

**HERTIE SCHOOL OF GOVERNANCE
ALBANIAN INSTITUTE OF SCIENCE**

**CORRUPTION RISK IN ALBANIAN PUBLIC
PROCUREMENT (2017 – 2019)**

Executive Summary

May 2021



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The OSCE Presence in Albania commissioned¹ the Hertie School of Governance and the Albanian Institute of Science to research corruption risk in public procurement in two relevant sectors and to propose improvements to the legal and administrative framework for its reduction.

Since its application to join the European Union (EU) in 2009, Albania has had an inconsistent evolution, reflected in various international rankings on democracy and governance. When recommending initiating negotiations with Albania in 2020, the European Commission outlined the need for an ever stronger focus on fundamental reforms, starting with rule of law and the functioning of democratic institutions and public administration.² The EU *acquis* covers both an “effective (independent, quality and efficient) judicial system” and “an effective fight against corruption”, judged to be of “paramount importance”, in chapter 23 on “judiciary and fundamental rights”.³ The EU has become in the meantime Albania’s biggest trading partner, with foreign direct investment in the country reaching €567.8 million in 2019. It is also the largest provider of financial assistance to Albania, with €1.25 billion in EU pre-accession funds disbursed during the 2007–2020 interval and €464 million provided in European Investment Bank loans since 1999.⁴ In this context, the importance of good governance, in particular that of public procurement, and the EU’s emphasis on reforms versus financial support is clear. An increase of EU funds in a governance context defined by weak institutions has been reported to reinforce vicious governance challenges and lead countries to fall short of their development targets.⁵ An effective and non-corrupt public procurement system to handle public funds is therefore essential in order to avoid a resource curse.⁶

The first objective of the study is thus to establish and measure corruption risks through public procurement indicators (compatible with the EU Single Market scoreboard on public procurement and the EU’s largest data repository, Opentender.eu⁷), which are action-able (allow administrative and policy intervention). Based on the findings of the above analysis, the second goal is to develop a set of recommendations on how to increase performance and integrity of public procurement.

Section 1 of the report outlines the study’s research objectives and methodology. Based on an analysis of public procurement spending and the availability of data, were selected the health and construction

¹ This research is part of the extra budgetary project implemented by the OSCE Presence in Albania “*Enhancing policies and strengthen capacities, transparency and accountability of the Public Procurement System in Albania*” 2020 - 2022, which is funded by the Italian, French and Slovak Governments, through their Permanent Missions to the OSCE.

² European Commission. (2020). Commission drafts negotiating frameworks for Albania and North Macedonia. Available at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1021.

³ European Commission. (2020). Albania 2020 Report (SWD(2020) 354 final). Available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf.

⁴ European Commission. (2020). A more credible, dynamic, predictable and political EU accession process - Commission lays out its proposals. Available at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_181.

⁵ See Beugelsdijk, S., & Van Schaik, T. (2005). Social capital and growth in European regions: An empirical test. *European Journal of Political Economy*, 21(2), 301–324.; Mungiu-Pippidi, A. (2019). *Europe’s Burden, Promoting Good Governance Across Borders*. Cambridge, UK: Cambridge University Press.

⁶ See Fazekas, M., Chvalkowska, J., Skuhrovec, J., Tóth, I. J., & King, P. L. (2014). Are EU funds a corruption risk? The impact of EU funds on grand corruption in Central and Eastern Europe. In A. Mungiu-Pippidi (ed.), *Controlling Corruption in Europe*. Berlin: Barbara Budrich.

⁷ <https://opentender.eu>

sectors. The report goes to analyse tender data from these procurement-intensive sectors over a three-year period (2017–2019). More than 24,000 individual tenders over a threshold of 800,000 ALL (approx. €6,500) were analysed based on data collected and coded with the red flags mechanism utilised in the Albanian Institute of Sciences’ database. The database for 2019 was compared against official data from the Albanian Public Procurement Agency (PPA). The difference mainly consist of framework contracts. The health sector’ dataset coverage in the PPA database was 89.3 per cent (2,231 out of 2,498 tenders). The construction sector’ dataset coverage, for the same year was 72.6 percent (918 out of 1,265). Therefore, the data is considered representative.

Corruption risks are indicated by proxies referred to as red flags in the public procurement literature. Red flags measure abnormalities from either random patterns or legal benchmarks at the tender input (such as the number of bidders), process or output level. The proxies are coded based on the descriptions of tenders or are calculated by statistical analysis. Risk is calculated by adding red flags by contract, at the tender level in a risk index. The proportion of risky contracts per contracting authority and sector is then calculated. Significant corruption risk is defined as prevalent favouritism, with contracts distributed non-transparently and non-competitively. This is measured by buyer concentration: the monetary volume or number of contracts awarded by one contracting authority (buyer) to one supplier. Higher values indicate risk of capture.

