

The Characteristics Analysis and Governance Research of Collusion Behavior in Government Procurement under the New Situation

Mingwei Huang, Yuehan Yang

Chongqing University of Technology, Chongqing, 400054, China
erichuang@cqut.edu.cn

Abstract: As one of the methods of national public financial expenditure, government procurement plays a role of macro-control and improving the efficiency of the use of procurement funds. The project involves a huge amount of money and has a pivotal impact on social and economic life. In line with the non-profit purpose of government procurement and the principle of open and fair competition, the market cannot tolerate the collusion behavior.

Keywords: government procurement; string marked; manifestation; reason; governance

1. Introduction

The government is the main representative of the public rights and interests. Government procurement activities are carried out by government departments at all levels in order to effectively regulate procurement behavior, activate the socialist market economy, and safeguard the national and social public interests. The standardization and fairness of the government procurement process can not only improve the procurement efficiency, but also effectively prevent the occurrence of illegal phenomena, so as to maximize the interests of both buyers and sellers. However, in reality, the parties to the procurement do not hesitate to bid through various means in order to benefit, which violates the original intention of government procurement and has a negative impact on market order and clean government construction.^[1] Therefore, it is of positive significance to analyze the characteristics and governance of government procurement collusion under the new situation.

2. The manifestation of collusion behavior in government procurement

As a procurement system, government procurement has strong market characteristics. At the same time, as a way of government financial capital control, there is also an administrative color. This duality determines the existence of a variety of game relationships between different subjects in the government procurement system.^[2] Collusion generally refers to the collusion between bidding units or between tendering units and bidding units to obtain benefits through fraudulent bidding. Conspired bidding and bid stringing refers to the behavior that several bidders jointly agree to consistently raise or lower the bid price at the time of bidding, limit the means and behavior of competitive bidders, exclude other bidders, and ensure that specific stakeholders win and benefit from bidding. According to the different subjects of serial labeling, the behavior of serial labeling can be divided into the following forms.

2.1 Collusion bidding between tenderers and bidders

In the bidding process, the ultimate goal of the bidder is to win the bid. If there is a close rivalry between the bidders, the parties may obtain a greater chance of winning the bid by different means. The essence is to use the loopholes in laws and regulations to reach an agreement with other bidders, implement a special operation impact assessment benchmark price, and obtain a competitive advantage in various evaluation factors by being set off by a series of bidders, so as to achieve the purpose of winning a specific bidding enterprise.^[3] One of these is "bid rigging", where multiple bidders are behind the same de facto controller to increase the probability of winning a bid by increasing the number of bids. Or some of the less competitive bidders, realising their low winning rate, charge a certain fee for stringing together bidders and, under the illusion of still being involved in the bidding, essentially withdraw from the competition and become "accompanying bidders".

2.2 Collusion between bidders and tenderers

This type of bid-rigging refers to bidders in positions of authority who take advantage of information gaps to deliberately divulge information to specific bidders, or who abuse their position to set unreasonable rules to create favourable conditions for "specific winners". This type of bid-rigging can take the form of: First, the tenderer as the subject. The bidders disclose information and information that can directly affect fair competition to specific bidders, and by controlling the scope of information disclosure, raising the threshold of entry, setting unreasonable time arrangements, and by specifically formulating some special bidding conditions based on the actual situation of specific bidders' qualifications, backgrounds and benefits, they restrict other bidders or potential bidders in various ways to make it easy for specific bidders to win the tender. Second, the expert review committee as the main body. Bidders and some evaluation experts have reached an agreement to implement various differentiated evaluations of the same or similar bids of different bidders. Even in some projects that have won the lowest bid price, evaluation experts have identified other lowest prices as invalid bids for various reasons, thus helping specific bidders to successfully complete the bid.

2.3 Collusion between multiple subjects

Collusive bidding between multiple subjects refers to the collusion of bidders and tenderers to set up "tailor-made" bidding document requirements, including the design of a good bid round-up between bidders with a competitive relationship, but also includes the evaluation experts and bidding units in one or more parties for collusive bidding, the formation of multiple subjects, multiple ways to coexist in the act of collusive bidding.

