**PUBLIC PROCUREMENT: CURRENT ISSUES AND SOLUTIONS TOWARDS GOOD GOVERNANCE IN VIET NAM**

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***Abstract***

Vietnam has embarked on open market economy under socialist orientation since 1992, hence, reforming legal system has been crucial important to achieve development target. Especially in the globalization and integration period, good governance is considered as an international standard for every nation in achieving sustainable development goals.

Good governance includes many elements such as accountability, transparency and eliminating corruption. According to Corruption Perceptions Index (CPI) 2019, Vietnam scored 37/100, and ranked 96/180 on the global index. Eliminating corruption is crucial important for Vietnam. Although Vietnam has developed a legal framework on anti-corruption such as Law on Anti-Corruption, Law on Access to Information, Penal Code. However, Vietnam is still struggling for fighting corruption, especially in public procurement. Hence, how to reform legal regulations on public procurement to ensure good governance is a key research question of this paper.

Through examining current legal regulations on public procurement including Law on State Budget, Law on Bidding and Law on Management and Use state properties, this paper will identify current issues of public procurement in Vietnam as well as propose solutions for strengthening legal system for fighting again corruption towards good governance standards.

1. **Overview of public procurement and legal framework for public procurement in Vietnam**

Public procurement (PP) refer to the purchase by governments and state-owned enterprises of good, services and works[[1]](#footnote-1). Public procurement is alternatively defined as the purchase of commodities and contracting of construction works and services if such acquisition is effected with resources from state budgets, local authority budgets, state foundation funds, domestic loans or foreign loans guaranteed by the state, foreign aid as well as revenue received from the economic activity of state. [[2]](#footnote-2) Government agencies have to purchase goods and services with public resources and for public purposes to carry out their functions. In general, a government spends, on average 10% of its GDP on the procurement of goods and services. In developing countries this rises to 12-20 %, and significantly in post-conflict countries such as Sierra Leone the figure reaches 70% (OECD, 2005), or each year European public authorities spend the equivalent of 16% of the EU GDP on PP.[[3]](#footnote-3) Australian and Canadian public procurement (external spend) is approximately 30 %. In Singapore, expenditure on government procurements has declined marginally in real terms and currently comprises about 27 % of public spending (source: WTO). In the US, there is a marked difference in the proportion of external spend across levels of government. At a state level, external spend accounts for 50 per cent of the budget whereas at a local level this drops to 30 %. [[4]](#footnote-4) And, since PP accounts for a substantial portion of the taxpayers’ money (state budget), governments are expected to carry it out efficiently and with high standards of conduct in order to ensure high quality of service delivery and safeguard the public interest.

Regarding to public administration and good governance standards, a country has to develop legal framework on public procurement to prevent corruption. According to Robert (2016), the public procurement has a number of objectives that range from social, economic, and then financial objectives which also are condition for ensuring good governance[[5]](#footnote-5). Especially, one of the core objective of public procurement is elimination of corruption in public procurement. Public procurement causes many problems such as corruption and fraud; therefore, it is essential to ensure that all business sectors can participate fairly and equally in providing goods, services financed by state budget (public procurement) without having any obstacles. Fair competition and transparency will enable all entities to become contractors if they are capable. Especially, in the case of Vietnam, under socialist oriented open-market economy, state own enterprises (SOEs) have played dominant role in public procurement.

In Vietnam, recurrent expenditure is about 18% GDP (Table 1). In addition, PP and state asset management have a very important role due to characteristics of economic, political and social development. From central planning (before “Doi moi” by 1986 and self-isolation adopted after unification of the country in 1975), Vietnam has embarked on open market economy under socialist orientation since 1992. Public sectors have played a crucial role in economic activities and service provision. Public procurement in Vietnam has a wide scope, including: (i) procurement to serve the maintenance of operations of state agencies, political organizations, socio-political organizations, and armed forces units. people page; (ii) procurement at development investment projects; (iii) procurement for the operation of state-owned enterprises.

**Table 1: Recurrent expenditure, shares of GDP[[6]](#footnote-6)**

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| --- | --- | --- |
| **Năm** | **Recurrent expenditure****(billion VND)** |  **Recurrent expenditure/GDP****(%)** |
| **2014** | **376.620** | **18,4** |
| **2015** | **777.000** | **18,8** |
| **2016** | **822.343** | **18,3** |
| **2017** | **881.688** | **17,6** |
| **Prel. 2018** | **940.748** | **17,9** |

Due to the wide scope of Vietnam PP, its provisions are regulated in many laws and other guidance documents, which is regularly amendments and revised in order to be more consistent with international standards. Vietnamese Government has made great efforts to reform the legal framework in public procurement to improve the effectiveness of PP management.

* *Regulations on bidding*

Public procurement policies and regulation are considered important indicators of public resource management, however the establishment of a modern public procurement legal frame work in Vietnam came later in 1996 with the adoption of the Decree No. 43/1994/ND-CP on the issue of regulation on bidding. Since then, the public procurement legal framework has been revised and amended over time. In 2005, National Assembly has promulgated Law on Bidding (amended in 2009) and a number decrees governing public procurement that address of shortcomings. Subsequently, in 2013 Law on Bidding No.43/2013/QH13 was issued with new regulations towards simplifying administrative procedures, concentrated procurement form is widely applied in bidding. In addition to the Law, the government and Ministry of Planning and Investment have issued guidance on the implementation of the legal framework through circulars and decisions, providing templates and detailed instructions for carrying out procurement processes.

* *Regulations on budget management and public property management*

State budget is used to purchase for goods and services therefore the use of state budget to procure public assets must comply with the regulations on the expenditures of state budget. Law on State Budget 2015 (replacing the Law on State Budget in 2002) deals with the planning, implementation, audit, statement, and supervision of state budget; responsibilities and entitlements of agencies, organizations, units, and individuals relevant to state budget. According to law on sate budget, the properties purchasing with state budget capital must all be made from making the cost estimate. Basing on the need to use public properties, standards and norms for the use of public property issued in accordance with the law on public property management and the capacity of the state budget, the agencies and organizations make cost estimation following the annual budgeting process. Annually, according to the Government's Resolution on socio-economic management and regulations of law on public property management, the Ministry of Finance will issue a Circular guiding the estimation, including the cost estimates.

