

**THE ROLE OF ENFORCING TRANSPARENCY, COMPETITION  
AND OBJECTIVE CRITERIA IN DECISION MAKING IN  
SUPPORT OF THE WEAK PARTY OF GOVERNMENT  
CONTRACTS**Kheirollah Parvin<sup>1</sup>Karim Farhadi<sup>2</sup>

**Abstract:** The special features of government contracts, such as the accession of these transactions and the prioritization of public interest over private interests, create a situation that undermines the principle of equality of the parties and their free will and weakens the private side of these contracts. The weaknesses on the private side of the contract are not always in the public interest, and exacerbating this situation can lead to a weakening of the private sector and ultimately to the general economy of countries. Therefore, lawyers and economists have come up with ways to protect it from the weak side of government contracts. The fruit of weak support in government transactions is to balance the benefits of executing and executing these contracts

and thereby achieve public goals while strengthening and safeguarding the interests of the private sector. One of the most effective ways of supporting the weak side is to create a framework that compensates for non-compliance with the principle of equity in government transactions and provides grounds for fair private sector growth and development. The most important of these contexts are the implementation of the principles of transparency, competition and objective criteria in decision making. In this article, while outlining these principles in relation to government contracts, we will study the role of adherence to each of these principles in protecting the weak side in government contracts.

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## Introduction

The government, as an administrator of the most important affairs of the country, such as health, culture, security, and development, covers much of its needs through the private sector. Governments try to provide public and state requirements by contracting with private service providers due to numerous constraints, such as a lack of specialized manpower or lack of advanced equipment and tools or for economic reasons, such as weakening the scope of governance and developing a regulatory role. On the other hand, the government sells property and services or concessions to the private sector in various situations, including through government transactions. Because the government enjoys greater power and control over these contracts and the public interest over the private sector, the principles of contract equality and the free will of the parties are not fully respected in

government contracts, and usually the private party of government contracts based on accession contracts is subject to contractual terms, which the public sector determines.

In the process, the private parties of contracts have far less bargaining power and are unable to safely secure their interests. Moreover, the enactment and enforcement of regulations that in the process of enforcing the contract recognizes special and discriminatory rights and privileges such as the right to unilaterally terminate the contract, rendering the private parties of government contracts in a weak position.

The basis of the superiority of the will of the State party over the private party is that in the process of concluding government transactions, the State party is the representative of the public and is responsible for safeguarding their interests; its advantages. In this regard, jurists have argued that the contract cannot limit the will of the state, which symbolizes the superior will of society and is exercised to serve the public interest (Imami & Ostwar Sangari, 2012, p. 133). Although these principles are applied for the benefit of the public, if government agencies overdo it and use

these principles in a way that undermines the private sector, the harm will eventually come back to the whole community. If the weaknesses of private parties of governmental contracts exceeds to a certain extent, it will eventually weaken the private sector. The weakening of the private sector will have many devastating consequences, including unemployment, stagnation and incomplete enforcement of government contracts. Consequently, balancing so that both the public interest and the private sector can continue to operate economically is one of the requirements that must be legislated in the laws and regulations of this field. One of the best ways to make such a balance possible and to prevent government agencies from imposing excessive conditions on private parties is to uphold the principles of fair and healthy activity for private parties. The principles such as transparency, competitiveness, and objective criteria in decision-making help private parties in government contracts defend themselves against enforcing conditions and taking discriminatory and sometimes cruel measures. Accordingly, the establishment of frameworks that modify the principles of public interest

guaranteeing and prevent the abuse of office machinery by these principles can constitute an effective breach in support of the weak. In this paper, we will examine the role of each of these principles in protecting the weak side of government contracts, and will determine to what extent the laws and regulations governing government contracts have respected and recognized these principles.

### **Chapter I: The Principle of Transparency**

The Transparency International's definition of transparency is as follows: "The principle that enables individuals affected by administrative decisions, business transactions and charitable activities to be informed of the fundamental facts, figures, processes and mechanisms, according to this aforementioned principle, the public servants, managers and trustees must act in an obvious and visible, predictable and understandable way" (Mohseni, 2013, p. 151). Schooner defines the principle of transparency in bidding: "A system used for bidding to ensure that bidders and contractors ensure that

bidding is conducted impartially and openly" (Schooner, 2002, p. 103).

According to the definitions above, the principle of transparency in government contracts, it means to provide accurate, complete and easy information on the transaction process to regulatory bodies, transaction-related persons and all citizens.