Table 1. Red Flag Indicators

Indicator		Definition
<i>Included in a composite risk-per-tender indicator</i>		
Composite risk score	Single bidding	1: if a single bid was submitted (de jure single bidding) 0: otherwise
	High-risk procedure type	1: if the contract had a negotiated procedure, or if it was a framework contract ⁸ but the procedure type itself was unclear 0: otherwise
	Short advertisement period	1: if the contract had an advertisement period that significantly increased the likelihood of single bidding (0–22 days for open procedures, ⁹ 0–9 days for every other contract) 0: otherwise
	Short decision period	1: if the contract had a decision period associated with a higher likelihood of single bidding (0–17 days) 0: otherwise
	Buyer concentration	Share of the biggest supplier per year per buyer ¹⁰
<i>Not included in the composite risk indicator</i>		
	Relative price	Actual price divided by estimated price
	Negotiated procedure without prior publication	High discretion procedure not using the e-portal, without transparency and competition

⁸ Note that not all framework contracts, but only those for which the actual procedure type could not be established, are categorized as high risk.

⁹ Including procedures labelled “framework”, which are most probably open procedures as well.

¹⁰ For example, if a public body awards contracts worth 100 million lek in a year and 60 million lek worth of contracts are awarded to a single company, then the risk score will be 0.6. More dispersed spending indicates lower risks (if the biggest company receives only the 20 per cent of the total awarded contract value, that indicates a higher level of competition). Buyer concentration is only calculated when the number of awarded contracts per year is greater than 10.

Section 2 deals with the institutional analysis of corruption risk. The International Monetary Fund (IMF) due to the opportunities they create has always considered public contracts, especially large ones, as corruption risks. These risks are amplified by administrative discretion (enabled by lack of transparency, poor regulation, and low accountability) and are observable both as formal rules and procedures and their outcomes (such as public procurement related sanctions) and as allocation patterns, due to the red flags methodology, which captures non-random (preferential) contracts distribution. Institutional factors present an important source of risk.

Through the review of the main actors and legislative changes in the public procurement in Albania, the report remarks that the expansion of e-procurement and centralization of the contract allocation process (through the creation of a Central Purchasing Agency) are important and positive steps. However, important corruption risk factors still exist, which require the continuation of reforms.

The most important issues, which need to be addressed, are:

- 1. An incomplete monitoring framework leading to gaming of indicators, which may result in an actual corruption risk increase, despite improvements in the monitored indicators.** For instance, the decrease in number of negotiated non-transparent procedures, which used to dominate, seems to have resulted in a large number of apparent fictitious bids that may de facto hide the same ‘dedicated’ allocations with one pre-designated winner in a ‘de facto’ single bidding situation. One indicator is the growing number of tenders in which the same bidders meet repeatedly, but only one bidder submits a full offer, whose economic value is just below the maximum threshold of the value advertised. Investigative journalists also report that the terms of reference have become highly restrictive with the goal of excluding competition¹¹.
- 2. The transfer of rents to concessions/public private partnerships (PPP) from public procurement.** The planned allocations via PPP are very high compared to total procurement spending and makes PPP an area of significant corruption risk in the absence of sound procedure of value for money evaluation and a due process for 1) selecting priorities; 2) selecting private partners; and 3) sufficient transparency to monitor both allocations and project management.
- 3. The absence of routine, competent value-for-money estimation, and of cost standard benchmarks and monitoring for both public procurement and PPP.** The evidence of this study shows that risky procedures are also more expensive. There were no data, however, on the timeliness or quality of delivery for a full estimation of social loss related to corruption. The Public Procurement Agency does not cover management of contracts, but only allocation. Also, no agency is currently empowered to work both *ex-ante* in providing procurement decision bodies with the relevant cost standards and *post-factum*, to check value for money routinely. The capacities and resources of both the Ministry of Finance and the Supreme Audit Institution should

¹¹ Focus group with investigative journalists, Tirana, November 2, 2020.

be strengthened in this sense (through creation of special units; capacity building; legal empowerment). In light of the gradual shift towards PPPs for infrastructure projects, which require sophisticated planning and multi-annual budgeting, the establishment and development of one or more cost standardization units (which could have branches by sectors) becomes a stringent necessity. A sound model exists in British sustainable procurement: the Government Buying Standards (GBS), which define product specifications, including price, and is mandatory for central government departments and related organizations and encouraged for the wider public sector¹². Such a unit would have as a task the *ex ante* provision of templates for terms of reference and benchmarks for quality and costs, as well as *post factum* monitoring of them. Templates and reference tables can be published online, to reduce transaction costs and increase trust in tendering processes.

