DOI: 10.22394/2070-8378-2017-19-2-27-31

PUBLIC PROCUREMENT: REGIONAL PRACTICE OF LEGAL REGULATION AND ENFORCEMENT

INNA YU. TIMOFEEVA, **Dr. Sci. (Economy), Associate Professor at Smolensk branch of Russian Presidential Academy of National Economy and Public Administration (214025, Russian Federation, Smolensk, Churilovsky Tupik, 6/2). E-mail: innatimoff@mail.ru;**
ARTEM I. TIMOFEEV, **senior legal adviser, Ministry of Internal Affairs of Russia in Smolensk Region (214000, Russian Federation, Smolensk, ul. Dzerzhinskogo, 13). E-mail: smolensk1989@yandex.ru**

Abstract: The article is dedicated to the analysis of public procurement system in the regions of the Russian Federation following the results of the introduction of an amended Federal Law of April 05, 2013 No. 44-FZ "On Contract System in the Sphere of Procurement of Goods, Works, and Services for State and Municipal Needs". A considerable number of amendments to the law, along with the issues of its enforcement on the example of the Smolensk Region, determine the relevance of the study.

The article reflects the main trends of law enforcement in the field of public procurement, systemizes the organization of public procurement at the regional level, and comprises conclusions on the advantages and disadvantages of the applicable contract procedures. Based on research the authors have substantiated the need of economic and legal methodological support for the uniformity (conformance) of the practice of state customers and budget institutions for the effective organization of public procurement in the regions. According to the authors, organization and management of competitive bidding, is a comprehensive economic and legal tool that boosts the efficiency of public spending, facilitates the development the national economy and competition, ensuring publicity and transparency in procurement, and acts as an effective mechanism to counter corruption.

Taking into consideration the proven efficiency of the joint trading sessions, it is proposed to extend their usage practice, that can improve the economic safety of the region.

Keywords: public procurement, transparency rating, joint procurement, corruption control

ГОСУДАРСТВЕННЫЕ ЗАКУПКИ: РЕГИОНАЛЬНЫЙ ОПЫТ ПРАВОВОГО РЕГУЛИРОВАНИЯ И ПРАВОПРИМЕНЕНИЯ

ИННА ЮРЬЕВНА ТИМОФЕЕВА, **доктор экономических наук, профессор, Смоленский филиал Российской академии народного хозяйства и государственной службы при Президенте Российской Федерации (214025, , Смоленск, Россия, Чуриловский тупик, 6/2). E-mail: innatimoff@mail.ru**
АРТЕМ ИГОРЕВИЧ ТИМОФЕЕВ **старший юрисконсульт МСЧ МВД Российской Федерации по Смоленской области (214000, Российская Федерация, Смоленск, ул. Дзержинского, д.13). E-mail: smolensk1989@yandex.ru**

Аннотация: Статья посвящена анализу системы государственных закупок в регионах Российской федерации по итогам принятого 5 апреля 2013 г. Федерального закона № 44-ФЗ «О контрактной системе в сфере закупок товаров, работ, услуг для обеспечения государственных и муниципальных нужд». Значительное число поправок к закону наряду с проблемами правоприменения, на примере Смоленской области, определяет актуальность проведенного авторами исследования.

Система государственных закупок в Российской Федерации не имела исторического опыта в организации правового регулирования сферы закупок для государственных (муниципальных) нужд. В основу формирования современной контрактной системы в России положены обобщенный международный и отечественный опыт государственных закупок двух последних десятилетий. В статье отражены основные тенденции правоприменения в сфере государственных закупок, систематизированы результаты организации закупок для государственных нужд на региональном уровне, а также сделаны выводы о преимуществах и недостатках применяемых контрактных процедур. На основе проведенного исследования авторами обосновано, что для эффективной организации государственных закупок в регионах необходима разработка экономико-правового методологического обеспечения для единообразного использования в практической деятельности государственных заказчиков и бюджетных учреждений. Организация и проведение конкурсных торгов, по мнению авторов, представляет комплексный экономико-правовой инструмент, который способствует повышению эффективности государственных расходов, развитию национальной экономики и конкуренции, обеспечению гласности и прозрачности проведения закупок, а также является эффективным механизмом противодействия коррупции.

