

Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Kazakhstan

Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from Kazakhstan was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by Kazakhstan in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



A. General framework

Legal and organizational framework:

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements¹ that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

1. Public procurement is regulated by the Law of the Republic of Kazakhstan “On Public Procurement” (hereinafter referred to as the “Law”), by the Rules for Organization of Public Procurement of Goods, Works and Services approved by the Decree of the Government N1158 as of October 31, 2002 and by the Instructions on Special Procedures of Public Procurement approved by the Decree of the Government N205 as of February 20, 2005. Bidding documentation is prepared based on the Sample Bidding Documentation approved by the Order of the Chairman of the Public Procurement Agency N8 as of October 31, 2002. These legal regulations are posted on the Website www.goszakup.kz.

2. International and regional agreements have not been concluded in accordance with the public procurement legislation.

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

In accordance with the Presidential Decree N 1449 as of September 29, 2004 “On Measures for Further Improvement of Public Administration” the strategic functions providing for formulation of public policies in relevant areas are entrusted to the ministries. The committees that are parts of the ministries are in charge of implementation of these public policies, oversight and control.

In accordance with the procedures established by the legislation the Ministry of Finance performs:

1) strategic functions providing for formulation of public policies:

analyzing practices of application of the legislation, preparation of proposals for its improvement, development (or approval) of legal regulations within its jurisdiction;

2) functions providing for implementation of public policies:

coordination of public procurement processes and control over public procurement as to whether the legislation of the Republic of Kazakhstan in the area of public procurement is followed.

The authorized body in charge of public procurement in accordance with the procedures established by the legislation performs:

1) functions providing for implementation of public policies in:

¹ e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

maintenance of state register of entities obliged to procure goods, works and services in accordance with the Kazakhstani legislation on public procurement;

decisions regarding public procurement that are mandatory for execution by customers;

regulation of public procurement process within its jurisdiction;

consideration of requests from customers regarding methods of procurement and respective decision-making;

delivery of materials of inspections to the law-enforcement bodies if signs of a crime are found.

2) control and oversight functions:

it evaluates effectiveness of control performed by entities acting as customers in public procurement process;

it considers appeals from potential suppliers (suppliers) regarding actions (failure to act) of customers, organizers of public procurement tenders, members of tendering commissions, a secretary of tendering commission and taking relevant measures;

it nullifies tenders if there were violations of the Kazakhstani legislation during the tender for procuring goods, works and services that affected the results of the tender and if the tender did not result in selection of the winner and contracting;

it nullifies the decisions made by the tender organizer, customer or tendering commission before concluding a contract and cessation of the public procurement process if there were violations of the Kazakhstani legislation on public procurement;

before concluding a contract it makes decisions to revise or to nullify the decisions made by organizers of the tender, customers and tendering commissions against the Kazakhstani legislation on public procurement;

it performs control as to whether the Kazakhstani legislation on public procurement is followed;

it finds, stops and prevents inefficient use of funds allocated for public procurement;

it performs inspections as to whether the requirements of the legislation on public procurement are met.

Customers that are government agencies, government entities **and** state-owned enterprises and other entities where 50 or more percent of shares or controlling interest are owned by the state and their affiliated legal entities initiate tenders and can independently designate the organizer of a tender. In such a case the customer approves by its order the tendering commission and bidding documentation for potential suppliers, publishes an announcement about the tender, provides bidding documentation to potential suppliers, opens envelopes with proposals, selects the winner and publishes the results of the tender. It should be noted that only the customer concludes the contract with the winner. Potential suppliers have the right to appeal to the authorized body on the issues of legitimacy of the tendering procedures. In its turn, the authorized body examines documents and makes relevant decisions. If there have been violations of the Kazakhstani legislation on public procurement and the contract with the winner has been concluded as well as in the cases when the requirements of the authorized body are not satisfied, the authorized body brings a case to the court for judgment. Control over execution of contractual commitments by the supplier is performed by the customer.

3. Is procurement of goods governed by the same procedures as procurement of services?

Generally, the Law establishes uniform procedures. At the same time, Para 6 and 7 of the Law establish peculiarities for selecting consultative services and other goods, works and services.