Along with the budget law, the management and use of public propert are also governed by Law on Management and Use of public property 2017 (replacing the Law on Management and use of State property in 2008). This law regulates that the form of public property of state authorities shall comply with assigned functions and tasks; criteria and norms for the use of public property issued by competent authorities; comply with source of property and funding to be used; follow methods and procedures specified in this Law and relevant law; and ensure publicity, transparence and proper policies.[[7]](#footnote-7)

In addition to the above core regulations, Vietnamese public procurement is also regulated in several other legal documents to ensure fair bidding, transparent, limit fraud in bidding, as well as to fight again corruption. For example, Law on Anti-Corruption (enacted in 2005 and amended it in 2007, 2012 and 2018), Law on Competition,[[8]](#footnote-8) and the Penal Code also provides a lot of measures to prevent corruption in public procurement.[[9]](#footnote-9)

In general, according to the regulations on public procurement in Vietnam, there are some notable points as follows: The use of capital is governed by the law on state budget, purchases must be regualated in the approved cost estimates. The payment must ensure the conditions for the State budget revenue and expenditures [[10]](#footnote-10) and comply with the norms and standards controlled by the State Treasury. Puplic procurement is carried out via methos stipulated on Law on bidding. Procecuing parties must comply with obligations and ensure competition in bidding. Violations in public procurementa are comprehensively specified on law on bidding and law on anti-corruption and handled by administrative penalties [[11]](#footnote-11) and criminal penalties [[12]](#footnote-12)to gether with liability for damages . The mechanism for inspection and supervision is also set up relatively comprehensive with the participation of agencies at different levels, such as the Government inspection; specialized inspectors under the Ministry of Planning and Investment; and ministries, branches and localities at all levels and copporations. In addition, State audit (under the Law on Auditing 2015, amended and supplemented in 2019) also pays significant role in public procurement management.

In brief, Vietnam has developed a comprehensive legal framework on public procurement through various areas, however, corruption remains as significant issues, for example many corruption cases related to PP have been detected currently, for example, during the Covid 19, former director of Hanoi CDC was arrested due to increasing the prices of healthcare equipment. [[13]](#footnote-13) or former director of Bach Mai hospital was also arrested.[[14]](#footnote-14) Hence, the question remains as such what are the legal issues of public procurement that should be reformed to eliminate corruption as well as to promote good governance in Vietnam?

1. **Issues in practice of public procurement rules in Vietnam**

The strengthening of public procurement management through the promulgation of policy and implementation has created a positive change in public procurement activities in Vietnam. The legal system has been improved, especially the Vietnamese procurement legislation is compatible with most international commitments (EVFTA, the WTO (Public Procurement Agreement - GPA).

In its operations, the Government, ministries and competent authorities have tried to strengthen publicity, transparency and efficiency in public procurement through promulgating regulations guiding decisions. Thereby, the fact has recorded many positive results.

Using relatively flexible procurement methods contributes to improving efficiency in public procurement. Through concentrated procurement, the amount of money can be saved is about 15% of the total procurement value, equivalent to 30,200 billion VND / year. In particular, the reduction of spending on the apparatus and payroll in public procurement is huge. From having more than 100,000 public procurement agencies in wholecounty, it has now reduced to only 107, including 2 national-level procurement agencies, 42 agencies of ministries, and 63 agencies of provinces.[[15]](#footnote-15)

In some specific fields such as drug procurement, drug procurement for 2018 according to the Vietnam Social Insurance has results: The total winning value of 5 active ingredients is 946.8 billion VND, decreased by 11% compared to the plan (a reduction of 117 billion VND) and went down by 21.1% compared to the winning price average in 2017 (corresponding to the decreasing value of 252.92 billion VND). In period 2019-2020, the results showed that the total prices of selected products decreased 22.4% of the average winning bid price in 2018 in localities (equivalent to VND 2,903.95 billion).

Regarding Bidding via network, according to statistics on the National Bidding Network System, in 2019, bidding via network continues to grow with the number of bidding packages reaching more than 39,547 and the total value reaching more than 120,320 billion VND, the saving rate of 5.63% (2018 reached 7.15%) is higher than traditional bidding. Compared to 2018, the number of bidding packages via network in 2019 increased more than 2 times (39547/19,000 bidding packages), and the total value increased by nearly 3 times (120,321/46,840 billion VND).[[16]](#footnote-16)

However, the practice of public procurement also reveals some shortcoming bellowing:

1. ***The transparent in public precurement are not really guaranteed to be comprehensively implemented***

The Agreement on Government Procurement (GPA) defines that all member state must ensure open, fair and transparent as essential conditions of competition in government procurement. Transparency are one of the principal criteria in good governance, as well as a measure of value and effectiveness in bidding. Transparency in government operations has several dimensions such as reliable information on government’s fiscal policy intentions or forecast; detail data and information on government’s operation; clearly established rules for elected and appointed officials; freedom of a requirement for information; open public procurement and employment practices.[[17]](#footnote-17)Transparency in fiscal and information on operations of governments is considered as the most important condition for corruption control while transparency in official recruitment and regulation is an essential element for democracy. In general, transparency is mentioned about the knowing of what governments are doing, as well as the explanations for their operations.[[18]](#footnote-18)

 According to UNODC (United Nation Office on Drugs and Crime), transparency is a key of feature of sound procurement system and generally involves: (a) publicity of procurement opportunities and the disclosure of rules to be followed: (b) undertaking procurement processes publicly and visibly, according to prescribed rules and procedures that limit the discretion of officials; and (c) the provision of a system for monitoring and enforcing applicable rules. Importantly, transparency also facilitates the achievement of the other objectives of a procurement system (in particular, non-discrimination), and thus it must be addressed at all stages of the public procurement process.[[19]](#footnote-19)

Vietnamese bidding law has heightened the transparency recently. Article 89 (6) of the Bidding Law specifies 10 acts of inequity and transparency in bidding; Article 4 of Circular No.19/2015/TT-BKHDT defines the requirements for members participating in the bid evaluation team; and Circular No.11/2019/TT-BKHDT (chapter II) regulates about posting, providing bidding information; Article 13, 14 Law on anti coruption. These regulations are relatively clear and contribute to improve bidding transparancy. From 2020, Bidding information increasing has steadily increased over the years with an average of 15-20% per year[[20]](#footnote-20). Hhowever, there are some shortcomings in ensuring the transparency which mainly caused by non-compliance of bidding parties such as un-publish bidding information, fraud in bidding.

