The Legal Framework of Public Procurement

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More than a year and a half has elapsed since the adoption of the existing Public Procurement Act (it entered into force on 1 October 2004). This is a sufficient period of time to assess the law and to develop practice in its implementation.

The law begins with the provisions concerning the principles of public procurement procedures – openness, transparency, free and fair competition, equal treatment of all bidders. However, these principles are not simply declared and put "on paper"; they are the underlying philosophy also of the more detailed provisions of this legislative act. Furthermore, the implementation of the law has been facilitated by the establishment of a new special authority, the Public Procurement Agency under the Ministry of the Economy and Energy. The Agency keeps a special public registry of all public procurement procedures. These rules enable all entrepreneurs and parties concerned to obtain fast and accurate information on the official website of the Agency (www.aop.bg). To achieve greater transparency and to make the search easier, the Agency has introduced a public procurement classifier which consists of a digital code to denote the type of goods or services involved in the public procurement procedure. A mechanism to avoid difficulties in the identification of the contracting authorities is the list of all contracting authorities, which is compiled and maintained by the Executive Director of the Agency.

The entities, which have the obligation to abide by the statutory public procurement procedures, may be categorized into two groups: public and sectoral. The public entities are, most generally, all government institutions and local governments, whereas the sectoral entities are the organizations and companies which the State has entrusted with the management of certain activities of public interest, e.g. water supply, energy, transport, etc. The main difference between them is that the latter group is free to apply easier public procurement rules.

The lawmaker has clearly indicated how the law is "triggered": by the cumulative existence of a contracting authority, an object (the goods or services to be provided) and a minimum value of the public procurement contract as specified in the law.

At present, there is a choice of five types of procedures: an open or restricted procedure, two separate negotiation procedures with and without a notice respectively, and a competitive bidding procedure for design work.

The acts of the contracting authority are subject to appeal before a special jurisdiction, the Arbitration Tribunal at the Public Procurement Agency. The objective is to avoid the lengthy and cumbersome judiciary proceedings when appeals under this law are filed with state courts. However, this way of resolving the dispute is possible only if an arbitration agreement has been expressly signed. Otherwise the state courts retain their competence.

In general, the law meets the requirements of the European standards for speed and transparency of public procurement procedures. Its consistent application in practice is the most important guarantee of its effectiveness.