# RUSSIAN PUBLIC PROCUREMENT LAW: GENERAL CHARACTERISTICS AND ANTI-CORRUPTION STANDARDS

## *GENERAL CHARACTERISTICS OF RUSSIAN PUBLIC PROCUREMENT LAW*

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Russian public procurement legislation is in a state of "permanent reform". Experts explain the large number of laws and other regulations adopted in this area and their constant patching up by the lack of a comprehensive concept for improving procurement legislation[1].

There were adopted ten special Federal laws regulating relations in this area between 1992 and 2015 (not considering the laws on amendments to other laws, as well as regional legislation) [2].

The most frequently applied laws in public procurement, in addition to special procurement laws, are the Civil Code of the Russian

1 *See Беляева О.А.* «Совершенствование» законодательства о размещении заказов для публичных нужд // Законодательство. 2009. № 11. С. 17-22 [*Olga Belyaeva*. "Improvement" of legislation on placing orders for public needs // Legislation. 2009. No. 11. P. 17-22]; *Белов В.Е.* Об изменениях гражданского законодательства в условиях формирования контрактной системы в сфере закупок товаров, работ, услуг для обеспечения государственных и муниципальных нужд // Актуальные проблемы российского права. 2014. № 10 [*Evgeny Belov*. On changes in civil legislation in the conditions of formation of the contract system in the sphere of procurement of goods, works, services for state and municipal needs // Actual problems of Russian law. 2014. No. 10].

2 *See* Закон РФ от 28 мая 1992 г. № 2859-1 «О поставках продукции и товаров для государственных нужд» (утратил силу) // Российская газета. № 148. 1992. 30 июня [Law of the Russian Federation of May 28, 1992 No. 2859-1 "On the supply of products and goods for state needs" (no longer in force) // Rossiyskaya Gazeta. No. 148. 1992. June 30]; Федеральный закон от 2 декабря 1994 г. № 53-ФЗ «О закупках и поставках сельскохозяйственной продукции, сырья и продовольствия для государственных нужд» // СЗ РФ. 1994. № 32. Ст. 3303 [Federal law of December 2, 1994 No. 53-FZ of "On purchases and deliveries of agricultural products, raw materials and food for state needs" // Legislation Bulletin of the Russian Federation. 1994. No. 32. Art. 3303]; Федеральный закон от 13 декабря 1994 г. № 60-ФЗ «О поставках продукции для федеральных государственных нужд» // СЗ РФ. 1994. № 34. Ст. 3540 [Federal law of December 13, 1994 No. 60-FZ "On deliveries of products for Federal state needs" // Legislation Bulletin of the Russian Federation. 1994. No. 34. Art. 3540]; Федеральный закон от 29 декабря 1994 г. № 79-ФЗ «О государственном материальном резерве» // СЗ РФ. 1995. № 1. Ст. 3 [Federal law of December 29, 1994 No. 79-FZ "On the state material reserve" // Legislation Bulletin of the Russian Federation. 1995. No. 1. Art. 3]; Федеральный закон от 27 декабря 1995 г. № 213-ФЗ «О государственном оборонном заказе» (утратил силу) // СЗ РФ. 1996. № 1. Ст. 6 [Federal law of December 27, 1995 No. 213-FZ "On the state defense order" (no longer in force) // Legislation Bulletin of the Russian Federation. 1996. No. 1. Art. 6]; Федеральный закон от 6 мая 1999 г. № 97-ФЗ «О конкурсах на размещение заказов на поставки товаров, выполнение работ, оказание услуг для государственных нужд» (утратил силу) // СЗ РФ. 1999. № 19. Ст. 2302 [Federal law of May 6, 1999 No. 97-FZ "On tenders for placing orders for the supply of goods, performance of works, rendering of services for state needs" (no longer in force) // Legislation Bulletin of the Russian Federation. 1999. No. 19. Art. 2302]; Федеральный закон от 21 июля 2005 г. № 94-ФЗ «О размещении заказов на поставки товаров, выполнение работ, оказание услуг для государственных и муниципальных нужд» (утратил силу) // СЗ РФ. 2005. № 30 (ч. 1). Ст. 3105 [Federal law of July 21, 2005 No. 94-FZ "On placing orders for the supply of goods, performance of works, provision of services for state and municipal needs" (no longer in force) // Legislation Bulletin of the Russian Federation. 2005. No. 30 (part 1). Art. 3105]; Федеральный закон от 18 июля 2011 г. № 223-ФЗ «О закупках товаров, работ, услуг отдельными видами юридических лиц» // СЗ РФ. 2011. № 30 (ч. 1). Ст. 4571 [Federal law of July 18, 2011 No. 223-FZ "On procurement of goods, works, and services by certain types of legal entities" // Legislation Bulletin of the Russian Federation. No. 30 (part 1). Art. 4571]; Федеральный закон от 29 декабря 2012 г. № 275-ФЗ «О государственном оборонном заказе» // СЗ РФ. 2012. № 53 (ч. 1). Ст. 7600 [Federal law of December 29, 2012 No. 275-FZ "On the state defense order" // Legislation Bulletin of the Russian Federation. No. 53 (part 1). Art. 7600]; Федеральный закон от 5 апреля 2013 г. № 44-ФЗ «О контрактной системе в сфере закупок товаров, работ, услуг для обеспечения государственных и муниципальных нужд» // СЗ РФ. 2013. № 14. Ст. 1652 [Federal law of April 5, 2013 № 44-FL "On the contract system in the procurement of goods, works, services for state and municipal needs"// Legislation Bulletin of the Russian Federation. No. 14. St. 1652].

