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# PUBLIC PROCUREMENT CORRUPTION: TYPES, APPROACHES, AND COLLUSION OR RIGGING.

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#### **ABSTRACT**

Corruption in public procurement is inevitable. Some officials and firms see procurement as a means of enriching their pockets. It is becoming complex and sophisticated by day. Practitioners in public institutions can perform their duties well if they are guided by set of rules and principles that regulate what they do. Highly skilled and trained procurement professionals with good morals are required in public institutions to help trace and fight corruption. The paper aims at reviewing literature on the types of collusion or rigging practices and the approaches to defining corruption in procurement. The objective of this paper is to identify the types of tender collusion and rigging practices and approaches to defining corruption in procurement. The study reviews relevant literature which revealed that the most destructive type of procurement corruption is systemic corruption. It does not involve one person but a group who work together to exploit genuine firms. This type of corruption stifles competition and can lead to the selection of a wrong firm. The review further revealed that, corruption occurs in public procurement when there is violation of law, norm and procedures governing a procurement process for private gain.

Keywords: Public Procurement, Corruption, Types, Ghana

#### 1.0 INTRODUCTION

#### 1.1 Corruption in Public Institutions

Corruption in public procurement is a canker which must be fought ruthlessly to regain the lost image of public institutions. Lawal (2007) wrote that procurement corruption is an enemy to economic growth and destroys institutional image. Jain (2001) stated that corruption affects resource allocation and violates the rule of law and increases basic business uncertainties. Campos et al. (2010) stated that corruption in procurement matters not because of its value but its avoidance. The social cost of corruption rises not because it hurts but because it serves as a powerful barrier to entry by new firms. According to Begovic (2005), public procurement corruption is destructive and unproductive. The depth of knowledge an institution has about corruption puts it in a pole position to fight it.

#### 1.2 Problem Statement

Corruption can appear in many shades. Identifying and dealing with this subject needs skilled and in-depth understanding. A number of public procurement practitioners have little or no knowledge about the types of corruption and collusion or rigging in procurement corruption (Heggstad and Frøystad, 2011). Tender collusion or rigging is a versatile world-wide observable fact which exists in the private sector but primarily involves government or public officials

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(O'Rourke, 1993). The Transparency International (2006) stated that the damage from corruption is estimated at normally between 10% and 25% and in some cases as high as 40 to 50%, of the contract value. Graycar and Sidebottom (2012) have also stated that global corruption is an important financial crime and cost about 5 per cent of global GDP. Collusion or rigging practices allow firms to make more money from states to boost their profits by reducing competition (Heggstad et al. 2010).

# 1.3 Aim and Objectives

The aim of this paper is to determine the types of collusion or rigging practices in procurement. The objective of this paper is to identify the types of tender collusion and rigging practices and approaches to defining corruption in procurement.

#### 1.4 METHODOLOGY

The study employed the traditional literature review approach. This involved general discussion of the themes and did not locate all relevant literature (Petticrew, 2001; Petticrew and Roberts, 2006). The appropriate literature was sought for using the internet by doing keyword search. Literature from e-books, organisational reports, journal articles and information from reputable firms who have written on any of the themes in the topic were used. Ely and Scott (2007) stated that identifying literature on a particular topic can simply be done by searching for keywords. The various literature gathered were first read and classified according to the themes in the topic. The actual review was done after the appraisal of the various literatures.

