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

## **Global Forum on Competition**

### **COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT**

-- Session V --

#### **Call for Country Contributions**

*This document is a call for country contributions for Session V of the Global Forum on Competition to be held on 18-19 February 2010. GFC participants are invited to submit their contributions by 10 January 2010 at the latest.*

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**TO ALL GLOBAL FORUM PARTICIPANTS**

**Re: Collusion and Corruption in Public Procurement**

**Global Forum on Competition (18-19 February 2010)**

**Session V**

Dear GFC Participant,

The OECD Global Forum on Competition will hold a roundtable discussion on collusion and corruption in public procurement on 19 February 2010. You are invited to make a contribution by *10 January at the latest*. Questions, that you may wish to address, are included in the Annex to this letter.

The performance of public procurement markets has significant implications for the effectiveness of governance in both developed and developing countries. Statistics indicate that public procurement accounts for approximately 15% of Gross Domestic Product (GDP) in OECD countries and is even higher in non-OECD countries. Moreover, procurement often involves goods and services with substantial economic and social significance, including transportation infrastructure, hospitals and health services, and education supplies. The fundamental purpose of public procurement is to obtain goods and services at the lowest possible price or, more generally, achieve the best value for money. Ensuring that public procurement markets function effectively requires policy makers to address two distinct but inter-related challenges: (i) ensuring integrity in administrative processes so that corruption by public officials is prevented; and (ii) promoting effective competition among suppliers and preventing collusion among them.

Anticompetitive conduct affecting the outcome of the procurement process is a particularly pernicious infringement of competition rules. Through bid-rigging practices, the price paid by the public administration for goods or services is artificially raised, forcing the public sector to pay supra-competitive prices. These practices have a direct and immediate impact on public expenditures and, therefore, on taxpayers resources. The OECD has long recognised the vital roles that competition and procurement agencies play in fighting hard core cartels in public procurement.

Corruption occurs when there is an abuse of entrusted power for private gain. Government policy can reduce corruption by increasing the benefits of complying with the rules, increasing the probability of detection and punishment, and increasing the penalties levied on those caught. For example, transparency requirements help root-out and deter corruption by requiring information on the public procurement tender to be made publically available. Transparency programs may require the basic facts and figures; award criteria and weights; the identities of the winning bidder and other bidders; and the terms offered by individual bidders, to be made publically available. Full transparency requires civil servants to act in a transparent, predictable and understandable manner. Because transparency provisions require tender specifications and processes to be made publically available, firms negatively affected by corruption can find out about it and take appropriate actions. Transparency requirements also put pressure on procurement officials because it is easier for government auditors to uncover illegal conduct.

While transparency provisions are highly useful tools for fighting corruption, they can increase the risks of bid rigging. Particularly in markets where there is a limited number of firms, collusion can be reached and sustained if firms have complete and perfect information on the main variables of competition. Market transparency allows firms to align their strategies more easily and to promptly detect and punish any deviation from an anti-competitive agreement. Thus, when firms are able to access information about the other bidders and the terms and conditions offered by winning and losing bidders the risk of collusion increases. Similarly, government transparency programs which require agencies to publish the total expected procurement requirements for a fiscal year can help firms reach an agreement on how they will rig the bids and divide the market.

Policies for fighting collusion can similarly increase the risks of corruption. For example, the OECD Guidelines for Fighting Bid Rigging state that in some situations it may be appropriate to aggregate tender contracts over a period of time. The Guidelines offer this suggestion as a way to reduce predictability and, in turn, the risks of bid rigging. However, higher contract values provide an enhanced incentive for firms to offer bribes and for officials to take them. Thus, contract aggregation can increase the risk of corruption. Similarly, flexible purchasing rules which allow procurement officials under certain circumstances to negotiate directly with suppliers (rather than conduct an auction) can be the most efficient and less costly way of selecting a supplier, but at the same time can increase the risks of corruption.

This roundtable will also explore working relationships between competition, anti-corruption, and procurement authorities. By taking stock of existing working methods and concerns, competition authority advocacy programs will be better able to respond to the joint challenges facing procurement agencies. Effective programs for fighting collusion should also result in fewer corruption opportunities because the illegal gains from bid rigging cartels are often the source used by firms to bribe public officials. In the long term, a unified approach will likely yield large social benefits.

The quality and utility of the roundtable will be strengthened by written contributions from participants. It will be especially helpful if you include a discussion of relevant cases from your jurisdictions. Your written contributions will complement an issues paper prepared by the Secretariat.

To help you to prepare your contribution, a number of issues and questions are attached that you should feel free to respond to and discuss in your submissions. This is not intended to be a restrictive or comprehensive list. Participants are encouraged to raise and address other issues, as well, based on their own experience. A suggested bibliography is attached, as well.

If you have not yet done so, please advise the Secretariat **by 9 December at the latest** if you will be making a written contribution. Written contributions are due **by 10 January at the latest (members and non members)**. Failure to meet that deadline could result in a contribution not being distributed in a timely fashion in advance of the meeting via the GFC website at <http://oecd.org/competition/globalforum>.

All communications regarding documentation for this roundtable should be sent to [erica.agostinho@oecd.org](mailto:erica.agostinho@oecd.org), Telephone – 33 (0)1 45 24 89 73; Fax – 33 (0)1 45 24 96 95; with a copy to [helene.chadzynska@oecd.org](mailto:helene.chadzynska@oecd.org) (GFC Programme Manager). H el ene will be pleased to answer any substantive questions you may have about the roundtable and the GFC in general. Her phone number is +33 1 45 24 91 05.

**Questions for Consideration  
in  
Country Contributions**

***I. Size and policy objectives***

1. What fraction of your economy does public procurement account for? What are the principle policy objectives of public procurement?

***II. Corruption***

1. What is the cost of corruption?
2. What factors facilitate corruption? Do some factors appear to be more important than others?
3. How do transparency programs help fight corruption? What other policies help fight corruption? What methods and techniques seem particularly effective in your jurisdiction?
4. Are firms required to certify during the procurement process that they have not bribed an official? What sanctions can be applied to firms and individuals who have engaged in corruption or bribery in your jurisdiction.
5. Who are the competent authorities for prosecuting corruption cases? Does the competition authority have any power in this area?

***III. Collusion.***

1. What factors facilitate collusion in procurement? What industries seem especially vulnerable to bid rigging?
2. What sectors in your jurisdiction were affected by bid rigging conspiracies in public procurement? What experience has your agency had in helping design procurement systems in order to minimize the risks of bid rigging?
3. Does your country employ certificates of independent bid determination? When firms have engaged in collusion, should they be prohibited from bidding in public procurement auctions for a period of time?

***IV. Fighting collusion and corruption.***

1. What cases from your jurisdiction have involved both corruption and collusion in public procurement?
2. Have collusion and corruption cases or allegations occurred predominantly at the local government level, provincial government level, or national government level?
3. What methods and techniques for fighting corruption would aid the fight against collusion?
4. When individuals or firms have engaged in bribery or corruption, are they able to receive leniency in your jurisdiction?

***V. Advocacy***

1. How do regulatory or institutional conditions help facilitate bid rigging and corruption?
2. In what ways can competition authorities work to improve the efficiency of public procurement?
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?
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?
5. Has your competition agency undertaken competition advocacy in this area?
6. If your agency has prosecuted procurement corruption or collusion cases, what type of remedies have you considered?

### SUGGESTED REFERENCES

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