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The International Comparative Legal Guide to: **Public Procurement 2017**

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A practical cross-border insight into public procurement

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Kazakhstan

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1 Relevant Legislation

1.1 What is the relevant legislation and in outline what does each piece of legislation cover?

In general, Kazakh public procurement legislation is based on the provisions of the Civil Code and the Budget Code of Kazakhstan, and the relevant legislation includes:

- The Law of the Republic of Kazakhstan “On Public Procurement” dated 4 December 2015, No. 434-V ЗПК (the “**Public Procurement Law**”).
- The “Rules of the Conduct of Public Procurement”, as approved by the Decree of the Minister of Finance of Kazakhstan No. 648, dated 11 December 2015 (the “**Public Procurement Rules**”).
- The Law of the Republic of Kazakhstan “On State Property” dated 1 March 2011, No. 413-IV ЗПК (the “**State Property Law**”).
- The Law of the Republic of Kazakhstan “On National Welfare Fund” dated 1 February 2012, No. 550-IV ЗПК (the “**NWF Law**”).
- The Decree of the Government of Kazakhstan dated 28 May 2009, No. 787 “On approval of the Template Rules of procurement of goods, works and services by national managing holding, national holding, national company and by organisations, 50 or more per cent of the shares (participatory interests) of which directly or indirectly belong to the national managing holding, national holding, national company” (the “**Template Procurement Rules of the National Companies**”).
- The “Procurement rules of goods, works and services by the JSC National Welfare Fund “Samruk-Kazyna” and by organisations 50 per cent or more of the voting shares (participatory interests) of which belong, directly or indirectly, to JSC National Welfare Fund “Samruk-Kazyna” on the right of ownership or trust management”, as approved by the Decision of the Board of Directors of the JSC National Welfare Fund “Samruk-Kazyna” No. 126, dated 28 January 2016 (the “**NWF Procurement Rules**”).
- The Decree of the Management Board of the National Bank of Kazakhstan No.237, dated 19 December 2015, “On approval of the Rules of procurement of goods, works and services by the National Bank, its departments, organisations, which are included in the structure of the National Bank and the legal entities, 50 or more per cent of the voting shares (participatory interests) of which belong to the National Bank or are in trust management of the National Bank, and legal entities affiliated with them” (the “**NBK Procurement Rules**”).
- The Rules For Organising and Conducting Purchases of Pharmaceuticals, Preventive (Immunobiological, Diagnostic, Disinfecting) Preparations, Medical Devices and Equipment, Pharmaceutical Services for the Purposes of Providing Guaranteed Free Medical Care approved by Governmental Resolution No. 1729 dated 30 October 2009 (the “**SK-Pharmacia Rules**”).

The range of entities (the “**Affected Entities**”) which fall within the scope of the Public Procurement Law and the Public Procurement Rules is wide (see section 27 of article 2 of the Public Procurement Law) and covers:

- state authorities (*государственные органы*) – e.g. Government of Kazakhstan or local executive authority (*Akimat*);
- state agencies (*государственные учреждения*) – e.g. the Ministry of Internal Affairs, in its capacity as a state agency;
- governmental enterprises (*государственные предприятия*); and
- legal entities, 50 or more per cent of the voting shares (participatory interests) of which belong to the state, and legal entities affiliated with them (e.g. municipal companies 100 per cent owned by regions or cities represented by respective *Akimats*).

To ensure the transparency, cost-efficiency and accessibility of procurement, the Public Procurement Law requires that suppliers of purchased goods, works and services (the “**GWS**”) (with limited exceptions stipulated in article 1 of the Public Procurement Law, e.g. GWS of military and double-purpose (usage) as part of the state defence order or making a contribution to the charter capital of a legal entity) to Affected Entities must be selected through a publicly disclosed procedure and only by way of a tender, auction or other selection method set out in the Public Procurement Law.

Importantly, the Public Procurement Law and the Public Procurement Rules do not apply to procurement of the purchased GWS by the following entities (however, specific procurement rules applicable for the entities listed below are similar to the procurement rules under the Public Procurement Law in most respects):

- the JSC National Welfare Fund “Samruk-Kazyna” (the “**SK**”) and by organisations 50 or more per cent of the voting shares (participatory interests) of which belong, directly or indirectly, to SK on the right of ownership or trust management, as these entities are subject to specific NWF Law and NWF Procurement Rules regulations (e.g. JSC Kazmunaigaz, JSC AirAstana, etc.);
- National Bank (the “**NBK**”), its departments, organisations, which are included in the structure of the NBK and the legal entities 50 or more per cent of the voting shares (participatory interests) of which belong to the NBK or are in trust management of the NBK, and legal entities affiliated with them, as these entities are subject to specific NBK Procurement Rules; and

3. so-called national managing holdings, national holdings, national companies (as defined in the State Property Law) and by organisations, 50 or more per cent of the shares (participatory interests) of which directly or indirectly belong to the respective national managing holding, national holding, national company, as these entities are subject to specific procurement rules to be adopted on the basis of the Template Procurement Rules of National Companies (e.g. the procurement rules of the JSC “Baiterek National Management Holding”, so-called “Social-Entrepreneurial Corporations”, etc.).

Further, procurement of pharmaceuticals within the guaranteed free medical care conducted by SK-Pharmacia LLP and public healthcare institutions is governed by the separate pharmaceutical procurement rules and the provisions of the Public Procurement Law shall not be applicable to it (see the SK-Pharmacia Rules).

Please also note that in Kazakhstan there is separate legislation for public-private partnerships, including concessions, as discussed below.

Unless otherwise expressly stipulated in the questions below, answers will be based on the Public Procurement Law.

1.2 Are there other areas of national law, such as government transparency rules, that are relevant to public procurement?

It is well-known that public procurement carries a high risk of corruption for business investing in Kazakhstan. Bribes and irregular payments used to be widespread in the process of awarding public procurement contracts. The main components of Kazakhstan’s anti-corruption legislation are the anti-bribery provisions of the Law of the Republic of Kazakhstan “On Fighting Corruption” dated 18 November 2015, No.410-V ЗПК, the Criminal Code of the Republic of Kazakhstan dated 3 July 2014, No.226-V, and the Code of the Republic of Kazakhstan on Administrative Offences dated 5 July 2014, No.235-V. Kazakhstan’s anti-corruption legislation identifies several crimes of corruption, among the most serious of which are the provision and receipt of bribes to government officials. These crimes are interrelated, and usually cannot be committed without one another.

1.3 How does the regime relate to supra-national regimes including the GPA, EU rules and other international agreements?

As of today, neither the EU procurement directives (unlikely ever to be applicable) nor the GPA apply in Kazakhstan. As a recent WTO member, however, Kazakhstan has undertaken a commitment, in its WTO accession protocols, to initiate accession to the GPA, and from 19 October 2016, Kazakhstan has observer status on the GPA Committee.

