

Client Update

From January 1, 2017 Priority Will Be Given to Russian Goods, Works and Services for Procurement by Certain Types of Legal Entities

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On September 16, 2016, the government of the Russian Federation adopted a Decree on the Priority of Goods of Russian Origin and Works and Services Performed and Rendered by Russian Persons Over Goods Originating in a Foreign Country and Works and Services Performed and Rendered by Foreign Persons (the “Decree”).

The Decree applies to procurement by companies partially owned by the state, natural monopolies and organizations performing certain regulated activities and their subsidiaries (the “Buyers”).¹ Goods of Russian origin are goods completely manufactured in Russia or those that have undergone sufficient processing/manufacturing in Russia in accordance with customs rules.² Russian persons means legal entities registered in the Russian Federation and individuals who are citizens of the Russian Federation.³

¹ In accordance with Article 2 of Federal Law No. 223-FZ on Procurement of Goods, Works and Services by Certain Types of Legal Entities dated July 18, 2011, this law applies to (a) state corporations, state companies, natural monopolies, organizations performing regulated activities in the area of power supply, gas supply, heat supply, water supply, water disposal, waste water treatment, treatment, recycling, decontamination and burial of solid household waste, state and municipal unitary enterprises, autonomous institutions, companies with an equity participation by the Russian Federation, by a constituent body of the Russian Federation, by a municipal body exceeds an aggregate interest of 50%; (b) subsidiaries in which more than an aggregate 50% equity participation is held by persons specified in (a) above; (c) subsidiaries in which more than an aggregate 50% equity participation is held by persons specified in (b) above; and (d) state funded institutions, if they meet certain conditions.

² See, e.g., Rules for Determining the Country of Origin of Goods approved by the Agreement of the Governments of the CIS Member States of November 20, 2009.

³ Clause 5(e) of the Decree.

The Decree is aimed at supporting the government’s policy of import substitution⁴ and localization of production and/or other business processes in the Russian Federation.⁵

It grants the following preferences to the suppliers of goods of Russian origin and Russian suppliers of works or services (together the “Russian Suppliers”) for all types of procurement by the Buyers:⁶

- *Selection preferences:* For procurement by tender or other method whereby the item is procured from the person quoting the lowest price, the price quoted by a Russian Supplier is always discounted by 15% from the price quoted, despite the fact that the contract will be signed for the quoted price.
- *Price preferences:* For procurement by auction:
 - if a Russian Supplier wins, the contract is signed at the price quoted by such Russian Supplier; or
 - if a supplier of goods of foreign origin or a foreign supplier of works or services wins, the contract is signed at a price discounted by 15% from the price quoted.

The above preferences do not apply for the procurement of goods, works or services:

- from a single supplier;⁷
- if the submitted bids do not include quotes from Russian Suppliers;

⁴ See, e.g., Order of the Ministry of Economic Development of the Russian Federation No. 155 on the Conditions of Access of Goods Originating in Foreign Countries for the Purposes of the Procurement of Goods, Works and Services for State and Municipal Needs dated March 25, 2014; Decree of the Government of the Russian Federation No. 102 on Restrictions and Conditions of Access of Certain Types of Medical Devices Originating in Foreign Countries for the Purposes of Procurement for State and Municipal Needs dated February 5, 2015; Decree of the Government of the Russian Federation No. 1289 on Restrictions and Conditions of Access of Pharmaceuticals Included in the List of Vital and Essential Drugs Originating in Foreign Countries for the Purposes of Procurement for State and Municipal Needs dated November 30, 2015.

⁵ Localization means the production of goods of Russian origin.

⁶ Types of procurement may include auction, tender, request for proposal, request for quotation and procurement from a single supplier, as well as other types of procurement envisaged in the Buyer’s regulations on procurement.

⁷ Such procurement is possible if the procurement is deemed failed or in cases provided for in the Buyer’s regulations on procurement in accordance with applicable legislation.

- if the submitted bids do not include quotes from a supplier of goods of foreign origin or foreign supplier of works or services; and
- in certain other cases.⁸

The Decree enters into force on January 1, 2017.

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Please do not hesitate to contact us should you have any questions.

⁸ Clause 6 of the Decree.