On Possible Security Risks of Contract Tenders for Developers

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Abstract. Today, electronic processes of various types, including tenders and bidding, gain more relevance in the era of digital economy and informational technologies. Tender is a relatively recent procedure, though it is already undergoing changes. New ways to conduct tenders and bidding procedures are driven by urge for efficiency. The authors try to elicit the efficiency element for developers that participate in bidding auctions for development of built-up areas, integrated urban development and construction of standard housing. The paper pinpoints the possible risks, which may occur if procedure rules, including electronic tenders, are failed to comply with. The authors attempt to protect and maintain regulations for tenders that are to be held according to the law. Underdeveloped and haphazard regulatory framework may place national security in jeopardy. Thus, the work considers options to prevent and curb possible threats.

1. Introduction
Urban Development Legislation of the Russian Federation provides for three types of contracts when planning construction. They are: a contract for development of the built-up area, integrated development of the area and construction of standard housing. These agreements differ in purposes of the construction objects, conditions and requirements for developers. However, all of them comprise a tender. The tender can be considered if municipal authorities are in charge. Goal the work is to analyze tendering procedures, regardless of type of contract, which is tendered out, in order to identify possible risks at different stages. Objective of this work is to mitigate various risks in order to ensure safety and equality of all parties when effecting a contract.

Urban Development Code does not state what bidding tender is. The given definition can be find in the regulation for state procurement and housing legislation.

Parties that bind an agreement on the development of the built-up areas, integrated development of the area, construction of standard housing dwell their assumptions on that one of the main goals of the current policy in Russia is a sustainable development of the territory. Sustainable development, according to the Urban Development Code of the Russia Federation, comprises, on the one hand, provision of safety and favorable work conditions when performing construction and, on the other hand, constraint of the negative effect of human activity on the environment. In order to maintain balance between production operation and the environment, federal, regional and municipal authorities take a number of laid down measures. Territory planning, which every municipality should have, plays an important role in this case Territory planning encompasses not only the allocation of elements of
the planning structure, but also the establishment of the boundaries of land plots, including those intended for construction. Meeting the municipal territory planning and goals, which developers set, is the major objectives of the authorities.

2. Materials and Methods

First, a request for tender is placed. The organizer, who are local authorities in our case, provides a clause, which comprises time, place, bidding procedure, form and deadline to submit offers, reduction of the initial price of the service, criteria and conditions for contenders.

Stages of a tender vary, though they are set in a number of legal acts. Any conflicts with the standards, which regulate tender action, are deemed illegal, therefore the results carry no legal weight and can be canceled out in court.

Electronic tenders for development of the built-up area, integrated development of the area and construction of standard housing draw a special attention. Submission bids online is a new model for land tenders, thus, principles for holding bidding tenders are put into question. Concept of tenders provides for legality, fairness, equality, transparency, land use management, public obligation, etc.

The development of information technology has led to the emergence of electronic tendering, including for urban development. Modern software not only makes it possible to search and sort information quickly, not only automatically notify about new lots, auction conditions, requirements for bidders, but also minimize drawbacks that are common for online procedures. The possibility of such risks as price-rigging, failure to maintain information transparency and availability, protection of personal data, drives to test new forms of ensuring legitimacy of electronic operations, and to work on new ways of prevention of technical issues during the tender actions.

Methods of comparative analysis, dialectics, logic and analogies are used in our work to effectively explore the topic that may open up a new vision for auctions.

3. Results

Legal relations that stem from tenders for development of the built-up area, integrated development of the area and construction of standard housing are subject to the Urban Development Code. However, Urban Development Code does not provide a step-by-step manual of tender procedures. The clauses of the Urban Development code comprise: the necessity to make a decision on the preparation of documentation for the tender to conclude the contract, names the parties of the contract, the essential conditions of the contract, legal entities, the procedure of notification about the tender, the rights and obligations of those who have concluded the contract for the tender. Detailed information on the contract for development of the built-up area, integrated development of the area and construction of standard housing includes the methods and volume of ensuring the fulfillment of contract obligations, the term of the contract and the liabilities if parties fail to perform or perform improperly the agreement. The procedure for holding a tender, enshrined in such federal laws as the Federal Law "On the contractual system in the field of procurement of goods, works, services to meet state and municipal needs" dated 05.04.2013 N 44-FZ, Federal Law "On Assistance to the Development of Housing Construction " dated 24.07.2008 N 161-FZ, is of special interest.

The Government of the Russian Federation is the main effector that regulates legal relations in the conduct of an electronic tender. It does not only develop functional requirements for creation, development, maintenance and management of a unified information system, but also establishes the procedure for registering participants in an electronic auction. FZ-44 lists such principles that are specific to the contractual system in the field of procurement, however, we believe that these principles can also be projected to hold an auction for the development of development of the built-up area, integrated development of the area and construction of standard housing. These principles encompass openness, information transparency, ensuring competition, professionalism of bidders, encouragement of innovations, unity, responsibility for the effectiveness of meeting state and municipal needs, and others.
Federal Law "On Assistance to the Development of Housing Construction", indirectly applies to those developers within housing legislation, who submit their proposals for the development of the built-up area, integrated development of the area, construction of standard housing. The law also focuses on placing information on the official website.

