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

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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 An active competition (antitrust) agency can help a lot (NB bid challenge or protest system not sufficient for this purpose)
- Agency vigilance/public education
- 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

- **The threat of collusive tendering is implicitly acknowledged in Article XV, para. 1(a) of the GPA**
- **However, <u>no outright requirement to take preventative or remedial measures</u>**

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 wining 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

- A threat that never goes away: can undermine the intended benefits of a good procurement system
- Need for vigilance by procuring authorities
- How market-opening helps
- Role of competition agencies (common interest in deterring collusion)