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Issues Related To The Termination Of Public Procurement Contracts And Their Legal Consequences

Malikakhon Pirnazarovna Qalandarova
Judge of the Supreme Judicial Council of the Republic of Uzbekistan, Uzbekistan

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Abstract: This article analyzes the issues related to the termination of public procurement contracts, their legal mechanisms, and consequences. The author examines the current procedures and normative-legal framework governing the termination of such contracts in the field of public procurement and identifies existing problems. In particular, it is noted that the Law of the Republic of Uzbekistan "On Public Procurement" does not clearly define the grounds for contract termination, which leads to various interpretations and disputes in practice. The article also studies the experience of foreign countries — the United States, the United Kingdom, Russia, and Germany — and proposes recommendations for improving national legislation. The author substantiates the need to prevent abuses by public customers in cases of unilateral contract termination, to protect the rights of contractors, and to ensure transparency in the process.

Keywords: Public procurement, contract termination, public customer, contractor, unilateral termination of contract, freedom of contract, legal consequences of contract termination, international experience in public procurement.

Introduction: In the current context of the legal regulation of public procurement, the study of the procedures and grounds for terminating public procurement contracts holds particular significance. This necessity arises from the need to ensure a balance between the interests of the contracting authority and the supplier, as well as to guarantee the stability and reliability of civil-law relations that emerge as a result of public procurement procedures.

The termination of a public procurement contract, on the one hand, serves as an important legal instrument for protecting the interests of the state and society aimed at addressing violations of delivery conditions or other contractual changes; on the other hand, this procedure is associated with a number of legal issues that require a comprehensive and scientifically grounded approach.

During the performance of a public procurement contract, various problems may arise that could lead to its termination. The termination of a public procurement contract is a complex process and represents one of the key institutions of civil law that results in the cessation of the parties' obligations.

The rules governing the procedure for terminating public procurement contracts should be stipulated in the Civil Code and in the Law "On Public Procurement." However, although the Civil Code provides for the general grounds for contract termination, such grounds are not specified in the special legislation. In contrast, in the United States, the United Kingdom, and the Russian Federation, the grounds for terminating public procurement contracts and the criteria for material changes in circumstances are clearly defined.

As a general rule, contracts may be terminated by mutual agreement of the parties, by a court decision, or through unilateral refusal to perform the contract. However, since the procedure and grounds for terminating public procurement contracts are not specifically regulated under national legislation, it is deemed appropriate to take into account not only the general principles of civil law but also other relevant circumstances.

From the perspective of state and public interests, there may also exist specific grounds for terminating public procurement contracts, including amendments to legislation, the emergence of financial difficulties, or

changes in circumstances.

Contracting authorities often make extensive use of unilateral termination of contracts, which leads to adverse consequences for the other party and may result in its inclusion in the Register of Unreliable (Dishonest) Contractors. However, there are also cases in which the contracting authority may engage in abuses during the process of contract termination. Such practices can lead to several negative consequences, including violations of civil legislation, the norms of regulatory legal acts related to public procurement, the principles of competition and professional integrity, as well as damage to the reputation of public legal entities. In addition, these situations hinder the development of a market economy in the field of public procurement, creating barriers particularly for small and medium-sized business entities.

In this context, it is necessary to study both the theoretical and practical aspects of issues related to the unilateral termination of contracts by state contracting authorities. This is because the Law "On Public Procurement" provides for only a single provision regarding the contractor's right to terminate the contract in accordance with its terms and/or in cases stipulated by law.

In particular, there exists an issue concerning the application of civil law norms to relations arising in the sphere of public procurement. The exercise of civil rights by an individual for the purpose of self-protection may only be carried out in proportion to the nature of the violation and within the scope of actions necessary to prevent the infringement of rights.

There should be a legal possibility to provide for the application of these norms of civil legislation within public procurement contracts. Otherwise, if such a clause is not included in the terms of the contract, the norms of the Civil Code cannot be applied during the performance of a public procurement contract, even in cases where one of the parties breaches the contractual terms.

