



**ӘЛ-ФАРАБИ АТЫНДАҒЫ ҚАЗАҚ ҰЛТТЫҚ УНИВЕРСИТЕТІ
ХАЛЫҚАРАЛЫҚ ҚАТЫНАСТАР ФАКУЛЬТЕТІ**



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30 жылдық мерейт ойы на арналған
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ТЕОРИЯ ЖӘНЕ ТӘЖІРИБЕ»**

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им. аль-Фараби
25 ноября 2020 года**

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of materials of the International Scientific and Practical Conference
«ACTUAL PROBLEMS OF MODERN INTERNATIONAL
LAW: THEORY AND PRACTICE»,
dedicated to the 30 th anniversary of the formation of International Law Chair
of International Relations Department of Al-Farabi Kazakh National University
November 25, 2020**

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Материалы конференции включают в себя статьи представителей научного и академического сообщества ведущих ВУЗов и НИИ страны, ближнего и дальнего зарубежья, представителей государственных структур, дипломатических миссий и международных организаций, аккредитованных в Республике Казахстан.

Рекомендуется научным работникам и другим специалистам юридических и экономических специальностей, докторантам, магистрантам, бакалаврам юридических и экономических вузов.

THE LEGAL REGULATION OF PUBLIC PROCUREMENT: THE CONCEPT AND PROBLEMS

Түйін. Мақалада мемлекеттік сатып алу ұғымы, сондай-ақ мемлекеттік сатып алуды реттеу саласындағы Қазақстан Республикасының құқықтық актілерінің және негізгі халықаралық-құқықтық құжаттардың жалпы сипаттамасы берілген. Автордың пікірінше, мемлекеттік сатып алуларды ұйымдастыру, сонымен қатар оларды басқару мемлекеттің қажеттілігі үшін сенімді жеткізуші мен ұтымды бағада тауарлар мен қызметтерді қажетті сапа мен мөлшерде алуға бағытталған елдің экономикасына мемлекеттің әсер етуінің басты құралдарының бірі болып табылады. Қорытындылай келе, автор мемлекеттік сатып алудың тек мемлекеттік қажеттіліктерді ғана емес, мақсатты бағдарламаларды іске асыруды, сондай-ақ тұтастай алғанда мемлекеттің экономикалық, құқықтық, әлеуметтік дамуын қамтамасыз ету үшін маңыздылығын атап өтеді.

Түйінді сөздер: мемлекеттік сатып-алулар, тиімділік, ашықтық, құқықтық реттеу.

Резюме. В статье дано понятие государственных закупок, а также общая характеристика правовых актов Республики Казахстан и основных международно-правовых документов в сфере регулирования государственных закупок. По мнению автора, организация государственных закупок, а также управление ими являются одним из главных инструментов воздействия государства на экономику страны, направленным на получение необходимого качества и количества товаров и услуг в качестве надежного поставщика и разумных цен для нужд государства. В заключении автор подчеркивает важность государственных закупок для обеспечения не только государственных потребностей, но и реализации целевых программ, а также экономического, правового, социального развития государства в целом.

Ключевые слова: государственные закупки, эффективность, прозрачность, правовое регулирование.

Summary. The article presents the concept of Public Procurement, as well as a general description of legal acts of the Republic of Kazakhstan and the main international legal documents in the field of Public Procurement Regulation. According to the author, the organization of Public Procurement, as well as their management, is one of the main tools of state influence on the country's economy, aimed at obtaining goods and services of the necessary quality and quantity at a reliable supplier and rational price for the needs of the state. Summing up, the author notes the importance of public procurement for ensuring the implementation of not only state needs, but also targeted programs, as well as the economic, legal, and social development of the state as a whole.

Key words: public procurement, efficiency, transparency, legal regulation.

The transition to a market management system is reflected not only in the emergence of a market represented by many sellers and buyers, freely establishing the partnership between the seller and the buyer, between which a purchase and sale transaction of goods and services is concluded. In this general market, there is a unique, specific market represented by many sellers and one buyer on behalf of the state.

As world practice shows, the effective use of the state's financial resources for the implementation of its activities is carried out through public procurement.

The state acts on the market as the largest buyer in all countries. Thus, in the United States, public procurement accounts for about 15% of the state budget, and in other countries, where the state makes purchases to meet social needs, this share is even higher. In countries where the market economy replaces centrally managed products, up to 50% of the national budget is spent on public procurement [1].

One of the determining factors for the development of market relations and the creation of competitive economic potential is the activation of financing activities through the use of state support opportunities. The main task of the National Public Procurement System is to ensure the purchase of goods, works and services for state needs.

Disposing of financial resources, the state body acts as an authorized representative of the state, so the expenditure of taxpayers funds should be carried out with the adoption of the necessary measures to ensure the maximum implementation of state interests.

Over the past half-century, the functions of the state have significantly expanded, in particular, in industrialized countries. One of the main mechanisms of state influence on the country's economy is the state order system, the purchase of goods and services for various needs. The organization of Public Procurement, as well as procurement management, is aimed at obtaining the necessary raw materials, materials or goods and services in terms of quality and quantity from a reliable supplier and at a reasonable price. It affects the price level, the income of individual entrepreneurs who will be interested in increasing the volume of production and the total number of sales. Thus, it can be noted that the private business sector will be involved in solving social and economic problems through public procurement.