Federation[3] and Federal law of July 26, 2006 No. 135-FZ "On protection of competition»[4].

The mechanism for implementing legislative norms is provided by numerous regulations at the subordinate level (first of all, by resolutions of the government of the Russian Federation).

Key legislative acts that underpin the whole system of public procurement in Russia are the *Federal law of April 5, 2013 No. 44-FZ "On the contract system in the procurement of goods, works, services for state and municipal needs"* (hereinafter – the Contract system law; Law No. 44-FZ) and *Federal law of July 18, 2011 No. 223-FZ "On procurement of goods, works and services by certain types of legal entities"* (hereinafter – the Law No. 223-FZ).

The presence of several legislative acts on procurement allows us to distinguish several subsystems in the Russian public procurement system (types of purchases; see the diagram).


The first subsystem (type of procurement) is *state and municipal procurement*, which is primarily regulated by the Contract system law (Law

3 Гражданский кодекс Российской Федерации (часть первая) от 30 ноября 1994 г. N 51-ФЗ // СЗ РФ. 1994. № 32. Ст. 3301 [Civil Code of the Russian Federation (part one) of November 30, 1994 N 51-FZ // Legislation Bulletin of the Russian Federation. 1994. No. 32. Art. 3301].

4 СЗ РФ. 2006. № 31 (часть 1). Ст. 3434 [Legislation Bulletin of the Russian Federation. 2006. No. 31 (1 part). Art. 3434].

No. 44-FZ). The second subsystem is *"corporate" procurement* (Law No. 223-FZ). The third subsystem is *other public procurement* of business entities that have *voluntarily* assumed responsibility for complex procurement procedures (usually, these are large legal entities that have adopted internal local procurement acts, organized their own purchasing departments, and conduct purchases; these entities conduct purchases, first, for economic reasons – because of the large volume of purchased products, which makes it difficult to ensure the process of concluding contracts at optimal prices without creating their own purchasing system, and second, for reasons of prestige). Other public procurements are conducted in accordance with the general provisions of Russian civil law.

The state defense order, as well as orders to the state reserve, are carried out in accordance with the Contract system law, taking into account the features established respectively by Federal law of December 29, 2012 No. 275-FZ "On the state defense order" and Federal law of December 29, 1994 No. 79-FZ "On the state material reserve". The state defense order is a type of government order, and purchases made for the implementation of a state defense order are a type of government procurement. In turn, the annual amount of accumulation of material values in the state reserve is planned as part of the state defense order. Thus, orders to the state reserve are part of the state defense order.

It should be added that two more special laws regulating relations in the sphere of state (municipal) procurement are still in force: Federal law of December 2, 1994 No. 53-FZ of "On purchases and deliveries of agricultural products, raw materials and food for state needs" and Federal law of December 13, 1994 No. 60-FZ "On deliveries of products for Federal state needs". These laws, which were adopted more than two decades ago, are very small in scope and contain only some special rules governing relations in the area of public procurement (so it seems logical to include these special rules in the text of the Contract system law, while recognizing these laws as invalid).

In a simplified form, the regulatory framework for public procurement can be described as follows.

