

Public Procurement in the Construction Sphere

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Abstract

The construction market in Russia is characterized by weak financial stability of construction companies. However, this situation can be changed with the help of financial regulation instruments, one of which is public procurement. This paper considers the problems of financial regulation of construction companies through public procurement. The main research method was a systematic approach. In the course of the study, conclusions were drawn about the need to increase the thresholds for unregulated public procurement, introduce flexible rules for processing applications, simplify the rules for planning public procurement, etc.

Key-words: Government Procurement, Government Contract, Construction Company, Construction Market, Financial Regulation, Financial Sustainability

1. Introduction

The sphere of state and municipal procurement of the products of the construction complex has always aroused public interest and seen particular attention of legislators and regulatory bodies, since it is objectively necessary in the economy of any country as it satisfies the needs of federal, territorial and municipal structures in relevant goods, works and services.

Over the past 15 years, Russian legislation in the field of public procurement has been transformed several times. Currently, Federal Law No. 44-FZ on the federal contract system is in force. It is rightfully considered a significant breakthrough in the regulation of public procurement. However, the practice of purchasing construction products still does not mean that all sore issues have been resolved.

2. Materials and Methods

The methodological basis of the research consists of theoretical and applied works by modern authors on the issues of public procurement, as well as the information presented in newspapers and in the global information network. In the course of the study, a systematic approach, statistical analysis and a dialectical method of cognition were used and implemented through the use of general scientific methods and techniques (observation, synthesis, comparison, grouping, induction, deduction, generalization of theoretical and practical material).

3. Results Analysis

According to official statistics, the Russian construction market has grown over the past seven years in terms of both the volume of construction and the added value of construction work. But the growth in nominal volumes still does not reflect the state of the industry: the cost of actually created objects increases insignificantly, and construction companies remain in crisis. In 2018, construction accounted for only half of all investments in fixed assets: 8.4 trillion rubles out of 17.6 trillion rubles, this ratio remained at the 2017 level. Over the year, the volume of the construction market has grown by almost 1 trillion rubles compared to last year. This compares with the leap in 2012, when it grew by 11%. If we look at the dynamics of the indicator in 2008 prices, then at the end of 2018 the volume of the construction market only approached the result of a decade ago and amounted to 4.4 trillion rubles in 2008 prices [3].

The growth in volumes in current prices is due to inflation in producer prices for construction products – an average of 6.8% per year, according to Rosstat. [5] Thus, since 2008, the cost of materials has increased by 88.7%. The nominally added value created by the construction industry increased by 0.5 trillion rubles over the year, although the actual growth in 2008 prices was 5%, or 140 billion rubles. As a share of GDP, the added value of construction decreased by 0.1 p.p.

compared to 2017, amounting to 5.4%. The fall is due to a 12.8% increase in GDP at current prices compared to 2017. The construction industry in general in Russia remains in stagnation, but over the past year there has been a weak positive trend. The same trend is typical for the infrastructure part of the market. The share of infrastructure investments in fixed assets in Russia in 2018 increased slightly – up to 38% – and amounted to about 6.7 trillion rubles. In fact, no more than 50% of these funds were allocated for construction, and the rest was spent on design, purchase and maintenance of equipment, preparation of projects and other expenses. In addition, funds at the level of the federal center and regions are still being spent according to the existing budgetary procedures, which often complicate investments.

According to Rosstat, in the beginning of 2019 there were fewer construction companies – about 278.1 thousand, but in the segment of companies with revenues of more than 0.4 billion rubles, the statistics service registered another significant growth – to 18.3 thousand enterprises, which is 7% more than last year. However, this is quite small: almost 93.5% of Rosstat companies belong to the segment of small and medium-sized businesses. According to SPARK, there are only about 4.5 thousand companies that earned revenues of more than 0.4 billion rubles in 2018 [2].

The number of profitable construction companies and top 170 groups for the year decreased from 145 to 131. At the same time, their total net profit increased from 79.9 billion rubles to 88.3 billion rubles. Basically, the number of profitable private construction companies has decreased: there are 112 of them against 122 in 2018.

The number of unprofitable construction companies and groups from the top 170 increased from 20 to 27 over the year. The total net loss reached 73.7 billion rubles.

The total balance of profits and losses of construction companies of the top 170, although it remained positive, almost halved: to 14.6 billion rubles. In terms of the absolute value of this indicator, private construction companies are in the lead (31.3 billion rubles).