In addition, the rules for procuring goods and services and the rules for procuring works have been developed. The relevant drafts are now considered by the ministries.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

In accordance with Subpara 14 of Article 1 of the Law the authorized body is a public body determined by the Government of the Republic of Kazakhstan that performs regulation of public procurement process. In accordance with this norm, by the Decree of the Government of the Republic of Kazakhstan N1134 “Some Issues of the Committee for Financial Control and Public Procurement of the Ministry of Finance” as of October 29, 2004, this Committee (hereinafter referred to as “CFC&PP”) was determined as the authorized body in charge of public procurement. Funds are allocated only from the republican budget in accordance with the passports of budget programs prepared in accordance with the needs of the CFC&PP, required for its activities. The central office of the CFC&PP has 103 people and 948 people work in the regional offices of the CFC&PP.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

Article 24 of the Law provides for special conditions for public procurement to satisfy the needs of defense, law enforcement and national security. Special procedures for such procurement are determined by the Government of the Republic of Kazakhstan. In accordance with this norm, the Decree of the Government of the Republic of Kazakhstan N205 as of February 20, 2004 approved the Instructions for Special Procedures of Public Procurement. The area for applying these Instructions is public procurement of goods, works and services in the area of military, economic, scientific and engineering, foreign trade, foreign policy, intelligence, counterintelligence and criminal investigation activities, research and development works for creation or modernization of weaponry, military equipment and their designs, ammunitions, communication and informatization facilities for the purpose to ensure security of the Head of the State and other protected officials in accordance with Article 1-2 of the Law of the Republic of Kazakhstan «On Guard Service of the President of the Republic of Kazakhstan», for the purposes of defensive capacity, national security of the state when there is a need to protect state secrets, and when procuring weaponry, military equipment and products for bacterial and medical protection required for ensuring defense capacity, national security and law enforcement.

Procurement policies and practices:

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

When performing public procurement on a competitive bidding basis the organizer of the tender is to develop bidding documentation. In accordance with Para 8 of Article 12 of the Law bidding documentation provided by the tender organizer to potential suppliers for preparing proposals and participating in an open or limited tender for procurement of goods, works and services is prepared based on the Sample Bidding Documentation approved by the Order of the Chairman of the Procurement Agency of the Republic of Kazakhstan N 8 as of October 31, 2002.

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

1. As reported by the administrators of budget programs in 2004 there were 8,502 tenders. 2,302 tenders were held by administrators of republican budgets and 6,200 tenders were held by administrators of local budget programs.

2. The method of public procurement of goods, works and services is determined by the customer in accordance with Article 9 of the Law.

In accordance with Para 1 of this article of the Law public procurement by one of the following methods:

- open tender (competitive bidding);
- limited tender;
- selection of a supplier through request for price proposals;
- sole-sourcing;

through open commodity markets.

When procuring goods, works and services all customers are obliged to follow the principles of legal regulation of public procurement as stated by Article 3 of the Law, namely provision of equal opportunities for participation in public procurement process to all potential suppliers, fair competition among potential suppliers and ensuring publicity for the procurement process.

In accordance with Para 1 of Article 10 of the Law competitive bidding is the major method of public procurement of goods, works and services

8. Please explain under which conditions pre-selection procedures are conducted.

The procedure for preliminary selection is applied in case of a limited tender. Limited tender is held with the approval of the authorized body when goods, works and services due to their complicated or specific nature are available only at limited number of potential suppliers that are known in advance to the organizer. A notification is sent to these suppliers in at least one month before the deadline for accepting proposals for participation in the tender.

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

The rapid development of new technologies provided for proceeding with creation of e-procurement.

Currently, the authorized body is working at creation and introduction of an e-procurement system. In accordance with the Decree of the Government of the Republic of Kazakhstan N1262 "On Some Issues of the Procurement Agency" as of December 13, 2003, the E-Commerce Center was established as a state-owned enterprise with the main function to develop and to maintain such system. The development of software for e-procurement has been almost finished and by the end of 2005 it is scheduled to introduce the system in a pilot zone.

The introduction of this system will help to increase efficiency of public procurement based on ICT and will allow to minimize violations related to corruption in the public procurement process.

B. Transparency and Fairness

Transparency of general procurement policies and regulations:

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

We think that all laws of the Republic of Kazakhstan are accessible to the public. These can be received through the mass media. In accordance with the Law of the Republic of Kazakhstan “On Legal Regulations” all laws of the Republic of Kazakhstan, Presidential Decrees, Decrees of the Government of the Republic of Kazakhstan are published in the mass media after they are adopted or issued. In addition, one can access to them through electronic databases (Yurist, RCPI) and through the Website. All information related to public procurement the CFC&PP posts on the Website www.goszakup.kz.

