INTERNATIONAL JOURNAL OF PUBLIC PROCUREMENT

AN OFFICIAL JOURNAL OF IPPC

VOLUME 1
ISSUE 2
WINTER 2025

International Journal of Public Procurement

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CODEN: IJoPP 1 (2), 1-144 (20251231)
Print ISSN: 1949-2332
Online ISSN: 1949-2340

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Volume 1, Issue 2, Winter 2025

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EDITORIAL: NAVIGATING THE MULTI-DIMENSIONAL TERRAIN OF PUBLIC PROCUREMENT—INSIGHTS FROM IPPC9 AND BEYOND

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The second issue of the International Journal of Public Procurement (IJoPP) arrives at a pivotal moment in the evolution of public procurement as a field of scholarly inquiry and strategic governance. This edition is largely anchored in the rich intellectual exchanges of the 9th International Public Procurement Conference (IPPC9), presenting a curated selection of research that encapsulates the conference's spirit of rigorous, comparative, and context-sensitive analysis. While the articles included herein represent a significant cross-section of the work presented at IPPC9, this editorial originates from a recognition that the conference's discourse on one of its most salient themes—Sustainable Public Procurement (SPP)—deserves a dedicated and expansive synthesis. Several profound contributions on SPP, some based on already published work, were presented at IPPC9 but do not appear as full articles in this volume. Out of respect for the authors' publication choices, yet driven by a conviction that the collective insights from these presentations are indispensable for mapping the field's trajectory, this issue opens with a systematic literature review that extends beyond the pages of this journal. It integrates key IPPC9 presentations on SPP with the broader academic corpus, aiming to trace the paradigm's journey from a peripheral tool to a central governance strategy. This endeavour is not merely retrospective; it is preparatory, laying a foundation for future dialogues, including those anticipated at IPPC10, where the sustainability imperative will undoubtedly remain at the fore.

The articles in this issue, viewed collectively, paint a compelling portrait of public procurement's complex and multifaceted role in the 21st century. They move beyond a monolithic view of procurement as a purely administrative or economic function, revealing it instead as a lens through which fundamental tensions in governance are refracted: between resilience and routine, integrity and efficiency, legal certainty and adaptive flexibility, national ideology and global norms.

The opening review by **Cao *et al.* (2025)** establishes the macro framework, arguing persuasively for SPP's ascendance to the core of state strategy. It outlines a tripartite analytical scaffold—connecting macro-level institutional pressures, meso-level market ecosystems, and micro-level organizational capabilities—that proves useful for interpreting the more focused studies that follow. This framework finds immediate resonance in the geographically diverse case studies presented. **Tsygankov and Maskaev's (2025)** incisive analysis of Russia demonstrates how the macro-level of national ideology—specifically economic nationalism and dirigisme—can

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powerfully constrain the adoption of horizontal sustainability policies, highlighting that policy diffusion is not a mechanical process but one filtered through dominant political narratives. Conversely, **Alrehaili's (2025)** evaluation of Saudi Arabia's legal reforms shows a strategic alignment with the macro normative framework of the UNCAC, prioritizing the foundational governance (`G`) pillar of integrity as a prerequisite for broader sustainable development. These two studies offer a masterclass in comparative institutional analysis, showing how divergent national priorities shape the procurement landscape.

The theme of procurement as a tool for resilience and crisis management is powerfully explored by **Sakane (2025)** and **Zhang (2025)**. **Sakane's (2025)** study of post-disaster reconstruction in Japan shifts the focus to extraordinary circumstances, revealing how sustainable development principles must be pragmatically integrated with urgent recovery needs. It underscores the critical role of human and organizational capacity (a micro-level factor) and strategic partnerships (PPP) in implementing procurement under duress. **Zhang's (2025)** examination of China's emergency procurement during COVID-19 tackles a similar context of crisis but reveals a unique, dichotomous legal framework and the unforeseen centrality of state-led production capacity management. Together, they expand our understanding of procurement's role beyond steady-state governance into the realm of societal resilience, where rules are stress-tested and adapted.

A robust thread running through this issue is the intricate interplay between law, contracts, and practice. **Wei (2025)** delves into the heart of long-term PPP contracts, exploring the delicate doctrine of imprévision and its fraught application within China's administrative law system. Her work highlights the inherent tension in PPPs between the need for contractual stability and the necessity for adaptation to unforeseen change—a tension that sits at the intersection of macro legal frameworks and micro contractual governance. This focus on legal complexity is complemented by **Zou *et al.* (2025)**, who dissect the practical realities of dispute resolution in Chinese government procurement. Their analysis of judicial precedents uncovers the friction points in the system, from ambiguous contract nature to legislative conflicts, reminding us that even the most well-intentioned macro policies can falter during micro-level enforcement and adjudication.

What emerges from this collection is not a singular narrative, but a rich tapestry of challenges and innovations. The studies on Russia and Saudi Arabia illustrate that the path to "strategic" procurement is not uniform; it can be one of ideological prioritization or foundational capacity-building. The research on Japan and China demonstrates that procurement systems are dynamically tested by crises, forcing innovations in procedure and revealing latent state capabilities. The legal examinations from China underscore that the translation of policy into practice is mediated by complex legal institutions and interpretative communities.

As a field, we are moving past simple dichotomies of traditional versus sustainable, or efficient versus equitable procurement. The scholarship in this issue pushes us toward a more nuanced, context-embedded, and multi-level understanding. It confirms that public procurement is indeed a central governance strategy, but its form and

function are inextricably linked to the political, ideological, legal, and institutional soil in which it is planted.

Our task as a scholarly community, which platforms like IJoPP and conferences like IPPC are committed to supporting, is to continue cultivating this comparative and integrative perspective. We must further illuminate the causal mechanisms linking policy design to outcomes, bridge the persistent gaps between the Global North and South in our research agendas, and deepen our exploration of emerging frontiers like digital transformation and the SPP-ESG nexus. The articles in this second issue of IJoPP provide both a substantive contribution to these goals and a compelling invitation to continue the conversation. We look forward to the continued exploration of these vital themes at IPPC10 and beyond.

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SYMPOSIUM ON INTERNATIONAL PUBLIC PROCUREMENT: PART II
Editors: Fuguo CAO, Karem Sayed Aboelazm and Khi V. Thai

SUSTAINABLE PUBLIC PROCUREMENT AS A CENTRAL GOVERNANCE STRATEGY -- A SYSTEMATIC LITERATURE REVIEW ON IPPC9 PRESENTATIONS AND BEYOND

Fuguo Cao, Yusen Yang, Shaobo Guo*

Suggested citation: Cao, F., Yang, Y., & Guo, S. (2025). Sustainable Public Procurement as A Central Governance Strategy- A systematic Literature Review on IPPC9 Presentations and Beyond. International Journal of Public Procurement, 1(2), 4-25.

Abstract:

This systematic literature review, anchored in presentations from the 9th International Public Procurement Conference (IPPC9) and extended to the broader scholarly landscape, aims to synthesize the evolution of Sustainable Public Procurement (SPP) research and assess its ascendance as a central governance strategy. It addresses key questions regarding SPP's conceptual foundations, policy diffusion mechanisms, implementation barriers, and impact assessment, while identifying critical research gaps such as geographical imbalance (over-focus on the Global North), methodological limitations in causal inference, and underexplored intersections like the SPP-ESG nexus. Employing a comprehensive review methodology, the study analyses a wide array of academic works, including empirical case studies and theoretical analyses. Its primary scholarly contribution lies in constructing an integrated macro-meso-micro framework that connects institutional pressures, market ecosystems, and organizational capabilities to explain SPP outcomes. The review concludes that SPP is transitioning from a peripheral policy tool to a core strategic function for states, essential for operationalizing sustainable development commitments. The policy implication is a call for moving from voluntary guidelines to mandatory, well-designed frameworks that enhance accountability, capacity, and multi-stakeholder collaboration to fully harness public procurement's transformative potential.

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Keywords
Sustainable Public Procurement (SPP); Governance Strategy; Literature Review; Policy Implementation; ESG (Environmental, Social, and Governance)

1. Introduction

The global pursuit of sustainable development, as articulated in the United Nations Sustainable Development Goals (SDGs) and the Paris Agreement, has catalysed a fundamental re-evaluation of public governance tools. Within this re-evaluation, public procurement has emerged not merely as a transactional mechanism for acquiring goods and services, but as a strategic lever of immense transformative potential. Accounting for an estimated 10–20% of Gross Domestic Product (GDP) in most countries, and exceeding 30% in some developing economies, public procurement represents a formidable fiscal force (OECD, 2019). This scale affords governments the unique capacity to shape markets, drive innovation, and steer societal progress towards environmental stewardship, social equity, and economic resilience. Consequently, Sustainable Public Procurement (SPP) – the integration of environmental, social, and economic criteria into public purchasing decisions – has progressively moved from the periphery to the very centre of policy discourse and academic inquiry.

The 9th International Public Procurement Conference (IPPC9) served as a critical juncture, reflecting and accelerating this centripetal movement. A significant cluster of presentations delivered at IPPC9 explicitly addressed SPP, offering nuanced analyses of its conceptual underpinnings, policy diffusion, implementation mechanisms, barriers, and performance outcomes across diverse geopolitical contexts. This review, while anchored in the scholarly contributions of IPPC9, aims to synthesise and extend the discourse by conducting a systematic review of the broader SPP literature. It is intended to meticulously charts the evolution of SPP from a fragmented concept to an institutionalised policy paradigm.

The ascendancy of SPP is neither accidental nor linear. It is a response to the compounding crises of climate change, resource depletion, and social inequality, coupled with a growing recognition of the state's role as a market-shaper. However, the trajectory of SPP is marked by persistent tensions: between the imperative for standardised global frameworks and the necessity of local adaptation; between the pursuit of "value for money" narrowly defined as lowest price and its broader redefinition as "value for society" across the triple bottom line; and between the technocratic optimism of policy design and the complex realities of policy implementation.

This review posits that SPP is undergoing a critical transition from being an adjunct policy tool to becoming a central strategic governance function. This transition is evident in the maturation of its theoretical foundations, the sophistication of its evaluation methodologies, and its explicit linkage to national and supranational strategic agendas like the European Green Deal and China's "Dual Carbon" goals. Yet, significant knowledge gaps and implementation challenges remain. By integrating insights from IPPC9 presentations with a wider body of literature, this editorial seeks to: (1) map the current intellectual landscape of SPP research; (2) identify core findings,

debates, and methodological advances; (3) critically analyse persistent barriers and divergent outcomes across different contexts; and (4) propose a forward-looking agenda for research, policy, and practice.

2. Conceptual Evolution and Theoretical Foundations of SPP

The intellectual journey of SPP begins with a clear demarcation from its predecessors. As Cao *et al.* (2025c) elaborate, SPP constitutes a paradigmatic shift beyond traditional procurement (focused on compliance and cost-minimisation) and even Green Public Procurement (GPP), which primarily incorporates environmental criteria. SPP is distinguished by its explicit commitment to the "triple bottom line" – simultaneously advancing environmental integrity, social justice, and economic effectiveness (Elkington, 1997). This is not a simple additive process but a foundational reconstitution of procurement's objectives, analytical boundaries, and decision-making pathways.

The core conceptual innovation of SPP lies in its adoption of a life-cycle and value-chain perspective. It moves beyond evaluating the upfront purchase price to consider the Total Cost of Ownership (TCO) or Life Cycle Cost (LCC), encompassing production, use, maintenance, and end-of-life disposal. Similarly, it expands the analytical boundary from the immediate government-supplier transaction to encompass the wider socio-economic and environmental impacts along the entire supply chain (Brammer & Walker, 2011). These reframing transforms procurement from a point-in-time market transaction into a strategic intervention in complex socio-technical systems.

Operationalising this holistic vision requires robust methodological scaffolding. Life Cycle Assessment (LCA) provides the scientific basis for quantifying environmental impacts across categories like carbon emissions, energy use, and resource depletion (Guinée et al., 2011). Complementarily, Social Life Cycle Assessment (S-LCA) attempts to measure social and socio-economic impacts on stakeholders throughout the life cycle (UNEP/SETAC, 2009). Multi-Criteria Decision Analysis (MCDA) methods, such as the Analytic Hierarchy Process (AHP) or Technique for Order of Preference by Similarity to Ideal Solution (TOPSIS), offer structured frameworks for making transparent trade-offs between competing environmental, social, and economic criteria (Pohekar & Ramachandran, 2004). The challenge, as noted in the literature, is that while LCA methodologies are relatively mature, S-LCA and integrated triple-bottom-line assessment frameworks remain underdeveloped, leading to an often-skewed emphasis on environmental metrics.

To explain the varied adoption and effectiveness of SPP across different jurisdictions, scholars have drawn upon a rich tapestry of theoretical lenses, creating a multi-layered explanatory framework:

Institutional Theory: Institutional theory is central to explaining why and how organizations adopt SPP, emphasizing the role of external pressures and legitimacy-seeking behavior. Drawing on DiMaggio and Powell's (1983) typology of coercive, mimetic, and normative isomorphism, scholars argue that SPP diffusion is often driven less by efficiency considerations than by the need to conform to regulatory mandates, peer practices, and professional norms. For example, EU procurement directives exert

coercive pressure on member states to integrate sustainability criteria, while international standards such as ISO 20400 generate normative expectations regarding responsible procurement practices (Testa et al., 2012). Mimetic processes further explain why late adopters emulate perceived leaders, even in the absence of clear performance evidence. Institutional theory thus accounts for widespread policy convergence, while also helping to explain symbolic adoption and implementation gaps.

Stakeholder Theory: Stakeholder theory shifts attention from formal rules to the constellation of actors involved in SPP, including government agencies, suppliers, NGOs, citizens, and oversight bodies, each with distinct interests and power resources. From this perspective, SPP implementation is understood as a process of balancing, negotiating, and aligning competing stakeholder expectations rather than simply enforcing compliance. Effective SPP depends on the ability of procuring entities to engage suppliers, manage civil society demands, and respond to political and public scrutiny (Preuss, 2009). This theory highlights the relational and interactive nature of procurement and explains why stakeholder resistance, limited supplier engagement, or weak civil society pressure can undermine sustainability objectives even under supportive legal frameworks.

Transaction Cost Economics (TCE): Transaction Cost Economics provides insight into the governance challenges introduced by sustainability-oriented procurement. Incorporating environmental and social criteria increases information asymmetry, measurement difficulties, and contractual complexity, particularly when sustainability performance is hard to observe or verify. From a TCE perspective, SPP instruments such as eco-labels, third-party certifications, standardized sustainability criteria, and long-term framework agreements can be interpreted as institutional responses designed to reduce transaction costs and mitigate opportunism (Williamson, 1985). This lens helps explain both resistance to SPP—when transaction costs are perceived as excessive—and the preference for standardized, low-risk sustainability tools in practice.

Resource-Based View (RBV) and Dynamic Capabilities:RBV and dynamic capabilities theories focus on the internal capacities of procuring organizations and help explain heterogeneity in SPP performance across otherwise similar institutional contexts. Successful SPP implementation depends not only on external mandates but also on organizational resources such as specialized knowledge, skilled personnel, data management systems, and learning mechanisms. Dynamic capabilities, in particular, emphasize the ability of organizations to adapt procurement routines, integrate new sustainability criteria, and respond to evolving policy and market conditions over time (Barney, 1991; Teece et al., 1997). These theories are especially useful for understanding why some organizations move beyond symbolic compliance and develop more sophisticated, innovative procurement practices.

Public Value Theory: Public value theory elevates the analysis of SPP from technical efficiency to a broader normative and political framework. It argues that public procurement should be assessed based on its contribution to collectively defined public value, rather than solely on cost minimization or procedural compliance. From this perspective, SPP is a mechanism through which governments actively shape societal outcomes, such as environmental protection, social inclusion, and ethical

governance. Public value theory thus provides a normative justification for sustainability trade-offs in procurement and frames SPP as a process of public value co-creation involving multiple stakeholders (Moore, 1995).

Policy Diffusion and Transfer Theories: Policy diffusion and transfer theories explain how SPP ideas, models, and practices travel across jurisdictions through mechanisms such as coercion, voluntary learning, lesson-drawing, and competitive emulation (Dolowitz & Marsh, 2000). These theories highlight the role of international organizations, professional networks, conferences, and academic communities in spreading procurement innovations. For instance, Sakane's (2025) analysis of post-disaster procurement in Japan illustrates how context-specific SPP practices can generate transferable lessons that diffuse internationally through scholarly and practitioner channels. This perspective helps explain both global convergence around SPP principles and the significant variation in how these principles are localized and implemented.

The synthesis of these theories, as suggested by Cao et al. (2025a), provides a powerful integrative framework. It suggests that SPP outcomes are a function of the alignment (or misalignment) between macro-level institutional pressures and incentives, meso-level market structures and intermediary ecosystems, and micro-level organisational capacities and motivations. A robust policy (macro) will fail if the market cannot supply sustainable products or if procurement officers lack the skills to evaluate them (micro).

3. The IPPC9 Contribution: Deepening the SPP Discourse

The IPPC9 conference served as a vibrant snapshot of contemporary Sustainable Public Procurement (SPP) research (Cao et al., 2025c), reflecting both the growing maturity and the increasing diversification of the field. The conference brought together empirical and conceptual contributions from a wide range of national and institutional contexts, employing diverse theoretical perspectives and methodological approaches. Collectively, the presented papers not only documented the evolving practices of SPP, but also critically interrogated its underlying assumptions, implementation challenges, and performance implications. In doing so, they enriched the multi-faceted dimensions of SPP outlined above and advanced the discourse in several key areas:

3.1 Contextual Specificity and Comparative Analysis

A recurring theme across the IPPC9 contributions was the decisive role of context in shaping the design, implementation, and outcomes of Sustainable Public Procurement, challenging one-size-fits-all policy prescriptions. Sakane's (2025) study offers a particularly compelling illustration of SPP operating under conditions of extreme uncertainty and urgency. Focusing on post–Great East Japan Earthquake reconstruction, the study demonstrates how sustainability objectives had to be reconciled with immediate recovery imperatives, such as speed, scale, and social stability.

Sakane's analysis highlights the strategic importance of Public–Private Partnerships (PPPs) in mobilizing resources and coordinating large-scale reconstruction

efforts, while also drawing attention to often-overlooked administrative dimensions. In particular, the study identifies human resource capacity—enhanced through fixed-term employment arrangements and inter-governmental personnel dispatch—as a critical enabling factor for sustaining procurement functions under crisis conditions. By explicitly linking macro-level national recovery strategies with micro-level local administrative capabilities, this work underscores the need for adaptive and context-sensitive interpretations of SPP principles. It also extends the SPP literature by situating procurement within a resilience-oriented governance framework, showing how sustainability and crisis response can be mutually reinforcing rather than inherently conflicting.

3.2 Organisational Transformation and Stakeholder Dynamics

At the organisational and relational levels, Samuels' (2025) systematic review provides a comprehensive synthesis of how SPP reshapes both internal practices and external relationships. The review consolidates evidence that SPP adoption is associated with tangible changes in organisational routines, including the integration of environmental and ethical criteria into procurement workflows, supplier evaluation, and contract management. These changes suggest that SPP functions not merely as a compliance requirement but as a catalyst for organisational transformation.

More significantly, Samuels emphasises the role of SPP in reconfiguring stakeholder relationships. By embedding transparency, accountability, and sustainability criteria into procurement processes, SPP alters the interaction between public buyers, suppliers, civil society actors, and citizens. This relational shift strengthens trust and legitimacy, aligning procurement practices more closely with societal expectations. The review thus bridges stakeholder theory and public value theory, illustrating how procedural reforms in procurement can generate broader public value by reshaping the relational fabric between the state and society, rather than solely improving transactional efficiency.

3.3 Policy Instrumentation and Impact Measurement

Methodological innovation and impact assessment constituted another key strand of IPPC9 contributions. Sadiq's (2025) predictive analysis represents a notable advance in this regard. By integrating the Theory of Planned Behaviour with Partial Least Squares Structural Equation Modelling (PLS-SEM), the study moves beyond descriptive or correlational approaches to model predictive relationships between procurement policy design and environmental performance outcomes.

The findings suggest that well-designed GPP frameworks can predict improvements in environmental cost efficiency, sustainable consumption patterns, and production performance, particularly within the ambitious regulatory environment of the EU Green Deal. This contribution is significant because it responds directly to long-standing critiques of the SPP literature regarding weak causal inference and limited quantitative rigor. By demonstrating how behavioral and institutional variables interact to influence procurement outcomes, Sadiq's work aligns with a broader shift in the field toward more systematic, theory-informed impact evaluation.

3.4 Conceptual Distinctions and Policy Challenges

Clarifying conceptual boundaries and policy risks was another important contribution of IPPC9. Aboelazm's (2025) paper makes a valuable intervention by explicitly distinguishing Green Public Procurement (GPP) from the broader SPP agenda. By focusing specifically on environmental objectives, the study sharpens analytical precision and avoids the conceptual dilution that can arise when environmental, social, and economic goals are conflated.

At the same time, Aboelazm draws attention to the political and administrative vulnerabilities of GPP implementation, including shifts in political leadership, fluctuating policy priorities, and competency gaps within procurement departments. These challenges mirror those identified in the wider SPP literature but are shown to be particularly acute even within the more established domain of environmental procurement. The study thus serves as a reminder that conceptual clarity does not insulate policy instruments from political and bureaucratic risk, and that sustained political commitment and administrative capacity remain essential prerequisites for translating procurement policies into meaningful environmental outcomes.

3.5 Large-Scale Empirical Mapping of SPP Implementation

A major contribution of IPPC9 was the growing use of large-scale empirical methods to systematically map the actual implementation of Sustainable Public Procurement. The planetary presentation by Cao Fuguo, "Rhetoric and Reality of Sustainable Public Procurement: An Empirical Assessment and Comparison between Conventional and PPP Procurement," builds on a series of previously published studies (Cao et al., 2022; 2024) and provides one of the most comprehensive empirical assessments of SPP implementation to date. Drawing on extensive data from both conventional procurement and Public–Private Partnership (PPP) projects, the research moves beyond policy declarations to examine how sustainability criteria are operationalized in practice.

The findings reveal a nuanced and sometimes counterintuitive picture. At an aggregate level, the overall frequency of SPP-related criteria appears broadly similar between PPP and conventional procurement. However, the prioritization of sustainability dimensions differs markedly across procurement modes. In PPP projects, green procurement criteria tend to be more prominent than in conventional procurement, reflecting the long-term, life-cycle orientation of PPP arrangements. At the same time, certain environmentally critical sectors—particularly those with high carbon implications such as energy and transportation—remain underrepresented in sustainable procurement practices across both procurement types. This suggests that formal references to sustainability do not necessarily align with environmental impact priorities.

With respect to social sustainability, the research identifies mixed outcomes. Certain social objectives, including labor conditions and poverty reduction, show relatively stronger representation, especially over time. In contrast, SMEs and specific social targets such as the inclusion of disadvantaged groups are often marginalized in

PPP projects, highlighting tensions between project scale, financial complexity, and social inclusiveness. Importantly, the longitudinal dimension of the analysis indicates a positive time trend, suggesting that some of these gaps are narrowing as policy learning and institutional capacity improve.

Beyond the substantive findings, this body of work exemplifies a broader methodological shift in SPP research toward big data and computational text analysis. By employing web crawlers and text-mining techniques to analyze hundreds of thousands of tender documents in China, Cao and his research group provide an unprecedented empirical window into the "reality" of SPP implementation, as distinct from its rhetorical prominence in policy frameworks. The analysis uncovers patterns such as high formal adoption rates of SPP language combined with limited influence on award criteria, the dominance of social over environmental considerations, and significant disparities between central and local government practices.

This large-scale, data-driven approach directly addresses long-standing critiques that SPP research relies too heavily on anecdotal evidence or small-n case studies. By enabling systematic comparison across procurement types, sectors, regions, and time, it substantially strengthens the empirical foundation of the field and opens new avenues for examining how institutional design, governance arrangements, and policy signals translate—or fail to translate—into concrete procurement outcomes.

3.6 National Contexts: Ideological Underpinnings and Anti-Correlation Frameworks

Further enriching the comparative perspective, IPPC9 featured contributions that examined how national ideological, political, and legal contexts fundamentally shape public procurement priorities, often producing trajectories that diverge from the dominant SPP narrative. Rather than treating sustainability-oriented procurement as a universally progressive or linear development, these studies highlight how procurement systems are embedded in broader political-economic projects that condition which "horizontal" policies gain prominence and which remain marginal.

Tsygankov and Maskaev's (2025) study provides a particularly illustrative example. Through a narrative analysis of procurement legislation and parliamentary discourse, the authors demonstrate that Russian public procurement is strongly informed by economic nationalism and dirigiste state traditions. Within this ideological framework, priorities such as industrial sovereignty, domestic producer protection, and strategic state control dominate policy narratives, while environmental and social sustainability receive comparatively limited attention. This finding underscores that the absence or marginalization of SPP in certain national contexts is not simply a matter of policy lag or capacity deficit, but reflects deeper ideological commitments that define the legitimate purposes of public procurement. In this sense, non-adoption or selective adoption of SPP becomes analytically meaningful, revealing alternative conceptions of public value and state–market relations.

Complementing this ideational perspective, Alrehaili's (2025) evaluation of Saudi Arabia's public procurement legal system in light of the United Nations Convention against Corruption (UNCAC) shifts attention to governance reform as a foundational,

and often sequential, priority. Her analysis highlights ongoing efforts to strengthen transparency, accountability, and integrity within procurement institutions, emphasizing that effective sustainability-oriented procurement presupposes a credible governance framework. Although environmental and social criteria are not the central focus of this study, the establishment of robust anti-corruption and integrity mechanisms constitutes a critical component of the governance (G) pillar within sustainable procurement ecosystems.

Taken together, these studies challenge linear assumptions about SPP diffusion and implementation. They suggest that, in many national contexts, procurement reform follows a staged or hierarchical logic, in which core governance objectives—such as economic sovereignty or anti-corruption—are addressed before, or even at the expense of, broader sustainability ambitions. By foregrounding ideology, narrative, and governance sequencing, this line of research broadens the analytical lens of SPP scholarship and reinforces the importance of context-sensitive, politically informed approaches to understanding procurement reform trajectories.

3.7 ESG: The Market-Driven Evolution and Critical Nexus of Sustainable Public Procurement

The incorporation of the study "The impact of sustainable public procurement on corporate ESG performance—The Chinese evidence" by Li Runyu into the SPP discourse marks a significant conceptual and empirical advance in the field. ESG (Environmental, Social, and Governance) should not be understood merely as an adjacent or parallel framework to Sustainable Public Procurement, but rather as a transformative lens through which the broader market effects of SPP can be evaluated. This perspective shifts the analytical focus from procurement as an internal public-sector governance instrument to procurement as a powerful market-shaping signal capable of influencing firm behavior, investment decisions, and long-term corporate strategies. By demonstrating that SPP implementation exerts a significant and persistent positive impact on corporate ESG performance, Li and Cao (2023) empirically bridge a long-standing theoretical gap, showing that public procurement can function as an "invisible hand" guiding private-sector sustainability outcomes.

3.7.1 SPP: The Demand-Side, Policy-Driven Instrument

Traditionally, Sustainable Public Procurement has been conceptualized as a demand-side, policy-driven instrument embedded within public administration. Its primary locus is the state, and its underlying logic is rooted in public value creation and regulatory compliance. From this perspective, SPP focuses on how public purchasing procedures can be redesigned to incorporate environmental and social objectives into tendering, award criteria, and contract management. Success is typically evaluated at the procurement level, through outcomes such as reduced environmental footprints of public purchases, improved labor standards, or increased participation of SMEs.

Within this framework, SPP is primarily understood as an internal governance tool aimed at improving the sustainability performance of public-sector activities. Its effectiveness is assessed by the degree to which sustainability principles are formally

integrated into procurement processes and translated into immediate transactional outcomes, rather than by its broader influence on market behavior or corporate strategy.

3.7.2 ESG: The Supply-Side, Market-Driven Metric

In contrast, ESG represents a supply-side, market-driven framework centered on corporate performance and risk management. Its locus lies in the private sector, and its logic is shaped by investor expectations, stakeholder pressures, regulatory anticipation, and long-term value creation. ESG evaluates how firms manage environmental risks, social responsibilities, and governance structures, with performance reflected in ESG ratings, access to capital, and resilience to regulatory, financial, or reputational shocks.

This shift from SPP to ESG therefore marks a change in analytical focus from public procurement procedures to firm-level behavior and strategic adaptation. Rather than asking how governments purchase sustainably, the ESG perspective emphasizes how companies respond to sustainability-related incentives and constraints in the market. Understanding this distinction is essential for recognizing how public procurement, while operating on the demand side, can exert indirect yet powerful influence on corporate sustainability performance across the broader economy.3.7.3 The SPP–ESG Nexus: Transmission Mechanisms and Outcomes

The crucial link identified by Li and Cao (2023) lies in the role of SPP as a transmission channel from public policy to corporate ESG behavior. By consistently demanding sustainable goods and services, governments first create a reliable market signal, transforming sustainability expectations into large-scale and predictable demand that reduces uncertainty for firms investing in green innovation. At the same time, SPP contributes to the internalization of environmental and social externalities by requiring suppliers to account for costs previously excluded from their business calculus, thereby directly affecting environmental and social performance.

Beyond these demand-side effects, SPP also drives operational and governance change at the firm level. In order to win and retain public contracts, companies are compelled to adjust production processes, supply-chain management, labor practices, and compliance systems, which often entails enhanced transparency and ethical standards. In doing so, procurement choices further demonstrate strategic commitment by the state, signaling national sustainability priorities to investors and reinforcing ESG performance as a competitive and strategic asset.

From this perspective, ESG emerges as the corporate-level outcome metric that SPP, as a policy input, seeks to influence. The analytical focus thus shifts from whether governments are purchasing sustainably to whether sustainable public purchasing is reshaping corporate behavior and contributing to broader economic transformation. The findings of Li and Cao (2023), showing stronger effects in more institutionally developed regions and among mature firms, further suggest that the SPP–ESG relationship is contingent on both institutional maturity and firm-level capacity, while the observed long-term effects highlight SPP's role as a sustained signal shaping corporate strategy and investment decisions over time.

4. Expanding the Review: Key Themes and Findings in the Broader SPP Literature

Building on the IPPC9 foundation, a systematic review of the wider literature reveals several consolidated themes, ongoing debates, and emergent frontiers.

4.1 Policy Diffusion and Institutional Isomorphism

The global spread of SPP is a textbook case of policy diffusion. The European Union stands as the most influential normative power, with its 2014 Public Procurement Directives (2014/24/EU, 2014/25/EU) providing a legally binding framework that mandates member states to integrate environmental and social considerations. This has created a strong coercive isomorphism across Europe (Brammer & Walker, 2011). Beyond the EU, organisations like the United Nations Environment Programme (UNEP) and the OECD promote SPP through guidelines, capacity-building programs, and peer-learning platforms, fostering mimetic and normative isomorphism (Cao et al., 2025c).

However, diffusion is not synonymous with effective implementation. Studies consistently show a gap between formal transposition of rules and their practical application. National culture, administrative tradition, and pre-existing legal frameworks heavily mediate the adoption process. For example, Cheng (2025), in a study comparing Chinese public universities and hospitals from an institutional isomorphism perspective, found that while both sectors showed convergence on coercively driven SPP elements (e.g., environmental compliance), their underlying institutional logics—research excellence for universities versus patient care and risk-aversion for hospitals—led to divergent practices in areas like innovative or circular procurement. The studies by Tsygankov and Maskaev (2025) and Alrehaili (2025) further exemplify this mediation. Russia's case demonstrates how a dominant national ideology (economic nationalism) can limit the isomorphic pull of global SPP norms, while Saudi Arabia's focus on anti-corruption aligns with a different strand of global governance isomorphism (UNCAC), showcasing varied pathways of policy integration.

4.2 The Implementation Gap: Barriers and Enablers

A substantial body of literature examines the persistent “implementation gap” in Sustainable Public Procurement (SPP), referring to the divergence between formal policy commitments and actual procurement practices. Empirical studies consistently show that, despite the widespread adoption of SPP strategies, sustainability criteria are often applied unevenly, selectively, or symbolically. This gap is multi-dimensional in nature, arising from interacting legal, economic, organizational, market, and technical constraints across governance levels.

4.2.1 Legal and Policy Constraints

Legal and policy barriers remain among the most frequently cited impediments to effective SPP implementation. Sustainability provisions are often framed in ambiguous or non-mandatory terms, allowing procuring entities to prioritize traditional cost-based criteria. In many jurisdictions, conflicts between procurement law, bidding regulations, and sectoral legislation further increase legal uncertainty and risk aversion among

procurement officers (Cao et al., 2025c). Even where legal frameworks align with international standards, implementation challenges persist due to rigid administrative procedures, limited discretion, and capacity gaps, as illustrated by Alrehaili's (2025) analysis of procurement reforms under UNCAC principles.

4.2.2 Financial and Budgetary Barriers

Financial considerations continue to constrain SPP implementation, particularly the perception of higher upfront costs associated with sustainable goods and services. Rigid annual budgeting systems often conflict with life-cycle costing approaches, making it difficult to account for long-term savings. The limited availability of practical tools for Total Cost of Ownership and Life Cycle Costing further reinforces a short-term focus on purchase price rather than broader value for money.

4.2.3 Organisational Capacity and Incentive Misalignment

At the organizational level, insufficient skills, training, and awareness among procurement professionals represent a major barrier to SPP uptake. Sustainable procurement requires competencies that extend beyond traditional procurement expertise, yet professional development in this area remains uneven. These capacity constraints are compounded by incentive structures that reward cost minimization and procedural compliance over sustainability outcomes, fostering risk-averse organizational cultures (Grandia & Meehan, 2017).

4.2.4 Market and Information Barriers

Market-related barriers further limit SPP effectiveness, particularly in contexts where sustainable products and services are scarce, costly, or unevenly distributed. Weak certification systems and unreliable eco-labels increase verification costs and undermine trust in suppliers' sustainability claims. Information asymmetries between public buyers and suppliers—especially SMEs—can discourage participation and reinforce conservative procurement practices.

4.2.5 Technical and Methodological Limitations

Technical challenges also contribute to the implementation gap. While environmental assessment tools such as Life Cycle Assessment are relatively mature, their application in procurement remains resource-intensive, and Social Life Cycle Assessment is still underdeveloped. The complexity of integrating multiple sustainability criteria into procurement decisions, combined with a lack of standardized and user-friendly tools, often results in sustainability being treated as an auxiliary rather than core consideration.

4.2.6 Key Enablers of Effective Implementation

Conversely, the literature identifies several enablers that can mitigate these barriers. Strong political leadership, clear and coherent legislative frameworks, dedicated funding mechanisms, and comprehensive training programs are consistently associated with stronger SPP implementation. In addition, the development of sustainable supplier

databases, standardized criteria, and pilot projects can reduce transaction costs, build organizational learning, and facilitate the gradual institutionalization of sustainable procurement practices (Brammer & Walker, 2011; UNEP, 2017).

4.3 Performance and Impact Assessment

Assessing the performance and impact of Sustainable Public Procurement remains one of the most methodologically challenging frontiers in the literature. Among the three pillars of sustainability, evidence on environmental impacts is the most developed. A growing body of empirical studies documents reductions in carbon emissions, energy consumption, and waste generation associated with green procurement initiatives, particularly in high-impact sectors such as buildings, energy, and transport (Cheng et al., 2018). These findings provide relatively robust support for the environmental effectiveness of sustainability-oriented procurement policies, especially where technical standards and measurable indicators are well established.

By contrast, economic impacts of SPP remain more contested. On the one hand, research suggests that SPP can stimulate green innovation, create lead markets for emerging technologies, and contribute to long-term competitiveness, as illustrated by Cao et al.'s (2025b) analysis of innovation policy mixes. On the other hand, concerns persist regarding potential increases in procurement costs, reduced supplier competition, and administrative burdens, particularly in the short term. In response, an increasing share of the literature emphasizes the importance of life-cycle costing and total cost of ownership approaches, arguing that sustainability-oriented procurement often delivers long-term economic benefits that are obscured by a narrow focus on upfront price.

Social impacts pose the greatest measurement challenges. While studies indicate positive associations between SPP and outcomes such as employment creation, SME participation, and improved labour standards, these effects are difficult to isolate and compare across contexts. The absence of standardized indicators and reliable data sources continues to constrain robust assessment of social sustainability outcomes, limiting both empirical generalization and policy learning (McMurray et al., 2014).

Recent methodological innovations offer promising avenues for addressing these limitations. The emerging use of large-scale data analytics, as showcased in the IPPC9 contributions on China, represents a significant step forward in impact assessment. By leveraging procurement databases, web scraping, and text-as-data techniques, researchers can move beyond isolated case studies toward systematic pattern recognition. This enables the identification of correlations between procurement characteristics—such as contract type, award methods, or governance arrangements—and varying levels of SPP implementation. Although such approaches do not fully resolve causal inference challenges, they substantially enhance empirical scope and provide a stronger evidentiary foundation for future, more refined impact evaluation.

4.4 Sustainable Procurement and Public-Private Partnerships (PPPs)

The intersection between Sustainable Public Procurement (SPP) and Public–Private Partnerships (PPPs) represents a critical yet still under-explored interface in the procurement literature. This relationship is directly addressed by Cao (2024) in

"Rhetoric and reality of public-private partnerships in China: A sustainable public procurement perspective," which examines PPPs through a sustainability lens rather than their traditional evaluation criteria. Historically, PPPs have been assessed primarily in terms of value for money, risk allocation, and efficiency gains, with sustainability considerations often treated as secondary or implicit objectives.

