



NATIONAL RESEARCH UNIVERSITY
HIGHER SCHOOL OF ECONOMICS

Yuliya D. Rodionova

CONFLICT RESOLUTION IN RUSSIAN PUBLIC PROCUREMENT: UNDERSTANDING SUPPLIER STRATEGIES IN A STATE DOMINATED SYSTEM

BASIC RESEARCH PROGRAM

WORKING PAPERS

SERIES: PUBLIC AND SOCIAL POLICY
WP BRP 28/PSP/2020

This Working Paper is an output of a research project implemented within NRU HSE's Annual Thematic Plan for Basic and Applied Research. Any opinions or claims contained in this Working Paper do not necessarily reflect the views of HSE.

CONFLICT RESOLUTION IN RUSSIAN PUBLIC PROCUREMENT: UNDERSTANDING SUPPLIER STRATEGIES IN A STATE DOMINATED SYSTEM²

This paper, based on a large-scale online survey of suppliers conducted by the HSE IIMS in 2017, analyzed various conflict resolution strategies in public procurement. The specific feature of this sphere is the presence of the state as the dominant party in the contractual relationship, and the resulting differences in assessing the chances of protecting one's interests in court, as well as the effectiveness of judicial conflict resolution mechanisms. At the same time, this paper proceeded from the fact that suppliers differ not only in their practice of resolving conflict situations after the conclusion of a contract but also in the type of behavior that determines the choice of each strategy. The survey results showed that the majority of suppliers prefer to resolve conflicts in public procurement using an out-of-court negotiation with procurers, while only 31% of respondents resort to judicial proceedings. At the same time, suppliers potentially involved in informal relations with procurers, are less likely to go to court and less often use negotiations. The paper will provide a possible explanation for the revealed patterns in the behavior of suppliers.

JEL Classification: H57, D74

Keywords: public procurement; conflict resolution; negotiations; supplies; procurer.

¹ National Research University Higher School of Economics, Institute for Industrial and Market Studies, Research Fellow, E-mail: yrodionova@hse.ru

² The paper was prepared as part the project "The behavior of economic agents in public procurement and the development of enterprises in transition economies" with support of the HSE Program for Basic Research in 2020.

Introduction

Public procurement today is a vital component of developed and developing economies, accounting for an average 15-20% of GDP in costs (*Thai, 2001; Lewis and Bajari, 2011; OECD, 2015*), and in some developing countries such as Angola and Eritrea, reaching 26% and 33% (*Djankov et al., 2016*). OECD countries spend about 13% of their GDP on public procurement, which on average makes up 29% of their total public expenditure (*OECD, 2015*). According to the Unified Information System, the total value of procurement made in Russia in 2018, including procurement by particular types of legal entities, amounted to 24.5 billion rubles (24% of the GDP in current prices).

The issue of public procurement efficiency is becoming an important reform priority in many countries, especially where there is a restricted budget. At the same time, similar to other state regulation tools, the extended use of public procurement creates conditions for manifestations of all sorts of unfair practices by the participants and leads to conflicts between them. Thus, the number of conflicts in public procurement registered in Russia in recent years has continued to grow. Official statistics of the Justice Department show that the number of public procurement-related conflicts has more than doubled during the last several years – from 8,000 in 2015 to 18,000 in 2018.³

Conflicts between participants in public procurement can arise at the stage of preparation, bid evaluation, contract award, or in the post-contracting period. Complaints filed to the Russian Antimonopoly Service, seek to eliminate violations in the process of selecting suppliers or drawing up initial procurement documents (selection criteria, technical documentation, etc.). If a conflict breaks out after the conclusion of a contract, the suppliers can apply to the court (Art. 105 of the Law on the Contract System № 44-FZ) or resolve the conflict without going to court using the mechanism of negotiations with the procurers.

Previous studies revealed that Russian companies do not refuse the possibility of going to court but prefer out-of-court conflict resolution methods (*Hendley, Murrell and Ryterman, 2000; Dolgopyatova et al., 2004; Yakovlev, 2008*). However, although there are studies identifying conflict and dispute resolution practices in contractual relations in various industrial sectors (see, e.g., *Bigsten et al, 2000; Chong and Mohamad Zin, 2012; Lee et al., 2016*), it was not possible to find any research on conflict resolution practices in public procurement or empirical proof of any relation between the types of suppliers' behavior patterns and their behavior strategies in conflict situations.

³ See: Legal Statistics of the Russian Supreme Court Justice Department (<http://www.cdep.ru/index.php?id=5> – Accessed on 03.10.2019)

A specific feature of public procurement is that one of the parties involved in the contractual relations is the state, with a different set of vested rights and obligations (clause 8 Art. 3 of the Law on the Contract System). Previous studies have highlighted considerable differences in the estimates of the chances of having one's rights protected in court if the respondent is a public authority rather than a private organization (*Frye, 2002; Dolgopyatova et al., 2004*), which casts a long shadow on the efficiency of the judicial conflict resolution mechanism. From the perspective of the institutional theory, the absence of efficient conflict resolution mechanisms leads to insufficient protection of ownership rights (*Tambovtsev, 2006*), and therefore, is capable of reducing motivation for participation in public procurement.

This paper is focused on conflict resolution strategies in public procurement in the post-contracting period when the parties can both apply to the court or resolve the conflict through negotiations. The study is based on the findings of a large-scale survey of suppliers conducted in 2017. The respondents were asked to assess how many times per year, on average, their companies had to apply to the court and conduct negotiations with procurers after the conclusion of a contract in 2014-2015. To characterize the identified conflict resolution strategies, the respondents' answers to questions about various problematic situations, and practices of informal relations were additionally used. The typology of suppliers' behavior based on the explanations of the practice of the predetermined choice of suppliers described by *Yakovlev, Tkachenko and Rodionova (2019)* was used to identify different types of suppliers.

