

Annotation

The topic of the dissertation: "Topical issues of law enforcement practice and improvement of the legislation of the Republic of Kazakhstan regulating the sphere of public procurement"

The purpose and objectives of the dissertation: the purpose of the dissertation research is to study the concept and essence of public procurement and identify problems of legal regulation of this area, as well as to develop proposals for improving the legislative and law enforcement framework of public procurement in the Republic of Kazakhstan.

This goal is achieved by solving the following tasks:

- analysis of legislation in the field of public procurement, taking into account the conditions of socio-economic development of the state;
- legal review of procurement procedures in foreign countries;
- Analysis of the legislation of the Republic of Kazakhstan on public procurement for its adaptation to the socio-economic situation in the country;
- study of public procurement procedures, identify the pros and cons of existing approaches;
- identification of problems of legislation and law enforcement practice;
- identification of factors contributing to the commission of offenses in the field of public procurement, including corruption risks in this area;
- development of proposals and recommendations for improving the legislative and law enforcement framework of public procurement in the Republic of Kazakhstan.

The theoretical and methodological basis of the research was the works of domestic and foreign researchers devoted to the problems of legal regulation of public procurement, research results, views and concepts.

The object of the study is the public relations arising from the legal regulation of public procurement in the Republic of Kazakhstan.

Scientific novelty and provisions submitted for protection.

This dissertation work comprehensively examines the issues of public procurement in the Republic of Kazakhstan, as a result of which proposals are being developed to improve legislation in the industry. In addition, the presented work analyzes the current trends in the development of public procurement in Kazakhstan.

Special attention was paid to sustainable public procurement, which was considered as one of such trends, and in the course of work they were separated into a separate division. It is known that one of the innovations of the new law "On Public Procurement", adopted on July 1, 2024, was the introduction of the principles of sustainable public procurement. During the writing of this dissertation research, a new law was discussed, which was adopted only at the completion stage, and is scheduled to enter into force at the beginning of 2025. Therefore, we were unable to assess how aspects that include sustainable public procurement work in practice. However, as an industry researcher, we also have to admit that such an innovation could not be ignored.

Given that public procurement accounts for 13% to 20% of Kazakhstan's GDP, it can be said that sustainable public procurement has sufficient potential to

become a tool for sustainable development of the state. It is expected that sustainable public procurement will contribute to improving energy efficiency and resource conservation, increasing waste recycling, introducing environmentally friendly technologies, improving working conditions and improving employee safety. Kazakhstan is obliged to develop and implement national standards, guidelines and criteria related to sustainable public procurement, taking into account international experience and proposals from international organizations.

The main provisions submitted for protection:

The 1st position to be defended:

The author's definition is proposed under the concept of "public procurement". Various definitions and interpretations of public procurement can be found in modern legal and economic scientific literature. Taking into account the various definitions and explanations contained in the discussed scientific literature on public procurement, the specifics and provisions of national legislation, the following author's definition is proposed: "public procurement is a legal relationship that arises between a customer and a supplier in order to purchase goods, works and services necessary for the state to perform its tasks at the expense of the state budget".

The 2nd group of provisions submitted for protection:

With the adoption of the new law "On Public Procurement" (effective January 1, 2025), which was signed on July 1, 2024, one of the innovations was the introduction of the principles of sustainable public procurement. Development trends today require a review of the role of public procurement. In other words, public procurement should be considered not as a management function, but as a tool for achieving strategic goals for sustainable development in the field of environmental, economic and social development.

The adaptation of legislation necessary for the introduction of innovations requires large-scale measures. Therefore, along with the adopted basic law, normative acts were adopted in the form of additional provisions dependent on it, in which:

- a list of goods, works and services should be defined, for the purposes of public procurement of which environmental criteria are determined;
- it is necessary to approve the procedure for determining environmental criteria for goods, works and services, we do not have such an order today;
- minimum limits on the volume of public procurement of goods, works and services should be determined, according to which environmental criteria are defined;
- a clear mechanism for the principles of purchasing environmental, innovative and high-tech goods, works and services should be approved. That is, a clear definition of the preference for environmentally friendly products and the methodology of its practical application should be fixed.

