award of Tenders:** - A single stage tender based primarily on price does not reveal efficient results. The quality of the delivery may be compromised at the time of execution of the contract if technical specifications are not delineated. It may also encourage collusive bidding as it is easier to manipulate the price bid. In any of the past cases where the lowest bidder had refused to accept the award and/ or the tender was subjected to negotiation may also be indicate collusive bidding.

**(a) Were the single stage tenders based primarily on prices?**

YES  NO

**(b) Was the tender awarded to the lowest bidder?**

YES  NO

**(c) Had there been a process of negotiation in selection of the winning bidder?**

YES  NO

Risk	Likely Consequences	Action
Single Stage Tender based only on Prices/ Not giving award to the lowest bidder / negotiation	Quality of the work may be compromised as price is the only criteria and the winning bidder may supply low quality product or give poor services. Chances of collusion are likely in cases where there is a withdrawal of bid/ non fulfilment of essential conditions of contract or negotiations. (see footnote13 below)	Check reasons for not giving to the lowest bidder in the past. If no cogent reason is there, there could be a possibility of withdrawal of bid by the winning bidder for some other consideration. (see footnote12 below) Also check the reasons for negotiation of the price, as the price quoted may be higher than market price on account of cover bidding. (see footnote 13 below)

**5. Scrutiny of present tender applications:** - The award may be the target of collusion if on close examination the proposals or applications submitted by the competing vendors are similar.

**Are there similarities between vendor applications or proposals?**

**(a) Two or more proposals contain similar handwriting, typos, or mathematical errors.**

YES  NO

**(b) Two or more proposals are sent from the same mailing address, e-mail address, url address, fax number, or overnight courier account number.**

YES  NO

(c) **Bank drafts/ cheques were made from same bank to pay tender documents or earnest money.**

YES  NO

(d) **Two or more proposals reflect that last-minute changes (such as white-outs and cross-outs) were made to alter price quotes.**

YES  NO

(e) **The document properties of two or more electronic proposals show that the proposals were created or edited by one vendor.**

YES  NO

<b>Risk</b>	<b>Likely Consequences</b>	<b>Action</b>
Suspicious transactions	Collusive bidding- <b>See case references below.</b> The CCI has dealt with a number of such cases and investigations have revealed the above modus operandi and helped in finalizing investigations	<ul style="list-style-type: none"><li>• Collect further information</li><li>• Do not discuss with suspected participants</li><li>• Keep documents, including bid documents, correspondences, envelopes,</li><li>• Keep records of all suspicious behavior</li><li>• <b>Contact CCI</b></li></ul>

**6. Discerning patterns among winning bidders:** - The award may be the target of collusion if review of the outcome of prior awards for the same product or service show patterns over time. The absence of regular suppliers may indicate that they have not participated in the bid to avoid competition in exchange of some other consideration.

**Have patterns developed among competing vendors?**

(a) **Over a series of awards, competing vendors rotate as the award winner.**

YES  NO

(b) **Over a series of awards, routine competing vendors win the same or similar amounts of work.**

YES  NO

(c) **Over a series of awards, one vendor always wins, regardless of competition.**

YES  NO

**(d) The vendor that wins the award subcontracts work to losing vendors or to vendors that withdrew their proposals or refused to submit proposals.**

YES  NO

**(e) As compared with prior awards, a smaller number of vendors submit proposals for the current award.**

YES  NO

**(f) Regular suppliers declined to participate in tender for no reasons.**

YES  NO

<b>Risk</b>	<b>Likely Consequences</b>	<b>Action</b>
Patterns of the same set of vendors winning	Collusive bidding	<ul style="list-style-type: none"><li>• Wider participation should be encouraged.</li><li>• Be vigilant to the likelihood of bid rigging.</li></ul>

**7. Checking suspicious behavior:** - The award may be the target of collusion if suspicious behaviour indicates that vendors worked together rather than competed for the award.

