

LEGISLATIVE INITIATIVES IN THE LAW ON PUBLIC PROCUREMENT

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Abstract. *This article discusses the legislative initiative of the Kostroma regional Duma to amend article 1 of the Federal law «On the contract system in the field of procurement of goods, works, and services for state and municipal needs». Based on the current legislation and analysis of the changes made, the author comes to the conclusion that the changes are not appropriate.*

Keywords: *public procurement, environmental expertise, freelance expert, procurement for public needs.*

The authors of the bill propose to exclude from the scope of the Federal law dated 5 April 2013 № 44-FL «On contract system in procurement of goods, works, services for state and municipal needs» [1] (hereinafter – the Law on public procurement) involvement of the authorized body of Executive power of external experts for state environmental expertise in accordance with Federal law dated 23 November 1995 № 174-FL «On ecological expertise» [2] (hereinafter – the Law on examination).

In the Explanatory note [3], the authors of the draft law indicate that the state environmental expertise of objects is carried out in order to realize the right of citizens of the Russian Federation to a favorable environment. The terms of this examination, as well as its procedure, are established By the law on examination, according to which it is provided to involve freelance experts for its conduct. Payment for such experts is made in accordance with the Order of the Ministry of natural resources of the Russian Federation dated September 23, 2013 № 404 [4]. This order defines the amount of payment for experts to participate in the examination. The specific amount of payment depends on the level of state environmental expertise. In accordance with the law on expertise, the time period for conducting such an examination is 15 days from the date of receipt of a complete set of documents for its conduct, subject to full payment. For some items, a shorter period of 3 days is set. The examination itself is car-

ried out by an expert Commission, which is created by the decision of the authorized state authority for each specific object.

Referring to the obligation of the customer to make an advance payment and the fixed amount of payment for freelance experts established By the law on expertise, the authors of the draft law conclude that the Law on public procurement and the law on expertise have different subjects and areas of regulation and if freelance experts are involved in state expertise, the norms Of the law on public procurement will not be applied, and the conclusion of the contract provided for by this law is not mandatory. In support of this position, the resolution of the Arbitration court of the North-Western district of 14.02.2017 № F07-12624/2016 [5] is given, in which, according to the authors of the bill, a similar opinion is expressed.

Further, the explanatory note notes that the main criterion for choosing the winner of a state contract is its price, and this does not correspond to the fixed amounts of remuneration for experts.

Part 2 of article 1 of the Law on public procurement defines a closed list of areas to which this law does not apply. Such areas, in particular relates to the lawyer's provision of legal aid in the framework of the Federal law from November 21, 2011 № 324-FL «On free legal aid in the Russian Federation» (further the Law on legal aid) [6], the involvement of citizens in the execution of works during the election period in accordance with the Federal

law of 12 June 2002 № 67-FL «On basic guarantees of electoral rights and the right to participate in referendum of citizens of the Russian Federation» (hereinafter the election Law) [7]. According to these laws, the final amount of payment is determined by a lawyer authorized bodies of subjects of the Russian Federation, and the wages of citizens on the election Law are determined by the Central election Commission of the Russian Federation. According to the authors of the bill, the involvement of external experts public authority for environmental review in the framework of the Law on expertise by its nature is similar to lawyers providing free services in the framework of the Law on legal assistance to citizens during the elections in accordance with election Law.

Based on the above arguments, as well as to comply with the terms of expertise, the authors of the draft law call for expanding the list of areas in which the provisions of the Law on public procurement are not applied by removing the involvement of freelance experts for state environmental expertise from the scope of the law.

On behalf of the State Duma Council, the State Duma Committee on economic policy, industry, innovative development and entrepreneurship issued an Opinion on the draft law under consideration [8].

The authors of the Conclusion refer to the letter of the Ministry of economic development of the Russian Federation dated April 24, 2017 № D28i-1674 (hereinafter – the Conclusion) [9], according to which the involvement of freelance experts of the state environmental expertise is carried out in accordance with the Law on public procurement. In Conclusion, it is indicated that in the absence of the law on environmental expertise established procedure for the participation of freelance experts in the activities of the expert Commission will contribute to abuse and restriction of competition in the selection of such experts, and also indicates the possibility of applying paragraph 4 of part 1 of article 94 of the Law on public procurement, which makes it possible to purchase from a single supplier.

The state Duma has previously rejected a draft Federal law providing that the Law on

public procurement does not apply to relations where specialists with special or scientific knowledge are engaged by state bodies to conduct state environmental expertise within the Framework of the law on environmental expertise.

In our opinion, the adoption of the bill is impractical, and the arguments of the authors of the bill are unconvincing for the following reasons:

1. The Law on public procurement regulates relations aimed at ensuring state and municipal needs in order to increase the efficiency and effectiveness of procurement of goods, works and services, ensure transparency and transparency of such purchases, prevent corruption and other abuses in the field of such purchases, including in the procurement of works and services. Conducting an environmental assessment is a service. The arguments of the authors of the bill that both laws have different areas and subjects of regulation are not based on current legislation.

2. The Law was adopted later than the law on expertise was adopted much earlier than the Law on public procurement, and in our opinion it was more correct to bring it into line with the Law on public procurement, as a special law adopted to prevent corruption in public procurement.

3. The court decision referred to by the authors of the draft law as justification for their position refers to the provision of environmental expertise as a public service by a state body and staff experts. It is from this position that the court order applies the phrase "have different subjects and areas of regulation". In this context, it means that a state body provides a service to another state body within the framework of current legislation and these legal relations are outside the scope of the Law on public procurement. At the same time, the authors of the bill propose to remove the involvement of freelance experts from the scope of this law, and the reference to the above-mentioned court decision is incorrect.

4. In our opinion, the authors argument that the main criterion for determining the winner in procurement is the contract price is not convincing, since the contract price is one

of the main, but the only criterion for determining the winner.

5. The authors arguments that the implementation of environmental expertise is similar to the involvement of lawyers in providing legal assistance to citizens free of charge and citizens in ensuring the powers of election commissions and referendum commissions during the preparation and conduct of elections and referendums Do not stand up to any criticism. In contrast to lawyers and citizens, when conducting elections, there is a large corruption component in the activities of specialists who carry out environmental expertise, which is associated, to a greater extent, not with the payments provided for them, but with the results of the expertise itself, which can significantly affect the economic (and perhaps socio-political, let's recall the Khimki

forest, Shies) situation during the construction of large objects. In this case, the involvement of such specialists should be as transparent and reasonable as possible. This is why the Law on public procurement was adopted.

On the basis of the above, the adoption of the draft law under consideration seems impractical. In our opinion, the adoption of this bill will not lead to positive results, since it will make the process of attracting specialists for environmental expertise opaque, and this, in turn, will give environmental expertise significant corruption risks, which is very possible when building large projects under state orders and is unacceptable from the point of view of the Law on public procurement. To solve the problems identified in the draft law, it is more appropriate to amend the Law on environmental expertise.

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ЗАКОНОДАТЕЛЬНЫЕ ИНИЦИАТИВЫ В ЗАКОНЕ О ГОСУДАРСТВЕННЫХ ЗАКУПКАХ

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***Аннотация.** В статье рассматривается законодательная инициатива Костромской областной Думы по внесению изменений в статью 1 Федерального закона «О контрактной системе в сфере закупок товаров, работ, услуг для государственных и муниципальных нужд». На основании действующего законодательства и анализа внесенных изменений автор приходит к выводу, что изменения нецелесообразны.*

***Ключевые слова:** государственные закупки, экологическая экспертиза, внештатный эксперт, закупки для государственных нужд.*