Digitization of government contract

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Abstract. The digital development in the Russian Federation is to a large extent reflected in the specific relationship that emerges in the procurement procedure for State and municipal institutions as a result of the contractual system in the area of procurement. The term «procurement» refers to the acquisition of goods, construction or services; it is the process of determining the need of a solvent audience, identifying the supplier (its search and choice), as well as concluding and executing the terms of the contract, whether delivery of the goods, Performance of the work or services required by the terms of the contract. The article provides a brief overview of the process of digitization of the contract system in the procurement section and details the features of the digitization of the public contract, identifies the specific nature of the contract in the context of digitization and identifies its shortcomings, opportunities for the use of smart contract technologies in the conclusion and execution of government contract were considered. Keywords: digital, contract, government contract, smart contract, blockchain, Smart contract, contract system, automation, EIS (also a single information system), electronic information platform, electronic document management system, electronic signature, EPC, electronic document, portal, procurement of goods and services, procurement.

1 Introduction

Digitization (digital development) is defined as the process of organizing a number of tasks in the digital environment and related business processes that were carried out by individuals and organizations prior to the introduction of relevant digital products [6].

Digitization in the Russian Federation is to a large extent manifested in the specificity of the relations that arise in procurement activities as the customer acquires the required goods, Contracts of works or services for the needs of State and municipal institutions, which are regulated by the contract system in the area of procurement (or procurement). The contractual vector for procurement is presented as an integrated pool of interactions among procurement stakeholders, such as the executive branch, direct requisitioners, selected vendors (also in practice referred to as contractors or implementers), agencies and authorized bodies, relevant organizations, as well as aggregators and operators of electronic portals (sites they are sites) and the direct actions themselves, Implemented and aimed at meeting the needs of State and municipal institutions. Procurement activities of any kind,

The contractual system is based on the principles of openness and transparency in the provision of procurement information. Fair and equitable competition, which is designed to stimulate economic activity, is also a key basic tenet of the contractual system. The cornerstone of the last decade has been the principle of innovation, which in turn will improve and strengthen the basic characteristics of the contractual system, such as unity in procurement, Responsibility for performance in meeting the needs of State and municipal organizations in this area. The digitization of processes has also played a special role, which has made it possible to improve the efficiency of the procurement processes that are most often carried out through the Single Procurement Information System (EIS), electronic portals (EE).

EIS is an integrated system consisting of an information unit: scheduling plans, an aggregated list of participants in the procurement process, contract and requisition registers, contract performance statistics, template contract forms with a list of relevant terms and conditions, An information base to ensure that system participants are aware of unscrupulous suppliers, a section on bank guarantees issued by banks for the purpose of enforcing obligations under contracts concluded, A section with a feedback form for the possibility of filing complaints, a regularly updated information unit on planned and unannounced inspections, the results obtained and the orders issued as a result of the inspections carried out, etc. and databases on the portal responsible for technical support and implementation of processes such as information generation and storage. Among other things, the system handles requests for information and delivers the formed data via the Internet site. Internet sites are electronic information and telecommunications platforms (portals, sites, home pages) on the Internet where, inter alia, goods, services or works may be purchased.

2 Materials and methods

It is based on research by domestic academic writers and specialists in civil law and the contract system in procurement. The article especially focuses on one of the provisions of the Civil Code of the Russian Federation, the Federal Law of 05.04.2013 N 44-F3 «On the Contractual System in the Sphere of Procurement of Goods, Works, Services for State and Municipal Needs» The Federal Law of 06.04.2011 N 63-F3 «On Electronic Signature» and other acts providing the normative basis of the processes of ensuring the conducted procurement.

The study is based on methods widely applicable in all fields of science: system analysis, synthesis, generalization, step-by-step progression from abstract to concrete, and modelling. As well as the author used so-called «frequent learning» methods that lie in such private spheres of science as formal-legal and dogmatic.
3 Results

The digitization of the contract system with respect to procurement processes provides a basis for answering questions on the civil law nature of actions taken in the process of concluding and executing government contracts.

It should be made clear that legal relationships arising under the procurement contract system could theoretically be assessed as complex, lengthy. They are evolving in stages, and legal regimes can change at different stages. It should be borne in mind that each stage of procurement was the responsibility of a particular branch of law. Legal instruments, such as administrative law, budgetary law or civil law, should be carefully evaluated and applied at every stage of the process. The rules of procedure can be considered to be to a large extent complex and extremely detailed. The procurement procedure is of an administrative and legal nature, and the procedure for processing the transaction following the procurement procedure, namely the process of concluding a State contract or contract, and the subsequent implementation of the terms and conditions of the contract itself is a matter of civil law, taking into account the peculiarities of the law on the contractual system. It should be noted that a public contract has a special legal regime by virtue of the law on the contractual system, which lays down the requirements for its substantive terms, the liability of the parties, the form, manner, manner and timing. Details of its implementation, rules for its amendment and termination. However, the special legal regime of a State contract does not exclude its civil law nature, which is clearly reflected in its definition in the Contract System Act, which defines a State contract as a civil contract. A legal contract concluded by a State client for the purpose of supplying State institutions with goods, works or services, as appropriate, to existing requests [4].

