

PREVENTION OF CRIMES OF CORRUPTION IN THE SPHERE OF PUBLIC PROCUREMENTS

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АННОТАЦИЯ

В статье анализируется значимость прокурорского надзора в области предупреждения преступлений коррупционной направленности, совершаемых в сфере государственных закупок товаров, работ, услуг для обеспечения государственных нужд. Рассматриваются возложенные, в связи с этим на органы прокуратуры полномочия, оценивается эффективность реализуемых прокуратурой мер.

Ключевые слова: прокурорский надзор, государственные закупки, преступления коррупционной направленности, предупреждение преступлений.

ANNOTATION

The article analyses significance of prosecutor supervision in preventing corruption crimes in public procurement of goods, work, services for provision of state needs. Assigned in this regard prosecutor powers are also considered in this article, efficiency of prosecutor implemented measures is estimated.

Keywords: prosecutor supervision, public procurement, corruption crimes, crimes prevention.

I. INTRODUCTION

Corruption is one of the main internal threats to the national security of the Republic of Uzbekistan. Analysis of statistics indicates an increase in the number of corruption-related crimes committed in the overall structure of crime.

Director of the Anti-Corruption Agency A. announced the statistics of detected corruption crimes for the past year and the first half of 2021, committed by officials of various levels.

According to him, in 2020, a total of 1,723 officials were prosecuted: 9 at the republican level, 45 at the regional level, and 1669 at the district and city levels. The damage from corruption amounted to 500 billion soums, 71% (335 billion soums) of this amount were reimbursed from the accused during the investigation.

The head of the agency said that last year most criminal cases were initiated under articles 167 (theft by misappropriation or embezzlement) - in relation to 835 people, 168 (fraud) - 227, 184 (tax evasion or other obligatory payments) of the Criminal Code - 207 people.

In 2020, officials of the Ministry of Public Education were most held accountable for committing corruption violations - 249 people. [1] In January-June 2021, 1,676 criminal cases were initiated and sent to courts for corruption cases against 2,544 officials. Based on the results of their consideration, the courts estimated the damage caused at 592.5 billion soums, 28% of which - 170.8 billion soums - were compensated. Collection of the rest is entrusted to the Bureau of Compulsory Enforcement under the Prosecutor General's Office. [2]

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II.METHODOLOGY

As components of the methodology, the author used general scientific methods, which involve the study of all phenomena and processes in their development, interconnection and interdependence, as well as special methods.

III.DISCUSSION

In recent years, both in Uzbekistan and in the world practice of public procurement, significant changes have been observed, namely: the introduction of electronic trading and digital control to increase the transparency of the procedure and prevent the formation of a threat to the economic security of the state. [5]

A special role in the system of combating corruption, including in the prevention of corruption-related crimes, is assigned to the prosecution authorities. This is not accidental, since the legal nature of the prosecutor's office is subordinated to one goal - the establishment of a "dictatorship of law" in the country.

Prevention of the implementation of criminal intent in public procurement is implemented through the main function assigned to the prosecutor's office - prosecutorial supervision.

The legal doctrine[6] is dominated by the point of view according to which, within the framework of an independent direction of "general supervision" - supervision over the implementation of laws in the field of economics, the prosecution authorities monitor the implementation of legislation on the contract system in the field of procurement of goods, works, services to meet public needs.

The duality of relations that develop during the conclusion, execution of a contract for the purchase of goods, works, services for state needs, as well as a large number of sources of their legal regulation predetermine the complex nature of prosecutorial supervision in this area.

Employees of the prosecutor's office in the course of supervisory activities check, on the one hand, the observance of all participants in the procurement activities of the contract law, on the other hand, the legality of the legal acts regulating the procurement procedure.

A study of the work practice of the prosecutor's office in recent years has shown that the supervision carried out in the field of procurement activities covers the following main areas: control over the expediency of spending budget funds, compliance with anti-corruption and competition laws in bidding. [7]

In the course of prosecutorial checks, the following methods and tricks are most often encountered, which can be resorted to in case of corruption conspiracy. [8]

1. Fake selection. The customer describes the requirements for goods (services), adjusting them to the characteristics of the goods (services) of the company he needs. Or the requirements of the tender indicate the skills that only the required firm has. This reduces the number of potential bidders and creates the basis for winning the tender for the firm of the right customer.

