

## **Public Procurement yields to no administrative pressure any more.**

### **From spontaneity to centralization**

Reformation of public procurement system in Russia began in 2005. Until this period, public procurement was conducted in the form of closed tenders which were only advertised in local newspapers with low circulation that made information on tenders practically inaccessible. The procedure of the tender itself was extremely imperfect and in many cases uncontrollable. The maximum sum of the tender was no more than 1 million rubles. The officials (procurement officers) can place any requirements to participants of tenders (the so-called administrative eligibility requirements), and selection of the winner was random. There were practically no open auctions as a form of public procurement. One could only appeal against the results of the tender in court which would have taken many months and by that time the contract would be fulfilled.

Since the adoption of the Federal Law 94-FZ<sup>1</sup> there appeared great changes. Auctions became the main form of public procurement conducting for state and municipal needs: the transparency of information on public procurement advanced as information on state needs became available on the all-Russia public procurement web-portal. At the present time, any business owner or entrepreneur from Kaliningrad to Vladivostok<sup>2</sup> can access information on any public procurement tender and participate in them. The Law ensured equal right of entry to public procurement all over Russia.

Now, the procurement officer cannot demand random requirements (the ones he favors) from the tender participant. The buying party should define relevant characteristics of goods or services rather than the experience of the partic-

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<sup>1</sup> The Federal Law 94-FZ "On State and Municipal Procurement of Goods, Works and Services" of 17 July 2005.

<sup>2</sup> Western and Eastern cities of Russia which are 9 time zones apart

ipant i.e. how many cars he should have in the company or how many employees of the company have PhDs (that cannot be objectively measured).

The next step in the development of the public procurement system in Russia was marked by transition to electronic auctioning.

In 2009 the government of the Russian Federation identified three pilot electronic trading platforms which were granted the rights to conduct electronic auctions according to the new regulations. These were the Moscow trading platform, the Tatarstan trading platform and also a platform run by Sberbank.

In 2010, by the Order of the Governmental Commission on administrative reform, five platforms were selected to conduct auctions for the 5 year period.

At present agreement with these e-Platforms are signed which include the detailed regulations of their work as well as technical specifications and requirements imposed on e-Platforms. These documents are quite large (up to 500 pages) and complex, describing the key points of e-auction conducting, use of electronic digital signature and supervision over activities of e-Platforms.

Since January 1<sup>st</sup> 2011, procurement for regional and municipal needs have also started to be carried out via these platforms.

### **Five – no more, no less.**

Numerous prolonged discussions were dedicated to the decision of one of the major questions, i.e. to determine the exact number of e-Platforms necessary for centralized public procurement placement.

Notwithstanding the fact that one powerful e-Platform will be more than enough for conducting all e-procurement in the country and from a technical standpoint this would be possible. But having only one platform has certain limitations and drawbacks.

In this case there are extremely high risks of failing to provide uninterrupted service in the event of force-major situations related to technological security of the e-Platform, as well as financial risks of bankruptcy and incorrect managerial decisions that are involved in the running of such an undertaking. If it were one central e-Platform, then most probably it would be State owned, and thus it will be fully dependable on annually allocated state budget funds; this may eliminate motivation of the e-Platform performing at its best.

In case of having the only one e-Platform there will be no competition for attracting participants in the market of e-procurement, i.e. procurement entities and suppliers as there is no alternative. It means that such situation could lead to underperforming of the e-Platform, lack of competition in the sphere of IT, stagnation of technological and organizational development of e-Platform.

On the other hand, it is also worth pointing out that there should not be too many e-platforms. It is impossible to execute full-fledged control over technological security of many platforms without administrative pressure from authorities. The likely outcome of it might be the discrediting of e-auctions, the absence of an integrated economic and information space in the public procurement sector. The consequence could be the thriving of corruption, no economizing of state budget funds and the absence of real competition between e-auction participants. At the same time, it is absolutely necessary to exclude the chance of manipulation of electronic auctions by the e-Platform itself with the help of technical and software facilities.

On the restricted number of e-Platforms the use of the unified system of digital signature is possible. At the present time a business owner/entrepreneur gets his digital signature just once to have the access to participate in e-auctions on any of the five e-Platforms in Russia.

