

MEASURES TO CURB CORRUPTION IN PUBLIC PROCUREMENT OF MYANMAR AND THAILAND*

Su Myat Nwal

Khon Kaen University, Thailand.

E-mail: sumyatnwal.n@kku-mail.com

Abstract

Public procurement is a key government function susceptible to corruption because of its large transaction volume, financial impact, complex procedures, and the close interaction between public officials and businesses. The objectives of this study is to study the anti-corruption measures in public procurement of Myanmar and Thailand, to study cases related to the public procurement of Myanmar and Thailand, and explore differences and similarities in anti-corruption measures of both countries. This study will be conducted by a doctrinal legal research methodology, drawing on the legal frameworks of Myanmar and Thailand, and analyzing preventative measures aligned with international standards such as the UNCITRAL Model Law on Public Procurement and WTO Government Agreement.

As the results, Myanmar emphasizes clear frameworks but risks overlooking bidder capabilities, while Thailand ensures legal compliance yet lacks clarity in certain qualification criteria. Additionally, Thailand's inclusion of performance evaluation criteria enhances the selection of competent contractors, contrasting with Myanmar's absence of such provisions. Furthermore, Thailand demonstrates a commitment to training programs for procurement officials, fostering expertise crucial for corruption prevention, a facet lacking in Myanmar. The involvement of public and business operators in anti-

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corruption efforts stands as another differentiating characteristic, with Thailand incorporating participatory mechanisms absent in Myanmar, potentially enhancing transparency and oversight. Both countries implement measures to mitigate conflicts of interest, with Myanmar emphasizing disclosure and fairness and Thailand focusing on committee formations and conflict prevention mechanisms. However, Thailand's inclusion of observer participation throughout the procurement process adds an extra layer of oversight, potentially reducing corruption risks. In conclusion, while both Myanmar and Thailand strive to address corruption in public procurement, variations exist in their approaches and effectiveness. The findings highlight the importance of clear criteria, performance evaluations, and public participation to strengthen anti-corruption efforts and transparency in public procurement.

Keywords: Public Procurement, Corruption, Anti-corruption Measures, Thailand, Myanmar

Introduction

Public procurement involves governments and state-owned enterprises purchasing goods, services, and works. It must be conducted efficiently and with high standards to ensure quality service delivery and protect the public interest, given it involves significant taxpayer funds (OECD, 2003)

In Myanmar, public procurement is primarily governed by Presidential Directive No. 1/2017, which serves as the principal regulatory framework for government agencies at both the state and regional levels in procuring construction, goods, and services. This directive is reinforced by the 2016 "Business Directive for Implementing a Business under a Contract System" issued by the Ministry of Construction, which provides specific guidelines for contractual operations, and the 2017 Financial Management Regulations, which set standardized financial procedures for all government departments. These



regulations collectively aim to ensure transparency, efficiency, and accountability in public procurement processes.

Efforts to establish a more robust and comprehensive legal framework gained momentum in 2020 with the introduction of the "Public Procurement and Asset Disposal Bill" to the Amyotha Hluttaw (House of Nationalities). This bill represents a significant step towards modernizing and standardizing procurement practices across the country. It was developed through a collaborative effort involving key stakeholders, including business organizations, international development partners, and various government departments, under the supervision of the Ministry of Planning, Finance, and Industry. (Sarapong, T., Prescott, C., Phoothong, S., Nuonhom, A., Sopa, S., & Wiroonapan, W, 2020)

The proposed legislation aims to address gaps in the existing framework by introducing clearer procurement procedures, mechanisms for asset disposal, and stricter anti-corruption measures. It is designed to align Myanmar's procurement practices with international standards, such as those outlined in the UNCITRAL Model Law on Public Procurement and the WTO Government Procurement Agreement. Key objectives include enhancing competitive bidding processes, ensuring equal opportunities for bidders, and promoting greater transparency and fairness in procurement decisions.

