

The Role Of Transparency In Tenders In Order To Maintain The Public Interest And The Rights Of Suppliers

Reza Tajarlou, Behzad ghorbany darabad

Abstract: The public tenders are very important instrument, which the public sector uses to the allocation of great part of public expenditure for Welfare of citizens. Due to the the lack of resources and the optimal use of it, in line with the public interest and the rights of tenderers, tenders play a key role in the public sector operations; they can be defined as an instrument to increase the effectiveness of the public sector as a whole. But with the conflict of interests of the public and private sector, there needs to be transparency so that the rights of the parties to maintain and public confidence in the state increase. Transparency in Tenders cause the Suppliers that win the bids are those with the best product, at the best price targeted at achieving the best outcome. This paper examines the concept and types of tenders for the effects of transparency in government tenders.

Index Terms: Public Procurement, Tender, Transparency, competition, public interest

1 Introduction:

Public procurement is the process of acquiring goods, works and services, covering both acquisitions from third parties. It involves option appraisal and the critical make or buy decision which may result in the provisions of goods and services in appropriate circumstances (Sarfó and Mintah, 2014). Public procurement is a key economic activity of governments that, more part of public money is spent each year by governments procuring goods and services for citizens. The 'public interest' has been described as referring to considerations affecting the good order and functioning of the community and government affairs, for the well-being of citizens. The objective of instituting a virile public procurement procedure is to increase the competition among potential suppliers or service providers in order to achieve public benefit and protect the rights of suppliers. Sometimes there is a conflict between the public interest and a public official's private interest. These circumstances are simpler to resolve. Public officials must always act in the public interest ahead of their private interests and must endeavour to promote confidence in the process of Public procurement. Due to the complexity of the Public procurement process and the probability of the Suppliers rights being violated, What transparency will impact on public interest and suppliers' rights in tender?

2 Tenders:

Regarding the conduct of Public procurement through specific processes To ensure fair treatment of the consumption of funds and resources, Governments must provide goods and services in a quality-based manner through a competitive approach. (Salam, 2012) The "tender" of the infamous bottle of the root of "defect" means reducing and decreasing.

Listening to the suggestion of multiple trading parties to get the lowest price in terms of quality that the contract is being awarded is called a tender. (Ansari, Taheri, 2009) Tender is the order in which public organizations purchase or purchase or purchase goods or services they require and compete with the natural or legal persons that offer the lowest price or the most appropriate terms. Tender is the creation of a suitable space for competitive contractors with various capabilities and expertise in order to allow various projects, especially large projects, to be awarded to the most appropriate contractors at reasonable rates, so that national interests and public interest are as high as possible. In the process of Public procurement, the three elements play a key role. Government as supplier of goods and services required, suppliers or contractors, citizens as the rightful owners. The procurement cycle consists of the steps that a procurement officer needs to go through in order to fulfil the task of purchase goods or services. Process of Public Procurement several stages. First, one needs to identify what goods or services that are needed by the government. Second, one must determine who would be the best supplier of the goods or services. Third, one must ensure that the goods or services are delivered at the right time, with the promised quality, and for the best price. These three stages must be done in a fair and open manner, competitively, effectively and efficiently (World Bank, 2007). In terms of inviting tenders in major deals, tenders are categorized as "general" and "limited". In public tenders of the state or public organizations, the bidding or buying of goods is made by tender between the public bidders to conclude a contract with the person who proposes the lowest price. (Ansari, 2005,). Effectiveness of the awarding of public tenders can be increased (in the sense of a cut in of the price for the public sector) by a reduction in private transaction costs. Therefore, public bidding is a tender in which the bidding is announced to tenderers through public announcements. In the term, this type of "bidding" is also called, in which the call of contractors and sellers is announced to all tenderers through the publication of public announcements in widely advertised terms. All manufacturers and actual dealers are invited to tender for bidding. In this ad, the type of work is specified and we ask everyone who has the ability to do the job to bid and tender documents at a given time. The purpose of this is to create an affair. As far as possible, competition will be wider. A limited tender is a tender that only trusted individuals who fulfill