The survey results have shown that negotiations are the most preferred way to resolve conflicts with a procurer in public procurement. Moreover, the conflict resolution method depends on the type of supplier behavior. The results showed that suppliers that are potentially involved in public procurement, that "justify" the existing practice of a predetermined choice of suppliers, less frequently apply to the court as a formal institution or use negotiations to resolve conflicts.

The paper has the following structure. Part 1 is an overview of previous literature. Part 2 briefly describes the methodology and the survey data, and part 3 presents the results. The main conclusions and recommendations are formulated in the conclusion.

1. Literature Overview

Conflicts today are part of the everyday reality of modern organizations. Conflicts need to be resolved with respect to various forms of contractual relations: inter-firm, labor, educational, insurance services, etc. Whenever there is a conflict situation, the parties can apply to the court or use alternative conflict resolution methods (*Colvin et al., 2006; Lipsky et al.,*

2015). Such out-of-court conflict resolution strategies generally include negotiations, mediation and arbitration (or arbitral authority), as well as all sorts of hybrid mechanisms (see, e.g., *Knudsen and Balina, 2014; Menkel-Meadow, 2015; Lee et al., 2016*).

The judicial system includes a system for monitoring compliance with general rules that shape behavior after the conclusion and execution of contracts, encourage parties to fulfill their contractual obligations, and punish for noncompliance (*Cooter and Rubinfeld, 1989; Llewellyn, 1931*). Litigation is a more formalized and regulated approach to conflict resolution (*Shavell, 1995*), and the information presented in court is often publicly disclosed. Alternative conflict resolution is practiced out of court, in settings less restricted by rules and regulations (*Bush and Folger, 1994*). These procedures are less formalized and less costly (*Brett, Barsness and Goldberg, 1996*), and allow information and decisions to remain confidential, as the parties may wish. Previous literature emphasizes numerous advantages of alternative conflict resolution strategies as opposed to a public trial (*Cheung and Suen, 2002; Harmon, 2003*).

Many studies contain a qualitative analysis of the choice of various conflict resolution methods (*Chan et al., 2006; Sander and Rozdeiczer, 2006; Cheung, 1999; Cheung and Suen, 2002; Chong and Mohamad Zin, 2012*). Researchers try to evaluate the relative cost of a method and its flexibility, the need to continue business relations between the conflicting parties and the level of control, etc. Some papers focus specifically on evaluating the transaction costs of each conflict resolution method (*Gebken and Gibson, 2006; Lu et al., 2015*).

Conflicts are traditionally modeled in previous literature in the form of a two-stage procedure where the parties first try to negotiate a solution and if they fail they go to court (*Cooter and Ulen, 2012*). Presumably, the parties would agree to pre-trial negotiations in order to avoid litigation expenses. Indeed, legal action is costly in terms of time and finance (*Spier, 2007*). In addition, the amount of such costs directly depends on the size of the firm. Considering a company's turnover, fixed litigation costs would be less significant for large companies than for small businesses (*Coviello et al., 2018*).

The efficiency of the legal mechanism in many countries has been decreasing during the past few decades due to increased numbers of court hearings and, consequently, longer delays in the issuance of awards (*Deffains et al., 2017*). Moreover, the efficiency of the court system may differ both within one country (*Coviello et al., 2018*) and between countries with different legal systems. The level of procedural "formalism" is higher in civil law countries than in common law countries and is usually connected with a longer average length of litigation, a lower proportion of just sentences and a higher level of corruption (*Djankov et al., 2003*).

Another argument in favor of the choice of alternative conflict resolution methods is the imperfect regulatory environment, mistrust towards state institutions (*Hendley, 1999*), and a lack

of independent courts (*Yakovlev, 2008; Budylin, 2012; Khanin, 2018*). Russia has always been characterized by a higher level of mistrust towards the judicial system (*Frye and Shleifer, 1997; Djankov et al., 2003*). According to the latest information of ANO Levada-Center, most of the respondents (58%) noted in 2018 that Russian courts are completely untrustworthy.⁴ The findings of a survey conducted by ANO Independent Research Center demonstrated that exactly one half of the questioned Russians do not trust the judicial system to some or other degree.⁵ In addition, over half of respondents (57%) make claims about the level of objectivity and impartiality of the courts.

Some previous studies demonstrated that Russian companies assess their chances of having their interests protected in court as rather poor, especially if the respondent is a public authority. In the early 2000s, only 29% of respondents expected successful outcomes of their litigation with the state vs. 70% if their opponent was another legal entity (*Dolgopyatova et al., 2004*). Similar results were shown in a survey conducted by T. Frye: 49% for conflicts with the state and 68% for conflicts between companies (*Frye, 2002*). In a survey conducted in 2007, only 39% of respondents positively evaluated the probability of their rights being protected in disputes against the state compared to 83% in disputes with private counterparties (*Yakovlev, 2008*).

As far as the Russian context is concerned, the greatest interest for the purposes of analyzed survey is posed by the paper Hendley, Murrell and Ryterman (2000), including an empirical study of mechanisms used by Russian industrial enterprises for resolving conflicts with other companies. The survey of 328 firms showed that Russian companies do not refuse to use the court system for conflict resolution purposes, but they prefer to settle conflicts without the involvement of third parties (public or private). The study by Dolgopyatova et al. (2004) produced similar results with respect to the preferred methods of dispute resolution by open joint-stock companies: 80% of respondents said they preferred an out-of-court conflict resolution strategy such as negotiations and only 51% preferred court appeals.

