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CARTELS IN PUBLIC PROCUREMENT: A REASSESSMENT
By Alberto Heimler

Bidding markets differ from all others because the objective of a cartel is not simply to raise prices, but also to ensure that each colluding firm gains some benefit. As a result, in most bid rigging cartels colluders rotate as adjudicators. The resulting bidding strategies give rise to anomalies in biddings that could be detected by the bid organizers. This is very important because leniency programs are unlikely to be very effective: dismantling a cartel is very seldom beneficial for the possible leniency applicant since she would renounce to all future profits without much gain in return. Furthermore, in public procurement cartel collusion is in many jurisdictions both an administrative and a criminal violation and “confessing” being part of bid rigging becomes too risky. This is why the recent EU ECN+ Directive has eliminated the possibility of criminal sanctions in public procurement cartels. The change is too recent for it to have had any significant effect. As a result, the bulk of bid rigging cartels continues to be discovered through reports by bidding authorities. However, in order to promote more reporting, the structure of incentives has to change. For example, the money saved from a cartel should at least, in part, remain with the administration that helped discover it and the reporting official should reap a career benefit. In any case, competition authorities should create a channel of communication with public purchasers so that the public purchasers would know that informing the competition authority on any suspicion at bid rigging is easy and does not require them to provide full proof.
I. INTRODUCTION

Bid rigging is a collusive agreement among competing firms aimed at artificially distorting a bidding process so that adjudication prices are higher and/or the quality of the product/service supplied is lower. The difference from a normal cartel, that leads exactly to the same outcome, is the process by which firms engage in bid rigging and the unique characteristics of a bid rigging cartel. These two elements, the process of finding a consensus on the bidding strategy to be adopted and the specific characteristics by which a bid rigging cartel operates, provide signals to procurement officials to suspect the existence of a bid rigging cartel and allow them to report it to enforcement authorities.

In a normal cartel competing firms meet in order to reduce the degree of competition among themselves (raising prices and/or reducing quality) and then meet subsequently making sure that there is no cheating and ensure that each cartelist market share remain sort of constant through time. On the other hand, in a bid rigging cartel firms get together to identify a strategy to distort the bidding process, but then, since there is only one adjudicating firm per bidding, they have to identify ways to compensate the other participants, offering them side payments or, more often, making sure that bid adjudications rotate among themselves. Detecting cheating is not an issue, because the transparency of the procurement process makes detection of a cheater immediate and costless. As a result no cheating in a bid rigging cartel.

The way the bid is organized affects the strategy to rig it. For example, a bid adjudicated at the minimum prices requires that potential bidders artificially fix their respective bidding price so that the price of adjudication is higher than it should otherwise be. The risk is that, since the possibility to bid is open to all qualified participants, some firms not participating in the collusive scheme wins the bid. This is a risk that cannot be reduced when the bids are adjudicated on the basis of the price only.

When bids are adjudicated on the basis of the most advantageous economic offer, then quality and price are both taken into consideration and the overall ranking of a bid requires aggregation with some predetermined weights. In such cases bid riggers, anticipating the quality of the offer of not participating firms, may more easily identify the price that would lead to adjudication and reduce the risk of adjudication to outsiders.

Finally, when anomalous offers are excluded automatically and the bid is adjudicated to some average price calculated with a pre-established formula (which is done to speed up the procedure), then the strategy of bid riggers may drastically change. This automatic exclusion requirement may induce companies to organize “cartels” whose aim is to artificially induce more bid participants and concentrate the offers around the level of the price that would most probably be considered just not anomalous. The probability for one of the participating firms to win the bid is thus drastically increased.

For many reasons leniency programs are not very effective in procurement cases. First of all, in most jurisdictions bid rigging in public procurement is also a criminal offence leading to jail sentences, as a result immunity for an administrative fine is not sufficient. Furthermore, once a bid is adjudicated (especially when lots are shared among the participating firms), it is very rarely detected subsequently. As a result, leniency candidates prefer to wait instead of coming forward.