Transparency is an important indicator of the intact and efficient system of government transactions and generally includes: (a) the dissemination of opportunities for government transactions and the promulgation of the rules and regulations governing the process of government transactions; (b) enforcing the system of government transactions in accordance with the rules and processes that are binding and limiting the decision-making power of public authorities in a way that is visible to the public and aware of them; (d) Effective military provision for the control, supervision and enforcement of the applicable regulations. Lastly, given the fact that the trading operator often has broad authority in the trading process, the degree of transparency

should be as broad as the authority and decision-makers in the public domain (United Nations Office on Drugs and Crime Vienna, 2013, p. 8). Observing the principle of transparency in government transactions requires several considerations. Firstly, all information about these transactions should be fully and accurately communicated to supervisory bodies and citizens. Accuracy means that the information is not imprecise and false, and completeness means that some information is not hidden to mislead the public and regulatory bodies. Secondly, the information should be publicly accessible and judged in a variety of ways; this information should be made available to the public in ways such as websites or newspapers or brochures.

The transparency is one of the most effective mechanisms of democratic systems to achieve accountability and accountability of government officials and employees. Given that the government for the benefit of the public and in line with public interest concludes the contracts, information and process transparency<sup>3</sup> of

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3. For further information on information and process transparency, see: (Mullaei, Ayat, Administrative Contracts: A

Comparative Study of the Platforms, Principles, Nature, and Principles, First

government contracts is an effective way of responding to government agents (Mullaei, 2014, p. 406). The transparency in government transactions also avoids waste and misuse of financial and human resources (Trybus, 2006, p. 410). The principle of transparency is applied to provide a good basis for competitive bidding and to eliminate monopoly and protect the weaknesses of government contracts. Obviously, meeting these requirements reduces the risk of information leakages and potential weaknesses in government transactions and puts all bidders on an equal footing. There are numerous laws and regulations in Iran regarding transparency of government and administrative actions and public access to administrative information and documents, especially in relation to government transactions. The Constitution of the Islamic Republic of Iran recognized in principle fifty-five citizens' access to the reports of the Court of Auditors on the activities of government agencies and bodies using the entire state budget: "The Court of Accounts to all accounts of ministries,

institutions, state-owned companies, and other agencies that somehow utilize the entire state budget in the manner prescribed by law, conduct audits or deal with that have not exceeded the cost of approved credits and have used any funds in place. The Court of Accounts shall collect the relevant accounts and documents in accordance with the law and shall submit a report on the appropriations for each year, together with its comments to the Islamic Council parliament, and shall be publicly available. "Among the common laws of the bidding law of 2004 and its implementing bylaws are detailed provisions directly related to transparency in government transactions. Other laws and regulations have also taken this principle into account in general and in all administrative matters. Transparency in government transactions is also mentioned in some legal dispersed materials.

*1) Law on Tender Holdings Approved in 2004 and its Implementing Regulations*

Pursuant to Article 23 (a) of the Tender Law of 2004 titled Documentation and Information, the Government is obliged, within one year, to establish the National Tender Database and Database and provide information and documents related to the tender call, names and specifications of the tenderers. Commission, bidders and attendees at bidding sessions, summary of bidding documents, bidders' qualitative evaluation procedures and procedures and their evaluation results, minutes and evaluation bidders and managers, name and specifications on bidder.

Paragraph (b) of this Article also obliges the bidder to submit the information referred to in Paragraph (a) as well as all bidding documents securely archived and maintained and a copy thereof to the Bidding Information Bank. According to paragraph (c) of this article, "Information on all transactions, including bids and tenders, except those transactions which shall be retained by the Board of Ministers upon its discretion." It should be made available to the public through the National Bidding Network. "The objection to this clause is that it does not specify on what criteria the Board of Ministers should

determine whether certain transactions should remain. The Executive Regulations of Subject (d) of Article 23 of the Bidding Law adopted in 2004 have also adopted complete rules and regulations regarding the documentation of government bidding information, the publication of these documents and the transparency of transactions in general. Article 3 of this Code stipulates that all bidding procedures and processes from the pre-call and bidding sessions to the execution of the subject of the contract must be documented. In paragraph (a) of this Article, the summary of the tender documents shall be registered and notified in the National Tender Database and Information Database. Paragraphs (b), (c), (d), (e) and (c) also list items that should be summarized in the various contracts; but one of the disadvantages of this regulation is that the regulations do not mention the criteria and reasons for selecting the winner and declare it to other bidders. In addition to these provisions, Article 8 of the Rules of Procedure of the Statute of the Board of Appeal of the Law on the Procurement of Tender Laws of 2010 stipulates that: (a) All executive bodies referred to in paragraph (b) of Article (1) of the Law They are required to submit their

contract information in the forms provided by the Vice-Presidency for inclusion in the Contracts Database so that it may be provided to the Board if necessary. "In this regard, one of the ways to support the weak side of government contracts is to provide an opportunity to ask questions about the uncertainties associated with holding these contracts.

