



Antitrust Law

On issues of bidders documenting and filing a bid for the order placement

Bidders for the right to enter into municipal and state contracts for supply of goods, performance of works and/or rendering services often face numerous pitfalls which, as a result, do not make it possible for businessmen to participate in such tenders and for bidders – to win.

For instance, winners of one of the municipal tenders held in Omsk Region encountered an unexpected problem.

The antitrust authority considered bidder applications to be non-compliant with the requirements of Part 3.3 Article 25 of the Federal Law “On placement of orders for supply of goods, performance of works and rendering services for state and municipal needs” (hereinafter the “Law”) on grounds that the list of documents being a part of the bidders’ applications was not bound. Consequently, the antitrust authority adopted a decision on violation of the Law provisions and issued a relevant writ to the administration of the municipal region.

The bidder challenged the decision and writ of the antitrust authority and won in the first-instance court, as well as in the appeals and cassation courts. The courts noted that Article 25 of the Law does not directly specify that the application is to be bound and numbered together with the all tender documentation.

The courts declared that bidders are not obliged to bind the list of documents being a part of the application.

Such court practice demonstrates that the courts are willing to take side with the bidders challenging groundless requirements both of tender managers and antitrust authorities aimed at exercising control over “purity” of such tenders.

Resolution of the Federal Commercial Arbitration Court of the West-Siberian District dated May 24, 2010 on case No.A46-20419/2009



Vitaliy Dianov
Senior Attorney
Moscow

Tel.: +7 (495) 970 10 90
E-mail: vdianov@cls.ru

Bidders are not obliged to bind the list of documents being a part of the application

Additional notes

Should any questions arise in connection with the above or if you need any additional materials, please contact Senior Attorney Vitaliy Dianov at the Moscow Office of Capital Legal Services.

This Legal Briefing keeps the clients of the Capital Legal Services and other interested parties abreast of changes in legislation that may, to one degree or another, affect their activity or cater to their particular interests. The opinions and commentaries expressed in this Legal Briefing are not legal opinions and cannot replace the necessity of receiving legal consultations or opinions in specific practical situations.