However, despite the availability of studies of conflict resolution in contractual relations in different economic sectors (see, e.g., *Bigsten et al., 2000; Chong and Mohamad Zin, 2012; Lee et al., 2016*), it was not possible to find any conflict resolution strategies in public procurement.⁶ The specific of this sphere is the involvement of the state as the dominant party to contractual relations and the resulting differences in the efficiency of different conflict resolution

⁴See: Levada-Center. Institutional Trust // Press Release dd. 04 October 2018 (<https://www.levada.ru/2018/10/04/institutsionalnoe-doverie-4/> - Accessed on 03 October 2019)

⁵ See: Russians' Attitude to the Judicial System (Findings of a Russia-wide Survey) // Independent Research Center. 2018. (<http://исследовательский-центр.рф/otnoshenie-rossiyan-k-sudebnoj-sisteme-itogi-vsereossijskogo-oprosa/> - Accessed on 03 October 2019)

⁶ Some papers demonstrated a connection between the types of the used procurement method and the types of disputes (*Colin et al., 1996; Mante et al., 2012*).

strategies. This paper proceeds from the assumption that suppliers differ, not only by their conflict resolution practices in public procurement but also by the type of behavior determining by their attitude to the practice of predetermined choice of suppliers.

Building upon the available literature, this analysis proposes the following hypothesis:

Hypothesis 1: in public procurement suppliers will prefer negotiation approaches to conflict resolution rather than litigation.

Hypothesis 2: suppliers that justify the existing practice of a predetermined choice of suppliers, and therefore potentially could be involved in it, would use judicial conflict resolution approaches to protect their rights much more seldom because of already established informal relations.

It can be assumed that previously developed informal relations lead to fewer conflicts after the conclusion of a contract or to less disclosure in the public space. Involvement in informal practices deprives the parties of the grounds for applying to the court as a formal institution, and the detection of unlawful conduct entitles the authorities to press official charges for the violation of effective regulations against the claimants themselves.

2. Survey Data and Methodology

This study is based on the findings of a large-scale online survey of suppliers conducted in 2017. The sample was generated with the use of e-mail addresses of public suppliers taken from contract information cards covering the period from January 2014 to March 2016 available on the official website www.zakupki.gov.ru. To increase the sample quality and exclude respondents with the insignificant experience only those mentioned at least 10 times during the period in question were selected from the overall body of data, which resulted in actual sample bias towards more experienced suppliers. Thus a database of approximately 346,000 respondents was formed, and in January 2017 it was used for the bulk emailing of questionnaires. A total of 721 correctly filled out questionnaires were received which generated the survey results.

Most suppliers that took part in this survey were private Russian firms. The majority of respondents were suppliers operating in the construction (27%) and trade (24%) sectors. The supplier sample was biased in terms of size toward companies with a headcount of up to 20 persons – they accounted for 69% of respondents. Companies with a headcount exceeding 250 persons made up only 3% of the sample. The sample had an almost equal representation of suppliers with an average annual volume of concluded public contracts exceeding Rub 1 million (36%) and under Rub 1 million (40%). A quarter of respondents (24%) were independent entrepreneurs. Slightly less than half of the suppliers (41%) had experience with previous public

procurement legislation. Over 60% of the respondents were males. The comparisons of this sample with the population are given in Table A1 in the Appendix.

Conflicts in the period after the conclusion of public procurement contracts are resolved in court or through negotiations. The respondents were asked to assess how many times per year on average their companies had to apply to the court or use negotiations with the procurer in the post-contracting period in 2014-2015. Their responses helped to identify the following suppliers' strategies: "Conflict-Free" (did not use any conflict resolution tool), "Negotiations" (used only negotiations with the procurer), "Litigation" (used only court appeals), "Hybrid" (used both negotiations and court appeals). To characterize the identified conflict resolution strategies, the respondents' answers to questions about various problematic situations and practices of informal relations in public procurement were additionally used.

To classify different types of suppliers' behavior the further analysis was proceeded from their attitude to the practice of predetermined choice of suppliers presented in the paper (Yakovlev, Tkachenko and Rodionova, 2019). This practice of "predetermined choice" when the customer determined the supplier before the procurement procedure, is widespread, but illegal and potentially liable to penalties (Avdasheva et al., 2020). As the practice of predetermining the choice of suppliers by procurers is against the law, the authors could not include a direct question about it. For this reason, to determine the different behavioral patterns of suppliers, the authors used more neutral question about the reasons for choosing the strategy of contracting predetermined suppliers. For this purpose, the respondents were asked to choose no more than three of the eight options offered in the questionnaire:

1. Desire to ensure a guaranteed performance of the contract
2. Desire to ensure a quality supply of goods/works/services
3. Lack of competition among other honest suppliers of required goods/works/services
4. Desire to avoid price dumping
5. Instructions/recommendations from higher authorities
6. Informal relations with suppliers
7. Imperfection of existing approaches to requirements, criteria, bid evaluation
8. Other (specify).

The authors presumed that different explanations may characterize the differences in supplier behavior patterns. In this regard, the authors identified three groups of suppliers offering different explanations for the reasons for predetermining the choice of public contract executors (see Table 1) In this classification, one group of suppliers choose only options justifying the practice of repeated contractual relations (desire to ensure a guaranteed performance of the contract and a quality supply of goods/works/services). As these respondents "justify" the

existing practice of a predetermined choice of suppliers the authors supposed that they could be involved in informal relations with procurers. Other type of suppliers explains the practice of a predetermined choice of suppliers only with options accusing the procurers (informal relations with suppliers). The third “realistic” type of suppliers accept both “justifying” and “accusatory” explanations of the prevalence of the practice of informal relations. A relatively small share of respondents (4% of the sample) chose another behavioral pattern and we, therefore, excluded this category from the further analysis. Further analysis showed that suppliers' answers to other questions of the questionnaire also varies strongly depending on their reference to one of the identified groups.

