

Begzhan Aizat,
2 year doctoral student
Scientific director:
Professor Aidarbayev Sagyngaliy

Principles of legal regulation of government procurement

The system for fulfilling public needs through competitive procedures is based on certain principles that can be divided into two groups.

The first group of principles are the so-called "properties of bidding", that is, without them, the very existence of the competitive system will be in question:

a) Transparency implies a wide availability of information about the announcement of tenders, their progress and results, and the legal framework for procurement. The principle of openness and transparency is expressed in conducting competitions, publishing information and ads. Ads for open competitions must be published in special publications.

b) Equality means that the conditions for conducting competitions, criteria and procedure for determining the winner are set in advance, and they are the same for all participants. In addition, these conditions should not change during the actual bidding process. It is a categorical requirement that no discriminatory measures be taken against any of the participants. The legal equality of the customer and suppliers is also implied.

This principle is implemented by providing equal opportunities for participation in public procurement to all suppliers – unitary enterprises and limited liability companies, enterprises owned by citizens of open joint stock companies with foreign capital. Of course, the state sets quite strict requirements for the quality of goods and the availability of licenses in order to supply goods and services to anyone, but reliable suppliers with good quality products [1].

c) Responsibility means the mutual fulfillment of obligations by the parties to each other in the course of procurement, as well as the legality and civility of building contractual relations.

All state authorities and individual officials bear administrative, civil and criminal responsibility. In case of collusion in the implementation of public procurement, both parties – the buyer and the supplier-are responsible. In this case, the supplier is included in the list of unscrupulous suppliers [1].

The second group of principles is related to the costs (expenses) arising in the course of competitive placement of orders and other procedures related to public procurement. Using these principles, you can evaluate the correct organization of purchases.

(a) Effectiveness means that the cost of organizing and conducting competitive bidding, while complying with the necessary rules and procedures, including the unconditional provision of transparency, equality and responsibility, should be as low as possible. It should be emphasized that cost reduction should be achieved by improving the management of the organization and bidding process.

(b) Efficiency is the main criterion for the effectiveness of procurement. Purchasing efficiency can be achieved by introducing competition to the market. Taking into account the specifics of the public procurement market, competition can be introduced by holding competitions (auctions), in which anyone can participate. It involves purchasing the required products with the maximum benefit for the buyer, which is the state. Moreover, the state can benefit directly (saving money) and indirectly (fighting corruption, stimulating competition, supporting its own producers, expanding the tax base, etc.).

The principle of efficient use of budget funds is essential for public procurement. The importance of this principle in this case is determined not only by the high proportion of purchases in the structure of budget expenditures, but also by the fact that the majority of offenses in the field of budget procurement are related to its violation. Some authors call it the principle of economy mode. However, D. A. Abdrakhimov emphasizes that "from the point of view of the concepts of system analysis, economy cannot be considered as an independent strategic goal of the same level as efficiency, since resource saving is one of the main economic results compared with costs within the concept of "efficiency"" [2].

Particular importance is attached to the principle of efficiency in relation to public procurement by the fact that, unlike many other types of budget expenditures aimed at the production of public goods that are not subject to purchase and sale (such as life expectancy, the state of the environment, public safety), the effectiveness of which causes serious difficulties [3], the effectiveness of public procurement can be clearly expressed in monetary terms. Given that the majority of goods, works and services purchased for state needs are available on the market, the effectiveness of the public procurement system can be assessed by comparing the average price of government contracts with the market price of a particular product, taking into account the cost of placing a state order [4, p.42-43].

If we consider the legislation of the Republic of Kazakhstan, in accordance with article 4 of the Law RK "About state procurements" dated 4 December 2015 [5], the implementation of public procurement based on the principles of:

- 1) optimal and efficient spending of money used for public procurement;
- 2) providing potential suppliers with equal opportunities to participate in the public procurement procedure, except in cases provided for by this Law;
- 3) fair competition among potential suppliers;
- 4) openness and transparency of the public procurement process;
- 5) providing support to domestic producers of goods, as well as domestic suppliers of works and services to the extent that this does not contradict international agreements ratified by the Republic of Kazakhstan;
- 6) responsibility of participants in public procurement;
- 7) prevention of corruption;
- 8) purchase of innovative and high-tech goods, works, and services.

A distinctive feature of public procurement from private procurement is the implementation of purchases with the taxpayer's money, and not on their own. The state budget funds are used to purchase goods and services necessary for its needs. Budget restrictions are set for public procurement. The legislature approves the final

budget for public procurement and all its further changes. For effective economic growth, States need to adhere to the basic principles of public procurement, and first of all, one of the most important principles – effective budget spending.

References

1. Галанов В.А., Гришина О.А., Шибаетов С.Р. Логистика государственных закупок: учебно-методическое пособие. - М.: ИНФРА-М, 2010. – 247 с.
2. Абдрахимов Д. О путях повышения эффективности системы конкурсных госзакупок // Информационно-аналитический бюллетень Конкурстные торги, 1999, №3
3. Яковсон Л.И. Эффективность государственных закупок // Информационно-аналитический бюллетень «Конкурстные торги». 2001, июль-август. С. 16-24.
4. Золотарева А.Б. Финансово-правовое регулирование бюджетных закупок: Дисс... канд. юрид. наук. - М., 2004. - 214 с.
5. Закон РК «О государственных закупках» N 434-V от 4 декабря 2015 года // https://online.zakon.kz/document/?doc_id=34050877