The ineffectiveness of leniency programs is in principle not a reason of much concern in bid rigging because signals of bid rigging could be identified by the way competitors participate in the bidding process. Procurement officials are thus good candidates to report what they perceive to be collusive bidding strategies to the relevant enforcement authorities. However, since procurement officials are rewarded for prompt delivery and are never held responsible should a bid be adjudicated at artificially distorted prices, they have little incentives to report their suspicions to enforcement authorities. There are ways to enhance their incentives to report, i.e. making them aware of the damages of bid rigging, linking their career to fighting bid rigging and making the procuring administration able to sue the bid riggers for damages.

Section II will show the differences between a normal cartel and bid rigging. Section III shows how a bid rigging can be detected providing the example of the Italian cartel among management consulting firms. Section IV addresses the issue of the incentives of public procurement official to report their suspicions to the relevant enforcement authorities and finally Section V discusses what happens when anomalous offers are automatically excluded and the bid is adjudicated around some average price. Section VI concludes.

II. CARTEL BEHAVIOR AND BID RIGGING

Cartel is a term generically applied to a wide variety of agreements among competitors having a direct effect on prices. The most common cartel is an agreement among competitors on the price or prices to be charged to some or all of their customers. In normal markets, since market conditions and costs frequently change, price fixing requires frequent contacts between competitors, either in person or through some form of
digital communication. This is particularly necessary for assigning to each market participant the quantities allowed to be produced. Furthermore, since transactions terms are usually secret and are not revealed to third parties, these meetings are necessary to make sure that nobody has cheated on the reached agreement.

In addition to full agreements on which price to charge, cartels can also consist in partial agreements on: the use of a standard formula according to which prices will be computed; maintaining a fixed ratio with the prices of some competing products; eliminating price discounts or establishing uniform discounts; common credit terms to be extended to customers; adhering to published prices, not to advertise, etc. Although these partial agreements do not completely eliminate price competition, they still reduce rivalry between competitors, sometimes substantially. The interesting feature of these partial price fixing agreements is that the agreement takes place once and for all and does not require any further contact between cartel members for it to be implemented or renewed. Nor the agreement needs to be formalized in any way. As a result, proving that competitors actually agree to such commonly adopted practices may be very difficult.

This is also the case for the agreements to allocate customers or territories. They take place once and for all and do not need to be formalized. As a result they are very difficult, if not impossible, to prove. Should the remaining market occupants be very few, the competition they face with respect to prices, service, quality, and innovation may become much weakened. As a result, market-division agreements may have a greater impact on competition than price-fixing.

Both full and partial cartel agreements are difficult to detect because those that are damaged by the cartel (the customers) do not have the information necessary to prove their existence. As for fellow cartel members, they are all either quite happy to be part of the cartel, even when they cheat on the cartel agreement or decide not to participate. In fact, unhappy cartel members do not have to denounce the cartel for it to stop functioning. To the contrary, if they decide to compete against the cartel (cheating), they still benefit from the high prices of the cartel.

In this respect bid rigging agreements are different. They are meant to allocate tenders between potential bidders. They are complex agreements requiring potential bidders to communicate frequently among them in order to identify the most profitable course of action for each bid and/or to a sequence of bids. Bid rigging agreements generally fall into two categories:

“Bid suppression. One or more competitors agree to refrain from tendering or to withdraw a previously submitted tender so that another company can win the tender. The parties to the agreement may administratively or judicially challenge the tenders of companies that are not part to the agreement or otherwise seek to prevent them from tendering, for example, by refusing to supply them with some necessary input.

Complementary bidding. The competing companies agree among themselves who should win a tender, and then agree that the others will submit artificially high bids to create the appearance of vigorous competition.”

In any case there has to be some form of bid rotation, which is the reward that a competitor receives for agreeing not to participate in a bid or to bid an artificially high price. The bid riggers take turns in winning the tender, with the others submitting higher bids. The bid riggers will generally try to equalize the tenders won by each over time or to maintain their historical market share. A strict pattern of rotation is often a clue, not a proof, that bid rigging is present.

