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## Public Control as a Mechanism of the Openness of Public Procurement: Case of Russia

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### Synonyms

[Government contracting out](#); [Outsourcing](#);  
[Outsourcing anti-fraud measures](#); [Public control](#);  
[Public procurement in Russia](#); [Public procure-  
ment regulations in Russia](#); [Transparency of pub-  
lic procurement](#)

### Definition

Public procurement is the process by which public authorities, such as government departments or local authorities, purchase work, goods, and services from the private sector.

### Introduction

Public procurement is a source of high corruption risk due to the large amount of funds involved and specific procedures for using such funds. Wide

powers of governmental and municipal authorities who are responsible for the contracting also contribute to corruption vulnerability of the public procurement system. The corruption damage in public procurement is very significant. As estimated by the Organization for Economic Cooperation and Development (OECD), the losses due to corruption range from 20 to 25 percent of the procurement budget, that is, around 2 billion USD annually. According to experts, the losses of the Russian budget resulting from corruption range from 5 to 7 billion dollars.

One of the high-profile cases related to unfair public procurement in Russia was the acquisition of CT and NMR scanners for regional healthcare facilities. The equipment was purchased at the price of 95 million roubles per unit, while the market price was in the range from 28 to 40 million roubles. The total of 64 scanners were purchased at elevated prices. The damage to the budget amounted to 700 million roubles.

Public procurement nourishes corruption due to the specificity and the large number of participants who are prone to corrupt activities. A large number of acts of corruption are possible in public procurement. Different forms of corruption have been observed in public procurement: bid rigging, bid orchestration, and distortion of quality ranking (Dimitri et al. 2006). Russian practice often draws a line between fraud and corruption. The term “corruption” refers to actions which involve contract performers and officials who make decisions on contract awarding. Corrupt practices include

slanted specification, breach of confidentiality, lax contract administration, and conflict of interests. The term “fraud” is used to describe the opportunistic behavior of the bidders, which manifests itself in the form of collusion, holding prices at a certain level, provision of false certificates, and over-invoicing, as well as other noncompetitive activities.

The variety of corruption opportunities depends on the complexity of the procurement as well as the stage of the procurement cycle. The types and incidence of corruption phenomena are determined by a number of other factors, such as national legislation regulating the complexity of tendering procedures, the extent of electronic filing format use, and rigidity of state control.

The variety of forms of corrupt practices requires the establishment of corruption elimination mechanisms, or at least reduction. In addition to the financial losses associated with the conclusion of contracts on conditions that are unfavorable for the state, fraud and corruption in public procurement contribute to the deterioration of the investment climate and lead to reduced confidence in the government.

In a situation where corruption manifestations are diverse and multifaceted, one of the most effective and versatile tools to combat corruption is public control.

Public control technologies are widely used in world practice. One of the OECD guidelines in the area of public procurement is the Principles for Integrity in Public Procurement, according to which “...governments should consider involving representatives from civil society organizations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption.”

Individuals, trade associations, professional associations, and business firms need to be involved into public control activities. In the USA, Transparency International has developed Procurement Monitoring Guide as well as online Procurement Monitoring Tool for civil society organizations in order to monitor the public procurement. In Mexico, social control functions are performed by “Social Witness” civil society groups, which take part in the contracting process

and work on the basis of an agreement between the state and the procurement agency (Transparency International 2014).

The fight against corruption is the driving force behind reforming the public procurement system in Russia. Therefore, much attention is given in the legislation to improving the transparency of procurement procedures. Such measures also include the organization of public control. Public control allows to detect violations of the law and report on such violations to the supervisory bodies. This very social control is called a “true Fourth Estate.”

In this regard, it seems relevant to develop social control in Russia as one of the mechanisms for better public procurement transparency.

## **Public Control in Public Procurement in Russia**

Russia’s transition from centralized and planned supplies and procurement of enterprises to their full independence in the 1990s was very sharp and extremely painful for the domestic economy. However, during this very period, preconditions for the functioning of the public procurement market started to appear. It is a characteristic that one of the first documents targeted at formation of a competitive public procurement market, adopted in 1997, contains anti-corruption rhetoric in its title. This document is the Presidential Decree “About urgent measures to eliminate corruption and budget cuts in the organization of the procurement of products for state needs” (Decree 305 dated April 8, 1997). It stipulates that the government affects state purchases on a competitive basis. Transparency in public procurement was facilitated by the adoption of Federal Law No. 94 “On State and Municipal Procurement of Goods, Works and Services” dated July 21, 2005. The law required customers to disclose information about procurement and tender procedure results in the Internet. This law created conditions for competitiveness improvement and fight against corruption. At the same time, the law only provided for limited state control, and it lacked public oversight system.

