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

LATIN AMERICAN COMPETITION FORUM

Session III - Improving Effective Public Procurement: Fighting Collusion and Corruption

Call for Country Contributions

18-19 September 2012, Santo Domingo, Dominican Republic

The attached document is circulated in preparation for the discussion under Session III of the Latin American Competition Forum at its forthcoming meeting to be held on 18-19 September 2012 in the Dominican Republic. Delegates are requested to send written contributions for that session to the Secretariat by 24 August 2012 at the latest. Advance notice of contributions by 2 August 2012 would be useful.

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LATIN AMERICAN COMPETITION FORUM

-- 18-19 September 2012, Santo Domingo (Dominican Republic) --

Session III – Improving effective public procurement: fighting collusion and corruption

CALL FOR COUNTRY CONTRIBUTIONS

1. Introduction

1. This request for contributions is circulated in preparation for the discussion to be held in Session III of the 2012 Latin American Competition Forum. Session III is entitled: “Improving effective public procurement: fighting collusion and corruption”. You are invited to make a written contribution for this session.

2. In this call for contributions we identify some issues that you may wish to address in your written and oral contributions. This list of issues is not prescriptive or exhaustive; you are free to raise other relevant issues that reflect your experiences. Speakers will be selected on the basis of the written contributions submitted to the OECD Secretariat in response to this call. To assist the OECD Secretariat in planning the session, please inform us by **2 August 2012** if you intend to submit a contribution. The contributions should be sent by email (as a Word document in electronic format, 5 pages maximum in Spanish or English) to Jessica Escaip [Jessica.Escaip@oecd.org] and copied to: Hilary Jennings [Hilary.Jennings@oecd.org] by **24 August 2012** at the latest. Country contributions will be circulated to participants through the LACF website (www.oecd.org/competition/latinamerica) as well as that of the Dominican Republic (<http://procompetencia.gov.do/en/latin-american-competition-forum>).

3. Key findings from previous OECD discussions on competition in public procurement and a Background Note on Collusion and Corruption in Public Procurement are available on the LACF website. The Secretariat will circulate a revised and updated version of the Collusion and Corruption Background Note in advance of the LACF meeting.

4. 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 17% 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.

5. A number of jurisdictions in Latin America are reviewing their procurement framework and practices to achieve more competitive procurement. To name a few, Mexico, Brazil, Chile, Colombia and El Salvador, for example, are engaged in different initiatives to improve the effectiveness of procurement activities in their respective countries. Efficiency and value for money are key principles which should guide government action in these areas, particularly in times of fiscal consolidation. Sound policies will generate significant savings of public funds, which in turn will reduce incentives and opportunities for corruption, thereby allowing governments to use these savings to deliver more and better-quality public services to those most in need of them.

6. Recent OECD projects in Mexico have indicated that savings from sound competitive practices in public procurement can result in significant savings for governments at all levels. For example, IMSS (the main Mexican social security institute) has achieved cost savings by centralising its purchases of generic medicines. Furthermore, following changes to the procurement law, it has been using innovative auction formats (e.g. reverse auctions) in order to achieve better tender results. In the period from 2006 to 2009 these changes resulted in cumulative cost savings of around MXN 35 million (USD 2.5m, EUR 2.1m) to the benefit of IMSS' members. Between September 2010 and June 2011, the Mexican Federal Government reported cost savings of MXN 196.8 million (USD 14.4m, EUR 11.8m) from using reverse auctions.

7. Anti-competitive conduct affecting the outcome of the procurement process is a particularly pernicious infringement of competition rules. Bid-rigging practices artificially raise the price paid by the public administration for goods or services, 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.

8. 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.

9. 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 detailed schedules of expected procurement requirements for a fiscal year may help firms reach an agreement on how they will rig the bids and divide the market.

10. Policies for fighting collusion can similarly increase the risks of corruption. For example, the 2012 OECD Recommendation on Fighting Bid Rigging, and the Guidelines annexed to it, 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 a public tender) can be the most efficient and less costly way of selecting a supplier, but at the same time can increase the risks of corruption.

11. This session 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.

12. This session will build on developments since the “Collusion and Corruption” roundtable at the 2010 OECD Global Forum on Competition. Activities and programmes targeted at fighting bid rigging have become more widespread and there is increasing interest on the part of competition authorities and governments in tackling collusion as a means of delivering more effective public procurement. The recognition that both collusion and corruption in public procurement result in public funds being siphoned off from important public projects, which are often essential for the poorest in society, may provide an added incentive to prioritising work in this area.

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?
2. To what extent do procurement policy objectives consider the impact of cost-savings from more effective procurement for other government funded social welfare or infrastructure projects? Are you aware of any initiatives undertaken or being considered by other government agencies in your jurisdiction (e.g. employment generation, economic development and education programs) that were or are aimed at reducing poverty and utilised the savings generated from more effective and competitive 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 and institutional arrangements

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?
7. What institutional arrangements are in place in your country to deal with the interface between anti-corruption and anti-collusion policies? Do you have established and institutionalised relationships with those empowered to prosecute corruption cases (for example, Memorandum of Understanding, co-operation agreements, inter-agency taskforce)? Is there a duty on competition officials to report alleged instances of corruption which were found during the investigation of bid rigging cases? If yes, has this ever occurred?