

UPDATING THE PUBLIC SECTOR



A REVISED PUBLIC PROCUREMENT LAW IN RUSSIA PROMISES TO ENSURE BETTER MANAGED AND MORE TRANSPARENT PROCUREMENT PROCEDURES. **TIM WILSON** OF THE ILO EXPLAINS.

For readers of *The Treasurer*, transparent and well-managed public sector procurement will be recognised as a hallmark of the modern state. The direct objectives of reform and modernisation in this sphere are likely to result in significant improvements in public administration and finances. They are also an easily articulated and pragmatic element in building the kind of state in which the values of civil society will be respected.

PUBLIC PROCUREMENT LAW REFORM. By the time this article has been printed the Government of the Russian Federation is likely to have presented a draft new Public Procurement Law to the Duma. This will be intended to ensure transparent and well-managed procurement. It reflects President Vladimir Putin's determination, expressed in his April State of the Nation Address, to modernise the public sector to end the corruption that is one of the factors which frustrates entrepreneurial activity and the development of civil society. Other aspects of the Presidential agenda that would be supported by reforming public procurement law are:

- sound fiscal policy;
- competitiveness and productivity;
- legal harmonisation at all tiers of government;
- World Trade Organisation membership; and
- trade harmonisation with the EU.

Good public procurement practice is equally important as a tool for other Presidential priorities: to provide the population with quality public services offering more choice for Russian citizens and efficiently managed state property.

THE VALUE OF RUSSIAN PUBLIC PROCUREMENT. The annual value of public procurement in Russia is not accurately known. (To put this into perspective it is also difficult to obtain a reliable estimate for the aggregate value of UK public procurement.) An estimate published in February 2001 by the World Bank and the Ministry of Economic Development and Trade (MEDT) was some \$5bn or 1.5% of GDP for 1999. Even allowing for the impact of a significantly lower proportion of national wealth consumed by the public sector in Russia compared

with Western Europe (EC estimates for public procurement in member states have ranged from 11.5%-15% of GDP), these figures look far too low. The result is probably a significant underestimate of the economic and fiscal significance of public procurement and the potential from 'Achieving Excellence' type initiatives with public sector collaboration with suppliers to boost Russian productivity and competitiveness within the global economy.

SUPPORT FROM THE EU. Funded by the European Commission under the Technical Assistance to Russia and Commonwealth of Independent States (TACIS) Programme, support for the introduction of the new Russian Federal Public Procurement Law has been provided by the International Labour Organisation (ILO) International Training Centre in Turin. The ILO's two Russian partners are MEDT, which is responsible for the new legislation and the Public Procurement Institute of the Higher School of Economics (HSE), Moscow State University. The latter is the main provider of public procurement training for both government and the private sector at five centres and 20 associated universities ranging from St Petersburg to Vladivostok. This partnership is the ideal fulcrum, institutionally, geographically and politically, for ensuring the long-term success of the reform initiative.

Considerable progress had been made before project inception in drafting a procurement law equivalent, in most respects, to international best practice.

Practical problems in managing government legislation because of the rigid separation of powers, compounded by the relative weakness of party organisation in Russia, that often makes the introduction and passage of effective and unambiguous legislation very difficult are well-documented in academic literature and remain a risk for this initiative. The failure of an earlier attempt to reform Russian Public Procurement Law in 1997-1999, when according to Russian experts the modernisation of public procurement took a backward step, highlights this. Even with the present draft law, problems such as the vertical integration of all levels of government procurement activity by observing common legal principles and the practicality of some of the draft chapters remain.

The first weakness would impede the development of good practice and standardisation that is essential for both reducing the cost of procurement to government and encouraging a more competitive market among suppliers. The latter, if not corrected, could make the law impracticable in certain key respects, with the result that the government might ignore the new legislation. Such an approach was common enough in the recent past but is inconsistent with the present commitment to *pravovoe gosudarstvo* (the rule of law state).