It also worth mentioning that Kazakhstan is a party to the Treaty on the Eurasian Economic Union dated 29 May 2014 (the “Treaty”), which establishes provision of the so-called “national regime” in the sphere of public procurement for the states-parties to the Treaty on Eurasian Economic Union (see Chapter XXII of the Treaty).

In accordance with article 2(31) of the Public Procurement Law, the concept “national regime” means a regime that allows procurement of GWS of foreign origin and respective suppliers (i.e. that can be local or foreign suppliers) to participate in public procurements in Kazakhstan on equal grounds with GWS of domestic origin, provided that the requirement to grant such a regime is set by the international treaties ratified by the Republic of Kazakhstan and pursuant to the terms and conditions set forth in such treaties.

The Treaty aims to provide free access, for example, to Kazakhstan suppliers for a government procurement carried out in Russia,

and *vice versa*. We note that exclusion from national treatment for companies from member states of the Treaty is possible only for a term not exceeding two years (see article 14.2 of the Public Procurement Law). The Treaty does not apply to procurement where information is a state secret and procurement is carried out by the national (central) banks of member states.

1.4 What are the basic underlying principles of the regime (e.g. value for money, equal treatment, transparency) and are these principles relevant to the interpretation of the legislation?

Article 4 of the Public Procurement Law stipulates that public procurement shall be based on the following eight fundamental principles:

- 1) spending of money used for public procurement in the most optimal and efficient manner;
- 2) provision of equal opportunities to potential suppliers to participate in the public procurement procedure, except cases specifically provided by the Public Procurement Law;
- 3) fair competition among potential suppliers;
- 4) openness and transparency of the public procurement process;
- 5) provision of support to domestic producers of goods, as well as domestic suppliers of works and services, to the extent it does not conflict with provisions of the international treaties ratified by Kazakhstan;
- 6) the responsibility of participants of the public procurement;
- 7) prevention of corruption; and
- 8) procurement of innovative and hi-tech goods, works and services.

Whether or not the action of an Affected Entity or other participants of the public procurement is in line with the principles of the Public Procurement Law may depend on how these principles are interpreted by the Kazakh courts and the authorised body for state procurement (currently the Ministry of Finance (the “Authorised Body”).

1.5 Are there special rules in relation to procurement in specific sectors or areas?

Article 50 of the Public Procurement Law provides a so-called “special procedure” for public procurement of the following GWS by the Affected Entities:

1. Goods, works and services for the needs of public order and national security, information of which constitutes state secrecy, in accordance with the legislation of Kazakhstan on state secrecy, and (or) contains proprietary information of limited distribution, as defined by the Government of Kazakhstan.
2. Goods, works and services, information of which constitutes state secrecy in accordance with the legislation of Kazakhstan on state secrecy and (or) contains proprietary information of limited distribution, defined by the Government of Kazakhstan.

The procedure of carrying out public procurement with the use of the so-called “special procedure” is defined by the relevant Decree of the Government of Kazakhstan dated 31 December 2015, No.1200.

2 Application of the Law to Entities and Contracts

2.1 Which public entities are covered by the law (as purchasers)?

1. State authorities (*государственные органы*); and
2. state agencies (*государственные учреждения*).

2.2 Which private entities are covered by the law (as purchasers)?

1. Governmental enterprises (*государственные предприятия*); and
2. legal entities 50 per cent or more of the voting shares (participatory interests) of which belong to the state, and legal entities affiliated with them.

2.3 Which types of contracts are covered?

First of all it worth mentioning that the annual value of public procurement in Kazakhstan, on average, is USD 9bn, with the total number of Affected Entities being around 19,000.

Article 2(14) of the Public Procurement Law defines “public procurement” as procurement on a fee-paid basis of the so-called “Goods”, “Works” and “Services” (as these terms are defined in article 2 of the Public Procurement Law) by a purchaser (i.e. Affected Entity) and in the manner prescribed by the Public Procurement Law and civil legislation of Kazakhstan.

A public procurement contract is defined as a civil contract between a “purchaser” and a “supplier” (that can be, generally, a natural person conducting entrepreneurial activity, a local or foreign legal entity and even a consortium, see article 2(24) of the Public Procurement Law) in relation to public procurement of the GWS. Furthermore, as all public procurement processes, starting from planning and up to the payment, nowadays are done electronically, the public procurement contract shall be, generally, executed in electronic digital format and signed using electronic digital signatures through the so-called ‘public procurement Web Portal’ (see article 43.3 of the Public Procurement Law). Article 43.4 of the Public Procurement Law provides certain exceptions from the above general statutory requirement of execution of the public procurement contract through the public procurement Web Portal.

Generally, a draft of the public procurement contract shall be prepared by the purchaser on the basis of the relevant templates of the public procurement contract, as per forms stipulated in the appendices 19–21 of the Public Procurement Rules (the “**Template**”), that shall be strictly followed in form and substance (see article 43.1 of the Public Procurement Law). The only exception to the statutory restriction is a public procurement contract with a foreign supplier, that can be executed in the form suggested by such foreign supplier (i.e. there is no need to follow the Template’s form); however, such contract shall still meet imperative requirements of the Kazakhstan law in relation to the substance of the contract (see article 43.6 of the Public Procurement Law). For instance, article 43.20 of the Public Procurement Law requires a public procurement contract to have a specific provision, pursuant to which the full payment to the supplier must be made within 30 calendar days from the execution of the suppliers’ obligations under the contract.

2.4 What obligations do purchasers owe to suppliers established outside your jurisdiction?

Equal treatment of suppliers, including local and foreign, is presumed under the Public Procurement Law. Purchasers, therefore, as a general rule, owe the same level of obligations to suppliers established outside Kazakhstan as in Kazakhstan.

2.5 Are there financial thresholds for determining individual contract coverage?

The Public Procurement Law covers public procurement by the Affected Entities of any Goods, Works and Services, irrespective of the amount of the respective public procurement contract, except for those which are expressly excluded. The list of exclusions is limited and exhaustive and provided in article 1 of the Public Procurement Law (e.g. purchase of services related to business-trip expenses). It is worth mentioning, however, that procurement of so-called “homogeneous GWS” (as defined in article 2(5) of the Public Procurement Law) by an Affected Entity, if the annual volume of such homogeneous GWS does not exceed 100 so-called monthly calculated indexes (the “**MCIs**”), that is roughly equivalent to USD 600 in 2016, can be done by way of the so-called “Single Source Procurement” (as defined below) method of public procurement, that is a non-competitive procedure (i.e. purchase from the sole supplier) (see article 39.3(42) of the Public Procurement Law).

