

EVOLUTION OF PUBLIC PROCUREMENT AUCTIONS IN RUSSIA

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Reverse auctions in public procurement have become an important stage, shaping the modern “showcase” of Russian state contractual system. The formal rules that determine conduct of economic entities in this field tend to be an essential factor underlying development of an efficient competitive environment in the public procurement quasi-market, which, other conditions being equal, facilitates growth of well-being for both consumers and producers in Russia. The paper focuses on the evolution of auction technologies and the underlying legal and regulatory framework in the modern Russia. A detailed comparative analysis of various auctions methods used in public procurement in Russia is presented to highlight the rationale of their transformation. Some formal rules are highlighted that contributed to attaining a controlled uniformity of procurement mechanisms, which have led to better predictability and attractiveness of the new market for its participants, and shaped framework for fighting corruption in the public sector. The pressing factors of corruption and quality assurance in public procurement are addressed. The issue is becoming of particular importance since, due to its current administrative reform, Russia is reviewing its offer for joining the WTO Agreement on Government Procurement. The sequence of technological measures in public and municipal procurement, stages and timeline of procurement procedures are detailed. The role of digitalizing public procurement in order to enhance transparency in this segment of economic operations is discussed. The authors have performed a comparative analysis of different types of e-auctions within the federal regulatory environment in Russia. Any robustness and balance improvement in procurement procedure selection can be expected only after mandatory and synchronous electrification of all methods of public procurement in the Russian Federation.

Keywords: *auction; public procurement; government regulation; economic policy; effectiveness of the contractual system*

JEL classifications: *D02, H30, H57, K20*

ЭВОЛЮЦИЯ МЕХАНИЗМА АУКЦИОНА ПРИ ГОСУДАРСТВЕННЫХ ЗАКУПКАХ В РОССИИ

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Использование редуционов при государственных закупках стало важным этапом, определяющим современное лицо российской государственной контрактной системы. Формальные правила, определяющие поведение экономических агентов в этой сфере, стали существенным фактором формирования эффективной конкурентной среды квазирынка государственных закупок, что при прочих равных условиях способствует росту благосостояния как потребителей, так и производителей в стране. В статье представлена эволюция аукционных технологий и соответствующего нормативно-правового регулирования в современной России. В результате детализированного сравнительного анализа разных методов проведения аукционов в системе российских госзакупок выявлена логика трансформации аукционных технологий. Показаны формальные правила, которые внесли вклад в достижение контролируемого единообразия механизмов осуществления закупочной деятельности, что позволило обеспечить большую предсказуемость и привлекательность нового рынка для участников, создало рамочные условия и предпосылки для борьбы с коррупцией в государственном секторе. Рассмотрены факторы коррупциогенности и обеспечения качества в сфере госзакупок. Это имеет особое значение в условиях подготовки к присоединению РФ к Соглашению ВТО о государственных закупках. В работе приводится последовательность технологических мероприятий государственных и муниципальных закупок, этапы и сроки проведения закупочных процедур. Показана роль электронизации в повышении прозрачности данной сферы хозяйствования. Приводится сравнительный анализ разновидностей электронного аукциона, встречающихся в рамках федеральной нормативной базы РФ. Ожидания роста сбалансированности при выборе закупочных процедур возможны только после обязательной и единовременной электронизации всех способов государственных закупок в России.

Ключевые слова: *аукцион; государственные закупки; государственное регулирование; экономическая политика; эффективность контрактной системы*

Introduction

During the transition from the Soviet system of directive planning to the market principles of satisfying public needs, public procurement has become a regulatory area with high corruption capacity (Belokrylov, 2017; Detkova, Podkolzina & Tkachenko, 2018; Makovleva, 2018; Sirotkina & Pavlovskaya, 2017; 2018; Balaeva & Yakiovlev, 2017). This is due to a specific market environment: the market of monopsonist buyer that can choose the seller, the type of product, its quality and other parameters of a deal based on one's personal preferences. Since the state is the largest buyer in Russia, regularizing the conduct of economic agents in this field is an essential factor underlying development of an efficient competitive environment (Ostrovnaya & Podkolzina, 2015; 2018) and market performance, facilitating the growth of consumer as well as producer well-being in Russia.

The stage of hammer (classic) and electronic reverse auctions in public procurement was important: during that period the modern face of Russian public contractual system was shaped (Anchishkina, 2017; Melnikov, 2008; Yakovlev, Tkachenko, Demidova & Balaeva, 2015). With all known technological and conceptual controversies (Hyytinen, Lundberg & Toivanen, 2018; Kettunen & Kivak, 2018), introducing the auction mechanism was a considerable contribution to achieving controlled diversity of procurement technology, enabling predictability and attractiveness of the new market for the participants, which created the framework conditions and prerequisites to counter corruption in the public sector as well as foster further digitalization of procurement procedures (Rymanov, 2014).

Evolution of auction technologies is in the focus of the paper. Comparative analysis of various auctions methods used in public procurement in Russia is presented.

Introducing auction mechanisms under the law on public procurement

According to the structure of procurement methods under No. 94-FZ Federal Law, there was a separate tentative group of competitive bidding, including tenders and auctions¹. They were understood as an absolutely correct method of procurement, choosing which did not require any particular preliminary conditions. Other methods of placing orders could be used only as an exception specified in the Law.

A superficial glance at the Law could lead to an assumption about possible equal status of tenders and auctions as varieties of competitive bidding. Article 10 Part 4 of the Law stated, however, that the Government of the Russian Federation must specify a list of products procured exclusively through auctions. When the relevant directions were adopted², it became obvious that due to the exhaustive list the role of tenders is reduced to the minimum. Its subjects become acquiring non-standard products, under particular customer requirements that could not be found on a competitive market, and when it was not possible to determine the winner based only on the price.

The choice of the open auction procedure was determined by the needs to comply with the conditions of the auction list approved by the Government as well as the applicable norms of the Law³.

Open auctions had the following sequence of steps (Chapter 3 Articles 32–40):

1. Making a decision to organize an auction.
2. Conducting market research.
3. Establishing an Auction Commission.
4. Drafting an auction notice and documentation.
5. Publishing the auction notice.
6. Issuing the auction documentation.
7. Responding to requests for explaining the auction documentation.

¹ This approach was in line with Articles 447–449 of the Civil Code of the Russian Federation.

² No. 609-r Directions of the Government of the Russian Federation of 15.05.2007; later replaced with No. 236-r Directions of RF Government of 27.02.2008.

³ From 1 January 2011 “hammer” auctions were replaced with open electronic auctions mandatory for all public and municipal customers.