**Have vendors demonstrated behaviour that suggests that they worked together on the award?**

**(a) A vendor submits a proposal for a procurement or grant award, and you know that the vendor lacks the ability to provide the goods or services requested.**

YES  NO

**(b) A vendor brings multiple proposals to an in-person procurement or grant process or submits multiple proposals.**

YES  NO

**(c) A vendor makes statements on the phone or by e-mail indicating advance knowledge of a competitor's prices or likelihood of winning the award.**

YES  NO

Risk	Likely Consequences	Action
Suspicious behaviour of vendors	Indicates that vendors may have worked together before (See case references below)	<ul style="list-style-type: none"> <li>Prevent sub-contracting or require the winning bidder to disclose any sub-contracting arrangements beforehand.</li> <li>Be vigilant to the possibility of bid rigging</li> </ul>

## Case References

Commission has found bidders following suspicious activities in various cases which procurer should monitor while evaluating the bids:

1. Two bidders shared a common fax number and were related through common directors.<sup>8</sup>
2. Bidder have stated that their blue ink pen being used to fill up the cover page of the tender got exhausted when they were filling the price schedule. Hence, they used black pens to fill the price schedule of their bids. Such a co-incidence casts doubt upon the activities of the bidders.<sup>9</sup>
3. Tender documents were usually submitted in-person and the rates were normally filled with hand. It was further observed that the tender documents were to be submitted by 2:00 p.m. on May 08, 2009 and bid was to be opened at 3:00 p.m. on the same day. For submitting the bids, representatives of the bidding companies made common entries in the Visitors' Register. In fact, a representative of one bidding company made these entries on behalf of the representatives of other competitors as well.<sup>10</sup>
4. Scrutiny of the bid documents revealed that the 19 firms had similar handwriting in which the prices were quoted in figures and words in their respective bid documents. Demand Drafts (DDs) amounting to Rs.2000/- towards payment of tender documents fee by some of the bidders vide Nos.663178 and 663177 respectively both of same dates were in sequence and hence made from the same banker and at the same time. DDs having been submitted from one bank or set of banks by different banks were corroborative evidence to show some kind of collusion in rigging the bids.<sup>11</sup>
5. Quoting identical prices right upto the last paisa alone is a very strong indicator towards a possible collusion amongst the bidders.

<sup>8</sup> Supra Note 6.

<sup>9</sup> Supra Note 5.

<sup>10</sup> Supra Note 1.

<sup>11</sup> Reference Case No. 05 of 2011, decided on 21/02/2013; available at: [http://www.cci.gov.in/sites/default/files/REF-052011\\_0.pdf](http://www.cci.gov.in/sites/default/files/REF-052011_0.pdf)

## Foundation for Common Cause v. PES and Anr<sup>12</sup>

Commission noted suspicions about three bidding firms (PES, MDD and MPS) as there was huge difference between the two losing firms (PES and MPS) and the winning bidder (MDD) in addition to one bid submitted by the losing firm (MPS) despite knowing the fact that neither it nor winning bidder (MDD) is eligible to bid established the fact that bidders have acted in concert to share the profits by submitting complementary bids. Moreover, losing bidder (PES) is a major player in installation of quoted products still submitted a losing bid by quoting a substantially higher financial bid and allowed MDD to win. It is a clear case of bid rigging in the form of subcontracting wherein PES submitted a losing bid in favor of MDD and thereafter received subcontract from MDD. The story gets complicated with PES bagging contract for similar work at different hospital with MDD and MPS submitting complementary bids.

## In Re: Alleged cartelization in the matter of supply of spares to Diesel Loco Modernization Works, Indian Railways, Patiala, Punjab<sup>13</sup>

Commission found all the three Research Designs & Standards Organization (RDSO) of the Indian Railways approved vendors rigging the bids in tender floated by the Diesel Loco Modernization Works (DLMW) for procurement of feed valves used in diesel locomotives. Commission discerned that two out of three bidders submitted complementary bids in response to the tender enquiry under consideration as two bidders were not, as a matter of fact, in competition with the third bidder in the procurement process. Offer of one bidder was found technically suitable, but its offer was passed over as it did not submit the cost of tender documents and other firm's offer was passed over as it did not accept the warranty clause as per conditions of the contract.

