

**ASSESSMENT OF STATUS AND LEGAL FRAMEWORKS OF
SUSTAINABLE PUBLIC PROCUREMENT IN THE REPUBLIC
OF KAZAKHSTAN**

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About the assessment

This report was prepared by Mr. Kuanysh Baltabayev, National Expert on Public Procurement in the framework of the consultancy contract with the United Nations Environment Programme (UNEP) for the United Nations Development Account project “Enhancing sustainable public procurement for the regional transition to inclusive green economy in Eastern Europe, Caucasus and Central Asia” (UNDA project on SPP) and the Partnership for Action on Green Economy (PAGE). The comments to the report were provided by Mr. Akhmetov S. M., Department of Public Procurement, Ministry of Finance of the Republic of Kazakhstan and by Mr. Farid Yaker, Ms. Lesya Nikolayeva, United Nations Environment Programme. The objectives and plan on preparation of the assessment were presented and discussed at the national on-line webinar on 9 December 2020.

About the project

The UNDA project on SPP, which is led by the UNEP Europe Office and implemented jointly with United Nations Economic Commission for Europe (UNECE) and Green Growth Knowledge Platform (GGKP), aims to strengthen the capacity of selected countries in the EECCA region on sustainable public procurement and strengthen the capacity of businesses to respond to public tenders with sustainability criteria. The project has been implemented between 2018 and 2021. Kazakhstan is one of the selected countries for implementation of the project.

About leading agencies

UNEP is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system. It promotes the transition to economies that are low carbon, resource efficient, socially inclusive. UNEP is a leading agency of the UNDA project on SPP. Other UNEP’s partners from the UN system are UNECE and GGKP. UNEP cooperates with the National Expert on Public Procurement in order to prepare the Assessment of status and legal frameworks of Sustainable Public Procurement (SPP) in the Republic of Kazakhstan.

ABBREVIATIONS

ADB	Asian Development Bank
DM	Domestic manufacturers
EAEU	Eurasian Economic Union
EBRD	European Bank for Reconstruction and Development
EU	European Union
GCS	Goods, Construction and Services
GDP	Gross Domestic Product
GGKP	Green Growth Knowledge Platform
IEA	International Energy Agency
LPP	Law of the Republic of Kazakhstan "On public procurement"
MEGNR	Ministry of Ecology, Geology and Natural Resources
MF	Ministry of Finance
MIIR	Ministry of Industry and Infrastructural Development
MSW	Municipal Solid Waste
OECD	Organisation for Economic Co-operation and Development
PP	Public Procurement
SDGs	Sustainable Development Goals
SK	JSC "National Welfare Fund" Samruk-Kazyna"
SPIID	State Program of Industrial and Innovative Development
SPP	Sustainable Public Procurement
ST RK	Standard of the Republic of Kazakhstan
ToR	Terms of Reference
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNCITRAL	United Nations Commission on International Trade Law
WB	World Bank
WTO	World Trade Organization

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SUMMARY

Public procurement (hereinafter – PP) is essential in the system of public services. It is responsible for meeting the needs of the State, supporting entrepreneurship, and can create incentives and promises for business transformation.

In the Republic of Kazakhstan, the volume of public procurement is 3.96 trillion tenge or 9.5 billion US dollars, which, according to experts from the Organization for Economic Co-operation and Development (OECD), is slightly lower than in the OECD countries¹. However, it should be understood that in addition to public procurement, through which the needs of state bodies are served, there are also purchases of the quasi-public sector. Procurement of the quasi-public sector – procurement of companies with state participation regulated by the legislation of the Republic of Kazakhstan (*i.e.* JSC "National Welfare Fund "Samruk-Kazyna" (hereinafter – SK) and its subsidiaries, such as JSC "National Managing Holding "Baiterek", etc.). The volume of quasi-public procurement in Kazakhstan is more than 5 trillion tenge.

Therefore, if we take into account the statement of the OECD experts that 43% of the budget funds are accounted for by public procurement², including the volume of purchases of the quasi-public sector, it was evident that the procurement system has a big power in creating favorable impulses and incentives for the transition of suppliers to the principles of sustainable development.

At the moment, the Majilis of the Parliament of the Republic of Kazakhstan is considering a draft law on PP, the central ideology of which is to increase the efficiency of state budget expenditures and strengthen support for local suppliers, taking into account compliance with the requirements of the World Trade Organization (WTO) and the Eurasian Economic Union (EEU).

In this regard, some different sustainability principles, that include economic, environmental and social aspects, can be introduced in the Law of the Republic of Kazakhstan "On Public Procurement" (hereinafter – LPP). Although, in general, the legislation of the Republic of Kazakhstan does not disclose the concepts and principles of sustainable public procurement. In comparison with social and environmental aspects, environmental issues in the sectoral legislation are fragmentary.

This makes it difficult to use the public procurement system as a tool to stimulate the greening of suppliers. Nevertheless, it seems right and possible to place the principles of sustainable development in public procurement.

It should be noted that some companies of the quasi-public sector are more open to the ideas of sustainable development in comparison with their colleagues from state bodies, since being also business entities, they are forced to meet the requirements of not only the Kazakh consumer but also the requirements of international partners. As a result, state-owned companies, especially those that impact the environment through their producing processes and materials they use, can introduce corporate responsibility towards sustainable development, develop environment-friendly strategies, or implement sustainable development elements. This improves the company's image and increases its value due to non-material factors.

However, according to the terms of reference, this report will focus only on assessing the status of SPP in the public procurement system without considering the status of sustainable procurement in the quasi-public sector system.

¹ OECD: Public Procurement in Kazakhstan. Reforming the system in order to increase efficiency <https://www.oecd-ilibrary.org/governance/3233de49-ru>

² In the same place

Structurally, the SPP assessment report will consist of two chapters. The first chapter includes assessment of the national strategies, program documents and institutional frameworks that create the conditions for implementing the SPP in Kazakhstan (including the possibility to include sustainability criteria in the procurement process), identification of policy and institutional gaps for the SPP application, as well as the analysis of questionnaires and interviews of participants in the public procurement tenders for the perception and preparedness for the implementation of SPP in Kazakhstan.

The second chapter is the due diligence of legislative documents which determines the legal provisions for possible implementation of the SPP in Kazakhstan.

Simultaneously, both sections also include recommendations for improving and developing the system of sustainable public procurement in the Republic of Kazakhstan.

Within the first chapter, the national expert analyzed the Republic of Kazakhstan's strategic documents, such as the Strategy "Kazakhstan-2050", the Concept for the Transition of the Republic of Kazakhstan to a "green" economy, the Strategic Plan until 2025, and others. We also conducted a survey among public procurement participants, both government agencies acting as customers and suppliers. Also, to assess the institutional potential for SPP development, interviews were conducted with selected current participants in the procurement process and persons influencing the formation of procurement rules.

The evaluation is an important initial stage of the preparation of the SPP program. It will allow stakeholders to assess the current level of SPP and help find solutions to improve them. The assessment of the current state will help in further work on the development of SPP in the Republic of Kazakhstan, as it will allow:

- ✓ determine the current status of PP at the national level and how the elements of SPP can be integrated;
- ✓ identify measures to introduce the SPP;
- ✓ compare the national approach to the implementation of SPP with international practices;
- ✓ to raise awareness of international obligations in the field of SPP.

In addition to studying the national strategic documents and plans, the assessment included a survey of key stakeholders. The SPP related questionnaire, developed and provided by the UNEP, was used for conduction of the survey.

The results of the survey and interviews with participants of the public procurement process show that in Kazakhstan, the initiative to reform the state budget comes from the top and for the moment PP is focused on socio-economic aspects without taking into account environmental criteria. Even though there is no sustainable procurement strategy in place, the representatives of public authorities, responsible for organization of the public procurement process, mentioned that they can implement the principles of SPP in their practice. But this requires an increase in the human potential of public buyers, amendments to the LPP concerning the exclusion of restrictive norms (*for example, mandatory requirements for determining the winner based on the lowest price*) from one hand and inclusion of SPP related provisions, on the other hand, and the introduction of incentive norms (*the definition of Goods, Construction and Services (GCS) that are purchased with inclusive sustainability criteria, granting priority rights for suppliers offering sustainable (resource efficient, energy efficient, eco-labeled) GCS, etc.*), the development of environmental standardization and eco-labelling schemes.

Within the framework of the second section, international agreements signed and ratified by the Republic of Kazakhstan in the field of procurement (*the WTO Agreement on Public Procurement*) and

legislative and subordinate acts, including national standards in the field of sustainable procurement, were studied.

With regard to the legislative framework on PP issues, it should be noted that the current legislation of the Republic of Kazakhstan meets the general principles of international laws in this field, and is built in accordance with the best practices of developed countries in terms of the economic and administrative components of public procurement processes.

Notably, the legal framework is in principle being dynamically improved, taking into account the realities of market development, the needs of the state and society. Changes and additions to the legal acts are considered and made almost annually – that is the way how the state and interested parties actively modernize the public procurement processes.

The legislation on public procurement covers all state organisations literally but does not include the quasi-public sector. The regulation of quasi-state organisations' procurement processes is very similar, but it has its specifics, based on the industry affiliation and the implemented tasks.

A comprehensive approach to the introduction and implementation of the SPP in the legal framework is not implemented and contains separate SPP components. These are a wide range of economic instruments in public procurement related legislation (*such as issues of competition, fair choice, support for domestic producers, transparency of processes, etc.*), coverage of specific social issues (*support for socially significant suppliers*).

1. ASSESSMENT OF THE STATUS OF SUSTAINABLE PUBLIC PROCUREMENT

1.1. Priorities of the Republic of Kazakhstan in the field of sustainable development related to the environment and the "green" economy.

The Republic of Kazakhstan, despite its large reserves of fuel and mineral resources, is a country committed to sustainable development, including in the field of natural resources and environmental protection.

Kazakhstan is actively developing the course of diversification of the national economy, implementing the third five-year State Program of Industrial and Innovative Development (hereinafter - SPIID). At the same time, the Government of the Republic of Kazakhstan notes that the further development of the economy should take place in parallel with minimizing the negative impact on the environment.

Kazakhstan's accession to the 2030 Agenda for Sustainable Development (hereinafter referred to as the 2030 Agenda) is a consistent step towards the country's sustainable development.

The 2030 Agenda, in many aspects, coincides with the priority goals of the Republic, presented in the Socio-Economic Development Strategy "Kazakhstan-2050": a new political course of the development of the state.

The strategy "Kazakhstan-2050" is focused on the diversification of Kazakhstan's economy with an emphasis on sustainable economic growth³. To do this, the Strategy raises the questions of:

- ✓ development of Kazakhstan's business on the basis of environmental standards;
- ✓ creating world-class eco-friendly Kazakhstani brands;

³ Address of the President of the Republic of Kazakhstan-Leader of the Nation N. A. Nazarbayev to the people of Kazakhstan "Strategy" Kazakhstan-2050": a new political course of the established state", Astana, December 14, 2012 // <http://adilet.zan.kz/rus/docs/K1200002050>

- ✓ rational consumption of natural resources;
- ✓ transforming the country's fuel and energy complex with an emphasis on "green" and innovative technologies.

According to the Law of the Republic of Kazakhstan "On Approval of the State Planning System in the Republic of Kazakhstan", the Strategy "Kazakhstan-2050" refers to the first-level documents defining the long-term vision of the country's development with key priorities and guidelines.

In general, Kazakhstan has effectively built a system of state planning. The institutional framework of the state planning system has been formed, a hierarchy of documents has been built, and an assessment of the effectiveness of state bodies' activities has been introduced. As a result, in 2020, almost 79.9% of the Sustainable Development Goals (SDGs) targets are reflected in the documents of the state planning system of the Republic of Kazakhstan.⁴

By achieving the United Nations SDGs, as well as implementing best practices and OECD standards in all areas of the state's life, the Republic of Kazakhstan strives to ensure its efforts towards becoming one of the 30 developed countries of the world⁵, which is noted in the Strategic Development Plan of the Republic of Kazakhstan until 2025 (hereinafter - the Strategic Plan until 2025). The Strategic Plan until 2025 is a document of the state planning system for the medium-term period and was developed to implement the long-term Development Strategy of Kazakhstan until 2050.

The Strategic Plan until 2025 is drawn upon a new model of economic growth based on stimulating export-oriented production by increasing the productivity and complexity of the economy, developing human capital and attracting private funds in the face of growing competition, the leading role of the private sector and realizing the development potential of the country's regions. Its main goal is to achieve a high-quality and sustainable economic recovery by 2025, leading to an increase in people's well-being at the level of the OECD countries.

High-quality economic growth should be based on increasing the competitiveness of business and human capital, technological modernization, improving the institutional environment, and minimizing the negative impact of man on nature. At the same time, the SDGs will be an essential benchmark.

The Strategic Plan until 2025 is built around seven major systemic reforms and seven priority policies that will be implemented in the country's economy and social life in the period up to 2025. Critical national indicators and international indices have been identified to evaluate the progress towards becoming one of the top 30 developed countries in the world.

In the field of nature resources and environmental protection, the Strategic Plan until 2025 includes targets in two areas: the energy intensity of Gross Domestic Product (GDP) an indicator of the proxy impact on the environment, according to the International Energy Agency (IEA) and the share of electricity from renewable energy sources in the total energy balance. Thus, the energy intensity of GDP by 2025 should be reduced by 25% from the level of 2008. For renewable energy – the share of renewable energy in total energy balance should reach 6% by 2025.

⁴ Institute of Economic Research of the Ministry of National Economy of the Republic of Kazakhstan Voluntary National Review of the Republic of Kazakhstan "On the implementation of the 2030 Agenda for Sustainable Development.// http://economy.kz/ru/Celi_ustojchivogo_razvitija/Nacionalnyj_otchet/

⁵ Decree of the President of the Republic of Kazakhstan dated February 15, 2018" On approval of the Strategic Development Plan of the Republic of Kazakhstan until 2025 and invalidation of certain decrees of the President of the Republic of Kazakhstan " dated February 15, 2018 No. 636 // <https://adilet.zan.kz/rus/docs/U1800000636>

Thus, the Strategic Plan until 2025 does not set targets for all the considered problematic issues related to the state of the environment: land degradation, water scarcity, high levels of air pollution in cities, and the disposal of household waste.

In this regard, the Strategic Plan until 2025 reveals the problems and describes the need to solve the above-mentioned environmental problems of Kazakhstan but does not form a specific way and tools to eliminate existing environmental issues.

The Strategic Plan until 2025 highlights the development of PP as a whole area. In particular, as part of the improvement of the procurement system, it is suggested that, in accordance with the OECD standards, instruction should be developed for the PP participant on actions in case of suspicion or determining the unfair organization of the procurement process.

Moreover, much focus is placed on modern digital solutions that reduce the risks of illegal actions in public procurement implementation, including "blockchain" technologies.

At the same time, the improvement of the procurement system is primarily focused on:

- ✓ increasing the share of local content by stimulating the localization of goods;
- ✓ reducing corruption risks in the public procurement system by increasing the transparency of the procurement process;
- ✓ increase in the efficiency of the use of budget funds.

In this part, it is clear that at the level of the first order's strategic documents, the public procurement system is not tasked with stimulating businesses to green their production processes and producing more environmentally friendly output products.

In 2021, the Strategic Plan until 2025 was amended. It aimed to improve the economic efficiency of the use of public funds for procurement and reduce the risks of corruption. In particular, it is proposed to consider increasing public procurement through commodity exchanges and creating an online platform for constant monitoring of average market prices for goods and services.

In the part of the section on the environment and the "green" economy changes were also made, which are devoted to the issues of waste disposal and water conservation. Both cases are of great importance for Kazakhstan, as the country has accumulated more than 125 million tons of waste, while 81.7% of landfills⁶ do not meet environmental and sanitary standards. At the same time, Kazakhstan annually generates more than 5 million tons of solid household waste (hereinafter referred to as MSW), but as the welfare increases, experts predict that under the current scenario, the annual volume of MSW may increase to 7 million tons⁷ per year. Only 18.6% of MSW⁸ is recycled in Kazakhstan, although there are oblasts (an administrative units in Kazakhstan) where this figure does not exceed 3%⁹.

⁶ Materials of the expanded Board of the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan on the results of activities for 2020 // <https://primeminister.kz/ru/news/reviews/ekologicheskie-iniciativy-sovershenstvovanie-zakonodatelstva-i-mery-gospodderzhki-razvitie-sfery-geologii-i-prirodnih-resursov-kazahstana-po-itogam-2020-goda-18116>

⁷ Decree of the President of the Republic of Kazakhstan "On the Concept for the transition of the Republic of Kazakhstan to a "Green economy" dated May 30, 2013 No. 577 // <http://adilet.zan.kz/rus/docs/U1300000577#z1>

⁸ Materials of the expanded Board of the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan on the results of activities for 2020 // <https://primeminister.kz/ru/news/reviews/ekologicheskie-iniciativy-sovershenstvovanie-zakonodatelstva-i-mery-gospodderzhki-razvitie-sfery-geologii-i-prirodnih-resursov-kazahstana-po-itogam-2020-goda-181164>

⁹ Report of the Minister of Ecology, Geology and Natural Resources of the Republic of Kazakhstan M. Mirzagaliyev on the work done in 2019 to the population // <https://primeminister.kz/ru/news/reviews/uvlichenie-doli-pererabotki-othodov-i-prodvizhenie-ekologicheskikh-iniciativ-m-mirzagaliyev-rasskazal-o-prodelannoy-rabote-1053421>

Kazakhstan is a water-deficient country with more than half of its rivers originating in neighboring countries. In this regard, practical and rational water use is a matter of environmental protection and national security.

Although almost all public water supply systems, water disposal and sewerage systems, and water supply systems for arable land for agricultural cultivation are state-owned, the state authorities pay little attention to promoting the introduction of water-efficient and water-saving technologies. We believe that the introduction of SPP in the procurement of such technologies could create a stable and unambiguous message in the need for the development and application of resource-saving technologies.

Unfortunately, the fragmentary use of certain principles of the SPP leads to the fact that public procurement as a tool at the moment does not create incentives for sustainable development. Therefore, the amendments made did not suggest considering environmental aspects in public procurement.

Additionally, Kazakhstan has a Concept for the Transition of the Republic of Kazakhstan to a "green economy" (hereinafter referred to as the Concept), approved on May 30, 2013 by the Decree of the President of the Republic of Kazakhstan. The concept defines "green" development in seven areas:

1. Sustainable use of water resources;
2. Development of sustainable and high-productivity agriculture;
3. Energy saving and energy efficiency improvement;
4. Development of the electric power industry;
5. Waste management;
6. Reducing air pollution;
7. Conservation and effective management of ecosystems¹⁰.

There are targets to be achieved for each area of the Concept by 2020, 2030, and 2050. Also, the Concept provides calculations of the necessary investments in the use of different scenarios and tools.

The Government decree approves an Action Plan for implementing the Concept for the Transition of the Republic of Kazakhstan to a "green economy" (hereinafter referred to as the Action Plan) for ten years.

At the moment, Kazakhstan implements an Action Plan for 2021-2030, which specifies the activities planned to be carried out by state bodies. It includes measures laid down by budget programs and are fixed in the functionality of state bodies by the Republic of Kazakhstan's legislation. For example, it has such measures as ensuring the disposal of solid household waste in accordance with environmental requirements, sanitary rules, and building codes, the elimination of illegal landfills with the subsequent removal of garbage to sorting and processing points.

Given that the Concept does not pay attention to SPP, and there are also no norms related to SPP in the legislative acts of the Republic of Kazakhstan, no measures for the development of SPP are provided for in the Action Plan with inclusive sustainability criteria.

The Government of the Republic of Kazakhstan is committed to achieving the SDGs at the national level with the involvement of the civil and business community.