Public procurement is a process used by the government to conclude contracts with service providers and suppliers [2].

From the point of view of the goals and interests of the state, procurement performs the following tasks::

- serves as a way to meet the needs of the state for goods and services produced by its own, domestic producers, entrepreneurs;

- it will increase and revive the demand for goods and services in the country, which will create motivating reasons for the development of production and entrepreneurship, and economic growth;

- promotes competition between producers who play the role of suppliers of products for state needs, which strengthens market principles in the economy and contributes to the growth of production efficiency and quality [1].

The issues and ways to modernize the public procurement system are currently the subject of public discussion. Special attention to this topic is explained by the large amount of budget funds allocated for the purchase of goods, works and services for state needs and corruption risks in this area.

One of the goals that buyer government agencies should focus on when conducting procurement campaigns is to reduce the cost of completing an order or get the greatest result at a given cost level. Therefore, taking into account the conditions and restrictions formed by the customer, it is necessary to choose a supplier who can and agrees to fulfill the order at the lowest price. As world practice shows, a universal tool for solving the problem of choosing a suitable supplier is conducting competitive bidding.

All over the world, procurement decisions for public needs are made by civil servants. The vast majority of corruption actions fall on the support of officials in the interests of specific suppliers. The most common schemes of corruption in this area are rollbacks, fraud with tender offers, and the use of fake or fake companies.

In the process of organizing purchases, it is very important to combat inefficiency. At the same time, the main mechanisms used are increasing information transparency, improving the skills of employees, regulating the rules of conduct of employees responsible for public procurement, and applying sanctions in case of detection of violations.

Corruption in the public procurement system leads not only to financial losses, but also to huge losses for any country. The state seeks to protect itself and protect itself from it. For this purpose, there is a constantly updated legal framework.

However, the problem of corruption in the field of public procurement cannot be solved in isolation by a single law. The solution to this problem can only be systematic, since the problem itself is part of a wide range of problems.

Analyzing international experience, we can conclude that no country in the world has managed to completely eliminate corruption in public procurement, but this does not mean that measures to reduce its level are ineffective. Today, the main efforts of all state bodies are aimed not at preventing and preventing corruption manifestations, but at eliminating the consequences of crimes committed.

To solve the problem of corruption, it is necessary to have political will, regulate procedures and tighten control, as well as a deeper approach related to the organizational and personal motivation of decision-makers, the development of competition both between suppliers and customers.

The fight against corruption in the field of public procurement of the Republic of Kazakhstan is carried out in accordance with the Constitution, the Criminal Code, the Law of the Republic of Kazakhstan “On combating corruption” and other legal acts. In accordance with the Law of the Republic of Kazakhstan “On Public Procurement” [3], the fight against corruption is also carried out by state regulation of procurement provided for in Chapter 2 of the law. The government, the authorized body, and a single operator in the field of public procurement are assigned certain powers.

The legislation of the Republic of Kazakhstan on public procurement is based on the Constitution of the Republic of Kazakhstan, consists of the norms of the Civil Code of the Republic of Kazakhstan, the law of the Republic of Kazakhstan on Public Procurement dated December 4, 2015, the rules for public procurement approved by the order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648 and other normative legal acts of the Republic of Kazakhstan.

The Law of the Republic of Kazakhstan “On Public Procurement” regulates relations arising in the process of purchasing goods, works and services from suppliers for the purpose of effective use of funds owned by state bodies, state institutions, state-owned enterprises, as well as Joint-Stock Companies and legal entities with a controlling stake in them owned by the state.

In accordance with the Law «on public procurement», public procurement is carried out in one of the following ways:

- competition;
- request for price offers;
- from one source;
- auctions;
- commodity exchanges [3].

The procurement policy requirement is that all public procurement should be based on the price-quality ratio, which is defined as «the best combination of quality and efficiency for the lowest costs during the period of use of the purchased goods or services». This should be achieved through competition if there are no valid reasons for the return.

Procurement in the public sector is regulated by a legal framework that encourages free and open competition and price-quality relations in accordance with international and national agreements and norms. Within the framework of its strategy, it coordinates the public procurement policy with this legal framework, as well as its broader political goals [4].

The generally accepted principles of procurement and order placement in world practice are formulated in the legislation of individual countries and registered in a number of international documents: the UNCITRAL Model Law on public procurement [5], the WTO agreement on government procurement [6], the EU directives, documents of the Organization for Economic Cooperation in the Asia-Pacific region, and others.

The model law on public procurement, developed by the United Nations Commission on international trade law (UNCITRAL), defines approaches recognized by the world community to the norms and rules of public procurement, the application of which allows different countries of the world to form modern national legislation. The model law on public procurement replaces the model law on the purchase of goods (works) and services of 1994. The new document accurately corresponds to the realities of the time, introducing new procurement technologies that have developed in recent years into the legal sphere, as well as inevitably modernizing relations between procurement subjects in accordance with current social trends.