Legislation on state and municipal procurement is the most complex. The Contract system law and the relevant legal acts constitute a very large legal and regulatory array.

The legislation on "corporate" procurement is based on Law No. 223-FZ, which is five times less in volume than the Contract system law. Bylaws adopted in accordance with Law No. 223-FZ are significantly smaller in terms of normative material for state (municipal) procurement.

This difference in the volume of normative arrays regulating the conduct of state (municipal) procurement, on the one hand, and "corporate" procurement, on the other hand, is explained by the fact that the Contract system law prescribes the procedures for planning and conducting procurement with a high degree of detail. Legal regulation of state and municipal procurement, based on the provisions of the Contract system law, has imperative character. The freedom of customers to build their own purchasing system and develop procurement rules is minimized[5]. In "corporate" procurement (Law No. 223-FZ), customers have a greater degree of freedom: they independently form the "rules of the game" in their internal documents (these documents are called the "procurement regulations" in Law No. 223-FZ). The main purpose of the adoption of Law No. 223-FZ is to ensure the "transparency" of "corporate" purchases (posting information about purchases on the Internet). The main obligations of customers under Law No. 223-FZ are to approve their own "procurement regulations" and publish this document in the unified procurement information system (primarily on the official website of this system - www.zakupki.gov.ru) and conducting purchases in accordance with the specified "procurement regulations" (on this basis Law No. 223-FZ can be called one of the most «liberal» procurement laws in the world). The small volume of Law No. 223-FZ is explained by the high degree of disposition of the relations regulated by it.

Other public procurement that is not conducted in accordance with the Contract system law or Law No. 223-FZ is carried out in accordance with the provisions of civil legislation, primarily the Civil Code of the Russian Federation (in particular, on the basis of general rules on contracts, offer and acceptance, bidding, etc.).

As we noted above, the legislation on the contract system in Russia is the most detailed and imperative (in comparison with the legislation on "corporate" and other public procurements). Therefore, we will consider further the anti-corruption standards that apply specifically in state and municipal procurements (the Contract system law). We are convinced that the anti-corruption standards of the Russian contract system can be applied by analogy also in the field of "corporate" and other public procurements in Russia.

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5 The famous Russian civil law professor G. F. Shershenevich in the second half of the XIX century noted that the procurement legislation of Russia of the previous period (first half of the XIX century) mainly had "the nature of instructions to administrative institutions, and not the rules of law" (*See Шершеневич Г.Ф.* Учебник русского гражданского права. Т. 2. М. 2005. С. 175 [*Shershenevich G. F.* Textbook of Russian civil law. Vol. 2. M. 2005. P. 175]). We can give a similar characteristic in many respects to the current Russian state (municipal) procurement legislation.

## ANTI-CORRUPTION STANDARDS OF THE RUSSIAN CONTRACT SYSTEM

The sphere of procurement for state and municipal needs is exposed to numerous corruption risks, not only legal, but also institutional, as well as behavioral.

In the area of using budget funds, there are always prerequisites for various corruption manifestations and other abuses, which have a negative impact on the development of fair competition, ensuring publicity and transparency of regulated procedures. The obvious consequences of corruption violations in this area are financial losses of the budget.

However, the global result of corruption phenomena is the undermining of trust on the part of citizens and society to state structures and the state in general. We are also talking about the country's political losses.

The Russian public procurement market is constantly developing, the amount of funds allocated for purchasing goods, performing works and providing services for state and municipal needs is estimated in trillions of rubles[6]. At the same time, the budget obligations of the authorities and management are consistently fulfilled, and winning a competition (auction or other procurement procedure) for the conclusion of a state and municipal contract practically guarantees the volume of work, as well as payment for their performance. However, with the increase in transparency and accessibility of public procurement procedures, facts of cartel collusions of their participants have become regularly apparent. This is the "private" corruption in this area.

The "classic" scheme, long period practiced by unscrupulous participants in purchases, was that several companies were joining a cartel, identifying the so-called "favorite". All participants of the conspiracy submitted applications to participate in the procedure (auction, tender, etc.), then all but the "favorite" withdrew their applications. As a result of such actions, the customer was forced to enter into a contract at the initial (maximum) price with the single participant in the procedure. Other participants in the collusion either became subcontractors of the "favorite", or in subsequent procurement procedures conducted by this or other customers, the role of the "favorite" was performed by another participant in the collusion[7].