4. **Impunity and lack of accountability.** The figures cited in this report derived from official responses from Courts and Ministry of Justice show that the costs for corruption in procurement are very low for rent seekers. The independent media and civil society complain loudly of a culture of impunity, which was all the more stringent in 2020, given high profile cases of individuals under investigation winning new public contracts. A system to disbar offending companies exists in principle, but it does not seem to work. Versatile rent seekers register new companies when they run into legal issues, and quickly win new contracts despite the young age of such companies. Procurement-related administrative sanctions also exist in reports, but no clear instance could be identified where a public manager or elected official received a serious administrative sanction following a procurement related scandal, or recommendations from the Supreme State Audit, despite the latter indicating many irregularities.

5. **Lack of independent oversight.** The political opposition can play a positive role in oversight of government corruption in general, and to a certain extent, it did so in Albania before the main opposition parties left Parliament and boycotted local elections. The accumulation of power in one party is clearly a risk for corruption. Potential solutions can be found in a number of countries that have made progress towards good governance in the past 30 years. So far, Albania has created 'independent' agencies that are de facto controlled by the same political majority. Their independence could be strengthened, with greater social and political accountability, by including civil society and political opposition in oversight bodies. One example, from Uruguay, is the presence of representatives of all political parties in Parliament on the board of state-owned companies as a rule. Such representatives can thus demand for more accountability for managers and exercise an oversight role. Albania also has sufficient e-government and e-participation to create evaluation systems of government services based on digital apps, where users of a service could rate it on their smartphone (reputation-based governance)¹³. Despite funding challenges,

¹²<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs#history>

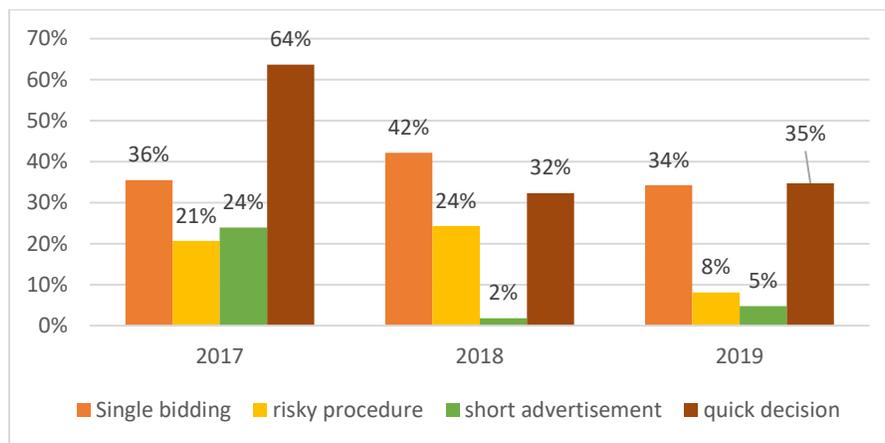
¹³ See for reputation based measures in public services and infrastructure Confalonieri, R., Leoni, C., & Picci, L. (2007). Rebag-ware: Reputation-based governance of public works (No. 586). Quaderni-Working Paper DSE.; Picci, L. (2006). Reputation-based governance of public works. *Rivista di politica economica*, 96(1/2), 161.; Picci, L. (2011). Reputation-based governance. Stanford University Press.

civil society is well enough developed in every sector to be a suitable partner of the government in creating such reputation-based mechanisms, which can warn of corruption and poor value for money in various public services. A small fraction of international donor funds dedicated to social accountability could be allocated to support such initiatives and enable both civil society and government to increase the quality of public service delivery.

Section 3 analyses patterns of contract allocation based on data from the two sectors. The probability of single-bidding, the main risk indicator in the European SMS, is statistically significantly higher in a negotiated procedure, or a tender with a 15 or 20 days of advertisement compared to an open or 50+ days long bidding period. These associations hold, even after a review for a range of contract dimensions, such as contract size, year, contract type and buyer fixed effects. Therefore, high-risk categories are defined based on a statistically significant association with single-bidding: a) high risk procedure type, b) short advertisement period, c) short decision period. These situations deviate from normal pattern and therefore were listed as risks alongside relative price (estimated versus actual price). The main indicator, byer concertation at the contracting authority level, is added to build a composite risk indicator per tender.

The most common risk indicators aside from the negotiated procedure are de jure single bidding (only one bidder) and a quick decision. Their evolution is very different from that of the negotiated procedure, which declined significantly after changes in legislation. Single bidding is rather constant (34% in 2019 compared to 36% in 2017, with a raise to 4% in 2018), while quick decision decreased by a half, probably due to changes in the legislation, but is still quite high at 35%.