The violation usually committed by the procurcing entities are publishing bidding information. Bidding regulation indentified that bid solicitors will post their approved contractor selection plan on the National Bidding Network System within 07 working days. [[21]](#footnote-21)Nevertheless, information of many bidding package is only published right before the time of posting invitation to bid. Statistics show that, the Bidding Newspaper [[22]](#footnote-22) announces about 80-100 plans to select contractors but they do not disclose information. Similarly, many investors/bid solicitors delayed disclosing their contractor selection results for a month, or even do not disclose this information.[[23]](#footnote-23)

The other sign of lack of transparency is providing inaccurate information. To evade certain timing regulations or hide information, the information published can be changed of adjusted. For instance, providing the wrong address , changing the type of bidding package from bidding package of goods, or from consulting bidding packages into non-consulting bidding packages in order to shorten the time for selection of contractors. Such violent activities will prevent potential bidder’s participationm, which is considered as one of factors facilitating bid rigging (Thanh Chan, 2018)[[24]](#footnote-24). In the report in 2011 mentioned that “One of the participants thought that in a majority of published opportunities, the procuring entity had already decided which company would win the contract. Another participant cited cases where the procurement process began again if the “wrong” company won the bid”. [[25]](#footnote-25)

1. ***Unclear regulations on the legal responsibilities of the procuring entities reduce the efficiency of public procurement, fail to enhance the liability of entities and cause difficulty in solving violations***

Ministry of Planning and Investment is the lead government agency charged with administering public procurement rules in Viet Nam. Other ministries and ministerial-level agencies also have authority to regulate and oversee government procurement matters in their relevant field.[[26]](#footnote-26) Local People’s Committees have the authority to supervise and administer local government procurement activities[[27]](#footnote-27). Usually, the heads of the agencies, organizations using the property are allowed to decide on the purchase of small-value assets and assets purchased from Non-business expenditure source. For assets of great value including houses, land and cars, ministers, heads of ministerial-level agencies or chairmen of provincial-level People's Committees shall decide.

The Law on Bidding 2013 has set aside 8 articles from Article 73 to Article 80, which stipulate the responsibilities of related entities in the implementation of bidding, especially the duties of legal entities who play an important role as the competent person, the investor, the bid solicitor. However, these regulations are mainly aimed at identifying the tasks of the entities, the provisions on legal obligations and responsibilities when they do not ensure the performance of the tasks are still ambiguous, which can affect effective performance of the operation.

*Regarding the responsibility of the competent person*

Violation which is usually reflected in the fact can be mentioned as the responsibility of "competent person". The competent person in the bidding includes Government, the local government agencies, the ministries. Article 73 of the Law on Bidding 2013 stipulates the responsibilities of the authorized person in the direction of determining the task to be performed, specifically approving the contractor selection plan, canceling the bid, handling violations of bidding, and suspending the bidding, deciding on the selection of the bid solicitor for investor selection,… Meanwhile, the legal liability for any violations or behaviors affecting the investment efficiency has not been mentioned in the Law. Responsibilities of the authorized person in the Law on Bidding 2013 are specified to encapsulate the content that must "compensate the related parties for damage in accordance with the law if the damage is caused by their fault". However, throughout the research, it has not recorded the application of this regulation in practice.

*Regarding responsibilities of other entities in bidding activities*

In a bidding relationship, the bid solicitor or appraisal organization can be considered as the party that requires professional expertise and capacity to partake in organizing the bidding. However, in many cases, the capacity of the bid solicitor and appraisal organization is limited or influenced by external factors such as benefits. This may lead to limitations in implementation, such as the bidding documents that are overly understated or low in comparison to the requirements of the bidding package, the application of the bidding document template to draft the required documents is still not flexible, and has not been adjusted suitably.

1. ***Procurement methods raise several shortcomings in implementation affecting the efficiency of public procurement***

Public procurement was carried out into 2 methods: Concentrated procurement and regular procurement.[[28]](#footnote-28) Regular procurement method refers to a way in which organizations directly using assets are directly perform procurement. Concentrated procurement method refers an open bidding in order to select contractor through a concentrated procurement unit. The objective of concentrated procurement is to reduce expenses, time, and focal units of bidding organization, strengthen the professionalism in bidding, and contribute in increasing economic efficiency. Concentrated procurement shall apply in case where goods, services or works need to be procured with big quantity, similar categories at one or many agencies, organizations, enterprises or investment owners. Currently, government encourages concentrated procurement through Decision 179 / 2007/QD-TTg issued by Prime Minister. The procurement forms are quite diverse which includes open bidding’ competitive offering; appointment of contractors and direct procurement according to the provisions of the law on bidding.

The method of concentrated procurement is considered as a significant solution in enhancing the efficiency of public procurement. However, the actual implementation illustrates some limitations. Regarding the method to proceed, the concentrated procurement applies only one form, which is the unit with the concentrated procurement task is assigned to sign contracts directly with suppliers and deliver in-kind to the agency or unit that use. With this approach, the procurement process and procedures will be lengthened, inconsistent with the general process of budget estimate assignment, limiting the initiative of agencies and units directly using properties in implementation of contracting, receipt and acceptance of quality of properties, services, exercise of the right to warranty, product maintenance. Next, as to the procurement mechanism focusing on one term, that is, the locality synthesizes the procurement needs and sends it back to the Ministry of Finance for approval.