#### 2.0 PUBLIC PROCUREMENT CORRUPTION

#### 2.1 Introduction

Corruption in public procurement is a serious issue that must be given the needed attention. Public procurement corruption can occur in various forms. A procurement process can be transparent superficially, fair and non-discriminatory but that may not be entirely true if proper investigations, thorough checks and proper independent audits are done. The purpose of this literature review is to expose the various types of corruption that can crop-up in a procurement process, the theory of corruption, collusion or rigging issues that can emerge in every procurement process. A formal interview conducted in some public procurement set ups revealed that many practitioners are not aware of the types of corruption, collusion or rigging and the theories of corruption. One form of collusion or rigging, or type of corruption may be encountered in a procurement process. The occurrence of any of these mentioned earlier have serious financial consequences on the success of the type of service, goods or works being procured. In addition to this, the appearance of any corruption can also create a bad image for the institutions or firms involved. The study considered and included literature from journal articles, organisational reports, e-books, and internet website information from recognised practising organisations who have written thoroughly about the themes in the topic. Although, the volume of work done in these thematic areas is not that much, considerable wealth of knowledge was found in the literatures that were reviewed on the topic.

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## 2.2 Types of Corruption

## 2.2.1 Incidental Corruption

Incidental corruption is common in public institutions in Ghana. According to Byrne (2007) incidental corruption is asymmetrical and does not suppress the mechanisms of control. Rose-Ackerman (1978) and Bryan (2012) stated that this corruption is of a limited size and normally involves low-ranking officers. It has little macro-economic cost and is very hard to control. This type of corruption takes place when a firm is persuaded by a procurement official to take an action which is in the interest of the official. Incidental corruption takes place in many procurement setups because perpetrators go unpunished (Azfar, 2007). The lack of stringent penalties and comprehensive institutional codes of ethics coupled with the lack of courage by senior officers to punish such officers have contributed to the upward trend of this type of corruption. Incidental corruption, according to Byrne (2007) weakens the confidence people have in public procurement institutions.

# 2.2.2 Systemic Corruption

This type of corruption is similar to organised crime because it is not incidental but rooted. Some institutions and departments create systems which make it easy to extort firms. Most officials with the mandate to serve their countries use their positions to create wealth for themselves (Campos and Pradhan, 2007). This act engrosses major institutions, processes and participants who act in agreement to extract and share (Azfar, 2007; Johnston, 1998). According to Myint (2000) "the worst scenario of corruption is when it becomes systemic". When systemic corruption grips an institution or a group of people, it becomes a way of life and it becomes difficult to conquer. In an institution where systemic corruption is well-established, honesty becomes unreasonable. It is not easy to fight systemic corruption because it is insistent and entrenched in a wider political and economic situation that helps to uphold it (Johnston, 1998). Those with the mandate to fight this type of corruption may receive their share of whatever is being extorted and so may lack the moral justification and power to crack down on such menace. According to Johnston (1998) systemic corruption hinders and weakens competitive processes and public institutions and makes it possible for officials to exploit genuine business. Systemic corruption is routine and can only be controlled by punishing those whose actions contradict the ethics of the system or process.

#### 2.2.3 Systematic Corruption

It is a calculated means through which procurement officials siphon state resources for their personal benefit in the procurement process. It takes place when weaknesses in laws or regulations governing the procurement regime are being exploited by corrupt and self seeking officials. Systematic corruption can affect a whole government department, institution or corporation. This type of corruption has significant effect on state revenue and may deflect development and affect resource allocation (Ocheje, 2001). According to Glaeser & Goldin (2006) systematic corruption is a form of behaviour or scheme which manipulates or corrupts economic systems and creates personal gain for a particular group of people. This type of corruption survives when those who set procurement criteria do so to favour certain firms. There is an urgent need for economic solution because this corruption stifles development and cripples the market (Glaeser and Goldin, 2006). According to Bryan (2012) and Rose-Ackerman &

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Søreide (2011), systematic corruption can only be dealt with by continuous reforms which seek to do away with the lapses in the law and also by ensuring that such reforms are strictly enforced.

## 2.2.4 Administrative Corruption

This type of corruption is aimed at varying implementation of policies. Where such corruption exists, firms get what they want even if they do not qualify (Shell International Limited, 1999). This menace is gradually becoming an integral part of procurement setups. Firms have come to the conclusion that nothing moves until one has adequately satisfied the concerned procurement official (Khan, 1997). Some procurement officers have now become familiar with living far above their legitimate income (Zafarullah, 1987) because of what they make through their unapproved administrative deals. The magnitude of what is given out by a firm is dependent on the influence of the officer on the said procurement (Khan, 1997).

