

A Comparative of the Principles Govern of Public Procurement in the Iranian Legal System and the Organization of Economic Cooperation and Development (OECD)

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Abstract

Public procurement is proces supply of goods and services by government of the private sector. Due to the use of public resources through public procurement on the supply of goods and servicesPublic, private and public sectors due to conflicts of interest and misuse of public. consumption of public resources and ensuring effective management of public resources requires principles and mechanisms. Organization for Economic Cooperation and Development for all stages of the deal cycle of government guidelines and criteria on the four pillars of transparency, good governance, accountability and control as well as prevention of misconduct is classified.Of course, these principles are not objective but rather a tool to achieve the main objectives of public procurement, including increased public confidence, maintaining the value of money (fair price), conservation and optimal management of financial resources. In the Iranian legal system, public procurement should be done through tenders and tenders law enacted by the legislature in 2004 is an attempt to transparency, competitiveness and non-discrimination, fair treatment and equal in the public tenders taken.In order to effective management in public procurement the authorities must explain the risk map vulnerable spots and bottlenecks and adopt practices that lead to promotion effective mechanisms public procurement, be considered. In this study, after sketching the concept of public procurement and its objectives,The role of the principles to promotion function in public procurement from the perspective of the OECD and Iranian legal system.

Keywords: public procurement, OECD , the Iranian legal system, , Transparency,competition

1. Introduction

Governments and state-owned enterprises purchase a wide variety of goods, services and public works from the private sector, from basic computer equipment to the construction of roads. Public procurement is a key economic activity of governments that represents a significant percentage of the Gross Domestic Product (GDP) generating huge financial flows, estimated on average at 10-15% of GDP across the world. . (OECD,2005)

Public procurement has been identified as the government activity most vulnerable to corruption. As a major interface between the public and the private sectors, public procurement provides multiple opportunities for both public and private actors to divert public funds for private gain (OECD,2007).So some risks, deals in the procurement of goods and services has threatened, that is not always easily identifiable. Ensuring the effective functioning of public procurement markets necessitates addressing distinct but inter-related challenges. Thus, according to the above and to the supply of goods and services by the government and the need for efficiency through process procurement Step through the process of recognition of the need to end payment procurement and commitments, usually a public benefit in the process deals with the challenges faced by the government to provide public services.

Considering the importance of public procurement in the economy, public institutions and the vulnerability of Provision of public goods and services in order to prevent dangers and threats against public procurement require Principles and mechanisms can be better predicted to use state funds for other guidelines include the identification, prevention Spots and bottlenecks vulnerable and precarious, serve a valuable role in increasing the level of these institutions by increasing effectiveness, operational efficienciesAnd improve the quality of their services to citizens and, ultimately, increase their confidence level and the public and promote citizen participation Management, financing and implementation of national projects play. An important question in this article, the concepts and principles of integrity promotion in public procurement, A comparative study of principles govern in public procurement from the perspective of the OECD economic and legal system of iran is the process of public procurement.

1.1 public procurement

Procurement procedures are made of many distinct parts, on which the buyer can intervene to adapt the process to the product, service or work that he wants to procure. (Carpinetti Laura, 2006) Public procurement is increasingly recognised as a central instrument to ensure efficient and corruption-free management of public resources. In this context, the role of procurement officials has changed dramatically in recent years to cope with the demand .The previous government of rule and order and public security, the largest civil projects, the largest employer, the largest buyer of goods and services And in many cases also the largest supplier of

government public procurement purchase goods or services by government Officials have said the public procurement system. (UNOPS, 2011)

Liyod (2004) Believes government deal includes the acquisition of goods or services from the beginning of the process involves all processes to identify and recognize the need to implement the contract. World Bank (1995) argues that state owned procurement goods or services by government departments using public funds. (Adotevi believes public procurement the performance of government in providing public goods and services. (Adotevi, 2004,). Thai(2009) Believes the process of educated public trading of goods or services from the recognition of the need, the resources required, until the end of service award. Arrowsmith Believes public procurement of the broad sense includes all processes of administrative decision to terminate the contract involves contract and in the narrow sense is the only award of contract. (Arrowsmith, 2005) Goals of public procurement usually purchase goods or services needed in order to maximize public welfare (Arrowsmith, Sandtrybus, 2003) Today, governments are much needed goods and services from the private and a higher percentage of public resources after the different processes of public procurement be paid for by the government. (OECD:2009, rostami,2014)

