

## FORMATION OF THE CONTRACT PURCHASE SYSTEM IN RUSSIA

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**Abstract:** In this paper, the prerequisites for the occurrence and formation of a contractual system in Russia are considered. Six stages of the development of the contractual system of procurement are identified. Each stage was accompanied by the introduction of a new law which regulated procurement procedures with the submission of entirely new requirements. The appearance and development of electronic trading platforms, as well as a unified information procurement system are considered, and their current status is noted. The authors studied the regulatory and legal framework of the contractual procurement system which varied over the time period presented. Great hopes are placed on the Federal Law No. 44-FZ which has already introduced many innovations. It must make changes that will help ease the procurement procedure, make it completely electronic and transparent. The new law on public procurement has demonstrated that the public procurement sector actively develops, and therefore electronic platforms, regulatory and legal framework and other instruments for its regulation should be improved along with it. The work was written with the help of studying the history of the development of the contractual system and the generalization of the materials studied, and the practical experience of the authors was taken into account.

**Keywords:** contractual system, government procurement, regulatory and legal framework, 44-FZ, electronic trading platforms.

### 1 Introduction

The modern contractual system in Russia was created for almost the whole period of liberal reforms in the country. The regulatory and legal framework governing the contractual system has undergone repeated changes (National Research University – Higher School of Economics. The system of public procurements in Russia: on the road of reform., 2017, p. 2). More than a dozen federal laws, and much more regulatory and legal acts of the Government of the Russian Federation have been adopted for its development.

### 2 Materials and methods

Materials for writing this work were:

- Normative and legal documents provided by the legal base Consultant Plus;
- Historical materials on the development of the contractual system (Pakharukova, 2014);
- Reviews of young scientists devoted to the changes of the basic law governing the contractual procurement system.

The material was processed by the specialists from the Department of Economics of Enterprises of the Naberezhnye Chelny Institute, Kazan Federal University.

### 3 Results and their discussion

Formation of the contractual system and the modification of the basic law governing this sphere can be divided into 6 stages (Table 1).

Table 1 - Stages of the legal regulation formation of the contractual procurement system

Stage	Period	The basic law governing the contractual system	The direction of the reform process
Stage 1	1992-1994	Law of the Russian Federation No. 2859-1 dated 28.05.1992 "On the supply of products and goods for state needs"	For the first time, general legal and economic principles for the execution on contract basis of orders for the procurement and supply of goods, works, and services for state needs have been established. In practice, these laws did not work.
	1994-1997	Federal Law No. 60-FZ dated December 13, 1994 "On deliveries of products for federal state needs"	
Stage 2	1997-1999	Decree of the President of the Russian Federation dated April 8, 1997. No. 305 "On priority measures to prevent corruption and reduce budget expenditures when organizing procurement of products for state needs"	For the first time, generally accepted international principles and approaches to the effective use of budget funds have been introduced. Lack of control over the implementation of procurement.
Stage 3	1999 -2005	Federal Law dated 6 May 1999 № 97 "On tenders for placing orders for the supply of goods, performing works, and rendering services for state needs."	Regulation of the public procurement procedure. Implementation of minimum control and application of elements of advanced technologies in the field of public procurement regulation. The emergence of electronic digital signatures and electronic trading platforms.
Stage 4	2005 -2011	The Federal Law dated July 21, 2005 No. 94-FZ "On the placement of orders for the supply of goods for performance of work, and provision of services for state and municipal needs"	Fundamentals of the procurement management system. Selection of 5 official electronic trading platforms by the state. Using the potential of IT systems.
Stage 5	2011 - 2013	Federal Law dated June 18, 2011 № 223 "On procurement of goods, works, services by certain types of legal entities"	Creation of a contractual procurement system. Making changes and clarifications in the Law No.94-FZ. Allocation of a separate type of legal entities and provide them with advantages when making purchases for their needs.
Stage 6	2013 - to the present time	Federal Law dated April 5, 2013 "On the contractual system in the sphere of procurement of goods, works, services to ensure state and municipal needs"	Regulation of all stages of the procurement procedure: planning, placing an order, executing a contract, evaluating effectiveness.

In the period 1991-1992, the Gosstab (the USSR State Logistics Committee) system has collapsed, the main consequences of which were:

- Direct financing of state enterprises;
- Abrupt reduction in government spending;
- Mass delays in payment of state orders from the budget; and
- Withdrawal of assets and high corruption in the public procurement system.

At this stage of development, relations on state purchases were regulated mainly by the Federal Law dated 13.12.1994 No. 60-FZ "On the supply of products for federal state needs". Due to their small size, the laws adopted in the period from 1992 to 1994 did not establish a clear procedure for placing orders, and therefore the ideas embedded in them did not find proper implementation in practice (Feklistova, 2017, p.371).

