



ICLG

The International Comparative Legal Guide to: **Public Procurement 2016**

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Macedonia

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1 Relevant Legislation

1.1 What is the relevant legislation and in outline what does each piece of legislation cover?

The public procurements in the Republic of Macedonia are subject to the regulation of the Public Procurements Law (PPL), brought into effect on 12 November 2007 (*Official Gazette of R.M.*, No. 136/2007), and afterwards amended and supplemented from time to time. The PPL as “*lex specialis*” governs the terms and procedures for awarding the public procurement contracts, the authorisations of the Public Procurement Bureau, the authorisations of the Council on Public Procurement, and the authorisations of the State Appeals Commission. In cases of the absence of any specific provision on a certain issue related to the review procedures in public procurements, the PPL prescribes that it shall apply the Law on general administrative procedure as a subsidiary law. The supervision of the enforcement of the public procurements system in the Republic of Macedonia is under the jurisdiction of the Ministry of Finance and the Bureau of Public Procurement. In order to simplify the enforcement of the PPL and provide a more detailed interpretation of the provisions of the PPL, the Ministry of Finance has brought several bylaws (rulebooks), which also apply directly to public procurement procedures.

1.2 Are there other areas of national law, such as government transparency rules, that are relevant to public procurement?

The transparency rules provided with the laws governing the authorisations of the state authorities shall also apply to public procurement procedure conducted by such authorities.

1.3 How does the regime relate to supra-national regimes including the GPA, EU rules and other international agreements?

The Republic of Macedonia, as a state candidate for membership of the EU, is continuously working, without delay, on the harmonisation of its national legislation with the EU rules. The harmonisation of national legislation on public procurements with EU rules is considered as one of the most powerful instruments for the improvement and development of the Macedonian market. Therefore, the mission and priority goal of the public procurement system in the Republic of Macedonia is to follow continuously, and harmonise with, EU rules on public procurements, in addition to the good practice of EU members in the field of public procurements.

1.4 What are the basic underlying principles of the regime (e.g. value for money, equal treatment, transparency) and are these principles relevant to the interpretation of the legislation?

The basic principles that the PPL underwrite are: (i) competition between the bidders; (ii) equal treatment and non-discrimination of the bidders; (iii) transparency and integrity in the process for awarding the contracts; and (iv) rational and efficient utilisation of funds in the contract award procedures. These principles are relevant to the interpretation of the legislation, and form the groundwork of the public procurement system; the principles must be obeyed in each public procurement procedure, and must also be practised by both the contracting authorities and economic operators.

1.5 Are there special rules in relation to procurement in specific sectors or areas?

The public procurements conducted by the public authorities, acting in any state sector or area, shall generally be subject to the PPL. Regarding specific sectors or areas, the PPL prescribes several exceptions in the field of state defence (in cases where public procurements provided by public authorities governing the state defence, such as the Ministry of Defence, the Ministry of Internal Affairs, and the organs under their jurisdiction), where the application of this Law is excluded. Those exemptions refer to contracts which are classified as “state secret” contracts, enforcement of which requires special security measures. Furthermore, the authorities of the State defence shall not apply the PPL in any case where it might additionally cause disclosure of any classified information, as it might endanger the primary security interests of the State, particularly in relation to manufacturing and/or trade of arms, munitions and military assets.

The PPL also shall not apply to:

- public procurement contracts whereby the funds have been provided by international organisations (donors and lenders) or by third countries, provided that special terms and conditions for awarding public procurement contracts are prescribed by them; or
- public procurement contracts of goods or works which are awarded on the basis of an international agreement concluded between the Republic of Macedonia and one or more countries, and which are intended for joint implementation or exploitation of a construction by the signatory states or services intended for joint implementation or exploitation of projects by the signatory states, provided that the international agreement envisages an appropriate contract award procedure.

