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MECHANISM OF PROCUREMENT HARMONIZATION
UNDER FEDERAL LAW №223- FL

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Abstract

The purpose of the study is to analyze the mechanisms of outsourcing in the sphere of corporate procurement through the example of Irkutsk region, to systematize advantages and disadvantages of harmonization of procurement by certain types of legal entities, and to develop a set of recommendations for improving the quality of model procurement provisions under development.

The object of the study is the system of procurement by certain types of legal entities in the Russian Federation under Federal Law No. 223-FL dated July 18, 2011 "On procurement of goods, works, and services by certain types of legal entities". The subject of the study is the mechanism of outsourcing procurement in the form of centralization. The research tasks are: 1. to analyze the existing mechanisms of outsourcing in the sphere of corporate purchases through the example of Irkutsk region; 2. to systematize the research results and to identify the contradictions within the Russian system of corporate procurement regarding centralization; 3) to propose measures to improve the quality of the corporate procurement system in terms of outsourcing in the form of centralization.

The authors have examined the examples of centralization (harmonization) of corporate procurement in Russia; analyzed the centralized procurement of Irkutsk region and elaborated a set of recommendations to improve the quality of the model procurement provisions under development.

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Keywords: Scheduled procurement, procurement outsourcing, centralized procurement, corporate procurement, model provision, law No. 223-FL.



1. Introduction

Is outsourcing possible as the centralized procurement within Federal Law No. 223-FL dated July 18, 2011 "On procurement of goods, works and services by certain types of legal entities" (hereinafter referred to Law No. 223-FL, Corporate Procurement)? The academic community has asked this question many times at various conferences, seminars and business meetings. Broadly speaking, on the formal level, the answer to it is known: similar to Article 26 of Federal Law No. 44-FL dated April 05, 2013 "On the contract system in state and municipal procurement of goods, works and services" (hereinafter referred to Law No. 44-FL, Contract System), the centralized procurement (Borisov & Trefilova, 2014) in the current version of Law No. 223-FL is not planned, but alignment of procurement activities of certain customer groups (at the level of the region, municipality, within the corporation, etc.) can be ensured by the founders' decision (Lisovenko, 2014).

Currently, some regions of our country (for example, Moscow, Moscow region, Murmansk region, Novosibirsk region, Voronezh region, Kaluga region, Republic of Sakha (Yakutia) and others). Therefore, in some regions, additional legal regulation of procurement for customers following Law No. 223-FL is provided as guidance and support. It can be imperative and contain certain responsibilities and prohibitions, as, for example, it is done in Moscow; and it can be expressed in the form of recommendation, as, for example, it is planned in Moscow region (Kosheleva, 2016).

Moreover, Law No. 223-FL does not regulate the issue of attracting an outside procurement authority, for example, a specialized organization (Vorobyeva, 2013). However, in this paper, the emphasis will be placed on procurement outsourcing in the form of centralization.

2. Problem Statement

Currently, the issues of procurement outsourcing by certain types of legal entities, including centralized procurement, are not resolved. Such practices are not systematized within Law No. 223-FL that generally leads to the fact that most customers operate according to their own individual procurement rules, and that creates additional barriers for organizations' participation in procurement under Law No. 223-FL. For purposes of comparison, we note that the average number of procurement participants by tender within the contract system was about 2.7, but by Law No. 223-FL there was 1.73.

The need for normative regulation of outsourcing issues in the sphere of corporate procurement is illustrated by the actual implementation of centralization elements in this procurement sector in a number of regions of the Russian Federation. Section No. IV "Centralization of customers' procurement, consolidated (joint) procurement" in "Standard for procurement activities by certain types of legal entities" (approved by FAS of Russia) specifies that "centralization of customers' procurement activities is possible in order to improve their efficiency, to reduce staffing and procurement procedures costs, to enhance professional development of those engaged in procurement...". The draft of Federal Law No. 821534-6 «On amendments to the Federal Law "On procurement of goods, works and services by certain types of legal entities"¹ worked out by the Ministry of Economic Development of Russia, if adopted, will enable the

