

ANALYSIS OF REGULATED PROCUREMENT PROCEDURES IN THE REPUBLIC OF KAZAKHSTAN FOR LOCAL CONTENT REQUIREMENTS

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Abstract. In connection with membership in the World Trade Organization and the Eurasian Economic Union, the Republic of Kazakhstan has taken several obligations to create equal conditions for producers of goods, works and services of all participating countries. This circumstance makes it difficult to provide direct support to domestic producers.

The purchases of government bodies, quasi-government organizations and subsoil users of solid minerals, hydrocarbons and uranium (government-regulated purchases) create a significant volume of demand for various kinds of goods, works and services.

Therefore, within the framework of the research, a literary review of the regulatory legal acts governing the procurement of these entities was carried out. An assessment of the norms contributing to an increase in the share of local content in purchases is given. As a result, proposals were formed to improve legislation in order to increase the effectiveness of these norms.

Keywords: local content, local content requirements, Kazakhstani content, support for domestic producers, support for domestic suppliers of works and services, regulated procurement.

JEL codes: H00, H500, H570, F230, E610

Аңдатпа. Дүниежүзілік сауда ұйымына және Еуразиялық экономикалық одаққа кіруіне байланысты Қазақстан Республикасы барлық қатысушы елдердің тауарларды, жұмыстарды және көрсетілетін қызметтерді өндірушілері үшін тең жағдайлар жасау жөнінде бірқатар міндеттемелер қабылдады. Бұл жағдай отандық өндірушілерге тікелей қолдау көрсетуді қиындатады.

Мемлекеттік органдардың, квазимемлекеттік ұйымдардың және жер қойнауының қатты пайдалы қазбаларын, көмірсутектер мен уранды пайдаланушылардың сатып алулары (мемлекет тарапынан реттелетін сатып алулар) әртүрлі тауарларға, жұмыстар мен қызметтерге сұраныстың едәуір көлемін тудырады.

Сондықтан, зерттеу шеңберінде, аталған субъектілердің сатып алуларын реттейтін нормативтік құқықтық актілерге әдеби шолу жүргізілді. Сатып алуларда жергілікті қамту үлесін ұлғайтуға ықпал ететін нормаларға баға берілді. Қорытындылар бойынша осы нормалардың пәрменділігін арттыру мақсатында заңнаманы жетілдіру бойынша ұсыныстар қалыптастырылды.

Түйін сөздер: жергілікті қамту, жергілікті қамтуға қойылатын талаптар, қазақстандық қамту, отандық тауар өндірушілерін қолдау, жұмыстар мен қызметтердің отандық жеткізушілерін қолдау, реттелетін сатып алулар.

JEL кодтар: H00, H500, H570, F230, E610

Аннотация. В связи с членством во Всемирной торговой организации и Евразийском экономическом союзе, Республикой Казахстан принят ряд обязательств по созданию равных условий для производителей товаров, работ и услуг всех стран – участниц. Данное обстоятельство затрудняет оказание прямой поддержки отечественных производителей.

Закупки государственных органов, квазигосударственных организаций и недропользователей твердых полезных ископаемых, углеводородов и урана (регулируемые государством закупки) создают значительный объем спроса на разного рода товары, работы и услуги.

В этой связи, в рамках исследования, проведен литературный обзор нормативных правовых актов,

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регулирующих закупки указанных субъектов. Дана оценка нормам, способствующим увеличению доли местного содержания в закупках. По итогам сформированы предложения по совершенствованию законодательства с целью повышения действенности данных норм.

Ключевые слова: местное содержание, требования к местному содержанию, казахстанское содержание, поддержка отечественных производителей, поддержка отечественных поставщиков работ и услуг, регулируемые закупки.

JEL коды: H00, H500, H570, F230, E610

Introduction

Currently, the state regulates the procurement of state bodies (including their subordinate organizations), quasi-state organizations and subsoil users of solid minerals, hydrocarbons and uranium. In the course of procurement, these organizations create a significant demand for various products, which must be used to support domestic producers of goods, works and services (hereinafter referred to as GWS). The effectiveness of the funds spent in terms of their support can be assessed by the share of local content in procurement.

However, in connection with the accession to the WTO and the EurAsEC, Kazakhstan is obliged to create equal conditions for suppliers of all participating countries, which significantly complicates the possibility of supporting domestic producers of GWS. However, in the current legislation governing the procurement process, there are various rules that directly or indirectly do this.

In this regard, within the framework of this article, a content analysis of regulatory legal acts (hereinafter - RLA), regulating the processes of all types of procurement, for the presence of such rules has been carried out.

Literature review

Local Content Requirements (hereinafter - LCR) is a protective device with two simple but powerful calls: creating jobs at home, not abroad, and directing business to domestic rather than foreign firms (Hufbauer et al., 2013).

