

Goodmans^{LLP} Update

Competition Bureau Announces Further Measures to Fight Collusive Bidding in Public Procurements

As part of its ongoing efforts to fight collusion among bidders in public procurements, the Competition Bureau recently announced that it had signed a Memorandum of Understanding (MOU) with the Yukon's Department of Highways and Public Works, which is responsible for the Territory's public highways, airstrips, buildings and information systems.

This development further signals the Bureau's prioritization of the investigation and prosecution of cartel activity relating to public procurement. The MOU and the detection efforts that it is designed to enhance will complement the Bureau's recently revised immunity and leniency programs. (See our Update from October 10, 2018, [Updated Canadian Cartel Immunity and Leniency Program](#).)

Under the MOU, the Bureau and the Department have agreed to notify each other upon learning of possible cartel activity in relation to a procurement process conducted by the Department. This sharing of information should assist in investigation and enforcement and should also allow the Department to take steps to mitigate the effects of any possible collusion. In addition, the Bureau has promised to offer educational programs to Department personnel, teaching them how to detect cartel activity and sharing best practices on preventive measures.

This MOU is just the latest Bureau initiative in the area. Early last year, the Bureau announced a similar MOU signed with Defence Construction Canada (a federal Crown corporation that provides contracting services as well as contract management to the Department of National Defence). And a similar MOU has been in place for several years with Public Works and Government Services Canada (which is responsible for most federal government procurements).

The MOU with the Yukon's Department of Highways and Public Works, however, marks the first such cooperation agreement with a provincial or territorial government.¹ And it comes on the heels of last year's successful prosecution of four individuals who participated in a bid-rigging scheme undermining competitive procurements run by the City of Gatineau in Quebec. All of this suggests a broadening of the Bureau's focus to encompass public procurements outside of federal jurisdiction.

Expanded efforts to fight bid rigging in public procurement can also be seen in a number of leading foreign jurisdictions. Last November, the United States Department of Justice announced the formation of the Procurement Collusion Strike Force, with a mandate to deter, detect and prosecute bid-rigging conspiracies in public procurement. In Europe, enforcement efforts have shifted into high gear over the last year, with high profile investigations being announced in France, the Netherlands and Spain. And the U.K. competition authority has launched a publicly available screening tool to help purchasers screen tender data for signs of collusive behaviour.

¹Other MOUs with provincial, territorial or local government entities have been limited to vaguer undertakings to "consult on matters of mutual interest".

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This increased focus by enforcement agencies, including the Bureau, on bid rigging in public procurements is noteworthy, as the potential consequences for cartel members are severe. In Canada, participants in a bid-rigging conspiracy can face not only civil claims for damages, but also the possibility of regulatory proceedings before the Competition Tribunal, as well as the risk of criminal prosecution, with penalties including prison terms of up to 14 years and fines that are limited only by the court's discretion.

For further information concerning this development, please contact our [Competition, Antitrust and Foreign Investment Group](#).

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