Public Procurement in Azerbaijan: Limits on Transparency and Public Oversight

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In the absence of effective mechanisms and systems, public procurement becomes a huge source of large-scale corruption. In particular, with limited oversight of the budget from parliament, civil society, and the media, the risk of corruption involving public procurement funds is extremely high.

In the Chamber of Accounts' review of the implementation of the state budget for 2020,[1] the notes on existing problems in the system of public procurement in Azerbaijan clearly show the vital importance of public control in this area. The document clearly shows that in 2020, AZN 6.6 billion of public funds were spent on the basis of public procurement contracts. Only 32.8% of these expenditures were made through open tenders, 18.8% through requests for proposals, 1.7% through requests for price quotes, and 46.7% through single-source procurement. Before touching on specific problems in the operation of the system, attention must be given to the nature of these procurement methods and the main differences between them.

The main procurement methods used

It is clear from the Chamber's review that in 2018-2020, the volume of procurement through open tenders, which is the main competitive method, decreased by about 3.5%, while the volume of procurement through non-competitive bidding increased by more than 7 times in 2020 compared to 2018. In addition, the

fact that the share of funds spent on single-source procurement, another non-competitive method, has reached almost 50% of total turnover, shows how serious the probability of risks is in this area with regard to transparency and corruption.

According to Article 16 of the Law on Public Procurement,[2] various procurement methods may be used (eg, open tenders, closed tenders, requests for proposals, requests for price quotes, single-source procurement, etc.) when spending public funds.

According to the decision of the Ministry of Finance dated May 20, 2013,[3] the open tender method must be used when the minimum amount of goods, works, and services to be procured exceeds AZN 50,000. According to the same decision, if the value of the procurement exceeds AZN 5,000, the procuring entity must use the request for price quotes method. According to the legislation, the procuring entity may obtain price quotes from consignors (contractors) provided that there are at least three, and at the end of the process, a procurement contract is concluded with the consignor who submitted the lowest price quote.

Procurement legislation allows the use of closed bidding to meet defence and national security needs. However, procurement to meet the needs of these sectors for clothing, inventory, medical equipment, medicines, service vehicles, and repair and construction work should be carried out by open tender.

The single-source procurement method is used either when the goods purchased belong only to a particular supplier, or when the entity has exclusive rights over the goods, works, or services being procured, or when the supplier is unique in the market and has no substitute or alternative. In addition to these conditions, this method is allowed if there is an urgent need for goods (works and services), if it was impossible to predict the circumstances that led to the urgent need, and in

an emergency.

As can be seen from the statistics presented in the Chamber of Accounts' review above, in 2020, almost half of the funds allocated for public procurement were distributed through single-source procurement. The review also notes that 60.8% of the funds spent on single-source procurement were for urgent needs, 3.78% for a sole consignor of goods (works and services), and 18.3% for the defence and security of the country.

Mechanisms required to ensure transparency in the procurement system

An electronic procurement system was launched in Azerbaijan in 2018, and on December 28, 2018, the necessary amendments[4] were made to the Law on Public Procurement on December 28, 2018. In April 2019, the "Regulations on a single Internet portal of public procurement"[5] were approved. The changes made e-procurement a main requirement. According to these requirements, announcements regarding public procurements and information about their results, information on procurement contracts concluded as a result of tenders, the service proposals of procuring entities, proposals for determining the suitability of qualifications, etc. must be published on the official portal.

Undoubtedly, the electronic system has huge advantages over traditional mechanisms. Unfortunately, in most cases, only the technical advantages of this system are noted. For example, the emphasis is placed on eliminating the cost of paper (use of printed materials) and saving time (providing the necessary documents and information in real time). However, the main goal of e-procurement should be to detect and eliminate corruption risks. The electronic system should provide modules so that the media and civil society can immediately identify conflicts of interest and risks of corruption in procurement. In terms of public oversight, the system should work in such a

way that the online platforms provide unhindered access to all parties interested in procurement information. The availability of information in an online format makes officials more accountable to citizens in the performance of their duties. From this point of view, ensuring the transparency, accountability, and openness of information in procurement is the main condition allowing for the regular monitoring of public procurement by civil society and the media. For example, it is important that procurement documents, especially technical specifications, are open to the public. Although this practice has been used successfully in Turkey, access to the database in Azerbaijan is restricted.

The lack of public information on business registers and beneficiaries in Azerbaijan is also a serious problem. However, if this database is not open to the public, it is impossible to investigate conflicts of interest and corruption risks in procurement through independent public monitoring. In particular, when beneficiaries and founders remain secret, the same people and business groups engage in multiple procurements by creating different companies under different names, and e-procurement audits and public monitoring lose their ability to investigate corruption risks in this area.