8. Publishing explanation on the official web-site.
9. Registering auction bids.
10. Evaluating bids.
11. Signing the Bid Evaluation Protocol and publishing it on the official web-site.
12. Performing the auction.
13. Publishing the auction Protocol on the official web-site.
14. Handing a copy of the Protocol and draft contract to the winner.
15. Concluding the contract with the winner.
16. Forwarding information about the contract to the body (at the relevant level) authorized to keep the Contract Register.

The timeline of the above events is given on Fig. 1.

Auctions were performed by a customer or an authorized body in the presence of the members of the Auction Commission, who elected an auctioneer by majority vote⁴, as well as registered procurement participants recognized as auction bidders. Since the auctions for product procurement for public needs were the so-called Dutch auctions, the procedure was to reduce the initial maximum price (IMP) specified in the notice by the “auction step”. Initially the “step” was set at 5% of IMP and then reduced each time by 0.5%, when there were no offers from the bidders. The procedure continued until the last “step” at 0.5% IMP. If no bidder raised a card after triple announcement of the price by the auctioneer with 0.5% step, the auction ended.

Other conditions being equal, the person who offered the lowest contract price would become the winner. At the same time, the Law embedded a mechanism for a transition from the buying auction to the auction for selling the right to conclude a contract, which in some cases allowed paying the customer for the right to become a supplier.

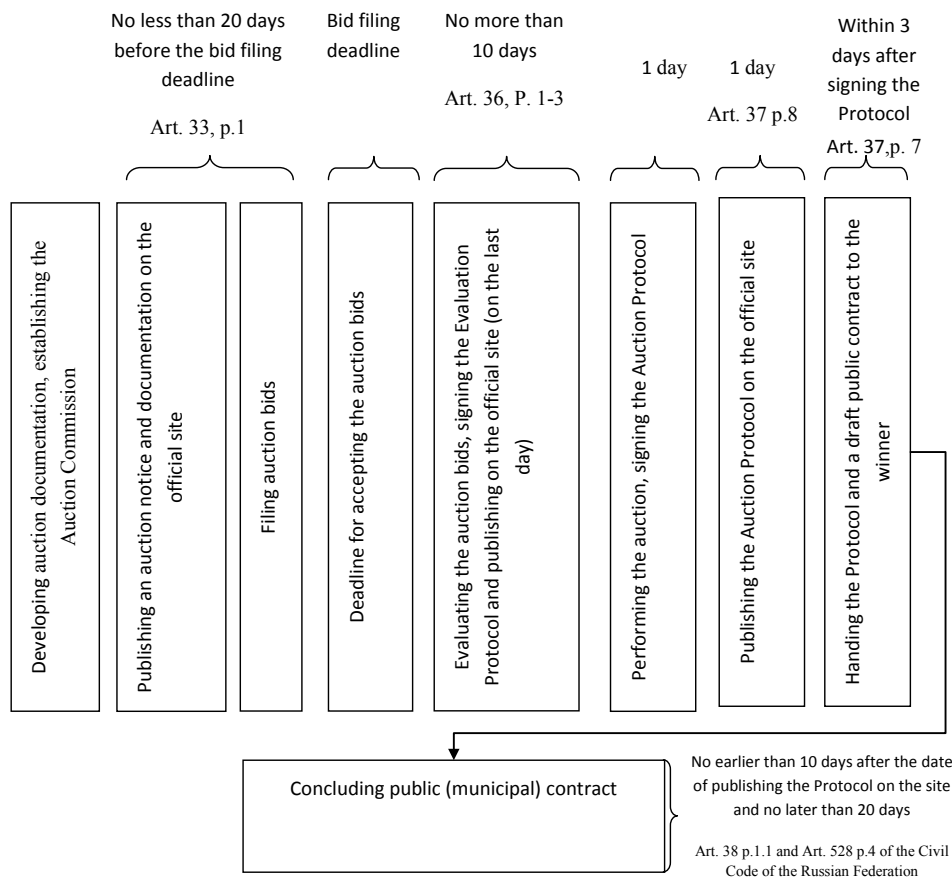


Fig. 1. Stages and timeframe for open auctions under No. 94-FZ Federal Law (Ch.3)

⁴ A person who had the necessary skills and was responsible for an auction was made a member of the Auction Commission in advance.

The surety was returned to all bidders within five working days after signing the Protocol except the winner and the person who made the second last contract price offer. The bidders with the best bids received sureties within 5 days after the date of concluding the contract with the winner. If the latter refused or did not manage to provide contract surety (in case of such requirement), surety would not be returned to the evader, and the contract would be offered to the bidder who made the second last bid.

Apart from efficient spending of public and municipal funds, a rationale of No. 94-FZ was fighting corruption. The newest Russian public procurement practice demonstrates plenty of cases of inefficient use of public resources. The main corruption factors behind the norms of the Law include a possibility to overrate prices in order placement coupled with lack of control over the procured products.

The controllers were forced to admit that in spite of detailed procurement technologies, the current legislation does not truly prevent inefficient or off-target use of public funds. According to Rosfinnadzor [the Federal Service for Fiscal and Budgetary Supervision], in 2004–2008 the scale of violations in public procurement increased by 8 times while “budget expenditure” increased approximately by 3.5 times (Tovkailo, 2010). In 2010 the RF President was officially made aware that the share of “lost” money in the Russian public procurement system reaches up to 20% – 1 trillion RUB (in conservative estimates) (Pismennaya, 2010). This is not about stealing; this is about “inefficient” spending when No. 94-FZ Federal Law applies⁵.

With broad introduction of the main “hope” of the basic law – open auctions in the electronic form (Ch. 3.1 No. 94-FZ) some positive changes took place in the procurement practice⁶. In a number of cases e-auctions became a good medicine against bid-rigging cartels between bidders as well as bidder-customer collusion. A trend emerged towards growing number of procurement bidders accredited at the five official trading sites.

E-auctions decrease considerably the customer’s rent-seeking ability – engaging the administrative resource at the expense of potential suppliers to the state. It became possible through the procedures distancing representatives of state bodies from bidders: publishing auction notice on the web-site, filing 2-part bids and raising a barrier in the form of the site operator that directly performs the auction procedure⁷. The information exchange mechanism between the official web-site and the trading sites was used to build up the public and municipal procurement information system in Russia as the “one-window” system, significantly increasing transparency and competitiveness of the segment and providing the unity of economic space.

A brief description of the technology for open e-auctions under Chapter 3.1⁸:

1. Making a decision on procurement at an open e-auction (OEA).
2. Conducting market research regarding the required goods, works, services to determine the initial contract price.
3. Establishing an Auction Commission.
4. Drafting an OEA notice and documentation; approving OEA documentation.
5. Publishing OEA notice on the official web-site (including an e-site) and other mass media at the customer’s discretion. Publishing OEA documentation.
6. Sending and providing OEA documentation.
7. Responding to requests about explaining auction documentation.