2.6 Are there aggregation and/or anti-avoidance rules?

The Public Procurement Law does not provide any aggregation rules as, under current legislation, splitting or dividing the subject matter of the contract will not help to circumvent the public procurement requirement anyway (see our response to question 2.5).

The main concern with respect to avoidance of law is about acquisitions through non-competitive procedures (purchases from the sole supplier). In fact, in Kazakhstan a lot of public contracts are awarded through purchase from the sole supplier, notwithstanding that Public Procurement Law stipulates a number of restrictions. Article 39.2 of the Public Procurement Law, in particular, provides that the so-called “Single Source Procurement” method of public procurement can be used in case the public procurement by way of Tender (Auction) or by way of the RFQ (as defined below) was declared void.

2.7 Are there special rules for concession contracts and, if so, how are such contracts defined?

Article 2.4 of the Law of Kazakhstan “On Public Private Partnership” dated 31 October 2015, No. 379-V 3PK (the “**PPP Law**”) specifically says that the Public Procurement Law shall not be applicable to PPP projects, nor any procurement of the GWS under the public private agreement, including concession agreements.

Implementation of a PPP project in Kazakhstan is possible, generally, either under the legal framework of the PPP Law, that allows all possible PPP structures to be used, or the Law of Kazakhstan “On Concessions” dated 7 July 2006, No.167-III 3PK (the “**Concession Law**”), that provides only for one of the specific PPP structures – concession.

A concession object can be any property that can be recognised as the so-called ‘social and vital infrastructure facility included into the list, which shall be constructed (or reconstructed) and operated under a concession agreement’. In accordance with section 2 of article 1 of the Concession Law, ‘social and vital infrastructure facilities are facilities [or] complexes of facilities used for the satisfaction of public needs, the securing of which is imposed on state authorities in accordance with the legislation of the Republic of Kazakhstan’. The Concession Law, therefore, cannot be used for construction of, for instance, a fertiliser plant, as it is unlikely to be considered as a facility used for the satisfaction of public needs, the securing of which is imposed on state authorities.

Unlike the Concession Law, under the PPP Law, practically any property can be considered as the PPP object. The PPP Law enables PPP projects to be implemented in all sectors of economy and, therefore, PPP facilities under the PPP Law, unlike the Concession Law, do not necessarily have to be used for the satisfaction of public needs, the securing of which is imposed on state authorities.

Generally, an open single-stage tender is required for selection of the concessionary; however, tenders of potential concession projects that require either the collection or analysis of innovative, creative, architecture-planning, or organisational-technological solutions or innovations, or that require running experiments or research studies, should be conducted in two stages rather than the single stage (see Article 20-1 of the Concession Law).

Unlike the Concession Law stipulating a unified procedure for concession of facilities, the PPP Law provides for a possibility to select a private partner *via* holding either a tender (open/closed, two-stage/simplified) or on the basis of so-called ‘direct negotiations’ (see Article 31.1 of the PPP Law).

2.8 Are there special rules for the conclusion of framework agreements?

There is no concept of a framework agreement in public procurement legislation of Kazakhstan and, therefore, current legislation does not provide for an opportunity to conclude framework agreements.

2.9 Are there special rules on the division of contracts into lots?

Article 9.6 of the Public Procurement Law provides that not more than two-thirds of total volume of the Works or Services under the public procurement agreement can be redirected (passed) by the Supplier (i.e. principal contractor) to its subcontractor(s) (co-contractor(s)). Moreover, such subcontractor shall also have qualification to take this part and provide relevant documents that confirm that it meets the same qualification criteria for the potential supplier as stipulated in article 9.1 of the Public Procurement Law (the “**Qualification Requirements**”) that are applicable to the potential supplier itself. Importantly, such subcontractor/co-contractor is prohibited to pass further to sub-subcontractors any volume of the Works or Services assigned. Even if the subcontract is made, the bid winner is still responsible under the public procurement contract.

3 Award Procedures

3.1 What types of award procedures are available? Please specify the main stages of each procedure and whether there is a free choice amongst them.

Importantly, generally, any public procurement process (i.e. which applies to all five methods described below) shall include the following consecutive steps:

- 1) elaboration and approval of an annual public procurement plan (preliminary annual public procurement plan) by the relevant Affected Entity;
- 2) selection of the supplier and execution with it of a public procurement contract; and
- 3) performance of the public procurement contract (see article 5.1 of the Public Procurement Law).

The annual public procurement plan/preliminary annual public procurement plan shall stipulate, *inter alia*: the nomenclature of the GWS envisaged to be procured in the respective year; methods and

timeframe of public procurement of each of the GWS; and sums allocated for the procurement of each of the GWS (see article 5.2 of the Public Procurement Law). Kazakh law, generally, prohibits procurement of GWS that are not stipulated in the respective annual public procurement plan/preliminary annual public procurement plan (see article 5.7 of the Public Procurement Law).

Furthermore, before the purchaser proceeds with selection of the supplier, it shall determine who would be the so-called “Organiser” responsible for organising and performing all public procurement process procedures. The purchaser itself can undertake the role of the Organiser (i.e. Purchaser and Organiser would be the same entity), or it can appoint a subordinate state agency, if any, as an Organiser (see article 7.2 of the Public Procurement Law).

Pursuant to article 13 of the Public Procurement Law, a public procurement in Kazakhstan can be performed through one of the following five methods:

- 1) competitive tender (open tender, tender with prequalification of bidders, two-stage tender);
- 2) auction;
- 3) requests for quotation (the “RFQ”);
- 4) Single Source Procurement; or
- 5) purchases at commodity exchanges.

In general, public procurement should be made through the so-called “public procurement Web Portal”, and the law entitles the customer (i.e. Affected Entity) to choose types of award procedure by itself, though such freedom of choice is limited by statutory restrictions, as discussed below (see article 13.2 of the Public Procurement Law).

Under the Public Procurement Law, generally, all public procurement processes, including the download of tender documentation, the submission of tender bids (applications), the opening of bids, the automatic rejection of bids, and the preparation of minutes on tender results shall be done electronically through the so-called public procurement Web Portal (see article 13.3 of the Public Procurement Law).

Competitive Tender

As a general rule, public procurement can only be carried out through a tender. Tenders are organised by a special commission formed by the purchaser. The tender process consists of several stages (including the publication of a tender announcement and review of bids) and is completed with the conclusion of a public procurement contract with the winner of the tender. Importantly, the Public Procurement Law requires the preliminary public discussion of the draft tender documentation by potential suppliers (see article 22 of Public Procurement Law).

