

PATHOLOGY OF I.R.I. RULES ON TENDER'S EXCEPTIONS: IN THE LIGHT OF FUNDAMENTAL PRINCIPLES GOVERNING ON INTEGRITY OF PUBLIC TRANSACTIONS

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Abstract. The macro volume of working capital in public transaction and various renting can form administrative corruption in this field. To fight against corruption in public transaction, the governments have predicted different mechanisms and one of the most important types is obliging the administrative institutes to observe the formalities of tender in public transaction. The formalities of tender include the processes with the aim of protection of the public benefits, avoidance of corruption and keeping the competitive space. If the formalities of tender are not observed for some logical reasons, we can leave these formalities in the rules. As tender exception is performed without following the rules and processes of tender, observing the fundamental principles to guarantee the administrative health is necessary. These principles include transparency, competitiveness, responsiveness and revision of the administrative decisions. The present study evaluates the Iranian rules regarding leaving the formalities of tender based on the mentioned principles to define how much the rules are based on these principles. The studies show that none of the mentioned principles are observed as fully in the rules of not observing the tender formalities and the rules have serious shortcomings in this regard. The lack of observing of these rules have important role in administrative corruption in this stage of public transaction. It is attempted to explain the weaknesses and strengths of the relevant rules and present corrective solutions and remove the legislative problems and fight against corruption in this field.

Keywords: Tender exceptions, Administrative corruption, Fundamental principles, Public transaction

Introduction

As responsible for the fundamental affairs, the government performs some affairs including health, cultural, security, civil affairs by the aid of institutions or non-public people. The public offices fulfill these needs via conclusion of contract with the private or public parties presenting services and goods.

The macro government plans and measurements cause that a considerable part of the budget is dedicated to such transaction. According to the researches in The Organization for Economic Co-operation and Development (OECD), more than 15% of GDP is dedicated to the government transaction¹. A great part of the capital of country is working and this leads to the financial corruption including bribery, embezzlement, accomplice and other types of crime in the process of trade as it was said, the higher the volume of tenure of government trading, the higher the economic corruption [1].

The government trading is performed by public budget and the authorities have not the freedom of the private trading and they should observe various legal formalities and the most important rules are related to tender and bids. Article 79 of the law of general calculations of Iran approved in 1987 to protect the public benefits and government treasure emphasizes on performing the government trade via tender and bid.

The main goal of holding legal rules of tender is prevention of corruption in government contracts. Performing government trading via leaving the tender formalities is an important stage in government trading in terms of corruption as corruption is mostly performed based on not observing the tender formalities more than the ordinary procedure of government trading. Thus, following the fundamental principles of the health of government trading plays an important role in prevention of corruption and fighting against it in this stage of public transaction.

1- The principle of transparency in the law of holding tender approved in 2004

The definition of transparency principle from the view of international transparency organization is "the principle giving information regarding facts, figures, and processes, main and fundamental mechanisms to the people affected by the administrative decisions, business trades and charity activities. Based on the mentioned principle, the government servants, managers and authorities should act as perceived and predicted and explicit [2]. Thus, the principle of transparency in public transaction means giving information regarding the trade as exact, complete and easy to the supervisory institutes, people and all citizens. Schooner defines the principle of transparency in holding tender as: The system in the tender in order that the bidders and clients are assure that the tender is performed honest and open [3,4].

This principle is one of the results of freedom of information and freedom of speech. The freedom of information in this concept means the right of access to information namely the public information and government documents. The accessibility right to information regarding the public decisions in Islamic texts is recognized explicitly. Imam Ali (Pbuh) in his fiftieth letter to the public authorities says: Be aware, except the war secrets, I have no secret hiding from you...." [5,6]. Freedom of speech is complementary to the freedom of information and it plays an important role in fighting against economic corruption namely corruption in public transaction. In case of

¹ OECD, (2007) "Bribery in Public Transaction: Methods, Actors and Counter-Measures", Paris, p 5.

respecting these rights, searching media can detect wide part of economic corruption. The successful examples of the effort of media can be mentioned to detect the economic corruption. We can refer to these cases: Watergate scandal in US and resigning Nikson, president, scandal of the minister of foreign affairs of Germany, Strauss, scandal of Lakhid in Japan [7]. These examples indicate the unique role of free media in fighting against the administrative corruption.

