

Қазақстанда сандық экономиканы дамыту бағдарламасы қабылданды, бұл оның көптеген салаларда алдыңғы қатарға шығуына мүмкіндік береді.

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Appeals against customer actions in the public procurement process: features in Ukraine and other countries

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Abstract: the article considers the components and sequence of the process of appealing the actions of the customer in the process of public procurement in Ukraine. Terms, grounds, conditions, features of payment and possible options for resolving appeals are indicated. The main aspects of the antitrust authorities of some countries are reviewed.

Keywords: public procurement, participant, customer, decision, appeal, complaint, appellate body

Adherence to the principles of the procurement procedure is directly related to the ability of the tenderer to appeal the decision of the customer. Participants have this right in the presence of indisputable facts of violation of the law by the customer and subject to compliance with all the features of the appeal process.

Thus, an appeal against a procurement is a protection of the legitimate interests and rights of participants that have been violated as a result of an illegal decision or inaction of the customer in the field of public procurement [1]. The body of appeal in Ukraine is the Antimonopoly Committee of Ukraine, and the review of complaints is carried out by the permanent administrative board for review of complaints. Therefore, during the appeal, the participant must clearly define and indicate in the complaint the subject of the appeal, indicate which of his rights have been violated, adhere to the deadlines for filing a complaint and its payment, and so on.

Thus, the subject of the appeal is the provisions of the tender documentation; decisions made by the customer; actions and inaction of the customer; the decision of the customer on cancellation of the tender.

The main rights of the bidder, which are most often violated during public procurement: the right to participate in the procurement procedure through the establishment of discriminatory and / or illegal requirements in the tender documentation; unreasonable rejection of the bidder's proposal; unfounded determination of the winner; cancellation of purchase.

The terms of the appeal depend on the subject of the appeal. Thus, the deadline for appealing the tender documentation and / or decisions, actions or omissions of the customer, which occurred before the deadline for submission of tenders is not later than 4 days before the date set for submission of tenders. The term for appealing decisions, actions or inaction of the customer, which occurred after the evaluation of bids, is within 10 days from the date when the subject of appeal learned or should have learned about the violation of their rights due to the decision, action or inaction of the customer, but before the contract about purchase. The deadline for appealing the decisions of the customer after consideration of tender proposals for compliance with technical and qualification requirements is within 5 days from the date of publication of the minutes of consideration of tender proposals.

The complaint is submitted by the complainant in accordance with Article 18 to the appellate body in the form of an electronic document through an electronic procurement system [1]. The complaint fee is charged through the electronic procurement system on the day of the complaint. The complaint is automatically entered into the register of complaints and its registration card is formed, which together with

the complaint is automatically published in the electronic procurement system. The fee for filing a complaint is 0.3% of the expected value of the subject of procurement or its part (in case of appeal of such part), but not less than 2000 hryvnias and not more than 85000 hryvnias in case of appeal of tender documentation or decisions, actions or inaction of the customer. before the deadline for submission of tender proposals. The fee for filing a complaint is 0,

If the complaint is entered in the register of complaints and a registration card is formed for it, such complaint cannot be withdrawn. However, the complaint can be canceled before payment is made.

The appellate body within 3 working days from the date of entry of the complaint in the register of complaints must place in the electronic procurement system the decision to accept the complaint for consideration or the decision to leave the complaint without consideration or the decision to terminate the complaint.

Yes, the appellate body leaves the complaint without consideration if;

- the subject of the appeal files a complaint regarding the same violation, in the same procurement procedure and on the same grounds that have already been the subject of consideration by the appellate body and in respect of which the appellate body has made a decision;

- the complaint does not meet the requirements of the law [1];

- the customer in accordance with the law [1] eliminated the violations specified in the complaint;

- before the day of filing the complaint, the customer has decided to cancel the tender or recognize it as not having taken place, cancel the negotiated procurement procedure, except in case of appeal against any of these decisions.

The appellate body shall terminate the consideration of the complaint if the following circumstances were established after the acceptance of the complaint for consideration:

- the subject of the appeal files a complaint regarding the same violation, in the same procurement procedure and on the same grounds that have already been the subject of consideration by the appellate body and in respect of which the appellate body has made a decision;

- the complaint does not meet the requirements of the law [1];

- the customer in accordance with the law [1] eliminated the violations that are specified in the complaint.

Therefore, as a result of filing a complaint, the following may occur: the electronic procurement system automatically suspends the start of the electronic auction, does not publish the customer's decision to cancel the bidding procedure, recognizes the bidding as not having taken place.