The governmental transactions are essentially specialized and complex, and therefore the documents related to these transactions may also be complex and vague. Applicants must therefore have the right to apply to a government agency, explain and clarify ambiguous points of documentation. The government agency should respond promptly to such requests and explain the necessary information to the applicant and provide this information to other potential applicants. Obviously, this response should be before the deadline for submission of bids and should be provided when the applicant company has sufficient time to decide on bids<sup>4</sup>. The questions about ambiguity and

its response should be written and communicated to other applicants to ensure equal treatment. Iranian lawmakers have taken note of this, and in Article 17 BC. The title "Explanation and Explanation of Documents" stipulates: "A. If the tenderer sees in the bidding documents ambiguity or defect, he may ask the bidder to explain. (B) The explanations and replies to the questions of the Bidders and in the case of a "Document Explanatory Session", the transcript of its minutes pursuant to Article 22 of this Act shall be equally dissenting to all Participants.

The objection raised by this article is that it does not indicate that the submission must be such that tenderers have sufficient time to participate in the tender and amend the proposals in accordance with the new explanations.

## **2) Other rules on the principle of transparency**

The Iranian Public Broadcasting and Access to Information Act (2009) holds that every Iranian has

the deadline to the deadline for submission of proposals, so that contractors can adapt to new conditions.

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4. An appropriate solution is to extend the deadline for submission if the ambiguity in the documents is significant and there is insufficient time to correct the proposal from

the right to access public information. The law establishes two types of access, one requiring access to the request in which the administrative agencies are required, public information provided to them upon request, and the other compulsory access that the administrative agencies and public institutions are required to provide, even Publicly disseminate public information about their performance in a variety of ways, such as websites and guides, without asking citizens. Article 23 of the General Policy Implementation Act, Article 44<sup>5</sup>, also deals with the publication of transcripts in the major newspapers. The Law on the Promotion of the Health of the Administrative System and the Fight against Corruption, adopted in 2011, has also emphasized the importance of transparency in administrative practices. Subject to Article 3 (a) of the Administrative Health

Promotion Act, all government agencies and the public are required to inform the public of regulations, approvals and decisions related to citizens' rights at electronic meetings<sup>6</sup>. This regulation, of course, also includes public regulations and approvals related to government transactions. Paragraph (b) of that Article provides: "(b) the text of contracts relating to secondary and higher business subject to the law of tendering by the means of tendering, auctioning, formalities, etc. by the entities subject to paragraphs (a), (b) and (c). Article (2) This Law shall be entered into and the Contracts Database shall be entered in the Database of Contracts as well as any documents relating to its incorporation, amendment, termination, cancellation or termination of the Contract before its expiration and any modification thereof. The Vice President of Planning and Strategic Oversight is

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5."Article 23 The Privatization Organization shall, following each transaction, immediately declare the following in relation to the transfer of management and control shares of the Enterprises: Company name and summary of its financial and management information, a summary of the transaction performed including the amount of shares outstanding, the name of the consultant or consultants who have provided the privatization agency with consulting services, the buyer's name and address, the

name of the equity investing company. Is committed, the name of the official expert of the judiciary or financial services institutions that has done the pricing of the firm."

6.According to paragraph (a) of Article 8 of this law, the transparency and documentation of the activities of the executive agencies are among the tasks of the Vice-Chancellors for Strategic Planning and Supervision, and for the Development of the Management and Human Capital of the President.



required to provide, within three months of the date of its enactment, its executive by-laws, including the rules and exceptions, the manner and extent of public access to contract information, and the establishment of a database of approved Ministers within a year of approval." However, contracts of a military, security and confidential nature<sup>7</sup> are excluded from the provisions of this article. Note 2 This Article provides with a law enforcement guarantee for failure to perform the duties set forth in the said Article: "Note 2: Delay in entering the above information or incomplete entry of information or unlawful entry in the said sites is considered an infringement, sentenced to six months to three years' temporary suspension from service in the units referred to in paragraph (a), (b) and (c) of Article 2 of this Act." It would not seem logical to impose the same temporary disqualification for delay in entering information and deliberately entering inaccurate information.

