



Economic Security

Original article

UDC 351.72

DOI: <https://doi.org/10.17308/econ.2022.4/10598>

JEL: O17; H57

Classification of the instruments for the mitigation of corruption risks in public procurement depending on their effect on the factors causing corruption as described by R. Klitgaard

A. V. Grachev¹, L. V. Sikorskaya^{2✉}

^{1,2} St. Petersburg University of the Ministry of Internal Affairs of the Russian Federation,
43 4th line of the Vasilyevsky Island, 199004 St. Petersburg, Russian Federation

Subject. Development of instruments for the mitigation of corruption risks in the public procurement system is an important problem facing the government. An analysis of the current state of the public procurement system demonstrates that the anti-corruption policy pursued in the development of the modern procurement system is countered by widespread corruption in the system. Another problem is the variability of the forms of corruption in public procurement, which means these forms need to be studied and classified in order to provide for effective anti-corruption measures. Scholars working on the problem have developed firm theoretical and methodological bases for combating corruption, including the economic formula of corruption suggested by R. Klitgaard and the formula for the expected income of criminals proposed by G. Becker. We believe that it is important to consider the factors used in these formulas when developing effective anti-corruption policies in public procurement based on the laws of economics.

Objectives. Classification of the instruments for mitigation of corruption risks in public procurement depending on their effect on the factors causing corruption as described by R. Klitgaard.

Methodology. To achieve the set goals the following methods of scientific knowledge were used: retrospective analysis of laws and regulations; structural analysis; formal logical analysis; and the scientific classification method. The research was based on the study of relevant scientific literature and economic journals.

Conclusions. The study determined the anti-corruption instruments applied in the sphere of public procurement in order to reduce the monopoly power of public officials; reduce the discretionary authority of public officials; to increase the accountability by introducing punishments; and to increase accountability by revealing corrupt deals and applying punishments.

Keywords: corruption, anti-corruption activities, public procurement, economic approach, economic security.

For citation: Grachev, A. V. & Sikorskaya, L. V. (2022) Classification of the instruments for the mitigation of corruption risks in public procurement depending on their effect on the factors causing corruption as described by R. Klitgaard. *Proceedings of Voronezh State University. Series: Economics and Management. (4)*, 93–102. DOI: <https://doi.org/10.17308/econ.2022.4/10598>

Introduction

Public procurement aims to provide the authorities, state institutions, and companies with the goods, services, and works they require. Due to the fact that procurement is generally financed by the state, i.e. the money spent on such goods, works, and services does not belong to public officials, and there are no special regulations in this area, the officials are not interested in finding the best value for money. The fact that public officials spend public money (not their own) is the first and the most important factor making corruption possible within the public procurement system. Although at the moment the purchase of goods, services, and works can be financed from other sources, it does not change the attitude of those who dispose of the funds that are not their own.

Another important factor is that public officials responsible for public procurement and representing a customer organisation have discretionary authority, i.e. they have the authority to make managerial decisions. Although the activities of the officials representing customer organisations are strictly regulated, they may still vary significantly during the procurement planning and contract execution stages.

Another risk factor is that corruption is beneficial for all the participants of a corrupt deal. This is explained by a high latency of the phenomenon and a low risk of sanctions, as well as by high turnover in public procurement, where expenditures of the contractor in the form of so-called kickbacks are levelled by the profit obtained from the contract. A high degree of latency can be demonstrated by the fact that, following the introduction of the corresponding articles to the Criminal Code of the Russian Federation in 2018, only 8 people were held liable for corruption in the area of public procurement in 2019-2020, all of them receiving suspended sentences. As to the high turnover, this is confirmed by the results of monitoring of public procurement in 2020. According to the monitoring data, there were 3.4 million

contracts signed in 2020 for the total amount of 8.9 trillion roubles. Therefore, an average public contract is worth 2,617,647 roubles.

The fact that corruption schemes are beneficial for both the customer and the contractor encourages the participants of such schemes to cooperate in order to conceal signs of corruption by both amending the documents and creating an illusion of fair competition among contractors.

The high latency of corruption in public procurement is explained by the absence of a victim, because the harm is done to the budget rather than to a particular person. It is hard to determine the harm done to a particular person or even to all the employees of a particular public organisation. Law enforcement agencies mostly initiate their investigations following complaints by wronged individuals. In the case of corruption in public procurement, neither the customer, nor the contractor joining the corruption scheme is the victim of the crime.

