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# RECOMMENDATIONS FOR EASIER ACCESS OF MICROENTERPRISES TO PUBLIC PROCUREMENTS



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# ABBREVIATIONS

- BPP** – Bureau of Public Procurements
- CA** – contracting authorities
- EO** – economic operators
- EPPS** – Electronic Public Procurement System
- EU** – European Union
- LPP** – Law on Public Procurements
- RM** – Republic of Macedonia

# INTRODUCTION

**T**his document is the second, updated issue of “Recommendations for Easier Access of Microenterprises to Public Procurements”, which were first published two years ago, in February 2013.

First and foremost, recommendations are drafted on the basis of insights obtained as part of regular monitoring of public procurements in the Republic of Macedonia, analysis of relevant national legislation on public procurements in Macedonia, Code of Best Practices in Opening Public Procurements for Small and Medium-Sized Enterprises published by the European Commission, as well as comprehensive research of practices applied by contracting authorities and experiences of microenterprises in relation to public procurements organized in the country.

All these demonstrated insufficient participation in public procurements, especially in terms of the value of tender procedures awarded to small- and microenterprises. Presence of microenterprises on the public procurement market is low and disproportional to the total number of such enterprises, their importance and their role in the local communities, but also in the overall economy. Research studies showed that these enterprises are facing lack of information about public procurements, ignorance of relevant legislation and manner in which public procurements are implemented, insufficient trust in public procurements, as well as series of administrative and other barriers in the practice related to implementation of public procurements.

Having considered this problem, several years ago the European Union proposed a package of recommendations addressed to contracting authorities at EU level, including specific measures that should be taken with a view to enable easier access to public procurements for smaller enterprises. All these constituted another reason for taking specific measures aimed at easier access of microenterprises to public procurements in Macedonia, with actions targeting both sides. On one side, training session, regular information dissemination, day-to-day assistance and consultations for preparation of bids and participation in tender procedures were provided for the purpose of capacity-building for microenterprises to enter the public procurement market, while, on the other hand, addressing contracting authorities with recommendations and workshops for the purpose of reducing administrative and other barriers to greater participation of microenterprises in public procurements.

In the meantime, in 2014 the EU reformed its regulations on public procurements, in particular by complementing its Directives on Public Procurements, primarily with provisions that imply easier access of small- and microenterprises to public procurements, thereby somehow translating their previously issued recommendations into legal solutions.

In Macedonia as well, a series of thorough changes have been made to the relevant legislation on public procurements. The basic Law on Public Procurements was subject to amendments on several occasions, inter alia, with a series of provisions from recommendations put forwards with a view to enable easier access of microenterprises to public procurements. For example, those recommendations included free-of-charge publication of tender documents together with procurement notices, recommendation on avoiding requirements on bank guarantees for bids submitted in procurement procedures within the lowest value brackets and part of the recommendation on setting proportional eligibility criteria for tender participation.

**Recommendations put forward in this document are not aimed to change the legislation; on the contrary, they aim to promote existing rules that govern public procurements which, if adequately implemented in the practice, will contribute to attainment of the overall goal: easier access of small- and microenterprises to the public procurement market and revival of local economies throughout the country.**

In addition, monitoring the implementation of recommendations on the part of contracting authorities revealed certain improvements in regard to implementation of other recommendations (for example, setting reasonable deadlines for companies to prepare and submit their bids), but there is still room for further improvements aimed at enabling greater participation of small- and microenterprises in public procurements, following the example set by EU member-states and in compliance with indications made by microenterprises themselves.

This has imposed the need to revise previously drafted recommendations and the need to amend and update recommendations that have already become legal obligations, notably for the purpose of reaffirming enforcement of recommendations that have not been adherently implemented on the part of contracting authorities and for the purpose of complementing them with a new set of recommendations that emerged as necessary in the analysis of relevant legislation and practices related to implementation of public procurements.



Recommendations are structured in the following manner:

1. Expected results from recommendation's implementation in the practice, both on the part of microenterprises and on the part of contracting authorities.
2. Reference to specific provisions from the relevant legislation (LPP or by-laws) that enable implementation of recommendations, i.e. confirm they are legally based.
3. Elaboration of recommendations by means of providing description of the problem, i.e. the issue addressed by the recommendation in question, manner in which the recommendation should be implemented in the practice and benefits from its implementation.