Having assessed the situation in general, and in an attempt to counteract the growing corruption, the President of the Russian Federation on 08.04.1997 issued the Decree No. 305 "On Priority Measures to Prevent Corruption and Reduce Budget Expenditures in Arranging Procurement of Products for State Needs". This document established that orders for the purchase of goods, works and services for state needs are placed at tenders (competitions). This provision can be considered the first attempt by the state to take control of growing corruption in public procurement. Of course, the above decree could not fully provide for organizational and technological support for public procurement, but had only the initial role of a single regulator in the government procurement market.

A logical continuation was the federal Law dated 06.05.1999 № 97 "On tenders for placing orders for the supply of goods, performing works, and rendering services for state needs". It was this law that initiated the minimal control and promotion of elements of advanced technologies in the sphere of public procurement regulation. However, most modern innovations in the public procurement system could not be applied due to the limited information resource and technological support of all such activities in the market of goods and services. In particular, it was impossible to use the potential of modern IT systems, electronic document management, and many other technological innovations that came to the market of state and municipal orders much later. In addition, in the conditions of an extremely volatile economy and insufficient training, the extent of the outlined later corruption and the need for open government intervention in this sector of the market to fight with were at that time still difficult to grasp. Therefore, the principle of forming a unified information procurement system based on the priority of publicity, and even more so of public discussion in this law, was almost never seen (Ivanov, 2016, p.22).

In 2005, a new federal law FZ No. 94 was adopted: "On the placement of orders for the supply of goods, performance of works, and provision of services for state and municipal needs" on which high expectations there have been had. It was understood that this law will help solve the problems that have accumulated in this area. The institution of state purchases was even formed on the basis of this law. Until 2005, declarative regulations did not limit the arbitrariness of state customers; there was practically no sanction for failure to comply with legislation in the field of state procurement. After the adoption of the Federal law 94-FZ in Russia, state regulation of public procurement in the form of norms and sanctions for their violation arose. The law significantly increased the informational openness of a state order, and a certain "transparency" appeared. The reason for this is the creation of a single official procurement platform which contained information on all orders of the federal, regional and municipal levels. The information was available to any user at <http://www.zakupki.gov.ru/>. The creation of a unified information storage database facilitated access to trades of suppliers throughout the country: prerequisites for the formation of a single market for state

procurement; this also allowed many initiatives on public control over the costs of the state to be implemented. In order to ensure the "transparency" of government procurement, the procedure for selecting bids was used by the criterion of the minimum price, which did not allow manipulation of the results of trades on the part of government customers. The law defined all stages of the state procurement, criteria for selecting a supplier, and a list of demands that customers could put forward. The electronic trading system was launched for the first time.

The ban on the establishment of qualification requirements and the absence of restrictions on characteristics of a potential supplier due to its skills and business reputation at the stage of assessment and selection of applications provided accessibility of bidding for new market participants. Low cost thresholds contributed to the entry to the public procurement market for small and medium-sized enterprises. Competitive purchases for government customers have become mandatory, starting from 60 thousand rubles before 2007, and starting from 100 thousand rubles - from 2007 to the present (Gafurova, 2016, p.501).

The prerequisite for the emergence of electronic trading platforms was the emergence of the possibility to conclude transactions using analogues of a handwritten signature, as described in the new Civil Code of the Russian Federation. At the same time, the term "digital signature" has appeared. Regulation of this sphere was entrusted to the Federal Law dated 10.01.2002 No. FZ-1 "On electronic digital signature" which has now become invalid in connection with the adoption of the new law No. 63-FZ "On electronic signature".

Already in 2001-2002, there was a qualitative leap in the development of e-commerce. In the Boston Consulting Group study published in early 2001, more than fifty Russian electronic trading platforms were already identified, most of which were established in the metallurgy and fuel and energy industries. By the end of 2001, this figure had doubled (The Boston Consulting Group, 2017).

In 2005, there were an unlimited number of electronic trading platforms; with so many electronic trading platforms it was impossible to control the tendering, transparency and competitiveness remained at a fairly low level. Despite the attempt to change the contractual system with the help of the Federal Law 94-FZ, the expected results were not justified.

The main turning point was July 1, 2010, when Chapter 3.1 of the Federal Law No. 94-FZ on the introduction of a new system of electronic auctions on a limited number of platforms has entered into force. As the beginning of the reform in 2009, the government decided to select several operators for conducting state and municipal orders within the framework of the amended regulations from the Federal Law 94-FZ. In 2010, according to the results of the selection process conducted by the Ministry of Economic Development and the Federal Antimonopoly Service, only 5 out of 18 contestants fell into the list of selected platforms, of which only 3 participants had active platforms at that time, and two - the MICEX and RTS - did not have any experience, nor the practice of bidding on public procurement in electronic form.

Based on a general analysis of the available practical experience, it may be noted that in a number of cases, the processes of openness and public control were formal, although it is difficult to assume that, given the size of government contracts held in a large number of competitions and tenders, one could generally speak of serious transparency in all those activities. In addition to this, there was no provision for a uniform control in the system of responsibility for planning, independent expertise and quality of delivered products, and hence the absence of clear legislative requirements for the training of specialists in public procurement (Improvement of Public Procurement Procedure. Recommendations and materials prepared by the Industrial Companies Working Group, 2012).