Incidental corruption may not be everyday's practice; but has a way of ruining the hard earned image of an institution. This unhealthy act which is usually committed by low ranking officers has become a practice in many institutions because offenders are set free for exhibiting such negative behaviour. It is growing because many institutions lack comprehensive code of ethics and standards that regulate the behaviour of such officers. Systemic corruption is a form of collusion by high ranking officers, who act together in harmony to extract money from firms. It is the worse type of corruption that can grip an institution. Wherever systemic corruption is deeply rooted, being honest becomes a choice. It is gaining grounds in public procurement institutions because the highest decision making officers who should be curbing its growth by punishing perpetrators are usually culprits.

Systematic corruption can only emerge when there are weaknesses in procurement laws and regulations. Practitioners and firms only take advantage of such weaknesses for their personal gains. The fight against this type of corruption only becomes possible by continuously reforming the laws and regulations to reflect current trends and practice. Administrative corruption tries to find a way around the norm. In a world where procurement processes have become so competitive, firms would not want to lose out on any job. They would be ever prepared to give out anything just to get what they want. The position of the officer a firm deals with, determines how much the firm has to pay to receive what it wants. Though, the various types of corruption discussed are different in nature, they have greater impact on institutions and must be given the needed attention. Punishment and continuous reforms in procurement laws were seen as the solutions to any type of procurement corruption. The literature reviewed failed to give comprehensive guidelines as to how punishments and reforms should be carried out.

## 2.3 Collusion or Tender Rigging

Procurement fraud can take place in so many forms and are very difficult to detect. Collusion in procurement involves a horizontal relationship between tenderers in public procurement who connive to eliminate the element of competition from a procurement tendering process (Porter & Zona, 1993; OECD, 2010). It becomes vertical where officials from the organising entity also partake in the rigging business. According Bajari and Ye (2003) tender rigging is serious in procurement. Usually, unjustified awarded contracts could be advertised just to create the impression that there is competition and fairness.

One other crime usually committed by firms is the creation of coordination within markets, prices and production with the intention of boosting their profits by reducing competition

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(Heggstad et al., 2010). This comes about when firms connive to fix prices for works, goods and services contracts in the tendering process. This conspiracy is designed to establish prices at abnormal levels to eliminate competition (Heggstad et al., 2010). This scheme may or may not be known by the entity which advertised the project (United Nations Procurement Manual, 2013). But in many instances officials are involved in these manipulations (Campos and Pradhan, 2007). The extra fund obtained through this inflated contract price by firms and their partners in crime is distributed amongst these plotters (Heggstad et al., 2010). Collusion and tender rigging are corrupt practices because they seek to reduce competition and extract more resources from the client.

# 2.3.1 Tender Suppression

Firms can collude in many ways to rig a procurement tendering process and one such way is to suppress the process. Firms concur not to submit tenders for certain projects so that a particular firm can win the contract (Campos and Pradhan, 2007). Firms who may have already submitted their tenders can also agree to withdraw their submitted tenders (United Nations Procurement Manual, 2013; Heggstad et al., 2010). After a particular firm has won the contract, the non tenderer may receive a subcontract to work with the successful firm or would be payoff for not tendering or withdrawing his tender (Campos and Pradhan, 2007).

## 2.3.2 Complementary Tendering

In complementary tendering, firms agree in advance on who should submit the winning tender (Heggstad et al., 2010). In this conspiracy, at least one of the firms agree to submit a tender which is either too high to be accepted or contains special terms and conditions that would not be acceptable to the procurement entity (United Nations Procurement Manual, 2013). Firms also deliberately submit tenders that fall short of the requirements of the tender in order to allow a favoured firm to win (Campos and Pradhan, 2007). These firms do this to defraud entities or organisations in the process and create the impression that such tenders went through competitive tendering (Chowdhury, 2008). The firms who lost as a result of this plot are later on being compensated by winning firms for making the collusion scheme successful.