Figure 2. Average risk scores per year, all contracts



Note: $N_{single\ bidding} = 10,941$; $N_{risky\ procedure} = 12,699$; $N_{short\ advertisement} = 10,247$; $N_{quick\ decision} = 9,116$

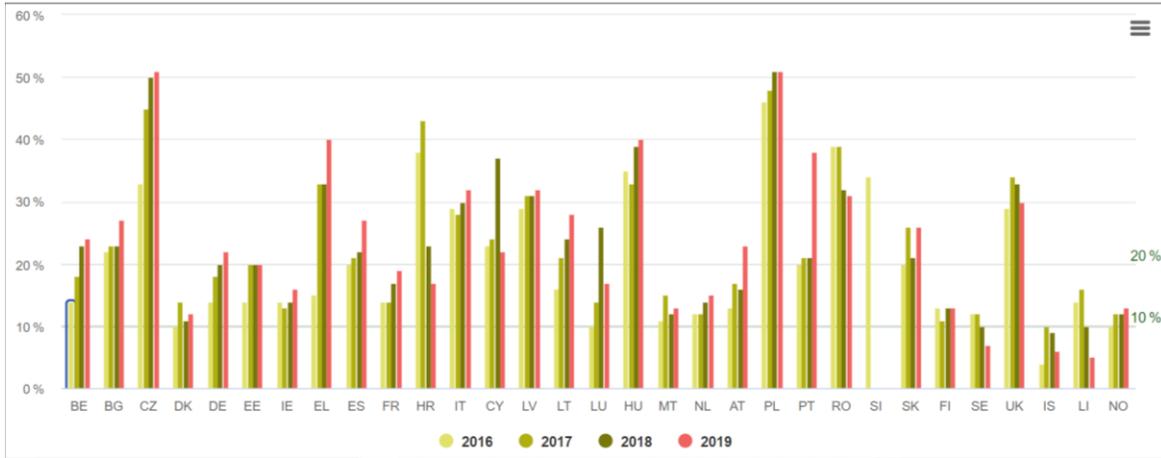
The Single Market Scoreboard of the European Commission looks at all procurement allocations above the EU threshold for reporting to European Tender Daily (high-value contracts). This makes a comparison

rather difficult with the Albanian sample, where the contracts' value is much lower. Still, it is worth noting that the Czech Republic, Poland, Cyprus, Croatia, Romania, Hungary, Portugal and Greece have scored higher than thirty on single bidding in recent years, compared to a European average of around 24–25. At 35 percent, Albania is comparable to the highest risk group of EU member states.

Figure 2. Single bidding corruption risk indicator in the European Single Market Scoreboard

Indicator [1]: Single bidder

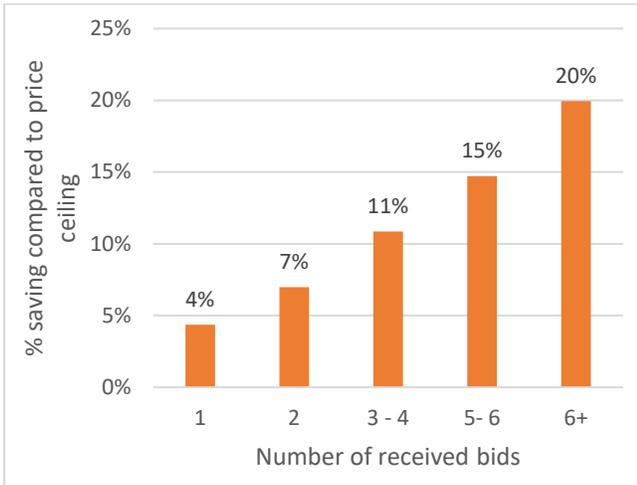
This chart measures the proportion of contracts awarded where there was just a single bidder (excluding framework agreements, as they have different reporting patterns).



Source: *EU Public Procurement Scoreboard, The Single Market Scoreboard - European Commission (europa.eu)*

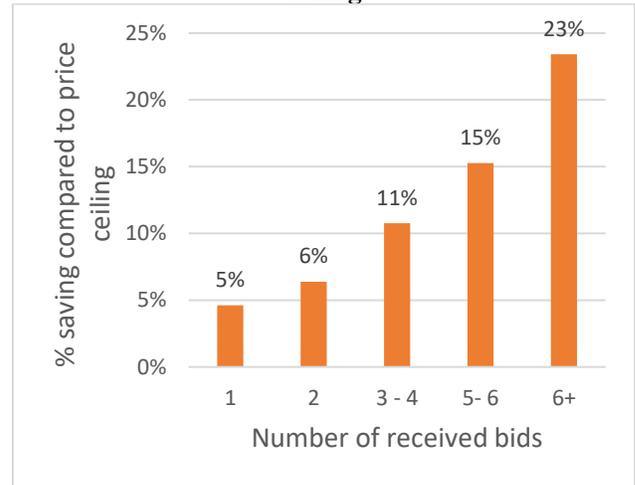
For the health sector, the report finds a statistically significant association between the additional risk contract indicator of relative price (final price divided by initial estimate) and number of bidders combined with contract-level composite risk. The difference between a risk-free contract and the highest risk contract is associated with an 8 per cent increase in relative price. The more competitive a tender is, the more money buyers save.

