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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from Latvia

-- Session V --

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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Latvia --

1. Size and policy objectives

1.1. What fraction of your economy does public procurement account for? What are the principle policy objectives of public procurement?

1. The data is not known. The main policy objectives are to provide transparency, free competition among the suppliers, equal and fair attitude to the all suppliers, to provide the effective application of financial resources of state and local government due to reduce utmost the risk for demanders.

2. Corruption – Corruption prevention and combating bureau (KNAB) was invited to give the answers to this part of inquiry

2.1. What is the cost of corruption?

2. No in-depth research has been made to estimate the total cost of corruption. However there have been several announcements from authorities and NGOs about the cost of corruption or the extent of shadow economy. For example, the Latvian Chamber of Commerce and Industry has recently announced that the firms willing to win have to pay bribes in procurements that constitute 15-20% of the total cost of procurement contract. However, it should be noted that traditionally it is perceived that about 25% of procurement contracts are connected with corruption.

2.2. What factors facilitate corruption? Do some factors appear to be more important than others?

3. Corruption occurs as a result of complex changes in society and institutions – the level of corruption is affected by overall economical situation, lack of specific internal control measures, insufficient transparency, mutual long term relationship between firms and public officials, etc. Appearance of corruption is also possible when provisions or regulations are very complicated and time consuming.

4. Complaints received by the Corruption Prevention and Combating Bureau (Bureau) and results of examinations carried out by the Bureau show increasing tendency of illegal activities in public tenders when procurements of large amounts are divided into several parts in order not to apply open competition procedure.

5. The spheres that are more subject to corruption in public procurement are health, construction, insurance, education and defence.

2.3. How do transparency programmes help fight corruption? What other policies help fight corruption? What methods and techniques seem particularly effective in your jurisdiction?

6. The anticorruption policy is defined in the medium term policy paper - Corruption Prevention and Combating Programme 2009-2013. The Programme combines tasks for greater transparency,

strengthening internal control and ethics, improvement of regulations and educational activities in the public sector, i.e. it also covers the public procurement.

7. The Law on Public Procurement sets strict rules regarding the transparency of the procedure depending on the amount of money to be spent, but these rules are not always properly implemented.

8. The Bureau uses a twofold strategy that corresponds to its name – not only does it investigate and combat crimes, but it also offers educational seminars and methodological materials to public officials, thus preventing them from acting illegally. Preventative work covers also the improvement of regulations, for example, amendments made to the Law on Prevention of Conflict of Interest in Activities of Public Officials make this law now applicable also to members of procurement commission. The purpose of this law is to ensure that the actions of public officials are in the public interest, to promote openness regarding the actions of the public officials and their liability to the public, as well as public confidence regarding the actions of public officials. It sets certain restrictions and obligations to public officials.

2.4. *Are firms required to certify during the procurement process that they have not bribed an official? What sanctions can be applied to firms and individuals who have engaged in corruption or bribery in your jurisdiction?*

9. No, there is no such demand. Nevertheless it is sometimes the case in big, socially and culturally important projects. For example the rules for applicants to the construction of the National Library included the provision that the applicants that have been involved in bribery cases are excluded.

10. However, members of the procurement commission and invited experts have to sign declaration stating that they have no interest in awarding a contract to any of tender participants.

11. The contracting authority may exclude proposals submitted by tender participants who have been found guilty by the court in corruption/fraud offences or other violations of the law.

12. In accordance with the Criminal Law (CL) both corruption and bribery are subject to sanctions. In the private sector punishment shall be imposed for unauthorised receipt of benefits (Article 198, CL) and commercial bribery (Article 199, CL).

13. The applicable sentence for commercial bribery is deprivation of liberty for a term not exceeding three years, custodial arrest, community service, or a fine not exceeding fifty times the minimum monthly wage. In case of aggravating circumstances the applicable sentence is deprivation of liberty for a term not exceeding five years, community service, or a fine not exceeding one hundred times the minimum monthly wage.

14. Public officials can be held criminally liable for accepting bribes (Article 320, CL), misappropriation of a bribe (Article 321, CL), intermediation in bribery (Article 322, CL) and giving of bribes (Article 323, CL).