Under the Contract System Act, almost the absolute majority of procurement is to be conducted electronically to meet open competition. There are legal exceptions to this rule when the procurement is done in paper form.

The main feature of electronic procurement procedures is that all stages (periods) of their implementation, from the posting of information about them to the conclusion of a contract, are ensured on the EE Internet site approved by the Government of the Russian Federation, with the use of electronic-digital means. The Contract System Act lays down the procedures and requirements for each of the electronic procurement methods. The rules on electronic contracting for all types of procurement conducted electronically are uniform and are set out in the Contract System Act. The contract is electronically entered into on the EE Internet site. Upon completion of the procurement procedure in electronic form, the Customer places the draft contract (without its signature) on both the EP and the EIS. The counterparty (supplier, contractor, executor) with whom the procurement organizer (requisitioner) has made a decision to award a government contract shall send to the EE the documents necessary for the contract award procedure (draft contract and government contract security document, if such requirement was established in the terms of the procurement). Any information provided to the EP by a counterparty in accordance with established procedural algorithms must be signed by an electronic signature (ECT) of the counterparty, who has the right to act on its behalf on the EP. ESC is an electronic-digital form that contains information for the identification of a natural or legal person. The customer places the signed contract after the counterparty has signed the draft contract. Article 83.2 of the Law on the Contractual System sets out the terms for the conclusion of a State contract in electronic form, the procedure and time-limits for the circulation of documents in the procedure for its conclusion, and the conditions and time-limits for the submission and processing of the record of disagreement.

These features of entering into a government contract using electronic means do not call into question the form of the transaction, it is written, This conclusion can be drawn from
the provisions of article 160, paragraph 1, paragraph 2, of the Civil Code of the Russian Federation, according to which: The written form of a transaction is also considered to be satisfied in the case of a person engaging in a transaction by electronic or other technical means enabling the substance of the transaction to be reproduced unchanged on the physical medium, the requirement of a signature being considered to be done, if any method is used to reliably identify the person expressing the will. The law, other legal acts and the agreement of the parties may provide a special way of reliably identifying the person expressing the will" [12].

In this case, the Act on the Contractual System provides a special way of identifying the persons who have expressed their will, a reinforced EPC for those who act for the benefit of the parties to the contract and are entitled to do so. Part 1 of Article 6 of the Federal Law of 06.04.2011 N 63-F3 «On Electronic Signature» defines and lays down criteria according to which the electronic document will be considered legal, in the subsequent signing of the EPC and will be considered an equivalent document, signed by a hand-written signature [13].

Of course, it should not be said that all the particularities of public contracting through the use of electronic means are limited to the question of their form. Electronic-digital means provide new possibilities for recording transactions, for making information about them available, including to third parties, and for the duration of their storage, which is ensured through an additional mechanism - the register of contracts concluded by customers, which is part of the EIS. The Act on the Contractual System prescribes that, within a period of five working days from the date of signature of the contract, the customers must transmit the relevant information on the transaction to the Federal Executive, that it has the right to perform the function of treasury service on the execution of the budgets of the budgetary system of the Russian Federation, which also updates the information base between State or municipal institutions and suppliers. There are unavoidable situations where contracting parties need to change the terms and conditions of delivery of goods or services (work performed) and, if agreed by the parties, the employer sends a list of such changes to the relevant federal authority within a fixed period of five working days from the date of the amendment. The same conditions apply to the communication of performance information under the terms of a contract or a separate performance period, and to its termination. The relevant federal body duly authorized to perform the corresponding function of the executive branch of the Treasury in the execution of the budgets of the budgetary system of the Russian Federation, is responsible for entering all of the above contract information into the contract registry of the customers.

Note that in the register of contracts concluded by the customer, the possibility of the parties to the State contract to exchange documents on the performance of contracts (primary records) has not been realized. The introduction of an electronic workflow system will enable customers and suppliers (contractors, implementers) to monitor contract performance and verify its performance. The main purpose of such a system should be to move away from the classical «paper» form of relationship. Such a project was implemented in the Russian Federation at the regional level in the Moscow region. The system created by the Moscow Oblast EPC automates the contract execution process. All primary accounting documents and other documents containing the results of the work carried out, as well as the individual stages of their execution, and the results of the acceptance, motivated by refusals to sign the acceptance documents or to pay the obligations performed, Submission of claims for payment of damages, unilateral rejection of contract terms, real-time creation, encrypted by cryptography. The contracting parties exchange the above documents over the Internet, eliminating the need for paper-based documents.

