

THE PUBLIC PROCUREMENT SYSTEM IN BULGARIA

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ABSTRACT

The public procurement system in Bulgaria is based on transparency and accountability, free and fair competition and equal treatment of all candidates. The national legislation is fully harmonized with the European directives.

The procurement register and the portal developed by the Public Procurement Agency ensure the e-procurement system in Bulgaria. The register is an extensive electronic database which contains information about all procedures and allows collection, analysis and synthesis of information. It is public and the access to it is free via the Agency's website: www.aop.bg.

The e-tendering procedure has been developed recently and allows the upload of contract documents by the contracting entity at their own website or at the Agency website and also the download of the full set of documents by the interested persons.

An electronic exchange of clarifications (questions and answers) using e-signatures has also been developed.

THE BULGARIAN PROCUREMENT LEGISLATION

The Bulgarian national legislation in the field of public procurement dates back from 1997, when the Law on the Award of State and Municipality Public Contracts was adopted. In 1999, this law was repealed by the Public Procurement Law (PPL).

Currently, the valid relevant act is the Public Procurement Law, which entered into force on 1 October 2004, and it transposes the provisions of current European Directives. This law adoption was

followed by the adoption of several secondary legislation acts, which set out the legislative framework in public procurement. These acts have been amended several times, the largest part of the amendments took place in 2006, in parallel with the accession of Bulgaria to the European Union, in order to ensure full compliance with European legislation in this field and, in particular, with the provisions of the valid European Regulations and Directives. Under the Treaty establishing the European Community, regulations have direct effect and set out rights and obligations for all subjects of European Law. They require no additional implementing legislation in the member states. Directives, in turn, have no direct effect in the member states, but need to be transposed by domestic legislative acts, taking into consideration national particularities.

At the beginning of 2010 new amendments of PPL has been publicly discussed and expected to be adopted. Their main aim is to transpose the Directive 2007/66/EC related to a more effective system of the appeals. Other substantial amendments are related to:

- elimination of the limit of signing of contracts for services for 4 years;
- obligation of the contracting authorities to publish information for the contracts signed without carrying out a public procurement tender due the exclusions in the PPL;
- preliminary (ex-ante) control for the procedures financed by EU funds;
- implementation of the basic requirements of Directive 2009/33/EC for clean and energy effective transport vehicles.

The legislation in the field of public procurement aims to ensure effectiveness in spending of budgetary and non-budgetary funds, as well as resources related to undertaking tasks of public concern.

THE PUBLIC PROCUREMENT AGENCY

The Bulgarian Public Procurement Agency (PPA) was established on 12.03.2004 with a Decree No 56 of the Council of Ministers in accordance with the Public Procurement Law, which provides the establishment of a self-dependent administrative structure in this field. The Agency is subordinated to the Minister of Economy, Energy and Tourism and assists him in implementing the national policy in the field of public procurement.

The main priority of the Public Procurement Agency is to ensure the efficiency of the public procurement system in compliance with the principles of publicity and transparency, free and fair competition, equality and non-discrimination.

The PPA works in close collaboration with the:

- National Audit Office in Bulgaria – for the control of the contracting authorities, spending public money;
- Public Internal Financial Control Agency – for internal audits of the public entities as a form of ex-post control.
- Commission on Protection of Competition – for the appeals of public procurement contracts;
- The Supreme Administrative Court - for appeals as a second-instance body.

All these bodies work in close cooperation for the implementation of common policy in the field of public procurement.

The main responsibilities of the Public Procurement Agency are focused on:

- updating the legal framework in the area of public procurement;
- introduction of uniform practice for public procurement;
- control of the process of public procurement especially the so called ex-ante control;
- ensuring publicity and transparency of the procurement process.

BEST PRACTICES

The introduction of best practices in the procurement process is carried out through provision of methodological guidance to all subjects in the procurement process:

- answers to written questions;
- face-to-face consultations;
- telephone helpdesk – more than 7000 queries were answered in 2009 on the “hot line” by the Agency experts;
- publications on the Agency website (www.aop.bg);
- a book “Practical Guidelines” was published in June 2009 in order to facilitate the contracting authorities as well as the contractors.

More than 15 training workshops and seminars were organized in the Agency's training centre for the popularization of the best practices in the public procurement.

Special attention was paid to the green public procurement (GPP). Green public procurement is a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to other goods, services and works with the same primary function. It is a process that promotes, but does not necessarily lead to, the purchase of "green" products, and which fully respects EU legislation on public procurement. The purchase of more resource-efficient products can bring direct benefits to the purchasers and significantly cut costs for users, even when the initial expenditure is higher. Public procurement can shape production and consumption trends by promoting innovation to create more economically efficient and environmentally friendly technologies, increase demand for environmentally friendly and efficient products and services, enlarge the market for them and cut the negative impact on the environment. Furthermore, GPP will help to preserve natural resources through the purchase of products manufactured from recycled material, reduce paper use by acquiring duplex printers and promoting the use of multifunctional devices. It also improves occupational health conditions for employees, students and patients by going for non-toxic cleaners, using catering services which supply organic food, and eliminating harmful substances from construction and repair work.

On 17 November 2009, a National Conference on the Benefits of Green Public Procurement took place in Sofia. The event was organized by the Bulgarian Public Procurement Agency and Ministry of Environment and Water of Bulgaria in collaboration with the International Training Centre of the International Labour Organization (ITCILO). The conference aimed to unite all GPP stakeholders at national level and trigger a dialogue among them. It targeted the main players in GPP, people who define the policies and strategies on GPP, their implementation, dissemination and monitoring.