The above listed factors create the economic basis for the occurrence and spread of corruption schemes. However, the spread of corruption significantly depends on the effectiveness of the anti-corruption activities required by the laws regulating public procurement. The effectiveness of such activities, in turn, depends on whether the economic basis of corruption is taken into account. Therefore, the purpose of our study was to analyse the instruments provided by the current laws for the mitigation of corruption risks and classify them depending on their effect on the corruption factors.

The structure of the article includes the following sections:

- retrospective analysis of the development of the legal regulation of public procurement in Russia performed in order to determine the target of the introduced regulatory instruments;
- description of the main corruption factors in the economy performed in order to determine the managerial influence of the anti-corruption activities;

– classification of the instruments for the mitigation of corruption risks in public procurement depending on their effect on the corruption factors.

Materials and methods

Our study was based on the current laws and regulations in the area of public procurement. During the first stage of our study, we performed a retrospective analysis of the development of these laws and regulations. As a result of the analysis we enumerated the anti-corruption instruments available in the sphere of public procurement at the moment.

The economic factors resulting in the occurrence of corruption were determined based on the studies by Klitgaard [15] and Becker [11].

Then, the article provides a classification of anti-corruption instruments employed in the area of public procurement depending on their effect on the economic factors leading to corruption. The classification helps to broaden the understanding of anti-corruption activities, which are traditionally, and rather incorrectly, associated with the criminalization of corruption, revealing criminal activity, and applying sanctions against the offenders.

The classification is based on and limited by the existing laws regulating the area of public procurement in Russia. These laws also determined the scope of our study.

Results

The fact that the area of public procurement presents a favourable environment for corruption has been obvious since the moment public procurement became an institution. Therefore, starting from the 17th century the government has been attempting to regulate this area. There are some curious facts regarding the history of regulation of public procurement. Listed below are some examples of such regulations.

A decree by Tsar Aleksey Mikhaylovich “On the terms of delivery of flour and ship biscuits to Smolensk” adopted in 1654.

A Contractor's Business Office opened by Peter I in 1715. The office was responsible for all public procurement and contacts.

A Senate decree “On combating false prices and corruption in procurement and supply services” adopted in 1721.

“Regulations of the Admiralty and the Shipyard” adopted in 1721. The document contains elements of the modern public procurement system, including procurement planning, procurement announcement, applications, “additional 10 minutes”, and announcement of results.

Catherine II assigned the authority to announce tenders to the Treasury Chamber. The officers of the chamber were to reimburse any loss occurring during tendering with their own money.

Anna Ioannovna obliged all the participants of tenders to provide statements by the Collegium of Commerce that they did not have any unpaid debts of any kind, and introduced a rule that procurement announcements were to be published in the national newspaper “Kuranty”.

Elizabeth I adopted the Regulus of Provision Management in 1758.

One of the key documents regulating the reforms of Catherine II “On the creation of governorates” included a separate section “On state contracts, supply, and procurement”.

During the reign of Alexander I, there were over 170 laws regulating public procurement. Tender statistics and analyses were published, and large contracts were divided into smaller lots.

Nicholas II adopted the “Regulations regarding tenders and procurement” in 1900.

In May 1927, the Soviet government adopted new “Regulations regarding state procurement”. According to this document, the price was not the only criteria for choosing a contractor. Customer organisations could also consider the creditworthiness, reliability, and experience of prospective contractors, which ensured maximal benefit for the state [3; 4].

A retrospective analysis of the laws regulating public procurement in Russia revealed the following tendencies.

1. The number of laws regulating public procurement is growing.

2. The range of relationships in the area of public procurement controlled by the government is broadening.

3. The development of the public procurement system has two major goals:

– to enhance the effectiveness of government expenditure on public procurement;

– to reduce the potential for corruption in the area of public procurement.

4. A number of instruments have been introduced into the public procurement system in order to reduce the potential for corruption.

Regulation of the activities of public officials (reduction of discretionary authority allowing the officials to act in a way they see fit).

Compulsory publication of information about public procurement (needs and results) (increasing the transparency of public procurement).

The introduction of competitions for the contractors and determining the selection criteria (reduction of discretionary authority allowing the officials to act in a way they see fit).

Holding public officials personally responsible for public losses (increasing the level of responsibility).

The introduction of liability for corruption as such (increasing the level of liability).

In today's Russia the transition to a market economy has led the government to the need to control and regulate the public procurement system in order to limit the activities of public officials and other individuals representing customer organisations and protect public customers from mala fide suppliers. The laws currently regulating this sphere go back to the Law of the Russian Federation No. 2859-1 "On the procurement of goods for public needs" dated 28.05.1992, and are now presented as the Federal Law No. 44-FZ "On the contract system

in the area of procurement of goods, works, and services for state and municipal needs" dated 05.04.2013, which regulates the public procurement system at the moment.