- *Reza Tajarlou, Behzad ghorbany darabad*
- *Department of Public Law, Faculty of Law and Political Science, University of Tehran, Iran*
- *PhD of Public Law, Employee OF University of Mohaghegh Ardabili, Ardabili, Iran,*
- *Email: ghorbanybehzad@yahoo.com*

the requirements for fulfilling the obligation can participate. (Ansari and Taheri, , 2009), in a limited tender, the government or the state institution does not arrange a contest among the public, but chooses, at its discretion, those who are deemed suitable for bidding. (Tabatabai Motemnani, 2000)

3 Objective of Tenders:

Tender is an executive tool for processes of the Public procurement are one of the best examples of how citizens, governments and businesses can work together for mutual gain – or work at cross-purposes or the exclusion of one another for huge loss. Management in Government Departments and Offices should ensure that there is an appropriate focus on good practice in purchasing and, where there is a significant procurement function, that procedures are in place to ensure compliance with all citizens. . Of course, the aim of the public sector is to achieve the lowest price possible for the highest quality while a public tender is the best way of achieving this aim. From the aspect of neoclassical microeconomic analysis it is really the best solution because it is basically a modification of market mechanism: there is only one agent on the demand side – the state or a government funded body. The price of the public contract realisation is the government cost of public project realisation. If the public tender ensures the lowest price, the best possible result is achieved according to this concept.) Jan Pavelj 2005)

4 Transparency in Tenders:

The system of public procurement - the expenditure by public authorities and institutions on goods and services - is one of the most important channels of government spending. Governments spend public monies to secure inputs and resources to achieve their objectives and by doing so create significant impact on key wider society. 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. When the products that citizens ultimately pay for are dangerous, inappropriate or costly there will be an inevitable loss of public confidence and trust in governments. Corrupted bidding processes also make a mockery of the level playing field for businesses, especially for younger, innovative companies eager to compete in a fair manner who may not have the backdoor contacts to buy contracts. The necessity to ensure transparency of the awarding of public tenders is currently a generally recognised fact that brings about many advantages, particularly in the fight against corruption. In addition, the transparent awarding of public tenders has a positive impact on the level of private transaction Government or public procurement is generally referred to as the purchasing of goods and services by the government from outside bodies. (Penfold & P Reyburn, 2011) Objectives of government tenders are fair competition. In order to achieve these goals, the process of state-owned transactions must be effective and efficient. In order to increase competition and reduce the risks of distorting and exploiting public resources, transparency is an appropriate tool for using public resources. (Unops, 2011). The objective of the principle of transparency is to eliminate discrimination and to open up the procurement market to all interested contractors.

(S. Arrowsmith,2009) Transparency used to hold tenders to ensure that bidders and contractors ensure that bidding is done impartially and openly. The principle of transparency creates competitiveness and places desirable procedures in the process of holding tenders. Competition is not a goal but an instrument for achieving the goal of maintaining quality, reducing costs and economic efficiency. Lack of transparency will result in poor management and resource allocation and an increase in injustice. Transparency International has created minimum standards for public procurement (Transparency International ,2005). These guidelines can be useful as a point of reference. A central rule of thumb is to ensure easy access to information for all interested parties throughout all the Examples of the stages of procurement where transparency is important:

- (i). Activities carried out prior to initiating the contracting process
- (ii). Tender opportunities
- (iii). Selection criteria
- (iv). The evaluation process
- (v). The award decision and its justification
- (vi). f.The terms and conditions of the contracts and all its amendments
- (vii). The implementation of the contract
- (viii). The role of intermediaries and agents
- (ix). Dispute and settlement mechanisms and procedures