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

The lists of potential suppliers (“white lists”) are not prepared.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

1. In accordance with Para 1 of Article 14 of the Law a potential supplier willing to participate in a tender is obliged to secure its bid in the amount of one to three percent of the bid by the method and on the conditions specified in the bidding documentation that guarantee that the potential supplier will not withdraw or change its bid after the deadline for submitting bids and will conclude a contract in case if its bid wins.

The security for bids of all bidders shall be the same.

At the same time, in accordance with Para 2 of Article 14 of the Law potential suppliers are not obliged to secure their bids if:

- they are SMEs and only in case if the budget for the goods, works and services they offer is not more than 6,000-fold monthly indicator established by the law on the republican budget for the relevant financial year;
- they are organizations producing goods, works and services created by public associations of disabled people and only in case the budget for the goods, works and services they offer is not more than 18,000-fold monthly indicator established by the law on the republican budget for the relevant financial year;
- the subject of public procurement are fundamental and applied scientific researches and development;
- they participate in the first phase of the two-phased tender;
- they are individuals participating in a tender for procuring housing at the secondary market.

2. In accordance with Para 2 of Article 11 of the Law, an announcement shall be published in the Russian and Kazakh languages in at least thirty calendar days before the deadline for accepting bids.

Simultaneously announcements can be posted on the Website of the authorized body.

If the tender has failed the announcement about the repeated tender shall be published in periodicals in at least fifteen days before the deadlines for accepting bids.

Transparency of procurement opportunities:

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

1. In accordance with Para 88 of the Rules, the organizer publishes an announcement about future and completed tenders for public procurement in a periodical determined by the authorized body in accordance with the procedures established by the legislation of the Republic of Kazakhstan. Currently there is work for organization of an open tender for procuring services for publication of future and completed public procurement. Based on the results of this tender a contract will be concluded with the winner and there will be additional information in the mass media about it. Before this all announcements are published in the Public Procurement Bulletin. In addition, the information about the periodical determined by the authorized entity is posted on the its Website. The CFC&PP thinks that it will be legitimate and good if customers post such announcements in other additional periodicals determined in accordance with the legislation of the Republic of Kazakhstan on public procurement.

2. In accordance with Para 4 of the Law the organizer of a tender has the right to charge for bidding documentation at the amount not exceeding costs for copying the documentation and in case of a limited tender it has the right to charge for its delivery in accordance with the procedures and on the conditions determined by the Government of the Republic of Kazakhstan.

The amount of charge is not fixed.

Other procedural charges are not stipulated by the legislation on public procurement.

3. In accordance with Para 2 of Article 11 of the Law, the time between the announcement about an open tender and the deadline for accepting bids shall be, at least, thirty days, in other words, these thirty days are given for preparing bids by potential suppliers.

If a tender has failed, a repeated tender shall be carried out. In such a case, this time shall be, at least, fifteen days.

In case of a limited tender, in accordance with Para 2 of Article 18 of the Law, a notification shall be sent to potential suppliers that have the required goods, works and services in, at least, one month before the deadline for accepting bids, i.e. the time for preparing bids by potential suppliers is also thirty days.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

The Public Procurement Law of the Republic of Kazakhstan regulated the criteria for selecting suppliers and determining the winner and these regulations are given in a form that prevents any differences in interpretation.

Thus, in accordance with Para 6 of Article 16 of the Law, the tendering commission evaluates and compares bids that have been accepted for participation in the tender and determines the winner based on the lowest price with regard to the following criteria:

- operating costs, costs for technical support and repairs of goods to be procured;
- time of delivery;

- functional, technical and qualitative characteristics of goods;
- terms of payment;
- guarantees for goods, works and services;
- other criteria providing for highest efficiency (additional investments, employment encouragement, transfer of technologies and training of managing, scientific and manufacturing personnel);
- support to local producers;
- qualification requirements to potential suppliers, i.e. a potential supplier has to:
 - 1) to be proficient and to have, at least, one-year experience of work at the relevant market of goods, works and services to be procured;
 - 2) have required financial, physical and human resources for executing contractual commitments;
 - 3) to have civil legal capacity for concluding a contract;
 - 4) to be solvent, not to be subject to liquidation, its property shall not be arrested, its economic activities shall not be suspended in accordance with the legislation of the Republic of Kazakhstan;
 - 5) not to be liable for failure to execute or inappropriate execution of commitments for contracts for public procurement concluded within two previous years based on legal judgment.