The Ministry of Finance will set the starting price, and localities will organize the bidding for the procurement based on the framework price set by the Ministry of Finance. Consequently, localities and other competent units may not have the sense of initiative in choosing product categories and origins. Moreover, wastefulness still occurs because the Ministry of Finance cannot control the actual needs of each locality, each administrative unit in public procurement. The data also shows that, despite actively implementing centralized procurement, the Ministry of Planning and Investment, currently has 20 agencies, localities, and corporations with low rate of saving in bidding (below 1.2 %). Notably, some units such as the Vietnam Academy of Science and Technology has a total package of 1619 valued at more than 3 trillion VND, but the saving rate is only 0.3%.

In term of bidding via network: bidding via network has been promoted, but there are still shortcomings which contribute to the reduction of the efficiency in this form. Statistics from the Ministry of Planning and Investment also demonstrate that the average rate of contractors participating in a bidding via network package tends to decrease over the years (in 2016, it reached 2.6 contractors / package; 2017 reached 2.5 contractors/ 1 bidding package; in 2018 it reached 2.47 contractors / 1 bidding package; in 2019, it reached 2.17 contractors / 1 bidding package; in the first 6 months of 2020, it reached 2.01 contractors / 1 bidding package). The saving rate of bidding via network has steadily decreased over the years. In 2016, bidding via network ‘s savings rate reached 9%; in 2017, this figure reached 8.2%; in 2018 - 7.15% and in 2019 - 5.63%.

The recent review of bidding via network on the National Bidding Network also showed that there were some phenomena of bidding via network , such as many bidding packages with only 1 contractor attending with a very low saving rate; intentionally converting the package into a mixed package or package consisting of parts (lots) to avoid bidding via network ; in the bidding documents unsuitable criteria that cause difficulties for contractors or orient to specific contractors.

In addition, the Ministry of Planning and Investment’s statistics show that the number of bidders registered on the National Bidding Network System and the number of contractors participating in bidding via network has increased over time, but the proportion of contractors participating in bidding via network in total Registered contractors are still very limited (this number only accounts for about 10%). In 2016, 984 contractors participated in bidding via network out of a total of 27,000 registered contractors (accounting for 3.6%). In 2017, there were 1,497 bidding via network contractors out of a total of 61,000 registered contractors (accounting for nearly 2.5%). In 2018, there were 2,678 bidding via network contractors out of 83,000 registered contractors (accounting for 3.2%). In 2019, there were 10,000 bidding via network contractors out of 102,000 registered contractors (accounting for nearly 10%).[[29]](#footnote-29)

As mentioned about, taking advantages from public procurement, CDC Hanoi purchased a number of automatic Realtime PCR systems - Covid-19 test to meet the demand for Covid-19 epidemic prevention and control testing. CDC Hanoi carried out package 15 in the form of regular contractor appointment. When setting up and determining the package price in the contractor selection plan, according to the method of taking 3 quotes of the goods supply case (Phuong Dong Company 7 billion, Viet Idea Company is 7.15 billion VND, and Thanh Cong Company is 7.25 billion VND). CDC Hanoi has taken the price of 7 billion Dong of Phuong Dong Company to estimate and hired Nhan Thanh Company to appraise the price without ensuring objectivity and transparency, contrary to the provisions of Clause 2, Article 11 of Circular 58/2016/TT-BTC. In fact, according to a subsequent investigation by the authorities, the price of the equipment system when imported to Vietnam is about 2 billion VND.

1. ***The capacity of individuals participating in bidding activities is not equal, affecting the effectiveness of the management and implementation of public procurement activities***

The Bidding Law stipulates that individuals participating in bidding must satisfy professional conditions with the criteria defined as having a bidding training certificate, or a bidding practice certificate. However, the annual reports of provinces show that many officials, managers, professionals and consultants in the bidding sector have not been trained and certified according to the Law. Additionally, the quality and organization of human resource training in bidding have not been strictly controlled.

Besides, the lack of expertise at the provincial and local levels. Provincial and local authorities have the right to issue internal rules governing procurement. However, the Departments of Planning and Investment generally have no specialized procurement unit that can control and support procurement activities in the province. As a result, there is no standardized method of conducting procurements at a provincial level. The procuring entities sometimes add steps to the open tendering procedures or make the simpler procurement methods. This lack of standardization causes confusion and inconsistent application of the national legal framework.

1. ***Regulations on inspection, supervision, and handling of violations in public procurement are increasingly perfect, however its effectiveness and deterrent are not high.***

The inspection and examination of bidding activities in the Bidding Law are briefly stipulated in Article 87 and other regulations on management of state budget and state properties. According to the rule, the inspection of bidding activities falls under the responsibility of the Planning and Investment agency, which demonstrates the reasonableness of management decentralization. However, this decentralization also raises some problems in practice. The current investment planning inspection branch is assigned to perform relatively broad inspections. The tasks are spread over a wide scope of activities while the human resource of the Inspectorate of the Ministry of Planning and Investment is limited and organized into 01 general department and 04 inspection rooms.[[30]](#footnote-30)Regardless of the quality of human resources, the size of the manpower arranged to undertake the inspection in such a wide scope of activities also raises the issue of specialty, efficiency, and coverage of operations.

In 2019, Ministry of Planning and Investment carried out 05 specialized inspection teams on bidding as planned in 5 provinces and organizations (Hue, Tay Ninh, Phu Yen and Ministry of Educantion and Training, Northern Power Corporation) and the Ministry organized 05 specialized inspection teams on the bidding work as planned and one ad hoc inspection team. In addition, ministries, ministerial-level agencies, localities and SOEs carry out inspection activities, but are quite limited: The Ministry of Public Security has conducted 04 specialized inspection teams on drug procurement and 23 inspection teams integrating bidding with finance and investment. With nearly 200.000 bidding package in 2019, the number of inspection team is needed to consider[[31]](#footnote-31).