15. Giving of bribes is subject to deprivation of liberty for a term not exceeding six years. In case of aggravating circumstances the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

16. The following coercive measures can be applied to legal persons: liquidation; limitation of rights; confiscation of property; or monetary levy. The following additional coercive measures may be specified: confiscation of property; and compensation for harm caused. Confiscation of property may also be applied to a legal person as an additional coercion measure, if as a result of the offence by the legal person it has

gained a material benefit and as basic coercion measures limitation of rights or monetary levy has been applied to it.

2.5. *Who are the competent authorities for prosecuting corruption cases? Does the competition authority have any power in this area?*

17. In Latvia prosecution of corruption crimes and all criminal offences is within jurisdiction of Prosecutor's office. Investigation of corruption cases involving public officials is the responsibility of the Bureau.

18. Competition authority (Competition Council of Latvia (CCL)) is not responsible and competent in this sphere.

3. Collusion

3.1. *What factors facilitate collusion in procurement? What industries seem especially vulnerable to bid rigging?*

19. From our point of view factors facilitating collusion in procurement are:

- Objects for the tenders that are big for Latvia may be regarded as small for international market. Therefore possible profit of participation in regional or national level procurements may be not sufficiently attractive in comparison with the necessary input. All this leads to the situation when due to the lack of foreign competitors local companies feel themselves very comfortable regarding the participation in procurements;
- Many top managers of competing companies have graduated the same universities and know each other. Corporate and even private contacts are very strong. This creates comfortable conditions for collusion, when nothing is agreed in writing, and therefore no direct evidences can be found;
- Also the transparency in the public procurement procedure facilitates the collusion. One of the stages in the procurements procedure in the construction (determined in the Public procurement law) is the visitation of the place where the object is planned to be built. Representatives of the pretenders are invited to the visitation and they have the possibilities to learn which companies are the competitors.

20. CCL had not analysed which industries are especially vulnerable to bid rigging, but it is supposed that these industries are with less market participants, high profit possibilities, less import alternatives, and where the industrial association exists.

3.2. *What sectors in your jurisdiction were affected by bid rigging conspiracies in public procurement? What experience has your agency had in helping design procurement systems in order to optimise the risk of bid rigging?*

21. According to the statistics the majority of infringements occurred in the construction, road construction and road up-keeping markets. Results of anonymous poll¹ show that 44% respondents confirmed their participation in collusive riggings in the bids. Also contractors are more or less responsible for creation of the favourable environment for collusion. It seems that in one third of the established bid rigging cases probably existed also some indications on corruption, including situations when contractors

1. Performed within the framework of survey on competition in construction market (2006).

somehow were not able to espy self-evident evidences of collusion, that offers of different pretenders were not prepared independently.

Table 1: The Statistics on Bid Rigging (Collusion) Cases in 2002-2009

| Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|--|-------------------|--------------|-------------------|--------------------|--------------------------------------|--|---|-------------------|
| Number of investigated bid rigging collusion cases | 1 | 1 | 1 | 1 | 4 | 3 | 5 | 1 |
| Number or established infringements | 0 | 0 | 0 | 1 | 3 | 3 | 3 | 1 |
| Number of penalised market participants | 0 | 0 | 0 | 3 | 9 | 10 | 19 | 2 |
| Volume of fines Ls/EUR | 0 | 0 | 0 | 76 672/ 109 095 | 403 670/ 574 374 | 77 750/ 110 629 | 197 081/ 280 423 | 69 733/ 99 222 |
| Industries | Road construction | Construction | Road construction | Construction | Supply of oil products, construction | Marketing services, supply of equipment for metal works, road up keeping | Road construction, up keeping, landscape services | Road up keeping |

3.3. Does your country employ certificates of independent bid determination? When firms have engaged in collusion, should they be prohibited from bidding in public procurement auctions for a period of time?

22. Our legislation does not require mentioned certificates as opinion prevails that such measure is unnecessary administrative burden for candidates as well as naïve as while there is not clear impression on regular cartel opening and unavoidable punishment any psychological pressing like certificate or leniency will not work. If firms are “caught” in the collusion they should be eliminated from procurement procedures. Prohibition to participate in public procurements is set now for 12 months, previously it was 3 years however practical application of it was limited due to the uncertainty of its application and actually impossible if decision was appealed in court, as the term was counted from the moment when infringement has occurred. At this moment disqualification term is counted from the moment when the decision becomes final, in such a way excluding possibility to avoid disqualification due the long investigation by CCL and later appellation process in court.

