PUBLIC PROCUREMENT AT THE CROSS-ROAD OF DIFFERENT POLICIES

SESSION 4 (COMPETITION & PROCUREMENT)

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Procurement matters
Procurement is exposed to many risks
Procurement pursues several policy objectives
The central role of procurement officials
Challenges in reconciling competition and procurement
Solutions? The OECD approach …
WHY DOES IT MATTER?

Public Procurement Interactions between private and public spheres

Significant economic activity

Core policy tool for any government body

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PUBLIC PROCUREMENT
Government procurement as share of GDP and of total govt. expenditures

On a global scale public procurement estimated at US$ 9.5 trillion/year
WHY DOES IT MATTER?

- Interactions between private and public spheres
- Significant economic activity
- Core policy tool for any government body

PUBLIC PROCUREMENT
Integrity of public procurement can be at risk because of:

- Corruption including bribery, 'kickbacks', nepotism, cronyism and clientelism;
- Fraud and theft of resources;
- Conflict of interest in the public service and in post-public employment;
- Collusion;
- Abuse and manipulation of information;
- Discriminatory treatment in the public procurement process; and
- The waste and abuse of organisational resources.

(OECD Recommendation on Enhancing Integrity in Public Procurement (2008))
2/3 of foreign bribery relates to public procurement.

Data available in the OECD Foreign Bribery Report 2014.
Public procurement is the government activity most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors.

Source: 2012-2013 Executive Opinion Survey from the World Economic Forum for the Global Competitiveness Report
Confidence in national government in 2012 and its change since 2007

Source: Gallup World Poll
A competitive procurement system will:

- Drive prices to marginal costs
- Will minimize costs for firms and the government
- Will drive innovation, as firms learn from one another and thereby to continuously improve products.

And competitive public procurement system will accrue benefits to the whole economy as public procurement often involves key infrastructure (highways, railways, electricity, etc.) for other industries.
WHY DOES IT MATTER?

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Interactions between private and public spheres
MULTIPLE OBJECTIVES OF PROCUREMENT

• Primary objective
  – Value for money

• Secondary objectives:
  – Security of supply
  – Standardization
  – Environmental policy
  – Social sustainability
  – Innovation
  – Infrastructure policy
  – Opportunities for SMEs
  – More…
PROCUREMENT OFFICIALS - WHY ARE THEY IMPORTANT?

- Procurement officers can exercise influence on all stages of the procurement process
  - Technical specifications and requirements
  - Definition of products and services
  - Tender notification/publication
  - Selection process and award
  - Post-award period
Over 1/3 of OECD countries do not recognise procurement as a specific profession.
• They are subject to rigid procurement regimes
• They are focussed on process
• … and not necessarily on output
• They are not managing their own resources
• Buying is more important than creating value
• Incentives are not always aligned
• The procurement system may lead to weakened competition
Traditional approach to fighting corruption and collusion may lead to trade-offs.
TRANSPARENCY OR CONFIDENTIALITY?

“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”
Louis Brandeis, 1914

“The system of sealed bids, publicly opened with full identification of each bidder’s price and specifications, is the ideal instrument for the detection of price cutting”
George Stigler 1964
CANNOT TOOLS BE CONFLICTIVE?

Transparency - procurement:
- Essential to fight against corruption
- Increases fairness and openness of process
- Makes bidders and procurement officials accountable and facilitates detection and punishment of corruption/bid rigging

Transparency – competition:
- Prior publication of volumes, weights in evaluating bids may facilitate agreements between suppliers
- Publication of procurement outcomes and, in particular, other bidders/rankings/prices can facilitate the policing of cartel agreements by participants

⇒ Need to find the optimal transparency level
OECD SUPPORTS A COMPREHENSIVE APPROACH TO PUBLIC PROCUREMENT

- Regulatory policy
- Sound public financial management
- Judicial practices
- Competition

Whistleblowing, Money laundering, surveillance, Investigative media

Conflict of interest
- Public procurement
- Corporate integrity
- Lobbying
- Tax transparency
- Export credits

Criminalising bribery
- Asset recovery
## WHAT DOES IT MEAN IN PRACTICE?

