

Financial and legal aspects of government orders in Uzbekistan

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Abstract: Improving the regulation of public procurement requires the development of the legal and institutional framework for public procurement. For the above reasons, great attention is paid in our country to reforming the system of public procurement. In the context of economic liberalization, a number of regulations aimed at ensuring openness and transparency of public procurement processes are being adopted. Improving the legal and institutional framework for public procurement can be divided into the following stages [11]: The first stage - the period up to 2011. The second stage - covers the years 2011-2018. The third stage - the period after the adoption of the Law of the Republic of Uzbekistan "On Public Procurement" [1]. Until 2011, the process of organizing and conducting public procurement was regulated by legislation adopted in 2000. These documents were not perfect and did not provide a solution to the problems that arose in various conflict situations. In addition, the imperfect legal framework has led to a number of misunderstandings and violations. Naturally, at such times, financial resources are used inefficiently, corruption occurs, the country's economy suffers even more, because the issue is about the money spent from the state budget. We are well aware that macroeconomic stability, low inflation, low unemployment, first of all, depend on financial resources [11]. Therefore, the legal framework should be perfect and regulatory documents should be improved on the basis of equality, transparency and the principles of equality. Effective use of funds, further improvement of the procurement system, expansion of opportunities for small businesses to obtain government orders for the supply of goods (works, services), further development of competition, ensuring openness and transparency in public and corporate procurement will be created only on a sound legal framework. Therefore, this article presents a number of shortcomings due to the existence or imperfection of the imperfect legal framework, the material damage caused to the economy due to misunderstandings, as well as additional principles, clauses and practical suggestions from foreign experience to address these shortcomings.

Keywords: public procurement, small business, efficiency, profitability, intensive growth, financial stability, production process, competitiveness, transparency, extra-budgetary funds, infrastructure, tax, revenue.

1. Introduction

Improving the regulation of public procurement requires the development of the legal and institutional framework for public procurement. In the context of economic liberalization, a number of regulations aimed at ensuring openness and transparency of public procurement are adopted in the world. Public procurement is a large segment of budget expenditures, creating an economic space to stimulate change that creates opportunities for effective, sustainable development of the national economy while performing certain functions to meet state and municipal needs. The state encourages the improvement of demand and regulatory framework for modern products by increasing the requirements for government orders. Prior to the creation of a multi-level system of public procurement in the country will be formed relations between public customers and suppliers, the regulatory system of public procurement, the order of procurement, the responsibility of suppliers and customers, the rules of control over the effective use of budget funds. Rules for participation of foreign suppliers in public procurement have been formed. Establishing the responsibility of participants in the process of public procurement and the application of appropriate penalties for violations will lead to the rational use of financial resources. Loot is prevented from looting and corruption. Therefore, laws must prevail and legal principles must be firmly established. That is why the legal framework plays an important role in the process of public procurement. For the legal framework to be crucial, the country's domestic laws and regulations must be clear, unambiguous, and equitable for all, and must not contradict international law. Research shows that the stricter the public procurement rules, the higher the discretionary power of the customer. On the one hand, this increases the flexibility of public procurement, on the other hand, it creates many opportunities for rent-oriented behavior. For this reason, one of the most important issues is the perfect provision of legislation in public procurement.

2. Materials and methods

Development of economic policy aimed at increasing the efficiency of the economic system in the context of deepening economic reforms is a priority in the development of public procurement. This policy should be based on the use of modern marketing methods at all stages of formation and placement of public orders, the transition to strategic planning and management, the conclusion and execution of public procurement contracts as an element of public economic activity. This is because public procurement is a large segment of budget expenditures, creating an economic space to stimulate change that creates opportunities for effective, sustainable development of the national economy by performing certain functions to meet state and municipal needs. The Law on Public

Procurement of the Republic of Uzbekistan also had a number of shortcomings [1]. It would be expedient to enrich the new Law with the following norms in order to supplement the old one. The current legislation does not stipulate that the person responsible for the organization and conduct of procurement procedures of the public customer must have professional skills. The sum of economic societies and enterprises of strategic importance in accordance with the current legislation, the share of state-owned enterprises in the authorized fund (authorized capital) and the share of legal entities with a state share of 50% or more in the authorized fund (authorized capital). Legal entities with a share of 50% and more in the authorized fund (authorized capital), state-owned enterprises in the authorized fund (authorized capital) and legal entities with a state share of 50% and more in the authorized fund (authorized capital) the sum of the shares. [21] Public procurement by legal entities of 50% or more is not covered by the Law of the Republic of Uzbekistan "On Public Procurement"[1]. The following problems arise in the current legislation and regulations in the field of public procurement [21]:

- Procurement of strategic companies and enterprises is not fully covered by law (24 entities);
- no administrative liability for violation of public procurement legislation;
- in the first half of 2020, 20% of public procurement (6.7 trillion soums) was carried out under a direct contract on the basis of assignments issued as an exception;
- no measures have been taken to prevent the participation of affiliates in trades;
- preliminary qualification selection in the current legislation
- and concepts such as backup winner do not exist;
- there is no direct procurement system in case of emergency.

