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SOME ISSUES OF CRIME PREVENTION IN THE FIELD OF PUBLIC PROCUREMENT

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ABSTRACT

In the article discusses the current situation regarding the legal regulation of the detection and prevention of violations related to public procurement, as well as the measures implemented in the republic in this area, topical issues related to the implementation of these measures. In addition, the experience of Germany and the European Union was briefly studied, and on its basis conclusions and proposals were made to improve the system for combating corruption crimes in the field of public procurement.

KEYWORDS

Corruption, public procurement, public procurement contractor, conflict of interest, public control.

INTRODUCTION

Today, the economy of our country is developing more and more, which creates the basis for the implementation of important public procurement for the benefit of the state and society. Public procurement has become important in the activities of the state, and it is customary to understand by them the purchase of goods and services by the state or citizens for a certain price. There are different views on the essence of this concept. In particular, according to V. V. Melnikov, public procurement is the purchase of industrial goods or specific services on the basis of a

state order. According to V. I. Kuznetsov, public procurement is the result of administrative, financial, civil law relations aimed at meeting the needs of the state and society. In our national legislation, this concept is given a clear and uniform definition, according to article 4 of the Law of the Republic of Uzbekistan “On Public Procurement” adopted on April 22, 2021, public procurement is the process of ensuring the needs of state customers in goods (works, services) on a paid basis [1].

Although this law was adopted relatively recently, there are many problems and violations in this area that cause serious damage to the legally protected interests of the state and society. It is for this reason that the fight against illegal activities, especially corrupt activities that take place in the field of public procurement, is an urgent issue, while it is important to identify the causes and conditions that contribute to the emergence of corrupt actions on the ground.

There are several factors that cause corruption in the field of public procurement, in particular, electronic public procurement, which is a new form of public procurement, that is, the implementation of public procurement through a software and hardware complex of a special information portal, such as an electronic store and an auction held to reduce the initial price, using information and communication technologies, as well as is the reason for the implementation of corruption situations by providing false signs in this area. Also, the presence of a conflict of interest among officials in the implementation of public procurement, as a result of violation of the rules of the tender, falsification of tender documentation is also the reason for violation of the provisions of the Law “On Public Procurement” and “On Competition”.

In our republic, the competent authority in the field of public procurement is the Ministry of Finance of the Republic of Uzbekistan. This body carries out state regulation in the field of public procurement, and the inability of the competent authorities to effectively act as another factor in the escalation of corruption cases in this area, including cases of embezzlement of funds from the state budget, it should be noted abuse of statutory powers.

According to statistics, when the Ministry of Justice checked regulatory legal acts in the field of

construction, healthcare, higher education and public procurement, it was found that in 65 out of 226 regulatory legal documents (29 percent) there were 292 corruption factors, 46 corruption factors were also found in 12 out of 16 documents in the field of public procurement [2].

In addition, the circumvention of auctions held in order to reduce the initial price during public procurement, as well as the purchase of goods at inflated prices through direct contracts without bidding, contrary to the requirements of public procurement, and the spending of excess funds by organizations not authorized by the Cabinet of Ministers, is clarified, a number of systematic violations have been identified, such as the purchase of passenger cars in excess of the norm and without the approval of the Ministry of Finance [3].

It should also be noted that some gaps in the regulatory legal acts regulating the sphere of public procurement, the lack of openness and transparency in the work of state bodies, the presence of bureaucratic barriers limiting the competitive environment and public control also created the ground for the entrenchment of corruption in this area. So, before the adoption of the Law “On Public Procurement”, for 2018-2019 and 5 months of 2020, 278 organizations concluded transactions worth 100.3 billion soums through the electronic store, purchases were made in excess of the established amount. During this period, 8,255 organizations carried out transactions worth 176 billion soums through the electronic store, exceeding by 25 times the limit of the base amount of the calculation established for public procurement. In 2018-2019, 10 budget organizations made purchases worth 5.2 billion soums in the form of auctions, without competition [4].

In addition to the above factors of the occurrence of corruption cases in the field of public procurement, corruption cases also create a short period of consideration of complaints received by the Commission for the consideration of complaints in the field of public procurement. Thus, in the Regulation on the procedure for considering complaints in the field of public procurement, approved by the order of the Director of the National Agency for Project Management under the President of the Republic of Uzbekistan №180 dated May 1, 2018 (№ 3013 dated May 14, 2018), the complaint review period is seven working days [5].

Although the verification and consideration of complaints does not take much time, this process suspends the validity of the specified contract, which in turn may harm the rights of interested persons. In our opinion, in this regard, it is necessary to establish a shorter period. Thus, in Germany, which is a member of the European Union, the public procurement system complies with the requirements of European legislation, the appellate body in the form of an independent institution and a judicial body in this area provides for an accelerated procedure for reviewing complaints (within 3 days), which does not slow down investment processes [6].

In addition, there is another unique system in this country, there is a public organization “Public Procurement Forum”, consisting of experts and scientists, within the framework of this forum, local opinions are exchanged, new relations in the field of public procurement are formed, and the best scientific work on public procurement is being formed. Also, if you look at the US experience, the overall coordination of activities in the field of public procurement in this country is carried out by the Office of Federal Procurement Policy, and public procurement is carried

out in a simplified manner, unlike other countries, including the following:

overview of price quotes;

use of corporate purchasing plastic cards when making very small purchases (up to 2500 US dollars);

making a purchase order;

for example, the use of standard regulatory contracts for the continuous purchase of products of many types [7].

