Analysis of the Main Aspects of Procurement by Budget Organizations of Resources for the Purposes of Industrial and Civil Construction

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Abstract. To meet the needs for goods, works or services, customers make purchases in accordance with the Constitution of the Russian Federation, Law No. 223-FL, Federal law No. 135 "On protection of competition", other Federal laws and regulatory legal acts of the Russian Federation, as well as the approved and placed in the unified information system regulations on the purchase of the customer, containing requirements for procurement, including the procedure for preparation and conduct of procurement procedures and conditions of their application, the procedure for conclusion and execution of contracts. Regardless of what procurement procedures are conducted by the customer, they are always based on the provision on procurement, beyond which the organizer of the procurement has no right to go. A detailed comparative analysis of the request for quotations and request for proposals procedures should be carried out in order to identify their distinctive features, advantages and disadvantages.

1. Introduction
The unification of procurement activities within the framework of Law No. 223-FL has been in force for several years and has been successfully applied in some regions of our country, but only since 2018 the legislator has officially established the possibility of developing model provisions on procurement that are mandatory for use by budgetary institutions, Autonomous institutions, as well as unitary enterprises. To date, UIS hosted about 200 of the model provisions on procurement related to the customers of different levels. At the Federal level, only a few model provisions on procurement were approved, among which the document of the Ministry of education and science of Russia was one of the first [1].

The standard regulation on the purchase of goods, works and services for the needs of Federal State Autonomous institutions, Federal state budgetary institutions, Federal state unitary enterprises subordinated to the Ministry of science and higher education of the Russian Federation was approved by the Order of the Ministry of education of 07.11.2018 No. 949 (hereinafter – the Regulation, the Standard regulation on procurement, the Model regulation on the purchase of the Ministry of education) [2,3].

2. Problem statement
The article reviewed in detail Order of the Ministry of Education RUSSIA from 07.11.2018 N 949 "On Approving the model provisions on procurement of goods, works and services for the needs of Federal State Autonomous institutions, Federal State Budget Institution, Federal State Unitary
Enterprise under the Ministry science and higher education of the Russian Federation” and Federal Law "On the procurement of goods, works, services by certain types of legal entities" dated July 18, 2011 No. 223-FZ [4].

It should be noted that in part 2.1 of article 2 of the Law No. 223-FL it is noted that "the Federal Executive authority performing functions and powers of the founder of the budgetary institution, Autonomous institution, Federal Executive authority or the organization performing on behalf of the Russian Federation powers of the owner of property of the unitary enterprise has the right to approve the standard provision on purchase, and also to define budgetary institutions, Autonomous institutions, the state unitary enterprises, for which the use of such model provisions on procurement is required when the adoption of their procurement regulations or amendments” [5,6]. However, in the Order of the Ministry of education and science of Russia № 949 noted that it is mandatory only for budgetary institutions, Autonomous institutions and unitary enterprises have the right to be guided by it.

3. Purpose
Let us turn to the content of the Model provision on procurement of the Ministry of education and science of Russia. Let's start with an overview of the procurement methods provided in the document, which is presented in Table 1 with all possible types and forms.

Table 1. Procurement Methods provided for by the Model regulations on procurement of the Ministry of education and science of Russia.

| Sign / Form | Methods of procurement according to the Model regulations on procurement of the Ministry of education and science |
|-------------|--------------------------------------------------------------------------------------------------|
|             | Competitive procurement | Non-competitive procurement from a single supplier (contractor) |
|             | competition | auction | inquiry of quotations | request for proposals | competitive selection | request for offers | procurement from a single supplier (contractor) |
| Bidding     | +          | +        | +                     | +                     | ?                     | -                | -                        |
| Closed form | +          | +        | +                     | +                     | -                     | -                | -                        |
| Electronic form | +      | +        | +                     | -                     | +                     | +                | +                        |
| «Paper» form | +          | -        | -                     | +                     | +                     | -                | -                        |
| Only among SMSB | +       | +        | +                     | +                     | -                     | +                | +                        |

The table shows that most of the procurement is conducted electronically. And if the request for quotations and request for proposals with the submission of applications on paper will contradict the requirements of the Law № 223-FL, the open auction is not prohibited by law [7]. However, subordinated to the Ministry of education and science customers are deprived of this opportunity.

4. Discussion
Paper of competitive procurement can only be competition and "other" competitive procurement method and competitive selection process which is held under the rules of open competition with the following features:

1) information on carrying out competitive selection, including the notice on carrying out competitive selection, documentation on purchase, the draft contract, is placed by the Customer in
uniform information system not less than five days prior to the date established in documentation on carrying out competitive selection of the deadline of submission of applications for participation in competitive selection [8];

2) evaluation and comparison of applications for participation in competitive selection with use of one criterion of an assessment if it is provided by documentation on carrying out competitive selection is allowed;

3) in case of changes in the notice of competitive selection, documentation on competitive selection, the deadline for applications for participation in the competitive selection should be extended so that from the date of placement in the unified information system of these changes to the date of the deadline for submission of applications remained at least five days [9,10].