<sup>12</sup> *Supra Note 7.*

<sup>13</sup> *Suo Moto Case No. 03 of 2012, decided on 05/02/2014; available at: [http://www.cci.gov.in/sites/default/files/032012\\_0.pdf](http://www.cci.gov.in/sites/default/files/032012_0.pdf)*

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# Diagnosics at EXECUTION Stage

## STEP 1

The overall purpose of a sound procurement policy is to get the best value for money. The contracts that are not executed in time lead to disputes and cost escalation. When bidders make prior agreement regarding the bid price and the total quantity supplied, it results in bid rigging. This causes injury to the public procurer by making the goods and services either unavailable or making it unnecessarily expensive to the detriment of the final users of public goods and services. Therefore, collecting and collating bid prices over period of time helps in observing pattern to detect collusive pricing.

At the execution stage i.e. when the bidder has been selected, information may be collected on the subject matter of procurement for the winning bid and bids submitted by participating bidders over the past two to five years and across various geographical / regional units of the organization (if available). In case if no information is available, then skip to Step 2. The data may be collected separately for each commodity of the tender in the following format.

Tender 1	Tender 2	Tender 3	Tender 4 and so on...
Winning Bid (Rs.)	Winning Bid (Rs.)	Winning Bid (Rs.)	Winning Bid (Rs.)
Bid 2	Bid 2	Bid 2	Bid 2
Bid 3	Bid 3	Bid 3	Bid 3
Bid 4	Bid 4	Bid 4	Bid 4

## STEP 2

Apply the Diagnostic questions to the selected bids, to study the bid prices in such tenders that have already been executed.

- Performance:** - *The* overall success rate of the past procurement processes may be evaluated to appreciate the outcomes of procurement. However, the importance of performance records should not be overemphasized for future contracts and wherever possible other relevant experience may be considered.

**(a) Was the product that was procured / service rendered / contract undertaken eventually up to the mark and did it provide the best value for money?**

YES    NO

Risk	Likely Consequences	Action
Low performance	<ul style="list-style-type: none"> <li>• Delay</li> <li>• Cost Escalation</li> <li>• Disputes</li> </ul>	<ul style="list-style-type: none"> <li>• Review reasons for low performance</li> <li>• Review procurement conditions for future</li> <li>• Ensure robust monitoring</li> </ul>

**2. Terms of Conditions:-** Any subsequent substantive change in the original terms and conditions should raise suspicion of collusive behaviour as it may affect the expected outcomes

**(a) Were the terms and conditions in past tenders that were originally stipulated during the beginning of the tender process changed / amended in any substantial manner?**

YES  NO

Risk	Likely Consequences	Action
Changing terms of contract	<ul style="list-style-type: none"> <li>• Low performance</li> <li>• High cost</li> <li>• Collusive bidding</li> </ul> (See footnote 17 below)	Review reasons for change in terms of contract to see likelihood of collusion

**3. Sub- Contract:** The tender document should require bidders to disclose upfront if they intend to use subcontractors. In case the winning bidder sub- contracts the work to unsuccessful bidders or the winning bidder does not accept the contract or is later found to be a sub- contractor of the winning party then it must raise suspicion about collusive tendering. Similarly, greater vigilance is required if two or more businesses submit a joint bid even though at least one of them could have bid on its own, as it could be a way to split profits among bid riggers.

**(a) Has any of the Winning Bidder sub- contacted his work in past?**

YES  NO

Risk	Likely Consequences	Action
Sub Contract	Indicates pre-determined arrangement among bidders. (See footnote 17 below)	Review selection/ disclosure criteria Effective monitoring of contract

**4. Disputes:** For a good evaluation of the execution of a tender, it is essential to attribute the delay on part of the respective parties. The procurement agency also has a duty to make timely payments. Similarly, the executing agency ought to deliver on time. Disputes relating to delay / payment etc. raise overall concerns regarding the outcome of the tender process.

**(a) Was there any dispute in relation to unreasonable delay in payment / unreasonable delay on execution of the work / quality of the product?**

YES  NO

Risk	Likely Consequences	Action
Disputes	<ul style="list-style-type: none"> <li>• Delay in performance</li> <li>• Cost escalation</li> </ul>	Review factors leading to past dispute to ensure that same are not repeated again.