Tab. 1. Typology of supplier behavior in public procurement depending on the combination of reasons for choosing the strategy of contracting with predetermined suppliers

Supplier's type	Combination of reasons	Number of respondents	Share of respondents (%)
“Justifying” type	Desire to ensure a guaranteed performance of the contract and a quality delivery without informal relations	238	32.6
“Realistic” type	Desire to ensure a guaranteed performance of the contract and a quality delivery as well as informal relations	208	28.5
“Accusatory” type	Only informal relations without desire to ensure guaranteed performance of the contract and a quality delivery	252	34.6
	Other combinations of reasons	31	4.3

In order to identify the characteristics of suppliers abiding by different behavior patterns for resolving conflicts, the first step of the empirical part of this study was to make a separate evaluation of the model with the dependent variables being the fact of court appeals and negotiations with the procurer in the post-contracting period. Control variables used in all models were the size of the company (measured by headcount and the number of supplies under public contracts), the sector, the federal district, the respondent's sex, and experience with previous public procurement legislation. It is often impractical for small enterprises to seek the protection of their rights in court as litigation costs may turn out much higher than the potential benefit. It was assumed that the difference between litigation costs and the potential benefit depends on the supplier's sector and location. The second step was to assess the hybrid supplier strategies presented in Table 2 based on a multinomial model to check the sustainability of the obtained results. The description of the independent and control variables used for the models are given in Tables A2-A3 in the Appendix.

3. Research Findings

3.1. Descriptive analysis

According to the results of the conducted survey, in 2014-2015 the majority of suppliers (64%) preferred the mechanism of negotiations for resolving conflicts with procurers, and only 31% applied to the courts. Responses to the question about conflict resolution methods identified combined strategies used by suppliers, as presented in Table 2.

Tab. 2. Typology of suppliers depending on the method of conflict resolution with procurers

		Negotiation		Total
		No	Yes	
Courts	No	“Conflict-Free” 199	“Negotiations” 227	426
	Yes	“Litigation” 26	“Hybrid” 167	193
Total		225	394	619

Table 3 shows that 37% of suppliers prefer resolving public procurement-related conflicts exclusively by negotiation while 4% use only the judicial system without resorting to the strategy of negotiations. The obtained results confirm the first hypothesis. It was assumed from the suppliers’ perspective the strategy of negotiation is more practical due to the high costs of litigation in terms of time and finance (*Spier, 2007*).

Approximately a third of respondents (32%) do not use any conflict resolution strategies. Probably those suppliers seldom encounter conflicts in their business practice, and if they do, they prefer not to report them. A considerable part of suppliers (27%) prefers a combined strategy including both litigation (court appeals) and out-of-court (negotiations with procurers) conflict resolution strategies. This type of supplier can use negotiation and litigation strategies in respect of a specific conflict or use both strategies at the same time. For example, they can try to resolve a conflict through negotiations, and if they fail, they would apply to the court (*Hendley, Murrell and Ryterman, 2000; Cooter and Ulen, 2012*).

To verify the sustainability of identified conflict resolution strategies the next step was to analyze how they are connected with the suppliers’ responses to other questions in the questionnaire. In particular, the average share of respondents’ assessment of procurers orientated on a predetermined choice of suppliers, and the share of respondents who evaded this question,

in respect of each strategy were considered. Table 3 shows that 21% of “Conflict-free” suppliers evaded the question about the prevalence of informal relations in public procurement, as compared to 8-10% in the other two groups. The average assessment of the share of procurers orientated on a predetermined choice of suppliers among respondents who did provide an answer is 48% (vs. 54% for suppliers adhering to the strategy of “Negotiations” and 56% proponents of a “Hybrid” strategy).

Tab. 3. Average share of procurers admittedly orientated on contracting predetermined suppliers depending on the conflict resolution strategy, as % of responses

Conflict resolution strategy	Average share of public procurers for each identified group of respondents admittedly oriented toward predetermined supplier contracting (%)	No answer/refused to answer
“Conflict-free”	47.5	21.1
“Negotiations”	53.8	10.1
“Litigation”	50.8	7.7
“Hybrid”	55.8	8.4

Table 4 and Table 5 show that assessments of the frequency of development of informal relations, and a conflict of interest in suppliers’ practice, also vary depending on the identified conflict resolution strategies. Suppliers, choosing a “conflict-free” strategy, deny the existence of informal relations, and a conflict of interest in the practice of public procurement more often than others. Specifically, 20% of them have never encountered informal relations, and 51% –a conflict of interest. Respondents adhering to the “hybrid” conflict resolution strategy have to deal with the aforementioned situations more often than others: 48% with informal relations and 16% with a conflict of interest. Similar results were produced for assessments of the frequency of encountering problems such as delays in payment and annulment of a contract.

Tab. 4. Assessments of the frequency of informal relations in the practice of public procurement, as % of responses

Conflict resolution strategy	Often	Sometimes	Seldom	Never
“Conflict-free”	29.3	26.6	23.9	20.2
“Negotiations”	37.8	32.4	21.2	8.6
“Litigation”	28.0	36.0	20.0	16.0

"Hybrid"	47.9	33.1	12.3	6.7
----------	------	------	------	-----

Tab. 5. Assessments of the frequency of a conflict of interest in the practice of public procurement, as % of responses

Conflict resolution strategy	Often	Sometimes	Seldom	Never
"Conflict-free"	4.5	11.9	32.8	50.8
"Negotiations"	9.8	17.3	40.2	32.7
"Litigation"	8.0	28.0	28.0	36.0
"Hybrid"	15.5	21.1	37.9	25.5

The next step was to consider the connection between the conflict resolution strategies and the typology of supplier behavior in public procurement, presented in Table 2. Fig. 1 shows that "justifying" suppliers prefer a conflict-free strategy; suppliers of "accusatory" type of behavior prevail in the hybrid strategy, and all main types of suppliers are represented in the negotiation strategy in an equal proportion. In addition, the share of respondents, evading the question about the frequency of using different conflict resolution strategies, is higher among respondents with a "justifying" behavior type, that justifies the existing practice of a predetermined choice of suppliers and potentially has stable informal relations with procurers.

