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**LEGAL MODEL OF BUSINESS ACTIVITIES IN THE CONTRACT SYSTEM
IN THE SPHERE OF PROCUREMENT IN RUSSIA**

5.1.3. Private law (civilistic) sciences

SUMMARY thesis for the degree of Doctor of Law

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The relevance of the dissertation topic. In the economies of foreign countries, a significant role is played by contract systems in the field of procurement of goods (works, services) to meet public needs (hereinafter referred to as contract systems). Such systems make it possible to ensure the implementation of all stages of procurement activities, including planning, placing orders, concluding contracts, accepting the results of fulfilling contractual obligations, analyzing the effectiveness of procurement, etc.

A special role in contract systems belongs to persons engaged in entrepreneurial activities (hereinafter also referred to as entrepreneurs).

Of particular relevance is the scientific study of a set of issues related to the place and role of entrepreneurs, the content of entrepreneurial relations, the legal regulation of entrepreneurial activity in the contract system in the field of procurement.

The degree of development of a scientific problem. Topics related to the procurement of goods (works, services) to meet state and municipal needs are given attention in the research of scientists within the framework of private law science. In this regard, we can note, in particular, the following scientific papers and their authors, who carried out research of a dissertation (monographic) nature: "Procurement of goods and energy service works for federal state needs: legal regulation". Author L.V. Andreeva (2011); "Public procurement in Russia: legal regulation and measures to improve it". Author L.V. Andreeva (2019); "Civil-legal regulation of municipal purchases and municipal contracts". Author A.E. Kirpichev (2012); "State (municipal) order of Russia: legal problems of formation, placement and execution". Author K.V. Kichik (2012); "The procedure for concluding contracts and the structure of contractual relations in state and municipal procurement." Author N.A. Kurtz (2018); "Regulation of delivery relations: theory and practice". Author L.I. Shevchenko (2002); "The system of state (municipal) procurement: methodology and implementation". Author M.V. Shmeleva (2021).

From the standpoint of studying foreign experience in this area, attention should be paid to the works of Russian and foreign authors: Public Procurement in

Foreign Countries: the Dynamics of Legal Regulation, ed. O.A. Belyaeva, V.A. Vaipan, K.V. Kichik (2017); Kikavets V.V. Public procurement in the practice of foreign countries (2022); Slepak V.Yu. EU Legal Regulation of State Procurement in the Fields of Defence and Security (2020.); Tasalov F.A. The contract system in the field of public procurement in Russia and the USA: a comparative legal study (2015); Tasalov F.A. Procurement in Russia and the European Union: methodology and practice of competition (2022); Fedorovich V.A., Patron A.P. USA: State and Economy (2005); Fedorovich V.A. Federal contract system: a mechanism for regulating state management (2010); Fedorovich V.A., Muravnik V.B., Bochkarev O.I. USA: military economy (organization and management) / ed. ed. P.S. Zolotareva and E.A. Rogovsky (2013); Stiglitz Joseph E. Economics of the public sector (1999); Westring G., Jadoun G. Public procurement manual (1996), etc.

With regard to the analysis of individual procurement institutions, it is necessary to single out the work of O.A. Belyaeva "Auction: The Foundations of the Theory and Practice Problems" (2016).

At the same time, there are practically no holistic scientific studies directly devoted to the study and analysis of issues related to the peculiarities of business relations, the legal regulation of business activities in the contract system, not enough attention is paid directly to persons engaged in entrepreneurial activities, on which the successful implementation of the goal of the contract system largely depends. – provision of state and municipal needs.

The purpose of the dissertation research is to scientifically substantiate the legal model for the implementation of business activities for the supply of goods, performance of work, provision of services in the contract system in the field of procurement in Russia, identification and analysis of problems associated with the implementation of business activities within the framework of the current legal model of the contract system, as well as development of scientific and practical recommendations for improving the legal support of entrepreneurial activity in the contract system.

