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Bid Protest Behaviors in Public Procurement

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Synonyms

Administrative review; Bid challenge

Definition

Bid protest is a formal, written objection to agency's solicitation for bids or offers, award, or proposed contract award. Bid protest is a challenge to the terms and conditions of a solicitation, an award decision, or a decision to cancel a solicitation or award.

Introduction

This article examines bid protests in public procurement. The article defines bid protest, describes bid protest behaviors, and provides potential theoretical explanations of bid protests behaviors in procuring and disposing entities. The paper is anchored on the justice perception and complexity models to demonstrate that bid protest behaviors are a result of injustice- and complexity-related constructs of interactions, networking, and coordination.

Protest

Protest is a product of frustration, anger, and alienation. Klandermans (2004) posits that protest is undertaken to enforce change and gain dignity through struggle and moral expression. Contempt, anger, and fear influence protest participation (2004). Fear of a protest may motivate procurement agency officials to conduct more rigorous market research, hold a competition instead of sole-source awards, or conduct a more thorough and fair competition (Schwartz et al. 2013). Fear of a protest could also prompt officials to try to structure a contract in a manner deemed less likely to be protested (Schwartz et al. 2013). Bid protest leads to effective competition, investments and innovations, cost-efficiency, promotion of ethics, and transparency (Parry 2011).

Bid Protest

Bid protests play a central essential role in protecting the integrity of the procurement system (Gordon 2006). Rankin and O'Hara (2016) observe that bid protest which is also referred to as "bid challenge," presents opportunity to the

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suppliers to scrutinize government procurement practices. A bid protest is a written objection to the conduct of a government agency in acquiring supplies and services for its direct use or benefit. Among other things, the challenged conduct can include violations of law or regulation in the way in which an agency solicits offers for a contract, cancels such a solicitation, awards a contract, or cancels a contrac. Bid protest is a formal, written objection to agency's solicitation for bids or offers, award, or proposed contract award. Bid protests are challenges to the terms and conditions of a solicitation, an award decision, or a decision to cancel a solicitation or award. Arena et al. (2018) note that bid protest are challenges to the terms and conditions of a solicitation, an award decision, or a decision to cancel a solicitation or award. A bid protest is classified into pre-award and post-award protests. Pre-award protests generally raise issues about the terms and conditions of the solicitation. They may challenge an interpretation of specific language in the solicitation document or decisions to restrict competition. Post-award protests typically challenge the evaluation process by arguing that the soliciting agency failed to follow evaluation criteria; that the evaluation violated procurement laws, regulations, or policies; or that the award was arbitrary and capricious or exhibited an abuse of discretion (Arena et al. 2018).

Bid Shopping

Bid shopping currently is not illegal, but it is certainly unethical practice. Bid shopping is defined as the unethical practice in which a contractor discloses the bid price of one contractor or sub-contractor to another, in order to obtain a lower bid price (Degn and Miller 2003). According to Angelo (2002), bid shopping exists in three forms: pre-award shopping, post-award shopping, and electronic reverse auction bidding; all three can lead to questionable ethical practices. Travers (2015) posit that bid shopping occurs when contractors disclose the bid price of one sub-contractor or supplier to its competitor in order to obtain a lower bid. Butcher and Tayton explain that bid shopping is often facilitated when the tender impose requirements or award marks in a way which favors the incumbent supplier over other suppliers. The contracting authority might have favored one bidder over another in its scoring, by awarding more marks for a similar answer. The contracting authority might not have applied the award criteria correctly. The contracting authority might have changed the award criteria or weightings after bids have been submitted to favor particular providers. Bid shopping occurs for several reasons. These reasons include the inability of the sub-contractor to tie the contractor to the bid. Under common law, except for on federal projects, the contractor is not obligated to contract with the sub-contractor, even though the sub-contractor's bid was used in the contractor's original bid (Degn and Miller 2003).

Bid Peddling

Bid peddling occurs when a provider, whose bid was not selected, offers to reduce its price in order to induce the contractor to substitute it after award of the contract (Travers 2015). The sub-contractor approaches the successful prime contractor after the award and offers to perform the sub-contract work at an increasingly lower price than submitted by the sub-contractor whose bid was relied on by the successful prime contractor. It is mostly experienced in fixed-price contract type such as engineering, construction, and manufacturing. The use of low-bid selection system is steadily decreasing due to defects generated by bid peddling.

Bid Rotation

In a bid rigging scheme, participants often rotate bid winning by geographic areas. For instance, one road contractor may get all the works in one country, and another or others also concentrate in other countries – or by type of job or by time to give each member an opportunity to share in the spoils. Losing bidders may receive a percentage of the profits of the company or be hired as a sub-contractor to improve on their cash flows as they wait for their turn.

