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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from Albania

-- Session V --

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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Albania --

1. Size and policy objectives

1.1. *What fraction of your economy does public procurement account for?*

1. According to the latest statistical data, public procurements in Albania are more than 15.4% of General Domestic Product (GDP) and this figure is very similar with the global average of public procurement vs. GDP, 15%¹. In some countries the government expenditure for public procurement is up to 20% of GDP.

2.2. *What are the principle policy objectives of public procurement?*

2. The main objectives of an effective procurement are efficiencies of public funds in terms of offers of best prices and quality offered by participants and to increase the competition in relevant market. This objective will be realised through some other sub-objectives as following:

- To increase efficiency and effectiveness for the procedures of public procurement made by contractual authorities;
- To secure the good use of public funds and to reduce the procedural expenses;
- To stimulate the participation of economic operators in the procedures of public procurement;
- To stimulate competition between economic operators;
- To secure an equal and non discriminatory treatment for all economic operators that participate in the procedures of public procurements;
- To secure integrity, public trust and transparency for public procurement procedures.

2. Corruption

2.1. *What is the cost of corruption?*

3. The Albanian legislation provides an administrative and penal treatment for corruption in the field of public procurement. The Albanian Competition Law, almost adapted with the European legislation in the field of competition, treats prohibited agreements and abuse with dominant position as hard constrain of competition.

1. Source: OECD 2008 Fighting Cartels in Public Procurement

4. The Penal Code in the article Nr. 258 provides fines and incarceration sanctions up to 3 years for enforcements of equilibration in procurements by the bureaucrats. In articles 244-245 and 259-260 are provided fines and incarceration sanctions for corruption of bureaucrats in public procurement.

5. According to the observations collected from our agency and their analyses, it was indicated an increased cost from 5% - 10% due to the concerted conduct among the firms involved in a certain case of a public procurement. The companies that co-ordinate with each other will increase the value of the bid from 95% - 99%, so near the limit of the fund. In the case where more bidders participate, the winning bid is 83% - 86 % of the fund. (Albanian Competition Authority-case)

2.2. *What factors facilitate corruption?*

6. The factors that facilitate corruption are:

- The existence of entry and exit barriers in the relevant market that create constrains for the possibility of more participants in public procurements;
- The existence of “specific” (i.e. particular not in the meaning in itself) criteria (economic or technical) that constrain the participation in public procurement and/or predetermine the potential bidders, creating the possibility for a coordinated behaviour.

7. Another factor may be the conflict of interest between the contractual authorities and the participants in public procurement. Even though it is foreseen in the law Nr 9643, (dated 20.11.2006) ‘On Public Procurement,’ it is difficult to measure the way they are implemented.

2.3. *Do some factors appear to be more important than others?*

8. Our experience is limited in this area of the infringements of the competition law, so it is not possible to provide a list of the factors that influence such behaviours of the players.

2.4. *How do transparency programmes help fight corruption?*

9. Transparency programmes help to increase the number of participants in public procurements and to increase competition by giving more information for the process. Through this programme the government and the consumers receive cheaper and better services. Since 2009 Albania is applying the online system of public procurement and at the same time in the website of the Public Procurement Agency information is published for the participants and winners.

2.5. *What other policies help fight corruption?*

10. The National Competition Policy, which aims to promote and protect free and effective competition in the market through preventing and detecting the anticompetitive practices, gives its contribution in fighting public procurement corruption.

2.6. *What methods and techniques seem particularly effective in your jurisdiction?*

11. Albanian legislation is adapted with the European Union legislation in the field of public procurement and Albania is using advanced techniques of public procurements such as the online system of public procurement.

2.7. *Are firms required to certify during the procurement process that they have not bribed an official?*

12. No. In the law 9643, dated 20.11.2006 'On public procurement' is not yet provided the certificate for the in depended bid CIBD, but the Albanian Competition agency may recommend it to the relevant public body But after finishing the in depth investigation the Competition Authority can recommend this to the Public Procurement Agency.

2.8. *What sanctions can be applied to firms and individuals who have engaged in corruption or bribery in your jurisdiction?*

13. Based on article 13/3 of the law Nr. 9643, dated 20.11.2006 'Public Procurement' the Public Procurement Agency can exclude an economic operator from participating in awarding procedures for a period of 1-3 years in the case of corruption in public procurement. Also the Penal Code in the article Nr. 258 provides fines and incarceration sanctions up to 3 years for enragements of equilibration in procurements by the bureaucrats. In articles 244-245 and 259-260 are provided fines and incarceration sanction for corruption of the bureaucrats in the public procurement.