Cao's analysis reveals a fundamental paradox at the heart of sustainability-oriented PPPs. On the one hand, PPPs possess structural characteristics that make them well suited to advancing environmental sustainability, particularly in infrastructure sectors. Their long-term contractual horizons and life-cycle orientation create incentives for private partners to invest in energy efficiency, durable assets, and environmentally innovative solutions. From this perspective, PPPs can function as powerful vehicles for green infrastructure development and long-term environmental performance improvement.

On the other hand, the study demonstrates that the complexity of PPP financial arrangements, contractual frameworks, and risk-sharing mechanisms may inadvertently undermine social sustainability objectives. High entry barriers, extensive compliance requirements, and sophisticated financial structures can marginalize small and medium-sized enterprises, limit local supplier participation, and weaken distributive equity outcomes. In this sense, PPPs may simultaneously advance environmental goals while reproducing or even exacerbating social inequalities, revealing a tension between different pillars of sustainability.

These findings underscore the importance of explicitly embedding SPP criteria throughout the entire PPP project cycle, rather than treating sustainability as an add-on at the procurement stage. Integrating sustainability considerations into feasibility assessments, partner selection, contract design, performance monitoring, and contract management is essential to ensure that PPPs deliver balanced outcomes across environmental, social, and economic dimensions. More broadly, this line of research highlights the need to reconceptualize PPPs not only as efficiency-enhancing contractual arrangements, but as strategic governance instruments whose sustainability performance depends on deliberate policy design and institutional capacity.

5. Critical Gaps and Future Research Agenda

Despite substantial theoretical development and growing empirical evidence, the literature on Sustainable Public Procurement (SPP) remains fragmented and uneven. Significant gaps persist across theoretical integration, methodological design, geographical coverage, technological change, and political analysis. Addressing these gaps is essential if SPP research is to move beyond descriptive mapping and contribute more directly to understanding procurement as a central governance strategy.

5.1 Theoretical Integration and Novel Frameworks

Although SPP research has drawn on a wide range of theoretical perspectives, these theories are often applied in parallel rather than in an integrated manner. Institutional theory, stakeholder theory, transaction cost economics, and capability-based approaches tend to explain different aspects of SPP adoption and implementation,

but rarely engage with one another within a unified analytical framework. Future research should therefore prioritize theoretical synthesis, examining how macro-level institutional pressures interact with meso-level market structures and micro-level organizational capabilities to shape SPP outcomes. For example, how coercive or normative institutional forces condition the development of dynamic procurement capabilities, and under what circumstances organizational learning enables actors to move beyond symbolic compliance.

In addition, normative theories such as public value theory offer underutilized potential for integrating evaluative and explanatory perspectives. Public value frameworks could provide principled guidance for assessing trade-offs between environmental, social, and economic objectives that are often operationalized through Multi-Criteria Decision Analysis (MCDA) tools. Beyond established public administration theories, future research could also benefit from engagement with transition studies, circular economy theory, and post-growth or degrowth economics. These perspectives would help situate SPP within broader processes of socio-technical transformation, highlighting its role not merely as a procurement reform but as a lever in long-term sustainability transitions.

5.2 Methodological Rigour and Innovation

Methodologically, the SPP literature remains dominated by cross-sectional studies, case analyses, and descriptive surveys, limiting the ability to assess long-term impacts and causal relationships. There is a clear need for more longitudinal research that tracks SPP implementation and outcomes over time, as well as controlled comparative studies across regions, sectors, and policy instruments. Such designs would allow scholars to better distinguish between short-term compliance effects and deeper, more durable changes in organizational practices and market behavior.

Advances in data availability and computational methods offer promising opportunities for methodological innovation. The use of text-as-data approaches, machine learning, and large-scale procurement databases can significantly enhance empirical scope, but these tools also raise concerns regarding bias, transparency, and interpretability. Similarly, emerging technologies such as blockchain for supply-chain transparency warrant critical evaluation rather than uncritical adoption. A particularly pressing methodological challenge remains the development of standardized yet context-sensitive metrics for social sustainability in procurement, where measurement difficulties continue to constrain both empirical research and practical implementation.

5.3 Beyond the "Global North" Focus

A persistent limitation of the SPP literature is its strong concentration on experiences from Europe, North America, and parts of East Asia. This geographical bias restricts theoretical generalization and obscures the diversity of procurement practices and governance challenges worldwide. There is an urgent need for more research on SPP in the Global South, including Africa, Latin America, and South and Southeast Asia, where procurement systems often operate under conditions of informality, limited administrative capacity, and distinct political economies.

These contexts also present unique opportunities for innovation, including institutional leapfrogging, hybrid governance arrangements, and South–South policy learning. Future research should examine how international sustainability norms are localized, the role of development aid and multilateral institutions in shaping procurement reforms, and the emergence of indigenous or context-specific models of sustainable procurement. Studies such as Tsygankov and Maskaev (2025) on Russia and Alrehaili (2025) on Saudi Arabia demonstrate the value of examining contexts where SPP competes with or is subordinated to other strategic priorities, such as economic sovereignty or anti-corruption. Expanding this line of inquiry would enrich the field with more nuanced, comparative, and politically grounded insights.

5.4 The Digital Transformation of SPP

The digitalization of public procurement represents a rapidly evolving but still underexplored research frontier in the SPP literature. The diffusion of e-procurement platforms, artificial intelligence for tender evaluation, smart contracts, and Internet of Things (IoT) technologies for asset monitoring has the potential to fundamentally reshape procurement processes. However, their implications for sustainability remain ambiguous. Future research should critically assess whether digital tools enhance the integration of sustainability criteria or merely automate existing practices.

Key questions include whether algorithms can evaluate sustainability criteria in transparent and unbiased ways, how digital procurement systems affect access for SMEs and new market entrants, and whether digitalization genuinely improves transparency or introduces new forms of opacity and technological dependence. Addressing these questions requires interdisciplinary research that combines public administration, information systems, and sustainability studies, ensuring that digital transformation supports rather than undermines the objectives of SPP.

5.5 Politics, Power, and Equity

Finally, SPP is inherently political, involving contested value choices, distributional consequences, and power relations. Yet much of the existing literature treats procurement as a technocratic process, underplaying its political economy dimensions. Future research should more explicitly address questions of power and equity: Who benefits from sustainability-oriented procurement reforms, and who bears the costs? How are sustainability criteria negotiated within political and bureaucratic arenas? Under what conditions can SPP serve as a tool for empowering marginalized groups rather than reinforcing existing inequalities?

A critical, power-sensitive approach is essential to understanding both the potential and the limits of SPP as a transformative governance strategy. Narrative and discourse-based analyses, such as that of Tsygankov and Maskaev (2025), demonstrate how ideological frameworks and political priorities shape the visibility and legitimacy of sustainability objectives in procurement. Expanding such approaches would deepen insight into the political foundations of SPP and help ensure that sustainability ambitions are aligned with broader goals of social justice and democratic accountability.

5.6 Future research on the SPP and ESG nexus

Despite promising empirical beginnings, research on the relationship between Sustainable Public Procurement (SPP) and corporate Environmental, Social, and Governance (ESG) performance remains conceptually underdeveloped and methodologically incomplete. Existing studies, most notably Li and Cao (2023), provide robust evidence that SPP implementation is associated with improved ESG outcomes at the firm level and that such effects vary across regions and firm characteristics. However, the literature has largely focused on establishing correlation rather than explicating causality, leaving the internal transmission mechanisms between public procurement policy and corporate sustainability behavior insufficiently theorized. Future research must therefore move beyond outcome validation toward a deeper understanding of how, under what conditions, and through which institutional and organizational pathways SPP reshapes corporate ESG performance.

5.6.1 Unpacking Micro-Level Mechanisms: From Procurement Requirements to Corporate ESG Change

A central challenge in advancing the SPP–ESG literature lies in opening the "black box" of micro-level mechanisms through which public procurement influences firm behavior. While ESG improvement is often treated as a unified outcome, firms may respond to SPP incentives through distinct and overlapping pathways. In some cases, firms enhance ESG performance strategically to improve competitiveness in public tenders, where sustainability criteria affect qualification, scoring, or award decisions. In this competitive bidding mechanism, ESG functions primarily as a market access condition, incentivizing short- to medium-term adjustments in corporate practices.

In other contexts, particularly under long-term public contracts or Public–Private Partnerships, ESG improvements may emerge through contract compliance and lock-in mechanisms. Firms engaged in sustained contractual relationships with public buyers face continuous monitoring, reporting requirements, and the risk of penalties or reputational damage, which can induce more durable changes in environmental management, labor standards, and governance structures. Beyond these instrumental responses, repeated participation in SPP processes may also generate organizational learning effects. Through interaction with procurement authorities, sustainability audits, and compliance routines, firms may internalize sustainability norms, develop new capabilities, and embed ESG considerations into corporate strategy and decision-making. Identifying the relative importance of these mechanisms requires greater reliance on qualitative methods, including process tracing, longitudinal case studies, and interviews with procurement and sustainability professionals.

5.6.2 Strengthening Causal Inference: Moving Beyond Correlation

Although recent empirical work has improved methodological rigor, causal identification in the SPP–ESG literature remains a significant challenge. The possibility of reverse causality and self-selection—whereby firms with stronger ESG profiles are more likely to participate in or succeed within public procurement markets—limits the interpretability of existing findings. Future research should therefore adopt more robust

quasi-experimental designs to strengthen causal claims. Difference-in-differences approaches that exploit the staggered implementation of SPP policies across regions, sectors, or procurement categories offer a particularly promising avenue, as do natural experiments arising from exogenous changes in procurement law, regulatory enforcement, or sustainability mandates. Such designs would allow researchers to more convincingly isolate the impact of SPP on corporate ESG outcomes from broader sustainability trends and firm-specific characteristics.

5.6.3 Re-Centering the "G": Governance Effects of Sustainable Public Procurement

Another critical gap in the literature concerns the governance dimension of ESG, which remains significantly underexplored relative to environmental and social outcomes. While SPP frameworks increasingly emphasize transparency, integrity, and accountability in procurement processes, little is known about how these requirements affect suppliers' internal governance structures. Future research should examine whether and how procurement-related integrity rules, disclosure obligations, and anti-corruption measures influence corporate governance practices, such as board oversight of sustainability issues, executive compensation linked to ESG performance, internal compliance systems, and anti-corruption policies. Studies such as Alrehaili (2025), which focus on procurement integrity frameworks, provide an indirect foundation for this line of inquiry but stop short of examining firm-level governance outcomes. Bridging this gap would significantly enhance understanding of SPP as a governance-shaping instrument rather than merely an environmental or social policy tool.

5.6.4 Sectoral and Firm-Size Heterogeneity in the SPP–ESG Relationship

The heterogeneous effects identified in existing studies point to the importance of sectoral and firm-size differentiation in the SPP–ESG nexus. High-impact sectors such as construction, energy, healthcare, and information and communication technologies may exhibit distinct response patterns due to differences in regulatory exposure, capital intensity, and supply chain complexity. Moreover, the implications of SPP for small and medium-sized enterprises (SMEs) remain ambiguous. While SPP may offer SMEs opportunities to improve ESG performance and access stable public markets, it may also impose compliance burdens that disproportionately disadvantage smaller firms. Future research should therefore explicitly examine whether SPP functions as an inclusive mechanism that supports SME upgrading or whether it risks reinforcing market concentration and inequality, thereby reconnecting the SPP–ESG debate with the social equity pillar of sustainable procurement.

5.6.5 Comparative and International Perspectives on the SPP–ESG Nexus

Empirical evidence on the SPP–ESG relationship remains heavily concentrated in single-country contexts, particularly China, limiting the generalizability of findings. Comparative and cross-national research is needed to explore how different procurement regimes and ESG regulatory environments interact to shape corporate sustainability outcomes. For example, the effects of SPP may differ substantially between contexts characterized by mandatory ESG disclosure regimes, such as the

European Union's Corporate Sustainability Reporting Directive (CSRD), and those relying on more voluntary or market-driven ESG frameworks. Such comparative studies would illuminate the institutional complementarities and tensions between procurement policy and broader sustainability governance systems.

5.6.6 ESG Data as Both Input and Output of Sustainable Public Procurement

Finally, future research should address the increasingly bidirectional relationship between SPP and ESG data. While most existing studies treat ESG performance as an outcome influenced by procurement, ESG ratings and disclosures are themselves beginning to be used as inputs in procurement decision-making. This raises critical questions regarding the reliability, comparability, and strategic manipulation of ESG data in public tenders, including risks of "rating shopping" and greenwashing. Research is urgently needed to assess whether the use of third-party ESG scores in procurement enhances sustainability outcomes or merely shifts compliance behavior without substantive impact. Longitudinal studies tracking firms before, during, and after major SPP contract awards would be particularly valuable in capturing the dynamic and adaptive nature of corporate ESG responses over time.

6. Conclusion: SPP as a Central Governance Strategy

The evidence from IPPC9 and the broader literature review compels a clear conclusion: Sustainable Public Procurement is no longer a niche or optional policy area. It is rapidly becoming a central strategy for governments worldwide to operationalise their commitments to the SDGs, the Paris Agreement, and just transitions. It represents a pragmatic recognition that the state's immense purchasing power must be aligned with its long-term societal and planetary goals.

The journey, however, is far from complete. The transition from policy rhetoric to widespread, deep, and effective practice is hampered by persistent barriers related to law, economics, organisation, and methodology. The research community has made sterling contributions in mapping these challenges, developing conceptual tools, and beginning the hard work of impact measurement. The papers presented at IPPC9 exemplify this progress, offering granular insights from Japan, South Africa, the EU, China, Russia, and Saudi Arabia, and employing innovative methods from systematic reviews and narrative analysis to large-scale text analytics.

For SPP to fully assume its position at the strategic core of government, a renewed and collaborative effort is required. Policymakers must move from voluntary guidelines to mandatory, well-designed frameworks with clear accountability. Practitioners need enhanced tools, training, and incentive structures. The private sector must engage in co-creating sustainable solutions. And researchers must continue to bridge disciplines, innovate methodologically, and focus on the most pressing real-world problems, particularly in under-studied regions.

In essence, sustainable public procurement is more than a technical procedure; it is a manifestation of a governing philosophy---one that uses the mundane act of purchasing to build a more resilient, equitable, and regenerative future. The discourse advanced at IPPC9 and reflected in the growing body of literature confirms that this

philosophy is gaining ground. The task ahead is to cement it into the bedrock of public administration everywhere.

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HORIZONTAL POLICIES IN RUSSIAN PUBLIC PROCUREMENT: IDEOLOGIES, VALUES AND NARRATIVES

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Suggested citation: Tsygankov, S., & Maskaev, A. (2025). Horizontal Policies in Russian Public Procurement: Ideologies, Values and Narratives. International Journal of Public Procurement, 1(2), 26-42.

Abstract

The purpose of this research is to determine the types of horizontal policies in Russian public procurement and to correlate the tools for its implementation with a particular economic ideology. The authors conduct analysis of the provisions of Russian procurement law No. 44-FZ[1] to reveal horizontal policies and economic ideologies based on the methodology of narrative economics. Next, the authors analyse transcripts of meetings of the State Duma of Russia using the PRISMA method to identify widespread ideological ideas about the economy among legislators. Thus, elements of the ideology of economic nationalism and dirigisme are broadly discussed by the deputies. The authors found only a few narratives regarding environmental or social horizontal policies. It means that the corresponding ideologies are not on the agenda of social processes in Russia in relation to public procurement.

Keywords

Public procurement, horizontal policies, ideology, neoliberalism, narrative economics, Russia

1. Introduction

The public procurement system's main objective is to satisfy public bodies' needs for goods, works and services necessary to provide public goods (for example, education, health care, defence, etc). However, the government may use the public procurement system for purposes other than acquiring goods, works and services on the best terms (value for money). Such policies are labelled in the scientific literature as horizontal or secondary (Arrowsmith & Kunzlik, 2006; Arrowsmith, 2010; Morettini, 2011; Graells, 2016; Hickman, 2019; Fazekas & Blum, 2021; Gyori, 2022).

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As D. North said, "ideologies are shared frameworks of mental models that groups of individuals possess that provide both an interpretation of the environment and a prescription as to how that environment should be ordered" (North, 1994). Therefore, the goals, often non-economic, of the public procurement system and the choice of tools for achieving them depend on the dominant ideology.

2. Methodology

The research was conducted within the framework of the narrative economics methodology, an approach developed by Nobel Prize winner R. Shiller (Shiller, 2017; 2019). Analysing the spread and dynamics of popular narratives allows us to understand the economic behaviour of individuals. It is especially important when these individuals are responsible for shaping institutions and determining economic policy.

The authors analyse the provisions of Russian public procurement law No. 44-FZ to identify horizontal policies and corresponding economic ideologies. Horizontal policies are explored using narrative economics methodology to identify proto-models through which actors explain cause-and-effect relationships, values, and social contexts (for more details, see Shiller, 2017; Volchik, 2022).

The authors will also comprehensively compare these ideologies with those commonly found in the narratives of the State Duma (the lower house of the Russia's Parliament) deputies of the Russian Federation regarding horizontal policies in public procurement.

3. Russian public procurement, neoliberalism and horizontal policies

The contemporary Russian public procurement system is a market, or quasi-market (Melnikov & Lukashenko, 2019; Tsygankov, 2024), in contrast to the Soviet period when it was planned and distributed. Such a system is quasi-market from the point of view of economic science because the state represents all demand in this market.

This approach to organizing the public procurement system is relevant to neoliberal views (Kunzlik, 2013). The core principles of neoliberalism are market efficiency and competition (Cerny, 2016; Pühringer et al., 2021), and the duty of the state is to ensure it and minimize interference (Schmidt & Thatcher, 2012). The desire for economic efficiency is most closely related to adherence to the principles of a market economy, which means that all other spheres of society (or, more narrowly, institutions) have to submit to the economy (Harvey, 2005; Hodgson, 2024). Therefore, horizontal policies in public procurement lie outside the neoliberal approach since, on the one hand, they pursue other ideological goals, and on the other hand, they can distort an effective competitive market environment.

In other words, the neoliberal approach involves creating incentives for the necessary behaviour of agents to implement a particular policy rather than applying various prohibitions and restrictions. For example, in the spirit of neoliberalism, tax benefits will be applied to companies producing eco-friendly goods rather than restricting the access of other goods to the public procurement market in various versions.

In turn, if economic ideology influences the choice of horizontal policy, then the opposite is true - we can determine the dominant economic ideology through the identification of horizontal policy. For these purposes, it seems optimal to use the methodology of narrative economics. The narrative economics methodology is promising since it provides valuable information about economic processes (Tsygankov et al, 2021, P. 2). We have developed the approach of Shiller (Shiller, 2019) to obtain qualitative data from the transcripts of the State Duma sessions on the significant social practices, routines, rules, and institutions (Volchik et al, 2023, P. 6) that deputies consider relevant for the application of horizontal policies into Russian public procurement law. Besides, this approach provides a useful framework for understanding the role narratives in influencing economic behaviour and decision-making too (Volchik et al, 2023, P. 3)

Based on the analysis of transcripts of the State Duma sessions dedicated to the adoption and amendment of Law No. 44-FZ, it is possible to identify the narratives of members of parliament, which will reveal the goals and motives of legislators when adopting one or another horizontal policy, which will allow one to obtain ideas about the dominant economic ideology.

Our approach identifies five highly generalized economic ideologies based on their core values (Volchik & Fursa, 2024, P. 18): neoliberalism, economic nationalism[2], dirigisme, socialism and environmentalism (See Table 1).

Table 1 List of economic ideologies in Russia based on their core values

	Ideology	Core value
1	Neoliberalism	Market efficiency
2	Economic nationalism	National identity
3	Dirigisme	Planning leading to well-being
4	Socialism	Equality and justice
5	Environmentalism	Protecting nature for next generations

Almost all ideologies correspond to various types of horizontal policies and corresponding instruments of the public procurement system (see Table 2).

Table 2 Main types of horizontal policies and policy tools in Russian public procurement

Ideology	Type of policy	Policy Tools
Economic nationalism	Industrial	Obligation to establish prohibitions, restrictions, and advantages provided to Russian goods Possibility of using offset contracts or contracts with counter investment obligations for single source procurement.
Dirigisme	Entrepreneurship support	Obligation to make purchases from small businesses and socially oriented non-profit organizations in an amount of at least 25% of the total annual procurement volume
Socialism	Social (Support for institutions and enterprises of the penal system)	Obligation to provide benefits in the amount of up to 15% of the contract price to enterprises and organizations of the penal system when purchasing certain goods (works, services) Possibility of purchasing from a single source from enterprises and organisations of the penal system when purchasing certain goods (works, services)
	Social (Support for organisations of disabled people)	Obligation to provide benefits in the amount of up to 15% of the contract price to organisations of disabled people when purchasing certain goods (works, services)
Environmentalism	Environmental	Obligation to establish environmental requirements for certain goods Possibility of applying environmental criteria for evaluating applications during tendering

3.1 Economic nationalism

The ideology of economic nationalism is aimed primarily at the formation or maintenance of national, religious or cultural identity. Acting subjects do not become abstract economic agents but acquire an identity and are divided into "we" and "strangers". Despite the fact that the underlying beliefs of this ideology may differ in different historical contexts, economic nationalism is viewed by its supporters as a set of practices aimed at creating, strengthening, and protecting national economies in the context of the global market (Pryke, 2012). From this perspective, Russia's policy of import substitution and Donald Trump's "Buy American" campaign, or his implementation of import tariffs have much in common. The downside of this ideology is the reduction of competition and the acquisition of goods at higher prices. The

ideology of economic nationalism is represented in horizontal policy instruments to support the domestic industrial sector.

Law No. 44-FZ and its by-laws (valid both before and after January 1, 2025; the list of all by-laws related to horizontal policies presented in Annex 1) provide for a wide range of instruments of prohibitions, restrictions (the "second wheel" principle) and advantages to bidders who offer domestic[3] goods in the amount of 15 per cent of the contract price. Consequently, in many cases, the current rules establish barriers to foreign goods' access to the public procurement market.

In addition, procuring entities until January 01, 2025 were required to purchase the appropriate percentage (share) of certain groups of Russian goods. However, this rule was rather implemented to conduct static assessments of the situation with Russian goods in the public procurement market. On the one hand, the legislation did not provide for any sanctions for failure to comply with the specified quota. On the other hand, sometimes procuring entities could not achieve the specified share for objective reasons. As are result this tool was excluded from the provisions of Law No. 44-FZ.

Another example of a horizontal policy in public procurement for the development of domestic industry based on economic nationalism is the possibility of using single-source procurement within the special offset or investment contracts when a business invests in the creation of production or modernisation of a product in Russia.

3.2 Dirigisme

Since the mid-2000s, there has been an increasing trend of government intervention in the Russian economy. The term "dirigisme" has become widely used in Russian economic discourse as a concept that lies between the centralized planning of the Soviet era and the deregulation of post-Soviet Russia in the 1990s. It is believed that the positive experiences of France could be used to reform the Russian economy, and according to A. Khudokormov's opinion, the "dirigiste ideology combines the strengths of a planned economy with the flexibility of market-based entrepreneurship"(Khudokormov, 2019, P. 68). Thus, dirigisme is a policy of intervention in the economy to achieve specific goals. Dirigisme did not involve discussions about values or the abstract state of economic efficiency; initially, it was a rather instrumental approach. However, now we can talk about the ideology of dirigisme as a specific principle opposite to the approach of neoliberalism. It is a belief that through targeted efforts, the economy can be brought to a better state than would be achieved in a free market since there are situations of market inefficiency. Antitrust legislation, measures to support competition and small business are all examples of intervention in the economy where the free market fails. In addition, dirigisme probably can function well ad hoc when it is necessary to support certain sectors of the economy or solve emerging problems (even if this supports some social interest groups and creates imbalances in the economy).

In Russian public procurement, dirigisme is represented by a horizontal policy that supports small businesses and socially oriented non-profit organisations. Thus, procuring entities are required to spend 20% of the total annual procurement volume on purchases from small businesses and socially oriented non-profit organisations.

Moreover, if the initial price of the contract does not exceed 20 million rubles (approximately a little more than 200 thousand dollars), only these organisations can be bidders.

3.3 Socialism

Unlike dirigisme, socialism has a clear focus on equality, redistribution and support for those entities that may be uncompetitive in a market environment. In the interpretation of Hodgson, socialists propose a rational structure of society based on human solidarity and cooperation, rather than on selfish individualism. This is impossible without changing human nature, according to G. Hodgson (2019, P. 6). The ideology of socialism includes a horizontal policy to support organisations of people with disabilities and enterprises of the penitentiary system. First, such bidders are given an advantage of up to 15% of the proposed contract price when purchasing certain goods, works, and services. Second, procuring entities can purchase certain goods (which they produce), works, and services from enterprises of the penitentiary system through single-source procurement without restrictions on the contract value.

In the first example, the goal of horizontal policy is to increase inclusion and ensure access to equal opportunities, even if this conflicts with the idea of economic efficiency. In the second example, re-education and creating a new individual do not correspond to the free market concept.

3.4 Environmentalism

Any ideology's core is a set of values and ethical premises. For a long period of human history, the consumer attitude towards nature has dominated. In Russian classical literature, the best example is Bazarov's statement in "Father and Sons": "*Nature is not a temple, but a workroom, and human is a worker in it*"[4]. Environmentalism emerged as an independent economic ideology relatively recently, in the 1970s. However, this approach has undergone a radical transformation. Thus, environmentalism as an economic ideology now involves a detailed analysis of the external effects of human activity from the point of view of damage to the environment or, more broadly, nature. At the same time, the tools used to achieve goals can be very different. They can range from imposing fines and creating institutions to supporting market mechanisms or privatizing limited natural resources. (Cropper & Oates, 1992; Fell & Maniloff, 2018). Products designed to be environmentally friendly may be more expensive, but they provide greater non-economic utility. It means they should receive preferences in public procurement.

Two environmental policy instruments represent environmentalism in Russian public procurement. On the one hand, procuring entities can optionally apply ecological evaluation criteria in tendering in electronic form. On the other hand, procuring entities are obliged to mandatory establish environmental requirements ("the share of recycled materials") for certain purchased goods (*toilet paper, paper towels, paper handkerchiefs, paper tablecloths, napkins, coverings made from recycled materials, paving slabs, curbs, fences, rubber tiles, crumb rubber coverings, soft roofing, containers and trash cans, organic fertilizers, soil and soil suitable for technical purposes*).

4. Selection of transcripts for analysis

We selected transcripts using the PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) method. Initially, this method was applied to analysing literature on medicine. Later, it became widely used in social sciences, including studies of public procurement. For example, PRISMA can be used to analyse fraud and corruption in public procurement (Lyra, et al, 2022), to evaluate the effectiveness of green procurement (Ortega Carrasco et al, 2024), or to investigate award criteria (Lenarčič, 2024). Thus, it is an appropriate method for including relevant sources of information into analysis with adequate accuracy. (Oláh, et al, 2020). A promising direction may also be the addition of qualitative PRISMA-based methods using quantitative text analysis in large-scale tender documents, as it was done for the public procurement system in China (Cao et al, 2022).

According to Russian law, all the State Duma session transcripts (except for closed meetings) must be posted in the State Duma Electronic Information Resources Fund[5]. They can be accessed through the "Transcripts of the State Duma sessions" database: http://transcript.duma.gov.ru/. We used a "simple search" on the site, which involved entering our keywords (phrases) and not selecting specific sessions of the State Duma but different time intervals to cover all meetings from 01 January 2013 to 31 December 2023. The number of transcripts found is shown in Table 3: a total of 445 transcripts were found.

Table 3 Key words (phrases) for selecting narratives.

Key words (phrases)	Transcripts quantity
Public procurement	83
Public procurement (abbreviated)	120
On the contract system	242
Overall	445

Our next step was to delete identical transcripts. As a result, the number of transcripts was reduced by more than 2.5 times, and only 170 texts of the State Duma sessions were allowed for screening and subsequent analysis using a code-book (Figure 1 and Annex 2). The authors' analysis revealed the dominance of narratives on industrial policy based on the ideology of economic nationalism (Table 4 and Figure 2).

Table 4 Number of narratives about horizontal policies in public procurement

	Horizontal policies based on a particular economic ideology	Number of narratives
1	Economic nationalism	38
2	Dirigisme	26
3	Socialism	3
4	Environmentalism	1
	Overall	68

Measures aimed at limiting the access of foreign goods to the public procurement market are being actively discussed within the walls of parliament.

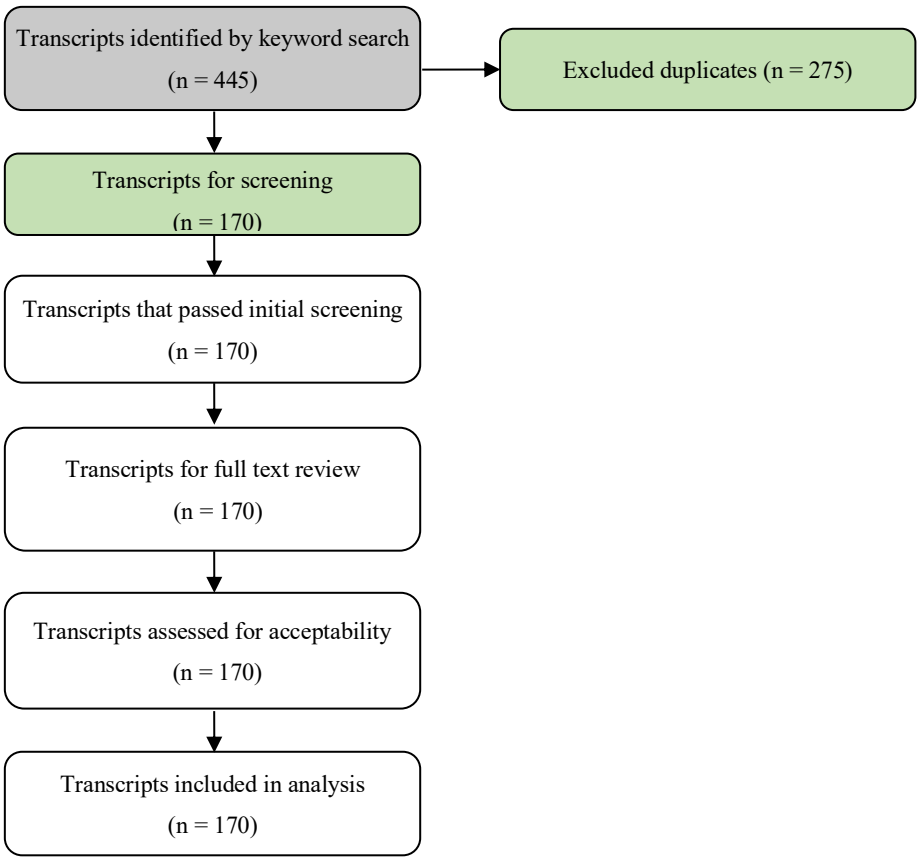

Fig. 1 PRISMA flowchart for analysing transcripts of the State Duma sessions

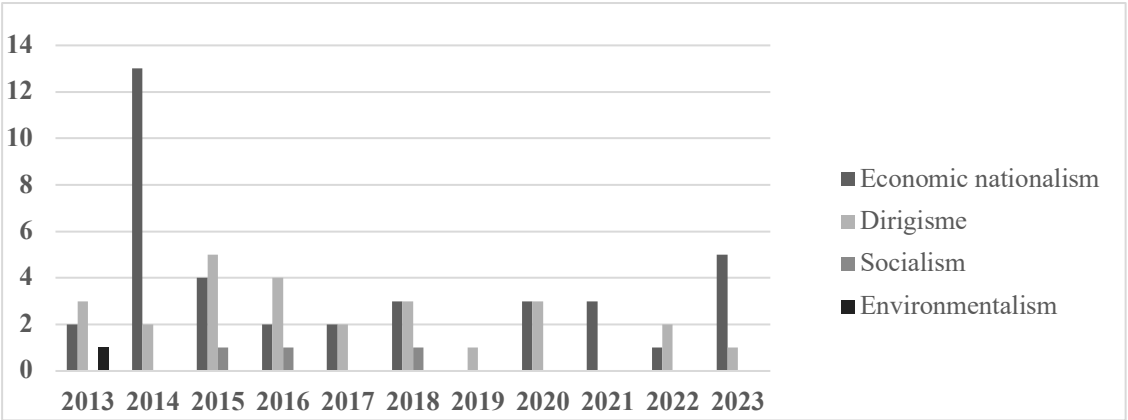

Fig. 2 Number of narratives about horizontal policies in Russian public procurement, by year

The most impressive, in our opinion, are the following narratives that represent the ideology of economic nationalism.

(1) B.S. Khamzaev, UNITED RUSSIA faction[6]:

"... We spend billions of rubles on the stationery as a whole, I mean state money, every month. We are talking about industrial products now. How can we ensure that

only Russian manufacturers have a priority right to participate in public procurement? Where and how does this bill help us so that we don't feed these scoundrels with the money that many, including German and various other companies, receive to this day? I said about the office because this is an illustrative example: when purchasing, they choose pens, pencils, felt-tip pens and much more - well, the activities there are more interesting than it seems ..."

(2) V.S. Osmakov, official representative of the Government of the Russian Federation, First Deputy Minister of Industry and Trade of the Russian Federation:

"Thank you very much for the question, it's actually absolutely clear. Let me remind you that our system of prohibitions and restrictions is enshrined in Law 44, this is the law on the contract system, it provides for the introduction of so-called national treatment requirements for certain purchases. In order to expand this to office supplies - and we will definitely work on this - it is necessary to expand the list of codes that the relevant decree covers, this is decree No. 616. We will look, and if this turns out to be effective, we can expand to include stationery products, including how it is made for machine tools, various types of mechanical engineering, all kinds of medicines, and so on".

(3) V.V. Gutenev, UNITED RUSSIA faction[7]:

"The laws are designed to solve one, but very important task - to turn government procuring entities to domestic producers. A lot has already been done for this, a long way has been traveled: the import substitution program is being implemented quite successfully, Yuri Ivanovich spoke about such mechanisms as the third wheel, various price preferences. Nevertheless, we are faced with a very important task - to effectively use the financial resources that will be allocated within the framework of national projects. I would like to give just a few figures: Yuri Ivanovich said that only a third of the products of our industry are supplied within the framework of 30 trillion rubles, and I would like to talk about an equally significant amount - for nine national projects, more than 3.2 trillion rubles should be mastered by domestic industry.

It should be noted that the public procurement system in recent years, unfortunately, has often been focused on foreign suppliers. Many procuring entities have a strong habit in the tender documentation of indicating unique characteristics of imported products that are not necessary and are not related to functional properties, or indicating delivery times for products based on ready-made batches of foreign products; accordingly, it is impossible for domestic manufacturers to compete in terms of deadlines, also often carbon copy justifications are written for the impossibility of purchasing domestic products. This approach immediately cuts our companies off from participating in government procurement, preventing them from not only competing, but also, in principle, taking full part. With the introduction of industry quotas, procuring entities will have to focus on the purchase of domestic products on an ongoing basis, and this will have a positive impact on the growth rate of consumption of our high-tech products. In addition, the introduction of a quota system for government procurement from domestic manufacturers proposed in the bills can

seriously support small and medium-sized businesses in the constituent entities of the Russian Federation.

Taking into account the above, the committee recommends that the State Duma support these bills in the first reading".

In addition, the selected transcripts contain narratives dedicated to supporting small businesses (as we noted above based on dirigisme). However, unlike narratives on industrial policy, they are often general about the need to support small businesses without detailed discussions about the norms of Law No. 44-FZ.

(4) V.V. Gutenev, UNITED RUSSIA faction[8]:

"*...at the same time, we consider it important to contact the Ministry of Industry and Trade in order to create a mechanism for actually increasing the share of small and medium-sized businesses in government contracts to 15[9] per cent in accordance with the amendments that we made to the 44th Federal Law*".

(5) D.B. Kravchenko, UNITED RUSSIA faction[10]:

"*...I cannot agree with the previous speaker, who exaggerated his words. In recent years, the business climate in Russia has significantly improved, the foundations for state support for small and medium-sized businesses have been created: taxation has been simplified, a grant support system has been created, there are micro-loans, guarantees, loans on preferential terms, and access to government procurement for small and medium-sized businesses has been expanded*".

During the transcript analysis, we identified only 3 narratives about horizontal environmental policy and only 1 narrative about horizontal social policy (in public procurement). It means that both these horizontal policies and the ideologies on which they are based are almost absent in public discourse now.

Here is an example of a narrative that describes social policy in the context of public procurement.

(6) M.B. Terentyev, UNITED RUSSIA faction[11]:

"... And of course, the issue of employment of disabled people: the state should still support employment of disabled people, stimulate the work of enterprises where disabled people work, through the creation of preferences for public procurement, access to municipal procurement is needed..."

Among the features of the political regime in Russia, there is a close connection between the executive and legislative branches, which influences economic policy. Government representatives and members of the State Duma often express similar views on the use of public procurement system to implement certain horizontal policies. Many of these statements are made by members of United Russia, a ruling party that stands in solidarity with the current government (Figure 3). Therefore, these narratives are reflected in ongoing government policies.

