

RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE STATE CONTRACT IN  
THE FIELD OF PROCUREMENT OF GOODS, WORKS, SERVICES TO MEET THE STATE  
NEEDS OF THE RUSSIAN FEDERATION AND THE REPUBLIC OF KAZAKHSTAN

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The existence of the rights, obligations of the parties and their content follow from the state contract. In this case, as in other obligations, the right of one party corresponds to the duty of the other.

The supplier is obliged to:

- 1) conclude a contract for the supply of goods for state needs;
- 2) having concluded a delivery contract, transfer the goods to the buyer or the state customer.

The state customer is obliged to:

- 1) accept the delivered goods;
- 2) attach the buyer to the supplier in case the buyer refuses in whole or in part from the goods specified in the attachment notice and from concluding a contract for their delivery. He must do this no later than 30 days from the date of receipt of the notification of the supplier (contractor). Failure to fulfill this obligation by the state customer gives the supplier the right to either require the state customer to accept and pay for the goods, or to sell them at its discretion with the allocation of reasonable costs associated with the sale to the state customer.

The state customer is granted the right to refuse in whole or in part from the goods, the delivery of which is provided for by the state contract, provided that the supplier (contractor) is compensated for the losses caused by such refusal;

- 3) pay for the goods. Payment for goods is made by the state customer if the delivery of goods for state needs is carried out by the recipient specified in the unloading order. However, when the goods are delivered to the buyer under a contract for the supply of goods for state needs and, as a general rule, he pays them, the state customer is recognized as a guarantor for this obligation, and, consequently, is jointly and severally liable together with the buyer [1].

Responsibility for violation of obligations for the supply of goods for state needs comes under the general rules of civil liability.

For some violations in the supply of goods for state needs, responsibility is established by special legislation. Thus, Federal Law No. 44-FZ of April 5, 2013 "On the contract system in the field of procurement of goods, works, services for state and municipal needs" provides that a supplier who unreasonably evades the conclusion of a state contract for the supply of goods for state needs pays a fine to the state customer in the amount of the cost of goods specified in the draft state contract [2].

Property liability for violation of obligations for the supply of goods, performance of works, provision of services for public needs is expressed mainly in the form of compensation for losses and payment of a penalty.

Losses are determined in accordance with the rules of Article 15 of the Civil Code of the Russian Federation [3] and Article 9 of the Civil Code of the Republic of Kazakhstan [4]. Losses are understood as expenses that a person whose right has been violated has made or will have to make to restore the violated right, loss or damage to his property (real damage), as well as unearned income that this person would have received under normal conditions of civil turnover if his right had not been violated (lost profit). Losses incurred during the delivery of goods,

performance of works, provision of services for public needs are subject to compensation in full, including lost profits. The latter is determined taking into account the measures taken by the creditor to obtain it and the preparations made for this purpose (Article 393 of the Civil Code of the Russian Federation and Article 350 of the Civil Code of the RK).

According to paragraph 1 of Article 330 of the Civil Code of the Russian Federation, a penalty (fine, penalty fee) is a monetary amount determined by law or contract that the debtor is obliged to pay to the creditor in case of non-fulfillment or improper fulfillment of the obligation, in particular in case of late fulfillment. Upon request for payment of a penalty, the creditor is not obliged to prove the damage caused to him.

Liability for non-fulfillment or improper fulfillment of obligations for the supply of goods, performance of works, provision of services for public needs, as well as civil liability in general, occurs if there are certain prerequisites, referred to in Article 372 of the Civil Code as grounds of liability.

In the norms of the Civil Code on the supply of goods for state and municipal needs (Articles 525-534), the grounds for liability for violation of obligations to ensure state and municipal needs are not defined. As for the Federal Law "On the Contract System in the field of procurement of goods, works, services for State and Municipal Needs" of April 5, 2013, it does not define such grounds in general. As established in Article 12 of the Law, in case of non-fulfillment or improper fulfillment by one of the parties of the obligations stipulated by the state contract, this party compensates the other party for the losses caused, and also bears other liability provided for by the legislation of the Russian Federation and the state contract. But in article 14 of the same Law, where we are talking about specific liability in case of non-fulfillment of the terms of a state contract in terms of volume, delivery time or payment of goods, the term "culprit" is used, obviously, in relation to the guilty party. By virtue of paragraph 1 of art . 161 of the Civil Code of the Russian Federation, a state contract must be concluded in a simple written form. In most cases, a state contract is drawn up in the form of a single document signed by the parties (Clause 2 of Article 434 of the Civil Code of the Russian Federation, Articles 54, 73, 83 of the Federal Law "On the Contract System").