The fundamental reform of the public procurement system in Russia began in 2014 when Federal Law 44-FZ “About contract system in the procurement of goods, works and services for state and municipal needs” dated May 4, 2013 came into force (hereinafter Federal Law 44-FZ). The specific features that distinguish Federal Law 44-FZ from previous legislation are:

1. *Focus on entire procurement cycle regulation, including planning and monitoring of procurement procedures.*

The law provides for two types of procurement planning: for triennium (procurement plans) and for 1 year (procurement schedules). Public procurement based on planning allows customers to solve a range of issues: to increase procurement validity and timeliness and to organize subsequent control over budget funds. The procurement cycle is finalized by procurement monitoring, when procurement target achievement indicators, as well as procurement validity, are assessed. Starting from 2017, the legislation imposes specific procurement ID codes to be indicated in all documents related to the purchase. This code is “crosscutting,” and it enables tracking of the whole procurement cycle from its planning to execution of the contract. Thus, it significantly increases the transparency of the procurement process.

2. *Establishing a unified information system.*

The unified information system is an open unified database which can be accessed at [www.zakupki.gov.ru](http://www.zakupki.gov.ru). The system provides access to a wide range of information, including procurement notices and information on procurement results, procurement plans and schedules, and information about signed and executed contracts. It also facilitates competitive procedures in real time. It is important to note that the information and the documents to be placed in the unified information system are in most cases verified for legislation compliance by the use of technology tools, thus preventing customers from placing false data. Starting from January 1, 2017, the unified

information system will monitor a wider range of procurement data, including information on the amount of financial securities in plans and procurement schedules, information on procurement notices, supplier selection records, etc.

3. *Expansion of supervisory bodies system, as well as adoption of special regulations governing public control.*

Federal Law 44-FZ has considerably expanded the system of supervisory bodies. The control powers of the Federal Treasury, regional and municipal financial authorities, state budget fund management bodies, and internal state (or municipal) financial control bodies were set out. For the first time ever, public control mechanisms were enshrined for citizens, public organizations, and associations of legal entities.

The law contains a wide range of contract award methods. The following procurement procedures may be used according to the legislation:

1. Competitive procurement procedures:
  - Auction (e-auction, closed auction) – a procedure which is carried out at an electronic platform according to the lowest price criterion.
  - Request for quotations – a procedure assuming purchase by the lowest price criterion if the contract price does not exceed 500 thousand roubles. The total number of quotation requests in terms of value cannot exceed 10% of the customer procurement budget.
  - Request for proposals – a procedure involving multicriteria evaluation of proposals. It is held in a limited number of cases, for example, after contract termination or after a failed procurement procedure.
  - Tender (open tender, restricted tender, two-stage tender, closed tender, closed restricted tender, closed two-stage tender) – a procedure involving multicriteria evaluation of proposals. The tender is carried out in all cases where the law does not require other procurement procedures from the customer.

2. Single-source procurement – it is used in small volume contracting (up to 100 thousand roubles, while the total amount of purchases in terms of value cannot exceed 5% of the customer’s purchasing budget/or 2 million roubles), in contracts with natural monopolies companies, in contracts where the supplier (contractor) is determined by the decisions of the president of Russia or the prime minister, etc.

Given the need to address anti-corruption tasks, the legislation is focused on the procurement procedures that eliminate customer’s subjective decision-making. An electronic auction based on the lowest price criterion is the most competitive and transparent procedure under the Russian law. As a result, the electronic auction procedure has become dominant in the public procurement system in Russia. According to the results of 2015, auction notices amounted to 56.6% of the total notices on the official notification website (Report on Federal law 44-FZ application results monitoring). The distribution of procurement procedures by procurement methods is shown in Fig. 1.

In accordance with the legislation, Russian public control of public procurement can be affected by citizens, public organizations, and associations of legal entities.

