

World Bank Assessment of the Novelties of the Russian Procurement Legislation in Comparison with Procurement Regulation in Other Developed Countries

Goszakaz-2007



The World Bank - Goszakaz 2007





THE WORLD BANK IN RUSSIA

- | The World Bank - Russian Federation collaboration for the next three years is based on the «Country Partnership Strategy», approved in November 2006.
- | The World Bank's mission in Russia is to help achieve sustained rapid growth, to improve public sector management and performance, delivery of social services, and also to enhance Russia's global role. To do this, the World Bank provides financial support, analysis and advice.



COUNTRY PROCUREMENT ASSESSMENT REVIEW

- | As part of the analytic work of the World Bank in Russia a Country Procurement Assessment Report was completed in December 2006.
- | In the CPAR all aspects of national procurement systems are addressed: legal framework, procurement practices, institutions, anti-corruption
- | This presentation is based on the main findings of the last Report, and on the comparison of the Russian procurement system with other advanced procurement systems in the world.

INTERNATIONAL LEGAL PROCUREMENT REFERENCES

Two types of sources

I Regional or plurilateral agreements on procurement

- i Government Procurement Agreement of WTO
- i EU Directives
- i Bilateral Trade Agreements (EU-Mexico)

I International reference texts or multilateral agreement

- i UNCITRAL Model Law
- i Multilateral Banks procurement rules
- i OECD
- i WTO Transparency working group



TODAY'S PRESENTATION

- | We will refer only to a few key issues highlighted in the last Country Procurement Assessment Report
- | We take as a basis for comparison commonly accepted principles of good procurement. We understand that these are recommendations ,and that every country, including the Russian Federation, has its own reality, and is at different stage of development of its procurement system

MAIN POSITIVE DEVELOPMENTS IN THE RUSSIAN FEDERATION PUBLIC PROCUREMENT SYSTEM

- | Regulation of public procurement at all levels.
- | Unified legislation replaces diverse procurement regulations.
- | Elimination of restrictions for access of products of foreign origin and foreign suppliers.
- | Advertisement and full disclosure of all procurement processes provided electronically
- | Basis created for introduction of future electronic procurement.
- | An enforcement control mechanism is established.
- | An administrative mechanism for review of complaints is established.



PECULIAR FEATURES OF THE RUSSIAN PROCUREMENT SYSTEM

WE WILL REFER IN OUR
PRESENTATION TO:

- | Procedures codified by a rigid law.
- | Absence of qualification criteria.
- | Traditional reverse auctions as one of the preferred selection methods.
- | Absence of Provisions for procurement of consulting services.
- | An “initial price” or ceiling determines the contract price rather than relying on the market.



- | The Federal Law on Placement of Orders for Supplying Goods, Executing Works, and Providing Services for State and Municipal Needs” (FL No. 94) is a direct action law, which pretends to address to the last detail all and each case in procurement.
- | There is little space for secondary legislation, and every change to the law requires approval at the State Duma. At the same time the dynamics of creating a modern public procurement system and the diversity of subjects of the Russian Federation claim for very operative reactions.

ADVANCED PROCUREMENT LEGISLATION ALLOWS FOR FLEXIBILITY

- | Advanced procurement systems are based not on the attempt to exclude all risks, but on risk management:
- | The European Union issues Procurement Directives, to be taken into account by its members in their respective national procurement laws.
- | United States of America issues the Federal Acquisition Regulations, to be adapted and followed by the Federal Agencies. Each state has its own procurement regulations, which should not contradict FAR.
- | The World Bank issues the Procurement and Consultants Guidelines to be followed in Bank-financed projects. These guidelines are adapted to the extent possible to the conditions of the country members through the bidding documents.

