

Review Article

THE REVIEW OF PROCUREMENT CORRUPTION PRODUCTION FIELDS IN HOLDING IRANIAN TENDERS

***Tahmineh Rahmani¹ and Nader Mirzadeh Koohshahi²**

¹*Department of Public & International Law, College of Law and Political Science, Science and Research
Branch, Islamic Azad University, Tehran, Iran*

²*Department of Public Law, College of Law and Political Science, Tehran University, Tehran, Iran*

**Author for Correspondence*

ABSTRACT

The new law of holding tenders in Iran approved in 2005 to prevent the emergence of procurement occupation different types, predicted some mechanisms, but due to faulty implementation of mentioned law or defect in implementing the law, after passing several years from the approval of holding the tenders, still different types of procurement corruptions in the process of Iran tenders is having considerable growth. In present research after offering the concept of procurement corruption, lawful analysis of issue was focused.

Keywords: *Government Purchases, Public Procurement, Tender, Tender Bidder (Tender Holder), Tenderer, Complaints Board of Iran Tender Holding*

INTRODUCTION

Procurement process is so complicated and could lead to emergence of procurement corruption. Bribery, embezzlement, extortion, illegal bonuses or commissions, contract commission, relationships rather than rules, lack of proper selection and procurement corruption are all examples of procurement corruption. Procurement stages in many countries and also in Iran follow certain lawful formalities. According to prominent role of procurement and contract section in economic and also vulnerability in different stages of good provision and public services, it seems recognition, prevention and discovery of procurement corruption instances would lead to efficiency of procurement laws. Lawful mechanism to set up tender process by the law and the principles of tender spread in different parts of the world as public procurement law and in Iran as the law to hold the tenders. The focus of this research is on the recognition of corruption substrates and also lawful analysis of the effects with the hope to prevent the fields to increase procurement corruption by rectifying procurement principles, reducing the role of government in the economy, monopoly removal, expanding competitive environment among the suppliers and promoting the transparency that require accurate documentation and informing.

The Concept and Basis of Procurement Corruption

Procurement corruption means monopoly in spite of using power excluding accountability and transparency in government procurement. Procurement corruption in different ways such as political procurement corruption, bureaucratic procurement corruption, lawful procurement corruption and also economic procurement occupation could decrease the degree of legitimacy and effectiveness of states in governmental purchases to the extent that could face the governments and political systems to the crisis of gaining legitimacy and acceptability in the government procurement market regulation. The research title is categorized to 7 categorizations as following from different aspects and by referring to votes, interview with the experts in the field of governmental purchase and also based on the gained results from the reports based on announcement and registration of different procurement occupations and in related to tenders. In the following, the lawful consequences of each would be investigated.

Lawful Procurement Corruption

Discriminatory procurement legislation in the market of governmental purchase and in favor of powerful politicians is called lawful procurement corruption. For example, the laws that specify the monopoly of purchase or production of one product to an individual or group without any economic or social justification. The sample of this corruption or vague and cloven procurement laws provides the field for

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bribery, embezzlement, etc. that is clear samples of lawful procurement corruption. (Mirzasharif, 2012) Paragraph (A) of Article 4 in holding the tenders approved in 2005 have prescribed that: one step tender is one which there is no need to commercial and technical evaluation of proposals. According to the fact that commercial technical evaluation and determination of scores is on commercial and technical committee and must be performed in the same session. Therefore it could be seen that legislator ignored to allow an opportunity to choose proper price, while the law regarded it publically and for different tenders regardless of being one stage or two stages. It is clear that legislator weakness in explaining the terms of holding provided the field for unfair selection and led to fulfillment of lawful procurement corruption.

Bureaucratic Procurement Corruption

Bureaucratic corruption and in field of governmental purchase is making decision and planning in the field of governmental provision by the people who don't have scientific and practical qualifications, ethical management and proper capacities with the responsibilities. The considerable part of bureaucratic procurement corruption is due to inability of managers and experts who aren't dominant of their responsibility. The observations showed: bureaucratic procurement corruption is done indifferent levels that is due to Non-transparent and non-accountable administrative structures and the lack of required certainty among some supervisory organizations, inspection and even in judicial cases, no decisively, institutionalized and sustained deal with the offenders. The relation between bureaucratic procurement corruption and low level of government staff salaries is also remarkable (Hamdami, 2004).

