

ANTI-BID RIGGING

FREQUENTLY ASKED QUESTIONS

1. What provision of the Philippine Competition Act (the “PCA”) is violated when one is involved in bid rigging?

Bid rigging violates Section 14(a)(2) of the PCA.

2. What entities are covered by the prohibition against bid rigging?

Entities covered include:

- Natural or juridical persons;
- Domestic or foreign entities; and
- Private entities or government-owned or -controlled entities

as long as they are:

- engaged in economic activity;
- competitors with respect to one another; and
- their bid rigging agreement has direct, substantial, and reasonably foreseeable effects in trade, industry, or commerce in the Republic of the Philippines, even if made abroad.

3. Can government employees or purchasers be held liable for bid rigging violations?

Government employees can be held liable under the PCA if they have facilitated a bid rigging agreement among competing bidders. This is without prejudice to possible violation of other penal laws.

4. Is there an exhaustive list of bid rigging schemes?

There is none.

Section 14(a)(2) of the PCA cites cover bidding, bid suppression, bid rotation and market allocation as examples of prohibited conduct. Each scheme can be practiced alone or in combination with other scheme(s).

The provision also explicitly mentions “fixing prices” as a violation. This would include fixing of prices, discounts and rebates.

Finally, Section 14(a)(2) ends with the phrase prohibiting “other analogous practices of bid manipulation”. This effectively includes all other schemes among competitors, which manipulate the tender process and adversely impact competition.

5. What is the extent of the jurisdiction of the Philippine Competition Commission (PCC) over bid rigging?

The PCC has original and primary jurisdiction in the enforcement and regulation of all competition-related issues, including bid rigging. No law enforcement agency can conduct any kind of fact-finding, inquiry or investigation into any competition-related matters, unless the PCC has deputized the same.

With respect to bid rigging that occurred during the effectivity of the PCA, the PCC is empowered to, among others:

- Conduct preliminary inquiry and full administrative investigation;
- Conduct administrative proceedings and impose administrative fines; and
- Stop or redress bid rigging by applying remedies, such as the issuance of injunctions and disgorgement of excess profits.

If the evidence so warrants, the PCC may file before the Department of Justice criminal complaints for bid rigging for preliminary investigation and prosecution before the proper courts.

6. What are the penalties provided by the PCA for bid rigging?

The PCC can impose the following schedule of administrative fines for a bid rigging violation:

- First offense: Fine of up to PHP 100 Million;
- Second offense: Fine of not less than PHP 100 Million but not more than PHP 250 Million; and
- Third and succeeding offenses: Fine of not less than PHP 150 Million but not more than PHP 250 Million.

In addition, the courts can impose criminal penalties for a bid rigging violation:

- Imprisonment from two (2) to seven (7) years; and
- A fine of not less than PHP 50 Million but not more than PHP 250 Million.

If the bid rigging involves the trade or movement of basic necessities and prime commodities as defined by Republic Act No. 7581 or the Price Act, as amended, the fine imposed by the PCC or the courts, shall be tripled.

For bid rigging that occurred prior to the effectivity of the PCA and has not yet been barred by prescription, the courts can impose the following penalties:

- Imprisonment of 6 years and 1 day to 8 years; or
- Imprisonment of 8 years and 1 day to 12 years, if the offense affects any food substance, motor fuel or lubricants, or other articles of prime necessity; and
- A fine ranging from PHP 200.00 to PHP 6,000.00.

7. When does the PCC initiate a preliminary inquiry on bid rigging?

The PCC, based on reasonable grounds, can initiate a preliminary inquiry:

- *Motu proprio*;
- Upon filing of a verified complaint by an interested party; or
- Upon referral by a regulatory agency.

8. Do all information on possible bid rigging need to be reported to PCC through a verified complaint?

Information on possible bid rigging may also be sent to PCC through other means, such as by e-mail, letter, or even through its social media pages. Such information may then be more closely examined and later form the basis for the commencement of *motu proprio* preliminary inquiry.

It is important to note that reporting of information in ways other than by a verified complaint does not by itself trigger preliminary inquiry. At best, such information can provide indications of bid rigging that the PCC may pursue in its own initiative.

9. Is there a fee for filing a verified complaint?

There is no fee for filing a verified complaint with the PCC.

10. What happens after a preliminary inquiry?

The PCC may either:

- Close the preliminary inquiry if no violation is found;
- Close the preliminary inquiry without prejudice, if evidence is insufficient to proceed to full administrative investigation at the end of the ninety (90)-day period; or
- Proceed, on the basis of reasonable grounds, to the conduct of a full administrative investigation.

After the full administrative investigation, the Enforcement Office of the PCC, if it finds sufficient basis, may file with the Commission a Statement of Objections charging entity(-ies) for violation of the PCA, its implementing rules, or other competition laws.