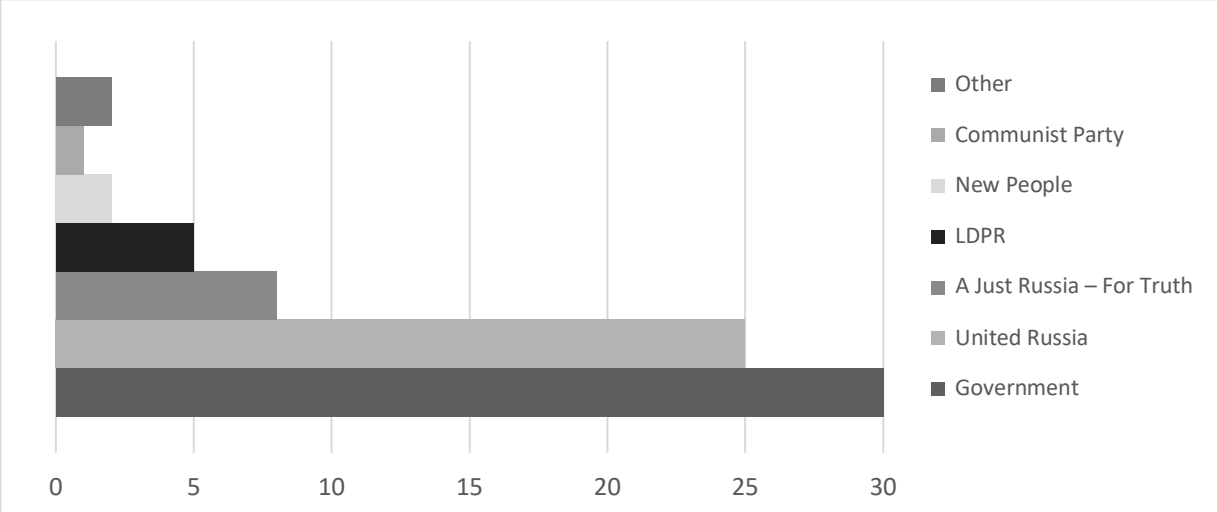

Fig. 3 Number of narratives about horizontal policies in Russian public procurement, by affiliation

5. Conclusions

Even a cursory glance at the State Duma transcripts suggests the presence of ideological ideas about the economy, which are reflected in horizontal policies. Thus, elements of the ideology of economic nationalism, dirigisme, socialism, and environmentalism, are widely represented in current regulations, in contrast to the quasi-market public procurement system itself, which is based on the ideas of neoliberalism.

At sessions of the State Duma, members of parliament mainly discuss horizontal policies in public procurement about industry and small business support (based on the ideologies of economic nationalism and dirigisme). During the analysis of the selected transcripts, we were able to identify only a few narratives regarding horizontal environmental and social (support for organisations of people with disabilities and enterprises of the penal system) policies. It means that despite the presence of these horizontal policies in the procurement law, neither they nor the corresponding ideologies (environmentalism and socialism) are on the agenda of social processes in Russia in relation to public procurement.

The results of this study should be considered in light of some limitations. Law No. 44-FZ contains a large number of by-laws (including those indicated in the research and related to horizontal policies) adopted by the Government. Therefore, they are discussed less in Parliament.

The findings of this research will provide valuable insights for policymakers, practitioners, and researchers regarding the implementation of horizontal policies within public procurement law. In addition, this article has implications for academics in the field of narrative economics.

Future research may focus on the quantitative and qualitative analysis of narratives from members of Russia's upper house of Parliament (the Federation Council) regarding horizontal policies in public procurement and related economic ideologies. This research could compare these narratives with the findings of this study and explore the similarities and differences between them. Additionally, a potential area for future

study could be to compare horizontal policies in public procurement across different countries in order to identify ideological variations.

NOTES

[1] Federal Law "On the contract system in the field of procurement of goods, works, services for state and municipal needs" dated April 05, 2013 No. 44-FZ

[2] The literal translation from Russian is "special path", but from our point of view, the term "economic nationalism" in English is more relevant.

[3] As a generale rule foreign goods mean goods produced outside the Eurasian Economic Union member countries. Similarly, domestic goods are produced in member countries of the Eurasian Economic Union

[4] Turgenev, I (1862) Fathers and Sons

[5] Article 39 of the Resolution of the State Duma of the Federal Assembly of the Russian Federation of January 22, 1998 No. 2134-II GD “On the Rules of Procedure of the State Duma of the Federal Assembly of the Russian Federation.”

[6] Transcript of the session on October 17, 2023 // http://transcript.duma.gov.ru/node/6202/ (accessed May 30, 2024)

[7] Transcript of the sessions on June 23, 2020 // http://transcript.duma.gov.ru/node/5479/ (accessed May 30, 2024)

[8] Transcript of the sessions on April 20, 2016 // http://transcript.duma.gov.ru/node/4466/ (accessed May 30, 2024)

[9] In the current version of the law, it is 25 per cent and not 15 per cent.

[10] Transcript of the sessions on January 22, 2020 // http://transcript.duma.gov.ru/node/5378/ (accessed May 30, 2024)

[11] Transcript of the meetings on March 22, 2016 // http://transcript.duma.gov.ru/node/4445/ (accessed May 30, 2024)

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Acknowledgements

This work was supported by the grant of Russian Science Foundation No. 24-18-00665, https://rscf.ru/en/project/24-18-00665/ “Ideological landscape of Russian economic science” at Southern Federal University.

Annex 1

List of by-laws of Law No. 44-FZ related to horizontal policies

Economic nationalism

Decree of the Government of the Russian Federation dated 05.02.2015 No. 102 “On restrictions and conditions for the admission of certain types of medical products originating from foreign countries for the purpose of procurement to meet state and municipal needs”

Decree of the Government of the Russian Federation dated November 16, 2015 No. 1236 “On establishing a ban on the admission of software originating from foreign countries for the purpose of procurement to meet state and municipal needs”

Decree of the Government of the Russian Federation dated November 30, 2015 No. 1289“On restrictions and conditions for the admission of medicinal products originating from foreign countries, included in the list of vital and essential medicinal products, for the purpose of procurement to meet state and municipal needs”

Decree of the Government of the Russian Federation dated August 22, 2016 No. 832 “On restrictions on the admission of certain types of food products originating from foreign countries for the purpose of procurement to meet state and municipal needs”

Order of the Ministry of Finance of Russia dated June 4, 2018 No. 126n “On the conditions for the admission of goods originating from a foreign state or a group of foreign states for the purpose of purchasing goods to meet state and municipal needs”

Decree of the Government of the Russian Federation dated July 10, 2019 No. 878 "On measures to stimulate the production of radio-electronic products on the territory of the Russian Federation when purchasing goods, works, services to meet state and municipal needs, on amendments to Decree of the Government of the Russian Federation dated September 16, 2016 No. 925 and invalidation of certain acts of the Government of the Russian Federation"

Decree of the Government of the Russian Federation dated December 3, 2020 No. 2014 "On the minimum mandatory share of purchases of Russian goods and its achievement by the customer"

Decree of the Government of the Russian Federation dated April 30, 2020 No. 616 "On establishing a ban on the admission of industrial goods originating from foreign countries for the purposes of procurement for state and municipal needs, as well as industrial goods originating from foreign countries, works (services) performed (provided) by foreign entities for the purpose of procurement for the needs of national defense and state security"

Decree of the Government of the Russian Federation dated April 30, 2020 No. 617 “On restrictions on the admission of certain types of industrial goods originating from foreign countries for the purpose of procurement to meet state and municipal needs”

Decree of the Government of the Russian Federation No. 1875 dated December 23, 2024 "On measures to provide national treatment for the procurement of goods, works, and services to meet state and municipal needs, and for the procurement of goods, works, and services by certain types of legal entities"

Dirigisme

Decree of the Government of the Russian Federation dated December 23, 2016 N 1466 "On approval of standard terms of contracts providing for the involvement of subcontractors, co-executors from among small businesses, socially oriented non-profit organizations in the execution of contracts"

Socialism

Decree of the Government of the Russian Federation of December 26, 2013 No. 1292 "On approval of the list of goods (work, services) produced (performed, provided) by institutions and (or) enterprises of the penal system, the purchase of which can be carried out by the customer from a single supplier (contractor, performer), including for the needs exclusively of organizations, enterprises, institutions and bodies of the penal system"

Order of the Government of the Russian Federation dated December 8, 2021 No. 3500-r "On approval of lists of goods, works, services, during procurement of which advantages are provided to procurement participants that are an institution or enterprise of the penal system, an organization of disabled people in accordance with Articles 28 and 29 of the Federal Law "On the contract system in the field of procurement of goods, works, services to meet state and municipal needs"

Environmentalism

Decree of the Government of the Russian Federation dated December 31, 2021 No. 2604 "On the assessment of applications for participation in the procurement of goods, works, services to meet state and municipal needs, amendments to paragraph 4 of the Decree of the Government of the Russian Federation of December 20, 2021 N 2369 and recognition as invalid some acts and certain provisions of some acts of the Government of the Russian Federation"

Decree of the Government of the Russian Federation dated July 08, 2022 No. 1224 "On the specifics of the description of certain types of goods that are the object of procurement to meet state and municipal needs, the procurement of which is subject to environmental requirements"

Annex 2

Code-book for selecting narratives

Economic Ideology	Horizontal policy	Code
Economic nationalism	Industrial	Import substitution, domestic (Russian) goods, domestic (Russian) manufacturers, foreign goods, national treatment, national preferences, offset contract, special investment contract
Dirigisme	Entrepreneurship support	Small business, small entrepreneurship, imperfection of the mechanism, failures of the system
Socialism	Social	Disabled people, organizations of the disabled, enterprises (organizations) of the penitentiary system, contribute to the correction of personality, socialisation, re-socialisation
Environmentalism	Environmental	Ecology, environment, sustainable development, green public procurement

AN EVALUATION OF THE SAUDI ARABIA LEGAL SYSTEM IN PUBLIC PROCUREMENT IN LIGHT OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

Abrar R. Alrehaili*

Suggested citation: Alrehaili, A. R. (2025). An evaluation of the Saudi Arabia legal system in public procurement in light of the United Nations Convention against Corruption (UNCAC). International Journal of Public Procurement, 1(2), 43-66.

Abstract:

This study evaluated the Saudi legal and institutional framework for combating corruption in public procurement, in the light of the United Nations Convention against Corruption (UNCAC). As Saudi Arabia strives to achieve its Vision 2030, which aims to transform the nation into a major global economy, transparency and good governance in public procurement are crucial. Utilising a qualitative approach with thematic analysis, the study reviewed laws, conducted interviews and examined government reports to assess Saudi Arabia's progress. The findings indicate that the legislative and institutional changes align well with UNCAC principles. Despite notable progress, challenges persist in implementing reforms, including high risks in the implementation phase, inflexibility in automation, capacity building and poor awareness among public officers about anti-corruption measures. Addressing these challenges is vital for strengthening procurement processes and promoting transparency, accountability, and integrity in government agencies. Recommendations to this end been made.

Keywords

Corruption; public procurement; Saudi Arabia; United Nations Convention against Corruption

1. Introduction

In 2016, the Kingdom of Saudi Arabia embarked on an ambitious development journey with the launch of Saudi Vision 2030, which aims to diversify the economy, reduce dependence on oil revenues and promote sustainable development across all

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sectors [1]. However, achieving this vision requires not only economic reforms but also a commitment to good governance and this is strongly evident in the realm of public procurement. Public procurement processes are particularly vulnerable to corrupt practices, which can undermine development projects, distort market competition and erode public trust. Good governance principles, such as transparency, accountability and integrity, as well as efficient public spending and the promotion of fair competition, are essential for safeguarding public funds and maintaining public trust in government institutions [2]. For the Kingdom of Saudi Arabia, a nation that stands as a leading economic power in the Middle East, tackling corruption is not just a legal imperative but also a critical component of its national development strategy. Thus, transparency, accountability and integrity are crucial the objectives of Vision 2030.

In this context, the United Nations Convention against Corruption (UNCAC) serves as a pivotal instrument [3]. As the only comprehensive and binding international legal framework for anti-corruption efforts, UNCAC outlines standards and policies essential for promoting transparency, accountability and integrity in public administration, including the public procurement sector. The convention's significance lies in its ability to provide a global benchmark for countries to structure their anti-corruption strategies effectively.

This study examines Saudi Arabia's legal and institutional framework for combating corruption in public procurement in alignment with UNCAC obligations. By employing a qualitative approach, specifically thematic analysis, the study aims to assess Saudi Arabia's progress in establishing a strong legal foundation for public procurement and anti-corruption measures, and an analysis of those measures. Through this evaluation, the study identifies both the strengths and weaknesses of Saudi Arabia's approach to public procurement and anti-corruption. The findings are expected to offer valuable insights into how well the Kingdom's initiatives align with international standards set by the UNCAC, providing a basis for recommendations to enhance transparency, accountability, integrity and governance in achieving Vision 2030.

The rest of this study is structured as follows: The first section reviews the literature on corruption on public procurement, emphasising the principles outlined by the UNCAC to guide and enhance national legal and institutional frameworks in the fight against corruption. The second section details the methodology employed. The third section analyses the alignment between Saudi Arabia's measures and UNCAC principles, providing an examination of legislative and institutional reforms. The discussion section evaluates the implications of these findings, highlighting both successes and areas for improvement, identifying barriers to successful reform and suggesting how these might be tackled. Finally, the study concludes with a summary of key findings, their significance and recommendations for enhancing compliance with UNCAC principles.

2. Literature review

2.1 Corruption in Public Procurement

Public Government agencies purchase various goods, services and infrastructure projects from private companies through a process known as public procurement. This

involves identifying needs, issuing tenders, evaluating bids, awarding contracts and managing vendors. Public procurement accounts for significant government expenditure across the world. For most countries, it represents 15%–22% of the gross domestic product, totalling approximately $9.5 trillion globally annually [4]. Furthermore, it can be an effective tool in achieving the goals of the country's economic and social development strategy by aligning public purchasing practices with strategic development objectives because it delivers the required input, such as services, goods and civil works, to public departments at an affordable cost with the optimum level of quality [5,4,6]. Instead of relying solely on price criteria to determine economic efficiency, a best-value-for-money system is adopted by considering the monetary and non-monetary components of bids [7]. By following this system, not only the price but also the quality is considered to determine the economic efficiency [7]. Given its scale and intricacies, public procurement greatly influences national economies.

Nevertheless, substantial financial resources and intricacies create significant incentives for bribery, kickbacks, collusion, embezzlement and other forms of malpractice, rendering the public procurement sector particularly vulnerable to corruption [2]. Corruption is defined as ’the abuse of entrusted power for personal gain’ [2]. According to the United Nations Office on Drugs and Crime (UNODC), corruption causes a loss of approximately 10%–25% of the value of public contracts [8]. Extensive research shows that corruption in public procurement has multiple negative effects. It can damage the economy, erode trust in government institutions, raise prices, lower service and product quality, reduce competition and impact the public budget, hindering long-term growth [9,10,11,12]. Corruption within the public sector often thrives when officials wield authority over resources of value and exercise discretionary power in their allocation [13,14]. Hudon and Garzón (2016) have illustrated how these components manifest in the realm of public procurement [15]. They assert that economic rents may be generated prior to contracting through contract valuation inflation or post-contract through modifications, facilitated by the exercise of discretion to distort the procurement process while avoiding scrutiny and accountability for such deviations. Returning to the factor of officials exercising discretionary power, this is particularly significant in the context of Saudi Arabia, where the influence of wasta is pervasive. Wasta refers to a culture, based on the old tribal system and patriarchal nature of the Kingdom, where relationships, familial, tribal and social, influence how decisions are made and who receives favourable treatment. In public procurement, this could be the award of a contract, for example [16]. It is clear that with such a powerful influence at work, the opportunities for corruption are many and the issue is thus of great importance. However, in some cases, the same discretionary power that can contribute to an environment where corruption might grow may also be seen as necessary if public officials who work in public procurement are to exercise their professional judgment effectively. It has been suggested that excessively limiting this discretion could, impair the overall efficiency of the procurement process and lead to an escalation in costs [17,18]. Furthermore, it may prove to have no more than a limited impact on corruption control [19]. Furthermore, the excessive regulation and predefining all parameters to curb corruption may lead to what is termed ‘negative

waste' of public resources [20,21]. An example of negative waste could be where a good-quality offer is submitted, perhaps better than others, but which suffers from one or two minor technical faults. If the officers have the discretion to give some advice on how the bidder could adjust the offer, it could then be accepted, to the public's benefit; otherwise, it may be rejected, leading to a situation where no-one (except the winner of the contract) benefits.

Two further examples can be given to show the value of discretionary powers for officials. First, in times of unforeseen circumstances, or emergencies, it may be vital that swift decisions and actions are taken, and there is no time to go through the normal bureaucratic channels. A case in point is the COVID pandemic, where governments had to quickly make provision for protective clothing and masks, and vaccines. Delay in procuring such items could have risked the spread of the disease, cost lives and also lost large sums of money. By allowing flexibility, procurement officers could be able to source and buy supplies quickly. Another example could be where best practice dictates a policy (such as allowing only five days for a losing bidder to appeal an award) but the policy is unsuitable to the Saudi context (where more time may be needed). Allowing extra time would, again, work in the public interest.

However, it could well be argued that the flexibility that could be offered in these scenarios could be abused and actually invite corruption. In the case where advice is offered to a bidder, this might be made by an officer who has some vested interest in helping the faulty bid succeed, and who has knowledge of the other bids and is thus in a position to pass on critical knowledge that will secure an award.

The question, then, is how to find a balance that will protect the integrity of the system while allowing a degree of flexibility which might serve the overall purpose of the process, i.e., efficient use of public money. Bosio et al. (2022) have suggested that curtailing discretion is only likely to be beneficial in a country where the public sector is relatively under-developed or inexperienced [22], while Decarolis et al. (2023) argue that national levels of corruption and the presence of effective control mechanisms should be considered to determine how much discretion to allow [19]. This common idea seems to hold some most chance of making a positive impact. This idea finds support from Rose-Ackerman and Palifka (2016), who add that a stable legal environment, along with strong enforcement institutions, can go a long way to control corruption [23]. Most of the research and approaches aimed at controlling administrative corruption are centred around this policy. For example, Malanski and Póvoa (2021) demonstrated, using the corruption perceptions index, that institutional quality, transparency and credibility contributed to reducing corruption levels [24]. Furthermore, Olken and Pande (2012) indicate that bureaucratic structures may contribute to the generation of bribes; this is not hard to understand, as more layers of bureaucracy that need to be negotiated means more opportunities for different individuals to assert their influence and seek a bribe [25]. In their study, Basheka and Bisangabasaija (2010), they confirmed that variables, including monitoring and evaluation had a statistically significant relationship with corrupt behaviour in public procurement contracts [26]. From this perspective, institutional designs and

institutional oversight that may reduce discretionary power and raise the costs of corrupt behaviour may contribute to controlling corruption.

Thus, discretion, as a principle, should go hand-in-hand with systems that strive for high levels of accountability, have strong monitoring processes and offer sufficient training to procurement staff so they fully understand the responsibilities they bear and the implications of any misuse.

As a result, legislative reforms that reduce discretion and unnecessary procedures and regulations should be encouraged, in addition to promoting competition in bids and contracting for public works or services, although in more well-established systems with better legal frameworks and accountability systems and cultures, a greater degree of discretionary power may be warranted.

2.2 UNCAC Principles to Control Corruption in Public Procurement

The United Nations' concerted efforts to combat corruption culminated in the General Assembly's adoption of Resolution 58/4, ratifying the UNCAC convention [3]. This convention marked the first comprehensive and binding international instrument outlined measures for the global community and individual nations to adopt to eradicate corruption. The primary goal of UNCAC is to introduce and build strong anti-corruption measures at the national level while fostering international cooperation [3]. This would serve as a preventive tool, reflecting a global strategy against corruption. Article 5 mandates that each state party develop and maintain coordinated anti-corruption policies founded on the principles of transparency, accountability and integrity. As outlined by Hausman, Article 5 serves as the strategic framework of the UNCAC convention, underpinning subsequent Articles that detail the implementation of these principles [27].

In the realm of public procurement, UNCAC uniquely integrates procurement reform policies with anti-corruption initiatives; historically, procurement reforms focused on promoting competition and transparency, with little focus on integrity, as the latter was seen as an anti-corruption issue [8]. UNCAC bridges this gap, emphasising the convergence of these three elements to foster effective governance [8]. Effective public procurement aims to achieve national economic and social development goals by optimising financial resource utilisation [5,6,7]. The convention endorses a ‘best-value-for-money’ approach, considering both monetary and non-monetary bid components to ensure economic efficiency[28]. By regulating public procurement as part of good governance, UNCAC aligns anti-corruption efforts with the efficient use of public resources, thus enhancing system integrity [28].

The effective application transparency, accountability and integrity is further elaborated in Article 9, which specifies legislative, institutional and operational requirements to establish appropriate systems to prevent corruption in public procurement.

2.2.1 The Principle of Transparency

Article 9/1 principally calls for the publication and dissemination of all data related to invitations to tender, procurement procedures and contract awards, including

predefined criteria and conditions. Transparency is a fundamental pillar in combating corruption in public procurement as it removes information gaps and secrecy, which would otherwise enable misconduct to thrive unchecked [29]. Adherence to transparency can support other principles, such as accountability, by enabling oversight bodies to monitor all stages and ensure legal compliance and objective implementation [30,31]. In addition, informing bidders of the required conditions and criteria in advance allows stakeholders to challenge decisions if legal provisions are not met [31]. The ability to challenge award decisions is integral to a robust procurement system. Analysis of data from over 3.5 million government contracts between 2006 and 2015 reveals that comprehensive transparency in bidding significantly reduces corruption risks [32]. This reduction is primarily attributed to pre-award transparency, which enables stakeholders to monitor the bidding process effectively [32].

In this context, e-procurement technology is crucial for automating disclosure through unified digital platforms with open data formats, enabling detailed tracking of procurement activities [8]. This may reduce manipulation, price inflation, participation barriers, subjective evaluations and execution gaps, common in manual processes [8]. Research by Neupane et al. (2013) shows that e-procurement enhances transparency and information accessand reduces discretionary power in developed and developing countries alike [33]. However, Mohungoo et al. (2020) argue that environmental differences between countries, stakeholders' understanding of public values (such as transparency, accountability and integrity), and the provision of adequate training for employees can significantly impact the expected outcomes of implementing e-procurement [34]. The current study also featured many comments which focused on the same point, explaining the value of the e-procurement platform in the pre-implementation phases.

2.2.2 The Principle of Accountability

There is a natural link between accountability and transparency, commentators seeing the latter as a dimension of the former [e.g., 30,35,36].

Accountability is the enforceable mechanism that operates to develop transparency into scrutiny, sanctions and continuous improvements, allowing those responsible for corruption to be held to account (e.g., through legal processes) and giving meaning to the monitoring of policy and teeth to enforcement [30]. Accordingly, UNCAC adopts a comprehensive approach to enhancing accountability in public procurement by creating specialised and independent bodies with oversight powers to detect corruption and to instigate action against anyone found to be involved in corrupt actions or activities. Also, it encourages legal frameworks that protect whistleblowers who are often vital to the exposure of corruption. In addition, it helps to establish effective appeals systems, allowing parties who believe awards have been made unfairly to bring up their concerns. Olken’s study (2007) on the impact of monitoring on corruption reduction in construction projects in Indonesia revealed that traditional economic approaches or strict top-down monitoring can significantly curtail corruption, even in environments where it is pervasive [37]. Furthermore, Serra (2012) indicates that a combined approach of top-down and bottom-up monitoring, which includes

active citizen participation in reporting corruption, can offer effective control, even when formal sanctions are infrequent [38]. Williams-Elegbe (2012) notes that social mechanisms, such as public shame and ridicule, upon exposure of corrupt acts, though informal, can be potent in combating corruption in public procurement, particularly in the absence of formal sanctions [39]. All of these reinforce accountability, as they threaten to have unwelcome consequences on corrupt practitioners, removing their cover of anonymity and drawing them in to a system that has real power to take punitive measures; thus, the cost of being corrupt is raised significantly. Such involvement enhances information flow, also enabling better identification of the strengths and weaknesses within anti-corruption mechanisms and providing a clearer picture of public service quality and governance effectiveness. These findings underscore the importance of enhancing comprehensive accountability to ensure the effective performance of anti-corruption strategies in public procurement.

2.2.3 The Principle of Integrity

Integrity in public procurement necessitates evolving transparency and accountability from mere compliance measures into an ethical culture that emphasises the public interest, equity and professionalism. According to t UNCAC, integrity entails 'the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interest in the public sector' [29: p80]. The convention mandates State Parties to adopt appropriate measures to enhance the integrity of public procurement officials. These include the introduction of declarations of interest by officials, a clear code of conduct, and training programmes [3]. Empirical research highlights a robust correlation between merit-based recruitment (as opposed the use of wasta, as is so common in Saudi Arabia [40]and reduced corruption levels, or instance, a survey by Dahlström et al. (2012), encompassing 52 countries [41]. These findings were corroborated by other studies [42,43] which demonstrated that merit-based recruitment could mitigate corruption in developing nations.

Professionalism in public procurement extends beyond educational qualifications when conducting procurement activities [44]. Additionally, [45] notes that a lack of understanding of procurement value, limited professional expertise and insufficient support from management can undermine the proper execution of procurement processes. Training procurement officials and ensuring their awareness of relevant regulations and procedures can serve as a deterrent to corrupt behaviour [46]. Basheka et al. (2013) assert that combating corruption in the public procurement sector requires enhancing the technical and professional capacities of public officials across various government departments, including those involved in procurement and bidding processes, and officials responsible for auditing and oversight [47]. According to Karyeija (2012), most public officials in developing countries lack the necessary technical capabilities, impeding the effective implementation of reforms and thus failing to improve the culture of integrity [48].

However, there is a need to consider both intrinsic motivations (such as the significance of the role) and extrinsic motivations (such as performance-based

compensation and promotions) when planning and implementing anti-corruption policies [46,49,50]. The extrinsic motivation of better pay and conditions operates to give the officials a sense of the organizations value and appreciation of them, and raises their esteem and satisfaction. Such an environment is conducive to the building of effective ethical values and fighting against corruption, which often thrives when employees feel neglected, under-rewarded and inferior to others. Thus, fostering a culture of integrity in the public sector is crucial due to the potential for conflicting loyalties and the extensive discretion available to officials, which can create opportunities for illicit gains [51].

2.3 Saudi Vision 2030 and the Imperative of Controlling Corruption

In 2016, Saudi Arabia launched Vision 2030, a comprehensive reform plan aimed at economic and social modernisation and sustainable development. Recognising the need to address corruption within the public sector, particular emphasis has been placed on reforming public procurement [1]. The Government Tenders and Procurement Law (GTPL) of 2019 reflects these efforts, aiming to enhance efficiency based on the principles of transparency, accountability and integrity in procurement processes [52]. The overarching goal is to drive economic growth, positioning Saudi Arabia among the world's top economies by 2030, through fiscal balance, innovative contracting methods and support for small businesses [1]. Public procurement is viewed as a strategic tool for achieving the development goals outlined in Vision 2030, with the GTPL (2019).

As a result of ratifying UNCAC in 2013, the Kingdom of Saudi Arabia underwent a review to assess its commitment to the provisions of the convention regarding combating corruption in public procurement. The principles outlined in UNCAC play a pivotal role in guiding efforts to address corruption within this domain. UNCAC's emphasis on transparency, accountability and integrity serves as a foundation for establishing effective legal and institutional frameworks aimed at mitigating corruption risks and fostering public trust in government institutions. Wafa (2020) argued that in Arab Gulf countries, social and institutional challenges hindered efforts to combat corruption, and Saudi Arabia was one of only three states to score more than 5.0 on the Global Competitiveness Index (2017) [53]. She recommended the need for a participatory approach and stressed the need for greater transparency. Alanazi (2021) points out that in Saudi Arabia, tenders for contracts can be annulled if there is evidence of corruption in the process, and by highlighting that GTPL (2019) seeks to ensure that there is transparency, fair competition and sufficient training for officials involved, he implies that there are areas where corruption may be situated in public procurement [54]. A thorough examination of the new Saudi public procurement lawin the light of UNCAC principles, the main focus of this study, will offer valuable insights into its potential impact on corruption prevention and the promotion of good governance in the Kingdom's procurement landscape.

The literature review offers a valuable insight into the connection between corruption in public procurement and the prevalence or degree of discretionary powers awarded officials, especially in the award of contracts. Although there is no unanimous verdict in the literature, the strong suggestion is that without a system of rigorous

monitoring, transparency and accountability, and without adequate training of officials, discretion is probably best limited. Furthermore, the roles of transparency, accountability and integrity are well explained and illustrated. Some attention is also given to the contexts of Arab Gulf states, and to Saudi Arabia in particular.

However, the literature does seem limited in some areas, revealing gaps which the current study intends to address. First, there is little in the literature which examines the question of corruption in public procurement in Saudi Arabia and the wider Gulf context. Secondly, there is also little to link discretion, and the rigidity and depth of the monitoring and enforcement processes operate, and their influence on levels of corruption in the Saudi context. Suggestions are made that wasta is a social factor that tends to permeate society and raises opportunities for corruption, but a more detailed examination, as well as concrete, evidence-based proposals are lacking; more empirical studies are needed before the real picture can be understood.

3. Methodology

This research adopted a qualitative approach, where the experience, reactions and opinions of the actors involved are central to understanding the answers to the research questions. Qualitative analysis is appropriate for investigating perspectives, behaviours, implementation challenges and context-specific insights on anti-corruption efforts, which quantitative data cannot capture [55] Both primary and secondary sources were used (semi-structured interviews, and academic and legal sources, respectively). Thematic analysis was employed to analyse the data, identifying emergent themes and patterns and organising the data accordingly. Thematic analysis is a qualitative research method that identifies patterns within data, using either an inductive approach to discover themes organically or a deductive approach to apply pre-existing concepts, making it valuable for both exploratory and structured studies [56]. In the current study, a deductive approach was used, applying the concepts of accountability, transparency and integrity.

The themes and patterns related to preventive measures to control corruption in public procurement and Saudi Arabia's alignment with UNCAC standards. Data were triangulated to give a more comprehensive picture, and helping to identify patterns and exceptions [57].

The main themes of transparency, accountability and integrity were supplied by the UNCAC convention and related academic literature. Sub-themes which emerged are indicated in Figure (1) below.

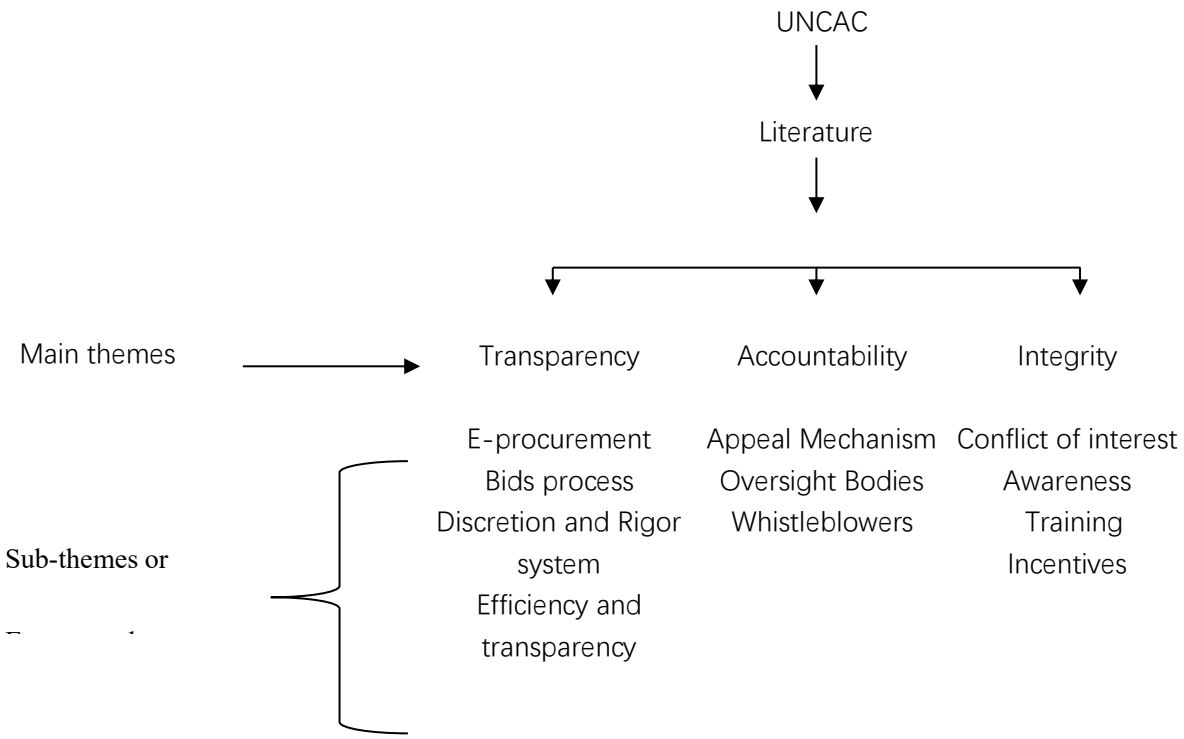

Figure 1. Main and sub-themes

The semi-structured interviews were conducted with government officials, procurement professionals and academics, to garner insights into the effectiveness of current anti-corruption measures.

Table (1) below summarises the role, years of experience and institutional affiliation of each interviewee.

Table 1. Overview of the selected sample

Number	Role, years of experience and institutional affiliations
Participant 1	Professor of Administrative Law, 20 years' experience
Participant 2	Government official, 10 years' experience, General Administration for Contract Follow-up at Nazaha
Participant 3	Government official, over 10 years' experience, Systems Development Department at Nazaha
Participant 4	Government official, less than 10 years' experience, Systems Development Department at Nazaha
Participant 5	Government official, the General Court of Audit, over 10 years' experience
Participant 6	Government official, 10 years' experience, Project Management Department
Participant 7	Government official, the Ministry of Finance, over 10 years' experience
Participant 8	Government official, the Ministry of Finance, 5 years' experience
Participant 9	Chairman of the Public Procurement Reform Committee, over 20 years' experience

Nonetheless, the research acknowledges certain limitations. The first, and perhaps most important, concerns the sensitive nature of the information that was being sought. In Saudi Arabia, it is not customary to publish and discuss subjects such as corruption, which might cause embarrassment to officials and the government. Thus, a number of officials who were approached declined to participate in the study, fearing that it would publicise or expose sensitive information. Others may have limited the amount of information or the number of details they were prepared to share with the researcher. The second limitation is that only officials working in the public sector were consulted. This reflects the time constraints of the study. A further constraint may be the positionality of the researcher, or the natural and sub-conscious biases that are prevalent. To achieve better objectivity, all data was analysed more than once, looking for evidence where bias might be evident, and any such interpretations were re-worked. It would have helped if more than one researcher were involved in preparing and analysing the data, so issues of bias could become evident and dealt with in a collective manner, but the practical demands of the study made this impossible. Another constraint involved time; there had been little time for the officials to fully assess and digest the impact of reforms, which had been introduced fairly recently. Finally, the relatively small number of participants naturally offers a somewhat limited source of information, although it should be said that for an exploratory, qualitative study such as this, the number is enough to provide useful data that can in turn inspire further research.

The research also adhered to the ethical guidelines and standards of the University of Sussex, as it was conducted as part of the requirements for obtaining a doctoral degree. Two key ethical considerations concern anonymity and data protection. To ensure that interviewees' identities were protected, each was anonymised, being referred to by an assigned number. No personal information was used other than their years of experience and their position. The information was not shared with anyone, making it impossible to identify the participants. To keep the data safe, the data was stored in a password-protected file which was not made available to any other person. One the research is completed; the names of the participants will be deleted from all records.

4. Saudi government tenders and procurement law and its alignment with the principles of the uncac

This section considers the new Government Tender Procurement Law (GTPL) of 2019, and its associated regulations. The provisions are analysed according to the principles of transparency, accountability and integrity, and both positive results and remaining challenges are discussed. Secondary and primary sources are used.

4.1 Transparency

The government has made two main provisions for reducing entities' discretionary powers and thereby improving transparency in the procurement process. These are (1) the establishment of an e-procurement system (Etimad) and (2) the introduction of a central purchasing body (EXPRO). These are now examined in turn.

4.1.1Etimad

The launch of the e-procurement platform by Saudi Arabia in 2018, managed by the Ministry of Finance, was a significant reform initiative aimed at enhancing digital government services and implementing Vision 2030 [58]. Following the enactment of the GTPL in 2019, the use of this platform became mandatory for all government entities and the private sector. In 2021, the operational and supervisory mandate of the platform was transferred to the National Centre for Government Resource Systems, endowed with financial and administrative independence [59]. Consequently, the platform now operates under the supervision of an autonomous entity distinct from the contracting parties.

Saudi Arabia leveraged international expertise and best practices in e-procurement, collaborating with the G20 Anti-Corruption Working Group [60]. Several indicators were developed to monitor signs of corruption risk, with the platform providing comprehensive services for managing all procurement procedures, from procurement management and contract management to payment management, including publishing the minutes and decisions of the public procurement committee regarding complaints and appeals [61].

Before the implementation of Etimad, levels of transparency were very inferior. Participant 7 (P7), an official in the ministry of Finance, points out that previously announcements advertising for tenders were limited to newspapers, and details regarding bids and prices were not public knowledge. The e-platform has transformed this situation, publishing all such knowledge openly. Thus, P1, a professor in the field of administrative law notes that risks of corruption in the awarding phase are now significantly lower, while P2, in the General Administration for Follow Up at Nazaha, adds that this has lowered corruption risks also in the pre-contracting and bidding phases. The difference that Etimad has made is considerable; P3 (an official with Nazaha) said transparency had been “significantly enhanced” while P5 (an official at the General Court of Audit) estimated the improvement in quantitative terms, assessing the improvement at 60% - 70%, and P8 (an official with the Ministry of Finance) declares that the e-platform represents a “paradigm shift” in thinking and practice.