Public procurement procedures often are complex. Transparency of the processes is limited, and manipulation is hard to detect. (Juanita, Olaya, and Wiehen, Michael, 2006) A number of countries have adopted dramatically new public procurement regimes.

The procurement process is examined in relation to three stages of procedure: preparation of specifications, selection of tenderers, and execution of contracts, within each of which some specific risks are identified. (Dorn, Nicholas and Levi, Michael and White, Simone: 2008)

In the effective management in public procurement. Countries have devoted efforts to ensure that:

- Public procurement procedures are transparent and promote fair and equal treatment;
- Public resources linked to public procurement are used in accordance with intended purposes;
- Procurement officials' behaviour and professionalism are in line with the public purposes of their organisation;
- Systems are in place to challenge public procurement decisions, ensure accountability and promote public scrutiny.

1.1.1 Principles public procurement OECD public procurement process of recognition of the need and determine the best suppliers of these needs and ensure that their needs based on location and the right time are distributed in a fair and public (OECD, 2015) in 2004, the lack of transparency and accountability in public procurement pose the greatest threat to public procurement (OECD,2007) Government deals with a fundamental challenge to be faced ensure integrity (Anderson, ECO vau, carolon, 2010) The issue of ensuring effective management in public procurement processes has rightly received a good deal of attention at the international level in recent years. It is addressed by various international instruments, including: (i) the UN Convention Against Bribery and Corruption; (ii) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and (iii) the OECD Revised Recommendation on Combating Bribery in International Business Transactions. The prevention of corruption has also been an important focus for non-governmental organizations (NGOs), which have made important contributions in this field.

In 2008 OECD countries recognized that efforts to improve value for money in public procurement shall go hand in hand with policy measures to enhance transparency and integrity with the adoption of the OECD Recommendation on Enhancing Integrity in Public Procurement. (OECD,2009) .Ensuring effective management of the resources of a Public Procurement and preserve the value of money and achieve other objectives, principles and mechanisms needed government deals . in this regard, the Organization of Economic Cooperation and Development principles as tools for integrity promotion policy in public procurement in line with the effective and efficient management of public resources at all stages of the deal cycle has been approved by the government in the form of a letter of recommendation.

The principles mentioned in Article 10. The first Principle for Enhancing Integrity in Public Procurement calls on governments to provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers, The second Principle stresses that governments should maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering , The third Principle states that governments need to ensure that public funds are used in procurement according to the purposes intended. The fourth Principle calls on governments to ensure that procurement officials meet high professional standards of knowledge, skills and integrity. The fifth Principle requests governments to put mechanisms in place to prevent risks to integrity in public procurement. The sixth Principle encourages close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management. The seventh Principle calls on governments to provide specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct, The eighth Principle highlights the importance for governments to establish a clear chain of responsibility together with effective control mechanisms, The ninth Principle stresses that governments should handle complaints from potential suppliers in a fair and timely manner, Last, but not least,

the tenth Principle calls on governments to empower civil society organisations, media and the wider public to scrutinise public procurement. (OECD, 2009)

The main basis of the principles of expression and the importance of public procurement process to improve transparency, good management, prevention of abuse and forms of accountability and control. It also better monitoring in order to implement the principles of prevention of threatening dangers and risk mapping tools and check list to achieve a better understanding of the risks for the discovery of illegal or suspicious expression. The report can be taken for public procurement cycle and understanding of important steps towards integrity threat and regulators in detecting fraud and corruption so on wit all home.