2. Putting unnecessary requirements for the product (service). In order for the right company to win the tender, the customer sets unnecessary requirements for the product (service). For example, in the tender conditions it is established that the supplier must be an official dealer, or that a permit certificate of the manufacturing plant must be provided, provide actual documents, licenses, permits and certificates that are unnecessary for the performance of work. In fact, setting such requirements may not affect the quality of the product (service). However, this significantly reduces the level of competition for the desired firm.

3. Complication of tender documentation. Tender documentation may contain dozens of pages of incomprehensibly (vaguely) stated terms of reference. As a result, most bidders may make mistakes when filling out documents. The customer, on the

basis of these errors and shortcomings, can remove participants from tenders or the commission lowers points. As a result, the firm that submits “correct and complete” answers will win the tender.

4. Biased assessment. This can be observed when the commission, when considering applications, gives additional points to the participant for proposals that are not specified in the evaluation criteria, or does not check the correctness and reliability of the data indicated by him. For example, during the evaluation, the commission takes into account the performance and achievements of participants that are not related to the subject of the procurement.

As an example, we can cite the data of the Anti-Corruption Agency: “In a tender worth 50.7 billion soums held in the Tashkent region, a firm with a B rating that applied for a tender lost the tender as a result of the Ministry of Construction moving it to the rating category SSS”.

5. Unreasonable rejection of tender applications. The state body rejects the applications of participants unreasonably or without appropriate explanations. Under the pretext of deficiencies, although they are minor and can be quickly corrected, the participation of the firm in the tender or auction is excluded. For example, the terms of reference do not indicate anything about the need to include in the estimate the price of materials necessary for the work, however, the customer rejects the application due to the non-inclusion of these calculations in the estimate.

An example from the message of the Anti-Corruption Agency: in a tender for the purchase of 27 types of sports equipment worth 800 million soums, the commission rejected the company's applications due to the fact that its representative did not personally take part in opening the envelopes, although this is not provided for anywhere in the legislation. The reasons for the rejection of the application were also not indicated in the protocol.

6. Mission Impossible. The requirements of the tender may include very short deadlines for the implementation of the project. For example, one day as a period for complex installation work. Naturally, only a company that has already begun to perform work or whose participation has long been agreed upon can win.

When carrying out verification activities in order to ensure the rule of law in the contract sphere, in particular, to suppress identified and prevent the commission of new crimes and other offenses of a corruption nature, prosecutors use the entire arsenal of prosecutorial response measures provided for by law.

Such measures include: bringing a protest, issuing a presentation, a decision to initiate a case on an administrative offense, a decision to initiate a criminal case, filing a claim with the economic court to recognize the transaction as invalid and to apply the consequences of the invalidity of a void transaction.

Based on the results of the audit of the implementation of the legislation on procurement activities, prosecutors most often resort to making a presentation on the elimination of violations of the law.

The most effective act of response is the decision to initiate proceedings on an administrative violation.

However, it is not always possible to bring the perpetrators to administrative responsibility for violations of contract law due to the short statute of limitations for bringing to justice. In this regard, proposals[9] are being made in the scientific community to increase the statute of limitations in administrative cases and to ensure the possibility of being held accountable for committed administrative torts during the entire term of the contract. [10]

At the same time, some experts express disbelief in the published statistics on the extent of corruption in public procurement. Thus, the director of the Association of Public Procurement Participants K. Nomozov notes that remote monitoring of public procurement in 2021 revealed violations of the laws “On Public Procurement” and “On Competition” in 452 tenders worth 145.3 billion soums.

In his opinion, these figures are not true: the amount of 145 billion with so many trades are a drop in the bucket. For example, in Russia, 29.1 trillion rubles were spent on public procurement in 2020. (\$440 billion at time of publication). With an average amount of "kickbacks", the market for corruption payments could amount to 6.56 trillion rubles. (\$98 billion). And this is 22% percent of the amount spent on purchases for the year. Whereas in our country this figure is only 1.5% per year. [11]

Thus, the Anti-Corruption Agency is studying government orders received by the Trust-12 company, where the shareholders are the son and wife of the Minister of Construction. The agency also handed over public procurement materials related to relatives of the khokim of the Jizzakh region to law enforcement agencies.

