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**TOWARDS OPTIMIZING THE PERFORMANCE OF
PROCUREMENT REGULATORY AGENCIES**

Svetlana K. Tsygankova (a)*, Elena A. Barmina (b), Raisa A. Shchinova (c)

*Corresponding author

(a) Vyatka State University, 36, Moskovskaya st., Kirov, Russia, stud114098@vyatsu.ru

(b) Vyatka State University, 36, Moskovskaya st., Kirov, Russia, ea_barmina@vyatsu.ru

(c) Vyatka State University, 36, Moskovskaya st., Kirov, Russia, ra_shinova@vyatsu.ru

Abstract

The article deals with the issue of improving the efficiency of control in the field of procurement in the Russian Federation. The first part of the research studies the issue of public control and its impact on the efficiency of public procurement. For a detailed study of public opinion, the authors have conducted a survey and analyzed its results. They have come to the conclusion that the potential of public control is not used. The second part of the research deals with various types of control in the field of procurement, provided by legislation, and prospects for their development. The authors have identified three types in the public procurement control system: preliminary "treasury" control, subsequent "procedural" control and internal state financial control. It is concluded that it is necessary to fully automate the procurement process for full implementation of "treasury" control. The development of this control prevents the imperfection of regulatory practice and also influences the development of "procedural" control. The authors have analyzed in detail the impact of the lack of uniform rules on the effectiveness of control. Moreover, the authors have proposed measures that can reduce the documentary load on customers when being checked by several control bodies. One measure is to conduct complex joint audits. It will allow reducing the number of documents prepared by customers, to avoid duplication, and to help control bodies analyze the procurement process in more detail, draw conclusions about their results based on a comprehensive study in general.

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Keywords: Control efficiency, joint audits, public procurement, procurement control, uniform rules



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1. Introduction

One of the primary tasks of any control is to anticipate violations. Legal requirements are created to organize and structure any activity. At the same time, activities are monitored in order to check if they maintain a given working structure and comply with the legality of actions. Reasonable control is always aimed at the public good, at preventing abuse and checking the fulfillment of powers in accordance with legal requirements and proclaimed principles of the contract system. However, at present, there are often cases of the destructive action of control and its formal implementation.

The most significant activity for the population is always an activity of social orientation. Meeting the needs of citizens in quality education and affordable healthcare is one of the most important functions of the state. The state is also entrusted with the authority to provide socially vulnerable segments of the population - pensioners, disabled people, youth. Needs arising from the implementation of state policy in these areas are met through the procurement of goods, works or services in accordance with the requirements of the Federal Law of 05.04.2013 No. 44-FZ "On the contract system in the field of procurement of goods, works, services for the provision of state and municipal needs" (hereinafter - Federal Law of 05.04.2013 No. 44-FZ).

There is no indifferent attitude to the activities of state authorities as we contact with the social sphere. Each citizen evaluates results of public procurement, when he gets medical service, gets education in state institutions, uses public transport, and just walks along the street inspecting the territory.

2. Problem Statement

Federal Law No. 44-FZ of 05.04.2013 provides the possibility of public control. Article 102 of the law gives this right to citizens, public associations and associations of legal entities. Meanwhile, citizens rarely show activity here, despite the fact that complaints and dissatisfaction with the state of affairs in socially significant areas is quite obvious.

In our opinion, such a low activity of public control is due to the low legal literacy of the population. They notice problems, but do not know which state body can protect their rights. Recently, there has been a tendency of covering problematic issues by citizens in social networks trying to give public resonance to problems. Monitoring social networks for problems and for the purpose of prompt response becomes a state issue (Antonova & Dergachev, 2018). Thus, public control has the opposite effect, not society controls the government, but the state controls complaints of the population.

Also, public control is not progressing, since citizens often associate the search for justice with additional money and time costs. Any appeal to a government agency requires the preparation of a competent request, tracking the timing of the response, and repeated appeals in case of dissatisfaction with the requirements.