It is extremely important that decisions on supplier complaints should be made public online. The consideration of supplier complaints about procurement or procedures, as well as all resulting protocols and decisions should be posted on a single e-procurement portal so that civil society and the media can collect these facts and identify typical violations.

An electronic catalogue of products (works and services) must be created. This catalogue should be created based on the classification codes of all products (works and services) that the procuring entities may need in practice. Such a catalogue is important for several reasons. First of all, procuring entities can obtain advance information about the technical parameters and content of the necessary products (works and

services). The unified classification codes of the products (works and services) will allow automatic comparison when audit and oversight bodies want to find out whether there are sharp price differences for the same product or service (work) in procurement contracts. Such a classification makes it possible to track changes and price differences based on classification codes in different areas and organizations in the public procurement system, as well as changes in the structure and dynamics of the required products (works and services). It would be a unique database for analyzing the needs of the state. At the same time, the e-procurement system would facilitate the creation of a "price module" for another database according to the codes. The database itself is potentially subject to procurement according to its classification code, and would provide for the creation of a database of market prices for all goods, works, and services based on the relevant classification codes. It should be updated once a month on the basis of price monitoring. The calculation of average prices should be based on the prices of wholesale markets available in all geographical areas of the country on the basis of statistical weight formulas. In this case, customers would have detailed and constant information about real market prices, and there would be no need for additional costs and market research to obtain the estimated prices for the procurement documents, as the electronic system itself would provide the necessary information on prices. At the same time, this database would prevent purchasing (customer) organizations from collecting information only from companies close to them to prepare proposals on probable prices. It is well-known that in some cases businesses that are major players in the market are excluded from such price requests, which leads to price distortions in the procurement system and increased risks of corruption. Price modules force suppliers to take a more objective and responsible approach to the preparation of price proposals. Most importantly, an electronic system has the ability to prepare online reports based on the price module. These reports reveal price

differences immediately in the purchase of typical and similar goods (services, works) under different procurement contracts, and deviations from the average market prices of buyers reveal whether they are economical or wasteful in the use of public funds. The electronic system immediately detects whether suppliers deliberately offer very low or high prices in their price proposals, and this information becomes one of the main indicators in compiling a list of unreliable suppliers.

Such an electronic price module eliminates the need to keep probable prices secret until a tender commission meeting, when they are open to the public. On the contrary, the disclosure of the probable price in advance is important in the business decision-making process. It also prevents any of the suppliers from colluding with the procuring entity. In practice, sometimes the procuring entity violates the terms of the competition by sending the probable price to a potential bidder (supplier) whom it knows in advance because of some secret interests.

One important mechanism is for regulators to create a blacklist of unreliable suppliers and publish it, updating it regularly online using digital tools, in order to prevent an unfair competitive environment and corruption risks. Suppliers on such a list should be disqualified and barred from public procurement for a period of time. The blacklist could use several different criteria. For example, suppliers could be included who have been convicted of corruption, failed to deliver goods, services, or work in a timely manner and in accordance with the terms of the contract, have been sanctioned for violating environmental standards, or have deliberately evaded taxes and failed to comply with loan payments.

In addition, the regulator could use the opportunities afforded by e-procurement to compile a list of contracts at risk of corruption based on a number of indicators and publish such a list online on a quarterly basis. Several factors might

be considered the main risk factors. For example, contracts might be included in the list of those at risk of corruption if the value increases by more than 15% at the end of the contract, if the period between the creation of the winning company and the tender announcement is less than one year, if the value of the winning company's assets and authorized capital is less than 10% of the procurement contract, if the winning company is registered in an offshore zone, or if more than 30% of the procurement contracts of a procuring entity during the year are executed by the same company or by companies founded by the same persons. So far, the current procurement system in Azerbaijan lacks all the listed mechanisms of public control.

References:

[1] The Chamber of Accounts' review of the report on the implementation of the state budget for 2020 https://sai.gov.az/files/2020-%C4%B0cra-R%C9%99y%20(3)-188749903.pdf

[2] The Law on Public Procurement http://www.e-qanun.az/framework/1029

[3] The Decision "On determining the minimum amount for public procurement by open tender" http://www.e-qanun.az/framework/25878

[4] Amendments to the Law on Public Procurement http://www.e-qanun.az/framework/41178

[5] Electronic Procurement Portal Regulations http://www.e-qanun.az/framework/42007