It is even more remarkable, although there are many agencies involved in inspectationg public procurement, but “there is no independent government agency to receive or adjudicate complaints, which poses a fundamental risk to the objective and transparent resolution of disputes. They also felt that there is no enforcement mechanism. None of the participants had ever heard of a successful challenge to a procurement decision.”[[32]](#footnote-32)

As regards the remedy for violations: In general, the violations in bidding activities in accordance with the current law are relatively fully adjusted with high deterrence. Violations are dealt with by methods ranging from warning, fines, prohibition of participation in the field of bidding to criminal prosecution. If the infringement is caused by officials and civil servants, they must also bear such remedies according to the law. The Criminal Code 2015 came into force from January 1, 2018, in which Article 222 stipulates that violations of bidding will be subject to criminal prosecution.

1. ***Regulations on public procurement are scattered in many documents, some inconsistent contents cause difficulties in application.***

The legal framework of public procurement has been improved however there are overlapping laws, making procurement highly complicated and difficult to implement in practice. Public procurement is regulated in many legal documents issued by the Government and Ministries. Besides, bidding regulations in some specific fields are regulated and instructed separately. For instance, the procurement in the energy sector is governed by the Petroleum Law and implemended by SOEs (State-Owned-Enterprise); the procurement of medicine is guided in Circulars of the Ministry of Health.

In addition, the regulations on the management of state as a whole and that of public assets still overlap, making it demanding for agencies or units to enforce them. The Law on Management and Use of Public Property was enacted; however, because of the large scale and high specificity of public property in Vietnam, the Government agencies have to issue standards and norms in the usage of special-use public property (up to now only about 50% of agencies or units performs this activity). Obviously, this regulation has created the complexity and difficulty in management and implementation.

**3. Solutions toward good governance in Vietnam**

Public procurement is now recognized as one of the key elements of good governance.**.** The relationship between public procurement and good governance is gaining increasing attention. Effective procurement practices provide governments with a means of bringing about social, environmental and economic reform.

The definition of good governance varies according to an institution’s focus, interests and sphere of influence. The World Bank, the IMF and the EU, for example, focus on technical and administrative aspects of how to implement policy and manage public resources. Other definitions focus on governments’ engagement with industry and society. [[33]](#footnote-33) There is agreement about the following core principles of good governance according to the Organization for Economic Co-operation and Development (2006a), United Nations Economic and Social Commission for Asia and the Pacific (2009), and the World Bank (Kaufmann et al., 1999). These core principles of good governance—transparency, accountability, participation, rule of law, effectiveness, efficiency, predictability, fighting corruption, proportionality, consistency, and coherence—are also applicable to public procurement.

Public procurement is as a major risk area for corruption; hence, anti-corruption is one core objective of “good governance” in public procurement management. United Nations Office on Drugs and Crime (UNODC) and Anti-Corruption Academy (IACA) have guided fundamental principles of successful procurement planning needed to prevent corruption, as required under article 9 (1) UNCAC, and based on existing procurement regimes and good practices. These principles include transparency; competition; and Objective criteria in decision-making.[[34]](#footnote-34)

In Vietnam, toward to Good Governance and anti-corruption, the law and practice of implementing public procurement should be placed in the specific criteria and requirements of Good Governance principles.

Public procurement activities in Vietnam today show that there are still shortcomings in implementation efficiency, openness, transparency, law compliance and management capacity. These issues are interrelated and have an adverse impact on public procurement. To identify this fact, with the goal of Good Governance, solutions to improve the law and intervene in public procurement implementation in Vietnam should focus on the following contents: standardizing the procurement process to create a foundation for management agencies and enterprises to effectively implement, in which modes of concentrated procurement and electronic bidding are encouraged; ensuring information disclosure; building public procurement management database; promote the application of information technology; strengthen inspection and supervision on public procurement and improve accountability of management agencies.

For detail, in order to good governance on public procurement in Viet Nam, some solutions should be considered as below:

***First, improving the transparency in public procurement***

Transparency ensures stakeholders (policymaker, officials, competitors and members of the public) to monitor the procurement process. Transparency ensures that the rules are followed, and, conversely, to ensure that non-compliance can be both identified and addressed. Importantly, transparency also facilitates the achievement of the other objectives of a procurement system (in particular, non-discrimination), and thus it must be addressed at all stages of the public procurement process.[[35]](#footnote-35) To contribute to the transparency of public procurement activities, the disclosure of the implementation organization is very important. All agencies and organizations involved in the public procurement process must make public from the estimation stage, procurement plans, contractors (list of contractors registered to provide public goods and services to the Government, list of successful bidders, monitoring of contractors' performance, scoring contractors), procurement results (quantity, types, technical criteria, commodity prices)

The application of information technology in public procurement should be further strengthened in the following aspects: Improving the technical infrastructure of The National Bidding Network System, the national database of state properties ...; research on a plan to build an electronic bidding system for the financial agency to implement, ensuring efficiency as well as other countries that have done well (Malaysia, Mexico, Japan, the UK ...). This will create conditions for units and organizations to easily access information, and at the same time for state management agencies in bidding to improve their ability to monitor and statistically effectively work on bidding.

Building a public procurement management database based on integrating existing databases on public assets and e-bidding to connect from standards, norms of public properties, list of properties. Public properties are currently managing, planning procurement bidding and evaluating the effectiveness of the public procurement implementation process.

In the implementation, the units assigned to purchase property and goods, service procurement must publicize their plans, information, data, invitation to bid, bidding results. In addition, listing of agencies and units assigned to manage and use assets and goods, and their management and use according to the Government's regulations. Monitoring, supervision and application of external monitoring should be strengthened with independent observers and social organizations.

To enhance the responsibilities of heads of agencies and units in the use of public property, maximizing the efficiency and use functions, It is necessary to strengthen statistics, asset tracking through a centralized system to control the amount of existing state properties.

