

Procurement Process and Local Content Rules in Kazakhstan

General Overview of Procurement in Kazakhstan

The regulated system of procurement in Kazakhstan consists of:

- State procurement
- procurement of JSC Samruk-Kazyna and its affiliates
- procurement of entities of natural monopolies
- procurement of subsoil users

Procurement is regulated by the following laws and regulations:

- The Law on State Procurement dated 21 July 2007
- The Procurement Regulations of JSC Samruk-Kazyna on 26 May 2012
- The Procurement Regulations of Natural Monopoly Entities dated 5 December 2011
- The Procurement Regulations of Subsoil Users dated 14 February 2013 (the **“New Procurement Regulations”**)

Procurement of Subsoil Users

24 June 2010 - the new Law on Subsoil and Subsoil Use (the “**Subsoil Law**”):

- a subsoil user and its contractors are obliged to procure goods, works and services of Kazakhstani manufacturers subject to their compliance with requirements of project documents and legislation of Kazakhstan on technical regulations
- a subsoil use contract must contain obligations on local content in staff; on amounts of expenses for training of Kazakhstani specialists; on local content in goods, works and services
- a subsoil user must submit to the competent body:
 - annual, midterm and long term procurement programs
 - quarterly report on goods, works and services procured and on performance of contractual obligations on local content in staff
 - quarterly report on performance of contractual obligations on training of Kazakhstani specialists
 - annual report on performance of contractual obligations on local content in staff
- a subsoil user must get registered in the Register of goods and services used in subsoil operations and manufacturers thereof (the “**Register of GWS**”)

Regulating Bodies

The Ministry of Industry and New Technologies (“**MINT**”)

- Forms the policy of development of local content
- Develops the rules for conducting expert evaluation for local content
- Forms the Register of GWS, manufactured by Kazakhstani manufacturers
- Develops and approves the criteria for including into the Register of GWS

The Ministry of Oil and Gas (“**MNG**”) :

- Forms the Register of GWS based on the annual procurement programs submitted by subsoil users
- Approves jointly with MINT the methodic for calculation of local content in staff
- Monitors compliance with local content obligations in oil and gas sector
- Submits to MINT the general information on local content for consolidation and analysis

Procurement Methods

New Procurement Regulations contain separate sections for the procurement procedures in the sphere of solid minerals and hydrocarbons

- open tender (for a subsoil user with not less than 30 days notification of potential contractors);
- from single source (42 grounds);
- request for quotation (if the annual amount of procurement of certain GWS does not exceed 14,000 Monthly Calculation Indices, and the quality characteristics of goods, works and services are not of substantial significance);
- through e-purchasing system (identical to open tender except for the procedures of submission of price proposals and selection of the winner; it is allowed to submit unlimited number of declining price proposals within the period of the electronic procurement); and
- through commodities stock exchange (in accordance with the legislation of Kazakhstan on commodities stock exchanges).

Procurement Process

In general, the procurement process for an open tender consists of:

- establishment of the tender commission
- development and approval of the tender documentation
- placement of the announcement and tender documentation on the Register of GWS
- collection of tender applications
- opening of the tender applications
- consideration of tender applications by the tender commission for compliance with tender requirements - Minutes of admission to tender
- submission by tender participants of tender price proposals and selection of the winner of the open tender - Minutes of the tender results summary
- execution of the contract with the winner

Only qualified bidders are admitted for the submission of tender price proposals

Local Content Rules

The Subsoil Law contains the following concepts related to local content:

- goods of Kazakhstan origin (goods, with CT-KZ certificates, confirming their Kazakhstan origin);
- Kazakhstani provider of works, services (Kazakhstani citizens and (or) legal entities established under the laws of Kazakhstan, using not less than 95% of citizens of Kazakhstan in the total number of employees)
- Kazakhstani manufacturer of goods (citizens and/or legal entities of Kazakhstan, which manufacture goods of Kazakhstan origin);
- local content in works, services (aggregate cumulative share of the cost of local content in goods and/or remuneration of the Kazakhstani employees in the payroll of the provider of);
- local content in goods (percentage of the cost of local materials used and the cost for the processing of goods); and
- local content in staff (percentage of Kazakhstani employees to the total number of employees as per each category of workers and specialists)

Calculation of Local Content in Goods

Local content in GWS is calculated in accordance with the Unified Methodology of Calculation of Local Content

- A CT-KZ certificate certifies the percentage of input and manufacturing costs in the final cost of goods
- A CT-KZ certificate is issued upon the expert evaluation on the origin of a good
- CT-KZ certificates are issued by territorial Chambers of Commerce and Industry
- In the absence of a CT-KZ certificate the local content in goods is zero

Calculation of Local Content in Works & Services

Local content in services is equal to the share of salary fund of Kazakhstan personnel in the general salary fund of employees of the supplier of services and its subcontractors (if applicable).

- Provision of a document indicating the salary fund of Kazakhstan personnel in percentage to the general salary fund of employees (applies also to subcontractors, if any).
- The key criteria is the percentage in the salary fund, but not in the total number of employees.
- Local content in works where goods are used is equal to the sum of local content in goods and local content in services calculated using the above methods.

Liability for Violation of Local Content Requirements

Under subsoil use legislation:

- Unilateral termination of a subsoil use contract in case a subsoil user fails to remedy two or more violations of contractual obligations
- Fines for non-performance or improper performance of contractual obligations

Under civil law:

- Compensation to the State of the losses caused

Under Administrative Offences Code:

- Penalty for the violation of the contract terms and provisions in the amount up to \$1,500

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Thank you!