This document and recommendations contained therein are primarily addressed to contracting authorities. Nevertheless, they should be made due consideration of and should be applied also by microenterprises, as some recommendations are addressing them directly.

Recommendations have been drafted and proposed as part of USAID's Project on Access of Microenterprises to Public Procurements, whose overall goal is to facilitate access of small- and microenterprises to the public procurement market, thus contributing to their sustainable development and better utilization of their potentials for job-creation, growth and innovations. On the other hand, the project should enable contracting authorities to attain lower prices and better quality of their respective public procurements. The project is implemented in 35 municipalities in the East, Vardar, North-East and South East regions.



# SUMMARY OF RECOMMENDATIONS

## **>> Increase accessibility of documents and information related to procurement notices**

Contracting authorities should more often rely on following law-stipulated mechanisms that will enable more information for microenterprises concerning existing and future procurement notices, as well as increase efficiency of their public procurements: 1. publication of their annual plans on public procurements; 2. use of additional forms for information dissemination on procurement notices published in the Electronic Public Procurement System; and 3. more frequent publication of previous indicative notifications.

## **>> Setting proportional eligibility criteria for participation of microenterprises in public procurements**

Requirements concerning pre-defined minimum annual turnover of companies as eligibility criterion for their participation in public procurements should be an exception. In cases when such requirements are defined, the minimum amount set should not be higher than twice the amount of procurement's estimated value, pursuant to the EU regulations. Criteria on setting technical-professional capacity should not be defined in a manner that imposes fulfilment of requirements that are irrelevant for the procurement subject, thus limiting the competition. Bank guarantees for bids should not be requested in cases of small scale public procurements, in particular because the requirement for statement of serious intent is considered adequate replacement and safeguarding mechanism that does not imply financial burden for economic operators.

## **>> Reduce the administrative burden for microenterprises by means of requirements for less documents for tender participation**

Requirements for high number of documents to be presented in cases of small scale public procurements is a major administrative burden for microenterprises and discourages them to participate in tender procedures. On that account, contracting authorities are recommended to replace

document requirements as evidence on fulfilment of relevant terms and conditions with statement on fulfilment of eligibility criteria, such as the statement on company's status.

### **>> More frequent use of the possibility to divide the procurement subject into lots**

Division of the procurement subject into several lots (individual parts), whenever possible and legally allowed, will facilitate access of microenterprises to large scale public procurement contracts, in particular because they will be able to independently participate in public procurements and respond to required quantity or specific procurement subject of a given lot for which they wish to submit their bids.

### **>> Setting reasonable deadlines for economic operators to prepare and submit their bids**

In most situations, especially in cases of bid-collection procedures, contracting authorities should set deadlines for submission of bids that are longer than the law-stipulated minimum deadlines. By doing so, they will enable more microenterprises to prepare and submit their bids, while in cases of particular procurements this will contribute to better quality of bids submitted.

### **>> Establish regular and improved communication and information exchange between contracting authorities and economic operators and feedback mechanisms for bidding companies**

In order to attain better information, communication and trust between contracting authorities and economic operators, which will inevitably result in more successful public procurement, the following steps need to be taken: 1. training for officers tasked with public procurements and representatives of microenterprises; 2. organization of technical dialogues also in cases of procurements whose estimated values are lower than the law-stipulated threshold which implies the legal obligation on mandatory organization of such dialogues; 3. organization of informative sessions for economic operators, both for specific public procurements and regular annual meetings; and 4. submission of detailed written notifications on the reasons behind bid selection or bid rejection decision, and establishing feedback mechanisms for bidding companies concerning strengths and weaknesses of already implemented tender procedures.

**>> Encourage cooperation and joint ventures among microenterprises, but also between microenterprises and bigger companies**

Relevant legislation on public procurements allows economic operators to group (enter joint ventures) among them and rely on their combined economic-financial capacity (except in the case of data from their profit and loss statements) and technical capacity (except in the case of reference lists, previously signed contracts and licenses), as well as possibility to engage subcontractors for contract performance. If these opportunities are used, most microenterprises will fulfil relevant requirements and will participate in public procurement procedures.



