

## Kazakhstan

### Legal and institutional framework

Public procurement in Kazakhstan is regulated by the Law on Public Procurement (LPP), the Rules for Organization of Public Procurement of Goods, Works and Services, and the Instructions on Special Procedures of Public Procurement. These documents are available on the Internet, in electronic databases, and in the mass media. The rules stipulated in these documents apply to government agencies and departments, state-controlled enterprises, and enterprises in which the state holds more than 50 percent of the shares. Special conditions and procedures apply to procurement in certain sectors, such as security and defense.

The procurement system in Kazakhstan is highly decentralized, with some centralized planning and oversight. Government departments and agencies administer specific procurement projects. The Committee for Financial Control and Public Procurement (CFCPP) enforces the laws and regulations on public procurement. The Ministry of Finance decides procurement policies and develops the legislative framework. Kazakhstan is currently setting up an e-procurement system.

### Procurement methods and procedures

While the LPP permits several methods of procurement, open tender is preferred. Restricted tendering may be used with the approval of the CFCPP to procure complicated or specific items that have a limited number of suppliers. Single-source procurement is available in specified circumstances, e.g., in urgent situations or where a supplier holds a dominant market position. A supplier may be selected through price proposals for the annual supply of similar goods below a certain threshold. Procurement through open commodity markets is also possible under certain circumstances. To strengthen consistency and transparency, a Kazakh procuring agency must draft tender documents conforming to the sample prepared by the chairman of the CFCPP. The tender period is 30 days or longer.

Risks of corruption in procurement can be reduced by publicizing procurement opportunities and thus increasing participation. In Kazakhstan, procurement opportunities are published in Russian and Kazakh at least 30 days before the bidding begins. The advertisement must appear in a periodical designated by the CFCPP. Kazakhstan has launched a database to assist in publicizing procurement, but use of the

database by procuring agencies has so far been sporadic, and, hence, not all tenders are listed in the database.

The LPP also prescribes procedures for handling, opening, and evaluating bids. The tendering commission receives bids and enters them in a register. The commission may open bids up to two hours after the deadline for submission. The commission also evaluates the bids. The primary criterion is price, although the LPP lists other factors that may also be considered. The commission must record the reasons for its decision. Within seven working days after the winning bid is chosen, the procuring agency publishes the name of the winning bidder and the details of the award in an approved periodical. Post-award negotiations are allowed, but only to reduce the price of the contract. Failure of tendering arises when fewer than two bids meet the tender requirements (i.e., even if there is one responsive bid). In case of failure, the tender may be conducted again with changed requirements. If still no acceptable bids are received, single-source procurement may be used.

### Safeguarding and enforcing integrity

Codes of conduct specifically for procurement personnel can help prevent corruption in procurement. Kazakhstan has codes that apply specifically to procurement agencies and their officials. In addition, there are general rules of ethical behavior that apply to all civil servants. Training procurement personnel in integrity issues can also be an effective measure, but Kazakhstan has not yet done so.

To address the issue of integrity of bidders, the CFCPP further prohibits potential suppliers or their close relatives from representing the procuring agency in any state procurement. However, there are no other measures to strengthen the integrity of bidders, such as declarations of abstention from corruption, or disclosure of commissions, gratuities, or fees paid to third parties for services rendered in relation to a tender.

Effective sanctions for corrupt behavior also have preventive effects. The CFCPP may cancel a tender or a contract that has been tainted by a violation of procurement rules. Officials who accept bribes are subject to criminal and administrative sanctions. They may also be liable for civil damages.

Kazakh law also provides means of review and complaint. Aggrieved bidders may first appeal to the CFCPP. If the CFCPP determines that a procuring agency has breached procurement regulations, it will refer the matter to the courts. If the bidder is not satisfied with the CFCPP's

decision, it may seek judicial review. Such review is, however, limited to certain grounds, e.g., an aggrieved bidder cannot challenge the choice of procurement method.

To strengthen the verification and monitoring aspects of its procurement framework, Kazakh legislation allows the CFCPP to regularly inspect procuring agencies to ensure compliance with procurement rules. The CFCPP may involve auditors in these inspections.

### A way forward

Kazakhstan is encouraged to strengthen its safeguards against corruption in the area of public procurement. It is invited to extend its efforts to publish government procurement opportunities in its central database and to include anti-corruption clauses in procurement documents. Kazakhstan may also want to consider whether the risk of corruption through abuse of tender failure could be reduced by modifying the conditions of tender failure and the procedures to be followed in such cases.

Furthermore, Kazakhstan is encouraged to conduct systematic training of officials involved in public procurement to ensure thorough implementation of the regulatory framework in this matter.