In addition, within the framework of the national policy for the implementation of the Sustainable Development Goals, the Government of the Republic of Kazakhstan is obliged to take measures to ensure the integration of sustainable public procurement into the development strategy, legislation and practice of public procurement. When conducting public procurement, customers

should include sustainability criteria in the technical specifications and procurement documentation, which are taken into account in the evaluation and selection of suppliers and contractors. The Government of the Republic of Kazakhstan, taking into account international experience and proposals from international organizations, is obliged to develop and implement national standards, guidelines and criteria related to sustainable public procurement. Government of the Republic of Kazakhstan:

1) ensuring systematic monitoring and evaluation of the effectiveness of sustainable public procurement, as well as transparency and accessibility of information on the results of public procurement and its impact on social, environmental and economic aspects of development;

2) conduct regular analysis of legislation and practice in the field of public procurement and adapt to international requirements to ensure compliance with international norms and standards in terms of stability;

3) provide training and advanced training of public procurement specialists in the field of sustainability, contributing to the development of professionalism in this field;

4) Organizations and institutions engaged in public procurement should ensure that the principles of sustainable public procurement are respected in their procurement procedures and turn them into their corporate strategy and practice;

5) in order to stimulate the participation of suppliers and contractors in sustainable public procurement, the Government of the Republic of Kazakhstan should provide advantages, tax and financial benefits to suppliers and contractors applying the principles of sustainability in the assessment and selection process;

6) The Government of the Republic of Kazakhstan, in order to share experience, knowledge and best practices, as well as promote global sustainable development, should cooperate with international organizations, other States and other stakeholders in the field of sustainable public procurement;

7) creation of a specialized body responsible for monitoring compliance with stability rules, as well as for the development and implementation of innovative approaches in the industry and monitoring its results.

The 3rd group of provisions submitted for protection:

It is necessary to review the mechanism of appeal by the participants of the tender in the public procurement process.

Article 25 of the Law "On Public Procurement", adopted on July 1, 2024, changed the procedure for appealing actions, decisions of the customer, the organizer, the single organizer, the expert commission. In accordance with the innovation, the obligation to review the complaint has now been transferred to the organizer of the purchase.

We believe that the innovation has two weaknesses: first, it may be difficult to perform the procedure efficiently in practice, since it may be difficult for the customer to establish a commission in the form given in section b of Part "2.2" of this study, and to recognize that the requirements were violated in the procedure that he conducted. According to our forecasts, the customer will first of all look for a convenient and safe solution for himself when considering a complaint, and I am

also sure that creating a commission and attracting other representatives from the organization to it will be a difficult issue for practical implementation. In addition, such a new type of procedure creates an additional corruption risk. This is because the procedure risks becoming a new tool for "accomplices". If the customer is a supplier who has received "support", complaints can be filed and considered unilaterally in agreement with the customer or, conversely, all conditions are created to ensure that the complaint is not satisfied if it is a "foreign" participant.

The risks, in our opinion, are very high, and this step by the legislator looks ineffective.

Suggestion: we consider it necessary to leave the procedure for reviewing the current complaint, i.e. leave the option in the wording of the law "On Public Procurement" of 2015. If necessary, leave only one of the two audits, as well as reduce the time for reviewing complaints by increasing the staff of the Internal State Audit Department.

We believe that the following amendments to the legislation are necessary in the direction of regulating the public procurement process:

1) attempts to improve legislation necessary to reduce the volume of public procurement from a single source should be continued. The revision of the criteria for procurement in this way and the reduction of the list of exceptions should lead to increased competition in procurement. Measures to improve the quality of market research and the compilation of technical specifications should be effective to ensure competition and reduce the volume of public procurement that has been declared invalid.

2) issues of regulation of procurement of quasi-public sector entities. Among such questions are:

- lack of proper control over these entities;
- low liability corresponding to violations in this area;
- the lack of a single information and analytical platform;
- the predominance of administrative regulatory approaches;
- the burden of dispute resolution for entrepreneurs;
- we attribute an insufficient level of transparency in procurement.

Recommendations:

Proposal 1 -it is necessary to work out the range of subjects of corruption offenses again:

- it is known that in the quasi-public sector, the range of subjects of corruption offenses has been expanded to deputy heads of organizations, heads of structural divisions, accountants, lawyers and other persons related to procurement and material and financial resources. However, it should be borne in mind that some of these persons may carry out activities on the basis of a contract for the provision of paid services and are not direct employees of such organizations, in connection with which clarifications will be required regarding the responsibility of these entities. For example, we believe that an employee of the organization, who is his direct supervisor, or a supervisor who has concluded a contract with him for the provision of paid services, should be present for the actions of such an entity.

