

# Prizing Open the Lid on Public Procurement

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Public procurements are often a hotly debated topic in the media, with the public often wanting explanations for why ordinary public officials drive very expensive cars, why the government pays double or even triple the worth of goods and services, and why tender winners are known well in advance.

In response to exposures in a range of publications, politicians invariably say much is being done to improve the situation and public procurement regulation is becoming more efficient by the day.

What has actually been done lately? Let us take a look at how the public procurement laws have changed over the last half a year.

### **Transparency and availability of public procurement procedures**

From Jan. 1, 2011, information on all national and municipal procurements is posted on one information portal — [www.zakupki.gov.ru](http://www.zakupki.gov.ru). Tender bids are also submitted electronically, and all tender steps can be seen on the Internet. Any company, from even the remotest regions, can now participate in tenders held by a customer at the other end of the country.

Public officials report success — the more participants, the tighter the competition, which means that the order will be placed on more favorable terms. Is this really the case?



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Russia-registered companies, goods and services are the major players in the broadening of the tender participant base. Despite the principle of equal access to public procurement for international goods and services and international companies, foreign businesspeople have limited opportunity for participating in tenders because of difficulties involved in submitting required documentation, obtaining a digital signature and also because of established preferences for suppliers of Russian goods (equipment, motor vehicles, etc.).

Foreigners have to participate in tenders via representatives and distributors, which raises costs for both the manufacturers and customers.

The reverse side of increased participation in tenders and the absence of serious qualification requirements is the increased possibility of fraudulent schemes where companies unable to fulfill public contracts to the required standard participate in tenders for the sole purpose of attracting cash, without providing contract-quality goods and services in return. These companies may engage in dumping practices, and win tenders and auctions without the government receiving the contracted goods or services.

To restrict bad faith tendering, public procurement rules include the securing of tender bids and enforcement of orders. For instance, warranty obligations by suppliers of sophisticated equipment are secured by surety, bank guarantees or deposits. This leads to additional financial burdens for good faith suppliers — in addition to reserving funds for warranty servicing, they need to freeze additional funds to secure this obligation. This leads to more expensive equipment and follow-up servicing, meaning greater budget outlays. Ultimately, the government is unable to optimize the costs of purchasing expensive, long-service-life equipment.

### **Control over initial tender prices**

If, as in the case described above, it is difficult to save on procurements, public procurement entities are now required by law at least to substantiate the initial (maximum) price of the order. The idea here is to preclude procurements being made at overstated prices.

The effectiveness of this measure is questionable. First, any price may be substantiated, if need be. Second, the law does not prescribe the techniques by which public procurement entities are to determine the public contract price on the basis of market prices — whether an average figure should be calculated, or whether the lowest price proposal should be used as a benchmark. The price offered by a public procurement entity must interest real suppliers; otherwise the only tender participants will be fly-by-night companies.

### **Regulation of public sector company procurements**

From Jan. 1, 2012, a law comes into force regulating procurement procedures of government corporations, companies with government involvement and their subsidiaries. Currently, regulation is confined to rules ensuring transparency of procurement: Information on procurement plans for at least one year ahead — on future tenders and order placement results — is subject to publication. Procurements must be made on the basis of approved and published procurement regulations stating how procurements should be prepared and effected, prescribing how contracts should be executed and making provision for contract enforcement.

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