

Public Procurement

Contributing editor
Sally Roe



2016

GETTING THE
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Public Procurement 2016

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Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016
No photocopying without a CLA licence.
First published 2005
Twelfth edition
ISSN 1747-5910

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Legislative framework

1 What is the relevant legislation and who enforces it?

Public procurement in Macedonia is regulated by the Public Procurements Law (PPL) passed on 12 November 2007 (Official Gazette of RM No. 136/2007), as amended and supplemented in 2008, 2009, 2010, 2011, 2013, 2014, 2015 and 2016. The PPL as *lex specialis* governs the terms and procedures for awarding public procurement contracts, the authorisations of the Public Procurement Bureau and the authorisations of the State Appeals Commission. In the absence of any specific provision on issues 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 and the enforcement of the public procurement system in Macedonia is under the jurisdiction of the Ministry of Finance and the Bureau of Public Procurements, as well as the State Appeal Commission as an independent body authorised to rule on the review procedures in public procurements.

A new oversight body has been established, the Procurements Council. In some specific cases determined in the PPL it is mandatory for contracting parties to require consent from the council before issuing the announcement for opening the public procurement procedure and to submit an adequate justification for the legal grounds and the need for the procurement.

2 In which respect does the relevant legislation supplement the EU procurement directives or the GPA?

Macedonia currently has the status of a candidate state for membership of the EU. Achieving EU membership is the major goal of the Macedonian state's politics. Therefore, Macedonia is continuously working on the harmonisation of its national legislation with EU rules. The harmonisation of national legislation on public procurement with EU rules is considered as one of the most powerful instruments for the improvement and development of the Macedonian market.

The European Commission has evaluated the Macedonian PPL as highly consistent with the EU Public Procurement Directives including, but not limited to, Directives 2001/78/EC, 2004/18/EC, 2004/17/EC and 2007/66/EC.

Between 2014 and 2018 Macedonia shall also implement Directives 2009/33/EC and 2009/81/EC.

3 Are there proposals to change the legislation?

The mission and priority goal of the public procurement system in Macedonia is to continuously follow and harmonise with EU rules on public procurement and the good practice of EU member states in the field of public procurement by further adoption of EU directives related to public procurement, especially to green procurement and their implementation in the national procurement system.

4 Is there any sector-specific procurement legislation supplementing the general regime?

The general rules of the PPL shall not apply to procurement contracts that are classified as 'state secret' and contracts whose enforcement requires special security measures. Also, the authorities of the state defence shall

not apply the PPL in any case when it might cause disclosure of any classified information or endanger the primary security interests of the state, especially related to manufacturing and trade of arms, munitions and military assets.

In addition to the exemptions in the field of state defence, the PPL also shall not apply to public service contracts that:

- include acquisition or rental of land, buildings or other immoveable property or the rights thereon;
- refer to the purchase, development, production or co-production of programme material by radio or TV broadcasters and for broadcasting time of TV and radio programmes;
- refer to arbitration and conciliation services;
- refer to 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 Macedonia;
- are notary services;
- are exequatur services;
- refer to employment contracts;
- refer to R&D services;
- are public contracts for which funds have been provided by international organisations (donors and lenders) or from third countries; and
- are public contracts granted for the activities of the army of the Republic of Macedonia.

Applicability of procurement law

5 Which, or what kinds of, entities have been ruled not to constitute contracting authorities?

There is no certain definition given with statutory law defining which organisations are not considered to be public authorities.

In fact the PPL explicitly defines the entities that are covered by the provisions of the PPL and that constitute contracting authorities; so any other entity not recognised with the definition given by the PPL shall not constitute a contracting authority.

On the other hand, the government of Macedonia has made a decision on defining an indicative list of entities that constitute contracting authorities; any entity that is not included in this list does not come under the PPL.

In addition to the entities listed in the indicative list of contracting authorities, a contracting authority shall constitute each entity that is funded, controlled or financed by the state, the state authorities or the local government authorities. On the other hand, the state authorities are listed and defined in the law on the organisation and work of the state authorities. Also, the laws governing certain types of public services such as water supply, energy, transport services, postal services, activities related to the exploration of land for the purpose of extracting oil, gas or coal or construction and operation of airports or ports identify the managing entity for such services that also constitutes a contracting authority.