The powers of public organizations and associations of legal entities comprise of:

- Preparation legislation improvement proposals regarding the contract system laws
- Requests to the customers regarding information on procurement and execution of contracts
- Independent monitoring of procurement and its efficiency assessment
- Appeal to the control authorities with an application for verification of customers’ operations
- Appeal to the law enforcement agencies and the courts

Despite the fact that the citizens are referred to as persons exercising control in the legislation, the law does not stipulate the mechanisms for its

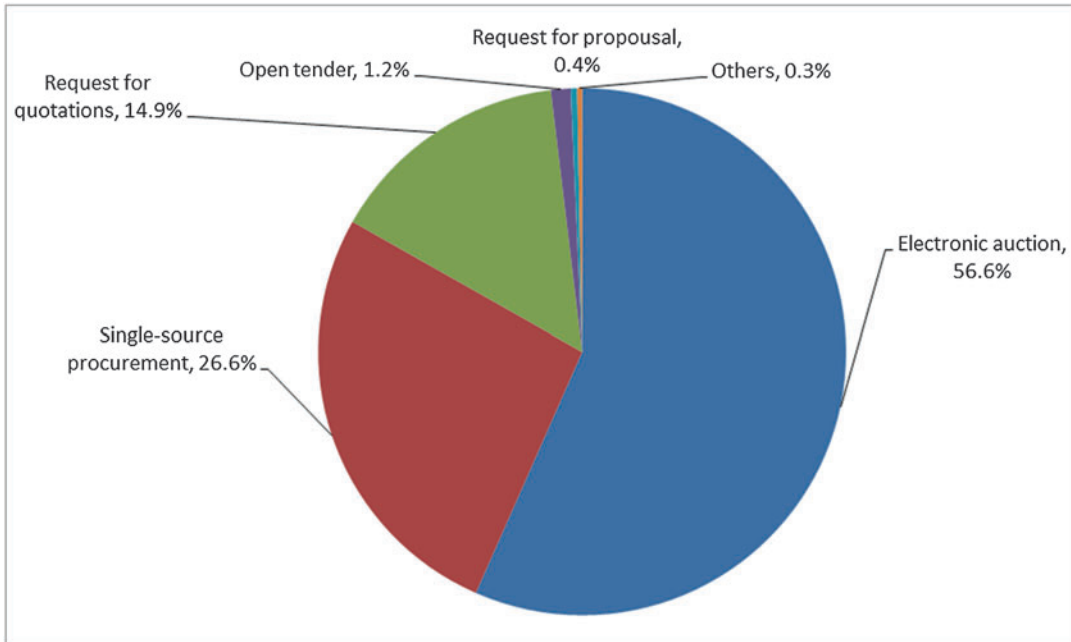
implementation. The citizens can exercise their right of appeal to the state bodies and to obtain information on state bodies’ activities, but the time limit for consideration of an appeal (within 30 days) limits promptness of violation prevention in procurement.

It needs to be mentioned that public organizations actively exercise their right to appeal. This is supported by the public register of complaints in the unified information system. A significant portion of complaints comes from representatives of public organizations, and it indicates the development of social control mechanisms.

The most frequent cause of complaints from public organizations is purchasing of goods with excessive consumer properties or luxury goods, as well as association of different kinds of goods and works in one lot, which adversely affects the level of competition and reduces the scope for small- and medium-sized businesses participating in bidding.

An example of procurement public control implementation is the project of All-Russian People’s Front’s public organization “for fair procurement.” The project is based on [zachestnyezakupki.onf.ru](http://zachestnyezakupki.onf.ru) website, and it is a service that allows to find a purchase which contravenes the law or which is meaningless. The service enables complaint submission in order to bring to work lawyers and experts. The project has brought together more than 5000 activists involved in fight against corruption and inefficient use of budget funds in public procurement. As a result, procurement for the total of 227 billion was cancelled, or irregularities were rectified. One of the most high-profile cases of appeal against actions of procurement officials in the Nizhny Novgorod region was a complaint about the open competition for construction activities (“Reconstruction of Yuzhny Avenue to the Nizhny Novgorod airport”) at the end of 2015. After an unscheduled inspection of the Federal Antimonopoly Service (FAS) of the Russian Federation, a number of customer’s operations violations were revealed, and the competition was canceled.

Here the risk of control misuse needs to be mentioned. Public control activists may represent



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**Fig. 1** Distribution of the procurement procedures by procurement methods in 2015

the interests of certain suppliers, and it negatively affects the control objectivity. The researchers estimate that 27% of public control members are affiliated (according to a questioning survey) (Dzhuzhoma and Pogorelko 2015). That is why the professional community discusses the creation of a public control council over public procurement. Such a council will be endowed with specific powers enabling bringing council members into the fold of customer's tendering commissions.

