



Councils may sue contractors for any public sector losses.

Councils throughout England may sue for damages if they are found to have suffered losses as a result of contractors colluding on public sector construction contracts. The threat of mass litigation will be a further blow to construction companies who have received Statements of Objections from the Office of Fair Trading (OFT).

Commenting on the investigation and the issuing of the Statement of Objections to the 112 construction companies Paul O'Brien, who is Chief Executive of the Association for Public Service Excellence (APSE) said **"The OFT investigation is not about a few hundred quid in a brown paper envelope or a discount for cash for non payment of VAT. This is potentially about colossal loss for the public purse. It could relate to contracts for high value public sector assets such as new hospitals, schools and homes and could signal unprecedented claims by the public sector against any construction firms if they are found guilty"**.

The OFT has investigated companies alleged to have been involved in bid rigging and in particular 'cover pricing' where one or more bidders collude with other contractors during a tendering process to obtain a price or prices which intend to be too high to win the bid. The OFT investigation is on going and at this stage 37 of the companies involved in the investigation have applied for leniency. **No assumptions can or should be made at this stage that the companies named by the OFT have breached competition law.**

Mr O'Brien added **"We have seen record levels of investment in the UKs public sector infrastructure delivered by private construction companies bringing much needed jobs and investment to the UK's regional economies. However, where there are such high levels of investment the public sector bodies procuring the new buildings and tax payers need to be assured that they are getting the very best value for money. Any allegations of price fixing need to be properly investigated to provide that assurance and indeed that is what the construction industry itself has called for."**

APSE advice to local authorities involved in widespread construction projects such as multi-million pound new school projects under the Building Schools for the Future projects includes:-

Local authorities publicising long-term construction and capital expenditure plans, providing feedback to suppliers on their past performance and being willing to ask for and learn from objective feedback from suppliers.

Ensuring collaboration between public sector organisations, EU procurement arrangements, aggregating contracts and effective management of the supply chain

Mitigating the risks of anti-competitive behaviour through use of non-collusion clauses and/or certificates of independent bids are used, disclosure of subcontractor and the avoidance of obligatory bids as a condition of staying on approved lists

Being aware of suspicious bidding patterns including bids received at the same time with similar or unusual wording, bids containing less detail than expected and the lowest bidder not taking the contract.

Notes to Editors

APSE is the Association for Public Service Excellence and works with over 250 local authorities throughout the UK

APSE supports councils in procurement and obtaining best value for council tax payers

APSE briefings on the OFT investigation are available on request

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