Учитывая подтвержденную эффективность проведения совместных торгов, предлагается расширить практику их применения, что повысит экономическую безопасность региона.

Ключевые слова: государственные закупки, рейтинг прозрачности, совместные закупки, противодействие коррупции

Public procurement system in the Russian Federation had no historical experience in the organization of legal regulation of acquisition system for the state (municipal) needs. The formation of a modern contract system in Russia is based on a generalized international and domestic experience of public procurement of the last two decades. This allowed the formation of a contract system in the shortest possible time, since national government has faced the task of creating a rational mechanism for organizing purchases for state needs, well proven at the world level. Organization and management of competitive bidding, in authors' opinion, is a comprehensive economic and legal instrument that boosts the efficiency of public spending, facilitates the development the national economy and competition, ensuring publicity and transparency in procurement, and acts as an effective mechanism to counter corruption.

The initial stage in establishment of modern mechanisms of public procurement consisted in the development and adoption of the Federal Law "On Placing of Orders for Supplies of Goods, the Performance of Work and the Rendering of Services for State and Municipal Requirements" of July 21, 2005 No. 94-FZ, w.e.f. since 01.01.2006. The regulation contained nine chapters and 65 articles, created a lot of problems for all budget institutions and was cancelled after 8 years – since 01.01.2014 with the adoption of the Federal Law of 05.04.2013 No. 44-FZ. During this period, the law was amended by 39 changes and 27 added articles.

The next stage in improving the mechanism for public procurement organisation lied in introduction of an amended Federal Law of April 05, 2013 No. 44-FZ "On Contract System in the Sphere of Procurement of Goods, Works, and Services for State and Municipal Needs". Within the three years of operation, the law has endured 27 amendments, which indicates constant problems and shortcomings in operation of the contract system.

Regional Practice (on the example of Smolensk Region)

Thereupon, at the regional level, attempts are being made to contribute to the development and improvement of the legal regulation of the procurement system for public needs. In Smolensk Region, the executive authority represented by the Main Directorate of the region carries out the government procurement regulating the contract system and performing the following functions:

Provision (in cooperation with the federal executive body for regulating the contract system in the procurement sphere) of the state procurement policy to ensure the needs of the Smolensk Region, organization of procurement monitoring, as well as the methodological support of the activities of customers carrying out procurement to meet the needs Smolensk Region;

Identification of suppliers (contractors, executors) for customers carrying out purchases to meet the needs of the Smolensk Region;

Definition of suppliers (contractors, executors) for regional state budgetary institutions;

Definition of suppliers (contractors, executors) for municipal customers in the manner determined by agreements between the Smolensk region and municipal entities of the Smolensk Region [1].

The authorized body and customers relate to each other in accordance with the regional legal framework developed and approved by Administration (1) and General Directorate on Regulation of Contract System (2) of the Smolensk Region. One of the main regional regulations is the decision of the Smolensk Region Administration of 28 of May, 2014 No. 399, which is designed in accordance with the Federal Law "On contract system in the procurement of goods, works and services for state and municipal needs" in order to delimit the powers of state customers of Smolensk Region, regional state budgetary institutions, municipal customers (hereinafter – customers) and the General Directorate on Regulation of Contract System (2) of the Smolensk Region (hereinafter – the authorized body) in definition of suppliers (contractors, performers). Within the implementation of procurement of goods, works and services following competitive methods for determining the suppliers (contractors, performers) are used in the Smolensk Region: open competition (1), competition with limited participation (2), two-stage competition (3), online auction (4), request for quotations (5), pre-selection (6), and request for proposals (7).