Financial Procurement Corruption

Financial corruption could be seen in public procurement contracts in all countries even those with highest level of honesty like Singapore or New Zealand. For example in Zimbabwe, the complicity of ministers of posts and telecommunications and a Swedish telecommunications company to deceive routine process in international tenders could led to delivery of contract to Swedish company. The amount of paid bribes has been announced to 7/1 million dollars. In fact, wherever there is money, the corruption would emerge. To fight financial procurement corruption, the reasons should be recognized. Regarding organizational aspect, financial corruption occurs when government officials have too much power, poor accountability and negative incentives. The high level of financial procurement corruption could lead to inefficient government procurement market regulation. In case of pointing the reasons and factors of spreading financial procurement corruption, it should be told that high guided economics are one of the pillars to nurture bribery and financial corruption. The experience of south Asia countries confirms this issue. Also in case of existing powerful but poor managers, the tendency to do procurement corruption would be aggravated. Legislating different laws on one hand and creating rent in this regard for governmental officials on the other hand are the basic factors to emerge financial procurement corruption. Financial procurement corruption in governmental tenders is emerged in the form of bribery and as result collusion between bidders and receiver or involved people and in all stages of tender; it means from requirement time by the bidder to the time of contract and product delivery, there is the possibility of misuse and as result corruption emergence (Rezai, 2007). In this section some of the important financial procurement corruptions are mentioned:

Procurement Bribe

Procurement bribe is the cash or the good which is received or delivered in a corrupted procurement relation to people in charge in governmental purchase. Although in Iran the generality of holding the tender follows clear rules, but explanation technical and financial details like necessity and project priority, restrictions, technical and financial standards capabilities, the timing of the implementation, supervision and control of the project and the quality level of used technology, machinery and equipment are all affected by expertise, experience and aspirations of the human factor. On the other hand, the impact on process of decision making and choosing governmental applicant companies or change in contract terms is considered as one of the most important reasons of procurement bribery exchange.

Procurement Embezzlement

Embezzlement means extracting from the sources by the people who managing this benefit is on them and it happens when employees misuse the properties of employer, governmental authorities or public

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sources. The transparency of the transactions and organizing the process of governmental purchases is one of the best methods to prevent procurement corruption. The law to hold the tenders and related regulations are edited to organize and transparent governmental transactions while it seems: this law is non-transparent and inconsistent that led to different interpretations on behalf of agencies and contractors. Transparency would lead to prevent fraud and collusion methods in transactions, Embezzlement, bribery, wasting public funds and so much (Khodabakhsh, 2012) even though executive regulations of documentation and information system of tenders approved in 2007 and the issue of article 23 to hold the tenders approved in 2005 in line with the fact to transparent governmental transactions, but in action it isn't effective enough and is having weak enforcement guarantee to face the offending bidders.

Procurement Collusion

The existing gaps in the law of holding the tenders approved in 2005 underlies collusion between the bidder and applicant. To explain recent mistake, it should be mentioned that, in many cases, the increase of work scope, the issue of tender and increase of work value and capacity are among the cases which in case of not predicting in the documents of tender, after satisfying the contract parties, the increase of work value as an attachment should be done. On the other hand, the bidder organization or people in charge of holding the tender in mentioned organization enter small or medium contract with the bidder to get away the competitive process of huge transaction and try to enter the easy contract of small or medium tender and in spite of mutual contract, predict the increase of work value and contract fee 10 times more than small or medium transaction price, so by relying on after entering the small or medium contract try to increase the work value and contract fee against bidder organization. Undoubtedly in analyzing such behavior, nothing would be achieved but procurement collusion and violation of rights of other applicants attend the tender and lack of existing any profit for the government (Pay, 2012).

Procurement Fraud

The importance of public procurement on one hand and financial pressures due to financial crisis and instability of current worldly economic environment led to growing increase of fraud even though all economic confirms are endangered by the risk of fraud in procurement cycle, but their capacity in public and governmental section organization is having direct relation with country's economic structure and governmental section wide activity. Even though there is no data about the rate of fraud in Iran, but by considering 1/5 world average procurement fraud percent and according to GDP announced by the World Bank in 2012, procurement fraud in Iran could be assessed 8/2 billion dollars (Ghanbari, 2013) procurement fraud could be considered as a menace against honesty and to face it, some policies should be edited to control probable corruption activities and also upgrade Transparency, accountability and good work. Fraud tricks could be seen in two groups of confiscation of assets and violations of financial statements. The process of purchasing the goods, service and constructing construction project are involving processes and the person in charge of procurement should follow the stages to buy the goods and services. In first stage, required goods and services of different sections in governmental organization should be recognized. Then the best good providers and required services should be recognized and finally timely delivery of goods and services, considering quality and provision of goods and services with best price should be ensured. The fraud could occur in different stages of procurement. Some of them could occur in all cycle of procurement. The risk of fraud is always related with lack of transparency. The lack of transparency could lead to proposer's inappropriate distribution of information, vague reasons for the selection of procurement procedures, unjustified use of competitive procedures and vague assessment criteria. Also the authorities involved in governmental purchase may be aren't trained sufficiently and as result aren't professional. This issue could lead to planning, budgeting, and non-standard risk management. Furthermore, control mechanism and insufficient response could be changed to mismanagement. This issue could lead to ambiguity in accountability for procurement responsible and also monitoring the company's performance could be unsatisfactory (OECD, 2012).