Moreover, the bill emphasizes the establishment of a centralized monitoring and evaluation system for public procurement to prevent mismanagement and irregularities. It also seeks to build capacity within government institutions through training programs and the adoption of technology to streamline procurement processes. The framework is expected to pave the way for stronger governance, increased public trust, and improved economic efficiency, while fostering collaboration with international investors and development agencies.

As Myanmar progresses in implementing these reforms, the successful adoption of the Public Procurement and Asset Disposal Bill is anticipated to play a crucial role in



supporting sustainable development, combating corruption, and fostering economic growth through better resource management and public sector accountability.

In contrast, Thailand has established a robust regulatory framework for procurement governance since 1992, reinforced by the Government Procurement and Supplies Management Act B.E. 2560 (2017 A.D). Aligned with international standards such as the UNCITRAL Model Law and WTO Agreement on Government Procurement, Thailand's legal framework includes provisions for the Anti-Corruption Co-Operation Committee and enables public participation in procurement processes. Additionally, Thailand has implemented e-government procurement (E-GP) initiatives and joined the Global Procurement Initiative to enhance transparency and efficiency in public procurement. It is undeniable that Thailand's public procurement system is more forward than Myanmar. Myanmar is at an early stage to approach public procurement and needs to be systemic. The greatest gap between Myanmar and Thailand is that Myanmar has no concrete law related with public procurement like Thailand. (Arrowsmith, S, 2010, Summer)

The cost of corruption in public procurement is not only measured in terms of financial loss. Competition is distorted by corruption, which may reduce the quality, sustainability, and safety of public projects and purchases. It also reduces the likelihood that the goods and services purchased will meet the public's needs. Governments can lose trust when procurement is corrupted by private interests instead of directed by public interests (Kühn, S., & Sherman, L. B, 2014). Because of the scale of the procurement process involved in staging a major event and the short length of time available, there is a very serious risk of corruption occurring within that process. Therefore, it is important to set out measures to prevent corruption in public procurement in order to mitigate corruption risk in the countries.



Research objectives

Three research objectives would be contributed to accomplish the study. These objectives are;

1. To study the anti-corruptions measures of Myanmar and Thailand
2. To explore the cases arisen by corruption in public procurement of Myanmar and Thailand
3. To analyze the similarities and differences in anti-corruption measure of public procurement in Myanmar and Thailand under the international standards set out by UNCITRAL Model Law on Public Procurement and WTO Government Procurement Agreement

Research Methodology

This study employs a doctrinal legal research methodology, drawing on the legal frameworks of Myanmar and Thailand, and analyzing preventative measures aligned with international standards such as the UNCITRAL Model Law on Public Procurement and WTO Government Procurement Agreement. This study will examine corruption in public procurement to assess its impact on governmental efficiency and public resources. It will explore differences in anti-corruption measures and identify similarities between the two countries. And the study involves analyzing specific legal cases arising from corruption in public procurement to explore the measures to curb corruption in public procurement of Myanmar and Thailand. Finally, the study will provide recommendations for improving anti-corruption measures in public procurement of Myanmar compared with the experience of Thailand.



Results

This study produces the following result by analyzing the anti-corruption measures in public procurement of both countries.

1. Anti-Corruption Measures in Public Procurement Procedures of Myanmar and Thailand

1) Qualification of Bidders

Under clause 41 of the Presidential Directive No. 1/2017 A.D, Myanmar bases bidder qualifications on business registration and tax payments. This clear framework helps reduce ambiguity in the evaluation process. However, the lack of detailed criteria may result in an incomplete assessment of bidders' overall capabilities, potentially affecting the quality of contractor selection.

In Thailand, bidder qualifications are outlined in six categories under Section 64 of the Public Procurement and Supplies Administration Act 2017. This includes legal capacity, business commencement, and necessary permissions, which ensure bidders meet essential legal standards and enhance procurement integrity. Despite this, some of the criteria need to be more explicitly defined to further improve clarity and fairness in the selection process.

