

CONFLICT RESOLUTION PRACTICE IN PUBLIC PROCUREMENT IN RUSSIA AND KAZAKHSTAN

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In this paper, using the results of a survey of suppliers conducted by the IIMS NRU HSE in 2020 in Russia and Kazakhstan, we analyze the mechanisms for resolving conflicts in the field of public procurement and identify the factors influencing the choice of the conflict resolution mechanism by suppliers in these countries. The specificity of the public procurement area lies in the presence of the state as the dominant party to contractual relations and the resulting differences in assessments of the chances to defend their interests in court (*Frye, 2002; Dolgopyatova et al., 2004*). At the same time, it has been shown in the literature that enterprises usually do not refuse to use judicial procedures, but rather prefer out-of-court mechanisms for resolving conflict situations (*Hendley, Murrell and Ryterman, 2000; Dolgopyatova et al. 2004; Yakovlev, 2008*).

In our survey, we asked respondents in Russia and Kazakhstan if their organizations had to file complaints against customers to the supervisory authority at the supplier selection stage and negotiate with the customer or go to court to resolve conflicts during the execution of the contract in 2018-2019. According to the survey results, only 22% of suppliers in Russia and Kazakhstan applied to the courts to resolve the conflict. At the same time, Russian suppliers much more often used negotiations with the customer at the stage of contract execution and the complaints mechanism at the supplier selection stage.

The respondents' answers to questions about the mechanisms for resolving conflict situations in public procurement practice also made it possible to identify mixed supplier strategies: "conflict-free", "negotiated", "judicial" and "hybrid". The survey showed that in Russia the dominant strategy in resolving conflicts in public procurement is a "negotiation" strategy (57% of suppliers), when suppliers prefer to resolve emerging conflicts exclusively through negotiations with a customer, while suppliers in Kazakhstan rather prefer a "non-conflict" strategy (44% of suppliers). At the same time, about one-fifth of suppliers in Russia and Kazakhstan adhere to a "hybrid" strategy, including both judicial (going to court) and out-of-court (negotiations with the

customer) mechanism for resolving conflicts. And only 1-2% of the respondents noted that they prefer to settle all emerging conflicts exclusively by resorting to the judicial system.

To identify the factors that influence the choice of the conflict resolution mechanism in the practice of public procurement in Russia and Kazakhstan, probit models were evaluated, in which the dependent variables were the fact of (1) complaints at the supplier selection stage, (2) court appeals and (3) negotiations with procurers in the post-contracting period. As explanatory variables in the models, we used the level of trust in customers in public procurement, the importance of the fight against corruption as the main goal of regulating public procurement, the level of job satisfaction and the main characteristics of the supplier's organization (enterprise size, an average annual amount of public contracts concluded, total number of customers with whom the organization worked in 2018-2019 and the share of public contracts in total revenue in 2018-2019). Control variables included the number of employees, industry, federal district, gender, age, position, time to complete the questionnaire (before or after the introduction of self-isolation due to the COVID-19 pandemic).

Econometric analysis showed that in Russia, suppliers who trust their customers in public procurement are less likely to complain about them at the supplier selection stage and less often use negotiations and appeals to the court as ways of resolving conflicts at the stage of contract execution. At the same time, the results of the analysis showed that suppliers with larger government orders (over 30 million rubles/year) and a large number of customers with whom they worked, more often use all mechanisms for resolving conflicts in public procurement than suppliers with small government orders and few customers in their practice. At the same time, it turned out that suppliers in Russia who are satisfied with their work are less likely to go to court to resolve different conflict situations.

In Kazakhstan, suppliers who trust their customers in public procurement are less likely to resort to conflict resolution through court procedures. At the same time, unlike Russian suppliers, a significant factor in Kazakhstan was the importance of the fighting corruption problem as the main goal in public procurement. Suppliers who recognize the importance of this problem in Kazakhstan are more likely to complain about customers at the supplier selection stage, but less use formal court procedures at the stage of contract execution. Similarly, the results of the analysis showed that Kazakh suppliers with larger government orders (over 50 million tenge/year) more often use all mechanisms for resolving conflicts in public procurement than suppliers with small government orders. However, suppliers who are more satisfied with their work, are less likely to use any conflict resolution mechanisms.

The results of the study can be used to justify the development of a regulatory and organizational framework for the use of negotiations, mediation, arbitration and other alternative

methods of resolving conflicts in public procurement, reducing the costs of participants in the procurement process and speeding up the procedures for resolving disputes in public procurement. The lack of empirical research on conflict resolution strategies is typical for most transition economies, which include Russia and Kazakhstan. Therefore, understanding how, in conditions of weak institutions, conflicts in a specific area of public procurement are regulated, where one party of the contractual relationship is the state, can be useful for improving measures to improve the efficiency of the public procurement system in other developing countries.

Keywords: public procurement; conflict resolution; negotiations; suppliers; procurer.