



Malaysia Competition Commission

Detecting Bid Rigging in Public Procurement
RH Hotel, Sibul
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Malaysia Competition Commission

SUREN RAJAH

**Executive of Investigation & Enforcement Division
Malaysia Competition Commission**

PRESENTATION OVERVIEW

INTRODUCTORY REMARKS ON BID RIGGING

CHECKLIST FOR DETECTING BID RIGGING

QUESTION & ANSWER SESSION

INTRODUCTORY REMARKS ON BID RIGGING

Key Points

- 1. Bid rigging can occur in any country and in any market.**
- 2. Bid rigging significantly increases prices of goods and services**
- 3. Fighting cartels and bid rigging is a top priority for most competition authorities**
- 4. Effective tools, such as the MyCC Guidelines, can help fight bid rigging**

Why worry about bid rigging?



Public procurement typically accounts for approx 10-25% of GDP in most countries

Bid rigging can raise prices significantly (20% or more)



**POTENTIAL WASTAGE OF TAX PAYER
DOLLARS CAN BE SIGNIFICANT!!**

Importance of Competitive Procurement

- Drive prices to marginal costs
- Drive firms to minimize their cost
- Drive innovation



A competitive public procurement system will accrue benefits to the whole economy as public procurement often involves key infrastructure (highways, railways, electricity) for other industries

The improvement of procurement procedures led to significant savings in a number of countries



- USD 3.1 million savings for the Karachi Water and Sewerage Board (Pakistan)
- Significant reduction in electricity prices in Bangladesh
- 47% saving in the procurement of certain military goods in Columbia
- 43% saving in the cost of purchasing medicines in Guatemala

In the EU, the implementation of the EC Directive on Public Procurement in the period between in 1993 and 2002 generated cost savings of between a little less than EUR5 billion and almost EUR 25 billion.

What is Bidding?



- Bidding is a way to buy or sell goods or services through a tender or auction
- When purchasing, the bid is usually awarded to the lowest bidder
- Every country has laws and rules establishing procedures

What is Bidding?



- Any agreement (written or oral) between bidders that limit or reduces competition in a tender
- The agreement may be between a bidder and a potential bidder that does not actually submit a bid

- The agreement may work well and last a long time, or not last long at all
- In most countries, all bid rigging agreements are illegal, and in some countries it is a criminal offence



Common Forms Bid Rigging

Cover bidding – pre chosen winner, the ‘looser’ deliberately bid over an agreed amount which creates an ‘artificial’ lowest competitive bidder

Bid suppression – agreement not to join tender, thus ensuring pre agreed participant to win the tender

Bid withdrawal – withdraws winning tender

Bid rotation – rotation among competitors to win tender

Non-conforming bids – deliberately including terms and conditions or specifications not in accordance with the tender

Bid Rigging vs. Corruption

- **Corruption can involve one company paying a bribe to a government official**
- **Bid rigging must involve at least two companies- they must agree to avoid competition**



Checklist for Detecting Bid Rigging

- Section 1 - Warning signs and patterns when businesses are submitting bids**
- Section 2 - Warning signs in bid documents**
- Section 3 - Warning signs and patterns related to pricing**
- Section 4 - Suspicious statements**
- Section 5 - Suspicious behavior**
- Section 6 - Cautionary notes about indicators**
- Section 7 - Steps to take when bid rigging is suspected**

CHECKLIST FOR DETECTING BID RIGGING

-SECTION 1-

WARNING SIGNS AND PATTERNS WHEN BUSINESSES ARE SUBMITTING BIDS

Suspicious Bidding Patterns

- Look for patterns, such as:
 - Same bidders often win
 - A pattern in awards indicating bid rotation or geographic allocation
 - Certain bidders fail to bid, withdraw bid or always bids but never wins
- Unnecessary joint bids or subcontracts



EXAMPLES OF UNUSUAL BID PATTERNS

- Bids are identical or very close
- Bids are too far apart
- Bids are an exact percentage apart
- Bids are round numbers, when that is unusual

Example – U.S. Gloves case

- 4 firms bid on 4 types of gloves (women's dress gloves, women's outdoor gloves, men's dress gloves, and men's outdoor gloves)
- Each type of glove was a separate contract
- Procurement official noticed that each of the 4 firms won one contract



Example – Seoul Subway

- Seoul city announced tenders for contracts on six sections of work construction to extend Seoul subway line No.7
- Six major construction companies each won one section of the work in the tender
- The six companies had met and agreed to allocate one section of each work to each company.