The shortcomings of the current legislation are as follows

- no liability has been established for violations of public procurement legislation;
- due to the fact that the basic concepts in the current legislation in the field of public procurement are not fully and clearly defined, there are various problems in the application of norms and procedures in practice, such as various interpretations;
- in a certain part of public procurement there are cases of participation in one lot by affiliates of the participant and the participant of the procurement procedure in case of unfair competition.
- today, there are no benefits and preferences for local businesses.

In addition, the fact that the basic concepts are not fully defined in the current law causes problems in the application of legal norms. In particular, although today there are 57 organizations specializing in public procurement, their status is not reflected in the current law. The introduction of the concepts will prevent different interpretations of the norms, identify beneficiary owners, exclude participants from trading if anti-competitive actions or conflicts of interest occur, as well as if an affiliate situation is identified. Public procurement laws in countries such as Russia, Kazakhstan, and Georgia contain similar concepts [20].

3. Results

The current version of the law does not provide for the authority of public administration bodies to enter into direct contracts for public procurement. As a results, Under the current version of the law, companies with a larger state share are not fully covered by public procurement legislation. In particular, Uzavtosanoat JSC will transfer its shares in Avtooyina (100%), Avtokomponent (99%), Uz-Koram Company (100%) and UzSUNGVU (50%) to Uzavtokomponent, which led to the non-application of the requirements of the Law "On Public Procurement"[1]. In the first half of 2020, 37.4 thousand transactions worth 2,956.8 billion soums were concluded by corporate customers, of which 1,770 billion soums (59.8%) were made on the basis of direct contracts. The repeal of the existing procedure will serve the full application of the principles of openness, transparency and impartiality of the law [21]. Today, strategic enterprises regularly violate the requirements for posting information on a special information portal on public procurement. In the first quarter of this year, JSC "Uzmetkombinat" - 984.4 billion soums (230 units), JSC "Uzbekistan Railways" - 88.9 billion soums (116 units), JSC "Uzbekcoal" - 6.9 billion soums (116 units) did not post information about the transactions on a special information portal [25].

In the first half of 2020 by budget customers [21]:

- Violation of the tender procedure in 81 cases (8.7 billion soums);
- Unreasonable conclusion of contracts or direct agreements with single suppliers in 513 cases (6.7 billion soums) [21];
- Violation of the order of formation and placement of procurement plans in 4 cases;
- Violation of the procedure and deadlines for posting ads on the special information portal in 3,089 cases (178.9 billion soums) [21];
- Inclusion of information restricting competition in procurement documents in 6 cases (3.9 billion soums), violation of order formation procedures;

- In 3 cases (785 million soums) there were violations such as non-acceptance of proposals or unreasonable reduction of deadlines for their submission, violation of the procedure for opening and evaluation of proposals [21].

4. Discussion

The Code of Administrative Liability for such alleged violations should impose fines on officials in the following cases. Russia, Kazakhstan, and Moldova face administrative fines for violating public procurement laws. During the registration of contracts by the treasury bodies, various errors and omissions were identified in 163.8 thousand transactions worth 21.2 trillion soums. 8.8 trillion soums or 42% of the identified shortcomings were caused by violations of the legislation on public procurement [21]. As such, it is necessary to improve the new legal norms for violations of the law, that is, to strengthen the penalties legally. It is obvious that in order to increase the responsibility of the state customer and other participants, the following should be ensured:

- The professionalism and qualification of the procurement officer of the state customer should be improved through compulsory training organized by the Ministry of Finance. This is due to the fact that based on foreign experience in this area, for example, the legislation of Kazakhstan and Russia includes special rules for the systematic improvement of skills and professionalism of employees responsible for public procurement. To overcome the shortcomings listed above, it is advisable to take the following steps [24].

1) The composition of the Public Procurement Commission should consist of representatives of the customer (7 members) [24].

2) The commission should include experts, as well as representatives of other interested ministries, departments and higher organizations of the customer [24].

3) The corporate customer must submit information on public procurement to the Ministry of Finance on a quarterly basis.

4) The Accounts Chamber shall be tasked with auditing public procurement of customers and annually submitting audit results to the Legislative Chamber of the Oliy Majlis, as well as publishing them in open sources [3].