Bid Suppression

This involves members of a particular group preventing "outsider" companies from bidding. This

is accomplished by rewarding an interloper or by forceful measures such as threats or violence. The procurement officials facilitate bid suppression by disqualifying legitimate bidders during the bidding process. The collusive group submits fabricated bid protest or coerces local suppliers and sub-contractors not to do business with the "outsider" in order to protect their monopoly. Sub-contractors and local providers participate in suppression of outsider firms by quoting extremely high prices to make the bid prices uncompetitive.

Specification of Protest Participation

Schussman and Soule (2005) found presence of interpersonal network to be a good predictor of protest participation. Norris et al. (2005) noted that grievances and emotions are very important factors for motivating protest. Klandermans (2004) observes that protest participation is "wanting to express one's view and the emotions associated to it. Putnam (2000) explains that without interest, knowledge and information individuals would not engage in protest." Verhulst and Van Laer (2008) contend that organizational membership facilitates ties and organizational members are more likely to receive information about protest through channels closed to non-members. Kamhon and Yan (2001) explain that protest participation is triggered by instrumental and expressive motives. Instrumental motives relate to interests and values, whereas expressive motives are concerned with feelings and emotions (Toka 2008). Simon and Klandermans (2001) argue that apart from instrumental and expressive dimensions of protest participation, there is individual and collective motive as dimensions to protest participation. Bridge explains that collective motive focuses on group solidarities.

Bid Protest Behaviors and Their Theoretical Explanations

Maser and Thompson (2010) argue that bid protest mechanism used by government agencies give providers the right to contest the procedure or outcomes of a procurement process. Boulding (1967) explains that protests arise when there is strongly felt dissatisfaction with existing programs, policies, and procedures. Toka (2008) explains that protest behaviors can either be instrumental or expressive. Instrumental behavior is more concerned with getting something done, whereas expressive behavior is about sending out signals (Rugg and Coles 1995). Expressive protester more than instrumental protester offers a means by which the individual participant may stake out role. The instrumental protesters are more likely to engage in face-to-face confrontation with the target. The expressive protester elicits feelings to the target that something is not right. Instrumental protesters expect the target to respond with changes. A number of explanations based on the justice and complexity models can be used to explain bid protest behaviors.

Justice Perceptions

Justice perception is the perception of individuals of an organization about fairness of the work environment including organizational processes followed. In organizational setting, justice perception can be of three dimensions: distributive, procedural, and interactional.

Procedural Justice, Distributive Justice, and Interactional Justice

Procedural justice in public procurement refers to participants' perceptions about the fairness of the rules and procedures that regulate the procurement process. Procedural justice may also refer to the perceptions of justice related with the decision-making processes that result in the award of a procurement contract. Procedural justice is anchored on the principles of impartiality, voice or opportunity to be heard, and grounds for decisions. Niehoff and Moorman (1993) define the fair procedures on the basis of six rules: consistency, bias suppression, accuracy, correctability, representativeness, and ethicality. Leventhal et al. (1980) suggested that procurement procedures are fair to the degree that the decision-making process demonstrates consistency, bias suppression, accuracy, correctability, representativeness, and ethicality. If the procedures leading to the unwanted outcomes are

considered unfair, individuals are more likely to respond destructively (Cropanzano and Folger 1989). Distributive justice is the perception of the bidders whether the procuring and disposing entities' savings are distributed according to the real evaluation and the performance. In this case, the perception of the bidders that the PDEs will award contracts based on fair evaluation enhances a contractor's perception about a protest. Interactional justice is the interaction between the procuring and disposing entity and the bidders who will be affected by the allocation decision.

Interactions

Anything that enhances the interactions will result into creativity and adaptability. Complexity theory suggests that, when agents come together to share information and respond to information, novelty is gained. Onyx and Edwards (2010) posit that through interaction and action, people start to develop a collective sense of how they can cooperate but also share experiences. OGC suggest the need for buyer-supplier interaction in procurement in order to better capture innovation. Close and early engagement with suppliers can also allow access to industry knowledge not available in-house that can be used to draw better tender specifications (Uyarra 2010). Interaction between buyers and suppliers can result into obtaining procurement information related to the bidders' rights.

