



Special Legal Alert for March 2019

Latest changes to state
Kazakhstan procurement law

Dear friends,

In this special alert, we will be discussing the latest significant amendments to the Kazakhstan State Procurement Law (the "State Procurement Law").

To aid implementation of the Presidential Message, "The Third Modernisation of Kazakhstan: Global Competitiveness" and amend legislation, improving the legal mechanism for identifying and suppressing price and tariff collusion in state and quasi-public sector bidding and procurements, a new law has been introduced from 1 January 2019 to amend legislative acts dealing with state procurements and procurements in the quasi-public sector (the "Law"), except for certain provisions that enter into force from 1 July 2019 and 1 January 2020. The Law covers 9 legislative acts, including the rules for making state procurements. Below, we highlight the main changes.

Changes to the dumping price issue:

- To avoid any of the parties involved in procurement activities "under-pricing", the Law has introduced a clear definition of "dumping price" as a price proposed by a tender participant that is lower than an established minimum, which was previously set by the state procurement rules as 50% of the price allocated for the tender, except engineering services in architectural, town-planning and construction activities;
- The new versions of the State Procurement Law and State Procurement Rules present the dumping price on state procurements, except engineering services in architectural, town-planning and construction activities (technical supervision), subject to the potential supplier, in addition to contract execution security, paying an amount equal to the reduction from the minimum price not recognised as a dumping price.

Changes to state procurement registers:

- *The introduction of a complaints' register* – following the introduction of "electronic complaints" on the state procurement website, the responsible body has also introduced a register of state procurement-related complaints filed electronically and any resolutions to those complaints;
- *The abolishment of the register of qualified potential suppliers* – from 1 July 2019, the authorised body will no longer keep registers of qualified potential suppliers;
- *A change in reasons for inclusion in the register of unscrupulous state procurement participants* – from 1 January 2019, potential suppliers or suppliers who have provided false qualification information and/or documents impacting the tender price will be included in a register of unscrupulous state procurement participants, while previously, only those participants

providing false information that let to them winning a tender would have been included in the register. Thus, inclusion of potential suppliers or suppliers in a register of unscrupulous state procurement participants does not depend on their win, and only provision of false information impacting the tender price could be the basis for such inclusion.

Change to the state procurement website:

- According to the Law, from now on, the "Electronic Commerce Centre" Joint Stock Company is responsible for providing state procurement website access to potential suppliers in return for a fee, which it sets in agreement with the authorised body based on established rates and maximum bids or contract value.
- A new term "electronic wallet" will be introduced from 1 January 2020 to function as the potential supplier's personal account and its payments to guarantee bids.

Amendments to potential supplier specifications:

- From 1 July 2019, potential suppliers should be financially stable and have no tax arrears in excess of six times the MCI;
- Potential suppliers registered as a legal entity according to an approved list in a low-tax (offshore) country may not participate in state procurements;
- The Law has developed the following measures not to allow gaining an unfair advantage from the failure of state procurements by obtaining access to competitor information and appealing:
 - potential suppliers who have not made a tender security payment or not paid the correct amount not be given access to review other potential suppliers' tender bids;
 - potential suppliers' objections to tender documentation (auction documentation), including qualification requirements in its specification, which were not made with respect to draft versions, will not be considered;
 - the maximum volume of work and services that may be given by potential suppliers to subcontractors or joint contractors to perform should not exceed, in total, one half of the work or services to be performed.
- The authorised body will develop and approve a list of goods, work or services whose procurement may require potential suppliers and suppliers to meet additional requirements.

In addition to the above, changes were also made to the principles for making single source procurements; the grounds for courts to recognise suppliers as unscrupulous state procurement participants, and the types of state procurement contract execution security.

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