# RECOMMENDATIONS

## Increase accessibility of documents and information related to procurement notices

### Expected results:

- >> Microenterprises will receive timely information on opportunities for tender participation.
- >> Contracting authorities will increase the transparency and possibility to obtain bids of better quality.

## 1 Publication of annual plans on public procurements

**Relevant provisions:** Articles 2 and 26 of LPP; Rulebook on the form, contents and method for developing plans on public procurements

Publication of annual plans on public procurements is not a law-stipulated obligation, but would enable the broader public and interested economic operators, primarily microenterprises in the capacity of potential suppliers, insight in contracting authorities' needs that will be addressed by means of public procurements. Provision of indications about what and when something will be procured is useful for the business sector, although portion of published information would probably undergo changes in the course of the year due to changes in contracting authorities' procurement needs and respective budgets. Therefore, contracting authorities are recommended to upload their plans on public procurements on their official websites or websites that are massively visited by people in the region. In this way, microenterprises will receive relevant information about estimated demands, i.e. contracting authorities' procurement needs, and will be able to timely prepare for procurement procedures they intent to participate in.

## 2 Use of additional forms for promotion of procurement notices published in EPPS

**Relevant provisions:** Articles 2 and 51 - paragraph (1), 53 and 54 of LPP; Rulebook on the form and contents of procurement notices and notifications.

Publication of all procurement notices in EPPS is a law-stipulated obligation, while open, limited and negotiation public procurement procedures with previously announced call for bids and open competitions for designs and ideas are also published in the “Official Gazette of the RM”, and large scale procurements are published in the Official Journal of the EU. Be that as it may, until inexperienced microenterprises develop habits for regular browsing of procurement notices in EPPS, it would be beneficial for information contained in procurement notices published in EPPS (but also notices taken from EPPS) to be published on other websites (for example, on contracting authorities’ official websites and other websites massively visited by people in the region), in the local media, etc. In this way, information from published procurement notices will be made more accessible for a broader circle of business entities and could result in increased number of bids, ultimately increasing the quality of public procurements.

### **3 More frequent publication of previous indicative notifications**

**Relevant provisions:** Articles 51 - paragraph (1) and 52 of LPP; Rulebook on the form and contents of procurement notices and notifications.

Although publication of previous indicative notifications is not a law-stipulated obligation, use thereof brings multiple benefits both, for contracting authorities and microenterprises. As regards microenterprises, this will enable them to timely prepare their bids, especially in cases when procurements necessitate grouping of companies for joint participation/joint venture, preparation of detailed technical offers, collection of additional certificates, and the like. On the other hand, contracting authorities will be able to shorten deadlines in cases of large scale procurements, especially when they need fast realization of public procurements.

However, contracting authorities should not use such notifications only in exceptional cases (i.e. in case of large scale and more complex tender procedures), but also as notification mechanism for small scope procurements, as that would be beneficial for microenterprises. Published indicative notifications do not oblige contracting authorities to actually implement the public procurements. Therefore, contracting authorities would not suffer negative consequences in cases when they have published such notifications, but decided not to implement the public procurement procedures.



### Setting proportional eligibility criteria for participation of micro enterprises in public procurements

#### Expected results:

- >> Higher number of microenterprises will be able to fulfil eligibility criteria for tender participation and will, therefore, be encouraged to more frequently participate in public procurements.
- >> Contracting authorities will benefit from greater competition in their public procurement procedures.

There are many eligibility criteria that could establish whether an economic operator is able to implement the public procurement in question, including various documents that could serve as evidence that such criteria are fulfilled. These criteria can be viewed as requirements for tender participation of economic operators. For economic operators that do not fulfil these requirements, they represent a barrier for their participation in tender procedures. Therefore, due care should be made in selection of such criteria, with a view to ensure that they are adequate to the procurement subject and value and to ensure that they are clear, non-discriminatory and proportional.

Criteria on establishing economic-financial status and technical-professional capacity are not mandatory, which means use thereof is left at the discretion of contracting authorities both, in terms of whether they will be used or not, and how they will be defined.