To achieve this goal, it is necessary to solve the following tasks:

- 1) conducting an analysis of the conceptual apparatus of the contract system from the standpoint of the philosophy of systems and legal science, including the concept of the contract system as a system of economic relations with the participation of entrepreneurs;
- 2) study of the functions of the contract system as a system of economic relations with the participation of persons engaged in entrepreneurial activities;
- 3) analysis of the legal principles of the contract system, including the legal principles of doing business in this system;
- 4) study of the impact of state economic, social and legal policy on the activities of entrepreneurs in the contract system;
- 5) characteristics of methods, means and forms of state regulation of entrepreneurial activity in the contract system;
- 6) consideration of the legal aspects of the processes of forecasting, planning and state control over entrepreneurial activities in the contract system;
- 7) analysis of the legal support for the interaction of entrepreneurs, the state, society and a citizen within the framework of the contract system;
- 8) study of legal forms of state support for domestic producers - participants in the contract system;
- 9) study and analysis of legal forms of state support for small businesses and other participants in the contract system in the field of procurement;
- 10) study of the legal aspects of stimulating entrepreneurial activity in the contract system;
- 11) identification and analysis of the peculiarities of the legal status of entrepreneurs as contractors of public legal entities in contractual relations;
- 12) analysis of the concept, legal nature, types, as well as identification of the features of state and municipal contracts (hereinafter also referred to as contracts);
- 13) description of the content of contracts;
- 14) identification of the features of the conclusion, including the use of various schemes of contractual relations, as well as changes, termination of contracts and fulfillment of contractual obligations in the contract system;

15) consideration of the mechanism for concluding contracts and fulfilling contractual obligations in certain economic sectors of the contract system;

16) identifying the features of applying sanctions to business entities - participants in the contract system;

17) study of the concept, forms and methods of protecting the rights of entrepreneurs in the contract system in the field of procurement;

18) study and analysis of the procedure for protecting the rights of entrepreneurs – participants in the contract system in arbitration courts;

19) study and analysis of the administrative procedure for protecting the rights of entrepreneurs in the contract system.

The object of the study is the system of legal relations that develop during the implementation of entrepreneurial activities in the contract system in the field of procurement in Russia.

The subject of the dissertation research are:

doctrinal views of scientists regarding the category of the contract system in the field of procurement in Russia, including the implementation of business activities in this system and its legal regulation;

provisions of concepts and policy documents related to the formation and functioning of the domestic contract system;

domestic legislation and draft regulatory legal acts on the contract system;

norms of international and foreign legislation governing public procurement, and law enforcement practice of foreign countries;

judicial and administrative practice in the field of the domestic contract system.

The theoretical basis of the study is the works of scientists in various fields of scientific knowledge, fully devoted to or affecting certain aspects relating to the category of the contract system in the field of procurement, including the implementation of entrepreneurial activities and the legal regulation of this activity.

The use of philosophical and ideological approaches required an appeal to the works of I.A. Ilyin, L.F. Ilyichev, S.M. Kovalev, C. Montesquieu, V.G. Panov, V.M. Rozin, V.S. Soloviev, A.G. Spirkin, P.N. Fedoseev and other scientists-philosophers.

The subject under study made it necessary to refer to the works of representatives of economic science: O.V. Anchishkina, S.Yu. Glazyev, V.P. Zavarukhin, A.G. Zeldner, N.V. Nesterovich, A.P. Patron, M.V. Sedova, S.N. Silvestrov, V.I. Smirnov, I.I. Smotritskaya, D.A. Rubwalter, V.A. Fedorovich, I.Yu. Fedorova, A.V. Frygin, Chernykh S.I., etc.

When analyzing the issues under consideration, the works of scientists in the field of public administration theory (G.V. Atamanchuk, V.N. Yuzhakov, etc.) were also studied.