Article 17 of the Civil Service Management Act of 2007 concerning the

observance of the principle of transparency in the transactions of executive agencies with corporations and non-governmental organizations expressly emphasized the observance of transparency in these transactions and stated: Contract with companies and NGOs to provide a clear and specific part of the services they need based on the specific activity, the specific workload, the price of each unit of work, and the total price. In case of failure to apply, applicants may be permitted to comply with the law on tendering and approval of the organization by leaving the tender procedure.

Note - Companies subject to this Article shall be designated by the State Management and Planning Organization or the Ministry of Labor and Social Affairs in accordance with their duties and shall be disqualified if the provision of this Article is violated.

## **Chapter II: The Principle of Competitiveness of Public Procurement**

prohibited in contravention of the laws and regulations and shall be in breach of the penalties set forth in the Penal Code for the Disclosure and Disclosure of Confidential Information and Government Secrets on"

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7. Article 34 of the Administrative Health Promotion Act on the Disclosure of Confidential Information states, approved on 18/02//1974: "Any disclosure of information on the databases of such devices shall be

One of the most important causes of weakness on the part of government traders is discrimination in dealing with potential applicants for government contracts. Discrimination and biased treatment of the bidders will weaken and undermine applicants' rights, creating a situation where less qualified but less rent-seeking or more influential applicants enjoy a better position in government transactions. Therefore, one of the most important principles in all administrative services and activities, including government transactions, is the principle of non-discrimination, impartiality, disregard and the unlawful bias of certain individuals and groups.

Non-discrimination in government transactions means that there is no limitation of inequality for actual and potential applicants to compete (Panahi and Bandari, 2003, p. 37).

The premise is that the interests of public affairs belong to the general public, and the principle of equality dictates that all persons are entitled to the benefits and benefits of the administration of public services justified in their capacity and competence. It should be noted,

however, that the statutory restrictions on the choice of trading party and the preference and choice of one participant over the others, if based on legal criteria, have no conflict with the principle of fair competition. One of the main purposes of holding state bidding and auctioning and other formalities governing government transactions is to provide an equal opportunity for all eligible applicants to compete in such transactions so as to apply these formalities and rules to the principle of fair competition. Therefore, one of the most important underpinnings of weak support in government transactions is the adoption of mechanisms designed and enacted based on the principle of competitiveness. Conducting government transactions in accordance with legal procedures based on fair competition not only creates fair and equitable employment conditions for all applicants; finally, by selecting the most competent applicants for contract matters, it also results in improved efficiency and optimal contract performance (Panahi, *ibid*, p. 40). In other words, in keeping with the principle of competitiveness of government transactions, these contracts are executed and executed in such a way

as to enable all the bidders to participate and ultimately win the most qualified people.

Competition is an important factor in getting the government to make the most of their financial resources. This in particular leads to low prices and the best quality for goods, services and work. In addition, competition acts as an important driver of innovation. Creating competition in government transactions is not just about expanding the circle of traders, but about all actions that create fair and healthy conditions for all bidders. In a study conducted by Bliss and Daydream, it has been concluded that a large number of competitors do not play a significant role in preventing corruption because what ultimately results in a competitor winning more is the ability to pay bribes. That is, if regulations do not deprive employees of the ability to obtain bribes and financial abuse, the multiplicity of competitors will not have an impact on the competitive environment and the prevention of corruption (Bliss, 1997, pp. 1001-1023, quoted by Ghorbani, *ibid*, P. 29).

Clearly, the introduction of competitive space in government transactions is about transparency.

Because if there is transparency in the conduct of a government transaction, the entrants can make less confident decisions and concerns with their own profits and losses and with access to information on costs and benefits; Lack of Transparency, Potential Brokers, are either not aware of the opportunity to participate in the transaction or will not be able to risk the transaction if they are informed of the transaction and even the opportunity to participate due to lack, ambiguity or deficiency in transaction information. Become transparent and participate in the transaction.

In the foregoing, the principle of competition in government transactions in Iranian laws and regulations is discussed first.

*1) Law on the Implementation of General Policies Article 44 of the Constitution adopted in 2008*

The principle of competition in the Islamic Republic of Iran's constitution has been found in terms such as "abolishing any ... monopoly", "abolishing unfair discriminatory" and "prohibiting ... monopoly ... and other

vicious and forbidden transactions"<sup>8</sup>. Normal laws and regulations also emphasize the need to observe this principle in all economic fields, especially in the field of government transactions. In the future, the effects and damages of this principle are explained in the General Policy Implementation Act, Article 44, and other laws and regulations.