Criteria on establishing economic-financial status and technical-professional capacity imposed by contracting authorities, especially in bid-collection procedures whose estimated values range from 5,000 to 20,000/50,000 EUR are often disproportionate and difficult for attainment by microenterprises, thus limiting the competition. On this account, below are the key principles, rules and possibilities that could serve as guidelines for contracting authorities when setting these criteria, with a view to stimulate greater competition.

## 1 Principle of proportionality for criteria on establishing economic operators' economic and financial capacity

**Relevant provisions:** Articles 2, 143, 144, 148, 149, 150, and 151 of LPP.

Frequent practices among contracting authorities include requirements for companies to demonstrate particular minimum annual turnover to qualify for tender participation. Although this is common for large scale procurements and procurements in the field of construction works, such requirements are often imposed also in cases of small scope procurements. Contracting

authorities are unjustifiably convicted that only when working with bigger companies they can be sure that procurement contracts will be performed. In the case of small scale procurements, contracting authorities face smaller risks and dispose with other safeguarding mechanisms. Therefore, the emphasis in such procurements should be on ensuring greater competition and benefits thereof.

New EU regulations in the field of public procurements, as well as international good practices, limit the maximum amount of companies' annual turnover that can be set as requirement for tender participation. More specifically, at the EU level, contracting authorities are not allowed to impose requirements on annual turnover higher than twice the amount of procurement's estimated value. On this account, contracting authorities should apply the principle of proportionality. Limiting the upper threshold for annual turnover requirements will enable greater competition, because higher number of companies, in particular microenterprises, will be in position to fulfil the eligibility criteria for tender participation.

Moreover, when contracting authorities request companies to demonstrate fulfilment of particular minimum amount of annual profits, which often happens in the practice, they should make due consideration of the market sector's profitability, i.e. of the fact that market participants, due to increased operation costs or investment endeavours, have operated under lower profits.

For example, when a procurement procedure concerning office equipment (furniture) in estimated value of 10,000 EUR defines an eligibility requirement for economic operators to demonstrate minimum annual turnover in the amount of 80,000 EUR, such requirement prevents microenterprises to participate in the tender procedure. There are numerous microenterprises with only a handful of employees that manufacture or sell furniture of solid quality and engage in continuous deliveries of smaller value for which this requirement constitutes an obstacle for submitting their bids. Also, economic operators' annual turnover is irrelevant in a bid-collection procedure concerning study development in estimated value of 6,000 EUR.

## 2 Principle of proportionality for criteria on establishing economic operators' technical capacity

**Relevant provisions:** Articles 2, 143, 144, 152, 153 and 154 of LPP.

As regards economic operators' technical and professional capacity, contracting authorities define requirements that would enable them to decide whether a particular bidding company possesses the necessary capacity for contract performance. These criteria should not be defined in a manner that would require fulfilment of irrelevant works, which limit the competition. For example, requirements on previous experiences acquired in terms of working with the public sector and emphasizing that such experiences are the most relevant, which limit the competition. Such approach closes the public procurement market for new entities (newly-established companies) or those whose experiences are related to other markets

and other entities (in the previous example: experiences in working with the private sector). Also, requirements on minimum number of employees and possession of certificates on implementation of quality standards by economic operators are irrelevant in a bid-collection procedure concerning office supplies in estimated value of 5,500 EUR. In many EU member-states, for the purpose of enabling participation in public procurements of newly-established companies, instead of company's years of operation, contracting authorities accept the number of years and previous experiences of company employees (for example, management experience of leading individuals).

### **3 Reduce practices on requesting bank guarantees for bids**

**Relevant provisions:** Articles 47, 48 and 49 of LPP.

The Law provides a possibility for contracting authorities to request bid guarantees issued by the banks in an amount that cannot exceed 3% of the bid's value, as well as a possibility to request contract performance guarantees in an amount that cannot exceed 15% of the signed contract's value. According to contracting authorities, these guarantees imply safeguards that contracts will be signed with selected bidding companies, i.e. that procurements will be performed in compliance with contracts signed. In their opinion, these guarantees are an efficient safeguarding mechanism for them, in particular because they can be activated (collected) quite easy and very fast, unlike the mechanisms defined in procurement contracts. According to economic operators, these guarantees represent one form of threat that they will be sanctioned should they fail to act in compliance with the law and the contract. However, more important is the fact that bank guarantees often represent a barrier for economic operators, especially for microenterprises, to participate in public procurements and are additional financial burden. Namely, when issuing such guarantees, economic operators' banks withhold (reserve) financial means and impose service fees in amounts that are significant for microenterprises, especially knowing that guarantees, due to contracting authorities' slow decision-making process or bureaucracy, are not freed for a longer period of time.