The current legislation establishes that for violation of the terms stipulated by the contract, for non-delivery of goods, delivery of substandard, incomplete goods, the supplier pays a penalty. The size and type of penalty depends on which condition is not met.

As a general rule, in economic (entrepreneurial) activity, responsibility is applied regardless of fault. By virtue of paragraph 3 of Article 401 of the Civil Code of the Republic of Kazakhstan, unless otherwise provided by law or contract, a person who has not fulfilled or improperly fulfilled an obligation in carrying out entrepreneurial activity is liable unless he proves that proper performance was impossible due to force majeure, that is, extraordinary and unavoidable circumstances under these conditions. Such circumstances do not include, in particular, the violation of obligations on the part of the debtor's counterparties, the absence of goods necessary for execution on the market, the debtor's lack of the necessary funds.

Both in the state contract and in the contract for the supply of goods for state needs, the supplier (contractor) is a person engaged in entrepreneurial activity — a commercial organization or an individual entrepreneur. Therefore, their responsibility comes in accordance with paragraph 4 of Article 401 of the Civil Code of the Russian Federation.

State customers, as well as buyers in contracts for the supply of goods for state needs, purchase (receive) goods from suppliers (performers) for the purposes defined in the Federal Law "On the Contract System in the Procurement of Goods, Works, services for state and Municipal Needs" dated April 5, 2013 (this is the creation of state material reserves, maintaining defense capability and state security, ensuring the implementation of targeted programs and interstate agreements, supporting the functioning of social sectors, satisfaction of the needs of public administration, etc.). Among the state customers and buyers of the contract for the supply of goods for public needs, there may be commercial organizations, but, as a rule, state customers perform managerial and other functions and are non-profit organizations-institutions. By

carrying out activities for the purchase of goods for state needs, state customers ensure the fulfillment of those tasks and functions for which they were created.

Certain consequences of non-fulfillment or improper fulfillment of obligations to supply goods for state needs are provided directly in the Civil Code of the Russian Federation and the Republic of Kazakhstan.

Unless otherwise provided by the legislation on the supply of goods for state needs or a state contract, the state customer is obliged to compensate the supplier (contractor) for losses caused in connection with the execution of the state contract. To compensate for such losses, Article 533 of the Civil Code of the Russian Federation establishes a thirty-day period calculated from the moment of transfer of goods in accordance with a state contract. Violation by the state customer of the obligation to compensate the other party for losses in connection with the performance of the state contract gives the supplier (contractor) the right to refuse to perform the state contract and demand compensation for losses caused by the termination of the state contract, in addition to losses caused in connection with the performance of the state contract. The termination of the state contract by the supplier (contractor) in connection with non-compensation of losses is supplemented by the right to refuse to execute the contract for the supply of goods for state needs concluded on the basis of the attachment notice. The losses caused to the buyer by such refusal of the supplier are subject to compensation by the state customer. The supplier (contractor) must notify the other party of the refusal to execute the state contract and the contract for the supply of goods for state needs.

According to Article 534 of the Civil Code of the Russian Federation, the state customer, in cases established by law, has the right to completely or partially refuse goods whose delivery is provided for by a state contract. But the condition of refusal is compensation to the supplier (contractor) for the losses caused by this. At the same time, the refusal of the state customer from the goods, the delivery of which is provided for by the state contract, gives the supplier (contractor) the right to terminate or change the contract concluded on the basis of the state contract for the supply of goods for state needs. Losses caused to the buyer by such termination or modification of the contract are reimbursed by the state customer.

The specifics of responsibility may also take place when performing works or providing services for public needs. At the same time, they follow from more general norms, because contractual relations for the supply of goods, performance of works, provision of services for state needs are varieties or types of relevant contracts: a state contract for the supply of goods for state needs and a contract for the supply of goods for state needs are varieties of a supply contract; a state contract for the performance of contract works for state needs is a type of construction contract or a contract for the performance of design and survey work; a state contract for the performance of research, development and technological work for state needs is a type of contract for the performance of research and development work or a contract for the performance of development and technological work.

Literature:

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