4. Fighting collusion and corruption

4.1. What cases from your jurisdiction have involved both corruption and collusion in public procurement?

23. Corruption and collusion was established in one case. It was initiated by CCL on the basis of information made public by KNAB as a result of their investigation. On request of CCL KNAB gave CCL access to the evidences in this criminal case initiated for the investigation of a corruption case. The transcripts of overheard phone conversations, taken by KNAB, were also used as evidence in the competition case. From the phone conversation it was clear that the official of a municipality gave instructions to the representatives of the undertakings concerned how to participate in the planned bid for supply of oil products and that the representatives agreed, on prices that should be included into the financial offers of each bidder, the sum of procurement and remuneration for each pretender after the bid. Three undertakings were involved into the bid rigging. The phone conversations were between natural persons, two of them formally were not related to the companies they represented. CCL had to prove the

link between relevant natural persons and according bidders. While analysing the offers CCL also established that the prices mentioned in the phone conversations and prices shown in the offers were the same. Besides the information on the bidders transactions on oil product supply market were analysed and it was established that the “planned winner” in the relevant bid offered a price that was approximately by 10% higher than other his prices in similar supplies. Other bidder at the time of procurement did not deal with supplies of oil products at all. CCL established the infringement and imposed fine. This is the only case when CCL used the information (transcripts of the overheard phone conversations) from the criminal case investigated by other authority. Investigation of this case was a good example of good co-operation between competition and corruption prevention authorities fighting against bid rigging in public procurement.

4.2. *Have collusion and corruption cases or allegations occurred predominantly at the local government level, provincial government level or national level?*

24. Competition Council mostly has detected collusion at local level government level.

4.3. *What methods and techniques for fighting corruption would aid the fight against collusion?*

25. Wider powers to use also methods used in criminal process would be suitable, for example competition authorities could also have rights to overheard phone conversations under certain conditions.

4.4. *When individuals or firms have engaged in bribery or corruption, are they able to receive leniency in your jurisdiction?*

26. Our legislation does not contain prohibition to receive leniency for firms engaged in bribery or corruption.

5. *Advocacy*

5.1. *How do regulatory or institutional conditions help facilitate bid rigging and corruption?*

27. Good balance between the transparency in the public procurement procedure and collusion prevention has to be found as any possibility for firms representatives to meet one another for example in public opening of tender offers facilitates later collusion. Also requirements for minimal number of offers at certain procurement types may promote collusion to ensure that procurement may proceed.

5.2. *In what ways can competition authorities work to improve the efficiency of public procurement?*

28. As the Competition Council is competent to investigate cases and impose fines for collusion activities, supervising markets in order to establish competition problems, it can give recommendations to the public authorities how to improve control over the procurement procedures due to identify collusion cases or to advert to the competent authorities the identified problems. Anyway the co-operation among Public procurement office, Anti-Corruption office (KNAB) and competition authorities can give additional advantages in combating against collusion and corruption.

5.3. *What steps have been taken to improve the efficiency of the public procurement process in your jurisdiction? What specific measures (if any) have been adopted to reduce collusion and corruption in public procurement? If so, what has been the experience to date? Have other approaches to reduce collusion and corruption been tried in your jurisdiction and what have been the results?*

29. CCL has provided educational seminars for the main contracting state and municipalities enterprises and authorities. No other particular steps with exception of initiative to clarify regulation on prohibition to participate in procurement if the collusion has established. Disqualification from the procurement as a result of collusion can be regarded as effective deterrent if they are used in practice.

5.4. *When adopting measures to reduce collusion and bid rigging in public procurement, have you taken into account the impact that such measures may have on the risk of corruption?*

30. Legislative measures usually are estimated to find the compromise of both collusion and corruption prevention. However any impact may be estimated only theoretically and not based on facts. Regarding previously mentioned measures it is expected that it will diminish the risk of the corruption.

5.5. *Has your competition agency undertaken competition advocacy in this area?*

31. To raise the awareness of the other surveillance authorities as well as contracting authorities on possible antitrust violations in procurement several educational seminars were provided for the main contracting state and municipalities enterprises and authorities, however these measures were not enough to significantly increase awareness and educational work regarding possible antitrust violations in procurement in future has to be continued and extended in respect of all contractors in the state and municipalities level.

5.6. *If your agency has prosecuted procurement corruption or collusion cases, what type of remedies have you considered?*

32. In every decision taken on the case of collusion CCL impose fines. No other particular remedies were imposed. Disqualification from procurement process is applied by contracting authority of particular procurement.