Reform of public procurement system and strengthen the management of public resources requires appropriate legal framework and regulations that must be established processes and procedures other words, the public procurement system to achieve your goals should be regulation principles to ensure the safety of public procurement

1.1.2 Principles of public procurement in the Iranian legal system

In 2000, some of the members of the Islamic Consultative Assembly (Majlis) in Iran prepared a plan entitled "Plan of Draft of Holding Tenders" for the purpose of clarity in holding tenders, competition in governmental purchases and reduction of multiple laws. After removing the objections made to the said plan by the guardian council, it was approved in 2005 by the Expediency Council. (Rahmani, mirzadeh, 2014)

Tender Act of Iran was approved in parallel with legal amendments in the economic sector, clarification, the process of governmental purchases, campaigning against corruption, competition and access to goods and services with a higher quality and a lower price (Mizani Ghobad: 2003).

In Iran, according to the rules and regulations governing government organizations and public sector bodies, including the tenders Act 2004 and Article 79 of the basic calculations that as the most important rules of public procurement are, public procurement, the three-story minor, medium and major divide be. Tool executive public procurement, tender on the basis of tenders, the tenders is divided into three stages. Including financing and determine pre-tender bidding on large deals during the bidding phase includes preparation of tender documents, evaluation of the quality of tenderers. If necessary, call for tenders, evaluation of tender proposals to the next stage of the tender including the contracting and payment.

One of the objectives of Tender Act is to provide integrated regulations and to cancel all general and specific rules concerning governmental purchases and holding tenders (Panahi, Moosavi Nejad: 2003)

Public procurement process due to the possibility of obtaining financial benefit is always the possibility of committing illegal acts. In this regard, in order to prevent dangers and threats against public procurement, one of the concepts in the new public procurement, and integrity, which means the public authority in the public interest.

Integrity precondition for achieving the goals of public procurement system and proper use of public resources, but to run required criteria and principles including transparency, good management, prevention of fraud and misconduct, accountability and control. Implementation and application of the legal framework and regulations requires appropriate processes and procedures that should be imposed. In other words, public procurement purposes should be based on the principles of due enforcement of regulation is to guarantee safety in public procurement.

In other words, to achieve optimal system of government purchases of goods and services, the first step for preparation and adoption of laws and regulations which ensures tender be desirable goals. The law passed by the legislature tenders effort that has been made in reducing the incidence of these illegal practices. In order to clarify the law on public tenders document, anticipating a comprehensive database of information, publication of the public tender, giving ample opportunity to the parties to prepare and submit proposals for all the volunteers, promulgating laws and Regulations governing the bidding in all areas, with the winning bid and the reasons (documentation), the qualifications of bidders to be transparent (with the help of objective and transparent criteria), announced the procurement of services and goods in the documentation standards. In the tender documents, task Tender holder to attend the opening of the financial proposals of bidders or their representatives at the meeting, informing the individuals, companies and individuals, and access to tender documents, tender documents must deliver all alike to all the volunteers. One of the other goals of Tender Act is to maintain principle of transparency in tender process (Ahrari: 2003). For this purpose and for the first time, Item A of Article 23 of the said Law, elaborating the case of documentation and information, has stated that government is obligated to establish a national tender database and to record and to keep the following information and deeds:

- Call for tender
- Name and particulars of the members of the committee, tender parties and participants in tender sessions
- Brief summary of tender deeds
- Method and stages for qualitative evaluation of tender parties and results

Also according to the article, the competitive bidding process to meet desired quality (according to the tender documents) in its obligations under the transaction to the lowest bidder of the tender Gary has been

granted. Adjust the definition of competitiveness, the quality of the transaction and offer the lowest price in the bidding process are composed of three elements together. Competition helps government in purchasing the necessary goods and services with the higher quality and a lower price. Article 2 of Holding Tender Act describes tender as a competitive process and legislator has used the term “The lowest proportional price” instead of the term “Lowest Price”. This shows that the lowest proportional price shall be proportional to the work volume and price estimation.

However, it seems that this law is unclear in some cases that resulted in removal of miscellaneous requirement by the executive agencies and contractors that uncompatibal transparent and objective creat of law .