The scientific basis of the study is the works of domestic pre-revolutionary legal scholars: Yu.S. Gambarov, K.D. Kavelin, D.I. Meyer, K.P. Pobedonostsev, I.A. Pokrovsky, G.F. Shershenevich and other authors, as well as Soviet and Russian representatives of legal science, such as T.E. Abova, M.M. Agarkov, N.G. Aleksandrov, S.S. Alekseev, S.M. Amosov, V.K. Andreev, Yu.N. Andreev, L.V. Andreeva, N.A. Barinov, A.V. Barkov, V.S. Belykh, O.A. Belyaeva, M.I. Braginsky, S.N. Bratus, V.A. Vaypan, A.V. Venediktov, V.V. Vitryansky, A.V. Gabov, G.A. Gadzhiev, V.G. Golubtsov, V.P. Gribanov, E.P. Gubin, V.A. Dozortsev, I.V. Doinikov, V.V. Dolinskaya, N.L. Duvernoix, V.V. Zaitsev, O.V. Zaitsev, S.S. Zankovsky, V.I. Ivanov, S.A. Ivanova, I.V. Ershova, O.S. Ioffe, I.E. Kabanova, K.V. Kichik, N.M. Korshunov, V.M. Koryakin, O.A. Krasavchikov, O.A. Kuznetsova, V.V. Kulakov, N.A. Kurtz, L.A. Lunts, V.S. Martemyanov, A.A. Mokhov, I.B. Novitsky, T.K. Primak, B.I. Puginsky, V.D. Ruzanova, O.N. Sadikov, E.A. Svininykh, A.P. Sergeev, O.A. Serova, V.L. Slesarev, V.S. Tolstoy, Yu.K. Tolstoy, R.O. Khalfin, Yu.S. Kharitonova, V.A. Khokhlov, S.A. Khokhlov, M.Yu. Chelyshev, N.V. Chentsov, L.I. Shevchenko, S.N. Shishkin, V.F. Yakovlev and others.

Analysis of the problems associated with the complex nature of the regulation of relations in the contract system required an appeal to the works of scientists in other branches of legal science that are directly related to the subject of scientific research: the theory of state and law (A.M. Vasiliev, N.A. Vlasenko, A. B. Vengerov, M.N. Marchenko, V.S. Nersesyants, V.E. Chirkin and others), constitutional law (O.E. Kutafin, Yu.A. Dmitriev, T.Ya. Khabrieva, A.Yu. Tsarev and others), administrative

and information law (D.N. Bakhrakh, I.L. Bachilo, A.V. Vinnitsky, A.V. Demin, S.M. Zubarev, M.A. Lapina, I. V. Panova, I. M. Rassolov, B. V. Rossinsky, Y. N. Starilov, E. V. Talapina, Y. A. Tikhomirov, K. I. Famieva, S. D. Khazanov, etc.), financial and budgetary law (O.V. Boltinova, E.Yu. Gracheva, S.V. Zapolsky, L.V. Zolotareva, M.V. Karaseva, I.I. Kuchеров, E.A. Malykhina, K.B. Markelov, N.A. Povetkina, E.A. Rovinsky, N.A. Sattarova, A.D. Selyukov, E.D. Sokolova, and others), etc.).

The study reflected the materials of publications of foreign scientists related to the subject under consideration, such as Joseph J. Stiglitz, Wang Jiawei, Wim A. Timmermans, Gesta Westring, George Jadow, Kim Dae In, Christopher H. Bovis, Lee Mi Jung, Rie Yasuda, Thorstein Arendt, Fausto Martin de Sanctis, Frederic Nordby and others.

The methodological basis of the study is a set of methods for scientific knowledge of social phenomena and processes, which is based on the general philosophical (dialectical) method of cognition.

In the process of dissertation research, general scientific methods were used: observation, questioning, comparison, description, modeling, etc. General logical methods of scientific research were also used: analysis, synthesis, induction, deduction, analogy, abstraction, generalization, idealization, formalization, systematic approach, etc.

The following private scientific methods were used in the study: formal-legal; historical and legal; comparative legal; right sociological; legal modeling; legal forecasting, etc.

The information base of the study includes international, foreign and domestic legislation on procurement for state and municipal needs, public (government) procurement, contract systems in the field of procurement; program documents; drafts of the concept of formation of the federal contract system and drafts of the federal law on the federal contract system of Russia.