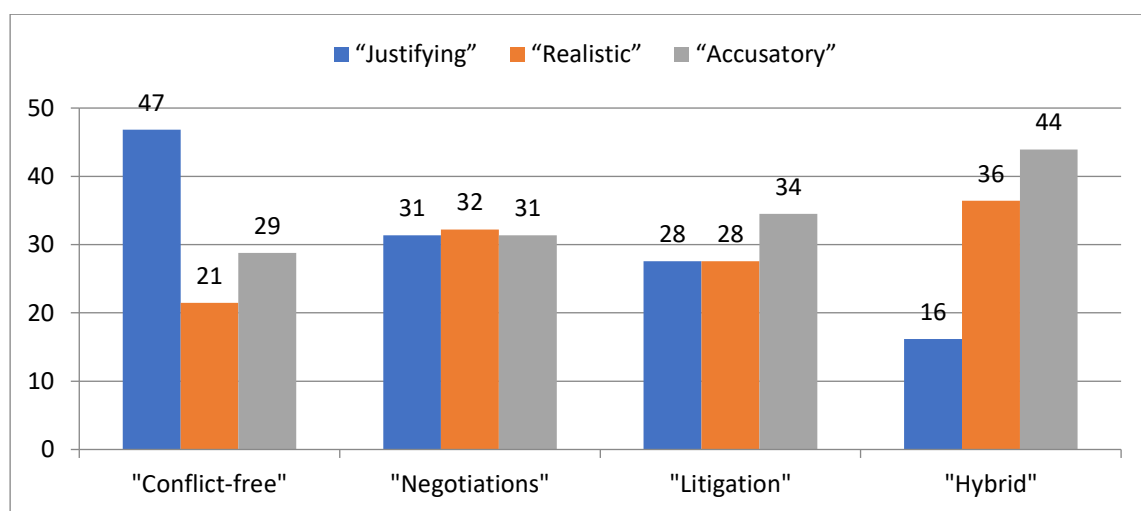


Fig. 1. Conflict resolution strategies involving procurers depending on the type of supplier behavior, as % of responses

3.2. Results of econometric analysis

In order to explain different conflict resolution mechanisms (courts, negotiations, combination of courts and negotiations), the probit-models in which the dependent variable was

the fact of court appeals and negotiations with procurers in the post-contracting period was evaluated. The models looked as follows:

$$P(Y_i = 1) = F(x_i' \beta), \quad (1)$$

$$x_i' \beta = \beta_0 + \beta_1 Type_i + \beta_2 Contract_type_i + \gamma X_i + \varepsilon_i, \quad (2)$$

where the variable $Type_i$ ($i=1,3$) was the type of supplier behavior, the variable $Contract_type_i$ ($i=1,3$) – the type of supplier depending on the average annual amount of concluded public contracts. The variable X_i was the combination of factors used as controls in the models: federal district, sector, headcount, position and gender of the respondent. The resulting marginal effects are presented in Table 6.

Econometric analysis has shown that the coefficients of the variables “Realistic” type and “Accusatory” type are significant at any reasonable level in both models. Therefore, it can be concluded that suppliers with “Realistic” and “Accusatory” behavior patterns, resort to conflict resolution through court and negotiations more often than suppliers of the “Justifying” type, which substantiates the second hypothesis formulated above. In addition, the results of the analysis show that major companies with large volumes of supplies under public procurement procedures, use litigation as a conflict resolution mechanism more frequently.

Tab. 6. Conflict resolution strategies depending on different supplier characteristics, including their type of behavior in public procurement

The set of variables included in the model	Marginal effects	
	Dependent variable	
	Litigation	Negotiations
Type of behaviour ^{a)}		
“Realistic”	0.177***	0.235***
“Accusatory”	0.242***	0.167***
Type of supplier depending on the average annual amount of concluded public contracts ^{b)}		
Up to Rub 1 million annually	0.0333	0.0316
Over Rub 1 million annually	0.170***	0.0298
Respondent's age ^{c)}		
from 21 to 30 years	0.195***	0.240***
from 31 to 40 years	0.112**	0.711
More than 50 years	-0.0231	-0.0196
Male respondent	0.00764	0.0909**
Other controls	YES	YES

Observations	619	619
--------------	-----	-----

Note:

a) base category - “justifying” behaviour

b) base category - Individual Entrepreneurs

The table shows marginal effects. Robust standard errors are given in brackets. Significance codes: *** p <0.01,

** p <0.05, * p <0.10

Consideration should, however, be given to the fact that in this case, a univariate analysis was conducted, as the model with the fact of court appeals and the model with negotiations with the procurer were analyzed separately. However, it was shown above that suppliers use combined conflict resolution strategies (see Table 2). To check the sustainability of the results combined supplier strategies: “Conflict-free” strategy, as well as “Negotiations,” “Litigation,” and “Hybrid” conflict resolution strategies were further considered.

As in this case, the dependent variable is not dichotomous, as in the case of binary regressions, and has more than two categories, in this analysis a multinomial logistic regression (a multiple-choice model) was used. In a multinomial logistic regression model, a binary logistic regression equation is set up for each category of the dependent variable. One of the categories of dependent variables is taken as a benchmark and all other categories are compared to it. In this case, the zero category (“Conflict-free” strategy) was taken as the benchmark and all other categories were compared to it.