6 For which, or what kinds of, entities is the status as a contracting authority in dispute?

The existence of the indicative list of contracting authorities adopted by the government of Macedonia, which is also published in the Official Gazette of Macedonia, removes any doubts or disputes on the issue of which entities have the status of contracting authority.

7 Are there specific domestic rules relating to the calculation of the threshold value of contracts?

The PPL applies to any contracts the total amount of which exceeds €500 in denar equivalent on a monthly basis, excluding value added tax.

As an exemption from this general threshold, the PPL shall not apply for utilities contracts (water supply, energy, transport, postal services and other covered activities) when the estimated value of the contract is below €200,000 in denar equivalent for public supply of works and services and €4 million in denar equivalent for the public supply of works.

8 Does the extension of an existing contract require a new procurement procedure?

The extension of existing public contracts requires a new procurement procedure to be conducted by the contracting authority. The PPL provides that for the purpose of the extension of the existing contract the contracting authority may conduct a negotiated procedure without prior publication of a contract notice.

9 Does the amendment of an existing contract require a new procurement procedure?

In cases where the existing contract is amended in a manner that will involve any supplement of the subject of the procurement, the contracting authority is obliged to conduct a new procurement procedure.

10 May an existing contract be transferred to another supplier or provider without a new procurement procedure?

The existing contract may be transferred, without a new procurement procedure, only to legal entities that constitute legal successors of the supplier, while the transfer of the contract to any other supplier is not allowed.

11 In which circumstances do privatisations require a procurement procedure?

Privatisations are not the subject of regulation in the PPL. Privatisations in Macedonia are governed by the special Law on Privatisation on State Shares in Companies, and it is under the jurisdiction of the government of Macedonia, that is, the government decides about privatisations. The privatisation procedure must generally be conducted by public announcements for soliciting purchase offers.

12 In which circumstances does the setting up of a public-private partnership (PPP) require a procurement procedure?

PPPs are governed by a separate Law on Concessions and Other Types of PPP. The PPP contract refers to services on projecting (designing), financing, contraction and maintenance of infrastructure projects, equipping and other type of public services that the private partner shall provide to the public partner for certain financial benefit. The PPL shall apply to procedure for awarding the PPP contracts, except for certain issues of the PPP contracts for which the Law on Concessions and Other Types of PPP provides special rules.

13 What are the rules and requirements for the award of works or services concessions?

The rules and requirements for award of public procurements generally apply to concessions with the exception of certain issues that are specially regulated by the Law on Concessions and Other Types of PPP.

14 To which forms of cooperation between public bodies and undertakings does public procurement law not apply and what are the respective requirements?

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

The procurement procedures

15 Does the relevant legislation specifically state or restate the fundamental principles for tender procedures: equal treatment, transparency, competition?

The basic principles of public procurement as set out in the PPL are:

- competition between the bidders;

- equal treatment and non-discrimination of the bidders;
- transparency and integrity in the process for awarding contracts; and
- rational and efficient utilisation of funds in public procurement.

16 Does the relevant legislation or the case law require the contracting authority to be independent and impartial?

The PPL requires the impartiality of the contracting authority through various provisions, starting from the general provisions setting forth that the equal treatment and non-discrimination of the bidders is one of the basic principles of public procurement.

In this context the PPL provides that the contracting authority shall not define the technical specifications of the subject matter of the procurement, such as indicating a specific manufacturer, production, a particular process, or trademarks, patents, types or a specific origin which may have the effect of favouring or disqualifying certain economic operators or certain products. Furthermore, the impartiality of the contracting authority is also covered by the provisions related to preventing conflicts of interest between the contracting authority officers undertaking actions in the procedure and the bidders who participate in the procedure.

17 How are conflicts of interest dealt with?

The PPL contains several provisions related to preventing conflicts of interest, providing that:

- persons who have participated in the preparation of the bid documentation cannot participate as bidders or members of a joint group in the contract award procedure;
- persons who have taken part or assist in the evaluation of the bids, as well as the head person at the contracting authority, cannot act as candidates, bidders, subcontractors or members in a group of bidders in the respective contract award procedure. In this case, the request to participate in the bid shall be rejected from the contract award procedure; and
- when executing the public contract, the contractor shall not appoint persons involved in the evaluation of bids submitted in the respective contract award procedure during the period of the validity of the contract. If this occurs, the public contract shall be null and void.