Figure 3. Value for money by number of bidders



Note: N = 8,795

Figure 4. Relationship between number of received bids and per cent savings compared to the price ceiling

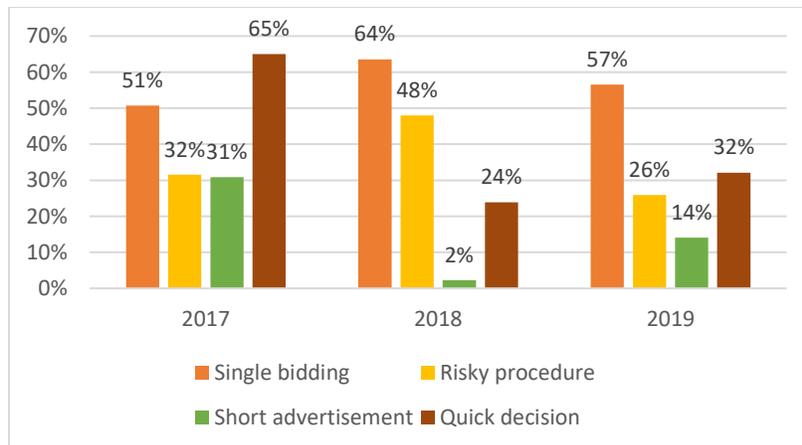


Note: N = 2,353; based on all construction contracts without filtering by year

For the construction sector, value for money decreases alongside the number of bids, with single bidding associated with the poorest value for money.

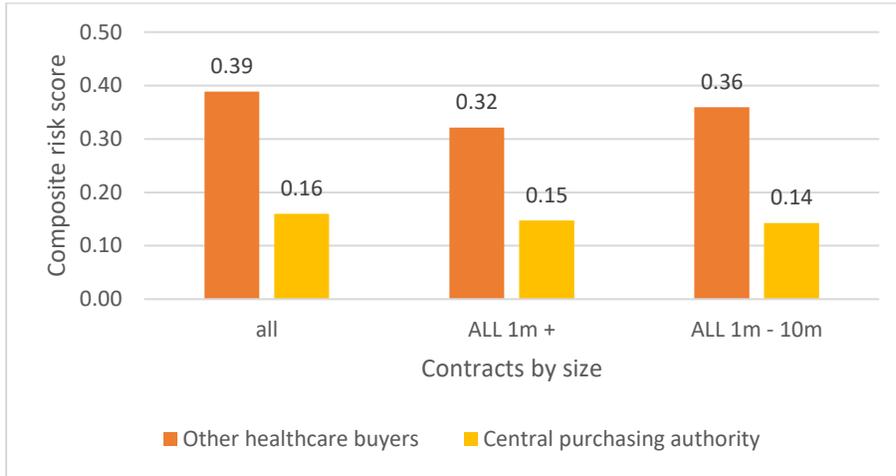
The report finds a positive evolution in the health sector, despite some risk indicators remaining high, indicating that most health buyers (*Figure 5*) have not changed their behaviour. The negotiated procedures went down. The new Central Purchasing Agency marks an exception in the risk landscape; it awards relatively large contracts with lower risk scores compared to other buyers (*Figure 6*).

Figure 5. Risk indicators over years in the health sector



Notes: N_{single bidding} = 4,740; N_{risky procedure} = 5,538; N_{short advertisement} = 3,964; N_{quick decision} = 3,371.

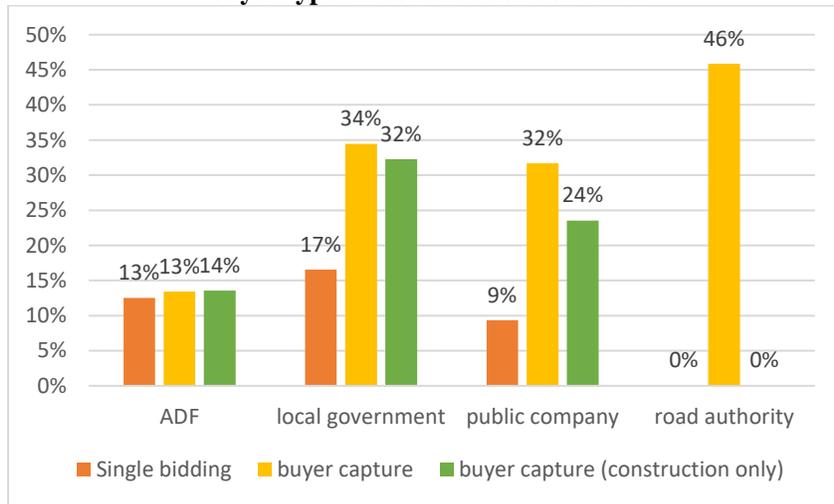
Figure 6. Risk score of health sector contracts by buyer type



Note: N = 8,461.

Where construction public works are concerned, the median buyer concentration level has not evolved over the years. Its range has decreased, however, indicating that fewer agencies are captured, even if the number of preferential contracts did not go down significantly (*Figure 7*).

