



BID RIGGING IN UZBEKISTAN: COLLUSIVE SCHEMES IN PUBLIC PROCUREMENT AND THEIR SIGNS FOR DETECTION

Dr. Husain Radjapov

Head of Business Law Department Tashkent State University of Law

Email: radjapovhusain@gmail.com

Abstract

The damage caused by collusive schemes to the state, society and entrepreneurship hinders development and throws the country back. This study analyzes potential collusion schemes in the field of public procurement and proposes proposals for improving the effectiveness of the fight against violations. Corruption and cartels are common in public procurement tenders, where bidders can negotiate a price increase or prioritize the winner and reserve contractors, causing significant damage to the government budget. According to World Bank studies, as a result of collusion in tenders, the tenders themselves cost the state 20-30% more. On March 14, the Legislative Chamber of the Parliament heard a report from the Accounts Chamber, stating that in 2021, violations of public procurement laws worth 971.1 billion soums were revealed. In this article, based on foreign experience and individual cases in domestic practice, I would like to analyze what schemes and methods to circumvent restrictions can be used in the field of public procurement and what changes in legislation and control practices are needed to prevent them. Where possible, potential loopholes and weaknesses in anticorruption controls are identified.

Keywords: collusion, corruption, tender, competition.

Introduction

Construction, repair, and equipping of schools, hospitals, construction, and reconstruction of bridges and roads - in these and similar areas, priority economic, social, and other tasks are solved by the state through state orders (purchases). Public procurement is an important source of financing for the private sector in economies of countries with a large share of the state.

The main principles of public procurement are openness, transparency, competition, objectivity, and the prevention of corruption. However, news about corrupt and anticompetitive practices in this area appears regularly.

According to the report of the Accounts Chamber, in 2021, violations of the legislation on public procurement were detected in 763 cases, amount to 971.1 billion soums. Separately, violations in the field of construction were revealed in tenders for 3.5





trillion soums. The report of the Anti-Corruption Agency indicates that violations of the law were revealed in 452 tenders worth 145.3 billion soums. In addition, these are just the reported cases.

Cartels and corruption are common in public procurement tenders, where bidders can negotiate a price increase or prioritize the winner and reserve contractor, causing significant damage to the government budget. According to World Bank studies, because of collusion in tenders, the tenders themselves cost the state 20-30% more.

I. The concept of bid rigging

Bid-rigging: This is a situation where the parties involved in the tender process coordinate their proposals rather than submit independent proposals. That is, it includes price-fixing in an auction, exchange, public procurement, or any form of bidding, including but not limited to closing bids, bid suppression, bid rotation, and market allocation. Tampering usually occurs when bidders coordinate their bids rather than submitting independent bids.

Bid-rigging is an illegal activity whereby bidders create an illusion of competition by secretly negotiating among themselves who will win the bid. By choosing the best price, buyers, often the national and local governments, are forced to pay more than they would otherwise pay under fair competition.

Bidding is one of the most serious violations of competition law that harms taxpayers given that public procurement is heavily involved in every country's economy.

According to previous studies, they typically account for 12-15% of the gross domestic product, indicating that bid rigging can have a significant impact on a nation's economy.

Public procurement schemes frequently encountered in different countries can be divided into two types.

- a) The customer (government agency) and tenderer (entrepreneur) collude (corruption);
- b) Tender participants (entrepreneurs) enter into an agreement among themselves (cartel agreement).

II. Collusive schemes in public procurement

Consider the methods and tricks that can be resorted to in corrupt conspiracies.

1. Fake selection. The customer describes the requirements for goods (services) and adjusts them to the characteristics of the goods (services) of the company they need. The tender requirements 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 with the right customer.

2. Putting unnecessary requirements for the product (service). For the right company to win the tender, the customer sets unnecessary requirements for the product (service). For example, in 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 to provide actual documents, licenses, permits, and certificates that are unnecessary for the performance of work. Setting such requirements may not affect the quality of the product (service). However, this significantly reduced the level of competition for the desired firm.

3. Complications of tender documentation. Tender documentation may contain dozens of pages with incomprehensibly (vaguely) stated terms of reference. Consequently, most bidders may make mistakes when filling out documents. Based on these errors and shortcomings, the customer can remove participants from tenders or the commission's lower points. As a result, the firm that submits "correct and complete" answers wins 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 considered the performance and achievements of participants that were not related to the subject of procurement.

