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INTEGRATION OF TOOLS OF THE INSTITUTE OF EVALUATION IN THE PROCEDURES OF SUBSTANTIATION OF THE INITIAL (MAXIMUM) CONTRACT PRICE IN PROCUREMENT ACTIVITIES

ABSTRACT

Analysis of the legal and economic provision of the public procurement system and the features of control and monitoring procedures in the current model of public procurements in Russian federation is an important issue to ensure the competition. We have highlighted major innovations and weaknesses in the regulations and the results of the control procedures in the planning, allocation, evaluation and control stages. We have formulated the conclusions and recommendations on improving the effectiveness of the public procurement control system in Russia through the integration of advanced tools for valuation and inclusion in the process of control activities and the formation of expert opinions regarding the justification and confirmation of the cost characteristics of the contract in field of the state order and procurement of state corporations. Specificity of institutionalization of control processes in the mechanism of public procurement has been overviewed.

Theoretical and practical basis for improving the system of public procurement control in Russia have been examined. An approach is figured out, how to further regulate control procedures in the contract system in order to ensure a qualitative impact on procurement processes.

KEY WORDS

PUBLIC FINANCES, STATE ORDER, CONTRACT SYSTEM, CONTROL, CUSTOMER, PARTICIPANT, PROCUREMENT PROCESS, PERFORMANCE EVALUATION, VALUATION, PROCUREMENT PROCEDURES CONTROL, EVALUATION TOOL.

INTRODUCTION

A key element in the improvement and functioning of the public and private sectors of the economy is the procurement system. It is the subject of many discussions in the researchers', economic and political communities. Experts from different branches of knowledge study the existing procurement mechanism with a view to make proposals on how to improve its efficiency. The agenda

of reforming of the described mechanism is also considered [Kudryavtseva T. Yu., 2013; Korytsev M. A. 2015]. The special social and economic importance of the state order on a national scale is explained by the fact that purchases of goods (works, services) are necessary to ensure state and municipal needs. Achieving the goals of strategic development and increasing the efficiency of spending budget funds require rational interaction of participants. The public procurement system serves a significant share of domestic demand.

OPERATION OF THE PURCHASING MECHANISM

The procurement field has undergone a number of significant institutional changes as a result of the adoption of a number of federal laws [Federal Law 2013; 2011; 2012; Order of the Ministry of Energy 2014; Order of the Ministry of Economic Development, 2013]. Moreover, the mechanism of the procurement system has been created, which is constantly being changed in order to improve its efficiency and promote the development of the state economy, the institution of public procurement. Efforts are being made to establish mutually beneficial relations between various economic agents.

Particular attention is paid to the state procurement of goods, works, services to satisfy national needs and the needs of state corporations. Improving the effectiveness of the materialization of budgetary funds is a cornerstone issue in the country's socio-economic development strategy [Decree, 2008]. Starting from 2016, the total volume of the state order market, including purchases of state corporations, reached 30 trillion rubles, or 25% of GDP [Artemyev I., 2016], which indicates an absolute importance of further improvements in the procurement system, especially for effective control, monitoring and justification of contract costs.

The mechanism of state orders includes such basic elements as legislative base, planning, allocation, monitoring, execution, control [Pratura O. S., 2016]. Thus, the procurement process itself turns into a regulated multi-stage cycle. Systematization of processes, computerization of procedures, and control and monitoring functions [Federal Law, 2013, art. 6] are assigned to the Federal Antimonopoly Service, the Accounts Chamber, the Federal Treasury and their regional offices. Nevertheless, in the procurement activities, there are still corruption problems, including non-earmarked spending in public procurements, intentional theft of funds and illicit payoffs [Serkov D., Kozlov V., 2017]. Relevant are not only the issues of the control over formal procedures for contracting, but also of entire cycle of public procurement, from the planning stage to expert analysis. The main goal of this approach is to reduce the risks of illegal and improper use of budget funds. Control in the sphere of state procurement is carried out at different levels: it can be departmental, public, as well as in the form of planned and unscheduled inspections of control bodies, and internal control by the customer [Demakova E. A., 2013].

Each element of the state procurement mechanism has its own specifics and requires the preparation of justifications, protocols (documentation and information support requirements are presented in [Federal Law, 2011, Article 4, Federal Law, 2013, Article 4, Federal Law 2012, Article 15] and the application of monitoring and audit procedures at each stage of the procurement process. An integrated approach to the functions of control, monitoring and delineation of powers should be considered as the most significant innovation. Of course,

control and monitoring measures to assess the quantitative and qualitative parameters of the implementation of formalized procedures for information support for planning, placement and execution of the contract enhance the efficiency of the procurement mechanism. This article examines the effectiveness of existing approaches to control and monitoring procedures, the informative nature of the results of these procedures and ways to improve their effectiveness.