There are three types of possibilities for rotation: Rotation in time, i.e. bid riggers rotate in the adjudication of the bids of a single buyer; rotation in time and space, i.e. rotate in the adjudication of the bids of different buyers; instant rotation, i.e. rotation between the lots of a single bid. Among all the three types of rotation, instant rotation is the less risky for the riggers. All happens at once. Otherwise, should firm A favor firm B in today's bid, there is no guarantee that firm B will reciprocate in the future, either because there is no certainty on the timing of next bid nor on the fact that firm B will either participate or respect its commitments.

Historically leniency programs have been quite successful in the discovery of cartels (not bid rigging though). Evidence suggests that leniency is most probable in the case of a merger (where the acquirer discovers that the acquired firm has been participating in a cartel of which it did not benefit but for which it would be liable in case it would be discovered), when the cartel becomes highly unstable because of widespread cheating, when technical progress makes the cartel irrelevant for one or more participants.

One of these characteristics, widespread cheating, is impossible in the case of bid rigging because the results of the bid are immediately known to all market participants and as a result a cheater would know that he/she would be discovered immediately and be punished afterwards (by interrupting the collusive strategy). Bid rigging cartels are thus much more stable than normal cartels. Furthermore, in most jurisdictions bid rigging

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in public procurement is also a criminal violation. As a result, when leniency would apply only to the administrative fine associated with the antitrust violation, a leniency applicant would risk a jail sentence. Leniency in the case of bid rigging in public procurement is thus traditionally quite unlikely.

In the EU some recent legislative change has addressed these shortcomings and article 23.2 of the recent ECN+ EU Directive\(^3\) provides that

> “Member States shall ensure that current and former directors, managers and other members of staff of applicants for immunity from fines to competition authorities are protected from sanctions imposed in criminal proceedings, in relation to their involvement in the secret cartel covered by the application for immunity from fines, for violations of national laws that pursue predominantly the same objectives to those pursued by Article 101 TFEU, if they meet the conditions set out in paragraph 1 and actively cooperate with the competent prosecuting authority.”

The change in legislation is too recent to have shown relevant results yet, but certainly the extension of the immunity privilege to the criminal part will provide the right incentives to file for leniency in cases of bid rigging in public procurement.

While the ECN+ Directive has removed some very important impediment to file for leniency in the case of public procurement bid rigging cartels, another Directive, the private enforcement Directive,\(^4\) by making the requests for damages for cartel infringements easier, has negatively affected the general incentive to file for leniency. While the administrative fine in the EU is capped by law at 10 percent of the yearly turnover of the firm, the request for damages has no cap. As a result, for cartels that have lasted for years the damage request may become extremely costly and sometimes even prohibitive for the involved firms. It may well be that the recent strong reduction of leniency driven cases that we see in Europe may also be caused by the high risk of follow-on damage requests.\(^5\)

Unfortunately, the proposal to extend leniency also to damage requests is not appropriate because it would punish the buyers from the leniency applicant that, quite unfairly, would not find any reparation. The solution adopted in the U.S., where buyers from the leniency applicant would receive single not treble compensation, is not available in the EU where damages cannot have a punitive objective. The U.S. solution, while it creates some differences between buyers from a cartel, where some would receive treble while other only single reparations, is a fair one because it compensates all consumers for the suffered damages. In fact damage reparation has to be guaranteed to all and other firms cannot pay for damages they have not caused. In other words, in the EU private enforcement negatively affects the incentive to file for leniency, but we have to live with this. There are no easy solutions.\(^6\)

However in the case of bid rigging cartels in public procurement this is not a reason to despair. Bid rigging agreements always entail some bid rotation. And it is exactly this rotation, together with some anomalies in the biddings of different competitors, that may lead procurement officials to suspect bid rigging.

A public procurement procedure is of an administrative nature and it cannot be interrupted just because there is suspicion of collusion. Public procurement officials should be trained to recognize these suspicious signals in order to report them to the relevant enforcement authorities. It would be then the responsibility of such enforcement authority to open a case if the evidence provided is sufficiently compelling. In the meantime the procedure could continue and restoration to the purchasing administration would come from damage requests.