A significant push to change the legislation in the sphere of public procurement was the financial crisis of 2008-2009, which served to reduce Russia's GDP and led to an increase in the budget deficit. There was a need to increase the economic efficiency of public procurement, since the reform of the public procurement system implemented since 2006 in Russia, could not radically improve the situation on the optimization of the public procurement mechanism. The law enforcement practice of the Federal law 94-FZ continued to cause much criticism and the President of the Russian Federation in the Message on the Budget Policy for 2010-2012 set the task of creating a federal contractual system. Therefore, some clarifications in the current legislation, already during the discussion of the regulatory and legal framework for the transition to a modern contractual system, were made already at the stage of adoption of the Federal Law No. 223-FZ dated June 18, 2011 "On the procurement of goods, works, services by certain types of legal entities", which focused on federal and municipal budgetary institutions, state unitary enterprises, state corporations and some other participants in procurement. Immediately after the publication of this legal act it seemed to many people, that it was excessively independent and would exist, as it were, in isolation from the main legislative field of procurement. However, everything fell into place shortly after the publication of the main (basic) Law No. 44-FZ on procurement: it is this document that allows and forms a practical space for the implementation of the Federal Law No. 223-FZ.

It turned out to be so many proposals for reforming the public procurement sphere and creation of a contractual system that a few years ago it would be decided to develop a virtually new federal legislative act that would take into account the experience of forming a contractual system in the United States and the EU states, as well as the accumulated domestic experience in this area. Anyway, but in 2010-2013 in the

community of professionals and procurement-related civil servants there were literally the hover of thoughts about the term "contractual system" or something similar in terminology (United Nations Procurement Capacity Development Centre, 2017).

In April 2013, a new Federal law was adopted, the so-called basic law, on which special hopes are placed. The Federal Law dated April 5, 2013 "On the contractual system in the sphere of procurement of goods, works, and services to ensure state and municipal needs". This law introduced revolutionary initiatives, bearing in mind the ideology of a global scale, stemming from this law.

The moment of adoption of the Federal Law 44-FZ may be called the time of active development of electronic trading platforms in Russia; the market was at the stage of formation, the level of competition among the platforms was extremely low, and the number of their clients grew rapidly. The first active users of the platforms were undoubtedly customers who first of all thought about the improvement and automation of procurement systems, about the possibility of expanding the range of suppliers due to the companies that had not previously cooperated with (Karabitskaya, 2016, p.64).

This law is effective to the present and is often edited for improvement. In 2017, it changed significantly, as instead of 5 Federal electronic trading platforms operating since 2005, the Ministry of Economic Development and Trade has selected one more platform and since March 2017 the sixth trading platform has started its work.

The operating now electronic trading platforms are shown in Figure 1.



Figure 1 - Current Federal electronic trading platforms operating under the Federal law 44-FZ

The demand for creation of electronic trading platforms has varied over the course of 20 years, from 2016 to the present time it has increased especially since the selection of the Federal electronic platforms by the Ministry of Economic Development will be continued. In addition to the federal electronic commercial platforms, there are commercial ones that are no less popular. In recent years, there have been trends in creation of commercial platforms.

At this point in time, 330,000 government customers and 500,000 suppliers are participating in public procurement. The total volume of the Russian public procurement market is estimated at 30 trillion rubles. The volume of state orders per year is 25% of Russian GDP.

The Federal law No. 44-FZ undoubtedly built a new contractual system, but it is not perfect. The problem is that the current legislation responds only to the question "how to make a purchase and select the supplier", but does not give an answer why a particular purchase is being made, and what result should be obtained (Karabitskaya, 2016, p.102).

The Ministry of Economic Development of Russia proceeds from the fact that it is impossible to solve problems in the sphere of public procurement otherwise as to fundamentally change the approaches to regulation. Effective regulation should be introduced from the preparatory stage (justification and planning of purchases, establishment of the initial price and essential terms of the contract) to management of contract risks, monitoring of performance and audit of contracts.

#### 4 Summary

The authors have identified the stages of formation of a contractual procurement system. The periods of development of the basic law regulating procurement procedures are considered in detail. High hopes are put on the Federal law 44-FZ on purchases. This stage of development should make the procurement procedure more transparent and facilitate to organizations the procedure for participating in electronic trading.

#### 5 Conclusion

Thus, there are positive changes in the historical perspective: the purchasing activity of Russian enterprises has become simpler. Almost all organizations passed to electronic procurement procedures; since 2005 organizations began to refuse from traditional "paper" trades which cannot be fully controlled. At the end of 2017, new federal electronic trading platforms were selected to conduct trades in accordance with the Federal law 44-FZ, with increased demands to them. Innovations in the contract procurement system undoubtedly modernized and simplified the procurement procedure, but along with the advantages there were also significant shortcomings that must be urgently eliminated. The new law on public procurement demonstrated that the public procurement sector actively develops, which means that electronic platforms, regulatory and legal frameworks and other regulatory instruments should be improved along with it.

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