Example – U.S Paint Brushes Case

- Two companies bid on 90 contracts over 7 years
- Two procurement auditors were discussing these contracts during lunch, and they noticed that each firm won 50% of the contracts each year



Your Experiences

- What patterns do you think might be a concern?
 - Have you noticed any unusual patterns in your work?
- What is your experience with joint bids or subcontracts?
 - How common?
 - Necessary? Or could separate entities bid?
 - Did practice change at some point in time?



CHECKLIST FOR DETECTING BID RIGGING

-SECTION 2-

WARNING SIGNS IN BID DOCUMENTS

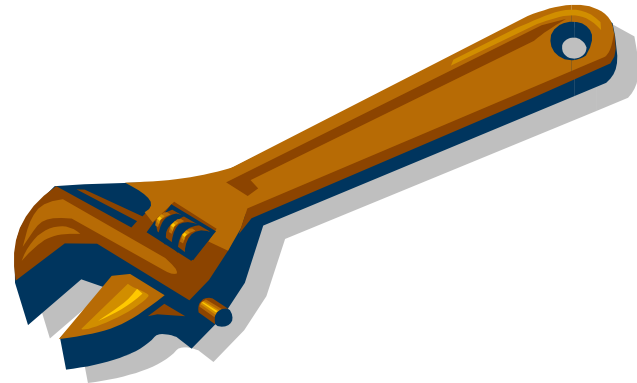
Clues in Documents

- Identical mistakes, same fonts, identical layouts, fax numbers, postmarks, forms or cost estimates
- Common addresses, phone number, personnel etc
- Indications of last-minute changes
- Indications bid is not genuine, such as lack of details or failure to comply with required terms