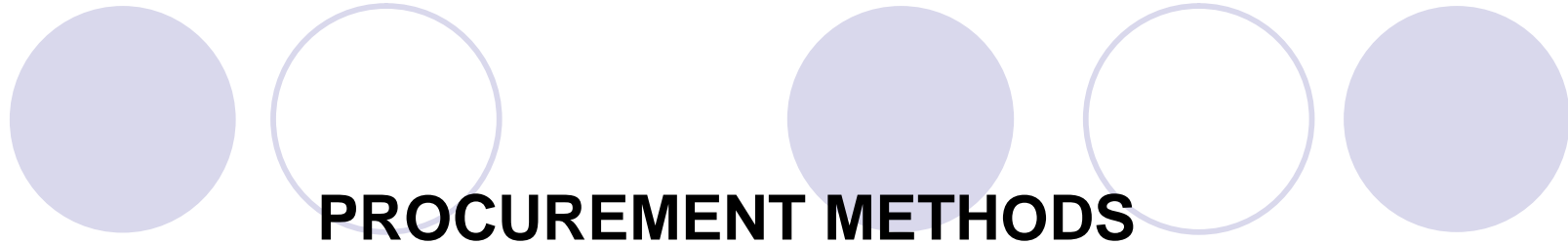


QUALIFICATION CRITERIA

- | The main shortcoming of the FL No. 94 is prohibition of use of any qualification criteria.
- | The draft law No. 352604-4 modifying the FL No. 94, currently under discussion at the State Duma, even reinforces this prohibition.
- | We understand that reportedly abuse of qualification criteria took place in the past. But refusing for that reason use of a main principle not only of procurement but of creating a healthy and strong business community seems not justified.
- | Same situation of abuse of qualification criteria could not repeat under the newly introduced control mechanisms.

ADVANCED PROCUREMENT SYSTEMS ARE BASED ON QUALIFICATION CRITERIA

- | Qualification criteria are based on the experience, technical and financial capabilities of the bidder.
- | Qualification criteria are tied to the size and complexity of the contract, are quantifiable and verifiable and strictly established in a clear methodology.
- | Absence of qualification criteria discourages serious bidders from development and participation. In the international perspective it puts Russian business in disadvantage.
- | Starting contractors should be encouraged by adequate qualification criteria, possibility of association, subcontracting, preferences to small business and proper contract packaging.



- | FL No. 94 does not clearly establish open competitive bidding as the preferred procurement method.
- | Traditional (reverse) auctions are promoted as one of the main methods. Physical and electronic participation is mixed.

ADVANCED PROCUREMENT LEGISLATION DOES NOT INCLUDE TRADITIONAL AUCTIONS

- | Advanced procurement legislation clearly promotes open competitive bidding as the preferred method.
- | Advanced procurement legislation does not include traditional auction as a procurement method. It is not in the UNCITRAL model law, neither in the EU Directives, nor in the American FAR, nor in the WB guidelines.
- | We do not refer to electronic auctions, which as a procurement method are commonly used for simple and low value contracts.

ABSENCE OF PROVISIONS FOR PROCUREMENT OF CONSULTING SERVICES

- Given current trends in the economic development of the country, contracts for intellectual services requiring specific procurement methods, will make up an increasing share in public procurement.
- While the FL No. 94 (Article 20, 5) mentions two-stage bidding for complex contracts this is optional, and not envisioned as part of the bidding process.

ADVANCED PROCUREMENT SYSTEMS INCLUDE PARTICULAR PROVISIONS FOR SELECTION OF CONSULTANTS

- | In consulting assignments qualification of consultant is key (experience of the firm and particularly of the offered key personnel. Here you cannot be without some qualification criteria.
- | Experience shows that consideration of quality of the services offered in combination with the price (Quality and Cost-Based Selection) best serves the interests of the Client and Consultants.
- | Qualification of consultants defines not only their own performance, but also the quality of the solution proposed by the consultant.
- | It is broadly recognized that the World Bank has the most developed set of procedures for selection of consultants

IN CONCLUSION THERE ARE FIVE FUNDAMENTAL PROCUREMENT PRINCIPLES OR GOOD PRACTICES

- | **Non-discrimination between bidders**
- | **Transparency of procurement proceedings**
- | **Economy of government contracting**
- | **Effectiveness of procurement processes**
- | **Accountability of private and public sector**

AN “INITIAL PRICE” IS IN REALITY THE MAXIMUM ACCEPTED PRICE.

- | In market economy prices are determined by the offer and demand. Attempts to introduce administrative regulations in this field are counterproductive.
- | The interest of the State of getting the best value for the money and of the business community of getting the best money for the value are best served by an environment of competition and transparency.
- | Public procurement in Russia, calculated at three trillions of rubles for the year 2007, has a significant impact in configuring the whole economy of the country, and it should work with economic categories, rather than administrative ones.

VIEW OF THE BANK AT DEVELOPMENT OF PUBLIC PROCUREMENT IN THE RUSSIAN FEDERATION

- | Overall positive events are developing in the Russian Federation public sector procurement. A lot of work is being done. An intensive process is ongoing. We praise the high attention paid by Russia to methodological and control issues of public procurement. And we see the value of our contribution in drawing the attention to best practices, which, properly adapted to Russian conditions, may improve this process.