



## What to Keep in Mind to Improve the Design of Public Tenders and Prevent Cartel Formation in Argentina

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The granting of Public Works contracts in Argentina has recently been held under close examination by the public eye following numerous corruption scandals that took place during the Kirchner era. Beyond these problems with corruption in public tenders, from a Defense of Competition perspective we should also be interested in how to avoid any potential cartel formation between companies when participating in tenders for the Public Sector.

The newly renovated National Commission for the Defense of Competition (CNDC) has announced that it's necessary to promote a Culture of Competition within the State itself, hoping to insert itself into all government ministries which employ public tender processes in infrastructure, transportation or any other outside contracts.

The CNDC's proposal may indeed be necessary given the Argentine context. But what tools does the Commission have at its disposal to prevent or diminish the impact of cartels on public tenders, referred to as *bid rigging*, and which may bring about lower prices in the goods and services acquired by the state?

The CNDC has a range of such tools at its disposal, which allow the agency to act both *ex ante* and *ex post*, which helps reduce the incentives of participants in public bids to engage in rigging. This short article will focus primarily on *ex ante* measures, since enough has already been said elsewhere regarding the agency's available *ex post* options.

There are many ways in which companies can engage in *bid rigging*. Among them is the use of covert offers (businesses agree on one of them presenting a higher bid than the designated winner), suppressing offers (designated 'losers' abstain from participating), rotating offers (businesses continue to present bids, but the designated winner is rotated between them) or by assigning markets (competitors divide the market by assigning discrete geographical areas to each.)

On the other hand, there are specific structural elements and characteristics within each market that may facilitate cartel formation. These include a large number of small companies; a low rate of entry in the market; very stable demand; industrial chambers and associations which facilitate





information exchanges; repeated contract offerings; homogenous products and services; few available substitutes for products; or slow technological change.

Special attention must be given to the characteristics of each market, but looking beyond these, a good design for contract offerings can help reduce the risks of *bid rigging*. In the first place, the evaluator must determine whether the market where the purchase is taking place possesses any of the characteristics that make collusion more likely. They must also gather information on potential providers, their products, prices and costs. They must stay up to date on recent price changes and keep accurate information on past contract bids held in the same market. It's vital that there is coordination between different Public Sector agencies, with all the necessary information for any particular market made readily available.

On the other hand, the contract bid design process must look to diminish or avoid creating any barriers to entry for potential true competitors. Participation may be encouraged by reducing the costs of making a bid, establishing participation limits that won't restrict competition, and allowing for companies from other areas or countries to participate. Ways can also be found to encourage smaller firms to participate, even when they may be unable to bid for the entirety of the contract.

It's important to ensure that any public tender design prevent or diminish any possible communication between suitors. If participants are allowed to communicate it may encourage deal-making and cartel-formation among them. Open tenders allow for participants to communicate and signal each other. The requirement for any bid to be presented in person allows for last-minute communication and deal-making among participants, which may be prevented using electronic means of presenting offerings.

Finally, the criteria used to select a winner will directly affect the effectiveness and intensity of competition. These criteria are, in turn, important not only for whichever contract is being contested at the moment, but for maintaining a set of potential competitors interested in participating in future processes. Whenever participants are evaluated using criteria other than the price, such as when considering the quality of the product, post-sale services, etc, these criteria must be transparent, properly described and adequately weighted in order to anticipate any possible confusion regarding the selection process. When used correctly these criteria can reward innovation and price-cutting developments presented by participants.

By applying the Best International Practices in contract bid design for public sector offerings, the CNDC can have an important and decisive role in preventing cartel formation in the public sector. This can bring significant improvements in the prices paid by the State in procuring these goods and services, which would benefit all Argentinians.