As a general rule, the right to unilateral termination must be established either by law or by mutual agreement of the parties. In particular, the provisions of civil legislation governing supply contracts may be applied to both the state contracting authority and the contractor.

According to Article 455 of the Civil Code, unilateral (in whole or in part) refusal to perform a supply contract is permissible if one of the parties has committed a material breach of the contract.

A supplier's breach of a supply contract may be considered material in the following cases:

- delivery of goods that are of inadequate quality and contain defects that cannot be remedied within a reasonable period acceptable to the purchaser;
- repeated violations of delivery deadlines.

A purchaser's breach of a supply contract may be considered material in the following cases:

- repeated violations of payment deadlines for the goods;
- repeated failure to collect the goods.

The parties may also stipulate other grounds for unilateral refusal to perform or unilateral modification of a supply contract in their agreement.

If another period for the termination or amendment of a supply contract is not specified in the notice of termination or agreed upon by the parties, the contract shall take effect as amended or terminated from the moment one party receives a written notice from the other party regarding full or partial unilateral refusal to perform the contract.

This provision contains the term "repeated violation," which cannot be applied to relations in the sphere of public procurement through various interpretative approaches. This is because the state contracting authority must ensure the efficient use of funds allocated for public procurement, including achieving an optimal balance between the benefits obtained from the acquisition of goods (works, services), their quality, and their cost (taking into account operating expenses during the period of use). Public procurement should be carried out in a rational and cost-effective manner that allows the timely implementation of procurement procedures.

According to the Resolution of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan "On Certain Issues of the Application of Civil Law Provisions Regulating the Conclusion, Amendment, and Termination of Commercial Contracts," unilateral refusal to perform a contract is permissible only when specific conditions provided by law are present (Article 422, paragraph three, and Article 746, paragraph one of the Civil Code, etc.). In such cases, termination of the contract is not required. A unilateral refusal to perform a contract shall be deemed valid upon notification of the other party.

In this case, an important aspect to be considered when applying civil legislation is that, according to Article 707 of the Civil Code, the customer has the right to demand the termination of a contract for the provision of services for remuneration, provided that the established price for the services is paid in full.

The contractor, in turn, has the right to demand the termination of a contract for the provision of services for remuneration only on the condition that all damages caused to the customer as a result of the contract's termination are compensated, except in cases where the contract is terminated due to the fault of the customer.

According to Article 448 of the Civil Code of the Republic of Uzbekistan, if the purchaser (the recipient) does not select the goods within the period specified in the contract for the supply of goods, or, if such a period has not been specified in the contract, within a reasonable period after receiving from the supplier a written notice indicating that the goods are ready for delivery, the supplier shall have the right either to refuse to perform the contract for the supply of goods or to demand payment for the goods from the purchaser .

In the first case, if the situation is not related to a breach of the contractual terms, and in the second case, if the refusal to perform the contract gives rise to civil–legal liability for the other party, then the right of unilateral withdrawal from a public procurement contract must be explicitly stipulated by the Civil Code and the contract itself.

Another important aspect is that if a violation related to a material breach of the contractual terms has been committed, or if there exists a risk of such a violation—that is, there are objective grounds to believe that the contract will not be performed within its prescribed time—then the party may exercise the right of unilateral withdrawal. For instance, if landscaping works could not be carried out in due time, making it impossible to perform such works during the winter season, or if goods have been delivered that are of inadequate quality and contain defects that cannot be remedied within a reasonable period for the purchaser.

In this form, unilateral withdrawal from the contract shall be considered a means of protecting a right.

