

# *New Law on Public Procurement transposing EU regulations*

18 August 2015

## *In brief*

The Moldovan Parliament has approved the new Law on Public Procurement. Its purpose is to transpose into national law Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. It also partially transposes Directives 2014/24/EU and 89/665/EEC.

## *In detail*

### *Scope of law*

The new law sets higher minimum thresholds for public procurement contracts for which the law applies, as follows:

- Public supply contracts and public service contracts – 80,000 Moldovan lei.
- Public works contracts – 100,000 Moldovan lei.

### *New rules on qualification and award criteria*

Under the Law, contracting authorities are required to apply proportional qualification and selection criteria which may only refer to the following:

- a) Personal situation of the tenderer or candidate;
- b) Suitability to pursue the professional activity;
- c) Economic and financial standing;
- d) Technical and / or professional ability;
- e) Quality assurance standards;

- f) Environmental management standards.

The law provides detailed descriptions of each award criteria.

Contracting authorities are required to specify the award criteria for public procurement in the contract notice.

Under the law, the criteria for awarding public procurement contracts are limited to the following:

- a) The most economically advantageous tender; or
- b) The lowest price.

The law establishes certain evaluation indicators for the most economically advantageous tender. Thus, the share price of the total bid evaluation cannot be lower than:

- 60% for public supply contracts;
- 80% for public works contracts;
- 40% for public service contracts.

### *Public procurement procedures*

The law provides the following procedures for awarding public procurement contracts:

- a) Open tender;
- b) Restricted tender;
- c) Competitive dialogue;
- d) Negotiated procedure;
- e) Reference of price offers;
- f) Contest of project proposals (solutions);
- g) Procurement of public works within subsidised housing schemes.

Open and restricted tenders are basic award procedures. Other procedures may be applied only in the cases expressly provided by law.

In addition, other special award procedures may be applied, as follows:

- a) Framework agreement;
- b) Dynamic purchasing system;
- c) Electronic auctions.

### *New rules on appeal*

The Agency for Solving Complaints has been

established as an authority under the Ministry of Finance. It is entitled to settle complaints filed against public procurement procedures.

The contracting authority is not entitled to conclude a public procurement contract if an appeal is filed during the procedure. If the contracting authority signs the contract in breach of this rule, however, the Public Procurement Agency cannot register the contract until the Agency for Solving Complaints issues a final decision on the appeal.

The law expressly sets the cases in which the court may ascertain the nullity of a public procurement contract if the procurement procedure was carried out in violation of the law.

Under exceptional circumstances, the law entitles the court to maintain the validity of a public procurement contract concluded in breach of the procedure, provided that certain alternative sanctions are applied, including:

- a) Limit the effects of the contract by reducing the period of its execution; and / or
- b) Imposing on the contracting authority a penalty of between 2% and 15% of the contract value.

The law on Public Procurement enters into force as of 30 April 2016.

Certain provisions, including those concerning the publication of data on public

procurement in the Official Journal of the European Union, enter into force as of 31 December 2020.

Ongoing public procurement contracts and award procedures have to be finalised based on the legal provisions in force at the time of their commencement.

*[Source: Law no. 408 dated 03 July 2015 on Public Procurement, Monitorul Oficial no. 196-205, dated 31 July 2015]*

### **The takeaway**

The law has established new rules on public procurement and detailed the procurement procedures, in order to transpose EU directives into national law. Most of the law's provisions enter into force as of 30 April 2016.

## ***Let's talk***

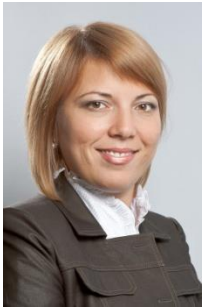
For a deeper discussion of how this new legislation might affect your business, please contact:



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