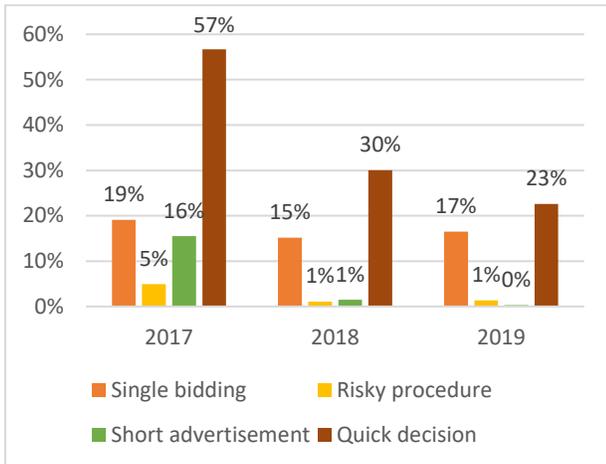
Figure 7. Share of single bidder contracts and buyer concentration in 2019 by buyer type in construction contracts



Notes: $N_{single\ bidding} = 745$; $N_{buyer\ concentration} = 59$ (unique organizations); $N_{buyer\ concentration\ construction} = 23$ (unique organizations). The buyer capture value for the Albanian Road Authority is explained by a single large contract, not by multiple contracts awarded to the same supplier.

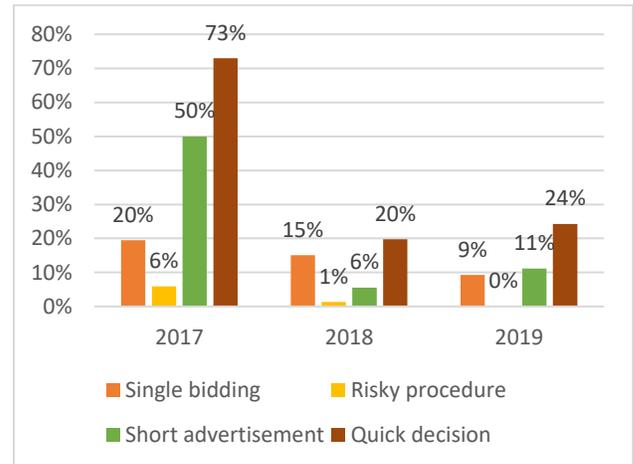
There is a wide variety across state-owned companies and local governments, with the most frequent buyers associated with relatively low risks (*Figure 8a and 8b*).

Figure 8a. Individual risk indicators, local government



Note: $N_{\text{single bidding}} = 1,950$; $N_{\text{risky procedure}} = 2,128$; $N_{\text{short advertisement}} = 1,960$; $N_{\text{quick decision}} = 1,885$.

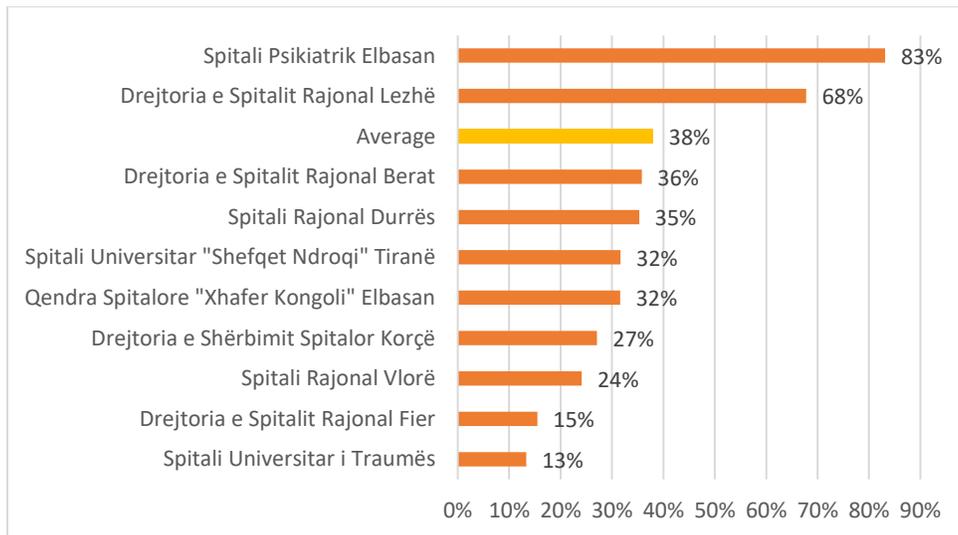
Figure 8b. Individual risk indicators, public companies



Note: $N_{\text{single bidding}} = 189$; $N_{\text{risky procedure}} = 207$; $N_{\text{short advertisement}} = 195$; $N_{\text{quick decision}} = 178$.