⁵ Examples from the recent Russian practice of non-efficient public procurement are described, for instance, in (Melnikov, 2015: 154–155). A case on procurement of the state-of-the art aircraft for the needs of USA DoD proves that inefficiency and corruption are not unique Russian diseases (Tucker, 2014). Seeking and refining an optimal model was not an easy task anywhere (Choi, 2003; Shadrina & Romanova, 2017; Popa, 2018).

⁶ For federal customers the pilot period of e-auctions started on 1.01.2010 in accord with the list approved by No. 1996-р Directions of RF Government of 17.12.2009 (in view of No.1157-АП/Д22 Explanatory Letter of the Ministry for Economic Development and FAS “On the Procurement Procedure for Federal Public Needs” of 01.02.2010). The mandatory transition from “hammer” to e-auctions started on 1.07.2010, and for regional and municipal customers – with a half-year delay, from 1.01.2011.

⁷ A reservation should be voiced here: on highly concentrated markets with poor competition the ability of customers to influence the auction outcomes as well bid-rigging potential are maintained.

⁸ The reservation (a reference to the Chapter) is necessary since under No. 94-FZ auction were also performed in accord with Article 41. Only general terminology was given so often auctions carried out in different regions could vary significantly by a range of elements. Another distinguished feature was lack of control over trading sites’ operations.

8. Publishing explanations on the official web-site.
9. Accepting OEA bids (by e-site operator).
10. Registering bids and blocking funds as a surety (by e-site operator).
11. Evaluating the first parts of the bids (characteristics of supplied products) and drawing No.1 Protocol.
12. Performing the e-auction (by e-site operator).
13. Publishing the Auction Protocol (No. 2 Protocol) on the e-site.
14. Evaluating the second parts of the bids (information about the bidders) and publishing OEA outcome Protocol (No.3 Protocol).
15. Handing the draft contract over to the winner via the e-site operator.
16. Forwarding the contract signed by the winner to the customer via the e-site operator with a contract security instrument.
17. Signing the contract by the customer and forwarding it to the winner via the e-site operator.
18. Forwarding information about the contract to the body (at the relevant level), authorized to keep the Contract Registers.

The timeline of the above events is given on Fig. 2.

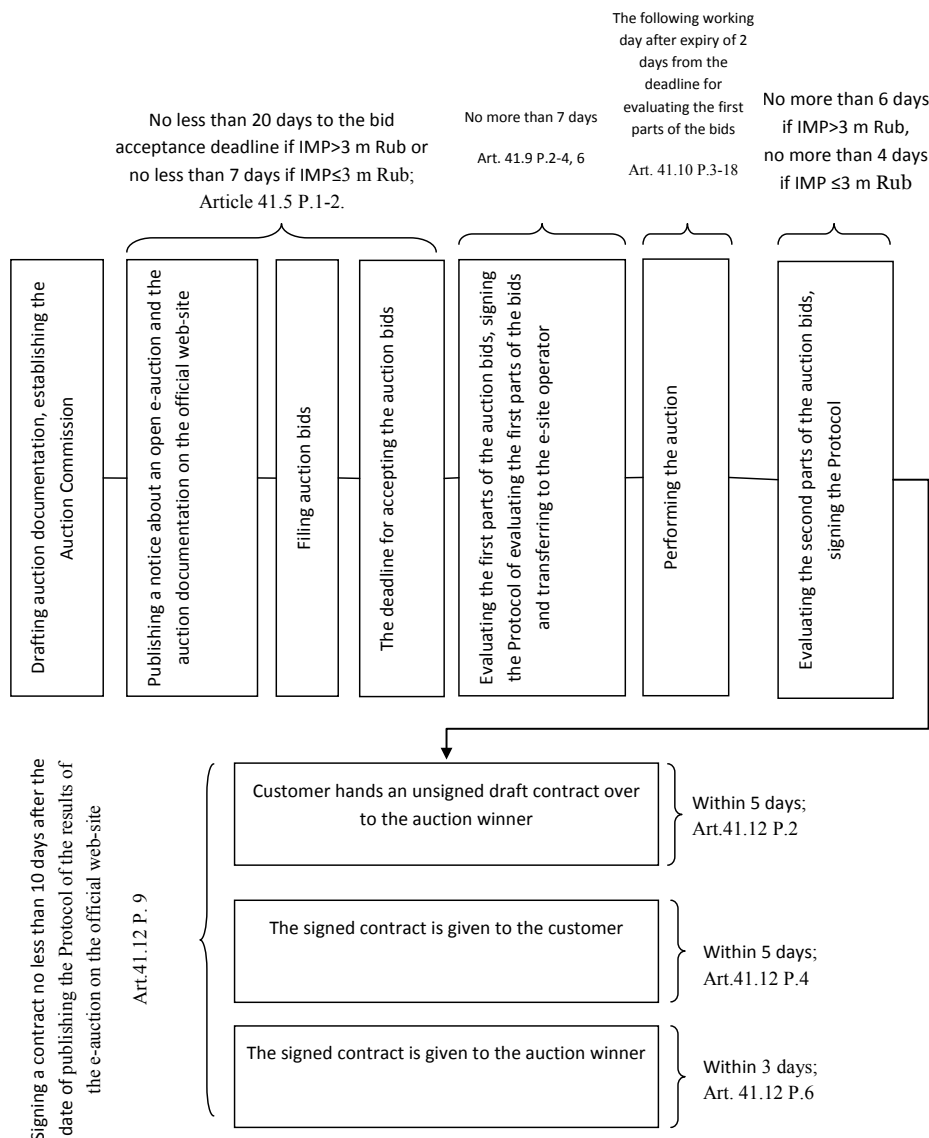


Fig. 2. Stages and timeframe for open electronic auctions under No.94-FZ Federal Law (Ch. 3.1)

Regarding the contracts concluded upon the OEA outcome, the situation is complicated by presence of the third party's document flow between the customer and the winner. E-site practices showed that an additional link in these relations could have led to technical errors preventing contracts (Kornilov, 2012).

A contract following an e-auction also must be concluded in the electronic form that is recognized as the original. Customers had no right to demand suppliers resign its paper copy.

E-auctions under Article 41, which existed in parallel until the end of 2010, were not regulated in that many details. A comparative analysis of these procurement methods is presented in Table 1 below.