Networking

The structure emerging from self-organization can often be represented as a network (Heylighen 2008). These networks take many forms in contemporary organizations, including personal contact networks, flows of information within and between groups, strategic alliances among firms, and global network organizations (Monge and Contractor 2003). Initially, agents interact with other agents, and some of these interactions are synergetic. Such interactions result into a bond, relationship, or link. Within the network, agents come together as nodes, perhaps on the basis of friendship, trust, and collaboration (Heylighen 2008). According to Yoon and Klopfer (2006), the patterns of interactions form a collective network of relationships that exhibit emergent properties that are not observable at system levels. Networking or collaborative linkages improve the potential of the organization to develop innovations (Contractor and Lorange 1988). In other words, the behavior of the system cannot be accurately determined by simply observing the behavior of the parts. The manner in which complex systems communicate, respond to perturbations, and self-organize is understood by studying the dynamical processes through which they evolve overtime.

Coordination

Coordination is defined as the additional information processing performed when multiple, connected actors pursue goals that a single actor pursuing the same goals would not perform (Malone 1988). According to Malone (1990), coordination means the act of working together harmoniously. Coordination specifies the nature of relationships through which coordination occurs, proposing that these relationships include shared goals that transcend participants' specific functional goals, shared knowledge that enables participants to see how their specific tasks interrelate with the whole process, and the mutual respect that enables participants to overcome the status barriers (Gitteli 2011). According to Gitteli (2011), when tasks are reciprocally interdependent, feedback loops are created among them, therefore increasing the need for coordination to enable participants to mutually adjust their actions in response to the outcomes of each other's tasks.

Feedback Behavior

Due to instrumental value of the concept of feedback, many studies have been conducted to understand it. Feedback is essential for goal pursuit (Fishbach et al. 2010). Feedback generally refers to the process by which information from the output of a system is returned to the original source (Yoon and Klopfer 2006). According to Yoon and Klopfer (2006), feedback is an important process that both explains system functioning and also coordinates and regulates system structures and behaviors. Firms acquire information

from their environment through feedback; complex systems identify regularities in that information and use this to modify behavior in the real world. In this way, they are said to be adaptive (Gell-Man 1994). Feedback may change behavior if it provides information about the nature of the project. Moreover, if feedback is public, among participants, it may influence the behavior of participants (Mas and Moretti 2009). In social group activity, the self-correcting behavior of group members is often influenced by feedback that indicates divergence from group norms (Arrow et al. 2000). Feedback is used by Ugandan firms to learn, gather, and share information by stakeholders like directors and employees to challenge the bidding and contract award processes during procurement.

Organizational Learning

Organization learning is the process of acquiring knowledge (Gozukara and Yildirim 2016). Cyert and March (1963) describe organization learning as a process of creating, retaining, and transferring knowledge within an organization. Weerawardena (2003) defines organizational learning as the development of new knowledge or insights that have the potential to influence behavior. Learning mainly consists of two kinds of activities, that is, obtaining know-how in order to solve specific problems based upon existing premises and establishing new premises to override the existing ones (Nonaka and Takeuchi 1995). These two learning activities have also been referred to as "single-loop learning and double-loop learning" (Argyris and Schon 1978). Organization creates and organizes knowledge relating to their functions and cultures. Organizational learning happens in all of the organization's activities, and it happens in different speeds. The goal of organizational learning is to successfully adapt to changing environment, to adjust under uncertain conditions, and to increase efficiency. Organizational learning is a continuous testing of experience and its transformation into knowledge available to the whole organization and relevant to their mission (Senge 1990). According to Argyris and Schon (1996), organizational learning emerges when organizations acquire information of any kind by any means. Jones (1985) emphasizes the importance of organizational learning for organizational performance defining it as a process through which managers try to increase organizational members' capabilities in order to better understand and manage the organization and its environment to accept decisions that increase organizational performance. An organization's adaptation is the ability to find solutions for the problems (Cyert and March 1963). Amagoh (2008) observes that an organization is able to learn from its environment and change its internal structure and its functioning overtime, thereby changing the behavior of individual elements.

Information Acquisition

Organization learning is the process of obtaining, combining, and developing information among the members of an organization (Huber 1991). According to Dixon (1992), information acquisition refers to the organization's information processing to utilize and value different information sources in organizations. Furthermore Daft and Weick (Draft and Weick 1984) observe that information acquisition is determined by two variables, which are data sources and intrusiveness of organization. Data sources can be internal or external, and intrusiveness of organization is the extent to which organization is capable of actively penetrating its environment with browsing and searching for data information (Draft and Weick 1984). Information acquisition contains internal acquisition and external acquisition. Organizational learning processes consist of key elements supporting activities of information generation, which involve seeking, developing, comprehending, and producing novel information (Verdonschot 2005). Internally focused learning enhances the absorptive capacity of the firm to acquire new knowledge and therefore is a prerequisite for acquisition of knowledge from external sources (Jay 2003).