Transparency is one of the most effective mechanisms of the democratic systems to achieve the responsiveness and responsibility of the public employees and authorities. On behalf of people, the government concludes the government contracts and the information transparency of government contracts is an effective method for the responsiveness of the public authorities [8]. Transparency in public transactions can lead to the prevention of waste and abusing financial and human resources [9]. Thus, various international and regional documents have emphasized on transparency in all stages of public transactions. For example, section 1, article 9 of UN convention regarding the fighting against corruption (Merida convention) under the public transaction and public financial resources have state that the information of public transaction including the invitation to tender should be offered to the public as the potential tenderers have the adequate time and chance to participate in tender. Here, the function of transparency principle is providing the suitable ground for competitiveness of tender and elimination of exclusiveness. The importance of transparency principle in administrative actions is observed in article 7 of convention of fighting against corruption. Based on section a, note 1 4 of this article, the governments are obliged to apply the principle of transparency in administrative actions and improve it. Article 2, instruction 18 of EU Public Procurement Law, obliges the authorities of procurement to act in accordance to transparency [4].

Administrative corruption is the crime without a direct victim and it is with the latent transactions [10]. Regarding the administrative corruption, those with direct and correct information about the committed crime are restricted to the people involved in these crimes. Thus, the probability of reporting and complaint about these crimes is very weak². This feature is emphasize in public transactions namely when we are encountered with tender exceptions. If the measurements of conclusion of contract are hidden, detection of corruption and fighting against it is encountered with many problems. By applying the principle of transparency or using the solutions showing all stages of conclusion of contract namely the exceptions and offering to the public can avoid corruption considerably.

There are various rules regarding the transparency of administrative and public actions and public access to the administrative information and documents namely regarding public transactions extending to the tender exceptions can be considered. The law procurement approved in 2004 deals directly to the transparency in tender's exceptions.

Based on note a, article 23 of the procurement law approved in 2004 titled documentation and information, the government is obliged to create the database and national basis of tender information and keep the documents of tender call, name and feature of the commission members, tenderers and those participating in the sessions of tender, summary of tender documents, method and stages of qualitative evaluation of tenderers and the results of their evaluation, agenda and the results of evaluation, name, features and the method of selection of the winner or winners of tender. Section b of the article obliges the tenderers to keep the information of section a) and all documents of tender as reliable and send a copy for the database of tender. According to section c of this article, "The information of all transactions including tender or tender's exception, except the transactions hidden with the detection of the board of ministers should be offered to the public via the national information network of tender". Section d) of this article obliges the organization of management and planning to provide the executive regulation of documentation and information of tender and it should be approved by the board of ministers within six months after the ratification of tender with the collaboration of ministry of economics and asset affairs.

This regulation was approved in 2006/9/5 and article 15 was regarding the documentation in non-obligation of tender. Section a) of this article refers to the cases of non-obligation of tender as: 1-minute of meeting of transaction including the summary of transaction documents (price, duration and subject of transaction), introduction of transaction commission, determination of the type of transaction (by explaining the mentioned cases in article 29, law), the text of call, name and title of transaction parties, 2-Transaction documents include the contract, attachments of contract, 3-The documents of providing financial resources including the method of financing, the place of providing credit and the guarantee of delay of commitment to perform transaction, initial estimation of transaction subject, note of section a) has stated that if the reason is the lack of obligation to the exclusive tender, the documents of exclusion conditions with the detection of the reference in section a) ARTICLE 29, should be added to minute of meeting (subject part a), section a) of this article). Section e of this article is regarding the documents of purchasing counseling services of section f, article 29.

Article 16 of this regulation refers to the documentation of tender's exceptions. According to section a) of this article, the documents of tenders exception include 1-report of tender's exception, 2-minute of meeting of tender's exception includes the summary of trade documents (price, duration and subject of transaction), name and position of the board of tender's exception and the name and title of transaction party and the documents of section a, article 12 of law in this regard, 3- The documents of funding including the information of the method of financing, the credit financing and credit maximum to perform transaction, initial estimation of transaction subject. Sections b, c of the mentioned article state that the mentioned documents in section a, should be in accordance to part 1, section b) of article 3 of this regulation in tender sys ten and a copy of minute of meeting of part 1) of section a) should be sent to the database of tender and be issued in the national basis of tender information.