2 Application of the Law to Entities and Contracts

2.1 Which public entities are covered by the law (as purchasers)?

The PPL shall be implemented by the following entities acting as purchasers:

- (a) state authorities, local self-government units and the city of Skopje;
- (b) legal entities established for a specific purpose for meeting public interest needs, which are of a non-industrial or non-commercial nature, and which are mainly financed by the contracting authorities referred to in item a) above or by other such legal entities, or which are subject to control of their operations by the contracting authorities referred to in item a), or by other such legal entities, or in which more than half of their governing or supervisory board members are appointed by the contracting authorities referred to in item a), or by other such legal entities;
- (c) associations established by one or several contracting authorities referred to in items a) and b) above; and
- (d) public enterprises, joint stock companies, and limited liability companies wherein the contracting authorities referred to in items a), b) and c) have a dominant direct or indirect influence through ownership, i.e. if they hold the major share of the company's capital, have the majority vote of the stockholders, or appoint more than half of the governing or supervisory board members of the enterprise or the company, and which carry out one or more utility activities (such as water supply, energy, transport, postal services and other utility activities covered by PPL), in the cases when they award public procurement contracts or conclude framework agreements for the purpose of carrying out appropriate activities.

2.2 Which private entities are covered by the law (as purchasers)?

The PPL shall be implemented by any legal entity from the private sector which carries out one or more utility activities (such as water supply, energy, transport, postal services and other utility activities covered by the PPL) on the basis of a special or exclusive right, in the cases when it awards public procurement contracts or concludes framework agreements for the purpose of carrying out appropriate activities.

2.3 Which types of contracts are covered?

Based on the subject of the procurement, the PPL recognises: contracts for public procurement of goods; contracts for public procurement of services; and contracts for public procurement of works, in addition to the "utilities contracts", as a special type of public contract covered by the PPL. Utility contracts are defined as a public contract awarded for the purpose of carrying out one or more of the activities related to water supply, energy, transport, postal services, and other activities related to the exploration of soil for the purpose of extracting oil, gas or coal, or construction and operation of airports or ports (river or lake ports) or other terminal facilities to carriers by air or inland waterway.

2.4 What obligations do purchasers owe to suppliers established outside your jurisdiction?

Suppliers established outside Macedonia are allowed to participate in the tender procedure under the same terms as the Macedonian

suppliers. According to the Macedonia PPL, any public procurement of goods, of which the value exceeds EUR 50,000, and any public procurement of works and services, of which the value exceeds EUR 200,000, shall be announced in the EU official gazette, in order to be more visible and accessible for the supplier established outside of Macedonia, and enable more competition in the tender procedures.

2.5 Are there financial thresholds for determining individual contract coverage?

The PPL applies to any purchases, the total amount of which exceeds the equivalent of EUR 500 in Denar on a monthly basis, without value added tax.

As an exemption from this general threshold, the PPL shall not apply for utilities contracts to be awarded by private entities (related to water supply, energy, transport, postal services and other covered activities) if the estimated value of the contract is the equivalent of under EUR 200,000 in Denar for public supply and service contracts, and the equivalent of EUR 4,000,000 in Denar for public works contracts.

2.6 Are there aggregation and/or anti-avoidance rules?

The contracting authority shall estimate the value of the public contract by calculating the total amount that should be paid for executing the respective contract, without the inclusion of VAT. The estimated value of the public contract shall be calculated when preparing the annual procurement plan.

The contracting authority shall not divide the public contract into multiple separate contracts with lower value, nor apply methods for calculating the estimated value of the contracts for obtaining an undervalued estimation of the contract, so as to avoid certain procedures under this Law.

The manner of estimation of the value of public contracts is described in detail in the rulebook for estimating the value of contracts, issued by the Minister of Finance.

2.7 Are there special rules for concession contracts and, if so, how are such contracts defined?

The concession contracts are covered by the Law on concessions and other types of public-private partnerships. By the definition given in this law, the concession contract means a contract with financial interest, concluded by and between the Provider of the concession (the Republic of Macedonia or local municipality authorities) and the Concessioner (domestic or foreign physical or legal entity or consortium), the subject of which is the utilisation of property of public interest of the Republic of Macedonia, carrying out construction works for constructions of public interest of the Republic of Macedonia, or conducting public services.