It should be noted that the Act on the Contractual System does not establish the procedure for the conclusion of an agreement on amendments made or a decision taken by
the parties or by only one party to terminate the contract. The conclusion of a competitive procurement process in electronic form, which raises questions in practice. Requisitioners have two ways of entering into agreements on modifications or final avoidance in relation to an electronic contract. The first, which prevails, is a paper-based agreement. The second is that the agreement is signed electronically on the Internet site (portal) of the electronic platform where the purchase was made and the contract was concluded.

Both methods are legitimate, since the key principles of the transaction were observed in writing, and thus, in accordance with article 452, paragraph 1, of the Civil Code of the Russian Federation, the agreement on a partial or total modification, the termination of the current contract may be effected in the same manner as the contract is concluded if there is no contradiction in the law, other legal acts, contracts or customs [12]. It would appear that the conditions for the State to pay close attention to the process of digitization of a public contract and to provide a clear understanding to the parties to the contract should specify in the Act on the Contractual System the relevant rules for entering into agreements on modification or Termination of contracts electronically concluded and stipulate that if a contract has been concluded electronically, the agreements entered into under such a contract must be made electronically.

On the basis of the above, it can be concluded that, in the current period, the digitization of the State contract is the transfer of participants to the electronic circulation of documents, which has made it possible to reduce the distance between the persons concerned in its conclusion and its execution. It should be borne in mind, however, that there are progressive trends that can trigger the process of digitization of public contracts and that they cannot be ignored.

Consider whether it is possible to apply the idea of a smart contract to the conclusion and performance of a government contract.

Let’s figure out what a smart contract is. In 1994, the idea of a smart contract was first proposed by Nick Sabo, who described it verbatim: «a digital representation of a set of obligations between the parties, including a protocol for the performance of these obligations» [9]. Smart Contract (Smart Contract) is a digital algorithm for controlling and reporting the ownership of anything. In connection with the concept of smart contract, specialists also make reference to relevant blockchain technologies.

Blockchain (from Mr. Blockchain) is information provided as a list (or a continuous linked chain of blocks) that follows prescribed rules. The link between the blocks is ensured by the fact that changing not only the numbering but also any information in the block entails a total change of the whole chain. To date, blockchain is widely used in the area of financial transactions, blockchain identification is used, and cybersecurity technologies could not have been developed without Nick Sabo’s system. Blockchain technologies are at the core of all key electronic products of banking institutions and government organizations worldwide [15].

Nick Szabo presented as a smart contract not the contract itself, but the form of its writing [9], according to his idea «self-fulfilling smart contracts, must fulfill the set conditions of the «contract», reducing the number of costs and errors related to the human factor, besides the author of the idea believed, that with the advent of smart-contracts various kinds of fraudulent operations will practically disappear» [8].

Smart contracts can be applied in various areas of the economy, but there is currently no single definition of the concept in science, nor has its legal nature been fully studied. At the legislative level, there is also no definition of a smart contract in the Russian Federation. Despite this, smart contracts have come to be frequently mentioned and used because they have a number of advantages that are based on blockchain technologies that ensure that no one can change the terms of a contract unilaterally and that the contract is self-executing, synchronization and encryption of information.
The Smart Contract may be used for various contractual purposes. In the literature, a smart contract is regarded as a contract, computer program, or algorithm (a way of concluding a contract and performing obligations). In turn, there is strong support for the view that a smart contract is a computer program that is inherently non-legal and a technical solution for concluding and executing a contract. This approach does not impose restrictions on the conclusion of smart contracts, and the use of blockchain technology does not contradict the requirements of the Civil Code of the Russian Federation for the execution of a transaction in writing.

Consider the possibility of using smart contract technologies in concluding and executing a government contract based on its terms.

The self-sufficiency of a smart contract leads to its permanence, a condition that could fully ensure that the contract system in the area of procurement is consistent with the terms and conditions of government contracts. The logic is understandable for the purchaser to make advantageous but knowingly impossible terms and then, during the performance of the contract, to change them under plausible pretexts. Moreover, when concluding a State contract, the parties may not derogate from the conditions set out in the draft State contract document competition» [8]. Following the rational conclusions drawn by E.A. Tsaturyan, «the establishment of the requirement of the continuity of the terms of the state contract proves once again that the state is actively fighting corruption, as this is a prerequisite for state stability.» [13]. It should be noted separately that article 34 of the Act on the Contractual System stipulates that no change in the terms of a contract shall be permitted in the conclusion and execution of the contract, except as provided for in article 95 of the same Act. The list of such cases is limited, but gives the parties the right to vary the terms of the contract. It follows that the condition of permanence of a smart contract cannot work in the context of a government contract, as the Contract System Act imposes restrictions on changes in its terms, but does not impose a complete veto on the permanence of its terms. Also, the Act on the Contractual System makes provision for the possible termination of a contract by mutual agreement of the parties or by court order, in particular, the possibility of unilateral waiver of contract under civil law is permitted, which in turn also does not meet the terms of a smart irremovability contract.