² Anti-Corruption Toolkit, Tool 28, UN Guidelines for Successful Investigation into Corruption, 2002, Retrieved in: 2/7/2913, in: <http://www.unfoc.org>, 2002, p.183. (cited in Mohseni

2- Applying the competition principle in tender's exception by determining the benefit criteria of tenderers

The competitive principle of public transactions means that the public transactions should be concluded as all qualified people can participate in transaction. Achieving the competitive space in public transactions is based on transparency. In case of transparency in public transactions, the people can calculate their loss and profit and by having access to the information of expenses and benefits, take their decision. In case of the lack of transparency, the potential parties are not aware of the opportunity of participation in transaction or in case of notification or even having opportunity, due to the shortage or ambiguity in information of transaction can not tolerate the risks of the non-transparency and participate in transaction. Observing the principle of competition in the constitution of Islamic Republic of Iran is manifested in some terms as "elimination of any.... Exclusiveness, removal of discriminations, prohibition... exclusion,..... and other void and cancelled transactions"³. In ordinary rules, article 35 of the third plan of economic, social and cultural development of Islamic Republic of Iran states: "in performing transaction by the public sector, we shouldn't make any discrimination between the public companies and systems with the private and cooperative sectors".

"The law of performing the general policies of article 44 of constitution" in the 20th section of article 1, considers any disturbance in competition including the cases as "leading to exclusiveness, hoarding, corruption in economy, loss of public, concentration and continuance of wealth in the hand of special groups and people, reduction of skill and innovation in society or the economic dominance of the foreigner on the country". Articles 44, 45, 51 of this law have prohibited any accomplice in public contracts leading to the discrimination conditions, confinement of the transactions of people with their business partners, discriminatory pricing, discrimination in transaction conditions, imposing the unfair contract conditions and creating unfair exclusive rights and privileges. This law applies "competition rights" and criminalizes the actions violating these rights in articles 72-78. The criminal policy in the mentioned law is as the legislator by diversification of responsiveness to the anti-competition behaviors beside formulation of crimes can make administrative violation and dealing it is on the priority of competition council. This council as a non-legislative institute takes some decisions with non-penal nature in case of violation of competition rights [11].

There are other rules regarding the observing of competition principle in public contracts. For example, in the instruction of detection of qualification of real entities NO. 77054/t778 on 1368/8/24, referring more than three works to one real contractor is prohibited [12].

Based on the definition of tender in section a, article 2 of tender law, the main essence of tender is its competitive nature [1]. In the process of tender exception, there is no such feature and by applying the rules of this process, competition in public transactions is removed. Making transactions in this regard and ignoring the competition principle is accepted if applying the competition principle can encounter public benefit and optimal performance of public services problematic. In other words, violation of competition principle is an exception and not observing this principle is true if the exceptions are not interpreted well and there is the legal justification of the legislator to violate this principle. If tender's exception is despite the legal rules and logical standards, it can lead to the removal of the competitors of contract and exclusiveness is not good for the public benefit. This leads into many problems in public transactions, the most important one is performing the contract subject with high costs and low quality. Based on the researches, discrimination in tender increases the costs and the tenderer pays much for the goods and services of contract subject [4].

Two factors are important in creating the competitive space. The first factor has offering role and it is determining the qualification criteria for the participants in tender and another factor with its negative role is the accomplice in public transactions process. The accomplice crime in the process of tender's exception is prevalent [1] and it has crucial role in removal of competitive space. Thus, in the future discussions, we consider these two subjects. If the tender's exception is despite the legal rules with collaboration with a special person, it is possible that the required person of the public organization has not adequate qualification to perform the subject obligations of contract. One of the solutions avoiding the transactions by tenders' exception as illegal is approving the conditions and rules determining the qualification criteria of the contract party as exact by creating the competitive space to avoid the conclusion of contract with the non-qualified parties. Article 13 of executive regulation of section "c" article 12 of tender law with the title "tender's exception" states in this regard: a. in case of using tender's exception, if the permission of exception is taken without mentioning the name of the tenderer, it is necessary to have the qualification certificate or a standard certificate regarding the tender subject. B) To prevent the change of ordinary conditions of referring, in case of using tender's exception, the separation of the project works into the separate parts is permitted only based on the reports approved of counseling services of the qualified units.

