

Newsletter

Strengthening national treatment in procurements: overview of recent developments

January 20, 2025

Dear Ladies and Gentlemen,

We would like to draw your attention to the strengthening national treatment in procurements.

On December 23, 2024, the Government of the Russian Federation issued the Decree No. 1875 "On Measures to Provide National Treatment in Procurement of Goods, Works and Services for State and Municipal Needs and Procurement of Goods, Works and Services by Certain Types of Legal Entities" ("**Decree**").

This Decree seeks to strengthen national treatment by extending it to a large part of procurements and applies to both competitive procurement (for example, (1) biddings, (2) auctions, and others) and non-competitive procurements from a single supplier.

Below you may find an overview of the major innovations in this area.

The Decree approves:

- 1 Prohibition of procurement of goods (*including those supplied in the course of performance of procured works, provision of procured services*) originating from foreign countries, works, services, respectively, performed or rendered by foreign persons

The procurement of goods, works, and services listed in Annex No. 1 of the Decree is strictly prohibited. This includes, but is not limited to:

1. Textile products;
2. Tyres;
3. Central heating radiators;
4. Integrated electronic circuits;
5. Self-propelled machines and trolleys equipped with a crane;
6. All-terrain vehicles;
7. Audit services;
8. Accounting services.

Additionally, procurement of goods originating from foreign states, as well as services performed or rendered by foreign entities, is prohibited under the state defense order.

This applies to measures associated with the state programs of the Russian Federation, state armament program, and other defense-related activities.

The Decree outlines specific circumstances under which this prohibition may not be applicable such as, for instance, when:

1. No domestic production of goods being procured is available within the territory of the Russian Federation;
2. The procurement is needed to provide urgent or emergency medical assistance or is necessitated by an accident or force majeure circumstances;
3. Purchases made by the Ministry of Internal Affairs of the Russian Federation for vehicles to ensure the security of state protection facilities and operational-search activities and others.

2 "Second one out" rule: restriction of procurement of goods (*including those supplied during performance of procured works, provision of procured services*) originating from foreign states, works, services, respectively, performed or rendered by foreign persons

Regarding the procurement of goods, works, and services listed in Annex No. 2 of the Decree, including but not limited to:

1. Aluminum wire;
2. Cartridges and ammunition;
3. Turbines;
4. Unmanned aircraft systems, including unmanned helicopter-type aircraft;
5. Electronic digital computing machines;
6. Active detection equipment;
7. Sound reproduction equipment;
8. Liquid analyzers;
9. Vital and essential medicines (VED).

A restriction has been imposed on purchases intended to satisfy state and municipal needs, as well as those made by certain types of legal entities.

The Decree discloses the "second one out" rule, the essence of which is that the customer rejects bids proposing to supply foreign goods if at least one bid is submitted proposing to supply Russian goods. Thus, this restriction applies to the purchase of foreign goods if there is an application for the supply of Russian goods that meets the customer's conditions.

The Decree also outlines specific circumstances under which this restriction may not be applicable. For instance, exceptions may be made in the following cases:

1. Procurement of spare parts and consumables for machinery and equipment used by the customer, in accordance with the technical documentation for these items;
2. Acquisition of spare parts and components for rifled sporting firearms, sourced from foreign countries etc.

3 Preference in respect of goods of Russian origin (*including those supplied during performance of procured works, provision of procured services*), works, services, respectively, performed or rendered by Russian persons

Please be aware that the provisions of the Decree concerning goods of Russian origin, as well as works or services provided by a Russian citizen or entity, also extend to goods originating from member states of the Eurasian Economic Union ("**EAEU**") and to works or services performed by foreign entities registered in the EAEU member states.

Where the object of purchase includes at least one product not listed in Annex No. 1 and Annex No. 2 to the Decree, this advantage applies to an application containing an offer to supply goods of Russian origin only:

- in case of procurement in accordance with the Federal Law "On Contract System in Procurement of Goods, Works, Services for State and Municipal Needs" No. 44-FZ of April 05, 2013, there is an application for participation in the procurement among the applications for participation in the procurement contains an offer to supply at least one product originating from a foreign;
- in case of procurement in accordance with the Federal Law "On Procurement of Goods, Works and Services by Certain Types of Legal Entities" No. 223-FZ of July 18, 2011 ("**Law No. 223-FZ**") there is an application for participation in the procurement among the applications for participation in the procurement, which is not rejected and contains an offer to supply at least one product originating from a foreign country.