It should be noted that when calculating the deadline for submission of applications in the competitor selection, customers should in practice take into account the rule of providing clarifications of documentation on competitive procurement, established in part 3 of article 3.2 of Law No. 223-FL. Based on this, it is recommended to establish a minimum application period in competitive procurement of four working days [11]. This nuance should be paid attention to, as in practice there are a large number of cases in which this period was not observed.

Selection of the supplier (contractor, contractor) by means of an open tender may be carried out if the subject of the purchase is goods, works, services (hereinafter-GWS) included in the list, which is an Annex to the procurement Regulations (Annex No. 1) [12]. Thus, if the purchased products are not included in this list, the customer has no right to hold a tender, and the use of other methods of procurement is allowed. For example, according to section 4, paragraph 1, of Chapter III of the Regulation: “the Selection of a supplier (contractor, contractor) by means of an open auction in electronic form may be carried out if the subject of the procurement is any goods, works, services, including those included in the list annexed to the procurement Regulation (Annex No. 1)”. This list includes:

1) food;
2) catering services;
3) services in the organization of rest of children and their improvement;
4) educational, information, consulting, audit, legal and forwarding services;
5) security services;
6) cleaning services;
7) design, construction, reconstruction, capital and maintenance of capital construction objects and (or) their parts, improvement of the territory, services in construction control;
8) scientific-research, project-research, experimental-design or technological works;
9) conducting experiments and experiments;
10) development and implementation of information systems;
11) goods, works, services related to the creation of design documentation for the manufacture of equipment and tooling;
12) organization of exhibition activities;
13) goods, works, services related to the provision of visits of official delegations and representatives;
14) product design development, production and delivery of product models, delivery of printing, stationery, gift, souvenir and premium products with the logo or corporate design of the Customer [13,14].

We believe that this list may be controversial due to the fact that there is no binding to any classifier.

Briefly, the conditions of application and the procedure for the most popular among customers competitive procurement procedures, open request for quotations in electronic form and open request for proposals in electronic form are presented in Table 2.
Table 2. Terms of use and procedure for open request for quotations in electronic form and open request for proposals in electronic form in accordance with the Model regulations on procurement of the Ministry of education and science of Russia.

| Condition, order | Open request for quotation in electronic form | Open request for proposals in electronic form |
|------------------|---------------------------------------------|--------------------------------------------|
| The types of purchased GWS | Can be carried out if the subject of purchase are any types of GWS | The complexity of GWS or conditions of supply of GWS does not allow conducting of request for quotations |
| The limit for IMCP | ≤ 7 million rubles. | ≤ 15 million rubles. |
| The deadline for applications | 5 working days | 7 working days |
| Composition of application | It consists of a price offer and one part | It consists of the first part, the price offer and the second part |
| The criterion for selecting the winner | The bidder who made the lowest price offer | The best conditions of contract performance (in accordance with Annex No. 2 to the Regulation) |
| Protocols | 1. Protocol of consideration of applications 2. Protocol mapping of quotations (forms operator) 3. Final protocol | 1. Protocol of consideration of the first parts of applications 2. Protocol mapping of quotations (forms operator) 3. The Protocol containing results of consideration of the second parts of applications 4. Final protocol |
| Contract | It is concluded with the use of software and hardware of the electronic platform and must be signed by the electronic signature of the person entitled to act on behalf of the respective bidder, the Customer |

At first glance, it may seem that the request for quotations can really be carried out on any GWS. However, section 8 of the part III Provisions it follows that in the complex GWS of conducting of request for quotations is not possible. We believe that customers who do not carefully study the Model provision on procurement and do not compare the norms of the various sections, risk making a mistake when choosing a method of procurement [15].

5. Detailed consideration of problem

Pay attention to the application deadline in the request for proposals. According to part 23 of article 3.2 of the Law № 223-FL "During the request for proposals notice of the procurement and procurement documentation are placed by the customer in a single information system for at least seven working days before the date of such a request" [16]. Many note the ambiguity of the legal rule regarding the deadline for submitting applications in the request for proposals arising from the provisions of the law. After all, with respect to other methods of procurement, the application deadline is set clear and tied to the date of expiry of the application deadline.

