

PUBLIC PROCUREMENT: HOW CAN LEGISLATIVE REFORMS AND TECHNOLOGICAL INNOVATIONS BE HARNESSSED TO EFFECTIVELY COMBAT CORRUPTION IN UZBEKISTAN?

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ABSTRACT

Corruption has found a fertile root in public procurement, a pillar of contemporary government, calling for a renewed commitment to strengthening the legal and institutional ramparts that protect the ideals of transparency and integrity. This article offers a conceptual examination of the corruption issue in the public procurement sector of the Republic of Uzbekistan, as well as proposals for statutory changes and technical developments to address it.

This work delves into the intricate dynamics of corrupt practices by putting together existing literature, legislation, and empirical data. It explains the key legal factors that create opportunities for corruption in public procurement. The author examines the system of preventing and combating corruption in public procurement from a critical standpoint, drawing attention to its constituent parts while assessing its overall degree of development and efficacy in light of available academic and regulatory-legal literature. In addition, this article conducts a comparative analysis of legislative frameworks and reforms, investigating various jurisdictions' experiences in implementing stringent regulations and technological innovations to combat corruption.

This article contributes to the continuing conversation on corruption in public procurement by outlining a path for developing legislative frameworks and using the power of technology to create a more equal, just, and prosperous future.

Keywords: Corruption | Public Procurement | Transparency | Technological Reforms | Legislative Reforms.

When it comes to tackling major economic and social challenges, few tools are as important as public procurement: from building new schools and hospitals to repairing roads and bridges, the state relies on public contracts to deliver high-quality services and infrastructure to its citizens. As World Bank reports, in countries where the government has a substantial share in the economy, public procurement serves as a

major source of private sector funding, with private sector firms relying heavily on public contracts and procurement to secure financing and revenue for their operations.¹

At the same time, according to the International Monetary Fund (IMF), it is one of the government activities most susceptible to corrupt activities.² Corruption concerns persist even in nations with well-functioning public procurement processes such as the European Union (EU), and the cost of corruption may be substantial: estimates place it at 20% to 25% of the overall public procurement budget in some countries.³ Public procurement accounts for around 12 percent of global GDP, or 11 trillion USD annually, thus any problems with it might have devastating effects on public finances ranging anywhere between undermined public trust and weakened economy.⁴

Uzbekistan is not an exception to corruption and anti-competitive practices in public procurement. With a score of 26 out of 100 (0 being extremely corrupt and 100 being extremely clean), Uzbekistan placed 146th out of 180 countries on Transparency International's Corruption Perceptions Index (CPI) 2020.⁵ In the year 2021, the Agency for Combating Corruption revealed that multiple violations of the law were uncovered in a total of 452 tenders, with a combined value of 145.3 billion UZS (equivalent to 12.9 million USD).⁶ However, these infractions were just a small fraction of the overall violations detected across all sectors, which amounted to a staggering 971.1 billion

¹ World Bank and International Finance Corporation, 'Doing Business 2014 Regional Profile : Europe and Central Asia' (2013) <<https://openknowledge.worldbank.org/entities/publication/37bd7b82-9c21-5870-8d22-2073f8a72d5a>> accessed 12 November 2023.

² International Monetary Fund, 'Fiscal Monitor: Curbing Corruption' (2019) <<https://www.imf.org/en/Publications/FM/Issues/2019/03/18/fiscal-monitor-November-2019>> accessed 15 November 2023.

³ Marko Hafner and others, 'The Cost of Non-Europe in the Area of Organised Crime and Corruption: Annex II - Corruption' (2016) <https://www.rand.org/pubs/research_reports/RR1483.html> accessed 15 November 2023.

⁴ Erica Bosio and others, 'Public Procurement In Law And Practice' (2020) <<https://www.nber.org/papers/w27188>> accessed 10 November 2023.

⁵ 'Corruption Perceptions Index 2020 for Uzbekistan' (*Transparency International* 2020) <<https://www.transparency.org/en/cpi/2020/index/uzb>> accessed 10 November 2023.

⁶ 'The Anti-Corruption Agency Organized a Press Conference on the 2021 Activity Outcomes' (*Anti-corruption agency of the Republic of Uzbekistan* 2022) <<https://anticorruption.uz/en/item/2022/03/10/agentlikning-2021-jildagi-faoliyati-natizhalariga-bagishlangan-matbuot-anzhumani-bolib-otdi>> accessed 10 November 2023.

UZS (or 86.5 million USD).¹ Needless to mention that these numbers do not account for undetected instances of corruption and fraud, which could be far more prevalent and costly to the public purse.