3. Harmfulness of Bidding Collusion in Government Procurement

Compared with the procurement of ordinary enterprises or individuals, the subject and capital of government procurement have public attributes, and have the characteristics of non-profit and openness, which determines the harmfulness of collusion and collusive behavior in the procurement process. This kind of behavior will not only damage the interests of many parties, but also contribute to the bad social atmosphere, so it needs to be strictly curbed.

3.1 Destroy the market economic order and fair competition mechanism

Fair competition is the soul of the market economy. It has the function of incentive, distribution and selection. The characteristic of the market economy is to realize the survival of the fittest through the full competition between equal subjects, so as to rationally allocate resources. Government procurement is to use the fair competition characteristics of the market to select high-quality and low-cost goods or services among many suppliers. However, the collusion and bidding behavior will seriously interfere with the normal economic order of the country, the bidding market order, destroy the fair competition mechanism, make the value and competition law difficult to play a role, and hinder the healthy operation of the market.

3.2 Encourage bad atmosphere

The bidding process of government procurement is complex, and any problem in any link will lead to the injustice of the results. Collusive bidding behavior in government procurement has even evolved into the norm. If the government procurement bidding behavior is not effectively controlled, it is difficult for law-abiding suppliers to win the bid through fair competition. In the long run, it is easy to appear 'bad money drives out good'. The phenomenon seriously undermines the people's awareness of law-abiding by the law and leads to a bad atmosphere in government procurement bidding activities.

3.3 Harm multiple interests

The collusion behavior will directly damage the interests of the purchaser and other potential suppliers, and fundamentally damage the national interests and the interests of the people. Although the quality of goods, projects and services provided by the winning suppliers through the collusion behavior cannot be completely denied, most of them do not focus on quality, but focus on obtaining the winning opportunity improperly through various methods. In reality, such suppliers tend to cut corners and shoddy,

causing huge losses to the purchaser. If it involves public infrastructure, it will also bring harm to public safety and social public interests.

4. Using the concept of supply-side reform to analyze the reasons for the behavior of collusive bidding

The ultimate goal of supply-side structural reform is to achieve optimal allocation of factors and improve the quality and quantity of economic growth by adjusting the economic structure. It can be summarized as “supply side + structure + reform”, that is, to promote structural adjustment by reform, reduce low-efficiency and low-end supply, expand the scope of high-efficiency and medium-high-end supply, enhance the adaptability of supply structure to demand changes, improve total factor productivity, and make the supply system better adapt to changes in demand structure. Collusion will be detected by analysing the supply-side system, demand-side market, and regulatory policies within the scope of government procurement.

4.1 Unclear system of bidding laws regulations and poor information disclosure

The effectiveness of supply side supply will directly determine the maximum efficiency of bidding operation. In order to stop bid-rigging, the State has set up provisions on the crime of "bid-rigging" in various laws such as the Bidding and Tendering Law, the Regulations for the Implementation of the Bidding and Tendering Law, the Law against Unfair Competition, the Measures for Bidding and Tendering for Construction Projects, and the Criminal Law, etc. However, the relevant laws have limitations in the determination of bid-rigging and bid-rigging. However, the relevant laws have limitations on the recognition of bid-rigging and bid-rigging, resulting in vague standards and weak operability, which makes it difficult for the supervisory authorities to apply them in practice. In addition, there are still some problems in China's government procurement in terms of bidding information disclosure, presenting a series of problems such as large regional differences, inconsistent publication of procurement elements, low information transparency and procurement efficiency, which are not conducive to the governance and supervision of bid-rigging.

4.2 The limited number and varying quality of review experts gives offenders a breakthrough

In the government procurement bidding project, the work of evaluation experts plays a decisive role in the bidding results. Government procurement involves a wide range, many types, high professionalism, and the complexity of procurement objects, all of which put forward higher requirements and demands for application-oriented experts. However, the actual situation is that for projects with complex technical parameters and high professional requirements, there are limited evaluation experts available, and some experts have too many attendance frequencies in certain types of projects. Some batch experts are subordinate to a system, which inevitably leads to the relationship between colleagues, leaders and subordinates, so that offenders have an opportunity to communicate privately through human relations, suggesting that some review experts give the bidding company more positive evaluation to win the bidding project. On the other hand, the quality and professional ability of the evaluation experts are also mixed. Some experts have excellent professional ability and fair evaluation, but some experts have low moral cultivation and are easy to be used by criminals and become accomplices of bidders.