Lately, the government has also been paying a lot of attention to the methodological provision for the activities aimed at revealing corruption in public procurement. Thus, the Ministry of Labour and Social Protection of the Russian Federation has published the following documents.

Methodological recommendations on revealing and mitigating corruption risks during the procurement of goods, works, and services for state and municipal needs.

Methodological recommendations on the activities aimed to reveal any personal interest of state and municipal officials participating in public procurement which may result in the conflict of interests. Such activities are to be performed by federal state governmental authorities, regional authorities of the territories of the Russian Federation, local authorities, state extra-budgetary funds, and other organisations organising procurement in accordance with the Federal Law No. 44-FZ "On the contract system in the area of procurement of goods, works, and services for state and municipal needs" dated 05.04.2013 and the Federal Law No. 223FZ "On procurement of goods, works and services by certain types of legal entities" dated 18.07.2011.

Methodological recommendations on the assessment of corruption risks by federal state governmental authorities with regulatory functions.

The laws regulating public procurement in today's Russia demonstrate that the regulator has broadened the range of objectives of such regulation, adding to the previously existing ones ("to enhance the effectiveness of government expenditure on public procurement" and "to reduce the potential for corruption in the area of public procurement") the following:

– to promote competition;

- to support small business entities;
- to support socially oriented economic entities;
- to support domestic producers.

In the introduction to this article, we mentioned the problem of the absence of individual victims of crimes which harm the state budget. This is the factor explaining the latency of corruption in public procurement. In this regard, the competitive principle of supplier selection required by the laws can be viewed as an anti-corruption measure. It helps to reduce the price of the contracts and enables regulatory and law enforcement agencies to appeal to suppliers who have lost competitions due to not taking part in corruption schemes as additional sources of information about the committed violations.

The existing laws regulating the current public procurement system include instruments which can be considered from the point of view of their ability to mitigate corruption risks in the system.

In order to do so, we used the factors leading to corruption introduced by Klitgaard [15] in his economic formula:

$$C = M + D - A, \quad (1)$$

where: C is corruption, M is the monopolistic position of a public official, D is the discretion of a public official, and A is accountability.

According to the formula, to mitigate the corruption risks it is necessary to do the following:

to reduce the monopoly power of public officials ($M \rightarrow \min$) and their discretion ($D \rightarrow \min$),

to increase accountability ($A \rightarrow \max$). However, accountability should not be only potential (the penalty suggested by the law (A_i)). The actual accountability should also be implemented in real life by revealing corruptive deals (R) and introducing sanctions against their participants (A_a). This two-factor interpretation of accountability corresponds to its description

in the formula of expected income of the criminal suggested by Becker [11].

Taking this into account, we developed a classification of the instruments provided by the current legislation for the mitigation of corruption risks in the public procurement system depending on their effect on the factors causing corruption presented in Klitgaard's formula. The classification is given in Table 1.

Public officials responsible for public procurement are also subject to general anti-corruption regulations applied to any public officials.

We should also note that the regulation of public procurement, though necessary for the reduction of the potential for corruption, may also be a negative factor slowing down the process, which often has a negative impact on the facilities and resources of public institutions. Therefore, the government might take steps for the liberalisation of the public procurement process while increasing the degree of accountability of the participants for corruption. Besides the legal aspects, accountability in this case should also be defined as the understanding of the unacceptability of corruption by public officials, since corruption is associated with the fear of punishment (fear) as well as with moral suffering (shame).

Despite the application of the above described instruments for the mitigation of corruption risks in public procurement, it has not yet been possible to eliminate corruption and corruption risks in the system completely. This is explained by the fact that it has not yet been possible to eliminate the discretionary authority of representatives of customer organisations. Other risk factors causing corruption are:

- possibility to bypass legal regulations;
- limited resources (quantitative, technical, legal, and compensatory) of the regulators;
- beneficial nature of corruption for the participants of corrupt deals which increases the latency of corruption crimes.