Public associations have achieved greater success in public control. We can see investigations of the All-Russian Popular Movement "For Fair Purchases" quite often in the media and on the Internet (Bureau of Investigation of the All-Russian Folk Front, 2020). However, it seems that the purpose of supervision of this association is to identify purchases of luxury and goods with excessive characteristics

rather than to meet the needs of individual citizens. Crowd supervision is also in question, since the initiative to create this association belongs to the Russian President, not to the public.

In the course of our research, we conducted a survey among various categories of citizens about their personal attitude towards violations in the field of procurement. Almost all respondents belong to the working population, so they can directly receive social benefits. Mainly respondents with higher education (93.5%) took part in the survey; the rest of the participants had an academic degree or secondary education. It means that we considered a sufficiently high level of social activity of the respondents.

Most of the respondents (58.1%) work in the public service, or in a public institution, which means that they have come across with public procurement. The rest of the respondents work in private organizations (12.9%) or are individual entrepreneurs (25.8%).

All respondents have heard about procurement violations at least once, since no one chose the option “never” (Figure 1). The overwhelming majority of answers are “sometimes”, “often” and “very often”, which means that the problems of a large number of violations in the field of procurement bother almost everyone.

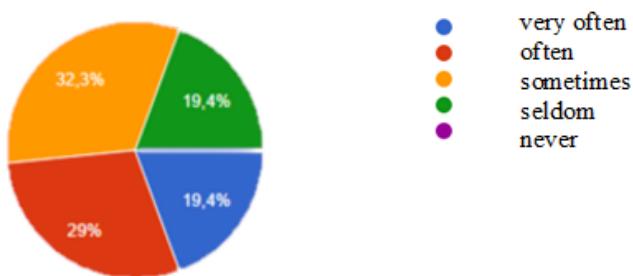


Figure 1. Distribution of answers on the frequency of getting information on procurement violations

A significant part of the respondents (64.5%) associate violations in the field of procurement with ignorance of the legislation, low qualifications or staff turnover (Figure 2). A small part of the respondents believe that the causes of errors are haste or workload of staff. These reasons make up the majority but there is no intention here, they are connected with the organization of activities and often caused by the human factor.

At the same time, almost 50% of respondents paid their attention to the desire for material benefits when working in the field of procurement or pressure from management. We consider these reasons the most negative, since in these cases the violations are intentional and committed purposefully.

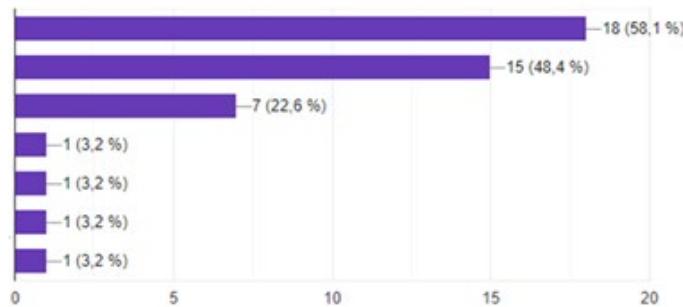


Figure 2. Distribution of answers on the reasons for violations in procurement

The results of the survey showed that the majority of the respondents consider sufficient to control public procurement (Figure 3). At the same time, they consider insufficient to exercise control over regional purchases only by regional authorities and insist that control should be exercised by federal authorities as well. To avoid duplication of powers of the authorities in this case, it is necessary to pay attention to the effectiveness of joint control.

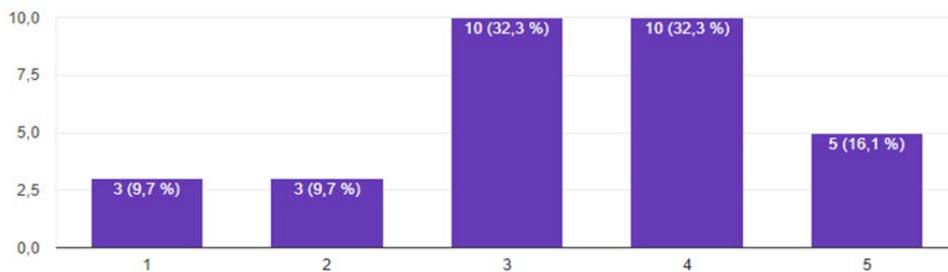


Figure 3. Distribution of answers on the degree of sufficiency of control in procurement

According to the respondents, specifically, the following groups should be controlled:

- conflict of interests between customers and suppliers;
- compliance of the procurement results with the goals of its implementation;
- the necessity and expediency of the procurement;
- correspondence of the established prices to the average market ones.