Contrasted by LCR with traditional forms of protectionism, such as tariffs and quotas, these measures have historically been classified as non-tariff barriers. Thus, LCR measures were placed on a par with complicated customs procedures, specific trade standards and direct government subsidies. However, LCR measures are different in nature. All forms of protectionism in one way or another discriminate against foreign goods, services and investments relative to the position of national

counterparts, while LCR measures are aimed not at diminishing the competitiveness of foreign manufacturers, but at national preferences (Magomedova, 2019).

The development of local content is a matter of national economic security, behind which lies the creation of new industries and, accordingly, new jobs, professional training of domestic personnel and, ultimately, improving the welfare of the population (Temirbekova et al., 2014).

Historically, TMS has been associated primarily with public procurement and state-funded projects (Hufbauer et al., 2013).

For the first time in the legislation of the Republic of Kazakhstan, the term "Kazakhstani content" was introduced by the Law "On Subsoil and Subsoil Use" No. 2828 of January 27, 1996: Kazakhstani content in work, service - the cumulative total share of the cost of Kazakhstani content in goods used in the performance of work, in the price of the contract and (or) wages of employees who are citizens of the Republic of Kazakhstan, in the wage fund of the manufacturer of work, services under the contract for the performance of work or the provision of services, minus the cost of goods used in the performance of work, and the prices of subcontracts.

In general, local content is an indicator in value and percentage terms of the share of local goods, services and labor resources used in the implementation of activities by state bodies, the quasi-public sector, and enterprises in the territory of the Republic of Kazakhstan.

Research methodology

The object of the study is the regulatory legal acts of the Republic of Kazakhstan regulating the procurement of state bodies, quasi-public sector and subsoil users of solid minerals, hydrocarbons, and uranium. Here were applied methods of content analysis and comparative analysis.

Analysis

Public procurement

Public procurement is regulated by the Law "On Public Procurement" dated December 4, 2015, No. 434-V and the Rules of Public Procurement approved by the Order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648.

The platform for the implementation of public procurement is the public procurement web portal (hereinafter referred to as the Portal), which has integration with government databases to obtain the necessary information about potential suppliers (availability of licenses, permits, absence of tax arrears). At the same time, potential suppliers need to have an electronic digital signature at all stages of procurement.

Also, an electronic depository functions as a subsystem in the Portal, in which a potential supplier can store information and documents confirming his work experience (later taken into account when conducting tenders), having previously passed the appropriate verification. Thus, there is no need to attach this information to each application for participation in the competition. In addition, for the purchase of homogeneous goods worth up to 100 MCI from a single source, the customer is obliged to use the electronic catalog of goods (part 3 of paragraph 378 of the Rules for the implementation of public procurement).

These norms, in addition to obvious benefits (minimization of corruption risks, acceleration of the process, convenience), also provide support for domestic suppliers and at the same time create an administrative barrier for foreign ones. So, to participate in public procurement, they at least need to register a legal entity in Kazakhstan and obtain an electronic digital signature. To sell goods worth less than 100 MCI, if it is in the electronic catalog of goods, a foreign supplier will have to register their goods in the catalog. The electronic depository also has great potential if it is used as the only source of information about potential suppliers.

One of the most effective measures to support domestic suppliers of GWS is to ensure the availability of information on upcoming purchases. The current legislation has a provision obliging customers to post

public procurement plans on the Portal (paragraph 12 of the Public Procurement Rules). At the same time, in the case of the purchase of works, design and estimate documentation is also published, providing information on the volume of goods required for their sale. It should be noted that there is an obligation in the Rules of the supplier to use local construction materials when carrying out construction work (subparagraph 3.1 of paragraph 4.1 of the Model Contract on Public Procurement of Construction Works). There is also a rule that allows the customer to pay only after the submission of a report on local content in goods, works and services in the approved form (Model contracts for public procurement of goods, works and services).

However, the customer does not have any tools for monitoring the fulfillment of this obligation and checking the reliability of the submitted reports.

Quasi-public sector procurement

Purchases of quasi-public sector are regulated by the Rules of Procurement of goods, works, services by national management holdings, national holdings, national companies and organizations, fifty or more percent of voting shares (participation shares in the authorized capital) of which directly or indirectly belong to the national management holding, national holding, national company, approved by Order of the First Deputy Prime Minister of the Republic of Kazakhstan - Minister of Finance of the Republic of Kazakhstan dated October 31, 2019 No. 1201. The quasi-public sector procurement platform is also the public procurement web portal. That is, basically the procurement process has the same advantages as the public procurement process. However, there is no obligation of the customer to use an electronic catalog of goods and an electronic depository.