#### 2.3.3 Tender Rotation

Conspirators in tender rotation submit tenders and by their own agreements take turns as to who should tender low on series of related contracts (Porter and Zona, 1993; Campos and Pradhan, 2007) or who should become the successful bidder (Kwasnica, 1999).

## 2.3.4 Subcontracting or Sub-contract Tender Rigging

This type of fraud involves an agreement between firms where some firms agree not to submit tender or submit losing tenders (United Nations Procurement Manual, 2013). In some instances, firms opt out of the competition under an agreement that some part of the tender will be subcontracted to them (Chowdhury, 2008).

#### 2.3.5 Market Division/Customer or Market Allocation

This practice is very difficult to detect. Firms allocate specific customers, products and territories among themselves (United Nations Procurement Manual, 2013). This poses a serious challenge to every procurement process. According to Chowdhury (2008) a winning bid is determined in

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accordance with such allotment. Campos and Pradhan (2007) said the result of such conspiracies is to ensure that firms do not compete against each other. Firms rather submit complementary tenders in areas not assigned to them or when invitation to tenders is made. This kind of practice is normally found in service contracts which may involve quoting prices for services as opposed to tenders.

## 2.3.6 Lowballing

Iimi (2013) said lowballing strategy by tendering firms has now been recognised as an important issue in public procurement. According to Campos and Pradhan (2007) a lot of lowballing activities in procurement are done through variation orders. They stated that in cases where there are lowballing, the company in question submits the lowest tender and with the help of the officer in charge of the procurement process the contract is awarded to the favoured firm. A prior agreement is made between the firm and the head of the entity to amend the contract so that the contract price can be increased. This enables the firm to inflate its profit margin and whatever comes out is shared as booty between the perpetrators of such act. Iimi (2013) said such practices undermine the efficiency, credibility and predictability of the budget execution. According Marshall (1995) lowballing does not exist where you have two homogenous firms because there is no incentive. Rather, both firms have an incentive to tender an amount that is consistent with their costs over a period of time. Where barriers to entry exist or are added to procurement frameworks, lowballing can then be a possibility.

# 2.3.7 Excluding Qualified Tenders

In a procurement competition, qualified tenderers can be disqualified or discouraged just because procurement officers have a particular firm they are promoting. This may be done by limiting the number of publications for request for tenders, giving firms short time to prepare and respond to the call for tenders. It can also be done through narrowing of contract specifications to a particular firm or intimidating potential competitors of the favoured firm to put them off from participating in the tendering process (Heggstad and Frøystad, 2011; Heggstad et al., 2010).

## 2.3.8 Rigged Specifications

Rigging of specifications is a possibility in public procurement. According Heggstad and Frøystad (2011), amendment can be made to the criteria set in the request for tenders. This can be done to suit a particular firm at the expense of other firms. Such actions are usually carried out by procurement officers (heads of entities) or other actors involved in the procurement process to eliminate some capable firms so that their personal interest would be achieved (Heggstad et al., 2010).

## 2.3.9 Unbalanced Tendering

It is the aim of every procurement process to achieve competition and to ensure fairness and transparency. There have been instances where firms have competed on an unbalanced scale because a particular firm is supplied with certain relevant information. This information given to the favoured firm in the process gives the firm a competitive edge over other firms and boosts the firm's chances of winning the contract (Heggstad and Frøystad, 2011; Heggstad et al., 2010).

## 2.3.10 Unjustified Direct Awards/No-Tender Awards

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The award of a contract directly to a contractor or a firm is a common means of evading competition. Where there are regulations which limit direct contracting, the tender process can still be escaped by forging documentation to defend why direct contracting is the only appropriate means. The action of unjustified direct awards ignores the requirement for direct contracting. Procurement entities achieve their aim by dividing procurement orders into parts or lower the value to stay below the threshold beyond which competitive tendering is required (Heggstad and Frøystad, 2011; Heggstad et al., 2010).