As an example, data from the Anti-Corruption Agency can be cited: "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 transferring it to CCC rating category.

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

An example from the message of the Anti-Corruption Agency is as follows: in a tender for the purchase of 27 types of sports equipment worth 800 million soums, the commission rejected the company's applications because its representative did not personally take part in opening the envelopes, although this is not provided anywhere





in the legislation. Reasons for the rejection of the application are also not indicated in the protocol.

6. Mission Impossible. The tender requirements may include very short deadlines for project implementation. For example, one day is the 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.

Honest firms, realizing that they cannot fulfill the conditions of the tender, do not participate in it. Puppet firms can be involved as tenders for their legitimacy. Even if the winner does not complete the work on time, the documents can be redone, the acts can be closed, and no one can make claims to anyone. In addition, customers can pay in advance for work that has not yet been completed. In fact, cases of work completed late also testify to corruption.

According to the data from the Anti-Corruption Agency, for the first half of 2021, at 2,928 out of 7,833 construction sites, the already commissioned facilities have not yet been completed.

7. Disclosure of confidential tender data by customers. Customers can disclose information about the price offers of competing firms to the necessary firms. Consequently, the required company submits the most optimal offer and becomes the winner of the tender (auction).

8. X-option. Customers can familiarize the required firm with tender documentation and requirements long before the tender is announced. As a result, this firm has an advantage in the preparation of applications. Once a tender has been announced, it may take a month to prepare an application; however, in reality, it may take two to three months to prepare the required documents.

9. Several technically and functionally independent lots are combined into one. This ploy can be used to limit competition because one participant may not be able to perform several unrelated jobs at the same time because he specializes in certain goods or services. In this regard, the combination of customers with various needs into one order can be a barrier for potential participants.

Hypothetical example: Combining road construction, surface and underground pedestrian crossings, public transport stops, bridges, and repair services in one lot means that only large firms can participate in the tender.

10. Uncomfortable conditions. The state body can establish payment terms that are inconvenient for entrepreneurs (long-term or in installments), thereby reducing the interest in the tender of unnecessary firms.

11. Formalism. The tender is announced after work has been completed or is already underway. Such a case occurred, for example, in the khokimiyat (local authority) of





the Samarkand region, whose company announced a tender on August 3, 2021; however, construction began in May, three months before the call for applications was announced.

12. "Hidden" purchases. You can "hide" the tender if the customer does not want "irrelevant" irrelevant firms to pay attention to it. For example, the subject of procurement or tender is called inappropriately, and its category is incorrectly indicated. As a result, fewer firms submit applications that increase their chances of winning the right firm.

13. Coercions refused to participate in the tender. The customer, in order to ensure the victory of the right entrepreneur, may offer the winner or other participants a high chance of winning to refuse participation for a certain fee.

14. Changing terms of the contract or accepting outstanding work. The right firm offers prices that do not correspond to the market price. Then, at the execution stage of the contract, its terms are changed to provide benefits to both parties. Thus, the price of the contract has not changed, but, in fact, the purchase took place in a smaller volume. In addition, acceptance by customers of goods that differ from those specified in the contract is evidence of possible corruption.

For example, according to the Anti -Corruption Agency, in the Jizzakh region, an amount of 6.3 billion soums was unreasonably attributed to payment documents for construction work and 1.4 billion soums for work not completed.

The Karshi regional department of improvement concluded an agreement for the sale of flower seedlings for 149.1 million soums with a farm founded by the sister of the head of the department, and unjustified expenses for 27.1 million soums were attributed to the reports.

In the Shakhrisabz district, 67 million soums were attributed to unfulfilled work during the installation of night-lights and pedestrian crossings, as part of the Obod Qishloq program.

In the Kashkadarya regional neurological dispensary, No. 2 in the Kitab district, instead of the "purchased" X-ray machine of the Mobile X- Ray RU-510 brand, there was old equipment.

15. Lobbying. It is one of the most aggressive schemes. 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, this occurs in two ways. Despite the reforms indicated above to ensure fair and competitive public procurement in Uzbekistan, more than 55–65 percent of it really happens based on direct contracting (in 2021–53 percent, in 2022–65 percent).



a) Individual state bodies are given the right to conclude direct contracts with selected firms, without holding a tender.

b) The decision shall indicate the specific names of the firms with which it is necessary to conclude direct contracts for the implementation of government orders.