For any other purpose in preventing conflicts of interest the PPL refers to the Law on Prevention of Conflicts of Interest, which shall accordingly apply to the contract award procedures.

18 How is the involvement of a bidder in the preparation of a tender procedure dealt with?

The PPL explicitly provides that persons who have participated in the preparation of the bid documentation cannot participate as bidders or members of a joint group in the contract award procedure. Such bids shall be rejected from the contract award procedure.

19 What is the prevailing type of procurement procedure used by contracting authorities?

The most frequent type of procurement procedure practised by the contracting authorities is the procedure with request for collecting bids. According to the last annual report on the procurement system in Macedonia, published by the Public Procurement Bureau, most of the procurement procedures in 2014 were conducted as procedures with request for collecting bids.

20 Can related bidders submit separate bids in one procurement procedure? If yes, what requirements must be fulfilled?

The PPL law does not contain any certain provisions referring to participation of related bidders in one procurement procedure. Generally, related bidders can submit separate bids in one procurement procedure; no specific requirements are provided within the PPL.

21 Are there special rules or requirements determining the conduct of a negotiated procedure?

The PPL recognises two types of negotiated procedures.

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:

- 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 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 the purpose 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:

- when no bid in an open procedure or no request to participate in the first phase of a restricted procedure has been submitted;
- 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. This does not apply to goods from mass production that would make profit or return of costs for development and research;
- in the case of supply contracts, for additional deliveries from the original supplier which are intended either as a partial replacement or extension of existing supplies;
- for the purchase of supplies under particularly favourable terms, for example from a supplier that 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 that have, through unforeseen circumstances, become necessary, provided that the award is made to the economic operator performing such works or services when:
 - such additional works or services cannot be technically or economically separated from the original contract without causing major problems to the contracting body; or
 - such additional works or services, although they can be separated from the execution of the original contract, are crucial for its completion.

22 When and how may the competitive dialogue be used? Is it used in practice in your jurisdiction?

The contracting authority may apply the 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 awarding the public contract.

The competitive dialogue procedure is rarely used in practice.

23 What are the requirements for the conclusion of a framework agreement?

The framework agreement shall be concluded by the contracting authority by carrying out an open or restricted procedure. The contracting authority may conclude a framework agreement with duration appropriate to the nature of the subject matter of the contract, but it shall not exceed a period of two years, except with the purchase of tests that include control, calibration and supplies for laboratory medical work, where the framework agreement may be concluded for a period of up to three years.

Public contracts awarded on the basis of a framework agreement shall be concluded between the contracting authority and the economic operator that is party to the respective framework agreement.

The contracting authority shall stipulate the minimum selection criteria for the candidates or the bidders according to the estimated value of the largest public contract to be awarded on the basis of the respective framework agreement.

24 May a framework agreement with several suppliers be concluded? If yes, does the award of a contract under the framework agreement require an additional competitive procedure?

The contracting authority may conclude framework agreements with several economic operators, but no fewer than seven economic operators. The contracting authority may conclude a framework agreement with fewer than seven economic operators, but only with prior consent of the council.

The contracting authority shall award public contracts on the basis of a framework agreement concluded with more than one economic operator:

- without reopening competition; or
- by reopening competition between all economic operators party to the framework agreement.

When the contracting authority awards public contracts by reopening competition between all economic operators, it shall reopen competition according to the following procedure:

- for every contract to be awarded, the contracting authorities shall submit a written request to all economic operators that are party to the framework agreement;
- the contracting authority shall set a sufficient time limit to enable the submission of bids for each contract to be awarded;
- the bids shall be submitted in writing and the contracting authority shall open them within the set time limit; and
- the contracting authority shall award each contract to the economic operator who has submitted the winning bid on the basis of the award criteria set out in the framework agreement.

25 Under which conditions may the members of a bidding consortium be changed in the course of a procurement procedure?

The members of a bidding consortium that has already submitted the bid may be changed only before the time limit for submission of bids expires. Any further changes of the bids, including changes in the members of the consortium, after the time limit for submission of the bids expires are not allowed.

