

Skopje, 25<sup>th</sup> February 2015

FAO: Bureau of Public Procurements

Subject: Proposal for amending the Law on Public Procurements

For the purpose of contributing towards a more comprehensive promotion of the legislation in this field, proposals put forward in this document do not concern only the Council of Public Procurements (CPP) and electronic public procurements, but other segments of LPP that are of vital importance for efficient implementation of public procurements in the country.

Proposals are a result of multi-annual and comprehensive monitoring of public procurements in the country, as well as series of consultations organized with stakeholders in the country and with relevant factors in the field of public procurements at EU level.

Proposed amendments aim to ensure greater cost-effectiveness and efficiency in public spending, greater transparency, encourage competition, stimulate greater participation of small companies in public procurements and alignment with existing and new EU Directives.

As regards the focus of announced changes to LPP concerning the work of the Council of Public Procurements, proposals enlisted below and related to CPP should be acknowledged merely as transitional solution, in expectation of competent authorities' detailed analysis and assessment of effects and purposefulness behind the introduction of CPP as additional and administrative and financial burden in the public procurement system.

Proposals, enlisted according the relevant articles from LPP they concern, are as follows:

- Article 2 of LPP should emphasize the principle "best value for the money spent".
- In cases when contracting authorities present the Council of Public Procurements with evidence on having acted upon recommendations in cases they have not been given approval, the Council, by default, should issue the approval for procurements in question, without having to engage additional experts (Article 14 of LPP).
- The Law should stipulate a threshold above which the subject of public procurement contracts will be mandatorily divided into lots (Article 15 of LPP).
- Contracting authorities' adopted plans on public procurement needs for the current year (annual plan) as stipulated by Article 26 of LPP should be mandatorily published

in EPPS (in the section on notifications, similarly to records on public procurements organized as bid-collection procedures) and on their official websites, within the same deadline stipulated for adoption of such plans.

- Throughout the text in Article 36-a, paragraph (1) of LPP, the word “producers” should be replaced with the word “economic operators”.
- In Article 36-a, paragraph (1), line (1) of LPP, the conjunction “and” in the provision “three producers on the market in RM and three producers on the foreign markets”, should be replaced with the conjunction “or”.
- Development of mandatory market analysis, as stipulated in Article 36-a, paragraph (3) of LPP, should be regulated in greater details by means of bylaw.
- The negative reference from Article 47, paragraph (5) of LPP, should not be issued in cases when the bidding company has withdrawn the bid prior to expiration of its validity and when the bidding company failed to sign the public procurement contract under terms and conditions indicated in the tender documents and the bid submitted.
- The issued negative reference from Article 47, paragraph (6) of LPP should result in exempting the bidding company in question from future public procurement contract-awarding procedures organized only by the contracting authority that has issued the negative reference.
- Bid guarantees (in the form of bank guarantees or deposits) from Article 47 of LPP should be abandoned completely and replaced with “statement of serious intent”.
- Guarantees on quality performance of procurement contracts (in the form of bank guarantees) from Article 48 of LPP should be mandatory for all public procurements whose value exceeds 500,000 EUR calculated in MKD counter value.
- Guarantees on quality performance of procurement contracts (in the form of bank guarantees) from Article 48 of LPP should be replaced with introduction of “statement on quality contract performance” in the case of all public procurements whose value exceeds 500,000 EUR calculated in MKD counter value.
- Deadlines governing submission of bids in the case of bid-collection procedures, as referred to in Article 100, paragraph (3) of LPP, should not be shorter than seven days from procurement notice’s publication in EPPS, when procurement contract’s estimated value does not exceed 5,000 EUR calculated in MKD counter value, without VAT, and fourteen (14) days from procurement notice’s publication in EPPS, when procurement contract’s estimated value does not exceed 20,000 EUR calculated in MKD counter value, and does not exceed 50,000 EUR calculated in MKD counter value, without VAT, for procurement of works.
- In case of bid-collection procedures whose estimated value exceeds 5,000 EUR calculated in MKD counter value, without VAT, eligibility criteria (economic operators’ economic and financial status and technical or professional capacity) should not be used (Article 102 of LPP).
- Article 118, paragraphs (1) and (2) of LPP should be revoked, meaning that the minimum number of economic operators with whom a contracting authority can sign a framework agreement should not be limited and the contracting authority should not be obliged to request approval from the Council of Public Procurements.

- Bid-collection procedures whose public procurement contract's estimated value does not exceed 5,000 EUR calculated in MKD counter value, without VAT, should not be completed with organization of e-auctions (Article 121, paragraph (1) of LPP).
- Organization of electronic auctions as the final stage of public procurement procedures as stipulated in Article 121, paragraph (1) of LPP should be made optional.
- Economic operators should not be obliged to present documents that demonstrate fulfilment of eligibility criteria as stipulated in Article 147, paragraph (2) of LPP for each individual public procurement procedure, but the contracting authority should restore economic operators' profiles kept in EPPS database, while economic operators should be obliged to update such documents every six months.
- Upper threshold for annual turnover of bidding companies as part of documents on demonstrating their economic and financial status should be introduced and should be set as double the amount of procurement's estimated value, without VAT (Article 150 of LPP).
- The legal provision whereby, by rule, the lowest price bided is defined as the selection criterion for awarding the public procurement contract (Article 160, paragraph (1) of LPP) should be changed as a step towards aligning procurement contract-awarding criteria with the new EU Directives, according to which, the economically most favourable bid is defined as primary contract-awarding criterion.
- Deadlines for lodging appeals as stipulated in Article 216, paragraph (2) of LPP should be extended from the current eight days, i.e. three days in the case of bid-collection procedures, to ten days, i.e. five days, respectively.
- Deadlines for logging appeals against the tender documents as stipulated in Article 216, paragraph (2), line 3 of LPP should start expiring from the publication of procurement notice and relevant tender documents.
- Fees imposed for initiation of appeal procedures in front of SCPPA (Article 229 of LPP) should be set as share of procurement's value, notably for the purpose of enabling equitability of costs and overcoming the current situation whereby the appeal procedure is most expensive in the most dominant type of tender procedures (bid-collection procedures whose values range from 500 to 5,000 EUR).
- At least one year prior to the gradual introduction of mandatory organization of electronic public procurements, activities need to be taken with a view to implement mandatory, free-of-charge training for all registered contracting authorities and economic operators, for the purpose of their timely preparation in terms of use of electronic tools in public procurements.
- Gradual responsibility should be introduced for non-compliance with LPP: from disciplinary, through misdemeanour, to criminal responsibility, while the punitive provisions in the field of public procurements should be exclusively regulated by the Criminal Code.
- Supervision and control mechanisms should be introduced for public procurements as early as their implementation, for the purpose of timely prevention of disrespect and violation of LPP provisions.