



# RUSSIAN DESK

## Dear readers,

Numerous amendments to the legislation on procurements are coming into effect in 2020. Changes are being made both to the Law on Procurements<sup>1</sup> (hereinafter “Law No. 44-FZ”) and to the Law on Procurements by Certain Legal Entities<sup>2</sup> (hereinafter “Law No. 223-FZ”).

First and foremost, these amendments concern registration in the Unified Information System (UIS), compliance with the national regime, procedures for procurement by specific means (procurement from a sole supplier, request for bids), but also certain other issues.

On the one hand, the changes make procurement procedures more complex (certain deadlines have been moved up, while the amount of documents to be submitted has grown); on the other hand, there are new opportunities (simplification of the procedure to conclude life-cycle contracts).

This newsletter provides an overview of the main changes in procurement legislation that are important to potential suppliers.<sup>3</sup> We also look briefly at planned amendments to Law No. 44-FZ and certain regulatory acts.



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## What’s changing in the legislation on procurements in 2020?

### Law No. 44-FZ Amendments entering into force in January 2020

#### INFORMATION SYSTEMS

The most significant change is that from 1 January 2020 one cannot participate in procurements without registering with the UIS. Any such bid will be simply returned on the grounds of Sub-Clause 4) of Clause 11 of Article 66 of Law No. 44-FZ. Parties not registered with the UIS or whose registration is about to expire will simply no longer have access to procurements.

A new state information system (SIS) has been in operation since 1 January 2020 – “Independent Registrar”. This system is intended to support the operation of the UIS, record the actions of procurement participants in the UIS and on the electronic platform, and store and process information on such actions<sup>4</sup>.

#### NATIONAL REGIME

When a procurement is performed with the establishment of bans and restrictions, the contract concluded as a result of such procurement should include information on the country of origin of the goods. This is monitored by the regional offices of the Federal

<sup>1</sup> Federal Law No. 44-FZ dated 5 April 2013 “On the Contract System in the Procurement of Goods, Work, and Services for State and Municipal Needs”.

<sup>2</sup> Federal Law No. 223-FZ dated 18 July 2011 “On the Procurement of Goods, Work and Services by Certain Types of Legal Entities”.

<sup>3</sup> The amendments were made chiefly by Federal Law No. 449-FZ dated 27 December 2019 “On Amending the Federal Law “On the Contract System in the Procurement of Goods, Work, and Services for State and Municipal Needs””.

<sup>4</sup> Russian Government Resolution No. 881 dated 28 July 2018 “On Establishing Requirements on the Operation of the State Information System Indicated in Part 13 of Article 4 of the Federal Law “On the Contract System in the Procurement of Goods, Work, and Services for State and Municipal Needs” and the Procedure for the Creation, Storage, and Use of the Information Contained Therein”.

Treasury, both at the time the contract is concluded and for contracts already discharged<sup>5</sup>. In accordance with Clause 8 of Article 103 of Law No. 44-FZ (with the exceptions listed in this norm), if the name of the country of origin of the goods does not match the terms of the contract, then information will not be entered in the contract register, which could result in fines for the client and non-payment to the supplier for the work performed under the contract.

### **LIFE-CYCLE CONTRACTS (LCC)**

Conclusion of an LCC – an agreement to perform an array of works, starting with design, manufacturing, or construction of an asset and ending with its servicing, operation, and disposal – is possible in cases defined by the Government (for example, unique capital construction facilities and healthcare facilities). From 8 January 2020, an LCC can also be concluded if new machines and equipment are the subject of the contract (Clause 16 of Article 34 of Law No. 44-FZ in the new version).

Government Resolution No. 27<sup>6</sup> also stipulates that an LCC can be concluded for purchases of medical equipment listed under codes 26.60.11, 26.60.12, 26.60.13.130, 26.70.22.150, 32.50.12.000, 32.50.21.121, and 32.50.21.122 of the Russian National Classification of Products by Type of Economic Activity (OKPD 2). This norm has been in effect from 31 January 2020.

### **CHANGES TO THE MATERIAL TERMS OF A CONTRACT WITH A SOLE SUPPLIER**

The Ministry of Finance has explained<sup>7</sup> that, in the cases indicated in Sub-Clause 1 of Clause 10 of Article 95 of Law No. 44-FZ, the client has the right, by agreement of the parties, to amend any material term of the contract, including the price and period of performance of the contract. For example, these cases include the conclusion of an energy supply contract or a sale and purchase contract for electrical power with a power supplier of last resort, the procurement of legal services in order to protect the interests of the Russian Federation in foreign and international courts and arbitration institutions, as well as with the authorities of foreign states.

