

M.A.Amirova¹, F.G. Ibragimova¹

¹Kazakh Humanitarian Law Innovation University

Kazakhstan, Semey

e-mail: amirova_mika@mail.ru

PUBLIC PROCUREMENT DURING THE COVID-19 PANDEMIC

The author examines problematic issues related to public procurement during a pandemic. In addition, the legal framework on the topic is disclosed. One of the important conditions for the prosperity and well-being of the nation is the state of health of the population. It should be noted that our state provides funding for the organization of the health care system, including procurement. The crisis caused by the COVID-19 pandemic has brought significant changes to many areas of life. The sphere of public procurement is no exception: the operating conditions have changed, new challenges have emerged and traditional challenges have become more acute. Countries are forced to adapt to the prevailing conditions and look for solutions (often non-standard) to the difficulties that arise. In a sense, the current crisis has placed a special responsibility on the public procurement system, since people's lives directly depend on the effectiveness of its functioning in emergency situations.

Keywords: public procurement, government, Covid-19, pandemic, corruption, current crisis, contract, development.

М.А. Амирова¹, Ф.Г.Ибрагимова¹

¹Казахский гуманитарно-юридический инновационный университет

Казахстан, Семей

e-mail: amirova_mika@mail.ru

Государственные закупки во время пандемии COVID-19

Автор исследует проблемные вопросы, связанные с государственными закупками во время пандемии. Кроме того, раскрывается правовая база по теме. Одним из важных условий процветания и благополучия нации является состояние здоровья населения. Следует отметить, что наше государство обеспечивает финансирование организации системы здравоохранения, в том числе закупок. Кризис, вызванный пандемией COVID-19, внес существенные изменения во многие сферы жизни. Сфера госзакупок не исключение: изменились условия работы, появились новые вызовы и обострились традиционные вызовы. Страны вынуждены приспосабливаться к сложившимся условиям и искать решения (зачастую нестандартные) возникающих трудностей. В некотором смысле нынешний кризис возложил особую ответственность на систему государственных закупок, поскольку жизнь людей напрямую зависит от эффективности ее функционирования в чрезвычайных ситуациях.

Ключевые слова: государственные закупки, государство, Covid-19, пандемия, коррупция, кризис, контракт, развитие.

М. А. Әмірова¹, Ф.Г. Ибрагимова¹

¹Қазақ инновациялық гуманитарлық-заң университеті

Қазақстан, Семей

e-mail: amirova_mika@mail.ru

COVID-19 пандемиясы кезінде мемлекеттік сатып алу

Автор пандемия кезінде мемлекеттік сатып алуға қатысты проблемалық мәселелерді қарастырады. Сонымен қатар, тақырып бойынша заңнамалық база ашылды. Ұлттың өркендеуі мен әл-ауқатының маңызды шарттарының бірі - халықтың денсаулық жағдайы. Біздің мемлекет денсаулық сақтау жүйесін, оның ішінде сатып алуды ұйымдастыруға қаражат бөлетінін атап өткен жөн. COVID-19 пандемиясынан туындаған дағдарыс өмірдің көптеген салаларына айтарлықтай өзгерістер әкелді. Мемлекеттік сатып алу саласы да ерекшелік емес: жұмыс шарттары өзгерді, жаңа сын-қатерлер пайда болды және дәстүрлі сын-қатерлер өткір бола бастады. Елдер қалыптасқан жағдайларға бейімделуге және туындаған қиындықтарға (көбіне стандартты емес) шешімдер іздеуге мәжбүр. Белгілі бір мағынада қазіргі дағдарыс мемлекеттік сатып алу жүйесіне ерекше жауапкершілік жүктеді, өйткені адамдардың өмірі төтенше жағдайларда жұмыс істеу тиімділігіне тікелей байланысты.

Түйінді сөздер: мемлекеттік сатып алу, үкімет, Covid-19, пандемия, сыбайлас жемқорлық, қазіргі дағдарыс, келісімшарт, даму.

Introduction.