5. **Price Fixing:** Price Fixing occurs when there is an agreement among competitors to raise, fix or otherwise maintain the price of goods or services.

(a) The patterns in bid prices submitted by different parties indicate there might be collusive behavior in bid prices. If the price quoted in the bids is similar, especially when the production capacity and utilization is different for each bidder is different; this is a strong indicator of price fixing.

**Are there any patterns in the price data that suggest that the prices quoted in the bids are similar?**

YES    NO

(b) Any sudden or identical increase in prices or price range would indicate that the bidders have no legitimate justification for increasing the bid price.

**Are there any sudden and identical increase in the price or price ranges by bidders that cannot be explained by cost increase?**

YES    NO

(c) The variation in the location of each bidder would normally be reflected in the bid price; any uniformity in the bid price should be viewed with suspicion.

**Is there identical pricing of the products over different geographical region by different suppliers?**

YES    NO

(d) Price differences between winning bid and other bids indicate that the winning bid is not actually cost effective, but rather has been selected as such due to inflated prices being quoted by the other bidders – a form of cover bidding.

**Is there a large difference between the price of the winning bid and other bids?**

YES    NO

(e) A comparative analysis of the bids offered by the same bidder, wherever possible also helps gauge the approximate cost incurred by that bidder. A significant difference between the same kinds of bids would clearly indicate that the bid price is being manipulated and inaccurate.

**Is there a significant difference in the bid of a supplier for a particular contract and for another similar contract?**

YES    NO

Risk	Likely Consequences	Action
Price fixing	<p>Risk of Collusion increases (See case references on price patterns below)</p> <p><b>*Remember – these factors are indicators of collusion that may call for further investigations. They are not themselves evidence of collusion. There may be legitimate business reasons for any of the above conduct.</b></p>	<ul style="list-style-type: none"> <li>• Collect further information</li> <li>• Keep documents, including bid documents, correspondences, envelopes,</li> <li>• Keep records of all suspicious behavior</li> <li>• <b>On Suspicion Contact CCI</b></li> </ul>

Tendering Authority (Procurers) should look for following price patterns which are conducive of a bid rigging and which have been upheld by the Commission:

- Most of the bidders quoted rates @ INR 66.50 (all inclusive), despite located differently;<sup>14</sup>
- Quoting identical quotes up to the last paisa alone is a very strong indicator towards a possible collusion;<sup>15</sup>
- Commission noted that while Wholesale Price Index (WPI) increased by the 13.32% over the previous year, the average Lowest bidding quote increased in the range for 45.38% to 50.69% for all the bidders. This was found to be 3.4 to 3.8 times higher than corresponding increase in WPI and indicative of price parallelism.<sup>16</sup>

<sup>14</sup> Supra Note 11

<sup>15</sup> Supra Note 13

<sup>16</sup> Reference Case No. 05 of 2013, decided on 19/01/2017; available at: [http://www.cci.gov.in/sites/default/files/Ref%20Case%20No%2005-2013\\_0.pdf](http://www.cci.gov.in/sites/default/files/Ref%20Case%20No%2005-2013_0.pdf)

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### In Foundation for Common Cause v. PES and Anr<sup>17</sup>

The evaluation committee of the Safdarjung Hospital (tendering authority) changed the terms and conditions, regarding the Comprehensive Maintenance Contract and Operation and Maintenance Cost, at the time of the evaluations of bids and added few additional items after Notice Inviting Tender (NIT) and pre-bid meeting. Moreover, winning bidder (MDD) did not have technical qualifications i.e. condition of exclusivity and requisite experience which was overlooked by the tendering authority. This led to bidders to collude and manipulate the entire bidding process to their advantage because of lack of expertise with tendering authority. Finally, the order was placed at almost 142% more than the estimated cost of bid with reduced warranty and charges. Moreover, losing bidder (PES) is a major player in installation of quoted products still submitted a losing bid by quoting a substantially higher financial bid and allowed MDD to win. It is a clear case of bid rigging in the form of subcontracting wherein PES submitted a losing bid in favor of MDD and thereafter received subcontract from MDD.