Consequently, the respondents are worried about logical questions: what exactly is being purchased and at what price, whether these goods, works, services are needed to perform the functions of government organizations, and whether there is a relationship between customers and suppliers, that is, whether both parties receive benefits when making purchases. The results of the survey indicate that public procurement does not sufficiently meet the needs of their final consumers, which means that "public confidence is decreasing" (Kazakovtseva & Perminova, 2015, p. 2).

3. Research Questions

To find out the reasons for the ineffectiveness of public procurement, there has been created a whole set of control bodies according to Federal Law No. 44-FZ from 05.04.2013. According to the legislator's idea, they should comprehensively check the actions of customers and suppliers and prevent possible violations and identify those that have already been committed. Some experts argue that the control model in this legislation can be defined as "maximum control" using the formula "do not allow what cannot be controlled" and "give preference to the interests of controllability" (Lusegenova, 2016, p. 1). The created control bodies carry out both preliminary and subsequent control.

Let us pay attention to the preliminary "treasury" control, implemented in accordance with parts 5, 5.1 of Article 99 of the Federal Law No. 44-FZ of 05.04.2013. Federal and regional authorities share the powers to carry out this type of control. Such information control of schedules and contracts concluded at the regional and municipal levels is carried out by relevant financial authorities. The schedules and contracts of federal customers are reviewed by the Federal Treasury. Moreover, since April 1, 2020 notifications of procurement, final protocols of the procedures and draft contracts to suppliers have been sent to the federal level for automatic control.

This control is implemented primarily to prevent purchases in excess of the financial security brought to the customer. Planned and ongoing purchases are monitored from the moment of bringing financial support to the customer and up to the execution of contracts and obtaining the results of purchases.

The goal of implementing control has been partially achieved. However, control can often fail, since only a part of the documents sent by customers to the official website of the unified information system in the field of procurement have a structured look and are checked automatically. Most of the documents have attached files and are controlled "manually" or rather the so-called "eye" control is carried out. These circumstances do not exclude the omission of errors due to the human factor, as well as the personal subjective discretion of the controller.

From a positive side, the Federal Treasury is trying to solve this problem and is making attempts to structure the rest of the documents, which will allow control them automatically. It is planned that the contractual system in the field of procurement will have a form of electronic structured contracts and all information will be entered into the interface of the unified information system in the field of procurement. Changes, execution and termination of contracts will also be in electronic form.

These changes are present in the "optimization" package of amendments, which has already been announced more than once by the Ministry of Finance of the Russian Federation. However, the new realities of the economic situation in the country, associated with the adoption of measures to combat the new coronavirus infection, required consideration of more urgent changes in the procurement legislation. In this regard, the submission to the State Duma of a bill aimed to facilitate and increase the effectiveness of preliminary "treasury" control in the field of procurement has been postponed till autumn. It means the time of entry the amendments into force will again be shifted ("Optimization" amendments to 44-FZ have postponed till autumn, 2020).

In addition, the normative regulation regarding the adoption of the new Procedure for the implementation of preliminary "treasury" control in the field of procurement in connection with the division of functions between federal and regional control authorities had another "surprise". In addition to the transition to automatic control, the new procedure for "treasury" control, approved by the Government of the Russian Federation No. 1193 of 06.08.2020, instructs the control authorities to check on paper draft contracts concluded with a single supplier (contractor, performer) on separate grounds. It seems that this form of control at the present time of digitalization and electronic document management can be considered as a step in the opposite direction. Such control will not only require additional material and labor costs, but will also lead to considerable time delays, which will undoubtedly reduce the effectiveness of government contracts.

