

Unclassified

DAF/COMP/LACF(2009)12

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

28-Aug-2009

English - Or. English

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

DAF/COMP/LACF(2009)12
Unclassified

LATIN AMERICAN COMPETITION FORUM

-- Session II: Tackling Bid Rigging in Public Procurement --

Contribution from Chile

9-10 September 2009, Santiago, Chile

The attached document from Chile is circulated to the Latin American Competition Forum FOR DISCUSSION under session II of its forthcoming meeting to be held in Chile on 9-10 September 2009.

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JT03268846

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**LATIN AMERICAN COMPETITION FORUM
-- 9-10 September 2009, Santiago (Chile) --**

Session II: Tackling Bid Rigging in Public Procurement

Contribution from Chile

Introduction

1. As of September 2009, 18 months have passed by since the implementation in Chile of a pilot program encouraged by the Organisation for Economic Co-operation and Development (OECD) in order to promote best practices for the prevention and detection of bid rigging in public procurement among the concerned entities.
2. This initiative has been coordinated by the Fiscalía Nacional Económica (FNE) of Chile and has benefited from the cooperation of the Canadian *Competition Bureau*. It has installed pro-competition criteria in the agendas of several public bodies, as well as the competition agency enrichment with the discussion of real cases and experiences of public procurement tenders across the country.
3. During this joint work period, we have found that introducing more competition in public procurement tenders imposes significant challenges for competition agencies. Particularly, coordination and a permanent dialogue between the competition agency and bodies in charge of public procurement is required, in an intense activity of promoting the benefits of effective competitive tenders in procurement processes, to show that the lack of competition prevents procurement bodies from attaining their pursued benefits.
4. As it is well known, in the public sector pro-transparency and sectorial purposes may also become obstacles for the development of more competitive processes. In such cases, we, the competition agency's professionals, must strive to minimise such obstacles.
5. Additional troubles arise from traditional structural settings — for instance, those related to the budget management, where saving incentives are not a top priority — and from the lack of effective

rewards for public procurement professionals, so as to encourage them to adopt strategies for preventing and detecting bid rigging patterns.

6. Along with the above-mentioned facts, the following milestones of the last 18 months, the current activities and the future challenges have to be underlined.

Milestones

a) The Anti-Bid Rigging Interagency Taskforce

7. In May 2008, the FNE brought together several public bodies and an association of public procurement officers, to a work team which was named *Comité Anti-Colusión entre Oferentes en Licitaciones de Abastecimiento Público* (hereinafter, the Interagency Taskforce). This team included representatives of the Bureau of the General Comptroller of the Republic (constitutionally independent body in charge of controlling –ex-ante and ex-post- the legality of the Administration’s acts), the (E-)Public Procurement Bureau (body in charge of modernising the public contracting through electronic purchases), the Ministry of Public Works, the Council for the Internal Auditing of Government and Redaba (an association of officers and staff in charge of procurement areas of different public bodies). Delegates of the Department of Housing and Urban Planning, the Transport supervisor and the Pensions regulator later joined the group. This Interagency Taskforce has held 8 work meetings between May 2008 and July 2009.

8. The work of this Taskforce during 2008 has had the following main outcomes:

- Drafting, printing and distribution of a *Detection Checklist* to be used by procurement officers (November 2008);
- Issuing by the Public Procurement Bureau of the Directive of Public Contracting Nr. 11 containing “**Instructions for preventing bid rigging in public procurement**” (January 2009);
- Inclusion of bid rigging questions in the certificate exams to be rendered by public procurement officers (November 2008);
- Cooperation and exchange of information agreement signed between the FNE and the Bureau of the General Comptroller of the Republic;
- Adoption by the Bureau of the General Comptroller of the Republic of the OECD bid rigging detection criteria in its auditing processes methodology (January 2009);
- Implementation of seminars and training activities, as a result of bilateral links with the taskforce members and also as a byproduct of installing the risk of collusion among bidders in the agendas of such bodies. Nearly 500 public procurement officers have attended these activities.

b) Additional efforts from the FNE

9. In addition, the FNE has been working internally on bid rigging in public procurement issues and strengthening ties with its strategic partners. Among these efforts’ outcomes, mention can be made of the following:

- Internal training activities of our professionals in bid rigging in public procurement matters.

- Implementation of periodically updated links on the institutional web site on the subject and e-filing (www.fne.gob.cl/colusion) with extensive information, including a contact telephone number for advice or complaints; an e-mail address with the same purposes; and an electronic form for submitting complaints;
- Organisation of the 2008 Competition Day devoted to bid rigging in public procurement, with the participation of foreign speakers of the Organisation for Economic Co-operation and Development (OECD). It summoned nearly 400 participants, most of them officers and staff from public procurement units;

Current Developments

10. Throughout 2009 the FNE has expanded its advocacy efforts in this field to the provinces of the country, having carried out 6 workshops in cities other than Santiago, on the prevention and detection of bid rigging in public procurement. Our plan is to achieve a total of 9 such workshops this year.

11. As to the work of the Interagency Taskforce, the proposal of incorporating a Certificate of Independent Bid Determination is being discussed. In addition, the FNE collaborates with its strategic partners on the implementation of their own agendas on these issues.

12. Also, an important objective the program had set out was reached, which is considered by the FNE a great success: the Ministry of Public Works recently decided to broaden the work on fighting bid rigging and together with the FNE, elaborated a joint work programme 2009 – 2010, encompassing several activities, including the following:

- the introduction of pro-competition criteria in the design and implementation of standard models of tender terms;
- assistance and support of FNE professionals in relevant tender proceedings;
- to conduct random, ex-post reviews of bidding processes, from the competition point of view, with the aid of the FNE's professionals.

Forthcoming Challenges

13. Despite having installed the subject in several public bodies' agendas, both pro-competition improvements of bidding processes – part of the bid rigging prevention field -, and the number of formal investigations opened in this field remain reduced. Hence, the relevance of further developments on this initiative, as it has already been agreed with the Ministry of Public Works.

14. Usually procurement officers are aware of the likelihood of bid rigging. However, previously to the developments and initiatives of the program described, they were uncertain of their illicit character, and also of the significant sanctions involved. Many procurement officers had not even heard of the national competition authorities. We have undoubtedly made significant progress in this area.

15. What is now required is better stimuli for public contracting officers towards detection and to align incentives in this area. Many activities carried out, and particularly the contacts with procurement officers, have highlighted as an obstacle for them to try to prevent or detect bid rigging in their daily practice, their ultimate goal of budget management, that is to say that their main focus is to spend resources according to the public commitments involved. In other words, at that level there are no real incentives for

saving public resources or for its efficient spending. And, since the fight against bid rigging entails a more efficient use of public funds, these activities would delay the budget management.

16. It is very important, therefore, that the Interagency Taskforce makes the necessary efforts to gain a new strategic partner, the Budget Office of the Ministry of Finance of Chile (DIPRES), to ensure the joint search of the mechanisms for effectively committing public procurement officers in these topics.