Statistics On Procurement

As a result of public procurement procedures was created a single register of contracts by the State Procurement Agency and posted on the website of the Agency. State Procurement Agency posted on the contract 10812 points of sale Information for the year 2014. During 2014 worth of 620825221.40 AZN procurement was carried out.

Globally, states spend 20% of their budgets on public procurement, which amounts to 9.5 trillion US dollars. However, 25% of these public funds are lost as a result of corruption. Latent corruption hinders use of public funds for the needs of the public and the state, distorts competition, causes an artificial increase in the prices of goods and services, reduces their quality and endangers human lives. Azerbaijan’s public procurement is organized by the State Procurement Agency and respective departments of the state bodies. The National Strategy on Increasing Transparency and Combating Corruption envisages development of appropriate regulatory documents, as well as expansion of the use of the internet to ensure fair competition in public procurement. Besides, the recent decline in state revenues due to a slump in global oil prices urges the government to optimize its expenditures. Ensuring transparent and accountable public procurement is a prerequisite for saving public funds. In this regard, “Transparency Azerbaijan” urges the state agencies to adopt “three-party integrity tender pact” for transparency of the bidding process and to introduce e-tendering for state bodies.
STATE PROCUREMENT CONCEPT

Public procurement refers to the acquisition by a government department or any government-owned institution of goods or services, ranging from bed sheets for hospitals and textbooks for schools to financial and legal services, as well as the commissioning of large-scale construction works, such as roads, bridges and airports. The ultimate goal of public procurement is to satisfy the public interest. A good procurement process is one that obtains goods, works or services in the correct quantity of the appropriate quality, at the required time, from the best supplier, with the optimum terms and under appropriate contractual obligations. Good procurement should meet public needs, secure value for money for the people and be fair to bidders. The tender process should organize to spent public funds for its intended purpose considering the need of public and government, also should create a fair competitive environment for the claimant to contractors. The tender process has the following four processes:

ORGANIZATIONAL MANAGEMENT OF STATE PROCUREMENT

The State Procurement Agency, established on 16 May 1997, is an independent body that enforces the state policy in the sphere of public procurement of goods, works and services. The Agency’s main function is to ensure the observance of the laws and regulations regulating the state procurement procedure and to promote transparency and good governance in the public procurement process.

Monitoring of the National Action Plan

Azerbaijan government committed to improve public procurement and to increase transparency within the 2012-2015 National Action Plan against Corruption and up to now carried out 45% of this obligation. Among the commitments are fully implemented can be saved as an example the creation of a single electronic register of sale and purchase agreements, also preparation of procurement plans for the next year and placing on the State Procurement Agency’s website. However organization of electronic tender, a flexible mechanism to look at the plaintiffs’ complaints, to inform law enforcement agencies about corruption, effective control mechanism for the implementation of procurement contracts and etc. are among the commitments have not been fulfilled yet.
services (hereinafter goods), whereas individual procuring entities (state enterprises and organizations, including those institutions, in the charter capital of which the state share makes up 30 per cent or more) bear direct responsibility for acquisition of goods. The Charter laying down the Agency’s duties was approved by a Presidential Decree dated 20 February 2003. The Agency’s spheres of responsibility include:

- participating in the development and enhancement of the legal framework governing public procurements,
- overseeing the legality of the procurement of goods by state agencies and enforcement of procurement contracts, reviewing the disputes and taking measures against the violators of the law on public procurement,
- providing methodical and organizational assistance to procuring agencies,
- making documents on public procurement accessible to the public, and developing and submitting an annual report on public procurement to the President and the Cabinet of Ministers.

PUBLIC PROCUREMENT METHODS

In Azerbaijan the following methods are used for the procurement of goods:

**Open bidding** - Article 17 of the Law on Public Procurement stipulates that public procurements are to be made through open bidding when the amount of the procured goods or services exceeds the legal minimum. This amount, as determined by the supporting legislation 104 is 50 thousand manat (US$63,700) for goods, services and works.

**Request for quotation** - The minimum and maximum thresholds of public procurements through request for quotation are 5 thousand and 50 thousand manat (US$6,370 – US$63,700). All procurements under 5 thousand manat are free of these procedures. If the estimated price of goods is above 10 thousand manat (US$12,700), then the announcement about it must be placed "on an internationally well-known media outlet and the internet".