In the Position of the matter specified in paragraph 9 of section 8 of Chapter III: «Information on holding the request for proposals in electronic form, including the notice and documentation on the request for proposals in electronic form, the draft Treaty is placed by the Customer in the unified information system no less than seven working days before the due documentation of the request for proposals in electronic form the date of expiry of submission of applications for participation in request for proposals in electronic form» [17].
It should be noted that the criteria for selecting the winner in the request for quotations and in the request for proposals established in the Provision do not fully comply with the provisions of Law No. 223-FL [18,19]. According to the normative act in the request for quotations the participant of the procurement, the application of which meets the requirements established by the notification about conducting of request for quotations, and contains the lowest contract price, and in the request for proposals - participant of the competitive procurement, the request for participation in the procurement of which in accordance with the criteria defined in the documentation for the purchase that most closely meets the requirements of the documentation for the purchase and contains the best conditions of supplying goods, performing works, rendering services.

6. Conclusion

From the presented brief review and analysis of the request for proposals and request for quotations in the Model provision on procurement of the Ministry of education and Science it is clear that the procedure for their conduct is almost fully consistent with the procedure for competitive procurement in electronic form, provided for in article 3.4 of Law No. 223-FL, i.e. [20]. A similar conclusion can be drawn with respect to the electronic tender and electronic auction provided for in the Regulation.

On the one hand this decision seems logical and correct, because the customers who are required to support small and medium business, the majority of competitive procurements will be to announce and conduct for this category of persons. on the other hand, some customers within the jurisdiction of the Ministry of education and science, which are not required to support SMSB, faced with the technical difficulties of implementing such procedures electronically.

It turned out that the algorithm of, for example, an electronic request for quotations among SMSB cannot be implemented without the condition of limiting participation only among SMSB. We believe that this technical nuance will soon be settled by the operators of electronic platforms.

References

[1] Order of the Ministry of Education RUSSIA FROM 07.11.2018 N 949 "On Approving the model provisions on procurement of goods, works and services for the needs of Federal State Autonomous INSTITUTIONS, Federal State Budget Institution, Federal State Unitary Enterprise under the Ministry SCIENCE AND HIGHER EDUCATION OF THE RUSSIAN FEDERATION"
[2] Federal Law "On the procurement of goods, works, services by certain types of legal entities" dated July 18 2011 No 223-FZ
[3] Barannikova E S 2017 Zhurnal rossiyskogo prava 1 115-122
[4] Peshkov V V, Mikulinskaya O O 2017 Electronic scientific journal “Molodezhnyy vestnik IrGTU” 4(28)
[5] Letter of the Ministry of Economic Development of Russia of January 29 2015 No OG-D28-1631 "On the implementation by the budget institution of procurement at the expense of funds from voluntary donations"
[6] Evstashenkov A N 2017 A collection of papers of the V All Russian practical conference-seminar (M.: JSC «Print inTime») 6-9
[7] Peshkov V V and Mikulinskaya O O 2017 Electronic scientific journal “Molodezhnyy vestnik IrGTU” 4(28)
[8] Gracheva E I 2015 ed Financial Law 587
[9] Federal Law "On the contract system in the field of procurement of goods, works, services for state and municipal needs" dated 05.04.2013 No 26-FL ATP "Consultant Plus"
[10] Schiavo-Campo S, Sundaram P 2000 To Serve and Preserve: Improving Public Administration in a Competitive World (Philippines, Manila) Asian Development Bank 836 p
[11] Shurpaev Sh M, Pitulko K V 2016 Features of the commission of crimes of corruption in the field of procurement for state needs Jurid. Research 10 pp 78-84
[12] Peshkov V V and Gamayunova Ye V 2018 Izvestiya vuzov. Investitsii. Stroitel'stvo. Nedvizhimost' 8(2) pp 56–72
[13] Loader K 2016 Is Local Authority Procurement Supporting SMEs? An analysis of practice in English local authorities Local Government Studies vol 42 3 pp 464-484
[14] Gafurova G T, Notfullina G N, Fukina S P 2016 Government procurement as a tool for the development of small and medium-sized businesses in Russia Economy of the region 12 vol 4 pp 1233-1243
[15] Yakovlev A A 2012 The System of public procurements in Russia: on the threshold of the third reform Public Sciences and modernity 5 p 70
[16] Federal Law “On Amendments to the Federal Law “On the Contractual System in the Field of Procurement of Goods, Works, and Services for Providing State and Municipal Needs” dated December 31 2017 No. 504-ФЗ
[17] Paulov P A, Silantyev K V 2018 State regulation of procurement activities Bulletin of science and practice vol 4 12 pp 442-446
[18] Ivanova V O 2013 Government procurement as a tool of “coercion to innovate” the industrial sector of the economy Ros. entrepreneurship 15 pp 77-84
[19] On the methodical recommendations on the estimation of the efficiency of holding competitions for placing orders for supplies of goods for state needs: letter of RF Mineconomic development 815/05
[20] Belyaeva O A 2015 The contract system: the main problems of the law of application and ways to overcome them Journal of Russian law 7 pp 15-17