Classification of the instruments for the mitigation of corruption risks in public procurement depending on their effect on the factors causing corruption as presented in Klitgaard's formula

Effect of the instrument	Instruments for mitigation of corruption risks in the public procurement system provided by the current legislation
Reducing the monopoly power of public officials (M → min)	suppliers are selected by a commission rather than by an individual public official
	competitive selection of suppliers (auctions (closed auction, electronic, closed electronic), competitions (closed, electronic, closed electronic), and online invitations to tender with detailed regulations)
	holding tenders in a unified information system, meaning that the information about public procurement is published on an official website with open access (including open access to the information on the execution of contracts)
	officials and individuals interested in the results of supplier selection are banned from public procurement tenders
Reducing the discretionary power of public officials (D → min)	thorough regulation of all stages of public procurement
	complete explanation of the need for specific goods, works, and services
	substantiation of the initial maximum price of the contract
	detailed substantiation of the particular method of selection of suppliers in each case (including during the planning stage)
	a finite list of requirements to the suppliers
Increasing the accountability (penalty suggested by the law) (A (Pl) → max)	detailed regulations for procurement performed on a competition-free basis (when there is only one supplier)
	accountability (including criminal liability) for violations (including corruption) in public procurement
Increasing accountability by revealing corrupt deals (A (P) → max)	a ban on participating in public procurement for those who have been held liable for administrative offences provided for in clause 19.28 of the Code of Administrative Procedures of the Russian Federation within the two years prior to a tender
	control (including public control) over public procurement
	audit of public procurement
	monitoring of public procurement
	possibility to withdraw a contract
	possibility to submit a plea to the court to denounce the contract made by customers whose official representatives are married to or are relatives of the beneficiary parties or managers of the contracting organisations
	disclosure of information about the beneficiary parties and managers including members of the collective executive body of the contractor when signing large contracts
	the participants of the procurement deal and the customer must not have any conflict of interests
no negotiations must be held with the participants of the procurement process	

Discussion

The suggested classification complies with the concepts of theoretical economics in general, and the economics of crime in particular. The key concepts of the economics of crime (Klitgaard

[15] and Becker [11]) were used as a basis for our classification.

The economic approach to corruption and the methods of combating this threat to economic security, were considered in a number of studies

by Russian and international scholars, including Borina¹, Gribkov², Dronov [3], Latov & Kovalev³, Levin & Satarov [6], Sudbina⁴, Heidenheimer [13], and Yuhachev [10].

The anti-corruption instruments used in public procurement are considered in latest articles by Russian (Golovin, Lutsenko & Shendrikova [1], Shmeleva [9]) and international (Khosro, Yusof, Chai & Laghari [14], Gnoffo [12]) scientists, which demonstrates their importance. What is more, the analysis of the articles on public procurement in other countries performed by Karasev [4], Kosiński [16], Mubarakshina [7], and Starodubova [8], demonstrated that the instruments described in the article are widely used abroad. At the same time, the key feature of our classification is the use of the economic approach.

We can thus conclude that the suggested classification develops the economic approach to corruption. It can be used to classify the existing instruments for the regulation of public procurement.

Conclusions

The retrospective analysis of the laws regulating public procurement in Russia revealed the following tendencies.

The number of laws regulating public procurement is growing.

The range of relationships in the area of public procurement controlled by the government is broadening.

Public procurement system has the following aims: to enhance the effectiveness of government

expenditure on public procurement; to reduce the potential for corruption in the area of public procurement; to promote competition; to support small business entities; to support socially oriented economic entities; and to support domestic producers.

A number of instruments are introduced into the public procurement system in order to reduce the potential for corruption.

Anti-corruption instruments should be developed using a scientific approach based on the suggested principle of classification of the applied anti-corruption instruments depending on their effect on the factors causing corruption and the income of the criminal, defined using the formulas suggested by Klitgaard and Becker. In this case, the anti-corruption instruments should pursue the following aims: to reduce the monopoly power of public officials; to increase accountability (potential penalty suggested by the law) and the actual accountability (revealing corrupt deals and applying sanctions against their participants).

The classification model can be used to analyse the effect of anti-corruption measures on corruption. Thus, for instance, departments of economic security of the Ministry of Internal Affairs of the Russian Federation have the following tasks while combating corruption in public procurement:

- to reduce the monopoly power of public officials and their discretion by excluding corrupt entities from the public procurement process;

- to increase the accountability of the participants of corruption schemes by revealing the crimes, determining the criminals, organising trials, and introducing sanctions against the criminals;

- to increase the potential accountability of the participants of corruption schemes by making the participants of the public procurement process aware of any revealed corrupt deals and punished criminals.

¹ Borina, L. V. (2015) [Control and audit institutions in the system of combating corruption as a threat to the economic security of the state (based on the materials of the Main Directorate of the Ministry of Internal Affairs of Russia for St. Petersburg and the Leningrad Region)]. Ph. D. thesis. St. Petersburg.

² Gribkov, M. A. (2012) [State management of anti-corruption processes]. Ph. D. thesis. Moscow.