In particular, the Agency is studying the transfer of large state orders to the Trest-12 company, where among the shareholders are the son and wife of the Minister of Construction, Batyr Zakirov. This was announced at a press conference on April 15 by the head of the Department for Preventing Corruption and Implementing the Compliance Control System of the agency Zuhridin Kodirov.

“The agency regularly conducts remote monitoring activities in the field of construction, public procurement and tenders to determine conflicts of interest and other circumstances,” he said.

According to Zukhriddin Kodirov, the situation with the Minister of Construction is not unique - such facts are found not only at the republican, but also at the regional levels. [12]

In the course of carrying out supervisory activities in the area under consideration, unreasonable interference in the economic activities of enterprises and organizations is not allowed. When issuing acts of response, it is necessary to assess the possible negative consequences of fulfilling the requirements of the prosecutor; it means that the acts of response should not be aimed at the destruction of existing legal relations, but at their adjustment and bringing them into line with the current legislation.

An important role in the prevention of various manifestations of corruption in the field of public procurement is played by the cooperation of the prosecution authorities not only with law enforcement agencies, but also with various authorities, representatives of supervised bodies and organizations in the field of public procurement, commissions for coordinating anti-corruption work, and state control bodies. and public control in the field of public procurement, civil society institutions, the media.

The establishment of such contacts contributes to the identification of violations of the legislation on public procurement and the adoption of comprehensive measures to suppress them, bring the perpetrators to justice and restore the interests of the state and society.

Forms of interaction on issues of combating corruption in the field of public procurement are very diverse.

So, between the named subjects and the prosecutor's office, information is exchanged about the state of legality; joint verification activities of procurement participants are carried out; in the course of a joint comprehensive analysis of the situation that has developed in a particular region, joint plans are developed and adopted on issues of anti-corruption policy. Holding "round" tables, conferences contribute to the discussion of existing problems of procurement legislation and possible ways to eliminate them.

It should also be noted that the implementation by the prosecutor's office of coordinating powers in the field of combating corruption is facilitated by the Public Councils created under them to protect the rights of small and medium-sized businesses, as well as permanent interdepartmental working groups.

Since among the determinants that cause crime in the field of public procurement, one can also name the imperfection of the legislative regulation of this sphere of economic activity, one of the preventive powers of the prosecutor's office is their participation in law-making activities. [13]

On the basis of monitoring the legislation and within the framework of supervisory practice, the prosecutor's office submits proposals to the legislative bodies and bodies having the right of legislative initiative to amend, supplement, repeal or adopt laws and other regulatory legal acts.

In the literature, another precautionary measure is singled out, which is not enshrined in the Law “On the Prosecutor's Office”, but is used in practice - sending information to customers or business entities about detected violations of the law.

The specificity of this procedure lies in the fact that it does not entail sanctions or authoritative instructions of the prosecutor to commit certain actions. [14]

In order to prevent violations and crimes of corruption, the prosecution authorities also carry out anti-corruption education and information through the dissemination of information on measures to implement state policy in the field of combating corruption, including in the field of public procurement of goods, works, services to meet the needs of the state; by providing access to anti-corruption materials through the media, official websites on the Internet, interaction with citizens and public organizations on problematic issues of combating corruption.

It is obvious that ensuring proper legality, counteracting crimes and other offenses, protecting the interests of the state and society in the field of public procurement is the most important task of the prosecutor's office and the entire system of state law enforcement and regulatory bodies.

To date, the prosecutor's office is carrying out daily, systematic and hard work in this area, has accumulated and continues to accumulate extensive experience in supervisory activities.

The comprehensive set of anti-corruption measures implemented by the Prosecutor's Office is an effective means of protecting the violated rights and legitimate interests of economic entities, society and the state as a whole, and also provides favorable conditions for the growth and development of a market economy in the country.

IV.CONCLUSION

However, it is noted that, despite the improvement of national legislation in this area over the past years, it is still necessary to develop and adopt changes to prevent theft and corruption in public procurement.

In this regard, we propose to supplement the provisions of Chapter 10 of the Law “On Public Procurement” dated April 22, 2021 No. ZRU-684, rename Article 75 of the Law “State Control (Supervision) of Procurement Procedures”.

In addition, the peculiarities of the organization of prosecutorial supervision over the implementation of laws in the field of procurement of goods, works and services to meet state needs should be accumulated in a single departmental order, which will delineate the powers of prosecutors in this area.

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