



THE PRINCIPLE OF COMPETITION – THE KEY TO REGULATION PUBLIC PROCUREMENT

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Abstract:

Public procurement is the acquisition of public goods and services from private sector. The main goal of public procurement is to achieving best value for money. In general, an efficient public procurement system enhances a government's public welfare role. Competition is the key to ensuring governments and citizens get the maximum value of money in the process of public procurement. Public procurement requires a regulatory framework based on the principle of competition and that submits public spending to the adherence of competitive procurement methods' and to increase the efficiency of public spending. This research establishes the effect of competition in the regulation of public procurement. The study recommends that Government, in order to optimize the value of money, should adopt draft principles of competition procurement policies that are compatible with procurement regulations.

Keywords: public procurement, competition, value for money, regulation

1. Introduction

In order to fulfil their obligations to their citizens all governments need goods and services. (Arrowsmith Public and Utilities Procurement, 2005). Generally, public procurement is the purchasing by a government of the goods and services it requires to function and maximize public welfare. (See Arrowsmith and Trybus, 2003) Procurement has a major role to play in the execution of budgets at all levels of Government. Government is the largest single buyer of goods, works and services in the country. The government spends approximately 70% of budget on procurement.

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Public procurement is a critical norm in measuring government efficiency because governments in these countries are the major drivers for economic growth and development, and perhaps the most important determinant in the acquisition and consumption of public services. Inefficient public procurement frameworks are bound to create and regenerate corruption, misuse of public funds, poverty and consequently underdevelopment in general. Efficient public procurement practices contribute towards the sound management of public expenditure (Evenett, Simon J. and & Hoekman, Bernard, M., 2005). The goal of this paper is an analysis of the impact of principle of competition to regulation public procurement.

2. Public procurement

Public procurement refers to the government activity of purchasing goods and services needed to perform its functions (Arrowsmith, 2010). Procurement is the process of acquiring goods, works and services. Public Procurement (PP) as a function of government includes decisions about the services that will be delivered to local authorities and the communities they serve (Hughes, 2005). Public Procurement system is broadly defined as the purchasing, hiring or obtaining by other contractual means of goods, construction works, and services by the public sector (Kipchilat, 2006).

3. The goal of Objectives of Public Procurement

Public procurement is a core function of public financial management and service delivery. To a large extent, budgets get translated into services through the government's purchase of goods and services. Good public procurement systems are central to effective government spending and a vital component in the strategy to improve the social and economic position of citizens of developing countries, especially (Trepte, 2005)

Public procurement entails contracting between public institutions and the private sector. Examples are the acquisition of medical equipment for use in public hospitals or textbooks for use in public schools. Globally, procurement is estimated to constitute between 12 and 20 percent of total government expenditures (OECD 2006b). It is difficult to identify with precision the purposes of a public procurement system; it is utilized not only to secure goods and services required by public sector organizations for their missions and to support services provided to taxpayers, but it is also used to implement national policies and to achieve social and other objectives (Thai, 2001).

Arrowsmith defines the primary objective of public procurement as *"the acquisition of goods or services fulfilling a particular function on the best possible terms"*.

(Arrowsmith Public and Utilities Procurement, 2005) She identifies the following objectives as being shared by most systems: *“value for money all of which must be implemented through a cost-efficient process”*. Value for Money is defined as the optimal combination of whole life costs, service delivery and quality necessary to meet the end user’s requirements. Meeting the end user’s requirements is fundamental. Procurement policy requires agencies to seek value for money in procuring goods and services for their entity. Value for money is the basis for comparing alternatives. So, buyers can choose the most cost effective outcome. This requires careful comparison of costs, benefits and options. In any particular case, the benefits should at least commensurate with the costs.

Value for money is the essential test against which agencies must justify any procurement made. Price alone is not often a reliable indicator of value for money. Best value for money means the best available proposal when all relevant costs and benefits over the procurement cycle are considered. Buyers will not necessarily obtain the best available value for money by accepting the lowest-priced offer that meets mandatory requirements. (Sudhir Kashap, 2004) The search for best possible procurement outcomes the best value for money. To reach this aim, it is vital to generate the strongest possible competition for procurement public awarded in the internal market. (Albert Sánchez Graells, 2011)

4. Regulation in public procurement

There are several theories on regulation of public procurement.

A. Institutional theory

The institutional theory is the traditional approach that is used to examine elements of public procurement (Luhmann, 2010). Scott (2004) identifies three pillars of institutions as regulatory, normative and cultural cognitive. The regulatory pillar emphasizes the use of rules, laws and sanctions as enforcement mechanism, with expedience as basis for compliance. Institutional theory states that there should be compliance with Public procurement regulations to ensure competitive bidding, transparency, and professionalism in procurement process (Andrew, 2008).

B. System theory

Systems theory is an interdisciplinary theory about every system in nature, in society and in many scientific domains as well as a framework with which we can investigate phenomena from a holistic approach (Barrett, 2010).