An important mechanism of public control is the procedure of mandatory procurement public discussion.

Mandatory public discussion is a procedure that allows the public to monitor the actions of state customers from the standpoint of public procurement legislation compliance. Mandatory public discussion of the procurement is carried out if the estimated contract price exceeds 1 billion roubles.

Mandatory public discussion is not carried out in the planning and procurement if:

- Closed methods of supplier choice are used.
- Weapons, military, and special equipment are procured in the framework of a state defense order.
- A single-source procurement is used.

The unified information system website has a dedicated section for mandatory procurement public discussion. This section can be accessed by anyone, and any registered user can post comments and suggestions. Any legal entities or individuals, entrepreneurs, state authorities, and local authorities may participate in the discussion on equal footing.

Mandatory public discussion procedure consists of two stages. At the first stage, the procurement is discussed on the unified information system website and in the framework of full-time public hearings at the stage of planning. The first stage begins after placement of the schedule in the unified information system, and it suggests two ways of interaction with stakeholders. At the beginning, public discussion participants submit their comments and suggestions to the customer

within not less than 20 days from the date of posting in the unified information system. The customer is obliged to respond to such comments or suggestions. Then the customer is obliged to carry out full-time public hearings to discuss the purchase. Full-time public hearings are open, and the information regarding the date, place, and time of such hearings is posted in the unified information system. In addition, this information is sent by e-mail to public discussion participants who took part in the procurement discussion.

According to the results of the first stage, one of the following decisions needs to be taken: cancellation of the purchase, continued preparations for the purchase disregarding the results of the mandatory public discussion, and continued preparations for the purchase taking into account the results of the mandatory public discussion (including amendment of procurement schedule). The first stage results of the mandatory public discussion are recorded in the minutes, which contain information on all submitted comments, suggestions, and answers, as well as the decision taken by the customer. The minutes are posted in the unified information system within 2 days after the full-time public hearings. In case of a delay, it is automatically recorded in the unified information system by program features.

At the second stage of the discussion, the information included in the procurement notice, as well as procurement documentation, are reviewed in the unified information system. The second stage begins when such information is submitted and posted. The result of the second stage may be a decision on the continuation of the purchase without amending the procurement notice and documentation, a decision to continue the procurement with notice and documentation modification, as well as cancellation of supplier definition.

After the end of the second stage, the customer posts the second stage public discussion protocol in the unified information system. These minutes contain all received comments, suggestions, and answers, as well as the customer's decision.

After posting in the unified information system, the minutes of both mandatory public discussion phases are automatically sent to the federal

executive body exercising functions of finance and budget control and supervision.

The procedure for mandatory public discussion of procurement is presented in Table 1.

Starting from July 1, 2014, the unified information system implemented blocking control which does not allow a large purchase if the customer breaches the established mandatory public discussion order.

Breach of mandatory public discussion order and timelines or failure to carry out mandatory public discussion results in an administrative fine paid by the customer.

Constituent entities of the Russian Federation and local governments can adopt legal acts establishing additional cases of mandatory procurement public discussion, as well as a specific procedure for related mandatory public discussion. To date, 18 constituent entities of the Russian Federation and a number of municipalities adopted such legal acts, including acts providing decrease of the contract price threshold. The most common minimum threshold is 100 million roubles. The minimum threshold of indicative contract price for public discussion purposes established at regional and local level is 15 million roubles (a municipality in the Chuvash Republic). Regional and local legislation development can be seen as a positive trend in the genesis of public control system.

It needs to be mentioned that according to the analysis of statistical data, the mechanisms of public control are not functioning in full. For instance, according to [zakupki.gov.ru](http://zakupki.gov.ru) official website, 337 mandatory procurement public discussions were posted for the total amount exceeding 1 billion roubles in 2015. The objects of procurement to be discussed were mainly construction works. Nine purchases were canceled at the first stage of mandatory public discussions, and three were canceled at the second stage. In 22 cases, customers amended planning documents, and 12 purchases were canceled (Report on results of monitoring of application of Federal law 44-FZ 2015).