Heggstad and Frøystad² provide that Public procurement corruption frequently occurs when internal players craftily take advantage of various components of the process: insiders may manipulate the process to their benefit in a number of ways, including by carefully tailoring the tender criteria to meet the needs of a given corporation,³ or announcing the offer for an extremely little amount of time, allowing only previously-informed businesses to submit bids.⁴

These corrupt practices in public procurement may be evaluated quantitatively using objective metrics, which are based on observable facts and behaviour.⁵ Several scholars have recognised the shortcomings of traditional corruption indicators and developed new objective metrics based on observed behaviours that are more likely to detect corrupt actions.⁶ Some prominent writers in the field, such as Fezekas, Toth, and King, employ a method that expands upon earlier work with analogous datasets by using a spectrum of public procurement "red flags."⁷

Unfortunately, there are no official statistics on the violations of public procurement procedures (which is another alarming point in itself), so the data for the

¹ 'Deputies Reviewed the Operation of the Audit Chamber in 2021' (*Chamber of Auditors of Uzbekistan* 2021) <<https://ach.gov.uz/uz/lists/view/207>> accessed 10 November 2023.

² Kari K. Heggstad and Marianne Frøystad 'The Basics of Integrity in Procurement' (2011) <<http://iffodatabase.trustafrica.org/iff/4211-the-basics-of-integrity-in-procurement.pdf>> accessed 10 November 2023.

³ A Grodeland, 'Fighting Corruption and Promoting Integrity in Public Procurement' (OECD 2005) <https://read.oecd-ilibrary.org/governance/fighting-corruption-and-promoting-integrity-in-public-procurement_9789264014008-en#page5> accessed 10 November 2023.

⁴ Maria Musatova and Kenny Charles J, 'Red Flags of Corruption' in *World Bank Projects : An Analysis of Infrastructure Contracts* (2010) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/790591468321562564/red-flags-of-corruption-in-world-bank-projects-an-analysis-of-infrastructure-contracts>> accessed 10 November 2023.

⁵ Ivan Langr, 'Public Procurement in the Systemic Corruption Environment: Evidence from the Czech Republic' (2018) 11 *Journal of Public Administration and Policy* 53 <<https://sciendo.com/article/10.2478/nispa-2018-0013>> accessed 10 November 2023.

⁶ Mihaly Fazekas, Istvan Janos Toth and Lawrence Peter King, 'Anatomy of Grand Corruption: A Composite Corruption Risk Index Based on Objective Data' [2014] CERS-IE WORKING PAPERS <<https://ideas.repec.org/p/has/discpr/1403.html>> accessed 8 November 2023.

⁷ Marko Klašnja, 'Corruption and the Incumbency Disadvantage: Theory and Evidence' (2015) 77 *The Journal of Politics* 928 <<https://www.journals.uchicago.edu/doi/abs/10.1086/682913?journalCode=jop>> accessed 6 November 2023.

corruption metrics analysis is taken from media content data and incident reports of the National Anti-Corruption Council of Uzbekistan.

Common founder of bidding firms

In a recent incident involving a public procurement worth 200 million UZS (17,5 thousand USD), the heads of the three firms competing for the contract were the same person.¹ Similarly, when conducting public procurement in the amount of 2.4 billion UZS for the overhaul of electric motors by order of UE "Toshkent Issiqlik Markazi" dated January 28, 2023, the founder of 2 out of 3 organisations participating in the competition, were the same person.² The virtually identical situation was also identified in Urgench.³

In the case where even the beneficiary owners, let alone directors, have to be disclosed by the bidders, such incidents serve as a vivid example of inconsistent application of the regulations.

Conflict of Interest

An investigation conducted recently by the Anti-Corruption Council revealed a number of violations in the field of public procurement, in particular, in two public procurements worth 1 billion 570.0 million soums (137 thousand USD); in particular, the winner of the bid was the chief engineer of the enterprise, and even the call for proposals and the winning proposal itself were uploaded from the same IP address. It is worth noting, once again, that the inconsistency in enforcement of laws was observed: while it is reported that the contracts were voided, there is no indication of the administrative liability imposed on the violators.⁴

Complicated 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

¹ Nuz uz, 'One in Three Persons, or How Corruption Manifests Itself in the Public Procurement System in Uzbekistan' (*nuz.uz* 2023) <<https://nuz.uz/obschestvo/1267353-odin-v-treh-liczah-ili-kak-proyavlyaetsya-korrupcziya-v-sisteme-goszakupok-v-uzbekistane.html>> accessed 10 November 2023.

² Ibid.

³ 'Public Procurement in the Amount of 731.6 Soums Canceled due to Violations of the Law' (*anticorruption.uz* 2023) <<https://anticorruption.uz/en/item/2023/04/04/agentlik-taqdimnomasiga-asosan-7316-mln-somlik-davlat-xaridi-bekor-qilindi>> accessed 8 November 2023.