4. Discussion
Tenders for development of the built-up area, integrated development of the area and construction of standard housing are regulated by the Urban Development Code. Any companies (legal entities) can participate in the bidding if they comply with the following requirements:

1. A legal entity must operate for at least three years as a developer.
2. A legal entity must be a member of self-regulatory organizations in the field of engineering surveys, architectural and construction design, construction, reconstruction, overhaul of capital construction facilities.
3. A legal entity must not be dissolved, no external management is introduced, the company is not recognized as a bankrupt.
4. By the bid submission date, no operations of the filing legal entity must be suspended.
5. The legal entity must not be in the register of mala fide suppliers.
6. Compliance by the legal entity with the standards for assessing the financial stability of its activities, which are set by the Government of the Russian Federation.
7. The legal entity has no unpaid tax, fees, other obligations and payments to the budgets of the Russian Federation.
8. CEO, members of the executive board or chief accountant have no records of economic crimes.

The Urban Development Code focuses on the mandatory notification of the tender actions, which must contain information such as the subject of the tender, information about the land plot for development, information about the executive body of state and municipal authorities that hold the tender, information about the organizer of the tender, place, date, time and procedures of the auction, the initial price, methods and volume of security fulfill the contract obligations, the application form to participate in the bidding, the procedure for accepting submissions with the mandatory address of the place, where submissions are collected, the date and time and deadline of submissions, requirements for bidders and others.

The Code provides for the obligation to inform about the tender and its results via the internet, which allows to achieve greater accessibility of the auction, to comply with the principles of transparency and efficiency. Unlike other legal acts with procedure for tender out, the Urban Development Code does not provide an exclusive mechanism for holding tenders in electronic form, that is, an alternative is provided: classic auctioning, which hinders the authorities to conduct tenders timely and promptly.

Electronic biddings, including for the development of the built-up area, for the integrated development of the area, for the construction of standard housing, introduce to the legal relations that regulate auctioning, the third subject - the Unified Information System. In this regard, new grounds appear to develop legal relations in tender procedures.

Tender out online is the near future of Russia.

To date, the procedure of e-auctioning is borrowed from procurement regulatory standards. The Urban Development Code and Federal Law N 44-FZ is bonded with the fact that the parties of legal relations are state authorities. The difference is that urban development legislation regulates the tender by a lot - a land plot, whereas FZ-44 announces the state itself as a buyer.

The Urban Development Code defines the subjects as the parties participating in the tender; initiators, goals, objectives, the lot preparation for the tender are laid down; lists the requirements for bidders. The control functions are not covered, or covered poorly. We deem necessary to pay attention to all types of control that are enshrined in Federal Law No. 44-FZ.
### Table 1. Types of control of the state procurement system [1].

| Entity                                                                 | Controlling unit                                                                                                                                                                                                 |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| **State procurement system**                                           | Clauses 1 - 3, part 1, article 99 of Federal Law No. 44 - FZ:  
|                                                                       | - federal executive body authorized to exercise control over procurement;  
|                                                                       | - control body in the field of state defense orders;  
|                                                                       | - executive body of the constituent entity of the Russian Federation and local government;  
|                                                                       | - financial conduct bodies of the constituent entities of the Russian Federation and municipalities;  
|                                                                       | - state (municipal) financial conduct bodies, determined in accordance with the Budgetary Code of the Russian Federation;  
|                                                                       | - governing bodies of state non-budgetary funds.                                                                                                     |
| **Departmental control**                                               | Article 100 of Federal Law No. 44 - FZ:  
|                                                                       | - governing bodies of state non-budgetary funds;  
|                                                                       | - state and municipal authorities.                                                                                                                     |
| **Control by ordering party**                                          | Article 101 of Federal Law No. 44 - FZ:  
|                                                                       | - the ordering party controls the fulfilment of the terms of the contract by the supplier (contractor, performer) in accordance with the legislation of the Russian Federation;  
|                                                                       | - the ordering party controls the subcontracting of small businesses and socially oriented non-profit organizations.                                                                                  |

It is worth paying attention to the fact that Federal Law No. 44 provides for two types of financial control: scheduled and unscheduled inspections. So, in accordance with part 13, article 99, scheduled inspections in relation to each customer, procurement department or manager, a permanent
procurement commission and its members, an authorized body or institution, operators of electronic platforms are carried out no more than once every six months. But in relation to specialized organizations and a non-permanent commission, scheduled inspections are carried out no more than once within each period a supplier is chosen.