As the dependent variable includes four categories (with the zero category being the benchmark), to establish the probability of the object of the study falling into one of these categories, the following group of equations was received:

$$\ln \frac{P(category=1)}{P(category=0)} = \beta_{10} + \beta_{11}Type_i + \beta_{12}Contract_type_i + \gamma X_i, \quad (3)$$

$$\ln \frac{P(category=2)}{P(category=0)} = \beta_{20} + \beta_{21}Type_i + \beta_{22}Contract_type_i + \gamma X_i, \quad (4)$$

$$\ln \frac{P(category=3)}{P(category=0)} = \beta_{30} + \beta_{31}Type_i + \beta_{32}Contract_type_i + \gamma X_i, \quad (5)$$

where the variable $Type_i$ ($i=1/3$) is the type of a supplier’s behavior, the variable $Contract_type_i$ ($i=1,3$) - the type of supplier depending on the average annual amount of concluded public contracts. The variable X_i stands for the combination of factors used as controls in the models: federal district, sector, headcount, position and gender of the respondent. The resulting marginal effects are presented in Table 7.

Tab. 7. Conflict resolution strategies depending on different supplier characteristics, including their type of behavior in public procurement

The set of variables included in the model	Marginal effects		
	Dependent variable		
	“Negotiations”	“Litigation”	“Hybrid”
Type of behaviour ^{a)}			
“Realistic”	0.20***	0.063	0.32***
“Accusatory”	0.080*	0.12*	0.31***
Type of supplier depending on the average annual amount of concluded public contracts ^{b)}			
Up to Rub 1 million annually	0.068	0.073*	0.014
Over Rub 1 million annually	0.017	0.19**	0.095*
Respondent’s age ^{c)}			
from 21 to 30 years	0.24***	0.21*	0.30***
from 31 to 40 years	0.052	0.080	0.085
More than 50 years	-0.016	-0.024	-0.079
Male respondent	0.086	-0.31	0.057
Other controls	YES	YES	YES
Observations	399	210	348

Note:

a) base category - “justifying” behaviour

b) base category - Individual Entrepreneurs

The table shows marginal effects. Significance codes: *** p <0.01, ** p <0.05, * p <0.10

The conducted analysis confirmed the previous findings. Suppliers of the “justifying” type (that “justify” the existing practice of a predetermined choice of suppliers and therefore could be involved in informal relations with procurers) seldom resolve conflicts through litigation and negotiations.⁷

Conclusion

Conflicts in public procurement can originate both from honest and dishonest practices of suppliers, leading to the obstruction of contract performance. But how do suppliers resolve conflicts, and does the conflict resolution method related with their type of behavior? Previous literature shows that Russian companies do not refuse from using litigation but prefer out-of-court conflict resolution strategies (*Hendley, Murrell and Ryterman, 2000; Dolgopyatova et al., 2004; Yakovlev, 2008*).

⁷ Low significance of coefficients in the second category is explained by a small number of respondents abiding by the “litigation” strategy.

This paper was based on the findings of a large-scale online survey of suppliers, conducted in 2017, to analyze for the first time the conflict resolution strategies in public procurement. The specific focus was on the post-contracting conflict resolution strategies when the parties could apply to the court or resolve the conflict through negotiations with the procurer.

The survey results showed that the majority of suppliers prefer to resolve conflicts in public procurement using an out-of-court negotiation with procurers, while only 31% of respondents resort to judicial proceedings. In addition, 37% of respondents prefer resolving public procurement conflicts exclusively by negotiations, and just 4% use only the judicial system. Approximately one-third of the respondents abide by the “conflict-free” strategy, and a slightly lower number of suppliers (27%) use a hybrid strategy that includes both methods of conflict resolution in public procurement.

The paper also revealed that suppliers potentially involved in public procurement, that “justify” the existing practice of a predetermined choice of suppliers, are less likely to go to court and less often use negotiations to resolve conflicts in public procurement. This can be explained by the fact that such suppliers have less cause for conflict and even less reason for its public disclosure. The existence of sustainable informal practices deprives their participants of formal grounds for applying to the court, and the detection of malpractices can result in formal charges being brought against them for a violation of effective regulations.

As with the majority of studies, this research, however, is subject to several limitations. Firstly, due to the limited number of questions it was not possible to analyze how the price of the contract and, accordingly, the estimated supplier’s costs affect the post-contract conflict resolution phase. In addition, conflict resolution strategy may vary significantly for contracts concluded based on the results of competitive procedures and of procurements from a single supplier. Secondly, due to the anonymity of the questionnaire, it was impossible to trace the procurer-supplier history and consider the impact of relational contracts on the choice of conflict resolution strategy. However, as a broad starting point, this study suggest value in pursuing these questions further.

A lack of empirical studies of conflict resolution strategies is a problem facing most transitional economies, including Russia. Therefore, understanding the strategies of regulating conflicts in the specific sphere of public procurement, where the state is one of the parties to contractual relations in a poor institutional environment, can be useful for improving the measures of raising efficiency within public procurement systems in other developing countries.

