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Killers of the government order: how the business of complainants in the field of government procurement works

The volume of the Russian market for the distribution of state orders in 2017 reached 6.3 trillion rubles. A growing business of professional complainants appeared next to him - people who disrupt public procurement, including for money and in other people's interests

Alexander Kulakov (Photo: Semyon Katz for RBC)

RBC magazine studied this strange market and found a man whom some of its participants call the largest killer of the state order in Russia. He himself calls himself an active member of the ONF in the fight against corruption in public procurement.

43-year-old Nizhny Novgorod resident Alexander Kulakov has been bombarding the Federal Antimonopoly Service (FAS) with complaints about government procurement for almost six years. During this time, he sent about 500 appeals: according to Kulakov himself, purchases worth 400 billion rubles were canceled for them. For comparison: the All-Russian Popular Front (ONF), which launched the project "For Fair Purchases" in September 2013, has since stopped violations in the amount of RUB 290 billion, according to the movement's website. Previously, Kulakov was also a member of the ONF, but then the front disowned him.

The FAS refused to report the statistics of Kulakov's appeals, citing the law on the protection of personal data. RBC magazine tried to confirm his words: in the register of complaints against state orders under Law 44-FZ (regulates orders of government agencies), 120 complaints were filed on behalf of Kulakov on behalf of Kulakov, of which instructions were issued on complaints for 140 billion rubles. Another 80 complaints amounting to about 330 billion rubles. filed from the public organization StopCartel, which is headed by Kulakov, of which orders were issued on 17 complaints for more than 92 billion rubles. The complaints filed by Kulakov under 223-FZ (the law regulates purchases of state-owned companies) cannot be counted, since the applicant's name is hidden in many of the applications.

Kulakov never ran a business, did not apply for state orders and never even visited the FAS building: "Why waste precious time of employees, retelling the content of their appeals?". He claims that his main place of work is a law firm, which he does not name and refuses to say why.

One of Kulakov's last appeals was a claim regarding the purchase of one of the structures of Gazprom for 41.2 billion rubles. Kulakov pointed out that the Zagorsk Pipe Plant is increasingly becoming the only supplier of large-diameter pipes for the company. This is a new market participant: it opened in 2016, and in the spring of 2017 a blocking stake in the enterprise was acquired by lawyer Nikolai Egorov, a classmate of President Vladimir Putin.

After the complaint - which, of course, does not necessarily mean a consequence - the pipe

procurement was discussed at the Ministry of Industry and Trade. The meeting was chaired by the head of the department, Denis Manturov, and was attended by representatives of the FAS, Gazprom and the largest pipe companies (TMK, OMK, ChTPZ, etc.). As Kommersant wrote, "big pipe manufacturers" were unhappy that many tenders for the supply of pipes to Gazprom in 2018 were postponed or declared invalid, after which the contracts were concluded in the format of a purchase from a single supplier. Following the meeting, the FAS was instructed to prepare an algorithm for the purchase of large-diameter pipes for Gazprom, in which the purchase from a single supplier is possible only in exceptional cases and in a lot of no more than 160 tons.

Activists and killers

In the language of professional complainants - killers of the state order, as they like to call themselves - this technique is called "swing the topic": the activist studies the conditions of the competition, finds a reason to file a complaint, and at the same time an informational lead for the media. Accusations of corruption in this sense are one of the best topics. The work of killers can be called outsourcing legal services: most often, the clients of the complainants are general contracting companies or state customers who, for one reason or another, want to disrupt the competition or challenge its results.

Alexander Kulakov (Photo: Semyon Katz for RBC)

The most difficult question is how to distinguish the killers of the state order from public figures, organizations and simply not indifferent citizens who act in the interests of society, and do not fulfill the order. It is difficult to do this, since both of them publicly declare the same tasks encouraged by society, such as the fight against corruption, says Aleksey Kostovarov, an advisor at the Liniya Prava law office: "Although there are public figures whose activities correspond momentary utilitarian tasks".

The same Kulakov assures that there is no commercial component in his complaints: "This is a social activity, I willingly help where the interests of one or another bidder are infringed upon." When the correspondent of RBC magazine called him and introduced himself as the head of the contracting company, Kulakov refused any payment at the start-up stage, only making a reservation: "If we see violations, it will be possible to discuss specific conditions." He also said that he could help with PR, since the media willingly write about major violations on his tip: "If there is a conspiracy, a cartel, a large state order, they take everything, the major federal business media can

can take quite. "

The company's connection with the hired complainant is usually impossible to trace. In any case, this scheme of cooperation is legal: the Law "On Public Procurements", which in the professional environment is called 44-FZ, allows public organizations to act as complainants. European Union norms, for example, prohibit a public figure or a lawyer from filing a complaint "out of academic interest", he must prove that he could potentially apply for the state row.

