

## TRANSPARENT PUBLIC PROCUREMENT RATING

### SECTOR ASSESSMENT QUESTIONNAIRE

#### ROADS SECTOR IN AZERBAIJAN (2018)

##### ***1. Do any unreasonable legal exemptions apply to the target sector?***

There are only one legal exemptions which used in target sector and prescribe non-competitive methods of procurement. In cases of “urgency”, a procurement entity may apply single source procurement.

Single source procurement – this method, which involves procurement directly from a single source without competition, may be used only in the limited number of cases enumerated in the Procurement Law (art. 21). Usually procuring entities may apply this method in procurement of goods which availability on the market is limited and up to 50.000 azn (approximately 29.400 USD). According to the Article 21 of the Law,

- 21.1.1. if procured goods are only available to any specific consignor (contractor) or specific consignor (contractor) possess rights over such goods (works and services) and if their substitutes or alternate are unavailable;
- 21.1.2. if urgent demand for goods (works and services) is arisen and conducting of tender procedures or use of any other procurement method is inexpedient; if impossible to foresee cases which led to urgency of demand or if such cases are not result of delay of procurement agency;
- 21.1.3. if urgent demand for such goods (works and services) is arisen in connection with emergencies, if use of other procurement methods is inexpedient in view of time to be spent to them;
- 21.1.4. if procurement agency after procurement of goods, equipment, technology or services from any consignor (contractor) arrives to decision to procure them from such consignor (contractor) in view of ensuring their compliance with standardization considerations of existing goods, equipment, technology or services.

But with an approval of the State Service for Anti-Trust Policy and Protection of Consumer Rights (hereinafter - SSAPPCR), a procuring entity may apply single source procurement even in purchases high than 50.000 AZN.

##### ***2. Does access to procurement documentation meet the requirements of the national legislation?***

Mostly it does, but not completely. Let's say access to procurement documentation is not in compliance with the requirements of the Article 50-2 of the Law on the Public Procurement. The web site of the SSAPPCR, doesn't include all the legislation applicable in the public procurements. From the other side, it is difficult to name the interface of the tender web-site user-friendly. If check the related link for the procurement documentation on the web-

site <https://etender.gov.az/law-acts> one can see that Rules<sup>1</sup> Ministry of Finance on the minimum threshold for the open tendering is not included there.

It is also difficult to say that the web-site of the SSAPPCR provides a comprehensive list of supporting documents necessary for preparation of the bid proposal. The suppliers are supposed to get these documents when they apply to the procuring entity, like

***3. Have there been any prominent cases that illustrate existing challenges (inefficiency, corruption or other forms of misspending) in recent years?***

The soundest challenges what indicate the inefficiency and misspending in the PP are the reports of the State Audit Chamber that we analyzed in the TPPR Questionnaire.

Another indicator that public funds are being spent ineffectively is the fact that procurement entities still don't prepare annual procurement plan which required by the of article 2 and 50-2 of the Law on Public Procurement.

Yet another issue is the reasoning of refusal submitted to failed bidders. The procurement Law contains a provision (art. 7.7) that requires the procuring entity to provide unsuccessful applicants for prequalification with justified information about the grounds for the rejection of the application for prequalification. In 2012 it was planned in the next round of amendments to the procurement Law to expand the debriefing procedure to include also provision of information to unsuccessful bidders about the ground for rejection of their bids, but these amendments was not implemented so far.

***4. Is there any indication that suppliers fail to fulfill contractual obligations? Any prominent cases in recent years?***

There is no indicator or news that contractors fail to fulfill contractual obligations under the tender. Whereas it doesn't mean that all suppliers comply with the provisions of the contract. It is frequent that financial terms of the lump sum contracts are being changed. According to the article 3.0.24. of the Regulation of the SSAPPCR, the State Service may approve the change in contract sum up to 15%. Usually amendments in price are not announced in the media; and regarding that the information request sent to the SSAPPCR was not responded, we are not able to provide correct information.

***5. What are the major strengths and weaknesses of public procurement in the target sector? (minimum of 2 each; personal deliberation of the author)***

I cannot mention any strength of public procurement in the target sector, because the government persistently resist to bring transparency and accountability the the PP system; but I can count these weaknesses of the PP system.

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<sup>1</sup> [http://www.e-qanun.az/alpidata/framework/data/10/f\\_10166.htm](http://www.e-qanun.az/alpidata/framework/data/10/f_10166.htm)

Strength	Weakness	Comments
When e-tendering will be implemented all tenders under 3.000.000 USD will be subject to e-bidding without any threshold for single-source procurement	Provision of the Law are not fully implemented	With implementation of the single web-portal e-bidding, this gap is supposed to be fixed.
	Systematic corruption within the political domain	There is no serious hopes that situation will be improved in close future.
	No Succession to WTO	We are not expecting this in close future. The main reason is a systematic corruption.
	Procuring entities don't submit annual procurement plan for the next year	In next year the provision of law on annual procurement plan may be implemented.
	e-tendering is not implemented	In next year the provision of law on e-tendering may be implemented.
	Web-site of the SSAPPCR doesn't contain information about the bidders submitted their proposals and details of proposals.	Even after implementation of the e-bidding through single web portal, the new Regulation on the single portal for e-tendering doesn't include this provision.
	Web-site of the SSAPPCR doesn't contain enough information about the subject and details of the purchased goods or work, especially for request of quotations and request of proposals. It is obvious that the SSAPPCR has to put forward minimum requirements for the tender announcement, but in fact it does not.	With implementation of the single web-portal e-bidding, this gap is supposed to be fixed.
	Required time for submission of tender announcement: The Law on Public Procurement doesn't include any minimal time for request of quotation what is very frequently used.	With implementation of the single web-portal e-bidding, this gap is supposed to be fixed.