¹⁰ Decree of the President of the Republic of Kazakhstan "On the Concept for the transition of the Republic of Kazakhstan to a "Green economy" dated May 30, 2013 No. 577 // <http://adilet.zan.kz/rus/docs/U1300000577#z1>

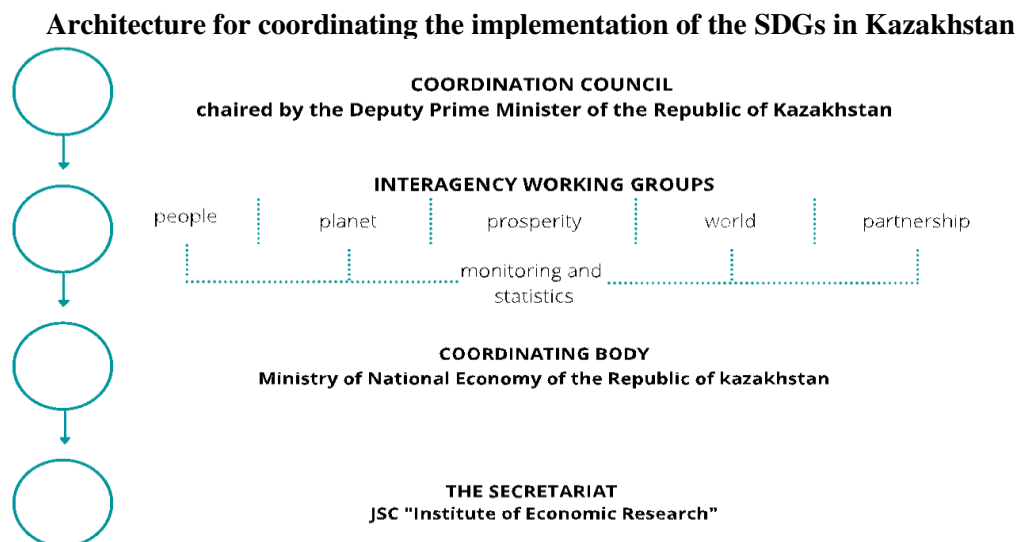
In order to engage the community in 2018, an architecture for coordinating the implementation of the SDGs in Kazakhstan was created, which consists of the Coordinating Council for Sustainable Development under the Government (hereinafter referred to as the Council) and five interdepartmental working groups. The main tasks of the Council are:

- ✓ Review and development of proposals for the formation of a united policy for the implementation of the SDGs in the Republic of Kazakhstan;
- ✓ Coordination of the activities of interdepartmental working groups in the SDG areas;
- ✓ Review and develop proposals for the implementation of the SDGs;
- ✓ Participation in the formation of the National Voluntary Review of Kazakhstan on the SDGs.

To effectively arrange the Council's activities, working groups were established in five key areas:

- ✓ "People": poverty eradication, gender equality, healthy living, education;
- ✓ "Planet": rational use of land and water ecosystems, climate change;
- ✓ "Prosperity": Inclusive growth and economic transformation;
- ✓ "Peace": a safe and peaceful society, strong institutions, and justice;
- ✓ "Partnership": global partnership for sustainable development, resource mobilization, technology, capacity building, trade.

Figure 1.



Each interdepartmental working group includes representatives of the State, non-state sectors and international organizations. Thus, public participation in coordinating the implementation of the SDGs is ensured in Kazakhstan.

In order to monitor and develop recommendations for achieving the goals of the Concept on the "Green" Economy, the Council on the "Green" Economy was formed under the President of the Republic of Kazakhstan, which has eight working groups on the following issues:

- ✓ Water resources management;
- ✓ Agricultural development;
- ✓ Energy saving and energy efficiency improvement;
- ✓ Development of the electric power industry, including renewable energy sources;
- ✓ Waste management;
- ✓ Reduce air pollution;
- ✓ Ecosystem management;

- ✓ Education and formation of ecological culture of the population.

Yet, the implementation of environmental requirements in the public procurement system has not found its practical reflection. That means that the Republic of Kazakhstan's legislation has half-hearted norms related to the SPP, which will be discussed in the second part of the report in the framework of legal expertise.

We consider it important and expedient to start with the implementation of the SPP through the Concept. The development of the SPP principles as one of the requirements of the Concept will allow us to continue the dialogue with the Government of the Republic of Kazakhstan on the potential of the PP. This encourages the development of the principles of sustainable development and the transition to a "green" economy.

At the same time, the lack of consistency and fragmentary use of the principles of sustainability in the public procurement system does not allow us to show the effectiveness of the SPP.

For example, in the Republic of Kazakhstan, much attention is paid to the issue of energy efficiency. Nevertheless, the issues of promoting energy-efficient technologies are fragmentary. As a result, according to paragraph 1 of the Law of the Republic of Kazakhstan "On Energy Saving and Energy Efficiency Improvement", it is not allowed to use incandescent electric lamps with a power of 25 W or higher, which can be used in alternating current circuits for lighting purposes. But since the public procurement system does not purchase lamps for lighting but purchases a service to provide lighting for communal property, in practice, the above point is often not followed.

The Terms of Reference does not specify the point of the law that it is not allowed to use ordinary incandescent lamps to provide the service. As a result, suppliers do not buy energy-saving lamps, and according to subclause 1) paragraph 1 of the law of the Republic of Kazakhstan "On Energy Saving and Energy Efficiency Improvement" may not be observed in practice.

Given the lack of vision on how sustainable development could be promoted through public procurement and low request from the civil society, there is an obvious need to support Kazakhstan in improving the competencies of persons involved in the procurement process.

Summarizing the results of this section, we can note the following:

- ✓ The Republic of Kazakhstan attaches great importance to the ecological sustainable development of the country and the transition to a "green" economy;
- ✓ In achieving the SDGs, the Republic of Kazakhstan considers the driver for new economic growth and improvement of the quality of life of Kazakhstanis;
- ✓ The SDGs are reflected in all the strategic documents of the Republic of Kazakhstan for the medium and long term, which indicates the course of the country formed until 2050;
- ✓ To achieve the SDGs, the Government of the Republic of Kazakhstan actively relies on civil society and has established various institutional platforms to monitor and improve existing policies and practices;
- ✓ The Republic of Kazakhstan does not use all the tools and mechanisms suggested by the international community to achieve the SDGs, which indicates the need to provide the Government of the Republic of Kazakhstan and civil society with consulting, methodological and information support on the benefits and advantages of existing tools to stimulate the switch to the principles of sustainable development, sustainable consumption and production, including such tool as SPP.

1.2. Overview of the public procurement system.

In 2020, the volume of public procurement of goods, works and services by public authorities through the e-procurement portal amounted to 3.96 trillion tenge (9.4 billion US dollars). These figures do not include the procurement costs, which are regulated by a separate set of rules and regulations implemented within the JSC "National Welfare Fund" Samruk-Kazyna", by national management holdings and other national companies (hereinafter referred to as SCGS). According to the Fund itself, the expenses of the SK for 2020 amounted to 3.07 trillion tenge, of which more than 772 billion tenge were long-term purchases-for three years.

Within nine months of 2020, the total volume of regulated procurement of goods, works and services amounted to 12.5 trillion tenge. Local suppliers bargained for about 6.5 trillion tenge, or 52%¹¹ of total procurement.

According to the structure of purchases, the state budget bears the greatest costs for raw materials and the acquisition of movable and immovable property. The exceptions are books and computers (table 1).

Table 1.

The most expensive items of goods according to the results of purchases in 2020.

Name	In total	Number of purchases made
Flat	44 681 548 012	1 382
Diesel fuel	37 235 060 592	5 993
Electric power	34 307 792 267	11 296
Building	26 549 890 466	727
Car	26 530 003 477	1 596
Gasoline for spark-ignition engines	25 942 462 205	20 495
Book	21 362 653 496	38 560
Natural gas	12 266 104 236	3 182
Coal stone	11 641 061 263	2 387
Computer	8 570 955 092	4 309

If we consider purchases by quantity, then most of the goods required for the needs of the society are purchased (table 2).

Table 2.

The most frequently purchased items of goods in 2020

Name	In total	Number of purchases made
Bool	21 362 653 496	38 560
Paper for office equipment	5 846 939 776	25 592
Detergent	915 147 508	22 824
Folder	568 443 446	21 751
Filter	518 361 584	21 528
Soap	873 761 971	21 138
Cartridge	1 969 511 219	20 734
Gasoline for spark-ignition engines	25 942 462 205	20 495
Printer ink	1 399 115 335	19 805
Gloves	668 396 189	18 966

This trend continues in the procurement plans for 2021 (table 3).

¹¹ Speech by President Kassym-Jomart Tokayev at the expanded meeting of the Government on January 26, 2021 // https://www.akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/vystuplenie-prezidenta-kassym-zhomarta-tokaeva-na-rasshirennom-zasedanii-pravitelstva

Table 3.

The most expensive items of goods planned for procurement in 2021

Name	In total	Number of purchases made
Coal stone	101 768 422 319	2 010
Diesel fuel	62 335 347 763	3 988
Electric power	40 501 217 369	6 815
Gasoline for spark-ignition engines	40 380 734 866	10 964
Car	38 097 295 224	1 091
Meteorological station	29 357 930 368	50
Computer	16 680 320 801	1 531
Natural gas	15 967 153 551	2 037
Jet fuel	15 259 562 514	34
Study room	14 157 904 223	697

In quantitative terms, among the goods planned for purchase, the largest number is also allocated to the needs of the office (table 4).

Table 4.

The most popular items of goods planned for procurement in 2021

Name	In total	Number of purchases made
Cartridge	4 109 272 517	12 643
Paper for office equipment	6 310 649 453	11 043
Gasoline for spark-ignition engines	40 380 734 866	10 964
Folder	704 525 515	10 676
Detergent	883 561 239	10 441
Filter	1 161 124 606	10 204
Soap	1 469 442 942	9 186
Book	9 160 510 995	9 133
Pen	310 779 887	8 294
Glue	250 402 525	7 966

In monetary terms, among the works purchased under the state budget, the most popular are works related to construction and repair (table 5).

Table 5.

The most expensive items of work based on the results of purchases in 2020

Name	In total	Number of purchases made
Works on the building (construction) of residential buildings/structures	378 381 430 828	698
Works on the building (construction) of non-residential buildings/structures	292 743 496 366	580
Road repair works	233 643 134 280	1 852
Works on the construction of a highway	207 096 026 651	181
Works on the construction of water supply facilities/systems/networks, water supply networks	104 856 946 403	342
Works on building (construction) of networks/systems/facilities/gas supply/gas distribution stations	102 650 487 428	248
Works on the building (construction) of engineering networks	85 860 998 597	280
Works on repair/improvement of the territory	69 543 335 842	3 381

Repair/reconstruction of water supply / water supply systems	64 760 398 977	843
Works on the maintenance of highways	62 696 992 592	2 923

With regard to the quantitative factor of purchased works and services, the most popular are the works required for the functioning of the office (table 6).

Table 6.

The most popular articles of works purchased in 2020

Name	In total	Number of purchases made
Staff /Employee training services	21 321 736 371	32 076
Work on the production of stands/signs/inscriptions	2 422 142 359	15 383
Works on repair of motor vehicles	2 826 467 158	8 774
Repair/modernization of computer/peripheral office equipment/equipment	1 054 149 112	7 397
Works on the production of typographic/printing	1 798 557 512	5 380
Production of printing plates/seals/stencils	183 822 137	4 435
Land management and land cadastral works	1 500 779 864	4 266
Work on conducting examinations/tests	3 216 022 360	3 987
Work on the development/adjustment/calculation/preparation of design and estimate documentation	10 483 429 300	3 389
Works on repair/improvement of the territory	69 543 335 842	3 381

The planned purchase of works for 2021 is approximately comparable to the list of works that was purchased in 2020 (table 7).

Table 7.

The most expensive and popular works that are planned to be purchased in 2021

Name	In total	Number of purchases made
Road repair works	280 782 514 707	1 140
Works on the construction of non-residential buildings/structures	249 212 630 736	333
Works on the construction of residential buildings/structures	234 703 135 413	382
Works on laying of main pipelines	123 933 768 625	16
Works on the construction of objects/systems/networks of heat supply, heating networks	116 966 773 812	21
Works on the construction of water supply facilities/systems/networks, water supply networks	106 320 200 895	232
Works on repair/improvement of the territory	66 030 582 365	1 274
Works on the maintenance of highways	59 542 122 945	1 245
Works on the construction of a highway	58 606 973 668	57
Repair/reconstruction of water supply / water supply systems	57 933 477 676	258
Repair of non-residential buildings/structures/premises	21 132 924 862	1 107
Work on the development/adjustment/calculation/preparation of design and estimate documentation	11 879 028 302	1 179
Works on repair of motor vehicles	6 215 995 038	3 589
Works on the production of typographic/printing	2 450 321 787	1 827
Work on conducting examinations/tests	2 005 343 877	1 380

Repair/modernization of computer / peripheral office equipment	860 872 109	2 607
Work on the production of stands/signs/inscriptions	785 381 417	1 994

The Government of the Republic of Kazakhstan has constantly been working to improve the system of public procurement and ensure compliance with international standards since the introduction of the first Law on Public Procurement (hereinafter – the LPP), which entered into force in 1997 and is based on the principles of the United Nations Commission on International Trade Law (the model law of UNCITRAL).

The current LPP was passed in 2015, mainly to ensure compliance with the requirements of the Treaty on the Eurasian Economic Union (hereinafter referred to as the Treaty on the EAEU) in the field of public procurement.

By becoming a member of the EAEU, Kazakhstan has committed to adapt the LPP of the Republic of Kazakhstan to the requirements of the Agreement on Public Procurement, in particular, in order to:

- ✓ Ensuring the optimal and efficient use of funds used for procurement in Member States;
- ✓ Provision of a national procurement regime for Member States;
- ✓ The inadmissibility of a more favorable procurement regime for third countries than that provided for between Member States;
- ✓ Ensuring the availability of information and transparency of procurement;
- ✓ To ensure the unlimited access of potential suppliers and suppliers of Member States to participate in electronic procurement through the mutual recognition of an electronic digital signature developed in accordance with the legislation of a member State by another Member State¹².

The strategic goals and objectives of the PP system coincide with the principles that are reflected in the Law on Public Procurement:

- Optimal and efficient use of money in public procurement;
- Providing potential suppliers with equal opportunities to participate in the public procurement Procedure, except in cases specified for by law;
- Creating conditions for fair competition among potential suppliers;
- Increasing the openness and transparency of the public procurement process;
- Providing support to domestic producers of goods, as well as domestic suppliers of works and services to the extent that this does not contradict international treaties ratified by the Republic of Kazakhstan;
- Increasing the responsibility of public procurement participants;
- Prevention of corruption manifestations;
- Acquisition of innovative and high-tech goods, works, and services;
- Compliance with the intellectual property rights contained in the purchased goods.

But the current legislative and regulatory framework does not cover the entire volume of purchases made from the budget. Thus procurement costs are not covered by the LPP:

- ✓ The National Welfare Fund of the SK, its subsidiaries or companies that are in the trust management of the SK;
- ✓ The National Bank of the Republic of Kazakhstan (hereinafter-the NB of the RK), its departments, organizations that are part of the structure of the NB of the RK, subsidiaries or companies that are under the trust management of the NB of the RK, and legal entities affiliated with them;

¹² World Bank, OECD. Evaluation of the public procurement systems of the Republic of Kazakhstan and the National Welfare Fund Samruk-Kazyna Joint Stock Company» // <http://www.mapsinitiative.org/assessments/Kazakhstan-MAPS-Final%20Report-2020-Rus.pdf>

- ✓ National management holdings, national holdings, national companies (as defined in the State Property Act) and their subsidiaries;
- ✓ SK - Pharmacy LLP and public health institutions responsible for the purchase of medicines and medical products for public hospitals and polyclinics within the framework of providing a guaranteed amount of free medical care.

In turn, the Republic of Kazakhstan pays great attention to the continuous improvement and reform of the PP system.

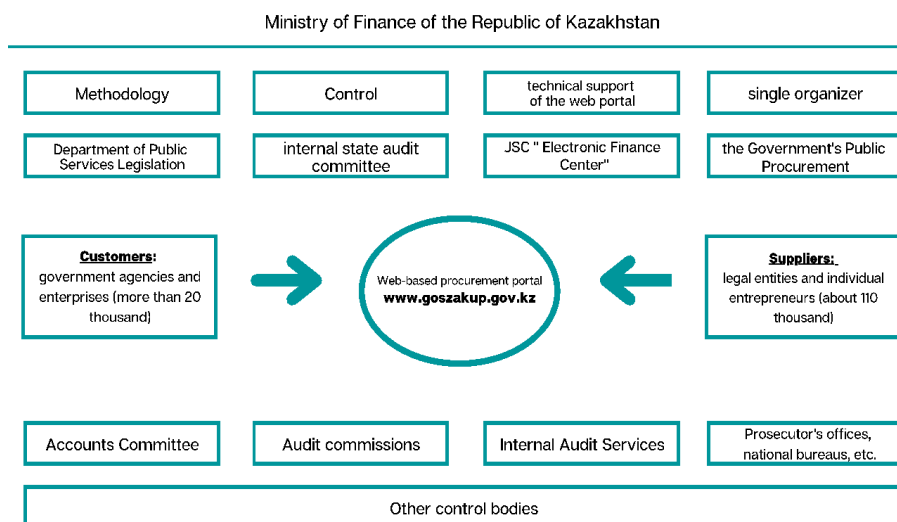
The reform of the public procurement system is a crucial priority in the framework of the modernization of Kazakhstan's economy. Speaking about improving the competitiveness of the Republic of Kazakhstan as the third stage of the modernization program (*after the development of human capital and technological renewal*)¹³, the President noted that "*modernization, which includes institutional transformation, security and measures to eliminate corruption...requires significant optimization of the public procurement sector.*"

Further amendments were made to the current LPP in 2018, which aimed to strengthen the centralization of public procurement and support for domestic suppliers. More details about the law's legal part will be described in the second chapter of the report.

The desire to digitize and centralize the PP to minimize corruption risks and increase the efficiency of budget spending led to creating a single e-procurement portal and creating a configuration of the procurement system, as shown in Figure 2.

Figure 2.

Structure of the public procurement system in the Republic of Kazakhstan ¹⁴



Thus, at the national level, state bodies' purchases are centralized and implemented through a "single window" at the local executive bodies (akimats). These functions are assigned to the public procurement departments of the akimat. However, all existing state institutions and subordinate organizations that are not state bodies carry out purchases independently in accordance with the LPP.

¹³ Address of the President of the Republic of Kazakhstan N. Nazarbayev to the people of Kazakhstan. January 31, 2017 "The Third modernization of Kazakhstan: global competitiveness" // https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-prezidenta-respubliki-kazahstan-nazarbaeva-narodu-kazahstana-31-yanvary-2017-g

¹⁴ OECD. Public procurement in Kazakhstan Reforming the system to improve efficiency. // <https://read.oecd-ilibrary.org/governance/79191b26-ru#page6>

In this regard, how effective centralized procurement will be in terms of budget savings and minimizing corruption cases remains to be assessed. It should also be noted that the current PP system does not encourage suppliers to improve their products since, during the attraction of investments, it has price limits and no guarantees that it will be a winner as the public buyers during the selection of the winner. This means they are obliged to choose the one who will offer the lowest price. The purchased product's all life-cycle costs are not taken into consideration.

It would be reasonable to provide long-term contracts to encourage suppliers to upgrade, including in terms of improving the sustainability of their products. In the current time, long-term procurement is carried out only within the framework of construction works, which is caused by objective factors: the timing of the object's construction.

However, long-term procurement, along with the offset policy, is practised in the quasi-public sector. In particular, in the group of companies that are part of the SK. At the same time, a prerequisite for suppliers who want to get an offset contract is creating new products in which the SK companies are interested.