The COVID-19 pandemic has become an additional incentive to reform the public procurement system not only in Kazakhstan, but also in many countries around the world. Increasingly, public procurement is seen as a lever to stimulate economic growth. The OECD report "Public Procurement Reform: Progress in implementing the 2015 OECD Recommendations" highlights that the relationship between additional political and economic growth is recognized by the countries surveyed. In some cases, countries collect data on the progress of additional goals and submit reports at various levels of Government. This is especially true for data on green public procurement and the activities of medium and small enterprises (SMPS): about 70% of the countries studied collect information or evaluate the results of public procurement in these two areas. Public procurement allows for the provision of basic services, such as healthcare, infrastructure, or energy. Health is the second largest area of expenditure for governments (more than 9% of GDP). At the same time, corruption risks in the health sector are higher than in many other areas: a third of the citizens of the OECD countries believe that the health sector is corrupt or extremely corrupt. The level of corruption in this area can be reduced by increasing the transparency of drug pricing, the development of common requirements, or the implementation of joint public procurement by two or more contracting organizations. In the infrastructure and energy sectors, public procurement is complex and also vulnerable to corruption risks. Global infrastructure investment needs are expected to reach \$ 71 trillion by 2030. Sound public procurement management can lead to significant savings, increased productivity, and improved service delivery. [1]

Main part.

Governments use public procurement to overcome environmental challenges. "Green" public procurement is the procurement of goods and services that cause less environmental damage, taking into account

their entire life cycle. Such purchases can be one of the main drivers for innovation to create environmentally friendly products and services. They can also provide cost savings for States, and governments that use green public procurement will be better equipped to address emerging environmental challenges, such as reducing greenhouse gas emissions. Almost all OECD countries have developed strategies and policies to support green public procurement, and 69% of countries evaluate the results of these strategies. [2]

The European Commission notes the importance of public procurement for the following reasons:

- Every year, more than 250 thousand public authorities in the EU countries spend about 14% of GDP (about 2 trillion euros per year) on the purchase of goods, works and services.
- In many sectors, public authorities are the main consumers (for example, in energy, transport, waste management, social protection, medical or educational services).
- The public sector uses public procurement to promote employment, economic growth and investment, as well as to create a more innovative, resource - and energy-efficient, socially inclusive economy.
- High-quality public services are supported by a modern, well-organized and efficient procurement system.
- Improving the public procurement process leads to significant savings: an increase in efficiency of even 1% can save US \$ 20 billion per year. [3]

The public procurement sector is considered one of the most vulnerable to fraud and corruption. According to estimates provided by the OECD, 10 to 30% of investments in public construction projects can be spent inefficiently as a result of mismanagement or corruption. According to other data, bribery in the field of public procurement adds from 10 to 20% to the total cost of purchased goods, works and services. And more than three out of ten companies that participated in public tenders say that corruption prevented them from winning.

The COVID-19 pandemic has made significant changes in the functioning of the economy, including in the field of public procurement. The OECD notes the emergence of three main challenges in ensuring integrity in public procurement. First, Governments were forced to purchase a large number of goods and services, such as hospital equipment, ventilators, hand sanitizers, face masks, in order to meet the urgent needs of the health sector. [4] Many OECD countries conduct this type of procurement on the basis of public procurement regulations in emergency situations that allow the use of special procurement procedures. Such provisions allow the purchase of necessary goods directly from suppliers or through a pre-approved list, without resorting to lengthy standard procurement procedures. The implementation of such mechanisms may lead to risks of unfair actions in the procurement of goods and services that may not meet quality standards. In addition, in emergency situations, the risks of fraud and corruption, which have always been present in the public procurement process, increase. Past humanitarian and health crises (for example, Hurricane Katrina in 2005) or the Ebola virus outbreak in 2014-2016) showed that these processes can be abused, harming those who most need the designated goods and services. Without proper safeguards for integrity and transparency, the procurement process in emergency situations is more susceptible to abuse. [5]