2.9. *Who are the competent authorities for prosecuting corruption cases?*

14. Based on the Procedural Penal Code, the competent authority for prosecuting corruption cases is the Prosecutor.

2.10. *Does the competition authority have any power in this area?*

15. Not exactly in this respect. In order to foster competition policy and law advocacy, the Albanian Competition Authority has the power to make recommendations addressed to the relevant institutions for increasing competition in the field of public procurement based on the analysis of the primary and secondary legislation.

16. Also, the Competition Commission has the power to impose fines from 2-10% of the turnover if the companies abuse with the dominant position in the market (according the article 9 of the exciting law) and if companies have a prohibited agreement (according the article 4).

3. *Collusion*

3.1. *What factors facilitate collusion in procurement?*

17. In the case of a small economy like Albania the most important factor that facilitates corruption is the small number of participants for a procured service or good and in the circumstances of the friendship network. This helps the companies to collude for the procedures of public funds.

3.2. *What industries seem especially vulnerable to bid rigging?*

18. In principle, the sectors/industries that seem vulnerable to bid rigging are those industries that have a limited number of participants, a limited number of licenses and detailed specifications for the participants. However, those factors are important and should take into consideration to identify the relevant determinants at the level of competition in the certain procurements procedures.

3.3. *What sectors in your jurisdiction were affected by bid rigging conspiracies in public procurement?*

19. During 2009, the Albanian Competition Authority has analysed constraints of competition in the field of public procurement because of the impact that has the efficiency of the procurement of goods and services. The methodology used for this analysis is from OECD - GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT.

3.4. *What experience has your agency had in helping design procurement systems in order to minimise the risks of bid rigging?*

20. The Albanian Competition Authority has collaborated with the Public Procurement Authority for opening the markets of the procured goods and services. The Competition Commission gave some recommendations, with its decision Nr 114, dated 26.05.2009, for increasing competition for the public procurement in security services. The Competition Commission recommended increasing the number of bidders because of securing the participation of economic operators (according to their size small, medium and big enterprises).

3.5. *Does your country employ certificates of independent bid determination?*

21. No.

3.6. *When firms have engaged in collusion, should they be prohibited from bidding in public procurement auctions for a period of time?*

22. Yes, based on article 13/3 of the law Nr. 9643, dated 20.11.2006 'Public Procurement' the Public Procurement Agency can exclude an economic operator from participating in awarding procedures for a period of 1-3 years in the case of corruption in public procurement.

4. *Fighting collusion and corruption*

4.1. *What cases from your jurisdiction have involved both corruption and collusion in public procurement?*

23. The Competition Authority and the Prosecutor have not had any common case until now. Each institution investigates from different perspective a certain case, focusing in the respective aspects of the constraints of competition and corruption. However, both public bodies based their relevant activities on the same source of information (at the large extent. In this respect their cooperation is very crucial to develop an appropriate information exchange system.

4.2. *Have collusion and corruption cases or allegations occurred predominantly at the local government level, provincial government level, or national government level?*

24. Collusion cases occurred only at national level until now. But it is possible to detect anticompetitive practices even in local government level.

4.3. *What methods and techniques for fighting corruption would aid the fight against collusion?*

25. Transparency in the procedures and in the selection process.

4.4. When individuals or firms have engaged in bribery or corruption, are they able to receive leniency in your jurisdiction?

26. No.

5. Advocacy

5.1. How do regulatory or institutional conditions help facilitate bid rigging and corruption?

27. No information.

5.2. In what ways can competition authorities work to improve the efficiency of public procurement?

28. According to law Nr 9121 'On competition protection', the Competition Authority gives recommendations for local and national institutions for the protection of effective competition. The Competition Authority has signed a memorandum of understanding with the Public Procurement Agency and has planned in 2010 to organise a training programme for the contractual authorities for detecting cartels.

5.3. What steps have been taken to improve the efficiency of the public procurement process in your jurisdiction? What specific measures (if any) have been adopted to reduce collusion and corruption in public procurement? If so, what has been the experience to date? Have other approaches to reduce collusion and corruption been tried in your jurisdiction and what have been the results?

29. N/A.

5.4. When adopting measures to reduce collusion and bid rigging in public procurement, have you taken into account the impact that such measures may have on the risks of corruption?

30. N/A.

5.5. Has your competition agency undertaken competition advocacy in this area?

31. Yes. The advocacy of competition comes through the recommendations given to the Public Procurement Agency and to the Directory of the Concentrated Procurements. We are also planning training for detecting and preventing collusion in public procurement.

5.6. If your agency has prosecuted procurement corruption or collusion cases, what type of remedies have you considered?

32. The Competition Authority has started an in depth investigation for a suspected case of collusion in public procurement market. When the investigation will finish the Competition Authority will give administrative measures for the companies that are involved in a prohibited agreement. Also, Competition Commission has recommended the procurement agency to approach the right size of bidding cluster with the size of the most players in the relevant markets, aiming to involve even the small and medium firms.

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