

Measures to prevent collusive tendering: an important adjunct to a liberalized government procurement regime

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What is collusive tendering?

- Cartelization in regard to public procurement processes. Also known as “bid rigging”.
- Essence of the offense is an agreement between competitors (e.g., to bid high, to not bid, to submit “cover” bids, etc.)
- Competitor may agree not to bid in return for promise of a sub-contract
- Often also involves side payments to competitors who “lose” and/or rotation of who wins
- As with other cartels, normally carried on in secret

Is there a link with corruption? What is the link?

- Different concepts: corruption normally considered as involving malfeasance of public authorities; collusion involves agreement between suppliers.
- However, economic damage similar: both prevent achievement of the goals of public procurement.
- Often occur together, for example where official is bribed turn a blind eye to collusion.
- Appropriate tools for each (transparency plays a central role).

Why should we care about collusive tendering?

- Collusive tendering imposes heavy costs on public treasuries and therefore on taxpayers (can raise the costs of goods and services procured by 20-30 %, sometimes more). Limits what can be procured with given resources.
- Particularly detrimental in light of the economic importance and essential role public procurement plays in modern economies:
 - Provision of transportation and other vital infrastructure (airports, highways, ports)
 - Public health (hospitals, medicines, water and sewer systems)
 - Schools and universities

Tools for deterring collusive tendering (1): the more or less obvious

- Effective competition law enforcement (e.g., by CADE), reinforced by tools such as leniency measures for cartel breakers.
- Education of the supplier community: certificates of independent bid preparation.
- Education of procurement officials (suspicious signs, usefulness of market research and internal estimates).

Tools for deterring collusive tendering (2): the perhaps not-so-obvious

- Pro-active measures to:
 - expand the pool of potential competitors and introduce enhanced supplier diversity, e.g. ,through trade liberalization (GPA participation!);
 - competition advocacy to address entry restrictions;
 - better (more open-ended) procurement design;
 - and better/more investment in market research!

Suspicious signs



- The same group of suppliers always submit bids and each wins in a regular pattern
- All bids are consistently higher than the internal estimate
- A company always bids high and then gets a sub-contract from the winning bidder
- If various bids look the same but with a few specific changes – or they come from the same URL!
- A company official states that he/she does not expect his firm to win, or that a bid “is only a courtesy”

Concluding thoughts

- Collusive tendering (like corruption) is a threat that never goes away entirely: can seriously undermine the intended benefits of the procurement system
- Importance of transparency and vigilance by procuring authorities
- Role of the civil society in monitoring procurement outcomes to address corruption.
- Role of competition agencies (common interest with procurement agencies in deterring collusion)
- Market-opening (GPA participation) helps!