



Fighting Bid Rigging: bidder exclusion

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Exclusion versus debarment

What do we mean?

- **Exclusion:** a supplier is not allowed to bid for or win a public contract, i.e., may be taken out of a specific tender, by the authority running the tender.
- **Debarment:** a supplier is not allowed to bid for or win public contracts, in general or in a specific sector and/ or over a designated threshold, for a period.

CMA (2025) Exclusion and debarment on competition grounds - what suppliers and contractors need to know <https://www.gov.uk/government/publications/the-procurement-act-2023-information-note-on-exclusion-and-debarment-on-competition-grounds/exclusion-and-debarment-on-competition-grounds-what-suppliers-and-contractors-need-to-know>;

Exclusion versus debarment

Who decides?

- **Exclusion (EU)**: the contracting authority assesses if there are “sufficiently plausible indications” of collusion. **No proof** is needed to exclude. This is **not a penalty**, and is **an option**, not an obligation. Authorities have **discretion to keep** a supplier despite suspicions.
- **Debarment**: a central authority (competition authority, the central procurement authority, other) assesses it. Once decided, it is **mandatory**.
- **The OECD** recommends to (and many authorities do) **exempt from (or shorten the duration of) exclusion and debarment for successful first-in leniency applicants**.

- European Commission (2021) Notice on tools to fight collusion in public procurement and on guidance on how to apply the related exclusion ground: <https://ec.europa.eu/docsroom/documents/45004>
- OECD (2023) Recommendation on Fighting Bid Rigging in Public Procurement: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0396>

Are there other sanctions that may be equally effective? These may include:

- > Fines
- > Criminal sanctions
- > Managers' disqualification
- > Compensation for victims



Is the market an oligopoly or not easily contested? This might be if:

- Suppliers are few
- Barriers to entry (regulatory, strategic, behavioural) are high
- Products are similar and innovation doesn't exist or isn't needed
- Prices are transparent
- Companies are linked (structurally or economically)



If the market is an oligopoly or not easily contested, then:

- > can the exclusion apply only to a specific sector or specific contracting authority or above a specific contract value?
- > what is the right (short/ long) time span for the exclusion?



- <http://www.oecd.org/daf/competition>
- <https://www.oecd.org/en/topics/sub-issues/competition-enforcement/fighting-bid-rigging-in-public-procurement.html>



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