2.8 Are there special rules for the conclusion of framework agreements?

The framework agreements are recognised by the Macedonian PPL and regulated within a separate chapter in the PPL.

The framework agreements may be concluded only by using open or restricted procedure. However, as an exception, the contracting authority can conclude framework agreements using the other procedures prescribed by the PPL only in specific cases, and in accordance with the PPL.

Framework agreements may be concluded for a period of no longer than three years, and if the public procurement agreement is granted on the basis of a framework agreement concluded with more operators (framework agreements may be concluded with one or more operators), the number of the operator cannot be lower than three. The PPL prescribes, as an exception, that if there are no three qualified operators, the framework agreement may be concluded with fewer than three operators.

2.9 Are there special rules on the division of contracts into lots?

The subject of the PP agreement may be divided to separate lots (parts), and each lot can be subject of a separate contract. The bidder may submit a bid for one, several, or all lots. The bidder should specify in its bid whether the bid applies to the whole subject, or whether only certain lots of the contract are to be awarded.

If a bidder submits an offer for two or more lots, the same shall be submitted in a manner that will allow each lot to be evaluated separately.

In the procurement of drugs, medical devices and/or medical disposables, the contracting authority shall not form lots consisted of more items, unless the items are associated with their use and upon prior consent of the Council.

3 Award Procedures

3.1 What types of award procedures are available? Please specify the main stages of each procedure and whether there is a free choice amongst them.

The contracting authority shall award public contracts by applying **open** or **restricted procedure** at the choice of the contracting authority. Notwithstanding this, the contracting authority may award public contracts in other procedures, such as:

- **Competitive dialogue**
The contracting authority may apply competitive dialogue procedure if:
 - the respective public contract is considered to be particularly complex; and
 - the application of the open or restricted procedure would not allow the awarding of the public contract.
- **Negotiated procedure with prior publication of a contract notice**
The contracting authority shall apply negotiated procedure with prior publication of a contract notice in the following cases:
 - when, after applying the open procedure, the restricted procedure or the competitive dialogue, no acceptable tender was received;
 - in exceptional cases, when the nature of the works, products or services, or the risks attached thereto, do not allow a prior overall pricing of the contract;
 - for public service contracts, where the service to be purchased is of such a nature that the technical specifications cannot be elaborated with sufficient precision to permit the awarding of the contract by applying rules governing open or restricted procedures; and
 - for public works contracts, when the works that will be executed are needed exclusively for purposes of research, testing or technological development, and only if these are not carried out in order to obtain profit, and do not aim at recovering the research and development costs.

- **Negotiated procedure without prior publication of a contract notice**

The contracting authority shall apply negotiated procedure without prior publication of a contract notice in the following cases:

- after two conducted open procedures or procedures with a request for bids, no bid is submitted, or if two restricted procedures are conducted and no bid is filed for participation in the first phase, in cases where the conditions have not changed from the tender documentation;
- when, due to technical or artistic reasons, or for reasons connected with protection of exclusive rights (patents, etc.), the contract may be executed only by a particular economic operator;
- for reasons of extreme urgency;
- when the products involved are manufactured purely for the purpose of research, experimentation, study or development;
- in the case of supply contracts, for additional deliveries from the original supplier which are intended either as a partial replacement or an extension of existing supplies;
- for the purchase of supplies under particularly favourable terms, from either a supplier which winds up its business activities (liquidation or bankruptcy);
- for public service contracts, when the contract concerned follows a design contest and shall be awarded to the winning candidate or to one of the winning candidates; and
- for additional works or services not included in the original contract, but which have, through unforeseen circumstances, become necessary, provided that the award is made to the economic operator performing such works or services.

- **Simplified competitive procedure**

The contracting authority shall carry out simplified competitive procedure:

- without public opening of the bids, if the estimated value of the public contract, excluding VAT, is up to the equivalent of EUR 5,000 in Denar; or
- with public opening of the bids, if the estimated value of the public contract is up to the equivalent of EUR 20,000 in Denar for public supply and service contracts, and the equivalent of EUR 50,000 in Denar for public works contract, excluding VAT.

