

**Intergovernmental Group of Experts on Competition Law and
Policy**

Geneva, 9-11 July 2012

**Competition Policy and Public Procurement
by
Russia
(Unofficial Translation)**

The legislation on Public Procurement (PP) that was in effect before 1st of January 2006 did not allow creation of conditions for development of fair competition in the sphere of public procurement (PP) and included many possibilities for abuse in PP by means of awarding PP contracts to “affiliated” suppliers, that significantly limited potential of other suppliers to access the market of PP.

Absence of unified approach of rules and procedure of PP conduction on every level of government functioning, possibility to establish any subjective requirements to tender participants, and as a consequence lack of competition, high level of corruption, absence of easily accessible sources of information on tenders; all of the above are the features of the of the legislation that was in effect before the 1st of January 2006. The new Federal Law on procurement 94-FZ of 21 of July 2005 “ «On Placement of Orders to Supply Goods, Carry out Works and Render Services for Meeting State and Municipal Needs” (hereinafter – the Law 94-FZ).

The Law 94-FZ reformed and changed the system of PP in the Russian Federation in principle, by establishing unified common PP rules on the whole territory of the Russian Federation. Key characteristics of the Law 94-FZ are:

1. Maximum transparency of information. The obligation to advertize the tender and place all related information on the official web-site in the Internet is established (from information on tender to tender contract fulfillment).

2. The prescribed list of requirements to tender participants is established as well as introduction of transparent and easy to manage formal requirements to tender participants (legitimacy, having license etc). Unconditioned qualification requirements are substituted by financial guarantee of quality contract fulfillment. Thus unconditioned administrative requirements were substituted by economic pre-qualification. The register of dishonest suppliers is instituted (it presupposes exclusion of such suppliers from PP tenders participation).

3. The list of limited number of cases relating to placement of PP with a single supplier is instituted, and such subjective concepts as “high urgency”, “extreme necessity to place PP without tendering procedure” are excluded (previously there was a possibility to make a decision on using single supplier for PP) .

4. A new form of tendering procedure is instituted – open auction in the electronic form (e-auction), that excludes subjectivism during evaluation of suppliers’ offers by procurement entity. When open auction in the electronic form is conducted the procurement entity sets all the necessary requirements in the tender documentation on quality of goods (works or services) and terms of shipment (fulfillment). In case if the supplier’s offer does not correspond to the required quality level set by the procuring entity the supplier is nor admitted to tender participation regardless of the price he offers. In case the supplier offers goods or services of the required quality then he participates in competitive bidding based on the price of the contract without any other subjective requirements.

Electronic auctions are conducted on 5 specially selected electronic platforms, that allows to accumulate there large amount of suppliers that in its turn significantly increases competition, makes the functioning of e-platforms more effective and makes control by authorities over activities of e-platforms easier.

Transition to conduction of e-auctions as the main form of PP placement on a limited number a e-platforms assure high effectiveness of tenders and minimization of risks of digital (electronic) fraud (collusion). E-auctions proved to be an effective measure of preventing collusion and serve as an instrument of creation of competitive environment with strictly set quality requirements. Moreover the establishment of all over Russia single PP web-site and transition to e-auctions as the main form of PP placement became the enormous technological breakthrough and all of work with the above mentioned electronic resources is conducted with the use of digital electronic signature (DES).

Transition to e-auction - is a step in creation of common economic space, automatic introduction of information technologies on all the territory of Russia, guarantying max level of competition, fight against corruption and bid rigging at tenders.

5. The provision on non-possibility of contract terms and conditions changing in

concluded PP contracts. The previous PP legislation (before 1st of Jan 2006) allowed to freely change terms of contract inclusive of contract price, that in fact meant ineffective conduction of PP and lead to uncontrollable rise contract price.

6. The Law 94-FZ established administrative procedure of appeal against activities of procurement entities that limited the rights and legitimate interests of tender participants. Before adoption of the Law 94-FZ tender results could be appealed against only in court. By the time the court decision is made the contract had been fulfilled already. In fact it means impossibility of effective appeal against unfair conduct from procurement entities and corruptive behavior from suppliers' side. Moreover administrative liability for violations of PP legislation for procurement officials was introduced.

First economic effect of the Law 94-FZ was sharp price drop of procurement, especially especially conducted in the electronic form: since the adoption of the Law 94-FZ (2006 – 2011 гг.) aggregated economic effect (saving of budget fund) upon PP placement mounted to more than составила более 1 448 billion Rubles (approx/ more than 36 Billion Euro).

It is worth mentioning that the max economy is reached by conduction of open tenders. Thus the economy of the Federal budget fund increased more than two times by means of introduction of electronic tender: year 2009 – 71 billion Rubles, year 2010 – 171 billion Rubles, year 2011 – 180 billion Rubles.

One of the most important key achievements of the PP legislation is the well developed information provision on PP tenders – and realization of one of the main goals and principles of the Law 94-FZ – openness and transparency of Public Procurement.

On the 1st of January 2011 the official all over Russia Public Procurement web-site www.zakupki.gov.ru became fully fictional. Information on all PP tenders in Russia is published there (requirement of the Law)..

Placement of tender information in the internet, possibility to access all information on tenders free of charge create positive environment for competition development and opening of the PP market for a large amount of suppliers and contractors (more participants in every PP tender or auction).

Due to the Law 94 FZ the internet became the main source of information on

public procurement tenders (auctions) placed in all regions of Russia. At the present time the official site hit rate is more than 8 million a day and number of officily registered procurement entities approx. 209,5 thousand.

Moreover public procurement became the subject of public attention and control by society that is proven by the numerous quotations and links to the web-site www.zakupki.gov.ru in the mass media.

But the reform of the public procurement which was marked by the adoption of the Law 94-FZ is not yet finished. The improvements are required at the present time on the following key issues:

- detailed regulation of all stages of procurement placement: from planning and placement to contract fulfillment and analysis of the acquired results.
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- centralization of public procurement – public procurement placement mainly through authorized representative units: substitution of 209,5 thousand single procurement entities by 2-3 thousand authorized procurement centers.;
- detailed procedure of explanation of setting starting (maximum) price of the contract;
 - fast track procedure of contract termination through the FAS Russia in case of wrong-doing according to terms of contracts (within 10 days);
- centralized registers of financial guarantees ;
 - establishment of additional requirements (criteria) to the supplier on the basis of fulfillment of the previous contracts;
 - organizing the register of improper suppliers not only according to the names of organizations but also including the names of the managers;
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