References

- Avdasheva S. B., Yakovlev A. A., Golovshchinsky K. I., Shamrin A. T., Podkolzina E. A., Orlova Yu. A., Korneeva D. V., Tkachenko A. V., Yusupova G F., Balaeva O.N., Demidova O.A., Rodionova Yu. D., Kravtsova M.V., Chasovsky A.V., Yashischens V., Dashkov S. B. Regulated procurement in Russia: how to increase the stimulating role of spending budgets and regulated companies. M.: HSE Publishing House, 2020. (In Russian).
- Bigsten, A., Collier, P., Dercon, S., Fafchamps, M., Gauthier, B., Gunning, J. W. and Teal, F. (2000). Contract flexibility and dispute resolution in African manufacturing. *The Journal of Development Studies*, 36(4), pp. 1-37.
- Brett, J. M., Barsness, Z. I. and Goldberg, S. B. (1996). The effectiveness of mediation: An independent analysis of cases handled by four major service providers. *Negotiation journal*, 12(3), pp. 259-269.
- Budylin, S. L. (2012). What does the court do? Lawmaking of courts and judicial precedent in Russia. *Law*, (10), pp. 92-110. (In Russian).
- Cheung, S. O. and Suen, H. C. (2002). A multi-attribute utility model for dispute resolution strategy selection. *Construction Management & Economics*, 20(7), 557-568.
- Chong, H. Y. and Mohamad Zin, R. (2012). Selection of dispute resolution methods: factor analysis approach. *Engineering, Construction and Architectural Management*, 19(4), pp. 428-443.
- Colin, J., Langford, D. and Kennedy, P. (1996) The relationship between construction procurement strategies and construction contract disputes. Proceedings of the CIB W-92 Procurement Symposium, North Meets West, 14-16 January, Durban, South Africa.
- Colvin, A. J., Klaas, B. and Mahony, D. (2006). Research on alternative dispute resolution procedures. In D. Lewin (Ed.) *Contemporary issues in employment relations*. Champaign, IL: Labor and Employment Relations Association, pp. 103-147.
- Cooter, R. and Ulen, T. (2012). *A Review of Microeconomic Theory. Law and Economics* (Sixth Edition), Boston, Mass.; London: Pearson Education International.
- Cooter, R. D. and Rubinfeld, D. L. (1989). Economic analysis of legal disputes and their resolution. *Journal of Economic Literature*, 27(3), pp. 1067-1097.
- Coviello, D., Moretti, L., Spagnolo, G. and Valbonesi, P. (2018). Court efficiency and procurement performance. *The Scandinavian Journal of Economics*, 120(3), pp. 826-858.
- Deffains, B., Demougin, D. and Desrieux, C. (2017). Choosing ADR or litigation. *International Review of Law and Economics*, 49, pp. 33-40.

Djankov, S., La Porta, R., Lopez-De-Silanes, F. and Shleifer, A. (2003). Courts. *Quarterly Journal of Economics*, 118, pp. 453- 517.

Djankov, S., Islam, A. and Saliola, F. (2016). How large is public procurement in developing countries. Washington, DC: Peterson Institute for International Economics.

Dolgopyatova T.G., Kuznetsov B.V., Simachev Yu.V. and Golikova V.V. (2004). Demand for law in the field of corporate governance: economic aspects / Ed.: A. A. Yakovlev. M.: The Higher School of Economics Publishing House. (In Russian).

Frye, T. (2002). The two faces of Russian courts: evidence from a survey of company managers. *East European Constitutional Review*, 11, pp. 125-129.

Frye, T. and Shleifer, A. (1997). The Invisible Hand and the Grabbing Hand. *American Economic Review*, 87, pp. 354-358.

Gebken, R. J. and Gibson, G. E. (2006). Quantification of costs for dispute resolution procedures in the construction industry. *Journal of professional issues in engineering education and practice*, 132(3), pp. 264-271.

Harmon, K. M. (2003). Resolution of construction disputes: A review of current methodologies. *Leadership and Management in Engineering*, 3(4), pp. 187-201.

Hendley, K. (1999). Rewriting the rules of the game in Russia: the neglected issue of the demand for law. *East European Constitutional Review*, 8, pp. 89-96.

Hendley, K., Murrell, P. and Ryterman, R. (2000). Law, relationships and private enforcement: Transactional strategies of Russian enterprises. *Europe-Asia Studies*, 52(4), pp. 627-656.

Knudsen, L. F. and Balina, S. (2014). Alternative dispute resolution systems across the European Union, Iceland and Norway. *Procedia-Social and Behavioral Sciences*, 109, pp. 944-948.

Khanin, G.I. (2018). Institutional conditions for the development of the Russian economy in 1999–2016. *Journal of Institutional Studies*, 10 (1), pp. 59-79. (In Russian).

Lee, C. K., Yiu, T. W. and Cheung, S. O. (2016). Selection and use of alternative dispute resolution (ADR) in construction projects — Past and future research. *International Journal of Project Management*, 34(3), pp. 494-507.

Lewis, G. and Bajari, P. (2011). Procurement contracting with time incentives: Theory and evidence. *The Quarterly Journal of Economics*, 126(3), pp. 1173-1211.

Lipsky, D. B., Seeber, R. L. and Avgar, A. C. (2015). From the negotiating arena to conflict management. *Negotiation Journal*, 31, pp. 405-413

Lu, W., Zhang, L. and Pan, J. (2015). Identification and analyses of hidden transaction costs in project dispute resolutions. *International Journal of Project Management*, 33(3), pp. 711-718.

Mante, J., Ndekugri, I., Ankrah, N. and Hammond, F. (2012). The influence of procurement methods on dispute resolution mechanism choice in construction. In: Smith, S.D (Ed) Procs 28th Annual ARCOM Conference, 3-5 September 2012, Edinburgh, UK, Association of Researchers in Construction Management, pp. 979-988.

Menkel-Meadow, C. (2015). Mediation, arbitration, and alternative dispute resolution (ADR). In International Encyclopedia of the Social and Behavioral Sciences, Elsevier Ltd.

OECD (2015), State-Owned Enterprises in the Development Process, OECD Publishing, Paris.

Sander, F. E. and Rozdeiczer, L. (2006). Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation Centered Approach. In Harvard Negotiation Law Review 11(1), 2006.

Spier, K. E. (2007). Litigation. *Handbook of law and economics*, 1, pp. 259-342.

Tambovtsev, V. (2006). Improving the protection of property rights –unused reserve of Russia's economic growth. *Voprosy Ekonomiki*, 1, p. 22-38. (In Russian).

Thai, K. V. (2001). Public procurement re-examined. *Journal of public procurement*, 1(1), pp. 9-50.