Proposal 2-it is necessary to increase control over the activities of quasi-public sector entities in the field of procurement:

- in order to increase control over the activities of quasi-public sector entities, it is proposed to create internal control services with the authority to verify and control in this area, and for their full-fledged activities, appropriate provisions on these services, uniform rules for control in the field of procurement by the state should be developed. We also believe that internal audit services should not be part of these holdings and that they should be entrusted with trust responsibility and that the audit should be accountable only to members of the Board of Directors;

Proposal 3-a measure to increase the responsibility of employees of quasi-public sector entities in the field of procurement engaged in this activity:

- we consider it advisable to clearly distinguish the provisions of corporate standards of quasi-public sector entities from the official duties of their employees, especially in procurement tasks.

3) changes in terms of procurement legislation conducted using framework agreements. Framework agreements are conducted in accordance with the requirements approved by the Order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 "On approval of the Rules for Public Procurement". In accordance with the procedure defined by the rules, purchases can be made by a single organizer of public procurement of the district of the region, the city of regional significance, the district in the city of regional significance, the city of republican significance and the capital.

However, in practice, there are often cases when the organizers of unified public procurement of this type are not. The issue concerned only the regions, and at the republican level, the Treasury Committee of the Minister of Finance of the Republic of Kazakhstan currently functions as a single organizer of public procurement.

Proposal: we consider it necessary to approve unified organizers, whose specific functions and tasks are defined in each region of the republic, as well as to introduce an effective mechanism that allows you to select framework agreements on the procurement web portal.

We propose a new mechanism for conducting independent public monitoring and expertise in public procurement.

We propose to introduce the control of independent experts, which will help ensure fairness and transparency in procurement. Experts may be representatives of public organizations that monitor purchases and have the right to conduct an expert examination of certain purchases. Information about such examinations is publicly available. We consider it necessary that through the new application posted on the Web portal, the opportunity to see the results of monitoring and expertise is created. Such a button should be located on the main page of the procurement web portal called "Public Monitoring and independent expertise".

The 4th group of provisions to be defended:

We propose to stimulate the improvement of the efficiency of the e-procurement system by evaluating the proper operation of the public procurement

process both at the level of individual procedures and at the level of the system as a whole. For these purposes:

1) it is necessary to transfer all state and quasi-state organizations to a single procurement platform, which will eliminate contradictions in legislation.

As a result of the analysis of the legislation, the lack of unity at the legislative and implementation (technical) levels of existing procurement systems has been revealed. Thus, in accordance with subparagraph 15) of Article 2 of the Law "On Public Procurement": "the web portal of public procurement is an information system of a public authority providing a single point of access to electronic public procurement services" [1]. And in accordance with subparagraph 12) of Article 2 of the Law "On Procurement of Certain Subjects of the quasi-public sector": "the procurement web portal is an information system that ensures procurement in electronic format in accordance with this Law and the rules of procurement" [2]. In accordance with subparagraph 2) of Article 2 of the Procurement Procedure by legal entities directly or indirectly owned by Samruk-Kazyna JSC: "the procurement web portal is an information system of the Fund that ensures electronic procurement in accordance with the law and procedure" [3]. Taking into account the instructions of the Head of State, it is necessary to create a unified information platform for the republic as a whole, including public procurement of the quasi-public sector, including the Samruk-Kazyna Fund. Accordingly, at the level of the law "On Public Procurement" it is necessary to consolidate the concept of a "unified public procurement platform".

2) the results of the public procurement process should be evaluated on a periodic and consistent basis. Within the framework of the public procurement system, it is necessary to collect relevant and reliable information, use this data to make high-quality decisions on future public procurement and identify new needs.

3) an additional system is needed with an automatic assessment of the effectiveness, efficiency and cost-effectiveness of the public procurement system, which allows for comparative analysis and contributes to the development of strategic decisions in the field of public procurement, and the development of new standards defining its functions.

An assessment of this kind should allow you to know reliable and up-to-date procurement data at all levels, specific: monitoring the fulfillment of conditions and the status of individual customers. The measure will form the basis of reforms aimed at improving the qualitative assessment of performance indicators in the public procurement system and preventing cost overruns.