The main reason for such a low performance of public control is poor feedback. State customer is not obliged to take into account public opinion

**Public Control as a Mechanism of the Openness of Public Procurement: Case of Russia, Table 1** The procedure for mandatory public discussion of procurement in Russia

Stages of mandatory public discussion	Procurement cycle stage	Content	Possible consequences
Stage 1	Planning	Discussion on the website of the unified information system	Cancellation of purchase
		Discussion during the full-time public hearings	Continuation of preparations for the purchase disregarding the results of the mandatory public discussion
			Continuation of preparations for the purchase taking into account the results of the mandatory public discussion
Stage 2	Procurement (posting of procurement notice)	Discussion on the website of the unified information system	Cancellation of purchase
			Continuation of the purchase without amending the procurement notice and documentation
			Continuation of the purchase with amending the procurement notice and documentation

during public discussion of major procurement contracts, and the legislation allows procurement without taking into account the results of mandatory public discussions. Lack of feedback contributes to mistrust of civil society in Russian state institutions, and it leads to unstable functioning of public control institutions.

Another problem decreasing the efficiency of mandatory public discussions is low motivation of public organizations. Representatives of local communities are more interested in local level issues, and it raises the question of revising the criteria for mandatory public discussion.

Despite the existence of legally binding mechanisms of public control, its impact on the procurement procedures is negligible at present. The main obstacles to the implementation of public control are:

1. *Difficulty and complexity of the legislation.*

F. Simone and Sh. Shah noted that “Procurement monitoring is a complex exercise and requires an understanding of procurement processes and various monitoring techniques, as well sector-specific knowledge” (Simone and Shah 2012). In Russia, the problem is compounded by the fact that the legislation

changes in a very fast way. Although public interest in this topic is very high, the share of professionals who are able to understand the process in detail is extremely small in the civil society.

2. *Low activity of civil society.* Unfortunately, Russia has no strong traditions of public organization involvement in the sphere of public administration. Modern public organizations in Russia are largely dependent on regional and local authorities and cannot work without the loyalty and support from the authorities. This has a negative impact on their efficiency. In addition, the interests of public organizations, particularly at the regional level, are concentrated mainly on local issues, mostly related to problems of social significance.
3. *Limited scope of public control procedures implementation.*

Public control procedures apply only to the customers whose purchasing activities are regulated by Federal Law 44-FZ. A substantial part of procurement, including procurement at the expense of budget funds, is affected in accordance with Federal Law 223-FZ “On procurement of goods, works and services of certain kinds of

legal entities” dated July 18, 2011, which does not stipulate public control. At the same time, the share of state needs purchases carried out in accordance with Federal Law 44-FZ was not more than 5.5 trillion roubles in 2015, whereas the purchases in the framework of Federal Law 223-FZ amounted to more than 23 trillion roubles. Thus, Rosneft petrol company alone spent more than 4.5 trillion roubles last year.

Federal Law 223-FZ is less stringent than Federal Law 44-FZ (223-FZ is much less restricted and regulated than 44-FZ). In fact, Federal Law 223-FZ stipulates only the basic procurement principles and requirements for placing information in the unified information system. Federal Law No. 223-FZ applies to state-owned corporations (e.g., RosAtom, RosNano, etc.), companies with state participation (e.g., Russian Railways), natural monopolies, regulated activity companies (electricity, gas, heat supply, water supply, and so on), state unitary enterprises and municipal unitary enterprises, autonomous organizations, as well as business entities with more than 50% shares belonging to the Russian Federation, Russian Federation regions or municipalities. They do not have a status of state or municipal customer, and they conduct their procurement activities in accordance with own procurement provisions. Indeed, organizations engaged in procurement in accordance with Federal Law 223-FZ should have a greater degree of freedom as many of them are involved in market activities and one of their work objectives is profit gain. However, given the scale of purchases and often negative public reaction, it is advisable to introduce mandatory public control of companies having large amount purchases in accordance with Federal Law 223-FZ.

## Conclusion

Public control mechanisms are essential components of modern legislation on public procurement in Russia. Despite the issues associated with the intense pace of reforms in the field of public procurement, it is possible to talk about the current system of public control enabling public procurement transparency. However, the

opportunities provided by the legislation in order to implement public control are not used in full. The impact of public on the authorities in the field of public procurement is insufficient, although given the unstable economic situation, an increase of public initiatives and the start of the public dialogue with government bodies regarding budget expenditures can be expected.

A logical continuation of the changes associated with state order transparency improvement will be the work to overcome the opinion about a high degree of competitive procedures predetermination which is prevailing among Russian entrepreneurs, as well as training and information support to the public procurement market participants.

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