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
METHODOLOGY 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 €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.
  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”:
- maximizing participation of bidders & wider selection base
- remove entry barriers
- 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.
DETECTION OF ANTI COMPETITIVE PRACTICE

**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
DETECTION OF ANTI COMPETITIVE PRACTICE

**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
DETECTION OF ANTI COMPETITIVE PRACTICE

**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 handwriting, 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