



# CONSUMER PROTECTION AND DEFENCE OF COMPETITION AUTHORITY (ACODECO)

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## Using the OECD Collusion Detection Checklist for Optimal Effect: Lessons on its Practical Application in Panama

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**Tackling Corruption and Collusion  
in Public Procurement**

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# OEDC COLLUSION DETECTION CHECKLIST IN PROCUREMENT BIDS

Taken from the February 2009 OECD document:  
*Detecting Bid Rigging in Public Procurement*  
<http://www.oecd.org/daf/competition/cartels/42761715.pdf>



# Look for warning patterns and signals when companies submit bids

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It is often the same company that makes the best offer.

Some companies submit bids that only win in certain geographic areas.

Companies do not submit bids to tenders where their participation was expected in spite of being qualified to do so, but continue to bid for other tenders.

Some companies unexpectedly withdraw from the bidding process

Certain organisations always bid but never win.



# Look for warning patterns and signals when companies submit bids

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There is a pattern of rotation between bid winners.

Companies that would have conditions placed on their independent participation submit joint bids.

The bid winner repeatedly subcontracts to losing bidders.

The winning bidder withdraws from, or relinquishes, the contract, only to later work on it as a subcontractor.

The competitors socialise or meet prior to the bidding deadline.



# Look for warning signals in all submitted documents

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The submitted documents contain the same spelling mistakes, corrections or crossings-out.

Bids from different companies are drafted in similar ways, with comparable stationary, typeface or layout.

Bids from different companies have identical calculation errors.

Documents submitted by different companies do not contain necessary details or show indicators of not being genuine.

Competitors submit identical bids or prices rise in regular increments.



## Look for warning signals and related price-setting patterns

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Bids contain sudden and identical rises in price intervals that cannot be explained by equivalent rises in costs.

A certain supplier's bid is much higher for one contract than that submitted for another, similar contract.

A new supplier, or one who does not often participate in the bidding process, submits a bid that offers significantly reduced prices compared to prior levels (the new bidder is probably not part of the rigging agreement).

Local suppliers offer higher prices for local projects than for those farther away.



# Always look for suspicious statements

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Spoken or written references about the establishment of an agreement between bidders.

The bidders justify their prices by checking “industry-suggested prices”, “market-standard prices” or “industry pricing scales.”

Indications that some companies do not sell in specific regions or to specific customers.



## Always look for suspicious statements

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Use of the same terms by various suppliers when explaining price increments.

Letters of intention from suppliers who refuse to comply with certain bidding conditions or make reference to discussions that maybe took place within guilds or industrial associations.





# Always look for suspicious behaviour

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A company requests a bid package for itself and for a competitor.

A company submits a bid together with that of a competitor.

A company that has no possibility of fulfilling the contract submits a proposal.

A company submits several bids for a tender.

Several bidders submit similar queries, or hand over similar requests or materials.



# Bidding: Hospital Complex Access

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Preliminary report on Procurement of the Undertaking of Studies, Designs, Plans, Technical Specifications and Construction of the Basic Access Infrastructure for the Hospital complex.

Bids (in Panamanian Balboas)
<u>32,400,000.00</u>
<u>32,400,000.00</u>
<u>32,403,600.00</u>
<u>41,099,770.00</u>

Explanation: A reference price was set (36 million Balboas), and bids were considered excessive if 15% above that price, and risky if 10% below that price.  
Recommendation: filing of preliminary report.



# Legal Basis of ACODECO supervision of competition in public services

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- Decree law No. 143 of 29th September 2006 (numerals 5, 25 and 26 of articles 20 and 33).
- Law 45 of 31st October 2007 (numeral 16, article 86).
- Cabinet Resolution No. 101 of 23rd August 2009 (article 9).
- Buying rules that establish the Parameters, Criteria and Procedures for the Guaranteed Purchasing Contracts of Energy and Power for Electricity Distribution Companies.
- In the participants' record, if ACODECO accepted the invitation, it signs the act as evidence of having supervised the process. If it does not sign or refuses to sign, evidence of this is also recorded in the record.
- Once the 'No Objection to the Evaluation Report' is granted, ASEP will send this to ACODECO, so that the latter can undertake an evaluation of the competition conditions in the participants' record. ACODECO can, at any time, examine the conditions of competition in the electricity generation market, and, should it consider it appropriate, request the support and collaboration of ASEP's technical personnel.



## Participants' records investigated by ACODECO

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Of the actions undertaken up until now, ACODECO has only considered it pertinent to open one investigation because of apparent restrictions to competition in the act of 7/10 that was undertaken on 21st December 2010 for the procurement of the surplus of unprocured, generated electricity. It concluded in resolution DLC-OGC 05-11 that the administrative investigation by the commission into absolute monopolistic practices on the part of the participating electricity generation companies be closed, as long as analysis of the results did not conclude that there was good reason to bring suit for violation of Law 45 of 2007.

It was recommended that the manager continue adjusting the buying rules so as not to establish price limits in the competitive participants' record.



# CONCLUSIONS

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- OECD recommendations for detection of procurement cartels are perfectly applicable to Panama.
- The cooperation of the public sector (organisations that design tender specifications and evaluate bids) and private sector (companies that participate in bids and detect any anomaly) is required for the implementation of these suggestions.
- The detection of one of the aforementioned signals does not automatically mean that there was collusion in the bidding. Different commercial factors must be analysed that may explain the anomaly.



# Recommendations

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- ◆ Motivate the participants in this forum to become multiplying agents of this information in their offices (public and private), universities (spreading knowledge to their students), and to report any indicator of a possible agreement concerning public or private procurement between competitors to ACODECO .



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**Thank you!**

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**Acodeco Protege**

**Latin-American and Caribbean Forum: The Prevention of and  
Fight Against**

**Corruption and Collusion in Procurement**

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