One of the project's major successes has been in generating discussion that has resulted in the creation of two working parties – one within the government chaired by MEDT and the other within the Duma, including lawyers funded by the TACIS project, to address such remaining issues. This, together with planned joint sessions of the two working parties, offers the prospect that the problems encountered in 1997-1999 will not be repeated and that within a year a new and effective Public Procurement Law will have been enacted. An additional risk, however, to the deliverability of this objective is that because of the expiration of project funding to a timetable determined several years ago when faster progress had been expected, the EC may not be able to continue funding this critical legal input.

GAINING MOMENTUM. In the meantime, the project has received additional support from a number of EU member states at central government, regional and municipal levels, including the finance ministries of Ireland and the Netherlands. By far the greatest contribution, however, has been made by the UK's DFID which funded additional attendees from Nizhny Novgorod during a study tour to the UK and a seminar in Moscow. It has also extended its continuing administrative reform programme in that region to include a public procurement initiative and sponsored a procurement seminar there for some 80 senior regional government and municipal officials in November.

Nor has support been confined to the governments of member states. CBI members and Skanska, together with trade unionists from the UK and Ireland, have contributed to a seminar programme for Russian officials and academics that has emphasised the significance of public procurement improvements for improving public services, modernising national infrastructure and obtaining better value for money, while seeking to manage responsibly the social and economic impact of public sector modernisation.

PROCUREMENT TRAINING, STANDARD CONTRACT DOCUMENTS AND STRATEGIC DEVELOPMENT. Another important project objective was to provide a comprehensive range of standard training material and standard tender documentation. At the recent Nizhny Novgorod seminar a representative from the HSE explained that following the recent validation of much of this material by Russian experts it was intended to commence procurement training based on the new manuals in December. This met a concern articulated by senior members and officials of the regional government during preparatory meetings about the absence of training manuals in Russia. Resources are scarce, however, and having created these much needed technical documents, funding is now needed to print sufficient manuals to issue them to newly qualified procurement experts as a source of reference while engaged in their work.

The project team's seminar programme included PPP procurement. Initially, this reflected the view that because of its characteristics as an advanced form of outsourcing it could be used

'THE PROSPECT OF AN EFFECTIVE AND EFFICIENT NEW PUBLIC PROCUREMENT LAW RAISES EXPECTATIONS OF SIGNIFICANT IMPROVEMENTS IN BOTH PUBLIC ADMINISTRATION AND THE BUSINESS CONDITIONS IN RUSSIA'

to illustrate clearly critical issues of great importance for more traditional purchasing (for example, tender selection criteria for more complex and high-value/high-risk projects where a sole criterion of lowest price would be inadequate; the concept of whole-life costing; integrated supply chain management; and the use of output specifications). However, developments in Russia, such as the preparation of a draft law on concessions within MEDT; a major waste treatment PPP scheme for St Petersburg; and a PPP scheme for bus provision in St Petersburg, illustrated the timeliness of a broader discussion about PPPs, and in particular what is already happening in Russia.

MAKING PROGRESS. The prospect of an effective and efficient new Public Procurement Law raises expectations of significant improvements in both public administration and the business conditions in Russia. The real test, however, goes beyond providing a good set of procurement rules. It will lie in ensuring a consistently high standard of competency and capacity within the public sector to optimise value for money at all levels of government throughout this vast country already undertaking a major series of fiscal, economic, administrative and social reforms. Russian experts, such as the HSE trainers, who are critical for the success of this reform, have few resources and insufficient contact with modern practices abroad. It is vital, therefore, that initiatives, such as those described above, by the EC and UK government undertaken at the request of Russian colleagues should continue.

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This article reflects the author's personal views. Information about future developments can be obtained from:

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Notes

¹Initiative by the UK government working in collaboration with the construction industry to achieve greater efficiency and client satisfaction, as well as benefits for the industry ranging from a better safety record to better margins.