Proposed Addition to the Law "On Public Procurement"

Article – Grounds for Termination of a Contract

A contract may be terminated in the following cases:

1. Unilateral termination by the contracting authority — if the supplier refuses to fulfill its obligations under the contract;

2. Unilateral termination by the contracting authority — if the supplier fails to fulfill or improperly fulfills its contractual obligations;

3. Unilateral termination by the contracting authority — if the supplier engages subcontractors not proposed or approved during the tender process;

4. Termination of the contract — if either the contracting authority or the supplier, being a legal entity, is liquidated or declared insolvent, or if the supplier, being a natural person, has deceased, except in cases of reorganization;

5. Termination of the contract — if violations of the restrictions established in Article 46 of this Law are detected with respect to the procurement for which the contract was concluded;

6. Termination by mutual agreement of the parties — if both parties have duly justified that further performance of the contract is no longer expedient.

7. If a court decision on the termination of the contract has entered into legal force.

The grounds for termination of the contract provided for in paragraphs 1, 2, and 3 of part one of this Article shall constitute the right of the contracting authority.

Termination of the contract on grounds not provided for in part one of this Article shall not be permitted.

In addition, taking into account the possibility of conflicts arising between the public-law status of the state customer and the interests of the parties, it is necessary to introduce a procedure for applying administrative liability in cases where instances of unjustified unilateral withdrawal from a contract by the state customer are identified.

Article 175^8 of the current Code of Administrative Liability provides for administrative responsibility for violations of the legislative requirements governing the formation and publication of state procurement plans, including schedules, as well as the procedures for their placement. It also establishes liability for failure to comply with the legislative requirements in the process of conducting public procurement, including violations related to the posting of public procurement announcements on the special information portal, failure to comply with the mandatory discussion procedures and deadlines, and violations of the time limits for publishing the results of public procurement.

Furthermore, administrative liability is prescribed for including prohibited or competition-restricting information, hyperlinks, or requirements in procurement announcements and documents; violations of the procedures for approving procurement documents and forming orders; failure to comply with the requirements for determining suppliers (contractors, service providers) through tender procedures; as well as for making decisions to conduct procurement from a single supplier or under direct contracts when the law requires competitive procurement methods.

Administrative liability also arises in cases of failure to

report affiliation during the procurement process as prescribed by the legislation, or for refusing to accept bids and for unlawfully shortening the deadlines for submitting proposals, in violation of the requirements of public procurement law. Likewise, violations in opening envelopes containing bids and in evaluating proposals in accordance with the procurement documents are also subject to administrative liability.

Given the above, it is proposed to introduce a specific provision establishing administrative liability for unjustified unilateral withdrawal by the state customer from a public procurement contract. Such a measure would ensure compliance with the principles of fairness, legality, and efficiency in public procurement, promote fair competition, protect the rights of suppliers, and maintain a proper balance between public and private interests in this sphere.

In particular, the contracting authority may fail to provide the contractor with the opportunity to remedy deficiencies, refuse to grant access to the site for the performance of works or the provision of services, or fail to substantiate the reasons for unilateral withdrawal from the contract. Therefore, during the process of unilateral termination of a contract by the contracting authority, it is necessary to develop a procedure that ensures the contractor's right to be notified and to remedy deficiencies.

Such a procedure should clearly specify the detailed grounds for unilateral termination, as well as the timeframe and procedure during which the contracting authority must refrain from obstructing the contractor until the identified deficiencies are remedied.

As noted by I.S. Yakovlev, one of the main problems lies in the fact that the contractor is often unable to challenge the decision of the contracting authority regarding unilateral termination, which leads to the absence of an effective legal remedy.

According to the Regulation on the Procedure for Reviewing Complaints in the Field of Public Procurement, approved by Order No. 180 of the Director of the National Agency for Project Management under the President of the Republic of Uzbekistan dated May 1, 2018, each participant in the procurement procedures, as well as the persons exercising control, shall have the right to file a complaint—either through judicial proceedings or to the Commission—against the actions (or inaction) of the contracting authority, the procurement commission, its members, or the operator of the electronic public procurement system, if such actions (or inaction) infringe upon the participant's rights or legitimate interests.