The Customer is prohibited from taking any action and making any decisions regarding the procurement procedure, except for actions aimed at eliminating the violations specified in the complaint. The conclusion of a procurement contract during the appeal is prohibited.

The subject of the appeal and the customer have the right to participate in the consideration of the complaint. The consideration of the complaint is open, so everyone can be present at the hearing. Persons present at the hearing may use the means of photo, video and audio recording.

The decision of the appellate body is made within 10 working days, but the term may be extended to 20 working days. The decision is binding on customers and other persons to whom it applies, and must be enforced within 30 days of its adoption (unless appealed to the court). The decision may be appealed to the administrative court within 30 days from the date of publication.

If the participant's complaint is satisfied, the complaint will be refunded. The administrator shall transfer the fee for filing a complaint to the subject of appeal within two working days from the date of publication in the electronic procurement system of the decision of the appellate body on satisfaction or partial satisfaction of the complaint; leaving the complaint without consideration in the event that the customer has eliminated the violations specified in the complaint; termination of consideration of the complaint in case the customer eliminates the violations specified in the complaint.

Failure to comply with the decision of the Antimonopoly Committee of Ukraine, as the body of appeal, based on the results of consideration of complaints of the subjects of appeal, the submission of which is provided by law, entails the imposition of a fine on the head of the customer.

The sale of goods and services through tendering has long been a common practice in many countries. Establishing and maintaining transparent and fair conditions for participation in tenders is one of the foundations for the development of competition in the relevant markets. However, in most countries, detailed antitrust regulation of tendering is not carried out. The results of the study of the experience of the public procurement process and appeals against customer decisions in such countries as the Republic of Kazakhstan, the Republic of Belarus, the Republic of Uzbekistan, the Republic of Azerbaijan show that not in all countries studied so far the antitrust authority has such significant powers as in Ukraine.

Antitrust regulation of tenders in the Republic of Kazakhstan is carried out by the antitrust authority as a result of the implementation of the following powers provided by law. First, the cancellation of the results of the tender conducted by the subject of natural monopoly, before concluding an agreement with the winner of the tender, conducted in violation of the laws of the republic, with the requirement to conduct a second tender. Secondly, rejection of the application of the subject of natural monopoly for approval of tariffs (prices, rates of fees) or their threshold levels in case of violation by the subject of the requirements for the tender established by law. Despite the fact that the competence of the antimonopoly body includes the prevention of anticompetitive agreements of market participants, however, the antimonopoly body does not take a direct part in the conduct of tenders. Usually, the antimonopoly body may obtain information on violations of the established procedure for conducting the tender from state bodies, mass media, appeals of citizens and legal entities, as well as upon direct detection of facts of violations of antimonopoly legislation. The most common reason for market participants to apply to the antitrust authority is the desire to eliminate a competitor, i.e. unfair competition. At the same time, there are almost no facts of involvement of market participants by the antimonopoly body in administrative liability for anti-competitive agreements reached as a result of tenders. as well as in the direct detection of violations of antitrust law. The most common reason for market participants to apply to the antitrust authority is the desire to eliminate a competitor, i.e. unfair competition. At the same time, there are practically no facts of involvement of market participants by the antimonopoly body in administrative liability for anti-competitive agreements reached as a result of tenders. as well as in the direct detection of violations of antitrust law. The most common reason for market participants to apply to the antitrust authority is the desire to eliminate a competitor, i.e. unfair competition. At the same time, there are almost no facts of involvement of market participants by the antimonopoly body in administrative liability for anti-competitive agreements reached as a result of tenders.

Tenders and procurements conducted by non-governmental organizations in the Republic of Belarus are regulated by the general provisions of civil and competition law. Procedures for appealing these tenders, including in connection with distortions of competition, are not specific. Lack of special antitrust regulation of tenders and procurement, as well as any practice of appealing (invalidating) tenders and agreements concluded as a result of the tender, based on violation of competition law, a specific decision on the protection of the rights and legitimate interests of the bidder or other interested party persons in connection with violations of the conditions of competition must be made separately in each case. With regard to the procedure for appealing (invalidating) state tenders and agreements,

Thus, in the Republic of Uzbekistan, control over compliance with antitrust laws during tenders is carried out by the antitrust authority in the exercise of control functions, study, as well as on the basis of applications from business entities and government agencies and authorities. If the fact of violation is revealed during the tender bidding, the antimonopoly body initiates a case of violation of the law and issues an order aimed at terminating the violations. For example, if the tender documentation identifies requirements that lead to restrictions of competition, the antitrust authority has the right to issue an order requiring the exclusion of anti-competitive requirements from the tender documentation. In case of violation of antitrust requirements during tenders, the antimonopoly body has the power to apply to the court for invalidation of tender tenders and agreements (contracts) concluded as a result of these tenders. If the court decides on the invalidity of tenders and agreements, each party is obliged to return to the other party everything received under the invalid transaction, and in case of impossibility to return the received in kind - to reimburse its value in cash.