If the administrative institutes decide the tender's exception, in accordance to the rules including article 42 and note of article 44 of the regulation of qualification and referring to the building contractors are obliged to observe the definite regulations and select the qualified counselors and contractors inserted in the long or short list of the tenderers or those approved by the office of counselors and contractors of the organization of plan and budget. It is possible that one of the companies in the mentioned lists of accomplice is preferred and this solution has no effect on prevention of corruption in conclusion of contract namely in tender's exception stage. Another preventive solution of fighting against corruption is the prohibition of public institutes in conclusion of contracts with special people. For example, it is required that the real or legal entities bribing the employees or those helping the state officers should be deprived of the conclusion of contract with the public systems [13]. Notes 3, 4 of article 91 of the law of services

³ Sections 6, 9, article 3, section 7, article 43 of constitution

management of country approved in 2016 has predicted such solution and states that: Note 3-the executive system is required to state the name of legal and real entities bribing the employees of executive systems for the prohibition of contract conclusion to all the executive systems. Note 4-The organization is obliged to state the name of legal and real people for the prohibition of contract conclusion to all the executive systems.

Section a, article 5 of the law of increasing the administrative integrity and fighting against corruption has prohibited the people deprived from participation in the tender and bids and other state contracts in big trades. Section c, article 26 of the executive regulation of documentation and information system of the tender has stated that the tenderers to participate in the different types of tender, the cases of tender's exception and the cases in article 29 of law should state their registration, tax and insurance of their employees to the national basis of tender information to the tenderer systems. Observing these cases helps the identification of the unqualified people in the tender.

3- The principle of responsiveness to the public and NGOs and attracting their participation

Responsiveness is defined: "Responsiveness is a tool to respond and explain the acts and decisions of acts and decisions of a person or an authority to another one or another institute with the legal and political and administrative effects [14]. The principle of responsiveness in administrative management is the focus by a new concept, responsiveness to the citizens [13]. Based on the "coordination of power and responsibilities", each of the authorities is required to respond to the people and their representatives based on their power [8]. In addition, the right of knowing and questioning regarding the government performance is the human rights [4,15]. Thus, the public offices and institutes should respond regarding their performance against the citizens and public opinion and these responses should be real without any incomplete report. The administrative and political responsiveness is one of the basic pre-requirements of development and it has different forms including the direct responsiveness to people or their representatives [16]. Therefore, one of the main goals of convention is fighting against corruption (Merrida, 2003) as inserted in article 1 and it is encouraging the responsiveness in public affairs.

In Iranian legal system, article 90 of the law of services management obliges the employees of executive systems to respond against the public. Sections a, d of article 1 of regulation of the plan of improvement of administrative system integrity and fighting against corruption, "increase of responsiveness", "improving the public supervision" are the conditions of improving the administrative integrity. Section 1 of article 13 of UN convention to fight against corruption (Merrida, 2003)⁴ has emphasized on the public participation in prevention and fighting against corruption and information transparency in administrative decisions and actions.

Besides responding the public, the prediction and design of NGOs evaluating the periodical and administrative financial reports of NGOs has direct effect on the reduction of administrative corruption in public transactions. The establishment of such institutes and specialization of them with the aid of jobs unions and private institutes of corruption detection in the possible cases in public transactions can be facilitated. The significance of the specialization of these institutes is high in tender's exception stage as the administrative justifications in proposal and transactions with the tender's exceptions are with the specialization affairs and the specialized people can detect the truth of claims of the employees and authorities bidding via the tender's exceptions.