6 According to analytical reports of the Ministry of Finance of the Russian Federation, the unified procurement information system published notices on purchases under Law No. 223-FZ with a total amount of 16.9 trillion rubles and notices on purchases under the Contract system law with a total amount of 11.9 trillion rubles in 2018 (*See* https://www.minfin.ru/ru/perfomance/contracts/purchases/).

7 *See* for example: постановление ФАС Уральского округа от 29.06.2011 № Ф09-3639/11 по делу № А76-15247/2010-62-371 [resolution of the Federal arbitration court of the Ural district of 29.06.2011 No. F09-3639/11, case No. A76-15247/2010-62-371].

The fight against collusion between bidders, on the one hand, as well as between bidders and customers, on the other, has become the *main reason for the emergence of electronic auctions* in the field of public procurement. Transparent electronic procedures contribute by themselves to the development of competition at auctions, while the anonymity of participants (submission of the first parts of applications under numbers without specifying the names of participants) contributes to the appearance of players during the auction who do not have agreements with other participants, as well as with the customer.

However, the process of proving the fact of cartel collusion between bidders is incredibly complex, and therefore the relevant decisions of the antimonopoly authority are invalidated by the courts very often[8].

At the same time, most of the corruption violations of the law on public procurement are acts related to the deliberate provision of advantages in one form or another to "selected" economic entities. This is usually done by artificially creating obstacles for "undesirable" procurement participants.

In particular, one of the examples of possible collusion between the customer and the "favorite" who receives the right to conclude a contract is the incorrect formation of lots (including in one lot products that are technologically or functionally unrelated to the subject of purchase), specifying the technical characteristics of equipment in such way that the products of only one specific manufacturer meet the established requirements[9].

Corruption in public procurement cannot be eradicated or even significantly reduced by the authorities alone. In this case, the efforts of civil society institutions are extremely important. For this purpose, institutions of *public discussion and public control of purchases* are designed. Public participation in procurement planning and implementation is based

8 *See* for example: постановление Верховного Суда РФ от 03.02.2016 № 308-АД15-16778 по делу № А63-10543/2014 [decision of the Supreme Court of the Russian Federation of 03.02.2016 No. 308-АД15-16778, case № А63-10543/2014]; постановление ФАС Западно-Сибирского округа от 18.01.2012 по делу № А70-2259/2011 [resolution of the Federal arbitration court of West Siberian district of 18.01.2012, case № А70-2259/2011]; постановление ФАС Московского округа от 26.12.2013 № Ф05-13600/2013 по делу № А40-94472/12-17-918 [decision of Federal arbitration court of the Moscow district of 26.12.2013 № Ф05-13600/2013, case № А40-94472/12-17-918]; постановление ФАС Северо-Западного округа от 21.12.2010 по делу № А05-4248/2010 [decision of Federal arbitration court of the North-Western district of 21.12.2010, case № А05-4248/2010] etc.

9 *See* представление Счетной палаты РФ от 24.12.2014 № ПР 12-345/12-03 «О результатах контрольного мероприятия «Проверка целевого и эффективного использования средств федерального бюджета, внебюджетных источников и федеральной собственности в 2013 году и за истекший период 2014 года в области здравоохранения в федеральном государственном бюджетном учреждении «Р» Российской академии медицинских наук» [the performance of the Accounts Chamber of the Russian Federation of 24.12.2014 No. 12-345/12-03 "On the results of control measures "Inspection of target and efficient use of Federal budget funds, extrabudgetary sources and Federal property in 2013 and during 2014 in the field of health in the Federal state budget institution "R" of the Russian academy of medical sciences"].

on the *principles of the contract system* in this area, including the principle of openness and transparency, the principle of ensuring competition, as well as the principle of responsibility for the effectiveness of state and municipal needs, and the effectiveness of procurement (articles 6 – 8, 12 of the Contract system law). However, there is a problem of a different nature: a clear distinction between the powers of "professionals" and "social workers", the substitution of such concepts as "expert control" and "public expertise".

In general, public control in the area of public procurement contributes to their economic efficiency. The institute of public control was called into existence based on the need to build confidence in public procurement. There is no alternative to the institution of public control because the society must develop an understanding of what the state order is, why it is formed, and what its goals are.

