Non-Competitive Procurement of Resources in Industrial and Civil Construction

V V Peshkov¹, T G Doroshenko², I A Sukhanova²

¹Irkutsk National Research Technical University Department of Real Estate Survey and Management, 83 Lermontov st., 664074, Irkutsk, Russia
²Center for Professional Education Baikal State University, Lenina str., 11 Irkutsk, 664003, Russia

Abstract. By Order No. 949 of the Ministry of education and science of the Russian Federation of 07.11.2018, a 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. This provision of the Ministry of education and science is very voluminous and sometimes duplicates the provisions of the Federal law of 18.07.2011 № 223-FL "On procurement of goods, works and services by certain types of legal entities", so in the article we have focused only on certain specific issues not covered by this law. In connection with the introduction of the Model provision, customers need not only to update their "old" provisions, but also, as a result, to make changes to other local and administrative acts regulating procurement activities. For customers in respect of which Order No. 949 is optional, it may be recommended to study the Model provision of the Ministry of education and science and to include its separate provisions in its procurement regulation.

1. Introduction
The main tool to improve the efficiency of budget spending is the approval at the level of the subject of the Russian Federation of the model provision on procurement for its customers. It will ensure the uniformity of all procedures, simplify the system of procurement control and reduce corruption risks arising from their implementation. The model provision can also be used to:
- to unify methods of procurement;
- define uniform requirements for participants;
- establish an exhaustive list of grounds for concluding a contract with a single supplier;
- prescribe the order of justification of the initial (maximum) prices of contracts;
- to provide access to procurement for small and medium-sized businesses (for example, to provide a single limited set of requirements for the bidder, carried out only among small and medium-sized entrepreneurs, and the composition of the application) [1,2].

2. Problem statement
Order No. 949 of the Ministry of education and science of the Russian Federation of 07.11.2018 approved the Model regulations 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 (hereinafter -
Order No. 949; Model regulations of the Ministry of education). This provision of the Ministry of education and science is very voluminous and sometimes duplicates the provisions of the Federal law of 18.07.2011 № 223-FL "On procurement of goods, works and services by certain types of legal entities" (hereinafter - the Law № 223-FL), so in the article we have focused only on some atypical issues. The procurement regulation should provide for competitive and non-competitive procurement, as well as establish the procedure for such procurement [3].

Competitive procurement is the procurement carried out in compliance with the following conditions (Fig.1).

**Figure 1. Conditions for Competitive procurement.**

If these conditions are not met, the purchase is non-competitive.

This division affects the form of procurement: either only in electronic form (for example, non-competitive procurement), or the choice of the customer in electronic or paper form; as well as the obligation to form a Commission (for example, when conducting only competitive procurement) and especially the formation of documentation, etc.

### 3. Purpose

Let us consider the specifics of non-competitive procurement, the conduct of which is regulated by Chapter IV of the Regulation. An offer request is a "different" non-competitive procurement method. On the one hand, information about this procedure is communicated to an unlimited number of persons by placing the notice and documentation in the UIS, i.e. competition is ensured in its own way. On the other hand, the description of the subject of purchase is carried out without compliance with the requirements of part 6.1 of article 3 of the Law N 223-FL [4,5]. We believe that any reasonable customer has provided for such a "different" non-competitive procedure in its procurement regulation. After all, in many situations it seems to be the only option that fits into the framework of Law No. 223-FL, allowing to purchase the necessary products with the highest efficiency. For example, when purchasing goods for resale. Position there are 8 cases under which a customer may conduct a request for offers. In addition to the example already given, of particular interest is such a basis as "when the purchase of goods, works, services of specific trademarks, service marks, brand names, patents, utility models, industrial designs, the name of the country of origin of the goods is provided for by the requirements of an
external customer who is an individual, including an individual entrepreneur, in order to fulfill the obligations of the Customer to such an external customer." After all, according to paragraph 3 of part 6.1 of article 3 of Law No. 223-FL, it is possible to specify a specific trademark without the words "or equivalent" in a competitive procurement if there is a corresponding contractual relationship with a legal entity, i.e. there is an omission in the law with respect to an individual [6].

There are also comments on the basis of the request for proposals, such as "procurement of goods, works, services through targeted donations." We doubt whether this paragraph can be applied by a budgetary institution. According to the letter of the Ministry of economic development of the Russian Federation of January 29, 2015 № OG-D28-1631 funds from voluntary donations do not apply to the cases referred to in part 2 of article 15 of the Law on the contract system, so when purchasing goods, works, services at the expense of these funds, the budget institution must be guided by the provisions of Law № 44-FL [7].