³ Latov, Yu. V. & Kovalev, S. N. (2016) [Shadow economy: textbook for universities]. Moscow, Norma.

⁴ Sudbina, N. A. (2012) [Improving the mechanism for combating corruption as a threat to the economic security of Russia]. Ph. D. thesis. Moscow.

Conflict of interest

The authors declare the absence of obvious and potential conflicts of interest related to the publication of this article.

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Aleksander V. Grachev, Cand. Sci. (Econ.), Department of Accounting, Analysis and Audit, St. Petersburg University of the Ministry of Internal Affairs of the Russian Federation, St. Petersburg, Russian Federation

E-mail: grachevalexunder@rambler.ru
ORCID ID: 0000-0001-8052-3677

Lidiya V. Sikorskaya, Assist. Prof., Department of Accounting, Analysis and Audit, St. Petersburg University of the Ministry of Internal Affairs of the Russian Federation, St. Petersburg, Russian Federation

E-mail: Lid6557@mail.ru
ORCID ID: 0000-0001-5940-3400

Received: 20.05.2022

Accepted: 20.09.2022



Экономическая безопасность

Научная статья

УДК 351.72

DOI: <https://doi.org/10.17308/econ.2022.4/10598>

JEL: O17; H57

Классификация инструментов снижения коррупционных рисков в системе государственных закупок в зависимости от их воздействия на факторы коррупции Р. Клитгаарда

А. В. Грачев¹, Л. В. Сикорская^{2✉}

^{1,2} Санкт-Петербургский университет Министерства внутренних дел Российской Федерации, 4-я линия Васильевского острова, 43, Санкт-Петербург, 199004, Российская Федерация

Предмет. Разработка инструментов снижения коррупционных рисков в системе закупок для обеспечения государственных нужд (государственных закупок) является важной государственной задачей. Современное состояние государственных закупок свидетельствует о наличии в данной сфере, во-первых, противоречий между антикоррупционным целевым ориентиром создания современной системы государственных закупок и реальностью масштабного распространения коррупции в данной системе; во-вторых, многообразием форм и проявлений коррупции в системе государственных закупок, требующих изучения, систематизации для целей эффективного противодействия данному негативному феномену. Научной мыслью сформирована богатая теоретико-методическая база противодействия коррупции, важными элементами которой выступают экономическая формула коррупции Р. Клитгаарда и формула ожидаемой выгоды преступника Г. Беккера. Полагаем, что учет факторов, положенных в основу данных формул, является важным условием разработки эффективной антикоррупционной политики в системе государственных закупок, основанной на действии законов экономики.

Цели. Классификация инструментов снижения коррупционных рисков в системе государственных закупок в зависимости от их воздействия на факторы коррупции Р. Клитгаарда.

Методология. В процессе достижения поставленных целей использовались методы научного познания: ретроспективный анализ нормативного регулирования; структурный анализ, формально-логический анализ, метод научной классификации. Исследование построено на изучении актуальной научной и периодической экономической литературы.

Выводы. В результате выделены антикоррупционные меры регулирования государственных закупок, направленные на снижение монопольного положения должностного лица; снижение произвольности в выборе решений; повышение ответственности посредством наказания, предусмотренного законодательством; повышение ответственности посредством выявления коррупционных сделок и применения наказания.

Ключевые слова: коррупция, противодействие, государственные закупки, экономический подход, экономическая безопасность.

Для цитирования: Грачев А. В., Сикорская Л. В. Классификация инструментов снижения коррупционных рисков в системе государственных закупок в зависимости от их воздействия на факторы коррупции Р. Клитгаарда // Вестник Воронежского государственного университета. Серия: Экономика и управление. 2022. № 4. С. 93–102. DOI: <https://doi.org/10.17308/econ.2022.4/10598>

Конфликт интересов

Авторы декларируют отсутствие явных и потенциальных конфликтов интересов, связанных с публикацией настоящей статьи.

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Грачев Александр Владимирович, канд. экон. наук, кафедра бухгалтерского учета, анализа и аудита, Санкт-Петербургский университет Министерства внутренних дел Российской Федерации, Санкт-Петербург, Российская Федерация

E-mail: grachevalexunder@rambler.ru
ORCID ID: 0000-0001-8052-3677

Сикорская Лидия Васильевна, старший преподаватель кафедры бухгалтерского учета, анализа и аудита, Санкт-Петербургский университет Министерства внутренних дел Российской Федерации, Санкт-Петербург, Российская Федерация

E-mail: Lid6557@mail.ru
ORCID ID: 0000-0001-5940-3400

Поступила в редакцию: 20.05.2022

Подписана в печать: 20.09.2022