According to the data on the public procurement portal, in 2017 more than 3.5 million contracts were concluded in Russia for the amount of 6.31 trillion rubles. - in money terms, this market grew by 17% compared to the previous year, according to the FAS consolidated analytical report. In the same 2017, the antimonopoly service received almost 97 thousand complaints about public procurement under 44-FZ and 223-FZ (for comparison: in 2015 there were 75 thousand).

The interlocutors of RBC magazine in the FAS differ in their assessments of the work of the killers of the state order. Some say that the complainants interfere with the normal work of the department and disrupt the execution of the budget, others consider them to be orderlies of the forest: "If everything is correct and transparent in public procurement, no" killer "is afraid."

"Name through the hype"

Alexander Kulakov's star rose in 2013, when he became one of the first activists of the above-mentioned project "For Fair Purchases" of the ONF, a public movement created in 2011 on the initiative of Vladimir Putin. The aim of the project was to combat violations in the state order, and Kulakov began to send complaints about public procurement to the FAS, and in November 2014, according to him, he applied to join the ONF.

At this time he worked as a lawyer at the Nizhny Novgorod State Conservatory named after I. Glinka. Before that, according to his own words, he worked in the banking sector: "The positions were ordinary, I did not particularly like the work".

And even earlier, Kulakov worked in the units for combating economic crimes of the Main Internal Affairs Directorate of the Nizhny Novgorod Region, where he rose to the head of the department for combating legalization of proceeds from crime and illegal VAT refunds from the budget. He entered the GUVVD immediately after graduating from the Nizhny Novgorod Law Institute of the Ministry of Internal Affairs.

As an ONF representative, Kulakov sent complaints for three years. On the website of the movement, he was listed as "an expert, an activist of the project" (a screenshot as of January 2016, found using the Web-archive service, is at the disposal of the editorial office). In early 2016, he filed another complaint, where he pointed out the possible evasion of Gazprom from paying 129 billion rubles. taxes. After that, the ONF disowned its expert: the then co-chairman of the central headquarters of the movement, Alexander Brechalov (in 2017, became the head of the Udmurt Republic), told the RNS news agency that Kulakov is ", in fact, an impostor, the ONF does not communicate with him."

"Kulakov got into what he does not know very well in order to make a name for himself through appeals in the media and hype, and the ONF is not ready to cover him up," the Nizhny Now newspaper quoted its own source in the Nizhny Novgorod branch of the ONF. Kulakov himself claimed that he was a member of the ONF and even received a letter of thanks from Brechalov for canceling a dubious purchase for the design and construction of facilities for the 2018 World Cup. In a conversation with RBC magazine, he called that situation a working moment and said that today he is an activist of the Moscow ONF. The ONF did not respond to the request of the RBC magazine.

Alexander Kulakov (Photo: Semyon Katz for RBC)

Gazprom's purchases remain a favorite subject of Kulakov's complaints. When asked by RBC magazine about the reasons why it does not show the same interest in other major corporations, he replied that everything has its time: "There are still more violations in Gazprom compared to other state-owned companies."

Complaints rates

The scale of the work of the killers of the state order began to grow especially strongly in 2014, after the entry into force of the new federal law "On state purchases", the same 44-FZ, which replaced 94-FZ. The new law, in particular, simplified the procedure for filing complaints with the antimonopoly service. "There were also a lot of complaints under the previous law, but today experienced lawyers file them quickly, remotely, and besides, the complaint is not subject to duty," said Dmitry Gavrilenko, senior lawyer in the antimonopoly practice of the law firm Art De Lex.

Of course, staff members of the procurement departments can file complaints themselves, but they are often overworked, and it is also difficult for them to follow the dynamically developing legislation and law enforcement practice. "Therefore, many companies, especially those who often participate in procurement, outsource this functionality," says Aleksey Kostovarov.

The specialized lawyers engaged to work with the FAS, in fact, do the same as the complainants, but officially, without hiding the name of the customer. "If the motives of the company are unethical, it resorts to the services of various activists," says Gavrilenko. For example, he wants to put pressure on the state customer in order to obtain more favorable conditions, threatening to disrupt the deadline or cancel the auction. "There are cases when a potential participant demands to give money

y procurement, otherwise threatening problems with the FAS," says the lawyer. At the stage when the FAS accepted the complaint, its author reappears and offers to resolve the case peacefully. But this is a simple option, it can be difficult to establish the real reason for filing a complaint, says Gavrilenko: "Sometimes the motives are very difficult to understand from the outside."