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<sup>17</sup> *Supra Note 7*

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# Diagnositics at MONITORING Stage

## Step 1

Apply the diagnostic question to the general procurement process:-

- 1. Complaint Handling System:** - The establishment of complaint handling mechanism helps to identify any anti-competitive behaviour.
  - (a) Have you established a complaint mechanism for firms to convey competition concerns?**  
 YES    NO
  - (b) Is there an identified office to receive, redress and review the nature of complaints received?**  
 YES    NO
  - (c) Do you use complaints for systemic improvements of your tender processes?**  
 YES    NO
- 2. Whistleblower System:** - The whistleblower system is a robust way to gauge any anti-competitive concerns/ cartel detection. However, care must be taken to ensure that false complaints or anonymous / pseudonymous complaints do not derail the procurement process.
  - (a) Have you established a whistleblower mechanism to collect information on bid rigging from companies and their employees?**  
 YES    NO
- 3. Leniency Programme:** - The leniency programme is internationally the best means of detecting presence of cartel.
  - (a) Have you informed yourself of the leniency programme of CCI?**  
 YES    NO
- 4. Internal Audits:** - The diagnostic tool can be used as an internal audit of the procurement process. The persons undertaking the diagnostic analysis should be technically competent and should also be aware of the market segments in which the procurement is taking place.
  - (a) Do you conduct regular internal audits of your procurement systems?**  
 YES    NO
  - (b) Do you report suspicious behaviour of bid rigging to the CCI?**  
 YES    NO
- 5. Training Programmes:-** Conducting training programs would take care of not only equipping the employees with the requisite information to identify bid rigging on the supply side but also apprise them of the way a procurement process is supposed to be run (a demand side issue).
  - (a) Do you conduct regular training program for your employees on bid rigging and cartel detection for your staff, with the help of CCI or any other resource persons.**  
 YES    NO

## LENIENCY PROGRAMME OF CCI

A transparent and predictable leniency programme has been proven to be an effective tool to detect, investigate and combat cartel cases worldwide.

Leniency programme is available for those enterprises / individuals who disclose to the Commission their role in a cartel and cooperate with subsequent investigations, are rewarded by a reduction upto 100% of the penalty.

Lesser penalty can be imposed on account of such disclosure provided the following conditions are met:

- a. The disclosure must be full, true and vital;
- b. The disclosure must have been made before the Director General submits his findings under Section 26;
- c. The person making the disclosure must continue to cooperate with the CCI till the completion of proceedings;
- d. The person making the disclosure must not have given (i) false evidence and (ii) must continue to comply with the condition on which lesser condition was initially imposed by the CCI.

Recently, the CCI amended its Competition Commission of India (Lesser Penalty) Regulations, 2009 vide notification dated 8th August, 2017. The key changes are as follows:

- a. *Enlargement of the scope of leniency programme*: Earlier, only enterprises could avail the benefit of the Lesser Penalty Regulations. The same has now been extended to individuals/officials of enterprises as well.
- b. *Clarification on number of applicants covered under leniency*: It has been now clarified that lesser penalty benefits can be accorded to more than three applicants.
- c. *Clarification on officials of enterprises*: Explicit provisions have been incorporated to extend lesser penalty benefits to the officers of leniency applicant, in case applicant is an enterprise.

### In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans<sup>18</sup>

The first instance in which Commission granted reduction in penalty to lenient applicant is in case In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items. Commission initiated suo-moto investigation, based on the information received from the Central Bureau of Investigation (CBI), New Delhi vide letter wherein it was stated that during an inquiry into alleged misconduct by the public servant, CBI found that three firms (bidders), had cartelized in respect of the tenders floated by the Indian Railways and the Bharat Earth Movers Limited (BEML) for the supply of Brushless DC fans (BLDC fans) and other electrical items. One of the bidder during an investigation admitted that he had rigged the three tenders of Indian Railways for BLDC fans along with