We believe that the introduction of a similar policy in the public procurement system should not cause difficulties. At the moment, state budget planning is closely linked to the public procurement system. All state bodies send their budget applications for the six months of next year before the budget is formed. Simultaneously, the budget in Kazakhstan is formed for three years with a division by year, which allows the procurement authorities to create medium-term procurement strategies and develop long-term procurement and offset policy. However, the Ministry of Finance of the Republic of Kazakhstan is not considering this option at this stage.

Thus, it can be noted that the existing tools and goals that the public procurement system serves, only partially meet the principles of the SPP. If we take into account that the SPP stands on three pillars of sustainable development: society, environment and economy¹⁵, according to the UNEP methodology, then we can say that the Government of the Republic of Kazakhstan pays attention primarily to economic and social aspects:

- ✓ Efficient use of public funds;
- ✓ Development of competition rate;
- ✓ Support of local GCS providers and public associations (organizations) of persons with disabilities;
- ✓ Creating new jobs.

At the same time, economic aspects are of primary importance in the formation of public procurement policy.

The necessity of introducing social and environmental aspects into the public procurement system was announced by the President of the Republic of Kazakhstan: *"Public procurement is fraught with a huge reserve (according to some calculations, up to 400 billion tenge per year), which could be used to solve ... social issues."*¹⁶

Although, yet there were no changes in terms of legislative reform or changes in implementing public procurement to solve social problems.

¹⁵ United Nations Environment Programme. Guidelines for the implementation of Sustainable Public Procurement. The UNEP methodological approach // https://www.ecolabel.org.ua/images/page/UNEP_ImplementationGuidelines_RUS.pdf

¹⁶ Address of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan. Constructive public dialogue is the basis of stability and prosperity of Kazakhstan // https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana

However, this may be the future stage of reforming the public procurement system, since the Strategic Plan until 2025 also sets the goal of guaranteed procurement by the state, quasi-public sectors and subsurface users, ensuring the stability of legislative conditions for the entire duration of the project, which will create new jobs and increase the added value of exported goods.

Also, through the public procurement system, the Government of the Republic of Kazakhstan plans to ensure the development of its own scientific, technological and innovative base¹⁷. So, it is proposed to create a demand for the domestic development and localization of foreign technologies with a high export potential or the need for which exists in the domestic market.

1.3. Analysis of the level of sustainable public procurement.

The analysis of sustainable public procurement practices of the Republic of Kazakhstan was carried out based on a questionnaire survey of participants of the public procurement system: customers and suppliers, as well as individual interviews of responsible employees of state bodies, the quasi-public sector and the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken".

In particular, 17 public procurement departments under local executive bodies (akimats) responsible for public procurement in the regions of Kazakhstan, representatives of the subordinate organization of the Ministry of Finance of the Republic of Kazakhstan responsible for the functioning of the public procurement portal, as well as buyers of national companies answered the questionnaire.

Most of the respondents who filled out the questionnaires are specialists in institutions and are responsible only for the implementation of the procurement process. At the same time, 80% of respondents have more than five years of experience in the procurement process.

In this regard, the respondents are well aware and understand how the public procurement process works in Kazakhstan. They can objectively assess the strengths and weaknesses, tell about the potential of public procurement in Kazakhstan.

On the other hand, specialists cannot influence the modernization of policy and the reform of legislation in public procurement since the developing law and by-laws is within the competence of the Ministry of Finance of the Republic of Kazakhstan.

As a result, 90% of respondents to the question *"Which of the following statements best describe the responsibilities in your organization about procurement?"* replied that they participate in the development of tender conditions or control the procurement process at one of their stages.

Additional interviews were organized with the Director of the Department of Public Procurement Legislation of the Ministry of Finance of the Republic of Kazakhstan Akhmetov S. M., a member of the Board-Deputy Chairman of the Board of the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken" Mambetaev A. O., responsible for representing the interests of business in the development of laws in the field of public procurement, directors of departments of the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan Oshurbaev M. T., Shiranov A. R. and Agabekov O. P., responsible for the development of the "green" economy, the introduction of green technologies and the transition to a circular economy,

¹⁷ Decree of the President of the Republic of Kazakhstan dated February 15, 2018" On approval of the Strategic Development Plan of the Republic of Kazakhstan until 2025 and invalidation of certain decrees of the President of the Republic of Kazakhstan " dated February 15, 2018 No. 636 // <https://adilet.zan.kz/rus/docs/U1800000636>

the head of the Public Procurement Department of the Pavlodar region Niyazbekov B. K. for the objectivity of the analysis.

This report reflects the materials and comments of the speakers who had additional consultations, including during the formation of conclusions and recommendations.

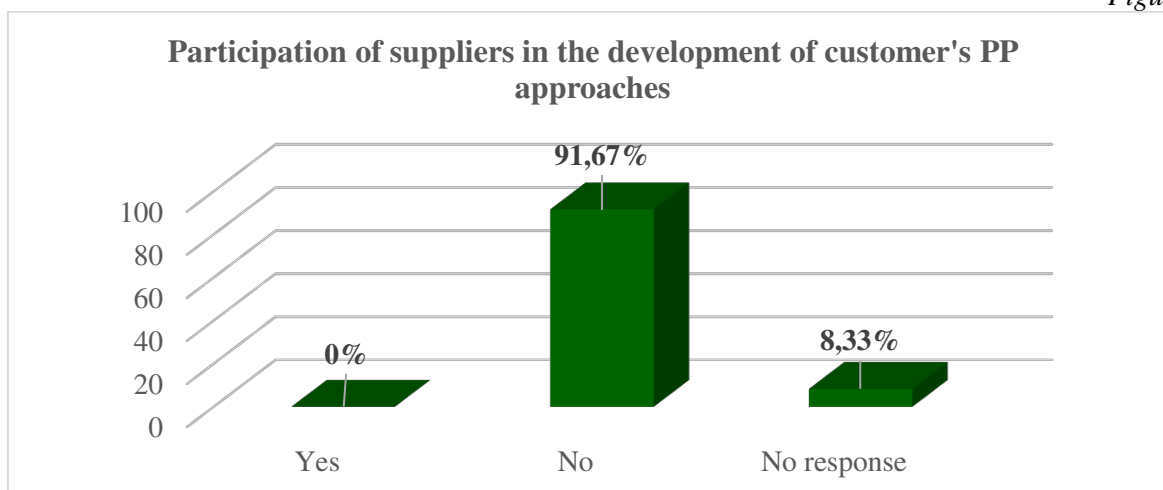
The questionnaire, which the participants completed, was developed and provided by UNEP. The blocks of questions from the questionnaires are as follows :

- ✓ How is the public procurement process organized?
- ✓ What criteria do customers set during the formation of purchase plans?
- ✓ What standards are used in determining GCS and suppliers?
- ✓ How are relationships with suppliers regulated?
- ✓ What are the barriers to the development of SPP in Kazakhstan?

Unfortunately, even though the questionnaire was distributed to different interested groups, the answers were (26 completed questionnaires) provided only by individuals who act as customers in the public procurement system.

The questionnaire helps to understand that public authorities determine the central policies and strategies for the development of public procurement without suppliers' participation. As a result, business entities do not form initiatives to improve the public procurement system, which is confirmed by respondents' responses (Figure 3).

Figure 3.

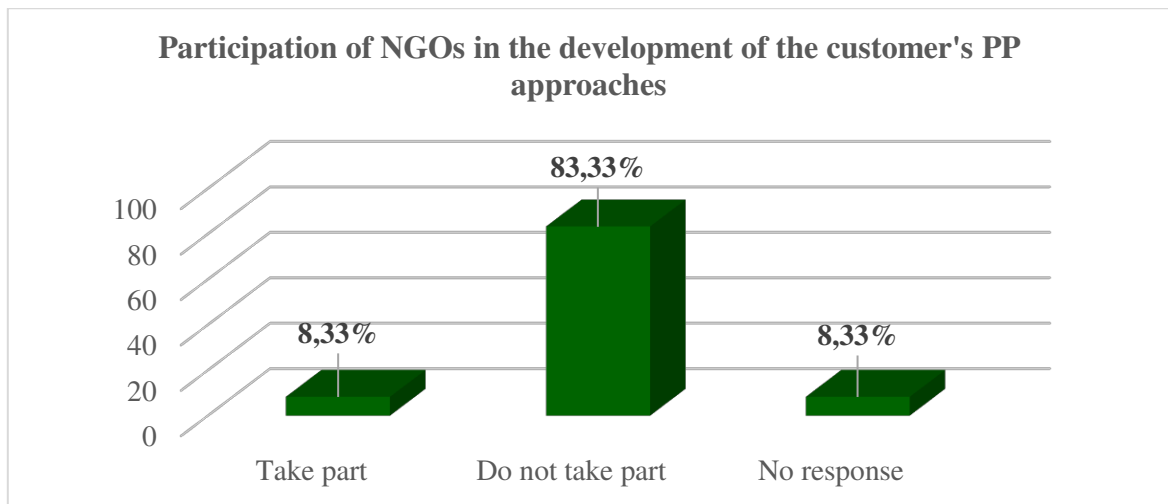


This state of affairs is justified because the Government of the Republic of Kazakhstan pays excellent attention to minimizing corruption-causing factors. In this regard, during the preparation of their plans, public authorities strive to minimize direct contacts with interested suppliers.

To represent their interests, the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken" operates in Kazakhstan, the status and functions of which are regulated by the Law of the Republic of Kazakhstan "On the National Chamber of Entrepreneurs of the Republic of Kazakhstan", as well as associations that represent the unification of business entities. However, such associations' primary efforts are primarily aimed at supporting an increase in local suppliers' share.

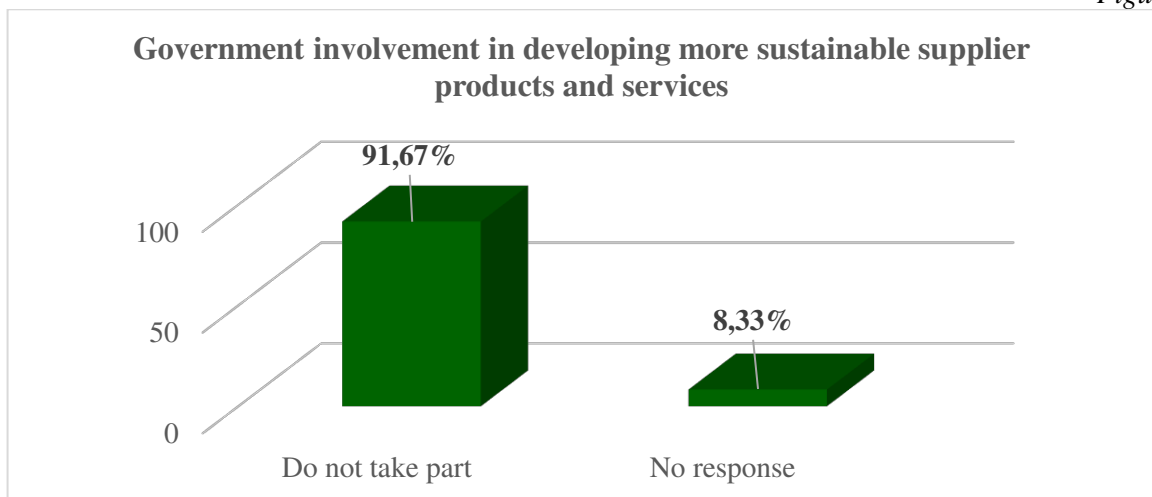
As a result, associations and non-governmental organizations do not participate much in the development of PP approaches, as shown in Figure 4.

Figure 4.



At the same time, it should be noted that representatives of authorized state bodies in the field of procurement also do not pay attention to suppliers in their initiatives to create more sustainable goods and services (Figure 5).

Figure 5.



Thus, when improving their products or services, suppliers are more guided by their own expectations and predict the needs of government agencies. This leads to the fact that in practice, more often suppliers are forced to upgrade after changes have been made to the customer's technical specifications.

As a result, there is a poorly built dialogue between the participants of the public procurement system in Kazakhstan regarding the development of sustainability principles. This is due to the fact that the main goal of the development of the GZ system in the Republic of Kazakhstan is to support local suppliers and increase the share of local content. This goal was repeatedly announced by the President of the Republic of Kazakhstan in his Address to the people of Kazakhstan in 2020 and at an expanded Government meeting in January 2021.

In particular, the President noted that "...instructed the Government and akims to strengthen the work to increase local content in procurement.¹⁸ "Regulated purchases in Kazakhstan should have a direct effect on the development of the industry¹⁹.

The responsible state bodies direct their efforts to fulfill the given instructions, which are not related to environmental aspects. Initiatives for the implementation and development of sustainability criteria, which are set out in the strategic documents of the Republic of Kazakhstan, are considered in a secondary plan.

In this regard, the state authorities of the Republic of Kazakhstan actively participate in the dialogue with experts from the OECD, the World Bank in terms of improving the efficiency of the public procurement system, consultations on supporting local suppliers, taking into account Kazakhstan's obligations under the WTO and the EAEU to provide equal access to public procurement for all suppliers. Recent reforms of Kazakhstan's legislation in procurement are aimed at the economic efficiency of spending public finances. This is reflected in the centralization of public procurement at the central and local levels. However, the issue of developing competition in the public procurement system remains unresolved. Respondents to the survey did not provide answers on the ratio of procurement methods in government agencies.

According to the data received from JSC "Center for Electronic Finance", which provides maintenance of the web portal of public procurement, by the end of 2020, 59.2% of all public finances were spent on public procurement carried out in a single-source way by the direct conclusion of a contract or 1,913,621 contracts out of 2,926,113 agreements that were concluded by state bodies within the framework of the State Budget. The amount of GCS purchased from one source by direct conclusion amounted to more than 2.3 trillion tenge and another 279.8 billion tenge from one source for failed purchases in numerical terms. More detailed statistics on the method of procurement ratio are presented in table 8.

Table 8.

Report on public procurement of goods, works, and services for 2020.

Purchase method	Quantity		The amount allocated for the purchase in the current year, (million tenge)	Total volume of purchases in the current year, (million tenge)
	Subjects of contracts	Winning Suppliers		
Open competition	58 538	8 148	928 142,8	765 077,1
Competition with preliminary qualification selection	10 811	1 343	380 501,5	357 577,5
Public procurement of housing	2 124	1 346	20 558,1	20 256,5
Public procurement of services provided by the state social order	911	363	3 790,8	3 379,8
Auction	2 273	677	29 064,4	24 415

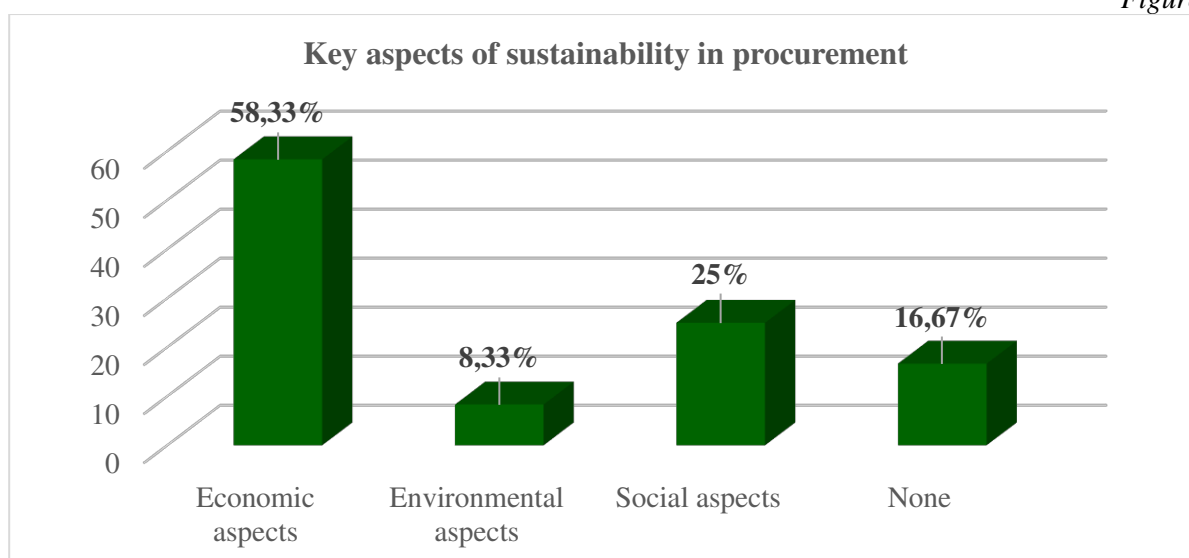
¹⁸ Speech by President Kassym-Jomart Tokayev at an expanded meeting of the Government on January 26, 2021 // https://www.akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/vystuplenie-prezidenta-kasym-zhomarta-tokaeva-na-rasshirenno-zasedanii-pravitelstva

¹⁹ The message of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan. September 1, 2020 // https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g

Request for price offers	609 315	20 723	200 797,7	147 227,4
One source on failed purchases	326 266	19 559	327 484,2	279 802,9
<i>failed open competition</i>	23 898	3 859	238 390,4	193 945,8
<i>failed request for price offers</i>	301 537	15 297	78 352,9	75 447,9
<i>failed auction</i>	370	134	4 080,1	3 844,9
<i>Upon public procurement of services provided for by the state social order</i>	461	269	6 660,8	6 564,2
Public procurement carried out in a single-source way by the direct conclusion of a contract	1 913 621	70 943	2 464 739,8	2 345 690,3
Public procurement conducted using the "Commodity Exchanges" method	2 254	261	19 035,2	18 788,3
TOTAL:	2 926 113	123 363	4 374 114,5	3 962 214,4

The analysis of questionnaires' feedback shows that the SPP in Kazakhstan has an initial level and covers only certain principles of sustainability. At the same time, the most important for the Government of the Republic of Kazakhstan is the economic aspect of procurement. According to the responses provided, more than half of the respondents consider only the financial part when purchasing (Figure 6).

Figure 6.



Central and local executive bodies support domestic producers, innovations, and new jobs, through the public procurement system, which relates to economic aspects. It is shown as the results of questionnaires and interviews.

Among the social aspects, the public procurement system's role as a tool for supporting people with disabilities is noted. However, even though 8.33% of respondents said that they influence environmental aspects through public procurement, neither in the questionnaire's feedback nor in the oral interview they were able to specify how the construction of the SPP in their company helps in solving environmental issues.

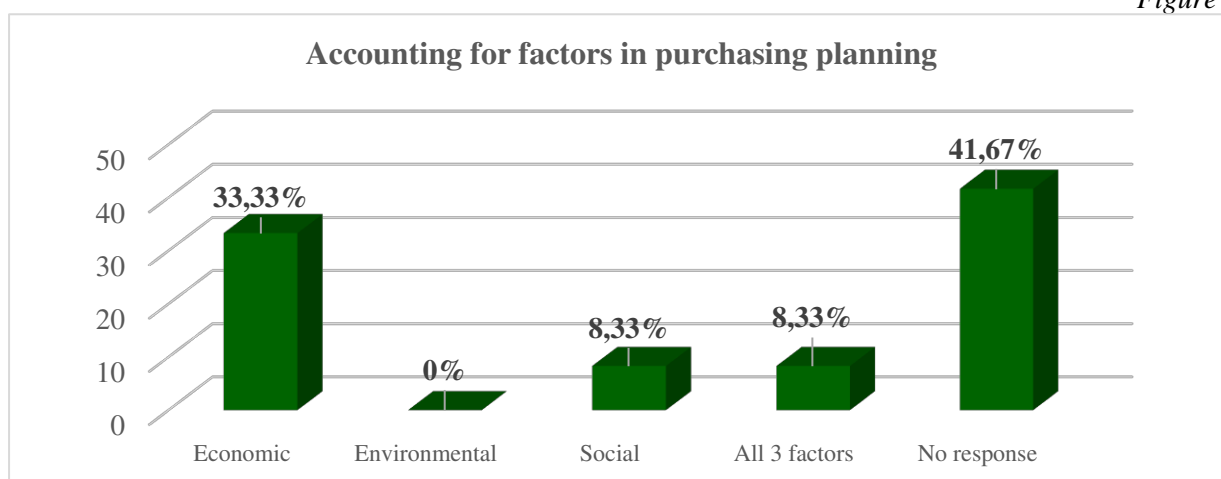
Another fascinating point is that despite the unified rules and requirements of the legislation, the public procurement departments of akimats (*local executive bodies*) have different law enforcement

practices in the implementation of procurement at the local level. Thus, 16.67% of respondents noted that during the execution of procurement, they do not try to solve any additional issues other than meeting their organisation's needs.

