



Public Procurement System: Competition Issues

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PUBLIC PROCUREMENT



- ❖ **Definition:** Purchase of goods and services with requisite parameters and conditions – includes concession agreements.
- ❖ **Objectives:**
 - i) Value for money – fair and transparent.
 - ii) Promoting domestic capacity of supplier
 - iii) Equality of opportunity – level playing
 - iv) Widen supplier base
 - v) Higher quality and technology

METHODS OF PUBLIC PROCUREMENT



- ❖ **Calling for quotations** - limited quantity & financial sanctions
- ❖ **Direct purchase** – Regd.Vendors
- ❖ **Limited tender**
- ❖ **Open tender on nomination**
- ❖ **Competitive bidding** or tendering process
- ❖ **e-auction**
- ❖ **e-reverse auction – swiss challenge system**

GAINS FROM COMPETITION: INTERNATIONAL EXPERIENCE



- ❖ **OECD survey** -shows saving to public treasury of 17 to 43% in developing countries
- ❖ **European Commission** – cost saving of Euro 5 billion to 25 billion between 1993 to 2003
- ❖ **In Russia:** Saving of \$7 billion to Govt. budget in 2008
- ❖ **Pakistan:** Saving of Rs.187 million for Karachi water and sewerage board
- ❖ **Columbia:** Saving of 47% in procurement of military goods
- ❖ **Guatemala:** Saving of 43% in purchase of medicines

INDIAN PERSPECTIVE - DIMENSIONS



- ❖ **Size:** Public procurement in India : Constitute 30% of GDP
It is about Rs.7 lakh crores in FY 2010-11
- ❖ **Legal and organizational framework**
 - i) PPS operates through Article 53 of the Constitution and **Govt. of India (Transaction of business) Rules**
 - ii) Governed by **General Financial Rules (GFR)** and **Delegation of Financial Powers Rules (DFPR)**
 - iii) The **GFR** lays down procedure and rules of public procurement : a) details of quantity, quality, and type b) offers fair and transparent and legal procedures c) procuring authority should take a correct and logical decision
 - iv) The **Contract Act, Sales of Goods Act, Arbitration Act and Limitation Act** also provide broader framework of procurement

AUTHORITIES : REGULATORS



- ❖ **3 –Cs** : i) Central Vigilance Commission (CVC)
ii) Comptroller and Auditor General (CAG)
iii) Competition Commission of India (CCI)
- ❖ **CVC** : Issues guidelines and instructions to curb corruption in PPS – SOP issued by all Govt. Departments and PSUs
- ❖ **CAG** : Monitors the deficiency and violations in the procedures and mechanism of PPS
- ❖ **CCI** : Regulates competition in PPS – prevents and punishes anti competitive conduct or practices by Govt. Departments and enterprises

ROLE OF CCI : REGULATION OF PPS



❖ **Promotion of Competition:**

Through transparent and efficient “*competitive bidding system*” :

- a) *maximizing participation of bidders & wider selection base*
- b) *remove entry barriers*
- c) *remove all factors of AAEC in the terms and conditions of tender documents*

❖ **Prevent and punish :Anti competitive practice**

- i) Anti competitive practices by the bidders (Section 3)
- ii) Anti competitive clauses in the tender documents – to favour some [Section 3(4)]
- iii) Abuse of dominance (Section 4)

Bidding Cases handled by DG

- DG , CCI has investigated total 13 cases of bid rigging :
- LPG cylinders
- Captive Explosives for mines
- Medical equipment suppliers
- Food grain Pesticides
- State lotteries
- Railways – 3 cases
- Aviation turbine fuel – OMC
- Cricket sports
- Defence goods – DGS&D

ANTI COMPETITIVE PRACTICE :BID RIGGING



- ❖ **Definition - Bid rigging** : Highly pernicious form of *collusive price fixing behaviour* where bids are obtained to earn and distribute higher profits
- ❖ **Kinds/forms of collusive bidding** :
 - i) **Collusive bidding** : Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
 - ii) **Bid rotation**: Conspiring firms continue to bid but they agree to take turns of being the winning bidder
 - iii) **Cover bidding**: also called **complementary or symbolic bidding**- where the bidder agrees to submit bid i.e. Higher than the designated winner or puts certain conditions unacceptable to the procurer to favour winning bidder
 - iv) **Bid suppression**: Bidders agree to refrain from bidding or withdraw the bid in favour of winning bidder
 - v) **Market allocation**: Bidders for different geographical areas allocate the market and based on such understanding bidding takes place as designed



Market structure - anti competitive practice

Evaluation of market structure and monitoring of bidding activities : **Warning signals or Red flags** – increase chances of collusion

- i) Small number of companies
- ii) Little or no entry
- iii) Market condition: Predictable and flow of demand
- iv) Industry association
- v) Repetitive Purchase of same kind of goods
- vi) No technology change