¹ The author's note: The corresponding amendments to Law No. 223-FL were adopted: Federal Law No. 505-FL dated December 31, 2017 "On Amending certain legislative acts of the Russian Federation". Starting from December 31, 2017, the founders have the right to approve a model provision on procurement that is mandatory for the subordinated budgetary institutions, autonomous institutions, and state unitary enterprises to apply. However, the issue of application of such model provisions by subordinate business entity remains unresolved, as well as the issue of attracting the outside auctioning authority (specialized organizations).

development of model procurement provisions in some cases that will be mandatory for application when approving procurement provisions by some business enterprises (Khramkin, Vorobyeva & Ermakova, 2016).

3. Research Questions

Up to date, the Russian system of corporate procurement has faced a serious problem: on the one hand, the rigid regulation of corporate customers' procurement activity by analogy with the contract system will deprive them of the opportunity to implement non-standard management decisions in this part of their activity, and also seriously hamper the production cycles of companies. On the other hand, the fact that the majority of customers making procurement in accordance with Law No. 223-FL have their own individual procurement provisions (at the time of writing this article, there were more than 77,000 documents regulating the procurement rules on the official website of the Unified Information System in the sphere of procurement) demonstrates that there is no principle of uniformity in the system of corporate procurement in our country. This situation ultimately leads to reduction of the level of competition in procurement, increase of the share of procurement from a sole supplier lowering procurement efficiency and cost-effectiveness, and to an increased risk of corruption.

4. Purpose of the Study

The purpose of the study is to analyze the existing mechanisms of outsourcing in the sphere of corporate procurement through the example of Irkutsk region, to systematize advantages and disadvantages of harmonization of procurement by certain types of legal entities, and to develop a set of recommendations for improving the quality of model procurement provisions which are being elaborated.

5. Research Methods

The study applies a complex of general scientific methods, including statistical and comparative analysis, examination of expert forecasts, statistical processing of information, the systematic method.

6. Findings

In order to meet this mandate, according to the message of the Governor of Irkutsk region dated April 14, 2016 "On the state of affairs in Irkutsk region in 2015 and the main directions of the regional state policy for 2016", the Ministry for Contract System Regulation of Irkutsk region (hereinafter referred to MCSR IR) developed three versions of model provisions on procurement:

Model provision on procurement of goods, works, services for needs of the state budgetary and autonomous institutions of Irkutsk region (Government of Irkutsk region, 2016);

Model provision on procurement of goods, works, and services for needs of the state unitary enterprise of Irkutsk region (Government of Irkutsk region, 2016);

Model provision on procurement of goods, works, and services for needs of business enterprises, in whose authorized capital the share of participation of Irkutsk region exceeds fifty percent in aggregate (Government of Irkutsk region, 2016).

We have analyzed the model provisions on procurement of goods, works, and services for needs of Irkutsk region customers and revealed the following advantages and disadvantages of procurement centralization (Table 1).

Table 01. Pros and Cons of procurement centralization under Law No. 223-FL

Advantages	Disadvantages
Increasing cash savings	Increasing procurement lead time
Increasing competition, creating equal conditions	Restricting customers' powers
Increasing transparency of ongoing procurement	Customers' dissatisfaction
Reducing corruption risks	
Professional approach to procurement	
Unity of procurement practices	
Monitoring the entire procurement process	

Among the advantages, we would also mention the increase of the effectiveness of training events for customers in Irkutsk region under Law No. 223-FL, and among the disadvantages, the fact that the negative effect of possible errors in the model provision increases and becomes the problem of the whole region.

The analysis of Irkutsk region model procurement provisions has revealed the following:

The first three chapters are devoted to the traditional issues of terminology, subjects, objectives, principles, and information support for procurement.