***Second, regulations and detailed instructions on the implementation of centralized procurement and bidding via network***

Concerning the mmethod of concentrated procurement, it is necessary to build a unified centralized procurement mechanism. The concentration here is not only understood as focusing on one place or one agency, but determined to concentrate on reviewing and synthesizing the demand for goods and services of the agency or organization to ensure rationality, thrift. On that basis, it is likely to select the suppliers of goods, services or works with the most reasonable quality and price. The way of procurement conducting is needed to adjust. Instead of letting the centralized procurement agency directly carry out the procurement and handover of assets to the agencies, it is necessary to assign more proactivity to the agency. Accordingly, the concentrated procurement agency only supports the selection of contractors and the framework agreement on prices of goods, services and works; The asset user unit actively manages the assigned procurement budget and directly signs the contract, receives the property and services and pays the price for the contractor.

Promoting online contractor selection method since this is considered an important solution in improving efficiency of bidding and public procurement activities.

In Vietnam, the Prime Minister issued Decision No. 1402 / QD-TTg dated July 13, 2016 of the Prime Minister approving the comprehensive plan and roadmap for online bidding for the 2016 - 2025 period. Therefore, it is necessary to actively implement the tasks and solutions set out to achieve the goals in Decision No. 1402 / QD-TTg such as: Building a full and advanced legal document system for online bidding in the direction of reforming, shortening administrative procedures, promoting the use of electronic documents and in line with international practices; Building, managing and operating the National Procurement Network in a sustainable manner, mobilizing resources from the private sector towards promoting internal resources, sharing available infrastructure and hiring information technology services.

The National Bidding Network System fully satisfies professional requirements and is easy to use; the application of advanced technologies ensures safety, security with continuous and stable operation; ability to integrate with other e-government systems; multi-language and multi-currency support suitable for international economic integration process and international commitments. Moreover, continuing to improve the online bidding process, standardize and model documents, files and forms in online bidding activities, Ensuring the conditions for infrastructure and facilities serving the online bidding process. Also, implementing programs to raise awareness for domestic and foreign communities on online bidding.

***Third, improve the capacity of human resource and raise awareness of legal compliance in public procurement***

Professional training is important to strengthen procurement official’s awareness of competition issues in public procurement. Efforts to fight bid rigging more effectively can be supported by collecting historical information on bidding behavior, by constantly monitoring bidding activities, and by performing analyses on bid data[[36]](#footnote-36).

In terms of building staff capacity, it is necessary to strengthen the training of professional public procurement officers, and the centralized public procurement agency needs to strengthen training to have a contingent of excellent experts with key ethical qualities, able to convince and realize the advantages of centralized public procurement. More specifically, it is necessary to consider the management of procurement training. Bidding training and retraining is specified in Decree 63/2015 / ND-CP, but there still has many problems in implementation. Therefore, in the upcoming time, it is essential to increase the efficiency of bidding training through strengthening the evaluation mechanism, testing the quality of training, and strongly handling related violations. Specific contents that need to be strictly implemented include strict supervision of the quality of lecturers - must be Lecturers named on the electronic Government procurement system; ensure the teaching time; archiving training courses, ... Bidding training institutions do not operate seriously, compete unfairly, do not comply with the law during the process of organizing bidding training will be deleted from the electronic Government procurement system and is not allowed to participate in the training and basic certification of bidding.

It is necessary to clearly stipulate responsibilities of related parties, especially the investor, the bid solicitor in the process of selecting contractors, such as: ensuring publicity and transparency of the entire process of issuing bidding documents, receipt of bids; information disclosure in bidding…. The proposed solution is to evidently define the legal responsibilities of the parties participating in bidding activities in the absence of guaranteeing the specified responsibilities and powers. There should be a requirement to ensure that competent persons are not allowed to interfere in the contractor selection process, leading to falsification of contractor selection results.

***Fourth, promote inspection, supervision and remedy for violation***

 Promotion inspection, supervision is considered as an important solution to increase the efficiency of the use of state capital. As for regulations on supervision, it is necessary to supplement regulations on the internal supervision mechanism of the units belonging to the competent persons with functions independent from the owner, investor, the bid solicitor. Through these supervision activities, it is possible to increase detection, support the implementation of the regular monitoring role of authority in the process of organizing the contractor selection and implementation of the contract, thereby promptly preventing and handling the unlawful behaviors, causing waste and loss of State capital and properties.

 In particular, there should be a mechanism of community participation in monitoring the contract performance of the investor and the contractor. Community supervision is a voluntary and organized activity of communities living in communes, wards or townships in order to monitor, inspect and evaluate the observance of top management regulations in relation to the investment and construction of the agency competent to decide on investment, the investor, the project management board, and the contractors during the project implementation.

Regarding the remedy for violations, it is necessary to add provisions on sanctions against violations to the Bidding Law. In order to rectify and enhance the effectiveness of bidding, it is necessary to supplement regulations on legal action against: (1) the person who is assigned the responsibility to tackle the violation but does not seriously implement his or her responsibility; (2) for the investor, the soliciting entity has breached; and (3) stipulating additional sanctions in addition to the main sanctions. Accordingly, the bidding regulations should be considered and studied separately the sanctions based on the violations of the law.

 ***Fifth,*** ***ensuring consistency in the legal framework on bidding***. Continue to improve the legal framework to make public procurement management more effective and transparent in the direction of unifying the system of legal documents on bidding towards synchronous enforcement, avoiding overlaps and contradictions in the management of public procurement expenditures, enhancing the effectiveness of law application.

It is necessary to provide detailed guidance on the regulation of public budgets and properties as follow:

*Regarding state budget*: It is necessary to improve mechanisms and policies on building and assigning budget estimates in public procurement. Annually, the budget estimate units that directly use the budget in order to propose the needs of goods procurement to serve the operation of the agencies and units together with making annual budget estimates to report to the higher budget estimate unit according to the above regulations, in which specific proposal types and quantity of goods are on the list of concentrated procurement. Proposal for purchase must be made based on the property use regimes, standards and norms according to regulations, actual needs of affiliated agencies and units for the use of assets and goods. Promoting the process of moving from resource-based budgeting to targeted and outcome-based budget support, realizing comprehensive autonomy for budgeting units once received legitimate financial sources.