Table 1

Comparative analysis of e-auctions performed in accord with No.94-FZ Federal Law (Article 41 and Ch. 3.1)

Comparison parameter	Article 41	Ch. 3.1	Comments
Validity period	Till 1 July 2010	No limit	Validity period of Article 41 was established by the law, although many regions [subjects of the Russian Federation] were in favour of extending it
Who may apply	Federal, regional municipal customers	Only federal customers till June 2010 (inclusive), everybody - from 1.01.2011	According to the law, auctions under Chapter 3.1 can be performed only on the authorized sites. Currently there are three authorized sites to hold auctions for federal customers. The Ministry of Economic Development selects five national operators of e-sites
Where can e-auction be held	Any e-site	Only the authorized e-sites	
Payment for the site services by customers	Set by e-sites	No charges	Under Chapter 3.1 of the Law, an e-site conducts auctions for customers free-of-charge – a fee (no more than 3000 RUB) is charged from the auction winner
Period	22 days	Depends on the initial maximum contract price (minimum – 23 days)	The periods of e-auctions under Article 41 and Ch. 3.1 are comparable
Stages	1 stage	3 stages	E-auctions under Ch. 3.1 have three stages: – first evaluation; e-auction on the site; second evaluation and determining the winner. Under Article 41 the winner is determined based on the outcome of a 1-stage e-auction, bids are not evaluated
Publishing information on the official web-site	Required	Until 1 January 2011 notice and protocols had to be published on e-sites	Publication of auction information under Ch. 3.1 is regulated by the norms specified in the Chapter and Article 65 of No. 94-FZ Federal Law

Table 1 continuation

Comparison parameter	Article 41	Ch. 3.1	Comments
Commission	No	Yes	The convenience of Article 41 for customers was that the procedure did not provide for collegial decisions, so the law does not require forming a Commission. The Commission met only if auction was conducted under Ch. 3.1
Meetings of the Commission	0	2	
E-signature for customers	In accord with the sites regulations	Mandatory	No. 179 Decree of the RF Government of 17.03.2008 provided for use of e-signature or other analogues of true signature in the course of e-auctions
E-signature for procurement bidders	In accord with the sites regulations	Mandatory	
Evaluating bids for e-auctions	No	Mandatory	Article 41 did not provide for bids evaluation; the customer determines the auction subject, the site operator registers (or declines) procurement bids
Limitations with regard to the initial contract price	1 million RUB	No limitations	1 m Rub limitations of the initial contract price or lots are specified in Article 32 of the Law for auctions held in accord with Article 41 of the Law
Dividing into lots	Possible	Possible	A possibility to determine lots is provided for
Auction step	No	The upper and lower step margins are set at 0.5–1% of the initial contract price	Auctions under Ch. 3.1 have an “auction step”
Bid filing interval	1 hour	10 minutes	Ch. 3.1 reduced the interval for filing price offers
Auction documentation	No	Yes	According to Article 41, auction documentation is not drafted. A customer prepared a notice and enclose a draft contract at one’s discretion
Publishing Protocols	1 Protocol	2 Protocols + Auction Protocol	Under Article 41 only 1 Protocol is drawn that is published on the website. Under Ch. 3.1, before 1 January 2011 all Protocols are published on e-sites
Signing Protocols	Signed by the customer	Signed by members of the Commission and the customer	
Auction bid surety	No	Mandatory	Ch. 3.1 specifies mandatory auction bid surety
Contract performance surety	At the customer’s discretion; the customer must undertake, in particular, liability insurance	At the customer’s discretion; except liability insurance (excluded by law)	The customer makes a decision on contract performance surety at one’s discretion; however, “executor’s liability insurance” is excluded from Ch. 3.1 as a type of surety

Table 1 continuation

Comparison parameter	Article 41	Ch. 3.1	Comments
Customer liability	Drafting a notice	At all auction stages	Under Article 41 customer liability can arise only if the customer committed a violation failed to follow the procedure drafting a notice (for example, naming a trademark without the words “or an equivalent”). Under Ch. 3.1 a customer is liable for specifying recruitments in the auction documentation, for allowing bidders to participate in procurement, etc.
Commission liability	No	At the stages of bids evaluating and selecting the winner of an e-auction	Article 41 does not specify Commission liability
Possibility to conclude a contract with a single auction bidder	No	Yes	Ch.3.1 provides for a possibility to conclude a contract with the single e-auction bidder, as well as with the bidder that offered the second best price after the contract winner. This is a serious advantage of Ch. 3.1 over Article 41.
Possibility to conclude a contract with the bidder that offered the second best price after the winner if the winner evades the contract	No	Yes	

Source: Seredintsev, 2010.

Transferring public procurement into the electronic format was an important step in the incremental evolution of Russian national procurement system, leaving increasingly less loopholes for corruption in the bidding mechanisms, which, however, did not guarantee procurement efficiency and defeating corruption in principle (Melnikov, 2011; 2012).

At the same time, increased transparency and technological advancement of e-auctions incurred some additional difficulties for the participants. Apart from concerns about interaction with state bodies, potential suppliers had to overcome reluctance to bid in e-auctions online. They also should take care of accreditation with an e-site, have back-up internet access in case of any network failures, reserve financial resources as auction surety, and study the rules and mechanisms of the new procurement technology and so on.

For the regulators the attitude to the reform was determined by a considerable reduction of the contract costs against the sums initially allocated for this purpose in the budget, which often had an adverse impact upon the quality of the procured products and still could not block inefficiency and corruption at the stage of contract execution and product supplies. Understanding that one of issues in auction inefficiency is reducing the procure-

ment regulation system to contract signing, introducing the product supply period in the scope of the law could be the next expected logical step of public authorities.

The auction mechanism of No. 44-FZ Federal Law

Drafting the law on contractual system and waiting when it comes into force was a period of intensive discussions of the public procurement technology development in Russia⁹. The valid procurement rules specified in No. 94-FZ Federal Law were quite disappointing: customers could not timely purchase the required products, users complained about consistently poor quality of the products, suppliers were not keen on participating in procurement procedures due to the risk of delays payments, expected additional corruption costs or simply fear to waste time; and government officials and the President accused the established procurement system of inefficiency and even failures of the tax-and-expenditure policy.

The scope of No. 44-FZ Federal Law was expanded considerably (Fig. 3). It covered procurement planning, selecting suppliers (from publishing a notice to signing a contract with the winner), product procurement (supply) until a contract is executed by its parties, as well as recording and tracking the results (Fig. 4).