That is, the crisis in the Russian construction industry is intensifying, despite the growth of certain indicators and a possible large inflow of funds in the next few years. Statistical data indicate a high debt burden of organizations in the construction sector and their weak financial stability. Construction companies practically do not have their own funds, and it is extremely difficult for them to obtain credit funds. And according to experts, it is unlikely that the position of contractors will significantly improve in the next year or two. Financial regulation instruments, one of which is public procurement, can affect the financial stability of construction companies.

According to the Ministry of Finance of the Russian Federation, the volume of public procurement in Russia for the first nine months of 2019 amounted to 6.7 trillion rubles, which is 22% more than in 2018 (5.5 trillion rubles). In the third quarter of 2019, 648.5 thousand notices were posted for 2.3 trillion rubles, while in nine months, government customers posted 2.2 million notices, which is 2% less than last year. Of the total number of notifications, 16% (28% in monetary terms – 1.9 trillion rubles) fell on purchases under various state programs. At the same time, at the end of the nine months of 2019, government customers signed 2.49 million contracts (1.6% less than in 2018) for 5.26 trillion rubles (10.6% more). For three quarters of 2019, government customers announced 815 thousand special auctions (only small and medium-sized businesses, as well as socially oriented non-profit organizations can participate in them) for 844 billion rubles. As a result of special tenders, customers signed 786 thousand contracts for 624 billion rubles. More than a third of government contracts (39%) accounted for contracts in the construction sector. [1]

The Federal Procurement Law [7] defines six basic principles that form the basis of the system of a competitive model for purchasing goods and services for public needs: openness, competition, professionalism of customers, stimulating innovation, responsibility and, as a consequence, efficiency. However, official data indicates that of the six principles, only one is fully implemented – openness. The information system created by the state largely meets modern requirements and allows you to receive in real time reliable information about all purchases carried out by state and municipal authorities throughout the country. However, the analysis of the data provided by this system inevitably leads to the conclusion about the low efficiency of the functioning of the public procurement system as a whole.

The main problem of the system of public procurement of construction works is the practice of electronic auctions, formalized in the form of an order of the Government of the Russian Federation dated March 21, 2016 No. 471-r “On the list of goods, works, services, in case of procurement of which the customer is obliged to conduct an auction in electronic form (electronic auction)”. [8] At the same time, this is not typical for foreign practice. Due to this, many construction companies do not see the prospects of participating in the “games without rules” and therefore half of the construction auctions in the country on average are invalidated with the forced award of a contract to a single participant, and up to 20% of such procedures do not have potential contractors. In the cases when auctions took place and budgetary savings as a result of dumping appeared, customers in most cases face a decrease in the quality of construction, a delay in the commissioning of facilities.

Obviously, construction work must be excluded from the above list and return to tenders, which allow, first of all, to assess the experience and qualifications of a potential contractor, and then consider price proposals.

Over 70% of all violations in the process of state and municipal procurement occur when justifying the initial maximum contract price. [4] Estimators are faced with the task of translating 1991 prices into the current ones, using a wide range of various indices reflecting inflationary processes over the past 28 years across the entire range of construction costs. In turn, the resource pricing method in our country is not being actively implemented, despite the presence of a special decree of the Government of the Russian Federation of December 23, 2016 No. 1452 “On monitoring the prices of construction resources” [9] and the creation of a federal information system for pricing in construction. The data of the federal information system of pricing in construction are fully used. Also, some authors note the presence of serious violations related to the execution of contracts, when funds are stolen and laundered using cryptocurrencies. [6, p. 330-335]

Amendments to the laws providing for the transition from the base-index to the resource method for determining the cost of construction were adopted in 2016. The new mechanism will not work without detailed and accurate monitoring of the current prices for materials, machines and mechanisms and workers' wages, and for each region. All data on prices of manufacturers and service providers should be accumulated in the Federal State Information System for Pricing in Construction. It was launched in the fall of 2017. But there were serious problems with filling. Now its occupancy is estimated at 12-13%. There are still questions about the counting method. The system is large-scale: the classifier contains more than 100,000 construction resources from 85 regions. Not all resources are pricing, not all of them are used. There are about 30,000 pricing providers. If the system cannot be updated by 2022, it will be filled in in other ways. In addition, not all Russian regions provided data on economically feasible indexes of builders' wages. Therefore, the contractors of the construction work bear all the risks associated with inadequacy of methods for justifying the initial maximum contract price.