Besides, to improve the activities in public procurement, the Main Directorate has developed the standard contracts and approved the resolution of the Administration of the Smolensk region of April 21, 2014 No. 297 "On approval of procedure for the development of standard contracts and standard terms of contracts to meet the needs of the Smolensk Region, with cases and conditions of applications". Typical contracts are subject to application by the executive authorities of the Smolensk Region, regional state institutions that enter into state contracts on behalf of the Smolensk Region, and regional state budget institutions in the procurement of goods.

The meeting of the Administration Coordinating Council on procurement issues for the needs of the Smolensk Region has approved the list of standard characteristics of the description of food products for joint procurements. The recommended characteristics for the purchase of food products led to the unification of the requirements system, which minimizes corruption risks.

The Main Directorate carries out measures to ensure sustainable development of the economy and social stability in the Smolensk Region. Currently, methodological recommendations for joint purchasing are developed to improve the organization of joint procurement activities based on the established practice. The developed regional legal base allows to regulate the order of implementation of all forms and types of purchases in the territory of the Smolensk Region, and to unify the system of requirements for the description of the objects of procurement.

In the event of purchasing the same goods by two or

1 Federal Law No. 44-FZ of April 05, 2013 «On Contract System in the Sphere of Procurement of Goods, Works, and Services for State and Municipal Needs» (with amendment and addendum) // Collected Legislation of the Russian Federation, April 08, 2013, No. 14, Art. 1652.

more customers, the latter are entitled to conduct joint purchases. According to the research, this form of procurement has become the most in-demand and effective in the Smolensk Region in 2015-2016, mainly in form of an online auction. Thus, this type of procurement online with the means of electronic trading platforms, designed to increase the transparency of procurement, is besides its commodity an effective anti-corruption mechanism that objectively reduces the degree of engagement of auction procedures and, accordingly, increases the chances of winning of any supplier of goods, works and services provided the latter offers a minimum price.

In 2015, purchases for the state needs of the Smolensk Region were carried out centrally through the authorized body – the General Directorate on Regulation of Contract System by conducting competitive procedures as prescribed by the Federal Law No. 44-FZ. The analysis of purchases was carried out on the basis of statistical data presented on the official website of the Russian Federation for posting information on placing orders, as well as on electronic trading platforms of Unified Electronic Trading Site JSC, Sberbank-AST CJSC and RTS-Tender LLC.

During the course of 2015, 8,374 procurement procedures were carried out, which is 5.3% lower than the same indicator in 2014 [Asriev, Beisenbin, Bozhkov, Koroleva et al., 2015]. The average number of participants in purchases increased compared with 2014 from 2.6 to 3, which corresponds, according to the Ministry of Economic Development of the Russian Federation, to the average all-Russian index. The reduction in the number of procurement procedures and the increase in the average number of bidders have been achieved mainly through the expansion of the practice of joint procurement procedures initiated in mid-2015.

The Practice of Joint Purchases

In 2015, the practice of joint bidding was successfully applied. Joint purchases were made for the supply of goods to provide social services for the regional institutions of the Smolensk Region. 55 joint auctions were held for the supply of food products for the needs of regional institutions subordinated to the Smolensk Region's Department for Social Development, the Department of Smolensk Region on education, science and youth affairs and the Department of Health in the Smolensk region. As a result of the joint procurement procedures, 967 contracts were concluded for a total of 102.3 million roubles[2]. Despite the fact that the initial price of contracts did not exceed the retail prices of chain stores, the budget savings from the results of joint auctions amounted to an average of 16.6%. At the same time, the average number of participants in joint purchases was 4.5, which is higher than the average for the region. Joint auctions were also held for the supply of pharmaceuticals and petroleum products.

The study shows that 30 contracts have been concluded at the initial (maximum) price, as joint auctions were declared invalid and filed with only one application from the participants. Two joint auctions for the supply of other fruits and vegetables have been declared invalid, since no applications have been submitted from the procurement participants. Joint purchases for the supply of food (egg chicken), have been acknowledged invalid with one application filed, so the contracts were made at the initial (maximum) price of the contract. 127 contracts were concluded with the winners of joint auctions, which ensured savings.