Generally, a tender requires pre-selection of qualified suppliers before conducting a tender and, accordingly, the potential suppliers have to provide the same documents for each tender to confirm they meet Qualification Requirements and requirements of the relevant tender documentation. A “tender with prequalification of bidders”, however, does not require pre-selection of qualified suppliers as, in such tender, only already qualified suppliers included in the so-called “Register of Qualified Potential Suppliers” (see article 20.5 of the Public Procurement Law) may participate. Public procurement by way of the tender with prequalification of bidders can be used only for the GWS, as stipulated in the Order No. 91 of the Ministry of Finance dated 29 February 2016 (see article 31.1 of the Public Procurement Law).

A two-stage tender is used when:

- 1) it is difficult to formulate detailed specifications of the GWS and to determine their technical and other characteristics and (or) it is necessary to solicit proposals from potential suppliers or to conduct negotiations with potential suppliers regarding outstanding issues;

- 2) it is necessary to conduct research, experiments or investigations; or
- 3) innovative and hi-tech GWS are procured (see article 30.1 of the Public Procurement Law).

In accordance with article 46 of the Public Procurement Rules, a public procurement by way of a tender requires implementation of the following consecutive actions:

- 1) determination by the Purchaser of the Organiser, unless Purchaser and Organiser are the same entity;
- 2) provision by the Purchaser of information and documents required for arranging the tender to the Organiser, or provision by the Purchaser to the Single Organiser of an order for arranging the tender;
- 3) forwarding by the Purchaser to the Organiser/Single Organiser through the Web Portal relevant provisions of the annual public procurement plan (preliminary annual public procurement plan) for arranging the tender;
- 4) selection and approval of the composition of the tender commission, composition of the so-called “expert commission” or an “expert” (as defined in article 2(25) and 2(26) of the Public Procurement Law), determination of the secretary of the tender commission;
- 5) approval of the draft of the tender documentation;
- 6) publication by the Purchaser of the announcement on public procurement by way of tender as well as text of the tender documentation on the public procurement Web Portal;
- 7) preliminary public discussion, by way of the Web Portal, of the draft tender documentation by potential suppliers and publication on the Web Portal of the minutes of preliminary discussion of the draft tender documentation;
- 8) submission by potential suppliers of the tender bids through the public procurement Web Portal and their automatic registration on the Web Portal;
- 9) automatic bid opening and publication on the Web Portal of the protocol disclosure;
- 10) review of the bids by the tender commission through the Web Portal on their compliance with Qualification Requirements and requirements of the tender documentation;
- 11) bringing of the bids by the respective potential suppliers into conformity with Qualification Requirements and requirements of the tender documentation (i.e. applicable to the bids that did not comply with Qualification Requirements and tender documentation);
- 12) reconsideration of the amended bids that have been brought into compliance with the Qualification Requirements and requirements of the tender documentation;
- 13) determination of potential suppliers which conform with Qualification Requirements and requirements of the tender documentation and official recognition of such potential suppliers as participants of the tender, as well as application of the relative values of criteria to submitted bids of the potential suppliers;
- 14) automatic comparison by the Web Portal of the so-called “notional prices” (as defined in article 2(32) of the Public Procurement Law) of participants of the tender, determination of the winner of the tender on the basis of the lowest notional price, and determination of potential supplier with the second-best bid, and publication of the minutes on results of the tender on the Web Portal; and
- 15) execution of the public procurement contract with the winner of the tender on the basis of the minutes on the results of the tender.

Auction

Public procurement by way of the auction is carried out on the public procurement Web Portal in real-time mode and only among

the potential suppliers that have been recognised by the auction commission as “participants of the auction” (i.e. they shall meet Qualification Requirements and the requirements of auction documentation) (see article 34.2 of the Public Procurement Law). An auction is performed by subtracting the lowest initial price of the participant of the auction by a bid increment. Pursuant to article 34.3 of the Public Procurement Law, a bid increment of an auction shall be from 0.5 per cent to 5 per cent of the lowest initial price of the participant of the auction. The participant offering the lowest price shall be automatically determined by the Web Portal as the winner (see article 34.8 of the Public Procurement Law). Importantly, the auction method can only be used for the purchase of Goods (see article 32.2 of the Public Procurement Law).

Request for Quotations

Public procurement by way of the RFQ method can be used only for procurement of the so-called homogeneous GWS and only if annual volume of such homogeneous GWS does not exceed 4,000 MCIs (see article 37.1 of the Public Procurement Law). Decisive criterion for automatic selection of the winner by the Web Portal is the price (see article 38.5 of the Public Procurement Law). Importantly, the RFQ method cannot be used for procurement of the GWS, delivery/performance/rendering of which requires a licence or notification in accordance with the licensing legislation of Kazakhstan (see article 37.4 of the Public Procurement Law).

Single Source Procurement

Public procurement by way of the Single Source Procurement method can be used only if either: (i) the respective public procurement by way of Tender/Auction or the RFQ was declared void (failed) as stipulated in article 39.2 of the Public Procurement Law; or (ii) one of the 54 cases stipulated in article 39.3 of the Public Procurement Law is applicable, to enable execution of the direct public procurement contract (e.g. procurement of the so-called “financial services”, acquisition of securities or a stake in a legal entity, procurement of the GWS within the framework of the so-called “investment project” financed by an international organisation, one of the member countries of which is Kazakhstan, etc). Importantly, if respective public procurement by way of RFQ was declared void (failed) because of only one quote submitted, the price of the public procurement contract executed by way of the Single Source Procurement should not exceed the quote given by only participant of the RFQ (see article 38.7 of the Public Procurement Law). If respective public procurement by way of auction was declared void (failed), the price of the respective public procurement contract executed by way of the Single Source Procurement method should not exceed specific limitations imposed in article 36.3 of the Public Procurement Law.

Purchases at the Commodity Exchanges

Public procurement of exchange commodities (e.g. potatoes, sugar, etc.), as listed in the Order of the Minister of National Economy of Republic of Kazakhstan dated 26 February 2015 No. 142 shall be, generally, carried out through commodity exchanges in accordance with the Law of the Republic of Kazakhstan on commodity exchanges dated 4 May 2009, No. 155-IV.

3.2 What are the minimum timescales?

During the tender, a bidding deadline shall be not less than 15 calendar days from the date of publication on the Web Portal of the minutes of preliminary discussion of the draft tender documentation and the draft tender documentation (see article 22.3 of the Public Procurement Law).

3.3 What are the rules on excluding/short-listing tenderers?

Article 6.1 of the Public Procurement Law provides an exhaustive list of 10 cases (see our response to question 3.9 herebelow), when a potential supplier may be prohibited from participating in a public procurement.