## 2.3.11 Manipulation of Tenders

Tenders can be manipulated after they have been submitted if integrity in a procurement entity is low or questionable and there are problems with security. According to Heggstad and Frøystad (2011) tender manipulations are done to ensure that a particular firm wins. This illicit act involves making changes to parts of tenders submitted or the tender scores or making sure that certain firms lose (Heggstad and Frøystad, 2011; Heggstad et al., 2010).

#### 2.3.12 Undeclared Conflict of Interest

Smith (2006) defines conflict of interest as a condition where expert ruling concerning a primary interest tends to be overly influence by a minor interest. Conflict of interest may be a general phenomenon. He argued that the quest for financial benefit can push officials to behave contrary to their ethics. Undeclared conflict of interest takes place when an actor who is involved in a procurement process has an interest but fails to declare any such interest (Hardell et al., 2007; Gilbert, 2011). Where this undeclared interest prevents an officer from properly performing his official duties, he would be guilty for conflict of interest.

Collusion or tender rigging in procurement is an agreement reached between firms, or firms and public officials with the mandate to organise and manage a procurement process. A firm in competition may resolve to opt out of competition to give another firm the opportunity to win. Some submit tenders with unacceptable prices or conditions just to throw them out of competition. Firms after withdrawing or submitting outrageous tenders that kick them out of competition receive compensation in the form of money or subcontract from the winning firm. The collusion of firms may also be to decide on who should win which project. The brain behind collusion or rigging is personal benefit. It takes a public officer and a firm to rig tender. Tender rigging starts with an agreement between a public procurement officer and a firm. All a tenderer needs to do is to submit the lowest tender without any mistakes. When price becomes the ultimate measure of who should win the contract, then the lowest evaluated tenderer would be awarded the contract.

Lowballing is a dangerous practice in procurement and is achieved through variation orders. This practice often leads to abandonment of contract because of price escalation which can lead to compromises in service quality. Where tender rigging is a practice, officials deliberately disqualify qualified tenderers to ensure that there would be no opportunity for them to compete against favoured firms.

Specifications are usually rigged by skewing criteria towards a favoured firm or supplying a favoured firm with valuable information to place them in a better position than others. Procurement orders may also be divided into parts or lower the value just to stay below the threshold and avoid competition. Where a public institution has a questionable image, it is possible to manipulate the tender of a favoured firm to ensure the firm's success. Officials with

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interest in a particular firm may not declare their interest and may allow this interest to influence their primary responsibility.

Tender collusion or rigging is detrimental to procurement and the pursuit for infrastructure development. Collusion or rigging can stifle the growth of small firms and even take them out of business. Therefore, there must be concerted efforts by public procurement institutions to identify and deal with collusion and rigging issues to cut down financial waste.

#### 2.4 APPROACHES TO DEFINING CORRUPTION IN PUBLIC PROCUREMENT

Corruption is a negative phenomenon which affects all facets of society and seeks to suffocate official norms and procedures. According to Shabbir and Anwar (2007) corruption is not anything new but it is something which has been with us since the birth of public institutions. It has different cultural implications at different levels within an organisation or institution. It has been described by Aidt (2003) and Seldadyo and Haan (2006) as the use or misuse of public power or authority for individual or personal gain or interest. In other words, it is the violation of the norms, procedures and regulations of one's office for his personal benefit. Morris and Blake (2009) also describe corruption as a menace which is very comprehensive and all-round. Corruption in public procurement is a crucial barrier to the development of any country, organisation or to any business (Hardell et al., 2010).

Shabbir and Anwar (2007) propounded three different approaches from the political sciences which tried to define corruption in public procurement. The approaches are namely:

- (i) The public interest approach
- (ii) Public opinion approach and
- (iii) The formal-legal approach.