The second challenge, according to the OECD, was the insufficient volume of accumulated stocks in many member countries of the organization, which led to increased competition for the necessary goods at the international level. In such circumstances, the negotiation processes between the public and private sectors are changing. Thousands of government customers and private organizations search the market for the same products, which are provided by a small number of suppliers. Moreover, production in some companies has been suspended or significantly restricted due to measures to prevent the spread of the pandemic. Under these conditions,

competition between government agencies increases, which leads to chaotic market behavior. In addition, many countries impose export restrictions to meet their own domestic needs, which affects the availability of goods on a global scale. [6] Many transactions are conducted informally, and price volatility reaches extreme proportions, with suppliers demanding significant upfront payments. This may contribute to changing the paradigm of corruption schemes, since in such conditions, buyers can bribe sellers to obtain the necessary goods and services. These risks can extend to the entire supply chain, as many goods depend on scarce raw materials. As a third challenge, the OECD highlights the need for governments to manage current government contracts. Governments must identify those at risk and ensure an effective response to suppliers significantly affected by the crisis and its consequences. Governments, along with contracting organizations, should help ensure that the suppliers most at risk are able to resume normal contractual deliveries once the outbreak is contained. Legal framework for the Digest. [7] Government procurement during the COVID-19 pandemic, 12 government procurement usually provides for exceptional measures to continue payments under current contracts in extraordinary circumstances, such as special advance payments or exemption of suppliers from penalties for improper performance of contracts. Such deviations from established contractual practices may be a breeding ground for corruption if they are not covered by the transparency guidelines that are made available to all contracting authorities.

The COVID-19 pandemic is putting constant pressure on the manufacturing capacity of global manufacturers and global supply chains. Organizations of the UN system faced the same problems in the field of procurement as individual States: closing borders, stopping air traffic, quarantine measures, inflated prices, supply that does not meet the level of demand. The main suppliers of PPE to the UN organizations were Chinese manufacturers, which, due to the restrictive measures imposed, could not fulfill the terms of the contracts. Short-and long-term market

challenges remain due to limited availability of raw materials, as well as uncertainty about the scale of demand and the duration of demand for products. The UN draws attention to the fact that the collapse in the aviation industry has affected the procurement and supply of vital vaccines. As a result of the supply disruptions, countries in Asia and Africa said that stocks of vaccines against measles, diphtheria, tetanus, pertussis, hepatitis B, pneumococcus, etc. had reached a critical level. As a result of the slowdown in supply, organizations face the risk of vaccine expiration dates. [8] In early May, a total of 99 countries reported suspending their immunization campaigns against measles, rubella, polio, yellow fever, typhoid, cholera, tetanus, and diphtheria due to the introduction of quarantine measures.

As the number of cases of COVID-19 increases exponentially, States have turned to the World Bank for support in the fight against the pandemic. The procurement of medical supplies should be carried out as a matter of urgency, and the same applies to the procurement of consulting services to raise public awareness and develop laboratory and medical protocols. The World Bank's public procurement specialists have switched to a round-the-clock mode, helping partners to conduct needs assessments and develop fast and efficient procurement mechanisms. [9] They assist States in addressing issues related to the pandemic, such as supply chain gaps and border delays, which affect the performance of contractors and suppliers. The World Bank's assistance is provided in several areas. In early April, the organization launched the COVID-19 Fast Track mechanism, which is a set of templates and guidelines, including accelerated public procurement mechanisms: contracts are now subject to subsequent review by the Bank to speed up purchases; retroactive financing (financing of expenses incurred before the contract enters into force) can be carried out in the amount of up to 40% of the total contract value. In addition, some projects, depending on the situation in the country, apply mechanisms that allow the use of customs documents as proof of imports for

the last 12 months. The Governments of the Member States may choose from several proposed options for simplified and accelerated procedures. Digest. Public procurement during the COVID-19 pandemic 20 The World Bank also offers practical support at all stages of procurement—from assistance in selecting suppliers to assistance in tendering, contracting and monitoring their implementation. World Bank borrowers are able to make purchases through UN agencies, which is facilitated by the new procedures adopted by the World Bank. [10]