The empirical basis of the study was the materials of judicial practice, including the positions of the Constitutional Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, the Supreme Court of the

Russian Federation; materials of administrative practice of the Prosecutor's Office of Russia, the Federal Antimonopoly Service of Russia and other state bodies; statistical data, including state monitoring data and the results of control checks in the contract system; positions of federal executive authorities and other state bodies involved in the development of state policy, legal regulation, control (supervisory) activities in the area under consideration, etc.

The study takes into account scientific provisions and ideas regarding the formation, functioning, and further development of the domestic contract system in the field of procurement, including the implementation of business activities in this system and its legal regulation.

The validity and reliability of the research results are provided by methodological and theoretical positions, the use of a set of research methods that are adequate to its object, purpose, tasks and logic; correlating the conclusions and results of scientific work with the positions of legal scholars who conducted research on the subject under consideration; approbation and implementation of the obtained results in practice.

The scientific novelty of the research is determined by the essence of the goals and objectives formulated in the dissertation and consists in a comprehensive, systematic analysis of the legal regulation of entrepreneurial activity in the contract system in the field of procurement in Russia.

The scientific novelty of the dissertation research includes: the development of a scientifically based legal model for doing business in the contract system in the field of procurement in Russia; identification and analysis of problems related to business relations and their legal regulation in the current domestic contract system; development of proposals for improving the efficiency of legal support for entrepreneurial activity in the contract system in the field of procurement.

The dissertation formulates and defends the following main provisions (conclusions):

1. The dissertation developed a legal model for doing business in the contract system in the field of procurement in Russia as a complex, holistic, compound,

integrated, dynamic system of interaction between entrepreneurs, the state and society as a whole, as well as an individual citizen, aimed at providing public, state and municipal needs for material and non-material benefits, based on trust, mutually beneficial partnership and cooperation, providing for measures for state support of entrepreneurs and stimulation of entrepreneurial activity, as well as ensuring a balance of rights and legitimate interests of entrepreneurs and other participants in this system.

Features of the legal regulation of entrepreneurial activity in the contract system in the field of procurement are expressed in the combination and interaction of relations of a private law and public law nature, private law and public law interests, private law and public law means.

2. The dissertation found that the legal model for doing business in the contract system in the field of procurement in modern socio-economic conditions can be represented as a digital ecosystem, including:

- a set of subjects – entrepreneurs, the state and society as a whole, as well as individual citizens;

- digital infrastructure – electronic trading platforms that ensure the implementation of competitive procedures for the selection of entrepreneurs and the conclusion of state and municipal contracts with them in electronic form;

- information infrastructure – a unified information system in the field of procurement for posting information about procurement planning, placing orders, concluding state and municipal contracts and fulfilling contractual obligations, as well as various registers (signed contracts; unscrupulous suppliers, contractors, performers; complaints of procurement participants, etc.)

- economic and legal, social and legal, administrative and legal relations between the subjects of this system.

3. The dissertation proves that the legal model covers the following stages and activities of entrepreneurs in the contract system:

- Preparatory stage: participation in long-term procurement planning to meet state and municipal needs; participation in public control; participation in the

selection of suppliers (contractors, performers); conclusion of state and municipal contracts; business planning; preparation for the production of goods (performance of work, provision of services).

Main stage: production of goods; sale of goods, performance of work, provision of services; operation (including maintenance, repair) of objects transferred to public law entities.

Final stage: assessment of the effectiveness of entrepreneurial activity in the contract system in the field of procurement.

Of particular importance in relation to the main stage of entrepreneurial activity in the contract system in modern economic conditions is the legal support for solving the problems of developing industrial production, import substitution, selling goods (performance of work, provision of services) of a technically and technologically complex, innovative nature.

4. The thesis established that the complex nature of the legal regulation of entrepreneurial activity in the contract system is due, among other things, to the complex nature of the conceptual apparatus, goals, objectives and functions of this system.

5. The dissertation substantiates that the legal model of entrepreneurial activity in the contract system is based on general philosophical, economic, social, managerial principles and includes constitutional principles (freedom of entrepreneurial activity, unity of economic space, support for competition, state regulation of entrepreneurial activity, etc.), as well as sectoral principles of a private law nature (freedom of contract, good faith, proper fulfillment of obligations, cooperation of the parties to a contract, etc.) and public law nature (ensuring competition, openness and transparency of information, efficient spending of budgetary funds and state non-budgetary funds, etc.).