Thus, we can conclude that Kazakhstan clearly understands public procurement's role in supporting the national economy. But at the same time, more effective work requires an increase in the quality of human resources. This will improve both the planning of public procurement and its implementation.

According to respondents, only 16.67% of respondents consider all three factors (*economic, environmental and social*) while forming procurement plans. 41.67% of respondents could not answer what factors they use when planning purchases (Figure 7).

Figure 7.



Insufficient human resources means that many of the respondents could not assess whether their organizations address sustainability aspects throughout the procurement cycle. More detailed information on parts taken into account in the procurement stage can be seen in table 9.

Table 9.

Consideration of sustainability aspects in the entire procurement cycle by state and quasi-state bodies (customers).

Factor	Identifica tion of needs	Defining specificat ions	Selection of tender companies	Obtai ning a contr act	Terms of contrac t executi on	Manag ement and monito ring
Economic factor	25%	16,67%	25%	25%	16,67%	25%
Environmental factor	0	0	0	0	0	0
Social factor	0	0	0	0	0	0
All three factors	16,67%	25%	8,33%	8,33%	8,33%	25%
No response	58,33%	58,33%	66,67%	66,67%	75	50%

As can be seen from table 9, government agencies do not consider all factors in the entire procurement cycle. In fact, in determining the specification, almost a quarter of public procurement customers pay attention to all aspects of the SPP. But already at the stage of selecting tender companies and concluding a contract, greater priority is given to economic factors.

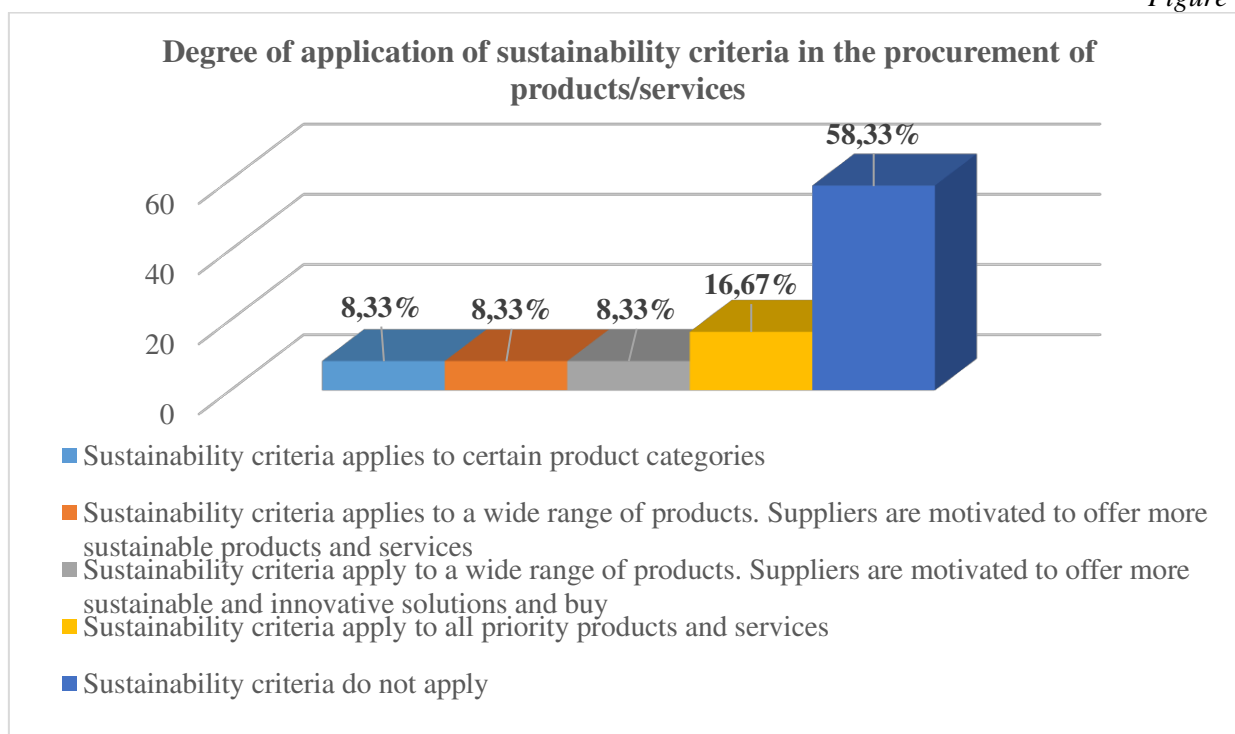
Perhaps this is since, in public procurement, the price factor limits customers. In particular, the winner of the tender is always the company that offered the lowest price. As a result, if potential suppliers do not meet all the requirements regarding environmental and social aspects, the authorized body may revise the technical specification in this part.

The Ministry of Finance of the Republic of Kazakhstan, which is responsible for the formation of legislative rules in public procurement, is trying to change this trend by introducing e-procurement. The electronic store's essence is that on a particular web portal, the customer will be provided with a list of suppliers offering such goods according to their requirements for delivering goods. Further, the customer can choose the supplier with whom the contract will be concluded, based on the compliance with the requested criteria, within the framework of their budget.

At the same time, there is no guarantee that the e-procurement will capture the environmental and social aspects, which will cover the entire SPP range. The introduction of an electronic store as conceived by the Ministry of Finance will allow you to buy better products, thereby reducing the frequency of purchases and increasing the efficiency of using budget funds.

In general, half of the surveyed representatives of the Republic of Kazakhstan's state bodies do not use the criteria of sustainability in procurement by the state bodies of the Republic of Kazakhstan (Figure 8).

Figure 8.



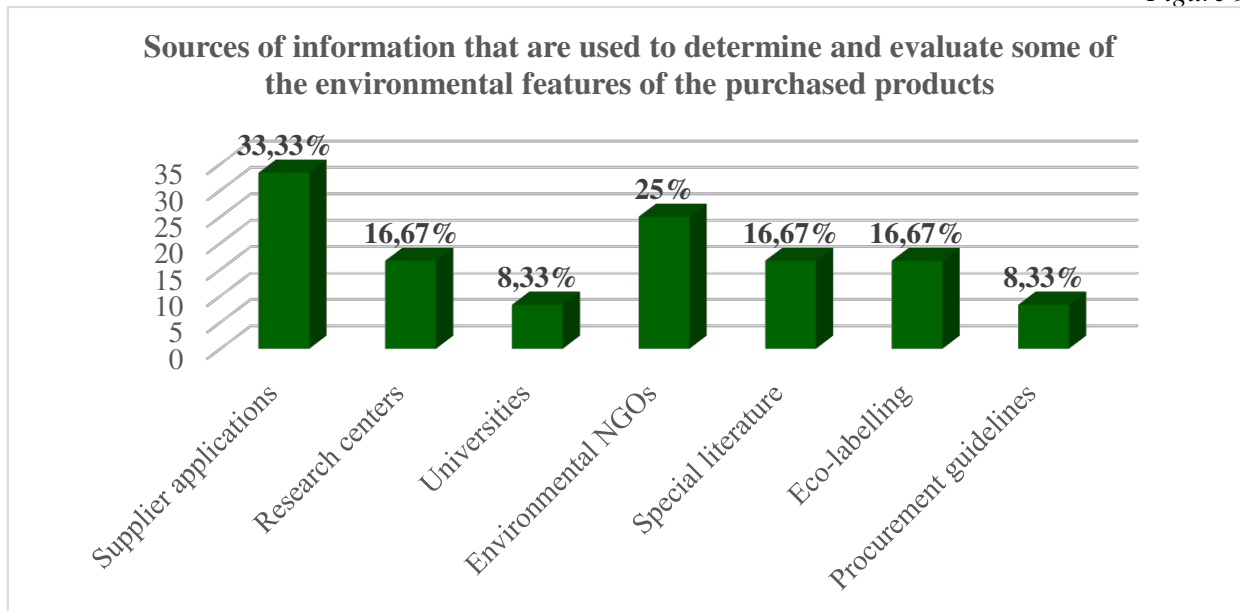
Only 16.67% of respondents actively use sustainability criteria in purchasing priority goods. A little more than 16% of respondents try to encourage suppliers to improve their products' sustainability.

However, in this case, it is not entirely clear how this occurs. As noted in Figures 3 and 5, suppliers and buyers are not in contact with each other as they form purchasing strategies and develop more sustainable products. Accordingly, the incentive can only be through increasing the requirements within the technical specification on the buyers' part.

On the one hand, there are still risks those local suppliers will not be able to meet customer requests, and reducing the share of local content is contrary to the Government's goals. On the other hand, there is a possible greenwashing on suppliers to get the order. Public authorities pay little attention to environmental labelling issues and the development of some standards and principles for determining sustainable procurement.

Almost a third of respondents rely on supplier requests to determine and evaluate the environmental characteristics of purchased products (Figure 9)

Figure 9.



The Strategy "Kazakhstan-2050" sets a goal for the development of Kazakhstan's business based on environmental standards with the formation of domestic environmental brands at the world level. Accordingly, to create recognizable brands in Kazakhstan, environmental labelling should be developed, guaranteeing the environmental friendliness and safety of products.

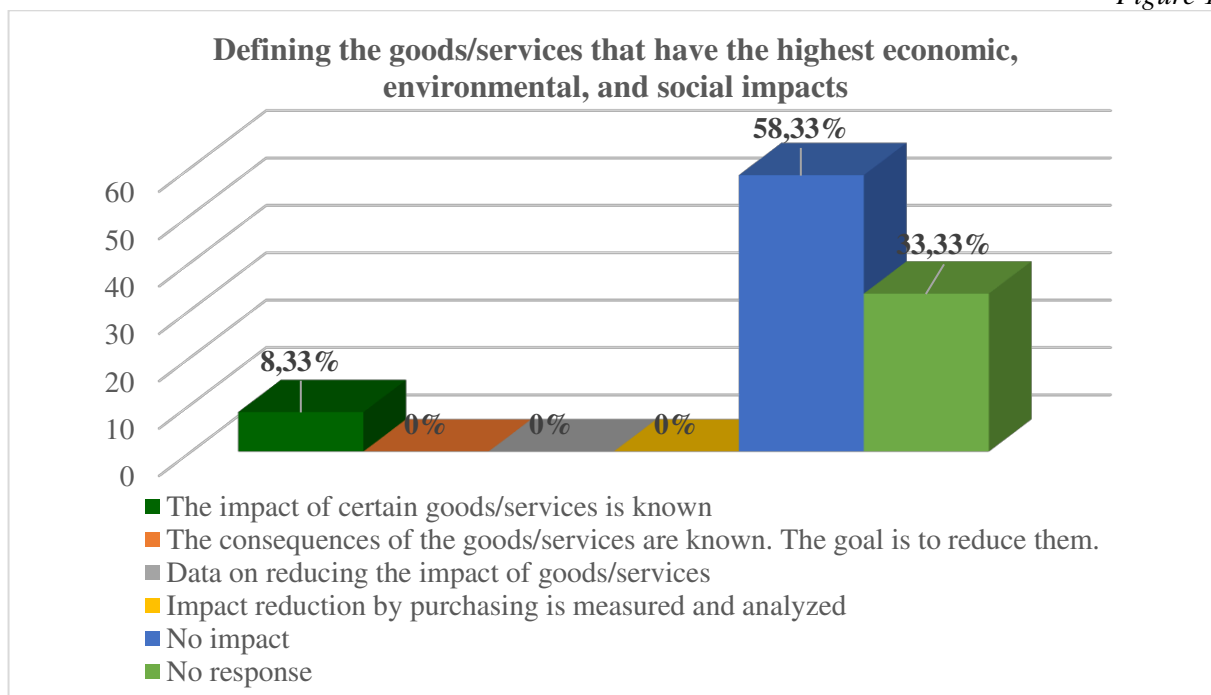
The application of environmental labelling in Kazakhstan, as in other countries, is voluntary. Environmental labelling is not widely used, except for food labelling. This is since the Government of Kazakhstan saw the production and export of organic agricultural products as a growth point for its economy. Simultaneously, in Kazakhstan, environmentally friendly products and organically clean products were identical concepts until October 2019. In this regard, at the moment in the Republic of Kazakhstan, national, interstate standards for environmentally friendly products are available mainly for food products. The criteria related to environmental labelling and sanitary products are part of the consortium's standards²⁰ and are voluntary.

The doubtfulness of the claim that the state authorities, through the public procurement system, encourage the production of more sustainable GCS is also confirmed by the fact that among all the interviewers, only representatives of JSC "NMH "Baiterek" were able to specify goods for the purchase of which environmental, economic or social criteria were used. Only a third of respondents mentioned products or services from the list for which ecological impacts were considered in the procurement process, while half of these respondents were representatives of the quasi-public sector. This suggests that a small number of government agencies focus on the

²⁰ International Academy of Ecology. Register of eco-standards // <http://eko-kaz.kz/2017/06/15/%d1%81%d1%82%d0%b0%d0%bd%d0%b4%d0%b0%d1%80%d1%82%d1%8b/>

implementation of SPP. As a result, public authorities are weak in identifying goods/services with high economic, environmental, and social impacts (Figure 10).

Figure 10.

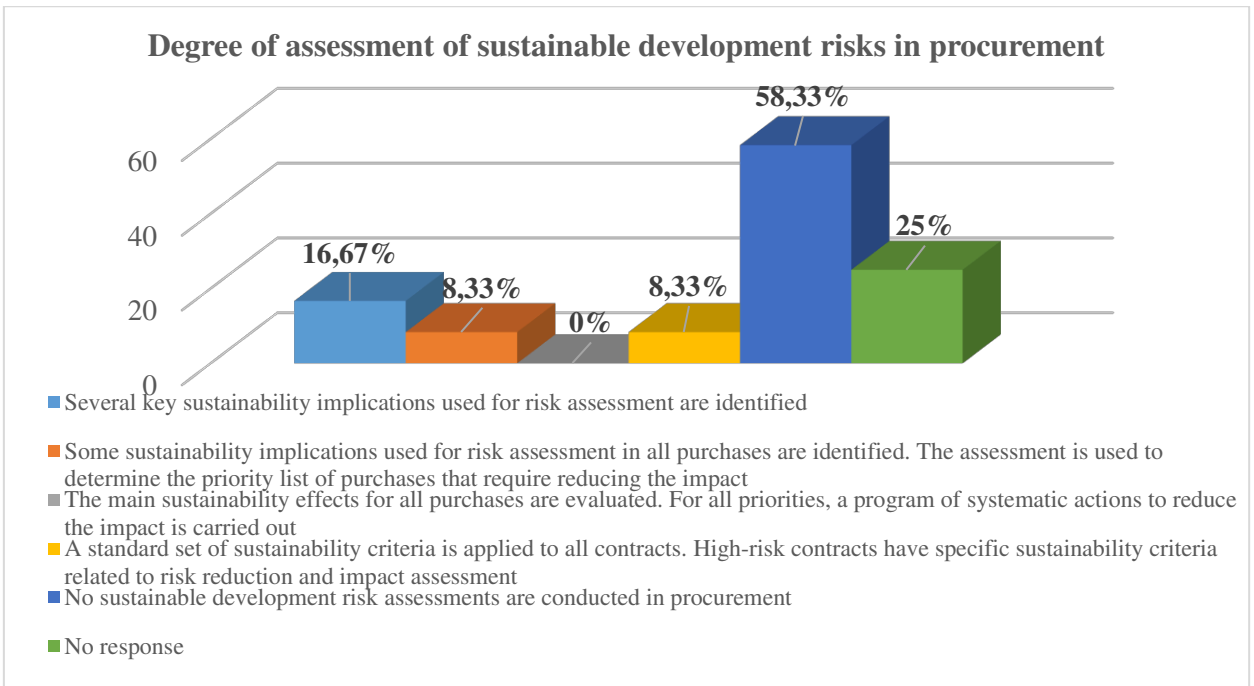


In addition, shoddy work in determining the impact of goods/services on the economy, the environment and the social environment also affects the quality of the assessment of sustainable development risks in procurement (Figure 11).

Of all respondents, only the akimat (local executive body) Almaty has a standard set of sustainability criteria for all contracts. They also noted that the akimat had identified several critical sustainability implications for risk assessment.

As shown in Figure 11, almost 60% of respondents noted that they do not assess the risk of sustainable development in procurement, while about 25% left this question unanswered. Thus, almost 85% of respondents do not manage risks, as they do not have a system for assessing them.

Figure 11.



The lack of clear criteria for assessing the risks of sustainable development in procurement leads to the fact that all respondents noted the lack of "ex-ante" and "ex-post" analyses in their organizations to assess the environmental and social consequences of procurement and the conclusion of contracts for goods and services. We believe that this situation is caused by several factors:

- ✓ In the case of public procurement, the determining factor is the price;
- ✓ The regulatory framework for the development of SPP has not been developed;
- ✓ Public procurement officers do not have sufficient training;
- ✓ There are not enough reliable suppliers in the market that can provide sustainable services and goods, which is why the active use of SPP will limit the participation of local suppliers.

As a result, public buyers have no reason to change the legislation to develop SPP principles since they will be limited either by their budgets or by the possibilities of local suppliers' proposals. The surveyed stakeholders mostly agree with these conclusions (Table 10).

Table 10.

The degree of agreement of respondents with the submitted statements

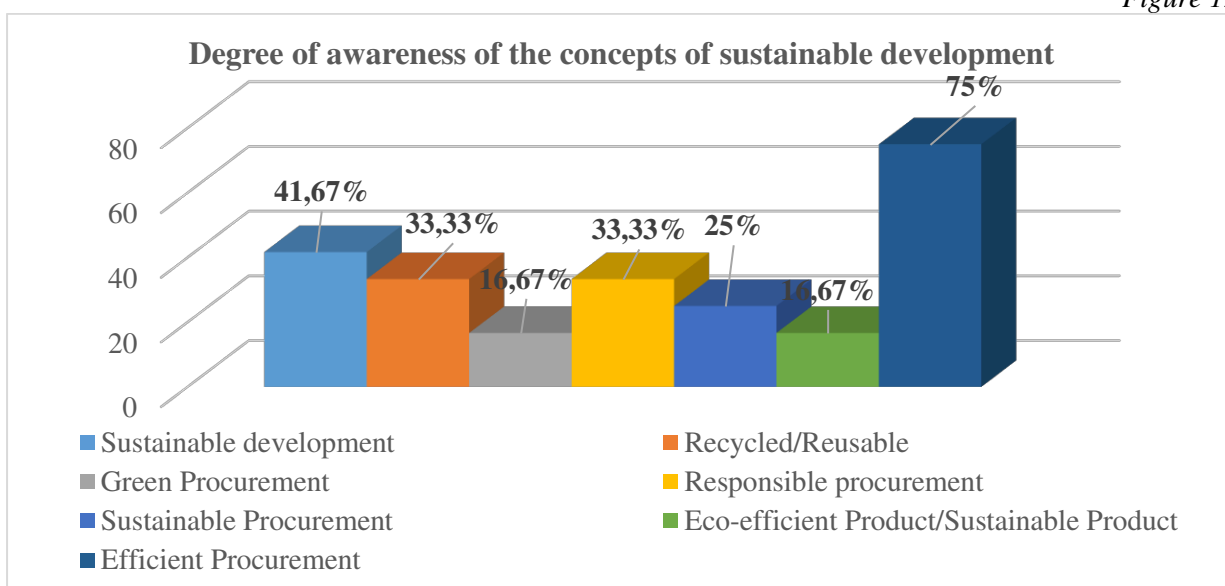
Statement	score, where 1– disagreement; 6–full consent
Price is the determining factor	4,56
There are not enough reliable suppliers in the market that meet the SPP requirements	4,33
The conditions for the SPP have been created, but there is not enough political will to implement it	3,89
State buyers do not have sufficient training for the implementation of SPP	3,78
Procurement departments do not have the experience or knowledge to use sustainability principles in developing technical requirements	3,67
The existing regulatory documents limit the SPP	3,22
In budget planning, economic factors are taken into account, while environmental and social factors are secondary.	2,89
Preference is given to large suppliers with extensive experience, who guarantee reliability	2,78

The exception is the high degree of agreement of state buyers with the statement that Kazakhstan has created conditions for SPP, but there is not enough political will for implementation.