EXISTING LEGISLATION AND PRACTICE PROBLEMS

The problem of decentralization of procurement

Latent Corruption

The monitoring revealed that in 2014 of the National Action Plan against corruption in 2012-2015 be known that according to Article 23.2 of the Law of "Public Procurement" of the Republic of Azerbaijan, corruption in public procurement, which was attended by representatives of the Ministry of Economy and Industry has not been found. There is no information about the detection of corruption in public procurement described in the 2014 annual report on corruption by the Chief Anti Corruption Department under the Prosecutor General's Office.
In the selection of the procurement methods “the independence” of public institutions is too visible. The Law on Public Procurement defines open bidding as a general method of public procurement. Although the exceptions to open bidding are regulated by the Law on Public Procurement, the law does not effectively ensure that their number is kept to a minimum. The law does not indicate in a straightforward language that the use of other procurement methods, which include two-stage tenders, tenders with limited participation, closed tenders, and single source procurement, must be “the exception rather than the rule”. Thus, the law leaves the contracting agencies considerable discretion in selecting a method of procurement.

The failure of representation of external experts in the membership of tender commissions

Under the law on public procurement the temporary working group established by the tender procurement agency purchases on behalf of the organization. According to the law the commission should be independent and decisions should be fully independent in accordance with the law. In its current form, the Commission is comprised of the experts and officials of a procuring agency (with the head of the Commission being a senior official from that agency). However, the Law gives the prerogative to involve independent experts in the Commission’s work to the administration of a procuring agency. Thus, Article 27.2 states that the agency brings in a specialist for assessment of the price of goods to be purchased in “important cases”. Obviously, an agency’s staff may not always measure up to such important undertakings as needs assessment, selection of investment and its quantity. Therefore, one of the shortcomings of the Law is that it does not clearly mandate the participation of external specialists. Additionally, the Commissions do not actively engage the representatives from civil society in the procurement process.

The lack of information on public procurement

The Law also expressly rules out the disclosure of information pertaining to study, assessment and comparison of tender proposals, offers and quotations, except for their summary. This limitation creates barriers for civil society and other stakeholders to research on how efficiently public agencies perform procurements. Including disinterested

The Cabinet Of Ministers Proposals

Agency prepared a package of proposals to the “Public Procurement Law”, November 12, 2012, was submitted to the Cabinet of Ministers in order to increase the effectiveness of anti-corruption measures and to increase transparency and competitive bidding process. The proposed changes include:

- Publishing on the official website of the procurement planning and procurement plans
- The determination of the application of the principles of e-procurement
- Tenders to provide an environment which excludes the application of non-discrimination;
- To announcement of the possible price
- Simplification of procedures for bidders offering documents;
- Proposals that do not require the exclusion of performance comparison;
- The costs of participation in tenders announced tender, tender documents reproduction, distribution and translation costs limited to cases where there is a need;
- Restriction of access to the methods of competition are reflected.
professionals and civil society representatives into the activities of the Commissions, and expanding the scope of information for public disclosure will enhance the accountability and transparency of the decision-making process in the procurement. The Agency keeps the register of basic statistics on public procurement, which can be accessed electronically (for the years 2012-2013-2014 only). The data includes the names of procuring agencies and the contractors (successful bidders), goods purchased and the price of procurement projects. Significant details, such as bidding related documents, the names of competing contractors and the reasons for the successful bidders’ are not available. It leads to conduct susceptible to corruption and closed tenders. As well, the chamber of accounts could not evaluate the public procurement.

TRANSPARENCY MECHANISMS

Transparency Azerbaijan recommended following transparency mechanisms to solve the above-mentioned problems in public procurement:

1. Integrity Pact
Transparency International developed the Integrity Pact as a tool to establish a level playing field in a contracting process by encouraging companies to abstain from bribery by providing assurances that their competitors will also refrain from bribery, and that government procurement, privatisation or licensing agencies will commit to preventing corruption (including extortion) by their officials and to following transparent procedures. An Integrity Pact is signed for a particular procurement project between the government agency undertaking the procurement (the “principal”) and companies submitting a tender for that specific project (the “bidders”). The major elements are:

- An undertaking by the principal that its officials will not demand or accept any bribes, gifts or payments of any kind and maintain appropriate disciplinary, civil or criminal sanctions in case of violation.
- A statement by each bidder that it has not paid, and will not pay, any bribes in order to obtain or retain the contract.
- An undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middle men as well as family members of officials).