Relations that develop in the process of state and municipal procurement are one of the main indicators of corruption in the country. In the process of material support for public needs any official has an opportunity to abuse their powers in order to obtain benefits for themselves or for third parties. Therefore, the state has no choice but to control its employees[10].

In recent years, Russia has been pursuing a consistent state policy in the field of harmonization of public procurement legislation in order to ensure high quality of execution of state orders and prevent the formation of unjustifiably high prices and corruption schemes.

It seems that the potential for corruption violations in the procurement procedure itself has been minimized to date. Such stages as procurement planning and acceptance of contract performance results should be recognized as corruption risk zones.

Successful improvement of legislation on public procurement depends, first of all, on the development of fundamental principles of procurement, taking into account foreign and international experience.

In this regard, the expansion of public procurement tools should be supported. We are talking about a variety of tenders (the introduction of tenders with limited participation and two-stage tenders, both open and

10 According to article 1 of the Federal law of December 25, 2008 No. 273-FZ "On combating corruption", corruption is understood as «abuse of official position, giving a bribe, receiving a bribe, abuse of authority, commercial bribery or other illegal use by an individual of their official position contrary to the legitimate interests of society and the state in order to obtain benefits in the form of money, valuables, other property or services of a property nature, other property rights for themselves or for third parties or illegal provision of such benefits to the specified person by other individuals» // СЗ РФ. 2008. № 52 (часть 1). Ст. 6228 [Legislation Bulletin of the Russian Federation. 2008. No. 52 (1 part). Art. 6228].

closed), as well as the use of other competitive procedures for concluding public contracts: request for quotations and request for proposals. This approach (using other competitive procurement methods in addition to bidding) is consistent with the principle provisions of the UNCITRAL Model law on public procurement of July 1, 2011[11].

It should be noted that corruption can manifest itself at different stages of procurement, including during the implementation of the terms of the contract. That is why the fight against corruption cannot be reduced to choosing the optimal method of procurement. For example, a fairly common corruption violation is the so-called "sharpening": the description of requirements for participants or for the delivered product, or for the result of work is done in such a way that allows you to immediately limit the range of possible applicants for participation in the procurement procedure.

The introduction of so-called "catalog" purchases is intended to counteract such violations by state (municipal) customers. Of course, the formation of *the catalog of goods, works, and services for state and municipal needs*, its maintenance and placement in a unified information system requires time (the relevant provisions of article 23 of the Contract system law came into force in 2017). The Ministry of Finance of the Russian Federation is responsible for creating and maintaining the catalog of goods, works, and services for state and municipal needs in the unified procurement information system.

It seems that the introduction of catalog purchases has a huge anti-corruption potential, since this mechanism deprives the state (municipal) customer of the ability to describe the product, work, or services at its discretion. Customers will only have to select the purchase items that are provided in the catalog after the introduction of such purchases. Maximum possible reduction of the customer's discretion at all stages of procurement is the main anti-corruption mechanism laid down in the Contract system law.

It is appropriate to focus on other anti-corruption standards of the Contract system law, which are equally related to *the typing of procurement terms*.

As noted above, anti-corruption cannot be reduced to compliance with the procedural requirements for procurement, since a variety of goods, including expensive ones, can be purchased in strict accordance with the established procedure. In this regard, the Contract system law provides conditions for *rationing and planning* of purchases. Rationing is

11 Adopted in Vienna on 01.07.2011 at the 44th session of UNCITRAL // https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement

necessary in order to prevent the purchase of luxury goods, goods with excessive consumer properties (part 2 of article 19 of the Contract system law). Rationing should also be attributed to the typing of purchasing conditions: the customer should not be able to decide at its own discretion what it should buy, the standard costs for providing the functions of a particular customer will already be determined in advance.

It seems that the implementation of these requirements will help to counteract corruption long before the actual conduct of a specific procurement procedure.

An important anti-corruption measure, which is being introduced into the modern practice of public procurement, as it seems, will gradually become *standard contracts and standard contract terms.*

The procedure for concluding a state (municipal) contract is almost completely consistent with the design of the contract of accession (article 428 of the Civil Code of the Russian Federation), all contract terms are formulated by the customer, the draft contract is an integral part of the procurement documentation. Moreover, negotiations between the customer, members of procurement commissions with the procurement participant are imperatively prohibited, in accordance with article 46 of the Contract system law.