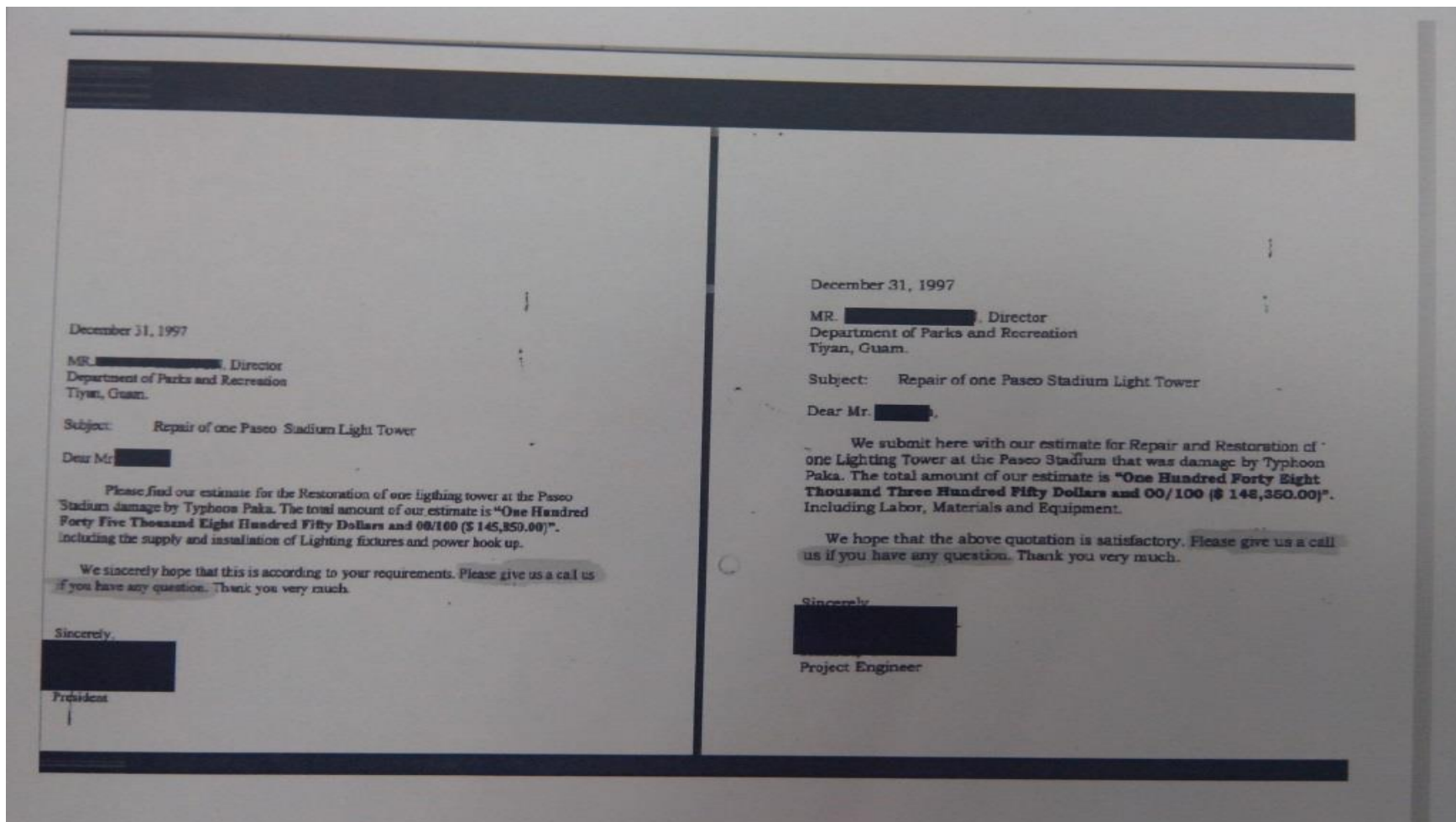


Example – U.S. Storm Damage Repair Case

- Next slide shows identical typos in two bidders' cover letter to repair damage done when a typhoon hit Guam
- The letters both end with identical words: 'Please give us a call us if you have any questions. Thank you very much'
- By noticing the extra "us" in both letters, the procurement official uncovered the cartel.



Exhibits from Guam Repair Case



Your Experiences

- Do you compare documents submitted by bidders?
- Do you look for signs of communication among the bidders?
- Have you ever received a bid where it seems that the bidder was not really trying to win?



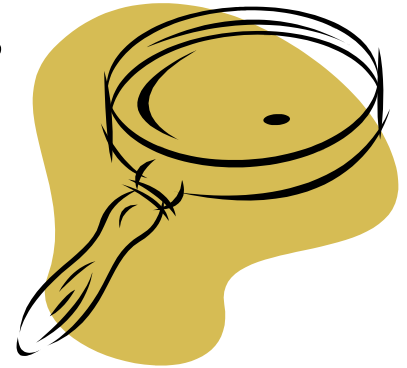
CHECKLIST FOR DETECTING BID RIGGING

-SECTION 3-

WARNING SIGNS AND PATTERNS RELATED TO PRICING

Clues in Pricing

- Unexplained price increases, or loss of discounts
- Unexplained prices differences between:
 - Geographic areas or;
 - Government agencies or;
 - Government purchasers and the private sector
- Large price difference between winning bidder and other bidders
- Unexplained identical prices or terms



Example: El Salvador Airline Tickets

Services to be rendered	Amate Travel	Agencia Viajes Escamilla	U Travel	Inter-Tours
Cost for issuing round trip tickets	\$39.55	\$39.55	\$39.55	\$39.55
Flight confirmations/ tickets and reservation voucher	Cost free	Cost free	Cost free	NA
Premium Ticket Procedure	Cost free	Cost free	Cost free	NA
Ticket Annulment	Cost free	\$39.55	Cost free (the same day)	NA
Ticket Re-issuance	\$39.55	\$39.55	\$39.55	\$39.55
Issuance of ticket against exchange order (MCO)	\$39.55	Cost free	\$39.55	\$39.55
Procedure for the reimbursement of non-utilized tickets	Cost free	Cost free	Cost free	NA
Procedure for the reimbursement of lost tickets	Cost free	Cost free	Cost free	NA
Train reservation	Cost free	Cost free	Cost free	NA
Delivery services in the metropolitan area	Cost free	Cost free	Cost free	NA
Total	\$118.65	\$118.65	\$118.65	\$118.65

