



Measures to prevent collusive tendering: an important adjunct to a liberalized government procurement regime

Robert Anderson

Counsellor, WTO Secretariat and team leader for government procurement*

WTO Symposium on the Agreement on Government Procurement

Geneva, Switzerland

11-12 February 2010

S8.2

*** NB: all views expressed are the personal responsibility of Mr. Anderson and should not be attributed to the WTO or its Secretariat.**



Matters to be addressed

- What is collusive tendering?**
- Why should we be concerned and what can we do about it?**
- Reference to collusive tendering in the GPA**
- Possible indicators of collusive tendering (“suspicious signs”)**
- Concluding remark: the need for vigilance**

What is collusive tendering?

- ❑ **Cartelization in regard to public procurement processes. Also known as “bid rigging”.**
- ❑ **Essence of the offence is an agreement between competitors (e.g., to bid high, to not bid, to submit “cover” bids, etc.)**
- ❑ **Competitor may agree not to bid in return for promise of a sub-contract**
- ❑ **Often also involves side payments to competitors who “lose” and/or rotation of who wins**
- ❑ **As with other cartels, normally carried on in secret**



Why should we care about collusive tendering and what can we do?

- ❑ Collusive tendering imposes heavy costs on public treasuries and therefore on taxpayers (can raise the costs of goods and services procured by 20-30 %, sometimes more)
- ❑ Undermines confidence in governments
- ❑ Best deterred through heavy fines and/or jail sentences (NB domestic review or bid protest system not sufficient for this purpose)
- ❑ Need for agency vigilance/public education
- ❑ Certificate of independent bid preparation a good idea
- ❑ *Opening markets to foreign competitors helps*
- ❑ The procurement agency should also prepare an internal estimate to compare with the bids submitted



References to collusive tendering in the GPA

- ❑ No outright requirement in the GPA to take preventative or remedial measures regarding collusive tendering.
- ❑ However, the threat of collusive tendering and the right of countries to take remedial measures regarding this practice is acknowledged in Article XV, para. 1(a) of the GPA

Suspicious signs

- ❑ The same group of suppliers always submit bids and each wins in a regular pattern
- ❑ All bids are consistently higher than the internal estimate
- ❑ A company always bids high and then gets a sub-contract from the winning bidder
- ❑ A competitor submits its own and another competitor's bid or the competitor's bid looks the same but with a few specific changes
- ❑ A company official states that he does not expect his firm to win or that a bid (“is only a courtesy”)

Concluding remarks

- ❑ Collusive tendering is a threat that never goes away entirely: can undermine the intended benefits of a good procurement system
- ❑ Need for vigilance by procuring authorities
- ❑ Market-opening helps (shows complementarity between trade liberalization and national competition policies)
- ❑ Role of competition agencies (common interest with procurement agencies in deterring collusion)