C. Transaction Cost Economics (TCE) theory

This theory addresses questions about why firms exist in the first place (i.e., to minimize transaction costs), how firms define their boundaries, and how they ought to govern operations. According to Patrick, (2010) TCE was originally developed to help to determine the efficiency of governance structures in the private sphere. Yet, Williamson (2006) already addressed public utility services and the importance of transaction costs in the public sector when analyzing bidding process. According to Simon and Evenett (2005), parties have to bid for the right quality of goods and services and the award has to go to the bidder offering the lowest price.

Firstly, where competitive bidding can indeed be an effective way of determining the lowest cost supplier when the price of the good or service being procured is the buyer's only concern, it works less well for complex goods and services where the buyer cares more for the quality, reliability, and other attributes of the procurement (Golinelli, 2009). Secondly, because supplying public utility services typically requires large, durable investments in production and distribution facilities that are specialized to a particular market, the efficient governance of public utility transactions is likely to require long-term contracts to avoid the hazards of repeated haggling over the terms of trade once those investments are in place (McCrudden, 2008). Finally, uncertainty about cost and demand conditions over such long horizons and the complexity of public utility services will leave long-term contracts for public utility services inevitably incomplete (Tukamuhabwa, 2012).

5. The principle of Competition in regulation of public procurement

The public procurement process should not be manipulated for the benefit of any organization or individual. Given that public procurement is funded primarily with tax payers' money, all eligible organizations and individuals should be allowed to participate by submitting offers in response to a specific requirement for which they are qualified. Public procurement requirements should be widely disseminated to increase the chances of a good market response, leading to the award of competitively-priced contracts. (Jorge Lynch, 2013) value-for-money is the objectives for procurement (Shakya, 2014). It should be noted that these objectives are focused on outputs and results rather than procedures. The principle of competition in procurement is in essence an economic one which could safely have been dealt with under the principle of economy. *"Corruption has a major impact in all countries of the world. It undermines democratic accountability, diverts resources away from the public good and into private pockets, and 'redistribut[es] wealth and power to the undeserving'."* (Klitgaard, R., 2000)

Corruption has often been argued to exist because the lack of competition generates rents that can be illegally appropriated. This general idea has often led people into thinking that, since increased competition reduces rents, it also leads to lower corruption. Corruption has rightly been condemned as a barrier to development and a scourge on the welfare of citizens in developing and developed countries. Efficiency in public procurement is of importance in ensuring that the best value for money is obtained by public entities. Ensuring the effective functioning of public procurement markets necessitates promoting effective competition among suppliers, including by preventing collusion among potential bidders (Robert D. Anderson, William E. Kovacic and Anna Caroline Müller, 2010) Procurement of goods, works and services is sometimes portrayed as the combination of the three fundamentals:

- Quality;
- Time;
- Price.

Competition is an essential factor in achieving this objective and promotes efficiency and effectiveness in procurement, discourages monopoly situations and avoids favouritism. It is believed that competition, as an economic principle, will ensure that suppliers will offer the best product at the best price. (Arrowsmith Public and Utilities Procurement, 2005) in the other words, the purpose of such competition is to obtain the best product at the best price through the most cost-effective process monopsonistic buyer power poses the same risks for competition and market players as a monopoly does. (Frank and Glass, 1999)

The idea that competition tends in most circumstances to generate lower prices and/or higher quality for a given price is one of the more basic propositions in industrial organization, the branch of economics that deals with industrial structure and performance the promotion of competition in public procurement markets has not received similar high-level attention as an aspect of international governance. It must be ensured that value for money is obtained. Regulations are rules made by a government or other authority in order to control the way something is done. In order of ensuring maximum competition, procurement processes should be designed to encourage levels of competition among suppliers commensurate with the regulation of public procurement. A well-functioning procurement system requires a holistic approach: it should comprise a legislative framework, supported by regulations as necessary, and by institutional, administrative and legal infrastructure. In other words, procurement rules and procedures alone are insufficient, and effective implementation and operational efficacy are vital.

In order to achieve the procurement goals and objectives prescribed an adequate legislative framework, supported by regulations to address procedural issues not

normally the subject of primary legislation (which in many systems can also accommodate changes in procedures and business methods more easily than primary legislation).

6. Conclusion

Effective system of public procurement is a critical tool in public administration and in government's efforts to maximize public welfare. One way to achieve this goal associated with it is to create an efficient procurement system, in order that the objective of public procurement maximizing economy promoting competition among suppliers and contractors for the supply of the goods or construction to be procured. In this regard, regulating public procurement according to the principle of competition causes economy and value for money in the use of public funds. Therefore, since the aim of the Public Procurement Regulations is to promote fairness, and nondiscrimination in procurement in public institutions with the main aim of ensuring efficient use of public funds, all procurement regimes allow competition procedures as the principal method for public procurement.

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