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Russian Desk

Coronavirus: Impending Changes for Participants in State Contracts

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On 1 April 2020 a law on the introduction of amendments¹ entered into force, aimed at countering the spread and mitigating the economic consequences of the novel coronavirus (COVID-19) pandemic (hereinafter also the “Amendments”). The Amendments contained therein concern, *inter alia*, state and municipal procurements. The indicated amendments reflect to a significant extent the proposals of business communities which had previously been discussed on the adoption of urgent measures which stipulate that suppliers under state contracts may not be held liable in connection with the onset of force-majeure circumstances (force majeure).

Clause 11 of the Amendments introduces amendments to the Procurement Law². In this newsletter we cover the most important amendments and addenda to this law.

1. Penalties

The level of late payment interest for the non-performance of obligations under state contracts will be reduced: according to the Amendments, this interest will be calculated based on the price of the stage of the performance of work under the state contract, with the exception of obligations that have already been performed. At present the base for the calculation is the price of the state contract in general, with the exception of obligations that have already been performed.

2. Procurements from a sole supplier

The Amendments will make it possible to procure from a sole supplier any goods, work or services, regardless of whether they are included in the following list approved by the Government of the Russian Federation: List of Goods, Work and Services Required for the Provision of Humanitarian Aid or the Clean-up of the Consequences of Natural or Man-Made Emergencies³. This is possible in instances where medical assistance must be provided in an emergency or as a result of an accident, force-majeure circumstances, in order to prevent and/or to clean up an emergency (in the event of the introduction of a high-alert regime is introduced and the clean-up of emergencies are cleaned up), or to provide humanitarian aid⁴. Consequently, a new reason for such procurements has been added – the introduction of a high-alert regime.

Procurement from a sole supplier will be legal if it is deemed inexpedient to apply competitive procurement methods requiring time costs.

¹ Federal Law No. 98-FZ dated 01/04/2020 “On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation on Issues of the Prevention and Clean-up of Emergencies”.

² Federal Law No. 44-FZ dated 5 April 2013 “On the Contract System in the Area of the Procurements of Goods, Work, and Services to Meet State and Municipal Needs”.

³ Approved by Directive No. 765-r of the Government of the Russian Federation dated 30/09/2013 “On the Approval of the List of Goods, Work and Services Required for the Provision of Humanitarian Aid or the Cleanup of the Consequences of Natural or Man-Made Emergencies”.

⁴ Amendments have been introduced to Sub-Clause 9), Clause 1 of Article 93 of Law No. 44-FZ.

In accordance with Clause 16 of the Amendments, the Government of the Russian Federation will be entitled to establish by 31 December 2020 other grounds for procurements from a sole supplier and determine their procedure⁵.

3. Amendments to state contracts in connection with the onset of certain circumstances

Article 112 of Law No. 44-FZ will be supplemented by Clause 65, stipulating that in 2020 the parties to a state contract will be able by mutual consent to change the performance deadline and/or the price (of the entire contract or unit of the goods, work, services in the instances established by law), if the state contract cannot be performed in connection with the onset of circumstances beyond the control of the parties that render performance impossible. Furthermore, the clause states expressly that the spread of novel coronavirus is recognised among such circumstances. Other instances may also be established by the Government of the Russian Federation.

However, it is not as easy as it sounds: such a change will only be permitted if it is backed by corresponding written substantiation on the basis of a decision of the Government of the Russian Federation, the supreme executive state authority of a constituent entity of the Russian Federation or a local government authority (depending on the party whose needs are being met by the procurement). Furthermore, if the proposed amendments result in the emergence of new circumstances for the supplier, which are not secured by the security for the performance of the contract that had previously been provided, the supplier will be required to provide additional security.

In addition, the amendments may only be performed by clients within the limits of budget commitments in effect for the timeframe stipulated for the execution of the state contract.

Consequently, amendments may be introduced to state contracts in connection with the spread of COVID-19. At the same time, however, such a step is contingent on compliance with a number of terms and conditions, *inter alia*, which are not always under the control of the supplier. Accordingly, such an amendment is not guaranteed.

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