The study shows that the greatest amount of joint purchases accounts for the purchase of long-term storage vegetables, while the smallest – for the purchase of cereals. Most of the savings amounted to 1.3 million roubles or 20% are occasioned by the purchases for the supply of vegetables for long-term storage. It can be noted that, regardless of the object of purchase, the number of participants is preserved. When carrying out joint purchases, one may note a higher level of competition and a decrease in the number of failed purchases, as well as a high level of savings in regional funds.

It can be concluded that in 2015 this method of procurement has shown high efficiency of the joint purchases for the first time in the Smolensk Region.

In 2016, the total amount of initial prices of contracts for announced procurements amounted to 122.7 million roubles. The amount of concluded contracts amounted to 94.2 million roubles, therefore, the savings in monetary terms amounted to 19.0 million roubles. Savings in percentage terms amounted to 24%.

As a result, only nine joint auctions have failed (i.e. auctions with one / zero applications from the procurement participants submitted). In the event of recognition of a joint purchase, the customers fail to take a decision to conduct a repeat procedure in a competitive manner or to conclude a contract in accordance with clauses 4 and / or 5, Part 1, Art. 93 of the Federal Law No. 44-FZ.

Thus, as a result of joint purchases, there is a significant increase in competition and a reduction in the initial prices of contracts, which ensures an effective expenditure of budgetary funds. Currently, the General Directorate of the Smolensk Region on Regulation of Contract System is conducting trial purchases for the supply of pharmaceuticals as well as the medical products for the needs of the Smolensk Region. Besides, in 2015, joint auctions were held for the supply of petroleum products to regional customers in the Smolensk Region, where one may note a large number of failed auctions and a lack of budgetary savings. This is due to the fact that the main condition for the documentation of joint purchases is physical presence on the territory of the Smolensk Region of an extensive network of gas stations of the supplier. Besides, in Smolensk Region, there is a single participant that complies with these terms: RN-Kart-Smolensk LLC. The result of such joint purchases is the lack of competition as the only possible winner would be the mentionedd supplier.

In order to effectively organize the procedures for joint purchases in the region, it became necessary to methodi-

2 Report on the procurement of goods, works, services in competitive ways for the state needs of the Smolensk region and the needs of the regional state budget institutions in 2015: http://www.goszakaz.admin-smolensk.ru/deyatelnost

cally ensure the joint purchases, which implies the development of guidelines that are intended for use in practical activities by state customers and budgetary institutions in the Smolensk Region when placing orders for regional needs, and is aimed at:

Increase of efficiency of budgetary expenses at realization of purchases for the state and municipal needs;

Reduction and prevention of negative consequences from actions of dishonest suppliers;

Support of honest competition, including small business engagement for the supply of goods;

Corruption control, prevention of economic violations and abuses in public procurement.

Methodical guidelines were developed in accordance with the provisions of Art. 25 of the Federal Law №44-FZ and the Government Decree of 28 November, 2013 No. 1088 "On approval of rules of carrying out of joint tenders and auctions" and are designed to facilitate the setting of lots within the implementation of competitive procurement to identify suppliers through collaborative online auctions. It should minimize the cost of procurement (1), evenly distribute the load of customers' employees engaged in preparation of applications for procurement (2), help the authorized bodies' experts in definition of suppliers (3), and improve the efficiency of use of budgetary funds and the quality of the implementation of public procurement in general (4).

If two or more customers have requirements for the same goods, works, services, the authorized body or executive body of the Smolensk Region, in whose subordination are the relevant customers, initiates a joint purchase. The rights, duties and responsibilities of customers in joint purchases are determined by the agreement of the parties on joint purchases, concluded in accordance with the Civil Code of the Russian Federation and Federal Law No. 44-FZ.

Joint purchases are to be formed in the Automated Public Procurement Information System of the Smolensk Region and posted on the official website of the Russian Federation on the Internet[3].

As part of methodical guidelines for the development of a unified approach to the description of procurement objects, unified technical tasks have been elaborated for food products included in the list of food products procured by regional customers subject to price monitoring by the Department of Economic Development of the Smolensk Region in order to justify the initial (maximum) contract price.

