

New public procurement law

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Procurement planning

- Article 87 para. (6) lit. a) regulates the task of the working group to draw up the annual public procurement plan, but the draft law does not detail the procedure for drawing up such a plan, and it is not stipulated that the rules for planning are established by the Government.
- Will the procurement plan be published in the AMPS CIS or will it continue to be published on each contracting authority's website?

Estimated purchase value

- The name of Art.4 suggests that it only applies to procurement contracts, while the EU directive talks about the "estimated value of a purchase".
- Do the provisions of the law apply only to purchases above the legal threshold or do they also apply to purchases below the legal threshold?

Nedivization of purchase

- To maintain the current exception provided for in Art. 76 para. (1) of Law no.131/2025: "The exception is the procurement of seasonal goods and services, which requires the conclusion of separate contracts for different periods of time".
- To regulate the exception from non-divided procurement for air transport services; for training activities, for insurance contracts.

Lottization of purchase (Art.45)

Rule

- The award of public contracts by lots is a right of the contracting authority and not an obligation, paragraph (1).

Exception

- The justification for not awarding the contract by lots is applicable only to compulsory lot subdivision, paragraph (3).

Proposal

The cases in which subdivision is mandatory under Article 46 para. (1) and para. (4) of Directive 2014/24/EU

Open tender (Art.26)

Proposal

- It should be expressly stated that the contracting authority has the right to negotiate the price offered for reduction where only one tender has been submitted in the open tender procedure.

Argumentation

- In order to avoid situations where the procurement procedure is annulled and restarted, in order to identify more advantageous offers (e.g. when the price offered is significantly higher than in previous years, and the reasons may be various, including error committed by the economic operator).

Electronic auction (Art.34)

The proposal

- To be used up to the opening of tenders (as this instrument is currently used) and not after a full initial evaluation of tenders.

Argumentation

- There is a risk that if there is only one qualified EO, it will have no incentive to underbid. At the same time, we note that Directive 2014/24/EU contains dispositive and not mandatory rules with reference to the use of electronic tendering, Art. 35 para. (1).

Declaring conflict of interest (Art.22)

- It will only declare if it exists, but it is not clear who and when it will declare
- Confidentiality and impartiality declarations will no longer be signed

Selection of tenders (Art.55)

- The current wording of Art. 69 para. (5) of Law No 131/2025: "*the contracting authority has the right to consider the tender as compliant if it contains insignificant deviations from the provisions of the tender documentation, errors or omissions that can be removed without affecting the essence of the tender*". Such an addition is important to ensure the efficiency of public procurement procedures.

Offer guarantee (Art.56)

- Adding para. (14) with the situation where several dependent economic operators submit tenders for the same public procurement procedure and do not respond to the request for clarification submitted by the working group at the stage of evaluation of tenders.
- Provision of the right of the contracting authority's working group to give the tenderer up to 3 days to supplement the tender guarantee or to submit the correction of the validity period of the bank guarantee letter.

DUAЕ (art.59)

Proposal

- Adding para. (9) with the obligation for the tenderer to place the documents related to the DUAЕ in the AMPSIS, except for documents classified as business secret, confidential or containing personal data.

Argumentation

- The information will be accessible to GPA, ANSC, civil society.
- It would streamline the procurement process.
- The uploading of economic operators' documents into the AMPS CIS should not be the responsibility of contracting authorities.

Cancel the procurement procedure (Art.69)

Proposal

- to be completed with para. (5) to read: *'The contracting authority shall have the right to cancel the award procedure for the public procurement contract/framework agreement if, at the stage of evaluation of the tenders, the need for the procurement of the goods, services or works has become apparent, duly substantiated'.*

Argumentation

- At present, there is no regulated ground for cancellation of a public procurement in the event that the contracting authority abandons the subject matter of the procurement, either because the regulatory framework has changed or because better products, etc., have appeared on the market.

Informing economic operators about the outcome of the procurement procedure (Art.54)

Proposal

- It should be expressly mentioned that the information of the economic operators who have submitted their bids through the SIA RSAP is made through the SIA RSAP with the publication of the GL decision.

Argumentation

- In the GL decision the information about the reasons for the rejection of each tender, the reasons for the annulment of the procurement procedure is filled in. Respectively, information by email doubles this communication.

Informing the GPA about the outcome of the procurement procedure (Art.54, Art.85)

Proposal

- It should be expressly mentioned that the information to the GPA is made through the SIA AMPS with the publication of the decision of the LG, the procedure report, etc.

Argumentation

- In order to streamline the process of communicating information on public procurement, we propose that the new AMPSIS will automatically inform the GPA about working group decisions published in the AMPSIS.

Art. (2) of Directive 2014/24/EU provides for informing the interested candidate or tenderer only on request within 15 days of receipt of a written request.

Award notice and award notice

- The debriefing duplicates the information in the GL Decision and the Award Notice. The EU Directive refers to the report on the procurement procedure. Respectively, we propose to revise the need for duplication of information.

Modification of public procurement contract

- It should be expressly provided that in the event of a change of postal address, bank details and other non-negotiable clauses, the contracting party informs the other party by letter without the need to sign an additional agreement.



Thanks for your
attention