## **Amendments entering into force in July 2020**

### **INVITATION TO TENDER**

At present, the client has the right to carry out procurements by issuing an invitation to tender in electronic form, provided that the initial (maximum) contract price (IMCP) does not exceed RUB 500,000. In this case the annual amount of procurements made should not exceed ten per cent of the aggregate annual amount of procurements by the client, and should not exceed more than RUB 100 million (Clause 2 of Article 82.1 of Law No. 44-FZ). From 1 July 2020, an invitation to tender may be issued in electronic form with an IMCP of up to RUB 3 million.

Bids will contain more information: instead of a simple declaration of compliance with the requirements of Sub-Clause 1 of Clause 1 of Article 31 of Law No. 44-FZ (general statutory requirements for the supplier), the procurement participant will be obligated to support its compliance with documents. It will also be required to submit the decision on the company's consent to the performance of a major transaction, if the law requires such a decision.

Invitations to tender will be conducted faster, but participants will have to provide more information. The date for the final submission of bids will be four business days from the day following the day when the notice is posted in the UIS. The contract will also have to be concluded rapidly: the client must send the draft contract to the UIS and to the electronic platform within three hours from the moment the protocol of results is posted; the client and the supplier will have one business day each to sign and post the contract.

However, the contract cannot be concluded earlier than two business days from the date the final protocol is posted to the UIS.

A statement of disagreements will no longer be prepared.

If only one bid that complies with the notice was submitted or is left, the client will have the right to immediately conclude a contract with this participant, without extending the bid submission period.

### **PROCUREMENT FROM A SOLE SUPPLIER**

From 1 July 2020, there will be a change to the list of cases where it will be necessary to obtain approval from supervisory authority for a contract for procurement from a sole supplier. Specifically, it will be necessary to obtain approval for contracts after failed electronic procedures, but only in cases where the IMCP exceeds a certain threshold which will be established by the Government.

### **SIMPLIFIED PROCUREMENT PROCEDURE**

A simplified procurement procedure is stipulated for procurements exceeding RUB 3 million (taking into account the client's annual volume of procurements).

Procurement participants can form tentative offers on the electronic platform and the client can post a message substantiating the contract price. After this, the operator of the electronic platform will choose the five best tentative offers and send them to the client for approval. The client must select the best offer within one business day after the offers have been sent.

The contract is also concluded through a simplified procedure, in the same way as a new invitation to tender in electronic form.

<sup>5</sup> Letter No. 07-04-05/14-26674 of the Treasury of Russia dated 10 December 2019 "On the Procedure for Amending Information on the Country of Origin of Goods in the Contract Register".

<sup>6</sup> Russian Government Resolution No. 27 dated 21 January 2020 "On Amending Clause 1 of Russian Government Resolution No. 1087 dated 28 November 2013".

<sup>7</sup> Letter No. 24-03-07/99602 dated 19 December 2019.

## Law No. 223-FZ

### INFORMATION SYSTEMS

As with procurements under Law No. 44-FZ, participation in procurements under Law No. 223-FZ will require registration in the UIS. The State Information System Independent Registrar will ensure the functioning of the UIS and help to perform other functions.

### INNOVATIONS IN RELATION TO SMALL AND MEDIUM-SIZED ENTERPRISE

Amendments that entered into force from 1 January 2020 were made to a number of subordinate regulatory acts<sup>8</sup> regarding small and medium-sized enterprises (SME).

For example, the deadline for paying for work under contracts concluded with an SME will be 15 business days instead of 30 calendar days. Similar rules are in place for cases when SMEs have acted as subcontractors under contracts. In other words, when SMEs are brought in to perform certain work under a contract, the contractor must observe the aforementioned rule for settlements with the SME.

The total annual volume of procurements from SMEs will increase for clients from 18% to 20 per cent. The share of the value of contracts concluded with SMEs based on the results of SME-only procurements will increase from 15 per cent to 18 per cent.

The provisions concerning SMEs also apply to so-called “self-employed” people, i.e. those who use the special tax arrangements “tax on professional income” pursuant to Federal Law No. 422-FZ<sup>9</sup>. These provisions enter into force on 28 March 2020<sup>10</sup>.

## New subordinate regulations

### AMENDING THE MATERIAL TERMS AND CONDITIONS OF A CONTRACT

The Ministry of Finance has explained the following:<sup>11</sup> Sub-Clause 10 of Clause 1 of Article 95 of Law No. 44-FZ stipulates the possibility to amend the material terms and conditions of a contract by agreement of the parties when a contract is concluded with a sole supplier in a number of cases specified by Clause 1 of Article 93 of the Law; in these cases the client is entitled to amend material terms and conditions of the contract by agreement of the parties, including the price and period of performance of the contract.

### STANDARD CONDITIONS OF CONSTRUCTION (RECONSTRUCTION) CONTRACTS ON A CAPITAL CONSTRUCTION FACILITY

Standard conditions of construction (reconstruction) contracts on a capital construction facility that must be complied with if the object of procurement has been allocated to certain codes of the Russian National Classification of Products by Type of Economic Activity (OKPD 2) concerning buildings and work on their construction (code 41.2), civil engineering structures and construction work (code 42, with some exceptions), specialised construction work (code 43), and services of a property owner and developer and a general contractor (code 71.12.20.110) were approved by an order of the Ministry of Construction, Housing and Utilities of the Russian Federation dated 14 January 2020<sup>12</sup>.

