

# Safe from the finger of suspicion

It is important for firms to have a policy which protects them from infringing anti-competitive practice laws



ETHICS

ANDREW AGAPIOU

The Office of Fair Trading has been focusing on corruption in UK construction for the past three years.

By March 2007 it had raided 57 companies, uncovering evidence of bid rigging from more than 1,000 contractors.

Bid-rigging can involve 'complimentary pricing' or 'cover pricing' – a practice where supposed rivals agree to submit bids that they know will not be accepted.

Tell-tale signs of anti-competitive practices include:

- A limited number of competing bids.
- Regular competition among the same companies.
- Regular meetings and telephone calls between firms.
- Fewer than the usual number of competitors bidding.
- Rotation of successful bidders.
- Fewer complaints against a company continually winning.
- Large margins between a winning bid and rival tenders.
- The awarding of subcontracts to losing bidders.
- A drop in prices when new entrants appear.

If caught, companies can be fined up to 10 per cent of turnover, while directors and employees dishonestly involved

face criminal prosecution.

The term 'dishonestly' covers situations where people involved take active steps to cover their tracks.

Anyone convicted of collusion under competition law could receive a maximum of five years' imprisonment and/or an unlimited fine. Company directors may also face disqualification for up to 15 years.

To date, the OFT has taken action in a number of cases where anti-competitive practices have been found. Twenty construction firms have been fined.

These companies could now face substantial claims for damages from clients who have had to pay more for contracts.

The OFT has confirmed that the construction and housing sector will remain a focus for investigations.

So contractors should consider how they can reduce the risk of infringement, and also, what systems they should implement to deal with potential investigations.

An active competition law compliance programme will be of assistance here. Having such a programme could lead to reduced fines should an investigation bring to light any irregularities.

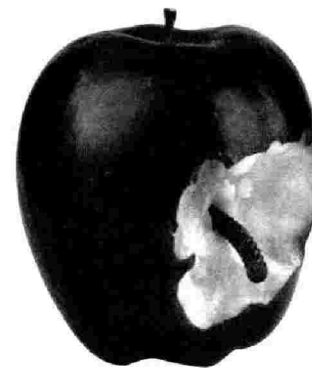
#### Compliance procedure

- Give staff training on the competition rules.
- Develop a competition law

compliance programme.

- Establish clear lines of accountability and a mechanism for supervising compliance.
- Ensure top management buys into the compliance system.
- Be aware that contact with competitors risks being interpreted as anti-competitive.
- Don't send clear messages of future bidding intentions via the bidding process.
- Produce clear internal documentation explaining steps taken and bid valuations.

Dr Andrew Agapiou represents CIOB on the UK Anti-corruption Forum



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