The average buyer concentration of contracting authorities in health is, at 38 per cent, quite high for the interval studied (2017–2019), indicating a high dependence of buyers on certain suppliers (*Figure 9*). Thirty per cent of the supplier market is engaged with this group of contracting authorities.

Figure 9. Buyer concentration in the health sector, filtered for 10 biggest spenders with above average composite risk

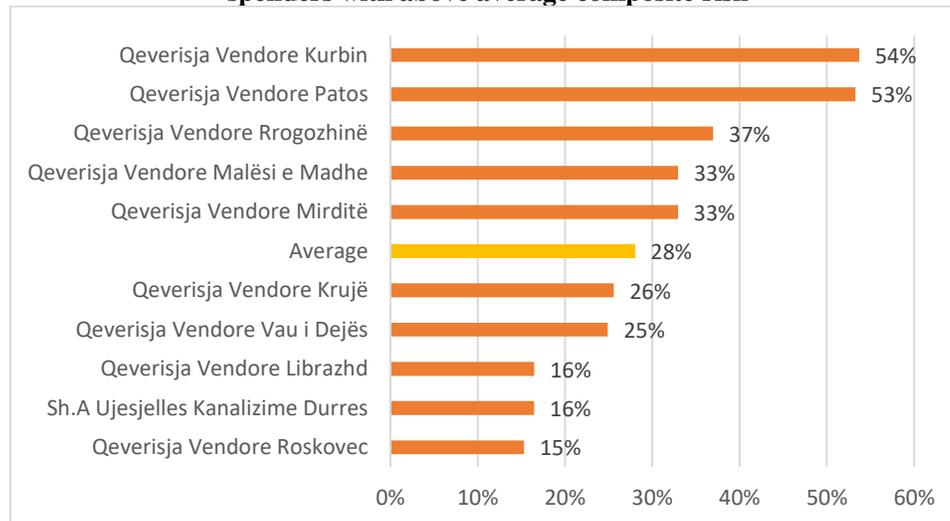


Note: Limited to agencies that awarded at least 10 contracts.

The average buyer concentration in construction contracts is at only 28 per cent, by number of contracts, less than in the health sector. However, the report finds a significant number of municipalities well above average and a few high-risk companies regularly winning through either de facto (competition

disqualified) or de jure single bidding. The report provides for both sectors detailed analyses of the highest risk buyers (contracting authorities) by risk, number of contracts and volume of procurement, and the highest risk suppliers.

Figure 10. Buyer concentration in the construction sector, filtered for biggest spenders with above average composite risk



Note: Limited to agencies that awarded at least 10 contracts, have above average composite risk scores and are in the top 10 for spending share.

Section 4 draws conclusions and makes some recommendations.

In the reporting period (2017-2019), Albania has recorded progress on public procurement, although a fundamental change of paradigm (a change from systematic corruption to corruption as an exception) is still not demonstrable beyond any doubt. This is why the recommendations treat public procurement reforms as part of the anticorruption effort, a priority aligned with the conditions set by the European Union for the opening of EU membership negotiations.

The first recommendation is the completion of the corruption risk monitoring system of indicators in order to avoid gaming.

The red flags included in the Public Procurement Agency database should combine procurement process and outcome in order to capture at least the most obvious risks. Indicators that could be added to the contract implementation reporting form include the publication date of the notice, date of decision award, number of bidders registered, number of actual bids (full offers submitted), number of bidders disqualified, whether the winner company or main shareholder is under investigation in a criminal procedure, and whether the winner has had any contracts cancelled.

In the implementation section, an indicator should be added: costs per unit, where all the goods purchased or created over a minimum threshold should be recorded. This does not imply any sophisticated cost

benefit calculation, which a management audit could perform later, but simply a transcription of purchase or creation (for roads, for instance, or clean water) costs when possible.

On the basis of contract data, the Public Procurement Agency open portal could then be programmed to automatically compute the following indicators per contracting authority (at the agency level): 1) the percentage of tenders awarded through single bidding, reported as the number of actual bids submitted (a monthly indicator), 2) the percentage of all contracts and percentage of volume awarded to one bidder (a yearly indicator), 3) the percentage of contracts renegotiated (a yearly indicator) and 4) the ratio of contracts published on the e-portal versus the figure declared to the State Supreme Audit Institution, broken down by type of award procedure.

The second recommendation is to reduce corruption opportunities by completing the digital corruption prevention architecture.

Albania was a pioneer of e-procurement. The existing system needs to take two additional steps to bring even better results.