In addition, the restricted number of e-platforms allows accumulating the maximum number of participants on any of the e-Platforms, thus lowering the cost of conducting e-auctions (not more than 3 thousand rubles presently). The participation fee does not depend on the size of the tender as the cost-price for the e-platform is the same. Every e-Platform becomes interested in attracting maximum number of customers to get the maximum turn-over profit. If no or just one supplier participates in e-auction then the e-Platform will not get any money for that. Therefore e-Platforms become greatly interested in drawing the attention of entrepreneurs (suppliers) and in carrying out e-auctions that are actually competitive. The total cost of the e-auction is calculated by allowing for involvement of many IT specialists and also takes into account the payback period of all the investment used for developing the e-Platform (design and elaboration of special software, personnel etc.) Participation in e-auction is free for entrepreneurs and for suppliers of procuring entities, the fee is only deducted from the winner of the e-auction when he knows that he will sign the contract that will result in getting a profit. When the e-Platform reaches the specified turnover threshold of e-auctions (in agreement on terms and regulations of the e-platform functioning), the fee will be lowered to two thousand rubles and at a later stage removed at all. It denotes that electronic auctions will become free of charge for everyone all over the Russian Federation.

The high concentration of procuring entities and suppliers involved in e-Platforms enables conducting of extremely competitive e-auctions as well as the

possibility of having the functionality of the quick search of information on placed e-auction lots.

Conducting the e-auction does not entail any visit (physical) to the e-Platform at all. All documentation is done electronically with the use of the digital signature. E-auctions in any region of Russia will start in the time zone of the procuring entity.

Adoption of centralized and controllable e-auctions created an integrated economic environment in the public procurement sector. The obvious benefit of it is that e-auctions do not experience any administrative pressure from authorities.

### **Participation in e-auction.**

Every participant receives the electronic digital signature. Procuring entities receive it from the Federal Treasury all over Russia free of charge. Suppliers can get it at the specialized certification centers that e-Platforms nominate and are ready to carry financial responsibility for these particular specialized certification centers.

It is worth paying particular attention to the fact that the key element of the whole system of e-auctions is confidentiality, which is maintained throughout the auction procedure until the auction is finished and the winner is nominated, thus making the collusion of participants or any administrative pressure on suppliers from the procuring side impossible.

At the open tenders there are cases when the participants are forced to withdraw their bids. In the case of e-auction, it is practically impossible as the

procuring entity does not know who the suppliers are until the end of the e-auction.

The procedure of participation at an e-auction is simple. Participant's (supplier) offer is subdivided into two parts: one about the goods, services or works and the other is about the supplier itself. At first the procuring entity grants the right to participate in his e-auction based on the 1<sup>st</sup> part of the offer, not knowing anything about the supplier. Then the e-auction is conducted. Only after the e-auction is finished the procuring entity will know who the participants were. The winning bidder is the one who is granted the contract.

### **Economizing is real.**

Electronic auctions as a form of conducting public procurement are not only means of providing equal rights of access to public procurement tenders and stipulation of competition between the participants; it is also real possibility to economize state budget funds. Thus during the 5 year period the economizing of budget funds since adoption of the Law 94-FZ amounted to about 1 trillion and 68 billion rubles.

We expect a further increase in the economic effect of conducting public procurement by e-auctions when e-auctions reach the target rate. This is only the monetary component of the benefits for state budget economy as the other major results are development of competition, creation of common economic environment, fighting corruption, improvement of the procedure and quality of the procurement order.

An additional benefit is that all the country including the remote municipal areas will quickly have to switch to using electronic technologies.

Many directors of the private enterprises are interested in buying products and services at actual current market prices. When the transparency of procurement in the state sector will be noticeable such companies and corporations will be able to carry out their procurement in the similar way according to general rules of public procurement.

Electronic auctions account for approx. 70% of all public procurement orders in Russia. Only 30% will be constituted of tenders on creative works and services (e.g. scientific or research and development, project works or medical services).

### **Recent amendments to the Law 94-FZ “On Public procurement...”**

Significant amendments to the Federal Law 94-FZ were adopted in spring 2011. The Law obliges procuring entities to provide the proof of the starting price in the terms of reference of the order indicating the source of information of such price quotes. In the base Law on Public Procurement there is a special provision that reserves the right of the Government of the Russian Federation to determine supplementary extra requirements, including eligibility requirements which will help to exclude negligent dishonest contractors from e-auctions. The norm of placement of public procurement with the representatives of small enterprises is more precisely defined.

Those are the major amendments. They will ensure the maximum effective and economic spending of state budget funds, and make the initial starting price of e-auction understandable and transparent, and over all procedure of public procurement order placement more proper and clearer.

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