In an effort to unite their efforts in the fight against the global challenge, States are exchanging experience in the field of public procurement in the context of the pandemic. In June 2020, an OECD webinar was held on the topic "Responding to COVID-19 in public procurement: lessons and experiences from countries". The event described the EU's overall response to the COVID-19 outbreak. In particular, an agreement was adopted on the procurement of medical supplies and equipment, and general measures were developed for the accumulation and reallocation of funds, depending on the needs of each country. In addition, a Digest was given. Public procurement during the COVID-19 pandemic 25 recommendations for ensuring the necessary transparency of procedures and maximizing the effectiveness of procurement. The following key positions were noted: * In times of crisis, cooperation in procurement between States, as well as between States and the private sector, is vital. * The accumulation of necessary goods and their distribution in different regions in accordance with the needs caused particular problems. * Creating emergency procurement guidelines and ensuring their implementation is critical. * In order to take effective measures to combat the crisis in public procurement, it is necessary to digitalize procurement procedures. The main measures taken by different countries to solve the problems encountered were related to the simplification and acceleration of procurement procedures. The most important measure to ensure a well-thought-out and balanced procurement policy in emergency

situations is the establishment of a centralized procurement coordination mechanism, which has been greatly facilitated by the digitalization of procurement procedures. [11]

Conclusion.

Experts note new challenges and increased risks in the field of public procurement in connection with the COVID-19 pandemic: • The risks of corruption and fraud in the procurement of goods and services have increased. There is a change in the specifics and paradigm of corruption schemes. There are challenges associated with the need to continue managing current government contracts. * Lack of training, poor coordination of activities, shortage of supply and labor market conditions, inflation, problems related to personnel. * The collapse of the aviation industry has led to disruptions in procurement, resulting in critical stocks of life-saving vaccines in Asia and Africa. [12] To address these and other challenges,

supranational organizations recommend that States take action at the international and national levels.: • To carry out joint public procurement, which allows States to act together as a major customer, ensures fairer prices and allows for priority deliveries to the most needy countries. International organizations are developing mechanisms for centralized procurement of goods and services Digest. Government procurement during the COVID-19 pandemic is used for the needs of its units, as well as to assist participating countries in their fight against the COVID-19 pandemic. * Simplify procurement procedures, conduct them in a short time, which contributes to more efficient activities of state customers in a crisis. * Enter into direct contracts (or purchase from a single supplier) in strict compliance with standards of openness and transparency and only to meet urgent needs related to the pandemic.

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Амирова Меруерт Аскаровна

Лауазымы: Қазақ инновациялық-гуманитарлық заң университетінің азаматтық құқық кафедрасының аға оқытушы

Мекен- жайы: 071400, Қазақстан Республикасы, Семей қ., Аманова к., 22-21

Ұялы тел.: +7 777 980 98 19

Ибрагимова Флюра Галимовна

Лауазымы: з.ғ.к., Қазақ инновациялық-гуманитарлық заң университетінің азаматтық-құқық кафедрасының меңгерушісі

Мекен-жайы: 071400, Қазақстан Республикасы, Семей қ., Абай көшесі, 94

Ұялы тел.: +7 777 318 31 13

Амирова Меруерт Аскаровна

Должность: Казахский инновационно-гуманитарный юридический университет, старший преподаватель кафедры гражданского права

Адрес: 071400, Республика Казахстан, г. Семей, ул. Аманова, 22-21

Сот.тел.: +7 777 980 98 19

Ибрагимова Флюра Галимовна

Должность: к.ю.н., Казахский гуманитарно-юридический инновационный университет, заведующий кафедрой гражданско-правовых дисциплин

Адрес: 071400, Республика Казахстан, г. Семей, ул. Абая, 94

Сот. тел.: +7 777 318 31 13

Amirova Meruyert Askarovna

Position: Kazakh innovation and Humanitarian Law University, Senior Lecturer at the Department of Civil Law Disciplines

Mailing address: 071400, Republic of Kazakhstan, Semey, Amanova St., 22-21

Mob.phone: +7 777 980 98 19

Ibragimova Flura Galimovna

Position: Kazakh innovation and Humanitarian Law University, candidate of law, head of the department of civil law disciplines

Mailing address: 071400, Republic of Kazakhstan, Semey, Abay St., 94

Mob.phone: +7 777 318 31 13