

## **Key Elements of the Draft Bill for Amendments and Modifications to the Public Procurement Law /DBAMPPL/**

The Decision to approve the Draft Bill for Amendments and Modifications to the Public Procurement Law (DBAMPPL) was adopted by the Council of Ministers on 01.06.2011.

The Bill was drafted in accordance with the Concept for Legislative Changes to the Public Procurement Legislation adopted by the government on 12<sup>th</sup> January 2011. The Concept was developed following the recommendations made in the report of the European Commission from July 2010 as a result of the progress assessment mission under the Cooperation and Verification Mechanism.

The main goal of the Concept was to outline measures aimed at improving the public procurement process and to create favourable conditions for increasing the effectiveness of EU funds absorption. The Concept will be implemented in two stages. In the first stage legislative amendments will be made in accordance with the measures included in the Concept. The Draft Bill for Amendments and Modifications to the Public Procurement Law is part of this process. The second stage of implementation involves Bulgaria meeting its commitments as a member-state by transposing Directive 2009/81/EC from 13.07.2009 for the award of contracts in the field of defence and security.

The special public procurement contracts and the calls for tenders as per the Ordinance on Organizing Tenders in the Fields of City Planning and Investment Projects are not included in the Draft Bill due to their specific scope. The revision of those legislative provisions is planned to take place when the second bill related to the transposition of Directive 2009/81/EC is drafted.

The amendments proposed in the draft bill for amendments and modifications to the PPL are in line with the measures outlined in the Concept and are aimed at simplifying the legislation in this area, facilitating the public procurement process in Bulgaria and improving the preliminary control on the contract awarding procedures for activities financed by the EU funds.

One of the most significant amendments relates to reducing the number of procedures and contract awarding arrangements in the country. This is to be achieved by abolishing the Ordinance on Awarding Small Public Contracts /OASPC/ and respectively abolishing the procedures provided for in the Ordinance. Public procurement contracts with estimated values as set out by the existing ordinance shall be awarded according to the procedures laid down in the law. Some exemptions are also set out in the new law.

An immediate and direct outcome of the abolishment of OASPC procedures is the reduced number and type of applicable standard forms. The paid information notice to be published in the State Gazette shall also be abolished since this information is rendered partially superfluous by the Public Procurement Register. This will save resources to the contracting authorities and hence the state budget.

A significant new development aimed at simplifying the public procurement process is the introduction of a new standard form - "decision for corrections". It is similar to the form of notice for additional information, information on incomplete procedure or corrigendum used by the Publication Service of the Official Journal of the EC. The new standard form allows the contracting authority to make one-off changes to the call for tenders and prior information notice within a period of 14 days from their publication in the Public

Procurement Register /PPR/. Only the object of the contract cannot be fully changed. Upon expiration of the above period the contracting authorities shall be entitled to only publish decisions for extending the procedure. This tool can be used to remove mistakes and irregularities in the cases when such have been found during the preliminary control carried out by the Public Procurement Agency. This will save time and result in avoiding delays in the procedures due to unnecessary court appeals. The corrections option does not affect the minimal procedure deadlines laid down in the law and the rights of the interested parties.

The scope of the preliminary controls carried out by the Public Procurement Agency and the control mechanisms shall be changed. Procedures financed fully or partially by the EU funds whose value exceeds the thresholds set out in the law will be subject to control. Control will be carried out only by the Public Procurement Agency. It will cover the calls for tenders and the methodology for assessment of bids as well as the decision to open a procedure in some cases. The amendments provide for a feedback mechanism aimed at monitoring the implementation of the recommendations made by the Agency. This is expected to improve the effectiveness of the controls related to the legality of the procedures.

The proposed draft bill for amendments to the PPL includes amendments related to the powers of the Public Procurement Agency. The acts issued by the Agency are differentiated and divided into groups of general methodological guidelines referring to issues related to the implementation of the law and the secondary legislation to be used by all contracting authorities and they are published in the public procurement portal. The current practice of issuing statements on specific cases raised by the contracting authorities will be maintained. In this respect the general methodological guidelines will be made mandatory for the controlling bodies given they were coordinated with the respective bodies prior to publication. This proposed amendment sets out to introduce a unified practice for the bodies tasked with controlling and methodological functions.

The draft bill provides for the introduction of very limited in house arrangements relating to utilities contracts awarded by contracting authorities which are territorial structures of central government bodies or their associations to companies registered under the Municipal Property Law and provided that the capital of the company is fully owned by the municipality, it is subject to the same controls as those carried out by the contracting authority over the units within its structure and the scope of its activities as per its Rules of Incorporation includes provision of utility services and at least 90% of its turnover is from provision of utility services to the contractor or an association of contractors. The types of utility services subject to in house arrangements are explicitly listed in the additional provisions of the Public Procurement Law.

New publicity requirements will be set out with regards to low value contracts by making it mandatory for the contracting authorities to publish a call notice on the Public Procurement portal and their web sites - "purchaser profile". They shall ensure that all interested parties have access to the call for a period of not less than 7 days.

Another novelty aimed at filling the gaps in the existing legislative framework is the regulation of the relations between the contracting authority and its complementary body – the public procurement commission. The lack of explicit provisions in that respect and the formal approach of the contracting authority to the work of the commission presented an obstacle to the timely removal of irregularities in the procedure which could be remedied. The proposed new provision lays down the rights of the contracting authority to exercise control over the work of the commission and to issue written guidelines for the removal of irregularities.

A number of provisions are further clarified which will prevent conflicting interpretations and enforcement of the law. The rules on setting the selection criteria and the

indicators for the complex assessment of bids are made clearer as well as the provisions regarding the formation of joint groups of bidders which are not legal entities and the selection procedures with regards to such joint groups.

A relief is set out subject to proving certain facts for awarding construction contracts according to which the submission of a certificate for registration in the Central Professional Register of Construction Companies shall be deemed a sufficient condition provided that the requirements of the contracting authority should be made part of the conditions for registration.

The scope of exemptions for public contracts' amendments is extended in order to achieve a more flexible and effective public contract management. Article 43 of the Law is amended to include new grounds for concluding annexes to the contracts and some of the existing grounds are clarified.

A definition of the term “affiliated parties” is introduced in the Public Procurement Law. This definition will be used to establish conflicts of interests in relation to the award of public contracts.

The Draft Bill includes amendments to the section regarding the appeals against the procedures. Those amendments do not affect the established proceedings or appeal bodies. The main goal is to improve the proceedings and to include additional provisions allowing for the removal of irregularities that have already been established in the current practice. An option is provided to appeal some actions or inaction of the contracting authority which do not relate directly to issuing procedural decisions but affect or hinder the participation of interested parties in the procedure. Examples of such actions as established in the current practice are the refusal to provide or send documents, refusal to provide further clarification of the published documentation, refusal to file a bid or a notice of participation, refusal to provide access to or a copy of the protocol of the commission, etc.

The adoption of the amendments proposed in the Draft Bill for Amendments and Modifications to the PPL will have a positive effect on the public procurement process and will result in the overall improvement of the public procurement system in Bulgaria.