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New EU Public Procurement Directives 2014

Draft New Bulgarian Public Procurement Act

Committee meeting

Sofia, Bulgaria

May 27, 2015

AmCham Healthcare Committee

Ruseva-Savova
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AGENDA

- INTRODUCTION
- KEY CHANGES INTRODUCED
- E-PROCUREMENT
- E-INVOICING IN PUBLIC PROCUREMENT

INTRODUCTION

A package of three new EU public procurement directives → **Adopted by the European Parliament in 2014**

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance → **Public sector**

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance → **Utilities**

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance → **Concessions**

*Proposal for an **EU Regulation on "Public procurement**: access of third-country goods and services to the Union's internal market and procedures supporting negotiations on access of Union goods and services to the markets of third countries"* → Awaiting European Parliament first hearing

KEY CHANGES INTRODUCED

- **The new EU Directives entered into force: April 17th, 2014**
  - **Bulgaria has to transpose them into its legislation in 2 years;**
- **The new EU Regulation on the access of third country goods / services to the EU's internal public procurement market: will apply directly and unilaterally across the EU.**

Sole award criterion: most economically and advantageous tender	Greater flexibility and simplification of negotiations	No distinction between priority and non-priority services	Less red tape for bidders and easier access for SMEs	The new Innovation Partnership	Clarification of rules on contract modification	No push to privatize public services
May be assessed on **price**, **costs** (cost-effectiveness approach), or **best quality/price** ratio.	Broader access to flexible procedures. Extended grounds: using the competitive procedure with negotiation	The Part B rules are suppressed by the new legislation	Encouraging contracting authorities to divide contract into lots	Authorities may call for tenders to solve a problem without pre-empting the solution	The new rules and exemptions have been derived from ECJ decisions.	The new norms do not require for privatization of public enterprises
In future, it may include: design; environmental and social characteristics; innovation. Staff experience or qualification	Availability of this procedure for all purchasing not "off the shelf"	Specific rules for awarding public contracts for health and social services; education	Reduction of bureaucratic burdens and introduction of a turnover cap	More room is left for negotiations between the authority and the bidding companies	Certain **abilities to change existing contracts**, eg. transfer of contract upon insolvency	Water sector excluded from the scope of the new rules

KEY CHANGES INTRODUCED (2)

Exclusion due to non-compliance with the law

Exclusion in hypotheses of non-compliance or violation of applicable EU and Bulgarian law

- exclusion applies to social, labor and environmental law

Exclusion due to deficiencies and exclusory acts

Exclusion may be motivated by significant and persistent deficiencies shown in prior contracts

Exclusion for exclusory acts done before or during the procedure

Incorporation of cooperation exemptions

Certain contractual relations among public bodies are exempted from regulation

Horizontal cooperation among contracting authorities

Tougher rules on subcontracting

Prevention of social dumping and violation of workers' rights

Tougher provisions on "abnormally low bids"

E-PROCUREMENT

Move towards e-procurement

- Contracting authorities have **to make procurement documents freely electronically available** from the date of publication of the notice:
  - Full e-procurement (communication and submission): latest until **2018**.
- The new EU Directive on public procurement introduces **mandatory e-procurement** including:
  - Transmission of notices in electronic form and electronic availability of procurement documentation;
  - **Switch to fully electronic documentation**, particularly **e-submission of tenders** , in all procurement procedures.

E-platforms

E-INVOICING
IN PUBLIC PROCUREMENT

- **Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement**
- **Anticipated positives / savings**:
  - To contribute to eliminating barriers to cross-border public procurement;
  - The wide use of e-invoicing in public tenders across the EU expected to generate savings of funds allocated for public procurement: up to EUR 2.3 billion a year.

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