4.3 Profit-driven and lack of industry self-regulation

As an economic entity, enterprises aim at making profits. Government procurement has great purchasing power and strong market influence. According to incomplete statistics, the overall scale of government procurement in China is close to 4 trillion yuan every year. Although the government procurement project is highly competitive, it involves a large amount of funds and has become a "hot spot" in the eyes of various bidding units. At the same time, most government procurement projects involve public resource transactions. When enterprises occupy rare resources, they will inevitably bring high profits to enterprises. Therefore, bidders use various means to win the bid, even at the expense of illegal collusion, collusive bidding, and “rent-seeking”. The lack of self-regulatory organizations in suppliers and agencies has greatly eroded the public interest, restricted the free competition in the market, disrupted the market order, hindered the development of enterprises themselves, and the quality of government procurement projects has also lost its guarantee.

4.4 Inadequate supervision and low cost of violation breed illegal acts

The supervision and management mechanism of government procurement is not perfect, and there is no linkage supervision mode based on the financial sector, supplemented by other regulatory authorities and social supervision. The normal supervision of bidding work has not been realized. Some enterprises are seemingly disciplined, and the actual illegal operation temporarily copes with the superior inspection. In addition, for illegal bid-winning behaviors, there are generally two penalties: invalid bid-winning and economic fines, but the penalty amount is only 5 to 10 percent of the bid-winning amount. Generally speaking, the amount of government procurement is often millions or tens of millions, and the winning bid can obtain huge profits through the collusion. Even if the collusion is found, the amount of fine is far less than the winning bid profit. Because the punishment is light, it is not enough to act as a deterrent warning to the offenders, which makes many speculators take risks and know the law but violate the law.

4.5 Supplier credit evaluation system is not perfect

Supplier credit evaluation refers to the credit evaluation of suppliers by the national financial department according to the behavior information of suppliers in government procurement, according to the prescribed indicators and procedures, to determine the credit rating, and to publicly receive public supervision. At present, the supplier credit evaluation system has been adopted in the bidding work of government procurement in many areas, which has also played a good preventive role in practice, but there are also some problems.

On the one hand, although credit systems have been established in various regions, due to the different management departments, management methods and degree of development of credit systems in different places, credit systems can only be applied in isolation within the region and not shared with other regions. Even some provinces have set thresholds for the identification of credit evaluation data from other places, which has led to the failure of credit information of foreign suppliers, evaluation experts and related practitioners to be recognized locally, and the advantage of credit information linkage has been lost. On the other hand, the government procurement bidding requires suppliers to provide proof of credit status is not uniform. Some tenders require suppliers to provide bank credit rating certificates, and some tenders require suppliers to provide credit rating certificates issued by credit rating agencies. This lagging supplier credit evaluation system can neither maximize the acceptance of suppliers' bids, nor strictly impose market bans on certain suppliers who have participated in illegal acts of collusion.

5. Countermeasures to curb government procurement collusion behavior

The supply-side structural reform focuses on the optimization and upgrading of medium and long-term economic structure and sustainable development, and emphasizes the five concepts of innovation, coordination, green, openness and sharing. In order to standardize the government procurement work, in view of the above problems, following the principles of structural optimization, total factor productivity, coordination of supply and demand, and sustainable development, we should start from the following aspects.

5.1 Promote the electronic and open bidding information

Improve the legal system and content, strengthen the feasibility of operation. In terms of legislation, the principle of regulation of collusion behavior should be refined, and the standards and responsibilities in the identification of collusion behavior should be clarified, so that relevant departments can have laws to follow and reduce the deniability of criminals. At the same time, the state can create an 'Internet + government procurement' model to enhance information transparency and make information timely, complete and accurate. The bidding process is electronic and process-oriented, so that each bidding process can be traced back and supervised, without giving criminals the opportunity to exploit legal loopholes.