This procedure is applied when the contract amount is small and does not exceed 5 million US dollars per year. It is forbidden to artificially reduce the volume of purchases (by dividing them into smaller parts). The introduction of similar experience into the national legal system, in our opinion, will give a positive result in preventing corruption factors in the field of public procurement. In recent years, several reforms have been implemented aimed at preventing corruption and creating a transparent system in the field of public procurement.

In particular, by the Decree of the President of the Republic of Uzbekistan dated June 29, 2020 № 6013 “On additional measures to improve the anti-corruption system in the Republic of Uzbekistan”, the Law of the Republic of Uzbekistan “On Public Procurement”, the Anti-Corruption Agency is tasked with analyzing the effectiveness of the anti-corruption control system in the field of public procurement and the use of budgetary funds, loans from international organizations and foreign states, the sale of state assets, as well as the development of proposals for its improvement [8].

Also, this decree grants the Agency the right to request, receive and research materials related to the expenditure of budgetary funds, the sale of state assets, public procurement, the implementation of investment projects and the implementation of state programs.

At the same time, the issue of responsibility for corruption situations in this area is being radically reformed today. In particular, on the basis of the Law of the Republic of Uzbekistan dated January 14, 2021, the Code of Administrative Responsibility was supplemented with article 1758, which provides for administrative responsibility for violation of legislation on public procurement [9].

According to it, non-compliance with the requirements of the legislation on the procedure for the formation and placement of public procurement plans, including schedule plans, as well as violation of the procedure for placing public procurement announcements on a special information portal, violation of the procedure and timing of mandatory discussion and violation of the timing of the placement of public procurement results in the implementation of public procurement in cases provided for by the legislation on public procurement entails the imposition of a fine on officials from five to ten basic calculated values.

The introduction of information, links and requirements prohibited by law and restricting competition in public procurement announcements and procurement documentation, violation of the procedures for approving procurement documentation and the formation of applications entails the imposition of a fine on officials from ten to fifteen basic calculation values.

Also, this norm provides for liability for violation of the bidding procedure. Thus, according to the third part of the article, violation of the requirements for determining suppliers of goods, works and services through a tender, as well as making a decision on public procurement from a single supplier or on the basis of direct contracts in cases where the definition of a supplier of goods performing work and providing services through a competitive procurement method is established in accordance with the legislation on public procurement is punishable by a fine in the amount of fifteen to twenty basic calculated values.

At the same time, failure to notify, in accordance with the procedure established by the legislation on public procurement, about affiliation and conflict of interests in the process of public procurement, as well as failure to accept proposals for public procurement in cases not provided for by the legislation on public procurement, or shortening the deadline for submitting proposals contrary to the requirements of the legislation on public procurement, as well as violation of the requirements of opening envelopes with proposals and evaluation of proposals in accordance with the procurement documentation, entails the imposition of a fine on officials from twenty to thirty basic calculated values.

A number of researchers also approved the strengthening of accountability in order to eliminate corruption situations in the field of public procurement. In particular, according to researcher O. N. Khodasevich, in case of an increase in cases of corruption in the field of public procurement carried out by individuals, it is necessary to strengthen measures of responsibility, including authorized representatives of authorities [10].

It is also necessary to simplify public procurement procedures, researcher R.I. Mishchenko notes. In his opinion, it is necessary to simplify the implementation of public procurement, clarify the concepts and terms in the laws relating to public procurement, as well as to prevent contradictions between the norms [11].

The implementation of these reforms and proposals and the experience of foreign countries in this system will give a positive result in preventing corruption in public procurement, in this regard, we would like to give additional recommendations.

Firstly, in order to create procurement systems based on transparency, competition and objective decision-making criteria from the point of view of preventing corruption, it is necessary to focus on creating sufficient conditions for placing procurement announcements and concluded contracts on the public procurement portal, information disclosure and public control.

Secondly, it is necessary to publicly announce in advance the criteria for the selection and decision-making of the winners of the tender, as well as the conditions of participation.

Thirdly, there should be restrictions aimed at preventing corruption in the public procurement process, that is, if the close relatives of the participants have the right to decide on the choice of the contractor, the participant should not be allowed to participate in public procurement.

Fourth, it is necessary to determine the procedure for collecting information about all contracts concluded within the framework of public procurement through a single register.

Fifth, if information about the conclusion of direct contracts in the course of public procurement is not posted in the electronic public procurement system, payments under these contracts should not be made.

Also, in order to create procurement systems based on transparency, competition and objective decision-making criteria from the point of view of preventing corruption, it is necessary to pay attention to the issue of placing procurement announcements and concluded contracts on the public procurement portal, making public and creating sufficient conditions for public control. As pointed out by researcher Sh. Rakhmanov, in the fight against corruption, it is necessary to ensure the transparency of the activities of public authorities and management, because the level of corruption determines the overall level of development of the country, statehood and society [12].

At the moment, administrative responsibility for this type of crime has been established, but the issue of criminal responsibility for such crimes has not yet been resolved. We believe that these proposals will serve to create conditions for fair competition among entrepreneurs, ensure openness and transparency, strengthen public control and prevent corruption.

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