The system of legal principles is aimed at balancing the rights and obligations of entrepreneurs, the state, society as a whole, as well as an individual citizen, is complex and has a comprehensive regulatory impact on entrepreneurial activity in the contract system.

6. In the dissertation, within the framework of the proposed legal model, it is substantiated that the implementation of entrepreneurial activities in the contract system in the field of procurement is integrated with the mechanism of socio-economic planning, including the development and implementation of strategic planning documents, including state and municipal programs, national projects.

Legal support for the formation and implementation of strategic planning documents within the framework of the contract system covers the participation of persons engaged in entrepreneurial activities in the development of policy documents of a socio-economic nature; planning business activities related to the implementation of these documents; direct execution of state and municipal programs, national projects as suppliers, contractors, executors under state and municipal contracts.

7. The dissertation proves that the legal model for doing business in the contract system implies the existence of a comprehensive, balanced system of requirements:

- to entrepreneurs (usual requirements for persons engaged in entrepreneurial activities; requirements for all procurement participants in the contract system; additional qualification requirements);

- to goods, results of work, services (standard or technically and technologically complex, innovative, etc.);

- to the methods of selecting entrepreneurs (competitive and non-competitive methods, types of competitive methods).

The legal regulation of relations concerning the requirements for entrepreneurs, the goods they sell (results of work, services), as well as the methods of selecting entrepreneurs for the purpose of concluding state or municipal contracts, is integrated with solving the problems of developing competition and industrial production, introducing innovations within the framework of the contract system.

8. In the thesis, within the framework of the proposed legal model, in order to ensure the economic and social solidarity of the state, society as a whole and entrepreneurs, the connection between the institutions of the contract system in the field of procurement and public-private (municipal-private) partnership is

substantiated, which allows entrepreneurs to act in the contract system without only as producers, intermediaries, but also as investors.

The use of elements of public-private (municipal-private) partnership in the contract system implies legal support for the application instead of the criterion of saving budget spending used at the stage of selecting potential suppliers (contractors, performers) in order to conclude state or municipal contracts with them, other more complex economic criteria for evaluating the effectiveness of the contract system (including the effectiveness of business activities) used at the stage of fulfillment of contractual obligations.

9. The dissertation proves that the proposed legal model for the implementation of entrepreneurial activity in the contract system in the field of procurement is characterized by an increased social orientation (including increased social responsibility), which is associated, among other things, with the institutions of social partnership between entrepreneurs, the state, society as a whole and individual citizens (harmonization of public and private interests), social solidarity (combining the efforts of these entities to achieve common goals), sustainable development (meeting current human needs while preserving the environment and resources for future generations).

The dissertation author identified groups of state and municipal contracts of increased social orientation:

contracts for state support of certain categories of economic entities (contracts with the participation of organizations of the disabled, contracts with the participation of socially oriented non-profit organizations);

contracts, the subject matter of which reflects an increased social orientation (contracts in the field of social entrepreneurship, contracts in the field of environmental entrepreneurship).

10. The dissertation substantiates that the proposed legal model for doing business in the contract system includes a system of contractual relations established between entrepreneurs and public law entities.

The system of contractual relations in the contract system, in addition to a simple scheme of contractual relations between a state or municipal customer acting on behalf of the relevant public legal entity (used in the current model of the contract system), covers schemes of contractual relations using shipping orders, as well as conclusions other than state or municipal contracts supply agreements of goods for state or municipal needs.

The proposed system of contractual relations within the framework of the contract system in the field of procurement contributes to an increase in the efficiency of the implementation of tasks and functions of a private law and public law nature.

11. In the dissertation, within the framework of the proposed legal model, a system of control (audit, monitoring) over the implementation of procurement, including entrepreneurial activities in the contract system, is substantiated.

