

Unclassified

DAF/COMP/GF/WD(2010)8



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

13-Jan-2010

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/GF/WD(2010)8
Unclassified

Global Forum on Competition

COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from Singapore

-- Session V --

This contribution is submitted by Singapore under session V of the Global Forum on Competition to be held on 18 and 19 February 2010.

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

JT03276929

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English - Or. English

COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Singapore --

Introduction

1. The Singapore government procures a substantial amount of goods and services annually. In 2008, the government purchases amount to an estimated S\$10 billion (€5 billion) which is approximately 4% of the country's GDP (S\$257 billion) (€128.5 billion).

The Three Principles

2. Three principles underpin Singapore's public procurement process:

- i) Transparency – An open and transparent procurement regime across all stages of the procurement lifecycle where the government's procurement objectives, criteria and procedures would, as far as possible, be made known to suppliers.
- ii) Open and fair competition - This will encourage suppliers to give their best offers and suppliers are given equitable access opportunities and compete on a level playing field; and
- iii) Value for money – This is based on overall cost-effectiveness and efficiency. Value for money is derived from the optimal balance of benefits and costs on the basis of total cost of ownership. As such, value for money does not necessarily mean that the tender is offered to the lowest bidder.

3. Singapore's Ministry of Finance constantly reviews the procurement guidelines based on the principles listed above and makes enhancements to the procurement system whenever necessary.

Transparency

4. Singapore is party to the World Trade Organisation's 1994 Agreement on Government Procurement ("WTO-GPA") and implements the WTO-GPA in its national laws in the form of the Government Procurement Act, Government Procurement Regulations, Government Procurement (Challenge Proceedings) Regulations and the Government Procurement (Application) Order (the "GPA Laws"). The procurement framework applies to all government ministries including specified statutory boards. Depending on the estimated value of the intended government procurement, the procurement procedure adopted could be by way of a small value purchase, quotation or tender. Goods and services of up to S\$3000 (€1500) in value are considered small value purchases which can be purchased directly from businesses or off the shelf. All government procurement of above S\$70,000 (€35,000) must adopt tendering procedures. For goods of value between S\$3001 to S\$70,000 (€35,000), these will be purchased via a quotation system.

5. Additionally, the Ministry of Finance is empowered under the law to establish regulations regarding a wide scope of procurement aspects, such as pre-qualification and award procedures. The public

have free access to the Government Procurement Act and also government procurement policies and procedures via the internet.

6. In order to keep corruption in check there is a need for a strong national governance structure based on accountability and transparency, a framework which has the effect of minimising motivation and opportunity for corruption and facilitating its detection. Clear and comprehensive regulations for the conduct of public procurement are a fundamental tenet to curbing corruption in public procurement. Government procurement activities in Singapore are decentralised to individual government procurement entities that make their own arrangements on procurement except for centralised purchasing carried out for common goods and services. In order to maintain uniformity and rigor in the process, these entities must adhere to guidelines issued by the Ministry of Finance. Further, all government officials are required to declare conflict of interests, if any, at every stage of the procurement process. Officers responsible for procurement are rotated from time to time and different officers supervise different stages of work where practicable. Members of a tender evaluation committee and those in the tender approving authority are kept different. Such separation of responsibilities avoids insulation of procurement staff and also ensures greater control through independent scrutiny. This is to ensure integrity in the procurement process.

Open and Fair competition

7. Open and fair competition is achieved through Government Electronic Business (“GeBIZ”) (<http://www.gebiz.gov.sg>), an e-procurement web portal for the whole of government where all procurement operations from the announcement of a tender to the award of the contract are conducted. All tender notices published online will contain information on the procuring entity, description of products, services, or works to be procured, dates of tender opening and closing, and venue for the collection of tender documents. The content of information which tender documents must contain is prescribed by law. The selection criteria are defined and set out in the invitation to tender and the award of the tenders are announced on the GeBIZ website. Under the GPA Laws, tendering methods may be Open, Selective or Limited. Open tendering is the default option. Selective tenders limit suppliers who satisfy the conditions for participation on grounds such as financial solvency, experience and capability and limited tendering may only be used in exceptional circumstances. Procurement in respect of some security-sensitive purchases may be exempt from the application of procurement regulations. As GeBIZ is on the internet, it ensures the widest reach for the tender and hence encourages vigorous competition.

8. All government entities generally adopt standard conditions of contracts and instructions to tenderers in their tender documentation. The set of standard conditions of contract contains a specific clause on corruption; bidders face the possibility of a termination of the awarded contract and the prospects of lawsuits and damages via the breach of standard conditions of contract with government agencies if they had been corrupt in obtaining or executing the contract. The GPA Laws also provide that technical specifications cannot be used as barriers to international trade and must be in terms of performance rather than design or descriptive characteristics. They must also be based on the international standard or, if no such standard exists on the applicable standard in Singapore.

