

Comment: Japanese highway project suspensions highlight stubborn problem of bid rigging

27 Sep 17 | 08:22 GMT

Author: By [Sachiko Sakamaki](#) on

IN BRIEF

Two Japanese highway operators said earlier this month that they had decided to halt tunnel expansion projects in Tokyo amid suspicions of bid rigging. Their unusual announcements underline the difficulty of eliminating collusion in tenders, despite years of efforts to curb such antitrust violations as bidding methods become increasingly complex.

Two Japanese highway operators said earlier this month that they had decided to halt tunnel expansion projects in Tokyo amid suspicions of bid rigging. Their unusual announcements underline the difficulty of eliminating collusion in tenders, despite years of efforts to curb such antitrust violations as bidding methods become increasingly complex.

East Nippon Expressway and Central Nippon Expressway announced that they had decided to call off signing contracts for projects to connect underground expressways with junctions on the Tokyo Outer Ring Road in the west of the capital.

They notified the Japan Fair Trade Commission and police of suspected antitrust violations (see [here](#)).

The suspected collusion was first reported on in February by Japanese Communist Party newspaper Akahata (Red Flag), which said that four joint-venture groups led by construction companies Taisei, Shimizu, Obayashi and Kajima were expected to win the four projects. The companies won contracts to build the main tunnels in 2014, the paper said.

Communist Party lawmaker Toru Miyamoto raised the issue in parliament in March. Land and infrastructure minister Keiichi Ishii replied that the two state-owned expressway operators would handle the matter appropriately.

"The bidding method was very questionable," Miyamoto told MLex in an interview. "It looks as if it was chosen to enable bid rigging."

The two highway operators employed a tendering method in which bidders proposed designs and the winner negotiated prices afterwards. The method was introduced in 2014 for projects where ordering parties would find it too difficult to decide on specifications.

A spokesman for East Nippon Expressway said the tender method was adopted

www.mlex.com
MLex customer services
customerservices@mlex.com

MLex London
141 Moorgate
London EC2M 6TX
United Kingdom

MLex Brussels
Rue de la Loi 67
1040 Brussels
Belgium

MLex Washington
1776 I (Eye) St. NW
Suite 260
20006 Washington, D.C.
USA

MLex New York
535 Fifth Avenue, 4th
Floor
10017 New York
USA

MLex San Francisco
32 7th Street
CA 94103
USA

MLex Hong Kong
3901 39/F Hopewell
Centre
183 Queen's Road East
Hong Kong

following a recommendation by an experts' panel because building an underground expressway 40 meters below the earth's surface was a challenging project, given the fact that some areas had sandy soils.

East Nippon Expressway decided to accept two designs to expand the two tunnel segments to connect with the junctions in case one design failed. A Central Nippon Expressway spokeswoman gave a similar explanation of its two projects.

Mitsuru Suzuki, a former JFTC investigator who is now a lawyer, said the expressway operators probably adopted the tendering method with the consent of the four construction companies rumored to have conspired in the tenders for the tunnel projects.

"The four companies didn't even need to talk among themselves to fix the auctions, because the bidding method enabled them to win," said Suzuki, a visiting professor at Toin Law School in Yokohama. Suzuki didn't think the JFTC would pursue the case as it had already been made public and the regulator wouldn't be able to gather evidence.

Another antitrust lawyer also said the JFTC could have a hard time gathering evidence in the case. He doubted whether the ordering parties had a malicious intention to collude with the bidders, but pointed out that officials at ordering parties tended to rely more on private-sector proposals for designs and prices than had been the case in the past, because the private sector had engineering knowledge that was superior to that of bureaucrats.

That may be the case for projects as technically challenging as building underground expressways, but even in a bid-rigging case involving digital communications equipment for fire stations – in which the JFTC punished five companies in February – the commission warned ordering parties not to use specifications derived from specific companies' products (see [here](#)).

Despite the JFTC's efforts to stamp out bid rigging, which have included filing criminal complaints to prosecutors (see [here](#)), the number of JFTC legal actions against bid rigging has averaged only three annually over the past five fiscal years, sharply down from an annual average of 11.4 in the five fiscal years to March 2009.

In the early 2000s, competitive tenders were promoted to curb rampant bid rigging, which sometimes involved politicians and bureaucrats. In 2003, a new law was brought in to punish officials from ordering parties who were involved in collusion in tenders. The Antimonopoly Act was also beefed up in 2006 to increase fines.

But the spread of tenders sometimes led to dumping and poor-quality projects. In 2005, a law to secure quality in public works was introduced to

www.mlex.com
Mlex customer services
customerservices@mlex.com

Mlex London
141 Moorgate
London EC2M 6TX
United Kingdom

Mlex Brussels
Rue de la Loi 67
1040 Brussels
Belgium

Mlex Washington
1776 I (Eye) St. NW
Suite 260
20006 Washington, D.C.
USA

Mlex New York
535 Fifth Avenue, 4th
Floor
10017 New York
USA

Mlex San Francisco
32 7th Street
CA 94103
USA

Mlex Hong Kong
3901 39/F Hopewell
Centre
183 Queen's Road East
Hong Kong

comprehensively evaluate proposals, eliminate poorly qualified bidders, and help curb bid rigging. Suzuki said that also created opportunities for ordering parties to exercise a higher degree of discretion.

Akinori Yamada, the JFTC's secretary general, declined to comment on whether the regulator was investigating the highway case, but said that reform in tendering methods alone wouldn't be sufficient to end bid rigging.

Meanwhile, the two highway operators said that nothing had been decided on how to tender future projects or when complete a missing section of the Tokyo Outer Ring Road first planned back in the 1960s and expected to ease traffic congestion in the capital.

www.mlex.com
MLex customer
services
customerservices@mlex.com

MLex London
141 Moorgate
London EC2M 6TX
United Kingdom

MLex Brussels
Rue de la Loi 67
1040 Brussels
Belgium

MLex Washington
1776 I (Eye) St. NW
Suite 260
20006 Washington, D.C.
USA

MLex New York
535 Fifth Avenue, 4th
Floor
10017 New York
USA

MLex San Francisco
32 7th Street
CA 94103
USA

MLex Hong Kong
3901 39/F Hopewell
Centre
183 Queen's Road East
Hong Kong