We believe that the statements about the conditions created for the implementation of SPP are exaggerated since the Kazakh legislation does not have a legal concept of "sustainable procurement", does not encourage the purchase of environmental products, and state bodies, like many quasi-state companies, do not have their sustainable procurement strategies. More details about Kazakhstan's legislation will be described in the second part of the report.

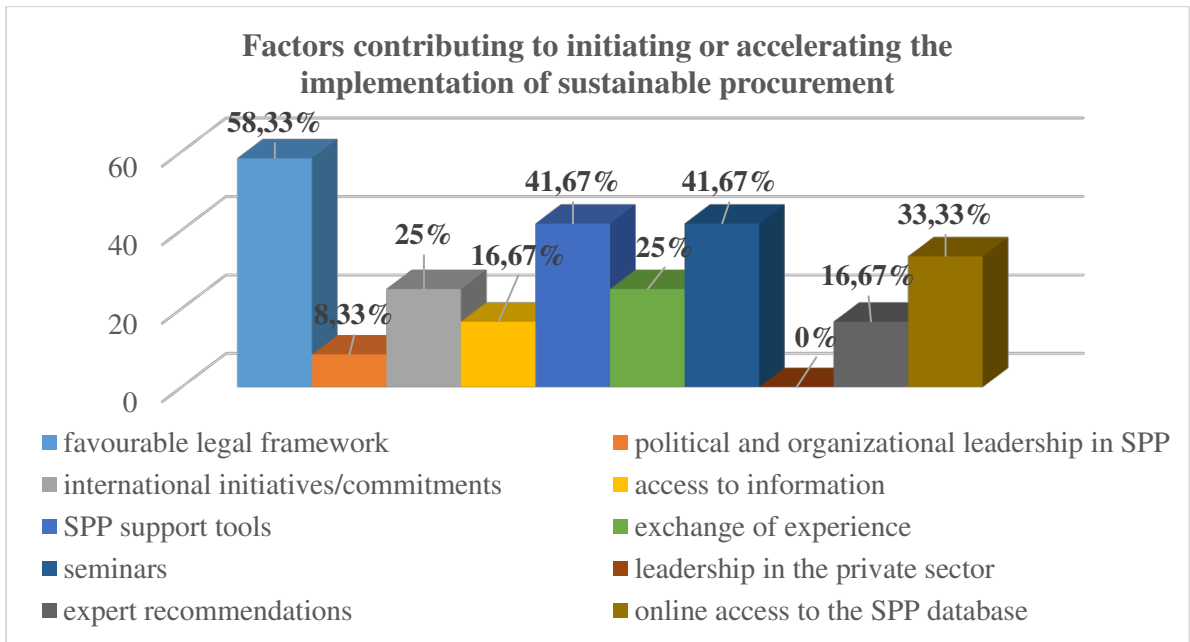
The lack of regulation of sustainable procurement leads to the fact that more than half of the respondents are not familiar with the concept of "sustainable development", and even fewer respondents know about "sustainable product" and "green procurement" (Figure 12). In contrast, the procurement efficiency principles laid down in the legislation are known to 75% of respondents.

Figure 12.



Moreover, in the section of the questionnaire devoted to identifying barriers to SPP development, more than half of the respondents noted that a favourable legal framework would be a motivator for their implementation (Figure 13).

Figure 13.



It is noteworthy that among the other measures that can stimulate SPP development in Kazakhstan, the most popular are those associated with obtaining additional knowledge and increasing human capital. This also corresponds to the assumption that the public procurement practices in terms of sustainable procurement does not allow at this stage to implement the SPP principles actively. We believe that improving the quality of human capital will allow us to more effectively implement the goals and objectives of the public procurement system of the Republic of Kazakhstan, which was described in section 1.2 of the report.

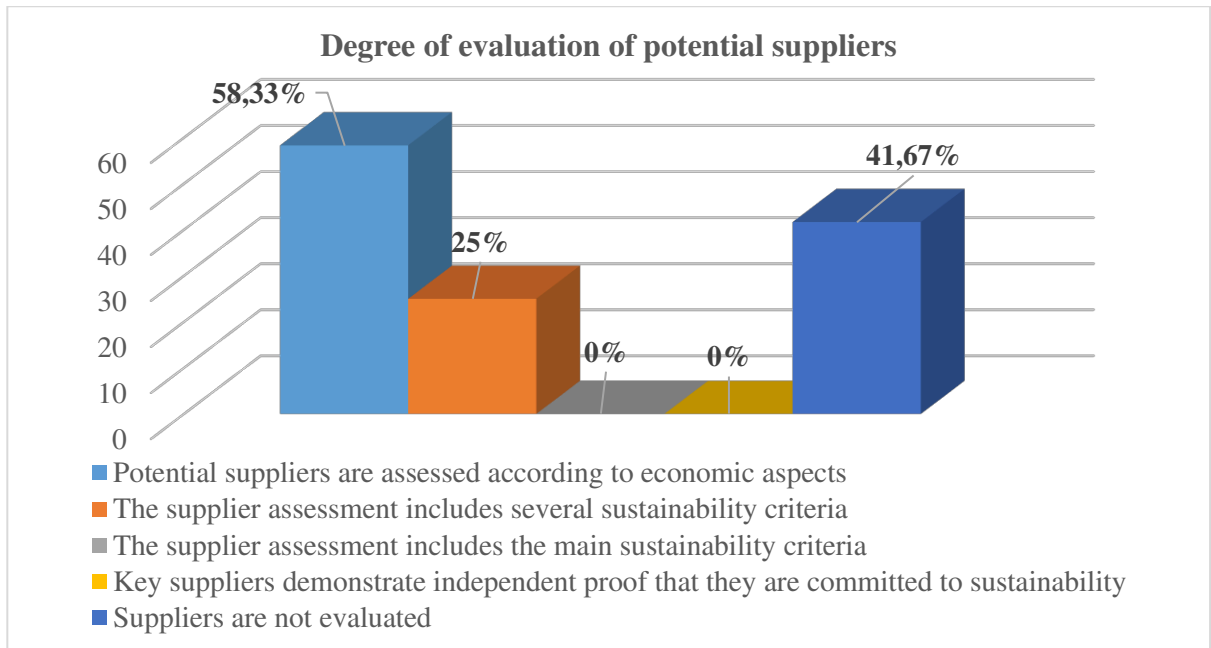
For example, government buyers could switch to high-quality monitoring and analysis of purchases and evaluate the achievement of goals to support local producers, create new jobs, effectively spend public finances, etc.

At the moment, the assessment of the achievement of these goals in Kazakhstan is evaluated based on reports on public funds and the share of local suppliers. Local suppliers provide the state authorities with certificates of origin of the goods (*certificate of ST KZ*) and a certificate that the company is a domestic manufacturer of goods, works or services (industrial certification). A more in-depth analysis of the impact of public procurement on the local market, the development of small and medium-sized enterprises (hereinafter referred to as SMEs), the creation of new jobs, and the production of goods in Kazakhstan is not carried out. This makes it difficult to assess the actual effectiveness of public procurement through the prism of sustainable development.

As the respondents noted, they do not require audit suppliers for compliance with any specific goals, such as creating jobs or promoting the development of SMEs. A significant percentage (41.67%) of respondents noted that their organizations do not evaluate suppliers. Although in Kazakhstan, a list of unscrupulous suppliers has been formed, where companies have not fulfilled their contractual obligations in the framework of procurement. In addition, amendments made in 2018 to improve potential suppliers' skills allowed to separate qualified suppliers and companies that do not have or have little experience in the public procurement system.

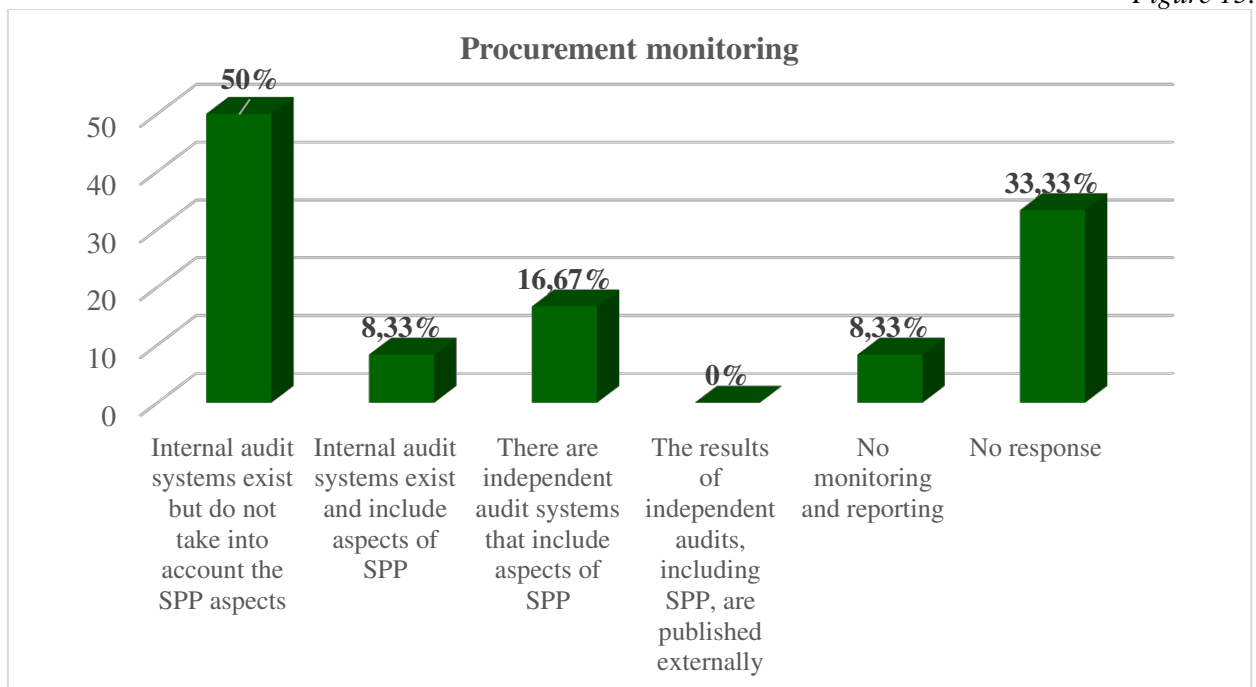
These steps contribute to the fact that buyers evaluate suppliers' economic aspects: financial stability, the ability to make deliveries, and the quality of order execution (Figure 14).

Figure 14.



Based on the results of public procurement and the contract conclusion, procurement monitoring is carried out only on economic aspects within the framework of internal evaluation procedures (Figure 15).

Figure 15.

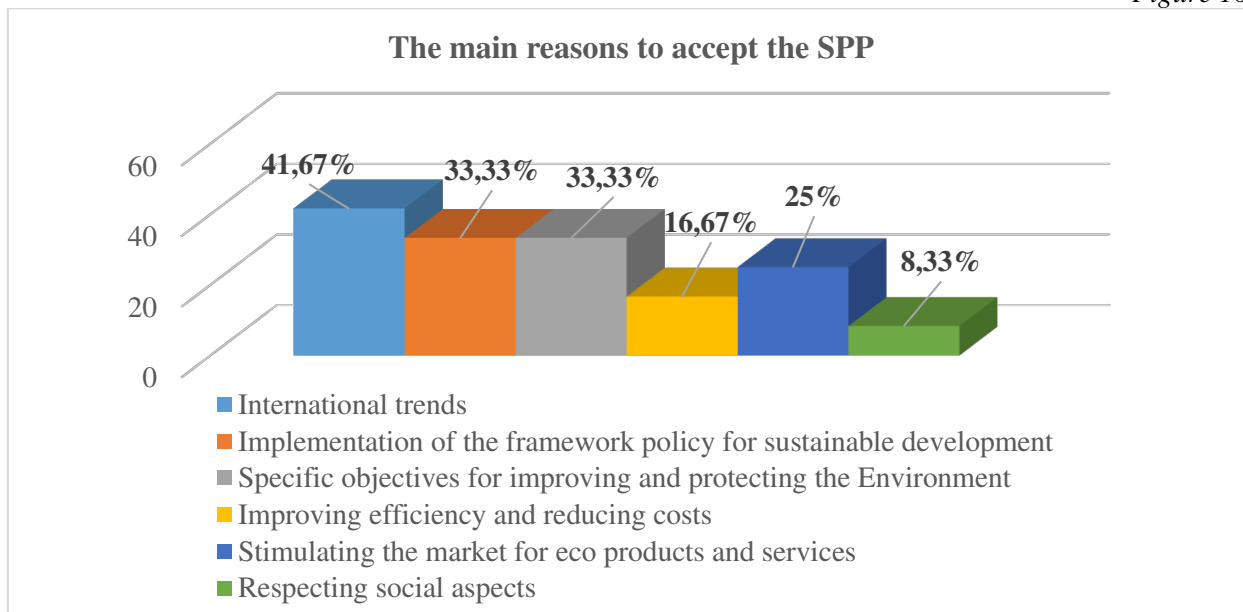


Simultaneously, in some quasi-state companies, in contrast to state bodies, independent audits are conducted, which take into account all aspects of the SPP. But they are not used in all quasi-state companies and are absent in state bodies' systems.

The fragmentary presence of independent audits in individual quasi-state companies is present due to international partners' requirements and the company's corporate policy. This assumption is based on the fact that independent audits that take into account all aspects of the SPP are noted by those companies that cooperate and receive financial support from international financial

organizations, such as the Asian Development Bank (ADB) or the European Bank for Development and Reconstruction (EBDR).

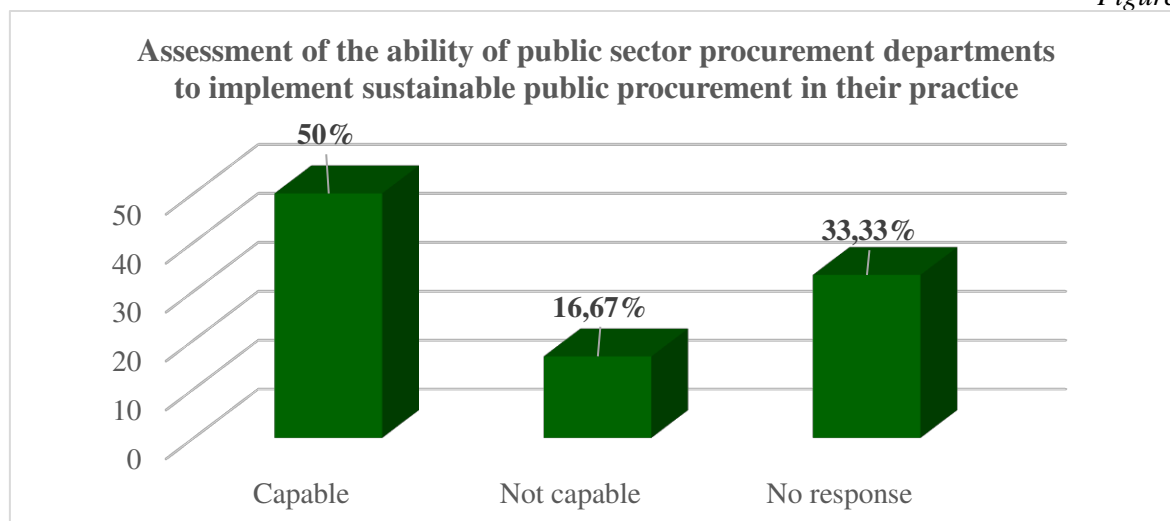
Figure 16.



As can be seen from the above diagram, the influence of international trends on improving the public procurement system is also confirmed by the respondents themselves. More than 41% of respondents noted that global trends could motivate the Government of the Republic of Kazakhstan to promote the SPP (Figure 16).

Almost every third person notes that if the Government has clear goals and vision for environmental protection and sustainable development, then the public procurement system can implement the SPP. Every second respondent is confident that public sector procurement departments are able to implement sustainable public procurement in their practice (Figure 17).

Figure 17.



As noted earlier, in order for public procurement departments to start using SPP in practice, it is necessary to solve a number of legislative, educational, informational and economic issues.

In particular, there is a need for extensive awareness-raising in Kazakhstan, primarily among decision-makers, about the long-term benefits and advantages of SPP. At the moment,

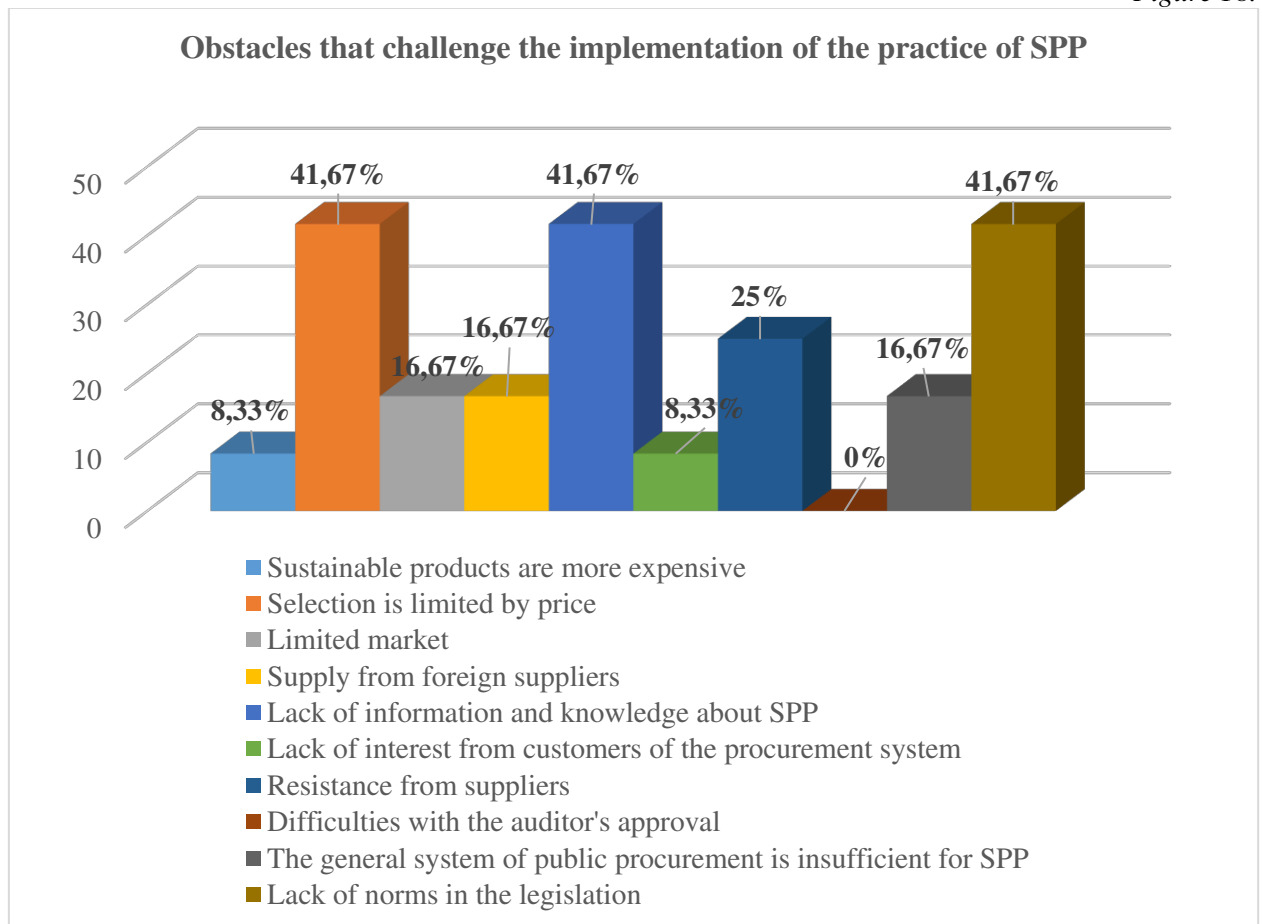
Kazakhstan's legislation in the field of public procurement is focused on price. The current LPP has rules for excluding dumping: state buyers set a threshold below which the supplier cannot offer its commercial offer. But at the same time, when suppliers offer their commercial offers within the established price range, the winner is the one who suggested the lowest price.