2) Work Performance Evaluation of Business Operators

In Myanmar, there is no specific provision for performance evaluation of business operators in the Presidential Directive No. 1/2017 A.D, though the 2016 Business Directive applies to government construction projects. In contrast, Thailand's Public Procurement and Supplies Administration Act 2017 A.D includes public observation programs and integrity pacts with businesses, along with clear performance evaluation criteria and a suspension mechanism. While both countries have performance evaluation measures, Myanmar focuses on construction projects, and Thailand takes a broader approach. The effectiveness of both systems depends on consistent implementation and addressing potential challenges.



3) Training Program for Officers in Charge of Public Procurement

In the current procurement system of Myanmar, there is no training programs for the officials in charge of procurement. The lack of a training program is a notable drawback.

On the other hand, Thailand offers training programs for public procurement officers, as mandated by Section 49 of the Public Procurement and Supplies Administration Act 2017 A.D. The Comptroller-General's Department is responsible for this training, ensuring that officials can effectively manage procurement processes. These programs are crucial for maintaining the quality and smooth execution of procurement activities.

4) Participation by the Public and Business Operators in Anti-Corruption

In Myanmar, there is no provision relating to the participation of the public and business operators in anti-corruption in the system of public procurement. However, Thailand has the provision to participate in anti-corruption by the public and business operators.

By involving observers with relevant knowledge and expertise throughout the procurement process contributes to an additional layer of oversight, potentially reducing the likelihood of corruption. Without specific measures encouraging public participation in Myanmar, there might be a lack of public engagement in monitoring and ensuring the integrity of public procurement proceedings.

5) Prevention of Conflict of Interests

Both Myanmar and Thailand have the provision to prevent having interests between the bidders and the authorities who participate in the public procurement proceeding.

2. Case Studies

In Myanmar, a case occurred in the 23-mile Myitkyina-Van Maw road AC asphalt resurfacing project. According to the examination results, Dr. Khe Aung, former Prime



Minister of the Kachin State Government. When former state Ministers U Wai Lin and U Win Nyunt were in their political positions, they allowed a private company to carry out that project, which was not included in the original budget for the fiscal year 2017-2018 without holding a tender in accordance with the Presidential Office's directive No 1/2017. According to the QC team's inspection, the quality of the road is not up to par, so it has to be repaired. Failure to comply with the terms and conditions of the contract resulted in the loss of the state's money (Myanmar Digital News, 2022).

In Thailand, there was a famous case known as The Khlong Dan Wastewater Treatment Plant project, initially envisioned as a pioneering solution to manage vast volumes of wastewater, tragically unfolded into a saga of corruption and mismanagement. With an estimated investment of 23 billion baht, the project was meant to be Asia's largest treatment facility but became synonymous with malfeasance. Corruption permeated every phase, from the dubious contractor selection process favoring a single bidder to irregularities in land acquisition, where politically connected figures profited from inflated land sales to the government. Legal proceedings uncovered fraud and misconduct among project stakeholders. High-profile legal cases ensued, the Supreme Court sentenced those involved in the corruption by means of Section 148 of the Criminal Code (PR News, 2024).

From these case studies of Thailand and Myanmar, despite challenges and instances of misconduct, these cases underscore Thailand's commitment to upholding international standards in combating corruption. The investigations by entities like the National Anti-Corruption Commission (NACC) have not only exposed systemic flaws and malpractice but also demonstrated a resolve to hold perpetrators accountable under stringent legal frameworks. By collaborating with international standards outlined by organizations such as UNCITRAL and the WTO, Thailand aims to promote fairness, transparency, and ethical practices in its procurement processes.



3. Differences and Similarities of Anti-corruption measures of Myanmar and Thailand under the Standards of UNCITRAL and the WTO

Based on the international standards established by UNCITRAL and the WTO, several differences and similarities between Myanmar and Thailand can be observed, given their membership in these institutions.