⁴ 'Public Procurements Carried out with Violations of the Law Canceled' (*anticorruption.uz* 2023) <<https://anticorruption.uz/en/item/2023/03/30/qonunchilikka-zid-otkazilgan-davlat-xaridlari-bekor-qilindi>> accessed 8 November 2023.

remove participants from tenders or the commission lowers points. As a result, the firm that submits “correct and complete” answers will win the tender.¹

Biassed 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. According to data from the Anti-Corruption Council, for instance, a company with a “B” rating that applied for a procurement worth 50,7 billion UZS in the Tashkent region lost the bid because the Ministry of Construction downgraded its rating category to “CCC”.²

Lobbying

This is one of the most aggressive schemes. In it, a state agency, without holding a tender, can pedal a special decision of the government to conclude a direct contract with the right company. In practice, it occurs in two forms:

- ❖ individual state bodies are given the right to conclude direct contracts with selected firms without holding a tender;
- ❖ decision shall indicate the specific names of firms with which it is necessary to conclude direct contracts for the implementation of government orders.³

One such example that caused a public outcry was the procurement of services for the Tashkent International Investment Forum under a direct contract for more than 15 billion USZ (1.3 million USD).⁴

While the Uzbek law on public procurement reflects on the Model Law of the United Nations Commission on International Trade Law (UNCITRAL), it is not able

¹ Khussain Radjabov, ‘How to Avoid Corruption in Public Procurement’ (*Gazeta.uz* 2022) <<https://www.gazeta.uz/ru/2022/03/31/procurement/>> accessed 6 November 2023.

² ‘Briefing on the Implementation of Measures for the Implementation of the “Corruption-Free Sector” Project in the Field of Capital Construction’ (*anticorruption.uz* 2021) <<https://anticorruption.uz/en/item/2021/11/24/kapital-qurilish-sohasida-korrupsiyasiz-soha-loyihagini-amalga-oshirish-chora-tadbirlari-ijrosi-yuzasidan-brifing>> accessed 7 November 2023.

³ Khussain Radjabov, ‘How to Avoid Corruption in Public Procurement’ (*Gazeta.uz* 2022) <<https://www.gazeta.uz/ru/2022/03/31/procurement/>> accessed 6 November 2023.

⁴ Kun.uz, ‘1 Portion of Pilaf for 130,000 Soums, Samsa for 70,000 Soums: Government Spending at the Luxury Forum’ (*Kun.uz* 2022) <<https://kun.uz/ru/11912927>> accessed 4 November 2023.

to address all the nuances of corrupt legal relationships.¹ The lack of a functional inspection body, uneven regulatory enforcement, and an inadequate technical foundation are all can be considered as contributing factors.²

To address the aforementioned deficiencies in the public procurement system, scholars propose a range of solutions, encompassing the adoption of more rigorous regulations and the integration of cutting-edge technologies.

Application of Stringent Regulations

Lisciandra observes that prevention and punishment of corrupt practices rely heavily on rule of law.³ There are two ways, as Chen et al. state, in which the rule of law may rein in corruption. First, a well-established body of law makes safeguarding private property and encouraging open government a top priority, cutting down on bureaucratic corruption. Second, bribery is more likely to be uncovered and punished in nations with robust law enforcement and efficient courts.⁴ Atamuradov also highlights the importance of punitive measures in combating malfeasance, especially in the realms of Uzbekistan.⁵

Implementation of Technological Innovation

Recent studies, such as that conducted by Bosio et al. in 2020, show that regulations alone are frequently insufficient to minimise bribery risks in public procurement, despite the fact that governments have traditionally tried to address corruption concerns in public procurement by regulatory measures.⁶ Instead, more effort should be put into improving procurement procedures.

Radjapov proposes a variety of anti-corruption strategies for the public procurement sector. For instance, he emphasises the successful practises utilised in

¹ United Nations Commission on International Trade Law (UNCITRAL), 'UNCITRAL Model Law on Public Procurement' (2011) <https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement> accessed 10 November 2023.

² Khussain Radjabov, 'How to Avoid Corruption in Public Procurement' (*Gazeta.uz* 2022) <<https://www.gazeta.uz/ru/2022/03/31/procurement/>> accessed 6 November 2023.

³ Maurizio Lisciandra, 'A Review of the Causes and Effects of Corruption in the Economic Analysis' (*papers.ssrn.com* 2014) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2372579> accessed 10 November 2023.

⁴ Hailin Chen, Friedrich Schneider and Qunli Sun, 'Size, Determinants, and Consequences of Corruption in China's Provinces: The MIMIC Approach' [2018] CESifo Working Paper Series <https://ideas.repec.org/p/ces/ceswps/_7175.html> accessed 10 November 2023.

⁵ Tulkin Atamuradov, 'Problems of Organizing Public Procurements in Uzbekistan and Factors Influencing Them' (*eLibrary.ru* 2021) <<https://www.elibrary.ru/item.asp?id=44780210>> accessed 10 November 2023

⁶ Erica Bosio and others, 'Public Procurement in Law and Practice' (www.nber.org 18 May 2020) <<https://www.nber.org/papers/w27188>> accessed 10 November 2023.

Romania and South Korea, where data science technologies are employed. Radjapov argues that these technologies enable the rapid detection of not only conflict of interest risks, but also different, more delicate symptoms of corruption, such as significant price cuts (20 to 50 percent), disqualified proposals, and minor price reductions of up to 1 percent. He also recommends that emergency and national security scenarios be the exclusive ones in which direct procurements (in which the government can enter a contract based on a special decree or resolution) are used.¹

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¹ Khusain Rajapov, ‘How to Avoid Corruption in Public Procurement’ (*Gazeta.uz*31 November 2022) <<https://www.gazeta.uz/ru/2022/03/31/procurement/>> accessed 10 November 2023.

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