After the procurement contract is awarded to a consortium, the option of replacing the awarded consortium with another entity is possible only if the contracting authority within the tender documentation provided that the awarded consortium shall establish a new legal entity which shall enter into the procurement contract with the contracting authority.

26 Are unduly burdensome or risky requirements in tender specifications prohibited?

The contracting authority shall prepare the tender documentation in the line with the PPL requirements and the by-law on the form and content of the bid documentation, which do not provide any risky requirements for the bidders.

The PPL explicitly provides that the contracting authority shall not require in the bid documentation fulfilment of certain minimum qualification requirements pertaining to the economic and financial standing and the technical or professional ability of the economic operators, which are disproportionate to the subject matter of the public contract.

27 What are the legal limitations on the discretion of contracting authorities in assessing the qualifications of tenderers?

The contracting authority shall evaluate the bids only by applying the criteria set in the bid documentation and published in the contract notice. The contract notice and the bid documentation shall contain information on the maximum number of points for each criterion and the methodology for calculation of the points for each separate criterion in accordance with the rules set in the Methodology for Expressing Contract Award Criteria into Points. The rules for expressing contract award criteria into points effectively limit the discretion of the contracting authorities in assessing the qualifications of bidders.

Update and trends

Macedonia continues to follow EU regulative trends in public procurement, as well as continuing to work on the harmonisation of the PPL with EU directives. The latest changes in the PPL do not provide any changes in the applicability of the law but are mostly dedicated to the improvement of the electronic system of public procurement. The strategic plan of the Public Procurements Bureau for the development of the procurement system in Macedonia in the next few years (2014 to 2018) provides that the main goals of the development and improvement of the Macedonian public procurement system refer to: improving the electronic system of public procurement; professionalisation and training of participants in public procurement (economic operators and contracting authorities); improving competition; defining certain measures for the Appeals Commission and the administrative court when reviewing procurement procedures; and introducing anti-corruption measures, etc.

28 Are there specific mechanisms to further the participation of small and medium-sized enterprises in the procurement procedure? Are there any rules on the division of a contract into lots? Are there rules or is there case law limiting the number of lots single bidders can be awarded?

The PPL does not provide any specific mechanisms directly stimulating the participation of small and medium-sized enterprises in the procurement procedure. The participation of small and medium-sized enterprises may be facilitated in the procedures where the contracting authority, at its own discretion, has decided to divide the complex subject matter of the procurement in several lots, so the smaller entity may submit a bid only for a separate lot according to its business capacities.

There are no special rules on the manner of the division of the contract into lots; the contracting authority may not specify the separate lot in a manner that will limit the competition or favour only one economic operator.

Each economic operator may submit bids for each and all lots and there is no limitation on the number of lots that can be awarded to one economic operator.

29 What are the requirements for the admissibility of alternative bids?

The contracting authority may allow the bidders to submit alternative bids only when the contract award criterion is the economically most advantageous bid.

The contract notice must contain an indication whether alternative bids are allowed. If such an indication is missing, alternative bids shall not be considered.

The contracting authority that allows alternative bids shall specify the minimum mandatory requirements in the technical specifications that shall be met by these bidders, as well as all other specific requirements for their submission.

30 Must a contracting authority take alternative bids into account?

The contracting authority that allows submission of alternative bids shall consider and evaluate all alternative bids that meet the minimum requirements referred to in technical specifications.

The contracting authority shall not reject an alternative bid, which is economically the most advantageous, even if the alternative bid will cause:

- the public supply contract that was to be awarded to be transformed into a public service contract; or
- the public service contract that was to be awarded to be transformed into a public supply contract.

31 What are the consequences if bidders change the tender specifications or submit their own standard terms of business?

The bidders shall prepare and submit their bids in compliance with the requirements and specifications provided by the contracting authority in the tender documentation, even in the forms provided by the contracting authority. Bids that do not comply with the requirements, criteria, formalities and other terms and conditions specified within the tender documentation may be disqualified as non-acceptable bids and shall not be evaluated.

32 What are the award criteria provided for in the relevant legislation?

The contracting authority shall be obliged to specify in the contract notice the contract award criteria, which once established shall not be changed during the contract award procedure. A contract award criterion is the lowest price. Only in special cases where the subject of the procurement is intellectual or consultancy services, may the contract award criterion be the economically most advantageous bid.