Observing the principles of public contracts and lack of corruption and fair division of wealth has close relationship with the benefits of private unions. Informing the process of tender's exceptions to the no-public institutes with direct benefits and relationship with the contract subject and recognition of these institutes as the private plaintiff has considerable effect on fighting against corruption in this stage of public transaction.

The reason is that these institutes have personal and direct benefit in fighting against corruption. For example, corruption in civil contracts is in contradiction with the benefits of engineering and road and building unions as it is possible that a few of the companies of this field penetrate into the administrative structures and create corruption in civil contracts and endanger a wide range of other companies and people. By prediction of supervisory solutions and providing the supervisory infrastructures for these institutes as managed in collection, the private supervision mechanisms are created by which these institutes can detect corruption even in the initial stage of public transaction and report it to the legal or public institutes. Responding and attracting the public participation requires preparation. This has some requirements as creating reporting mechanisms to the research and judiciary references and supporting the intuition reporting. Articles 13, 3 of EU convention against corruption as "Council of Europe; Civil Law Convention on Corruption (1999) has emphasized on supporting these people and compensation of their materialistic and spiritual losses [17].

Another important point is that establishment of NGOs can not avoid the different types of corruption but it can reduce the Rial amount of corruption as with these supervisory institutes, the systems responsible for public transactions as determined to commit accomplice or other types of corruption attempt to consider the contract price as it is not far from the real costs and common profit of project to make the detection of crime by the supervisory institutes as difficult. However, if there are not supervisory mechanisms, these people have no barrier and they dedicate most of the budget to these contracts to acquire much profit. Thus, such supervisions reduce the damage of corruption automatically.

In Iranian rules, article 66 of penal code approved in 2013 has stated " The NGOs with the article of association on supporting the acts, environment, support of citizenship rights can state crime regarding the crimes in the above fields and participate in all stages of penal procedure. In this article, nothing is mentioned about the active NGOs in fighting against the administrative corruption and based on the extension of the meaning of "citizenship rights", we can consider the issue of fighting against the administrative corruption as an example of citizenship rights

⁴United Nations Convention against Corruption (2003).

and we can say NGOs can litigate in courts against the administrative corruption [18]. Note 3 of this article allow the NGOs to insert their name in the list by the ministry of justice and ministry of interior affairs and it is approved by the chief of judiciary power. Unfortunately, by visiting the sites of ministry of justice and judiciary power, such list is not found. Article 15 of “the law of general policies of article 44 of constitution” has obliged the government to establish the profession-job unions as NGOs and this article states: the government is obliged to establish profession-job associations as NGOs. These associations are active to fulfill the profession and job rules, professional ethics and scientific and technology development in the relevant fields. The executive systems are obliged to take the counseling view in formation and reform of the rules. Based on this article, it is found that the main goal of establishing these organizations is not fighting against corruption.

4- Observing the principle of revision of administrative decisions of tenders exceptions

In accordance to the revision principle, the administrative decisions, the decisions of administrative offices and public institutes should be review in important cases by an independent institute to evaluate the accuracy and legitimacy of these decisions as the experts have proved that administrative power without the control and supervision, increases the corruption [19].

Regarding the rules of tender’s exceptions, in accordance to the Iranian rules, who is qualified to decide regarding the transactions via tender’s exception and these decisions are made by which institutes. The supervision on the decisions of transaction authorities via tender’s exception is based on the fact that at first, the relevant rules of criteria and terms of transaction and then the formalities of the transaction are considered by the legislator. Effective supervision is meaningful in case of determining the criteria and public transaction by the legislation institutes as without legal criteria of performing public trading, requesting the authorities is not possible as proving the violation of regulations is not possible without the regulations. Unfortunately, this rule is not observed in article 27 of law regarding the tender’s exception. In this article, the legislator without explaining the exact conditions as considered in tender’s exception, by considering the ambiguous terms and using interpreting terms as impossibility of tender “benefit of system” has opened the personal taste and administrative corruption. Another weakness of this legislation is that great power is dedicated for the authorities of tender’s exception but it is not defined which abilities are required to take such decisions [20].