The services of killers are also in demand because companies often do not want to file a complaint themselves. "They are afraid that they will send a complaint, win the tender - and the customer will take revenge on them for the complaints filed, for example, finding fault with the results of the work," explains Ekaterina Smirnova, partner of the legal group "Yakovlev & Partners".

The standard tariff for the services of a killer of the state order is from 30 thousand to 200 thousand rubles. both for filing and for recalling a complaint, participants in this market told RBC magazine. In especially difficult cases with large orders, the cost of the service can reach 1-3 million rubles. The range of services in this area is very diverse, from the narrow tasks of filing a complaint and accompanying it during consideration to comprehensive services - participation in the procurement, appeal to the FAS Russia and press coverage. Only lawyers - representatives of the affected companies can apply to the court to challenge the results of the competition: the public figure is powerless here, since he is not the injured party.

It is difficult to estimate the volume of the Russian market for services of killers of the state order, for the most part it exists in the gray zone - in conversations with the RBC magazine, participants in this market called different numbers, but not less than 12 billion rubles. in year. The FAS speaks about him very restrainedly. "It is inappropriate to assess the actions of the applicants," Artem Lobov, head of the department for controlling the placement of state orders of the federal department, told RBC magazine. - The FAS Procurement Commission objectively and comprehensively examines the circumstances of the case.

Trap Specialists

The killers of the state order describe the technology of work as follows: they either help prepare tender documentation with "traps" for the customer, or they themselves look for these "traps" and disrupt the tender. Most often, we are talking about contracts for the construction, maintenance and repair of roads, for the supply of medical equipment or food to social institutions, as well as for the supply of building materials or orders in the housing sector.

There are three main traps. Firstly, these are the requirements for the characteristics of the product: chemical composition, test results, and the like - a participant from the street is not able to fill in these puzzles correctly. Secondly, the combination of orders of the same type into one - so the cost of the contract is consolidated from 50-100 million rubles. up to several billion, and a small business can no longer participate in it, since this requires at least a bank guarantee for 5-10% of the contract value. Thirdly, the customer may present illogical requirements for the financial position of the contractor, his work experience, and the availability of equipment.

Every Russian region has its own famous complainants. For example, Kulakov names among them an activist from Samara and a confidant of Vladimir Putin Vadim Nuzhdin, coordinator of the Samara anti-corruption project of the ONF, businessman Alexei Savoskin from Tyumen, as well as co-chairman of the headquarters of the Popular Front in St. Petersburg Vitaly Fateichev. A group of lawyers under the leadership of Anatoly Bikeev has been working in the Leningrad Region for several years, previously

they published a magazine under the FAS office in St. Petersburg.

In 2014, the St. Petersburg edition of Fontanka wrote about Bikeev's team. In one of the materials, the correspondent described his dialogues with similar complainants and recounted the conditions that they named: "Since we came from the street, we are only ready to write requirements for the goods that will be included in the tender documentation of some unknown order, and then we ourselves will have to negotiate with the customer with these requirements".

Kulakov says that now purchases for less than 1 billion rubles. not interested. "Complaints above this amount are considered in the central office of the FAS, and I have more confidence in him," he explains. It's not about trust, but about the desire to promote and fill the price of their services for filing complaints, one of the competing activists sharply comments on his words.

"Complaining about such large government orders is like sticking a plastic knife at a bear," says Artur Dancharov, general director of Spetsstroy. In St. Petersburg, he was also known as the killer of the state order: in 2014-2017, Dancharov sent dozens of complaints about state purchases in St. Petersburg and the region, but then he himself switched to the state squad. In 2017-2018, his company received orders for a total amount of more than 1 billion rubles, it follows from the data of the public procurement portal. Dancharov admits that his activities as a complainant were aimed at obtaining specific contracts for his companies, companies of his business partners and counterparties: "Unlike Alexander Kulakov, who chaotically sends out complaints with dubious goals."

Two laws

Today, complaints to the FAS often relate to purchases under 44-FZ, since according to it, "a step to the left, a step to the right is execution," notes Ekaterina Smirnova. According to her, the consu

litants and lawyers are more often recruited to work with procurements under 223-FZ, which regulates tenders for state-owned companies. "According to 223-FZ, each state-owned company develops its own system for evaluating applications, which, as a rule, is based on a complex economic analysis, so deep knowledge is needed to appeal it," explains Smirnova.