Thus, in the process of concluding a state (municipal) contract, there is no expression of will on the part of the procurement participant, the terms of the contract are not developed jointly by the parties, the procurement participant accepts the "game rules" proposed by the customer. If these rules do not suit him, he simply does not participate in this procedure. The participant cannot "break through" this algorithm for concluding a contract; his capabilities are reduced only to attempts to indirectly influence the change in the terms of the contract: by sending a request for clarification of the documentation and by sending a complaint to the supervisory authority (these actions are possible at the stage of filing applications).

This situation generated in practice a lot of corruption violations of the following nature: the customer formulated in the draft contract obviously impracticable, enslaving (that is, extremely unprofitable or obviously impracticable) conditions for fulfillment of obligations, which frightened off applicants undesirable for the customer and at the same time ensured victory or "direct" conclusion of the contract with "their" procurement participant (for example, many customers practice setting the shortest possible time for the delivery of products or work).

Currently, federal executive bodies, as well as state corporations «Rosatom» and «Roskosmos», have developed model contracts that are

placed in the *library of standard contracts and standard contract terms* in a unified procurement information system (part 11 of article 34 of the Contract system law). Standard contracts and standard contract terms consist of two parts:

1) constant (not subject to change when applied to a specific purchase);

2) variable (providing for the possibility of selecting one or more options for the conditions from the proposed exhaustive list of such options for conditions defined by the responsible authority in the standard contract, standard contract terms, as well as the possibility of entering information on the conditions of a particular purchase, the content of such conditions and the procedure for determining such content).

It seems that this measure will significantly limit customers in the possibility of manipulating the terms of the contract, "cutting off" "unwanted" suppliers from participation in the procurement.

The preparation of model contracts at the federal level is quite difficult, but to date, more than thirty model contracts have been approved[12].

For a long time, one of the most favorable conditions for the production of corruption in the system of state municipal procurement was the lack of a *procedure for determining the initial (maximum) price of contracts*, as well as the *methodology for analyzing the average market prices for purchased products* (goods, works, services). This inevitably gave rise to the arbitrary establishment of such a cost of goods, work, services, which in some cases was many times higher than the purchase prices established on the market.

12 *See* приказ Минсельхоза России от 19.03.2020 № 140 "Об утверждении типового контракта на поставку продуктов питания" [order of the Ministry of Agriculture of Russia of 19.03.2020 No. 140 "On approval of a standard contract for the supply of food"], приказ Минпромторга России от 27.12.2019 № 5090 "Об утверждении типового контракта на оказание услуг по ремонту электронного и оптического оборудования для обеспечения государственных и муниципальных нужд, информационной карты типового контракта на оказание услуг по ремонту электронного и оптического оборудования для обеспечения государственных и муниципальных нужд" [order of the Ministry of Industry and Trade of Russia of 27.12.2019 No. 5090 "On approval of a standard contract for the provision of repair services for electronic and optical equipment to ensure state and municipal needs, an information card of a standard contract for the provision of electronic and optical equipment repair services to meet state and municipal needs"], приказ Минкультуры России от 10.06.2019 № 745 "Об утверждении типовых контрактов в сфере культуры" [order of the Ministry of Culture of Russia of 10.06.2019 No. 745 "On approval of standard contracts in the field of culture"] etc. The library of standard contracts and standard contract terms is available here https://zakupki.gov.ru/epz/btk/quicksearch/search.html

Currently, article 22 of the Contract system law regulates in detail the process of determining and justifying both the initial (maximum) price of a contract and the price of a contract concluded with a single supplier. The Ministry of Economic Development of the Russian Federation has developed Methodological recommendations on the application of various methods for determining and justifying prices[13].

These measures are not only designed to counteract corruption in the procurement of goods, works, services at inflated prices, but are also aimed at achieving budgetary savings (regardless of corruption violations, but to avoid objective errors by customers in the pricing process).

It should be noted that even with an adequate initial price of the contract for bidding, only one application can be submitted, and bidding with a single participant, as is known, is recognized as failed. The lack of competition at the auction disavows the saving of budget funds because non-competitive bidding can be caused by objective reasons, and not just targeted actions of the customer. In order to prevent corruption at this stage of the procurement (conclusion of a contract as a result of the recognition of a failed competitive procurement), the Contract system law provides for a *procedure for coordinating the conclusion of a contract with the supervisory authority (Federal Antimonopoly Service)* (clause 25 part 1 of article 93 of the Contract system law).