However, ongoing challenges need to be addressed. The first of these is that P3 claims the main issue is that it is the government entity that is responsible for inputting the data onto the platform, and that oversees that it is accurate and complete. However, this may leave room for corrupt practices later, as it can be possible to manipulate the data in the implementation phase. Indeed, P9, the Chairman of the Public Procurement Reform Committee gave the example of when his department needed to retrieve a document for legal purposes, they noticed that the information had been tampered with. Similarly, P1 notes that while the introduction of the e-platform has streamlined processes, it has also increased risks related to bribery during implementation. P2 further emphasizes that significant challenges persist in this phase.

Another challenge is the limited flexibility inherent in automating all procurement procedures, which may hinder the ability to accommodate various scenarios that may arise in practice. This lack of flexibility could lead to attempts to bypass the established procedures to overcome obstacles. (P 9), for this reason, suggests that the process should allow a degree of flexibility and initiative.

4.1.2 Central Purchasing Body (EXPRO)

The Government Expenditure and Projects Efficiency Authority (EXPRO) was established in 2021 to centralise procurement activities and enhance transparency [62]. Operating independently, EXPRO is tasked with various roles, including negotiating framework agreements, reviewing feasibility studies, preparing tender documents, overseeing procurement operations and participating in bid evaluations [52]. One of the key amendments in the GTPL (2019) is the requirement for government entities to prepare detailed annual procurement plans that outline the needs and timelines for the intended projects and to publish them on the e-platform, where they will be reviewed by EXPRO. Moreover, under the GTPL, Saudi government agencies must follow strict requirements regarding the bid documents; they must use EXPRO's standard templates and submit full documentation to EXPRO for review at least 15 days before issuing bids except for projects up to SAR 20 million. The EXPRO authority must review the specifications of the bid and respond within 15 days; no response means approval. This amendment addresses the procedural opacity that existed under the GTPL of 2006, where the assessment of needs and the preparation of all pre-procurement procedures, including the drafting of tender documents, were almost entirely subject to the discretion of the relevant government agency, with no external oversight [63].

Recent changes in bid evaluation have diversified criteria beyond price alone, incorporating both price and non-price factors to ensure fairness and competitiveness. These criteria are categorised into basic, balanced and total project cost criteria [64]. Basic criteria focus on fundamental technical requirements, whereas balanced criteria evaluate financial and technical capabilities with predefined weights. Total project cost criteria assess cost-effectiveness across competitive alternatives. These mechanisms aim to achieve the best value for money, with government agencies mandated to disclose them for transparency [64]. This ensures bidders can confidently align proposals with agency priorities, enhancing decision-making transparency and stakeholder understanding [64].

4.2 Accountability

4.2.1 Appeal Mechanisms

Before the reform, the lengthy litigation process undermined the effectiveness of challenging administrative decisions, often leaving affected parties with inadequate compensation rather than true justice, making the appeals process more theoretical than practical [65]. Saudi Arabia has significantly improved its appeal mechanisms with the GTPL (2019). It distinguishes between grievances not related to the awarding decision, which must be submitted within 5 working days, and those which are, requiring a suspension period of 5–10 working days for resolution [52]. These changes enhance opportunities for appealing administrative decisions while still allowing parties enough time to address grievances administratively before contract execution.

Appeals are first made to the government entity, and if not accepted, they can be further addressed to a special committee to review grievances and adjust pricing [52]. The completion of contracting procedures is suspended until the grievance is decided

upon or the period specified by law for the committee to consider the grievance, which is thirty days, has expired, something previously not possible. If they can resolve the grievance, they take action to do so and if not, they have the power to cancel the contract [52]. In all cases, the GTPL (2019) allow for judicial review by filing an annulment lawsuit within 60 days of notification [52].

However, concerns remain regarding the practical effectiveness of the new appeal mechanism. P1 argues that setting a strict timeframe of five to ten days for grievance resolution is unrealistic due to persistent bureaucratic inefficiencies within government agencies and suggests rather that an emergency court process should be set up whereby urgent grievances can be heard, and action taken, quickly.

4.2.2 Restructuring Oversight Institutions to Monitor Public Procurement

Before the reforms, Saudi Arabia's implementation and oversight mechanisms were insufficient due to multiple oversight entities, often with overlapping jurisdictions, limited authority and lack of incentives to thoroughly investigate cases beyond a basic level [66]. In reviewing the role of Saudi oversight authorities, the Country Review Report [60: p26] suggested that the government should, 'enhance coordination and cooperation between relevant anti-corruption entities'. In response, regulatory institutions were reorganised to strengthen their mandates and ensure their independence. Accordingly, the powers of the Oversight and Anti-Corruption Authority (Nazaha) were expanded to include investigating and detecting corruption by consolidating administrative investigations and enhancing prosecutorial authority [67]. They are given strong powers to demand access to information they consider to be relevant to a case. This integration allows Nazaha to handle financial and administrative corruption more comprehensively, promoting effective coordination and equipping it with the necessary tools to perform its duties efficiently [67].

Nazaha depends to a large extent on information supplied by whistleblowers to identify cases for investigation. However, until the 2024 Whistleblower Protection Act [68], there was little incentive for whistleblowers to come forward [69]. The Act offers extensive protections, including anonymity and legal safeguards, which may extend to their associates, indicating the country's direction towards enhancing comprehensive accountability and strengthening the societal role in combating corruption [68].

Despite reforms, challenges persist in financial accountability, particularly regarding post-contract oversight by the General Court of Audit. This differs from Nazaha in that it is primarily interested in documentation while Nazaha is focused on people and their actions. A key issue is that many government entities fail to submit their contracts for examination. P5 identifies several reasons for this: poor internal management within these entities, the overwhelming number of government contracts, which exceed the General Court's capacity, and a shortage of human resources and authority within the General Court itself.

4.3 Integrity

Under the GPTL (2019), two regulations concerning conflicts of interest and codes of conduct were introduced for officials involved in public procurement contracts.

2020 saw the introduction of the Regulation on Conflicts of Interest [70]. This regulation expanded the definition of conflicts of interest to include actual, potential and apparent conflicts, requiring disclosure from both government employees and vendors. Each government entity must issue its policy, drawn up in cooperation with the Ministry of Finance. If Nazaha finds that such a policy does not exist, it can instruct the government entity to put the situation right. Should a conflict of interest be found to be irreconcilable, then the individual is removed from the process.

Further to the Conflict of Interests rRegulation, another regulation was issued to regulate the conduct and ethics of those working in public procurement [71]. This outlined principles and duties to guide the behaviour of procurement officials and align practices with the standards of professionalism, integrity and objectivity. EXPRO has been charged with providing training and support in these areas to officials [52].

Despite these regulatory improvements, challenges persist. The first challenge is that a number of government entities have failed to issue a conflict of interest policy, despite regulations which require them to do so. P4 (an official with Nazaha) and P8 note that this is especially the case in entities with state ownership stakes. They go on to suggest that this might be explained by the fact that previously, such entities had been exempted from some requirements under public procurement law, and officials may not have appreciated their new obligations, thinking they did not apply to their entity.

A failure to appreciate new regulatory obligations is not restricted to the example given above.

P5 highlights that government entities often misinterpret relevant laws, while P4 points out that some create financial regulations they perceive as more flexible but that ultimately violate statutory requirements. Furthermore, entrenched organizational culture remains a significant barrier. P6 (an official at project management) observes that outdated practices persist, with officials reverting to old habits when faced with issues. Although some awareness of new regulations exists, it remains insufficient to drive meaningful change. According to P6, shifting these deeply rooted behaviours will likely take generations.

In terms of improving the results of the new measures, some observations and suggestions were made. While supporting anti-corruption efforts, P6 suggests that the approach should be more supportive, understanding and persuasive, not relying on instructions and threats of punishment to achieve compliance. This suggests that non-compliance may often be the result of factors other than a lack of integrity. Additionally, P5 notes that employees at less important entities often receive better incentives than those at the General Court of Audit, making it difficult to retain skilled professionals and maintain high standards. P4 emphasizes the need for intensive training sessions for departments responsible for implementing procurement regulations and approving financial policies. Government entities must develop a deeper understanding of the system's provisions, which are broad and complex, and which require careful reading and considerable experience. Furthermore, P5 points out that, unlike countries such as Egypt, Saudi Arabia currently lacks accredited professional certifications for procurement specialists. Establishing such certifications would help professionalize

public procurement, ensuring that only qualified individuals handle procurement tasks within government entities.

Table (2) below summarises key reforms.

Table 2. Summary of key reforms in Saudi public procurement: A pre- and post-reform comparison

Principles	Pre-reform	Post-reform
Transparency	There was no provision for e-procurement. Government entities exercised broad discretion Price was the only evaluation criterion	Mandatory use of e-procurement platform (Etimad) Central Purchasing Body 'EXPRO' Strict requirements for Planning and Preparing bid documents Price and non-price criteria
Accountability	No power to suspend the process in case of appeal Inefficient Implementation and oversight mechanisms	Impose a suspension period 5-10 days Restructuring Oversight Institutions to Monitor Public Procurement Whistleblower Protection Act (2024)
Integrity	There is no dedicated regulation addressing conflict of interest,	Regulation on Interests of Conflict (2020) Regulation Governing the Conduct and Ethics (2020)

5. Discussion

This study's findings demonstrate that overall, Saudi Arabia has made significant strides in aligning its public procurement legal framework with the principles outlined in UNCAC. Key institutional reforms, including the adoption of e-procurement and the creation of EXPRO, represent a paradigm shift towards a more transparent framework, free from discretionary practices and potential abuse. Speaking of the Etimad platform, P5 says that it has made "noticeable" changes and "addressed many gaps", while P1 argues that it has "significantly reduced" risks of corruption in the awarding phase. This reflects the inherent feature of transparency that the e-platform embodies aligns very clearly with one of the main pillars of UNCAC principles. This is consolidated by the introduction of EXPRO. Participants have noted how this has positively impacted transparency and efficiency.

Saudi Arabia's adoption of measures to enhance accountability, such as strengthening the role of Nazaha, issuing a law to protect whistleblowers, and addressing gaps in the appeals mechanism, signals a shift towards comprehensive accountability. This is supported by new regulations regarding conflict of interest and the introduction of a code of conduct. This provides a clear framework under which officials can recognise their responsibilities, and when corruption is suspected or detected, whistleblowers are protected and appeals are heard more quickly, with greater powers awarded Nazaha to redress problems. These reforms are guided by best practice,and again demonstrate that UNCAC principes are taking a strong hold on Saudi thinking as it restructures its public procurement processes.

However, despite these advancements, several challenges remain that require further attention and targeted reforms to ensure effective implementation. One such challenge is that the effectiveness of e-procurement is undermined by data manipulation risks especially in the implementation stage, potentially allowing for corrupt practices. P3 described this a the "main challenge" in combatting corruption in the implementation phase. This problem is not confined to Saudi Arabia; data from other regions, such as Nigeria, indicate that power of e-procurement to streamline processes and enhance transparency and integrity is threatened if adequate oversight mechanisms are not established throughout the procurement process [72]. To minimize opportunities for misconduct, it would be beneficial for works to be received and payment certificates to be issued by different employees at each stage of execution, removing the risk that one employee alone can control areas where corruption could occur. Introducing an electronic random selection feature in the Etimad platform could facilitate this by allowing government agencies to register a list of relevant employees from which selections can be made. Also, piloting AI-driven monitoring tools for post-award contract management may be a significant step forward, reducing human involvement and discretion.

Additionally, although automating procurement procedures is vital for transparency, there is a risk of inflexibility that could hinder adaptability. Striking a balance between automation and flexibility is crucial. Indeed, this fear led P9 to state that he "opposed" full automation and wanted to see more discretionary power handed to officials. This study tends to agree with the understanding [19,22] that discretion should not become widespread unless there is a culture and tradition of accountability and integrity, and strong controls are established to monitor decisions. In the case of Saudi Arabia, which has a pervasive tradition of wasta, or giving special attention to friends and family, this discretion should be introduced very slowly and carefully; other factors, such as training in new legislation and requirements, should take priority. P4 agreed that it was "essential" to intensify workshops and training for public officials.

The strengthening of Nazaha, anti-corruption agency, has also encouraged accountability, transparency and integrity in public procurement. However, the focus on enhancing the role of Nazaha has resulted in less attention given to the General Court of Audit. This important body needs more resources and authority, and this study recommends that this important body should be empowered and supported to work alongside Nazaha.

This study also highlights the close connection between transparency and accountability, and this is highlighted by the case of the new appeal mechanism. Between 2022 and 2024, the new committee charged with considering appeals dealt with just four cases [73]. In each case, the appeal was rejected, on the basis of technical faults, such as not submitting the appeal within the specified time frame, or not providing a financial guarantee when the appeal was submitted [73]. This would seem to indicate an issue with transparency; the appealing parties were simply not aware of the requirements or the importance of following them closely. It does not indicate that the appeal had no merit, or that the award was indeed made without evidence of corruption. Therefore, we suggest that the principes of accountability and transparency

must be considered together and cannot exist in isolation of each other. If there is no accountability, then transparency loses its meaning. On the other hand, how can accountability be ascertained if the processes which lead to a case are not transparent? It is recommended that departments and officials responsible for these areas work together, to better understand their effects on each other.

Finally, a balanced approach, combining incentives with disciplinary measures, is necessary to encourage ethical behaviour. For example, providing professional certifications and performance-based rewards for ethical behaviour can serve as strong incentives, while a zero-tolerance policy for misconduct should be enforced through regular audits and feedback loops. The case of Singapore is enlightening. After gaining independence from Britain, the country underwent a rebuilding process. Interestingly, tow pillars of the reform were the exceptionally high levels of pay awarded politicians and public officials, but the zero-tolerance of and severe penalties for corruption. Singapore's development is held as an example of how to achieve efficiency and integrity [74].

6. Conclusion

The legislative and institutional changes in the Saudi public procurement system demonstrate remarkable alignment with the principles of the UNCAC. Notably, the EXPRO system has played a central role in reducing discretionary power by centralizing procurement and enhancing transparency. The adoption of e-procurement through the Etimad system has streamlined processes, though challenges such as data manipulation risks, insufficient post-award contract oversight, weak awareness, and the need for a balance between automation and flexibility remain.

The study also highlighted the close connection between transparency and accountability in ensuring the effective implementation of these reforms. To address existing challenges, the most feasible and high-impact recommendations include:

Training public officials, professional certifications, performance-based rewards, and disciplinary measures to motivate and equip public employees

Enhancing the General Court of Audit's role in procurement oversight to ensure greater accountability.

Random employee selection in the Etimad system to reduce favouritism and enhance procedural fairness.

Developing AI-driven monitoring tools to detect irregularities and strengthen oversight.

These recommendations are listed in order of their feasibility and impact.

These reforms will not only contribute to achieving the goals Vision 2030 but also provide a potential model for other Gulf countries seeking to enhance procurement integrity. Saudi Arabia's current position as among the leading Gulf countries in terms of anti-corruption standards [53,75] provides a platform on which to build, and offers greater credibility.

There is a potential for the integration of AI and digital oversight mechanisms to play an important role in anti-corruption practices, and if this potential is fully

developed, it may influence future UNCAC guidelines on digital transformation in public procurement.

It should be noted that the Etimad and EXPRO systems in promoting transparency and accountability are fairly new, and further research is needed to assess their long-term effectiveness in the Saudi context.

Declaration of competing interests

The author declares that there are no competing interests.

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PUBLIC PROCUREMENT FOR SUSTAINABLE DEVELOPMENT AFTER GREAT NATURAL DISASTER: AN ANALYSIS BASED ON EXPERIENCE OF JAPAN

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Suggested citation: Sakane, T. (2025). Public procurement for sustainable development after great natural disaster: An analysis based on experience of Japan. International Journal of Public Procurement, 1(2), 67-80.

Abstract:

Public procurement is an essential tool for sustainable development. This is eminent in reconstruction procurement of public infrastructures after great natural disaster. Based on such understanding, this paper analyses projects and procurement of public infrastructures after great natural disaster based on experience of Japan. The Great East Japan Earthquake and Tsunami is taken as the case to be analysed from viewpoint of project and procurement strategy with PPP in reconstruction phase, and from viewpoint of ways to fulfil shortage of public servants, by focusing on the three disaster-stricken prefectures and these municipalities. This paper is created by referring mainly to related administrative documents and information in addition to partly referring to related prior research works. As a result of these analysis, importance of procurement strategy and grand design with PPP, and also importance of securing enough administrative organizational human resource capacity mainly through fixed-term employment and receiving dispatched public servants are pointed out.

Keywords

Public Procurement; Sustainable Development; Great Natural Disaster; the Great East Japan Earthquake and Tsunami; PPP; Human Resource; Recruitment and Dispatch

1. Introduction

For social sustainable development, public procurement can be regarded as one of essential tools. This is eminent after great natural disaster with huge destruction of

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public infrastructures. In such case, public procurement becomes necessary to let public infrastructures restored. Emergency and recovery phases can be regarded as important process. However, considering longer term sustainable development of disaster-stricken, especially tsunami-stricken, cities and towns, how to reconstruct public infrastructures with equipping enough resilience to future great disasters is a critical measure to be realized for social sustainable development. In this viewpoint, the Great East Japan Earthquake and Tsunami can be taken as a good example and worth to be shared in this international public procurement conference and this journal. Also, since the Editor in Chief of this journal showed an important attention to sustainable development in public procurement and in this journal in its editorial in the inaugural issue (Cao, 2025, 1), it seems to be meaningful to be included this case, which is related with sustainable development, into this journal.

It is also worth to take this case as an example considering that though the Great East Japan Earthquake and Tsunami occurred on 11 March 2011 has been received world-wide international attention and supports, it seems not to be widely known internationally about its reconstruction including reconstruction of public infrastructures, and how these projects and procurement contributed to realize much stronger and resilient cities and towns against future great tsunamis and earthquakes, and eventually contributed to sustainable development of these societies.

Actually, in the tsunami-stricken areas of the Great Japan Earthquake, reconstruction of public infrastructure has been basically completed already. Such reconstruction was planned and implemented by taking well into account to realize more resilient to future great disasters and to realize sustainable development. However, in order to realize it, larger-scale projects, construction and procurement became essential. For that, it became necessary to secure enough administrative organizational human resources of public servants, including those in civil engineering and architecture involved in reconstruction of public infrastructure. Taking above points into account, following two analytical viewpoints are explored in this paper, firstly reconstruction projects and procurement strategy with PPP, and secondly ways of fulfil shortage of public servants by focusing on prefectural and municipal level.

Some papers that related to public procurement after the Great East Japan Earthquake and Tsunami were already presented at the past International Public Procurement Conferences. For example, Tanaka (2012) made an in-depth analysis about procurement of temporary housing. Then, some papers that dealt with broader public infrastructures after this disaster are as follows. Sakane (2016) dealt with issues about basic structure of the government procurement administration in Japan and its regional presence. In it, as an example of regional presence of national government and its procurement administration, above paper of 2016 included analysis about recovery and reconstruction of public infrastructures by the Tohoku Regional Bureau of the MLIT (Ministry of Land, Infrastructure, Transport and Tourism) after the Great East Japan Earthquake and Tsunami. With comparison to above paper of 2016, while this paper also explores further about it from the view point of PPP, main focus of this paper is set in prefectural and municipal level. Then, Sakane (2014) considered capacity matter of public servants in tsunami-stricken coastal municipal governments in Miyagi

Prefecture mainly during recovery and early reconstruction period. About reconstruction period, Sakane (2018) considered bidding and capacity matter of public servants by focusing on Ishinomaki city where had largest casualties and where is a famous tsunami-stricken coastal municipal city located in Miyagi Prefecture. On the contrary, this paper does not limit its analytical focus on Miyagi prefecture and Ishinomaki city but expands to Iwate prefecture and Fukushima prefecture and these municipalities too, so that more comprehensive understanding becomes possible. This paper focuses on reconstruction period by referring to 2019 data which is more recent year data than above two papers.

This paper consists of following sections. The first section analyses strategy and grand design of infrastructure reconstruction projects and procurement with PPP. Then, the second section analyses ways of fulfil shortage of public servants by focusing on prefectural and municipal level. Finally, the points analysed above are summarized and implications are addressed. Perspectives of these two sections are in line with Drabkin and Thai (2007) in terms of time and manpower as key elements in emergency contracting after disaster, though this paper covers reconstruction phase. In this context, especially in terms of time, below remark from the concluding comments of Drabkin and Thai (2007, 99) is worth to be quoted here: “the main purpose of emergency contracting is to solve the crisis situation on a most urgent basis in which there may not be sufficient time for competitive biddings”. This paper is going to show importance of PPP during reconstruction phase too. Also, especially in terms of manpower, below remark from the concluding comments of Drabkin and Thai (2007, 99) is worth to be quoted here: “emergency contracting agencies such as FEMA need to be well equipped with skilled and experienced manpower in order to efficiently and effectively handle natural disasters like hurricanes Katrina and Wilma”. This paper is going to show importance of manpower during reconstruction phase too. This paper is created by referring mainly to related administrative documents and information in addition to partly referring to related prior research works.

2. Public infrastructure reconstruction projects and its procurement strategy with PPP

The Great East Japan Earthquake and Tsunami brought huge damages of public infrastructures including roads in Sanriku coastal area, which is shown in Figure 1. Figure 1 illustrates the geographic scope of the Sanriku road project, emphasizing its role in regional connectivity.

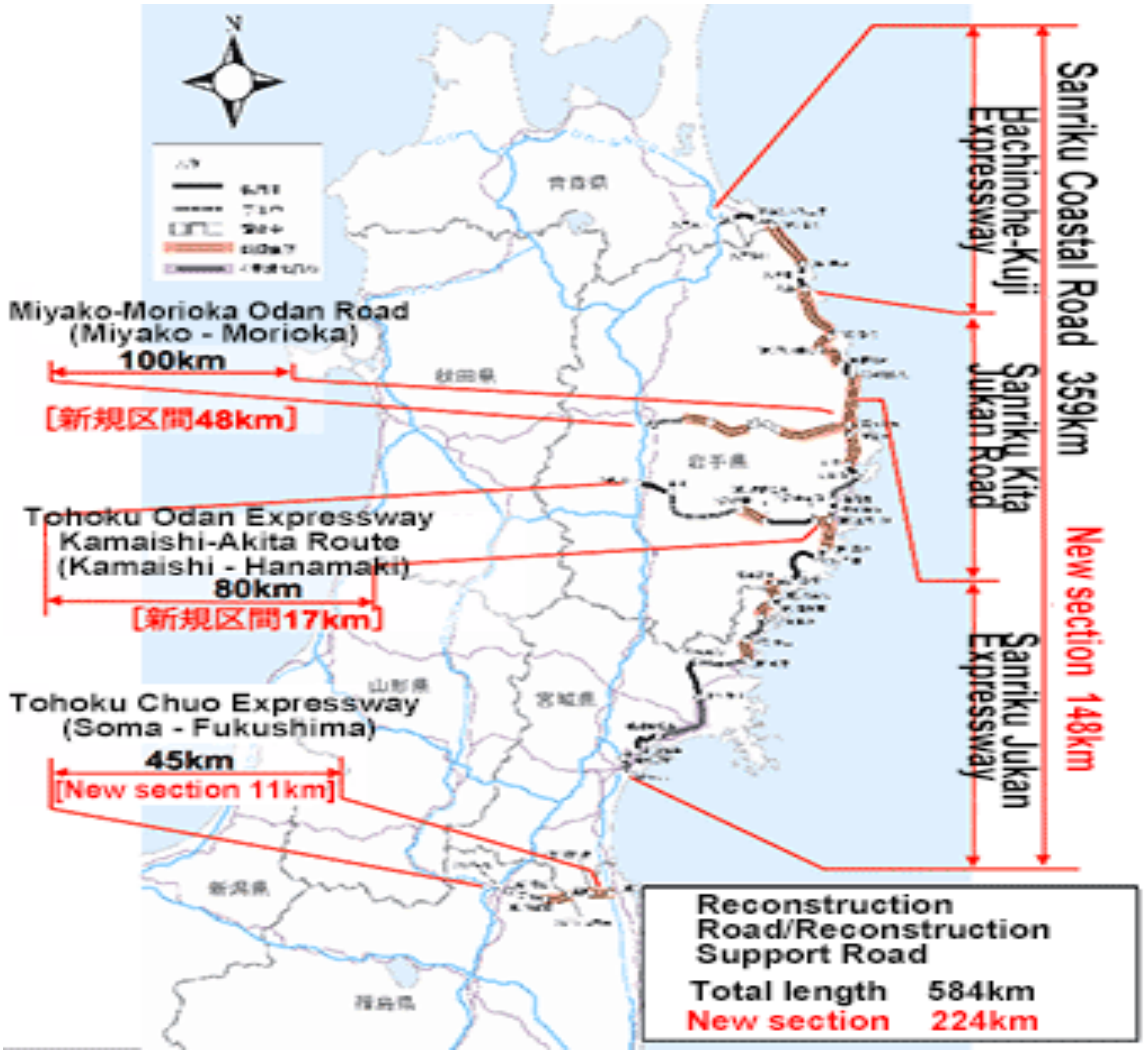

Fig. 1 Road Map of the Sanriku Coastal Reconstruction Road and Support Roads
Source: Tohoku Regional Development Bureau, Ministry of Land, Infrastructure, Transport and Tourism
(https://infra-archive311.thr.mlit.go.jp/en/images/lower/fukkoudouro0103.gif)

It is understood that national roads in Figure 1 is important to be completed its reconstruction and new construction so that north-south-long Sanriku coastal area is strongly connected by resilient long north-south reconstruction road, together with some resilient east-west support roads. As Sakane (2016) introduced in the IPPC 7, this project and procurement was designed and implemented by the Tohoku Regional Bureau of the MLIT. In this paper for the IPPC 9 and then for this journal, main focus of this national project is set on its PPP.

Entire length and scale of this road project was shown in the above Figure 1. Actually in general, usually average length of one typical new road construction project is said to be about 10km, while length of this project was hundreds of km. Since the length and scale of this national road project was very long and large, long period of time has been expected with a normal way of project design and implementation.

Therefore, in order to shorten lead time until starting construction, project promotion PPP was used.

In this project promotion PPP, public and private technical team was formed and this PPP team worked together to perform pre-construction tasks, which are usually performed by public side only, such as: consultation and coordination with local communities and related organizations, and progress management of the project plan and outsourced tasks. The road construction rout was divided into 10 construction units, and one PPP team was selected for each unit. Then, various general contractors and construction consultants applied for this PPP through forming 24 entities applied, which is mostly Joint Ventures (JVs). The breakdown of 24 is as follows: 7 JVs formed between construction consultants, 16 JVs formed between general contractors and consultants, and 1 non-JV stand-alone company. In terms of the number of companies forming and joining in the 24 entities, 22 were general contractors and 51 were construction consultants. So, in total, 73 companies applied for this project promotion PPP through forming and joining to 24 entities (Iwasaki 2013). Such cooperation between public and private sector in terms of design, construction preparation, and securing construction sites has resulted and succeeded in a shortening of the pre-construction process. As a result, this project promotion PPP contributed greatly to minimize time and process before implementation of construction only in one year, while it normally takes about four years. At the same time, fairness was ensured by prohibiting companies that formed and joined in the PPP to participate in bidding for construction implementation in the same particular road construction unit (Iwasaki 2013).

As for innovations in terms of bidding and contracting, while utilizing the general competitive bidding system, number of technical proposal items was reduced in order to shorten the procedures. Also, evaluation result of technical proposal becomes possible to be used and be applied in some same types of public construction works and these biddings. In addition, the Tohoku Regional Bureau of the MLIT, which is the national technical and administrative public organization responsible of this national road project and procurement, decentralized more procurement authority by delegating more solicitation authority from the headquarters of the Tohoku Regional Bureau of the MLIT to its branch offices where are located in closer to the construction sites. Furthermore, in order to tackle on problem of shortage of private-sector participation to this project and bidding, more bidding opportunities were given to let local construction companies in disaster-affected areas be able to participate in more procurement cases and bidding process either by alone or by forming a JV with construction companies located outside of disaster-affected areas (Iwasaki 2013).

As Table 1 shows, above Sanriku road project was a big road project connecting costal long line across tsunami-stricken some prefectures and it was a national project. This project was implemented and procured by the national public technical administration, i.e. by the Tohoku Regional Bureau of the MLIT.

So, as a different administrative level, how about reconstruction of public infrastructure projects in each prefecture and each tsunami-stricken municipality level? Tsunami-stricken coastal areas were recognized as dangerous areas considering

possibility of huge scale another tsunami again in the future. So, people and communities in these coastal areas needed to relocate to safer areas. However, many these people and communities did not wish to move to totally different municipalities but wished rather relatively closer safe inland relocation. Also, such relocation and creation of new communities and towns were planned and implemented with close consultation to these people and communities. Multiple defence system can be understood to realize safety and to assist above-mentioned people's and communities' wishes.

Below Figure 2 shows a typical example of reconstruction grand design of multiple defence for comprehensive tsunami protection in each municipal level taken a case from coastal area in Sendai City. Since it is widely understood that if only to ensure to recover the damages and revert back to pre-disaster situation as it was, relatively huge risk to future great disaster will be remained and it will not be secured sustainable development of society and security of people living there. Therefore, multiple defence system was prepared for mitigating to future great tsunami risk.

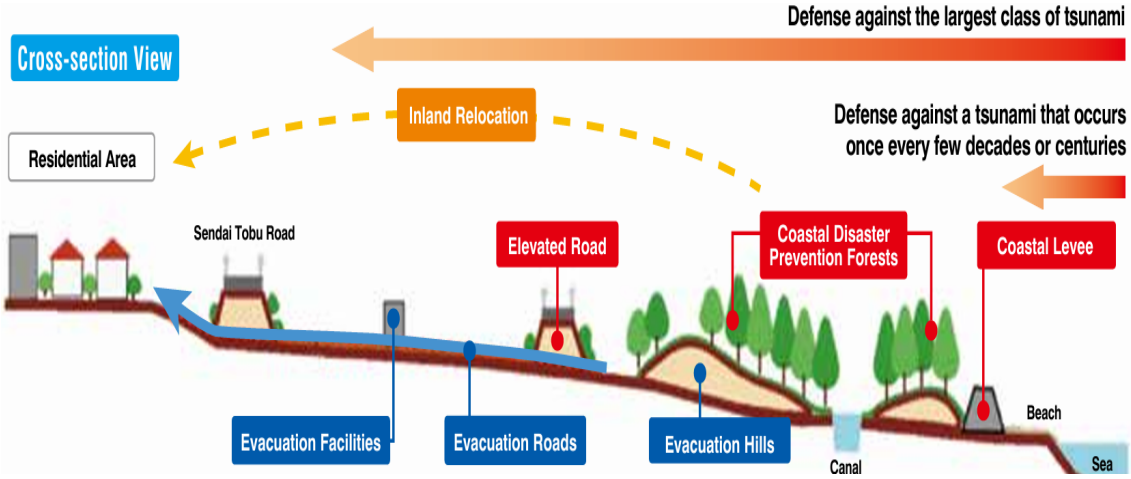

Fig. 2 Multiple Defence for Comprehensive Tsunami Protection - An Example of Coastal Area in Sendai City

Source: Sendai City Office, Post-Disaster Reconstruction Department, City Planning Policy Bureau. (2017). The Reconstruction of Sendai. March 2015, Revised in April 2017, 5.

As above figure shows, multiple defence system consists of various public infrastructures which are created in order to make future huge tsunami be prevented and mitigated.

According to Sendai City Office, multiple defence for comprehensive tsunami protection consisted of coastal levee construction, replanting of forests for disaster mitigation, and elevation of prefectural road. Not only that, evacuation hills, evacuation facilities, and evacuation roads on coastal areas were constructed for emergency evacuation. Also, the disaster prevention collective relocation promotion projects were planned and implemented for people lived in coastal side disaster risk areas (Sendai City Office 2017).

In order to create these multiple defence system, escape facilities and relocation communities, not only more budget but also more administrative human resource capacity was needed. Sendai city is only one ordinance-designated city in the tsunami-stricken three prefectures and has the biggest population and GDP in Tohoku region and in tsunami-stricken coastal side. However, other tsunami-stricken municipalities in coastal area has relatively smaller administrative organizational human resource capacity only. Therefore, how to secure enough public servants to tackle on huge various types of reconstruction needs, including creation of such multiple defence system, escape facilities and relocation communities, became an important challenge to be solved. Also, the three tsunami-stricken prefectures faced human resource shortages too. So, next section explores how such human resource capacity gap problem has been tackled and alleviated for the three disaster-affected prefectures and municipalities in each prefecture.

3. Ways of fulfilling shortage of public servants for the three tsunami-stricken prefectures and these municipalities

After the Great East Japan Earthquake and Tsunami, the disaster-affected three prefectures and these municipalities faced huge needs of securing additional public servants including those who conduct procurement-related works to promote recovery and reconstruction. Among some ways of measures to alleviate this problem, securing fixed-term public servants and dispatch of public servants are found as two main ways in the disaster-affected three prefectures and these municipalities. In this section, these two ways are shown and analysed below.

3.1 Recruitment of fixed-term public servants

Fixed-term recruitment is the most commonly used way of directly securing public servants by disaster-affected three prefectures and municipalities in each prefecture for various reconstruction administrative activities including reconstruction of public infrastructures and its public procurement. Five years is the maximum term for fixed-term recruitment. Since reconstruction is a non-permanent administrative activity, recruitment of fixed-term public servants can be regarded as a reasonable way, compared with recruitment of permanent public servants, considering mid-term and longer-term budgetary implications and human resource management policy (Sakane 2014). From legal point of view, limitation to be set as maximum five years is regulated by a law about employment of fixed-term public servants in local public entity (Reconstruction Agency 2020).

Table 1 below is an overview of fixed-term public servants recruited by the disaster-affected three prefectures and these municipalities as of 1 April 2019. After about 8 years since the great disaster on 11 March 2011, even after the peak of implementation of reconstruction including infrastructure projects, still 1420 fixed-term public servants were secured.

Table 1. Number of Fixed-term Recruitment of Public Servants for Reconstruction in the Three Disaster-affected Prefectures and These Municipalities as of 1 April 2019 (Person)

Dispatched to / Vocational Categories	Iwate Prefecture			Miyagi Prefecture			Fukushima Prefecture			Total			
		Prefecture	Municipalities		Prefecture	Municipalities		Prefecture	Municipalities			Prefectures	Municipalities
General Administration	199	104 (29)	95	378	121 (4)	257	317	170 (0)	147	894	63.0%	395 (33)	499
Civil Engineering	91	68 (25)	23	158	78 (34)	80	74	56 (21)	18	323	22.7%	202 (80)	121
Architecture	8	2 (2)	6	21	0 (0)	21	20	15 (5)	5	49	3.5%	17 (7)	32
Others	21	2 (2)	19	54	4 (3)	50	79	53 (8)	26	154	10.8%	59 (13)	95
Total	319	176 (58)	143	611	203 (41)	408	490	294 (34)	196	1420	100.0%	673 (133)	747

*Note: Number in ( ) stands for number of public servants who were dispatched within the same tsunami-stricken prefecture such as dispatch from prefectural office to municipalities. “Others” consists of various types of specialists such as electricity, machinery, agricultural engineering, specialist for cultural property, public health nurse and so on.

Source: Reconstruction Agency. (2020). Survey on Securing and Operating Support Staffs for Disaster-affected Municipalities, 5. Percentages were added by the author.

Among total 1420, general administration including land acquisition is the biggest category with 894, which consists of 63% of total fixed-term recruitment for the reconstruction in the disaster-affected three prefectures. Civil engineering is the second biggest category with 323, which consists of 22.7% of total fixed-term recruitment for the reconstruction. In architecture category, 49 fixed-term public servants were secured and which consists of 3.5% of total fixed-term recruitment. In terms of public procurement of infrastructures for the reconstruction, civil engineering and architecture are essential vocational categories (job roles).

Also, among total 1420 fixed-term public servants, three prefectures hired 673, which consists of about 47%, and municipalities in these three prefectures hired 747, which consists of about 53%. Then, among 673 who were hired in the three prefectures, 133 were dispatched to municipalities. So, three tsunami-stricken prefectures contributed well to tsunami-stricken municipalities in each prefectural area. Especially, among 133, 80, i.e. about 60%, was civil engineering public servants. Therefore, it is found out that especially three tsunami-stricken prefectures well contributed to municipalities in each prefecture’s area by securing considerable number of civil engineering.

3.2 Dispatch of public servants

Despite efforts of recruitment of fixed-term public servants shown in the above Table 1, it was not possible to secure enough human resource only through it. So, dispatch of public servants mainly from outside, and some from inside, of the disaster-affected three prefectures and municipalities located in these three prefectures became the other most important way. Table 2 below shows its overview with its vocational categories (job roles) as of the first day of fiscal annual year of 2019. In 2019, compared with recent years, more reconstruction works and activities were implemented and more suitable year to check here.

Table 2. Number of Dispatched Public Servants and Its Vocational Categories in the Three Disaster-affected Prefectures and These Municipalities as of 1 April 2019 (Person)

Dispatched to / Vocational Categories	Iwate Prefecture			Miyagi Prefecture			Fukushima Prefecture			Total			
		Prefe-cture	Munici-palities		Prefe-cture	Munici-palities		Prefe-cture	Munici-palities			Prefe-cture	Munici-palities
General Administration	183	26	157 (99)	288	50	238 (49)	94	42	52 (8)	565	50.3%	118	447 (156)
Civil Engineering	103	24	79 (31)	226	33	193 (59)	69	23	46 (23)	398	35.4%	80	318 (113)
Architecture	12	1	11 (4)	34	2	32 (5)	11	2	9 (5)	57	5.1%	5	52 (14)
Others	20	10	10 (9)	40	20	20 (6)	43	34	9 (8)	103	9.2%	64	39 (23)
Total	318	61	257 (143)	588	105	483 (119)	217	101	116 (44)	1123	100.0%	267	856 (306)

*Note: Number in ( ) stands for number of public servants who were dispatched within the same prefecture such as dispatch from prefectural office to municipalities. “Others” consists of various types of specialists such as electricity, machinery, agricultural engineering, specialist for cultural property, public health nurse and so on.
Source: Reconstruction Agency. (2020). Survey on Securing and Operating Support Staffs for Disaster-affected Municipalities, 4. Percentages were added by the author.