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<tr>
<th>Procurement Rules</th>
<th>Advocacy</th>
<th>Enforcement</th>
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<tbody>
<tr>
<td>• Coordinated efforts to develop best practices</td>
<td>• Education of officials, business, media</td>
<td>• Strong sanctions</td>
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<td>• Advocacy to government and legislators</td>
<td>• Inter-agency co-operation</td>
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OECD WORK ON INTEGRITY

http://www.oecd.org/gov/ethics/integrityinpublicprocurement.htm#Principles
OECD WORK ON COLLUSION

http://www.oecd.org/daf/competition/fightingbidrigginginpublicprocurement.htm
2009: OECD GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT

Translated in 27 languages
THE GUIDELINES FOR FIGHTING BID RIGGING HELP TO IDENTIFY

- Markets in which bid rigging is more likely to occur
- Methods that maximise the number of bids
- Best practices for tender specifications, requirements and award criteria
- Procedures that inhibit communication among bidders
- Suspicious pricing patterns, statements, documents and behaviour by firms
CHECKLIST FOR DESIGNING TENDERS

• Learn about the market and about your suppliers

• Maximize participation of potential bidders

• Define requirements clearly and avoid predictability

• Reduce communication among bidders

• Raise awareness of the risks of bid rigging, provide training
Procurement officials should be alert for:

- Opportunities that bidders have to communicate with each other
- Relationships among bidders (joint bidding and sub-contracting)
- Suspicious bidding patterns (e.g. ABC, ABC) and pricing patterns
- Unusual behavior
- Clues in documents submitted by different bidders
2012 Recommendation
Governments should assess public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

Guidelines become an integral part of Recommendation.
FROM 2009 TO TODAY
OECD FIGHTING BID RIGGING PROJECTS…

› Mexico (IMSS x 2, State of Mexico (GEM), ISSSTE, CFE x 2, PEMEX) – 2011 to 2018
› Colombia – 2014
› Argentina – 2018 – 2019
› Brazil, Peru and Ukraine – Forthcoming in 2020

Main components:

• Recommendations for changes in procurement regulations and practices
• Training and capacity building
• Manuals and train-the-trainers
COMMON ISSUES AFFECTING COMPETITION IN TENDERS

• Market studies are critical for competitive tenders
• Consolidation of tenders can reduce collusion but watch out for supply concentration
• Limitations on bidders by regions or nationality reduce competition and may facilitate collusion
• Transparency rules may facilitate collusion
• Joint awards, splitting contracts and sub-contracting may facilitate collusion
OECD RECOMMENDATIONS ABOUT LEGISLATION

- Remove provisions that discriminate against certain suppliers
- Limit the use of non-competitive procurement procedures
- Eliminate the requirements to hold clarification meetings and to publish a reference price
- Ensure disclosure requirements are not excessive
- Require suppliers to submit signed certificates of non-collusion
- Check legal framework regarding guarantees and penalties, which may make it difficult for SMEs to bid
LESSONS LEARNED

• Successful collaborations require high-level commitment, sufficient resources and a willingness to be open and candid
• Training and education of public procurement officials is absolutely necessary and pays immediate dividends
• Procurement officials demonstrate an eagerness to be a part of the solution
• Recommendations in procurement studies/reports must be tailored to the specific department/agency and commitments must be long-term
• Implementation plans are critical
MULTI-STAKEHOLDERS APPROACH

Institutional Stakeholders

- Contracting authorities
- Auditors
- Anti-corruption authorities
- Public prosecutors
- Competition authorities
- Policy makers
RELATIONSHIP BETWEEN PROCUREMENT AND COMPETITION AUTHORITIES

Procurement authorities:
- Report suspicious conducts
- Provide advice on the design on procurements

Competition authorities:
- Build databases
- Raise the awareness of procurement officials
- Provide special knowledge about procurement markets
- Help procurement authorities to get compensation
Thank you!

For questions: antonio.capobianco@oecd.org
More on OECD competition work at http://www.oecd.org/daf/competition/
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