Requirements on bid guarantees should not be imposed by default in almost all procedures, but only in exceptional situations and as result of previous considerations and risk assessments that the contract will not be signed or that the procurement will not performed according to the contract signed. Guarantees should be especially avoided in cases of competitive markets (when high number of bids is expected), in cases of small scope procurements, in cases of single procurement delivery, in cases of markets where all bidding companies are renowned companies, etc.

An additional reason for avoiding requirements on bank guarantees is the introduction of statement of serious intent, which provides basis for issuance of negative references. The statement of serious intent provides a new safeguarding mechanism for contracting authorities and allows attainment of same goals.

### Reduce the administrative burden for microenterprises by means of requirements for less documents for tender participation

#### Expected results:

- >> Increased participation of microenterprises in public procurements and more time spent on developing essential aspects of their bids.
- >> Increased competition and reduced number of annulled public procurements.

**Relevant provisions:** Articles 147 - paragraphs (2) and (3), 148, 149, 150, 151, 153, 154, 155, 156, 157 and 158 of LPP.

As indicated in the recommendation for setting proportional eligibility criteria for tender participation, contracting authorities are obliged to establish the status and professional activity of economic operators. That process concerns verification whether economic operators work in compliance with the regulations in effect, whether they are subject of criminal or misdemeanour proceedings or are undergoing receivership and bankruptcy, which in its own right implies exemption of economic operators from tender participation, because they are legally incapable for contract performance. In addition, contracting authorities may, but are not obliged to, establish economic operators' eligibility in terms of their economic and financial status, as well as technical and professional capacity. These obligations and possibilities entrusted to contracting authorities originate in world practices, i.e. EU Directives in the field of public procurements. However, the EU Directives entrust member-states with setting the requirements and defining the documents by means of which they will verify and establish economic operators' capacity.

LPP refers to particular documents that could serve as evidence for establishing various types of capacity, but allows contracting authorities to request additional documents and specify them in their relevant tender documents. Often, package of documents required includes series of documents issued by other institutions, whose obtaining implies investment of time and funds. For example, receipts on previous deliveries issued by clients, evidence that the economic operator disposes with a pre-defined number of employees (M1/M2 templates), certificates for implemented quality standards issued by independent institutions and the like.

Usually, microenterprises do not possess sufficient and specialized administrative capacity (human resources) to respond to all requirements imposed in public procurement procedures. For that purpose, requirements for too many documents in small scale procurements constitute an enormous administrative burden for microenterprises and discourage them to participate in public procurements. On this account, maintaining administrative requirements to their minimum is of vital importance.

Therefore, in cases of bid-collection procedures contracting authorities are recommended to assess whether the eligibility criteria (criteria on establishing economic and financial status, as well as technical and professional capacity) they have are imposing do not request all documents as evidence of their fulfilment, but replace such requirements with the statement on eligibility criteria fulfilment. Criteria on establishing economic-financial and technical professional capacity are optional, therefore, if they are already imposed, economic operators should be relieved of additional burdens when preparing their bids by requesting them to submit only statement on eligibility criteria fulfilment, such as the statement on company status, and after the selection decision is taken to request the most favourable bidder to submit all relevant documents, in original. In cases when the selected most favourable bidder fails to submit the requested evidence, the contract can be awarded to the second-ranked most favourable bidder.

For this purpose, some EU member-states have established practices whereby, instead of requesting such documents to be submitted by companies, contracting authorities obtain insight into necessary documents from the economic operators' electronic profile kept at electronic systems of public procurements, irrespective of the fact whether the procedure is organized on paper or as electronic procurement. Other contracting authorities have opted not to request economic operators to resubmit documents if they have participated in previously organized procurement procedures with the same contracting authority, of course, provided that documents' validity period has not expired.

