

# **WELCOME** Participants to



**Seminar on-**

**Public Procurement Reforms for Better  
Value for Money: Learning from  
International Experience**

**15.12.2009**



# Public procurement

- Public procurement refers to the purchase of goods or services by the public sector .

**PRINCIPLE OF PUBLIC PROCUREMENT is---**

- **TO PROCURE WORK, MATERIAL, SERVICES OF THE SPECIFIED QUALITY WITHIN THE SPECIFIED TIME AT THE MOST COMPETITIVE PRICES IN A FAIR, JUST & TRANSPARENT MANNER----**

- **\*TRANPARENCY \* FAIRNESS**
- **\* VALUE FOR MONEY**
- **\* QUALITY**
- **\* TIME**

**are the watchwords**



# Public procurement

- is a key economic activity of governments, accounting for an estimated 15% of Gross Domestic Product (GDP) worldwide on average.
- Public procurement **policy**, affects the **way firms compete** and does **shape the effects on competition** in the longer run in an industry sector.



# Public procurement

- There is need to develop **good competition among suppliers** - to ensure that the procurement process is not affected by practices such as **collusion**, **bid-rigging**, **fraud** and **corruption**, and get value for money .
- **collusion**, **bid-rigging**, **fraud** and **corruption** affects the outcome of the procurement process and violates competition law.



# Factors promoting bid-rigging

- **Factors that make it easier to engage in bid-rigging are --**
- **high entry barriers** so that it is difficult **for new or smaller firms to bid for contracts;**
- **limited** residual **competition**, with only a few potential alternative suppliers;
- opportunities for **repeated interaction between market participants**
- active trade associations.
- a **high level of market transparency** that makes it easy to see what the competitors are doing (if bidders are easily identifiable)

# Central Vigilance Commission guidelines

- In order to have uniformity in decision making, the Central Vigilance Commission has issued various directives and guidelines so that under normal conditions, a purchaser is able **to take a decision in the most logical and consistent manner**.
- All the guidelines of the Commission have been framed **to ensure transparency** and provide for a level playing field for the bidders.



# Rules governing public procurement

Formal rules governing public procurement are blamed for promoting collusion amongst bidders.

(reduced transparency in flow of competitively sensitive information can be considered)



# Central Vigilance Commission guidelines

- However, there could be instances wherein, **operational situations may demand deviating** from the stated normal procedures/guidelines. The Commission had in fact issued a communication in October 2006, stating inter-alia that— ***“In case anyone needs to take action in deviation or modification of the guidelines, to suit their requirements, it is for them to do so by recording the reasons and obtaining the approval of the competent authority for the same. However , in no case should there be any compromise to transparency, equity or fair treatment to all the participants in a tender”.***
- However, this circular had to be withdrawn in 2007, since there was indiscrete use of discretion of the dispensation. **If such deviations or exercise of discretions are duly justified and well documented, there is no need to be apprehensive.**





# Government versus Private purchaser

- **Limited strategic options** with the Government in dealing with the threat of collusion as compared to a private purchaser.
- A **private purchaser's** purchasing strategy is flexible.
- The public sector is subject to transparency requirements and generally is constrained by legislation and detailed administrative regulations and procedures on public procurement.



# Government purchaser

- **rules** are set to avoid any abuse of discretion in the public sector.
- **Full transparency** of the procurement process is envisaged. Its outcome is however seen to promote collusion.
- **Disclosing information** such as the identity of the bidders and the terms and conditions of each bid allows –
- **Competitors to detect deviations from a collusive agreement, punish those firms and better coordinate future tenders**

# Combating Bid-rigging

- The lack of flexibility limits the opportunities for the public purchaser to react strategically **when confronted with unlawful co-operation amongst potential bidders** seeking to increase profits.
- **Necessity for the legislative and regulatory framework to be designed to allow sufficient flexibility** on the purchasing side.





# Combating Bid-rigging

- Introduction of **new and different** procurement procedures such as –
  - **Reverse auctions**, e-procurement,
  - **direct negotiations** under certain circumstances,
  - permission to **adapt** procurement **procedures according to the market situation** with which it is confronted,
  - **Minimising joint bidding & sub contracting**
  - **Fixing realistic reserve price**
- are some ways to achieve positive results.



# Competition Act, 2002

- In India, the Competition Act, 2002 **specifically prohibits collusive bidding** (direct or indirect), while some countries have based their enforcement practice against bid rigging on the **general antitrust laws** against anti-competitive agreements

# Combating Collusion in public procurement

- **Collusion** in public procurement may be **reduced** through **strict, effective competition law enforcement.**
- **education** of public procurement agencies at all levels of government to help them **design efficient procurement processes** and **detect collusion** shall also **reduce collusion** in public procurement.



# Reducing risks of collusion

- The risks can be **reduced by careful consideration** of the **various features of the auction process** and their **impact on the likelihood of collusion.**
- Designing auction and procurement tenders **in such a way** that the **bidder's ability and incentives to reach collusive arrangements** **are significantly reduced,** if not eliminated.



# Role of competition authorities

- Competition authorities need to make efforts ---
- to **increase awareness** of the **risks** of bid-rigging in procurement tenders by way of **Outreach programmes -- educational** programs.
  - help **educate** procurement officials how to **detect** bid-rigging **through actual examples** of **bidding patterns** and conduct, to indicate occurrence of bid-rigging.
  - **train** procurement officials **to collect evidence** to be **used to prosecute bid-rigging conduct** more effectively





# Role of competition authorities

- educate public procurement officials and government investigators about the cost of bid-rigging to the government and to the taxpayers, and
- warn officials involved in procurement **from participating** in bid-rigging and other illegal conduct which undermines competition.



# Role of competition authorities

- Competition authorities can develop **check lists** to help procurement agencies **spot** instances of **possible collusion** (though they may not be conclusive), which contain indications of potentially collusive conduct.

( such as those developed by countries like --Canada, Switzerland, Sweden and the US)





**It is hoped, the seminar will further come out with new strong recommendations for adopting better approach and new tools based on other international experiences to improve the competitive bidding system.**

**THANK YOU**



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