The Decree specifies certain circumstances in which the provisions regarding prohibitions, restrictions, or advantages do not apply. These exemptions may include, for instance:

1. Procurements involving contracts with counter-investment obligations that mandate the supply of goods solely produced at a facility established, modernized, or commissioned under such a contract;
2. Procurements by pharmacies for retail purposes concerning pharmaceuticals and medical devices, specifically intended for in-store use rather than resale.

4 Minimum mandatory share of purchases of goods of Russian origin under the Law No. 223-FZ

The minimum mandatory share of purchases of goods of Russian origin is set according to the list in accordance with Appendix No. 3 of the Decree (*for example, for: (1) tanks, cisterns, tanks and similar containers the mandatory share is 90%, (2) television cameras the mandatory share is 18%, (3) video cameras the mandatory share is 70%, (4) magnetic and optical data carriers the mandatory share is 45%, and others*).

The minimum share is determined as a percentage of the volume of purchases of relevant goods (*including goods supplied in the performance of procured work, provision of procured services*) made by the customer in the reporting year.

The minimum mandatory share is applied when purchases are made by individual customers that are state corporations, state companies, public law companies, natural monopolies, organizations engaged in regulated activities in the field of electricity supply, gas supply, heat supply, water supply, water disposal, wastewater treatment, solid municipal waste management, autonomous institutions, including legal entities in the charter capital of which the Russian Federation, a constituent entity of the Russian Federation, or a municipal entity together hold more than 50% of the shares (*participatory interests*), as well as their subsidiaries.

The minimum mandatory participatory interest does not apply to purchases by customers other than the legal entities listed above.

5 Information and a list of documents that confirm the country of origin of goods for the implementation of the above measures

The Decree delineates different lists of information and documentation required to verify the country of origin for different categories of goods. Some of the examples could be seen below:

1. For vehicles, refrigerated cabinets, and belt conveyors, it is mandatory to provide the registry entry number from the register of Russian industrial products;
2. To confirm the origin of software for electronic computing machines from the Russian Federation, the serial number from the unified register of Russian software programs and databases must be indicated;
3. To verify that all stages of production for a medicinal product occur within the territories of the EAEU member states, a document detailing the technological process stages, issued by the Ministry of Industry and Trade of the Russian Federation according to established procedures, is required etc.

6 Requirements for the form and content of a report on the volume of purchases of Russian goods, the procedure for its formation and placement in the unified information system

The Decree *inter alia* establishes:

- requirements to the form and content of the report on the volume of purchases of goods of Russian origin, works, services, respectively performed, rendered by Russian citizens, Russian legal entities ("**Report**");
- procedure for generation and placement of the Report in the unified information system in the sphere of procurement of goods, works and services for state and municipal needs, as well as on the official website of the unified information system in the information and telecommunications network "Internet";
- procedure for providing the authorized body with access to the information contained in the Reports;

- procedure for review of Reports and assessment of the results of such purchases in the Reporting year by the authorised body.

The reporting period is a calendar year - **from January 01 to December 31 inclusive**. The Decree is accompanied by the form of the Report and a detailed description of the specifics of completing all of its sections.

The **Ministry of Finance of the Russian Federation** is the federal executive body authorized to review Reports and assess the results of such procurement in the reporting year.

This Decree is valid from January 01, 2025, except for subparagraph "f" of Paragraph 4 of the Decree (concerning provision on procurement of medicinal products included in the list of strategically important medicinal products, production of which must be ensured in the territory of the Russian Federation), which shall enter into force on September 01, 2025.

We hope that the information provided herein will be useful for you.

Note: please be aware that all information provided in this letter is based on an analysis of publicly available information as well as our understanding and interpretation of legislation and law enforcement practices. Neither ALRUD Law Firm nor the authors of this letter bear any liability for the consequences of any decisions made in reliance upon this information.

If you have any questions, please do not hesitate to contact ALRUD experts:

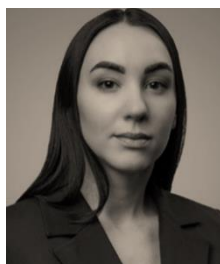


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