### III. AN EXAMPLE OF BID RIGGING: THE ITALIAN CARTEL BETWEEN FIRMS CONSULTING ON THE MANAGEMENT OF EU STRUCTURAL FUNDS.

In 2015 the Italian central purchasing agency (“Consip”) launched a bid for purchasing the services of consulting for the management of EU structural funds. The bid was split in 9 different lots of different value, ranging from 3.9 to 11.9 million EUR, for a total value of 60 million EUR. The bidding
was organized according to the most advantageous economic offer, with weights set at 70 percent for quality and 30 percent for the price. Participants could bid for all lots, but a single firm could at the maximum be the adjudicator of three lots and a maximum of 27 million Eur. There were 9 participants to the bidding. After having adjudicated the contract, Consip sent to the Italian competition Authority the following suspicious evidence:

<table>
<thead>
<tr>
<th></th>
<th>lotto 1</th>
<th>lotto 2</th>
<th>lotto 3</th>
<th>lotto 4</th>
<th>lotto 5</th>
<th>lotto 6</th>
<th>lotto 7</th>
<th>lotto 8</th>
<th>lotto 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>kpmg</td>
<td>30</td>
<td>30</td>
<td>10</td>
<td>14</td>
<td>11</td>
<td>14</td>
<td>10</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>EY</td>
<td>11,21</td>
<td>31,42</td>
<td>11,55</td>
<td>13,25</td>
<td>31,44</td>
<td>31,51</td>
<td>11,21</td>
<td>14,999</td>
<td></td>
</tr>
<tr>
<td>PWC</td>
<td>13,553</td>
<td>13,186</td>
<td>11,632</td>
<td>32,274</td>
<td>12,098</td>
<td>10,064</td>
<td>12,676</td>
<td>1,048</td>
<td></td>
</tr>
<tr>
<td>Deloitte</td>
<td>10,064</td>
<td>10,905</td>
<td>13,207</td>
<td>31,342</td>
<td>12,098</td>
<td>10,064</td>
<td>12,676</td>
<td>1,048</td>
<td></td>
</tr>
</tbody>
</table>

All figures are percentage discounts to the baseline.

There are many anomalies in this bidding pattern. First the highest discounts of the four bidders are all for a different lot. How is this possible? Second these nine highest discounts are of the same order of magnitude. How is this possible? Finally the four companies bid also in other lots, not just for those where they seemed to be mostly interested and also here with discounts of very similar levels. How is this possible?

The Italian Authority after more than a year of investigation concluded that this pattern of bidding did not emerge spontaneously. The four companies had met before the bidding, but failed to provide a reasonable explanation of the reason of their meeting. And indeed the Authority found indirect evidence that they met to coordinate their biddings. It took almost a year to conclude the procedure, indicating that suspicions are not yet a proof!

There are a few interesting issues in this case. The first one is that Consip had chosen a bilinear formula for calculating the score for the price discounts. As a result the four companies, that knew they had the highest quality offer, tried to reduce the average discount for the lots that were not of interest to them, so as to minimize the difference in score between them and any more aggressive bidder. The strategy was not successful for all lots and four lots were adjudicated to firms not participating in the rig. The second issue is that Price Waterhouse did not win any bid but was nonetheless considered responsible of bid rigging and fined.

Finally, the purchasing officials were able to discover the bidding because they had undergone extensive training. The bidding pattern, especially because it involved only a subset of the participating firms, was quite complex to discover.

**IV. THE INCENTIVES OF PUBLIC PROCUREMENT OFFICIALS**

Public procurement officials are evaluated on how well they run the procedure and on how quickly they deliver. The adjudicating price is not an issue of concern for them because it is simply the result of the competitive process. If by any chance the competitive process is distorted it is not the responsibility of procurement officials and they could simply ignore the issue. Even worse, suspicion that there is a cartel (and the process of evidence gathering for reporting it) may delay the whole process of purchasing and therefore goes against the main interest of procurement officials (quick delivery).