1. Qualification of Bidders

Myanmar and Thailand both have legal provisions for bidder qualifications that align with international standards like WTO and UNCITRAL, emphasizing legal compliance and transparency to enhance procurement integrity. However, Myanmar's qualifications focus narrowly on business registration and tax compliance, lacking detailed criteria, which limits their ability to comprehensively assess bidders. In contrast, Thailand's framework is broader, covering six categories including legal capacity and business commencement, providing a more holistic approach but still requiring refinement for clarity. While Myanmar's approach minimally aligns with international standards, Thailand's framework better reflects UNCITRAL's recommendations by emphasizing professional, technical, and ethical qualifications.

2. Work Performance Evaluation of Business Operators

While both countries have performance evaluation measures, Myanmar focuses on construction projects, and Thailand takes a broader approach.

3. Training Programs

Both Myanmar and Thailand aim to align their public procurement systems with international standards, including ethical practices, and both countries recognize the potential need for a code of conduct for procurement officials, as recommended by UNCITRAL. However, a key difference lies in Thailand's provision of structured training programs for procurement officials, which ensures their competency and ethical awareness. In contrast, Myanmar lacks formal training mechanisms for its procurement



officials, putting it at a disadvantage in developing and enforcing the necessary skills and ethical standards.

4. Public Participation in Anti-Corruption

Thailand has established programs to facilitate public access and participation in anti-corruption efforts, aligning with UNCITRAL and WTO standards of transparency and fairness. Myanmar does not have similar programs.

5. Prevention of Conflicts of Interest

Both Myanmar and Thailand have policies in place to prevent conflicts of interest in public procurement, aligning with the guidelines on the provision to avoid conflicts of interests in procuring agencies and business operators under the WTO and UNCITRAL Model Law on Public Procurement.

Discussion

This study provides a comparative analysis of the anti-corruption measures in public procurement between Myanmar and Thailand, highlighting their respective strengths, weaknesses, and alignment with international standards.

Myanmar's bidder qualifications focus on business registration and tax payments, offering clarity but lacking detailed criteria for comprehensive bidder assessment. Thailand's qualifications are broader, covering six categories under its procurement law, but require clearer definitions for improved fairness.

In terms of performance evaluation, Myanmar lacks a broad framework, relying instead on sector-specific guidelines for construction projects, which limits overall oversight. Thailand, by contrast, offers a more extensive performance evaluation system with public observation programs and integrity pacts, contributing to greater transparency.



Additionally, Myanmar lacks training programs for procurement officials, a critical weakness. Thailand mandates training for officials, enhancing their capacity to manage procurement effectively.

Overall, Thailand's procurement framework is more aligned with international best practices, while Myanmar could benefit from enhancing its criteria, performance evaluation mechanisms, training programs, and public participation to improve its anti-corruption efforts.

Conclusion and Recommendations

The qualifications of bidders, performance evaluation, training programs for procurement officers, public participation in anti-corruption efforts, and conflict of interest prevention in public procurement reveal both similarities and differences between Myanmar and Thailand. In Myanmar, bidder qualifications are based on business registration and tax payment, offering clarity but lacking detailed criteria. Thailand's qualifications are more comprehensive. Thailand has clear criteria and an electronic system for performance evaluation, including suspension for underperforming contractors, while there is no implementation in Myanmar. Myanmar lacks training programs for procurement officials, while Thailand offers structured training through the Comptroller-General's Department. Public and business participation in anti-corruption efforts is absent in Myanmar but mandated in Thailand, with transparency programs and integrity pacts. Both countries aim to prevent conflicts of interest, with Myanmar emphasizing disclosure and Thailand requiring procurement committees to avoid conflicts, with members recusing themselves if necessary.

Recommendations for future research

Future research should focus on improving qualification and evaluation criteria in public procurement in Myanmar and Thailand. Myanmar should develop more detailed criteria, including past performance and technical capabilities, and standardize



performance evaluations. Thailand should clarify criteria in the Public Procurement and Supplies Administration Act and assess post-contract performance. Both countries need to enhance training programs for procurement officials and promote public participation to fight corruption. Myanmar should introduce structured training and public participation, while Thailand should evaluate its existing programs. Additionally, both countries must strengthen conflict of interest prevention, with Myanmar exploring ethics training and Thailand assessing current measures' effectiveness.

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