If the subject of public procurement is attraction of consultative services, the criteria for selection in accordance with Para 7 of Article 16 of the Law are:

- 1) financial proposal;
- 2) qualitative characteristics of consultative services;
- 3) experience of work of a potential supplier at the market of these services;
- 4) qualification, reputation, reliability and proficiency of a potential supplier.

The criteria that are prohibited are limitations related to public procurement process.

Thus, in accordance with Article 7 of the Law:

- close relatives (parents, spouse, brothers, sisters and children) or relatives by marriage (spouse's brothers, sisters, parents or children) of an official or an agent of the potential supplier participating in public procurement process have no right to represent the customer's interests related to public procurement process;
- a potential supplier and/or its employee that provided consultative services to the customer for developing bidding documentation has no right to participate in the tender for procuring goods, works and services, related to the provided consultative services;
- a potential supplier and its affiliates have no right to participate in the same tender (lot).

The indication of these criteria in bidding documentation is mandatory as in accordance with Para 8 of Article 12 of the Law bidding documentation is prepared based on Sample Bidding Documentation approved by the authorized body. Sample bidding documentation supplied by the tender organizer to potential suppliers for preparation of bids and participation in an open or limited tender for procuring goods, works and services has been developed in accordance with the Public Procurement Law of the Republic of Kazakhstan and the Rules for Public Procurement of Goods, Works and Services.

Transparency of contract evaluation and award procedures:

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

1. In accordance with Para 4 of Article 16 of the Law, a tendering commission declares a tender as failed if less than two potential suppliers have provided their bids for participating in the tender or if less than two bids have been supplied that meet the requirements of the bidding documentation.

If a tender is declared as failed as a whole or for a lot, in accordance with Para 5 of this Article of the Law, the customer has the right to recommend the tender organizer:

- 1) to change the bidding documentation as required and have repeated tender;
- 2) to have two-phased procedures.

If the measures stipulated for by this Article have not resulted in conclusion of a contract for public procurement, the procurement can be made through sole sourcing in accordance with Subpara 4 of Para 1 of Article 21 of the Law.

2. In accordance with Para 8 of the Rules, the secretary of a tendering commission keeps a register for bids and potential suppliers willing to participate in the procedures of opening envelopes. The register shall indicate the time and date when bids are provided by potential suppliers and the name of the designated representatives of potential suppliers (a person who submitted the envelop with the bid and participates in the tender). The registers for bids from potential suppliers willing to participate in the procedure for opening envelopes shall be laced, its pages shall be numbered and the last page shall be sealed by the tender organizer. It is allowed to keep the same register for similar types of procurement.

When there are sufficient elements of protection against unauthorized access the register can be prepared in electronic format which is then printed on a paper. The registers shall be kept and stored in accordance with the filing procedures of the tender organizer.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

1. In accordance with Para 27 of the Rules, during the procedure of opening envelopes with bids the secretary of the tendering commission keeps the minutes in the format in accordance with Appendix 7 to the Rules. The minutes are then signed by the Chairperson of the tendering commission, his/her deputy, members and secretary of the tendering commission.

In case of a two-phased tender the tendering commission keeps the minutes for opening envelopes and for tender results for each phase of the tender.

In accordance with Para 1 of Article 17 of the Law in case of competitive bidding the tendering commission is obliged to take the minutes of the tender results. Based on Para 40 the minutes, in its format and content, are prepared in accordance with Appendix 8 to the Rules and are signed by the Chairperson of the tendering commission, his/her deputy, members and secretary of the tendering commission.

2. In accordance with Para 108 of the Rules, the materials of completed public procurement are stored in accordance with the procedures established by the relevant classification of the tender organizer or customer.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

In accordance with Para 2 of Article 17 of the Law, the minutes about the tender results can be submitted as requested by any potential supplier that has provided a bid for participation in the tender. If this information contains information that is considered as state secrets of the Republic of Kazakhstan, then it is provided in accordance with the legislation of the Republic of Kazakhstan on state secrets.

In addition, according to Para 10 of Article 16 of the Law the tender organizer informs all participated potential suppliers within seven working days through publication of the tender results in the mass media indicating the name of the tender, the winner and its address, the name and price for a unit of good, works and services offered by the winner.

In accordance with the Appendix 8 to the Rules “Minutes on Tender Results”, the tendering commission is obliged to indicate based on what criteria the bids have been evaluated. Based on results of evaluation and having compared the bids the tendering commission makes a decision to declare the winning bid and indicating the name and location of the potential supplier and the conditions based on which it is declared as the winner.