The legislator gives the power related to their duties in different conditions to the managers and administrative authorities, using the legal power should be based on the national and public benefits, not personal, family, group, party, regional or organizational benefits and in case of the contradiction of national benefits with the benefits of government system, the preference is given to the national benefits not the benefits of tender system. Thus, we can say, the authority to conclude the government contract commits corruption if in taking decision, benefits except the national and public benefits are considered. Article 27 of law states that the decision of the board of tender’s exception should observe the “benefit of “the tender authority. On one hand, the benefits of tender system covers even the public companies in accordance to article 1 of law, it is despite the national and public benefits and considering such rules is despite the principles of public transactions. Article 27 of law had positive changes compared to article 83 of law in 1987. First, according to article 83, holding one commission for tender’s exception was adequate for the future similar cases and it was applied about them but article 27 of law stated that the board of tender’s exception determines transaction only for one type of goods or services. This law considers formation of the board of tender’s exception as necessary for each transaction. According to the recent article, the board can not take decision for the transactions not being occurred and it is obliged to make a session for each case separately and decide about it [21]. One of the reforms of the mentioned article is that article 83 of the law of tender’s exception is allowed if the transaction is possible with the view of three people board or it is not based on benefit but article 27 has deleted the term “not beneficial” and stated that transaction is not possible with the detection of three-person board. As the term “benefit” is an interpretable term, its deletion and considering “possibility” as an objective issue has more evaluation capability to this term and it can restrict the cases of tender’s in the law. Also, by changing the supervision on the performance of three-person board of tender’s exception can be easier [22].

In case of non-obligation to holding tender in article 29, determining the regulations of taking decision about trade is defined as transparent. Although the cases of non-obligation to hold tender is considered as the tender’s exception, its method is different from tender’s exception as the examples of non-obligation are considered by the legislator and the executive system is not obliged to present the justification report and approves it by the other references. As the acquired are general and it is possible that there is any ambiguity or difference of views in inclusion of special case in articles of 29, it is necessary to predict a reference supporting the inclusion of non-obligation cases on special example of contract subject or present the obligation to present a report justifying the inclusion of non-obligation cases on special case of trading. For example, one of the examples of abuse of non-obligation of holding tender is the case in which the government offices without observing the competition principle delegate a set of annual activities under a general title such as repair to the special people. With such case, the government office is not obliged to hold limited and general tender or observe the rules of tender’s exception [23]. In addition, in some examples of non –obligation to hold tender, the transaction is possible via limited or general tender. For example, purchase or renting immovable property in big cities is possible via holding public tender or limited tender as in big cities, there are many suitable examples of estate for sale or rent for administrative goals. Based on great amount of such transactions and floating price of estate, the legislator restricts tender’s exception in some cases to the definite conditions.

Another problem in this regard is that violation in justification of transaction via tender’s exception is not effective. It means that if the authorities don’t mention all events in presenting their justification report or they

attempt to deviate the trading from its legal path by presenting the opposite report, they are not encountered with definite reaction. However, article 24 of the law of improving administrative health and fighting against corruption considers any “untrue statement and presenting unreal documents” as crime but this article considers crime occurrence based on “violation of the legal rights of government or the third party or escaping from paying the tax or achieving unsuitable privilege” and the punishment is abolishment of privilege and imprisonment of the wrongdoer to the cash penalty equal to the rights violated and the compensation of the loss by the claim of the beneficiary and it has little and inhibiting punishment. This problem is much serious regarding tender as limited. In articles 11, section 2, (b) of article 4, the legislator considers the highest position of tender holding to perform the public transaction by the limited tender. This type of tender is opposite to the principles of full competition and freedom of transaction [24] and is not different by not holding the tender [16]. In addition, in this method of public transaction, revision principle of administrative decisions is not observed as the deciding position decides individually regarding the method of holding tender and he is not obliged to respond about the reasons of choice of this method of tender. In these cases, the authority of tender invites four or five companies to complete and send the tender documents and participate in the tender. In most of the transactions, the authority of tender can cooperate easily with a limited number of participants in tender and delegate the transactions orderly. It is necessary to determine the mechanisms determining the criteria and conditions of holding these contracts and put it under the supervision of supervisory institutes. According to mentioned rules, the authority of tender is obliged to mention the reasons of tender via this method but these rules are not adequate to avoid corruption in transactions as the law has no definite mechanism to review the decision of the authority of tender regarding the selection of the type of tender and it is not clear whether the reason of the type of tender should be stated to which institute or supervisory reference. Thus, the authority has the opportunity to invite the special people to the tender as he pleases, and this increases the corruption and cooperation considerably.

