



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

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Working Party No. 3 on Co-operation and Enforcement

PUBLIC PROCUREMENT/BID RIGGING ISSUES

-- South Africa --

The attached document is submitted to Working Party No. 3 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 15 June 2010.

Please contact Mr. Antonio Capobianco if you have any questions regarding this document [phone number: +33 1 45 24 98 08 -- E-mail address: antonio.capobianco@oecd.org].

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1. Certificates of Independent Bid Determination (CIBDs)

1. There has never been a prosecution of CIBD violation in South Africa as it is not a compliance requirement during bid determination. However, following several bid-rigging cases, the Competition Commission then proposed to the National Treasury to consider including CIBDs as part of the determinations of bids involving public procurement. The National Treasury has since developed Draft Practice Notes that will make it compulsory for bids to also be accompanied by a CIBD. This will then be incorporated into the Guidelines for the General Conditions of Tender.

2. Leniency and bidder disqualification

2. National Treasury publishes and manages a *List of Restricted Suppliers*. Government procurement officers are required to check the prohibition status of bidders prior to awarding of contracts. Treasury also maintains a *List of Tender Defaulters* as required in terms of section 28 of the Prevention and Combating Corrupt Activities Act No. 12 of 2004 (“PCCA Act”). The PCCA Act provides that companies convicted of tender fraud and/or price fixing may be restricted from doing business with the public sector for up to 10 years.

3. On the other hand, the South African competition legislation does not provide for bidder disqualification/debarment but only for administrative fines to be levied upon the transgressing firms. Whilst the Competition Commission does not prosecute leniency applicants (firms) who cooperate fully during the civil competition proceedings, the same leniency applicants are not formally protected from being subjected to bidder disqualification/debarment if they are prosecuted and found to have contravened the PCCA Act.

3. Incentivizing officials responsible for public procurement to focus on bid-rigging

4. As part of its public education campaign, the Competition Commission held a public sector consultative forum in 2008 for purposes of educating various government departments on the detection and prevention of bid-rigging. This was followed by several information sessions with senior officials from the National Treasury as well as four (4) bid-rigging workshops to the provincial Treasury procurement officials.

5. Positive relationships may be developed if Competition enforcers make themselves available to assist in clarifying bid-rigging issues that government procurement officers may encounter during bid evaluation. Also, the Competition Commission is of the view that training programs may be supplemented by including employment awards or incentives on the performance contracts of government procurement officers.