The standard contractual conditions must be complied with in cases when procurement notifications have been posted in the UIS or if a contract is concluded with a sole supplier, in those cases when the posting of a notification on the procurement from a sole supplier in the UIS is not stipulated, on the expiry of 30 calendar days after the day when the standard contractual conditions are posted in the UIS<sup>13</sup>.

The Order enters into force on 26 March 2020.

### STANDARD CONTRACTUAL CONDITIONS ON DESIGN AND SURVEY WORK

Standard conditions on design and survey work that must be complied with if the object of procurement has been allocated to OKPD 2 codes 71.12.12 – 71.12.19, which include services on the design and engineering of buildings, power supply systems, tunnels, motorways, streets, etc., were approved by the Ministry of Construction, Housing and Utilities of Russia dated 14 January 2020<sup>14</sup>.

These standard contractual conditions must be complied with when procurement notifications have been posted in the UIS or if a contract is concluded with a sole supplier, in those cases when the posting of a notification on the procurement from a sole supplier in the UIS is not stipulated, on the expiry of 30 calendar days after the day when the standard contractual conditions are posted in the UIS. This order will enter into force on 1 January 2021.

### INDICATING INFORMATION ON THE COUNTRY OF ORIGIN OF GOODS

Government Resolution No. 180 dated 19 February 2020<sup>15</sup> has introduced amendments to the Rules on Keeping a Register of Contracts Concluded by Clients<sup>16</sup>, pursuant to which information on the country of origin must be indicated, regardless of whether

<sup>8</sup> Resolution No. 1205 of the Government of the Russian Federation dated 18 September 2019 “On Amending the Resolution on the Special Features of Participation of Small and Medium-Sized Enterprises in Procurements of Goods, Work, and Services by Certain Types of Legal Entities, the Annual Volume of These Procurements, and the Procedure for Calculating this Volume”, Resolution No. 1001 of the Government of the Russian Federation dated 1 August 2019 “On Amending the Resolution on the Special Features of Participation of Small and Medium-Sized Enterprises in Procurements of Goods, Work, and Services by Certain Types of Legal Entities, the Annual Volume of These Procurements, and the Procedure for Calculating this Volume”.

<sup>9</sup> Federal Law No. 422-FZ dated 27 November 2018 “On Conducting an Experiment to Establish Special Tax Arrangements “Tax on Professional Income””.

<sup>10</sup> Articles 2, 3 of Federal Law No. 474-FZ dated 27 December 2019 “On Amending Article 251 of the Federal Law “On Developing Small and Medium-Sized Enterprise in the Russian Federation” and Article 8 of the Federal Law “On the Procurement of Goods, Work, and Services by Certain Types of Legal Entities””.

<sup>11</sup> Letter No. 24-03-07/99602 dated 19 December 2019.

<sup>12</sup> Order No. 9/pr of the Ministry of Construction, Housing and Utilities of Russia dated 14 January 2020.

<sup>13</sup> Point 15 of the Rules on Drafting Standard Contracts and Standard Contractual Conditions, approved by Resolution No. 606 of the Government of the Russian Federation dated 2 July 2014 “On the Procedure for Drafting Standard Contracts and Standard Contractual Conditions, and on the Cases of and Conditions on Their Use”.

<sup>14</sup> Order No. 10/pr of the Ministry of Construction, Housing and Utilities of Russia dated 14 January 2020.

<sup>15</sup> Resolution No. 180 of the Government of the Russian Federation dated 19 February 2020 “On Amending Certain Acts of the Government of the Russian Federation”.

<sup>16</sup> Approved by Resolution No. 1084 of the Government of the Russian Federation dated 28 November 2013 “On the Procedure for Keeping a Register of Contracts Concluded by Clients and a Register of Contracts Containing Information Constituting a State Secret”.

or not the national rules apply when performing procurements (Article 14 of Law No. 44-FZ). In other words, this information must always be indicated, whether goods are provided for the performance of work or provision of services. These amendments will enter into force on 1 April 2020.

## Planned amendments

The new draft amendments to Law No. 44-FZ prepared by the Ministry of Finance are currently discussed publicly. The key provisions of these draft amendments are:

- a reduction of the number of procurement methods (two-stage tenders, selective tenders, and requests for bids may be excluded);
- an increase in the possibilities for procurements from a sole supplier (for example, purchase of buildings through tenders);
- an adjustment of the information to be included in the Register of Bad-Faith Suppliers (RBFS);

- an amendment of the appeal procedure against violations (an electronic appeal procedure will be possible in some cases).

If these amendments are approved, they should enter into force on 1 January 2021.



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