This approach has been criticized for years by experts in public procurement, including those from the OECD. But, unfortunately, Kazakh officials believe that this way ensures the efficiency of spending budget finances.

Thus, through seminars and explanatory work, it is necessary to show that the efficiency and savings of the state budget are possible with the SPP to understand the basic principles and goals of sustainable procurement. In parallel, it is also necessary to determine the goods and works that can be tested based on SPP, taking into account the presence of a wide range of suppliers among the local business community. Since the support of local suppliers is one of the fundamental goals of the public procurement system.

Addressing these issues will eliminate the main barriers to SPP implementation in Kazakhstan (Figure 18).

Figure 18.



Summing up the results of this section, according to the responders, it should be noted:

- ✓ Public authorities responsible for the arrangement of procurement are able to implement the principles of SPP in their practice;
- ✓ Public authorities responsible for the arrangement of procurement do not have strategies for the implementation of SPP and do not define GCS to which sustainability criteria can be applied;

- ✓ The restriction of the introduction of SPP in the public procurement system of the Republic of Kazakhstan is due to limited knowledge about SPP, limited supply from local suppliers and the need to reform the PP in terms of removing restrictive rules on the price issue and introducing standards for the development of SPP;
- ✓ There is no dialogue between buyers and suppliers regarding the development of sustainable GCS: public buyers do not involve suppliers in the discussion informing their procurement strategies and do not provide them with consulting assistance in the development of more sustainable products;
- ✓ The introduction and implementation of SPP in Kazakhstan require the establishment of awareness-raising activities in terms of communicating knowledge about the benefits of SPP, the formation of a database on the principles and mechanisms of SPP by connecting to the information resources of UNEP, improving the competencies of public purchasers through the organization of seminars, the definition of a pilot list of goods and works that can be purchased based on SPP, amendments to legislation on public procurement, improving the system of environmental standards, labelling and quality control.

1.4. Conclusion and recommendations for Chapter 1.

Since independence, the Republic of Kazakhstan has faced a large number of environmental problems: historical pollution of soil and groundwater, millions of tons of waste, shallow water of the Aral Sea, and others.

In this regard, the Republic of Kazakhstan places great value on the country's ecologically sustainable development and the transition to a "green" economy. In order to solve environmental problems, a new Environmental Code of the Republic of Kazakhstan was adopted this year, which focuses on the best practices of environmental regulation with an emphasis on synchronisation with the environmental legislation of the OECD countries. Introduction of the new Environmental Code is essentially just the beginning of major environmental reform, which will also involve the transformation of Kazakhstan's economy and industry.

In the achievement of the SDGs, the Republic of Kazakhstan sees a driver for new economic growth and improves Kazakhstanis' quality of life. The SDGs are reflected in all the Republic of Kazakhstan's strategic documents for the medium and long term, which indicates the course of the country formed until 2050.

To achieve the SDGs, the Republic of Kazakhstan's Government actively relies on civil society and has established various institutional platforms to monitor and improve existing policies and practices.

However, the Government of the Republic of Kazakhstan does not use all the tools and mechanisms presented by the international community to achieve the SDGs, which indicates the need to provide the Government of the Republic of Kazakhstan and civil society with consulting, methodological and informational support on the benefits and advantages of existing tools to stimulate the transition to the principles of sustainable development, including the SPP.

Increasing human capital and improving understanding of the benefits of SPP for the economy and society will make it possible to introduce specific changes to the strategic documents of the Republic of Kazakhstan to use SPP as a tool for developing sustainability.

At the moment, the PP system includes only individual goals and objectives of the PP, which are based on economic and social factors. The public procurement system in Kazakhstan is constantly undergoing reform. The system is continuously being improved, new tools for developing competition and reducing corruption factors are emerging. Such, for example, are electronic

auctions, the centralization of PP on a single portal. There are also additional tools to support local suppliers – certificates of origin, the priority of suppliers included in local companies' register.

Suppliers have to constantly adapt to changes, making it challenging to develop medium - and long-term strategies to meet the sustainability criteria.

Moreover, the PP system does not encourage suppliers to develop their products since it does not guarantee the contract's prolongation. As a result, development initiatives do not come from the market; any reform begins at state bodies' initiative and goes "from above".

Simultaneously, the human capital of public procurement requires increased competencies, especially in terms of environmental aspects and sustainable development, for the implementation of SPP in Kazakhstan. In the case of providing expert support to the bodies responsible for the State Procurement Service and improving the competence of public purchasers in the framework of seminars on the state procurement service, participants in the public procurement system have the potential to implement the state procurement service in their practice.

The Government of Kazakhstan needs to maintain the ability to support local suppliers, taking into account compliance with the obligations under the WTO and the EAEU in the implementation and development of SPP in state procurement practice bodies. In turn, government buyers are afraid that focusing on environmental aspects of procurement will lead to foreign suppliers' growth since, in their opinion, the local market is limited in its supply.

Briefly, it is necessary to analyze the needs of state bodies for the most popular GCS categories and study the local market for its readiness to supply the designated GCS, taking into account sustainable development. At the same time, we assume that the possibility of obtaining a long-term contract will better encourage suppliers to create or increase the stability of the proposed GCS.

For successful implementation, it is necessary to identify pilot goods or works from the GCS list for which the state authorities want to apply the sustainability criteria. Create a commission with the public's involvement to assess potential suppliers' compliance with the SPP requirements. Similar work is currently being carried out in the Republic of Kazakhstan by JSC "National Welfare Fund "Samruk-Kazyna".

Besides, as the use of SPP principles may increase in Kazakhstan, it is necessary to develop a system of environmental labelling and standardization. This will require the development of new standards and the strengthening of compliance control and the improvement of knowledge and competencies of public procurement.

Thus, for the development of SPP in Kazakhstan, it is necessary:

- ✓ To improve the competence and knowledge of public purchasers about the SPP through seminars and the development of a knowledge database, as well as the provision of expert support;
- ✓ Determine the GCS that can be carried out at the first stage through the SPP (*for instance, purchase of office supplies, office equipment, furniture, transfer to electronic document management, services for garbage collection, catering, provision of electricity and water supply, etc.*);
- ✓ Establish a commission to develop and implement a pilot project on elaboration of sustainable procurement strategies;
- ✓ To improve the legislative and regulatory framework in the field of environmental labelling and environmental standards, as well as to increase the level of competence and knowledge on environmental labelling;

- ✓ Improving the strategic documents by defining the potential and capabilities of the SPP as a tool for achieving the SDGs.

2. LEGAL FRAMEWORKS FOR INTRODUCTION OF SUSTAINABLE PUBLIC PROCUREMENT

2.1 International legal framework

Following the provisions of Article 20 of the Law of the Republic of Kazakhstan "On International Treaties of the Republic of Kazakhstan" each existing international treaty of the Republic of Kazakhstan is subject to mandatory and conscientious implementation by the Republic of Kazakhstan.

The Republic expresses its international consent to be bound by an international treaty by signing, ratifying, approving, accepting and acceding to it (*subparagraph 11) of paragraph 1 of Article 1 of the Law "On International Treaties of the Republic of Kazakhstan"*).

According to the provisions of Article 4 of the Constitution of the Republic of Kazakhstan, international treaties ratified by the Republic have priority over its laws. Ratified international treaties are applied directly, except in cases where it follows from an international treaty that its application requires the publication of a law (*paragraph 2 of Article 6 of the Law "On Legal Acts"*).

Agreement establishing the World Trade Organization

In 2015, the Republic of Kazakhstan ratified the Protocol of Accession to the Marrakesh Agreement establishing the WTO of 15 April 1994.

Following the WTO accession protocol's obligations (reflected in the country's Report), within 4 years from the date of accession, Kazakhstan will start negotiations on joining the Agreement on Government Procurement.

("949.The representative of Kazakhstan confirmed Kazakhstan's intention to accede to the WTO Agreement on Government Procurement and to notify the WTO Committee on Government Procurement on the date of accession to the WTO, and to ensure that by that date, its public authorities conclude contracts based on the principle of transparency, following published laws, rules and recommendations. It also confirmed that Kazakhstan will submit a request for "observer" status under the WTO Agreement on Public Procurement on the date of accession to the WTO and will begin negotiations on participation in the WTO Agreement on Public Procurement by offering in the prescribed form of Annex I within four years after accession. She confirmed that if the negotiations' results meet the interests of Kazakhstan and other members of the Agreement, Kazakhstan will join this Agreement. The Working Group took this commitment into account.")

The Agreement on Government Procurement is subject to application within the framework of any legislation, regulations, procedures and practices in the field of public procurement. In 2019, Kazakhstan submitted a corresponding application to join the Agreement on Public Procurement of the World Trade Organization. According to the information, the negotiations will be conducted based on a market access proposal submitted by Kazakhstan and its responses to a checklist of questions related to its public procurement legislation.

Treaty on the Eurasian Economic Union

By signing the Agreement, the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation establish the EAEU, which ensures the freedom of movement of goods, services, capital and labour implementation of a coordinated, harmonious or unified policy in economic sectors.

In order to develop economic cooperation and expand trade and economic ties, the Parties, among other things, intend to pursue a coordinated policy in the field of state (municipal) procurement based on the need to harmonize the laws of the states.

The Agreement applies to relations in the field of state (municipal) procurement, except for procurement, information about which was a state secret (paragraph 2, article 88 of the Agreement).

The States define the following objectives and principles of regulation in the field of state (municipal) procurement:

- Regulation of relations in the field of procurement by the legislation of the member state on procurement and international treaties of the member states;
- Ensuring the optimal and efficient use of funds used for procurement in the Member States;
- Providing the Member States with a national procurement regime;
- The inadmissibility of providing third countries with a more favourable procurement regime than that supplied to the Member States;
- Ensuring information openness and transparency of procurement;
- Ensuring unhindered access of potential suppliers and suppliers of member states to participate in procurement conducted in electronic format by mutual recognition of an electronic digital signature made following the legislation of one member state by another member state;
- Ensuring the availability of authorized regulatory and supervisory authorities of the member state in the field of procurement (it is allowed to perform these functions by one body) –
- Establishing responsibility for violations of the legislation of the member states on procurement;
- Development of competition, as well as combating corruption and other abuses in the field of procurement.

The Agreement does not apply to purchases made by national (central) banks of the member States.

Within the framework of the Agreement, a separate procedure (Protocol) for regulating state (municipal) procurement has been adopted, which is aimed at implementing the goals as mentioned above and principles, and also contains the main requirements for the procurement procedure (*methods and types of procurement applicable to them, exemptions from regulation, features of national regimes, rights and obligations of procurement participants, requirements for procurement, etc.*).

This international agreement, which Kazakhstan has ratified, does not contain any specific general strategy, goals or objectives for the development, application, or intent of SPP development. There are no provisions in the Treaty to achieve environmental and social goals (*such as reducing greenhouse gas emissions, improving energy and water efficiency, and supporting the processing industry; in the social sphere, SPP can affect poverty reduction, strengthen justice, and increase respect for workers' rights*).

Free Trade Area Agreement

This Agreement between the members of the Commonwealth of Independent States (a number of countries of the former USSR) also contains a key message that each of the Parties provides for the treatment of goods originating from the territory of any other Party and their suppliers no less favorable than the one provided:

1. Domestic goods and suppliers;
2. Goods originating from the territory of any other Party and their suppliers.

In 2016, the States parties to the Free Trade Zone Agreement of October 18, 2011, concluded a Protocol on rules and procedures for regulating public procurement, which does not contradict the provisions of the Protocol for Regulating State (Municipal) Procurement of the Treaty on the Eurasian Economic Union and supplements it with requirements for protecting the principles of

free trade on non-discrimination of suppliers and non-provision of favourable conditions to individual suppliers or goods.

At the same time, like the Treaty on the Eurasian Economic Union with the attached Protocol for Regulating State (Municipal) Procurement, the provisions of the Free Trade Zone Agreement and the Protocol on Rules and Procedures for Regulating Public Procurement approved under it also do not contain provisions on the application of the SPP and any related economic, environmental and social goals.

The United Nations Commission on International Trade Law Model Law on Public Procurement of the Republic of Kazakhstan

One of the key objectives of the Model Law's development is to assist countries in establishing effective and up-to-date procurement legislation. This document is an example of a "soft law" - a document adopted by the UN and have a recommendatory nature.

The application of this Model Law allows for maximum cost efficiency by taking advantage of best practices. Besides, the Model Law enables the State to solve domestic policy problems, for example, to promote economic growth through small businesses support.

The UN General Assembly has adopted a resolution that encourages all UN member States to use the Model Law to assess their national public procurement regimes and take into account the provisions of the Model Law when enacting or revising their legislation.

Despite the advisory nature of the Law, its provisions have been used by many countries in reforming their public procurement systems (*Russia, India, Kazakhstan, Kyrgyzstan, Jamaica, and others*), as well as by some international organisations as a guide in preparing proposals for the reform of procurement legislation in their countries of operation (*the World Bank, the EBRD, the OECD, and others*).

The Model Law provides for the sustainability of procurement as the application of best practices. The Model Law allows for the promotion of sustainability in the procurement process by establishing qualification criteria (*under article 9, which explicitly authorises the procuring entity to establish environmental qualification criteria, as well as ethical and other standards, which may include requirements for fair trade treatment*).

Sustainability is not specified in the Model Law's preamble as a separate objective but is considered one of the elements of the procedures provided for in the Model Law. The concept of sustainable procurement can also be used as a general concept for implementing social, economic and environmental policies through procurement, for example, to regulate "social" factors such as employment conditions, public participation, non-discrimination; "ethical" factors such as human rights, child labour, forced labour; and environmental/green procurement.

In conclusion of the review of international agreements to which the Republic of Kazakhstan is a party, it is necessary to note the existing agreements of Kazakhstan with international financial organizations on loans of funds. Such agreements are concluded everywhere by states and aim at implementing individual projects in the socio-economic policy of countries and in various industries.

For example, such agreements include loan agreements of Kazakhstan with the International Bank for Development and Reconstruction, the Asian Development Bank, the European Bank for Reconstruction and Development, the Asian Infrastructure Investment Bank, the Islamic Development Bank, government funds of various states (*Japan, the United Arab Emirates, etc.*), and other international financial organizations.

The Republic of Kazakhstan, being a party to such loan agreements, acts as a Customer for certain goods, works, and services (hereinafter referred to as TRU) implemented under a specific project following its objectives. As a rule, the contractor for the loan and, in the future, the customer for the procurement is the relevant central executive body that conducts state policy in the industry in which the project is implemented (the relevant ministry, agency, etc.).

Given the status of international financial institutions that have developed governance institutions, best practices and relevant domestic policies (including in the field of procurement), almost many agreements contain clauses on the conduct of procurement within the framework of borrowed funds following the guidelines of organizations that have principles and mechanisms for the application of sustainable, "green" procurement.

However, in addition to the clauses on the application of procurement procedures of international financial organizations in the framework of loans, the agreements also contain notes that the national procurement regime may be applied in individual cases (*for example, if the national authority does not contradict the policies of the MFI or its application to certain types of procurement*).

2.2. Fundamentals of constitutional and administrative law

The Constitution of the Republic of Kazakhstan has the highest legal force, establishes the competence of various public authorities, defines the main goals of such rule-making, the sphere of public relations, and contains many basic provisions for developing other branches of law.

The Constitution does not contain direct rules governing relations in the field of economy and, in particular, public procurement. Due to the content of the Constitution, there are no constitutional laws in Kazakhstan – laws approved on issues provided for by the Constitution (sub-paragraph 12) of Article 1 of the Law of the Republic of Kazakhstan "On Legal Acts").

Analyzing the constitutional norms, it is necessary to note several provisions that define the basic principles on environmental protection and social problems.

Thus, according to paragraph 2 of Article 6 of the Constitution, property obliges, and its use must simultaneously serve the public good. The subjects and objects of property, the scope and limits of the exercise of their rights by the owners, and their protection guarantees are determined by law.

According to the provisions of articles 28-31:

- Citizens of the Republic of Kazakhstan are guaranteed the minimum wage and pensions, social security by age, in case of illness, disability, loss of a breadwinner and on other legal grounds.
- Voluntary social insurance, the creation of additional forms of social security and charity are encouraged.
- Citizens of the Republic of Kazakhstan have the right to health protection.
- The Republic of Kazakhstan citizens have the right to receive free of charge the guaranteed amount of medical care established by law.

The State aims to protect the environment favourable for human life and health (Article 31), and citizens of the Republic of Kazakhstan are obliged to preserve nature and take care of natural resources (Article 38).

In terms of legislation, environmental issues are regulated by such major sectoral legislative acts as:

- Environmental Code;
- Water Code;

- Forest Code;
- Land Code;
- The Law of the Republic of Kazakhstan "On the protection, reproduction and use of wildlife";
- The Law of the Republic of Kazakhstan "On Specially protected natural Territories";
- The Decree of the President of the Republic of Kazakhstan "On the Concept for the Transition of the Republic of Kazakhstan to a " Green economy".

The regulation of specific environmental issues is contained in the sectoral legislative acts in cases where the sectoral relations have a corresponding relationship with environmental issues (*for example, the Code of the Republic of Kazakhstan "On Subsoil and Subsoil Use", the Law of the Republic of Kazakhstan "On Civil Protection", the Law of the Republic of Kazakhstan "On Tourist Activities in the Republic of Kazakhstan", etc.*).

The main legislative acts regulating relations on social issues include a number of laws that have a social orientation or regulate certain social issues, such as:

- The Code of the Republic of Kazakhstan "On people's health and healthcare system";
- The Law of the Republic of Kazakhstan "On social protection of disabled persons in the Republic of Kazakhstan";
- The Law of the Republic of Kazakhstan "On compulsory social health insurance";
- The Law of the Republic of Kazakhstan "On state social assistance";
- The Law of the Republic of Kazakhstan "On minimum social standards and their guarantees";
- The Law of the Republic of Kazakhstan "On special social services";
- The Law of the Republic of Kazakhstan "On state social order, grants and prizes for non-governmental organizations in the Republic of Kazakhstan";
- The Law of the Republic of Kazakhstan "On social and medico-pedagogical correctional support for children with disabilities";
- The Law of the Republic of Kazakhstan "On Special State Benefits in the Republic of Kazakhstan";
- The Law of the Republic of Kazakhstan "On State Benefits for Families with Children"
- The Law of the Republic of Kazakhstan "On Education";
- The Law of the Republic of Kazakhstan "On Employment of the population";
- Labor Code of the Republic of Kazakhstan;
- other legislative acts.