At the same time, the Rules stipulate the obligations of the customer for the procurement of goods and services included in the approved list among suppliers holding an industrial certificate (paragraphs 54 and 77 of the Rules). An industrial certificate is a document confirming the presence of an applicant in the register of domestic manufacturers of GWS. According to the list (appendix to Rules 2-1), priority procurement is provided for the following goods and

services:

Furniture products;
Light industry goods;
Cars and other motor vehicles;
Electrical transformers, static electrical converters, rectifiers, inductors and chokes;
Wires and cables;
Services for the creation and development of informatization facilities.

Moreover, the Rules provide for a guaranteed purchase of GWS included in the base formed by the national institution for the development of local content from among domestic GWS suppliers.

Thus, this rule limits the number of potential suppliers to residents of the Republic of Kazakhstan who have received an industrial certificate and / or are included in the GWS database. That is, the purchase of foreign GWS is possible only if there is no domestic supply.

Procurement of subsoil users

Purchases by subsoil users of solid minerals are governed by the Rules for the acquisition by subsoil users and their contractors of goods, works and services used in operations for the extraction of solid minerals, approved by order of the Minister for Investment and Development of the Republic of Kazakhstan dated May 21, 2018, No. 355. Purchases of hydrocarbons and uranium by subsoil users are governed by the Rules for the acquisition by subsoil users and their contractors of goods, works and services used in exploration or production of hydrocarbons and uranium production, approved by order of the Minister of Energy of the Republic of Kazakhstan dated May 18, 2018, No. 196.

Despite the difference in regulatory bodies, the procurement of these entities is similar and have similar norms that contribute to the development of local content. At the same time, they differ from the purchases of state bodies and the quasi-public sector due to the relatively low influence of the state on private entrepreneurship in general.

Thus, the platform for procurement is the "Register of goods, works and services used in subsoil use operations, and their manufacturers", for which an EDS is required. There are also regulations for the

submission of reports on local content and the publication of procurement plans. At the same time, it should be noted that there is no regulation of the timing of the publication of procurement plans.

There are no other rules stipulated in the procurement of state bodies and the quasi-public sector and aimed at developing local content in the Procurement Rules for Subsoil Users.

At the same time, given that the customers in this case are private enterprises, they are given the opportunity to establish minimum requirements for local content in the purchased GWS (subparagraph 18) of paragraph 25 of the Rules).

In addition, when determining the winner of an open tender, in the event of equality of prices of the competitive bids of potential suppliers of an open tender, taking into account the application of the conditional price reduction criterion, the winner of the open tender is the potential supplier who offered the highest percentage of local content in the purchased GWS. At the same time, if one of the suppliers is a Kazakhstani manufacturer of GWS, preference is given to him regardless of the proposal for local content (paragraphs 76-78 of the Rules).

Moreover, customers have the right to prescribe from one source:

- goods of Kazakhstan origin, confirmed by a certificate of origin of goods of the form "CT-KZ" or an industrial certificate;
- GWS from Kazakh manufacturers of GWS registered in a single-industry town, where the customer's enterprise is the only city-forming enterprise (paragraph 85 of the Rules).

Conclusions and recommendations

The conducted content analysis showed that, in general, the processes of all regulated purchases are similar. However, in public procurement there are fewer effective measures to support domestic producers of GWS in comparison with the procurement of the quasi-public sector and subsoil users.

Comparison of support measures for domestic producers of GWS is shown in the following table.

Table 1 - Comparison of support measures for domestic producers of GWS in the context of procurement entities

Measures	Public procurements	Quasi-public sector procurement	Procurement of subsoil users
Procurement platform	Web portal of public procurement	Web portal of public procurement	Register of goods, works and services used in carrying out subsoil use operations and their manufacturers
Use of the electronic depository	+	-	-
Using the electronic catalog of goods	+	-	-
Publication of a procurement plan	+	+	+
Supplier's obligation to submit a local content report	+	+	+
Availability of plausibility checks on local content reports	-	+	+
Obligations of the construction contractor to use local building materials	+	+	-
The customer's commitment to priority procurement among suppliers with an industrial certificate (for goods and services included in the approved list)	-	+	-
Availability of a guaranteed order of GWS included in the base of domestic GWS manufacturers	-	+	-
Availability of the customer's ability to establish minimum requirements for local content in the purchased GWS (for procurement by means of an open tender)	-	-	+
Preference for Kazakhstani manufacturers of GWS with equal price offers	-	-	+
The presence of an advantage over the supplier who offered the largest share of local content (with equal price offers)	-	-	+
The possibility of purchasing local goods using a method from a single source (if you have a CT-KZ certificate)	-	-	+
Purchase of GWS from local manufacturers registered in single-industry towns where the customer's enterprise is located, which is the only city-forming	-	-	+

Thus, all regulated purchases are carried out electronically, in special information systems, for which the presence

of an EDS is necessary. However, the electronic catalog of goods and the electronic depository are used only in public

procurement.