The features of a smart contract do not allow the issue of performance to be resolved in the event of force majeure. Thus, in accordance with article 401, paragraph 3, of the Civil Code of the Russian Federation the person who failed or improperly performed the obligation in the conduct of the business is liable unless he proves that proper performance was rendered impossible by force majeure, that is to say extraordinary and unforeseeable circumstances.». This issue became very topical in connection with the spread of coronavirus infection caused by 2019 - n CoV, which is extraordinary and insurmountable, as pointed out by the Ministry of Finance of Russia, the Ministry of Emergency Situations of Russia and the Federal Administrative Agency of Russia. In the event of force majeure, the parties may be exempted from payment of the penalty under the contract if evidence is provided within the prescribed time that the breach occurred due to force majeure (Section 34, Part 9, Contract Act).

An important feature of the smart contract is the protection of information and written terms and conditions of the smart contract, as well as general information about it from third-party persons. The protection of a smart contract implies the limitation of any action by third parties with respect to the contract. The restriction applies to the processing of contract data, the supervision of the content and performance of the contract, as well as active interference in the formation, signing or execution of the contract. The privacy of the contract insulates it from external influences» [1]. The characteristics described above also result in the impossibility of using a smart contract in the conclusion and performance of a
government contract, as this is contrary to the principle of open and transparent contracting in procurement, which provides and grants access to a free-of-charge and free-of-charge information base of the Russian procurement contract system. Functionally, the rigidity of a smart contract is questionable. Traditionally, in the process of concluding a State contract, there is always an opportunity for the parties to negotiate further, to adjust terms or to terminate the contract process altogether, as long as this is not inconsistent with the requirements of the Act on the Contractual System. The Smart Contract does not allow for such a possibility, any change in the procedure is not possible, the stipulated conditions must be met in a clear manner, otherwise sanctions will be imposed on the offending party. For example, if the supplier, by reason of the circumstances (not excluding the force majeure condition), was unable to fully comply with the terms of the smart contract, be it the delivery of the goods or the provision of the service (lack or loss of quality of the goods, the service). The system that is responsible for parameters that do not correspond to the specified points will transfer the information to the Smart Contract. In such a case, the settlement with the vendor would be revised to take into account the adjustment factor defined in the Smart Contract Code. We believe that the features of a smart contract, such as self-service, permanence and security of its terms and data from third parties, do not allow it to be applied in the practice of digitization of a State contract.

4 Conclusions

On the basis of the study, it may be concluded that conditions have been created in the Russian Federation for the digitization of the State contract.

The digitization of the State contract at the present stage consists in the transition of the participants in the process of its conclusion and execution to the electronic circulation of documents. The electronic circulation of documents has made it possible to reduce the distance between the persons interested in its conclusion and execution.

The shortcomings of the created electronic workflow have been identified, which are the lack of automation of contract execution. It is also worth noting that the introduction of the electronic document management system allows great flexibility in the processing and storage of information, but at the same time, the electronic document management system creates new risks, threats of confidentiality. The consideration of the question of ensuring information security in the current context of the digitization of the contracting process should be comprehensive, and we believe that it is a viable topic for future consideration.

In addition to the above, we have identified gaps in the Contractual System Act in terms of regulating the conclusion of agreements to amend or terminate contracts concluded electronically.

Having dealt in this article with the application of smart contract technologies in the conclusion and execution of a public contract, it has been concluded, on the basis of its terms, that it is not possible to apply its technology in the practice of digitization of a public contract.

The following conclusions can be drawn from the above material:

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<td>1</td>
<td>Digitalization of the state contract at the present stage consists in transition of participants of the process of its conclusion and execution on electronic document circulation.</td>
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| 2 | Shortcomings of electronic workflow:  
- no automation of contract execution,  
- risks, threats to privacy. |
The gaps in the Contract System Act relate to the regulation of electronic contracting or termination agreements.

Impossibility of using smart contract technologies in the digitization of public contracts.

Overall conclusion: Conditions have been created in the Russian Federation for the digitalization of the State contract.

Acknowledgement

This work was financially supported by the Grant of the President of the Russian Federation No. NSh-2668-2020.6 ‘National-Cultural and Digital Trends in the Socio-Economic, Political and Legal Development of the Russian Federation in the 21st Century’

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