Note 20 of Article 1, the General Policy Implementation Law, Article 44 of the Constitution of 2008, stipulates that disruption of competition includes those which "cause monopoly, hoarding, corruption in the economy, damage to the public, leading to the concentration and persistence of wealth at hand. Certain individuals and groups will lose skills and initiative in society or foreign economic domination over the country." Articles 44, 45, and 51 of this Act has prohibited any collusion in government contracts that results in discriminatory conditions, restricting the transactions of individuals with their business competitors, discriminatory pricing, discriminatory trading

conditions, imposing unfair contractual conditions, and creating unfair monopoly rights and privileges. The law also criminalizes violations of these rights in Articles 72 to 78 by basing "competition rights".

The criminal policy adopted in the law was that the legislator also placed the competence of the Competition Council in the competence of the Competition Council with the aim of diversifying its response to anti-competitive behaviors, along with criminal offenses, administrative offenses and legal enforcement. . As a non-judicial body, the council makes non-criminal decisions on violations of competition law (Hosseini & Ahmadi, 2014, pp. 48-49).

One of the initiatives of this law is that in Chapter 9, "Facilitating Competition and Non-Monopoly", it introduced various rules to observe the principle of competition in public and private transactions<sup>9</sup>, and instituted a body called the Competition Council to oversee the implementation of this law. Regulations are considered. Article 53 of

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8. Notes 6 and 9 of Article 3 and Note 7 of Article 43 of the Constitution

9. According to Article 43 of this law, all natural and legal persons of the public,

public, cooperative and private sectors are subject to the provisions of this chapter.

the Act reads as follows: "To achieve the objectives of this Council Chapter shall be called the Competition Council." The Council is composed of members of the three branches and the private sector (of course, at the suggestion of the members of the three branches) and is responsible for laying down guidelines for overseeing the enforcement, inspection and investigation and enforcement of the enforcement provided for in Article 61 of this Act.

One of the strengths of Article 44 of the General Policy Implementation Law is that Article 62<sup>10</sup> recognizes the possibility of a complaint by a non-governmental organization to the Competition Council. Given that it has the right to impose a broad range of legal

enforcement guarantees on individuals and legal entities, this opportunity could provide an appropriate space for these organizations to work against corruption in government transactions.

In addition, it has adopted numerous regulations to create a competitive environment. Article 8 Provision shall be made for any concession to the State apparatus and shall also apply to the private sector. Since this concession may be in connection with the conclusion of government contracts, the application of this provision helps to create a competitive environment in these contracts. According to Article 21 of the General Policy Implementation Law, Article 44<sup>11</sup>, the transfer of state-owned

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<sup>10</sup>. "Article 62 of the Competition Council is the sole authority for dealing with antitrust proceedings and is responsible for or on the basis of, or upon the complaint of, any individual or legal, including the Attorney General or the District Attorney, the State Accounting Office, the State Audit Office, the Regulatory Division, Government agencies and bodies, trade unions, consumer rights associations and other nongovernmental organizations, begin investigating and investigating anti-competitive practices and decide within the meaning of Article 61 of this Act. "

11. Article 21- Proper pricing and scheduling of state-owned enterprises shall be commensurate with the method and scope of each market in accordance with the following: (a) In the case of divestiture

through public offering, pricing of the first package of stocks of each company, stock size, selection procedure Strategic clients and applicants for controlling and managing stocks will determine the appropriate timing for the issue of stocks, as the case may be, after undergoing undergraduate studies with the proposal of the Privatization Organization and the approval of the delegation. The public offering of compliance with the Islamic Republic of Iran Securities Market Act, approved 1/9/1384, is required. (B) In respect of the sale of assets, leases and management contracts, the determination of the sale prices of the assets, the determination of the amount of the lease and fees of the management agreement and other conditions for the assignment based on the technical

enterprises, in the form of shares, must, as far as possible, be carried out in exchange for the sale of assets, leases and management contracts, in accordance with the provisions of the Tender Law.

Article 45 of this Act (enshrined in Chapter 9: Facilitating Competition and the Prohibition of Hoarding) outlines the actions that lead to disruption of competition. Many of these practices in relation to government transactions are in addition to privatization. For example, discriminatory pricing or discrimination in trading terms or misleading statements may also occur during government transactions other than privatization.

The question now is whether these rules apply to these transactions as well. In response, it must be stated that, in accordance with Article 43 of this Act, all natural and legal persons in the public, public, cooperative and private sectors are subject to the provisions of

Chapter 9. In the same manner, the Competition Council deals with many disputes involving individuals, both public and private, so it should be acknowledged that this rule applies to all government transactions, and interested parties can file complaints about these violations. Require follow-up in the Competition Council.