Conclusion. The management and true execution of public duties on one hand requires giving power to the managers, authorities and government employees and on the other hand, these people should use their power in accordance to the national and public benefits not their personal benefits. The significance of this issue in tender’s exception is more than other conditions of government contract conclusion as in this stage, the deciding position can deviate the process of transaction conclusion from the normal path and guides it based on the personal benefits of himself or the relatives. To fight against corruption in tender’s exception stage, it is required to explain at first the principles of administrative decisions in this regard and then by supervisory mechanisms, the performance of managers is evaluated based on the mentioned rules to define whether the power of managers is applied consistent with the condition of the public contract or not and whether there is any deviation or corruption in this stage of conclusion of public transactions or not. The evaluation of the rules of both mentioned fields show that in the rules of tender’s exception, the fundamental principles of public transaction are not observed as complete and effective supervisory mechanisms are not predicted to detect and fight against corruption in tender’s exception. Performing public transaction via tender’s exception and non-obligation cases to hold tender, if not based on the fundamental standards of the integrity of public transactions including transparency, competitiveness, responsiveness and revision of administrative decisions can provide a ground for the growth of corruption in public trading.

The experience of successful countries in fighting against administrative corruption indicates that the greatest enemy of corruption is observing transparency principle. The press and media is the best and cheapest tool of information and it is adequate that no barrier is created for them to play their role well. The fact that corruption information can lead to their distrust to the authorities or insecurity of business space in the country shouldn’t affect corruption reporting and avoid it [13]. The satisfaction and trust of people are eliminated via corruption and the lack of determinant fighting with the corruption examples. The investing institutes with the will of government and nation to fight against corruption can make investment easier. In Iran, different rules emphasize on transparency and there are exact and detailed rules in this regard. Unfortunately, the lack of prediction of guaranty based on violation of rules and not determining the authorities can fail the execution of these rules. Presenting the justification reports of holding public transaction via tender’s exception is the main solution of transparency in these transactions. According to the rules, the authorities via tender’s transaction are obliged to present the justification report but as the criteria of taking such decision are not determined well, in most of the transaction, the person to present and verify the justification report is the one and most of the reports are not examined well by the superior authorities and supervisory institutes. Providing the justification reports has no effect on prevention of corruption in this stage of public transaction. The legislator can define the objective and practical criteria and define whether the decision of authorities regarding the tender’s exception is true or not. Choosing such approach facilitate the decision making process of authorities performing public transaction and helps them to choose the best method of performing public transaction. Another method to fight against corruption in tenders’ exception is observing competition principle in public transactions. Observing this principle plays an important role in reducing the costs of public transactions. Indeed, performing transaction via tender’s exception prevents the competition of people except the contract parties. Thus, one of the main pre-requirements of tender’s exception is the lack of competition in the required transaction. Unfortunately, this rule is not observed in the law regarding tender’s exception and other exceptions of public procurement including the cases of non-obligation of holding tender and limited tender. The reforms of relevant rules and inserting this obligation have great impact on prevention and fighting against corruption in this regard. Responding the public and providing the ground for the public participation, their agents and namely the people with direct benefits in public transactions has great role in fighting against corruption. Unfortunately, in Iran, this principle is not observed adequately in the rules in practice. Article 10 of the law of improving administrative integrity and

fighting against corruption has stated: The ministry of interior is obliged to provide the requirements about the development and improvement of NGOs on prevention and fighting against corruption and evaluation of corruption indices by observing the benefits of the country in the framework of the relevant rules and present its annual report to the Islamic council parliament. The ministry of interior has not performed effective action in this regard. Another problem of rules in tender's exception is incomplete execution of revision principle of administrative decisions. The shortcoming of the supervision of supervisory institutes about the non-macro transactions is the fact that the supervisions are performed after the conclusion and execution of the decisions of tender's exception. The coordination of supervision with the administrative actions can play important role in fighting against corruption. Another problem is the lack of specialization of most of supervisory institutes on public transactions. The significance of the specialization of these institutes is in tender's exception stage more than other methods of conclusion of public transactions as administrative justifications in the proposal and trading with tender's exception are attributed to the specialized affairs and the specialized people in contract subject can detect the true or wrong nature of the claims of employees and authorities proposing the transactions via tender's exception.