### More frequent use of the possibility to divide the procurement subject into lots

#### Expected results:

- >> Access of microenterprises to public procurements will be increased in quantitative terms, notably because the size of lots will be adequate to respective capacity of microenterprises.
- >> Increased competition, and thereby increased quality of bids, notably because the lots will be adequate to specialized fields of operation among microenterprises.

#### Relevant provisions: Articles 15, 27 and 144 of LPP.

Procurement subjects can be divided into several lots, while one bidding company can submit bids for one, several or all lots. Such division of procurements into lots should contribute to independent participation of microenterprises which do not offer all goods or services being procured, but only some of them. This approach will enable participation in tender procedures also of microenterprises that offer more specific goods, services and works.

Division of procurement subjects into lots should be pursued only when the relevant market has been researched and there is sufficient competition. Contracting authorities should not insist on dividing into lots all types of procurement subjects, because they might achieve a counter-effect: failure to utilize economies of scope (whenever possible) or attainment of higher prices in cases of market sectors marked by lack of competition. On the other hand, contracting authorities must not divide procurement contracts into contracts of lower values for the purpose of avoiding organization of particular type of procurement procedures, and to use division into lots in a manner that would disturb fair competition.

Recommended procurement subjects that can be divided into lots include: ICT equipment, furniture, foodstuff, construction works of smaller scope, craftsmanship like painting and installation works, and the like.

### Setting reasonable deadlines for economic operators to prepare and submit their bids

#### Expected results:

- >> Microenterprises will participate in higher number of public procurement procedures and will submit bids of better quality.
- >> Contracting authorities will receive higher number of bids and will have longer time to evaluate and rank them.

**Relevant provisions:** Articles 38 - paragraph (2), 65, 66, 69, 70, 75, 76, 90, 91, 100 - paragraph (3), 108 - paragraph (1), and 130 of LPP.

LPP stipulates deadlines for submission of bids for all types of public procurement procedures. In that, the Law sets the minimum deadlines, while contracting authorities can set longer deadlines in their respective tender documents. In principle, deadlines are longer in cases of large scale procurements, while bid-collection procedures, which are usually of lower value, imply shorter law-stipulated deadlines.

Microenterprises most often participate in bid-collection procedures, where according to the law minimum deadlines for submission of bids are set at 10 days from procurement notice's publication, in cases when procurement's estimated value exceeds 5,000 EUR, i.e. 5 days from procurement notice's publication, in cases when procurement's estimated value does not exceed 5,000 EUR. In most cases, subjects of these procurements are simple and do not require long preparation of bids. Nevertheless, equally high is the number of procedures in which, due to procurement subject's specificity, microenterprises need more time than the minimum law-stipulated deadline to prepare and submit their bids.

Here, due consideration should also be made of unfavourable practices applied by some contracting authorities whereby they publish procurement notices on Thursday or Friday, which in cases of deadlines of 5 days, results in economic operators' losing two days as non-working days during the weekend.

While the recommendation for setting longer deadlines is favourable for companies, as they are given longer time to prepare their bids and possibility to submit bids of better quality, the same can also imply additional benefit for contracting authorities. Notably, by setting longer deadlines commissions tasked with bid evaluation and ranking are also given additional time because, pursuant to LPP, deadlines for decision-taking on the most favourable bid must not be longer than the period allotted for submission of bids.

On this account, contracting authorities are recommended, prior to publishing their procurement notices, to make a solid assessment of their respective deadlines and establish whether there is a need to set deadlines for submission of bids that are longer than the law-

stipulated minimum deadline (for example, setting a deadline of 8 days instead of 5 days, or setting a deadline of 12 days instead of 10 days). By doing so, they will enable higher number of companies to prepare and submit their bids, while in cases that imply development and submission of particular designs, methodologies, expert team or the like, such practices will also contribute to better quality of bids.

On the other hand, microenterprises should avoid submission of their bids in the nick of time, as this practice has been frequently observed in the practice. Especially if their bids are prepared in advance and they are waiting to submit them in the last minutes, due to fears that contents thereof might be disclosed to their competitors prior to the expiration of the bid submission deadline. LPP stipulates a clear obligation for contracting authorities to guarantee that contents of companies' bids remain confidential until their public opening, which in the case of e-procurements is technically supported and enabled.