Article 20 of this law has also laid down the principle of respecting the principle of competition in auctions and public auction<sup>12</sup>. Note 2, of course, that this provision, adopted in connection with the transfer by negotiation, violates the principle of competition. The note stated: "In cases where there is no purchase after two auctions, the transfer through negotiation is permitted by the delegation. Also, the use of negotiation method, apart from divestiture of national equity cooperatives in the form of equity shares, for consulting and knowledge based companies with

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and financial valuation, as the case may be, under the Bidding and Government Transaction Law, Privatization and approval of the delegation. Note: The one-step and two-step provisions shall be applicable within the framework of the bidding law adopted by the Islamic Consultative Assembly in 2004. If the auction is not held in accordance with the provisions of this law, the laws and regulations governing government transactions shall apply. "

<sup>12</sup>. Article 20 of the Act provided: "The delegation shall decide in the following ways, in accordance with paragraph (a), of the assignment of the enterprises: A) Selling the firm through public offering of shares in domestic or foreign stock exchanges, B) the sale of a block or stock by public auction in the domestic or foreign markets; C) the sale of a firm or block stock through negotiation."

limited physical and financial assets and the value of the company being mainly intangible assets, as well as publicly traded companies in which Management Specialties Required Managers or a group of specialist managers and experts from the same firm are authorized. It is up to the delegation to determine the conditions of the managers and specialists. ” This material has several drawbacks. First, it allowed the buyer to negotiate, simply because the buyer did not exist on two occasions. However, the absence of the buyer may be due to improper publication of the newspaper ad or due to other obstacles that the delegating authority may be able to eliminate, and then publicize, but unfortunately in this regulation this has not been paid attention to. Another disadvantage is that these regulations do not provide for a mechanism that requires, in addition to the newspaper, advertisements to be published on websites or in the audiovisual media.

Therefore, the ad may be published in a way that potential applicants are not notified, such as whether it will be published on certain days of the year, such as on vacation, or in newspapers that are not in the contract area, or, All copies of the newspaper in

that area will be purchased by the parties who are to be the subject of the contract, so as not to reach potential customers.

## 2) *Other Terms and Conditions*

Observing the principle of competition in government transactions, there is also a pronounced appearance in other ordinary laws other than Article 44 of the General Policies Act. Paragraph (a) Article 14 BC. (Bidding Documents) Regarding the principle of competition in the access of all bidders to the bidding documents, it was stated: "All bidding documents must be distributed equally to all bidders".

Paragraph (k) of Article 5 of the Statute of the Board of Appeals of 2009, is also one of the competences of the Board to deal with the issue of "discriminating between bidders in referring work and conducting a transaction by a bidder".

Part 2 (a) Article 1 of the Bidding Documentation and Information System Implementing Regulations 2006 (Subject (d) Article 23 BC) also contains poems, one of the main aims of the "Free Competition and Principle of Documentation" system, equality of rights for bidders". Clause (c) of Article

15 of this Code also stipulates the documentation of the reasons for the monopoly<sup>13</sup> subject to the contract in the case of a referral meeting of the contract: (A) Article (2) of the Act shall be added to the minutes of the meeting (subject to subparagraph (1) (a) (a)).

Article 35 of the Third Plan for Economic, Social and Cultural Development of the Islamic Republic of Iran also stipulates: "In the referral of work and transactions by public and private sector, there shall be no discrimination between public and private bodies and corporations with the cooperative and private sector." There are also other sporadic regulations regarding compliance with the principle of competition in government contracts. For example, in the Guidelines on the Determination of Qualifications of Individuals No. 77054 / d dated 24/8/1368, reference to more than three works is forbidden to a real contractor (Hosseini, 2015, p. 263).

Obviously, following these rules will result in healthy government space deals with equal competition and

consequently corruption will be significantly reduced in this area and enforcement agencies will not be able to easily excuse contract monopoly against the truth and perform the transaction without complying with the requirements of the competition principle.

### **Chapter III: The Principle of Observing Objective Criteria in Decision Making**

The objective of adhering to objective criteria in decision-making in government transactions is closely linked to the weak side's support in these transactions. The weak side's support at all stages of government transactions requires objective criteria in decision-making. The principle of objective decision-making is closely linked to the principle of non-discrimination and equal treatment of applicants with the government. The principle of equal treatment means that there should be no distinction between providers of goods,

<sup>13</sup>. According to clause (a) of Article 2 BC, "Monopoly in the transaction is the uniqueness of the applicant in the transaction as determined by the following: 1. The

Board of Ministers' declaration of goods and services that are monopoly of the State, 2. Publication of a public announcement and only one applicant for the transaction."



services or labor unless it is justified on the basis of objective considerations.