<sup>18</sup> *Suo Moto Case No. 03 of 2014, decided on 18/01/2017; available at: [http://www.cci.gov.in/sites/default/files/Order\\_Suo\\_Moto\\_03\\_of\\_2014%20%28Final%29\\_1.pdf](http://www.cci.gov.in/sites/default/files/Order_Suo_Moto_03_of_2014%20%28Final%29_1.pdf)*

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other two bidders and exchange numerous calls, emails amongst bidders which continued during period of the renders for rates to be quoted and quantities to be shared. Commission imposed penalty on the three bidders and on their respective office bearers at the time of the tender. Commission granted a 75% reduction in penalty to the enterprise and its office bearer each under Section 46 of the Act, as opposed to maximum of 100% that may otherwise have been available to the Commission

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## DO'S AND DON'TS IF YOU SUSPECT COLLUSION

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1. **DO** keep all documents/evidence ready in detail.
2. **DO** question bidders on price on individual basis.
3. **DO** note bidder replies and carefully record for future reference.
4. **DO** act normally, and continue with the tender process.
5. **DO** report suspicions to the Competition Commission of India
6. **DO NOT** accuse bidders directly or contact your legal staff.

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## HOW TO FILE AN INFORMATION / REFERENCE

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If Departments / Organizations while reviewing their tender processes detect cartelization or bid-rigging, they can approach CCI by filing information or Reference under Section 19 of the Act.

Any person, consumer or their association or trade association can file “Information” as required under Section 19 of the Act, before the Commission. Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry under Section 19(1)(b) of the Act. “Person” includes an individual, Hindu Undivided Family (HUF), firm, company, local authority, cooperative or any artificial juridical person.

For further information on:

- The details required in the “information”
- The specific provisions to be invoked in an information
- The fees to be paid and the address details

Please refer to the advocacy booklet “How to File Information” available at the following URL: [http://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/How%20to%20file%20Inf](http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/How%20to%20file%20Inf)

Competition law enforcement is neutral as to ownership of companies. Commission applies competition law to both private and public economic entities.

Commission found and imposed fine on four public sector insurance companies after investigation<sup>19</sup>. Commission acted on anonymous information against four public sector insurance companies as they quoted higher premium rates in tender floated by the State of Kerala in public procurement for social welfare schemes, the beneficiaries of which were Below Poverty Line (BPL) and poor families.

In past, Commission has been approached by an NGO<sup>20</sup>, CBI<sup>21</sup>, acted on report by Comptroller and Auditor General of India (CAG)<sup>22</sup> or from the procurer<sup>23</sup> itself vide references filed by each of them into their respective matters and Commission has successfully found bidding companies colluding with respect to sharing of quantities or quoting identical prices.

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<sup>19</sup> *Suo Moto Case No. 02 of 2014, decided on 10/07/2015; available at: <http://www.cci.gov.in/sites/default/files/022014S.pdf>*