### Establish regular and improved communication and information exchange between contracting authorities and economic operators

#### Expected results:

- >> Microenterprises will better understand public procurement procedures and will have greater trust in the public procurement system and operation of contracting authorities in that context.
- >> Reduced number of unsuccessful procurement procedures and increased transparency in operation of contracting authorities.

## 1 Training for officers tasked with public procurements and representatives of microenterprises

**Relevant provisions:** Articles 14-a and 29-a of LPP.

Lack of sufficient, relevant and clear information in procurement notices and tender documents makes it difficult for economic operators to understand contracting authority's needs and develop adequate bids. Moreover, implementation of public procurement procedures by using electronic means (e-procurements) and e-auctions can still be treated as novelty for which economic operators, especially the less experienced ones, including microenterprises, need to acquire knowledge and skills in order to participate. These problems can be solved by means of regular training and provision of guidelines and advice.

Representatives of contracting authorities should attend training on public procurements, especially when they are employed at contacting authorities with small scope of public procurements or in cases of less experienced officers or members of public procurement committees. At these training sessions, special emphasis should be put on mechanisms at disposal of contracting authorities and aimed to enable easier access of microenterprises to public procurements. In this regard, they are particularly recommended to attend training on market research methods.

Considering the insufficient involvement of microenterprises in public procurements, as well as their indications of the need for training on public procurements, representatives of microenterprises must mandatorily attend training on public procurements, irrespective of the form and the organizing entity. At training sessions intended for microenterprises emphasis should be put on sections from LPP that concern manner of: browsing procurement notices, preparation of bids, communication with contracting authorities, identifying (documents on) company status, professional, economic-financial and technical capacity, as well as methods for participation in e-procurements and e-auctions, and legal remedies available for economic operators in public procurement procedures.

## 2 Organization of technical dialogues in cases of procurement subjects whose estimated values are lower than the law-stipulated threshold

**Relevant provisions:** Article 43, paragraph (5) of LPP.

Technical dialogue is an organized form of dialogue between contracting authorities and interested economic operators concerning the draft of technical specifications for subjects being procured. Technical dialogues are mandatory for large scale procurements (whose value exceeds 130,000 EUR), and are optional in cases of small scale procurements. Nevertheless, very often, even small scope procurements imply specific subjects for which contracting authorities might not have sufficient knowledge, or there might be different positions in terms of their description. In such cases, considerations, ideas and advice provided by the expert public (especially by experienced and innovative economic operators) can make a significant contribution in drafting attainable technical specifications.

Therefore, in cases of such procurements, contracting authorities are recommended to organize technical dialogue, although engagement in such process might consume additional time for procurement implementation, ultimately this effort will reduce the possibility for annulment of tender procedures on the following grounds: 1. not a single bid or no acceptable or adequate bids have been obtained; 2. acceptable bids have been submitted, but they cannot be compared due to the different approach applied in development of technical or financial offers; and 3. contracting authority has assessed that tender documents contain important omissions or shortcomings in the period until the public opening of bids. Moreover, well-defined technical specifications will reduce or will completely eliminate any misunderstandings that might emerge in the course of contract performance, but are a result of different interpretation of procurement subject's description provided in the technical specifications.

## 3 Organization of informative sessions for economic operators

**Relevant provisions:** Article 2 of LPP.

International good practices in the field of public procurements are indicative of the need for organization of informative sessions with potential bidding companies for the purpose of clarifying any issues related to procurement notices published. This possibility is particularly applied in cases of voluminous tender documents and technical specifications, as well as in cases when indecisive economic operators and those with poor knowledge of rules governing public procurements need to be animated. These meetings have proved to be efficient manner of clarifying and answering any questions which, if such meeting did not take place, would most certainly be posed as part of the regular method on asking questions and clarifications.

Except for informative sessions organized for specific procurement notices, contracting authorities should also organize regular annual informative sessions that would serve as method for increasing transparency and information dissemination for economic operators. These meetings could be

organized early in the year or in the wake of a period marked with more frequent publication of procurement notices. Contracting authorities with large scope of public procurement could engage in more frequent organization of such meetings. These sessions could include presentation of annual plans on public procurements, as well as specificities related to the rules governing participation in public procurements (for example, contracting authorities' advice and guidelines aimed at correction of frequent errors made by economic operators). Such meetings provide an opportunity for microenterprises to get acquainted with one another and with bigger companies and establish contacts for their future cooperation and grouping for the purpose of joint participation in tender procedures.