9. Small and medium enterprises (“SMEs”) in Singapore have benefitted from the public procurement process through the following measures

- a) SMEs no longer need to have track records to pre-register for potential tenders;
- b) SMEs can receive immediate approval through an Expenditure and Procurement Policies Unit in the Ministry of Finance which performs automatic online processing;
- c) The rule for the amount of security deposit from suppliers has been relaxed; and

- d) SMEs will be allowed to form consortiums to bid for projects to overcome larger value tenders where small suppliers may not be able to meet the financial and operational requirements on their own.

Value for Money

10. Government agencies accept proposals/quotations on the basis that they are the most advantageous to the Government, that is, that meet the requirements and offer the best value. Best value does not necessarily mean the cheapest option but the optimal balance of benefits and costs on the basis of total cost of ownership.

11. Evaluation of public procurement is done in a structured way that meets critical evaluation criteria and proposals should be evaluated on a like-for-like comparison wherever possible. High value projects should be subject to more quantifiable evaluation methods to reduce subjectivity and to provide more robust assessments.

12. Negotiation is permitted only in situations where there is limited competition, and where it is advantageous for the government agency to obtain better value for money purchases. However, in carrying out the negotiations, the agency should adopt the safeguards in line with the fundamental principles of incorruptibility, fairness and transparency.

Enforcing the principles

Sanctions against bidders

13. In addition to a comprehensive system of administration, enforcement also plays an important role in preventing corruption and collusion in public tenders. The risk of being caught and punished acts as a strong deterrent. It follows that an essential tool to protect the procurement process is to put in place effective sanctions to deter both bidders and procurement officers from engaging in corrupt and/or collusive conduct.

14. Section 34 of the Competition Act (Chapter 50B) (the “Act”) prohibits any agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. By their very nature, CCS regards collusive tendering or bid-rigging arrangements as restrictive of competition to an appreciable extent. Tendering procedures are designed to provide competition in areas where it might otherwise be absent. An essential feature of the system is that tenderers prepare and submit bids independently. Any tenders submitted as a result of collusion or co-operation between tenderers will, by their very nature, be regarded as restricting competition appreciably.

15. CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of 3 years. In 2008, six pest control companies were found to have colluded to support one another in tendering projects, two of which related to public procurement, and subsequently fined for bid rigging.

16. Corruption offences arising out of the procurement process are investigated by the Corrupt Practices Investigation Bureau of Singapore (CPIB). Suppliers who corruptly procure a withdrawal of tenders or corruptly offer gratifications to a public officer in relation to a government contract shall be guilty of an offence and liable on conviction to a fine not exceeding S\$100,000 or imprisonment for up to a term not exceeding 7 years or both. In addition, a court may make a confiscation order against a person

convicted of a corruption offence in respect of benefits derived by him from the criminal conduct. There are also related offences of money-laundering for accomplices.

17. Suppliers convicted of a criminal offence related to the conduct of their business or profession may also be debarred by individual procurement entities from future government tenders. There is also the Standing Committee on Debarment (“SCOD”), comprising representatives from various government bodies, which is the authority that decides on all cases of debarment of defaulting contractors. In general, the debarment period should be commensurate with the financial or material losses suffered by the government agency and the need to protect other government agencies from the infringing persons. The debarment action has a wide application, imposing sanctions on the following:

- a) The contractor or any of its employees, directors, partners or its sole proprietor who had bribed a public sector officer or another person, in connection with a government agency or contract;
- b) Directors/partners/sole proprietors of the debarred companies/business who are involved in corruption/rigging and recommended by CPIB for debarment;
- c) Other companies/businesses on which blacklisted directors/partners/sole proprietors sit; and
- d) Existing and new subsidiaries of the principal offending company (companies in which the principal offending company has 50% or more ownership directly or indirectly).

18. Debarred directors/partners/sole proprietors are allowed to appeal to the Permanent Secretary (Finance) against sanctions against them if they have good reasons not to be held personally responsible directly or indirectly, for the default.

19. In cases where concurrent infringement of the two jurisdictions (Competition Act and Prevention of Corruption Act) occurs, both CCS and CPIB will collaborate to handle the case. To avoid confusion, the working approach in such instances will be one agency to be the lead agency to handle dealings with the public. Both agencies will update each other on the developments in their respective investigations, subject to the confidentiality obligations under the respective Acts.

20. For information lodged by a complainant to either agency, the receiving agency will assess if the complaint is under its purview. If it is not, the receiving agency will, with the consent of the complainant, refer the information to the relevant agency accordingly. The referring agency will also send an interim reply to the information provider that the information has been directed to the referred agency which will then follow up with the information provider henceforth.