4. Discussion

In General, with regard to "other" non-competitive procurement methods, such as the request for proposals in the Model provision on procurement of the Ministry of education and science of Russia, concerns are raised by the court practice, which has begun to form, according to which the customer's attribution of competitive procurement to non-competitive in the procurement regulation is a violation of the requirements of part 3.2 of article 3 of the Law No. 223-FL [8,9].

Favourites customers purchase from a single supplier (contractor, contractor) can be carried out in accordance with the Model regulations on the purchase of the Ministry of education and science of Russia in the following cases (Fig.2):

- when, due to the peculiarities of the market of the relevant products, there is virtually no competition (no alternative purchase)
- when the cost of products purchased by the Customer does not exceed 500 000 (five hundred thousand) rubles (purchase of small volume)
- when objective circumstances due to which the procurement is otherwise not feasible (procurement under the special circumstances)
- when the agreement on the network form of implementation of educational programs is signed, according to article 15 of the Federal law of December 29, 2012 N 273-FL "About education in the Russian Federation"

Figure 2. Favourites customers purchase from a single supplier with the Model regulations on the purchase of the Ministry of education and science of Russia.

5. Detailed consideration of problem

It is important to pay attention to several points:
1. Among non-alternative purchases such basis as "services of power supply or purchase and sale of electric energy at the guaranteeing supplier of electric energy" is specified. At the same time, among the relations-exceptions from the scope of Law No. 223-FL there is "the conclusion and execution of contracts in accordance with the legislation of the Russian Federation on electricity, which are mandatory for participants in the market of electricity and (or) power." So O. A. Belyaeva writes: "Another exception to the scope of regulation of the procurement Law is the relationship on the conclusion and execution of contracts in accordance with the legislation of the Russian Federation on electricity, which are mandatory for the wholesale market participants in the circulation of electric energy and (or) power (p. 8 h. 4 article 1 of the procurement Law) [10]. In law enforcement practice, questions often arise as to the correct definition of the scope of such treaties. The analysis of the current legislation allows to refer to them the following contractual constructions: the contract of purchase and sale of electric energy and power»

2. The annual volume of purchases of small volume shall not exceed 5 million rubles or twenty percent of the sum of expenses for purchases of goods, works, services according to the Federal law No. 223-FL in the current year, including for payment of expenses under the contracts signed before the beginning of the current year.

Not allowed artificial splitting of purchases into multiple purchases of low volume with the purpose of evading competitive procedures of determination of supplier (contractor, performer), the signing of several contracts with the same supplier (contractor, performer) with the same subject of procurement, if the date of conclusion of such contracts have on the same quarter of the calendar year. Under the same subject of purchase in this paragraph refers to goods (works, services) belonging to the same group of products in accordance with the Russian classification of products by economic activity "RC 034-2014" (CPA 2008) [11,12]."The legislation of the Russian Federation does not provide for the concept of "purchase fragmentation". Within the framework of Law No. 223-FL, the customer carries out procurement activities based on the purposes and principles set forth in the law. The inclusion of the concept of "fragmentation of procurement" may increase the risk of administrative liability of customer officials in connection with the identification of "formal" violations of the procurement regulations.

3. Among the grounds for procurement under special circumstances, it is indicated, inter alia: "a contract is concluded with the operator of the electronic platform in order to ensure the procurement in electronic form in accordance with the procurement Regulation." In this case, among the grounds for the purchase from a single supplier (contractor, contractor) there is no special basis that gives the customer the opportunity to pay for the services of the operator of the electronic platform according to the Decree of the Government of the Russian Federation of 10.05.2018 № 564 "On the collection of electronic platforms by operators, operators of specialized electronic platforms fee during the electronic procedure, closed electronic procedure and the establishment of its limits." It turns out that in that case the customer will have to spend a limit of purchases of small volume[13].

Also, when making a purchase for special circumstances, the responsible official of the customer shall approve a statement of justification, which includes the following information:

a) justification of impossibility or inexpediency of carrying out competitive procedure and justification of the price of the contract with Appendix of necessary calculations, data of the analysis of the market.

This certificate-the justification must be substantial justification of the impossibility of using other methods of procurement do not allow to conduct a competitive procedure for objective reasons on the basis of the factual circumstances of the specific procurement. Justification of the contract price should be contained in the contract;

b) justification of the choice of the specific supplier (contractor, contractor) with Appendix of documents according to the list given in Provision.