Example: El Salvador Airline Tickets Tender

WITNESS EXPLANATIONS

- U-Travel: *Witness asked why the service fees are identical. Witness answered it is just a coincidence in calculation procedures, in the cost structure the companies may have*
- Amate Travel: *Witness said commission was calculated on the basis of the 2003 experience, based on their clients' consumption in that account- that is how they arrived to the \$ 35.00 + sales tax*
- Agencia De Viajes Escamilla: *Witness speculates that all companies have the same program with the airline. He can talk about Escamilla's costs. For him, it is very difficult to speculate if those people have the same costs as Escamilla's, if the airline has the same program*
- Inter-Tours: *The witness is asked why, with so many variables that influence in the preparation of the bids and the companies being so different, they all submit bids with identical (to the cent) charges. Witness says he analyses the tender documents, sees where they are flying to, services required, the number of them to be rendered, and then calculates his costs. He does not know the others' costs, but this is the way he calculated them.*

Your Experiences

- Have you examined pricing patterns?
 - Tried to determine if prices are increasing compared to past bids?
 - Assessed whether increases are justified?
 - Assessed whether there are significant differences in prices paid between various types of buyers (e.g. based on geographic area, agency, public v. private, etc.)

Have you encountered identical prices from bidders?



CHECKLIST FOR DETECTING BID RIGGING

-SECTION 4-

SUSPICIOUS STATEMENTS

Clues in Statements

- Indication of communication or agreement among bidders
- Mention of “industry” or “standard” prices
- Indication certain customers or areas belong to a certain bidder
- Indication a bidder does not expect to win, or knows who will win

Examples – Canadian Bus Services Case

- Both bidders submitted bids that were very similar
- After award, the bidder who received only a small portion of the award (losing bidder) telephoned procurer
- Procurer's notes of conversations with losing bidder follow. The losing bidder indicated that he knew bids were close, even though they were sealed bids



Alberta Bus Tender (2)

Alberta Bus Tender (2)



Mar 1 - I clarified the rates with Paul Dion @ Sun Valley and awarded him the \$20,000 contract.

He was surprised to learn that he was only getting the small contract & questioned why we did not split the large one when the pricing was so close. (he said that) I asked him why he thought it was such a close bid... he hummed a bit, basically said he thought it would be.

Alberta Bus Tender (3)

Alberta Bus Tender (3)



May - 9:30AM - talked Paul Lion - wanted to know why the contracts were not split when they were so close that the only difference would be on the overnight rates. I asked him what made him think it was on the overnight rate? He said based on last couple of years. He then went on to ~~say~~ state the advantages/disadvantages on a fixed night rate versus a cost plus rate.

My feeling is that Sun Valley + Bison Buses are in collusion on these 50A's with the objective of price fixing and reducing competition.

Your Experiences

- Do you communicate with individual bidders?
 - Via telephone or in person?
 - Do you take notes?
 - Do you store those notes?
 - Via email?
 - Do you store emails permanently?
- Do you have any indication that bidders have communicated with each other?



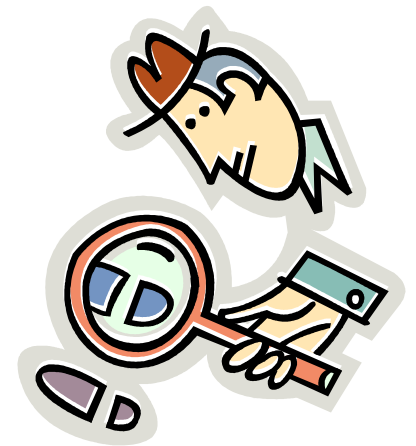
CHECKLIST FOR DETECTING BID RIGGING

-SECTION 5-

SUSPICIOUS BEHAVIOUR

Clues in Behaviour

- Competitors meet privately, such as at trade association meetings
- Bidders request or submits competitor's bid
- Bidder tries to determine who else is bidding, and then, perhaps, changes bid
- Several bidders make similar enquiries or requests of procurer
- Bidders don't exist- complimentary bids



Examples – U.S. Ice Cream Case

- Two firms submitted bids for ice cream to supply Department of Defense
- First Clue
 - Following slides illustrate one bidder submitting the competitors' bid
 - The procurement official first noticed that on item #35 of the bid form, both bidders made the same mistake – they both multiplied the quantity (8,400 GL) times the price per dozen (4.68/dz) instead of the price per gallon (12.45/gal)