- **Design contest**

The contracting authority shall organise a design contest when it acquires a plan or a project, mainly in the area of spatial or urban planning, architecture and civil engineering, or data processing, selected by a jury after being put out to competition.

3.2 What are the minimum timescales?

The minimum timescales for submission of the bids, after the publishing of the public procurement notice are:

- 45 days for open procedure, with the possibility to be decreased to 36 days;
- 30 days for restricted procedure, with the possibility to be decreased to 15 days;
- 30 days for competitive dialogue;
- 30 days for negotiated procedure with prior publication of a contract notice, with the possibility to be decreased to 15 days;
- five days for simplified competitive procedure when the estimated value of the contract is up to EUR 5,000, 10 days

if the estimated value of the contract is up to EUR 20,000 for goods and services and up to EUR 50,000 for works; and

- 35 days for the design contest procedure.

3.3 What are the rules on excluding/short-listing tenderers?

The contracting authority shall exclude any economic operator from the contract award procedure, provided that it:

- is under a bankruptcy or liquidation procedure;
- has unpaid taxes, contributions or other public duties, unless the economic operator has approved the delayed payment of taxes, contributions or other public duties in accordance with the special regulations, and pays them on regular basis;
- has been imposed with a secondary sentence prohibition on participation in open call procedures, awarding public procurement contracts and contracts for public-private partnership;
- has been imposed with a secondary sentence which constitutes temporary or permanent prohibition on performing a certain activity;
- is being pronounced a misdemeanour sanction prohibition on practising profession, performing activity or duty, i.e. temporary prohibition for performing a particular activity; or
- presents false information or does not submit the information required by the contracting authority.

Furthermore, an economic operator with one or several negative references within a period of one year, as of the day of the publication of the last negative reference, shall not have right to participate in a contract award procedure.

3.4 What are the rules on evaluation of tenders?

Bids that were not opened at the public opening of the bids cannot be evaluated. The contracting authority, prior to the evaluation, mandatorily inspects whether negative references are published for any of the bidders, and for those bidders for whom there exists no published negative reference, the contracting authority inspects the validity and completeness of the documentation. If the documentation is not complete, the contracting authority obligatorily requires the operator to clarify or supplement the documents for the determination of their ability. The contracting authority may also require translation of the tender related to the technical documentation, if the same is allowed to be submitted in a foreign language.

The evaluation of the tenders shall be conducted by applying the criteria stated in the tender documentation and published in the contract notice. During the evaluation, the contracting authority shall inspect the qualification of the bidder to participate in the procedure, upon the criteria for the bidder set in the tender documentation referring to:

- personal standing;
- qualification to perform a professional activity;
- economic and financial standing;
- technical or professional ability;
- quality assurance standards; and
- environmental management standards.

The unacceptable bids (incomplete bids) shall not be subject to evaluation.

3.5 What are the rules on awarding the contract?

A general criterion for awarding the contract is the lowest price.

An exemption of this rule is the public procurement of consultant and other intellectual services, where the criterion for awarding the contract shall be the “economically most favourable bid” (the one which receives the highest points upon deferent criteria, such as price, quality characteristics, technical and functional characteristics, environmental characteristics, operational costs, cost-effectiveness, post-sales services and technical support, delivery or execution time, or other significant elements for the evaluation of the tenders). However, prior to publishing the notice, the contracting authority shall request the Council’s consent for using the criterion “economically most favourable bid”. The criterion “economically most favourable bid” is mandatory for the procedures of competitive dialogue and the procedures allowing alternative bids.

3.6 What are the rules on debriefing unsuccessful bidders?

The unsuccessful bidders, i.e. the bidders whose bids are not fulfilling the qualification criteria set in the tender documentation, will be excluded from the procedure and shall not be subject to evaluation.

The contracting authority shall notify the candidates, i.e. the tenderers, in writing, about the decisions made in connection with the conducted pre-qualification, the award of the public procurement contract, the conclusion of the framework agreement, or the cancellation of the contract award procedure. The notification shall be sent within a time period of three days as of the day of the adoption of the respective decision.