It is also not allowed for the potential supplier or its affiliated persons to participate in the same lot of the tender (auction) (see article 6.2 of the Public Procurement Law).

In the event of any of the cases stipulated in article 12.4 of the Public Procurement Law (e.g. improper performance by the supplier of its obligations under the public procurement contract or avoiding entering into a public procurement contract by a winning bidder), the suppliers shall be included by the Authorised Body into the so-called “Register of Bad-Faith Suppliers”, and shall be prohibited from participating in public procurement activities for 24 months either (i) from the date when relevant court decision on recognition as a bad-faith supplier takes legal effect, or (ii) from the date when the Authorised Body made a decision on recognition as a bad-faith supplier, as applicable (see article 12.6 of the Public Procurement Law).

3.4 What are the rules on evaluation of tenders? In particular, to what extent are factors other than price taken into account (e.g. social value)?

The Public Procurement Law contains criteria, in accordance with which the best terms and conditions of a tender are determined. For an auction and RFQ, price is the only criterion. For a competitive tender, a tender documentation shall stipulate, besides the price, other criteria, including the relative value of such criteria and calculation of the notional price (see article 21.1(7) of the Public Procurement Law). Kazakh law requires, in particular, that the Organiser of a tender shall procure that certain criteria as provided in article 21.4 of the Public Procurement Law (e.g. relevant work experience, etc.) shall be stipulated in the tender documentation and calculation of the so-called relative value of the criteria that affect the amount of the final price bid shall be calculated in accordance with the relevant provisions of the Public Procurement Rules. For tender and auction methods, bids are evaluated first by the tender or auction committee, depending on the type of award procedure, for their compliance with the Qualification Requirements and requirements of the tender/auction documentation, as applicable. For a tender method, once the tender commission confirms which of the potential suppliers are recognised as participants of the tender, it applies to each of the bids the so-called relative value and the criteria for calculation of the notional price of each of the bid. The main criterion of a bid for all types of award procedures is, therefore, the price of products and the winner is selected automatically by the Web Portal.

3.5 What are the rules on awarding the contract?

The right to enter into a contract is awarded to a bidder who offers the best terms and conditions, compared to those of other bidders. If the winner avoids signing the contract, the customer shall conclude a contract with the participant whose bid got second place in accordance with the minutes of bid’s evaluation (see article 43.7 of the Public Procurement Law). The contract should be concluded on terms and conditions proposed in the winner’s bid. If the participant whose bid got the second place has not signed the contract within three business days from the date of provision of the draft public procurement contract, the purchaser shall start the

public procurement procedures from the very beginning (see article 43.8 of the Public Procurement Law). Kazakh law also requires the supplier to provide a security for due performance of the public procurement contract within 10 business days from the date of execution of the contract (see article 43.9 of the Public Procurement Law). Such security of due performance shall be in amount of 3 per cent of the total amount of the contract and can be either in the form of a guaranteed financial contribution on the bank account of the purchaser or in the form of a banking guarantee (see article 43.10 of the Public Procurement Law).

Importantly, in accordance with article 43.17 of the Public Procurement Law, execution of public procurement contracts with a term of more than one financial year is possible, only with the suppliers selected through competitive bidding (i.e. tender or auction).

3.6 What are the rules on debriefing unsuccessful bidders?

Where the winning bidder of a tender is determined, the Web Portal automatically forms a minute about results of the public procurement by way of tender, and a secretary of the tender commission shall publish such minutes on the Web Portal, with simultaneous notification by email of all members of the tender commission and all potential suppliers who submitted their bids on the same date when decision on the winning bidder is taken (see article 28.1 of the Public Procurement Law and article 143 of the Public Procurement Rules). Such minutes about results of the public procurement by way of tender shall be signed on the Web Portal by all members of the tender commission and provide, *inter alia*, detailed information about the reasons for the rejection of unsuccessful bids (see article 28.2 of the Public Procurement Law).

Similar provisions on publication of the minutes on the results of the public procurement by way of auction on the Web Portal on the day when the auction finished, and simultaneous notification of all potential suppliers by email, is provided for the auction method of public procurement (see article 35 of the Public Procurement Law).

Kazakh law also requires automatic publication of the minutes on the results of the public procurement by way of RFQ on the Web Portal on the same day when the automatic selection of the winner by the Web Portal is made (see article 45 of the Public Procurement Rules).

Likewise, under the Single Source Procurement method, an Organiser is required to form and publish on the Web Portal the minutes on the results of the public procurement by way of Single Source Procurement within three business days from the date when the requested information is provided by the potential supplier, in accordance with article 40 of the Public Procurement Law.

3.7 What methods are available for joint procurements?

For the purpose of centralisation of public procurements in Kazakhstan, the Public Procurement Law established the concept of a so-called “Single Organiser (arranger) of public procurements” as the state institution specifically established to act as such by either: (i) the Government of the Republic of Kazakhstan (the Public Procurement Committee of the Ministry of Finance of Kazakhstan was approved in this role) for certain GWS, an exhaustive list of which is approved by the Order No. 669, dated 21 December 2015 of the Ministry of Finance of Kazakhstan, to be procured mainly by the central Ministries and their subordinated agencies; or (ii) *Akimats* (i.e. the regional executive bodies) for certain GWS, an exhaustive list of which shall be approved by the respective *Akimat*,

to be procured by local state agencies (see articles 2(16) and 8.1 of the Public Procurement Law). Centralised public procurement by the Single Organiser can be conducted by methods of tender or auction only, and there are certain peculiarities of the process of centralised public procurement, as stipulated in article 8.2 of the Public Procurement Law.

3.8 What are the rules on alternative/variant bids?

The Public Procurement Law explicitly prohibits tender participants from making more than one bid for each subject of a tender (see article 24.4(1) of the Public Procurement Law). However, a bid may subsequently be altered or amended or even recalled at any time until the deadline for the provision of bids (see article 24.5 of the Public Procurement Law).