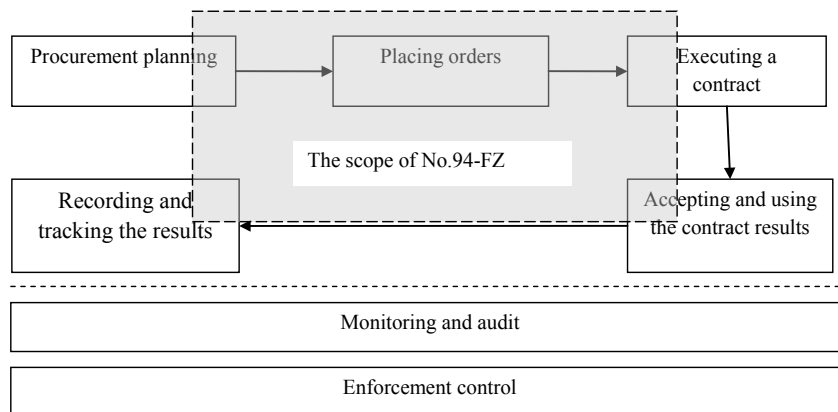


Fig. 3. Processes within the public and municipal procurement system under No. 44-FZ Federal Law (Mavlyukeev, 2013: 6)

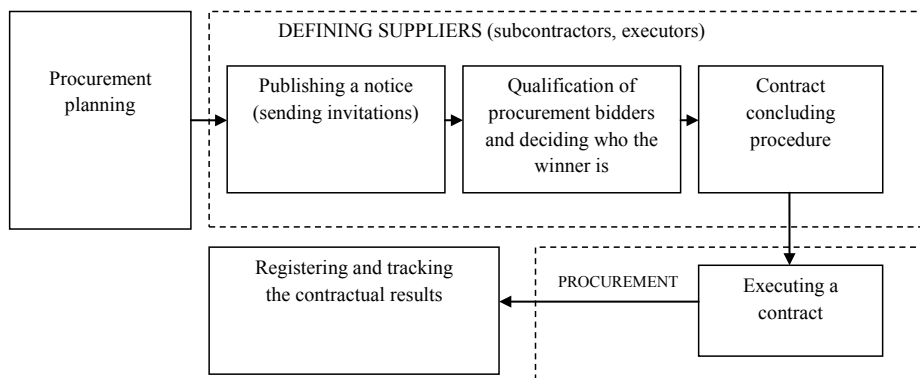


Fig. 4. Stages of public and municipal procurement under No. 44-FZ Federal Law

The law on contractual system is aimed at creating a situation when a customer has at least one official professionally dealing with procurement. Under the law, customers, whose consolidated annual volume of procurement exceeds 100 million RUB, must form contractual services (specialized units or assign the relevant responsibility to staff of

⁹ On the concept of establishing and developing the contractual system in Russia and international experience in this field see, for instance: ipamm.hse.ru/upload/download/library/wp8-2011-02.pdf (Golovschinsky & Shamrin, 2011).

other departments), and if their consolidated annual volume of procurement is less than 100 million RUB, the law provides for appointing such an official – a contractual manager. It is expected therefore, that over the long term there will be a minimum number of random persons who were given an extra workload in addition to their main job responsibilities.

Customers have an obligation to set recruitments for auction bid surety that can be either deposited monetary assets or a bank guarantee¹⁰ at 0.5–5% IMP¹¹. In No. 94-FZ Federal Law, auction bid surety was interpreted as a customer right (Article 20 Part 4 and Article 32 Part 5 of No. 94-FZ Federal Law).

The e-auction procedure under No. 44-FZ Federal Law, mostly repeats the open e-auction norms given in Ch. 3.1 of No.94-FZ Federal Law “On Public Procurement...”. The “auction list” set by the RF Government remains the basis upon which a customer chooses this procurement technology. As we already emphasized, however, customers have the right to employ this method of procurement for other products at their discretion.

A brief description of the e-auction technology:

1. Timely reflecting information about the procured products by a customer, as well as possible changes to the procurement plan and the schedule.
2. Making a decision on procurement through an e-auction.
3. Establishing the Auction Commission.
4. Drafting a notice on the e-auction, devising and approving documentation. Publishing a notice about organizing an e-auction, documentation in the unified information system and publishing in other mass media at the customer’s discretion.
5. Forwarding and providing e-action documentation.
6. Responding to requests about explaining auction documentation and publishing the answers in the unified information system.
7. Accepting the e-auction bids (by the e-site operator).
8. Registering bids and blocking funds as surety (by the e-site operator).
9. Considering the first parts of the bids (characteristics of the supplied products), drafting No.1 Protocol and publishing it on the e-site and in the unified information system.
10. Holding an e-auction (by the e-site operator).
11. Publishing the Auction Protocol (No. 2 Protocol) on an e-site.
12. Considering the second parts of the bids (information about participants) and publishing the Protocol for summing up the outcome of the e-auction (No.3 Protocol) on the e-site and in the unified information system.
13. Signing the contract at the e-site:
 - forwarding a draft contract to the winner;
 - forwarding a signed contract to the ordering party, providing further documents on contract support;
 - signing the contract by the customer and sending it to the winner.
14. Forwarding data about the contract to the body (of a relevant level) that is authorized to keep Contract Registers.

The timeline of the above events is given on Fig. 5

It is expected that the main goal of auctions for public and municipal procurement of goods, works, services is to reduce the contract price to the maximum. The contract price is the only criterion based on which the winner is determined. At the same time, No.44-FZ Federal Law introduced a discouraging standard at first glance: Article 37 – “Antidumping measures in tenders and auctions”. If a participant of competitive methods of determining the supplier wishes to reduce a contract price by 25% and more, then, other conditions being equal, the contract surety must be 1.5 times higher¹².

¹⁰ In e-auctions, judging from technology – only as funds transfer.

¹¹ In a short e-auction for procurement products for no more than 3million RUB – 1% of IMR.

¹² If IMCP is below or equal 15 m RUB suppliers can ease their life providing information that confirm their good faith, if such was specified in the procurement documentation and provided in advance by the bidder as part of the bid.