Bidding process: Detection check list – symptoms and suspicious behaviour: Warning signs

- i) Dispatch of tender application, seriatum, same address, identical bids of same value etc.
- ii) Odd Bidding patterns and practice
- iii) Same supplier is the lowest bidder
- iv) Geographical allocation of winning tenders
- v) Unexpected withdrawal of bidders
- vi) Regular bidder but never win
- vii) Joint bidding or single bidder
- viii) Winning bidder does not accept the **contract**



Tender documents - Warning signs

- i) Tender documents prepared by the same person
- ii) Identical mistakes, adjustments, cost estimates or letters
- iii) Bids from different companies containing similar hand writing, type or font, stationery packaging, post mark, telephone number and addresses etc.
- iv) Identical price patterns, price parallels – price change – withdrawal of discounts
- v) Abnormal increase in bid prices without justification

DETECTION OF ANTI COMPETITIVE PRACTICE



Suspicious statements and behaviour

- i) Spoken or written differences to a formal or informal agreement amongst bidders
- ii) Identical explanation for price change with reference to standard market price
- iii) Advance knowledge of competitors pricing or bid details
- iv) Statement indicating token or cover bid
- v) Formal or informal meetings of bidders prior to closure of bid date
- vi) Simultaneous submission of bid documents of two or more competitors
- vii) Several bidders makes similar inquiries from the procurement agencies

Case No.1: LPG Cylinder Manufacturers

- Tender No.PG-O/M/PT-03/09-10 invited for supply of LPG cylinders by IOCL
 - a) 50 bidders- awarded to all
 - b) price parallels detected Rs.1100 – Rs.1240
 - c) role of association found
 - d) allocation of territory noticed
 - e) meeting of bidders detected
 - f) admission statement
 - g) contravention to Section 3(3)(d)
- Penalty of Rs.165.58 crores on all bidders

Case No.2: Medical Equipment Suppliers

- 2 cases - Tenders by **Sports Injury Centre (SIC)**, & **JP Narain Trauma Centre** for supply of modular operation theatre
 - i) 4 bidders - contract awarded to MDD at Rs.24.32 cr.
 - ii) identical typographical mistakes & technical deficiencies.
 - iii) Bids submitted almost at the same point of time.
 - iv) MDD & PES 2 bidders had common authorization from the principal manufacturer i.e. Stryker India.
 - v) PES being exclusive dealer submitted losing bid & obtained sub-contract from MDD.
 - vi) 3 bidders had business transactions with each other.
 - vii) Report of CAG & CVC considered
 - viii) procedural lapses and changes in condition by SIC.
- **Bid rotation** established u/s 3(3)(d) since in another bid of JP Narain Trauma Centre for same equipment, it was awarded to PES – penalty of Rs.3.09 cr. u/s 27 of the Act.

Case No.3: Pesticide Manufacturers

- FCI invited bid for supply of pesticides in 2011
 - i) 4 bidders – bid awarded in proportion
 - ii) quoting identical bid price at Rs.388 per Kg.
 - iii) 3 bids submitted by one person - evidence gathered from visitor register
 - iv) Boycott by all ALP manufacturers in the e-auction of 2011.
 - v) Past history of quoting identical bids.
- Collusive bidding established – penalty of Rs.317.91 crores

Case No.4 : Explosive Manufacturers

- CIL invited bid for supply of explosives
 - i) 12 bidders – awarded to all
 - ii) Quoting of near identical bid - Rs. 26,500 – 34,700
 - iii) Collective stoppage of supply
 - iv) Common letters sent to CIL
 - v) Collective boycott of e-reverse auction
 - vi) Active role of EMWA
- Collusive bidding established and penalty of Rs.58.82 crores.

PREVENTION OF BID RIGGING

- ❖ **Full information** about the market
- ❖ **Maximize participation** of credible bidders – wider choice and to reduce unreasonable requirements/conditions
- ❖ **Avoid ambiguous drafting** of the specifications/terms of reference – avoid bias or discrimination – focus on functional performance rather than product description
- ❖ **Design of tender process** : Avoid joint bids, subcontracting, repeated joint interaction, imposing reserve price
- ❖ **Avoid non-compete** clauses
- ❖ **Evaluation criteria** : Technical and financial evaluation should be fair and transparent

PREVENTION OF BID RIGGING



- ❖ **Innovative bidding models:** e-auction – price transparency and avoid corruption – **Ascending clock auction** (in discovery of price of 3G spectrum)
- ❖ **Swiss challenge systems** in infrastructure projects – original bidder offers best price for the project – than the said price is offered to third parties, who in turn makes better offer – the original bidder is allowed to counter match the superior offer of the third party



Thank you