THE PROCUREMENT REGISTER AND PORTAL

The e-procurement system in Bulgaria is provided by the procurement register and the portal developed by the Public Procurement Agency. The register is an extensive electronic database which contains information about all procedures and allows collection, analysis and synthesis of information. It gives the authorized users who have universal e-signatures the possibility for on-line submission of notices through a cryptic connection. It is

public and the access to it is free via the Agency's website: www.aop.bg. This portal hosts up-to-date and comprehensive information concerning the whole public procurement process in Bulgaria.

The Public Procurement Register has been created to enforce the basic principles of the PP Law – publicity, transparency, free and fair competition and equal treatment of all candidates. It is one of the 20 electronic services which the Bulgarian state administration offers to the citizens and business.

This is entirely new electronic database system which was designed and based on modern information and communication technologies in order to meet the requirements of the new public procurement law. (Until 2004 there existed a Register which contained information only about the procurement notices above the threshold). The new register has more functionalities and possibilities to enhance and develop them with new stages of e-procurement.

The Register was developed on the basis of the latest version of one of the most powerful database management systems – Oracle 10 g, in combination with the SuSE Linux Enterprise Server version 9 system and specialized software for cluster operation of Oracle Real Application Cluster 10g servers.

The Public Procurement Portal is a centralized information system which provides access to all aspects of public procurement. It contains vast information systemized in various thematic fields oriented to the specific interests of the main user groups. The Portal also provides multiform and useful information about PPA structure and activity, procurement rules and regulations, as well as the practice in public contracts area. An important component is the Public Procurement Portal and its in-built search of information possibility. The aim is to improve publicity and transparency on procurement-related issues and to raise public awareness on this complicated matter. The Portal offers update information aligned with ongoing amendments in Bulgarian and European Legislation and established good practices. The Portal is also designed for use by disabled people.

THE E-PROCUREMENT

The e-tendering procedure has been developed recently and allows the upload of contract documents by the contracting authority at their own website or at the Agency website and also the download of the full set of documents by the interested contractors. Important step is the possibility to receive the tendering documentation electronically. It will be extremely useful for contractors whose offices and headquarters are far from the contracting authority. The

contracting authority can upload the tender documents on its website with a link to the website of the Public Procurement Agency. The functionality to download documents will be available only to the interested contractors who have the right of access to the documents and it will utilize a standard download mechanism (including also the possibility for just opening of the document). The application software should permit multiple download of the documents from the same candidate in the permitted period. When the contracting authority has declared the documents of the particular contract or a part of it as confidential, before allowing the interested contractor to download the documents, the system must explicitly notify him/her of the confidentiality of the documents.

An electronic exchange of clarifications (questions and answers) using e-signatures has also been developed. It is developed in both directions – asking questions upon request for clarifications and answering questions. A mechanism similar to the Internet forums is used. When a question is asked - the system automatically will send a notification by e-mail to the contracting authority. The clarifications on the documents will serve in two directions. In the first case the contracting authority answers a query of the interested contractor. The elaboration of the answer must take place within 3 days from the receipt of request of clarifications on the documents and the system will generate a warning to the contracting authority for keeping this deadline. The answer shall be published on the website and the interested contractors will receive an automatic notification by e-mail for the publication of the answer.

Another option of the Register is the possibility for every registered user to create and save a search pattern which includes a random combination of search criteria. Furthermore, when a pattern is established, a service for electronic subscription for information from the PP Register can be activated and daily information corresponding to the criteria indicated can be received at an indicated e-mail address with the new information about public contracts published in the Register.

The Public Procurement Agency (PPA) provides several online services, the most important of them being the publication of information in the Public Procurement Register (PPR):

- "Small value contracts" provides the opportunity of publishing into the Public Procurement Portal of notices about small value public contracts. This type of public procurement is not carried out in accordance with the provisions of the above-mentioned ordinance and the Public Procurement Law, but by collecting no less than three tenders. This e-service is available only to contracting authorities/entities having an authorised procurement agent (APA) in

the PPR. The Small value Contracts service allows users to see the full list of announcements and search through it according to various criteria.

- "Virtual clerk" is an online service which facilitates users to send digitally signed documents, as well as to receive replies from PPA.

- "On-line forms" is a service for online completion of public procurement forms. It is available only to contracting authorities/entities having an authorised procurement agent (APA) and is activated by an internal website for document management. This e-service is an alternative to PPA-provided specialized software product Form Editor.

- "eSender" is a free e-service, by which PPA forwards to the Official Journal of the European Union public procurement notices for publication.

- "Procurement Planner" is a tool for calculating and scheduling the time needed to conduct a public procurement procedure. This e-service is available to all users of the Public Procurement Portal.

The Register contains information about all procedures for the award of public contracts – the decisions for opening a procedure for awarding of public procurement contract; procurement notices; information for awarded procurement contracts; other information. For 2009 more than 25 % of all PP notices were published by the contracting authorities directly in the Register using e-signature. For those users who do not have an Internet connection, a specialized software called "Procurement Form Editor" with the whole set of procurement notices, has been developed. The new software gives the users the possibility to fill in the necessary standard form on their computers and then to send it for publication in the PPR. All electronic forms have the option for automatic validity check of the information and the filled in obligatory sections, which corresponds to the requirements of the Public Procurement Law.

For 2009, the number of public procurement procedures published in the Register is less than the previous year due to the economic crisis. The distribution of notices according to the subject of the public procurement is: 13 % - for supply, 35 % - for works, 52 % - for services. 49,6 % of all procedures are opened pursuant to the Public Procurement Law (PPL), and 50,4 % of them are under the PPL thresholds. The distribution of the notices according to the type of contracting authorities is: 75 % – for public contracting authorities and 25 % - for the utilities sector.