Yakovlev, A.A. (2008). Legal institutions in Russia in 2000-2007: a view from the business side. *Social Sciences and Contemporary World*, (4), pp. 21-37. (In Russian).

Yakovlev, A., Tkachenko, A., & Rodionova, Y. (2019). Who Is Inclined to Hide the Truth: Evidence from Public Procurement. *International Journal of Public Administration*, pp. 1-12.

Tab. A1. Comparison of the sample and the general population by areas of activity, federal district, number of employees and the share of individual entrepreneurs

Parameters		Suppliers sample		General population	
		Quantity	%	Quantity	%
Sector (areas of activity)	Construction	194	27,5	72 779	26,1
	Trade	175	23,9	68 533	24,6
	Industry	56	7,7	22 274	8,0
	Others	307	41,9	115 253	41,3
	Total	732	100,0	278 839	100,0
Federal District	Moscow and Moscow region	126	17,7	42 478	15,8
	Central (without Moscow and the Moscow region)	111	15,6	36 614	13,6
	Northwestern	81	11,3	34 294	12,8
	South and North Caucasus	95	13,2	31 597	11,8
	Volga region	135	18,9	47 820	17,8
	Ural region	59	8,3	25 797	9,6
	Siberian and Far Eastern	108	15,1	50 188	18,7
	Total	714	100,0	268 531	100,0
Number of employees	Up to 10 employees inclusive	320	44,1	84 672	41,3
	11-100 employees	354	48,8	107 182	52,3
	More than 100 employees	51	7,0	132 59	6,5
	Total	725	100,0	205 113	100,0
Share of individual entrepreneurs	Individual entrepreneurs	171	23,4	59 311	21,7
	Total	732	100,0	273 309	100,0

Tab. A2. Description of the main variables for analyzing conflict resolution strategies

Characteristic of respondent/ organization/ region	Description	Observation	%	P-value
Type of behaviour	“Justifying”	238	34,1	0,000
	“Realistic”	208	29,8	
	“Accusatory”	252	36,1	
	Total	698	100,0	
Average annual amount	Individual Entrepreneurs	159	22,8	0,007

of concluded public contracts	Up to Rub 1 million annually	283	40,5	
	Over Rub 1 million annually	256	36,7	
	Bcero	698	100,0	
Age	21 to 30 years old	98	14,1	0,065
	31 to 40 years old	228	32,7	
	41 to 50 years old	196	28,1	
	over 50 years old	175	25,1	
	Total	697	100,0	
Gender	Female	278	40,0	0,037
	Male	417	60,0	
	Total	695	100,0	
Position	Specialist (manager)	161	23,6	0,057
	Division head	162	23,8	
	Department head/ deputy CEO	359	52,6	
	Total	682	100,0	
Experience with previous legislation on public procurement	No	283	41,1	0,206
	Yes	405	58,9	
	Total	688	100,0	
Number of employees	Up to 10 employees inclusive	307	44,0	0,407
	11-20 employees	171	24,5	
	21-50 employees	100	14,3	
	More than 50 employees	120	17,2	
	Total	698	100,0	
Sector (areas of activity)	Construction	184	26,5	0,001
	Trade	168	24,2	
	Industry	53	7,6	
	Others	290	41,7	
	Total	695	100,0	
Federal District	Moscow and Moscow region	123	18,0	0,312
	Central (without Moscow and the Moscow region)	104	15,2	
	Northwestern	78	11,4	

	South and North Caucasus	89	13,0	
	Volga region	130	19,0	
	Ural region	56	8,2	
	Siberian and Far Eastern	104	15,2	
	Total	684	100,0	

Tab. A3. Description of the independent and control variables used for the models

Variable	Description	Observations	Median	Standard deviation
Type of behaviour	“Justifying” (reference group)	698	0,34	0,47
	“Realistic”	698	0,29	0,46
	“Accusatory”	698	0,36	0,48
Average annual amount of concluded public contracts	Individual Entrepreneurs (reference group)	698	0,23	0,42
	Up to Rub 1 million annually	698	0,41	0,49
	Over Rub 1 million annually	698	0,37	0,48
Age	21 to 30 years old	697	0,14	0,35
	31 to 40 years old	697	0,33	0,47
	41 to 50 years old (reference group)	697	0,28	0,45
	over 50 years old	697	0,25	0,43
Gender	1 – Male, 0 - Female	695	0,60	0,49
Position	Specialist (manager) (reference group)	682	0,24	0,43
	Division head	682	0,24	0,43
	Department head/ deputy CEO	682	0,53	0,50
Experience with previous legislation on public procurement	1 – Yes, 0 - No	688	0,59	0,49
Number of employees	Up to 10 employees inclusive (reference group)	698	0,44	0,50
	11-20 employees	698	0,24	0,43
	21-50 employees	698	0,14	0,35
	More than 50 employees	698	0,17	0,38
Sector (areas of activity)	Construction	695	0,26	0,44
	Trade	695	0,24	0,43
	Industry	695	0,08	0,26

	Others (reference group)	695	0,42	0,49
Federal District	Moscow and Moscow region	684	0,18	0,38
	Central (without Moscow and the Moscow region) (reference group)	684	0,15	0,36
	Northwestern	684	0,11	0,32
	South and North Caucasus	684	0,13	0,34
	Volga region	684	0,19	0,39
	Ural region	684	0,08	0,27
	Siberian and Far Eastern	684	0,15	0,36

Contact details and disclaimer

Yuliya Rodionova

Research Fellow, Institute for Industrial and Market Studies,

National Research University Higher School of Economics, Moscow

E-mail: yrodionova@hse.ru

Any opinions or claims contained in this Working Paper do not necessarily reflect the views of HSE.

© Rodionova, 2020