3.9 What are the rules on conflicts of interest?

According to article 6 of the Public Procurement Law, the following individuals may not take part in a tender, auction or bidding commission set up by the contracting authorities for the purpose of placing an order:

- 1) Close relatives, husband (wife) or cousin-in-law of heads of a potential supplier and (or) an authorised representative of the potential supplier who has the right to decide on the choice of the supplier or they are representatives of the supplier, or of an Organiser of public procurement, in the respective public procurement.
- 2) A potential supplier and (or) its worker provided to the purchaser or the Organiser of public procurement, expert services, consulting and (or) other services for preparation of public procurement, who has participated as the general designer or sub-designer in development of a feasibility study and (or) project (design and estimate) documentation for construction of the facility, which is the subject of public procurement, except for cases of participation of the developer of a feasibility study in public procurement for the development of the project (design and estimate) documentation. This restriction is not applicable to projects to be implemented in accordance with international construction standards.
- 3) A head of the potential supplier applying for participation in public procurement who is related to the management of, corporation of or, participation in the charter capital of legal entities that are listed in the Register of Bad-Faith Suppliers.
- 4) A head of the potential supplier that has applied for participation in a public procurement, who is a natural person engaged in entrepreneurial activity, and he/she is included in the Register of Bad-Faith Suppliers.
- 5) A potential supplier, who is a natural person engaged in entrepreneurial activity, applying for participation in a public procurement, who is the head of a potential supplier, which is included in the Register of Bad-Faith Suppliers.
- 6) A potential supplier who is in the Register of Bad-Faith Suppliers.
- 7) A potential supplier and (or) subcontractor (co-executor), whose property with the balance value of more than 10 per cent of the value of the relevant capital assets, is under arrest.
- 8) A potential supplier and (or) subcontractor (co-executor) who has outstanding obligations under executive documents and is included in the so-called “Unified Register of Debtors” by the authorised body implementing state policy and state regulation of activities in the field of enforcement of executive documents.

- 9) A potential supplier and (or) subcontractor (co-executor) whose activities have led them to be suspended, in accordance with the legislation of the Republic of Kazakhstan or the legislation of a potential supplier/non-resident of the Republic of Kazakhstan.
- 10) A potential supplier and (or) its subcontractor (co-executor), and (or) their head, and (or) founders (shareholders) who are included in the list of organisations and individuals associated with the financing of terrorism and extremism, in accordance with the legislation of the Republic of Kazakhstan.

4 Exclusions and Exemptions (including in-house arrangements)

4.1 What are the principal exclusions/exemptions?

In accordance with article 1 of the Public Procurement Law, procurement of the following GWS by the Affected Entities does not require compliance with the provisions of the Public Procurement Law and shall not be considered as public procurement:

- 1) services acquired from natural persons under labour contracts;
- 2) services acquired from natural persons, who are not performers of entrepreneurial activities, under paid services contracts (e.g. advocates);
- 3) services related to business trip expenses;
- 4) so-called “state task” and GWS acquired as part of their implementation in accordance with the budget legislation of the Republic of Kazakhstan;
- 5) making contributions (deposits), including into the charter capital of legal entities;
- 6) GWS acquired by the so-called national managing holdings, national holdings, national management companies, national companies and their affiliated entities, the National Bank of the Republic of Kazakhstan, its agencies, organisations, including in the structure of the National Bank of the Republic of Kazakhstan and legal entities, 50 or more per cent of the voting shares (shares in the charter capital) of which are owned by the National Bank of the Republic of Kazakhstan or in its asset management and their affiliated entities; or
- 7) goods (products), works and services of military and dual-purpose (application) are included in the state defence order.

4.2 How does the law apply to “in-house” arrangements, including contracts awarded within a single entity, within groups and between public bodies?

The Public Procurement Law does not contain an express prohibition against the winners within groups and between public bodies. It should be noted, however, that article 6.3 of the Public Procurement Law prohibits the participation of the purchaser (i.e. initiator) in public procurement arranged in its own interests as a potential supplier.

5 Remedies

5.1 Does the legislation provide for remedies and if so what is the general outline of this?

Chapter 9 of the Public Procurement Law is dedicated to ensuring the protection of rights and lawful interests of participants of public procurement. Article 47.1 of the Public Procurement Law, in particular, provides the right of the potential supplier to appeal the

actions (omission) of the (i) purchaser, (ii) Organiser, (iii) Single Organiser of public procurement, (iv) commissions, (v) expert, (vi) so-called “Single Operator in public procurement sector”, in an out-of-court (in administrative procedures), by way of filing a complaint with the Authorised Body, if such actions (omission) of the above entities violate the rights and legal interests of the potential supplier. Importantly, in the case such complaint is submitted to the Authorised Body not later than five business days from the date of publication on the Web Portal of the relevant minutes on results of the public procurement by way of tender/auction, the relevant contract award is stayed for 10 business days during which the complaint is considered (see articles 47.2 and 47.5 of the Public Procurement Law). Following the results of consideration of the complaint, the Authorised Body may issue a decision either to cancel the results of the award procedure or reject the complaint (see article 47.6 of the Public Procurement Law). Any decision of the Authorised Body on the results of consideration of the complaint may be challenged by an interested party (e.g. potential supplier) in the relevant state court of Kazakhstan.

The peculiarity of Kazakh legislation is that any interested party, including potential suppliers, may bring before the court an action for invalidation of the award procedure, even after expiration of a term of five business days for an out-of-court complaint with the Authorised Body (see article 47.3 of the Public Procurement Law). General statutes of limitations of three years, however, are still applicable.

5.2 Can remedies be sought in other types of proceedings or applications outside the legislation?

Any participant to an award procedure is entitled to ask a court for an interlocutory injunction aimed at the prevention of impossibility of performance of a judicial act. It can be a court order prohibiting the conclusion of a contract following the results of award procedures or performance of the contract if it has already been concluded, in case of appealing the award procedure by any participant in court.

In general, any remedies stipulated by civil and procedural laws can be used by a person whose rights and lawful interests have been violated during the award procedure. Any participant to award procedures who disagrees with its results because of procedural breaches, or with the refusal to be admitted to participation in award procedures, has the right to bring before a court an action on invalidation of the procedure and concluded contract, and on application of consequences of invalidity thereof in the form of mutual restitution.

5.3 Before which body or bodies can remedies be sought?

The Authorised Body or the relevant state court. Also, generally, it is always possible to try and file a claim with the prosecutor.

5.4 What are the limitation periods for applying for remedies?

It is five business days for filing a complaint in an out-of-court procedure with the Authorised Body, as discussed in our answer to question 5.1 herein. To apply for remedies after the expiration of the five business days period specified above, a participant can only go to the court where, generally, the applicable statute of limitation period is three years. Such period starts from the day when a person learnt or should have learnt of the violation of its right. However, it should be taken into account that real remedies in cases when a contract has been concluded and duly performed in full might be impossible to obtain.

5.5 What measures can be taken to shorten limitation periods?

Generally, no measures can be taken to shorten limitation periods.

5.6 What remedies are available after contract signature?

An award procedure may be invalidated irrespective of whether the contract has been concluded or not. If the award procedure is invalidated by a court, the contract can also be invalidated. A respective action can be filed either by a participant to the award procedure or by the Authorised Body.

5.7 What is the likely timescale if an application for remedies is made?

The Authorised Body shall consider a complaint within 10 business days (see our response to question 5.1 herein).

