

Italian Competition Authority Releases New Guidelines on Competitive Bids

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On October 26, 2013, the **Italian Competition Authority** (the Authority) published its new guidelines on competitive bids. The guidelines are intended to help contracting entities to recognize and inform the Authority of potentially anti-competitive behavior during the awarding procedure.

According to the guidelines, potential anti-competitive behavior is more likely in markets with few competitors (or companies that are similar in efficiency and size), homogeneous products, the same companies repeatedly tendering for work or where bids are subdivided into several contracts of similar economic value.

The guidelines note that breaches of competition laws tend to be associated with the following behavior:

- **Boycotts** of competitive bids, *e.g.*, companies presenting offers below those required by the award procedure, or presenting offers of the same value, aimed at prolonging the existing agreement or forcing the awarding party to award the contract *pro quota*.
- **Offers** that are intended to be refused, *e.g.*, excessive offers that have conditions attached that are clearly unacceptable to the awarding party.
- Misuse of **subcontracts** or **temporary associations of companies** aimed at market-sharing between the participants or foreclosure of potential new entrants.
- **Market sharing** and **bid rotation**, which can usually be spotted by analyzing the patterns of wins across a number of awarding procedures.
- **Other activities**, such as simultaneous presentation of offers, the same errors appearing in bids and the same handwriting on documents.

In the first phase of the application of the guidelines, the Authority has invited the contracting parties to only report suspicious matters related to competitive bids above the community threshold.

The guidelines show that the public works sector continues to be one of the main priorities for the Authority, which has imposed over 500 million euros in fines since the early 1990s on companies found to have allegedly co-ordinated their behavior in public bids.

Italian and international organizations active in Italy are advised to carefully monitor their conduct during awarding procedures to avoid the risk of unmotivated involvement in potential proceedings before the Authority.

Giorgio Santoro also contributed to this article.

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