The Antimonopoly Service of the Republic of Azerbaijan may also establish the fact of restriction of competition. At the same time, the criteria used by the antimonopoly service are publicly unavailable and unpredictable. The law provides the antimonopoly service with various regulatory tools as sanctions for the above actions, including: going to court to confiscate illegally obtained profits; coercion to pay profits to the state budget; compensation for damage to victims on the basis of a court decision.

Thus, with different powers and different areas of activity, the goal of each country's antitrust authority is to comply with public procurement legislation and transparent procurement.

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Методологические основы развития цифровой экономики в Республике Узбекистан

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Аннотация. В статье подробно рассматриваются изменения, в экономической системе которое является цифровизация. Анализируются основные факторы развития цифровой экономики: Интернет вещей, универсальный Интернет, высокая коммуникация, приложения и услуги на основе облачных технологий, анализ больших данных, автоматизация, робототехника, многоканальные или каналные модели распределения товаров и услуг.

Ключевые слова: цифровая экономика, Интернет вещей, высокая связь, облачные технологии, автоматизация, робототехника.

В Послании Президента Республики Узбекистан Шавката Мирзиёева в Олий Мажлис говорится, что в целях дальнейшего развития науки в нашей стране, воспитания нашей молодежи глубоких знаний, высокой духовности и культуры, продолжения начатой работы по формированию конкурентоспособной экономики и подъему ее на новый, современный уровень, 2020 год назван Годом науки, просвещения и цифровой экономики. Необходимо провести масштабную работу по приоритетному развитию и реформированию направлений, обозначенных в 2020 году. В частности, в этом году необходимо увеличить охват дошкольников дошкольным образованием до 60 процента. В текущем году на эти цели из бюджета будет направлено около 1,8 трлн. сумов.

Самым динамичным процессом, который внесет существенные изменения в экономическую систему, является цифровизация. Основными факторами развития цифровой экономики являются: Интернет вещей, универсальный Интернет, высокая коммуникация, приложения и услуги на основе облачных технологий, анализ больших данных, автоматизация, робототехника, многоканальные или каналные модели распределения товаров и услуг.

Происходящие изменения радикальны, они вводят другие ценности и модели поведения на рынке фирм, их клиентов и потребителей.

Поэтому для ученых-экономистов, действующих политиков в развивающихся странах важно понимать, что сегодня нам нужно сосредоточиться на институциональной среде, а не на экономических реформах. Во-вторых, чтобы соответствовать требованиям цифровой экономики, необходимо модернизировать структуры цифрового мышления, чтобы уменьшить оппортунизм высокого уровня, включив их в стандартные ценности деловой практики.

Для этого методологические основы экономики должны быть освобождены от старого подхода к устойчивому росту потребительских товаров, то есть функции максимизации полезных услуг. Со временем кризис экономической теории будет преодолен, и появятся новые концепции, близкие к цифровой экономике.

В 2011 г. немецкий профессор физики и председатель SAP Г.Кагерман представил концепцию «четвертой промышленной революции». Он состоит из промышленности, автомобилестроения и логистики.

Представители западных школ изучают способы его реализации. В частности, проживание в неестественной для институтов социальной среде. В заключение, институциональный проект следует рассчитывать с точки зрения транзакционных издержек, если его гибкость в экономической среде невысока.

Еще одно направление исследований - оценка методологического индивидуализма. Это основа либеральной модели экономики. Он основан на идее свободы предпринимательства и принципе максимизации прибыли за счет операций по обмену валюты в рыночной экономике.

Западный индивидуализм должен быть разумным и разработать методы оценки и минимизации потенциальных рисков, прежде чем какой-либо индикатор. Новая институциональная экономическая теория вводит понятие ограниченной рационализации. То есть лица, принимающие решения, не могут определить транзакционные издержки для получения информации. Поскольку люди склонны к