U.S Ice Cream Case Clue 1

Capitol Bid

	ICE CREAM, REGULAR, TYPE II, GRADE 1, GENERAL 8.0% MP (MIN), CHOCOLATE, FRUIT, NUTS OR OTHER BULKY FLAVORS					
15	<u>13722</u> 4 (FLUID OUNCE) CUP FIBER/PLASTIC	8,400	GL	4.68/doz 12.45/gal	39,312.00	

Briggs Bid

	ICE CREAM, REGULAR, TYPE II, GRADE 1, GENERAL 8.0% MP (MIN), CHOCOLATE, FRUIT, NUTS OR OTHER BULKY FLAVORS					
15	<u>13722</u> 4 (FLUID OUNCE) CUP FIBER/PLASTIC	8,400	GL	4.50/doz 11.97/gal	37,800.00	

Examples – U.S. Ice Cream Case

- Second Clue
 - On the bottom of the bid form, the bidder types its address
 - The procurement official noticed that the same address was originally typed on both bids, and then changed
 - This could be seen only on the original documents, not on copies, so you cannot see it on the slide. It is always important to look at original documents

U.S Ice Cream Case Clue 2

OFFER (MUST BE FULLY COMPLETED BY OFFEROR)

NOTE: ITEM 10 DOES NOT APPLY IF THE SOLICITATION INCLUDES SECTION K, PROVISION NO. 57.214-16, MINIMUM BID ACCEPTANCE

10. In compliance with the above, the undersigned offers, if this offer is accepted within 73 calendar days from the date of receipt of offers specified above, to furnish any or all items upon which prices are at the price set opposite each item, delivered at the designated points, within the time specified in the schedule.

11. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 57-257-A)	10 CALENDAR DAYS %	30 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS

12. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror shall tender receipt of amendments to the SOLICITATION for offers and related documents numbered and dated.)	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

13. OFFEROR CODE: FACILITY CODE:

NAME AND ADDRESS
(Street, City, County, State and Zip Code):

Capitol Ice Cream Wholesalers, Inc.
2307 Bladensburg Road, N.E.
Washington, DC 20018

AREA CODE AND TELEPHONE NUMBER

202-832-730

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1. Check if remittance address is different from above - Enter such address in schedule (see clause K42).

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Examples – U.S. Ice Cream Case

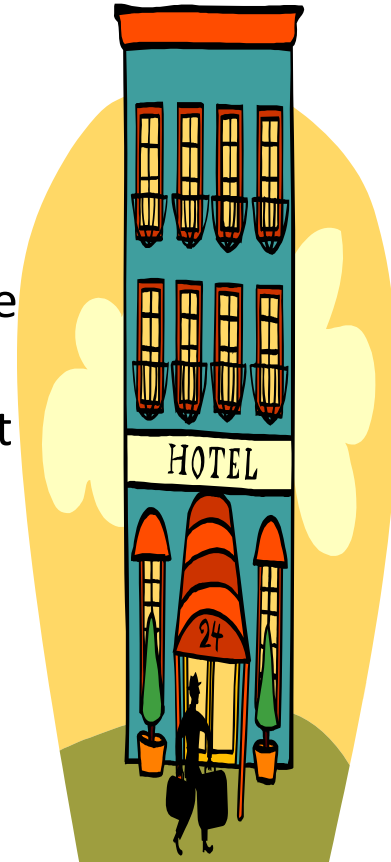
- Third Clue
 - The procurement official examined the envelopes used to submit the bids
 - Post marks showed both envelopes were mailed for the same post office at the same time
 - The stamps (with the pictures of the cars) were ripped from the same roll of stamps

U.S Ice Cream Case Clue 3(i)



Canadian Hotel Case

- This case involved tenders for hotel rooms used by the Canadian Government employees travelling to Ottawa for guests of the Canadian government
- Officials from six(6) of the largest hotels met in one hotel to fill in the tender documents together-all submitted identical rates for the different types of hotel room
- The conspirators put their bids in individual envelopes but then put all of the envelopes in the same courier package for delivery to the government procurement agency
- The woman receiving the package was suspicious and called her boss
- The boss spoke with the courier delivery person
- The Competition Authority used this information and obtained search warrants
- All hotels pleaded guilty to big rigging charges



Your Experiences

- Do your suppliers meet privately before submitting bids? Trade association meetings?
- Have you seen any behavior that makes you suspicious that we have not already talked about today?