Litigation on the invalidation of award procedures may be considered in a state court of first instance usually within two to four months, depending on the complexity of the case and the number of postponements of court proceedings on permissible grounds. However, the most important thing is consideration by the court of an application on interlocutory injunction, for example, prohibitory injunction to conclude and/or perform the contract, within one business day. In practice, this is necessary as the real protection of rights, even in the event of violation of the rules of award procedure, may be impossible due to the performance of the contract, especially work contracts or contracts on rendering services, when the parties' return to their original position turns out to be impossible.

5.8 What are the leading examples of cases in which remedies measures have been obtained?

Due to the fact that the legislation on public procurement is often enforced in courts (e.g. just in the first nine months of 2016, the Specialised Inter-District Economic Court of Astana city registered 2,684 cases related to public procurement), there is no need to single out specific examples of such cases. It would be more efficient to name categories of such cases. The most common breach in 2016 are legal actions on recognition of suppliers as so-called bad-faith participants of public procurement.

5.9 What mitigation measures, if any, are available to contracting authorities?

No special mitigation measures are explicitly provided for in Kazakh law.

6 Changes During a Procedure and After a Procedure

6.1 Does the legislation govern changes to contract specifications, changes to the timetable, changes to contract conditions (including extensions) and changes to the membership of bidding consortia pre-contract award? If not, what are the underlying principles governing these issues?

According to article 45.1 of the Public Procurement Law, it is possible to amend the draft of a public procurement contract, provided that permanency of quality and other conditions, that were

the vital basis for the selection of the supplier, are guaranteed, and only if the following interrelated conditions are met:

- 1) Amendments to the draft public procurement contract are initiated by one of the parties not later than five working days from the date of signing of the minutes on the results of public procurement by way of a tender (auction).
- 2) Amendments are related to reducing the amount of the draft of the public procurement contract.
- 3) The decision to amend by reducing the amount of the draft of the public procurement contract is to be made based on the mutual consent of the parties involved.
- 4) Amendments to the draft of the public procurement contract, to increase the period of performance of the public procurement contract by five working days, are sent to the potential supplier which was awarded second place, if a potential supplier, the winner, declines to enter into public procurement contract in due course.

6.2 What is the scope for negotiation with the preferred bidder following the submission of a final tender?

Generally speaking, there is little room for change once the bidding document is filed.

6.3 To what extent are changes permitted post-contract signature?

According to article 45.2 of the Public Procurement Law, it is possible to amend an already executed public procurement contract, provided that permanency of quality and other conditions, that were the vital basis for the selection of the supplier, are guaranteed, only in the following cases:

- 1) By mutual consent of the parties to reduce the price of the GWS and the amount of the public procurement contract accordingly.
- 2) By increasing the amount of the public procurement contract if the design estimate documentation, examined in accordance with the legislation of the Republic of Kazakhstan, was amended and the decision to allocate additional funds by the amount of such change in accordance with the legislation of the Republic of Kazakhstan is made.
- 3) By reducing or increasing the amount of the public procurement contract related to a decrease or an increase in demand of the amount of purchased goods, works, except for works referred to in paragraph 2) above, provided the price per unit of GWS specified in the public procurement contract of these GWS is kept fixed. Such change of the concluded agreement on public procurement of GWS is permitted within the amounts provided in the annual plan of public procurement for the purchase of such GWS.
- 4) In case the supplier, during the process of execution of the concluded public procurement contract, while keeping the same price per unit of GWS, offers better quality and (or) technical characteristics, or the terms and (or) delivery conditions of goods, works and services that are the subject of the concluded public procurement contract.
- 5) By a decrease or increase of the amount of the public procurement contract for execution of works with a completion date in the next (subsequent) financial year (years), due to changes in tax, customs and other legislation of Kazakhstan.
- 6) By reduction of the amount of the public procurement contract on the execution of works with performance completion in the next (subsequent) financial year (years).
- 7) By changing the dates of the period for performance of the public procurement contract on works, in case of change of financing from year to year at the expense of the state budget, provided that the price of the concluded public procurement

contract does not change or there is a reduction of the estimated cost of work, and there are amendments to the design and estimate documentation, which are subsequently examined in accordance with the legislation of the Republic of Kazakhstan.

- 8) By change of the period for performance of the public procurement contract for works in case of initiation of a criminal case related to the execution of the public procurement contract in respect of an officer of the purchaser and (or) the supplier.
- 9) By change of the period for performance of the public procurement contract for supply of goods if the supplier is a producer of the delivered goods. Such change of the concluded public procurement contract of goods is allowed within the current financial year after notifying the supplier, for a period of not more than ten working days.

6.4 To what extent does the legislation permit the transfer of a contract to another entity post-contract signature?

The transfer of a public procurement contract to another entity is not, generally, possible. A supplier, however, can be replaced to the extent that a new supplier is the successor of the old one due to the reorganisation thereof.

7 Privatisations and PPPs

7.1 Are there special rules in relation to privatisations and what are the principal issues that arise in relation to them?

Privatisation in Kazakhstan is regulated by a separate block of legislation and Public Procurement Law does not apply to such relations. The main law on privatisation is the State Property Law.

7.2 Are there special rules in relation to PPPs and what are the principal issues that arise in relation to them?

See our response in question 2.7.

8 Enforcement

8.1 Is there a culture of enforcement either by public or private bodies?

After the adoption of the Public Procurement Law, a great number of claims on many different grounds against customers, tender committees and other entities participating in order placement have been considered. Just in the first seven months of 2016, the Authorised Body detected 60 violations of the public procurement legislation in a total amount of 29bn Tenge, and violations in 41 cases of public procurement for a total amount of 18bn Tenge have already been rectified by way of reconsideration of the results of the award procedures or even cancellation of the results of the tenders.

8.2 What national cases in the last 12 months have confirmed/clarified an important point of public procurement law?

As a new type of legal action in 2016, where court practice is not established yet, judges have noticed an increasing number of suits

filed by potential suppliers on revocation of the decision of the Authorised Body to include suppliers into the so-called “Register of Bad-Faith Suppliers”.

9 The Future

9.1 Are there any proposals to change the law and if so what is the timescale for these and what is their likely impact?

No material changes are expected in the near future.

9.2 Are any measures being taken to increase access to public procurement markets for small and medium-sized enterprises and other underrepresented categories of bidders?

