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On 9 June 2023 were initiated public consultations regarding the Draft Law with proposed Amendments and Supplements to the Public Procurement Act (PPA), which will end on 24.06.2023.

The draft law proposes **four groups of changes** related to:

1. Refinement of provisions to comply with European legislation;
2. Implementation of commitments under the National Recovery and Sustainability Plan (NRSP);
3. Measures in preparation for Bulgaria's membership in the Organisation for Economic Co-operation and Development;
4. Refinement of the current legislation to overcome identified problems in the practice of contracting authorities.

The first group of amendments are set to achieve more precise compliance with the requirements of Directive 2014/24/EU and Directive 2014/25/EU. The Draft Law removes the exceptions from the application of the PPA, currently set out in Art. 14, para. 8 and para. 9 of PPA, entitling the National Health Insurance Fund (NHIF) and the Road Infrastructure (RIA) not to apply the PPA in certain situations. An expected result of the change is that the RIA will discontinue the practice of the so-called "inhouse" contracts and will procure under the PPA, and private hospitals will again be obliged to procure under the PPA medicines, consumables, electricity, because they spend public resources received from the NHIF. This group of amendments also includes the change in Article 72 of the PPA regarding the justification of unusually good offers, which will also be required even in cases when only one tender is submitted.

The second group of the proposed amendments pursues the implementation of the public procurement commitments set out in the NRSP. Some of them are aimed at reducing non-competitive procurement using negotiated procedures without a contract notice and single tender contracts. The amendments also introduce an obligation for the contracting authorities to conduct market consultations on the project in the case of construction contracts worth more than BGN 10 million. Another proposed change is in the definition of the term „Exclusive circumstances“ under § 2, item 17 of the additional provisions of the PPA. The new wording significantly narrows the scope of the term, which is expected to further limit the cases in which this procedure is used. Another change is set in art. 246 where a new Consultative council under the Minister of Finance will be established as a ancillary body.

The third group of the amendments is related to the preparation for Bulgaria's membership in the Organisation for Economic Co-operation and Development. It is proposed to introduce an obligation for public contracting authorities to set environmental requirements when awarding contracts for supplies and services with threshold values under Art. 20, par. 1 and par. 2 of the PPA.

The fourth group of the amendments is set to refine the provisions of the PPA and overcome identified problems in the practice of contracting authorities. The amendment to art. 7, par. 1 of the PPA is intended to clearly define the range of persons to whom powers may be delegated so

as to delineate the limits of the transfer of responsibility for the expenditure of public funds. Another amendment proposes a prohibition, in the case of a negotiated procedure without a call for tenders, to conclude a contract at a price higher than the financial resource, which the contracting authorities have indicated in the previous open or restricted procedure that cannot be exceeded. The proposed change to Article 117a is intended to overcome a conflicting interpretation regarding the applicability of the provision to price indexation of contracts where there is no approved methodology for the subject matter concerned. At the same time, the provision has been refined in order to remove a contradiction concerning the application of an approved methodology in the cases of Article 116, par. 1, item 1. The list of the amendments is not exhaustive.

Lastly, the amount of the sanctions established against contracting authorities that circumvent the PPA or violate the procedures for their conduct is doubled.

DGKV's team is working around the clock to get you in line with the new legal framework.

Contact us for assistance.

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