Among total 1123, general administration including land acquisition is the biggest category with 565, which consists of 50.3% of dispatched public servants for reconstruction assistance to the disaster-affected three prefectures. Civil engineering is the second biggest category with 398, which consists of 35.4% of dispatched public servants. In architecture category, 57 dispatched public servants were secured and it consists of 5.1%. These percentages of dispatched civil engineering and architecture were more than percentages of fixed-term public servants hired in the disaster-affected three prefectures. It means that human resource of civil engineering and architecture can be regarded as more difficult to secure enough from inside of disaster-affected prefectures. Therefore, it is more important to secure human resource of civil engineering and architecture from outside of the tsunami-stricken three prefectures, i.e. from all over Japan.

Then, next Table 3 illustrates number of dispatched public servants to the three disaster-affected prefectures and municipalities located in these three prefectures as of 1 April 2019. This Table 3 shows that prefectures in Japan, also including Tokyo-to, Hokkai-do, Kyoto-fu and Osaka-fu, dispatched 630, which consists of 56% of total 1123. Municipalities in Japan dispatched 372, which consists of 33% and ordinance-designated cities in Japan dispatched 121, which consists of 11%.

Table 3. Number of Dispatched Public Servants to the Three Disaster-affected Prefectures and These Municipalities as of 1 April 2019 (Person)

Dispatched to / Dispatched From	Iwate Prefecture			Miyagi Prefecture			Fukushima Prefecture			Total			
		Prefecture	Municipalities		Prefecture	Municipalities		Prefecture	Municipalities			Prefecture	Municipalities
Prefectures	165	61	104 (81)	299	105	194 (86)	166	98	68 (44)	630	56.1%	264	366 (211)
Ordinance-Designated Cities	28	0	28 (0)	84	0	84 (22)	9	2	7 (0)	121	10.8%	2	119 (22)
Municipalities	125	0	125 (62)	205	0	205 (11)	42	1	41 (0)	372	33.1%	1	371 (73)
Total	318	61	257 (143)	588	105	483 (119)	217	101	116 (44)	1123	100.0%	267	856 (306)

*Note: Number in ( ) stands for number of public servants who were dispatched within the same prefecture such as dispatch from prefectural office to municipalities.
Source: Reconstruction Agency. (2020). Survey on Securing and Operating Support Staffs for Disaster-affected Municipalities, 4. Percentages were added by the author.

Analysis of each dispatch source, i.e. from prefectures, from ordinance-designated cities and from municipalities is as follows.

Firstly, about dispatch from prefectures, among 630, other prefectures, excluding the three disaster-affected prefectures, dispatched 264 public servants to the three disaster-affected prefectures, which consists of about 42% of 630. Remaining 366, which consists of about 58%, was dispatched public servants from prefectures to disaster-affected municipalities. Then, among this 366, 211, which consists of about 33% of 630, stands for dispatched public servants from the three disaster-affected prefectures to municipalities in each prefecture. Therefore, among this 366, remaining 155, which consists of about 25% of 630, stands for dispatched public servants from non-disaster-affected prefectures to disaster-affected municipalities. Compared with municipalities, prefecture in Japan has more human resource capacity to be able to dispatch public servants for the reconstruction is found from here, also considering number of prefectural level local government is 47 in Japan including Iwate, Miyagi and Fukushima which are three disaster-affected prefectures, and also including Tokyo-to, Hokkai-do, Kyoto-fu and Osaka-fu. 47 is much smaller number than number of municipalities, which is more than 1700.

Secondly, about dispatch from ordinance-designated cities, among 121 dispatched public servants from ordinance-designated cities, only 2 was dispatched to Fukushima prefecture and 119 was dispatched to municipalities. Then, among 119, 22 was dispatched to disaster-affected municipalities in Miyagi prefecture from Sendai City, which is the capital city of Miyagi prefecture and which is only one ordinance-designated city in these three disaster-affected prefectures. Compared with municipalities, each ordinance-designated city in Japan can be said as having relatively more human resource capacity to be able to dispatch public servants for the reconstruction, also considering number of ordinance-designated city is only 20 (Kumamoto city which is the 20th ordinance-designated city since 2012) in Japan including Sendai City.

Thirdly, about dispatch from municipalities, among 372 dispatched public servants from municipalities, only 1 dispatched to Fukushima prefecture and 371 was dispatched to municipalities. Then, among 371, 73 was dispatched to disaster-affected municipalities in the three disaster-affected prefectures from municipalities in the same disaster-affected prefecture. Compared with prefecture and ordinance-designated city, each municipality in Japan can be said in general as having relatively limited human resource capacity to be able to dispatch public servants for the reconstruction, also considering number of municipality in Japan is more than 1700.

It can be understood that these fixed-term and dispatched personnel impacted project outcomes. Namely, fixed-term and dispatched civil engineering not only improved technical capacity but also realized huge volume of project designs and procurement technical planning be possible. Without their existence, it must be really hard to realize so huge volume of projects and procurement be realized in such short years. According to Miyagi Prefectural Government (2017, 194-195), compared with pre-disaster time, after disaster, budget scale of Miyagi Prefectural Government's Civil Engineering Bureau became 4 times more in 2014, while its manpower was 911 in pre-disaster time and only relatively small increase to 1143 in 2014. Among 1143, 123 was dispatch and 52 was fixed-term staffs. Miyagi Prefectural Government (2017, 195) explained as the shortage of manpower has not yet been resolved and the priority issue is to continue to receive dispatched manpower support from other prefectures. It became possible due to administrative inter-agency cooperation and coordination.

In addition, it is clear that Miyagi prefecture and municipalities in each prefecture received biggest number of dispatches, not only hiring the biggest number of fixed-term public servants among three prefectures. However, it is also found that above analysis in this section is applicable to two other prefectures, i.e. Iwate prefecture and Fukushima prefecture, and these municipalities, though number of receiving dispatched public servants and number of hiring fixed-term public servants are both relatively smaller than Miyagi prefecture.

4. Challenges

Some remaining challenges and examples of future further research viewpoints are raised below.

Firstly, as for PPP, to expand the literature review to explicitly link PPP strategies to disaster recovery theories is worth to be pointed out. In addition, while PPP accelerated pre-construction tasks, potential drawbacks of PPP are worth to be considered such as limited competition because of restrictions on contractor bidding.

Secondly, international comparative analysis is worth to be implemented. In this context, to make international comparative discussion between Japan's PPP model explained in this paper and other countries' related good practices such as American FEMA's emergency contracting and pre-disaster measures seems meaningful. Also, to briefly contrast Japan's approach with other disaster responses to highlight uniqueness or generalizability, and possibly to propose a framework for adapting strategies to different governance contexts are worth to be considered.

Thirdly, as for methodology, while this paper relied mainly on administrative records together with related prior works, stakeholder interviews is also another possible way of research methodology.

5. Summary

As a result of this analysis, firstly, importance of procurement strategy and grand design with PPP is found from the first section. After the Great East Japan Earthquake and Tsunami, the reconstruction and construction project and procurement of long Sanriku coastal reconstruction road and its support roads, which are very important national roads in the disaster-stricken and tsunami-stricken Sanriku coastal area, was realized its smooth preparation of construction through the project promotion PPP. Also, the Tohoku Regional Bureau of the MLIT made some improvement in procurement implementation. Then, as a different administration level and scale in tsunami-stricken prefectural and municipality level, reconstruction grand design of multiple defence, together with evacuation and relocation measures, for comprehensive tsunami protection and mitigation in each tsunami-stricken municipal level is especially worth to be introduced and worth to be understood to this international public procurement conference and this journal. At the same time, such way of huge reconstruction needed more administrative organizational human resource capacity and this matter was dealt with in the second section as below.

Then, also as a result of this analysis, secondly, importance of securing enough administrative organizational human resource capacity mainly through fixed-term employment and dispatch in three tsunami-stricken prefectures and these municipalities is found from the second section. Considering smooth and successful preparation and implementation of reconstruction of public infrastructure projects and procurement, securing enough public servants especially dealing with civil engineering and architectures, together with general administration related to land acquisition, is important. It also became clear that the three prefectures and other prefectures, Tokyo-to, Hokkai-do, Kyoto-fu, Osaka-fu and ordinance-designated cities in Japan has more capacity to be able to dispatch public servants to help three tsunami-stricken prefectures and these municipalities, rather than many municipalities in Japan. The three tsunami-stricken prefectures has more capacity to recruit fixed-term public servants compared with tsunami-stricken municipalities.

These two points: i.e. importance of procurement strategy and grand design with PPP; and importance of securing enough administrative organizational human resource capacity mainly through fixed-term employment and dispatch to the three prefectures and these municipalities; can be said as important not only for prompt, smooth and successful infrastructure reconstruction procurement and projects, but also for realizing sustainable development in tsunami-stricken and disaster-affected society after the great disaster. These two points seem to be applicable to other various great disasters in Japan and in other countries. Therefore, these two points can be pointed out as precious implications and lessons learned. In this context, the role of international cooperation in capacity-building such as cross-border dispatches is worth to be increased. In addition, while this paper dealt with post-disaster PPP reconstruction case, pre-disaster PPP framework is worth to be analysed.

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APPLICATION OF DOCTRINE OF IMPRÉVISION IN PPP CONTRACT OF CHINA

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Suggested citation: Wei, Y. (2025). Application of Doctrine of Imprévision in PPP Contract of China. International Journal of Public Procurement, 1(2), 81-96.

Abstract:

The long-term and incomplete nature of public-private partnership (PPP) contracts, combined with the exercise of unilateral administrative powers by public authorities, has resulted in the limited application of the doctrine of *imprévision*. The lack of unified legislation on administrative agreements further obscures the rules governing the application of this doctrine to PPP contracts. Through a comparative study, this paper argues that, under China's new mechanism for PPPs, the legal framework for administrative agreements should be refined to accommodate the application of *imprévision.* Such refinement includes clearly delineating the boundaries of administrative powers and specifying both the conditions under which *imprévision* may be invoked and its legal effects.

Keywords

PPP contract; Doctrine of *imprévision*; Administrative agreements; Renegotiation; Compensation

1. Introduction

A public-private partnership (PPP) contract refers to the long-term agreement between the contracting authority and the private partner to provide a public asset or service in which the private partner bears significant risk and management responsibility and in which remuneration is linked to performance (World Bank, 2017). Currently, there is no universally accepted international definition of a PPP. In China, there is still no dedicated legislation governing PPPs, and the relationship between, and distinctions among, government procurement contracts, concession contracts, and PPP contracts have been a subject of considerable debate. China first introduced the French-style infrastructure concession model in the 1990s. A new phase of PPP reform began in 2013, driven by the global PPP wave initiated by the United Kingdom's Private

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Finance Initiative (PFI). Under this model, public authorities outsource, in whole or in part, the construction of infrastructure and the provision of public services to the private sector, which in turn provides upfront financing for construction and operation. The government pays with instalments based on the performance evaluation of the construction and operation of the project in its entire life cycle so as to smooth the financial pressure of the government. During this period, PPP contracts in China were classified into three types based on the payment mechanism: government investment, feasibility-gap subsidies, and user payments. Accordingly, Chinese PPP contracts encompass both public procurement arrangements involving varying degrees of government funding and concession contracts financed through user charges. The legal regime applicable to these contracts is not uniform, as PPP agreements may be treated either as administrative contracts or as civil contracts. Specifically, when a PPP contract is characterized as a government procurement contract, the Government Procurement Law and the civil contract rules under the Civil Code (2020) apply. Conversely, when characterized as a concession contract, it falls under the administrative law framework and the rules governing administrative contracts. On 12 November 2019, the Supreme People's Court issued the Provisions on Several Issues Concerning the Trial of Administrative Agreement Cases (hereinafter Provisions on Administrative Agreements 2019). The document redefines the special rules applicable to administrative agreements, clarifies that PPP contracts—such as government concession agreements—constitute administrative agreements subject to the Administrative Litigation Law, and provides that, where this document is silent, courts may refer to the relevant provisions of civil law in adjudicating administrative agreement cases. The 2022 audit by the National Audit Office revealed losses of RMB 1.722 billion in state-owned assets (State Council, 2023), prompting a nationwide suspension of PPP projects in February 2023 and thereby bringing this phase to a close. In November 2023, the central government launched the third phase of PPP practice. The State Council circulated a notice from the National Development and Reform Commission and the Ministry of Finance outlining the Guidance for Standardizing the Implementation of the New Mechanism for PPPs. The guidance explicitly stipulates that all future PPP projects will adopt the concession model exclusively, hereafter referred to as the "new mechanism." Consequently, all subsequent PPP contracts are concession agreements and are classified as administrative agreements. At the same time, the new mechanism recognizes that, for existing PPP projects, disputes may still be resolved through administrative litigation, civil litigation, or arbitration, meaning that both administrative and civil contractual frameworks continue to coexist for the stock of legacy PPP contracts.

PPP projects involve long-term investments and are inherently exposed to market uncertainties. When unforeseeable changes occur and the parties fail to reach an agreement, several legal doctrines—*force majeure*, *imprévision*, and administrative prerogatives—may apply. In the context of civil contracts, the doctrines of *force majeure* and *imprévision* are explicitly codified in the Civil Code. However, for administrative agreements, the application of these doctrines remains unclear and may intersect with the exercise of administrative prerogatives. Currently, China lacks

detailed regulations on how *force majeure* and *imprévision* should be applied within the administrative agreement framework. The only relevant guidance is found in the Provisions on Administrative Agreement 2019, which allows courts to refer by analogy to the Civil Code. The rules governing administrative prerogatives are likewise contested, creating uncertainties in the predictability and stability of PPP projects. Amid the deepening of China's efforts to optimize the business environment, the Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Development and Growth of the Private Economy (2023) stress the need for a "stable, fair, transparent, and predictable development environment" and the enhancement of the government's good-faith contract performance. Consequently, whether administrative organs adhere to contractual and legal obligations and whether private interests are effectively safeguarded have become key determinants of the success of business environment reforms. Against this backdrop, a more refined legal framework clarifying the application of *force majeure*, *imprévision*, and administrative prerogatives would help ensure a balanced approach that safeguards public interests, protects the legitimate rights of private entities, and maintains the contractual stability of PPP arrangements. This paper examines the application of the doctrine of *imprévision* in PPP contracts with the aim of providing a comprehensive understanding of the doctrine and informing the ongoing development of China's administrative agreement framework.

The remainder of this paper is structured as follows: Section 2 elaborates on the research methodology employed. Section 3 explores the unique characteristics of PPP contracts when confronted with changed circumstances, laying the groundwork for the subsequent analysis. Section 4 conducts an in-depth analysis of the current application status of the *imprévision* doctrine in PPP contracts. Finally, Section 5 offers constructive suggestions for improving China's legal system governing administrative agreements, specifically regarding the application of the *imprévision*.

2. Research methodology

Two research methods were applied in this study: (1) legal doctrine and judicial case examination and (2) comparative legal studies. The combination of these two methods help form a critical and comprehensive analysis from which to answer the research question. First, a brief summary on the status quo of PPP legislations and legal documents is provided. All the primary legal sources originate from the China law database. Secondary materials and comments are also necessary in this study to obtain and compare valuable information and different viewpoints. In addition to analyzing legal texts and existing literature, project practice and courts cases from China are also cited. The legal documents and cases studied were selected based on their relevance and potential to answer the research question. The aim of this doctrinal and case analysis is to systematically illustrate the current PPP legal rules so as to find the loopholes for further reform. Second, a comparative study is carried out to elucidate the similarities and differences between China and selected foreign legal systems. Given that China's PPP agreements will adopt the concession model under the new mechanism, French administrative contract law will serve as the primary reference for the analysis

in this paper. Unlike administrative contracts, civil and commercial contracts in China are largely influenced by English law and international commercial contract principles. In the absence of comparable *imprévision* rules in administrative agreements, this study examines the interpretations of these two legal systems and their implications for shaping *imprévision* provisions in Chinese administrative agreements governing PPP projects. Such a comparative approach deepens our understanding of the law in this context and aids in identifying best practices and potential adaptations for China's legal framework.

3. Particularity of PPP Contracts and Change of Circumstances

The "circumstances" in the performance refers to unforeseen circumstances that occur after the establishment of the contract, that is, the objective circumstances that affect the whole or part of the social environment with certain universality. The "change" refers to the abnormal change in the environment or grounds on which the contract is established. The concept of a change of circumstances is distinct from the doctrine of *imprévision*. A change of circumstances refers to unforeseen and objective changes that arise after the contract is concluded. By contrast, the doctrine of *imprévision* concerns the legal consequences triggered by such changes: when continued performance becomes manifestly unfair or frustrates the purpose of the contract, the affected party may request judicial modification or termination. *Force majeur*e, as an external event, is similar in nature to a change of circumstances; however, its legal consequences differ, as *force majeure* typically results in termination of the contract and full or partial exemption from liability due to the impossibility or impracticability of performance.[1] This paper does not undertake a detailed inquiry into the distinction between the underlying causes of *force majeure* and *imprévision*, as both presuppose objective, accidental, and unforeseeable changes for which neither party is at fault. The core difference in Chinese law lies in their legal effects: *force majeure* results in termination and liability exemption, whereas *imprévision* permits the affected party to request the court to adjust or cancel the contract. To prevent parties from routinely alleging "unfairness" and seeking "reasonable and equitable adjustments," judicial intervention in the name of fairness must be exercised with caution (Ewan McKendrick, 1995). Consistent with this concern, Judicial Interpretation II of Contract Law (2009), while formally recognizing the doctrine of *imprévision*, simultaneously adopted a prudent stance to avoid undue disruption of the contractual equilibrium. It emphasized that the doctrine should be applied restrictively and, in certain circumstances, only with the approval of a higher people's court or the Supreme People's Court. In essence, the doctrine of *imprévision* enables the court to modify or terminate a contract in order to restore the balance of interests disrupted by unforeseen and accidental changes, but such power must be exercised sparingly to preserve contractual stability.

3.1 Self-adjusted Mechanism of Long-term Contracts

[1] Civil Code (2020), articles 563 and 590.

PPP contracts are inherently long-term arrangements, typically lasting 20 to 30 years or even longer. Over such extended periods, it is impossible to fully anticipate market fluctuations and evolving risks, making performance hardship a common concern. As classic long-term and incomplete contracts, PPP arrangements must therefore incorporate flexible mechanisms that allow the parties to address changing circumstances in a timely manner, thereby minimizing disputes and losses. Certain changes may be reasonably foreseeable at the bidding stage—for example, demographic growth that affects service capacity, or upgrades in service standards that lead to increased costs. In such cases, the contracting authority may require bidders to commit to pre-priced adjustments for these anticipated variations. Other changes, though foreseeable in principle—such as amendments to governmental laws or policies—are uncertain in magnitude and impact, making it difficult to incorporate them fully into the initial contractual design. Still other changes, though theoretically anticipated, are regarded as having extremely low probability, such as war, major financial crises, or severe inflation. Depending on their nature, legal systems may categorize these risks as market risks, *force majeure*, or circumstances giving rise to *imprévision*. Accordingly, parties to PPP contracts must carefully assess whether foreseeable changes can be specified, structured, and priced at the bidding stage, while relying on a robust contractual adjustment mechanism to address residual, unforeseen variations over the contract's lifetime. Numerous international organizations and government bodies—including the World Bank, HM Treasury, China's Ministry of Finance, and the National Development and Reform Commission—have therefore issued standardized contract guidance recommending the incorporation of structured change-management mechanisms within PPP contracts. When a change of circumstances occurs, the parties must first resort to the contractual adjustment procedures for resolution. If this proves infeasible, the parties are expected to renegotiate in good faith and reallocate rights, obligations, and risks accordingly. Only when renegotiation is rejected or rendered futile does the doctrine of *imprévision* become relevant. Consequently, the detailed *ex ante* arrangements typical of long-term PPP contracts substantially narrow the circumstances in which *imprévision* may be invoked.

3.2 Change of Circumstances with Unilateral Administrative Power

The principle of *imprévision* should be invoked only when changes in circumstances cannot be absorbed by the contractual self-regulation mechanisms typically embedded in PPP agreements. Such changes are often highly unpredictable, as exemplified by the COVID-19 pandemic. However, during the performance of government contracts, aside from statutory changes that both parties may agree to treat as *force majeure*, it remains exceedingly difficult in practice to determine whether the government's exercise of administrative power should be classified as *force majeure*, *imprévision*, or an administrative prerogative. This ambiguity creates substantial risks for the protection of private entities'rights and interests.

Since the Supreme People's Court first defined "administrative agreements" in its Judicial Interpretation of the Administrative Litigation Law, the safeguarding of public

interests has been emphasized as a defining feature. PPP contracts, which involve the provision of public services, naturally implicate public interests. Adjustments to public services throughout a long-term contractual period may lead administrative authorities to unilaterally modify or terminate agreements when continued performance significantly conflicts with public interests. In practice, however, some local governments have exercised unilateral administrative power arbitrarily. A prominent example is the phenomenon of "new officials reneging on commitments made by their predecessors," in which governments alter plans or invoke various pretexts to overturn previously concluded PPP contracts (China Newsweek Magazine, 2018). Judicial practice also reveals inconsistencies in the interpretation of government powers. The Supreme People's Court has held that administrative organs may unilaterally modify or terminate administrative agreements when necessary to protect public interests, achieve administrative management objectives, or respond to substantial legal or policy adjustments.[2] In a substantial number of cases, courts have upheld unilateral government actions modifying or terminating administrative agreements.[3] However, judicial practice shows that the exercise of unilateral administrative power in PPP contracts encompasses at least three distinct scenarios. First, some courts classify the broad exercise of administrative functions as unilateral governmental action. Decisions involving land acquisition, demolition compensation, the transfer of state-owned land-use rights, or tax and fee adjustments have been recognized as legitimate exercises of administrative authority within PPP projects.[4] Second, other courts take a narrower view, holding that unilateral modification or termination constitutes an administrative prerogative only when unforeseen circumstances arise that justify adjusting the contract.[5] Third, in yet another line of cases, where the private party breaches the contract, government termination is characterized as an exercise of administrative authority aimed at protecting the public interest.[6] The absence of clear legal standards defining the scope and limits of unilateral administrative power based on "public interest" has raised concerns about the low cost of invoking such prerogatives and the risk of abuse (Zhang, 2022). Therefore, it is crucial to clearly distinguish and categorize the government's conduct during contract performance to ensure that administrative powers are exercised properly and to safeguard the legitimate rights and interests of private investors.

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[2] Supreme Court Administrative Petition case no.4590 (2017)*Liu Shuqing vs. Bijiang District Government of Tongren City, Guizhou Province*

[3] Administrative Ruling of the Supreme People's Court (2017) Zui Gao Fa Xing Shen No. 3564.

[4] Civil Ruling of the Higher People's Court of Shaanxi Province , (2017) Shaan Min Chu No. 89.

[5] Administrative Ruling of the Supreme People's Court (2017) Zui Gao Fa Xing Shen No. 4590.

[6] For instance,Administrative Ruling of the People's Court of Yanjiang District, Ziyang City, Sichuan Province, (2019) Chuan 2002 Xing Chu No.5.

4. The Current Application of the Doctrine of *Imprévision* in PPP Contracts

4.1 Imprévision in the Civil Code

In Chinese law, Judicial Interpretation II of Contract Law (2009) first recognizes the doctrine of *imprévision* and distinguishes it from *force majeure* in its definition. *Imprévision* applies when, after the time of contract conclusion, the circumstances change significantly in ways which were not foreseeable at the time of the contract's conclusion and which were neither commercial risk nor caused by *force majeure* events. The performance of the contract would lead to an obvious unfairness for one party or a failure to achieve the purpose of the contract. In this case, the people's court equitably determines to change or terminate the contract at the request of the party.[7] The Civil Code, enacted in 2020, incorporates this doctrine in Article 533. Different from the previous provisions, it adds the "right to renegotiate," stating that "the party adversely affected may request renegotiation with the other party." Additionally, it stipulates that "if the negotiation fails within a reasonable time limit, the parties may request the people's court or an arbitration institution to modify or terminate the contract," thereby including arbitration institutions as adjudicators in terms of the applicable outcomes.

Regarding PPP contracts, the new mechanism specifies that for existing PPP projects, the dispute resolution mechanism may apply civil contract laws and arbitration. This essentially affirms the application of the principle of *imprévision* in the Civil Code to PPP projects that are recognized as civil contracts. For those PPP contracts recognized as civil contracts, or when legal disputes arise from the agreements reached voluntarily and on an equal footing between the two parties, despite the existence of a concession contract, the application of civil legal norms to the PPP contract is reasonable and justifiable. However, it should be noted that the new mechanism itself is not a piece of legislation. The parties cannot cite the "new mechanism" as the basis for determining the nature of a PPP contract. In a PPP project, it is often the case that a state-owned enterprise acts as the employer on behalf of the government and signs a contract with the private sector. Such a contract is not a PPP contract with the government directly as the contracting party. This type of contract is inherently a private law contract, and there are no legal obstacles to applying the principle of *imprévision* according to the Civil Code. Therefore, it is not the subject of this research.

4.2 Imprévision in Administrative PPP Contracts

When the Contract Law (1999) was enacted in 1998, Chinese civil law scholars argued that administrative agreements—concluded between parties of unequal status—should fall outside its scope (Wang, 1998). To date, many civil law scholars still adhere to this view (Cui, 2004). However, contemporary administrative law academia increasingly regards administrative agreement as the embodiment of the contract spirit and recognizes the overall equal status of administrative organ and private sector (Sun, 1997; Luo, 1997; Chen, 2019). Meanwhile, they believe that the main difference distinguishing administrative and civil contracts is administrative prerogatives, which prevents the parties from having equal status in the administrative agreement.

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[7] Judicial Interpretation II of Contract Law (2009), article 26

The public authority's unilateral prerogatives give rise to the distinctive features of PPP contracts in the application of the doctrine of *imprévision*. In private contracts, both parties enjoy equal rights to modify or terminate the agreement in response to changed circumstances. By contrast, in administrative contracts, the power to modify or terminate a contract in the public interest is vested exclusively in the government, which inherently represents public interests. As a result, when PPP contracts are treated as administrative contracts, administrative authorities may adjust public services or projects to reflect evolving public needs. This unilateral governmental power to alter or terminate contracts eliminates the need to resort to judicial mechanisms to invoke the doctrine of *imprévision*. Such an arrangement underscores a fundamental distinction between administrative and private contracts, highlighting that the exercise of administrative prerogatives in PPP contracts can circumvent the doctrine's application. Furthermore, under China's current Administrative Litigation Law, the government lacks standing to initiate litigation. Accordingly, once a PPP contract is classified as an administrative agreement, administrative authorities cannot seek judicial modification or termination based on *imprévision*, thereby further constraining its practical applicability.

As an exception to the principle of *pacta sunt servanda* (agreements must be kept), the doctrine of *imprévision* is not limited to civil contracts. France, the originator of the administrative contract system, has legal norms that govern both concession contracts and PPP contracts.[8] In the French administrative contract framework, both parties are entitled to modify or terminate the contract in the event of changed circumstances (Brown and Bell, 1993). The Provisions on Administrative Agreements 2019 classify concession agreements and other analogous PPP contracts between the government and private entities as administrative agreements. Under the new mechanism, all PPP contracts fall under the category of administrative agreements. Notably, Chinese legislation has yet to clearly define the application of the doctrine of *imprévision* within administrative agreements. Although the Provisions on Administrative Agreements 2019 provide a basis for applying the doctrine of *imprévision* to PPP contracts by way of analogy, the term "apply by reference" implies a discretionary application, suggesting that such application remains optional rather than mandatory. This ambiguity creates legal uncertainty, leaving room for different interpretations and practices.

In reality, the private sector also rarely invokes the principle of *imprévision*. Several factors contribute to this infrequent reliance. First, even in civil contract disputes, courts apply the principle with great caution. The Supreme People's Court has emphasized that the purpose of the doctrine is to relieve a party from excessively burdensome performance, not to redistribute contractual risks. Although civil parties enjoy equal rights to seek modification or termination, judicial practice consistently prioritizes modification. Termination is permitted only when the counterparty refuses to renegotiate. Moreover, the Guidance of the Supreme People's Court on Several

[8] L'article 11 de l'ordonnance n°2004-559 du 17 juin 2004 sur les contrats de partenariat

Issues Concerning the Trial of Civil and Commercial Contract Disputes under the Current Situation (2009) instructs that "during litigation, the people's court shall actively guide the parties to renegotiate and amend the contract; if renegotiation fails, every effort shall be made to mediate a settlement." Notably, termination is not mentioned, and the doctrine's application is subject to stringent judicial scrutiny—reflecting the Court's highly cautious approach. Second, in PPP projects, private entities overwhelmingly prefer negotiation to litigation, a tendency shaped by China's legal tradition and litigation culture. Even during the COVID-19 pandemic, when private parties confronted *imprévision*-related challenges—such as rising material costs and project delays—they generally sought renegotiation with the government rather than judicial intervention for contract modification or termination. Third, the Provisions on Administrative Agreements 2019 do not explicitly grant private parties the right to sue for the modification of administrative agreements. Instead, they allow only "requests for judgment to revoke or terminate administrative agreements."[9] Consequently, aside from the general instruction to "apply by reference to the Civil Code," no clear rules guide the application of the *imprévision* doctrine to administrative agreements. This legal gap not only impedes effective protection of private parties' rights but also undermines the predictability and stability of PPP projects, underscoring the need for timely legislative clarification and refinement.

5. Clarifying the Application of the *Imprévision* in Administrative Agreements

5.1 Distinguishing Different Types of Administrative Powers

In French law, during the performance of an administrative agreement, the exercise of administrative power may be categorized under different doctrines. Depending on whether the administrative organ is a party to the contract when exercising its functions and whether it exercises administrative power regarding the content of the contract, it can be classified into *force majeure*, the doctrine of *imprévision*, *fait du prince*, and administrative prerogatives.

In administrative agreements, an administrative act can constitute *force majeure* only when it is undertaken by a non-contracting administrative authority. Such acts typically impede performance when they alter the objective conditions underlying the agreement—for example, through changes to zoning plans or new administrative legislation—thereby rendering performance impossible. Accordingly, if evidence shows that neither contracting party could have foreseen the issuance of such an act at the time of contract formation, the event may be classified as *force majeure*. Different from the automatic termination of a private law contract due to *force majeure*, the application of *force majeure* in public law is rare. And due to the requirement of the continuity of public services, it can only be applied when the performance of the contract becomes impossible (Richer and Lichère, 2021, p.287). In this regard, the preconditions for application are similar between the doctrine of *imprévision* and that of *force majeure*. However, the doctrine of *imprévision* more strongly advocates for the modification of the contract to enable its continued performance, rather than its outright

[9] Provisions on Administrative Agreements 2019, article 9,10 (2) and 17.

termination. Whether a contract should be terminated is a determination made by an administrative judge on a case-by-case basis, taking into account the specific circumstances and equities of each individual case (Li, 2020).

An administrative act carried out by a contracting party of an administrative agreement based on its administrative management authority, that is, an administrative act not directed at the content of the contract, which results in an obstacle to the performance of the contract, constitutes a *fait du prince* under French law. In this context, the contracting authority acts not only as a party to the administrative agreement but also as an administrative organ with public management powers. According to French administrative law, if a contracting administrative organ in an administrative agreement makes a legal administrative act based on a relationship other than the agreement after the conclusion of the agreement, and this act leads to an increased burden on the counterparty to the agreement, the administrative organ must bear the repercussions of this act, that is, it must fully compensate the counterparty for the increased burden (Brown and Bell, 1998). Under Chinese law, however, no equivalent to *fait du prince* exists; analogous circumstances may be treated as instances of *imprévision*.

When a contracting administrative organ undertakes an administrative act based on the contractual relationship, and this act creates an obstacle to performance, it is considered an exercise of administrative prerogatives. The application of this prerogative presupposes a serious impairment of the "public interest." However, the Provisions on Administrative Agreements 2019 articulate this power only in vague terms. As noted earlier, in practice, unilateral acts of modification or termination are routinely characterized as exercises of administrative prerogatives, regardless of whether the contracting organ is itself the administrative authority or whether the action is grounded in contractual reasons. Even when the private party is in default, once negotiations between the parties break down, the contracting authority may rely solely on administrative power to alter or dissolve the agreement, given the absence under Chinese law of the two-way judicial review mechanisms available in French administrative contract law. Such reliance on administrative prerogatives substantially narrows the room for invoking the doctrine of *imprévision*. The author explores the functioning of these prerogatives in greater depth in a separate article, emphasizing the need to guard against administrative organs invoking broad or indeterminate notions of public interest as a pretext for unilateral contractual adjustments. The issue is particularly pronounced in the Chinese context, where structural asymmetries between the parties heighten the risk of governmental overreach (Wei, 2024).

5.2 Preconditions for Invoking *Imprévision*

In China, the doctrine of *imprévision* as applied to administrative agreements should be structured in accordance with the Civil Code, with its preconditions explicitly excluding "public interest" considerations, thereby maintaining a clear analytical distinction from the exercise of administrative prerogatives. First, there must be an unforeseen change in circumstances not attributable to either party. The standard for "unforeseeability" should be objective: the inquiry is whether a reasonable person, at

the time of contract formation, could have anticipated the change. The relevant circumstances must arise after the conclusion of the contract but before its performance is completed. Second, the change in circumstances must fundamentally undermine the contractual foundation such that continued performance under the original terms would be manifestly unfair to one of the parties. Third, the application of the doctrine must be invoked by a party before a court, as judicial involvement is required for its implementation.

A further question concerns whether changes in legal norms may constitute "unforeseen circumstances." Consistent with the aforementioned, a change in law should not originate from the contracting authority itself. Alternatively, where the contracting authority does introduce the change, it must do so pursuant to superior legal norms, with a lawful basis and in a manner of general applicability, rather than for the specific purpose of affecting the performance of a given administrative agreement. For example, in Liu Shuqing v. People's Government of Bijiang District, Tongren City, Guizhou Province, the Supreme People's Court held that the Tongren Municipal Government's adjustment and revision of the city's urban system plan and master plan—implemented through administrative regulatory documents—rendered the delivery of resettlement homesteads under the "Housing Relocation Compensation and Resettlement Agreement" impossible. The Court therefore recognized the occurrence of unforeseen circumstances.[10]

5.3 Legal Consequences of *Imprévision*

5.3.1 Renegotiation

Prior to initiating legal proceedings, the Civil Code grants the parties the right to renegotiate. Specifically, the party adversely affected by changed circumstances may formally request to engage in renegotiation with the counterparty. In the event that the parties fail to reach an agreement within a reasonable timeframe, either party may petition a court or an arbitration institution to modify or terminate the contract.[11]

Before the promulgation of the Civil Code, some Chinese scholars argued that this renegotiation provision differentiates the doctrine of *imprévision* from commercial risks, excludes *force majeure* from the scope of *imprévision*, and establishes the affected party's obligation to renegotiate. The obligation to renegotiate should be exercised promptly and in good faith, and the affected party should bear the adverse legal consequences for breaching this renegotiation obligation (Wang, 2019). Then, a key question arises: is renegotiation an obligation or a right? The phrase "may request" used in the Civil Code, on its face, suggests that it is a right. This interpretation aligns with the language in the Principles of International Commercial Contracts (PICC) issued by UNIDROIT (The International Institute for the Unification of Private Law), which

[10] Administrative Ruling of the Supreme People's Court (2017) Zui Gao Fa Xing Shen No. 4590.

[11] Article 533 of the Civil Code

employs the term "is entitled to request."[12] Conversely, Article 6.111 of the Principles of European Contract Law (PECL) states, "A party is bound to fulfill its obligations even if performance has become more onerous...the parties are bound to enter into negotiations with a view to adapting the contract or terminating it." Here, the PICC's "is entitled to" clearly implies a right, while the PECL's "are bound to" unequivocally establishes an obligation. Unlike the PICC, China's Civil Code also incorporates the PECL's requirement of a "reasonable negotiation period." This pre-procedural requirement seemingly imposes an obligation on the parties to engage in renegotiation. The PECL further stipulates that only when the parties fail to reach an agreement within a reasonable time can a court either terminate the contract or modify it in a just and equitable manner. Moreover, the court has the authority to award damages to a party that has suffered losses due to the other party's refusal to negotiate or its bad - faith termination of negotiations.

The author contends that for private law contracts, renegotiation represents a prudent measure for the long-term performance of contracts and should be regarded as a right rather than an obligation. Encouraging renegotiation should not encroach upon the autonomy of the contracting parties. It is reasonable to assume that when circumstances change, the parties will naturally opt for renegotiation before resorting to litigation. Designating renegotiation as an obligation would amount to paternalistic government intervention, coercing both parties into negotiation and undermining their contractual autonomy. The decision to initiate renegotiation should be left to the discretion of the parties themselves. To prevent unwarranted delays, once one party formally requests renegotiation, the other party is obligated to engage in the process. The right to renegotiate should be considered a Gestaltungsrecht (unilaterally right to modify or terminate a legal relationship) within civil law. In cases where one party refuses to renegotiate or terminates negotiations in bad faith, the court may award damages to the aggrieved party for any losses incurred. For contracts that are rendered unperformable due to policy changes or other insurmountable factors, the most expedient solution is to terminate the contract without the requirement of a renegotiation process. This approach not only reduces costs for the parties involved and the judicial system but also respects the parties' freedom of contract. If the parties can perform the contract under new circumstances, they are free to enter into a new contractual agreement.