References

1. Menatinejad, Sadegh. Winter 2007. The methods of cooperation in public trading. The legal journal of justice court. NO. 61.
2. Mohseni, Farid. Spring 2013. Prevention of administrative corruption with the emphasis on IT. Legal views. No. 61.
3. Schooner.S.L.(2002). "Desiderata: Objectives for a System of Government Contract Law ", Procurement Law Review.
4. Bagherzade, Hamid. 2013. The rights of tender: Basics and nature, First Vol. First edition. Tehran. Mizan publication.
5. Salehsobhei, 1414. Nahjolbalaghe. Corrected by Feizoleslam. Darolhojre. First edition.
6. Sarikhani, Adel, Akramisarab, Rohollah. Summer 2013. The preventive functions of transparency in criminal politics. Legal journal of justice court. No. 82.
7. Ansari, Bagher. 2008. Information freedom. First edition. Tehran. Dadgostar publications.
8. Molayi, Ayat. 2014. The administrative contracts: Comparative study of grounds, basics. Nature and principles. First edition. Tehran. Mizan publication.
9. Trybus Martin, "Improving the Efficiency of Public Procurement System in the Context of the European Union Enlargement Process ", Public Contract Law Journal, vol. 35. No. 3, Spring 2006, (PP. 409-425), P 410. In: Hein Online (<http://heinonline.org>)
10. Lipst, Simor Martin et al., Spring 2004. Encyclopedia of Democracy. Translated by the control of Kamran Fani and Norollah Moradi. Vol. 2. The publications center of ministry of foreign affairs.
11. Hosseini, Seyed Hossein, Ahmadi, Zahra. Spring and Summer 2014. The criminal policy of the law of performing general policies of principle 44 of constitution. Economic rights. Year 21. No. 5.
12. Hosseini, Esmail. 2015. The principles of public contracts. Fifth edition. Behnami publication.
13. Ahmadi, Aliakbar et al., 2015. Financial and administrative corruption in the current organizations. First edition. Tehran. Fozhan.
14. Zarei, Mohammad Hossein (Spring and Summer, 2001). The process of being public and responsiveness and state management. The journal of higher education complex of Qom. Third year. No. 9.
15. Stiglitz.J.(2002): "transparency in government. The right to tell: the role Of mass media in economic development". World bank institute.
16. Hamdami, Khotbesara. Abolfazl. 2008. Financial corruption. The causes, grounds and strategies of fighting against it. The research center of strategic studies. Tehran. Second edition.
17. Masumi, Seyed Mohammad. Winter 2007. Social prevention of corruption. Legal journal of justice court. NO. 61.
18. Niazpour, Amirhossein. Fall 2015. Prevention of administrative-financial corruption based on the regulation of prevention and systematic fighting with economic corruption in executive power. 2013. The strategy. No. 76.
19. Gholipour, Rahmatollah and Nikraftar, Tayebe. 2006. Administrative corruption and the solutions to fight against it. Parliament and research. Year 13. NO. 53. P.37.
20. Moshfegh, Mohammad Ali. Spring 2010. Social pathology of administrative and economic corruption in Iran. Research of social science. NO. 52.
21. Esmaili Harris, Ebrahim. 2013. The rights of construction industry: explaining the law of holding tender. First edition. Dadgostar publications.
22. Shiravi, Abdolhossein. Fall 2006. The comparison of the law of holding tender with the approval of public procurements in the world trade organization. Journal of humanities teacher. Period 10, NO. 3.
23. Vafayi, Hassan. Aban 2004. Financial corruption in public contracts. Report. NO. 157.
24. Ansari, Valiollah. 2013. The generalities of the rights of administrative contracts. Sixth edition. Tehran. Law maker edition. Danesh Negar.