3.7 What methods are available for joint procurements?

Joint procurements shall be carried out through one contracting authority on behalf of a group of contracting authorities which require the same type of contract, upon prior concluded agreement for carrying out a joint contract award procedure.

The agreement for carrying out the joint contract award procedure shall define all rights and obligations of the contracting authorities with regard to the economic operator who will be awarded the public contract.

3.8 What are the rules on alternative/variant bids?

The PPL prescribes that the contracting authority may allow the tenderers to submit alternative bids only when the contract award criterion is the economically most favourable tender.

It is mandatory for the contracting authority to indicate in the contract notice if alternative bids are allowed. If such an indication is missing, it shall be considered that alternative bids are not allowed.

The contracting authority which allows alternative bids shall specify the minimum mandatory requirements in the technical specifications that shall be met by these tenders, and the alternative bids that fail to meet the minimum requirements shall not be considered by the contracting authority.

3.9 What are the rules on conflicts of interest?

In order to prevent conflicts of interest concerning the award of public contracts, the provisions of the Law on Prevention of Conflict of Interest shall be applicable.

In the contract award procedure, the president, deputy president, members and deputy members of the public procurement

commission, as well as the responsible person, shall sign a statement for the non-existence of conflict of interests, which shall be a part of the dossier for the implemented procedure.

In cases of conflicts of interest with the president, the deputy, the members and their deputies in the public procurement commission, they shall withdraw from the work in the commission and shall be substituted by other persons.

In cases of conflicts of interest with the responsible person, the same shall, by a special decision, authorise another person from among the officials or employees at the contracting authority to adopt the appropriate decisions and to sign the contract.

When implementing the public procurement contract, the contractor cannot hire persons involved in the evaluation of tenders submitted in the respective contract award procedure for the duration of the contract. In this particular case, the public procurement contract shall be considered null and void.

4 Exclusions and Exemptions (including in-house arrangements)

4.1 What are the principal exclusions/exemptions?

Besides the certain exemptions described above in question 1.5, the PPL shall not apply to public service contracts which:

- include acquisition or rental of land, buildings, or other immovable property or the rights thereon;
- refer to the purchase, development, production or co-production of programme materials by radio or TV broadcasters, and to the broadcasting time of TV and radio programmes;
- refer to arbitration and conciliation services;
- are financial services related to the issue, trading or transfer of securities or other financial instruments, brokerage services and services rendered by the National Bank of the Republic of Macedonia;
- refer to public notary services;
- refer to services of public executors;
- refer to employment contracts;
- refer to R&D services; and
- are public contracts for which funds have been provided by international organisations (donors and lenders) or from third countries.

4.2 How does the law apply to "in-house" arrangements, including contracts awarded within a single entity, within groups and between public bodies?

The PPL shall not apply to public service contracts awarded by a contracting authority to another contracting authority or legal persons established by one or more contracting authorities, in cases where they have exclusive rights to provide such services.

Furthermore, the PPL shall not apply to contracts awarded by the contracting authority to legal entity if:

- (a) the legal entity is incorporated for the purpose of conducting services from the scope of the jurisdiction of the contracting authority;
- (b) the legal entity had more than 80% of total turnover in the preceding business year for the needs of contracting authority;
- (c) subject matter of the contract is directly related to the performance of the activity of the legal entity described under item a) above;

- (d) the contracting authority is the sole shareholder of the legal entity;
- (e) the contracting authority is supervising the legal entity; and
- (f) the legal entity performs the subject matter of the contract on its own, without the engagement of any subcontractors.

5 Remedies

5.1 Does the legislation provide for remedies and if so what is the general outline of this?

The PPL states that any economic operator having legal interest in the contract award procedure, and which has suffered or which could suffer damage by an alleged infringement of the provisions of this Law, may initiate an appeals procedure against the decisions, actions and failures to undertake actions by the contracting authority during the contract award procedure. The appeals procedure shall be initiated by submitting the appeal, i.e. by submitting the request to the State Appeals Commission.

The decisions of the Appeals Commission may be subject to administrative dispute in front of the Administrative Court, which is competent in resolving administrative disputes.