According to Para 4 of Article 23 of the Law before signing the contract the customer has the right to have negotiations with the potential supplier in order to reduce the price. The potential supplier has the right to disagree with such depreciation and its refusal does not give the right to the customer to evade from signing the contract with the potential supplier declared as the winner of the tender for procuring goods, works and services.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

The goods, works and services are delivered in accordance with the contracts concluded based on the results of selecting the supplier by the methods stipulated by Article 9 of the Public Procurement Law.

Integrity of procurement personnel:

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

Currently there are codes of ethics that were specially developed for public procurement agencies and their officials. At the same time if such an official is a civil servant he/she is subject to the norms on civil service that provide for measures to prevent corruption-related violations and there is also anti-corruption legislation.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

At present, there is no special training for public procurement officials. The policies and procedures for public procurement are described in the relevant legislation. The authorized body regularly organizes seminars for the officials who directly involved in public procurement.

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

In accordance with the anti-corruption legislation the public procurement officials can approach anti-corruption agencies.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

The Criminal Code of the Republic of Kazakhstan a person authorized to perform government functions and an equal official can be sanctioned for receiving a bribe (these sanctions are: a fine, custodial restraint for a term established by the legislation or imprisonment with no right to take certain positions or to perform certain activities). Administrative sanctions are not applied.

In accordance with the acting labour and civil legislation, material damages can be levied from officials who have exacted or received a bribe. If these officials are materially responsible persons, the damages are levied in full measure; if no then the damages are levied partially.

The Anti-Corruption Law and the Presidential Decree on On-Duty Ethics provide for liability of civil servants and people set equal to them up to dismissal and criminal and administrative liabilities in accordance with the legislation.

Integrity of bidders and suppliers:

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

The criminal legislation does not provide for liability of legal entities whereas individuals can be prosecuted depending on components of a crime in their actions.

In case of economic damages caused by the supplier to the customer the issues of recovery are regulated in accordance with terms of the contract either voluntarily or by judicial means.

24. Do your country's laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

The acting legislation does not provide for debarring a firm that has given a bribe to an official from participation in tenders and/or other commercial activities

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

A tender participant is obliged to refuse from participation in the tender of a bid has been supplied by its affiliate.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

They are not obliged.

D. Accountability

Separation of responsibilities and independent scrutiny:

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

Regular inspections are carried out in the entities that are obliged to procure goods, works and services in accordance with the legislation of the Republic of Kazakhstan on public procurement. Based on the Statutes of the Committee for Financial Control and Public Procurement approved by the Decree of the RK Government N1134 as of October 29, 2004, the authorized body to carry out inspections as to whether the public procurement legislation is followed is the CFC&PP. The CFC&PP submits the information about the inspections to the RK Government, to the Presidential Administration and, if necessary, to the law-enforcement bodies.

According to Para 11 of the Statute the CFC&PP can involve into such inspections specialists from government agencies and, if required, auditors or auditing firms and experts on a contractual basis. The money for paying for such services is allocated from the republican budget.

Review and complaint mechanisms:

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

Yes.

In accordance with Article 5 of the Law the authorized body:

- before concluding a contract makes decisions to revise or to nullify the decisions of tender organizers made against the legislation of the Republic of Kazakhstan on public procurement;
- brings suits for nullifying deals made against the legislation of the Republic of Kazakhstan on public procurement;
- considers cases on administrative offences in area of public procurement and imposes administrative sanctions in accordance with the relevant RK legislation.

The time allowed for claims or appeals is established by the Administrative Code, by civil and procedural legislation of the Republic of Kazakhstan.

In 2004 the authorized body received 386 appeals from potential suppliers.

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

The public procurement legislation does not provide for limitations regarding the right to initiate appellate procedures.

At the same time, the issues regarding the measures aimed at protection of people who have provided discreditable information are not regulated by the public procurement legislation.

According to Subpara 9-1 of Article 5 of the Law the authorized body provides mandatory for execution guidelines on the issues within its jurisdiction to customers and tender organizers and to the members and secretary of tendering commissions.

Having considered the valid claim, the authorized body sends instructions to the tender organizer to nullify or to revise tender results if a contract has not been concluded. If such a contract has been concluded, the authorized brings an action to the court to nullify the deals arranged against the legislation of the Republic of Kazakhstan on public procurement.