In addition to the above cases, on the part of the state customer, there may be delays in signing the contract with the firm that won the tender (auction), refusal to sign the acceptance certificate for the work performed on time, and failure to make payments under the contract to the contractor.

III. Collusion between participants (entrepreneurs)

Now, consider the cases of collusion among participants (entrepreneurs).

Agreements on high-price offers in tenders or contracts for victory can be concluded without customer participation.

1. "Three Musketeers". Three participants participated, two of whom played the role of lowering the price, dropping it to economically unprofitable (by 30-70%). Affiliated or shell firms can act as "musketeers". As a result, honest entrepreneurs who have lost interest in auctions are forced to drop out of the race. In the last few minutes of selection, the third "musketeer" gives the price a little lower than the competitors. When considering the second part of the bid, the two participants who played for a fall deliberately made mistakes in the documentation, and for this reason, the customer rejected their proposals. Consequently, the third "musketeer" wins.

2. Order of victory. Such a scheme may result in a turnover of tender winners. If entrepreneurs reach an agreement by participating in the tender, prices are reduced by a slight 0.5-1%. Profit is mainly distributed among the parties to the agreement in the form of subcontracting or other forms of remuneration may be applied.

3. Passive participation. Shell firms can be recruited to provide bids that are known to have a low probability of winning (owing to high prices and unfeasible conditions), and as a result, the right firm wins. Another feature of this scheme is that puppet firms submit bids to secure a minimum number of bidders; however, bids may not be provided. A single firm can prepare puppet firms.

IV. Recommendations and conclusion

Based on this, I put forward the following proposals to improve the effectiveness of the fight against corruption in the field of public procurement in Uzbekistan.

First, to create a single digital platform for all public procurement with the possibility of data screening and introduce the practice of data screening. This will make it possible to quickly identify suspicious tenders not only based on the risks associated with a conflict of interest provided for in the state anti-corruption program for 2021-





2022 for 2021-2022, but also on other, more hidden signs of corruption. For example, a sharp decrease in prices (for 20-50%), rejection of applications, and a slight decrease in prices (up to 1%). The experience of Romania and South Korea in establishing such data-screening criteria may be helpful.

Second, to ensure an equal, competitive environment in public procurement, it is necessary to reduce it as much as possible and establish specific criteria for concluding direct contracts without holding tenders according to government decisions (for example, areas where direct contracts can be concluded should be limited to issues of national security, emergency situations, and defense).

Third, strengthening accountability. Introduce a separate article "Violation of the legislation on public procurement" in the Criminal Code. A gross or repeated violation of the procedural rules in public procurement should be the basis for criminal liability, not only if there is corruption. In some cases, it is possible to determine criminal liability after a repeated offense of public procurement legislation for which a person was previously held administratively liable. However, it is necessary to consider the issue of direct criminal liability in the event that a violation of legislation on public procurement causes damage to the state budget. This will increase the responsibility of officials and not allow them to avoid serious punishment when brought only to administrative or disciplinary responsibility.

Fourth, special training should be organized for law enforcement agencies and civil servants to identify and prove corruption schemes in public procurement.

Fifth, to conduct explanatory work among entrepreneurs on avoiding corruption schemes and collusion in public procurement and improve their legal knowledge in filing complaints and going to court in cases of offenses.

Bibliography

1. Law of the Republic of Uzbekistan "On Public Procurement"
2. OECD, Competition Law and Policy in Uzbekistan 2022
<https://www.oecd.org/countries/uzbekistan/an-introduction-to-competition-law-and-policy-in-uzbekistan-ru.htm>
3. Х.Раджапов, «Как избежать коррупции в госзакупках», 2022
<https://www.gazeta.uz/ru/2022/03/31/procurement/>
4. Husain, Radjapov. The Identification of Tacit Collusion in Oligopolistic Markets. Diss. 神戸大学, 2019.
5. OECD (2014) Detecting Bid Rigging in Public Procurement, www.oecd.org/competition/cartels/42594486.pdf.
6. OECD, Fighting bid rigging in public procurement, 2016
<http://www.oecd.org/competition/Fighting-bid-rigging-in-public-procurement-2016-implementation-report.pdf>