5.2 Can remedies be sought in other types of proceedings or applications outside the legislation?

The PPL prescribes only the rules on the appeals procedure with the indication that, for the issues related to this procedure that are not governed by the PPL, it shall apply the Law on general administrative procedure. The next remedy against the decision brought upon the appeal (an administrative act) is the initiation of an administrative dispute by submitting a lawsuit against the Appeals Commission decision in front of the Administrative Court. The rules on the procedure in front of the Administrative Court are subject to regulation of the Law on administrative disputes. The decision of the Administrative Court may also be subject to a second-instance appeals procedure in front of the Higher Administrative Court, as regulated by the Law on administrative procedures. Besides the Law on administrative procedures for the issues related to the administrative dispute, which are not governed specifically with the Law on administrative disputes, it shall apply the Law on Civil Procedure.

5.3 Before which body or bodies can remedies be sought?

The first-instance remedy in public procurement procedure is the appeal on the decisions, actions and failures to undertake actions by the contracting authority during the contract award procedure, which the concerned economic operator shall submit at the same time in front of the State Appeal Commission and in front of the public procurements commission of the contracting authority. After receiving the appeal, the public procurements commission of the contracting authority has the opportunity to eliminate or improve the issue that is subject of the appeal, and if it is not consented to do so, the State Appeal Commission will then proceed with the appeal procedure.

The economic operator who has submitted the appeal, and who is not satisfied with the decision of the State Appeal Commission, is entitled to challenge the decision of the State Appeal Commission in front of the Administrative Court. The next and final instance where the economic operator may challenge the decision of the Administrative Court is the Higher Administrative Court.

5.4 What are the limitation periods for applying for remedies?

The appeal against the decisions, actions and failures to undertake actions by the contracting authority during the contract award procedure shall be submitted within eight days/three days at simplified competitive procedures, from the day of:

- receipt of the minutes of the conducted technical dialogue regarding the actions or failure to take actions related to the implementation of technical dialogue;
- publication of the contract notice, regarding the information, actions or failures to undertake actions under the contract notice;
- the opening of tenders, regarding the actions or failures to undertake actions related to the tender documentation, i.e. the public opening of tenders;
- the expiry of the deadline for bringing a decision on selection or annulment of the procedure against the failure of the contracting authority to adopt a decision on selection or annulment of the procedure in the relevant period;
- the receipt of the formal decision for an individual right in the contract award procedure, regarding the establishment of the qualifications from the requests to participate or the evaluation of tenders, as well as the decision; or
- acknowledging illegal implementation of the contract award procedure, within one year after the day of completing the contract award procedure.

The State Appeals Commission shall decide upon the appeal within 15 days after receiving the whole file on the contract award procedure by the contracting authority.

The economic operator who is not satisfied with the decision of the State Appeals Commission (the Administrative Act) may challenge it in front of the Administrative Court within 30 days after reception.

5.5 What measures can be taken to shorten limitation periods?

The PPL does not provide any measures to shorten the limitation periods for applying for remedies. Namely, the concerned party applying for remedy may shorten the limitation period by submission of the remedy as early as possible in the limitation period.

5.6 What remedies are available after contract signature?

The signing of the public contract and its execution shall be postponed until the decision on the submitted appeals in front of the Appeals Commission becomes final. Therefore, after the decision of the Appeals Commission becomes final, the contracting authority may sign and start executing the awarded contract, and in the meantime the economic operator may challenge the decision of the Appeals Commission in front of the Administrative Court as described in the sections above.

After receiving the final decision of the State Appeals Commission, the contract can be signed and executed, and if in the meantime the dissatisfied economic operator has submitted a lawsuit to the Administrative Court, it has the right, together with the lawsuit, to request a temporary measure that would postpone the execution of the agreement until the adoption of the final decision of the Administrative Court.

Beside the administrative dispute, the economic operator that has succeeded in the administrative dispute, after the contract has been signed and executed, may initiate a civil procedure in front of the Civil Court and ask for compensation of damage against the contracting authority.