33 What constitutes an 'abnormally low' bid?

There is no explicit definition of 'abnormally low bid'. The abnormally low bid shall be considered the bid that has an unusually low price for the subject matter of the contract compared to the estimated value of the supplies, works or services to be provided.

34 What is the required process for dealing with abnormally low bids?

When a bid has a price that appears to be unusually low compared with the estimated value of the supplies or the works or services to be provided, the contracting authority shall request the economic operator, in writing and before taking a decision regarding the rejection of the bid, to provide details of the bid that it considers relevant, and it shall check the evidence supplied in order to justify the price in the bid.

The contracting authority shall take into account the evidence the economic operator has submitted, especially that referring to:

- the economic basis of the price-setting reflecting the production process or the provided services;
- the technical solutions chosen or any other exceptionally favourable conditions available to the economic operator when executing the works, delivering the supplies or providing the services;
- the originality of the supplies, services or works bid for;
- the compliance with the regulations regarding safety at work and the working conditions applicable for the execution of works, the provision of services or the delivery of supplies; and
- the possibility for the economic operator to use state aid.

35 How can a bidder that would have to be excluded from a tender procedure because of past irregularities regain the status of a suitable and reliable bidder? Is the concept of 'self-cleaning' an established and recognised way of regaining suitability and reliability?

A bidder that has a negative reference owing to irregularities in public procurement procedures is excluded from all the further contract award procedures for a period of one year from the day of publication of the negative reference. The period of exclusion shall be extended for one additional year for every subsequent negative reference, but will not exceed five years. After expiry of the period of exclusion the bidder shall regain the status of suitable bidder.

However, the contracting authority shall exclude any bidder from the procedure, no matter that the bidder has no registered negative reference for past irregularities, if that bidder at the moment of submission of the bid:

- is in a bankruptcy or liquidation procedure;
- has unpaid due taxes, contributions and other public duties;
- has been convicted of a misdemeanour resulting in prohibition for performing any professional activity or duty (ie, temporary prohibition for performing professional activity);
- has been prohibited from participating in public procurement procedures; or
- presents false information or does not present the information required by the contracting authority.

Review proceedings and judicial proceedings

36 Which authorities may rule on review applications? Is it possible to appeal against review decisions and, if so, how?

Each economic operator having legal interest in the public procurement procedure, and which has suffered or could suffer damage by an alleged infringement of the provisions of the PPL, may initiate an appeals procedure against the decisions, actions and failures to undertake actions by the contracting authority during the public procurement procedure.

The appeal procedure (review procedure) is ruled by the State Commission for Appeals in Public Procurements.

The decisions of the Appeals Commission may be challenged in judicial procedure before the Administrative Court competent for resolving administrative disputes.

The decision of the Administrative Court may also be challenged in certain appeals in front of the Higher Administrative Court as regulated by the Law on Administrative Disputes.

37 How long does an administrative review proceeding or judicial proceeding for review take?

The Appeals Commission is obliged to give its decision on the appeal within 15 days receiving the whole documentation related to the public procurement procedure against which the appeal is submitted. The documentation for the public procurement procedure shall be delivered to the commission by the contracting authority within five days of submission of the appeal. In practice the decision-making process usually takes 15 to 20 days after submitting the appeal.

Judicial proceedings before the Administrative Court (administrative court procedures) concerning public procurement procedures, although considered as urgent, may last longer than six months after initiating the procedure.

38 What are the admissibility requirements?

The PPL provides mandatory information that has to be included in the appeal in order for the appeal to be accepted and reviewed by the Appeals Commission. Such information refers to:

- the appellant's name, address or residence and seat;
- information for the representative or legal proxy;
- name and address of the contracting authority;
- number and date of the contract award procedure and information on the contract notice;
- number and date of the contracting authority decision;
- other information about actions or failures to undertake actions by the contracting authority;
- description of the actual situation;
- description of the irregularities and infringements of the PPL;
- proposal for evidence;
- appeals request or request for compensation of the procedural costs; and
- signature and seal of the appellant.

The appellant shall also be obliged to provide evidence that it has paid the appeals fee. Even if all the formalities stated above are complied with, the appeal will not be accepted if it is submitted out of time.