Within the framework of subsequent control, the contractual system in the field of procurement provides the implementation of two other types of control: "procedural" control in accordance with Part 3, Article 99, Federal Law No. 44-FZ of 05.04.2013 and internal state financial control in the field of procurement, part 8, Article 99, Federal Law No. 44-FZ of 05.04.2013. These types of controls cover various stages of procurement.

Within the framework of "procedural" control, compliance with the legislation is checked during the direct conduct of auction procedures, tenders, requests for quotations and requests for proposals. As Medvedeva (2015) notes, the aim of this type of control is "to ensure that procurement procedures are carried out without harming the competitive foundations of economic development, without disturbing competition in a particular commodity market, without infringing on the interests of individual participants in public procurement" (p. 2). In the process of this control, they study documentation of the procedures, check decisions and actions of the customer's commission when considering the applications of the participants in the procedure, carry out the control of the conclusion of contracts according with the specified requirements and the proposal of the winner of the procedure.

Until July 1, 2019, Federal Law No. 44-FZ of 05.04.2013 did not provide this type of control for the procedure. It allowed the federal agency, the Federal Antimonopoly Service, as well as regional and municipal control authorities to exercise control over procurement, acting within the framework of independently developed procedures. These circumstances, of course, led to a variety of administrative and judicial practice, different timing of inspections and the amount of verified information.

Such unpredictable control does not help customers or controllers. Control bodies in such a situation cannot be guided by the judicial practice of other regions, implying that their control procedures may differ. Having different orders, it is impossible to form a stable and uniform judicial practice, when customers can also rely in cases of conflict of law norms or insufficient regulation of individual institutions of the contract system.

A change in the legislation on the contractual system in the field of procurement according to Federal Law No. 50-FZ of 01.04.2019, the adoption of a unified procedure for "procedural" control was provided since July 1, 2019. As indicated in the explanatory note of the draft law, the adoption of a unified procedure would ensure "the formation of a vertical of procedural control, a unified law enforcement practice and methodology for exercising control powers at the federal and regional levels." Meanwhile, the draft Procedure, prepared by the Federal Antimonopoly Service, has not yet been

adopted. It affects actions of control bodies. The procedures developed by local control authorities are still in force, but there are no general requirements to them.

It is interesting to note that, ahead of the time schedule, in accordance with Decree of the Government of the Russian Federation No. 90 of 05.02.2020, rules for assessing the effectiveness of activities of the “procedural” control bodies were adopted. These rules use the proportion of decisions of the control body canceled partially or completely on the basis of judicial acts as indicators for assessing control bodies, as well as the proportion of decisions posted in a unified information system in the field of procurement in violation of the deadline. The analysis of indicators will be carried out by the Ministry of Finance of Russia based on the results of the calendar year. Its results will be used to improve legislation in order to ensure the effectiveness of the activities of control bodies.

Undoubtedly, the intentions of the federal regulator are good. However, how can we evaluate a control mechanism that does not have uniform rules? In addition, it should be noted that these indicators do not quite clearly characterize the quality work of control bodies and should not be used to measure the effectiveness of controllers' work.

The internal state (municipal) financial control in the field of procurement had even greater changes. The legislator in this direction of control has always tried to converge the two similar types, provided by the legislation in the field of procurement and budgetary legislation. Recent changes allow concluding that internal state (municipal) financial control is becoming a single instrument for checking both the financial and budgetary sphere and the procurement sphere.

Since January 1, 2020, control in the field of procurement, provided by the legislation of the Russian Federation on the contractual system in the field of procurement of goods, works, and services to meet state and municipal needs, has been added to the powers of internal state (municipal) financial control bodies. Moreover, Federal Law No. 44-FZ of 05.04.2013 introduced a paragraph on the implementation of internal state (municipal) financial control in the field of procurement "in accordance with the procedure provided by the budgetary legislation of the Russian Federation and other regulatory legal acts governing budgetary legal relations". That is, within the framework of this type of control, a huge step was made towards the formation of uniform rules for conducting inspections. The basis for the implementation of control is the federal standards that enshrine the rules for conducting inspections, the basic rights and obligations of officials, the rules for drawing up reports, etc.