5.7 What is the likely timescale if an application for remedies is made?

The State Appeals Commission shall decide upon the submitted appeal within 15 days after completing and receiving the whole documentation about the tender procedure. Generally, in practice, the prescribed legal terms in the appeal procedure are usually followed and complied with properly by the contracting authority and the State Appeals Commission, and the appeal procedure usually finishes within 15 days up to one month after submitting the appeal. On the other side, the administrative dispute procedures concerning public contracts, although being considered urgent, as well as the civil court procedures, may last longer than six months after initiating the procedure.

5.8 What are the leading examples of cases in which remedies measures have been obtained?

The most common cases when remedies measures have been obtained are the cases when the contracting authority awards bidders with unusually low prices for the subject matter of the procurement. In such cases, when an unusually low price is offered, the contracting authority must ask the bidder to provide a reasonable explanation of the low price, and if the contracting authority fails to do so and decides to award the contract to that bidder, it is very often the appeal on these arguments that is successful.

Furthermore, the remedies measures have also been obtained in cases when the contracting authority is trying to discriminate the bidders, requesting the bidder to have residence in certain territories of the Republic of Macedonia. Therefore, the tenders providing such territorial discrimination for the bidders are usually successfully challenged by conserved economic operators.

Other common grounds for appeal are:

- major infringements relating to the opening of the bid;
- major infringements relating to the evaluation of bids;
- failure of the contracting authority to comply with the decision of the State Commission; and
- selection of an uncompleted or non-qualified bid.

5.9 What mitigation measures, if any, are available to contracting authorities?

In cases when the economic operator submits an appeal against the decision of the contracting authority for awarding the contract, the filed appeal suspends the signing of the public procurement contract and its implementation until the decision of the State Commission becomes final.

However, the contracting authority is entitled to request the State Commission to approve the continuation of the contract award procedure before the decision of the State Commission becomes final.

The request for the continuation of the contract award procedure may be submitted due to reasons that can cause damages if the procedure is not conducted, and which are disproportional to its value.

6 Changes During a Procedure and After a Procedure

6.1 Does the legislation govern changes to contract specifications, changes to the timetable, changes to contract conditions (including extensions) and changes to the membership of bidding consortia pre-contract award? If not, what are the underlying principles governing these issues?

The PPL prescribes the possibility of amending or modifying the tender documentation by the contracting authority no later than six days before the time limit for submitting tenders, as well as the possibility to extend the time limit for submitting the tenders.

6.2 What is the scope for negotiation with the preferred bidder following the submission of a final tender?

The PPL does not provide an option for negotiation with the preferred bidder following the submission of a final tender, since the preferred bidder must accept all contractual terms at the moment of submission of the bid. The contractual terms, i.e. the draft contract, are always an integral part of the tender documentation, and it may not be subject to changes or negotiations after the best bidder is selected. Eventually, negotiations may be possible for certain secondary issues which the contracting authority has not provided in the draft contract; yet, the negotiations in any case may not exceed the scope of the terms and conditions provided with the draft contract and the tender documentation.

6.3 To what extent are changes permitted post-contract signature?

With reference to any possible changes of the contract after being signed, the PPL prescribes only specific rules for changes in contracts awarded by state authorities which are users of the State budget. Therefore, in the case of a decrease of the state budget, changes of the performance schedule and/or payment of liabilities under concluded public contracts may be possible with prior consent by the other contracting party and approval by the Government of the Republic of Macedonia, upon prior opinion by the Ministry of Finance. However, the changes, post-contract signature, exist in practice, since there is no explicit rule that changes are not allowed. Usually, the changes refer to time schedules, or other terms which do not materially change the subject of the contract.

6.4 To what extent does the legislation permit the transfer of a contract to another entity post-contract signature?

The transfer of a contract is not allowed and is regulated with the PPL. However, the transfer would generally be possible only in cases of statutory changes in the awarded bidder or contracting authority (mergers, divisions, acquisitions); therefore, the legal successor of the awarded bidder or the contracting authority will be entitled to take over the contract. In other cases, transfer would not be possible.