The first approach argues that a person who is entrusted with power is said to have acted improperly if his or her actions go against public interest. The second approach argues that procurement corruption is what the people think. Peters and Welch (1978) also supported the second approach by saying that public procurement corruption is based on the notions of the public or when public opinion determines an action to be corrupt. The third approach also argues that procurement corruption is said to have occurred if the actions of a person with entrusted authority violate the norms of laid down procurement procedures leading to illegal exchanges of anything of value for private gain. Iyanda (2012) affirmed that an act is corrupt only when it violates some formal procurement standards or rules or civic order. It is also said to be corrupt when it negates the moral principles that guide the operations of official procurement obligations. Garoupa and Klerman (2010) gave an assumption that for persons entrusted with power to commit or not to commit an offense, it lies in their own hands.

The depth of knowledge procurement officials have about corruption is what will help them to combat it. De Graaf (2007) said that:

- (i) Officials become corrupt when they know their chances of being caught are slimmer than the benefits they stand to gain if they succeed. This approach does not depend on general factors but concentrates on specific situations of an agent,
- (ii) Officials are corrupt because they have faults in their character and as a result move from bad moral character to corrupt acts. It argues that officials are corrupt because they have defects in their human character and the cause of their actions can be rooted in human weakness such as greed. Criminological theories related

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to this approach have stated that the corrupt official is corrupt because of his quest to make material gains,

- (iii) Once an organisational culture and structures are corrupt, officials who come into contact with them will automatically become corrupt except where they choose to follow their good moral instincts. Meanwhile, corruption is said to be minimal in institutions where professionalism and high standards are upheld (Svensson, 2005),
- (iv) Corruption occurs because of the failure of officials to distinguish between their public roles and private ones. Sometimes out of obligations to friends or family, officials take bribes just to ensure that an essential personal duty is carried out,
- (v) Corruption surfaces as a result of societal pressures and neglect of issues of integrity. Society believes that once a person holds a certain position in an organisation or institution, he or she should be able to use that position to change his financial fortunes without given any regard to the norms of that office and,
- (vi) The last approach sought to look at the correlation between income and corruption. Some studies have shown that officials whose incomes are low are likely to take bribes to make up what they think they are losing. Amundsen (1999) argues that there is a very great relation between low income, lower-middle income, upper-middle income and high income and procurement corruption. It is believed that the probability for people who receive higher wages or salaries to engage in corrupt practice in procurement is very low (Svensson, 2005). But this cannot be entirely true because some rich officials have the notion that they must continue to become rich irrespective of how they make their wealth.

Some people become corrupt because of their interest and others are corrupt because they have weakness in them. Others have become corrupt because of institutional culture. Corruption is part of some organisations and people who join such institutions become corrupt because of the structure of the organisation. Usually, some officials become corrupt because they are not able to differentiate between their private and official roles leading to conflict of interest. Societal pressures have also made people corrupt because at a point people believe the perceptions of society. For others, corruption entered into their lives because they felt cheated by what was given to them as their income. Many are the people who have become corrupted because of where they work and who they associated themselves with.

## 3.0 CONCLUSION

Systemic corruption was identified to be the most destructive type of procurement corruption. It does not involve one person but a group who work together to exploit genuine firms. This type of corruption stifles competition and can lead to the selection of a wrong firm.

Reforms are very important in any procurement environment. This is the only way lapses can be taken away from procurement laws and regulations. The change in technology and information requires tighter and stiffer procurement controls to safeguard procurement processes.

Collusion or rigging in procurement is very difficult to detect. They take place in many forms and are harmful to institutions. Firms and procurement officials make fortunes out of these practices. There is the need for public institutions to create efficient and workable code of

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conducts to regulate the activities of professionals. Training and upgrading of practitioners is one way of fighting collusion or rigging in procurement.

Corruption occurs in procurement when there is a violation of the law, norm and procedures governing procurement process for private interest. The law must be the first point of call if corruption occurs in any procurement process. To ascertain any breach of law, norm or regulation, an efficient procurement auditing would be needed to determine such violations.

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