Any contract between a government authority and a construction company is a public-private partnership project. At the same time, an analysis of the procurement of construction work carried out by state and municipal customers showed that only in one case, an advance payment was provided for in the terms of the procurement, the costs of bidders for securing the application and execution of the contract averaged from 21 to 40% of the initial maximum contract price, and in all cases, there was

no opportunity to discuss the terms of the contract. In addition, standard contracts contain many penalties for contractors, provided for by the Government of the Russian Federation of August 30, 2017 No. 1042. In this situation, one cannot talk about the “mirroring” of obligations, and the apparent bias of risks from the customer to the contractor discourages the majority of construction companies from participating in public procurement.

Rules for ensuring the execution of government contracts, tight deadlines for submitting a voluminous package of documents, the impossibility of making changes to an already filed application – all this, on the one hand, discourages construction companies from purchasing, and on the other hand, deprives a bona fide customer of the opportunity to select the really best offer from a reliable contractor. There are no real actions aimed at removing administrative barriers to participation in procurement. Thus, we propose the following:

increasing the framework for unregulated public procurement and public procurement under simplified procedures;

introduction of flexibility in the rules for processing applications;

simplification of the rules for planning public procurement;

revision of the “architecture” of regulation rules for public procurement, concentrating the powers to establish requirements for the procurement of goods, works, services, regulatory costs at the level of the Government of the Russian Federation;

unification, standardization and translation into a structured form of all documents that are used in the contract system;

centralization of development and approval of a library of standard contracts, implementation of a contract constructor based on a library of standard contracts.

4. Conclusions

In conclusion, we will formulate recommendations on the participation of construction companies in the execution of government contracts in order to ensure their financial stability:

1. Familiarization with the customer's reputation in the media before concluding a government contract.

2. Exact calculation of the cost of contract execution. Most often, the executor of a state contract must provide the contract with cash or provide a bank guarantee from a credit institution

included in the list approved by the Ministry of Finance of the Russian Federation. The cost of a bank guarantee depends on the speed of its receipt. The standard time required for registration is 10 working days. The cost of an emergency bank guarantee is significantly higher than the usual one. And the larger the amount of the state contract, the more time it takes to issue a guarantee. Accordingly, in order to preliminarily assess the effectiveness of a specific government contract, you can take the approximate cost of a bank guarantee – 3.5% of the amount with 180 days of collateral and lay down at least 10 working days for the procedure for obtaining.

3. Taking into account anti-dumping measures. So, if the price has dropped by more than 25% of the initial price, anti-dumping measures start to take effect. If the initial price did not exceed 15 million rubles, the winner of the tender is obliged to provide a security of an increased amount, i.e., 1.5 times higher than originally declared by the customer. Or the construction company confirms the good faith with various documents. But more often than not, it is precisely the increased financial security that is required.

4. Careful drawing up of the protocol of disagreements. Within five days after the publication of the final procurement protocol, a draft contract is posted. The construction company has the right to check all the legal terms of the contract, but within 5 days. During this time, a protocol of disagreement can be submitted. At the same time, it is important to take into account the fact that the construction company can submit the protocol of disagreements once.

5. Re-calculating the project profitability after analyzing all legal and banking conditions. A construction company runs the risk of being blacklisted by suppliers if, having become the winner of the tender, at the stage of signing the contract, it is recognized as “evading the conclusion of the contract”.

6. Upon appointment, those who work with public contracts should meet certain requirements and receive further training. Otherwise, they can unintentionally violate the terms of state contracts in terms of technical control, work approval, budget documentation analysis, setting contract prices, etc. this can happen since they may have no experience in devising, implementing, and controlling the state defense contracts. This may be categorized as art. 293 of the Criminal Code of the Russian Federation. This factor should be taken into consideration according to part. 9 of the Methodology for the anti-corruption assessment of the laws and regulations and projects [11], when the excessive requirements from an individual to exercise his or her right are viewed as a corruption factor. The identified factors should be reflected in the materials by the investigator or the head of the

investigative institution according to art. 158, para. 2 of the CrPC of the Russian Federation. Then, these materials should be sent to the client and/or contractor who could make mistakes which resulted in crimes, or who violated the law. Meanwhile, the effectiveness of the prosecution should not revolve around the conviction. It should be about the prevention of crimes which is both the aim of the Criminal Code (art. 2, para. 1 of the Criminal Code of the Russian Federation) and the most important procedural responsibility of those who bring a prosecution (art. 73, para. 2, art. 158, para. 2 of the CrPC of the Russian Federation) [10, p. 7952].

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