Chapter 4 is devoted directly to the centralized procurement. When conducting competitive procurement from five million rubles and more, the customer and the authorized body interact as follows:

1. The authorized body creates a procurement commission;
2. The customer sends to the authorized body a draft notice and documentation on procurement;
3. The time for consideration of the draft procurement documentation by the authorized body is not more than five working days. After examining the draft procurement documentation, the authorized body sends a letter to the customer about the approval of the procurement or the refusal to agree on the procurement, specifying the reasons for the refusal;
4. Receiving a refusal to agree on the procurement, the customer shall again send the draft procurement documentation, finalized taking the comments received into consideration, to the authorized body.

Further, the specific character of procurement from small and medium enterprises is presented. It is relevant only for those customers who are obliged to provide preferences for this category of participants in procurement.

We have analyzed and systematized the procurement methods from model procurement provisions and conditions of their application. Table 2 provides the results of the analysis.

Table 02. The procurement methods and conditions of their application covered by the model procurement provisions

Procurement method		Who applies	Limitation of I(M)PC	Application form	Grounds	Application of price and non-price criteria
Competition	Open	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions		In writing in a sealed envelope		Established by a model provision
	Closed	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions		In writing in a sealed envelope	In case of procurement of goods, works, and services, information about which is a state secret, as well as information on procurement, on which the Government of the Russian Federation took the decision	Established by a model provision
Auction	Closed	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions		In writing in a sealed envelope		
	Open	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions	5 million rubles	In writing in a sealed envelope		
	In electronic form	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions		In the form of an electronic document using electronic signature		
	Reverse auction	In electronic form	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions	5 million rubles	In the form of an electronic document using electronic signature	
Invitation to tender	Invitation to tender	Business entities, state unitary enterprises	1 million rubles	In writing in a sealed envelope		
		Budgetary institutions, autonomous institutions	500 thousand rubles			
	In electronic form	Business entities, state unitary enterprises	1 million rubles	In the form of an electronic document using electronic signature		
		Budgetary institutions, autonomous institutions	500 thousand rubles			
Request for proposals	Request for proposals	Business entities, state unitary enterprises	Customer's price, million rubles	In writing in a sealed envelope	In cases established by a model provision	Established by a model provision
	In electronic form	Business entities, state unitary enterprises	Customer's price, million rubles	In the form of an electronic document using electronic signature	In cases established by a model provision	Established by a model provision
Sole-source procurement (contractor, executor)	Business entities, state unitary enterprises, budgetary institutions, autonomous institutions				In cases established by a model provision	

It is noteworthy that only business entities and state unitary enterprises are allowed to use the request for proposals (including in the form of an electronic document). Thus, the budgetary and autonomous institutions have only one "multi-criteria" way to choose a transactor – a competition. In this case, a competition in electronic form is not presented in the model provision. That is, if a budgetary or autonomous institution purchase products included in the "electronic list" in a competitive manner, the procurement method can be either an auction in electronic form or a reverse auction in electronic form, or invitation to tender in electronic form. Consequently, the customer will have to give preference to the lowest price, because there is no multi-criteria competitive procedure in electronic form in the model procurement provisions for these legal entities. We guess that this case requires an amendment.

In general, the special features of procurement in electronic form are as follows: electronic procurement is conducted using e-trading platforms (hereinafter referred to as "EP"), which have been selected in accordance with Law No. 44-FL. Prior to the commencement date of such EP operators functioning, procurement in electronic form is carried out by EPs with functionality of integration with RIS (such EPs are RTS-Tender, OTC.RU, and Sberbank-AST). We believe that such requirements for limiting possible EPs are to be entirely appropriate.

It is worth considering the requirements for procurement participants. Unified requirements for procurement participants are formulated similarly to Part 1 of Article 31 of Law No. 44-FL (as amended by Federal Law No. 489-FL dated December 28, 2016). The customer may establish additional requirements for procurement participants including:

- availability of material, financial and labor resources necessary for the contract performance in case IMPC is five million rubles or more;
- experience of execution (taking into account the succession) of a contract for works, services accomplishment, goods delivery of comparable nature and size for the last three years prior to the date of application for participation in the relevant procurement.