*Regarding public properties*: reducing in-kind procurement and equipping to switch to budget allocation and asset rental mechanism. Current public property management policies in Vietnam still have subsidy provisions, in-kind in the procurement of equipment, management, use, liquidation, transfer ... that have not yet promoted autonomy of units directly managing and using public properties, affecting the efficiency of public property management and increasing the state budget burden for asset procurement. Therefore, the Law on Management and Use of public property should supplement regulations on the form of arrangement and using public properties such as budget allocation, property lease. The lease, contracting and procurement of public properties must comply with the standards, norms and be under the assigned budget estimates.

**Conclusion**

One of the most corruption prone government activities is public procurement. The reasons for this include "the volume of transactions and the financial interests at stake" as well as "the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders". OECD (2014) highlights that 57% of all foreign bribery cases are due to procurement corruption [[37]](#footnote-37). Public procurement in Vietnam have recently improved through centralized shopping, promoting bidding via network, and information disclosure. However, there are shortcomings in ensuring transparency, legal compliance of procuring entities,…, which affects the implementation of Good Governance. Consequently, many forms of corruption in public procurement in Vietnam are revealed such as embezzlement and abuse of functions. Corruption on public procurement carries negative inpacts on economic and social such as wasted resources, inefficiency and missed opportunities. Therefore, reforming legal framework on public procurement, strengthening bidding via network, appling technology and techniques to bidding and raise awareness of legal compliance of procuring entities are solutions which should be considered in order to effective public procurement

**Appendix 1. The number and valua of bidding package implemented in 2020[[38]](#footnote-38)**

|  |  |  |
| --- | --- | --- |
|  | **The number of bidding packages implemented** | **Total of bidding packages value implemented** |
| Years | Total number of bidding packages | Number Bidding packages can be applied Bidding via Network | Bidding via Network | Rate (%) | Total bidding package value | Total bidding package value can be applied Bidding via Network | Bidding via Network | Rate (%) |
| 9/2020 | 83.296 | 79.949 | 67.875 | 84,9 | 599.231,6 | 385.470,0 | 200.316,8 | 52,0 |
| 8/2020 | 71.427 | 68.487 | 57.496 | 84,0 | 502.723,8 | 328.847,0 | 168.536,0 | 51,3 |
| 7/2020 | 60.404 | 57.812 | 47.839 | 82,7 | 437.951,8 | 274.913,3 | 139.087,1 | 50,6 |
| 6/2020 | 49.234 | 46.993 | 38.104 | 81,1 | 367.210,3 | 220.836,7 | 110.310,0 | 50,0 |
| 5/2020 | Top of Form 39,309Bottom of Form | Top of Form 37,398 | Top of Form 29,434Bottom of Form | 78.7 | Top of Form 280,250Bottom of Form | Top of Form 177,347 Bottom of Form | Top of Form 86,771 Bottom of Form | 48.9 |
| 6/2020 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| 3/2020 | 22,898 | 21,618 | 14,894 | 68,9 | 192,898.7 | 103,695.1 | 44,371.91 | 42,8 |
| 2/2020 | 14,303 | 13,490 | 7,518 | 55,7 | 119,960.3 | 68,382.8 | 25,071.81 | 36,7 |
| 1/2020 | 8,059 | 7,703 | 2,641 | 34.3 | 70,416.5 | 43,081.2 | 11,397.80 | 26,5 |
| 2019 | 123,418 | 115,615 | 39,527 | 34.2 | 855,727.8 | 579,060.7 | 120,321.74 | 20,8 |

**Appendix 2.** List of ministries, localities, corporations have not implemented the Bidding via Network in 2020

(*Attached to Official Dispatch No 4276/NKHDT-QLDT dated 02/7/2020 of Ministry of Planning and Investment)*

|  |  |  |
| --- | --- | --- |
| **Order**  | **Công ty/Đơn vị** | **Entity** |
| 1 | Ban Quản lý lăng Chủ tịch Hồ Chí Minh | Ho Chi Minh Mausoleum Management Board |
| 2 | Đài tiếng nói Việt Nam | Radio The Voice of Vietnam (VOV) |
| 3 | Ngân hàng phát triển Việt Nam | Vietnam Development Bank (GDP) |
| 4 | Tranh tra Chính phủ | Government Inspectorate (GIV) |
| 5 | Toà án nhân dân tối cao | The Supreme People’s Court |
| 6 | Tổng công ty Cà phê Việt Nam | Vietnam National Coffee Corporation (Vinacafe) |
| 7 | Tổng công ty Công nghiệp tầu thuỷ Việt Nam | Vietnam Shipbuilding Industry Corporation |
| 8 | Tổng công ty Giấy Việt Nam | Vietnam Paper Corporation (Vinapaco) |
| 9 | Tổng công ty Lương thực miền Bắc | Vietnam Northern Food Corporation (Vina Food) |