Simplification of Tender Procedure

Before the Public Procurement Law took legal effect on 1 January 2016, in the case of procurement by way of tender, only suppliers who suggested the so-called “best technical specification” were admitted to submit price proposals to the purchasers, the subjects of state procurement. The “best technical specification” meant the specification of goods, services and works to be purchased, the characteristics of which were better than the standard specification required from all suppliers in the tender documentation. This provision restricted competition, since only a limited number of suppliers could suggest “the best technical specification”. In addition, it created grounds for corruption, since the procedure of recognising the suggested specification as the “best” was not transparent, and purchaser-subjects of state procurement could easily have recognised any supplier as suggesting “the best technical specification” at their discretion, thus unfairly awarding them the tender. In the newly enacted Public Procurement Law, the concept of “the best technical specification” is excluded. Now tender applications from all suppliers who suggest equal technical specification required by purchasers shall be considered.

Further, tender procedure has been simplified by the inclusion of a price proposal to the tender application (previously, a price proposal could be submitted only after tender applications had been considered and suppliers suggesting the “best technical specification” had been identified). This legal novelty will allow the tender procedure to be expedited.

Public Discussion of Draft Tender Documentation by Potential Suppliers

Importantly, the newly enacted Public Procurement Law introduces a mandatory condition of the tender documentation approval: the preliminary public discussion of the draft tender documentation by potential suppliers. Any comments on the draft of the tender documentation, as well as requests for clarification of the tender documentation, can be addressed by potential suppliers to the purchaser, Organiser of state procurement or the Single Organiser, no later than five business days from the date of publication of the public procurement announcement. The mentioned entities shall consider the comments and questions of the potential suppliers and either amend the tender documentation accordingly or decline comments and provide reasons for declining. Any such decision may be challenged by potential suppliers. This legislative amendment will allow potential suppliers to preview drafts of the tender documentation before it is approved and, in case of identification of

any issues, may request amendments to the tender documentation by the purchaser. This legislative amendment is also aimed to address the frequent situation when purchasers tailor tender documentation for particular suppliers.

New Tender with Prequalification of Bidders

The newly enacted Public Procurement Law introduces a new way of conducting public procurements – the so-called “tender with prequalification of bidders”. The tender with prequalification of bidders consists of two steps: (i) establishment of a register of qualified suppliers by types of goods, works and services that will be regularly updated. The commission for the establishment of this register will mandatorily include representatives of the National Chamber of Entrepreneurs and other non-governmental organisations for protection of potential suppliers’ interests; and (ii) a competitive tender among qualified suppliers included in the register.

Simplification of Auction Procedure

Before the Public Procurement Law took legal effect on 1 January 2016, the auction consisted of three main stages: (i) verification of auction applications for compliance with technical specifications and the existence of application security (cash deposit or bank guarantee); (ii) auction by best price offered; and (iii) verification of compliance of auction participants with qualification requirements. The newly enacted Public Procurement Law simplifies the auction procedure, so that now it consists of two stages: (i) verification of auction applications for compliance with technical specifications and of auction participants on compliance with qualification requirements; and (ii) auction. The described simplifications aim to decrease the time taken to conduct the auction and, more importantly, to exclude the possibility of refusal of an application that won the auction by the best price at a later stage on the grounds of non-compliance with Qualification Requirements.

Abolition of Exclusions to the State Procurement Process

Before the Public Procurement Law took legal effect on 1 January 2016, there was a list of goods, services and works that were excluded from state procurement requirements and could be purchased by the purchaser-subjects of state procurement directly, by signing of the relevant agreement with the relevant supplier (e.g., if the total annual value of the purchased GWS did not exceed 2,000 MCIs or approximately USD 12,000 mass media GSW, employees’ education, etc.) Under the Public Procurement Law, however, such exclusions have been abolished and most of the earlier excluded GSW shall be now purchased through the so-called “Single Source Procurement” procedure. In order to make such procedure more transparent, the newly enacted Public Procurement Law requires the purchaser to place on the Web Portal the report on purchases of GWS made “from one source”. This report shall contain the detailed justification of the choice of the particular supplier, and information on the price and other major terms of the agreement concluded with the relevant supplier.

Amendments Related to State Procurement Contract

Furthermore, now the state procurement contract shall be generally concluded in electronic form, i.e. sent through the Web Portal and signed by the parties using electronic digital signatures. This amendment will improve the position of purchasers against bad faith suppliers, who in practice frequently did not conclude state procurement agreements and avoided liability, since the purchasers could not prove due delivery/signing of the state procurement contract. Electronic format of the conclusion of the state procurement contracts is aimed to address this issue.

In order to improve the position of the suppliers, the newly enacted Public Procurement Law provided them the right to refuse advance payment under state procurement contract (and accordingly, released them from the obligation to provide the security in the amount of this advance payment).

Introduction of State Procurement Monitoring

The newly enacted Public Procurement Law introduced monitoring over state procurement as one of the stages of the state procurement process. Monitoring shall be performed by the Authorised Body, based on analysis of the Web Portal. An annual report, with results of monitoring, shall be submitted by the authorised body to the Administration of the President of Kazakhstan and the Government of the Republic of Kazakhstan.

Establishment of Territorial Unified Organisers of State Procurement

The Single Organiser of state procurement previously existed at republican level only (i.e. did not participate in local state procurements conducted in territorial subdivisions of Kazakhstan). The purpose of the Single Organiser is to ensure transparency and fairness of the procurement process, since representatives of the Single Organiser participate in state procurement together with representatives of the purchaser. Under the newly enacted Public Procurement Law, it was decided to apply successful experience of using the Single Organiser not only on a Republic-wide level, but also to establish local unified organisers in territorial subdivisions /regions of the Republic of Kazakhstan, and improve state procurement procedure at all levels.

Introduction of Antidumping Measures

The newly enacted Public Procurement Law introduces antidumping measures on public procurement by way of tender. It is now permitted for potential suppliers to suggest dumping prices, provided that the potential supplier, in addition to providing security for the execution of the state procurement contract, provides additional security of the amount of the difference between the suggested dumping price and the price that according to the law shall not be considered as dumping price. This measure will save budget funds and promote competition among the potential suppliers.

9.3 Have there been any regulatory developments which are expected to impact on the law and if so what is the timescale for these and what is their likely impact?

Based on publicly available information, a significant proportion of procuring entities (i.e. Affected Entities) belong to the educational and health care sector (schools, kindergartens, hospitals and polyclinics). At the same time, the aforementioned organisations do not have structural subdivisions responsible for the public procurement function, with accountants responsible for that. The Public Procurement Law provides for the establishment of a Single Organiser(s) at republican, *oblast* and *rayon* levels. In this regard, currently there is ongoing work to develop the legislative framework for centralisation of procurement for educational and health care facilities which aims to free these facilities from the public procurement function by transferring this function to single purchaser organisations.



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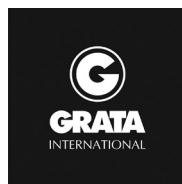


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