These legislative acts contain regulations on the competence of the relevant State bodies to implement the State policy. Consequently, certain functions performed by a State body or through its subordinate structures require public procurement.

2.3. Administrative/regulatory framework

In the review of financial and budgetary regulation, considering its relationship with public procurement issues, important issues are procurement planning for the formation of appropriate procurement funding (budgets), financial reporting, as well as state audit and economic control over the use of budget funds.

The Budget Code of the Republic of Kazakhstan contains the rules for the administration of planning state expenditures, both conducted by the method of public procurement and the costs of organizing the public procurement system itself. According to paragraph 1 of article 53, the expenses of the republican budget (direction – state functions of a general nature) include the organization of a unified public procurement system.

Consequently, the norms of the Budget Code on planning, development and use of budgets at the central and local levels, reporting and monitoring, are applied to the organization of the public procurement system (*concerning forecasts of socio-economic development; forecast consolidated financial statements for the republican budget; strategic plans of state bodies; budget programs; operational plans*).

In addition to administrative and procedural issues, the Budget Code also contains certain exceptions on the non-application of the public procurement procedure for certain types of budget spending.

For example, the execution of a state task is carried out without following the competitive procedures provided for by the legislation on public procurement (paragraphs 1, 3 of article 41) (*a state task is an order for individual legal entities to provide certain public services, implement budget investment projects and perform other studies aimed at ensuring socio-economic stability and (or) socio-cultural development of the state*).

Also, the legislation of the Republic of Kazakhstan on public procurement does not apply to legal relations related to the acquisition of GCS in connection with the decision of the Government of the Republic of Kazakhstan on the issue of state-issued securities, as well as the purchase or modification of the terms of previously issued state-issued securities and the implementation of other measures in respect of issued and (or) previously issued state-issued securities (paragraph 5 of Article 206).

In addition, it should be noted that certain mechanisms of public procurement are used in the development of budgets.

The database of prices for GCS established by the legislation on public procurement is used as a reference point for calculating the types of expenditures for each budget program when the Central Authorized Body for Budget Planning considers budget applications of budget program administrators for their compliance with the budget and other legislation of the Republic of Kazakhstan, the forecast of socio-economic development, current natural norms and draft budget programs (subparagraph 1 of paragraph 2, subparagraph 1 of paragraph 3 of Article 68).

In turn, according to the legislation of the Republic of Kazakhstan on State audit and Financial control (the Law "On State Audit and Financial Control"), the audit of the effectiveness of the validity of planning, feasibility and effectiveness of the implementation of GCS by state bodies and subjects of the quasi-public sector of procurement is carried out by the Accounting Committee of the Republic of Kazakhstan (subparagraph 8 of paragraph 1 of Article 12). In contrast, the audit of compliance with the Republic of Kazakhstan legislation on public procurement is carried out by the authorized body for internal state audit (*the Committee of the same name under the Ministry of Finance of the Republic of Kazakhstan*) (subparagraph 2 of Article 14).

The Law of the Republic of Kazakhstan "On Public Procurement"

The basic legislative act in the regulation of public procurement in the Republic of Kazakhstan is the Law of December 4, 2015 "On Public Procurement", which applies to the acquisition of GCS necessary to ensure the functioning or statutory activities of customers.

The Law (subparagraph 27 of Article 1) includes state bodies, state institutions, as well as state-owned enterprises, legal entities, 50 (fifty) or more per cent of the voting shares (*participation shares in the authorized capital*) of which belong to the state, and legal entities affiliated with them.

The exception is the following entities (*and legal entities affiliated with them*), whose purchases are not subject to the provisions of the Law:

- National management holdings ("*Baiterek*", which at the end of 2020 was transferred to "*KazAgro*", "*Samruk-Kazyna*"), national holdings (information holding "*Zerde*"), national companies ("*KazMunayGas*", "*KEGOC*", "*Kazpost*", "*Food Contract Corporation*", "*Kazatomprom*", "*National Information Technologies*", "*Kazakhstan Temir Zholy*", "*Kazakhtelecom*", "*Kazakhstan Engineering*", "*Kazatomprom Kazakhstan Garysh Sapary*", "*Tau-Ken Samruk*", "*Kazgeologiya*", "*Aktau Sea Trade Port*", "*QazExpoCongress*", "*KazAvtoZhol*", "*KAZAKH INVEST*", "*KazakhExport*", "*Kazakh Tourism*»);
- The National Bank of the Republic of Kazakhstan, its departments, organizations that are part of its structure, and legal entities, 50 (fifty) or more per cent of the voting shares (*participation shares in the authorized capital*) of which it owns or is in its trust management, and legal entities affiliated with them;
- State-owned enterprises as property complexes, legal entities, 50 (fifty) or more per cent of the voting shares (*participation shares in the authorized capital*) of which belong to the state, and their affiliated legal entities transferred to the trust management of individuals or non-state legal entities with the right to subsequent redemption.

In addition, the Law does not apply to the following types of purchases:

1. Services purchased from individuals under employment contracts;
2. Services purchased from individuals who are not business entities under contracts for the provision of paid services;
3. Services related to the implementation of travel expenses;
4. The state task and GCS acquired in the framework of its implementation in accordance with the budget legislation of the Republic of Kazakhstan;
5. Making payments (contributions), including to the authorized capital of legal entities;
6. GCS acquired by national management holdings, national holdings, national management companies, national companies and their affiliated legal entities, the National Bank, its departments, organizations that are part of its structure, and legal entities, fifty or more per cent of the voting shares (shares in the authorized capital) of which it owns or is in its trust management, and its affiliated legal entities;
7. Military goods (products), dual-use goods (products), military works and military services that are part of the state defence order;
8. GCS acquired by an organization specializing in improving the quality of credit portfolios of second-tier banks for the implementation of certain types of activities provided for by the Law of the Republic of Kazakhstan "On Banks and Banking Activities in the Republic of Kazakhstan»;
9. GCS acquired as part of the implementation of investment projects financed by international organizations of which the Republic of Kazakhstan is a member (*GCS developed as part of the implementation of investment projects fully or partially funded by other foreign banks is carried out according to the rules of these banks, subject to the following conditions in aggregate:*
 - *The foreign bank has a long-term credit rating in foreign currency not lower than "A - " of the Standard & Poor's agency or a rating of the same level of one of the other rating agencies;*
 - *More than fifty per cent of the financing is carried out by foreign banks;*
 - *The implementation of the investment project is carried out by state-owned enterprises, legal entities, 50 (fifty) or more per cent of the voting shares (participation shares in the authorized capital) of which belong to the state, and legal entities affiliated with them;*
 - *The investment project's implementation does not require a state guarantee and does not entail the borrower's property's encumbrance).*

The **Law "On Public Procurement"** covers all the main aspects of regulating relations in procurement (*business processes, from the planning stage to the monitoring stage of implementation, implementation mechanisms, regulatory instruments, etc.*). The content is based on best practices and international obligations (*adjustments and additions are made annually in accordance with the established*

procedure, including on the recommendations of international organizations) and is aimed at implementing the established principles (article 4):

1. Optimal and efficient spending;
2. Providing equal opportunities to suppliers;
3. Fair competition;
4. Openness and transparency of processes;
5. Providing support to domestic producers;
6. Responsibilities of participants in public procurement;
7. Prevention of corruption manifestations;
8. Acquisition of innovative and high-tech goods, works, and services;
9. Compliance with intellectual property rights.

The Law (article 13) provides for public procurement in the following ways:

1. Competition (open competition, competition with pre-qualification selection, competition using two-stage procedures);
2. Auction;
3. Requests for price offers;
4. From a single source;
5. Through commodity exchanges.

The customer determines the method of procurement according to the requirements of the Law, except a separate list of GCS.

Each specified method has specific criteria for its application (*price, types of GCS, customer entities, procurement goals, etc.*), which are approved, including at the subordinate level (*by the relevant decisions of the authorized state body that manages public procurement (the Ministry of Finance of the Republic of Kazakhstan)*).

Procurement is carried out through the public procurement web portal (<https://www.goszakup.gov.kz/>) – an information system that provides a single point of access to electronic public procurement services.

The detailing of public procurement, regulation of specific issues by the Law is carried out at the subordinate level by the decisions of the authorized body that manages public procurement (*Ministry of Finance of the Republic of Kazakhstan*). Such regulatory legal acts include orders of the Ministry of Finance of the Republic of Kazakhstan approving:

- Rules for public procurement (*Order of the Minister of Finance of the Republic of Kazakhstan No. 648 dated December 11, 2015*);
- Rules for the collection, consolidation and analysis of financial statements with information about the purchases from domestic producers in the integrated with the web portal of public procurement database of GCS and their suppliers under Business code of Kazakhstan (*order of the Minister of Finance of Kazakhstan from December 28, 2015 No. 693*);
- The rules of use of the web portal of public procurement (*order of the Minister of Finance of Kazakhstan from December 28, 2015 No. 692*);
- Rules of operation of the e-procurement platform in case of technical failures of the public procurement web portal (*Order of the Minister of Finance of the Republic of Kazakhstan No. 692 of December 28, 2015*);
- The list of types of GCS, public procurement of which is carried out in accordance with the standard tender documents (auction documents) (*developed and approved by the authorized bodies of the relevant industry in coordination with the authorized body*);
- A list of individual GCS, during public procurement of which additional requirements may be established for potential suppliers and suppliers (*Order of the First Deputy Prime Minister*

of the Republic of Kazakhstan-Minister of Finance of the Republic of Kazakhstan dated February 28, 2019, No. 155);

- Rules for the formation and maintaining registers in the field of public procurement (*Order of the Minister of Finance of the Republic of Kazakhstan No. 694 of December 28, 2015*)
- Methodological recommendations on public procurement (*including in consultation with the relevant industry's authorised bodies*).

Based on the provisions of the Republic of Kazakhstan's current legislation in the field of public procurement, we note the following entities in the system of state regulation that perform state functions or implement tasks arising from the norms of the legislation on public procurement.

The key role of state regulation is played by the Government of the Republic of Kazakhstan, which, in accordance with article 15 of the Law "On Public Procurement", develops the main directions of state policy in the field of public procurement and organizes their implementation.

The authorized state body in the field of public procurement is the Ministry of Finance of the Republic of Kazakhstan, which, according to article 16 of the Law, in addition to approving those as mentioned above regulatory legal acts, also:

- Monitors compliance with the legislation on public procurement, including desk control, if necessary, verifies the accuracy of reporting data, materials and information provided by participants in public procurement;
- Decides on the cancellation of decisions of the organizer of public procurement, the unified manager of public procurement, the customer and the competition commission (auction commission), adopted in violation of the legislation on public procurement, or the cancellation of public procurement before the conclusion of public procurement contracts;
- Approves the rules for retraining and advanced training of employees who carry out their activities in the field of public procurement;
- Requests the necessary information and materials from the participants of public procurement following the rules of public procurement;
- Attracts experts of state bodies and other organizations for conducting expert examinations and consultations;
- Ensures the integration of the public procurement information system with the information system of the National Chamber of Entrepreneurs of the Republic of Kazakhstan to form a single point of access to procurement conducted under the legislation of the Republic of Kazakhstan;
- Has other authority in the field of public procurement, defined by regulatory legal acts.

It is also necessary to note the roles of the following subjects of the public procurement system:

- A single operator in the field of public procurement – a legal entity designated by the authorized body in the public procurement, the sole owner of shares (*shares in the authorized capital*) of which is the state (*JSC "Center for Electronic Finance"*), which provides development, maintenance and system service of the web portal of public procurement and related services, including on a paid basis.
- Legal entities determined by the Government of the Republic of Kazakhstan (*at the republican level-the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan*), akimats of regions, cities of republican significance and the capital, or akimats of districts, cities, districts in the city that conduct centralized public procurement. (*The Ministry of Finance determines the lists of GCS for which single organizers make purchases of public procurement by creating joint tender commissions (auction commissions) with the customer or by combining homogeneous GCS into one lot, regardless of the place of their delivery (execution, rendering). Also, the unified organizers of public procurement have the right, subject to their consent, to conduct purchases at the request of customers for the purchase of GCS that are not included in the lists of GCS determined by the Ministry of Finance of the Republic of Kazakhstan, by creating joint tender commissions (auction commissions) with the customer*).

The list of GCS for which the unified organizers of public procurement carry out purchases contains 16 positions for the State Revenue Committee (*a single organizer at the republican level*) and 5, 6 positions for the cooperative organizers of regions, cities of republican significance and the capital or districts, cities, districts in the city.

The main factor in assigning GCS types to single organizers is exceeding the threshold values of the purchase amount (*for example, for single organizers of regions, cities of republican significance and the capital, the average threshold value is 40,000 MCI (116,680,000 tenge, for single organizers of districts, cities, districts in the city, the average threshold value is 4,000 MCI (11,668,000 tenge,))*)

To sum up, we note that according to the current legislation in Kazakhstan, decisions on changing the legal framework, the foundations of state regulation in the field of public procurement, which means amendments and additions to the Law of the Republic of Kazakhstan "On Public Procurement", are made by the Parliament of the Republic of Kazakhstan by the established procedure.

The authority to amend and supplement the subordinate legal acts regulating public procurement is assigned to the Ministry of Finance of the Republic of Kazakhstan – the authorized body in the field of public procurement, as well as to local executive bodies (akimats) within the scope of their powers.

It should be noted that according to the hierarchy of public administration bodies, higher state bodies (the President of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan) have the authority to make decisions and, accordingly, to give instructions to the Ministry of Finance, on changes or additions to those as mentioned above regulatory legal acts.

Currently, the Parliament of the Republic of Kazakhstan is considering the draft Law of the Republic of Kazakhstan, "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Public Procurement", which provides for amendments to the following issues.

To establish administrative responsibility to set the administrative responsibility of customers for not sending or late sending of information about suppliers to the authorized body for inclusion in the register of unfair procurement participants.

Implementation of framework agreements.

In order to simplify public procurement procedures, it is proposed to introduce a new procurement method "tender using framework agreements" for centralized procurement of simple, standard GCS, which will significantly speed up the public procurement process. This method of procurement is provided for in the UN Model Procurement Law (UNCITRAL).

Implementation of an electronic store.

In the context of the development of e-procurement, it is proposed to introduce a new method of purchasing through an electronic store. This will significantly simplify the procurement of goods and increase their efficiency.

The electronic depository.

It is proposed to form a Register of documents confirming work experience (*Electronic Depository*). The Register will include all records that have been verified for their authenticity. This will eliminate the facts of providing false information and allow the organizers to consider potential suppliers' applications based on the documents included in the Register.

The use of dumping in public procurement.

It is suggested to provide for anti-dumping measures in the form of payment by potential suppliers and ensure the performance of the contract, of an amount equal to the reduced amount from the minimum allowable price, which is not recognized as dumping.

Increasing the purchase thresholds by requesting price offers- increase the threshold value of purchases by the method of price offers from 4 thousand times to 8 thousand times the size of the MCI.

Reduce purchases from a single source by directly entering into a contract- exclude the purchase of certain insignificant goods from a single source.

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The amendments based on law enforcement practice results aim to improve the legislation on public procurement.

This draft law is designed to improve the public procurement system and contain proposals of an economic nature but includes separate issues of developing sustainable social and environmental goals.

Within the framework of the draft law, a new procurement method is proposed – a tender using the calculation of the cost of the life cycle of the purchased goods. This method will allow us to move from price parameters to quality criteria. The customer will have the opportunity, despite the price, to choose not only a product that meets the quality but also environmental norms and standards.

In comparing Kazakhstan's legislation with the countries that have implemented the principles of sustainable procurement in the legal regulation, it is necessary to note the following points that are absent in the Republic of Kazakhstan.

One of the most comprehensive legislation on sustainable procurement is the European Union's legislation, where the use of "green" procurement is brought to the forefront.

For example, the norms of a number of **EU countries**, since 2001 the Environmental Action Programme, the Strategy for Sustainable Development in Europe (Gottenburg), contain a number of areas with priority regulation: problems of climate change, environmental protection, health and quality of life, rational use of natural resources and addressing issues with waste disposal. Then, areas of rational application of the life cycle cost approach were included to avoid negative environmental impacts during the transition from one stage of the cycle to another.

In 2008, the European Commission adopted the recommendations on Public Procurement for the Environment Improvement (2008), on how to reduce the environmental impact of consumption for the needs of the public sector and how to use "green" procurement to stimulate innovation in the field of environmental protection in the procurement of GCS. For example, the Commission has set a goal to implement 50% of all public procurement in Europe by 2010, taking into account environmental friendliness principles (to be "green").

Also, the EU has criteria for evaluating the effectiveness of sustainability (*environmental friendliness, social responsibility*) in public procurement.

The legal basis of SPP in the EU is as follows:

- Directive 2014/25 / EC on the procurement of public utilities, energy, transport and postal services;
- Directive 2014/24 / EC on public procurement of goods, works and services, which provide specific guidance on the possibility of including environmental requirements and criteria in the procurement process

The Directives provide for the inclusion of environmental, social, and occupational safety requirements in the procurement procedures to determine the winning bid. The EU procurement rules provide for the support of small and medium-sized businesses, the use of eco-labels, and the cost of the product life cycle. The Directives do not simply suggest but oblige the purchasing authorities to apply sustainable procurement requirements and conditions. The provisions of the

Directives are taken into account by EU members in national procurement regimes.

In addition to these Directives, there are various methodological materials in the EU intended for customers to apply GCS. An essential tool is a list of environmental criteria recommended to be applied in public procurement, including product requirements and standards for awarding a contract.

In 2006, the **French Code on Public Procurement** was supplemented with several articles on public procurement (*The Impacts of Sustainable Public Procurement, 2012*):

- assessment of requirements based on the availability of innovative solutions
- inclusion of sustainability parameters in technical specifications;
- identification of small businesses as main contractors;
- the possibility of entering into contracts with companies that employ exclusively disabled people.

In the **UK**, National Action Plans for the Development of Sustainable Procurement are implemented. The principles set out in the Sustainable Development Strategy are reflect the integration of sustainable development issues in public procurement and UK authorities' investment agreements.

The rules are aimed at achieving the following objectives:

1. Minimize adverse environmental impacts in the construction and maintenance of government and public buildings;
2. Promote more efficient use of public resources;
3. Encourage the market to develop innovations and produce products with more practical consideration of cost and sustainability principles for all buyers;
4. Set an example for business and the public and show that the government and the public sector contribute significantly to sustainable development.

The Action Plan highlighted ten priority areas out of the existing 174 areas of government-purchased products in the UK, the procurement of which requires the primary application of the principles of sustainability.

In **China**, for example, there are regulations that the state cannot buy products from companies whose production leads to negative environmental consequences (Qiao, Wang, 2011).

Public purchasers should include environmental protection requirements, encouraging and supporting manufacturers that meet these requirements, allowing them to enter into contracts to supply products in public procurement. The procurement focuses on saving resources, which is expressed in the purchase of energy-efficient, water-saving products and eco-labels.

In addition to the law, a list of energy-saving products, goods produced by Chinese enterprises was accepted. Customers are required to purchase a certain number of products from the specified categories.

In **Brazil**, public procurement is regulated by the Public Procurement Act. Also, there is a decree that encourages state customers to purchase products from domestic manufacturers. This requirement applies to all government agencies, State-owned enterprises, and public universities.

