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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from Papua New Guinea

-- Session V --

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Contact: H el ene CHADZYNSKA, Programme Manager of the Global Forum on Competition
Tel: +33 1 45 24 91 05; email: helene.chadzynska@oecd.org

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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Papua New Guinea --

1. Size and Policy Objectives

1. Papua New Guinea has a relatively small economy in global terms and is very much a developing economy and society. The Papua New Guinea population is one of the least urbanised in the world, with a large proportion of the people living in small and often isolated village locations.

2. Accordingly, government involvement in the economy and in the supply of goods and services beyond the village subsistence economy is very significant, much more so than in richer, developed economies. It is estimated that about 70% of the procurement of goods and services in Papua New Guinea is government procurement of one sort or another. This procurement activity is undertaken by all three levels of government, at the national, provincial and local level.

3. Because of its significance in the overall domestic economy in PNG, government procurement and how it is organised is of critical importance. Many firms in many industries throughout the country are heavily dependent on government customers, in some cases government being their only major customer. This may have positive effects in requiring firms to be cautious that they do not alienate their government customers through trying to charge higher prices by colluding with competitors, but at the same time there may be negative effects with the close commercial relationship between private firms and government, and the dependence on government as a customer, leading to corruption between the supplier and the acquirer of goods and services.

2. Corruption

4. Papua New Guinea has significant problems with corruption; it ranks poorly in international comparisons made in the Transparency International Corruption Index. Anti-corruption measures and institutions are operating widely throughout Papua New Guinea (the Ombudsman Commission, in particular, is very active and has a high profile) but these efforts have not been able to stem the occurrence of corrupt practices. Not surprisingly, that is particularly so in government procurement, where the sums of money involved can be significant. The Ombudsman Commission has in recent years frequently been frustrated, through blocking or delaying legal action or otherwise, in its efforts to prosecute corruption. The Independent Consumer and Competition Commission (ICCC), the national competition regulator, has no direct role in investigating or prosecuting corruption matters.

5. Corruption in PNG can arise, or remain unchecked, for a number of social, cultural and economic reasons. As far as corruption in government procurement is concerned, the strong social custom of “wantok” can provide opportunities for unscrupulous persons to subvert the procurement process through corrupt conduct. The wantok system is a longstanding tradition of mutual assistance for extended family or village groups, whereby a person is obligated to assist his family member, or wantok, to the maximum extent that he can, and in whatever way, while the wantok has a similar obligation to other family members. This cultural tradition, very important in traditional village life where outside support may be unavailable, has not translated well to a modern economy where it can lead to nepotism or corruption.

6. Corruption in the form of political patronage can also occur in the use of government funds. Most government infrastructure projects and other major government spending is required, by law, to be arranged by competitive tender through the Central Supply and Tenders Board (CSTB) or Provincial Supply and Tenders Board (PSTB), whose procedures are designed to be transparent and avoid corruption. However, each member of the National Parliament is given a substantial amount of money each year, which has increased dramatically in the last couple of years, to be spent on projects benefitting the member's electorate.

7. While those funds are supposed to be acquitted fully and openly to the national government and, in respect of amounts over 300,000 kina (about US\$110,000) to be allocated through the CSTB or PSTB tender processes, this acquittal often does not occur; the funds are allocated personally and directly by the Member of Parliament to individuals or firms within the electorate. There is anecdotal evidence of such funds being used corruptly, as would inevitably be the case where the allocation of money is within the personal gift of an individual, and proper procedures for fairness and transparency are bypassed.

8. Further opportunities for corruption occur in the procurement of goods and services by provincial and local level governments, who are supposed to use CSTB procedures and processes, but frequently do not. With such a lack of transparency, it is difficult to conclude that those procurement contracts are fair and provide value for money.

3. Collusion

9. In an economy the size of that of Papua New Guinea, most sectors of the market have either very small businesses (e.g. in retailing and distribution) or a relatively small number of larger firms participating in the market. Often that may be limited to three firms or less competing in a particular market, which makes collusion much more likely than in a vigorously competitive market with many participants. The range of firms that are large enough to tender for government goods or services is likely to be even further limited.

10. Also, where CSTB processes are not followed in government procurement (see above), the opportunity for collusion to go undetected or unremarked is greater. In such situations there is often no great desire to ensure that the government is getting the best value for money from that procurement.

11. The ICCC, when it identified the likelihood of collusion and bid rigging in government procurement, engaged with the CSTB to make the CSTB and its staff aware of the risks of collusive bid rigging and how it can occur. The CSTB, as part of that process, sought the ICCC's assistance to introduce in the CSTB's Standardised Bidding Documents (SBD) mention of corruption and collusion in government procurement. The SBD contract conditions (which are still in draft form) specify clearly to contractors that where corrupt, fraudulent, collusive, coercive or obstructive practice is detected, the contract will be terminated by the procuring agency. The ICCC's discussions with the CSTB are ongoing.

12. Papua New Guinea, through the CSTB, does not require a Certificate of Independent Bid Determination (CIBD), though the current tender documents require certification of no conflict of interest. Following the discussions at the 2010 Global Forum on Competition, the ICCC will consider the desirability of introducing a form of CIBD into the tendering process.

4. Fighting Collusion and Corruption

13. Over the years there have been quite a number of investigations into alleged corrupt practices, by politicians and others, though only a proportion of them relate to government procurement. These investigations have been carried out by, typically, the Ombudsman Commission,

the police Fraud Squad and, on occasion, by specially created commissions of inquiry or Royal Commissions. Such inquiries are strongly transparent, with public hearings which are widely reported. Some of these investigations have resulted in prosecutions, while others have not.

14. Investigations into corruption have typically concentrated on that issue and have not also examined possible collusion as well. The ICCC has alerted the CSTB to the tell-tale signs of bid rigging, but to date the CSTB has not brought forward any particular matters to the ICCC for investigation.

15. The ICCC has been trying to publicise the dangers and destructive effects of collusive conduct and the broader issue of cartel behaviour, without limiting this to government procurement, but for the whole of industry. Part of that publicity has been to highlight the detriment such conduct can cause to the victims of collusion or cartel conduct, requesting them to report their suspicions to the ICCC for investigation. This publicity is an ongoing process which may last for a long time.

5. Advocacy

16. In 2009 the ICCC, and the CSTB, in conjunction with a number of government departments, conducted a series of Joint Central Supply and Tenders Procurement Forums in selected urban areas in Papua New Guinea. These forums brought a measure of awareness to departmental procurement officers around the country and highlighted the harm which collusive tendering and bid rigging can cause. This will form a basis for the ICCC's continuing advocacy for stamping out collusive bidding and anti-competitive behaviour generally; this advocacy will always continue as an important part of the ICCC's charter.

17. As part of its recognition of the detriment caused by collusion and corruption in public procurement, the Papua New Guinea Government's Procurement Manual identified corruption, fraud and conflict of interest as three main areas of concern. "Conflict of interest" should probably be broadened to include all collusive practices, which have a seriously bad effect on trying to have government procurement as transparent, fair and producing value for money. These efforts to stamp out such corruption and collusion will continue for the foreseeable future.