

Bosnia & Herzegovina: Public Procurement

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New Law on Public Procurement

Bosnia & Herzegovina has new Law on Public Procurement. The law, adopted in April 2014, will become applicable in November this year, thus replacing the legislation from 2004. It harmonizes domestic public procurement procedures with the Directive 2004/17 EC on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, the Directive 2004/18 EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and the Directive 2007/66 EC amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

The Law is significantly longer than its predecessor (124 articles versus only 57 articles) and directly regulates many of the issues that were previously regulated by bylaws.

Overview of most important provisions

As a general rule, the Law provides for open and restricted public procurement procedure, Open procedure is a single-stage process in which any interested bidder may submit a bid. Restricted procedure features a pre-qualification stage and a bid submission stage.

There are additional three specific procedures that can be applied in the presence of specific conditions. Negotiation procedure with publication of procurement notice can be resorted to in the following cases: (i) after open, restricted procedure or competitive dialogue procedure failed because all received bids were unacceptable, provided that the participation requirements remain the same; (ii) if due to the nature of the goods, services or works it is not possible to determine the value of procurement in advance; (iii) in case of public procurement of intellectual services when the subject of procurement cannot be determined with sufficient clarity; and (iv) procurement for research, testing or development purposes. In this procedure, the contracting authority negotiates directly with one or more bidders after publishing a public notice on procurement. Following the negotiations, the contracting authority publishes bidding documentation and a call for submission of final bids.

Negotiation procedure without publication of procurement notice can be resorted to: (i) if no bids were submitted in open or restricted procedure, (ii) if no submitted bid was appropriate, (iv) if the

contract can be awarded only to one supplier for technical or artistic reasons, or existence of exclusive rights, and (iii) if so required by urgency. This procedure can be also applied in certain specific cases of procurement of goods, works or services, for example in case of procurement of goods traded at commodity exchange; additional, unforeseen, services and works the value of which does not exceed 30% and 20% of the original value, respectively.

Finally, competitive dialogue can be used if the subject of procurement is particularly complex taking into account its technical specifications and legal / economic structure. The contracting authority invites all interested parties to submit an application for participation in the competitive dialogue and recognizes the applicants' qualification based on the conditions determined in advance. The contracting authority conducts a competitive dialogue with all qualified applicants, until an adequate solution is found. Once the solution is framed, the contracting authority calls for submission of bids.

A notable change to the previous legislation is represented by the rule that public procurement procedures do not apply to awarding of contracts for works and related services which are directly subsidized by the contracting authority by less than 50%.

The Law introduces the possibility of concluding a framework agreement with at least three bidders for a maximum duration of four years. Individual agreements are then concluded with the pre-selected bidders.

Deadline for submission of bids is extended to no less than 45 days in open procedure and 35 days in restricted procedure (compared to 28 under the previous legislation). If the contracting authority has published an advance notice of planned procurements, with estimated values, the deadlines in open and restricted procedure can be reduced to 25 days.

The Law significantly relaxes conditions for proving eligibility requirements. Personal eligibility requirements include absence of conviction for organized crime, corruption, fraud or money laundry, absence of bankruptcy proceedings and the requirement that the bidder has paid all due taxes and social security contributions. Any of the foregoing can be evidenced by a bidder's written statement confirming the fulfillment of the eligibility requirements on a form to be prepared by the Agency for Public Procurement. Only the winning bidder will be required to evidence the eligibility requirements by the official certificates issued by the relevant public authorities.

Special rules apply to contracting authorities active in water supply, transport, energy and postal sectors.

The Agency for Public Procurement remains responsible for, *inter alia*, drafting amendments to the Law, increasing public procurement awareness, publication of guides and manuals, advising and

providing technical support to bidders and contracting authorities, organizing seminars etc., while the Office for Review of Complaints decides on complaints lodged by interested parties alleging breach of the law and relevant bylaws.

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