However, in the model provision, the requirement for audit by the procurement commission of compliance of procurement participants with additional requirements was missed. This is most likely a clerical error.

The following standard raises most of the questions: "In case several legal entities, private customers (including individual entrepreneurs) are on the side of one participant in the procurement, the demands specified by the Customer in the procurement documents for the procurement participants shall be presented to each of these persons individually". Furthermore, the requirements for application composition and content in each individual competitive procurement do not pay attention to the "multiple" participant. At the same time, according to experts, the institute of multiplicity of persons on the side of one procurement participant has prospects for development (Evstashenkov, 2017).

As for the list of procurements from a sole supplier (contractor, executor), the model provision for budgetary and autonomous institutions, for example, provides the list of 35 items, some of which customers may not include in their document. For the "small procurements" that are popular among customers, the norm is defined quite democratically: "procurement of goods, works, services whose value does not exceed one hundred thousand rubles, and, in case the annual revenue of the customer for the current fiscal year is more than five billion rubles, whose value does not exceed five hundred thousand rubles".

The possibility to change the concluded contract is very limited by analogy with Law No. 44-FL. We believe that under Law No. 223-FL, the mechanism for possible amendment of the contract in performance should be more flexible.

7. Conclusion

The results of the study would enable the use of the findings for improvement of the system of centralized procurement of Irkutsk region, and the development of model procurement provisions in other regions.

Likewise, on the basis of the analysis of the law enforcement practice of procurement under Law No. 223-FL, we recommend regulating the following procurement issues not directly mentioned in Law No. 223-FL:

1. The customer's actions when appealing against the procurement procedure under Art. 18.1 of the Federal Law No. 135-FL dated July 26, 2006 "On protection of competition", namely: in which part the procedure is suspended, in full or only in the part of the contract conclusion, as this issue has not been resolved by the procedure for appealing against actions (inactions) of some legal entities in the procurement process.

2. Since the procurement provision must contain the information to be placed in the UIS, the following should be noted:

- a. the procedure for entering information on the performance of contracts into the register of contracts in accordance with the Decree of the Government of the Russian Federation No. 1132 dated October 31, 2014 "On the order of keeping the register of the contracts concluded by customers resulting from procurement" (Decree No. 1132), namely: to update the information upon each acceptance and payment "within" the contract or upon the execution of the whole contract, because this issue is not regulated by Decree No. 1132;
- b. to fix (if necessary) the right provided for by Part 15 of Art. 4 of Law No. 223-FL, namely: the customer has the right not to place in UIS the information on the procurement of goods, works, services, whose value does not exceed one hundred thousand rubles. In case the annual revenue of the customer during the fiscal year reported on is more than five billion rubles, the customer has the right not to place in UIS the information on the procurement of goods, works, services, whose value does not exceed five hundred thousand rubles.

3. To provide additional grounds for adjusting the procurement plans in accordance with item 8v of Decree of the Government of the Russian Federation dated September 17, 2012 No. 932 " On approval of rules for development of plans for goods (works, services) procurement, and requirements for the plan's form". Such grounds can be introduced in another local act of the customer, not only in the procurement provision.

The first steps have been taken to implement outsourcing in the form of centralized procurement under Law No. 223-FL in Irkutsk region and this fact itself is extremely positive. Further, MCSR IR and customers face a significant challenge of verification of the norms of model provisions in practice and their improvement. The current mechanism of corporate procurement needs a complete revision of the approach to procurement outsourcing including in the form of centralized procurement, in particular:

The issues of development, approval and application of model procurement provisions must be settled on the part of founders and / or regulatory authorities in the sphere of procurement and parent companies. The procedure for joining subordinate customers and /or customers' subsidiaries to this provision should be also regulated.

The issue of procurement outsourcing in the sphere of transferring a certain part of the customer's functions to a third-party procurement organizer (an authorized body, a specialized organization, etc.) requires careful assessment by the legislator. It is necessary to resolve the issue of the rights and obligations of the parties, control and, of course, responsibility.

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