The list of products includes computers, telecommunications equipment, microelectronics, software and related services. Also, since Brazil has international obligations in terms of environmental safety, the country has adopted a number of presidential decrees regulating these issues. A ban on the purchase of ozone-depleting substances and illegal wood from the Amazon region has been introduced. The law stipulates the possibility of applying environmental requirements to products and environmental criteria when choosing a supplier.

In different countries, the use of SPP is either mandatory or voluntary (*mainly in Latin America, but also in Croatia, Spain and Switzerland*) or mixed. In the case of a mixed type of obligatory use, there are different options; for example, the mandatory use of SPP is at the national level and voluntary at the local level, or the mandatory use of SPP is for a priority group of products and voluntary in other cases.

In **Japan**, the current legislation assumes that preference is given to products with a national environmental certificate in the procurement of certain groups.

In the **United States**, the Environmental Protection Agency's "Environmentally Preferred Procurement Program" helps buyers meet environmental requirements and thereby stimulate the market for "green products".

In **Sweden**, government agencies can only purchase environmentally-friendly vehicles. There are many other examples, including the construction of energy-efficient schools in Malta, the acquisition of energy-efficient lighting in Portugal, and the acquisition of energy-efficient information technology equipment in Spain.

In **Japan, China, and Taiwan**, the current legislation assumes that preference is given to goods with a national environmental certificate — ecolabeling.

Examples of the integration of eco-labels in the procurement process are present in many countries, for instance, in **Greece**, where the presence of eco-labels "European Flower", "Northern Swan", and "Blue Angel" was accepted as confirmation of the product's compliance with the environmental criteria.

Successful practices of SPP included steps to educate the population, business representatives, and other stakeholders. In **Austria**, for example, a significant part of the effort was focused on implementing a communication strategy that included informing the public and businesses.

In comparison with the legal regulation of public procurement in these countries, the legislation on public procurement of the Republic of Kazakhstan does not contain specific tools and mechanisms in the field of "green" procurement, such as, for example, eco-labelling, priority "green" GCS, "green" criteria for determining the supplier, conditional discounts, etc.

The main legislative act on environmental protection is the Republic of Kazakhstan's Environmental Code as amended in 2007. It should be noted that the President of the Republic of Kazakhstan signed the Environmental Code as amended in 2020, which comes into force on July 1, 2021.

This Code includes several provisions aimed at the sustainable development of the Republic of Kazakhstan (*however, as in the previous version of the codex from 2007*), defining the environmental foundations of sustainable development.

"Article 4. Environmental safety and environmental foundations of sustainable development of the Republic of Kazakhstan

- 1. Sustainable development is the Republic of Kazakhstan's socio-economic development, achieved without violating environmental sustainability while ensuring environmental safety and environmentally balanced use of natural resources to reasonably meet the needs of present and future generations.*
- 2. The environmental foundations of sustainable development of the Republic of Kazakhstan are:*
 - The formation and maintenance of sustainable production and consumption patterns characterized by an increase in the well-being and quality of life of the population while minimizing the anthropogenic impact on the environment, reducing the consumption of non-renewable natural resources, reducing the level of waste generation and disposal, as well as stimulating their use as secondary resources;*
 - Sustainable functioning of natural ecological systems, conservation and sustainable use of biological diversity (hereinafter-biodiversity), prevention of degradation of the natural environment and implementation of measures to improve it, combating desertification;*
 - Participation of the Republic of Kazakhstan in the global response to the threat of climate change by implementing measures to prevent climate change and adapt to climate change, as well as to protect the ozone layer of the Earth's atmosphere;*
 - International cooperation of the Republic of Kazakhstan to preserve, protect and restore the healthy state and integrity of the Earth's ecosystem;*
 - Harmonization of the environmental legislation of the Republic of Kazakhstan with the principles and norms of international law and promotion of the development of international environmental law;*
 - Deterrence, prevention of transfer and transfer to the Republic of Kazakhstan from other states and from the Republic of Kazakhstan to other forms of any activities and substances that cause environmental damage or harm to human life and (or) health, as well as the adoption of preventive measures by the precautionary principle".*

The Code contains a provision stating that one of the principles of legal regulation of environmental relations is the principle of sustainable development:

- The principle of sustainable development: nature and its resources constitute the Republic of Kazakhstan's wealth, and their use must be sustainable. The State ensures the balanced and rational management of natural resources in the interests of present and future generations. In making decisions on environmental protection, priority is given to the preservation of biological, ecological systems and ensuring their sustainable functioning, water conservation, energy conservation and energy efficiency, reducing the consumption of non-renewable energy and raw materials, the use of renewable energy sources, minimizing waste generation, as well as their use as secondary resources;*

The principles of sustainable development through environmental legislation's prism do not have a direct relationship with the bill on public procurement.

This means that the environmental requirements for certain types of goods, processes, and activities aim to protect the environment, as it should be. At the same time, the legislation on public procurement and other industry-specific legislative acts build regulation taking into account (compliance with) such environmental requirements, but without integrating and applying the principles of sustainable development.

The current legislation of the Republic of Kazakhstan does not currently have clearly defined criteria for sustainable/green procurement, except the provision of the Law "On Public Procurement" (paragraph 4-1 of Article 21) that the organizer (or a single organizer) of public procurement is obliged to provide in the tender documentation priority for goods produced with the use of secondary raw materials obtained from waste in the territory of the Republic of Kazakhstan, and having a supporting document.

Of course, this norm encourages manufacturers to develop the sphere of production of goods from secondary raw materials, and the established priority in public procurement theoretically allows us to ensure a stable sales market.

The Republic of Kazakhstan's current legislation does not provide for the procedure governing the issuance of supporting documents that the goods were produced from secondary raw materials.

In other words, the specified norm from the category of "green" purchases has no practical implementation.

2.4. The regulatory and legal basis for the introduction of SPP in the Republic of Kazakhstan.

The analysis of the legal framework for the regulation of public procurement, together with the conclusions about the lack of clear criteria for public procurement in the legislation of Kazakhstan, showed the lack of opportunities provided by the legislation for the practice of sustainable "green" procurement.

Various categories and stages of public procurement (*conditions for participation in tenders, selection criteria, etc.*) are currently unacceptable for the implementation of "green" procurement in accordance with the current legal framework.

With regard to the application of ecolabeling standards that guarantee the environmental friendliness and safety of products, it should be noted that in Kazakhstan, in accordance with environmental legislation, it is voluntary.

There is a situation in which ecolabeling has been applied only to food (organic) products, the issues of labeling of which are regulated by the Law of the Republic of Kazakhstan "On the Production of Organic Products".

An environmental label is understood as a statement informing about the environmental aspects of products, works or services in the form of a text, sign or graphic image on the product label or packaging, in accompanying documentation, technical description, advertising brochure, information leaflet for the public or in another form.

Environmental aspects are defined as elements of an organization's activities, products or services that may have an impact on the environment. Environmental labelling should take into account all aspects of the life cycle of a product, work or service.

The international standard ISO 14024 and its Kazakhstan version ST RK GOST R ISO 14024-2006 establish requirements for voluntary ecolabeling of type I. The difference between type I ecolabeling and all others is that the assessment is carried out over the entire product life cycle: from the extraction of raw materials or the use of natural resources to the distribution (disposal) of production and consumption waste.

To date, the Type I ecolabel is represented in more than 50 countries around the world. Each country has its own independent certification body, which has the right to assign this marking to goods and services.

It should be noted that ecolabeling is not only a domestic or regional tool, but also an international one. In 1994, the Global Ecolabelling Network (GEN) was founded.

The advantage of type I ecolabels is the availability of developed standards for a large number of product groups. These standards include a set of criteria for evaluating products throughout the entire life cycle.

An important feature of such standards is the mandatory public assessment at the development stage (*that is, industry representatives, experts, and the scientific community are involved in drawing up quality criteria*). This allows the most objective assessment of the suitability, sufficiency and achievability of the criteria, as well as provides an absolutely impartial approach to their formation. The criteria include not only environmental, but also economic, and sometimes social components.

The implementation of such criteria in the public procurement system allows state institutions to solve a number of important tasks through procurement, for example, to support local production, contribute to solving social problems, promote safe and economically profitable technologies on the market, as well as significantly save budget funds.

Other advantages of using Type I ecolabeling as a criterion for green procurement:

- A high level of trust, as the certification process is handled by an independent third party-the certification body;
- Clear and accessible criteria that are developed with the participation of a wide range of stakeholders;
- A complete and comprehensive assessment based on a life cycle study;
- A wide range of product groups covered;
- The presence of a type I eco-label for the purchased product is in itself a confirmation of compliance with the eco-criteria.

In general, reviewing the tasks and principles of the legislative structure of the regulation of public procurement, the main barriers are the predominance of economic development issues over environmental protection. In many respects, in order to protect the domestic market, the state policy is based on the principles of supporting domestic producers of goods, as well as domestic suppliers of works and services.

The market of domestic suppliers has qualitatively different opportunities over foreign ones, especially in terms of "green", eco-friendly GCS, since objectively, Kazakh companies are significantly behind or do not have separate types of GCS that relate to or have eco-friendly characteristics (*goods made from recycled materials, using energy-efficient, resource-saving technologies, etc.*).

Accordingly, the current legal framework does not contain the "green" environmental handwriting of SPP, which is also one of the key problems for the full implementation and realization of SPP practices.

Also, the following points can be considered as the barriers to the transition to SPP:

1. The main criterion for a supplier in public procurement is the lowest price. It can be assumed that the implementation of the SPP will require additional budget funding from customers, since environmentally safer products, better technologies that allow less harm to the environment, can cost more if the cost of the entire life cycle is not taken into account.

2. The legislation on public procurement does not allow the use of environmental assessment criteria.
3. There is no list of GCS that can be subjected to "greening", the procurement of which can be carried out taking into account the criteria of environmental friendliness.
4. Lack of skills, relevant education, and experience in implementing SPP by customers, as well as a low level of awareness of the principles of SPP on the part of both government agencies and suppliers.

For the development of SPP in Kazakhstan, we propose in the Law "On Public Procurement" to form provisions on "green" eco-friendly criteria for GCS, compliance with which entails certain preferential opportunities, such as:

- discounts for suppliers of such GCS;
- priority in determining the winner.

The selection criteria themselves are proposed to be fixed at the subordinate level, in the order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648 "On approval of the Rules for Public Procurement".

According to the Law "On Public Procurement", it is advisable to provide a rule on the list of GCS, the purchase of which must necessarily meet the criteria of sustainable "green" procurement. And then, at the subordinate level, for example, also in the order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015, No. 648 "On approval of the Rules for Public Procurement" to approve the specified list.

However, the development of this list requires a detailed analysis of the possibility of implementing such purchases, taking into account the economic component of the market, the state of suppliers, and the principles of support for domestic manufacturers.

As it was mentioned earlier about the criteria for SPP in the current legislation, it is necessary to finalize the mechanisms for goods produced with the use of secondary raw materials, where the authorized bodies (MIIR and MF) need to approve the procedure for determining goods produced with the use of secondary raw materials obtained from waste on the territory of the Republic of Kazakhstan.

It is required to determine the procedure for calculating the share of secondary raw materials in the manufactured products in order to ensure equal conditions for all potential suppliers.

The confirmation body may be the appropriate laboratories that will accept the necessary conclusions.

The joint work of the Ministry of Finance of the Republic of Kazakhstan and the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan, as well as industry associations (non-governmental organizations) and industry institutions is required.

After the approval of the methodology for calculating the share of secondary raw materials in the manufactured products and the supporting document, it is needed to amend the order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648 "On approval of the Rules for public Procurement" regarding the assignment of a conditional discount for the supply of goods produced using secondary raw materials obtained from waste on the territory of the Republic of Kazakhstan.

The use of such a powerful potential as public procurement encourages manufacturers to innovations, including the production of environmentally friendly products and the use of the principles of resource renewal.

The law " On Public Procurement " provides for conducting public procurement by means of a tender using two-stage procedures that are carried out according to the list of GCS approved by the Ministry of Finance of the Republic of Kazakhstan, in cases:

- it is difficult to formulate detailed specifications of GCS and determine their technical and other characteristics, and (or) it is necessary to request proposals from potential suppliers or negotiate with them on the issues that have arisen;
- it is required to conduct research, experiments, research or development;
- innovative and high-tech goods, works, and services are purchased.

The obligation to make a security application for participation in the competition in the amount of 1% of the tender amount is excluded to reduce the burden on entrepreneurs.

To date, the list of GCS, the purchases of which are carried out by means of a tender using two-stage procedures, includes only works on decorative landscaping of territories, design and survey work on landscaping, work on the modernization of technical equipment in terms of water and energy conservation and the development of uniforms with the provision of a signal sample.

At present, the Republic of Kazakhstan is striving to improve procurement procedures through the formation and implementation of state policy in the public procurement system. So, during public procurement of works on the modernization of technical equipment in terms of water and energy-saving, the procurement manager has the right to specify the principles of SPP in the tender documentation.

The list of GCS in which public procurement is carried out by means of a tender using two-stage procedures requires revision and expansion.

It is also worth highlighting the following preferences for manufacturers established by the Law of the Republic of Kazakhstan "On Public Procurement".

First, participation in public procurement of certain categories of potential suppliers: public associations and organizations of disabled people. The legislation establishes the priority purchase of a certain list of GCS from these organizations (*light industry goods, furniture, typhlotechical and hygienic products, landscaping and landscaping*).

The second direction is the availability of an industrial certificate from manufacturers of furniture and light industry, which confirms the presence of production on the territory of the Republic of Kazakhstan.

The approval of these measures by the state supports both public associations and organizations of disabled people, as well as manufacturers of furniture and light industry in the development of their production facilities, modernization and in the future, as a result, contributes to the fastest transition to the principles of "sustainable development".

At the same time, to obtain a greater effect, it is necessary to consider the possibility of developing common environmental requirements and criteria.

For example, in the purchase of cleaning products and detergents, set restrictions on the presence of dangerous carcinogenic and toxic products in the composition. In the purchase of office equipment, establish the requirement for energy efficiency, as well as the possibility of replacing failed parts.

Moreover, the indication of these requirements does not contradict the Law "On Public Procurement", which determines that in the absence of national and interstate standards, the

tender documentation must contain functional, technical, qualitative and operational characteristics of the purchased goods.

2.5. Conclusion and recommendations for Chapter 2.

Summarizing the information presented in this report, including an analysis of the legal framework that defines the possibilities for implementing the SPP, as well as recommendations for improving legislation (*possible proposals for revising the existing legal framework to facilitate the inclusion of environmental criteria in public procurement*), the following conclusions form the final part of the report:

1. The current legislation of the Republic of Kazakhstan meets the general principles of international law, is built in accordance with the best practices and experience of developed countries in terms of economic and administrative components of public procurement processes.
2. The legal framework is being dynamically improved, taking into account the realities of market development, the needs of the state and society. Changes and additions are considered and made almost annually, that is, the state and interested parties actively modernize the public procurement processes.
3. The legislation on public procurement covers literally all state organizations but does not include the quasi-public sector. The regulation of procurement processes of quasi-state organizations is very similar, but it has its own specifics, based on the industry affiliation and the tasks being implemented.
4. A comprehensive approach on reflecting the SPP provisions in the legislation is not implemented and contains separate components of the SPP. These are a wide range of economic instruments (*issues of competition, fair choice, support for domestic producers, transparency of processes, etc.*), coverage of certain social issues (*support for socially significant suppliers*).
5. Currently, the legal framework does not include the use of "green" procurement, which is directly aimed at reducing the negative impact on the environment. There are some rules that are not applicable in practice due to the lack of an appropriate mechanism (*goods from secondary raw materials*).
6. Taking into account the balanced policy of the state, the need to protect the environment and implement the principles of sustainable development, it may now be a positive moment to discuss with government agencies, society and other parties about changes in the legislation on public procurement in order to strengthen the environmental focus, the introduction of SPP principles, concepts, criteria and other clarifications on "green" procurement.

Taking into consideration that the current legislation of the Republic of Kazakhstan does not fully apply the principles of SPP, it is proposed to comprehensively review the legal framework for regulating public procurement, starting from the level of legislative acts and, accordingly, extrapolating approaches to regulatory legal acts at the subordinate level adopted by authorized state bodies.

It is necessary in the Law "On Public Procurement" to provide for the principle of "sustainable procurement", revealing and consolidating the very concept of "sustainable procurement".

This will enable the procurement organizers to specify in the tender documents additional requirements of "sustainable procurement" for potential suppliers, as well as for the goods supplied, works performed and services rendered.

In addition, the Law "On Public Procurement" defines criteria for resistance to GCS, compliance with which entails certain preferential opportunities, such as:

- Conditional discounts for suppliers of such GCS;
- Priority in determining the winner.

The selection criteria themselves are proposed to be fixed at the subordinate level, in the Order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648 "On Approval of the Rules for Public Procurement".

Also, at the level of the Law "On Public Procurement", it is advisable to provide a rule on the list of GCS, the purchase of which must necessarily meet the criteria of sustainable "green" procurement. And then, at the subordinate level, for example, also in the order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648 "On approval of the Rules for public Procurement" to fix the specified list.

The formation of this list requires a thorough analysis for the possibility of implementing such purchases, taking into account the economic component of the market, the state of suppliers and the principles of support for domestic manufacturers.

As mentioned above about the criteria for SPP in the current legislation, it is necessary to complete the mechanisms for goods produced with the use of secondary raw materials, where the authorized bodies (MIIR and MF) need to approve the procedure for determining goods produced with the use of secondary raw materials obtained from waste on the territory of the Republic of Kazakhstan.

At the same time, it is necessary to determine the procedure for calculating the share of secondary raw materials in the manufactured products in order to ensure equal conditions for all potential suppliers.

After the approval of the methodology for calculating the share of secondary raw materials in the products produced and the supporting document, it is necessary to modify the Order of the Minister of Finance of the Republic of Kazakhstan dated December 11, 2015 No. 648 "On Approval of the Rules for Public Procurement" in terms of assigning a conditional discount for the supply of goods produced using secondary raw materials obtained from waste in the territory of the Republic of Kazakhstan.

The use of such a powerful potential as public procurement encourages manufacturers to innovate, including the production of environmentally friendly products and the use of the principles of resource renewal.

Thus, at present, the Republic of Kazakhstan, forming and implementing the state policy in the field of public procurement, strives to improve procurement procedures. Thus, during public procurement for the modernization of technical equipment in terms of water and energy saving, the procurement organizer has the right to specify the principles of the SPP in the tender documentation.

It is worth highlighting the following preferences for manufacturers established by the Law of the Republic of Kazakhstan "On Public Procurement".

The first is the participation in public procurement of certain categories of potential suppliers: public associations and organizations of disabled people. The legislation establishes the priority purchase from these organizations of a certain list of GCS (*light industry goods, furniture, typhlotechnical and hygienic means, gardening and landscaping*).

The second direction is the existence of an industrial certificate from manufacturers of furniture and light industry, which confirms the presence of production in the territory of the Republic of Kazakhstan.

The adoption of these measures by the state supports both public associations and organizations of disabled people, as well as manufacturers of furniture and light industry in the development of their production facilities, modernization and in the future, as a result, contributes to the early transition to the principles of "sustainable development".

At the same time, to achieve a greater effect, it is necessary to consider the possibility of developing standard environmental requirements and criteria.

For example, while procuring cleaning products and detergents, set restrictions on the presence of dangerous carcinogenic and toxic products in the composition.

When procuring office equipment, establish a requirement for energy efficiency, as well as the possibility of replacing broken parts.

Moreover, the indication of these requirements does not contradict the Law "On Public Procurement", which defines that in the absence of national and interstate standards, the tender documentation must contain the functional, technical, quality and operational characteristics of the purchased goods.

Thus, the development of standard environmental requirements and their adoption as methodological recommendations at the level of bylaws in general will help buyers to make requirements in the tender documentation.