KEY DIRECTIONS OF MODERNIZATION OF CONTROL PROCEDURES

Based on an analysis of the requirements of federal legislation [Federal Law, 2013 Art. 22; Regulation 2017; Order of the Ministry of Economic Development of 2013], it seems possible to draw a number of conclusions. First, in the legislative framework described above, the requirements for verifying the correctness of the choice of the method for determining and justifying the calculation of the initial maximum contract price (IMCP), that is, in fact the requirement is formalized. Obviously, control and monitoring activities are aimed only at identifying shortcomings in documentary turnover, which in turn opens up opportunities for corrupt conspiracies. Secondly, there is an obvious vulnerability of the legislation regarding the definition and justification of IMCP according to the described methodology (for example, in the case of deliberate overstatement). This approach is also possible in cases where the customer seeks to limit the number of participants by making unreasonable demands on the purchased works, goods, services (example: [Decision, 2014]).

Thirdly, the lack of requirement for formulated inquiries and confirmations of market analysis data (the law explicitly states that such information can be a "screenshot") is fraught with the use of paid-for analytical reviews. Separately outlined are the procedures of rationing and the creation of documentation on rationing [Smotrinskaya I. I., Shuvalov S. S., 2017; Poroshin S. A., 2016]. Under the regulation in the procurement sphere, it is understood that the requirements for the goods, work, services purchased by the customer (including the marginal price of goods, works, services) and (or) standard costs for ensuring the functions of state bodies, subordinated institutions, municipal needs, budget institutions and territorial bodies. The Government of the Russian Federation determines the rules of rationing in the sphere of procurement to ensure state and municipal needs, including:

- general requirements to the procedure for development and adoption of legal acts on rationing in the sphere of procurement, content of those acts and ensuring their implementation;
- general rules for determining the requirements for certain types of goods, works, services (including the marginal prices of goods, works, services) purchased by customers and the standard costs for ensuring the functions of state bodies, government extra-budgetary funds, etc.

PROPOSALS TO IMPROVE EFFICIENCY OF CONTROL PROCEDURES IN CONDUCTING THE STATE PROCUREMENT

Attention should also be paid to the published reports on the results of inspections and monitoring of compliance with the requirements of legislation in the field of public procurement. They are published on the official websites of the Ministry of Finance of the Russian Federation [Monitoring Procurement, [without year]] and the Uniform Information System in the Procurement Area [Official Website, [without year]]. The main tasks of the audits and monitoring are mainly the quantitative analysis of the functioning of the system of procurement of goods, works, services by certain types of legal entities and evaluation of the achievement of the objectives [Federal Law 2011; 2013]. This information is of a reference nature and not only does not contribute to solving existing problems in the public procurement system, but neither it solves the problem of increasing the efficiency of the system as a whole. On the basis of these documents, it is impossible to assess the effectiveness of the system, and it is only possible to analyze the impact of the changes introduced over the volume of the public procurement market [Istomina E. A., 2014; Sedova M. V., 2014].

In the public procurement system for a long time there is the problem of cartel price-fixing on the one hand, the conspiracy of the customer and the executor, as well as derivatives from them, on the other hand. Its solution is the main criterion of the effectiveness of the procurement system as a whole, achievement of competitive prices with sufficient quality of products, timely provision of state and municipal needs. In case of a cartel, several firms in the auction reduce to minimum the price of a company on the background of the constant prices of others, thereby the winning is achieved. During 69 digital auctions, "FARGO" LLC and "Farmakon" JSC resorted to this scheme [Appeal, 2018]. This scheme is not unique: for example, 437 auctions were executed with violations of competition by the companies "Terra" and "Company FITO" in the bidding process for a total of more than 1.5 billion rubles. [Novosibirsk, 2018].

A new tool of a cartel can be called an auction robot as a response of unscrupulous contractors to the challenges of the digital economy. Programmable limits of price reduction in the given ranges allow the customer to make a choice in favor of an unscrupulous participant [Titarenko E., 2017].

The conclusions are prepared by the experts who are aware of flaws in the public procurement system. Considering examples of conspiracy between the customer and the executor, the experts identify the following problems in the formation of procurement documentation:

- reduction in the timing of a typical product realization for the benefit of a particular participant (the participant, as a rule, started realization before the bidding);
- understated price of the contract, compensated by additional contracts;
- absence of the specificities or the extremely detailed description of the object of procurement, intricate

contracting conditions, which allow to exclude specific executors [Vorontsov P. P., 2018]. For the present, the analytics related to those cases remain non-public and cannot be publicly evaluated. Based on the results of the analysis, the Federal Antimonopoly Service can issue warnings and conduct inspections.

When discussing changes into the federal law [Federal Law, 2013], a gradual transition to e-procurement to identify suppliers is declared. As long as for the present, there is no proper analysis and preventive regulatory measures in relation to software products that provide cartels with a winning in the procurement competition, this measure seems premature.