Furthermore, the general system of incentives within a Public Administration is not designed to promote the discovery of bid rigging cartels. First of all, the money that is being saved because of the dismantling of a cartel does usually not remain in the administration that actually discovered or helped discovering the cartel, but is redistributed to the general administration budget. Furthermore, the administration that purchased at higher prices because of a cartel could sue for damages, but, in many jurisdictions, damages would be collected by the Treasury, not by the administration that was actually instrumental in the discovery of the cartel. For all these reasons

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7 A formula transforms a discount into a score. A bilinear formula has the characteristics that a predetermined percentage of the total score (in our case 90 percent) is assigned to discounts below the average of all discounts and only the residual percentage (in our case 10 percent) of the score is left available for discounts above that average. Both formulas are linear, but the second one has a much higher slope. This means that an additional percentage of discount with respect of the reference price provides a higher additional score at discounts below the average and a much smaller increase in score for discounts above the average. The formula is chosen to reduce the incentive for excessive discounts. However, since the average depends upon the discounts of all participants, the lower this average the greater the probability that the high-quality firms would win the bid.

8 Here is the list of firms that won the bid for each lot: Lot 1, KPMG; lot 2, Lattanzio (discount 42.7 percent); lot 3, Lattanzio (discount 42.7 percent); lot 4, Deloitte; lot 5, Lattanzio (discount 42.7 percent); lot 6, IT Audit (discount 48.5 percent); lot 7, Ernst Young; lot 8, Deloitte; lot 9, KPMG.
public purchasers are generally indifferent on the existence of cartels. Nobody could ever blame them that they paid too much because of a cartel.  

In order to induce more public purchasers to report to the enforcement Authorities their suspicions of bid rigging, the incentive structure has to change. First of all, purchasing administrations should be encouraged to sue for damages originating from bid rigging and such damages (when granted by the judge) should remain in the budget of the suing administration. Furthermore, the career of a public procurers could be also made dependent on the number and importance of the cartels he/she contributed to identify.

The OECD Competition Committee has set up a guidance for procurement officials aimed at helping them discover bid rigging cartel. The guidance identifies a number of elements that purchasing officials have to consider in the running of a bidding processes, like attention on any evidence leading them to suspect that rivals got together before the bidding discussing their respective participation to the procedure. In that case some analysis of previous bids and/or bids by others may help them conclude that there is bid rigging. However public administration officials have to be trained in the use of this guidance, because it requires different skills and competences than those needed for successfully organizing and running a bidding procedure.

Government employees often believe they should have full proof of bid rigging before reporting their suspicion (that should become a certainty) to the enforcement Authority. Since this is quite unlikely, they tend to keep any suspicion for themselves. This is why competition authorities should create a special channel of communication for public procurement officials where they could communicate to the Authority any suspicion they may have on a bid.

Finally, whistle blowers are also very important. They may be employees of firms guilty of cartel infringements. In 2017 the EU has introduced a channel of communication where the identity of whistle blowers would be fully protected in the denunciation of cartel infringements. The same has been done in Italy in March 2023 as required by the whistle-blower EU Directive. A recent cartel in Italy was discovered thanks to a whistle blower.

There are also some procedural and legal steps that should be taken to make bid rigging much more difficult.

The first is to centralize purchases (or make sure that bids are not made artificially too small, so that a large purchase cannot be easily divided up among all the firms in the industry) and reduce the incentive to collude because rotation may be too risky and would take years to satisfy all firms involved. Furthermore with centralization the information on the different bids can be found within the same organization, so that any irregularity across different bids can be more easily identified.

Also the rules that favor smaller firms in their participation to tenders on which individually they would not be able to participate because of their small size, should be made more rigorous. In particular temporary consortia should only be allowed if comprised by firms producing complementary goods or services, while simple horizontal consortia (where firms split among themselves a contract for a single product/service) should be prohibited. In fact, temporary consortia between rivals are very often a tool for enforcing a cartel, more than a way to increase competition.

