

CHANGES IN THE SPHERE OF BUDGET LEGISLATION IN APRIL 2013 M. Goldin

In April 2013, Federal Law on the Contract System in the Sphere of Procurement of Goods, Jobs and Services for State and Municipal Needs was approved.

On April 5, the President of the Russian Federation signed Federal Law No. 44-FZ of April 5, 2013 on the Contract System in the Sphere of Procurement of Goods, Jobs and Services for State and Municipal Needs (hereinafter referred to as the Law on FKS); most provisions of the above Law will become effect from January 1, 2014. The Law will finally come into force on January 1, 2017.

The Law is meant to replace existing Federal Law No. 94-FZ of July 21, 2005 on Placement of Orders on Supplies of Goods, Fulfillment of Jobs and Rendering of Services for State and Municipal Needs (hereinafter referred to as Law No. 94-FZ).

The Law on FKS transforms to a great extent the rules of regulation in the sphere of state procurement and considerably expands the scope of regulation as compared to existing Law No. 94-FZ. So, the Law on FKS introduces the system of planning of purchases, including development of three-year plans of purchases and schedule-plans of purchases for each year. The Law on FKS establishes the general requirements to purchase-planning: the scope of schedule-plans of purchases, rules on the deadlines of approval of schedule-plans of purchases and other. At the same time, a number of procedural questions at the stage of planning of purchases will be regulated by statutory acts of the Government of the Russian Federation.

Also, the Law on FKS introduces the practice of rationing in the sphere of procurement. A requirement will be established to rationing of purchases aimed at complete securing of state and municipal needs and exclusion of purchases – made at the expense of budgetary funds – of goods with excessive consumer properties. Rationing of purchases suggests determination of some pricing thresholds, that is, ultimate prices for goods, jobs and services and (or) standard costs of activities by the authorities. In addition to ultimate prices, requirements will be set to goods, jobs and services purchased by the customer. The general rules of rationing in the sphere of procurements will be approved by statutory acts of the Government of the Russian Federation.

The Law on FKS expands the choice of methods of determination of the supplier by means of introduction of such new methods as a tender with limited participation, a two-stage tender and a request of bids. An open auction will be held in the form of an electronic auction.

Existing Law No. 94-FZ is often criticized as regards preferential pricing approach to determination of the best bid or quotation. Due to the above, the Law on FKS provides for antidumping measures aimed at prevention of unjustified reduction of prices in holding of tenders and auctions and carrying out of monitoring of purchases and audit in the sphere of procurements. So, in particular, if in carrying out of a tender or auction the initial (maximum) price amounted to over Rb 15m and the participant in procurement whom the contract was concluded with offered a contractual price which was 25% or more blow the initial (maximum) price of the contract, the contract is concluded only after the above participant provided a contract performance bond in the amount which exceeds by 50% the amount of the contract performance bond specified in the tender (auction) documentation, but no less than the amount of the advance payment (if the contract provides for the advance payment to be made).

The Law on FKS envisages a more in-depth regulation of the system of supervision in the sphere of state procurement. It is believed that supervision will be carried out at several levels:

public (municipal) control;

- in-house control;
- control carried out by the customer in the sphere of procurement;
- public scrutiny. ●