Unfortunately, this procedure is still imperfect, practice shows cases of arbitrary refusal by the regulatory authorities to coordinate the conclusion of a contract with a single participant in the procurement procedure. The procurement participants, who turned out to be "the only ones", try in vain to defend their interests in court[14]. It is in vain – because even obtaining a positive court decision declaring the inaction

13 *See* приказ Минэкономразвития России от 02.10.2013 № 567 "Об утверждении Методических рекомендаций по применению методов определения начальной (максимальной) цены контракта, цены контракта, заключаемого с единственным поставщиком (подрядчиком, исполнителем)" [order of the Ministry of Economic Development of the Russian Federation of 02.10.2013 No. 567 "On approval of the Methodological recommendations on the application of methods for determining the initial (maximum) price of a contract, the price of a contract concluded with a single supplier"].

14 *See* for example: постановление Арбитражного суда Восточно-Сибирского округа от 27.03.2015 № Ф02-831/2015 по делу № А69-2870/2014 [resolution of the Arbitration Court of the East Siberian District of 27.03.2015 No. Ф02-831/2015, case No. A69-2870/2014]; постановление Арбитражного суда Дальневосточного округа от 27.02.2015 № Ф03-6366/2014 по делу № А73-9526/2014 [resolution of the Arbitration Court of the Far Eastern District of 27.02.2015 No. F03-6366/2014, case No. A73 -9526/2014]; постановление Арбитражного суда Западно-Сибирского округа от 25.03.2015 № Ф04-16165/2015 по делу № А45-10833/2014 [resolution of the Arbitration Court of the West Siberian District of 25.03.2015 No. Ф04-16165/2015, case No. A45-10833/2014]; постановление Второго арбитражного апелляционного суда от 29.09.2014 по делу № А28-5837/2014 [resolution of the Second Arbitration Court of Appeal of 29.09.2014, case No. A28-5837/2014]; постановление Десятого арбитражного апелляционного суда от 08.08.2014 по делу № А41-18249/14 [resolution of the Tenth Arbitration Court of Appeal of 08.08.2014, case No. A41-18249/14]; решение Арбитражного суда Свердловской области от 19.06.2014 по делу №

of the control body illegal is not providing for the real restoration of the violated rights and legitimate interests of the procurement participant.

Nevertheless, this procedure is very necessary, since it is aimed at eliminating collusion between the customer and the sole participant in the procurement, when the uncompetitive situation is not due to objective reasons, but is modeled by the customer maliciously (by establishing requirements for the procurement object, procurement participant, and formulating enslaving conditions for fulfilling contractual obligations and so on). This is an additional verification of compliance with the requirements of the Contract system law, carried out on the eve of the conclusion of the contract on the basis of the failed competitive procurement procedure[15].

It is worth noting that the conclusion of the contract is not subject to approval by the supervisory authority in all cases, but only when tenders and requests for proposals are declared invalid.

The savings achieved in course of state and municipal procurement may in some cases have nothing to do with budget savings per se. For example, if there is dumping in the procedure, i.e. the application wins with a clearly underestimated ("bargain") price, there is a risk that the contract will not be properly executed. There is savings during the conclusion of the contract, but upon completion of the contract there is nothing.

From the foregoing it follows that the price of a won contract is an important, but not the only indicator in the fight against corruption in public procurement.

In this regard, the *anti-dumping measures* regulated in article 37 of the Contract system law deserve a positive assessment. Their essence is to increase the requirements for the size of the contract execution security or, under certain conditions, to establish the requirement to disclose information confirming the good faith of the procurement participant (in the form of experience in the execution of state or municipal contracts confirmed by the registry of contracts for a certain period of time). It seems that these measures will help to counteract corruption conspiracies between procurement participants to the detriment of public interests.

An important anti-corruption barrier in the light of what has been said is the inclusion in the Contract system law (article 94 and others) of norms on *acceptance and examination of contract execution, as well as reporting.*

A60-18543/2014 [decision of the Arbitration Court of the Sverdlovsk region of 19.06.2014, case No. A60-18543/2014] etc.

