

PETERKA PARTNERS

THE CEE LAW FIRM

PUBLIC PROCUREMENT IN BULGARIA IN A NUTSHELL January 2022

CZECH REPUBLIC SLOVAKIA UKRAINE BULGARIA
RUSSIA POLAND ROMANIA BELARUS HUNGARY

Background

The spending of resources via public tenders in Bulgaria has increased over the past two years with the number of announced public procurement (“PP”) procedures rising from around 14,000 with a total value of BGN 13 billion (approximately EUR 6.7 billion) in 2020 to around 19,300 with a total value of BGN 16 billion (approximately EUR 8.6 billion) in 2021.

This trend is expected to continue, especially considering the recent announcements of the authorities that the use of the so-called in-house procedures for awarding large public projects without tenders will be substantially limited and instead public funds will normally be spent through competitive PP. In addition, Bulgaria is expected to receive up to BGN 12 billion (approximately EUR 6 billion) of additional funding under the country’s Recovery and Resilience Plan which in turn will be distributed through PP.

Here is a brief overview of the main aspects of PP procedures in Bulgaria, including insight into certain related practical issues.

Participation of Foreign Entities

Foreign entities from any country, except for entities registered in jurisdictions with a preferential tax regime in certain cases, may participate in local PP either directly or as part of a joint venture with local or foreign partners, usually in the form of a consortium. The consortium can be formed under the Bulgarian or a foreign law. A consortium under Bulgarian law:

- does not usually require registration before the awarding of a public contract and is constituted by virtue of signing a consortium agreement in a simple written form. Registration of a company may however be required by the Contracting Authority (“CA”) prior to signing the public contract when it is necessary for the execution of the procurement and this has been indicated in the tender documentation;
- is treated as a company for tax purposes.

Consortium agreements must meet certain criteria (e.g., contain provisions on the manner of representation, distribution of responsibilities among the parties, etc.)

Note: Registration in the BULSTAT register and VAT registration of the consortium will be required after the awarding of a public contract and prior to its signing.

Electronic Awarding of Public Contracts

A fully electronic process is in place through an on-line platform called the Centralized Automated Information System (CAIS), accessible at: [CAIS EOP | Log in](#)

Registration with CAIS is free of charge and requires a qualified electronic signature.

A qualified electronic signature (“QES”) is required for the registration, as well as for the submission, of tenders. It is also a convenient way to sign tender documents.

A QES issued by other EU countries may also be used. Information on recognized qualified trust service providers, in accordance with the eIDAS Regulation, is available at: [EU Trust Services Dashboard \(europa.eu\)](#)

Upon registration, users will obtain a profile in the system, under which tenders can be filed with the respective CA.

Once registered, the user may access and select from a list of available procurements. Upon selecting the procurement an access key is generated and provided to the registrant. The system will then consider the user as a potential participant and will redirect to him/her all notifications related to the respective procurement.

Note: Notifications will formally appear in its profile with the CAIS. In practice, informal notifications are also received by e-mail.

Phases of PP

Phases depend on the type of procurement. The most commonly used forms of PP (open procedure and public competition) are carried out in two phases:

- pre-selection phase, where compliance with the pre-selection criteria set by the CA is being examined;
- selection phase, where the price and technical offer of pre-selected participants are being evaluated and ranked.

Submission of Documents

Documents can be filed signed electronically or as scans. Electronic documents signed with a QES by more than one individual (e.g., an ESPD) will also be accepted.

Participants do not have to submit any proof of their economic and financial status, technical capabilities or other grounds for exclusion before the awarding of the public contract.

ESPD

The ESPD must, in principle, be signed by all natural persons who act in the capacity of a representative, member of a management or a supervisory body of the participating entity or of the legal entities that are members of such boards of the participating entity. In the case of a consortium, signatories will be the respective natural persons with such functions in all members of the consortium, as well as by the individual managing and representing the consortium.

Note: The law allows the signing of the ESPD by one of the said persons only in certain cases and where the respective circumstances are the same for all of them (e.g., clean judicial record). Relevant proof should be submitted along with the tender in such cases, e.g., declarations from all of the non-signing persons provided in simple written form or insertion of a respective statement in the ESPD that information on the circumstances has been provided to the signatory in advance.

Justification of Exceptionally Favourable Tender

Where the price of a participant is more favourable than the average price of all other tenders by more than 20%, the said participant will have to submit a justification thereof. The justification should provide reasonable and precise data on which the price is based, the financial reasoning behind the figures, as well as the general benefits taken into consideration.

Note: It is entirely at the discretion of the commission appointed by the CA to accept or reject such justification. Its decision is not subject to a judicial review on the merits but only on procedural grounds. accept or reject such justification. Its decision is not subject to a judicial review on the merits but only on procedural grounds.

Time Limits

Time limits in PP may vary substantially and will depend on the type of procedure, complexity, number of participants, etc. Some of the milestones within PP in terms of timing under the law are the following:

- filing an offer – e.g., 20 days (which can be lowered to 10) in open competition and 30 days (which can be lowered to 15) in an open procedure;
- ranking the offers – 10 days as from receiving the minutes of the commission assigned by the CA. In practice this time limit is generally respected by the CA although not mandatory;
- concluding a public contract – not less than 14 (with few exceptions) as from notifying the interested participants, unless an appeal has been lodged against the award decision.

Conclusion of a Public Contract

In order to conclude a contract, the selected participant will have to submit documentary proof of its economic and financial status and technical capabilities as per the ESPD and to provide a performance security in the form of a bank guarantee, insurance or a lump sum.

Note: The performance security should not exceed 5% of the contract value and in some cases may even be as low as 2%.

Appeals before the Administrative Authority

Decisions of the CA can be appealed within 10 days before the Commission for Protection of Competition (“CPC”). Appeals against decisions on the awarding of public contracts have a suspension effect on the respective tender procedure; appeals against other types of decisions may attain such effect if an interim measure is granted by the CPC upon a request by the appellant.

Under the law, the CPC shall rule on the merits of the appeal in 1 month or 15 days depending on the value of the tender. Those time limits are respected in a good number of cases.

The state fee due to the CPC for the appeal depends on the value of the tender but it does not exceed BGN 4,500 (approximately EUR 2,300) in any event.

Appeals before the Court

The CPC’s decisions can be further appealed before the Supreme Administrative Court (“SAC”) within 14 days.

The SAC will normally rule on the merits of the appeal within several months. Such rulings are final.

The state fee for these court proceedings is similar to those for the appeal proceedings before the CPC.

Note: Expenses in both administrative and court proceedings are borne, subject to certain limitations, by the losing party.

Appeal Related Figures

Statistics show that roughly a thousand appeals were filed to the CPC in 2020. In almost half of those cases, the final decision of the CPC has been further appealed before the SAC and approximately 7% of the CPC decisions have been annulled by the court.

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