Besides, standard contracts for the supply of foodstuffs, as well as certain standard terms of contracts, were developed as compulsory for application by regional customers to provide methodological assistance to customers and a uniform approach to their implementation of the as refers to the acceptance of goods and liability measures for non-fulfilment or improper performance of contractual obligations.

A unified approach was determined to the formation of lots for the purchase of food products by customers in accordance with certain alignments, as well as a unified approach to the formation of initial prices of contracts for the supply of food [Koroleva, 2014, P. 52-54]. The Department of Economics conducts monitoring of prices for products purchased by regional institutions twice a month in retail chains. When determining the initial prices of contracts, customers are prohibited from exceeding the prices indicated within the monitoring, which is an element of price regulation at the regional level [Ibid].

In the course of the study, the following advantages of joint procurement were revealed:

Significant reduction in the number of procurement procedures, increase of 'transparency', reduction of 'labour' of budget institutions within the administration of numerous procurement procedures;

Decrease of responsibility for the conducted procedures of both customer and the authorized body;

Possibility of significant budgetary savings;

Participation of large companies, which, due to their production capacities, are able to offer favourable prices for the execution of an order.

As the world experience shows, along with the adoption of regulatory and legal acts that regulate the problem areas of the economy, independent rankings are one of the most important anti-corruption instruments [Asriev, Beisenbin, Bozhkov, Koroleva et al., 2015, P. 69]. So the National Ranking for Procurement Ttransparency has been implemented since 2006, specializing in the economic and legal analysis of the Russian market for government and corporate procurement. Transparency Ranking aims at continuous monitoring of the actual state and trends of the national procurement market and is formed with the support of the Federal Antimonopoly Service of Russia, the Ministry of Economic Development of the Russian Federation, the Accounts Chamber of the Russian Federation, and the relevant committees of the State Duma of the Russian Federation[4]. The Ranking includes bidders (procurement participants) that represent both public and corporate procurement sectors. The analysis of organizations and rating assignment are carried based on the following open sources:

All-Russian official website for public procurement;

State Statistics Federal Service (Rosstat);

Official websites of the participants;

Information provided by the participants through relevant application forms.

Based on the results of the analysis, an integral evaluation is assigned to the particular participant in the procurement (bidding). It depends on a range of indicators that directly or indirectly characterize the information openness of enterprises and the effectiveness of their procurement procedures. The company's assigned rating refers to one of the following five classes of the accepted rating scale: 'guaranteed', 'high', 'medium', 'basic', and 'low transparency' [Ibid, P. 69]. 'Guaranteed transparency' and 'high transparency' define market leaders and are positive evaluation classes, while 'basic transparency' and 'low transparency' denote negative evaluation.

3 The official website of the Russian Federation for posting information on placing orders: http://zakupki.gov.ru.

4 National Transparency Transaction Ranking: http://www.nrpz.ru.

Within the ranking, the bidders are assessed based on the following criteria:

The average number of suppliers (contractors, executors) admitted to the procedures, the average number of those not admitted, and the total number of suppliers who submitted applications – these three criteria are the most important in determining the competitive environment for procurement and identifying a corruption factor that hinders the 'purity' of trades;

Share of the order placed by the bidder in the form of online auctions and tenders as the most transparent way of carrying out procurement procedures, since they do not limit suppliers in participation, either territorially or temporarily. Accordingly, the higher this indicator, the higher rating is assigned to a specific subject of evaluation;

Share of contracts concluded without all the required procedures – the criterion directly determines the degree of corruption factor;

Assessment of the initial price decline – when the prices set by the customer are determined as either unreasonably inflated or unreasonably understated, the procurement procedure may be considered ineffective;

Publication of procurement regulations, availability of a plan for procurement, availability of reporting on concluded contracts, assessment of the availability of viewing documents attached to the customer – all these criteria allow to assess the procurement organizer in terms of information openness and indirectly indicate the bias / impartiality of the procedures for all possible participants (suppliers).