Some of these exceptions due to the lack of transparency in the structure and the opening of public servants to interpret, provides grounds for corruption and abuse. In order to manage public resources and ensure optimum use of funds based on the objectives of the system public procurement , one of the major approaches in planning and budgeting process in order to finance the transactions and achieve the goals set by the government, performance-based budgeting that can track the movement of public procurement to be appropriate. In Iranian law, the policies of third, fourth, fifth, Civil Service Management Code, LawPart of the government's financial regulations and the annual budget laws emphasis is on performance-based budgeting Unfortunately, so far not been implemented properly.

In order to prevent fraud and abuse in the Iranian legal system more or less scattered provisions in various laws, Including non-governmental and consumer transactions in the collusion in its place (Audit Law and the Penal Code), non-use of surplusCredit (General Auditing Act), proper diagnosis (Article 23 of the Law on the Supreme Audit Court), there. But according to the dispersion rules to prevent corruption and to take the necessary mechanism by authorized officials to identify and sanction non-compliance vulnerable bottleneck of them in one place .It also aggregated in the direction of transparency and better monitoring and control in order to meet the regulatory bodies have been formed in all three branches.

Conclusion

One of the government's obligations to provide public services Supply of goods and services is based on the processes of public procurement. Due to limited financial resources, maintain the correct use of public funds staple of governments. In this regard, in order to prevent dangers and threats against public procurement, to achieving the goals of public procurement system, including maintaining the value of money, increase participation Private to improve the quality and efficiency of services provided, to ensure the fair and equal treatment and the proper use of public resources and the effective management of public resources in order to preserve the value of money and achieve other objectives, principles and mechanisms needed public procurement, including transparency, competition, accountability, management and oversight is good. With regard to the fundamental risks in all stages of the procurement process, the cooperation and economic development of the Assessment of risks in the tenders cycle and to identify red flags in this process discovered illegal or questionable action and has designed Organization for Economic Cooperation and Development principles on 10 principles for integrity promotion in public procurement in line with Effective and efficient management of public resources at all stages of the deal cycle has been approved by the government in the form of a letter of recommendation. The main foundation of these important principles of government process in order to enhance transparency, good management, prevention of abuse and also constitutes a response and control.

In the Iranian legal system Tender Holding Act in Iran is for applying guidance policies of the government in economic activities, use of government's purchase power and achieving special economic goals such as supporting domestic production and accessing goods and services with appropriate quality and price based on laws and regulations governing government agencies and public sector institutions, including lawTenders Act 2004 and Article 79 of the basic calculations that are considered as the most important state tender rules. The law passed by the legislature tenders effort to reduce the incidence of these acts. There have been illegal, the law of tenders by reducing the tender process, fairness and impartiality in the selection of the deal will ensure more competition in government transactions, transparency of the tendering process up to the principles of the law. In order to clarify the law on public tenders document, anticipating a comprehensive database of information, PublishTender Notice to the public, giving ample opportunity to the parties to prepare and submit proposals for all the volunteers, promulgating laws and regulations governing the bidding in all areas, with the winning bidder and the reasons for winning (documentary), vetting tenderers in a transparent manner (with the help of objective and transparent criteria) is emphasized. Also according to the article, the competitive bidding process to meet desired quality (according to the tender documents) in which the obligations under the transaction to tender GaryThe lowest price offered, transferred. Adjust the definition of competitiveness, the quality of the transaction and offer the lowest price in the bidding process are composed of three elements together.

In order to manage public resources and ensure optimum use of funds based on the objectives of the public procurement system one of the major approaches in planning and budgeting process in order to finance the transactions and achieve the objectives set by the state, which can track the movement of performance-based

budgeting properly for government transactions. In Iranian law, the policies of the Third, Fourth, Fifth Development, Civil Service Management Code, Law of Government financial regulations and the annual budget laws on performance-based budgeting stressed that the Iranian legal system is unfortunately not apply . In line with effective monitoring and control, staff complaints, but seems to hold tenders for the formation of effective supervision requires the elimination of certain regulatory authorities parallel.

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