CONCEPT OF A STATE (MUNICIPAL) CONTRACT IN THE RUSSIAN FEDERATION

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ABSTRACT

First of all, the definition of the state contract concept is required to establish a definition of the concept of a state (municipal) contract for the creation of intellectual activity results for state or municipal needs. According to the Federal Law dated 05/04/2013 No. 44-FZ "On contractual system in the sphere of procurement of goods, works, services for provision of state and municipal needs" (hereinafter referred to as the Contractual System Act), a state contract, or a municipal contract is a contract concluded on behalf of the Russian Federation, a subject of the Russian Federation (state contract), municipal formation (municipal contract) by a state or municipal customer to provide state needs or municipal needs, respectively. This concept is not a single unified concept. To understand the legal nature of a state (municipal) contract, it is necessary to distinguish its distinctive features.

Keywords: government contract, municipal contract, result of intellectual activity, public needs, municipal needs.

INTRODUCTION

The first such feature is the subject composition of such a contract. According to Clause 7, Article 3 of the Law on the Contractual System, the customer is a state or a municipal customer or a budgetary institution, state or municipal unitary enterprises engaged in procurement. Thus, one of the parties to a state or municipal contract is a public authority or a local government body, or a public legal entity - customer.

The second feature is a special source of financing for state (municipal) contracts having concluded for provision of state (municipal) needs: budgetary funds of a subject of the Russian Federation or the Russian Federation itself. According to Clause 5, Article 3 of the Law on the Contractual System, the state customer is a state body (including the state authority), the State Atomic Energy Corporation "Rosatom", the State Corporation for Space Activity "Roscosmos", a state extra-budgetary fund management body or a state public institution acting on behalf of the Russian Federation or a constituent entity of the Russian Federation authorized to accept budgetary obligations in accordance with the budget legislation of the Russian Federation on behalf of the Russian Federation or a subject of the Russian Federation and carrying out procurements.¹ According to clause 6 of article 3 of the Law on the contractual system, a municipal customer is a municipal body or municipal public institution acting on behalf of the municipal entity authorized to accept budgetary obligations in accordance with the budget legislation of the Russian Federation on behalf of the municipal entity and carrying out procurements.²

In accordance with Article 6 of the Budget Code of the Russian Federation dated July 31, 1998 No. 145-FZ (hereinafter - the Budget Code), budgetary obligations are expenditure obligations that are subject to execution in the relevant financial year; expenditure obligations are stipulated by law or other regulatory legal act, or contract or agreement the obligations of a public-law entity (the Russian Federation, a

constituent entity of the Russian Federation, a municipal entity) or a public institution acting on its behalf to provide an individual or legal entity, or other public-law entity, or a subject of international law with funds from the corresponding budget. Thus, one of the features of a state or municipal customer is the adoption of budgetary obligations.

According to Article 72 of the Budget Code, State (municipal) contracts are concluded in accordance with the schedule of procurement for goods, works and services to ensure state (municipal) needs, formed and approved in the order in accordance with the legislation of the Russian Federation on the contractual system in the procurement of goods, services to ensure the state and municipal needs, and are paid within the limits of budgetary obligations.

The third distinctive feature is the provision of state and municipal needs. So, according to part 1 of Article 12 of the Law on the Contractual System, state bodies, state budget funds, municipal bodies, state institutions, and other legal entities in the cases established by this Federal Law in planning and carrying out procurement should proceed from the need to achieve specified results on ensuring state and municipal needs. However, the Law on the contractual system lacks the concept of state and municipal needs, what creates certain problems in the formation of a clear understanding concerning the legal nature of the state contract. Previously, Federal Law No. 94-FZ dated 21. 07. 2005 "On the Placement of Orders for the Supply of Goods, Works and Services for State and Municipal Needs" (hereinafter referred to as the Law on Placement of Orders), applied before the entry into force of the Law on the Contractual system, the following concept of the state contract was given: "a state or municipal contract is understood as a contract entered into by the customer on behalf of the Russian Federation, a constituent entity of the Russian Federation or a municipal formation for the purpose of securing the state or municipal needs". The structure of a state contract concept is similar in both laws, but, unlike the Law on the contractual system, the Law on the Placement of Orders among other things, defines the concept of state needs: "State needs are understood to be provided from the federal budget or the budgets of the constituent entities of the Russian Federation and extrabudgetary sources on financing the needs of the Russian Federation, government customers in goods, works, services required to exercise the functions and authority of the Russian Federation (including for the implementation of federal targeted programs), for the fulfillment of international obligations of the Russian Federation, including for the implementation of interstate target programs in which the Russian Federation participates, or the needs of the constituent entities of the Russian Federation, or state customers in goods, works, services necessary for the implementation of the functions and powers of the subjects of the Russian Federation, government customers, including for the implementation of regional targeted programs". Thus, the Law on the Placement of Orders links state needs with the exercise by the state of its functions, powers and fulfillment of obligations. As noted in the literature, the functional purpose of the state is the need to protect and secure public interest, which is defined as the interest of the people living in the relevant territory. Accordingly, the claimed needs must be associated with the appropriate functional assignment of the state customer.

SUMMARY
Thus, the state (municipal) contract has the following distinctive features:

- One of the parties to this contract is a state or municipal customer or budgetary institution, state or municipal unitary enterprises that carry out procurement. Thus, one of the parties to a state or municipal contract is a state authority or a local government body, or a customer being a public legal entity.

- The source of funding for state (municipal) contracts concluded to ensure state (municipal) needs are the budgetary funds of the territorial entity of the Russian Federation or the Russian Federation.

- The target orientation of the contract consists in the provision of state or municipal needs.

CONCLUSION
Considering the above, it is possible to give the following concept of a state contract and a municipal contract. A state contract and a municipal contract is a contract concluded to provide for the needs in goods, works (work results) or services necessary for the performance of its functions, powers and fulfillment of obligations by the Russian Federation, constituent entities of the Russian Federation and municipal formations (municipal contracts).

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REFERENCES