5.2 Professional government procurement team

On the one hand, strengthen the training and team building of technical personnel at all stages of procurement work, and improve the professional ethics and business ability of procurement personnel. Relevant departments regularly carry out professional learning and learning of laws and regulations, and establish the awareness of staff to act according to law. At the same time, the country should organize

business guidance and practical case exercises for the evaluation experts, expand the number of experts, achieve the purpose of selecting a wide range of experts and effectively controlling the frequency and randomness of expert attendance, thereby reducing the possibility of bribing evaluation experts. On the other hand, procurement personnel and evaluation experts should uphold a fair and rigorous attitude. From the formulation of procurement requirements to the final evaluation of project results, they should verify and deliberate repeatedly, measure the advantages and disadvantages of each bidding unit from different dimensions, and select the optimal solution.

5.3 Establish a credibility system for bidders

The serious lack of social integrity leads to distorted market environment, low illegal cost and high law-abiding cost, which are the root causes of collusion bidding behavior. Therefore, how to strengthen the source supervision is particularly important. The government can establish the integrity file of bidders, use the Internet to report, formulate a reasonable integrity evaluation standard and integral system, and update the integrity file in real time according to the participation of bidding enterprises.^[4] In the construction of integrity, the method of combining positive and negative incentives is adopted. In government procurement, enterprises with high credibility are given qualification audits and preferential treatment under the same conditions, so as to achieve the purpose of self-restraint of enterprises. At the same time, the dishonest enterprises are recorded in the integrity file and publicized. Once the enterprises with vicious competition or illegal bidding are found, they will be punished accordingly, and they will be listed in the blacklist of government procurement bidding and prohibited from participating in any procurement activities. The government needs to actively promote self-discipline among bidding companies to create a fair and positive competitive environment for government procurement and bidding activities in order to develop a good industry culture of "trustworthy benefits".

5.4 Regulate the regulatory enforcement system

The state should strengthen the awareness of the main responsibility of the supervision department and implement the requirements of equal rights and responsibilities. Relevant departments should regularly carry out learning and training to improve ideological understanding and recognition of laws and regulations. In addition, the state should clarify the division of labor and responsibilities of each position, and grasp the information of user needs, sources of funds, procurement methods, and scope of expert extraction in advance to ensure the legitimacy and fairness of government procurement bidding. The supervision process is also formulated according to the type of government procurement project, and the different stages of bidding are strictly supervised.^[5] At the same time, the relevant government departments need to increase the economic punishment of the collusion behavior, and the criminal punishment is imposed on the bad situation, so that the illegal cost of the collusion is much higher than the illegal income, and the illegal speculators are deterred by strong punishment.

5.5 Comprehensively regulate the agency's agency behavior

First, it is necessary to strengthen the supervision of the agency. The relevant national financial and audit departments, as well as the internal audit institutions of the unit, should carry out all-round and multi-level supervision of the agency, improve the supervision system of the agency, carry out the follow-up supervision mechanism before, during and after the event, and form a normalized supervision, so that the agency's procurement procedures and procurement behavior are legally regulated. Second, we must strengthen the training of agencies. The government can invite well-known experts to conduct on-the-job training for employees of agencies, train the basic knowledge, professional knowledge, operational skills and professional ethics of government procurement, so that they can master the government procurement agency business and improve their service awareness and practice ability. Third, it is necessary to improve the tracking and supervision mechanism of agency behavior. The agency should establish detailed work records and track and supervise the agency business to ensure the legitimacy and legality of agency behavior. Establish a supervision and standard working mechanism, clear rewards and punishments for agency activities, and seriously deal with violations. The procurement agency should also strictly control the key links in the preparation of procurement documents, establish a sense of responsibility and professional ethics to check the results of the review, so that both the purchaser and the bidder can achieve satisfactory results.

6. Conclusion

Both Surround-bidding and Collusive bidding in government procurement activities are the behavior of crowding out competitors, which destroys the fairness and justice of bidding activities, and even directly affects the success or failure of bidding activities. In addition, government procurement is a complex project. While reforming and improving its own system construction, it also needs to promote the reform of supporting systems. If we only rely on legal prevention and control, we cannot fundamentally solve the problem of collusion in government procurement. Only the joint reform of social management system, social credit system and social security system can provide more comprehensive support and guarantee for standardized government procurement.

Therefore, the state should adhere to the improvement of laws and regulations, the construction of professional government procurement team, and strengthen the supervision of government procurement work, through a variety of ways to effectively curb the occurrence of illegal acts, by improving total factor productivity and public resource allocation efficiency to achieve sustainable economic growth.

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