39 What are the deadlines for a review application and an appeal?

The appeal against the decisions, actions and failures to undertake actions by the contracting authority during the public procurement procedure shall be submitted within eight days, or three days at simplified competitive procedures, as of the day of:

- announcement of the contract notice, with respect to the infringements regarding the information, actions or failures under the contract notice;
- opening of bids, with respect to the infringements regarding the actions or failures related to the tender documentation and the public opening of tenders;
- receipt of the formal decision with respect to the infringements regarding the evaluation of bids; or
- acknowledging illegal implementation of the contract award procedure, within one year after the day of completing the contract award procedure.

An appellant who is not satisfied with the decision of the Appeals Commission may challenge it by initiating a judicial procedure before the Administrative Court (administrative court dispute) within 30 days of receipt of the commission's decision.

40 Does an application for review have an automatic suspensive effect blocking the continuation of the procurement procedure or the conclusion of the contract?

The application of an appeal shall automatically suspend the signing of the public contract and its execution until the decision on the appeal by the Appeals Commission becomes final.

Notwithstanding this, the Appeals Commission may approve the continuation of the public procurement procedure upon request of the contracting authority. The Appeals Commission must decide within three days of the submitted request. If the public contract is signed contrary to these terms, it shall be deemed void.

41 Must unsuccessful bidders be notified before the contract with the successful bidder is concluded and, if so, when?

The contracting authority shall notify all bidders in writing about the selected bidder to whom the public contract is awarded. The notice shall be sent within three days from the day the respective decision was made, and a copy of the decision shall be attached to the notice.

The contracting authority is obliged in the notice to inform the rejected bidders of the reasons why their bid was considered unacceptable, and to inform bidders who submitted an acceptable tender that was not selected as winner as to the reasons for selecting the winning bidder.

42 Is access to the procurement file granted to an applicant?

The right to access the procurement file during the public procurement procedure is not explicitly provided by the law.

The PPL explicitly provides only that an applicant who has submitted an appeal against the contracting authority's decision for awarding the public contract shall have the right to review all the documents in the appeals procedure, except those sections of the tender and the documents containing confidential information stipulated by law.



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43 Is it customary for disadvantaged bidders to file review applications?

Generally, it can be stated that remedial actions are frequently taken by disadvantaged bidders in public procurement procedures in Macedonia.

In the past, remedial actions were even more frequent since no fees were charged for applications to appeal. After the adoption of the current law and the establishment of fees for applications to appeal, not every disadvantaged bidder has decided to appeal.

44 May a concluded contract be cancelled or terminated following a review application of an unsuccessful bidder if the procurement procedure that led to its conclusion violated procurement law?

Theoretically it is possible, but in practice it is not enforceable since the conclusion and fulfilment of the public contract is suspended only until the Appeals Commission decides upon the submitted appeal.

Afterwards, irrespective of whether the unsatisfied appellant proceeds with the other remedies against the decision for awarding the contract, the contracting authority is free to conclude and start enforcing the contract with the selected bidder. Usually, the time required for enforcement of all possible remedies by the unsatisfied applicant, namely the appellant, and obtaining a definitive court decision confirming that the conclusion of the contract violated the procurement law, exceeds the time required for enforcement and fulfilment of the concluded contract itself, thus the termination or cancellation of the contract after it has been fulfilled is not possible. The only option that the unsatisfied applicant has in these cases is to ask for compensatory damages.

45 Is legal protection available to parties interested in the contract in case of an award without any procurement procedure?

Contracting authorities are not allowed to enter into procurement contracts without conducting the procurement procedure in accordance with the provisions of the PPL, thus all contracts concluded contrary to the provisions of the PPL shall be deemed void. Therefore, each party that has any interest may ask for legal protection, namely cancellation of the contracts in a civil court procedure or may bring charges against the contracting authority representatives for breaching or abusing their official authorisations in a criminal procedure.

46 If a violation of procurement law is established in an administrative or judicial review proceeding, can disadvantaged bidders claim damages? If yes, please specify the requirements for such claims.

If a violation of procurement law is established, the disadvantaged bidders are entitled to claim damages in certain civil court procedures. The bidder claiming damage shall prove that, in the absence of an established violation, it would be awarded the contract and that its bid is the most favourable. The damages claimed usually are related to the lost profit (contract price minus the costs of implementing the contract).

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Public Procurement
ISSN 1747-5910



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