CHECKLIST FOR DETECTING BID RIGGING

-SECTION 6-

CAUTIONARY NOTE ABOUT **BID RIGGING**

Clues Do Not Prove Bid Rigging

- Indications of possible bid rigging may have innocent explanations
- Do not assume supplier is guilty based on clues



CHECKLIST FOR DETECTING BID RIGGING

-SECTION 7-

WHAT TO DO IF YOU SUSPECT **BID RIGGING**

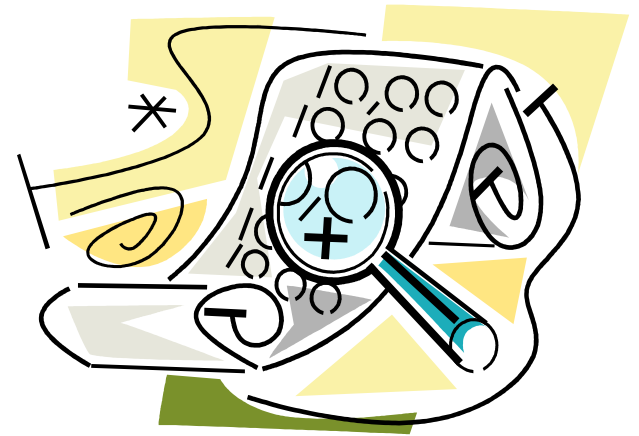
If You Suspect Bid Rigging

- Keep all documents and detailed records of clues
- Do NOT discuss concerns with bidders
- Contact internal legal or audit staff, or manager
- Contact competition authority
- After obtaining advice, decide whether to proceed with tender



Conclusion

- Detecting bid rigging requires your constant attention for clues, which are detailed in the OECD Checklist for Detecting Bid Rigging
- Among the most important clues are:
 - Patterns in the bidding or prices
 - Indications that the bidders have communicated with each other



**Hypothetical Case (Construction Contracts)
(Contracts Awarded Every Six Months- Assume All Bids Above Estimate and
Lowest Bidder Wins Contract)**

Contract No.1

Contractor A- \$1,800.00
Contractor B- \$1,944.00
Contractor C- \$2,088.00
Contractor D- \$2,232.00

Contract No.2

Contractor C- \$800.00
Contractor B- \$1,100.00
Contractor D- \$1,800.00

Contract No.3

Contractor D- \$650.00
Contractor B- \$800.00
Contractor A- \$1,000.00

Contract No.4

Contractor B- \$1,800.00
Contractor A- \$2,100.00
Contractor D- \$2,100.00
Contractor C- \$2,300.00

Contract No.5

Contractor C- \$1,000.00
Contractor A- \$1,500.00
Contractor B- \$1,900.00

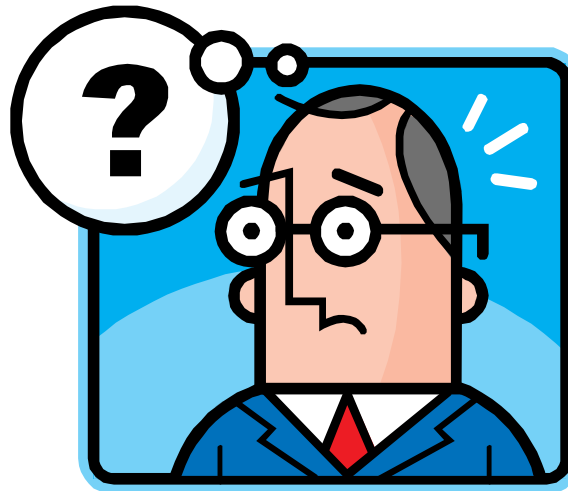
Contract No.6

Contractor D- \$1,150.00
Contractor B- \$1,510.00
Contractor A- \$1,525.00
Contractor C- \$1,575.00

WARNINGS

- 1) 5 or fewer bidders
- 2) Same group
- 3) Each gets \$1,800.00 of work
- 4) Contracts #4 & #6 show possible #'s to bid above (\$2k & \$1.5k)
- 5) Identical bids in Contract # 4
- 6) Companies all over the place, so possibly not bidding on basis of costs (A is low on #1, well high on others)
- 7) Refrain from bidding (A in #2, C in #3 etc)
- 8) Equal increments above each other (\$144.00 on #1)

Any Questions??



THANK YOU



www.mycc.gov.my

complaints@mycc.gov.my

enquiries@mycc.gov.my