However, in the context of administrative agreements, when the government invokes the doctrine of *imprévision*, it is obligated to fulfill the duty of renegotiation. Establishing a reasonable notice period and negotiation timeframe is essential for the government to adhere to due process, thereby fully safeguarding the right to information and the right to participate of private sector entities. This mechanism serves to prevent the abuse of the administrative agency's *de facto* dominant position in administrative

[12] Article 6.2.3.(1) of the UNIDROIT Principles of International Commercial Contracts (PICC), in case of hardship, the disadvantaged party is entitled to request re-negotiation. The request should be made without undue delay and should indicate the grounds on which it is based.

contracts. Failure by the government to undertake the renegotiation process may lead to a judicial determination that any subsequent contract modification or termination is illegal on procedural grounds.

5.3.2 Modification or termination

In French law, to ensure the uninterrupted delivery of public services, the application of the doctrine of *imprévision* in PPP contracts prioritizes contract modification over termination. Typically, when new circumstances arise that lead to an increase in the costs borne by the private sector, the government is required to provide compensation to ensure the continued provision of public services (Richer and Lichère, 2021, p.282-283). By contrast, Chinese law currently provides no explicit rules allowing the private party to request modification of an administrative agreement. This legislative gap highlights the urgent need for supplementary regulation to create a more comprehensive and balanced legal framework for administrative agreements.

In terms of the conditions for the termination of an administrative contract, the Provisions on Administrative Agreement 2019 added one more condition of "not damaging public interests and state interests" for rescission to the relevant provisions in contract law.[13] According to the Contract Law (1999) and the currently effective Civil Code, termination can be awarded when the agreed-upon conditions between the parties or mandatory conditions are met up. The mandatory conditions include cases where the breach of contract is excessively severe, or where *force majeure* has rendered the contract's purpose unachievable; cases where there is a delay in fulfilling the primary obligation to the extent that the contract is not performed within a reasonable time after a demand for performance; or cases where, before the expiration of the performance period, one party explicitly indicates or demonstrates through their actions an intention not to fulfill the main obligation. Therefore, if the administrative agreement rules are applied to PPP contracts, the restrictions on the parties in exercising the right of rescission requiring there is no damage to state and public interests, which undoubtedly increases the obstacles to the private in applying the *imprévision*. The legitimacy of this provision is doubtful, as Provisions on Administrative Agreement 2019 are not laws enacted by the National People's Congress.

In addition, when applying the doctrine of *imprévision*, administrative organs and private parties ought to be treated equally without discrimination regarding the modification and termination of contracts. Therefore, administrative entities should also be granted the right to initiate judicial proceedings, allowing them to bring administrative litigation when necessary. Considering that China has not yet established an administrative litigation system where the "government sues the citizen," administrative organs are unable to petition the court for the modification or termination

[13] Article 17 of the Provisions on the Administrative Agreement (2019) stipulates: "if the plaintiff requests to terminate the administrative agreement, and the people's court considers that it is in line with the conditions of agreed and mandatory termination and does not damage the state interests, the public interests and the legitimate rights and interests of others, the court may terminate the agreement by judgment."

of contracts. Therefore, the application of the doctrine of *imprévision* following the introduction of the new mechanism for PPPs can only be realized by improving the legal framework for administrative agreements, including the establishment of a two-way litigation mechanism and an *ad hoc* tribunal dedicated to administrative agreements (Wei, 2024). Otherwise, administrative organs can only exercise their power of unilateral modification or termination instead of resorting to the court.

5.3.3 Compensation

Regarding compensation under *force majeure* and the doctrine of *imprévision* in civil contracts, China's Civil Code exempts a party from liability when non-performance results from *force majeure*. By contrast, the Code does not explicitly address whether compensation is required when the doctrine of *imprévision* is invoked. Judicial practice, however, indicates that any awarded compensation generally does not exceed 50% of the loss incurred.[14]

Unlike civil contracts, under French administrative contract law, economic compensation must be provided to the counterparty regardless of whether the case applies *force majeure*, the doctrine of *imprévision*, or the exercise of administrative prerogatives. The only distinction lies in the amount of compensation. This requirement reflects the fundamental difference in motivations between the contracting parties: whereas the administrative authority enters into the contract primarily to fulfill public service or administrative management objectives, the private party participates primarily to secure reasonable economic benefits. Even when unforeseen circumstances occur that are not attributable to the government, the economic interests of the private party must be protected. Failing to do so would significantly hinder the administrative authority's ability to attract partners for future agreements. This legal framework thus seeks to balance the public interests pursued by administrative authorities with the legitimate economic rights of private parties, thereby ensuring the sustainable development of administrative contractual relationships (Chen, 2015).

The compensation framework for applying the doctrine of *imprévision* in Chinese administrative agreements should be distinguished from that applicable to unilateral administrative prerogatives. While unilateral prerogatives are exercised in consideration of the public interest, the government itself is the primary driver behind any contract modification or termination. Consequently, to maintain economic balance, the private sector should be entitled to full compensation, encompassing both actual losses and expected profits (Llorens, 1984). Full compensation not only signals the economic costs of exercising such prerogatives to administrative authorities but also serves as an important constraint on their use, even though current Chinese law limits recovery to actual losses. By contrast, when *imprévision* arises from changes in the economic foundation, government compensation should be restricted to factual losses sufficient to ensure the continued delivery of public services, rather than full indemnification.

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[14] Civil Ruling of the Supreme People's Court (2018) Zui Gao Fa Min Shen No. 6232.

It is worth noting that under the legal regime of administrative agreements, the private party is entitled to compensation for government's unilateral contract modifications or terminations, regardless of whether the doctrine of *imprévision* applies. Consequently, the practical application of this doctrine is likely to be limited if it does not provide compensation superior to other available mechanisms. Since invoking *imprévision* requires court proceedings, the government is naturally inclined to exercise its unilateral powers directly. Meanwhile, the private party, receiving equal or greater compensation through alternative avenues, has little incentive to pursue judicial intervention. In other words, whether there will ultimately be room for the application of the doctrine of *imprévision* in the rules of administrative agreements under Chinese law may largely depend on whether the compensation mechanism for the private sector has an advantage over the compensation rules of other doctrines.

6. Conclusion

While the formal promulgation of a dedicated PPP law in China has been delayed, the Administrative Litigation Law of 2015 and the Provisions on Administrative Agreements 2019 have already brought PPP contracts within the scope of administrative law. These provisions have reshaped the autonomy of the parties, the conditions for contract modification and termination, and the expectations regarding compensation. Against this backdrop, this study has examined the application of the doctrine of *imprévision,* providing a detailed analysis of its applicable conditions and legal effects in the context of PPP agreements.

The analysis identifies several critical areas for reform. First, the boundaries of different types of administrative powers should be clearly delineated to prevent arbitrary or excessive exercise of authority. Second, the conditions under which *imprévision* may be invoked must be explicitly defined. Third, the legal consequences of invoking *imprévision*—including renegotiation, modification or termination, and compensation—should be clearly specified and standardized. Such reforms would contribute significantly to improving the predictability and legal certainty of PPP contracts, facilitating sustainable public–private cooperation, and reinforcing confidence in China's institutional and commercial environment.

Acknowledgement: This research is supported by CSC scholarship of China.

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LEGAL DISPUTE RESOLUTION IN CHINESE GOVERNMENT PROCUREMENT——USING 50 JUDICIAL PRECEDENTS AS A SAMPLE

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Suggested citation: Zou, D., He, Z., & Cao, Y. (2025). Legal dispute resolution in Chinese government procurement: Using 50 judicial precedents as a sample. International Journal of Public Procurement, 1(2), 97-119.

Abstract:

While the scale of Chinese government procurement is rapidly expanding, there are also many legal disputes. This article analyzes 50 judicial precedents extracted from the Non Litigation Online, sorts out and explains eight common legal disputes in government procurement, specifically involving procurement documents, information disclosure, expert evaluation, qualification of bidding suppliers, contract performance, and infringement of bidding suppliers. The trial of government procurement cases is mainly based on the scope of the case, the eligibility of the parties, the application of law, and the determination of evidence by court in China. However, due to the unclear legal nature of government procurement contracts, the existence of mandatory pre procedures, conflicts in procurement legislation, and the varying judicial capabilities of judges, the role of judicial litigation in resolving procurement legal disputes is affected. In view of this, improvements can be made in optimizing or restructuring the legal system for government procurement, deepening judicial system reform, and other aspects.

Keywords

Chinese government procurement, Legal dispute resolution, The nature of the procurement contract, Judgment benchmark.

1. Introduction

Government procurement first emerged as a means of public procurement or centralized procurement, and was a product of Western governments' legalization and standardized management of government procurement behavior. In the European and international commercial and commercial legal environment, government procurement represents a professional and important field of practice. There has always been no

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unified definition of government procurement internationally, and it is generally stipulated by countries around the world based on their own actual situations. In China, government procurement refers to the act of government agencies, institutions, and organizations at all levels using fiscal funds to purchase goods, projects, and services within the centralized procurement directory established by law or above the procurement limit standard. This regulation reflects the characteristics of Chinese government procurement, such as the public nature of the main body, the financial nature of funds, the purpose of public welfare, and the diversity of content.

Chinese government procurement began its pilot program in 1996 and was fully launched in 1998. It has been developing for more than 20 years now. Against the backdrop of economic transformation, transformation of government functions, and continuous optimization of the business environment, the scale of Chinese government procurement has rapidly expanded, accounting for an increasing proportion of GDP. According to the latest data from the Ministry of Finance, the scale of Chinese government procurement reached 3586.14 billion yuan in 2018, accounting for 4% of GDP; By 2020, the national government procurement scale was 3697.06 billion yuan, an increase of 390.36 billion yuan or 11.8% compared to the previous year, accounting for 10.2% and 3.6% of the national fiscal expenditure and GDP, respectively. From a hierarchical perspective, the government procurement scale of central budget units and local budget units is 285.30 billion yuan and 3411.76 billion yuan, respectively, accounting for 7.7% and 92.3% of the national government procurement scale. From a structural perspective, the procurement scale of goods, engineering, and services is 917.58 billion yuan, 1749.24 billion yuan, and 103.024 billion yuan, respectively, accounting for 24.8%, 47.3%, and 27.9% of the national government procurement scale. From the perspective of organizational form, the scale of government centralized procurement, departmental centralized procurement, and decentralized procurement is 1238.51 billion yuan, 408.67 billion yuan, and 2049.88 billion yuan, respectively, accounting for 33.5%, 11.1%, and 55.4% of the national government procurement scale.

Chinese government procurement has played an important role in promoting the rational use of fiscal funds, improving administrative efficiency, and promoting the development of market enterprises. However, in procurement activities, there are many disputes between the procurement parties, which are related to the setting of technical parameters in procurement documents, qualification conditions, and the authenticity of supplier bids. Judicial litigation is the most important and ultimate solution to government procurement disputes, aiming to protect the legitimate rights of procurement parties through procedural justice. According to the judicial cases of government procurement publicly disclosed on the China Non Litigation Network, since 2003, the total number of government procurement cases has been 26247. Among them, from 2003 to 2012, the total number of government procurement cases was relatively small, at 465. After 2013, the number of government procurement cases increased rapidly, with an average of approximately 3670 cases per year. In 2018, the number of cases reached 6231, the highest in history. In 2019, there was a slight decrease, reaching 5994 cases. In 2020, there were 3047 cases. According to the classification of Wu Litigation Net, government procurement cases mainly include

1934 administrative cases, 8277 civil cases, and 3968 criminal cases. This article selects 50 judicial precedents for government procurement on the non litigation website, based on the reasoning of the judgment documents of the cases, observes the main legal disputes and the current situation of dispute resolution in Chinese government procurement, conducts key reviews, and proposes improvement measures.

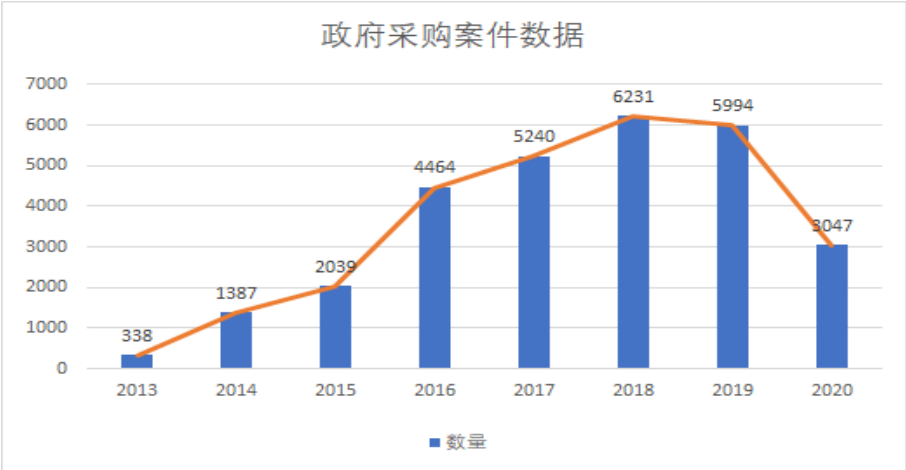

Fig.1 Statistics on the number of judicial trials in Chinese government procurement from 2013 to 2020

Data source: China No Litigation Network (https://www.itslaw.com/bj)

2. Literature Review on Legal Disputes in Government Procurement

According to the different stages of government procurement, there are generally two classification methods for government procurement disputes internationally. One method is to divide government procurement disputes into pre bidding disputes, bidding disputes, and performance disputes. The other method is to divide them into contract award stage disputes and contract performance stage disputes (Lin Jiaqi, 2002). Both of them vertically decompose government procurement contracts, but the former classification method lists pre bidding disputes separately. Overall, domestic and foreign scholars have mainly studied specific government procurement disputes and their causes. Crowell et al. (1990) argue that government procurement disputes typically include resolving technical issues related to the latest technical specifications, engineering issues arising from construction contracts, and complex accounting issues related to government claims. Levesque (1991) believes that the evaluation criteria for procurement bidding are not clearly defined in advance and that failure to adopt a consistent approach can lead to disputes. Chen Li (2019) believes that there is insufficient understanding of government procurement information disclosure, resulting in procurement disputes due to incomplete types of government procurement information disclosure, low quality of information disclosure, and poor channels for information disclosure and sharing. Wang Dabin (2018) pointed out that bidding hoarding and collusion are illegal behaviors derived from bidding, which harm the interests of purchasers and potential suppliers and trigger procurement disputes. Krizic (2019) also proposed to prevent corruption and other collusive practices and reduce the

occurrence of procurement disputes. Wang Chuanquan and Fan Jie (2019) emphasized that the professional level of the business personnel participating in the review is not up to standard, and the internal issues inherent in the government procurement review method, such as information asymmetry, short evaluation task time, and the lack of transparency in the review process, can easily lead to review disputes. The occurrence of various disputes will directly damage the economic effectiveness, competitiveness, fairness, and openness of government procurement, make it difficult to fully realize the economic value and public policy value pursued by government procurement, and to achieve the inherent requirement of value for money (Cao Fuguo, 1998; 2016).

Procurement contracts are the carrier form of government procurement behavior with legal significance, and their signing and performance are the central links surrounding the entire government procurement. The nature of domestic and foreign government procurement contracts can be summarized into three categories: civil contracts, administrative contracts, and mixed contracts. The focus on defining the nature of government procurement contracts varies among different legal system countries, leading to differences in the ways in which government procurement disputes are resolved.

In terms of the Judicial Handling of Procurement Disputes, which main contains the Procedural Barriers and Substantive Challenges. In common law countries, there is basically no concept of administrative contracts, so government procurement contracts are mainly regarded as civil contracts. Due to the characteristic of common law that there is no strict distinction between public and private law, the relationship between citizens and the government, as well as the relationship between citizens, is generally governed by the same law and under the jurisdiction of the same court (Wang Mingyang and Yang Haikun, 1987). Therefore, government procurement in common law countries is often regarded as an ordinary civil act, and administrative entities generally do not enjoy unilateral privileges. Disputes in government procurement are equivalent to general civil disputes, and suppliers can file lawsuits in civil courts (Zhang Qingbin and Xiao Nianhua, 2002). The concept of prioritizing public interests in civil law countries is deeply rooted, based on public law factors, and has established an administrative contract system model centered on administration (Wang Mingyang, 1988). In French government procurement contracts, administrative nature is the primary intrinsic attribute, and the contractual nature in the contract is subordinate to administrative nature (Yang Jiejun, 2008). The French Government Procurement Law clearly stipulates that contracts concluded between government procurement departments and suppliers are administrative contracts in nature. In the judicial resolution of government procurement disputes, France currently mainly follows the theory of separable behavior, which means that since all government procurement contract awarding procedures are legally classified as administrative procedures, they are uniformly reviewed by the administrative court. For disputes over the performance of government procurement contracts, a case study is conducted. After distinguishing the nature of the government procurement contract as a civil contract or an administrative contract, they are reviewed in ordinary civil courts or administrative courts, respectively (Sun Qi, 2007). For Germany, the formal implementation of the 1976 Federal Administrative Procedure

Law enabled administrative contracts to be confirmed in legislation and achieved the same legal status as administrative acts. Influenced by the dual order theory, "decisions made by administrative agencies during the grant stage are administrative actions and subject to the jurisdiction of administrative courts; the implementation of such decisions and the execution of contractual terms are regulated by private law" (Yu Lingyun, 2000). In China, the "Tendering and Bidding Law" officially implemented in January 2000 has to some extent solved quality and corruption issues in the field of engineering construction. The Government Procurement Law introduced in 2002 provides a legal basis for addressing the issues of low efficiency in the application of public funds and corruption that may arise during their use. The Government Procurement Law was passed at the 28th meeting of the Standing Committee of the National People's Congress on June 29, 2002, which clearly stated that "government procurement contracts shall be governed by the Contract Law, and the rights and obligations between the purchaser and the supplier shall be stipulated in a contractual manner based on the principles of equality and voluntariness." This is a significant change in the definition of this law.

In recent years, the government procurement legal system that only focuses on using procedural control to achieve the purpose of institutional design has been questioned to some extent. Regarding the construction of the system and system, in 2018, the Central Committee for Comprehensive Deepening Reform passed the "Deepening Government Procurement System Reform Plan", aiming to build a modern government procurement system with "complete policy functions" and "perfect legal systems".

The legislative techniques used in the government procurement legal system to carry three major functions (cost saving and efficiency increasing, corruption prevention, and policy regulation) at different stages of development have their respective focuses. In the early stage of government procurement law, more attention was paid to the efficiency of fund utilization, and the scope of power and exercise methods of procurement subjects were the core content of legal regulations; In the mid-term development of government procurement legal system, the focus of legislation is to control the power of purchasers, standardize procurement procedures and methods, and attach importance to the positive role of public policies in government procurement.

The Government Procurement Law and the Tendering and Bidding Law are laws of the same rank, with different starting points for their formulation. The former focuses on regulating the procurement subject, while the latter focuses on procurement methods. Although both laws have provided significant assistance to China's economic development, the issue of the coexistence of the two laws has become increasingly prominent. The differences and overlaps in the content of the two laws have led to difficulties in the application of the law. The differences between the two laws are mainly reflected in the scope of application, procurement mode, source of funds, and supervisory authorities. The most controversial legal issues in procurement lie in the identification of government procurement behavior and the nature of government procurement contracts, which are related to a series of legal issues and related

theoretical issues such as the content, attributes, rights and obligations, behavioral subjects, supervision and management of legislation.

Article 43 of the Government Procurement Law stipulates that government procurement contracts shall be governed by the Contract Law. Due to the fact that the Contract Law regulates civil and commercial contracts, some scholars believe that this is a legal lock on the nature of civil contracts in government procurement contracts at the legislative level. Xiao Beigeng (2017) believes that in determining the nature of government procurement contracts, the criterion for determining the "application of law" is a methodological bias based on the legislative interpretive stance. The inherent administrative legal attributes of government procurement contracts, such as safeguarding public interests, controlling administrative power, and economic regulation functions, should become the core considerations for analyzing the nature of government procurement contracts. Emphasizing that after the 2014 revised Administrative Litigation Law affirmed administrative contracts under the name of administrative agreements, it is an inevitable logical result that government procurement contracts belong to administrative contracts. He Hongfeng (2017) believes that simply categorizing government procurement contracts as civil or administrative contracts has its drawbacks. In practice, administrative law should be applied to adjust the public interest in the contract, and the civil part should be adjusted using civil law (Wang Tianying, 2018). Some scholars of Taiwan, China Law of China believe that in the contract awarding stage, the supervision of the purchaser is mainly based on public law norms such as administrative supervision, which has the nature of public law. During the contract performance stage, the delivery of the contract subject matter, dispute resolution, and other performance matters between the successful supplier and the purchaser are based on civil law as the basis for their rights and obligations, and have a private law nature (Lin Jiaqi, 2002).

Article 43 of the 2014 revised Government Procurement Law seems to have clarified that government procurement contracts are civil contracts of a private nature, but the public law color of the procurement subject is an unavoidable issue. There is still controversy in the academic community regarding the legal nature of government procurement agreements. Civil law scholars advocate the "civil contract theory" and the mainstream "administrative contract theory" of administrative law scholars. The former focuses on the performance stage of relevant legal acts, while the latter emphasizes administrative priority. The "mixed contract theory" represented by Professor Yu Lingyun and Chen Chuansheng and Ge Mengting (2021) believes that government procurement agreements are hybrid contracts with both private and public law characteristics, It should be subject to both public and private law constraints.

In terms of government procurement dispute settlement, Chinese Mainland will generally use the administrative settlement mechanism for disputes that occur before the conclusion of government procurement contracts, including raising inquiries, questions, complaints, applying for administrative reconsideration, filing administrative litigation, and taking such channels as letters, visits, and reports (Huang Minjin, 2018); Disputes arising after the conclusion of government procurement contracts are resolved through civil settlement mechanisms, including negotiation and

settlement, mediation, arbitration, and civil litigation(Qin Jun, 2007). There are two main ways to settle disputes over government procurement contracts in Taiwan, China, China: administrative appeals and administrative litigation, and ordinary judicial litigation or arbitration. The two paths are parallel and can be freely chosen.

In our study, the information asymmetry between purchasers and suppliers, the principal-agent problems in expert evaluations are suitable in our study. From the perspective of the information asymmetry between purchasers and suppliers, there is often a significant information gap between buyers and suppliers, and the suppliers have more information than the buyers in fact. The theory of information asymmetry refers to the differences in understanding of relevant information among various individuals in market economic activities(Yimin Yu, Xiaodong Zhang, Taowei Chen, 2020; Yingyu Zhou, Haiying Wang, Ping Ke,2023). People who have sufficient information are often in a favorable position, while those who lack information are in a disadvantageous position. There is often information asymmetry in government procurement, which requires both parties to eliminate the information gap and conduct economic transactions on an equal footing.

3. Overview of Sample Sorting of Public Cases of Legal Disputes in Chinese Government Procurement

In China, the People's Court is the national judicial organ of the People's Republic of China, responsible for exercising judicial power in accordance with the law and maintaining social fairness and justice. According to the Constitution of the People's Republic of China and the Organic Law of the People's Courts of the People's Republic of China, the people's courts are divided into three levels, including the grassroots people's courts[15], intermediate people's courts[16] and higher people's courts[17].

The government procurement judicial cases were publicly disclosed on Wulitiao.com, examining the main legal disputes and their resolution, in order to seek

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[15] The grassroots people's court is the lowest level of the people's court system, responsible for hearing grassroots civil and criminal cases, as well as some specific types of cases, such as administrative cases and industrial enforcement cases. The grassroots people's courts have direct jurisdiction and are also the first level courts in the people's court system closest to the people.

[16] The intermediate People's Court is the intermediate level of the people's court system, responsible for hearing some complex civil and criminal cases, as well as some specific types of cases, such as property disputes involving large amounts of money, civil cases involving multiple units or individuals, etc. Intermediate people's courts have jurisdiction and can also directly govern some grassroots people's courts.

[17] The high People's Court is the highest level of the people's court system, responsible for adjudicating major, complex, and sensitive civil and criminal cases, as well as cases involving multiple units, disciplines, and fields. The Higher People's Court has direct jurisdiction.

breakthroughs for the subsequent improvement of Chinese government procurement. From the perspective of judicial settlement practice, the courts generally follow the vertical decomposition of legal relationships in government procurement contracts, and apply different legal norms based on the legal nature of different stages after decomposition. Generally speaking, cases that arise before the conclusion of a procurement contract are classified as administrative cases. Disputes arising during the performance stage after the signing of the procurement contract, including the acceptance and operation stages after the completion of the contract, are classified as civil cases. Cases that clearly violate legal provisions and can be recognized as criminal acts are directly classified as criminal cases, and thus enter the corresponding administrative litigation[18], civil litigation, and criminal litigation procedures. Due to technical reasons ⑤, the "government procurement" “contract disputes”, “court level” and “regions” as the search keywords on the non litigation website, and ranks it according to relevance in this research. Taking into account the frequency of government procurement disputes, the level of review and court level, 50 government procurement cases are randomly selected, and corresponding legal judgment documents are used as effective analysis samples.

According to the hierarchical classification of the review court, the sample includes 1 judgment document from the Supreme People's Court, 6 documents from the Higher People's Court, 17 documents from the Intermediate People's Court, and 26 documents from the Grassroots People's Court. According to the classification of trial cases, there are 19 administrative judgment documents for government procurement, 17 civil judgment documents, and 14 criminal judgment documents.

In addition, on January 1, 2014, the Provisions of the Supreme People's Court on the People's Court's Publication of Judgment Documents on the Internet was officially implemented. The judicial interpretation makes it clear that the Supreme Law has set up a Chinese judicial document website on the Internet to uniformly publish the effective judicial documents of people's courts at all levels. Meanwhile, the 50 sampling cases were also published in public websites that includes the Chinese judicial document website and WuLitigation.com. Therefore, the 50 cases in this study have strong representativeness as well as reflect the feasibility and effectiveness of the research results to some extent.

The main causes of administrative cases include administrative contracts, administrative penalties, failure to fulfill legal responsibilities, administrative

[18] Administrative reconsideration is an activity and system in which a person with a legal interest in an administrative action believes that the administrative action taken by an administrative agency has infringed upon their legitimate rights and interests, and applies for reconsideration to an administrative agency with statutory authority in accordance with the law. The reconsideration agency reviews the legality and reasonableness of the applied administrative action in accordance with the law and makes a decision.

reconsideration, administrative confirmation, administrative acceptance, and government information disclosure. The main causes of civil cases include contract disputes, infringement liability disputes, improper collusion bidding disputes, reputation rights disputes, trademark infringement disputes, trademark secret infringement disputes, and commercial defamation disputes. The main causes of criminal cases include contract fraud, bribery, abuse of power, collusion in bidding, bribery, dereliction of duty, credit card fraud, corruption, and forging seals. In the sampled cases, the main party filing the lawsuit is the bidding supplier, and the defendant is the purchaser. In administrative and civil procurement cases, there are 15 cases where suppliers have won, accounting for 30%. In most cases, supplier demands have been rejected. The court's judgment results are mainly disclosed in the form of legal documents such as judgments or rulings.

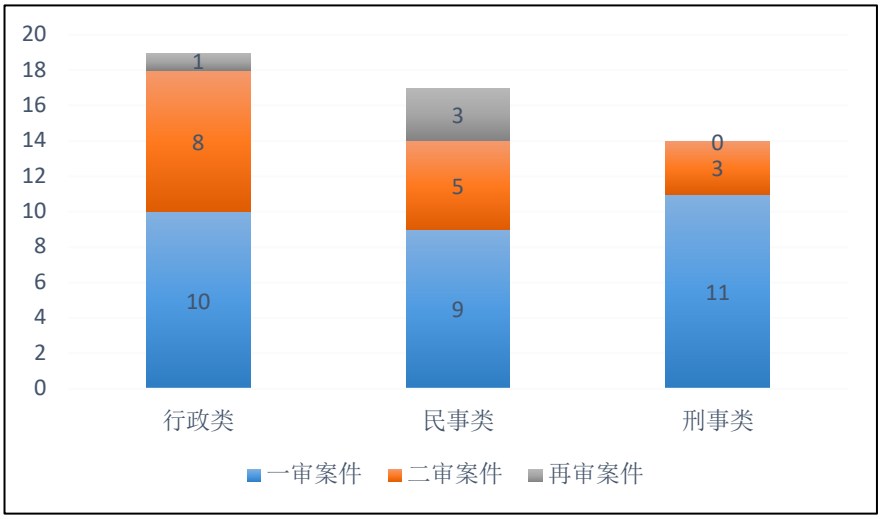

Fig. 2 Types of litigation and distribution of review courts in sample cases of Chinese Government Procurement

4. Analysis of judicial review cases in legal disputes over Chinese government procurement

Our study will contain two parts in this section, one part is analysis of the main legal disputes in Chinese government procurement, the other part is analysis of Chinese court judgment standards in government procurement cases.

(1) Analysis of the main legal disputes in Chinese government procurement

Due to the complex scope of judicial litigation in government procurement, this article mainly analyzes the main legal disputes and court judgment standards in government procurement cases based on the reasoning of sample judgment documents, in order to examine the actual situation of legal dispute resolution in Chinese government procurement. The Main Legal Disputes in Chinese Government Procurement are following:

① Legitimacy and rationality of procurement documents

The preparation of procurement documents is a crucial part of the government bidding process and the main basis for government procurement activities. As a legally binding document, whether the preparation of procurement documents is scientific, standardized, and rigorous will directly affect the success or failure of the entire procurement work. From the selected government procurement cases, there are four specific legal disputes arising from the content of procurement documents: (1) whether the procurement requirements have been accurately set? Are there discriminatory and exclusive provisions in the qualification conditions of suppliers, whether other potential suppliers are excluded from specific qualification settings, and whether the qualification setting conditions are suitable for the specific characteristics and actual needs of the bidding project. Whether the qualification conditions of the supplier are reasonable and whether the technical parameter settings are all substantive terms, especially how to classify the technical parameters when the quantity is large? Is the evaluation criteria complete and clear, is the setting of quantitative indicators reasonable, is it more conducive to achieving the goal of value for money as an alternative bidding solution, and does the setting of scoring factors necessarily follow the principle of prioritization? Are necessary explanations provided for unclear meanings and inconsistent expressions of similar issues in procurement documents?

② Information Disclosure of Government Procurement

The disclosure of government procurement information mainly includes data such as procurement projects, demand profiles, budget amounts, and estimated procurement times, providing equal information and fair opportunities for all potential suppliers to participate in competition. The main controversies currently existing in the scope and methods of procurement information disclosure include whether the corresponding bidding content and materials involved in the procurement documents publicly released by procurement agencies are sufficient and complete. Whether the details of various ratings and on-site audio-visual materials in the procurement project belong to legally disclosed government information? Whether the information purpose indicated by the supplier's application for information disclosure meets the conditions for citizens to apply for information disclosure? Whether the procurement announcement, procurement specified date, and public information format issued by the procurement agency meet the standards? Whether the score setting and quantification criteria of evaluation factors are influenced by subjective factors?

③ The legality of the selection of evaluation experts and the fairness and professionalism of their evaluation

Evaluation experts are the fundamental elements of the government procurement operation system and an important external force to assist in executing the procurement process. According to the judicial precedents of Chinese government procurement, disputes arising from expert evaluation can be classified into the following five categories. Whether the procurement agency strictly selects evaluation experts from the expert database in accordance with the prescribed procedures? Have the selected experts had any business experience in reviewing projects, are they familiar with relevant policies, regulations, and market conditions, and have they violated fairness and integrity? Whether the evaluation experts strictly follow the prescribed evaluation

procedures, methods, and standards for independent evaluation? In procurement activities, which situations need to be avoided by evaluation experts and which situations do not need to be avoided? Is there any favoritism or fraud that affects the fairness and impartiality of bidding work?

④ Qualification of bidding suppliers

The qualification of suppliers affects the actual implementation effect of government procurement activities, and strict qualification control is an important task for procurement agencies. In procurement activities, the purchaser mainly reviews the qualifications of bidding suppliers from two aspects: one is to review the basic qualifications, including the supplier's registration status, credit status, and compliance with laws and regulations. The second is to review professional qualifications, including qualification status and license certification, agency and acceptance status, product quality testing and certification status, experience and commercial reputation, financial status, and after-sales service capabilities. Article 17 of the "Measures for the Administration of Tendering and Bidding of Government Procurement Goods and Services" stipulates that the authorization of manufacturers shall not be used as a qualification requirement, and does not specify that the authorization of manufacturers shall not be used as a evaluation factor.

The extracted judicial precedents reflect some specific qualification disputes among bidding suppliers. Is the credit and qualification honor certificates of bidding suppliers authentic? Do the technical parameters in the bidding documents fully meet the requirements of the bidding documents for the product? Are suppliers with a history of illegal and dishonest behavior restricted in participating in subsequent procurement projects and to what extent? Do suppliers who have not participated in the bidding have the right to question the qualifications of the successful suppliers?

Another controversial point lies in questioning complaints, which is a relief right granted by government procurement and bidding laws to suppliers when they believe their rights and interests have been infringed. Article 9 of China's "Government Procurement Challenge and Complaint Measures" specifies that joint suppliers should jointly participate in questioning complaints. Joint questioning complaints are not only the right of joint suppliers, but also their obligation. However, the current government procurement and bidding laws in China do not specify whether non joint venture suppliers have the right to jointly challenge and complain. At present, there is no relevant legal basis in the field of government procurement that prohibits suppliers from jointly questioning and complaining, and there are no legal provisions on how procurement agencies and departments handle joint questioning and complaints.

The "joint challenge complaint" of government procurement suppliers can be divided into two situations: firstly, suppliers who participate in government procurement projects in one capacity through signing a joint agreement engage in a "joint challenge complaint", and all members of the consortium bear joint and several liability to the purchaser; The second is for independent government procurement suppliers to conduct "joint challenge complaints". In the second case, should the relevant procurement unit or financial department accept their joint challenge complaints for the justice.

⑤ Bid collusion and false bidding behavior

Bidding collusion refers to the act of collusion between bidders, between bidders, or between bidders through an agency, in order to exclude competitors and win the bid through improper means. According to the different subjects of collusive bidding behavior, collusive bidding behavior can be divided into horizontal collusion between bidders, vertical collusion between bidding parties, and collusive bidding behavior involving multiple entities. In terms of the extracted judicial precedents, the specific controversial situations reflected include: (1) whether the bidding suppliers have marital relationships, equity relationships, or abnormally close quotations, which are considered collusive bidding. (2) When the creators of different bidding documents are the same, can it be considered as constituting bidding collusion. (3) Is there any disciplinary behavior between the purchaser, evaluation expert, and bidding supplier, such as modifying bidding indicators, tending to produce bidding documents, or leaking quotations. (4) Is the patent, trademark certificate, and other bidding materials provided by the bidding supplier true and valid?

⑥ Performance of government procurement contracts

The effective performance of procurement contracts determines the smooth completion of government procurement projects. In government procurement practice, both parties may affect the normal performance of the contract due to factors such as the subject matter, quantity, quality, price, performance period, location, and method of the contract. The specific situations that have caused disputes over the performance of government procurement contracts in selected cases include whether the products provided by the successful supplier comply with the provisions of the procurement contract? Is the actual project quantity consistent with the bidding list quantity? How to calculate the payment for government procurement contracts? How are the liability for breach of contract, liquidated damages, and interest recognized and paid separately? If the government procurement process is found to be illegal after the procurement project has been completed, how will the winning bid be handled? How to define the responsibilities of the purchaser and the successful supplier? In cases where the "Procurement Catalogue of XX City" does not fall under laws or administrative regulations, if there is a legal dispute over the procurement contract amount specified in the procurement catalogue, whether the violation will not result in the invalidity of the contract, both parties shall fulfill their respective contractual obligations in accordance with the contract agreement. Regarding the issue of determining the final payment, if the supplier's qualification expires and the supplier's qualification is lost, should the relevant payment be refunded.

⑦ Government procurement deposit

The government procurement bond is divided into bid bond and performance bond in two stages: bidding and signing. The bid bond, which is different from the deposit or deposit in the general contract law sense between pure civil subjects, is intended to regulate the order of government procurement and has more administrative management color. The performance bond refers to the fees provided by the successful supplier to the purchaser to ensure their performance of contractual obligations. Disputes over whether to pay the performance bond as required, as well as the

management, ownership, and refund of the bid bond, are common. Specifically, there are the issue of the responsible party for the return of the bid security deposit, which should be returned by the government purchaser or by the procurement agency. Payment of bid security. There is a situation where the bidding supplier has already paid the deposit but has not been officially recorded, which will have an impact on the supplier's bidding effectiveness. If the supplier overpays the bid security, can their bid be deemed invalid? Is there a legal basis for the appellant's failure to participate in the procurement activity and assuming the profits obtained after winning the bid, and is there a legal obligation for the financial department to make corresponding compensation?

According to the analysis of the extracted cases, the legal disputes over the infringement behavior of bidding suppliers are specifically manifested as whether it infringes on the exclusive right to use registered trademarks. For example, have trademarks and enterprise names created by other enterprises and registered in accordance with the law been registered as individual business names without permission; Have you participated in government procurement bidding under the name of another company's trademark and won the bid using the brand name's popularity and good reputation? Is there any commercial defamation behavior. Is it legal and valid for a bidding supplier to believe that another bidding supplier has provided false information in government procurement bidding projects, suspected of violating production regulations, forging or falsely using quality certification certificates? Whether it infringes on trade secrets. This is reflected in whether one bidding supplier obtained trade secrets such as basic parameters, technical performance indicators, etc. from the other bidding supplier through improper means.