V. AUTOMATIC EXCLUSION OF ANOMALOUS OFFERS

In Italy, like in many other countries, many bids of lower value are adjudicated to the bid closer to some sort of average of part of the biddings. Already in 1992, when the system was much more widespread than today, the Italian competition Authority issued a report on public procurement

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9 The importance of incentives is confirmed by the fact that in the last decade the Italian central purchasing agency (CONSIP) has reported quite a number of bid rigging cartels to the Italian Competition Authority. The agency was under heavy criticism by the Administrations that were using its services that instead of providing benefits to them it would purchase at prices higher than if purchases were decentralized. To show that the complaints was unfunded the agency started reporting possible bid rigging cases to the Italian Competition Authority, suggesting that collusion was the cause of the high prices (this is my personal interpretation of these developments based upon chats and small talks).


11 Directive 2019/1937 of 23 October 2019, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937. In Italy the measure has been quite fruitful and since the entry into force of the new instrument (6 months) 34 reports have been filed, quite a remarkable number. We will see how many of these reports are of a good quality and will actually lead to cases.


13 As Heimler, A. (2012), “Cartels in public procurement,” Journal of Competition Law and Economics observes, “there is also an efficiency reason why temporary consortia between small rivals should be prohibited: big tenders require big firms because they have the organizational capacity to handle them. The organizational capacity of a big firm is never equal to that of a sum of smaller firms.”
where, among other issues, it denounced the system as prone to collusion. The point made by the Authority was that firms may participate in large number to the bidding, so as to strategically influence the level of the average adjudicating price and increase the probability of adjudication. At the time there was no evidence that such colluding practices were actually widely followed. The Authority just presumed it.

Even today, over 30 years after that Report, the system of adjudication to some sort of average of biddings is still in place in Italy, after ample evidence that the system induces widespread collusion.

Conley & Decarolis (2016) present evidence that bidding in procurement auctions where contracts are awarded to the bid closest to an average of some of the bids is widely characterized by coordinated actions. The paper start with the confession of one of the riggers, Bruno Bresciani, found guilty of having rigged 94 average bid auctions in the Piedmont region of Italy and sentenced to seven years of jail in 2008: “… At the first meeting they said: ‘Why should we kill ourselves and let those coming from the outside laugh at us?’ Here [in Turin] firms from the South were coming and getting the jobs, setting the averages, they used to come with 20, 30 or 40 bids, they used to get the jobs and then what was left for us?…”

But why rewarding bids at some average bid price? The reason is that it is believed that prices below a certain threshold are too good to be true and there is a risk that what is needed will not be delivered, will be delivered at a lower (not observable) quality than requested or will be produced underpaying the workforce. A full analysis of the viability of these bids (to avoid such occurrences) is considered too costly, especially for smaller contracts, and adjudicating at some average bid is considered an effective alternative. What is not considered however is that the rules of the game have an impact on the bidding behavior of firms. By the way it is also doubtful that adjudicating at higher prices has any consequence on any definition of quality as presumed by the proponents (if there is no control on quality ex-post the incentive to reduce it remains intact).

In any case, what the system induces is a multiplication of participants that distribute their bids in such a way as to influence the determination of that average, increasing the probability that one of the firms participating in the cartel is awarded the bid. As Conley & Decarolis (2016) report in the case of the cartels operating in the Piedmont region this is what happened:

| Table 2: Cartels operating in Piedmont in the period 2000-03 |
|---------------------------------|-----------------|-----------------|-----------------|
| **Group ID** | **No. Firms** | **No. Victories** | **No. Auctions** |
| 1. Torinisti (B) | 17 | 83 | 247 |
| 2. San Mauro (C) | 13 | 35 | 234 |
| 3. Coop (G) | 16 | 73 | 240 |
| 4. Pinerolei (A) | 16 | 1 | 110 |
| 5. Canavesani (E) | 16 | 7 | 155 |
| 6. Settimo (D) | 11 | 10 | 220 |
| 7. Provvisiero (F) | 7 | 11 | 73 |
| 8. Tartara/Ritonnaro (H) | 14 | 1 | 62 |

**Source:** Conley & Decarolis (2016)

It is interesting to observe that in the 276 bidding procedures considered eight separate “cartels” were in operation, suggesting that the collusive practices did not eliminate competition altogether. As the table shows, some of these “cartels” were more successful than others.