This amalgamation of the two interrelated types of control provided more opportunities for procurement control, including taking action on the results of control activities. It becomes possible to issue submissions - requests to eliminate violations or causes of violations, and to use budgetary enforcement measures, which are common practice in exercising control in the financial and budgetary sphere.

On the one hand, these are large-scale changes that allow one to bring closer control of budget legislation and the contractual system, and to unify the actions of control bodies within the framework of two institutions of financial law.

However, these changes require the restructuring of the entire system of internal state (municipal) financial control in the field of procurement. Over the years of the existence of Federal Law No. 44-FZ of 05.04.2013, this is the third change in the rules for inspections. Frequent changes in the principles of

implementation of control activities do not contribute to its effectiveness. Control authorities again need time to work out the introduced order.

Another problem, especially for regional and municipal control bodies, is the concentration of all types of control not only in the powers of one state body, but more often of one structural unit, and sometimes even one person. The fundamentally different order of actions within the framework of control measures does not allow combining control measures when conducting checks in a particular institution. Checks are carried out in parallel with the execution of a large number of the same type of documents, or are at different time, which, of course, can not cover a large amount of information and purchases.

In these cases, control authorities need to interact to eliminate redundancy in order to avoid finding customers in a permanent state of constant checking. Since the introduction of a risk-based approach in planning inspections, large purchases, purchases carried out within the framework of the implementation of national projects are often subject to control by different control bodies with different purposes. The lack of rules for the interaction of control bodies "unbalances the control system" (Rybnikova & Tevosyan, 2016, p. 5).

An acceptable way out in this situation may be to conduct joint inspections of all control bodies with a desk-based receipt of documents prepared by the customer. Firstly, this method allows analyzing the fulfillment of legislative requirements comprehensively and from all sides. The exchange of views within the framework of round tables on the results of inspections can have an extremely positive effect on the effectiveness of each control event and analysis of the effectiveness of procurement in general. Secondly, this approach will relieve customers of unnecessary workloads associated with the preparation of documentation and interaction with each control body separately.

4. Purpose of the Study

The objective of this research is to identify what factors can contribute to a change in the semantic orientation of control, its target, and to work out ways to increase its effectiveness.

5. Research Methods

During the research, the authors used the following theoretical methods: analysis and synthesis, generalization, forecasting. Also, when studying public control, they used practical methods: statistical methods, polling, questioning.

6. Findings

For a unified approach to the implementation of inspections within the framework of "procedural" control, the predictability of actions of control bodies, and their correct assessment, a procedure is required, the adoption of which was provided by legislation a year ago. There are questions about the need for reliable control for the state if the reform "optimization of the activities of control bodies in the field of procurement" (this is the name of the bill when it was considered) has been delayed for more than a year.

Despite the sudden deviation from the mainstream of control automation, the final implementation of preliminary "treasury" control in the area of procurement is quite optimistic. The implementation of the planned amendments will allow switching to fully automatic verification of electronic structured documents of customers by 2022. It will increase the efficiency and openness of control, minimize the occurrence of technical errors, and reduce the number of "paper" documents of customers.

As for the internal state (municipal) financial control in the area of procurement, we consider the reform implemented in this direction is quite promising. The combination of the two types of control will contribute to a more detailed study of ongoing procurement, from the point of view of compliance with the legislation on the contract system and from the effective use of budget funds. We consider the improvement of control to be the most important and significant, since within the framework of its implementation it analyzes the effectiveness of the execution of state contracts, the effectiveness of procurement, achievement of the state goals.

7. Conclusion

Based on the results of the research, the authors have come to the following conclusions. The reform of the activities of control bodies in the field of procurement is directed towards its regulation and unification. The introduction of uniform rules for conducting inspections should facilitate the actions of control bodies, make them expected for customers, reduce the negative impact of control measures on the subjects of control and, as a result, increase their effectiveness. Control authorities need competent communication, avoidance of a formal approach to inspections and use of maximum opportunities for joint actions in the implementation of control activities to ensure the control workflow.

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