5) The affiliate of the bidder and the participant of the procurement procedure must ensure the participation in one lot.

6) The members of the Procurement Commissions should be obliged to self-deny and not to participate in the voting on this issue in the presence of affiliate relations with the participants [23].

7) The period of restriction of participation in public procurement of entities included in the single register of dishonest executors should be reduced from three to two years [22].

The procedure for maintaining a single register of dishonest executors shall be established by the Ministry of Finance [21].

8) Tenders must be conducted electronically [11].

9) Participants and executors must compulsorily transfer their beneficiary owners in an open form [13].

10) Restrictions on the participation of the participant in public procurement should be established in cases where close relatives of the participant and (or) the authorized representative of the participant have the right to decide on the selection of the executor or the representative of the state customer or the specialized organization involved [11].

11) There are several other types of competitive procurement in the public procurement legislation of Russia, Kazakhstan, Georgia, China, and other foreign countries. It is advisable to follow the same procedure [12].

12) In Russia, Kazakhstan, Georgia, Armenia, as well as China and a number of other foreign countries, procurement commissions are formed by the state customer and, if necessary, experts are involved. It would be advisable to use this experience as well [12].

This, in turn, leads to the prevention of unfair competition and corruption.

It all depends on one problem. The public procurement system at all levels (state, regional and municipal) has the following problems:

- incompleteness and inconsistency of the rules and norms of distribution of budget funds, normative legal acts provided by the legislation;
- improvement of the forecasting and planning system at the stage of budget preparation, which requires prolongation of tenders, excessive spending of budget funds;
- lack of a methodological framework for procurement, including the registration of state and municipal contracts;
- information on the placement of orders complexity of supply;
- norms and rules of placing orders lack of effective control over its implementation;

- insufficient material and technical support for the activities of state and municipal customers, regulatory authorities.

5. Conclusion

First of all, there is a trend of steady growth of public procurement in the state, regional, municipal markets. At the same time, the quality of the elections does not meet the requirements of a market economy. Analyzes show that tenders for the supply of products for government needs account for about 10 percent of all open tenders. First, this problem is a problem of mass errors in the registration of documents, in some cases in the organization of the competition in order to create conditions for the benefit of certain organizations. Second, in practice, the placement of the state order is associated with the proliferation of tenders that involve the concerted actions of the participants and the imperfection of existing legislation, the uncertainty of the legal framework, the lack of sufficient legal norms. Control as an instrument of the public procurement institute is also an effective means of formal control and control over the quality of procurement activities. An important task facing the new model of the Public Procurement Institute is to integrate it into the electronic space. Formation of a single procurement information system Procurement plan, schedules, information on the implementation of procurement plans and schedules, information on the conditions of production of foreign goods, works (services) by foreigners, national order (national order - not the rule, exceptions)) conditions of application; information on procurement, performance of contracts, register of contracts, register of suppliers; standard contracts, a library of standard contracts; register of bank guarantees, complaints, scheduled and unscheduled inspections, register of their results and information provided, list of international organizations concluded in accordance with international agreements, financial statements of organizations that have concluded international agreements with the Republic of Uzbekistan; Procurement monitoring, procurement audit, procurement control results, customer reports, catalog of goods, works and services to meet state and municipal needs, regulatory documents; it is necessary to create an opportunity to move information such as information about the prices of goods, works and services that are formed in the commodity market. which in turn serves as the main basis for an excellent legal framework.

Therefore, the following suggestions play a key role in achieving this goal [28].

- The Code of Administrative Liability includes the imposition of fines on officials in the following cases:
- Violation of the tender procedure - up to 11.5 million soums [28];
- Procurement from a single supplier or on the basis of direct contracts - 11.5 - 22.3 million soums in cases where procurement is established through a competitive procurement method [28];
- formation of public procurement plans (plans-schedules) and violation of the order of placement - 3.4 - 5.7 million soums [28];
- Violation of the procedure and terms of placement (discussion) of announcements on the special information portal - 3.4 - 5.7 million soums [28];
- Inclusion of information restricting competition in advertisements and procurement documents, violation of order formation procedures -5.7 - 11.5 million soums [28];
- Failure to report affiliation and conflict of interest - 11.5 - 23 million soums [28];
- Rejection of proposals or unreasonable reduction of deadlines for submission of proposals, violation of the procedure for opening and evaluation of proposals - 11.5 - 23 million soums [28].

In the process of public procurement, its participants must strictly adhere to the legislation on public procurement, established rules and procedures. The process of public procurement is monitored by special authorities in the prescribed manner. The process of public procurement should provide for the establishment of liability of participants and the application of appropriate penalties for violations.

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