#### **Submission of detailed written notifications on the reasons behind bid selection or bid rejection decision, and establishing feedback mechanisms for bidding companies**

**Relevant provisions:** Articles 2, 167 and 168 of LPP; Rulebook on the form and contents of notifications on bid selection decisions.

In addition to enabling easier access to all relevant information on business opportunities, feedback mechanism for economic operators that have participated in contract-awarding procedures is also of vital importance. In order to prepare for future participation in public procurement procedures, bidding companies find it is useful to reconsider which aspects of their bids have been assessed as strong advantages and which have been assessed as disadvantages by the contracting authorities.

For that purpose, BPP has developed templates for various types of notifications (on selection of the most favourable bid, on non-selection of the most favourable bid, on bid rejection) which are accompanied with detailed instructions for their drafting. Therefore, contracting authorities are recommended to use these templates, with adequate adjustments made to accommodate specificities of procurement procedures in question. In addition to benefits for bidding companies, contracting authorities will also reduce the possibility for lodging of appeals and will increase their transparency.

At the same time, contracting authorities should be open, should secure relevant mechanisms and should encourage economic operators to give them feedback on strengths and weaknesses of tender procedures implemented, which would be of great assistance to them for better preparation of future tender procedures.

### **Encourage competition and joint ventures among microenterprises, but also between microenterprises and bigger companies**

#### **Expected results:**

- >>** Fulfilment of eligibility criteria for tender participation and increased participation of microenterprises in public procurement procedures.
- >>** Greater competition and quality of bids submitted.

**Relevant provisions:** Articles 40, 41, 42, 45, 46, 144, 151 and 154 of LPP.

## **1 Utilization of the possibility for economic operators to group (enter joint ventures) and rely on their combined economic-financial and technical capacity**

LPP allows economic operators to join forces with other economic operators for the purpose of submitting joint bids in public procurement procedures. Moreover, LPP stipulates that economic operators can rely on economic-financial and technical capacity of other companies, irrespective of the legal nature of their mutual relations, for the purpose of demonstrating that they fulfil capacity or ability requirements defined by contracting authorities. Despite that, economic operators must demonstrate that they dispose with all resources needed for contract performance.

Except in terms of fulfilling eligibility criteria for tender participation, joint bids will enable economic operators to participate in procurement procedures that imply delivery of greater quality of procurement subjects or in cases of different procurement lots which, if microenterprises are to make independent bids, will not be able to perform/deliver.

## **2 Use of the possibility to engage subcontractors**

An ideal situation for economic operators is to win procurement contracts on their own, notably because they usually view opportunities for engagement of subcontractors as contracts with reduced profits. However, in cases of large scale contracts, where microenterprises are not in position to act as primary contractors or are jointly bidding with other microenterprises, subcontracting can still offer them better opportunities, especially when microenterprises can bring an added value in the form of specialized or innovative goods or services.

In both cases, irrespective whether it is a matter of joint participation of microenterprises or joint ventures and cooperation with bigger companies, contracting authorities are recommended to

encourage such ventures and cooperation. In that regard, pursuant to good practices of EU member-states, contracting authorities are recommended to emphasize such opportunities for joint ventures and cooperation in their respective tender documents, and even in their procurement notices. Moreover, contracting authorities could organize public meetings with all existing and potential bidding companies that would take the form of forums at which primary contractors and subcontractors will get acquainted and will establish contacts among them. For the purpose of greater cooperation among bidding companies, contracting authorities could upload on their official websites the names of companies that have been awarded procurement contracts, including their contact information and details about their procurements. Also, in cases when contracting authorities have assessed that joined bidding companies or bidding companies with subcontractors can participate in particular tender procedure, they could set longer deadlines for submission of bids, thereby allowing bidding companies more time to enter mutual agreements, joint ventures and prepare their bids.

Sometimes, entering joint bids or engagement as subcontractors is the only chance for smaller companies to participate in public procurements. Therefore, microenterprises themselves should research these opportunities and find partners for which they would act as subcontractors or would participate in group bids.