Sanctions against procurement officers

21. Provisions are also put in place to bolster the integrity of procuring agency staff and bidders. Procurement officers are required to report attempts by suppliers to undermine the impartiality and independence of action through the offer of bribes, benefits or other forms of inducement under Section 32 of the Prevention of Corruption Act, Chapter 241 (the “PCA”).

22. To underline the priority of integrity in government procurement in Singapore, penal sanctions against procurement personnel found guilty of fraudulent practices such as accepting or soliciting bribes in relation to government contracts are particularly harsh; up to seven years imprisonment or a fine not exceeding S\$100,000 or both, may be imposed for active or passive bribery in government procurement. Such criminal penalties are compounded by civil proceedings which can be initiated against a corrupt public official even after a conviction in court for corruption. Under Section 14(1) of the PCA, an officer

may also face civil sanctions such as recovery of a civil debt by the principal against the procurement personnel.

Other safeguards

23. To ensure the proper sanctioning of any attempt to undermine procurement regulations, anyone who has suffered or reasonably risks suffering loss or damage as a result of a breach of a contracting authority's duty is entitled to bring a challenge before the Government Procurement Adjudication Tribunal (the "Tribunal"). The Tribunal may order any decision or action taken by the contracting authority concerned to be set aside and take action in accordance with the applicable regulations in place of that which have been set aside; or in the event that the contract for procurement has already been awarded, to order the contracting authority to pay to an applicant costs reasonably incurred for the purposes of the procurement.

24. Other checks include regular mandatory internal and external audits of the procurement process at least once every year by the Government's Auditor-General. These Audit reports by the Auditor General Office are made available to the public. Documentation regarding the procurement proceedings has to be kept by the procuring entity for a minimum of three years.

Advocacy

25. Singapore also recognises the importance of continuously raising the awareness of procurement officers of competition issues in public procurement. Procurement officers are often the frontline staff best placed to identify problematic situations and alert competition authorities of their suspicion. Therefore, a regular series of monthly seminars and workshops are conducted by CCS to procurement officers across government agencies. These sessions are compulsory for all new public procurement officers. It is envisaged that by building their knowledge of bid-rigging practices in their scope of work and equipping the officers with skills to spot bidding patterns and practices that suggests the possibility of bid rigging, these officers will be alert to these bid rigging dangers in the course of their daily work and in the long run, serve as an invaluable asset in the fight against bid rigging.

26. In this regard, the OECD Design and Detection checklist approved by the OECD Competition Committee in February 2009 will be an invaluable tool for such advocacy efforts.

27. Further, another tool used in the education strategy is to teach people how to react in situations that can give rise to corrupt conduct. This is where codes of conduct such as the civil service codes of conduct have an important function in imbibing the public service values of integrity, service and excellence. Public officers who can be held to account for corrupt conduct are also informed of the relevant laws and consequences.

The issue of signalling

28. An e-procurement web portal such as the GeBIZ website improves the efficiency of the public procurement process as it provides a common electronic platform for suppliers and procurers across international boundaries with streamlined electronic processes. This web portal helps reduce costs, increase deal/contracting speed, improve transparency and provide costs savings through bulk purchasing. Although it is recognised that the efforts to streamline processes and improve transparency is a useful tool to curb corruption, it may be argued that there is a risk that information transparency such as readily available information on identity of successful bidders and awarded bid prices increases the risks of collusion and anti-competitive behaviour as it has a price signalling effect.

29. However, these risks are alleviated to a certain extent by the structure of the tender system itself. GeBIZ as a web portal allows for the maximisation of potential participation of competing bidders worldwide; it encourages both local and foreign participation in procurement, reduces the costs of bidding and put in place participation requirements that do not unreasonably limit competition and thereby reduces the possibility of collusion. Further, the government allows smaller firms to form a consortium and tender for bigger projects to allow more firms, including small and medium enterprises to participate in such tenders. Transparency on prices also allows benchmarking across firms and therefore facilitates competitive bidding. Moreover, the easy availability and access to information via an electronic forum by which tender and award information is provided allows for ease of monitoring and policing by the authorities. Competitors can request for information on tender selection to review evaluation results and competition authorities can detect bid rigging activities via analysis of bid history patterns and other bid data.

Conclusion

30. The introduction of the electronic medium for public procurement has brought about many benefits such as greater efficiency, transparency, cost savings and opportunities for small and medium businesses. However, e-procurement is but a tool and is underpinned by Singapore's three principles of transparency, open and fair competition and value for money. These principles govern the public procurement process in Singapore and are vigorously enforced by comprehensive laws and procedural safeguards.