The model law is aimed at ensuring maximum cost-effectiveness and efficiency of procurement; expanding and stimulating supplier participation in procurement, thereby promoting international trade; developing competition between suppliers in relation to purchased goods (works) or services; ensuring fair and equitable treatment of all suppliers; promoting objectivity and fairness of the procurement process and public confidence in it; and ensuring transparency of procurement procedures.

The law reflects the consequences of revolutionary changes, such as the widespread use of the Internet, the development of electronic forms of trade and automated electronic trading procedures.

The use of information and communication technologies for state needs in the field of public procurement will eliminate existing shortcomings.

The introduction of Electronic Procurement Information Systems will ensure the improvement of procurement procedures by automating all stages and stages of procurement planning, formation and implementation processes, as well as functions for analyzing and monitoring their implementation.

Transparency of the procurement mechanism at all stages and levels will prevent reduction of budget expenditures when purchasing products for state needs and increase the economic efficiency of the work of executive bodies of state power.

It is very relevant to conduct electronic auctions for the purchase of products for state needs. The advantages of electronic trading are obvious.

Electronic auction is the main electronic procurement method used in the world. This method allows you to determine in real time the price offered by the supplier for a particular product, work or service. This

method is the most complex in terms of implementation, as it provides for specific trades in which suppliers can respond to each other's offers and compete with each other in a strictly competitive mode.

The introduction of electronic bidding in the implementation of public procurement is aimed not only at automating the daily processes of interaction of procurement authorities with potential contractors, but also at reducing the cost of performing procurement procedures and sharply reducing the time frame for conducting these operations.

It should be noted that the electronic procurement system of each country is unique, since each country has its own institutional features that are unique only to a particular country, so each system is characterized by its own features.

The first electronic Public Procurement Service in the Republic of Kazakhstan appeared on the portal recently, in 2007 the automated integrated information system «electronic public procurement», the web portal of public procurement in the Republic of Kazakhstan is a state information system that provides a single point of access to electronic public procurement services. Participation in the web portal of public procurement of the Republic of Kazakhstan is completely free of charge. All information posted on the web portal of public procurement is provided free of charge.

Since 2013, public procurement in Kazakhstan has been transferred to the e-commerce format. Tasks of the web portal:

- reduction of budget expenditures for the purchase of goods, works and services for state needs;
- unified procedure for forming and placing a state order;
- reduction of costs for conducting public procurement procedures;
- creating equal conditions for competition between suppliers;
- quick access to the collected information;
- significant reduction in paper document flow;
- increasing transparency and transparency of the public procurement process;
- reducing the number of offenses in the process of Public Procurement [7].

Thanks to the electronic public procurement system in Kazakhstan, the state saves a large amount of budget funds.

However, in addition to the advantages that an electronic form of Public Procurement provides in Kazakhstan, there are some disadvantages in this area [8].

Currently, most of the public procurement in Kazakhstan is carried out through the web portal of public procurement in Kazakhstan by means of price offers. Despite the simple procedure for submitting price offers, there are often situations of misunderstandings between suppliers and customers when conducting public procurement procedures. In order to ensure the victory of the price offer, avoid difficulties in fulfilling the terms of the contract and enter into the Register of unfair participants in public procurement in Kazakhstan, potential suppliers need to know and comply with the procedure for submitting price offers and concluding contracts based on the results of procurement.

One of the most important problems for the customer is the ability to purchase low-quality goods when requesting price offers, since price is the main criterion.

Since customers do not know their suppliers, in order to protect themselves, they must carefully write down all the points that require a lot of time and conclude voluminous contracts.

Also, the procedure may be delayed due to the refusal of suppliers who have won the competition to conclude a contract for certain reasons. There are situations when the customer cannot find their suppliers.

If the supplier refuses to conclude a contract, the customer applies to the court to include them in the Register of unscrupulous suppliers, which also prolongs the procedure. Technical problems are noted.

The above presupposes the need for further elaboration in the field of Electronic Procurement, simplification of procedures and creation of a harmoniously understandable and accessible system for the supply of goods and services.

The study of the mechanism of functioning of Public Procurement involves abstraction from specific forms of formation of public goods, its division into pure and mixed forms and allows us to focus the main attention on factors that determine the dynamics of demand and supply of public goods, pricing features.

Legal regulation of public procurement is a complex and continuous process of adoption, adjustment and application by the state of legal norms regulating the sphere of public procurement by establishing uniform rules, rights and obligations of its subjects. Public procurement as an object of international and National Legal

Regulation is a complex, continuous process of ensuring state needs by attracting external performers on a paid basis and consists of a set of interrelated and consistent stages: forecasting, planning, formation, placement, execution and control.

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ЖУНИСОВ Ж.С. ЕУРАЗИЯЛЫҚ ЭКОНОМИКАЛЫҚ ОДАҚТА МҮШЕ-МЕМЛЕКЕТТЕРДІҢ ЗАҢНАМАЛАРЫН ҮЙЛЕСТІРУ МЕН БІРІЗДЕНДІРУДІҢ КЕЙБІР МӘСЕЛЕЛЕРІ	175
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