Smolensk Region has been participating in this project since 2012. In 2015, based on the assessment of regions by 38 criteria, the Smolensk Region was included in the number of regions rated as those with 'high transparency' [Lavrova, Artemenkova, 2016].

Thus, public procurement is a subtle legal and complex organizational structure that requires significant material resources and labour. The activity of regional authorities on the legal regulation of the contract system and the development of guidelines in this area contributes to a significant improvement in the social and economic situation and is an effective mechanism for corruption control in the region [Asriev, Beisenbin, Bozhkov, Koroleva et al., 2015, P. 78].

For the first time in 2015, joint purchases on the territory of the Smolensk Region has shown their high efficiency in solving social problems, and resulted in considerable savings of budgetary funds, comparatively to similar purchases conducted in an individual way. In addition, the process of joint procurement meets the needs of a large number of customers interested in purchasing the same types of goods, mainly small budget social institutions and healthcare organizations. Joint purchases lead to reduction in the amount of labour, namely, a reduction in the number of preparation of notices and documentation, reduction in the number of meetings of commissions, the number of procedures, and to an increase in the interest of large participants in procurement (large companies).

The priority form of procurement was an online auction that has an undisputed merit – the convenience of applying for participation. Participation in procurement is carried out without leaving the office, using the functionality of electronic trading platforms. This circumstance not only saves time and is a significant convenience, but also allows expanding the scope of the supplier, including outside its region.

However, the online auction has certain drawbacks. First of all, these are considerable financial costs: obtaining an electronic digital signature and security amounts provided by law (the amount of the application and the amount of enforcement of the contract). The first amount is up to 5% of the maximum contract price, is to be paid by all participants and is returned within two to three days after the end of the procurement. The second amount is to be paid by the auction winner for contract security and is up to 30% of the contract price that paid in full for the entire duration of the contract. Diversion of these resources from the company's current assets is not always possible for small business.

In conclusion it should be said that, taking into account the confirmed effectiveness of the joint bidding, it is proposed to expand the practice of its application at regional level for the purchase of food, pharmaceuticals, medical supplies, computer equipment, stationery for regional and municipal institutions, which will increase the level of economic security in the region, ensure transparency of procurement and efficiency of corruption control.

References

Asriev S.A., Bejsenbin K.A., Bozhkov I.V., Koroleva E.L. et al. Mezhdunarodnyi opyt protivodeistviia korruptsii v usloviiakh globalizatsii [International Experience of Corruption Control in the Context of Globalization] (in Russ.). Smolensk, 2015.

Koroleva E.L. K voprosu ob effektivnosti deiatel'nosti organov mestnogo samoupravleniia Rossiiskoi Federatsii [On the Issue of the Effectiveness of Local Government Bodies in Russia]. In: Science and Education Development in the Modern World: collection of scientific papers of international conference (in Russ.). M.: AR-Consult, 2014. P. 52-54.

Lavrova E.V., Artemenkova V.S. Otsenka reguliruiushchego vozdeistviya: sovremennoe sostoianye [Regulatory Impact Assessment: Current Status]. In: Policies, Education, Economics and Law in the Social System: Challenges and Perspectives: proceedings of international scientific and practical conference (in Russ.), 2016. P. 16-18.

Литература

Королева Е.Л. К вопросу об эффективности деятельности органов местного самоуправления Российской Федерации // Развитие науки и образования в современном мире: сборник научных трудов по материалам международной научно-практической конференции. М.: АР-Консалт, 2014. С. 52-54.

Лаврова Е.В., Артеменкова В.С. Оценка регулирующего воздействия: современное состояние // Политика, образование, экономика и право в социальной системе общества: новые вызовы и перспективы: материалы международной научно-практической конференции. 2016, С. 16-18.

Международный опыт противодействия коррупции в условиях глобализации / Асриев С.А., Бейсенбин К.А., Божков И.В., Королева Е.Л. и др. Смоленск, 2015.