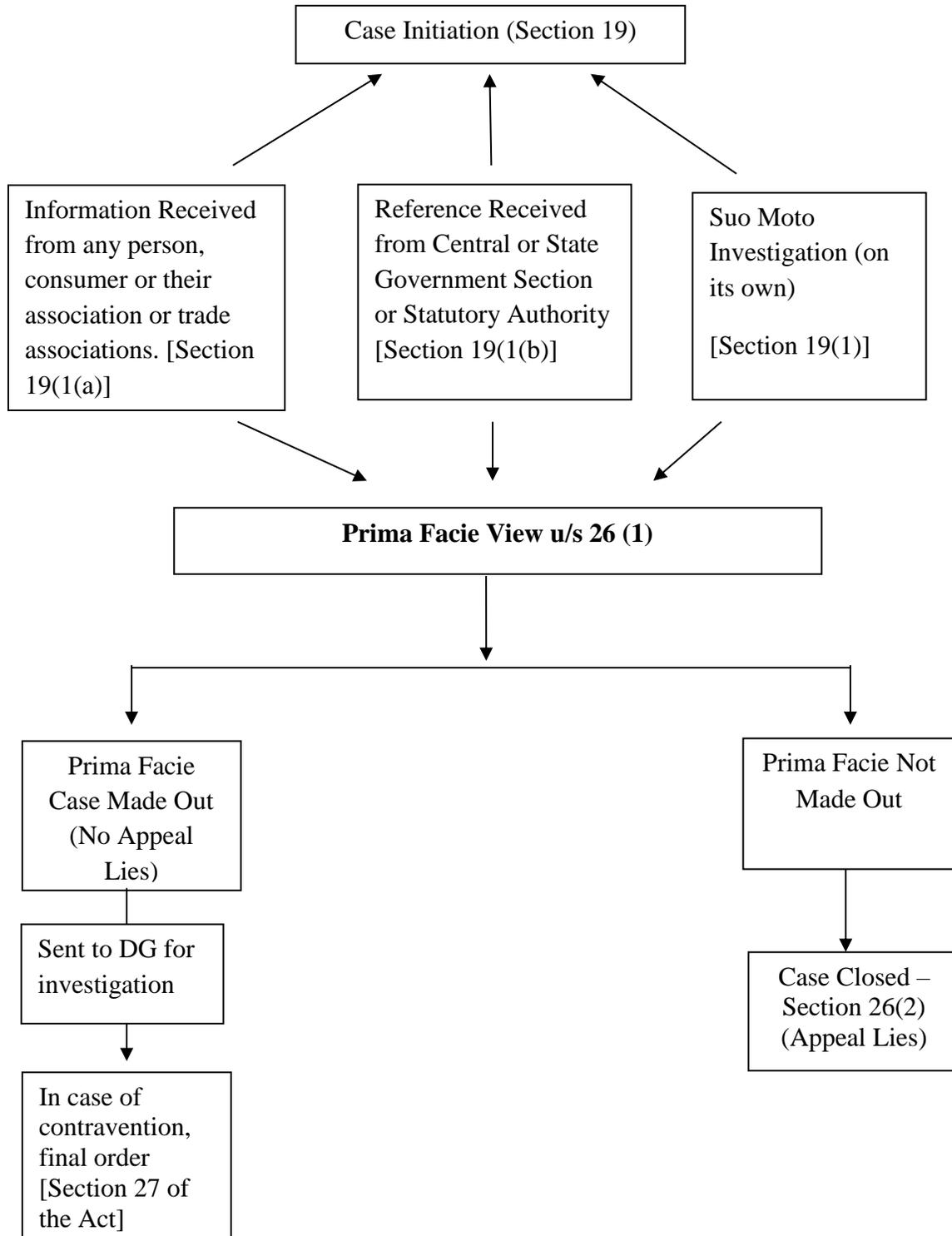
<sup>20</sup> *Supra Note 7*

<sup>21</sup> *Supra Note 18*

<sup>22</sup> *Supra Note 6*

<sup>23</sup> *Supra Note 16.*

## PROCESS FLOW



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## PENALTY PROVISIONS

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The Commission may impose such penalty as it deems fit under Section 27 of the Act. The penalty can be up to 10% of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging or collusive bidding. In case the bid-rigging or collusive bidding agreement referred to in sub-section (3) of section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to 3 times of its profit for each year of the continuance of such agreement or 10% of its turnover for each year of the continuance of such agreement, whichever is higher. The penalty can therefore be severe, and result in heavy financial and other cost on the erring party.

Under section 33 of the Act, during the pendency of an inquiry into bid rigging, the Commission may temporarily restrain any party from carrying on the offending act until conclusion of the inquiry or until further orders, without giving notice to such party, where it deems necessary.

Commission had directed to cease and desist from carrying on bid rigging activities along with penalty on the bidding firms as well as on their office bearers. Commission had imposed approximately INR 205 crore on seven cement companies where penalty was calculated only at the rate of 0.3% of their average turnover during the last 3 financial years<sup>24</sup>. Recently, Commission asked 10 coal and sand transporters to deposit approximately 12 crores at the rate of 4% of their average turnover during the last 3 financial years<sup>25</sup>.

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<sup>24</sup> *Supra Note 19.*

<sup>25</sup> *Supra Note 5.*

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13. *In Re: Western Coalfield*, Case no. 34 of 2015, decided on 14/09/2017