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15 April 2015

Hong Kong Competition Law Series: Part 6

2015 - THE YEAR OF COMPETITION IN HONG KONG

Cardinal Sin No. 4 – Bid Rigging

Last week we looked at the Cardinal Sin of market sharing. This week we discuss Cardinal Sin No. 4 – bid rigging.

Bid Rigging

Bid rigging refers to agreements between competitors not to compete for a tender, and instead allowing a designated winner to be awarded the project or contract.

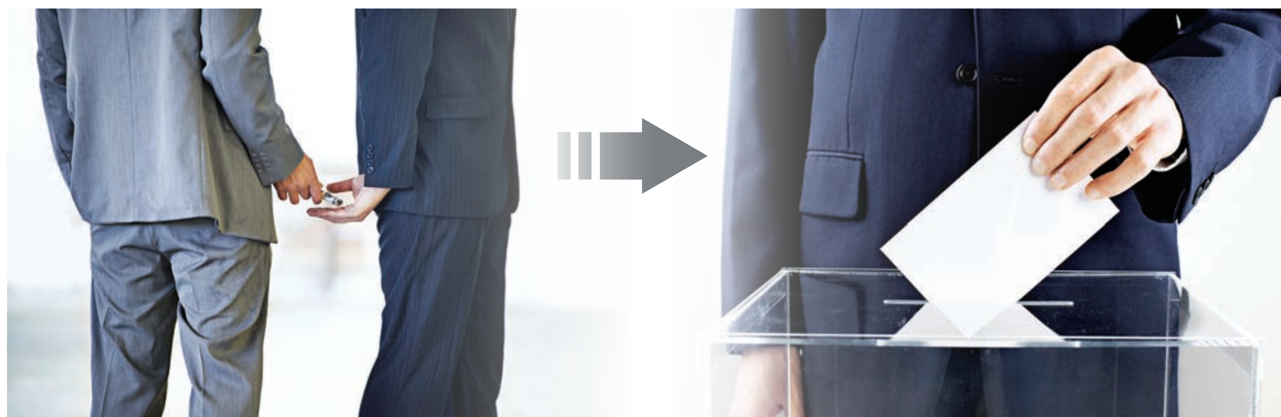
WHY RIG BIDS?

To prevent competitors from undercutting each other, and enable each competitor to charge a higher price or lower the quality of goods or services offered.

WHAT DOES BID RIGGING ENTAIL?

A "rigged" tender or bid is one that has a predetermined result engineered by the competing participants in the tender, i.e., there is one "chosen winner" and others agree to be "designated losers". Below are some examples of how bids are commonly rigged:

- **Sham bidding:** the designated losers submit bids that are bound to be rejected:
  - » Cover bidding: the designated losers submit bids that are less attractive due to higher prices or lower quality.
  - » Non-conforming bids: the designated losers submit bids that do not conform to the tender specifications.
- **Bid rotation:** competitors take turns being the chosen winner.
- **Bid suppression or withdrawal:** the designated losers either refrain from bidding, or withdraw their bid to allow the chosen winner to win.



WHAT DO THE "DESIGNATED LOSERS" GET OUT OF IT?

Participants in a bid rigging agreement benefit in the following ways:

- Bid rigging may be part of a market sharing agreement, where competitors maintain their allocated share of the market by refraining from participating in tenders, or by always submitting sham bids in each others' share of the market.
- The chosen winner compensates the designated losers by letting them win another tender or appointing them as a subcontractor.
- The chosen winner pays the designated losers a fee.

Next Week

This concludes our discussion of the Cardinal Sins: price fixing, output limitation, market sharing and bid rigging. Remember, these are the most harmful forms of anti-competitive conduct that will almost always fall foul of the First Conduct Rule.

Next week we look at information exchange among competitors, a complex but intriguing area of competition law.

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