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Round Table
Competition Policy and Public
Procurement
(TD/B/C.I/CLP/14)

Presentation
by the UNCTAD secretariat

Agenda

1. Introduction
2. The design of a public procurement system that promotes competition
3. Prevention, detection and prosecution of bid-rigging
4. Topics for further discussion

Introduction

Competition in public procurement – two fundamental aspects:

1) Limitations of the public budget

- Competition amongst possible suppliers to ensure “best value for money”

2) Size of public procurement markets

(25 to 30 % of GDP in developing countries, around 15% in OECD countries)

- Rules on public procurement to ensure equal opportunities for bidders

Introduction (cont'd)

The desired level of competition for public contracts is not always achieved in practice.

Reasons for such lack of competition comprise:

1. The regulatory framework for public procurement;
2. Market characteristics;
3. Collusive behaviour of bidders;
4. Further factors.

The design of a public procurement system that promotes competition

1) Elements of the regulatory framework

- Competition as a guiding principle for public procurement laws:
 - Result of a modernisation and reform process of public procurement systems over recent decades
 - UNCITRAL Model Law on Public Procurement 2011
- Public tendering: the main form of competitive procurement methods
- Scope of application of public procurement laws;
- A clear prohibition of bid-rigging to complement public procurement laws;
- Review mechanism for public procurement decisions.

The design of a public procurement system that promotes competition (cont'd)

2) Ensuring competition through the design of the institutional framework for public procurement:

Centralized vs. decentralised

- Increased purchasing power of centralised agency;
- Greater level of expertise in procurement procedures and respective markets;
- Greater standardization of technical requirements, procurement contracts and transactions, management controls and reporting

- Reduced scope for large scale corruption and mistakes affecting large volumes resulting in overspending
- closer matching of supplies delivered to the end-users
- greater opportunities for SMEs to successfully compete for public tenders

The design of a public procurement system that promotes competition (cont'd)

3) Broadening the circle of potential bidders

- Facilitating country wide participation of bidders:
 - Country-wide access to invitations to tender;
 - Standardised e-procurement;
- Facilitating the participation of SMEs:
 - Breaking down large tenders into lots;
 - Allow for joint bidding of SMEs
 - Simplifying procedures
- Liberalizing public procurement markets:
 - On individual basis; or
 - Accession to WTO Agreement on Government Procurement (GPA)

4) Balancing competition with other objectives of public procurement

Prevention, detection and prosecution of bid-rigging

1) Prevention of bid-rigging

- Manage information on who are the other potential bidders;
- Discourage communications between potential bidders;
- Reduce incentives for collusion (OECD 2009 Guidelines for fighting bid-rigging in public procurement: Helping governments obtaining best value for money);

2) Detection of bid-rigging

- OECD check-list;
- Need to build-up in-house capacity at public procurement entities
- Cooperation between competition authorities and public procurers

Prevention, detection and prosecution of bid-rigging (cont'd)

3) Prosecution of bid-rigging

- Cooperation between procurement entities, competition authorities and sometimes public prosecution;
- Some success stories reflected in background note;
- Particular alliance to fight bid rigging in the Mexican Health Care System.

Suggested topics for further discussions

- Which steps have competition authorities and procurement entities taken to systematise their knowledge on specific procurement markets?
- Has the analysis of incentives for collusion lead to any specific law or policy adjustment in your jurisdiction?
- Does transparency of bidding processes actually undermine competition?
- Which advocacy actions by competition authorities have proved to be more effective to enhance competition in public procurement?
- Which remedies have been used after bid rigging cases to enhance competition in bidding markets? Is blacklisting effective to deter collusive practices?