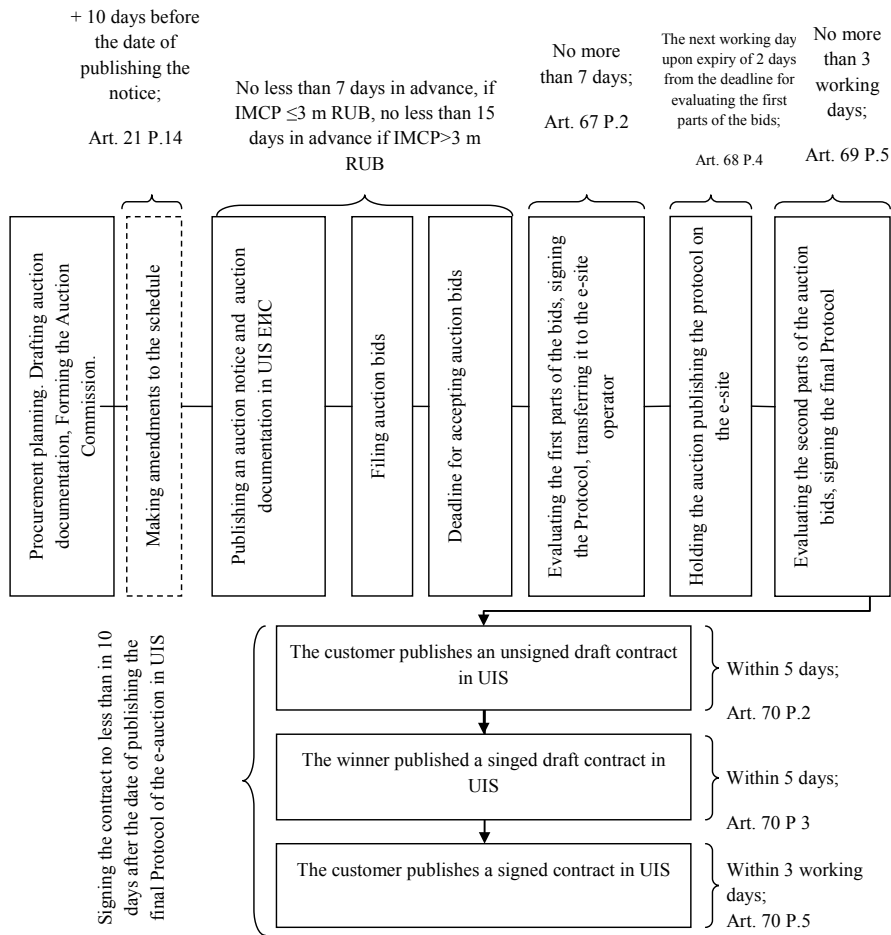


Fig. 5. Stages and time frame for e-auctions under No. 44-FZ Federal Law

On the one hand, customers in e-auctions ask bidders to reduce the price to the maximum; on the other – think about the consequences. This measure is an obvious result of deficiencies in the concept of the law when the most widespread procurement technology a priori causes the legislator’s concerns with regard to supplying low quality products or inability to execute the contract in principle.

Table 2

Comparative analysis of e-auction procedures¹³

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
1.	Stage of planning	Mandatory, publishing schedules (Art.16 P. 5.1)	Mandatory, compiling, approving and keeping procurement plans and schedules (Art.16, 17, 21).
2.	Norm-setting in procurement	No	Mandatory in view of the by-laws (Art. 19)
3.	Public discussion of procurement	No	Mandatory in the cases determined by the by-laws (Art. 20)

¹³ Compiled by the authors. No.44-FZ as of December 2014. A comparative analysis of e-auctions under Art. 41 and Ch. 3.1 of No. 94-FZ is given in Table 2.

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
4.	Specialized organization	Customer can engage a specialized organization to perform procurement functions (Art. 6 P.1)	Customer can engage a specialized organization on the basis of a contract to perform particular functions to select a supplier, particularly, to draft auction documentation, perform other functions related to the procedure of determining the supplier (subcontractor, executor). (Art. 40 P.1)
5.	Experts, expert organizations	Customers can engage independent experts, chosen in line with the current Federal Law. (Art. 9 P.12)	Customers engage experts, expert organizations in the cases specified by the law. (Art. 42 P.1)
6.	Initial (maximum) contract price	Sources of information about the prices of goods, works, services can be state statistical reporting data, the official web-site, Contract Register, information about manufacturer prices, market research findings in open access, market studies. They also have a right to estimate the maximum contract price on their own (Art. 19.1 P. 1)	Limitations for small business, socially oriented, non-profit entities: the (maximum) contract price should not exceed 20 m RUB In other cases MCP is determined and justified by the customer using the method specified in the law (Art. 22 P.1)
7.	Auction Commission	Mandatory (Art. 7 P.1)	Mandatory (Art. 39 P.1,3)
8.	Minimum number of Commission members	At least five persons (Art. 7 P.3)	At least five persons (Art. 39 P.3)
9.	Bid surety	Bid surety for an open auction cannot be less than 0.5% and cannot exceed 5% of the initial (maximum) contract price (lot price). Small companies: cannot exceed 2% of the initial (maximum) contract price (lot price). (Art. 41.1 P.5)	0.5–5 % IMP. If IMP does not exceed 3 m RUB – 1 % IMP (Art. 44 P.14)

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
10.	Contract surety	<p>Contract surety cannot exceed 30% of the initial (maximum) contract price (lot price), specified in the notice on an auction in the electronic form, but cannot be less than the advance payment (if a contract requires an advance payment), or if the advance payment exceeds 30 % of the initial (maximum) contract price (lot price), the contract surety cannot be 20 % higher than the advance payment and cannot be less than the advance payment. If the initial (maximum) contract price (lot price) is more than 50 m RUB, the customer, the authorized body must set the contract surety requirement at 10–20 % of the initial (maximum) contract price (lot price), but no less than the advance payment (if a contract requires an advance payment) or if the advance payment exceeds 30 % of the initial (maximum) contract price (lot price), no higher than 20 % of the advance payment, but no less than the advance payment.</p> <p>(Art. 41.5 P.11)</p>	<p>Contract surety is specified in the auction documentation.</p> <p>Contract surety must be 5–30 % of the initial (maximum) contract price, specified in the procurement notice. If of the initial (maximum) contract price is more than 50 m RUB, the customer must set a contract surety requirement at 10–30 % of the initial (maximum) contract price, but no less than the advance payment (if a contract requires an advance payment). If the advance payment is more than 30% of the initial (maximum) contract price, the contract surety is equal to the advance payment.</p> <p>(Art. 96 PP. 1-10; Art. 64 P.1 Cl. 8)</p>
11.	Negotiations with participants	<p>Not allowed if create preferential conditions for participating in an open auction in the electronic form and (or) conditions for disclosing confidential information</p> <p>(Art. 41.1 P.6)</p>	<p>Not allowed if as a result of the negotiations этих preferential conditions are created for participating in an electronic auction and (or) conditions for disclosing confidential information .</p> <p>(Art. 46 P.2)</p>

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
12.	Document flow	In the electronic form; documents must be signed with a fortified electronic signature (Art.41.2 P.2) (or an electronic signature under No. 1-FZ of 10.01.02)	In the electronic form; documents must be signed with a fortified electronic signature (Art. 60 P.1-2)
14.	Fee for accrediting at an e-site for participating in an auction	Bidders are not charged. Charging the person with whom the contract is concluded (Art. 41.1 P.4)	Bidders are not charged. Charging the person with whom the contract is concluded (Art.59 P.6).
15.	Participants accreditation	Mandatory. To obtain accreditation, a procurement bidder submits documents and data required by the law to the e-site operator (Art. 41.3 P.1,2)	Mandatory. To obtain accreditation, a procurement bidder submits documents and data required by the law to the e-site operator (Art. 60 PP. 1,2).
16.	Making decisions on accrediting participants	Within 5 working days (Art. 41.3 P.4)	Within 5 working days (Art. 61 P.4).
17.	Declining accreditation	Failure by the bidder to provide documents and information or providing documents that do not meet the requirements set by the law of the Russian Federation. (Art. 41.3 P.6)	Failure by the bidder to provide documents and information or providing documents that do not meet the requirements set by the law of the Russian Federation. (Art. 61 P. 6).
18.	Notice	A notice is published on the official web-site no less than 20 days before the deadline for filing auction bids. (Art. 41.5 P.1) If IMCP does not exceed 3 m RUB, a notice must be published no less than 7 days before the deadline for filing auction bids. (Art. 41.5 P.2)	A customer publishes a notice about an e-auction in UIS. If IMCP does not exceed 3 m RUB, a customer published a notice about e-auction in UIS no less than 7 days before the deadline for filing auction bids. If IMCP exceed 3 m RUB, a customer published a notice about e-auction in the Unified Information Ssystem no less than 15 before the deadline for filing auction bids. (Art. 63, PP.1, 2, 3).
19.	Changes to a notice	Allowed, no alter that 5 days before the deadline for filing auction bids; No changes to the auction subject, the changes must be published on the official web-site within 1 day (Art. 41.5, P.5)	Allowed, no alter that 2 days before the deadline for filing auction bids; Changing the auction subject is not allowed, the changes must be published in UIS within 1 day (Art.63, P.6).