Objectivity in government decision-making refers to efforts to reduce or eliminate prejudice, discrimination, and personal and taste evaluations. For example, the contract award criterion must be comprehensively determined in advance so that bidders can evaluate the possibility of winning the tender. The government has been able to show goodwill to the applicants if the applicants can do their assessment fairly and accurately. The objectivity of the criteria is guaranteed by the use of a variety of methods, for example through the requirements of informing all the criteria required to participate in the transaction, the qualifications required of the applicants and the requirements regarding the technical characteristics and requirements that guide technical and price evaluations (United Nations Office on Drugs and Crime Vienna, *Op.cit*, p. 9).

In cases where government transactions are conducted contrary to legal requirements and in pursuit of collusion with a particular person, the person in question may not be sufficiently qualified to perform the

obligations under the contract; To unlawfully prevent, it is the ratification of conditions and standards that specify precisely the eligibility criteria of the contracting party to preclude the contract from being concluded with the disqualified parties.

In British law, this has been given special attention, and bidders have been required to comply with objective criteria alongside the bid price. According to these rules, the lowest bid in the tender cannot be the only effective criterion in deciding whether to award the contract. Article 67 of the Public Procurement Act of England stipulates that the acceptance of the public contract shall be based on the evaluation of the most economically advantageous tender in the tender.

This criterion is a combination of the bid price and the quality of performance of the applicant in the contract. The quality of performance in this law has several dimensions including: a) Quality: including technical competence, identifying and functional specifications (good reputation), availability, design for all users, innovative, social, environmental and Business status; b) Organization: The competence and experience of the

staff assigned to execute the contract in cases where such competence has a significant effect on the performance of the contract. C. After-sales service and technical assistance, delivery conditions such as delivery date, delivery process, delivery time and completion date (Sadeghian, 2015, p. 101).

*1) Necessity to meet objective criteria in non-competitive processes*

According to the bidding and bidding rules, in particular the definition of bidding in clause (a) of Article 2 of the Bidding Law, it is clear that the main substance of the bidding procedure is their competitive bidding (Menatinejad, 2007, p. 48). These formalities provide a context in which the eligible persons seeking to participate in government transactions have a real opportunity to win the transactions. The legislator has not, for certain reasons and in certain circumstances, considered it necessary to observe the competitive conditions and to conduct bids and exceptions to these two methods of conducting government transactions. These exceptions include the tendency to abandon tender procedures and even restricted tenders.

In these exceptions, the characteristic of competitiveness is absent or weak.

Determining the objective criteria in transactions made through these methods is far more important and important than other transactions because they are concluded with specific individuals without giving them the opportunity. Given that the principle of competitiveness of government transactions is not respected in these transactions, it is essential to establish objective criteria that compensate for the lack of this principle.

Of course, doing so in a way that deviates from the principle of competition is acceptable if it is difficult to enforce the principle of competition, preserve the public interest and perform optimal public services. In this regard, Article 28 of the "Ancillary Sample Law on State Transactions" provides that the principal rule in the conduct of government transactions is the conduct of tenders or public auctions, and in cases where the transaction is permitted in a manner other than public practice, the contract must strive to make the transaction as competitive as possible. It also requires that the bidder in writing should record and maintain the reasons and circumstances that necessitate the

use of this method if the bidding entity uses a method other than a public one (UNCITRAL Model Law, 2014).

Articles 29 to 31 of the Act also provide that other forms of government transaction (other than bidding and public bidding) shall be used to cover specific situations that justify such conduct. For example, government agencies are permitted to conduct transactions involving low-value goods, urgent and urgent transactions, and transactions for the supply of special items exclusively through public tenders and bidding (ibid).

Therefore, the rules governing exceptions to tendering should only be applied if there are reasonable justifications so that competition between potential bidders is not practicable. Exceptional Transaction Practices Just as if used improperly would better achieve the purposes of government office; it could be an illegitimate tool in the hands of employees seeking to gain illicit profits by exploiting these rules and citing reasons. Charged and unfounded assign the contract to the person they want. Given that the exception to the principle of competition is an exception, non-compliance would be correct if the

exceptions were interpreted too narrowly and there was a legitimate legal justification for departing from this principle. Accordingly, if the bidding process is contrary to legal standards and reasonable standards, it will expel contracting party competitors and harm monopolies in the public interest. This creates many problems in the conduct of government transactions, the most important of which is the subject of higher cost contracting and lower quality because, based on research conducted, discrimination in bidding can raise costs and cause, The Tenderer will pay more for the goods and services subject to the contract.