Appendix 3. **List of ministries, localities, corporations have a high rate of savings in bidding**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Order | Entity | Total number of bidding packages | Total bidding packages value | Total winning bid price (million VND) | Different level |
| Value(VNĐ) | Rate Saving(%) |
| 1 | Vietnam Posts and Telecommunications Group | 6.052 | 8.647.509 | 7.376.830 | 1.270.679 | 14,69 |
| 2 | Dong Nai Province | 4.364 | 12.555.964 | 10.782.982 | 1.772.892 | 14,12 |
| 3 | Vietnam Oil and Gas Group (PVN) | 717 | 19.926.940 | 17.215.206 | 2.711.734 | 13,61 |
| 4 | Viettel Corporation | 546 | 8.257.962 | 7.226.078 | 1.031.884 | 12,50 |
| 5 | The Vietnam National Textile and Garment Group (Vinatex) | 117 | 385.255 | 337.682 | 47.573 | 12,35 |
| 6 | Nghe An province | 1.822 | 16.243.540 | 14.379.753 | 1.863.787 | 11,47 |
| 7 | Vietnam Aviation Corporation | 51 | 306.634 | 271.483 | 35.151 | 11,46 |
| 8 | Tra Vinh province | 1.530 | 2.351.791 | 2.088.482 | 263.309 | 11,20 |
| 9 | Vietnam electricity  | 13.275 | 54.470.828 | 48.746.151 | 5.724.677 | 10,51 |
| 10 | Tay Ninh province | 3.216 | 6.861.044 | 6.162.225 | 698.819 | 10,19 |
| 11 | Ca Mau province | 5.102 | 5.241.636 | 4.716.708 | 524.928 | 10,01 |
| 12 | Ha Nam Province | 5.558 | 6.214.423 | 5.625.386 | 589.037 | 9,48 |
| 13 | Ministry of Information and Communications (MIC) | 2.543 | 1.755.770 | 1.590.712 | 165.048 | 9,40 |
| 14 | Da Nang province | 2.297 | 10.431.649 | 9.502.684 | 928.965 | 8,91 |
| 15 | Bac Giang province | 4.166 | 8.747.423 | 8.007.369 | 740.054 | 8,46 |
| 16 | Vietnam Paper Corporation (Vinapaco) | 11 | 21.449 | 19.542 | 1.807 | 8,42 |
| 17 | Vietnam Maritime Corporation (VIMC) | 116 | 285.390 | 264.403 | 20.987 | 7,35 |
| 18 | Vietnam Southern Food Corporation – Joint Stock Company (vinafood II) | 34 | 6.697 | 6.207 | 490 | 7,32 |
| 19 | Ha Giang province | 2.021 | 3.246.151 | 3.035.330 | 210.821 | 6,49 |
| 20 | Can Tho province | 918 | 2405288 | 2251667 | 153621 | 6,39 |

Appendix 4. **List of ministries, localities, corporations have a low rate of savings in bidding**

(*Attached to Official Dispatch No 4276/NKHDT-QLDT dated 02/7/2020 of Ministry of Planning and Investment)*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Order | Unit | Total number of bidding packages | Total bidding packages value | Total winning bid price (million VND) | Different level |
| Value(VNĐ) | Rate saving (%) |
| 1 | Viet Nam national coffee corporation (VINACAFE) | 41 | 8.452 | 8.442 | 10 | 0,12 |
| 2 | Bộ Khoa học và Công nghệ | 460 | 1.478.364 | 1.474.065 | 4.299 | 0,29 |
| 3 | Department of Science and Technology (DOST) | 1.619 | 3.026.433 | 3.017.239 | 9.194 | 0,30 |
| 4 | Committee for Ethnic Affairs | 158 | 52.539 | 52.375 | 165 | 0,31 |
| 5 | State Audit | 154 | 644.623 | 642.042 | 2.590 | 0,40 |
| 6 | Binh Phuoc Province | 1.890 | 5.661.905 | 5.635.708 | 26.197 | 0,46 |
| 7 | Radio The Voice of Vietnam (VOV) | 303 | 349.376 | 347.643 | 1.733 | 0,50 |
| 8 | Yen Bai province | 4.139 | 3.159.767 | 3.140.937 | 18.830 | 0,60 |
| 9 | Thai Binh province | 706 | 2.644.577 | 2.628.239 | 16.338 | 0,62 |
| 10 | Vietnam Academy of Social Sciences | 304 | 313.526 | 311.524 | 2.002 | 0,64 |
| 11 | Ministry of Labor, War Invalids, & Social Welfare | 250 | 357.178 | 354.312 | 2.866 | 0,80 |
| 12 | The Supreme People’s Court | 38 | 850.741 | 843.679 | 7.061 | 0,83 |
| 13 | Ministry of Industry & Trade | 708 | 845.681 | 838.434 | 7.247 | 0,86 |
| 14 | Kon Tum province | 2.284 | 3.088.819 | 3.061.906 | 26.913 | 087 |
| 15 | Ninh Binh province | 1.473 | 1.979.834 | 1.962.534 | 17.300 | 0,87 |
| 16 | Lai Chau province | 2.081 | 2.170.977 | 2.151.887 | 19.090 | 0,88 |
| 17 | Phu Tho province | 3.471 | 3.591.382 | 3.558.625 | 32.757 | 0,91 |
| 18 | Gia Lai province | 2.346 | 1.700.112 | 1.682.267 | 17.845 | 1,05 |
| 19 | Thanh Hoa province | 5.445 | 7.031.476 | 6.952.266 | 79.210 | 1,13 |
| 20 | Quang Ngai province | 6.716 | 8.313.437 | 8.219.621 | 93.816 | 1,13 |

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8. Law on Competition was promulgated on 3 December 2004 to establish a legal framework for a more effective competitive economy as one of the requirements to access to WTO. In 2018 National Assembly has enacted Law on Competition with several new regulations. [↑](#footnote-ref-8)
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10. Law on State Budge, Article 12, Chapter 5.

2. State budget expenditures are only permitted if they are included in a given budget estimate except for the case in Article 51 of this Law, have been decided by the head of the budget-using unit, investor, or an authorized person, and satisfy all conditions in each of the following cases: a) Expenditure on investment in fundamental construction must satisfy conditions prescribed by regulations of law on public investment and construction;

b) Recurrent expenditures must comply with the standards, limits on budget expenditures imposed by competent authorities; in case an organization or unit is permitted by a competent authority to exercise financial autonomy, it shall comply with its regulations on spending which conform to its budget estimate.

c) Expenditure on national reserve must satisfy conditions prescribed by regulations of national reserve;

d) With regard to procurements of consulting services, goods, construction works under programs/projects that need bidding to select contractors providing, bidding must be organized in accordance with regulations of law on bidding;

 dd) Expenditures on tasks given or ordered by the State must comply with regulations of law on prices or fees and charges promulgated by competent authorities. [↑](#footnote-ref-10)
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