One of the instances of procurement fraud is fraud in field of assessing qualified supplier. In all parts of the law holding the tenders approved in 2005 and implementing regulations implies that qualitative evaluation of applicant, as the first supervisory loop by the bidder is to prevent the attendance of

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unqualified applicants whether public or limited (Kamali, 2012). In this regard, advertising quality assessment recall for the tender issue in widely circulated press and receiving qualitative assessment documents of applicants, observing of documents in specified date and mentioned on tender documents delivery site to the applicants and finally qualification and tender process with precise observance of the law and its executive regulations of the requirements in the regulations is predicted. One of the most important bases in procurement stages is the role of governmental procurement responsible which choose required supplier through tender. Therefore the existence of weakness in choosing the qualified suppliers would be shown as the weakness in providing the goods, service and emerging fault in reaching country's long term goals. As the spirit of law to hold tender force the provider to the most appropriate price based on time and place aspects, so choosing such provider to perform the tasks based on the quality required by the procurement responsible or bidder could be considered as success. (Hagh, 2012) Providing required services to perform constructive projects that service provider take measures based on price list, couldn't accept the proposals after holding the tenders as according to article and paragraph 2 related to the law of holding the tenders, commercial and technical evaluation of proposals is the process to observe features, standards, efficacy, continuity and other technical characteristics of the business proposals of the applicants and qualified proposals would be accepted and the contractor is obliged to assess the documents based on the mentioned features and standards.

Procurement Political Corruption

Misuse of political power for the personal and illegal goals of individuals is called procurement political corruption. Procurement political corruption and also power are twin. In other words, procurement political corruption is made of political power or conflict to gain power. Through two ways procurement political corruption could be tracked, first governmental authorities misused his position and second considered his position a place to gain wealth. Nowadays freedom fundamental laws to prevent false stability of such governor, by separating triple forces try to decrease the corruption and domination of the governors. Whenever supervising the activity of public affair agents is weakened, there would be an opportunity for political corruption. When the division of power between political actors (government) and other power isn't clear discovering the corruption cases and punishing the agents would be difficult. As in recent two decades in all over the world, paying attention to the law and facilitating the economic activities is emphasized, is just to remove political corruption (Sameti, 2006). Making a monopoly of power in government would lead them to arbitrary interference in economic activities .having such power along with the access to the data which the others are deprived of cause the opportunities for the government authorities to increase their profit even by decreasing the public interest. On the other hand, from the political view, corrupt political behavior occurs when public officials despite of having high authority have no sense of responsibility. In this regard, senior political are not willing to be completely transparent in their activities. For some of the governors, the higher transparency may be along with the lower power as this issue could be effective to increase the welfare among the beneficiaries in governmental purchase or the governors to stable and protect their power need non-transparent financial resources. Therefore fighting against corruption can't be away from the government re-engineering. In some of the countries , it could be seen that governmental authorities are willing more to governmental purchase with more procurement corruption opportunity and never choose it due to the positive effect on economic growth. The observations showed: Bribery in government procurement led some procurement to grow complicatedly. The result is that some of the governmental purchases are moving in the direction of slow economic growth and their share in GDP is decreasing. Each country needs investment and increase of investment for economic growth and also there should be indirect relation between the costs of governmental purchase and economic growth. According to this opinion, if a country added the cost due to governmental purchase, so the economic growth would be decreased.

CONCLUSION

What is gained through the observation and recognition related to the production of procurement corruption in holding the tenders in Iran indicated that: legal system in Iran is having legislative gaps,

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incomplete and subject to constant change. Undoubtedly in general conclusion, the most important factor of procurement corruption in governmental tenders is the fields related to weak supervisory mechanisms. The political aspect of holding the tenders, bureaucratic power, and the rent-seeking tenders are next in rank and other factors that facilitate access to rent sources. According to the scholar's opinion, the main sub-factors lead to economic corruption are related to lack of independent informing in holding the tenders, the existence of political expediency in facing the offender officials, holding governmental tenders in the frame of relations and also the government interference and the governmental tender adjustment. The danger to create procurement corruption in the tenders according to different stages of the tenders, type of procurement contract and the way of implementation and legal management, the economic complication level and also required economic section are different. It seems that the amount of money, technology complexity, the necessity and urgency to acquire goods and services and also power among the authorities are among the main elements to form the procurement corruption in governmental purchase.

Recommendations

Regulating public procurement market through simplification of procurement rules and promotes the integrity of the honest system could lead to transparency and spread of competitive atmosphere. The most important factor of success to guide the trend from procurement market status to optimum status is planning based on good governing and Procurement rules deriving from the basic principles of human rights such as the right to freedom of expression, freedom of trade, the flow of information. Iran procurement rules is considered more as internal administrative law and this thought decreased the importance and position of procurement status and the effect in expanding the democracy and stabling the law and other effective laws in good governing and involve most of the governmental sections, while it seems necessary to continue this scope of rules to private companies and economic firms which are using public bonus and governmental monopoly. Finally democracy stability, good governing and law government are considered as high goals of public law and fighting procurement corruption, increasing transparency, expanding the rule of civil society as supervisory and accountability tools would be provided.

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