Article 13 of the Executive Regulation, paragraph (c), Article (1) of the Bidding Procedure, hereinafter referred to as: "a) if the work is referred to in the bidding procedure, if the authorization to leave the bid is unconditional." The bidder is required, as the case may be, to have a standard or qualification certificate and an operating license in the field of bidding. (B) In order to prevent a change in the standard terms of reference, when applying for tenders, the separation of project work into separate contracts shall be permitted

only on the basis of reports approved by the qualified consulting services units.

The objection to this regulation is that, contrary to the concept of this article, in cases where authorization to leave formalities has been obtained with the name of the bidder, no objective and necessary criteria have been met. However, in such cases the possibility of corruption and collusion with a particular tenderer is more likely than not with the specific tenderer to be named; it is essential to comply with objective criteria of eligibility in all cases, with the exception of tenders.

However, the Bidding Authority is required to comply with the principle of competitiveness and to ensure that bidding through its standard bidding process is not possible, in the form of a Bid Transfer request from the manufacturer or service provider. The subject of the contract will make the necessary inquiries and state the result in the form and submit the documents along with the request (Habibi, 2009, p. 258).

This principle has also been addressed by other legislatures. For example, administrative bodies in cases where they decide to abandon the bidding procedure, in accordance with the provisions of Article 42 and Note 44

of the Code of Qualification for the Recognition and Referral of Work to Construction Contractors, Obligated to Observe Criteria and Selection of Qualified Consultants and Contractors, and Listed in the long or short list of bidders or approved by the Office of Planning and Budgeting Consultants and Contractors.

2) *Objective Criteria for Decision Making in Government Transactions; Iranian Laws and Regulations*

Laws and Regulations Related to Government Transactions in Iran, in particular the Law on Government Transactions and its By-Laws, contain numerous provisions regarding the need to meet objective criteria in decisions regarding government transactions and how to rate them. Other things are less damaged.

Article 12 BC The Bidders' Quality Assessment, in relation to the determination of objective decision-making criteria and the evaluation of bids, is based on the following criteria:

- "A) In the qualitative evaluation of bidders, the following shall be considered: 1)

Quality assurance of products and services. 2) Having experience and knowledge in the field. 3) Good track record. 4) Having a work permit or qualification certificates, if necessary. 5) The applicant's financial capacity to perform the work, if necessary.

• B) The qualitative evaluation steps of the bidders are as follows: 1) Determining the evaluation criteria and the relative importance of the criteria; 2) Preparing the evaluation documents; 3) Receiving, completing and submitting the bidding documents. 4) Evaluation of the received documents and assignment of each bidder and their ranking.

The Management and Planning Organization of Iran is obliged, in cooperation with the executive agencies than three months after ratified this law, law enforcement qualitative evaluation of tenderers with the standards set out in this Article, indicating metrics to measure and evaluate the tenderers to be prepared and approved by the Cabinet."

Article 2 (2) of the CCP In the definition of Bid Technical Evaluation, the Bid has the following meaning: "A process in which the specifications, standards, efficiency, durability and other technical characteristics of the Bidders are evaluated, evaluated, and evaluated."

This regulation has indirectly pointed to the need for objective criteria and standards in decision-making. Paragraph (a) of Article 19 of the Code also states: "In two-stage bidding, the bidder shall be bound by the criteria and procedures announced in the bidding documents, the qualitative evaluation of the bidders and the technical evaluators of the bidders and the evaluators." In the Executive Regulation of paragraph (c) of Article 12 BC, (Bidders' Quality Assessment) Sufficient, detailed and codified rules for setting objective decision criteria, how to qualify bidders, weighting criteria, scoring and evaluation, how to prepare short and long bidders, experience evaluation, goodwill The background, financial, equipment, technical and planning and working capacity of the applicants, and documentation of these criteria and decisions are given.

## **Conclusion**

The authority of government agencies to contract with non-governmental entities often weakens these parties. The weakening of the private parties to government contracts has gradually reduced the financial and professional capacity of these individuals, who are usually private contracting companies. This process ultimately causes irreparable damage to the private sector and, consequently, to the entire economic system of the country. Therefore, it is crucial to devise mechanisms that support the weak side of government contracts and modify government privileges in contracts. In this regard, providing platforms that facilitate the activities of private parties to government contracts and reduce the likelihood of private and unlawful conduct of government contractors is one of the effective measures that support the weaknesses of government contracts and ultimately the contractual balance between The parties to these contracts. Applying the principles of transparency, competitiveness and objective criteria in decision making creates a context that redresses the weaknesses of private parties to government contracts and enables them to enjoy a relatively equitable position

and position with government agencies. If their rights are violated, they can seek legal action and claim the right.

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