The legal support of the control system covers state (municipal) and non-state control and includes the following types of control:

by subjects of control — state control (supervision, audit, monitoring); municipal control (audit, monitoring); control by the state or municipal customer; public control (audit, monitoring) carried out by public associations; civil control exercised by individual citizens;

on the content of control — control over compliance with the rules (procedures) for the selection of entrepreneurs; control over the conclusion of state and municipal contracts; control over the fulfillment of contractual obligations; control over the spending of budgetary funds and funds of state non-budgetary funds (financial control);

by stages of entrepreneurial activity – control in preparation for the production of goods (performance of work, provision of services); control in the production of goods (performance of work, provision of services); control during the sale of goods; control upon acceptance of goods (results of work, services); control in the application (use, consumption) of objects acquired by public legal entities;

according to the methods of obtaining information – face-to-face control; remote control (control using a unified information system in the field of procurement).

12. In the dissertation, as part of the legal model for the implementation of entrepreneurial activity in the contract system, a system for stimulating entrepreneurial activity is defined.

The negative form of incentives for entrepreneurs covers general sanctions against persons engaged in entrepreneurial activities; special sanctions applied to entrepreneurs participating in the contract system.

The use of enhanced negative sanctions is balanced by positive forms – economic and moral incentives for entrepreneurs in the contract system.

Positive forms of stimulating entrepreneurial activity are integrated with the solution of tasks enshrined in policy documents of a socio-economic nature, related to the development of industrial production, the production of goods (performance of work) of an innovative nature, etc.

13. Within the framework of the legal model of entrepreneurial activity, the dissertation substantiates a comprehensive system for protecting the rights of entrepreneurs.

It is proposed to supplement the system of protection of the rights of entrepreneurs, which includes, within the framework of the current legal model for carrying out entrepreneurial activities, a public law (judicial and administrative) procedure for protecting rights, private law tools (claim procedure for resolving disputes, negotiation procedures, mediation) in order to increase mutual trust between the state and the business community.

The proposed legal model in terms of protecting the rights of entrepreneurs in the contract system is differentiated taking into account the stages of procurement; entities providing protection of rights; public law and private law remedies for the protection of violated rights.

Conceptual proposals for improving legislation related to the regulation of business activities in the contract system in the field of procurement

I. Proposals aimed at integrating the legislation on the contract system with other blocks of legislation, reflecting the relationship of the contract system, including the implementation of entrepreneurial activities with institutions:

strategic planning;

public-private and municipal-private partnerships;

public control over entrepreneurial activity, etc.

II. Proposals to improve the legislation on the contract system, including the Federal Law of April 5, 2013 No. 44-FZ “On the contract system in the field of procurement of goods, works, services to meet state and municipal needs”.

The corresponding proposals are formulated in the text of the work.

Theoretical and practical significance of the research. The materials of the dissertation work may be useful in carrying out further scientific research related to the study and analysis of the category of the contract system in the field of procurement, both within the framework of the science of civil, business law, and the science of administrative, information, financial, budgetary law, and also be of interest to scientists in the field of theory of economics and public finance, state and municipal government.

In addition, the results of the study can be used in law-making, law enforcement and law enforcement activities, in teaching academic disciplines in undergraduate, graduate and postgraduate studies, conducting classes in the system of additional professional education.

Approbation of the research results. The main provisions and conclusions of the dissertation were approved in the process of reviewing and discussion at a meeting of the Department of Legal Support of the Market Economy and reflected:

in reports at international and all-Russian scientific and practical conferences
— more than twenty presentations in total;

in published monographs and scientific articles;

when performing research work;

in the practical activities of the dissertator during the period of work in federal executive bodies;

when developing curricula and conducting classes in the higher education system;

when conducting classes in the system of additional professional education.

The structure and content of the dissertation are determined by the purpose and objectives of the study. The work consists of an introduction, six chapters, twenty paragraphs, a conclusion and a bibliography.

Publications of the author on the theme of research. On the topic of the dissertation research, 23 articles were published in publications recommended by the Higher Attestation Commission under the Ministry of Education and Science of Russia, 17 of which were in scientific publications recommended by the RANEPA Academic Council for the publication of articles on jurisprudence.

The research materials are also reflected in 5 personal and collective monographs, 22 collections of materials from international and all-Russian conferences, 19 contributions in other publications.