7 Privatisations and PPPs

7.1 Are there special rules in relation to privatisations and what are the principal issues that arise in relation to them?

Privatisations are not subject to regulation in the PPL. Privatisations are governed by specific laws (*lex specialis*) regulating the procedure of privatisation of certain properties (real estate, goods, services, etc.) in State ownership.

7.2 Are there special rules in relation to PPPs and what are the principal issues that arise in relation to them?

The PPP's rules and concession's rules are governed by a special law on concessions and other types of PPP. The PPP contract refers to services on projecting (designing), financing, contraction and maintenance of infrastructural objects, equipping, and other types of public services that the private partner shall provide to the public partner for certain financial benefit. Although the procedure for awarding the concession contract or the contract on PPP is similar, and has several common principles with the public procurement procedure such as transparency, non-discrimination, rationality and efficiency, the terms and conditions on the PPP contracts and the status of the ownership over the investments/constructions made by the private partner are some of the issues that distinguish the PPP from public procurements.

8 Enforcement

8.1 Is there a culture of enforcement either by public or private bodies?

When speaking of the enforcement of public procurements contracts, it can be ascertained that the culture enforcement is at a satisfactory level by both public and private bodies.

8.2 What national cases in the last 12 months have confirmed/clarified an important point of public procurement law?

It is hard to identify any specific national cases that have an important point of public procurement law. Generally, the public procurement system in Macedonia through the years is gaining positive development.

9 The Future

9.1 Are there any proposals to change the law and if so what is the timescale for these and what is their likely impact?

The Ministry of Finance of the Republic of Macedonia and the Bureau of Public Procurement, having the jurisdiction of the supervisor of the implementation and improvement of the public procurement system in Republic of Macedonia, have brought the Strategy for development of the public procurement system in the Republic of Macedonia in the period of 2014–2018. The first and major goal of the Strategy is the improvement of the legal framework of public procurements through the harmonisation of national legislation with

EU rules. Furthermore, the Strategy of the Bureau is focused on the development of the electronic system of public procurements, recruitment of the anti-corruption measures, professionalisation of the public procurement occupation, efficiency, rationality and transparency of the remedy procedures, and legal protection in public procurements.

The Ministry of Finance and the Bureau of Public Procurements will make their best efforts to ensure that all the goals stated above will be implemented in the current regulation within the next four years.

9.2 Are any measures being taken to increase access to public procurement markets for small and medium-sized enterprises and other underrepresented categories of bidders?

In the past two years, there have been actions taken for increasing the access of small to medium-sized entities in the public procurement system by opening up several offices and regional centres for giving

support and advice to small and medium-sized entities willing to participate in the public procurement market. Some of these centres are financed by USAID.

On the other side, the latest changes in the PPL adopted in 2013 and 2014 facilitate the access of the small and medium-sized entities to the procurement system by decreasing of the costs for submitting bids such as: making the tender documentations free of charge and mandatorily available on the electronic system for public procurements; and implementing the “economic operator profile” in the electronic system, which means that the economic operator shall make its profile and upload the necessary documents for its personal identification and status in the profile account, and that the profile is available to all contracting authorities and there is no need for the bidder to collect the same document certificates in order to prove its identification and status for each tender separately. These measures would save time and costs for every bidder; however, it is much more important for small and medium-sized entities than big companies.



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Accepting the premise that no one can be equally versed in all fields of law, Debarliev, Dameski & Kelesoska, Attorneys at Law (DDK) has been created as a company committed to being the leading business law firm in Macedonia.

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The quality of Debarliev, Dameski & Kelesoska, Attorneys at Law rests mainly upon the quality of its attorneys, their accessibility and efficiency. DDK's attorneys share outstanding academic backgrounds, as well as a strong commitment to legal perfection.

The partners of DDK have more than 20 years' legal practice experience, and exceed clients' expectations by providing sophisticated and efficiently managed legal services of all civil law areas, including but not limited to: corporate law, labour law, competition and antitrust, M&A, contracts law, litigation, tax, public procurements and PPP, energy law, IP and telecommunications, etc.