Knowledge Sharing

Knowledge sharing is the activity of transferring or disseminating knowledge from one person, group, or organization to another. This definition includes both tacit and explicit knowledge (Lee

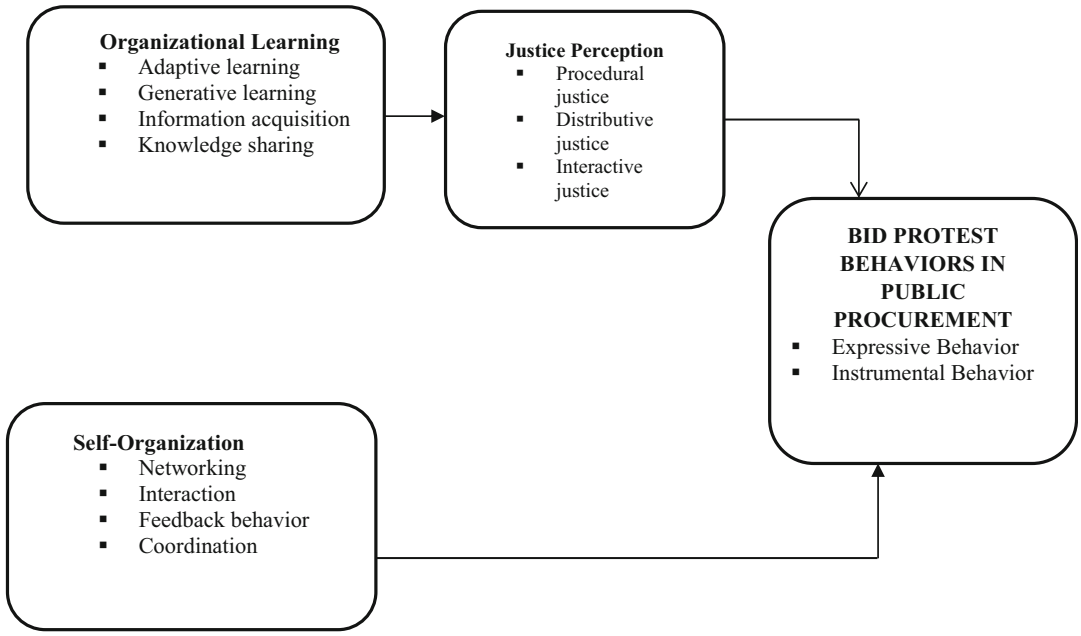
2000). According to Cummings (2004), knowledge sharing refers to the provision of task information and know-how to help others and to collaborate with others to solve problems, develop new ideas, or implement policies or procedures. Argote et al. (2000) posit that knowledge transfer in an organization is a process through which one unit is affected by the experience of another. Wang et al. (2004) describe knowledge transfer as the process of a systematically organized exchange of information and skills between entities. Modi and Mabert (2007) postulated that it is the implementation of activities involving direct interaction between the procuring firms and vendors. Such activities are time- and resource-intensive for the procuring firm, and firms undertake them with the objective of increasing supplier capabilities. According to Molina et al. (2007), knowledge transfer relates to organizational learning from the experience of another. Knowledge sharing can occur via written correspondence or face-to-face communications through networking with other experts or documenting, organizing, and capturing knowledge for others (Cummings 2004). Knowledge sharing was found to be positively related to procedural justice (Schepers and Van den Berg 2007). Lin (2007) found that both distributive and procedural justice had positive indirect effect on tacit knowledge while distributive justice also influences knowledge sharing through trust.

Conceptual Framework for Bid Protest Behaviors

Figure 1 shows the relationship between organizational learning, justice perception, and bid protest behaviors in public procurement. It attempts to provide a link between organizational learning and bid protest behaviors in public procurement mediated by justice perceptions. The model also shows the relationship between self-organization and bid protest behaviors in public procurement.

Conclusion

It is increasingly becoming common for contractors to challenge contract award decisions or the conduct within which procurement or disposal is carried out. This paper has attempted to provide



Bid Protest Behaviors in Public Procurement, Fig. 1 Antecedents of bid protest behaviors

theoretical explanations for the bid protest behaviors based on the constructs of self-organization, organization learning, and justice perception in public procurement. This conceptual model which has been derived from a critical review of literature can guide scholars in undertaking empirical studies of bid protest behaviors in public procurement.

Cross-References

- ▶ Government Procurement
- ▶ Procurement and Finance
- ▶ Procurement Integrity
- ▶ Procurement Regulation
- ▶ Rural Procurement

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