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
20.	Extending the deadline for bids filing if changes are made to the notice	The deadline for filing bids for an open auction must be extended so that the period from publishing the changes to the notice about the open auction on the official web-site to the deadline for filing the open auction bids is no less than 15 days, or if IMCP does not exceed 3 m RUB, no less than 7 days. (Art. 41.5, P.5)	The deadline for filing bids for an e-auction must be extended so that the period from publishing the changes to the notice about the auction in UIS the deadline for filing the open auction bids 15 is no less than 15 days, or if IMCP does not exceed 3 m RUB, no less than 7 days. (Art.63, P.6).
21.	Auction documentation	Yes, meets the standards specified in Parts 1 - 3.2, 4.1 - 6 Article 34 of No.94-FZ, no requirements to drafting and the form of bids. (Art. 41.6, PP.1,2)	Yes, meets the standards specified in Art. 64 P.1. Cannot contain requirements to drafting and the form of auction bids; contains the statutory requirements, enclosing a draft contract, which is a part of the documentation, is mandatory (Art. 64, PP.1-3).
22.	Making changes to the documentation	Yes, no later than 5 days before the deadline for filing bids for an open e-auction. Changing the subject of the open e-auction is not allowed (Art. 41.7, P. 7)	Yes, no later than 2 days before the deadline for filing auction bids. Changing the subject is not allowed. (Art.65, P.6).
23.	Publishing changes	Within 1 day after making a decision, the changed made to the open auction documentation are published on the official web-site (Art. 41.7, P.7)	Within 1 day after making a decision, the changed made to the auction documentation are published in UIS (Art. 65, P.6).
24.	Explanations to the documentation	Yes, any participant can send no more than 3 enquiries on explaining the provisions of the open e-auction documentation for the same open e-auction. (Art. 41.7, P.3)	Yes, any participant can send no more than 3 enquiries on explaining the provisions of the e-auction documentation for the same auction. (Art. 65, P.3-4).
25.	Requirements to bidders	Contains an exhaustive list of requirements to procurement bidders; the Government of the Russian Federation can set additional requirements to participants of procurement of particular types of goods, works, services (Art. 11)	Contains an exhaustive list of requirements to procurement bidders; the Government of the Russian Federation can set additional requirements to participants of procurement of particular types of goods, works, services (Art. 31)

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
26.	The form of bids	Electronic form, a bid has two parts, each containing statutory information, and includes submission of the relevant documents (Art. 41.8, PP.1, 3, 4, 5, 6)	Electronic form, a bid has two parts, each containing statutory information, and includes submission of the relevant documents (Art. 66, PP.1-8).
27.	Bid filing procedure	Procurement bidders send the first and the second parts of the auction bids to the e-site operator as two electronic documents, signed with an electronic signature, by the deadline and in the form specified in the documentation (Art. 41.8, P.1,3)	Procurement bidders send the first and the second parts of the auction bids to the e-site operator as two electronic documents, signed with an electronic signature, by the deadline and in the form specified in the documentation (Art. 66, PP.2-3)
28.	Confirmation of the received bids	Mandatory, within an hour after receiving a bid the e-site operator must send a confirmation to the procurement bidder that the bid is received, specifying the number assigned to the bid. (Art. 41.8, P.11)	Within an hour after receiving an e-auction bid, the e-site operator must assign a number to the bid and confirm with an e-document, sent to the auction bidder that filed the bid, its receipt, specifying the number assigned to the bid. (Art. 66, P.9)
29.	Bid filing period	Specified in the documentation (no less than 20 days; Art. 41.5 P.1). A bidder can file a bid for an open e-auction at any moment since a notice about the open e-auction is published on the official web-site till the deadline (date and time) for filing the bids for the open auction specified in the documentation on the open e-auction (Art. 41.8, P. 8)	Specified in the documentation (no less than 15 days or no less than 7 days; Art. 63 PP. 2-3). A bidder can file a bid for the auction any time since the notice about the auction is published till the deadline (date and time) for filing the auction bids specified in the auction documentation. (Art. 66, P.7)
30.	Single bid is filed	The e-site operator sends both parts to the customer. The bid is evaluated in accord with Articles 41.9 and 41.11 of the law (Art.41.8, P.22). The customer can conclude a contract.	The auction is declared void (Art.66, P.16). Actions under PP 1-3.1 Art. 71. Without approval (Art. 93 P.1 Cl. 25).

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
31.	No bids have been filed	The auction is declared void (Art. 41.8, P.21)	The auction is declared void (Art. 66, P.16)
32.	Evaluating the first parts of bids	The Auction Commission verifies whether the first parts of the bid for an open e-auction, containing the data specified in Part 4 Article 41.8 of the Federal Law, meet the requirements given in the documentation on the open e-auction regarding the procured goods, works, services. A decision is made to allow the procurement bidder to participate in the open e-auction or to reject participation (Art. 41.9, PP.1,3)	The Auction Commission verifies whether the first parts of the bid for an e-auction, containing the data specified in Part 3 Article 66 of the Federal Law, meet the requirements given in the documentation on the e-auction regarding the procured goods, works, services. A decision is made to allow the procurement bidder to participate or to reject participation. (Art. 67, PP.1,3)
33.	The period for evaluating the first parts of the bids	The period for evaluating the first parts of the bids for an open e-auction cannot exceed 7 days from the deadline for filing the open auction bids. (Art. 41.9 P.2)	The period for evaluating the first parts of the bids for an e-auction cannot exceed 7 days from the deadline for filing the bids. (Art. 67 P.2)
34.	Evaluation Protocol	Customer sends to the e-site operator on the day which is the deadline for evaluating the open e-auction bids. (Art. 41.9 P.6)	Customer sends to the e-site operator on the day which is the deadline for evaluating the e-auction bids. (Art. 67 P.7)
35.	Conducting an auction	On a working day upon expiry of two days after the deadline for evaluating the first parts of the bids for an open e-auction. (Art. 41.10 P.3)	On a working day upon expiry of two days after the deadline for evaluating the first parts of the bids for an e-auction. (Art. 68 P.3)
36.	Auction Protocol	Mandatory, published by the e-site operator on the e-site within 30 minutes after the open auction ends. (Art. 41.10 P.19)	Mandatory, the e-auction Protocol published on the e-site by its operator within 30 minutes after the auction ends. (Art. 68 P. 18)

