



DETECTION OF BID RIGGING IN MALAWI

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Just Competition Fair Trading

OVERVIEW OF THE PRESENTATION

- Importance of public procurement to the national economy
- Regulation of public procurement
- Prohibition of bid rigging under the Competition and Fair Trading Act
- Detection of bid rigging
- Challenges

IMPORTANCE OF PUBLIC PROCUREMENT TO THE NATIONAL ECONOMY

- It is estimated that over 40% of Malawi's public expenditure spent on public procurement.
- This represents 12.2 to 16.2 of the country's GDP.
- These figures underscore the importance of public procurement to Malawi financial management and, therefore, improving the country's development outcomes.
- The World Bank estimated in 2004 that through better procurement policies, practices and institutional arrangements, Malawi can make savings on its public budget amounting to over \$24 million.

REGULATION OF PUBLIC PROCUREMENT

- In 2003 the Malawi Government enacted the Public Procurement Act.
- The Act has just been amended.
- The Act, among other things, provides for methods of procurement and their conditions for use.
- In short, the Act seeks to ensure that the public procurement market delivers efficient outcomes.
- This objective resonates with the objective of the Competition and Fair Trading Act.
- There are, therefore, complementarities between the two legal frameworks.

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PROHIBITION OF BID RIGGING UNDER THE COMPETITION AND FAIR TRADING ACT

- Bid rigging is prohibited per se under the CFTA.
- Anyone who engages in bid rigging commits an offence which attracts a financial penalty and imprisonment.
- Despite bid rigging being a criminal offence, market outcomes suggest that the conduct may be endemic.
- For example, studies in the construction industry have shown that most of the large scale projects are undertaken at unreasonably high costs.
- The CFTC has, therefore, included detection of bid rigging among its priority activities.

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DETECTION OF BID RIGGING

- The CFTC has come to realise that bid rigging is more difficult to detect than the other forms of cartels.
- The public procurement market has its own unique characteristics which make detection of bid rigging difficult:
 - Some procurements happen once in a while, as is the case with big construction projects. Therefore, bidders can collude on 'ad hoc' basis.
 - The procurement rules require transparency which, if not properly managed, facilitates bid rigging.
 - Market fragmentation facilitated by decentralisation policy and categorisation of service providers (in the case of construction projects), makes it easier for bidders to collude without raise suspicion.
- The CFTC has put in place a bid rigging detection programme which seeks to exploit the jurisdictional overlap between the CFTA and the Public Procurement Act.

DETECTION OF BID RIGGING CONT'D

- The CFTC has signed a Memorandum of Understanding with the Office of the Director of Public Procurement (ODPP) now to be called the Public Procurement Agency.
- Under the MoU, are required to, among other things, exchange information regarding suspicious bids.
- The parties meet every quarter to share information and develop strategies for cooperation on specific areas of concern identified.
- The detection programme also enlisting the support of public officers involved in public procurement.
- This involves sensitising them on the provisions of the CFTA and training them in bid rigging detection.

DETECTION OF BID RIGGING CONT'D

- So far officers in 12 local authorities and in six Government Ministries have been trained in bid rigging detection.
- With regard to Government Ministries, the main focus is on Ministries whose functions involve issuing of high value contracts for supply of goods and services.
- So far none of the local authorities and Government Ministries trained have alerted the CFTC about any suspicious bids.
- The lack of responses indicates that the programme is yet to be internalized by the cooperating partners.

CHALLENGES

- The difference between the CFTC mandate and that of the ODPP not well understood by the stakeholders:
 - The stakeholders not sure which issues which be reported where.
 - Creating a perception that the CFTC is encroaching into other organization's mandate
- Relocation of public officers among public offices disrupts continuity.
- In some cases bid rigging may be facilitated by the officers involved. They may, therefore, not be willing to report any suspicious bids.
- ***Because of the above challenges, the CFTC is yet to realize full cooperation from the stakeholders.***

ITHANKYOU FORYOUR ATTENTION

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