However, Clause 2 of this Regulation stipulates that the Commission shall not consider matters related to the settlement of disputes and disagreements arising in the course of the performance of obligations stipulated in contracts concluded as a result of public procurement. Such matters shall be resolved in accordance with the procedure established by legislative acts.

In conclusion, the contracting authority may unilaterally terminate a public procurement contract in the following cases:

Firstly, if the contractor has committed a material breach of the provisions stipulated by civil legislation or the terms of the contract;

Secondly, if there is a risk of a material breach of the provisions stipulated by civil legislation or the terms of the contract on the part of the contractor;

Thirdly, if the contracting authority proves that the violation has occurred due to the contractor's fault.

For the consequence in the form of contract termination to arise, there must exist an established fact of a violation of rights provided for by the Civil Code committed by a party to the contract, or a risk of such violation. However, the assessment of this factual element is carried out independently by the party applying such a measure. Therefore, although the law grants this possibility, the evaluation of the grounds for its application is conducted solely on a subjective and unilateral basis, while the creditor is not able to assess such a situation objectively from a legal standpoint. Consequently, even though the law requires a factual composition that includes either a violation of rights or the threat of such a violation, the application of this measure remains entirely within the scope of the creditor's unilateral discretion.

As emphasized by G.A. Sverdlik and E.L. Strau, a contract is founded on the parties' freedom of conclusion, and its termination through judicial proceedings does not give rise to significant complications, since all parties possess the right to judicial protection.

Furthermore, in the case of unilateral withdrawal, with respect to the moment at which obligations are deemed terminated, there exists a general rule stipulating that any agreement on the amendment or termination of a contract must be executed in the same form as that in which the original contract was concluded.

Another issue concerns the termination of a contract by mutual consent of the parties.

In the United States, under the Federal Acquisition Regulation (FAR), contractual relations are based on mutual consent through negotiations, taking into account the needs of the government agency and the

public interest.

In legal literature, the practice of the United States is recognized as enabling the government to manage contractual relations in a more flexible manner and to reduce the risk of litigation. This is particularly significant in times of crisis — for instance, during pandemics or natural disasters — when government needs may change abruptly.

In Germany, the United Kingdom, and France, the termination of a contract is primarily guided by the principles of the supremacy of state and public interests, budgetary efficiency, and proper legal formalization. In Kazakhstan, termination by mutual agreement is permitted only when the parties have reached a consensus that further performance of the contract is no longer expedient.

The WTO Agreement on Government Procurement (GPA) and the UNCITRAL Model Law on Public Procurement provide for the possibility of termination by mutual consent of the parties, while ensuring compliance with public interest, respect for the rights of suppliers, and equal access to information.

According to national legislation, unless otherwise provided by the Civil Code, other laws, or the contract itself, a contract may be amended or terminated by mutual consent of the parties. In such a case, the parties must reach agreement on all disputed issues and have no outstanding claims against each other.

In public procurement, when a contract is terminated by mutual agreement, attention should be given to the following three aspects:

- the contracting authority no longer has a need for the unfulfilled portion of the contractual obligations;
- the public procurement contract has not been performed or has not been duly performed, or there is a risk of such non-performance;
- the contracting authority has no objections against the contractor, and mutual agreement has been reached on all disputed matters.

In such a case, if the contractor has committed a material breach of the contractual terms, the parties shall not be entitled to terminate the contract by mutual consent. In this situation, the contract must be terminated unilaterally or through judicial proceedings, provided such grounds are stipulated in the contract.

The issue of amending and terminating a public procurement contract is not merely a matter of legal and technical regulation, but also a question of strategic public administration. Analysis of international and national practices demonstrates the necessity of further improving the legal mechanisms in this area. In this process, a balance must be maintained between the interests of the state, the rights of business entities performing under public contracts, and the principles of fair competition.

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