The Albanian Public Procurement Agency should reorganize its website to register tenders in a database in sufficient detail to allow the automatic computing and monitoring of risk indicators (based on the simplified model of www.opentender.eu). The Agency should be supported by donors in this endeavor, which is not so costly, seeing that Opentender.eu in it's entirety (more than 37 million contracts in 35 countries described for tenths of procurement red flags) cost European taxpayer around one million euro and has annual operating costs of less than 50,000 euro¹⁴. Albania has far fewer tenders and an already digitalized system. The Agency could also cooperate with Albanian civil society, which is highly experienced, having developed parallel monitoring websites. Bringing the Open Procurement Albania website (*openprocurement.al*) and the official public procurement portal together, with civil society working on analytics as partners, could increase trust substantially. Donors to civil society could then sponsor such a development.

The resulting database should be interconnected for periodic checks with the register of the National Business Center (to check for officials in conflict of interest) and (in the future) a conflict of interest database, where interest mandatory interest disclosure could be stored. There exists model software in the Romanian 'PREVENT' example to cross-check tender winners with companies belonging to officials (or associated to them). This requires shareholders of winning companies to be listed in open format, either in the National Business Center Register, or in a Conflict of Interest database based on COI disclosures forms. Currently, contracts are manually reviewed for conflict of interest issues. In Romania, this is not implemented by the Procurement Agency (which has a weak role) but the National Integrity Agency (NIA) which is the safe-keeper of all disclosures of interests and assets for public officials (which are millions, but most of them in pdf format). It is however up to Albania to decide what institution is better placed to

¹⁴ Hertie School of Governance is a partner in this endeavor.

pursue this. NIA uses data on shareholders from the open format data *Register of commerce* to cross-check winners of tenders against the digital public procurement portal. Once the algorithm signals a possible COI, the agency engages the contracting authority in a dialogue to clear the situation. The findings are available only in monthly reports, and the total number of warnings per year has so far been in the low hundreds. NIA argues, however, that the creation of the system five years ago was a major deterrent for COI and led to an immediate fall in the number of companies belonging to public officials and relatives bidding for public contracts. For instance, between June 2017 and October 2020, PREVENT checked 1.245 contracting authorities, 7.314 suppliers and 120.994 individuals, issuing 124 integrity warnings for potential interest conflict of 1,32 billion RON (over 270 mil euro)¹⁵. Both the European Commission Cooperation and Verification Mechanism for Romania and the World Bank Romania praise this mechanism and promote it as best practice.

Finally, the third set of recommendations concerns building public accountability.

Although general agreement exists that decisions are made at the top where Albanian public procurement is concerned, the institutional report shows that the control and punitive systems of anticorruption were built as horizontal systems without clear sanctions and hierarchical administrative (and political) accountability, presuming instead an extensive transaction effort (of communication and coordination) across a multitude of actors.

The establishment of clear, benchmarked targets of public procurement policy on the model of the European Single Market Scoreboard allows decisive steps towards more accountability, and an end to the impunity culture, leaving the slow and so far inefficient judicial procedures only as a last resort policy. To make this operable, first, policy targets should be set. What is the target on competitiveness? In other words, how much can de facto as well as de jure single bidding be reduced? What are the cost standards that the budget can afford? Any such benchmarks, once established, should be published and the reporting system per contracting agency should be modified accordingly.

Second, a new position should be created at top management levels of the government. This position should be responsible for implementing procurement policies, including signing pledges on behalf of the contracting authority to implement government targets and supervising all procurement processes. Such a model already works partly in Albania between the policy delivery office within the Office of the Prime Minister and certain ministries: procurement policy and value for money targets should be included in a standard agreement extended to cover every contracting authority (eventually after their number is reduced due to the Central Purchasing Agency assuming public procurement on behalf of smaller buyers). Reaching targets (for example effective competitive bidding at 90%) should be made conditional for the disbursal of a flexible share of salaries of managers (or a bonus system) and the continuation of the management contract. This can be applied to politically appointed managers, as well as merit-based ones.

¹⁵ Romanian Integrity Agency Prevent System, <https://www.integritate.eu/prevent.aspx>

The Public Procurement Agency could also publish in its annual report whether or not each CA achieved its public procurement targets (it has already published some indicators broken by CAs), or it could publish this data quarterly online, thus enabling the public to check whether the hierarchical superiors of managers hold them to account for their performance. Negative reports from the State Supreme Audit should also be tied into management contracts: currently, they have insufficient follow up. The Public Procurement Agency does not have direct authority over CAs, and such a system where horizontal and vertical accountability are combined would enable principals to check agents and be themselves exposed to public scrutiny if they do not act. In other words, accountability would be better enabled.

The model to reduce risk is captured in the below Figure. On one hand, there is the need to reduce corruption opportunities and enable prevention by streamlining and simplifying procedures and maximizing transparency in all processes, including the monitoring of an extended indicators list. Open formats, with automatic risk computing and cross-checking of databases, can enable transparency. Their calculation at the level of those responsible for implementing public procurement policy targets and their being held accountable by the government are the other part of the chain: the increasing of constraints to high-risk winners by enabling vertical accountability. Together, they can deliver a quality of procurement higher in terms of both integrity and performance for Albania, which is already on a progress track.