15 According to the data provided in the report of the Ministry of Finance of Russia, in 2018 the Federal Antimonopoly Service of Russia (FAS) considered 2,561 appeals on agreeing on the possibility of concluding a contract with a single supplier; in 93% of cases the possibility of concluding a contract was approved by FAS// https://www.minfin.ru/ru/perfomance/contracts/purchases/

Procurement is a legal procedure – it embodies a certain sequence of actions by customers up to the execution of the contract (clause 3 of article 3 of the Contract system law). Moreover, one of the principles of the contract system proclaimed the principle of the effectiveness of procurement (articles 6, 12 of the Contract system law). The above standards correspond to article 94 of the Contract system law, dedicated to the specifics of contract execution.

So, the execution of the contract includes a set of specific measures that are implemented after the conclusion of the contract and aimed at achieving the goals of the procurement. Among these measures, a special place is taken by the examination of the delivered goods, the results of the work performed, the services rendered. According to part 3 of article 94 of the Contract system law, to verify the results provided by the supplier, provided by the contract, in terms of their compliance with the terms of the contract, the customer is required to conduct an examination. Such an examination may be carried out by the customer on their own or experts, expert organizations may be involved in conducting it based on concluded contracts.

How should the customer decide on the candidacy of an expert who could verify the results of the contract?

In its most general form, an expert (from Latin «expertus» – experienced) is a qualified specialist in a certain field, involved in research, consulting, development of judgments, conclusions, suggestions, and examination.

According to paragraph 15 of article 3 of the Contract system law an expert or an expert organization is an individual with special knowledge, experience, qualifications in the field of science, technology, art or craft, including an individual entrepreneur or a legal entity (employees of a legal entity must have special knowledge, experience, qualifications in the field of science, technology, art or craft), which carry out activities on the basis of the contract to study and evaluate the subject of examination, as well as to prepare expert opinions on questions posed by the customer or the procurement participant.

The involved expert (expert organization) must also comply with the requirements for the absence of a conflict of interest provided for in article 41 of the Contract system law (this norm is aimed at ensuring the objectivity of the expert during the examination).

There is no normative document that would establish uniform requirements for experts in Russia. Therefore, experts are selected, as a rule, depending on the subject of the contract itself[16]. In any case, the

16 *See* for example: Положение о проведении экспертизы некачественных и опасных продовольственного сырья и пищевых продуктов, их использовании или уничтожении, утв. постановлением Правительства РФ от 29.09.1997 № 1263 // СЗ РФ. 1997. № 40. Ст. 4610 [Regulation on the examination of substandard and dangerous food raw materials and food products, their use or destruction, approved Decree of the

choice of a person who can be considered an expert in a certain field of activity is determined by subjective assessment, subjective decision of the customer.

A situation is obvious in which the results of the expert's work will be checked by the customer himself. But what is the value of such a check, "examination of the results of another examination"? In one case, the customer cannot be an expert, but in the other, he himself will be an expert in relation to a third-party expert.

An examination of the results of contract execution is necessary of course, but it should not be universal, but strictly selective. In addition, it is unreasonable to provide the opportunity for the examination to the customer. In this case, the examination is no different from the acceptance, its isolation is clearly artificial, the customer cannot and should not act as an expert.

It should be noted that the involvement of third-party experts and expert organizations contributes to conflict situations between the customer and the supplier[17].

In conclusion of the presented analysis, we note that Russian legislation on public procurement is very progressive in nature, provides for a significant number of anti-corruption mechanisms, the introduction of which into legislative norms is due to the investigation and systematization of detected corruption violations.

However, the effectiveness of anti-corruption measures in the field of public procurement is associated not only with tightening, but in some cases with a softening of the legislative regime. There are many difficulties associated with overcoming the conflict of interests in state and municipal procurement; it is simply impossible to calculate many conflicts of interest (between colleagues, friends, etc.). In addition, the law does not prohibit corporate conflicts of interest and does not provide for standards protecting the interests of a person who claims to have committed a corruption violation.

An analysis of anti-corruption law enforcement practice and positive foreign experience seems to be extremely necessary in the process of improving the Russian public procurement legislation.

Government of the Russian Federation of September 29, 1997 No. 1263 // Legislation Bulletin of the Russian Federation. 1997. No. 40. Art. 4610].

17 *See* постановление Арбитражного суда Волго-Вятского округа от 13.01.2016 № Ф01-5492/2015 по делу № А31-7128/2014 [resolution of the Arbitration Court of the Volga-Vyatka District of January 13, 2016 No. F01-5492/2015, case No. A31-7128/2014].

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