In April 2008, the owners and managers of numerous construction firms were indeed convicted. The Court documents identify 95 firms that operated in 8 cartels. These cartels were very successful in their activity. Despite representing no more than 10 percent of the firms participating to the bidding procedures, they won about 80 percent of all the auctions held in the Piedmont region between 2000 and 2003.

At the time these collusive practices were implemented the Italian procurement law prescribed a very simple calculation for the average bid and the relevant formula could be easily simulated by firms participating in the bidding procedure. Since then the legislation was changed and now, although adjudication according to some average bid is still in place, the averages are calculated randomly in order to make it more difficult to simulate the exact level of the average bid used for adjudication. Although no other similar case was discovered since 2008 (at least

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to my knowledge), there is some indirect evidence that firms still try to influence these averages. In Italy the number of firms participating in bids with adjudication at some average bid is orders of magnitude higher than when adjudication is at the minimum price\textsuperscript{16}.

VI. CONCLUSION

Bid rigging cartels are much more stable than normal cartels. Indeed, in normal cartels, members have an incentive to cheat because they are not easily discovered and, by not following the cartel prescriptions, they increase profits by slightly lowering the cartel price and increase quantities beyond the cartel level. In bid rigging quantities are fixed and bidding is only used to identify the lowest possible price. Furthermore, bidding markets are much more transparent than normal markets further reducing the incentive to cheat.

This has a strong impact on the effectiveness of leniency programs in bid rigging cartels. Since leniency applications tend to be more probable the less stable a cartel, leniency is quite uncommon in bid rigging cartels. The recent amendments to EU law extending the benefit of leniency to criminal sanction will probably promote leniency applications in bid rigging cartels. At the same time however the damage directive, making it easier to sue for damages, remains a strong disincentive.

The peculiarity of bid rigging cartels is bid rotation and as a result public procurement officials are well placed to suspect that a cartel is artificially distorting a bid. They could thus easily report their suspicions to the relevant enforcement authorities. Unfortunately however, the incentives of public procurement officials are geared towards results (fast procedures, quality deliveries) and prices are not considered a variable of interest to them (prices originate from the bidding and in general are not a responsibility of procurers). Furthermore, public procurers wrongly believe that it is not just sufficient to suspect a cartel to report it. They think that they have to be certain that the bid was rigged and as a result immediately block the procedure. Since this is very seldom the case, they are inclined to do nothing.

There are however some measures that public administrations can adopt to more effectively discover bid rigging cartels:\textsuperscript{17}

1) Promote central purchasing especially whenever there are just a few firms competing in the relevant market.
2) Temporary consortia often organized to allow smaller firms to participate in larger bids for which individually they would not qualify should be allowed only if of a vertical nature, i.e. putting together firms producing complementary goods and services.
3) Introduce career advantages for official that helped discovering a cartel.
4) Promote follow-on damage requests by affected public administration and make sure that the proceedings remain within the purchasing administration.
5) Competition authorities should create a special channel of communication with public purchasers, so that they would know that informing the Authority on any suspicion they may have would be worthwhile; and that they would never be responsible vis à vis the firms involved (the responsibility of any subsequent action rests with the enforcement authority).
6) Discovering bid rigging cartels requires different skills and competences than those necessary for successfully running a bid, so that public purchasers should be adequately trained, possibly by experts in antitrust enforcement.
7) Avoid adjudicating bids to some average price because that average can be artificially influenced by colluding bidders.

\textsuperscript{16} I thank Francesco Decarolis for pointing this out to me.

\textsuperscript{17} Six of these seven suggestions are the same as in Heimler (2012).
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