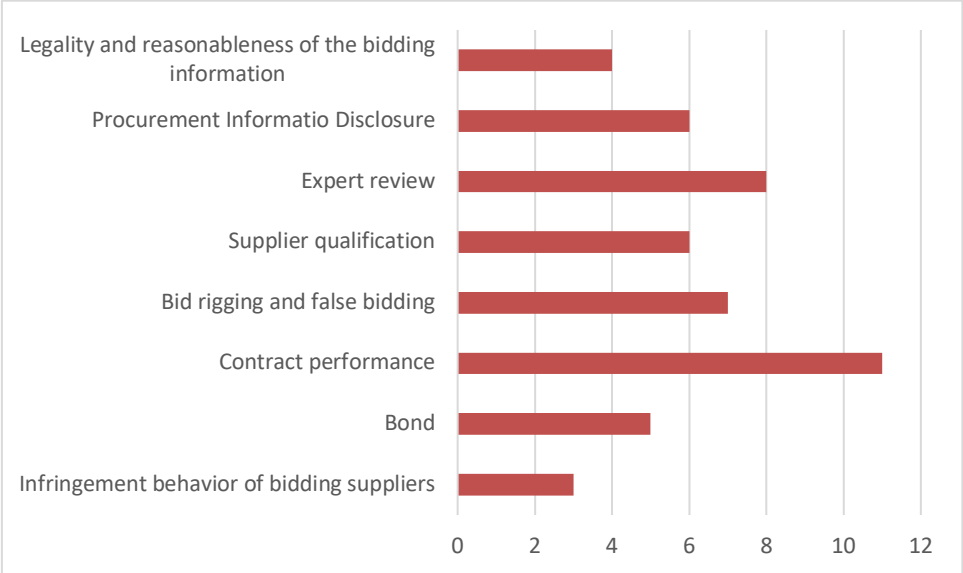

Fig. 3 Main legal disputes in sampling cases of Chinese Government Procurement

(2) Analysis of Chinese court judgment standards in government procurement cases

Among the 50 judicial precedents on government procurement selected in this article, using court decisions as the main material for reasoning, it can be found that the review of government procurement cases were mainly begun from the following four benchmarks in Chinese courts.

① The distinguishes between civil contracts and administrative contracts

First, in terms of the Subject identity. One party to an administrative contract must be an administrative agency or its representative, while both parties to a civil contract are equal civil subjects. Second, in terms of the purpose of contract. The purpose of administrative contracts is to achieve public interests or complete administrative tasks, while the purpose of civil contracts is to achieve private economic interests. Third, in terms of the legal basis. The formation and performance of administrative contracts are based on the provisions of national laws and regulations, while civil contracts are based on relevant laws and regulations such as the Contract Law. Fourth, in terms of the contract content. The content of administrative contracts usually involves administrative actions, policy formulation, resource allocation, etc., and has strong public, welfare, and social characteristic. While the content of civil contracts involves the rights and interests between the parties, such as property rights, intellectual property rights, personal rights, etc. Fifth, in terms of the legal effectiveness and dispute resolution. The legal effectiveness and dispute resolution of administrative contracts are often resolved through administrative reconsideration or administrative litigation, while civil contracts are resolved through civil litigation. In summary, when distinguishing between civil contracts and administrative contracts, the court will comprehensively consider the above factors. In May 2021, the Supreme People's Court released typical cases of administrative agreements for the first time. The revised Administrative Litigation Law for the first time clarifies administrative agreements as the scope of administrative litigation, and the Supreme People's Court issued the "Provisions on Several Issues Concerning the Trial of Administrative Agreement Cases" on November 27, 2019, which will be implemented from 2020. This regulation provides more detailed trial rules and more unified judgment standards for the people's courts to hear PPP project contract dispute cases. For instance, In 2019, Administrative Agreement between Hainan Middle East Group Co., Ltd., Maoming Highway Construction Co., Ltd., and Suixi County People's Government Case [(2019) Yue Xing Zhong 602]. The Suixi County People's Government and Suixi County Water Ecological Investment and Development Co., Ltd. have formed an administrative delegation relationship, and the corresponding legal responsibilities should be borne by the Suixi County People's Government. The construction project involved in the project contract is mainly public facilities, which are basically of public welfare nature and require government approval before proceeding. The Suixi County People's Government and Suixi County Water Ecological Investment and Development Co., Ltd. have formed an administrative delegation relationship, and the corresponding legal responsibilities should be borne by the Suixi County People's Government. The construction project involved in the project contract is mainly public facilities, which are basically of public welfare nature and require government approval before proceeding.

② Scope of case

Government procurement legal disputes can be classified into different litigation scope based on the nature of the procurement behavior and the time of award of the procurement contract. Article 12 and Article 13 of the new Administrative Litigation Law (2015) and Article 1 of the Judicial Interpretation of the Supreme People's Court on the Administrative Litigation Law (2018) respectively stipulate the scope of accepting cases that belong to and do not belong to the administrative litigation of the people's court. Among them, the new Administrative Litigation Law has revised the "specific administrative actions" that can be sued to "administrative actions", thereby expanding the scope of cases. According to the sampling case, the people's court lawfully accepts cases where suppliers file administrative lawsuits due to their dissatisfaction with the complaint handling decision made by the government procurement supervision and management department or their behavior that has not been handled within the prescribed time limit. The internal administrative actions taken by higher-level administrative organs based on internal hierarchical supervision relationships, actions unrelated to government procurement activities themselves, mediation actions, and arbitration actions stipulated by law are not within the scope of administrative litigation proceedings. Article 43 of the Government Procurement Law stipulates that "Government procurement contracts shall be governed by the Contract Law." Legal disputes between the parties to a procurement contract during the performance and acceptance stages of the contract mainly fall within the scope of civil litigation, such as contract disputes, deposit disputes, liquidated damages disputes, infringement liability disputes, etc. In procurement activities, there are various forms of government social capital cooperation (PPP), including BT, BOT, BTO, and other modes. The litigation procedures applicable to PPP agreements in different modes are different. According to the judgment documents, when reviewing the legal nature of PPP agreements, the court generally makes judgments based on whether the intervention of public interest and administrative power is obvious, and whether the public law attribute is prominent. When defining whether the PPP agreement is an administrative agreement, the main focus is on the elements of the administrative agreement. Article 1 of the "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Agreement Cases" (2019) stipulates that administrative agreements belong to administrative acts stipulated in the Administrative Litigation Law and should be included in the scope of administrative litigation. According to the provisions of the Criminal Procedure Law on the examination of criminal cases, when the facts and circumstances of the crime are clear, the evidence is accurate and sufficient, the nature of the crime and the determination of the charges are included in the scope of criminal proceedings in accordance with the law.

③ Eligibility of the parties involved

Eligibility of parties, also known as legitimate parties or qualified parties, refers to the qualification to become parties in one's own name in a specific lawsuit. The parties filing a lawsuit may not necessarily be qualified parties, and only judgments made by the court against qualified parties have legal significance. For unqualified parties, a ruling should be made to dismiss the lawsuit or replace it. In administrative

litigation, Article 26 of the Administrative Litigation Law stipulates that if a citizen, legal person, or other organization directly brings a lawsuit to the people's court, the administrative organ that has taken the administrative action is the defendant. In judicial practice, when judges determine whether the defendant is qualified, they usually follow the legal principle of "who acts, who is the defendant; who acts, can be punished". For example, in the sampling case, the first paragraph of Article 20 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Implementation of the Administrative Litigation Law of the People's Republic of China stipulates whether the Management Office of the Government Procurement Commission has the qualification of a defendant, If an administrative organ establishes and entrusts administrative management functions to an institution that does not have the ability to independently assume legal responsibility, and makes specific administrative actions in its own name, and the parties do not agree to file a lawsuit, the administrative organ that established the institution shall be the defendant. As a subordinate department of the Government Procurement Committee, the office in question does not have the ability to independently assume legal responsibility, so the court believes that it does not have the qualifications of a qualified defendant Article 119 of the Civil Procedure Law lists the conditions for prosecution, and its first paragraph states that "the plaintiff is a citizen, legal person, or other organization directly interested in this case". In the case, the supplier purchased the bidding documents but did not submit them. Can the supplier act as the plaintiff to sue for collusion in the bidding project involved? The court ruling holds that there should be no narrow understanding or restriction on the competitive relationship of the parties involved in anti-unfair competition disputes, and other market entities with certain interests should have the right and qualification to file a lawsuit against collusive bidding for unfair competition behavior. The plaintiff is a practitioner in the industry related to the bidding project involved in the case, and the disruption of industry competition order will affect their legitimate interests as competition participants. Therefore, the supplier is a qualified plaintiff. ⑧ According to Article 3 of the Criminal Procedure Law, the People's Procuratorate participates in criminal proceedings as a public prosecution, and if there is a clear criminal fact, it participates in the trial as a defendant.

④ Legal Application

There are two basic laws in the field of government procurement: the Government Procurement Law and the Tendering and Bidding Law. There are two administrative regulations: the Implementation Regulations of the Government Procurement Law and the Implementation Regulations of the Tendering and Bidding Law. In addition, the departmental rules, local regulations, and rules formulated based on these four laws and regulations jointly constitute the legal system in the field of government procurement and tendering and bidding in China. However, it should be noted that the Government Procurement Law and the Tendering and Bidding Law are two parallel laws, with certain overlap and differences in their scope of application and details of bidding projects. In judicial practice, courts need to grasp the differences in the scope of application and provisions of the two laws and their supporting regulations, and correctly apply the law. According to the types of government procurement cases,

administrative cases are mainly governed by the Administrative Procedure Law, civil cases are mainly governed by the Civil Procedure Law and the Contract Law, and criminal cases are mainly governed by the Criminal Procedure Law and the Criminal Law. In addition, the judicial interpretations of the Supreme People's Court and the Supreme People's Procuratorate in the three major litigation and other related fields, as well as the laws and regulations that adjust specific dispute areas, are important legal norms applicable in the court's decision-making process. For example, to determine the legality and validity of a commissioned auction contract, it is necessary to comprehensively consider the relevant provisions of the Auction Law and the Contract Law. The handling of disputes over construction project construction contracts can be based on the provisions of the Interpretation of the Supreme People's Court on the Application of Legal Issues in the Trial of Construction Project Construction Contract Disputes, The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Corruption and Bribery can be applied to corruption and corruption in government procurement. In the process of adjudication, the court generally applies the level of legal effectiveness in accordance with the provisions of the Legislative Law, that is, for legal norms formulated by different organs, according to the principle of "superior law is superior to inferior law", and for legal norms formulated by the same organ, according to the principle of "new law is superior to old law".

Table 1 Main Applicable Norms for Judicial Review of Chinese Government Procurement Cases

	Normative name (year of implementation)	Effectiveness level
General laws and regulations	Government Procurement Law (2003) Tendering and Bidding Law (2000)	law
	Regulations on the Implementation of the Government Procurement Law (2015) Implementation Regulations of the Tendering and Bidding Law (2012)	administrative regulations
Supporting laws and regulations	Anti-Unfair Competition Law (1993) Product Quality Law (2000) Administrative Penalty Law (1996) Budget Law (1995)	law

	Regulations on Quality Management of Construction Projects (2000)	administrative regulations
Standardization of Government Procurement Information Disclosure	Regulations on the Disclosure of Government Information (2008)	administrative regulations
	Measures for the Administration of Government Procurement Information Release (2020)	treasury regulation
	Regulations of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Concerning Government Information Disclosure (2011)	Normative documents
Expert review specifications	Management Measures for Government Procurement Evaluation Experts (2016)	Normative documents
Agency specifications	Interim Measures for the Management of Government Procurement Agencies (2018)	Normative documents
Contract performance specifications	Contract Law (1999)	law
	Guiding Opinions of the Ministry of Finance on Further Strengthening the Management of Government Procurement Demand and Performance Acceptance (2016)	Normative documents
Other commonly used specifications	Management Measures for Government Procurement of Services (2020) Government Procurement Query and Complaint Measures (2018)	treasury regulation

	Management Measures for Tendering and Bidding of Government Procurement Goods and Services (2017)	
	Management Measures for Government Procurement of Government and Social Capital Cooperation Projects (2014)	Normative documents

⑤ Evidence determination

The evidence rules in litigation are the core of the entire litigation activity, and judges and litigation participants must follow unified and clear evidence rules to clarify the facts of the case and achieve fairness and justice in judicial activities. Chinese courts mainly follow the four rules of evidence in the trial, namely, providing evidence, collecting evidence, cross examination, and authentication. The Supreme People's Court has direct provisions on evidence in administrative and civil litigation, but there is no specific provision on the rules of evidence in criminal litigation. According to the analysis of sampled cases, the court places great emphasis on the relevance, legality, and authenticity of evidence during the review process, which is reflected in the review of five aspects: firstly, the reasons for the formation of evidence. That is, to identify the purpose for which the evidence was formed and its impact on the authenticity of the evidence. The second is the objective environment in which evidence is discovered, namely when, where, and by whom, whether the preservation conditions meet the environmental requirements for preserving the evidence when it is discovered, and whether there has been a qualitative change in the evidence due to environmental reasons. The third is whether the evidence is the original, and whether the original and photocopy match the original. The fourth is whether the person or witness providing evidence has an interest relationship with the parties involved in the case, and whether the evidence has a clear tendency. The fifth factor is other factors that affect the authenticity of evidence. For example, regarding whether QQ chat communication records should be excluded as illegal evidence, a sampled court ruling document pointed out that the Chinese Constitution stipulates that citizens' freedom of communication and communication secrets are protected by law, and cannot be infringed upon without legal procedures of legal organs. However, there are no detailed provisions on the communication methods. Tencent QQ is an emerging communication method with the development of the Internet, whose main function is to communicate and communicate with external parties, In essence, like traditional communication methods such as letters and telegrams, they belong to the category of citizens' freedom of communication and communication secrets, and should be protected by law. At the same time, the court also examines whether administrative law enforcement agencies have illegally obtained evidence as stipulated in the "Provisions of the Supreme People's Court on Several Issues Concerning Administrative Litigation Evidence" during the process of retrieving QQ chat communication records In addition, when the

evidence submitted by the plaintiff cannot prove that the defendant engaged in illegal activities that infringed on the plaintiff's rights and interests in government procurement activities, the plaintiff shall bear the legal consequences of being unable to provide evidence, and the court will not support the plaintiff's lawsuit request.

5. Review and improvement of legal dispute resolution in Chinese Government Procurement

As mentioned earlier, we have sorted out, summarized, and analyzed eight common legal disputes in Chinese government procurement, and also classified and analyzed the benchmark for Chinese courts to review government procurement cases. It can be seen that the types of judicial proceedings for resolving legal disputes in Chinese government procurement are comprehensive and applicable to the adjustment scope of the administrative, civil, and criminal procedural laws. At the same time, we also found that the existence of the following issues affects the effectiveness of judicial mechanisms in legal dispute resolution. Firstly, the unclear legal nature of government procurement contracts affects the specific choice of litigation methods. There are obvious differences between civil litigation and administrative litigation in terms of dispute nature, litigation principles, scope of acceptance, litigation procedures, etc. The unclear nature of the contract is not conducive to the procurement parties' convenient choice of resolution methods, but also brings certain difficulties to court trials. The second is that mandatory pre litigation procedures limit the scope of litigation. The channels of inquiry, questioning, complaint, administrative review, and litigation stipulated in the Government Procurement Law have a chronological order of application. For example, questioning is the pre procedure for complaints, and complaints are also the pre procedure for litigation. When a supplier directly brings a lawsuit without questioning or complaining, the court does not include it in the scope of litigation. Thirdly, legislative conflicts bring about confusion in the application of laws. There are overlaps and differences in the provisions of the "Government Procurement Law" and the "Tendering and Bidding Law" in the details of bidding projects, which affect the correct legal application of procurement cases by the court. Fourthly, judges at different levels of courts have varying professional qualities and judicial abilities in government procurement cases, which affects the timely and accurate adjudication of procurement legal disputes.

To effectively avoid the above issues, the following measures can be taken: firstly, to optimize or reconstruct the legal system of government procurement. In terms of clarifying the legal nature of government procurement contracts, advanced theories and the effectiveness of dispute resolution should be integrated, and the nature of contracts should be specified in more detailed legal texts, especially in the specific selection of judicial litigation methods. In expanding the scope of court cases, mandatory pre procedures should be abolished, and the free choice of bidding suppliers should be respected to improve the efficiency of judicial resolution of procurement disputes. In order to avoid conflicts in legal application, the Government Procurement Law and the Tendering and Bidding Law are consistent in terms of legal attributes, legislative purposes, and legislative purposes. The overlapping or different parts that should be

unified and integrated should only retain one provision. Or merge the two laws into one, and standardize bidding as the main method and important link of government procurement in the "Government Procurement Law". The “Government Procurement Law”, such as revising Article 43 to clarify contract nature or introducing a dispute resolution ombudsman. At the 37th session in 2004, it was agreed to update the 1994 Model Law, particularly on new practices arising from the use of electronic communications in public procurement. And draw on the experience gained in using the Model Law as a legal reform in 1994. The revised version of the Model Law will greatly contribute to establishing a coordinated and unified modern legal framework for public procurement, promoting cost savings, improving efficiency, increasing competition, and enhancing the credibility, fairness, and transparency of the procurement process. The revised Model Law on Physical and Mental Health will greatly assist all countries, especially developing countries and countries with economies in transition, in strengthening their existing procurement laws and formulating procurement laws that do not yet exist, promoting the development of harmonious international relations, and enhancing economic development.

Secondly, we will continue to deepen the reform of China's judicial system. Further optimize the administrative, civil, and criminal litigation mechanisms, and promote the unified and coordinated development of the three major litigation mechanisms, especially in terms of litigation evidence. Strictly enforce the admission system for the profession of judges, improve their professionalism and impartiality in determining case facts, applying laws, and improve the quality of trials. In addition, specialized judicial interpretations of government procurement need to be introduced to provide a direct and clear basis for judicial review activities of government procurement.

Annotation

① Refer to Article 2 of the Government Procurement Law of the People's Republic of China.

② Website of the Ministry of Finance of the People's Republic of China: http://www.mof.gov.cn/index.htm .

③ Wusui.com is a website that collects over 88 million Chinese judicial precedents, with a website address of https://www.itslaw.com/bj .

④ The deadline for case data statistics is December 16, 2020.

⑤ Only the top 400 cases on the list are displayed on Wusui.com.

⑥ During the trial process, the court may discover more than one type of legal dispute in the same government procurement case. For statistical convenience, this article selects the most important controversial point for statistical analysis.

⑦ Refer to: https://www.itslaw.com/detail?judgementId=e440dc54 -1904-4606-9f9a-9b523407cf5d

⑧ Refer to: https://www.itslaw.com/detail?judgementId=52c15b0c -76f5-4dac-b64e-328929d11a8d

⑨ Refer to: https://www.itslaw.com/detail?judgementId=bd4d66e2 -487a-44bf-879f-86d5c43a3f72.

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EMERGENCY PROCUREMENT IN CHINA: EXPERIENCES AND SUGGESTIONS FROM CONTAINING COVID-19

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Suggested citation: Zhang, X. (2025). Emergency procurement in China: Experiences and suggestions from containing COVID-19. International Journal of Public Procurement, 1(2), 120-144.

Abstract:

Emergency procurement resulting from containing Covid-19 has posed great challenge to China's public procurement system. By analyzing the legal provisions and procurement practices in China, it is found that there is a dichotomy of emergency procurement in China: direct contract award in extreme emergencies and less competitive procedures in relative urgent situations. Since the there is no clear rules for the former emergency procurement, local government have developed a serial of practices under the constraint of financial accountability to justify the procurement. For the latter emergency procurement, which applies the procedures originally designed for conventional procurement, new procedures should be developed to shorten the time for selection of suppliers and determinations of contract terms. Although not traditionally within the scope of procurement policy, production capacity management and price regulation are crucial factors for the successful implementation of emergency procurement, which is a characteristic that is highly specific to China's context.

Keywords

Emergency Procurement; COVID-19; Public Procurement; China; Direct Contract Award; Production Capacity; Price Regulation; Accountability and Supervision

1. Introduction

The outbreak of COVID-19 placed immense pressure on national governments, testing the agility and effectiveness of public procurement systems worldwide. In China, one of the earliest and mostly intensely impacted countries, the crisis highlighted the critical importance of rapid procurement to secure essential medical supplies,

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equipment and services. The country's mobilization of resources was both massive and urgent, raising key questions about the balance between procedural compliance and emergency responsiveness.

China's emergency procurement measures during COVID-19 combined elements of established public theories with notable deviations prompted by crisis urgency.[19] Studies document some significant characteristics of emergency procurement in China, such as campaign-style and counterpart assistance mobilizing resources rapidly through vertical accountability and lateral cooperation,[20] improving procurement efficiency and strengthening supplier management through electronic procurement, [21] and regulatory adaptations leading to accelerated approval processes.[22]

1.1 Characteristics of emergency procurement

A primary characteristics of emergency procurement is its focus on timeliness. Emergency procurement procedures are specially designed to dramatically shorten the procurement cycle, bypassing the lengthy and often bureaucratic processes inherent in traditional procurement systems. The expeditious approach is essential when governments facing rapidly evolving challenges, such as health crises or natural disasters. [23] Consequently, restrictions that are designed to encourage competitive bidding, ensure transparency, and curb corruption are relaxed, enabling modalities such as direct contacting as well as other mechanisms for purchasing without tenders.[24]

1.2 Main categories of emergency procurement

According to the World Bank, there are two main categories of emergency procurement procedures relevant to COVID-19-related public procurement: critical and high-risk procedures. Critical procedures primarily aim to shorten procurement timelines to respond promptly during emergencies, while high-risk procedures provide greater flexibility for suppliers but increase risks related to fraud, corruption, and ineffectiveness. Critical emergency procedures commonly include direct contracting allowances, accelerated bid times, no or unlimited thresholds for direct contracting, shorter bid validity periods, and emergency framework agreements in place. High-risk

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[19] Ran Yan and Fuguo Cao, "Improving Public Health and Governance in COVID-19 Response: A Strategic Public Procurement Perspective", *Frontiers in Public Health*, (2022) 10, pp. 1-14.

[20] Weixu Wu, Xinyu Tan & Qinzhi Jiang, "Campaign-Style Paired Assistance: The Chinese Experience in Fighting the COVID-19 Pandemic", *Chinese Public Administrative Review*, (2021) 12, pp. 72-81.

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[24] Oriana Bandiera, Erica Bosio & Giancarlo Spagnolo (ed.), *Procurement in Focus: Rules, Discretion, and Emergencies,* London: CEPR Press, 2021, p. 103.

procedures often involve advance payments without bank guarantees, procurement outside formal regulatory systems, use of unwritten contracts or verbal agreements, lack of performance securities, eased qualification requirements for firms, fewer checks on firms' technical qualifications or past experiences, and flexible terms for delivery volume of dates, payments, and insurance.[25] The extent of adopting of these emergency procurement correlates with the severity of COVID-19 impact, such that countries with higher case numbers or hospital bed demand adopted more critical and high-risk procedures.

1.3 Rules and discretion: perspective to understand emergency procurement

At its core, the theoretical foundation of emergency public procurement is defined by the inherent tension between adhering to strict procurement rules and allowing for discretionary flexibility. This tension is rooted in trade-off between efficiency, speed, transparency, and accountability. On one hand, rigid rules are designed to prevent corruption, ensure competitive pricing, and guarantee transparency and fairness; on the other hand, emergencies demand rapid and flexible responses that often necessitate bypassing of relaxing standard procurement.

The theoretical foundation underlying the tension between rules and discretion in emergency public procurement is grounded in agency problem and moral hazard issues inherent in public procurement processes. Public procurement involves an agent (buyer) who uses public fund to purchase goods and services on behalf of taxpayer, but the agent does not bear the full costs or benefits, leading to moral hazard where the agent may prioritize private interests over public good. Dut to difficulty in measuring "value for money" and the incomplete nature of contracts between the state and procurement agents, there exist a fundamental tension: rules designed to limit agents' ability to purse private interests and reduce agency problems, may impede flexibility and responsiveness, especially in emergencies when rapid reactions are needed. On the other hand, discretion gives agent the ability to respond quickly and adapt to unforeseen changes by using their contextual knowledge, but this raises risks of reduced transparency, accountability, and potential corruption.[26] The common approaches to emergency procurement include increasing delegation of procurement authority, non-competitive contracting, and utilizing existing vendor lists or standing offers.[27]

Recognizing the tension between rules and discretion, legal frameworks in many jurisdictions have introduced exceptional procedures that explicitly relax standard procurement rules during emergencies. It is recommended that such exceptions should

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[25] World Bank Group, *Opportunities and Challenges for Public Procurement in the First Months of the COVID-19 Pandemic: Results from an Experts Survey*, Washington D.C., World Bank Group, 2021, pp. 14-15.

[26] Oriana Bandiera, Frica Bosio & Giancarlo Spagnolo (ed), *Procurement in Focus: Rules, Discretion, and Emergencies*, London: CEPR Press, 2021, pp. 1-2, 5, 13.

[27] Office of the Procurement Ombudsman, "Emergency Procurement", October 8, 2020, https://opo-boa.gc.ca/documents/urgence-emergency-eng.pdf, pp. 5-9.

be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption.[28]

1.4 Designing principles of emergency procurement

The design of emergency procurement institutions involves fundamental trade-offs between efficiency and accountability. Effective emergency procurement systems must balance the need for rapid response with requirements for transparency, competition, and oversight. This balance is particularly challenging because the optimal design may vary depending on the type of emergency, the institutional context, and the specific goods or services being procured.

Severy design principles emerge from the available evidence, supported by literature and practical guideline. First, emergency procurement frameworks should be established in advanced rather than improvised during crises. Pre-positioned frameworks allow for better planning, training, and stakeholder engagement, providing clearer legal authority and reducing the risk of legal challenges. For example, the Office of the Procurement Ombudsman in Canada, in line with UN Procurement Manual, emphasizes strategic planning, including pre-defined framework like vendor registration, standard specifications, and long-term agreements, crucial for agility in emergencies.[29]

Second, emergency procedures should maintain some competitive elements wherever possible, even if full competition is not feasible. Limited competition helps maintain market discipline and reduces opportunities for abuse. [30]

Third, emergency procurement systems should include robust monitoring and oversight mechanism, even if these operate with some delay. Real-time monitoring may not always be feasible during emergencies, but post-emergency audits and reviews are essential for accountability and learning. The COVID-19 experience demonstrated that transparency can actually be enhanced during emergencies through the use of digital platforms and open data initiatives.[31]

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[28] OECD: "Recommendation of the Council on Public Procurement", February 18, 2015, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411.

[29] Office of the Procurement Ombudsman, "Emergency Procurement", October 8, 2020, https://opo-boa.gc.ca/documents/urgence-emergency-eng.pdf, p. 15.

[30] Matúš Kubák, Peter Nemec & Marcel Vološin, "On the Competition and Transparency in Public Procurement During COVID-19 Pandemic in European Union." *SSRN Electronic Journal* (2021): n. pag. Laurence Filliot Lalliot & Chirstopher R. Yukins, "COVID-19: Lessons Learned in Public Procurement. Time for a New Normal?", *Concurrences*, (2020) 3, pp. 46-58. Sue Arrowsmith, Luke RA Butler, Annamaria La Chimia & Christopher Yukins (ed.), *Procurement Regulation in (a) Crisis? Global Lessons from COVID-19 Pandemic*, Oxford: Hart Publishing, 2021, p. 510.

[31] Jasmine Kendall, Andrè, Petheram, Scarlet George & Richard Stirling, "Global Procurement Responses to COVID-19: How to Do Better in an Emergency", October 2020, https://oxfordinsights.com/wp-content/uploads/2023/10/OI-OCP-GlobalProcurementResponses_lessons.pdf, pp, 17, 22-24.

Fourth, clear criteria for triggering and terminating emergency procedures help prevent abuse and ensure that special authorities are used only when necessary. These criteria should be objective and verifiable to the extent possible, though some judgment will inevitably be required.[32]

Following the conceptual analysis of emergency procurement—encompassing definitional parameters, typological classifications, foundational theories, and designing principles—it becomes imperative to explore how these constructs manifest within real-world governance frameworks, particularly in moments of acute crisis. The COVID-19 pandemic constituted a severe and prolonged public health emergency, exerting immense pressure on institutional capacities across all levels of government. In China, this unprecedented situation required an immediate and coordinated procurement response within a distinct legal and administrative landscape. The mobilization of resources, procurement of critical supplies, and execution of logistics were undertaken under conditions of urgency and uncertainty, thereby revealing both the capabilities and limitations of the existing procurement system. As such, an examination of China's legal framework and administrative practices during this period not only illustrates how emergency procurement mechanisms were operationalized under stress, but also contributes to the broader understanding of institutional resilience and responsiveness.

China is a country with frequent natural disasters and accidents. In recent years, China has successively carried out emergency procurement in responding to floods, low temperature, snow and freezing, earthquakes, typhoons, forest fires and explosions[33] and public health emergencies. The scale and duration of the COVID-19 epidemic had far exceeded all previous emergencies, thus magnifying and highlighting the necessity of establishing and improving the emergency procurement systems. At the same time, China's attempt and exploration in emergency procurement in containing COVID-19 epidemic also provided valuable experience and insights for the design of emergency procurement system.

2. Legal Framework of Emergency Procurement in China

2.1 Basic legal provisions of emergency procurement in China

The "government procurement" as defined in the *Government Procurement Law* of PRC ("GPL" hereafter) is generally conducted through competitive procedures. In the event of serious disasters or other force majeure, if the procurement is still conducted in accordance with the methods and procedures required by the GPL, the

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[32] Oriana Bandiera, Frica Bosio & Giancarlo Spagnolo (ed), *Procurement in Focus: Rules, Discretion, and Emergencies*, London: CEPR Press, 2021, pp. 138. Gianluca Bortoletto, "Rules and Discretion in Standard and Emergency Public Procurement", MBA Thesis of Universita' Degli Studi di Padova, 2021, p. 64.

[33] The Ministry of Emergency Management, the National Development and Reform Commission, the Ministry of Finance and the State Food and Strategic Reserves Administration: "Notice on Printing and Distributing 'the Fourteenth Five-Year Plan on Materials Guarantee'", October 1, 2022. https://www.gov.cn/zhengce/zhengceku/2023-02/03/content_5739875.htm.

actual needs for relief will hard to be met. Therefore, Article 85 of the GPL stipulates that "the present *Law* shall not be applicable to the emergency procurement made as a result of serious natural disasters or other force majeure and procurements involving the security or secrets of the state." Article 4 of the GPL stipulates that "the *Tendering and Bidding Law* shall apply to the tendering and bidding of government procurement projects". Under Article 66 of the *Tendering and Bidding Law*, "Projects involving national security, state secrets, emergency rescue and disaster relief, or those that use poverty alleviation funds for work-relief programs and require the employment of migrant workers, among other special circumstances, which are not suitable for bidding, may be exempted from bidding in accordance with relevant national regulations."

2.2 Proper understanding of the clause of emergency procurement

The GPL stipulates six procurement methods, including public call for bids, invitation-based call for bids, competitive negotiations,[34] single-source purchases,[35] price inquiries,[36] and other procurement methods recognized by the government procurement supervision and administration authority under the State Council.[37] One of the conditions for competitive negotiations is that "the end-users are in urgent need of the goods or services so that there is not enough time to make the procurement by bid."[38] One of the conditions under which single-source purchases can be used is that "unpredictable emergencies have happened so that the goods or services cannot be procured from other providers"[39] So literally, Articles 30 and 31 of the GPL also mention "emergency",[40] but there are essential differences between "emergency" here and "emergency procurement" in Article 85, that is, "emergency procurement" in the proper sense. The "emergency" in Articles 30 and 31 refers to some unexpected (but not so serious) situations in the procurement, which lead to the adoption of the relatively low competitive procurement methods to ensure the achievement of procurement tasks. The "emergency procurement" in Article 85 refers to a serious situation that cannot be foreseen, avoided or overcome, and its legal consequence is to exclude the application of the standard procurement methods provided in the GPL.

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[34] Competitive negotiations refer to the negotiation between the negotiation squad and qualified suppliers on the procurement of goods, projects and services. The suppliers submit response documents and final quotations according to the requirements of the negotiation documents. The purchaser determines the successful suppliers from the candidates proposed by the negotiation squad.

[35] Single-source purchases refer to the procurement through which the purchaser purchases goods, projects and services from a specific supplier.

[36] Price inquiries refer to that the inquiry team issues an inquiry notice for purchasing goods to qualified suppliers, requiring them to quote the price that cannot be changed, and the purchaser determines the successful supplier from the candidates proposed by the inquiry team.

[37] GPL, Art.26.

[38] GPL, Art. 30.

[39] GPL, Art 31.

[40] In Chinese, "urgency" can be used as the synonym of "emergency".

In other words, the key to distinguishing Articles 30, 31 and 85 lies in their relationship with the "procurement plan". The GPL stipulates that "the department responsible for making budgets of the government organs shall, when making budgets for the next public fiscal year, list the items of government procurement and the budget funds of the public fiscal year, and report to the public fiscal department at the same level."[41] The "emergency" mentioned in Articles 30 and 31 is within the procurement plan, while Article 85 is the "emergency" beyond the original estimate of the procurement plan.[42]

2.3 Initiation of emergency procurement

From the perspective of applicable procedures, the "emergency" mentioned in Articles 30 and 31 is also different from the "emergency procurement" in Article 85. In case of "emergency" in Articles 30 and 31, the purchasers shall use the procurement procedures with relatively low degree of competition, and apply to the financial department of the people's government of the city divided into districts, autonomous prefecture and above for approval after obtaining the consent of the competent budget authorities in accordance with the relevant provisions of the Administrative Measures of the Ministry of Finance for Non-tender Procurement of Government Procurement. The single-source purchases shall be publicized no less than 5 working days before approval.[43]As far as the "emergency procurement" stipulated in Article 85 is concerned, the GPL itself does not stipulate the procedure for the use of this Article. In practice, the central or provincial public fiscal departments confirm the existence of the state of emergency and authorize the initiation of the "emergency procurement" procedures.

3. Practice of Emergency Procurement in China

It seems, if only reading the text of the GPL, that China does not have detailed provisions regarding emergency procurement. In fact, some legal principles, as well as rules provided by low-level legal documents, function as a comprehensive system that makes emergency procurement operates smoothly.

On January 26, 2020, the General Office of the Ministry of Finance pointed out in the relevant notice that "state organs, institutions and organizations at all levels using public funds to purchase goods, projects and services related to epidemic prevention and control, should take the satisfaction of the needs of epidemic prevention and control

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[41] GPL, Art, 33.

[42] This distinction can also be verified to some extent in the "Measures for the Management of Government Procurement Demand" (Cai Ku [2021] No. 22) issued by the Ministry of Finance. The "Measures for the Management of Government Procurement Demand" requires the purchaser to determine the procurement demand and formulate the procurement implementation plan, but stipulates that "if the procurement is implemented due to unforeseen emergencies of the purchaser, the relevant management requirements can be appropriately simplified". April 30, 2021, https://www.gov.cn/gongbao/content/2021/content_5623061.htm.

[43] Article 4 and 38 of the "Administrative Measures for Non-tender Procurement of Government Procurement" (Decree No. 74 of the Ministry of Finance). November 19, 2013, https://www.gov.cn/gongbao/content/2014/content_2644816.htm.

as the primary goal, and establish a 'green channel' for procurement. The methods and procedures specified in the GPL may not be implemented, and the procurement of imported materials need not be approved."[44] This means that in extreme cases, the procuring entity can directly award the contract to suppliers,[45] which is precisely the "emergency procurement" in the strict sense stipulated in Article 85 of the GPL However, except for a few emergencies that can be treated as extreme cases which justify direct contract award, in most cases, the situations have not yet reached the level where immediate direct contract award is required. The use of public treasury funds for emergency procurement needs to satisfy the general purpose of public finance- serving the public interest in an efficient manner- and face the pressure of ex post audit. Therefore, in the emergency state of responding to the epidemic, although the GPL and relevant documents of the Ministry of Finance seem to fully authorize the purchasers for purposes of efficiency,[46] in the real process of procurement, local governments at

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[44] "Notice of the General Office of the Ministry of Finance on the Facilitation of Procurement relating to Epidemic Prevention and Control" (Cai Ban Ku [2020] No. 23). January 16, 2020, https://www.gov.cn/zhengce/zhengceku/2020-01/26/content_5472325.htm. Similarly, on February 8, 2020, the General Office of the National Development and Reform Commission issued the "Notice on Actively Responding to the Epidemic, Innovating Bidding Work, and Ensuring Stable Economic Operation" (Fa Gai Dian [2020] No. 170), which stipulates that "…for medical facilities, quarantine facilities and other construction projects urgently needed for epidemic prevention and control, if they conform to the provisions of Article 66 of the Tendering and Bidding Law, bidding may not be conducted. The project owner may adopt non-bidding methods for procurement, or appropriately shorten the relevant time limit requirements when bidding. It is necessary to dynamically adjust work arrangements in a timely manner according to changes in the epidemic prevention and control situation, the urgency of projects and the needs of market entities, so as to minimize the impact on public resources trading activities such as bidding and tendering while ensuring safety." February 8, 2020, https://www.ndrc.gov.cn/xxgk/zcfb/tz/202002/t20200208_1220179.html.

[45] For example, in order to solve the problem of insufficient medical resources in Wuhan and treat more patients, on January 23, 2020 (the day of the lockdown of Wuhan), the Municipal Government of Wuhan decided to build Huoshenshan Hospital in Caidian District, which would be completed within 10 days. The Wuhan Municipal Government decided to award the design contract to CITIC Central Institute of Architectural Design and Research Co,, Ltd and the construction contract to the consortium led by China Construction Third Engineering Bureau Group Co,, Ltd. See "The God of Fire will fight the God of Plague", February 3, 2020, http://www.wuhan.gov.cn/sy/whyw/202003/t20200316_960436.shtml.. Also see Wei Xu and Mao Nong, "Analysis of the Legal Arrangements Related to the Construction of Huoshenshan Hospital", March 9, 2020, http://www.nnac.org.cn/zcwy/t4247533.html.