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
37.	Handing over the Protocol and the second parts of the bids	Within 1 hour after publishing the Protocol on the e-site, the e-site operator must forward the Protocol and the second parts of the bids for the open e-auction to the customer and notices to the bidders (Art. 41.10 P.20)	Within 1 hour after publishing the Protocol on the e-site, the e-site operator must forward the Protocol and the second parts of the bids for the e-auction to the customer and notices to the bidders (Art. 68 P.19)
38.	Enquiry about explaining the auction results	Yes, the e-site operator must provide the relevant explanations within 2 working days after receiving the enquiry. (Art. 41.10 P.22)	Yes, the e-site operator must provide the relevant explanations within 2 working days after receiving the enquiry. (Art. 68 P.21)
39.	Procedure for evaluating the second parts of the auction bids	The total period of evaluating the second parts of the bids for an open e-auction cannot exceed 6 days from the date of publishing the Protocol of conducting the open e-auction on the e-site. The Auction Commission evaluates whether the second parts of the bids for an open e-auction comply with the requirements and makes a decision on bid compliance or non-compliance for the open auction. (Art. 41.11 PP.1-2,5)	The total period of evaluating the second parts of the bids for an e-auction cannot exceed 3 days from the date of publishing the Protocol of conducting the auction on the e-site. The Auction Commission evaluates whether the second parts of the bids for an e-auction comply with the requirements and makes a decision on bid compliance or non-compliance for the auction. (Art. 69 PP.1,2,5)
40.	Criteria for determining the winner	The lowest contract price and compliance with the requirements specified in the open e-auction documentation (Art. 41.11 P.9)	The lowest contract price and compliance with the requirements specified in the e-auction documentation и соответствие (Art. 69 P.10)
41.	Final Protocol	Mandatory, must be published on the e-site and on the official website within 1 working day (Art. 41.11 P.12)	Mandatory, must be published on the e-site and in UIS no later than on the working day following the date of signing the Protocol. (Art. 69 P.8)

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
42.	Non-compliance of the second parts of the auction bids or compliance only of the second part of an auction bid	The auction is declared void (Art. 41.11 P.11)	The auction is declared void (Art. 69 P.13)
43.	Forwarding the contract	A draft contract is forwarded to the operator within five days after publishing the Protocol on the e-site, the operator hands the unsigned draft contract over to the auction winner within 1 hour after receiving the draft contract (Art. 41.12 PP.2-3)	The customer published an unsigned draft contract in the unified information system within 5 days after the date of publishing the Protocol in the unified information system (Art. 70 P. 2)
44.	Period for signing the contract by a bidder	5 days after receiving the draft contract (Art. 41.12 P.4)	5 days after publishing the draft contract in UIS (Art. 70 P.3)
45.	Sending the signed contract and contract performance security documents to the customer	Within 5 days after the date of receiving the draft contract (Art. 41.12 P.4).	Within 5 days after the date of publishing the draft contract in UIS by the customer, the e-auction winner published a signed draft contract in the unified information system, and a document confirming contract performance security, with a fortified electronic signature of the above person (Art. 70 P.3)
46.	Sending the contract, signed by the customer, to the operator	Within 3 days from the date of receiving the contract, signed by the bidder, from the operator (and, possibly, a performance security document) (Art. 41.12 P.6)	Within 3 working days from the date of publishing a draft contract with a fortified e-signature of the e-auction winner in UIS, and providing contract performance security, the customer must published the contract, signed with a fortified e-signature, in UIS (Art. 70 P.7)
48.	Concluding the contract	The contract is considered concluded since the moment when the e-site operator forwards the contract signed by the customer to the bidder of the open e-auction. The contract can be concluded no earlier than 10 days after the date when the final Protocol of the open e-auction is published on the official web-site (Art. 41.12 PP.8,9)	The contract is considered concluded since the moment when the contract signed by the customer is published in UIS. The contract can be concluded no earlier than 10 days after the date when the final Protocol of the e-auction is published in the Unified Information System (Art. 70 PP.8,9)

Table 2 continuation

Item	Comparison criteria	Open auction in the electronic form (Ch. 3.1. No. 94-FZ)	Electronic auction (No. 44-FZ)
49.	Contract is not signed on schedule	The bidder is declared avoided entering into the contract; entering data about the bidder to the Register of Unfair Suppliers; a lawsuit can be filed on a forced contract award, or contract can be concluded with a bidder of the open e-auction who offered the same contract price as the open auction winner, or whose contract price bid gives second best conditions on the contract price, after the conditions offered by the open auction winner. (Art. 41.12 PP.11,13)	The bidder is declared avoided entering into the contract. A lawsuit can be filed on a forced contract award and the contract can be concluded with an auction bidder who offered the same contract price as the winner or whose contract price offer has second best price conditions after the conditions offered by the winner. (Art. 70 PP.13,14)
50.	Appealing the results to the authorized controlling body	Yes. Also, any procurement bidder has the right to appeal the result judicially (Art. 57 P.1)	Yes. Also, any procurement bidder has the right to appeal the result judicially (Art. 105 P.1)
51.	Penalties for delays in fulfilling the obligations (by customers as well as suppliers)	Yes. If the parties delay fulfilling the obligations (Art.9 P.9)	Yes. If the parties delay fulfilling their contractual obligations, and for improper execution of their obligations (Art. 34 PP. 4-9)

Conclusions:

1. Due to its technology, electronic auction is a mechanism capable to generate the maximum economic effect within the public procurement system.
2. The institutionalism of auctions makes them the main procurement tool in Russia in spite of their implied equivalence with open tenders.
3. Applying auctions in public procurement creates a serious problem of quality assurance, especially in procurement of experience and credence goods.
4. Trimming the requirements to bidders and expanding procurement under the auction list means that the skills level of the customer staff must be improved, since their work determines the quality of drafting technical assignment in line with the valid law.
5. Transferring auctions into the electronic form made a considerable positive contribution in the openness of the public procurement system as well as anticorruption efforts.
6. An improved balance in selecting procurement procedures can be expected only after a mandatory simultaneous electronization of all methods of public procurement.
7. Increasing the efficiency of public procurement in the course of the reform of this system of administration will depend directly on the growth of confidence and engagement of a broad range of qualified product suppliers.

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