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State Procurement System reform:the FAS Proposals on Simplifying the Process

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The Federal Antimonopoly Service (FAS) has made a set of proposals to further reform the public procurement law. The main idea is aimed at eliminating too complicated procedures, which occur in the process of state procurements between customers and suppliers. In particular, to improve the red tape of a two-stage tender as it is in conflict with the acquisition system ultimate principle – an unrestrained competition of participants. If tenders fail, a governmental customer has the right to sign a contract with the only supplier under the terms of tender documents.

In addition, the reform is required due to governors’ “complaints” to the President and officials during the State Council Meeting, which took place in Yalta and was dedicated to the implementation of national projects in relation to the fact that the contracting system (Federal Law N44) delays significantly any capital project as per its deadlines. Anton Siluanov, the First Vice Prime Minister and Minister of Finance, has made the following comment on this issue: “The contracting system is complicated and not flexible enough to implement national projects, it needs to be readjusted.”

As a result, the FAS has made some attempts to develop the reform concept that is only in the prospect of a practical implementation because it will have to go through an adjustment and approval procedure with the Ministry of Finance and Federal Treasury in the immediate future.

Authorities are developing a complete package of the simplified contracting system, which implies that a company is allowed to appeal the governmental customer decision to terminate the contract unilaterally. Such “risky” termination can result in both the contract loss and its cover funds regardless of whether the company has completed the contract properly. Moreover, this company is automatically registered in the Blacklist of Suppliers. Legal proceedings in favor of the reputation and lost monetary funds can exceed one year and a half.

To avoid such consequences, the FAS recommends allowing the governmental customer to terminate the contract only in case of the supplier’s unfair fulfillment of its contractual obligations.

The FAS also considers the development of the Unified Information System (UIS) as one of the possible options leading to a tightened control of the central bodies, local administrations over the relations between customers and suppliers. The transparency of “relations” can be only respected if: complaints and notices are to be only sent via the UIS; all claims and other official correspondence between a customer and supplier is to be in the UIS. And most importantly, the UIS shall enable remote processing of a complaint, thus allowing suppliers not to come in person from far away regions. The Service proposes to introduce a state fee against the complaints proved to be unjustified (currently, they make 60% of the total amount), which,

from its perspective, will protect customers from “professional complainants”.

The FAS reviews the increase of the initial price ceiling of “short-term” biddings from 3 million up to 50 million roubles. In addition, to avoid any ways to collude in tenders and to simplify the bidding process for participants, sending a two-way “consent” of the contract terms shall be sufficient, which is to replace the completion of intricate and time-consuming biddings. The Service proposes to introduce a reputation pre-qualification in relation to medium- and large-scale tenders “for the bidding and contract cover funds to depend on the supplier’s rating. A good reputation must be a business asset which the supplier shall value.” (Michael Evrayev, the FAS Deputy Head)

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