The upcoming changes in the procurement process of individual legal entities [Project, 2015], changes according to which will take effect from July 1, 2018, will ensure convergence of federal laws [Federal Law 2011; 2013], in terms of non-competitive and competitive procurement methods, with mandatory electronic procurement from small and medium-sized businesses (Law, 2018). A regulation is introduced, implying the submission of an appeal exclusively by the participants in the procurement who have submitted an application. This regulation can be associated with a significant corruption risk, when the filing of applications is hampered by the cartel representatives or directly by the customers who have conspired with the executors. The new draft envisages limitations: in the process of consideration of complaints, only the arguments contained in a certain complaint are taken into account. As a result, dishonest procurement participants will have the opportunity to influence bona fide participants and limit the applicant's ability to engage the antimonopoly authority to verify the terms of the procurement. Finally, an important, from our point of view, but not sufficiently developed is the mandatory indication of the qualitative, technical and functional characteristics of the items of procurement, the need to supplement the documentation with the phrase "or equivalent" when specifying a specific trademark. This is a step towards the normative consolidation of the quality component of the purchased products along with the price component, however, as experts say, without the sectoral specification, structuring, cataloging and standardization of products, this norm will provoke deliberate obstacles to purchases due to excess specificities and exclusion of the competitors.

Thus, the development of the procurement system at all stages does not contribute to improving the efficiency of procurement and leaves a significant resource for creating corrupt schemes. As a measure to improve the methods for verifying information support and conducting control and monitoring procedures, it is proposed to use an expert opinion to prove the justifiability of the IMCP and of the final cost of the concluded contract [Kislitsky M. M., Egorov V. A., 2016]. The conclusion will contain information on the results of a survey conducted by specialists using valuation techniques and market analysis. The results of the study may represent a certain interval of cost, acceptable in the determination of IMCP and total amount of the contract. Obviously, the creation of such a document requires certain skills and professional knowledge. It is necessary to determine the circle of responsibility of the specialists, and the requirements for qualifications of the authors of the opinions, for example, experience or employment history in

the field of procurement, experience in use of valuation tools, including the mass ones; there may be requirements for the position, for example, work in scientific sphere, having an academic degree, which will avoid affiliation of individuals and corruption conspiracies of the participants in procurement. The given opinion will find wide application at carrying out and generalization of results planned and unscheduled audits by the control bodies in field of the state procurements and purchases of state corporations.

An expert opinion is a documentary evidence, widely used in the proceedings, including when considering cases in the field of public procurement. An analysis of the arbitration practice for considering such cases (examples: the decision of the Arbitration Court of the Republic of Tatarstan dated April 11, 2017 in case No. A65-79/2017, in which the third person acts as a specialist – MBU "Institut Kazgrazhdanproekt", Decision of the Arbitration Court of Moscow dated May 28, 2018, in case No. A40-5077/18, 64-38, Resolution 17 of the Arbitration Court of Appeal dated February 15, 2018, in case No. A60-40960/2017, Resolution of the Arbitration Court of the Moscow District dated January 9, 2018 in case No. A40-83040/2016, Decision of the Arbitration Court of the City of St. Petersburg and Leningrad Region dated 02 June 2016 in case No. A56-6623/2016) allows us to deduce that expert opinions are often used, experts are attracted to participate in the trials. In the expert opinion, the answers may be given to the questions about the validity of government procurement, IMCP, the amount of contract, the quantitative and qualitative characteristics of goods, works or services are determined, facts are given, commonly known to the specialists of a specific field of knowledge, within the framework of which the procurement procedure is carried out. Such generally-known or widely known may be published materials and data (for example, statistical data of the state statistical services, various statistical collections, in which data is presented for calculations and adjustments within the framework of valuation [Reference books, 2018; Valuers and Surveyors, [without year]], [Verification, 2018], widely used by the experts in the field of assessment activities). The tool has a good potential for application both in the area of purchasing goods that are in a free sale or whose turnover is limited, and which have restrictions on turnover [Civil Code, 1994, Art. 129].

CONCLUSION

It is advisable to consolidate all key provisions of an expert opinion as standard requirements, this will ensure uniformity and speed up the document circulation process. In preparing the expert opinions, it is necessary to take into account the specifics of the field of procurement and activities of participants, to apply methods of grouping according to characteristics of procurement objects and areas to them, to update them in accordance with changes in legislation and in conditions of the economic situation.

Improving the legislation and expanding the scope of the competence of the controllers (not only verifying the correctness of the document circulation, its completeness and observance of the deadlines, but also the formation of legally significant, substantive documents regarding determination of the

IMCP and the final amount of the contract) will improve the quality and efficiency of the audits, prevent the procurements at high prices.

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