Alexander Kulakov (Photo: Semyon Katz for RBC)

According to her forecasts, this trend will change next year. Amendments to 223-FZ introduced new rules for procurement, in which only small and medium-sized businesses can participate (it must account for at least 15% of procurement by state-owned companies). The new rules actually duplicate the stricter 44-FZ, which allows public activists to file complaints, so we should expect an increase in the number of appeals.

According to the public procurement portal, about 25 trillion rubles passes through 223-FZ. per year, while through 44-FZ - about 6 trillion rubles. Today, a public organization can file a complaint only after the end of the submission of applications for the tender under 223-FZ and only within ten days after the publication of the minutes with the results of the auction. It is believed that until the end of the auction, the rights of public figures cannot be violated in any way. About 90% of all complaints are received for competitions under 44-ФЗ, estimates Gavrilenko from Art De Lex.

More than 96% of the purchases of state-owned companies in 2017 took place on a non-competitive basis, the Finance Ministry said in a report. And in the fall of 2016, the head of the FAS Igor Artemyev, speaking in the State Duma, said that purchases of state corporations in 95% of cases are imitation of tenders: "We believe that this law of 1995 (223-FZ. - RBC magazine) is outdated, it should be canceled and a chapter in competition law should appear instead. The adoption of the amendments will greatly expand the scope of the complainants' activities.

The upward trend in the number of complaints continues from year to year. In the first half of 2018, the central office and territorial bodies of the FAS received more than 3.3 thousand complaints under 223-FZ and more than 42 thousand complaints about state purchases under 44-FZ, the department told RBC magazine. At the end of 2017, the FAS received almost 97 thousand complaints: 89.3 thousand for state purchases under 44-FZ and 7.6 thousand under 223-FZ (see infographics).

"Complaints are growing for economic reasons: government orders and purchases of companies with state participation are trillions of rubles, almost a third of Russia's GDP," says Ekaterina Smirnova. "Roughly speaking, the money in the country remained only with the state, hence the growing interest of contractors in procurement".

Wizard and New Year

After amendments to 44-FZ entered into force in 2017, which prohibited individuals from appealing construction orders, Alexander Kulakov created a public organization StopCartel. It works without registration in the Unified State Register of Legal Entities, which is permissible by law, he explained. The co-chairmen of the organization are the journalists of the Nizhny Novgorod editions Irina Slavina and Alexander Pichugin.

Now Kulakov sends complaints de facto, as before, from himself, signing his own electronic signature (follows from his complaints in the FAS database), but de jure - from Stop Cartel. Among the latest successes: initiation of an administrative case against the Udmurt regional operator for the management of solid waste "Spetsavtokhozistvo" for combining work in different territories into one lot for 1.7 billion rubles. and a successful complaint of a similar procurement violation for RUB 2.9 billion. for the repair of roads and bridges of the Omsk Road Administration.

After a conflict with the leadership of the ONF, Kulakov moved from Nizhny Novgorod to Moscow. "As an expert, I couldn't find a decent job in Nizhny Novgorod, including in the city administration," he says. Now he is an ordinary employee in a certain Moscow law firm, about which he only says: "I sit at Kropotkinskaya until five in the evening, then I go home." When asked how the company views his hobby with filing complaints, he did not answer.

Kulakov promised to present his book of poetry to the correspondent of RBK magazine. They can also be read on the Poetry.ru portal, where he is published under the pseudonym "Your Wizard". For example: "Write without condemning anyone - from feeling to feeling the feet when placing them, only the shadows of the ship that are losing their" loyalty to the helm "are insensitive.

Perhaps the lyricism of Kulakov's mood is due to the fact that the end of the year is the favorite time of all the killers of the state order. "We will harvest the most powerful harvest now, on New Year's Eve," says one of them. - Officials know that the most suspicious contracts must be concluded before January 10, until no one wakes up. They drop off the stray passengers from the competition on the last working days, sign an agreement with their own, and when strangers start complaining, theirs are already working hard. Cancellation of the contract under which work has begun is a huge rarity. "

According to the interlocutor, the killers monitor the purchases and throw complaints about them on December 25-26 to block the conclusion of the contract. "Recalling a complaint during this period is twice or three times more expensive, for us the New Year is like March 8 for florists and the first snow for a tire fitting," he says.

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