Transparency supports the wise use of limited development funds, from planning investments in advance to measuring the results. An open and transparent procurement process improves competition, ensures value for money, increases efficiency and reduces the threat of unfairness or corruption. Transparency allows the public the widest possible access to documents that enables citizens and businesses scrutinize how the powers vested in public procurement officials exercise their authority. Transparency between service providers and service providers by creating an appropriate opportunity and increasing trust is a criterion for increasing competition. (Anderson R.D. and W.E. Kovacic ,2009) The lack of transparency of creates ambiguity and causes corruption. Increasing transparency will also increase competitiveness, thus reducing government spending. To comply with the savings principle, bidder organizations must compete for individual contracts. Competition is the key to ensuring governments and citizens have the highest value in government transactions (Unops, 2010) Transparency at all stages of the procurement cycle leads to increased competition, promotion of fairness and fair treatment of participants in the public procurement, and increased public confidence, and the manger increases the participation of suppliers in government transactions, which leads to increased efficiency, effectiveness (Saving value of money) and will make optimum use of public resources in the procurement system. Conclusion: The public sector in most advanced countries allocates a large portion of public expenditure through public tenders. All countries have recognized that increasing the effectiveness of the use of public funds to maintain the public interest and the rights of suppliers requires the existence of an adequate national procurement system that meets international standards and that operates as intended. Tender is an executive tool for processes of the Public procurement. In order to maintain public interest and rights of suppliers, public procurement

processes should encourage competition. But because of the conflict between public and private interests public procurement system needs to be transparent until the decision-makers in the procurement department with unbiased and objective information regarding the performance of the procurement function. Finally, transparency in tenders, in accordance with criteria such as the right of access and sufficient opportunity for participants, and the right of public access to related documents, increase public oversight, which promotes fairness and fair treatment of participants in a public transaction. In the end, transparency will lead to increased competitive space and will preserve the value of money, management and optimal use of public resources in order to public interest.

Reference:

- [1] Anderson R.D. and W.E. Kovacic (2009). "Competition policy and International Trade Liberalisation: Essential Complements to Ensure Good Performance in Public Procurement Markets". *Public Procurement Law Review*, 18 (2): 67-101 .
- [2] Ansari Masoud, Taheri Mohammad Ali (2009) *The Encyclopedia of Private Law*, Volume 1, Issue 3, Isfahan, Nasir Jangal
- [3] Ansari, Vallah (2005) *General Theoretical, Practical and Comparative Laws of Law*, Tehran, Tehran: Amount
- [4] Arrowsmith, S. (2009). "EC Regime on Public Procurement". *International Handbook of Public Procurement* (Thai, K.V. edition), Chapter 12. Boca Raton, Auerbach Publications, 251-289 .
- [5] G Penfold & P Reyburn "Public Procurement" in S Woolman, T Roux, J Klaaren, D Stein, M Chaskalson & M Bishop (eds) (2007) ,*Constitutional Law of South Africa 2 ed.* P Bolton *The Law of Government Procurement in South Africa* 67-68.
- [6] OECD (2005a) *OECD Guidelines for Managing Conflict of Interest in the Public Service*. Policy Brief, September, Organisation for Economic Co-operation and Development
- [7] OECD (2007) *Integrity in public procurement. Good practice A-Z*. Organisation for Economic Co-operation and Development
- [8] OECD (2009b) *OECD Principles for Integrity in Public Procurement*. Organisation for Economic Co-operation and Development
- [9] Salam , kranisqi,(2012), public procurement procedure and its cycle ,*igrras*,vol 10 ,p:151-158
- [10] Sarfo, P. A. & Mintah R. B. (2013). "Assessing the Effect of the Procurement Act (663) on the Public Financial Management in Ashanti Region" in *American Journal of Rural Development* 1(4). Pp. 91-98. Retrieved from www.pubs.sciepub.com/ajrd/1/4/5/
- [11] Tabatabaei Motemani, Manouchehr (2000), *Administrative Law*, Second Edition, Publication
- [12] Transparency International (2005c) *TI's minimum standards for public contracting*. Berlin, Transparency International.
- [13] UNOPS, (2011), *Transparency and public procurement , Supplement to the Annual Statistical Report on United Nations Procurement*
- [14] World Bank. (2007) 'Frequently Asked Questions about RA 9184 and Procurement Methods for WB-assisted Projects'