The grounds for unscheduled inspections are defined in Part 15 of Article 99 FZ-44, they are:

- information on violation of the law of the contract system in the field of state (municipal) procurement;
- expiration of the deadline for compliance with the order;
- application from a procurement participant exercising public control of a non-governmental association or an association of legal entities with a complaint against a customer, an authorized body or institution, a specialized organization, an operator of electronic platforms, a procurement commission or its bodies, officials of the contract service or a contract manager.

The need to control the sphere of government procurement is beyond doubt, therefore, ensuring the safety of the procurement system should be one of the most important functions of government authorities. Compliance with legislation of contract system is ensured by the Federal Antimonopoly Service, Federal Service for Fiscal and Budgetary Supervision and the Federal Treasury. Safety principles should be maintained throughout the entire cycle of state (municipal) procurement, and be also aimed at preventing and suppressing typical threats. The Federal Antimonopoly Service secures the state procurement sector by conducting financial monitoring of ordering companies, contract services and managers, organizations and institutions, procurement commissions, etc.

In our opinion, it is important to indicate in the Federal Law No. 44 the value of the effectiveness of state procurement [2].

The main indicators that determine the effectiveness of the use of financial resources when placing government orders are: budget savings, structure of government procurement, duration and labor intensity of government procurement procedures, etc.

Conducting a full assessment of the effectiveness of placing a government order requires an analysis of a fairly large number of parameters, since the volume of information that must be taken into account is quite large. Evaluation of effectiveness in this case should be carried out on the basis of a set of indicators, approaches and methods in order to assess comprehensively the effectiveness of the state order placement system. Evaluation of the effectiveness of activities requires a certain amount of resources, and from this point of view, the complexity and resource intensity of the applied methods must be compared with the results of effectiveness assessment. To date, the Ministry of Economic Development of Russia has developed methodological recommendations for calculating the efficiency of spending budget funds based on prices for products proposed by bidders in order to assess the efficiency of procurement work (performance of work, provision of services) for state needs. Indicators such as cutback in budget spending and comparative efficiency most fully reflect the effectiveness of calls for government tenders.

In order to comprehensively assess the effectiveness, it is necessary to analyze a sufficiently large amount of information. Given this circumstance, it can be concluded that the greatest difficulty in this case is collection of all necessary information, that is, the completeness of the information provided is often insufficient to conduct an in-depth assessment of efficiency. It is also important that neither the assessment methodology nor the criteria for calculating the efficiency in the field of state procurement are not specified in the law.

The effectiveness of state procurement should be considered as a complex and multi-level system, in which there is a close interaction of all components, which dictates a systematic approach to its study.

Due to its complex and manifold character, the state procurement system requires the development of a multi-level and multi-criteria model for assessing efficiency, which could consider all stages of
procurement tender actions.

Urban Development Code, which regulates the legal relationships that develop during the preparation and tender actions to bind contract with a developer, is effective in choosing a legal entity whose financial stability is the highest. The standards for assessing the financial stability of developers are set by the Decree of the Government of the Russian Federation of December 26, 2018 No. 1683 "On the standards for the financial sustainability of the developer's activities.” The provisions in this Decree refer to these standards: the standard for the security of obligations and the standard for the targeted use of funds. The second article of the Decree lists the conditions of the standards for the financial sustainability of the developer's activities. Those developers, who received a building permit before January 1, 2018, must have the indicator value of security of obligations be not less than 1, and the indicator value of targeted fund use - not higher than 1. Those developers, who received a building permit after January 1, 2018, must have the indicator value of security of obligations be not less than 1, and the indicator value of targeted fund use - not higher than 1. This Decree defines the standard for the size of the developer's personal funds: at least 10 percent of the planned cost for construction of apartment buildings. These standards work only for those developers who work in accordance with the Federal Law "On Participation in Shared Construction of Apartment Buildings and Other Real Estate Objects and on Amendments to Certain Legislative Acts of the Russian Federation" dated 30.12.2004 No. 214-FZ.

5. Conclusions
Studies, which were conducted when achieving objectives, demonstrate that electronic land tenders are not systematic and are a combination of other federal laws. The regulatory standards, which arise and develop when tender out, create a gap that can be abused, being not enshrined in any legal act. This situation is ripe for risks that hinder effective tender actions. It is worth noting that legal acts considering the nuances that are typical for other legal relations are based on the same principles that guide developers and authorities in legal relations during the auctioning. Transparency and unified database are vital components to mention. These components are the bedrock to conduct an efficient tender.

The need to control is driven by the fact that construction companies are not always participating in tender to meet purpose, which they are held for. This is particularly true for construction of standard housing. Construction of this type is part of a social program in many regions of Russia, therefore, tender participants are entitled to certain benefits, which are the main reason developers submit their bids. Despite the fact that fiscal supervision of the state procurement system is aimed at reducing risks and their possible consequences, control over the previous activity of a legal entity - a developer is also relevant.

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