At the same time, it should be noted that the potential of the electronic depository is not fully realized. Currently, it is used at the request of potential suppliers, as a convenient tool. Whereas the use of an electronic depository as the only source of information about a potential supplier will create a barrier for foreign suppliers due to the need to enter relevant information into it (work experience, licenses, permits, etc.). At the same time, the verification period for them may be extended compared to local ones, since the verification of the reliability of the information provided takes longer. However, first of all it is necessary to expand the list of information contained in the electronic depository (availability of equipment, base, admission to participate in specific works, etc.).

The legislation provides for an obligation for all subjects of regulated procurement to preliminary publish their procurement plans with design estimates, if any. However, at present, domestic producers, in search of information about the upcoming volume of demand for their products, are had to read the scanned versions of estimates found on the Portals of individual purchases of works. At the same time, modern information technologies make it possible to maintain design estimates in electronic format, which makes it possible to

consolidate information about the upcoming demand for a particular product with reference to a specific location. The refinement of the public procurement portal with the introduction of a cartographic projection of ongoing purchases (using the example of an interactive map of open budgets) will greatly facilitate the perception of information. Thus, domestic producers will be informed about the upcoming demand for their products and will have the opportunity to prepare an appropriate stock. Also, in all three cases, the supplier is obliged to submit reports on local content. At the same time, if subsoil users and subjects of the quasi-public sector have the right to check the reliability of reporting information, while the state bodies, in accordance with the norms of the Entrepreneurial Code, cannot do this.

To solve this problem, it is proposed:

- combine procurements of all subjects of regulated procurement on the public procurement web portal;
- provide domestic producers with an online platform based on the Portal to offer suppliers their products, indicating the volume, characteristics, price and conclusion of an agreement (possibly in the case of digital design and estimate documentation);
- to improve the Portal in terms of automatic comparison of the local content report with the offered goods of domestic producers.

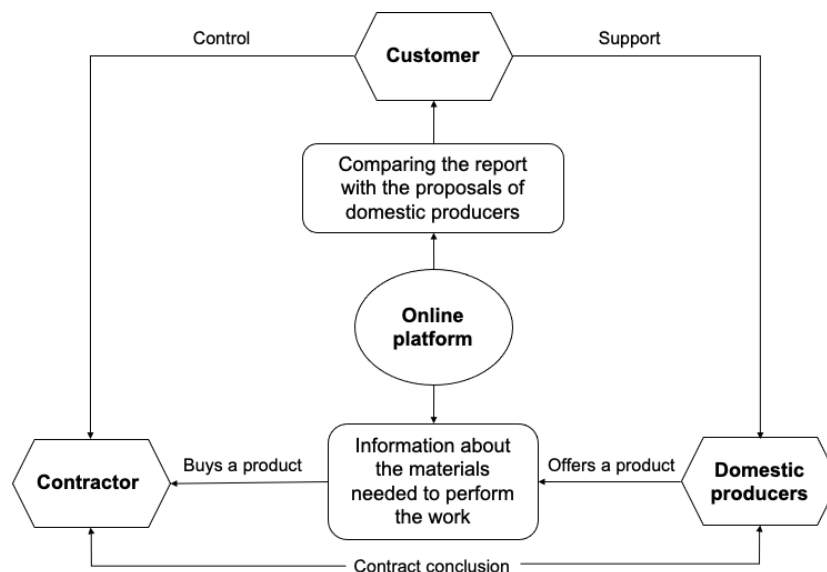


Figure 1 - scheme of the proposed online site

Thus, an automated verification of the reliability of the local content report will be

carried out, which will make it possible to require the supplier to fulfill its local content

obligations. In addition, this will make it easier for general contractors to find the necessary materials, and for domestic producers - a buyer (Figure 1). And also, it will allow us to form a base of average prices for goods.

The remaining norms, which are directly aimed at supporting domestic producers of GWS, are provided for in each category as far as possible and their generalization is unacceptable.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ РЕТТЕЛЕТІН САТЫП АЛУ РӘСІМДЕРІН ЖЕРГІЛІКТІ ҚАМТУ ТАЛАПТАРЫ ТҮРҒЫСЫНАН ТАЛДАУ

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АНАЛИЗ ПРОЦЕДУР РЕГУЛИРУЕМЫХ ЗАКУПОК В РЕСПУБЛИКЕ КАЗАХСТАН НА ПРЕДМЕТ ТРЕБОВАНИЯ МЕСТНОГО СОДЕРЖАНИЯ

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