Construction Of Berlin Airoport

The Federal Republic of Germany and the States of Berlin and Brandenburg agreed in the early 1990s, soon after the re-unification of Germany, to build a major new international airport near Berlin. For that purpose they formed a private sector company, the Flughafen Berlin-Schönefeld GmbH (FBS) 1 – a limited company owned by the three public authorities, with the Mayor of Berlin as Chairman of the Board of Supervisors. The total cost of the project was then estimated at €2,400 million (€2.4 billion) and the planned completion date set for October 2011. In late 1995 TI-Germany (TI-D) had offered the then-new tool of the Integrity Pact (IP) to the relevant authorities, but they declined summarily, arguing that applying the IP would be to admit publicly that there was a risk of corruption. Only weeks later, the first corruption allegations surfaced in the media and haunted practically every step of the process, forcing on the authorities several modifications of the project’s administrative and financial structures and finally, in 2001, a cancellation of all project agreements reached by that time. TI-D emphasised the importance of appointing an independent external monitor, so as to shield FBS management effectively against potential efforts to undermine or circumvent correct procedures. Over the following weeks, TI-D and FBS managers and staff worked together to develop a model IP that contained all the essential elements of an IP, adapted to Germany’s legal context. Both parties concurrently searched for a suitable person to act as the IP monitor. Several candidates surfaced, and in January 2005, two experts were appointed by FBS. The team leader was a retired procurement official from the City State of Berlin, with a spotless record and strong commitment to integrity in procurement, who became a member of TI-D before accepting the monitoring assignment.
• A set of sanctions for any violation by a bidder of its statements or undertakings, including:
  - Denial or loss of contract
  - Liability for damages to the principal and the competing bidders
  - Debarment of the violator by the principal for an appropriate period of time

Up to now, Integrity Pacts have been implemented in many countries, including India, Korea, Pakistan, Argentina, Mexico, Colombia, Austria and Germany, involving more than 300 contracts. Often the Integrity Pact is used for large-scale construction projects. It is also useful for selection of engineering, architectural or other consultants, bidders for government assets in a privatization programme and bidders seeking licences or concessions in the extractive sector. As an example, the construction of the Greater Karachi Water Supply in Pakistan was subject to an Integrity Pact, monitored by Transparency International, and the final project came in under budget by 15.83 per cent.

2. E-procurement

The management of procurement processes from a single electronic portal is one of the main tool for the prevention of corruption. The followings could be main outcomes of e-procurement.
• Strengthening of state control over the spending of public funds
• Promoting healthy competition in business, ultimately increasing the number of contractors in the tender processes.

Monitoring of the bidding process by civil society will increase the accountability of public institutions

South Korea estimated using e-procurement saved US$8 billion annually in transaction costs. The Sao Paolo (Brazil) State Government’s Electronic Purchasing System, brought an average procedural cost reduction of around 51 per cent. The World Bank estimates that potential savings using e-procurement can range from 6 per cent to 13 per cent. It is basically possible with the standardization of tender documents, with the automated registration, appeal of tender processes, finally, electronic evaluation of proposals.
Introducing e-tendering has been on the Agency’s agenda for some time now, but there has not been much progress on that front. The Agency, in compliance with the Cabinet of Minister’s required list of electronic services, 112 has introduced three e-services on its website, but they cover rudimentary aspects of the procurement process. The Agency plans to introduce electronic tendering in 4 phases, and as of the date of writing, it has finished the first stage so far:

- Placing tender announcements on the website.
- Providing bidding documents on the website.
- Submitting bids electronically.
- Evaluating bids electronically.

The following information can be published to increase the scope of data on tenders announced by the state agencies.

- Number and basic information about respective procurement departments of all state agencies in the website of State Procurement Agency;
- Announcement of the government agencies’ procurement budget and plans;
- Announcement of the tender advertisements and tender documents;
- Protocol of tender meetings;
- Announcement of the winning bidder and disclosure of contract value;
- Analytical report on all transactions based on criteria such as region, customer, contractor and etc.

ADDITIONAL RECOMMENDATIONS MAY INCLUDE:

- “To make amendments to the Law on Public Procurement to mandate the participation of external specialists in the Work of Tender Commission at all stages of the procurement process.
- To make public, procurement procedures reported by all procuring parties submitted to the President and the Cabinet of Ministers; including bidding related documents, the names of competing contractors, and the reasons for the successful bidders’ winning.
- To develop and conduct assessment of the public procurement by the Chamber of Audit.
- To expedite introduction of e-services and create an efficient system of e-procurement.
In line with the new Law on Public Participation, involve the representatives of civil society into consultations and monitoring of the procurement process.

**LITERATURE**

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