In some cases, the preparation of a certificate of justification is associated with high time costs of the customer, requires the involvement of additional labour resources, i.e. may entail additional
cash costs [14]. At the same time, the fulfilment of this requirement in some cases does not affect the increase in the efficiency of spending money, which does not correspond to the principle set out in paragraph 3 of part 1 of article 3 of the Law No. 223-FL, namely: "targeted and cost-effective spending of funds for the purchase of goods, works, services (taking into account, if necessary, the cost of the life cycle of purchased products) and the implementation of measures aimed at reducing the costs of the customer" [15,16].

In practice, it is not always easy for customers to agree with the counterparty the inclusion of the contract price justification in the contract form.

4. "If the Federal law No. 223-FL does not provide for the right of the Customer not to place information about the purchase from a single supplier (contractor, contractor) in a single information system, then in a single information system not later than 2 working days before the conclusion of the contract, a notice of purchase from a single supplier (contractor, contractor) and a draft contract, which is an integral part of the notice of purchase, and in the case of purchase from a single supplier (contractor, contractor) for special circumstances, also a certificate of justification"[17,18,19].

6. Conclusion
On the one hand, the presence of a model provision on procurement eliminates the need for subordinate customers to prepare a document on their own, on the other hand, to take into account the needs and nuances of each individual customer is almost impossible and the norm that will be good for one customer can be practically unrealizable by another. In addition, upon the introduction of the model provision on procurement, customers need constant methodological support from the developer: clarification of the provisions of the document, training activities, preparation of standard forms of documents [20]. And the main thing is that the norms of the model provision on procurement do not lead to "work for the sake of work", but actually increase the efficiency of the procurement activities of the customer.

Thus, in connection with the introduction of the Model provision, customers need not only to update their "old" provisions, but also, as a consequence, to make changes to other local and administrative acts regulating procurement activities. For customers in respect of which Order No. 949 is optional, it may be recommended to study the Model provision of the Ministry of education and science and to include its separate provisions in its procurement regulation.

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] 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"
[4] Decree of the Moscow Government dated July 05, 2013 No 441-PP “On Approving the List of Additional Requirements for the Procurement of Goods (Works, Services) of State Unitary Enterprises of the City of Moscow and Business Companies, in the authorized capital of which the share of the City of Moscow exceeds 50 percent in total”
[5] Belyaev O A Corporate purchases Problems of legal regulation The document is provided by the system ConsultantPlus
[6] Evstashenkov A N 2017 A collection of papers of the V All Russian practical conference-seminar (M.: JSC «Print inTime») 6-9
[7] Gracheva E I 2015 ed. Financial Law 587
[8] Gareev I F 2016 International journals on housing research: analysis of publications and scientometric indicators (part 3) Housing strategies vol 3 3 pp 223–242 doi: 10.18334 / zhs.3.3.36397
[9] Gorbachevskaya E Yu 2015 Development of a methodological approach to the method of managing rental housing Bulletin of the Irkutsk State Technical University vol 5(100) pp 186-196
[10] Kovaleva E A 2010 Positive and negative effects of the public procurement institution Bulletin of Chelyabinsk State University 5 186 p
[11] Decree of the Moscow Government dated July 05, 2013 No 441-PP On Approving the List of Additional Requirements for the Procurement of Goods (Works, Services) of State Unitary Enterprises of the City of Moscow and Business Companies, in the authorized capital of which the share of the City of Moscow exceeds 50 percent
[12] Resolution of the Twelfth Arbitration Court of Appeal of 02.02.2019 N 12АП- 664/2019 in case number A12-36504 2018 an overview of the decision is presented on the website of the journal “State and Municipal Procurement”
[13] Belyaev O A “Corporate purchases Problems of legal regulation The document is provided by the system ConsultantPlus
[14] Galanov V A 2014 Foreign experience of state procurement activity (M .: INFRA-M) p 63
[15] Official website of the Federal state statistics service of the Russian Federation http://www.gks.ru
[16] Peshkov A V 2016 Izvestiya Irkutsk state economic Academy 26(3) pp 419-425
[17] Matveeva M Kholodova O 2018 MATEC Web Conf. vol 212
[18] Kramin T V, Grigoriev R A, Kramin M V 2015 Assessment of the influence of the federal contractual system of Russia on the efficiency of government procurement: regional analysis Vector of science of Togliatti State University. Series: Economics and Management 3(22) pp 30-33
[19] Matveeva M V and Skolubovich A Yu 2018 Izvestiya vuzov. Investitsii. Stroitelstvo. Nedvizhimost 8(3) pp 45-52
[20] Lapin A E, Kiseleva O V, Kumundzhieva E L 2016 Approaches to assessing the effectiveness of the contractual system in the field of state and municipal procurement Business. Education. Right Bulletin of the Volgograd Institute of Business 1(34) pp 30-35