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It is impossible to penalize a supplier for the wrong product, if he was able to rectify the defect before the expiration of delivery

Between Federal state institution "Main Bureau of medical-social expertise in Ulyanovsk region" the Ministry of labour and social protection of the Russian Federation (the Customer) and LLC "MRTECHICA" (Supplier) was awarded the contract for the supply of technical means of rehabilitation according to the results of the electronic auction.

After the goods have been delivered, the Commission of the Customer receiving the delivered goods has found that among the goods delivered partially does not meet the technical description, in connection with the admission of the goods to the Supplier was denied.

Supplier, after the incident, was able to the end of the term of delivery established by contract, to replace the improper goods to one that fits the technical description. The customer has accepted the goods, comments on his part in a new product has been presented.

However, the Supplier was deducted a penalty from the amount of security of contract made by Supplier. These Customer actions were perceived by the Supplier as illegal, therefore, the Supplier appealed to the court of Arbitration.

The arbitration court of the first instance satisfied the claims of the Supplier, the special court's attention was drawn to the fact that the Supplier in the shortest terms have been eliminated the circumstances in which a Customer and was deducted a penalty from the Supplier. Additionally, the court pointed out that in the process of execution of the contract, the Supplier was not admitted improper performance of the terms of this contract.

The arbitration court of first instance logically came to the conclusion that the fine was deducted by the Customer illegal as the rights of the Customer, in fact, was not violated, because the Supplier has eliminated the defect, while in a period not exceeding the term of the supply contract. Thus, the requirements of the Supplier have been satisfied.

The court of appeal and the cassation court supported the position of the court of first instance.

Federal state institution "Main Bureau of medical-social expertise in Ulyanovsk region" the Ministry of labour and social protection of the Russian Federation (Customer) appealed to the Judicial Board on economic disputes of the Supreme court of the Russian Federation cassation complaint against the judicial acts adopted by the aforementioned courts, indicating a significant violation of the law. The cassation appeal to the Judicial Collegium for Economic Disputes was refused to the Customer, while the court of the Supreme Court again drew attention to the fact that the Supplier had timely eliminated the deficiency in the goods, and the Customer had accepted the goods without complaints, and the Supplier had timely executed their obligations under the contract.

Thus, the Supreme Court of the Russian Federation explains that if circumstances arise during the delivery process that do not correspond to the contract itself or the technical description of the goods, it is possible to eliminate the shortcomings in the delivery time and after that it is impossible to withhold the fine from the Supplier.

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