[46] The authorization can be understood as two points: the goods, projects and services which originally purchased in a centralized manner can be purchased in a decentralized manner due to emergency, and the implementation of competitive procedures can be exempted.

all levels gradually developed a series of practices to enhance the legitimacy of emergency procurement.

3.1 Strictly limiting the scope of emergency procurement

Before the Ministry of Finance authorized nationwide emergency procurement for epidemic prevention and control, Sichuan Provincial Department of Finance launched emergency procurement for epidemic prevention and control in advance, and stated that emergency procurements "are only limited to procurement related to the prevention and control of pneumonia caused by novel coronavirus infection, and other procurements are still carried out under the relevant provisions of the GPL".[47]After the issuance of the "Notice of the General Office of the Ministry of Finance on the Facilitation of Epidemic Prevention and Control Procurement", similar supplementary provisions have been made in the implementation schemes of nearly all provinces. For example, Tianjin Finance Bureau stipulated that emergency procurements "are only applicable to procurement related to epidemic prevention and control, and other general procurement projects are still implemented in accordance with the provisions of the government procurement legal system".[48]

3.2 Considerations for direct contract award in responding to public health emergencies

As mentioned above, the construction of Huoshenshan Hospital is an example of emergency procurement where the contract is directly awarded to the suppliers. From the disclosed information of decision-making process, the following factors are mainly considered when selecting suppliers:

——Historical performances. Wuhan Urban Construction Bureau selected CITIC Central Institute of Architectural Design and Research Co., Ltd as the design contractor, which had participated in the design of Wuhan Jinyintan Hospital (the designated hospital for the treatment of pneumonia caused by the novel coronavirus).[49] China Construction Third Engineering Bureau Group Co., Ltd. has built many representative projects in housing construction, steel structure, infrastructure, environmental

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[47] Sichuan Provincial Department of Finance: "Notice on the Implementation of Emergency Procurement in the Prevention and Control of Pneumonia Infected by Novel Coronavirus", January 21, 2020, http://czt.sc.gov.cn/scczt/c102423/2020/1/22/79c765093b364b1d97d00e0078c3764d.shtml.

[48] "Notice of Tianjin Finance Bureau on the Implementation of Relevant Policies for Epidemic Prevention and Control Procurement Facilitation" (Jin Cai Cai [2020] No. 1), January 28 2020, https://cz.tj.gov.cn/zwgk_53713/tzggx/202012/t20201211_4843473.html.

[49] CITIC Central Institute of Architectural Design and Research Co., Ltd.: "Project Profile: Wuhan Jinyintan Hospital", http://design.citic/portal/article/index/id/3047/cid/26.html.

protection, petrochemical industry, electromechanical installation, indoor and outdoor decoration and other fields.[50]

——Performing capability. CITIC Central Institute of Architectural Design and Research Co., Ltd has been selected as one of ENR's "Top 60 Engineering Design Enterprises in China" for many years and China Survey and Design Association's annual top 100 in terms of contracts turnover.[51] China Construction Third Engineering Bureau Group Co., Ltd is the second of the top 100 enterprises in Hubei Province in 2019. Its competitiveness has ranked first among the top 100 of China's construction industry for many years, and it is capable of coordinating various resources in a very short time.[52]

——Accessibility. The headquarters of CITIC Central Institute of Architectural Design and Research Co., Ltd and China Construction Third Engineering Bureau Group Co., Ltd are both in Wuhan. This factor has a very important significance when the whole city of Wuhan was locked down for quarantine, and the construction period was extremely tight, requiring immediate commencement. At the same time, Wuhan Municipal Government has also selected three state-owned enterprises, including Wuhan Municipal Construction Group, Wuhan Construction Engineering Group and Wuhan Hanyang Municipal Construction Group, to participate in the construction.

3.3 Simplified use of bidding procedures or use of less competitive procurement procedures

Despite the authorization of the Ministry of Finance, as well as National Development and Reform Commission, when the urgency of the situation is not enough to provide justification for the direct award of the contracts, the purchaser still uses routine procurement procedures as far as possible to meet the needs of the legitimacy.

There are two common practices. The first is to simplify the use of open bidding procedures. This simplification is mainly reflected in shortening the term of public summons. For example, at the end of 2022, Lianjiang County of Fujian Province issued a tendering announcement on the emergency procurement of equipment related to the mobile cabin hospital, which still performed through the public bidding. However, the interval between the day when the document for calling bids is sent out and the deadline for the suppliers to submit their bids was only six days,[53] less than 20 days as required by law.[54] The second is to choose less competitive and faster procurement procedures, including competitive negotiations, price inquiries and single-source purchases. For

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[50] China Construction Third Engineering Bureau Co., Ltd.: "Strengths in performance" , https://3bur.cscec.com/yjsl11/201305/2701093.html.
[51] CITIC Central Institute of Architectural Design and Research: "Company Profile", http://design.citic/portal/list/index/id/7.html.
[52] "How did the Engineering Miracle of Huoshenshan Hospital Come True under the Epidemic Situation", https://zhuanlan.zhihu.com/p/111579708,
[53] Lianjiang County Hospital of Fujian Province: "Announcement on Emergency Procurement of Equipment for Lianjiang Mobil Cabin Hospital", December 12, 2022 http://www.ccgp.gov.cn/cggg/dfgg/qtgg/202212/t20221212_19212928.htm.
[54] GPL, Art. 35.

example, on February 24, 2020, the Institute for Infectious Disease Prevention and Control of the China CDC purchased real-time fluorescent quantitative PCR and semi-automatic heat-sealing instruments for epidemic prevention and control through competitive negotiation.[55] On August 6, 2021, Anhui Provincial CDC purchased reagents and disinfection materials by way of price inquiry.[56] On November 17, 2021, Heilongjiang Provincial CDC procured gene sequencing reagents via single-source purchase.[57] In addition, in 2014, the Ministry of Finance issued the Interim Measures for the Administration of Competitive Consultation on Government Procurement.[58] It is stipulated that competitive consultation can also be used as a way of government procurement.[59] Competitive consultation is slower than competitive negotiation,[60]but

[55] Institute for Infectious Disease Prevention and Control of the China CDC: "Announcement on Competitive Negotiation of Real time Fluorescent Quantitative PCR and Semi-automatic Heat-sealer in Response to the Epidemic Situation of COVID-19", February 24, 2020. ,http://www.ccgp.gov.cn/cggg/zygg/jzxtpgg/202002/t20200224_13917225.htm.

[56] Anhui Provincial CDC: "Price Inquiry Announcement for Emergency Procurement of Reagents and Disinfection Materials", August 6, 2021, http://www.ccgp.gov.cn/cggg/dfgg/xjgg/202108/t20210806_16675209.htm.

[57] Heilongjiang Provincial CDC: "Public Notice of Single-source Purchase for the 'Green Channel' Procurement of Gene Sequencing Reagents", November 17, 2021, http://www.ccgp.gov.cn/cggg/dfgg/dylygg/202111/t20211117_17202245.htm November 17, 2021.

[58] Ministry of Finance: The "Interim Measures for the Administration of Competitive Consultation in Government Procurement" (Cai Ku [2014] No. 214), December 31, 2014. https://www.gov.cn/gongbao/content/2015/content_2843785.htm.

[59] Competitive consultation refers to the way in which the purchasers and the government procurement agencies negotiate with qualified suppliers on the purchase of goods, projects and services by establishing a competitive negotiation group. The suppliers submit corresponding documents and quotations according to the requirements of the negotiation documents. The purchaser determines successful suppliers from the list of candidate suppliers proposed by the negotiation group. Competitive consultation is mainly used for: (1) government purchase of services; (2) The technical complexity or special nature makes it impossible to determine the detailed specifications or specific requirements;(3) The total price cannot be calculated because the time and quantity of art purchase, patent, proprietary technology or service cannot be determined;(4) Scientific research projects with insufficient market competition and scientific and technological achievements transformation projects that need support;(5) Construction projects other than those for which bidding is required in accordance with the Tendering and Bidding Law and its implementing regulations. The main difference between competitive consultation and competitive negotiation is that the former determines the successful supplier according to the comprehensive scoring method; while the latter determines according to the lowest transaction price method.

[60] For competitive consultations, the time span shall not be less than 10 days from the date of issuance of the consultation document to the deadline for the supplier to submit the first corresponding document. For the competitive negotiation, that time interval shall not be less than 3 working days from the date when the negotiation

faster than public bidding. Therefore, competitive consultation is a less competitive, more efficient and more flexible procurement method compared with public call for bid, and is also used for emergency procurement. For example, in May 2020, Yuxi City Hospital of Traditional Chinese Medicine in Yunnan Province applied competitive consultation for emergency purchase of medical equipment for epidemic prevention and control.[61]

3.4 Principle of reasonable price

In the "Emergency Notice on Strengthening the Management of Procurement for Rescue and Relief of Wenchuan Earthquake" issued by the Ministry of Finance in 2008, while authorizing emergency procurement, the purchaser is required to conduct procurement at a "reasonable price".[62] Although "reasonable price" is an open concept, in the process of implementing emergency procurement, local governments have been constantly exploring and creating ways to concretize the principle of reasonable price. In the normative documents issued by Gansu Province, it is required to "strictly control the price and purchase nearby".[63] In relevant documents of Liaoning Province, it is required that "when implementing emergency procurement, provincial departments should negotiate with one or more suppliers and compare prices, and purchase directly at reasonable prices on the premise of ensuring the quality and delivery time of materials".[64]

On December 4, 2020, the Ministry of Finance issued the "Notice on Soliciting Public Comments on Proposal to Revise the GPL", in which the third paragraph of Article 52 stipulates that "suppliers shall not participate in emergency procurement at obviously unreasonable prices, payment requirements and other transaction conditions".[65] The precondition of implementing the principle of reasonable price is to monitor the market price to provide an objective basis for determining whether the price is reasonable. By the end of 2022, the price monitoring system of emergency goods

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document is issued to the deadline when the supplier submits the first response document.

[61] Yuxi Hospital of Traditional Chinese Medicine: "Announcement on Competitive Consultation of the Third Batch of Emergency Procurement of Epidemic Prevention and Control Medical Equipment", May 21, 2020, http://www.ccgp.gov.cn/cggg/dfgg/jzxcs/202005/t20200521_14334071.htm.

[62] Ministry of Finance: "Emergency Notice on Strengthening the Management of Procurement for Rescue and Relief of Wenchuan Earthquake" (Cai Ku [2008] No. 43), https://www.gov.cn/zwgk/2008-06/03/content_1003721.htm.

[63] Article 6 of "Interim Measures for Government Procurement Management of Emergency Projects in Gansu Province", December 12, 2010, https://www.ccgp.gov.cn/zcfg/dffg/gansu/201312/t20131217_3929119.htm.

[64] Article 4 of the "Interim Measures for Procurement Management for Emergency Response by Provincial-level Departments in Liaoning Province" (Liao Cai Cai [2008] No. 75), https://www.ccgp.gov.cn/zcfg/dffg/liaoning/201311/t20131119_3592047.htm.

[65] Ministry of Finance: "Notice on Soliciting Public Comments on Proposal to Revise the Government Procurement Law ", December 4, 2020, http://tfs.mof.gov.cn/zhengcefabu/202012/t20201204_3632547.htm.

were gradually put into operation in various regions. For example, Guangdong Provincial Healthcare Security Bureau required that "all procuring platforms should monitor the purchase and supply, put all medicines and consumables related to epidemic prevention and control into the scope of emergency monitoring, and analyze the transaction data of the medicines and consumables…. Healthcare security bureaus at all levels should strengthen…the price early warning for medicines and constables…. and handle abnormal prices promptly."[66] Price monitoring is an important basis for determining whether prices are reasonable, and a crucial support for emergency procurement.

3.5 Strengthening the internal control as well as in-process and ex post supervisions of procurement activities

Traditional government procurement attaches great importance to external supervisions. In emergency procurement, due to the requirements of efficiency, the time window for public supervision is shortened. At the same time, the public may not have time or interests to supervise when trapped in an emergency, so the restriction of external supervision is greatly weakened. In order to maintain control over procurement activities, emergency procurement often relies on internal control, which is mainly reflected in three aspects. The first is the internal approval process. For example, Zhengzhou University, in its "Emergency Procurement Management Measures (for Trial Implementation)", stipulates that the purchasers shall set up an emergency procurement team to implement the emergency procurement of less than 100,000 RMB; the emergency purchase with the contract amount between 100,000 RMB and 1 million RMB) shall be reported to the competent department for review, and shall be approved by the Vice President of the University in charge or the emergency management team within one day; and the emergency purchase with a contract amount of more than 1 million RMB shall be reported to the President for deliberation and to the CCP Committee of the University for final approval.[67] The second is internal check, that is, procurement activities need to be conducted by more than two persons. For example, the emergency procurement team set up by Zhengzhou University should have more than three members.[68] Jilin University of Finance and Economics also stipulates that the procurement team shall be composed of at least three fellows.[69]The third is the supervision of discipline inspection departments. Taking the Zhengzhou University as an example, the Office of the University's Ombudsman, the Audit Department, the

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[66] Guangdong Healthcare Security Bureau: "Notice on Further Improving the Procurement and Price Monitoring of Medicines and Consumables Related to Epidemic Prevention and Control", December 22, 2022, http://www.gd.gov.cn/gdywdt/zwzt/yqfk/gdzc/content/post_4073210.html.

[67] Article 6 of the "Emergency Procurement Management Measures of Zhengzhou University (for Trial Implementation)", November 24, 2021, http://www7.zzu.edu.cn/ztb/info/1079/10163.htm.

[68] Ibid.

[69] Article 8 of the "Implementation Rules for Emergency Procurement of Jilin University of Finance and Economics", March 17, 2021.http://xxgkw.jlufe.edu.cn/info/1073/1091.htm.

Accounting Department, the State-owned Assets Management Department, and the Bidding Office would all oversee the whole process of emergency procurement of more than 100,000 RMB.[70]

The above internal controls belong to in-process supervision. The "Notice of the General Office of the Ministry of Finance on the Facilitation of Procurement relating to Epidemic Prevention and Control" pointed out that "all procurement units should strengthen the management of the procurement documents including the invoices of epidemic prevention and control procurement projects and keep them for future reference", which is ex post supervision. For example, Changchun University stipulates that the procurement unit must file with the University's discipline inspection commission within 10 days after the completion of emergency procurement activities, including documents relating to approval (such as meeting minutes), procurement items, procurement process, suppliers, price, and checking and accepting, etc..[71]

4. Conclusions and Reflections

4.1. Emergency procurement as a continuous spectrum

From the perspective of procurement methods, there are two senses of emergency procurement in China. One is direct award of contracts in extreme of serious emergencies; the other is to use simplified or less competitive procurement procedures under relatively urgent circumstances.

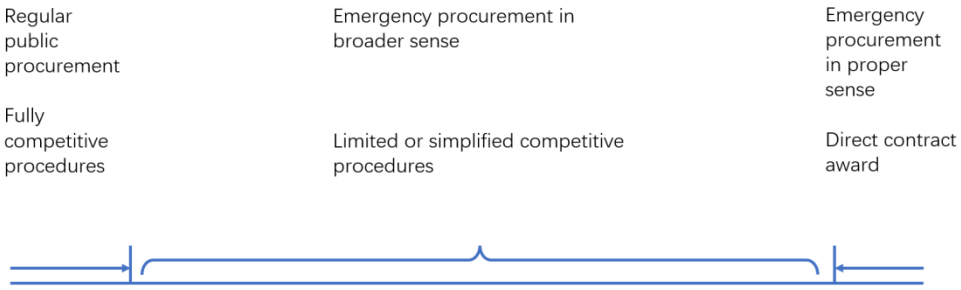

Figure 1. Continuous spectrum of procurement activities

When it comes to emergency procurement, the first problem to be solved is to distinguish between extreme emergency and relative emergency, so as to apply different procurement methods. Actually, the Notice of the General Office of the Ministry of Finance dodged this question. In practice, many procurement units are aware of the differences between the two, and put forward the criteria for distinction. For example,

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[70] Article 6 of the "Emergency Procurement Management Measures of Zhengzhou University (for Trial Implementation)", November 24, 2021, http://www7.zzu.edu.cn/ztb/info/1079/10163.htm.

[71] Articles 13 and 14 of "Changchun University Emergency Procurement Management Measures", November 2, 2022, .https://zbcgzx.ccu.edu.cn/info/1011/1691.htm. .

China University of Political Science and Law (CUPL) divides emergency procurement into on-site disposal emergency procurement and non-on-site disposal emergency procurement. "The procurement for emergency repair of water supply, electricity, gas, communication, network, roads, pipelines, elevators, central air conditioners and other equipment and facilities as well as emergency disposal of unexpected events is on-site disposal emergency procurement. Other emergency procurement is non-on-site disposal emergency procurement".[72] The on-site disposal procurement is performed by directly awarding the contract, and the non-on-site disposal emergency procurement is implemented through the conventional procurement procedures with low degree of competition. [73] Jilin University of Finance and Economics divides emergency procurement into emergency disposal procurement and functional recovery procurement, and has developed more strict internal control procedures for functional recovery procurement than emergency disposal procurement. At the same time, it is stipulated that functional recovery procurement that is not synchronized with emergency procurement shall be handled as routine procurement.[74] The Proposal to Revise the GPL published at the end of 2020 take a flexible approach in this regard. Article 52 of the Proposal, after authorizing direct award of contracts in case of emergency in paragraph 1, stipulates in paragraph 2 that "if the market supply capacity and speed to supply can meet the needs of emergency rescue and relief, the purchaser shall not exclude competition with the excuse of emergency procurement".[75] In other words, it is required to adopt the procurement method that matching the market supply situations.

The second problem is the procedure of directly awarding contracts in extreme emergencies. Again, this issue was not clarified in the relative Notice of the Ministry of Finance. In fact, since the epidemic, there has been very little disclosure of information about direct award of contracts. In the relative rules of CUPL, there are some framework provisions on the procedure of directly awarding contracts, which are of certain reference value. It is provided that in the selection of suppliers, the following guidelines should be applied: (1) For industries with natural or technical monopoly such as water, electricity, heating, gas, communication, network, elevator, central air conditioning, etc., relevant suppliers shall be those designated by relevant industries; (2) For emergency procurement covered by the centralized procurement catalogue, suppliers shall be selected from those who are already on the shortlist; (3) For emergency procurement other than those covered by the centralized procurement catalogue, the suppliers should be selected from those of high quality or high

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[72] Article 6 of "Administrative Measures for Emergency Procurement of China University of Political Science and Law (for Trial Implementation)", May 8, 2019, http://ztbjcgglbgs.cupl.edu.cn/info/1017/1032.htm..

[73] Ibid., article 7.

[74] "Implementation Rules for Emergency Procurement of Jilin University of Finance and Economics", March 17, 2021, ,http://xxgkw.jlufe.edu.cn/info/1073/1091.htm.

[75] Ministry of Finance: "Notice on Soliciting Public Comments on Proposal to Revise the Government Procurement Law ", December 4, 2020, http://tfs.mof.gov.cn/zhengcefabu/202012/t20201204_3632547.htm.

reputations. Under the same conditions, priority should be given to those who have previous transactions with CUPL.[76] The price of emergency procurement shall be determined according to the following principles: (1) The project cost shall be subject to the final audit results; (2) The purchase price of instruments, equipment, parts and other materials required for on-site disposal shall be determined according to the quotations of the suppliers, subject to the renegotiations and adjustment if they are found to be too expensive later; (3) The purchase price of instruments, equipment and other materials required for non-on-site disposal shall be determined according to the results of the procurement procedures approved by the CUPL leading group of procurement; (4) The price of services shall be determined according to the implementation results of the procurement procedures approved by the CUPL leading group of procurement.[77] It can be summarized from the above provisions that there are two characteristics in the procedure of directly awarding contracts in emergency procurement: first, conventional procurement generally leads to the only winner through competitive procedures, which formally limits the discretion of the purchaser. Under the direct grant mode, the purchaser always has the discretion to select the supplier to a certain extent. Second, in conventional procurement, the agreement of procurement is reached at the same time as the contract terms are determined. In direct awarding of contracts, suppliers are often determined first, and then specific terms are determined, which are subject to the principle of reasonable price.

4.2 Legitimacy-oriented emergency procurement

Public procurement activities have two dimensions, one is legitimacy, the other is efficiency. Reviewing the practices of emergency procurement since COVID-19 epidemic in China, it can be seen that, except for some cases where contracts are directly awarded, the vast majority of emergency procurement is completed by using conventional procurement procedures with limited competition. Some innovative procurement methods, such as signing procurement contracts with suppliers under the same contract terms as other purchasers, have not been popularized. It is worth noting that, to date, China's emergency procurement in response to COVID-19 has involved only critical procurement, with no instances of legally high-risk procurement observed. It can be concluded that China’s emergency procurement in the prevention and control of the epidemic is generally guided by the principle of legitimacy. There may be two main reasons for this: First, China has a huge and comprehensive supply capacity of goods, projects and services for epidemic prevention and control. After the chaos at the beginning of the epidemic, the mobilization of production capacity was completed in a very short time, which improved the market supply and greatly reduced the pressure on the efficiency of procurement. For example, taking personal protective equipment such as masks as an example, China imported a large amount of them from other countries and regions in the early stage of the epidemic in February 2020. However, since March

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[76] Article 8 of “Administrative Measures for Emergency Procurement of China University of Political Science and Law (for Trial Implementation)”, May 8, 2019, http://ztbjcgglbgs.cupl.edu.cn/info/1017/1032.htm.

[77] Ibid., Article 9.

2020, China has become an exporter of these products.[78] Second, China has invested a huge amount of public funds in the prevention and control of the epidemic.[79] A considerable part of these public funds is used in the form of procurement. Containing COVID-19 is an unprecedented mobilization of all kinds of resources, and the governments at all levels are in the focus of public attention and play an exemplary role. Therefore, the government pays more attention to the legitimacy of procurement activities to protect the sustainability of strict prevention and control policies and the reputation of the government.

4.3 How should we improve the emergency procurement?

Although China's emergency procurement system seems to have withstood the test of the COVID-19 epidemic due to its strong supply capacity and large scale of social mobilization, from the problems exposed by emergency procurement, there is still plenty room for China to improve. In October 2020, the Ministry of Finance, when replying the Proposal on Establishing a National Emergency Procurement System raised by Mr. Jianguo Li, a deputy to the National People's Congress, acknowledged that emergency procurement faced problems such as insufficient legal basis, opaque information, lack of suppliers' data, and difficulties in responding to demands.[80] News from the Ministry of Finance revealed that the "Management Measures for Emergency Procurement" were being formulated. This "Management Measures" will strive to build a complete institutional framework for emergency procurement, clarify the coverage, basic principles, methods, procedures and management requirements of emergency procurement, and further standardize emergency procurement behaviors.[81]To further improve the procurement procedures in the future, China should make efforts in the following two aspects:

First of all, the guidelines on direct award of contract should be formulated. Direct awarding of contracts is the last resort in extreme emergency situations, and is an unavoidable element in emergency procurement system. Given the unpredictability of market conditions under extreme cases, it is unrealistic to stipulate a fixed or rigid

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[78] Yi (Sara) Xiao, "Every Mask Counts: Leading Emergency Procurement for UNDP China During the COVID-19 Pandemic", May 6, 2020, https://www.undp.org/china/blog/every-mask-counts-leading-emergency-procurement-undp-china-during-covid-19-pandemic.

[79] According to the speech of Minister of Finance Kun Liu at the beginning of 2021, by the end of November 2020, the public fiscal expenditure for epidemic prevention and control at all levels had exceeded 400 billion RMB.) Kun Liu, "Speech at the National Financial Work Conference", *China State Finance,* (2021) 1, pp. 4-16.

[80] "Reply of the Ministry of Finance to the Proposal No. 10154 of the Third Session of the 13th National People's Congress" (Cai Ku Han [2020] No. 10), October 22, 2020, http://gks.mof.gov.cn/jytafwgk_8304/2017jytafwgk_14533/2018rddbjyfwgk/202010/t20201022_3609086.htm.

[81] Mingliu Zhang, "Seminar on 'Government Procurement Contributes to Improve Emergency Support Capability' was Held", March 28, 2023, http://bj.mof.gov.cn/ztdd/czysjg/jyjl/202303/t20230328_3875272.htm.

procedure for direct awards of contracts. The most likely problem of direct awards of contracts is the abuse of discretion and the most feasible solution is to provide guidance for direct award of contracts in the form of "soft law" through the summary of typological scenarios, so as to improve the rationality and legitimacy of direct awards of contracts.

Secondly, the key to the design of emergency procurement system is to shorten the time for determining suppliers and contract terms, which can be achieved to some extent by using conventional procurement procedures which are less competitive. However, conventional procurement procedures are designed for normal procurement scenarios, and there is still a problem of low efficiency when using for the purpose of emergency procurement. Some efficient procurement methods, such as framework agreement procurement,[82]as well as signing procurement contracts with suppliers under the same contract terms as other purchasers, should be introduced into emergency purchase procedures.

4.4 Remedies and supervisions

When discussing the differences between regular procurement and emergency procurement, the Ministry of Finance pointed out that "in the normal state, the government procurement markets are buyer's market, which emphasizes value for money, gives priority to improving the efficiency of fund utilization, and needs to implement the procurement procedures provided by laws and regulations. It requires as many suppliers as possible participating in procurement competition, and generally adopt competitive procurement methods. In the emergent state, however, the relationship between supply and demand has changed significantly, and transform into the seller's market to a certain extent. Under these circumstances, it is not necessary to follow requirements of time span and numbers of suppliers, and tends to less competitive procedures, or directly select suppliers by the purchasers and place the orders. The primary goal is to meet emergency needs, and main considerations of the purchasers are sufficient supply and timely delivery."[83] It is necessary to further analyze, whether remedies in regular procurements, such as queries and complaints, also apply to emergency procurements.

As mentioned earlier, there is actually a dichotomy in emergency procurement: emergency procurement by directly awarding contracts in extreme emergencies, and emergency procurement by less competitive procurement in relatively urgent situations.

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[82] In January 2022, the Ministry of Finance issued the "Interim Measures for the Administration of Procurement under the Government Procurement Framework Agreement" (Decree No. 110 of the Ministry of Finance). January 14, 2022, https://www.gov.cn/gongbao/content/2022/content_5687507.htm. Procurement under Framework Agreement is mainly used for frequent and small-amount procurement activities, but it has the potential to serve emergency procurement.

[83] "Reply of the Ministry of Finance to the Proposal No. 10154 of the Third Session of the 13th National People's Congress" (Cai Ku Han [2020] No. 10), October 22, 2020, http://gks.mof.gov.cn/jytafwgk_8304/2017jytafwgk_14533/2018rddbjyfwgk/202010/t20201022_3609086.htm.

It is believed that for emergency procurement conducted by directly awarding contracts, due to insufficient competition, or even not issuing procurement announcements, it is meaningless to stipulate queries and complaints, also there is a lack of sufficient stakeholders to initiate the queries and complaints procedures. On the other hand, queries and complaints may conflict with the prime goal of efficiency in extreme emergencies. Therefore, it is not necessary to set up queries and complaints mechanism under these circumstances, but in order to prevent fraud and protect public interests, a reporting or whistle-blowing mechanism should be put in place. In the case of relatively urgent situations, the procurement procedures with low level of competition which are originally designed for regular or conventional procurement are applied, thus the queries and complaints mechanism should be retained.

Under the pressure of efficiency, the emergency procurement procedure always has the problem of insufficient ex ante legitimacy due to lack of competitiveness, which can be supplemented through ex post supervisions.[84] Ex post supervision is mainly conducted through audit. The National Audit Office pointed out in the 13th Five-Year Plan for the Development of National Audit Work that "we should conduct follow-up audits on major public emergencies focuses on the supervision and inspection of the mobilization, allocation, disbursement, and utilization of relevant funds and materials, as well as the progress related project implementation. The aim is to ensure the smooth execution of emergency response, early warning and prevention, and post-crisis recovery and reconstruction efforts."[85] In February 2020, the National Audit Office issued the "Notice on the Audit and Supervision of Financial Funds and Donations for the Prevention and Control of COVID-19 Epidemic", requiring "the focus is placed on the overall situation, allocation, and management of COVID-19 prevention and control funds arranged by the central and local governments; as well as on the general status, distribution, and utilization of donations received from society."[86] The Ministry of Finance also pointed out on the supervision of emergency procurement that "the follow-up audit and review should be strengthened, and the whole process of emergency procurement should be documented. The purchaser is required to properly keep the records of reasons for the implementation of emergency procurement, procurement decisions, budget, suppliers selection, procurement contracts and prices, payments and other related information, and properly disclose relevant information to the public, and accept audit and supervision according to law and regulations."[87] For example, the

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[84] Xiaoping Zhang, "Several Elements to Consider in the Construction of Emergency Procurement System", *Chinese Government Procurement*, (2021) 3, pp. 45-46.

[85] National Audit Office: "The 13th Five-Year Plan for the Development of National Audit Work", June 2, 2016, https://www.gov.cn/xinwen/2016-06/02/content_5078941.htm.

[86] The National Audit Office: "Notice on the Audit and Supervision of Financial Funds and Donations for the Prevention and Control of COVID-19 Epidemic", (Shen Cai Fa [2020] No. 3), February 7, 2020, https://www.audit.gov.cn/n11/n536/n537/c136811/content.html.

[87] "Reply of the Ministry of Finance to the Proposal No. 10154 of the Third Session of the 13th National People's Congress" (Cai Ku Han [2020] No. 10), October 22, 2020,

Audit Office of Jiangxi Province submitted the Special Audit Report on the Prevention and Control Funds and Donations of COVID-19 Epidemic in Jiangxi Province to the National Audit Office in 2020, which mentioned the problems that the procurement procedures did not fully comply with the requirements of laws and regulations, such as some purchasers did not sign written contracts with the suppliers, defects in inbound and outbound management, and not receiving invoices from the suppliers,. These problems involved 27 cities and counties, with a total amount of 65,275,400 RMB.[88]

4.5 Beyond the demand side: public procurement law and production capacity regulation and price control

In the context of public goods provision, procurement law predominantly emphasizes the demand side of transactions. This focus aligns well with the realities of contemporary market economies, where the majority of goods and services exist in conditions of oversupply. As a result, this demand-oriented framework generally does not pose significant challenges in the context of routine or conventional procurement activities. But in an emergency, especially when the market situations change into the seller's market, the procurement system design focusing only on the demand side may fail. Therefore, if the emergency procurement system is to be effective, it often needs to be supplemented by production capacity regulation and price control to prevent the failure of the procurement system due to the massive shortage of supplies.

In terms of production capacity regulation, in order to stimulate the production of epidemic prevention and control materials, the Ministry of Finance and the State Administration of Taxation jointly issued the "Announcement on Tax Policies for the Prevention and Control of Pneumonia Infected by Novel Coronavirus", giving preferential treatment to fixed assets depreciation and VAT to enterprises that involved in the production and transportation of goods for epidemic prevention and control.[89] The National Development and Reform Commission issued a list to identify the scope of goods that enjoy the above tax preferences.[90] In the most critical period of production, the Ministry of Industry and Information Technology dispatched special commissioners to the factories to help solve the problems of qualification, employment,

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http://gks.mof.gov.cn/jytafwgk_8304/2017jytafwgk_14533/2018rddbjyfwgk/202010/t20201022_3609086.htm.

88 Quoted from Junbo Wang, "Research on the State Audits of Sudden Public Incidents: Taking the Audit of the Financial Resources and Donate Supplies to Defense Epidemic Situation in Jiangxi Province as an Example". Master's Thesis of Jiangxi University of Finance and Economics, 2021, p. 22

89 "Announcement of the Ministry of Finance and the State Administration of Taxation on the Tax Policies for the Prevention and Control of Pneumonia Infected by Novel Coronavirus", February 6, 2020, http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5143461/content.html.

90 "Letter of the General Office of the National Development and Reform Commission on the Specific Scope of Key Safeguard Materials for Epidemic Prevention and Control" (Fa Gai Ban Cai Jing [2020] No. 145), February 18, 2020, https://www.gov.cn/xinwen/2020-02/20/content_5481265.htm.

funds, transportation, etc..[91] As summarized in a white paper issued by Chinese government, "China exploited the full strength of its comprehensive and resilient manufacturing sector and its complete industrial chain.… [Medical manufacturers] resumed production as quickly as possible, and expanded capacity to the maximum."[92] The reason that relatively rudimentary emergency procurement system in China can still meet the needs of epidemic prevention and control partly lies in the strong production capacity management measures.

In terms of price control, the General Administration of Market Supervision issued the "Guiding Opinions on Investigating and Dealing with Illegal Acts of Prices Gouging during the Prevention and Control of COVID-19" in February 2020.[93] Several rounds of law enforcement movements were organized to stable the prices of masks, antiviral drugs, disinfection and hygiene products, related medical devices, and basic commodities such as grain, oil, meat, eggs, vegetables, and milk. In January 2023, the National Healthcare Security Administration issued the "Guidelines for the Formation of the Price of Novel Coronavirus Therapeutic Drugs (Trial Implementation)", which requires that Novel Coronavirus therapeutic drugs that are entering domestic centralized pharmaceutical market for the first time are required to disclose the rationale behind their initial pricing. This includes providing detailed information on cost components and pricing methodologies, such as manufacturing costs, period costs, profit margins, and applicable taxes, to promote the fairness and accessibility of such therapeutic drugs.[94]

Although productions capacity regulation and price control can alleviate the pressure of emergency procurement and form coordination among policies, the government departments in charge of procurement is often not the departments in charge of production capacity regulation and price control. Accordingly, while the necessity of regulating the supply side in emergency procurement is widely acknowledged, the feasibility and extent of such regulation are closely tied to the presence of a strong and coordinated central authority. In this context, China's approach

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[91] Press Conference of the Joint Prevention and Control Mechanism of the State Council, February 13, 2020, https://www.miit.gov.cn/xwdt/gxdt/sjdt/art/2020/art_ad38827d492c4895a47592726b06f370.html.

[92] China's State Council Information Office: "Fighting Covid 19: China in Action", June 7, 2020, http://english.scio.gov.cn/whitepapers/2020-06/07/content_76135269_5.htm.

[93] General Administration of Market Supervision: "Guiding Opinions on Investigating and Dealing with Illegal Acts of Prices Gouging during the Prevention and Control of the New Coronavirus Infection Pneumonia Epidemic, (Guo Shi Jian Jing Zheng [2020] No. 21), February 1, 2020, https://www.gov.cn/zhengce/zhengceku/2020-02/02/content_5473889.htm

[94] Office of the National Healthcare Security Administration: "Guidelines for the Price Formation of Novel Coronavirus Therapeutic Drugs (Trial Implementation), (Yi Bao Ban Fa [2023] No. 2), January 6, 2023, http://www.nhsa.gov.cn/art/2023/1/6/art_104_9993.html.

presents a distinctive case, shaped by its particular institutional structures and national governance model.

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Journal articles (if the number of authors exceeds 10, after the tenth author we use et al.)

[1] Chen, X., Zhu W. Y., Zhang Q. M. (2023). Electrocaloric cooling technologies for a sustainable world. iEnergy, 2(2): 100–108.

[2] Slifka M K, Whitton J L. (2000). Clinical implications of dysregulated cytokine production. J Mol Med, https://doi.org/10.1007/s001090000086.

Books and articles in books

[3] Peyret, R., Taylor, T. D. (1983). Computational Methods for Fluid Flow, 2nd edn. New York: Springer-Verlag Berlin Heidelberg.

[4] Volpe, R. (1994). Techniques for collision prevention, impact stability, and force control by space manipulators. In: Teleoperation and Robotics in Space. Skaar, S. B., Ruoff, C. F., Eds. Washington DC: The American Institute of Aeronautics and Astronautics.

Articles in proceedings

[5] Poirazis H, Kragh M, Hogg C. (2009). Energy modelling of ETFE membranes in building applications. In: Proceedings of the 11th International IBPSA Building Simulation Conference, Glasgow, UK.

Reports, theses, and individual papers

[6] Chapman, G. T., Tobak, M. (1984). nonlinear problems in flight dynamics. NASA TM-85940. 6

[7] Steger, J. L., Nietubicz, C. J., Heavey, J. E. (1981). A general curvilinear grid generation program for projectile configurations. Report No. ARBRL-MR03142. U.S. Army Ballistic Research Lab., Aberdeen Proving Ground MD.

[8] Yang, X. (1999). Study of building material emissions and indoor air quality. PhD Thesis, Massachusetts Institute of Technology, USA.

Patent style

[9] Lenz, J. R. (2004). Compact tribology tester. U.S. Patent 6 817 223, Nov. 2004.

Standard

[10] US-ASTM. (2014). ASTM D974-2014 Standard test method for acid and base number by color-indicator titration.

Non-English publication style

[11] Jia, W., Zhang, Q., Bai, Z., Ma, S. Y., Yao, D. Wang, Y. (2007). Progress on manufacturing techniques of shaped charge liners. Rare Metal Mater Eng, 36(9): 1511–1516 (in Chinese).

Others

[12] Information on http://www.adobe.com/technology/projects.html. [13] Mishra, A., Sefene, E. M., Tsegaw, A. A. (2021) Process parameter optimization of friction stir welding on 6061AA using supervised machine learning regression-based algorithms. arXiv preprint: arXiv: 2109.00570 [cs.LG].

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