

PUBLIC PROCUREMENT WHO'S WHO

Public procurement is the purchase of goods, services and public works by governments and public utilities, and in most countries this market accounts for around 15-20% of GDP, a major part of economic activity and international trade.

Since public resources are scarce, the efficiency of the procurement process is a primary consideration of every procurement regime. Therefore, open, transparent and non-discriminatory procurement is the best tool to achieve value for money as it optimises competition among suppliers. Increasing legal regulation means that public procurement is one of the fastest developing areas of commercial law. One of the reasons for the rapid development of this area arises from the fact that some governments use their procurement to achieve domestic policy goals, such as the promotion of specific local industry sectors or social groups.

This directly conflicts with the objectives of global trade organisations such as WTO, the EU and NAFTA. As a result, certain arrangements have been put in place to regulate public procurement to ensure fair international competition for government contracts, by requiring governments to tender major contracts according to detailed rules.

For example, via the WTO, an Agreement on Government Procurement (AGP) was negotiated in order to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

The changing face of public procurement

Public procurement regulation and processes are constantly changing, not only to adapt to economic and social circumstances but ultimately to increase transparency, fairness and interoperability and modernise the award of contract process.

A growing awareness of the environment is resulting in a move towards green procurement, in which public purchasers are encouraged to take account of environmental factors when buying products, services or works. Significant demand from public authorities for greener goods will create or enlarge markets for environmentally friendly products and services and provide incentives for companies to develop environmental technologies.

In addition, e-procurement is an online procurement tool that is growing in importance worldwide. Especially as using information technology appropriately can contribute to reducing costs, improving efficiency and removing barriers to trade. In order to streamline and facilitate the procurement process the EU Directives adopted in March 2004 as part of the public procurement legislative package provide a legal framework aimed at boosting the development and use of electronic procurement.

The global economic crisis is also changing the face of public procurement in many ways. For example, some governments are being forced to limit their spending, while others are encouraging public procurement projects. The EU is an example of the latter, having introduced legislation that speeds up the procurement procedure.

Public procurement practitioners are tasked with keeping up with the many legal changes that affect public procurement, not only in their own jurisdiction but in countries around the world.

See the following pages for more information from public procurement advisers around the world.

Ireland

The Irish Government believes that there is scope to access significant private funds for infrastructure projects and is currently in discussions with the Irish pension industry regarding using private funds to provide infrastructure and to support PPP projects and other projects previously funded by the Government.

In December 2008 the European Commission recognised that the current exceptional economic situation justifies the use of the accelerated procurement procedure for major public projects on the grounds of urgency throughout 2009 and 2010, in order to bolster economies through rapid execution of major public projects. It remains to be seen whether the public authorities will avail themselves of this opportunity to fast track the delivery of projects.

As one of the largest law firms in Ireland, we provide a one-stop shop for legal services and have a uniquely integrated cross firm approach to projects, having worked on some of the largest projects in the country in recent years, thus amassing an enviable portfolio of Ireland's largest developers.

BCM Hanby Wallace has a dedicated team of projects lawyers who have extensive experience in public procurement law and public private partnerships. Our highly skilled team has over 10 years experience in advising clients on public procurement law including government departments, state and semi-state bodies, local authorities as well as private sector clients tendering for government contracts. We also provide procurement administration services for the public sector.

The team works closely with the firm's banking, construction, property, public procurement, corporate, commercial, employment, health and safety, planning and environmental lawyers. We do not just give legal advice; we pro-actively manage all legal aspects of our client's project, working seamlessly with financial and technical advisers to ensure the successful delivery of the project.



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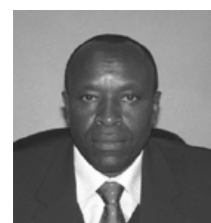
The award of works, supplies and services contracts by public bodies in Ireland are subject to either EU law or Irish guidelines, depending on the value of the relevant contract.

If a public contract is to exceed the EU thresholds as set out in the relevant EU Directives or is to be wholly or partly financed by the EU, then that contract shall be governed by EU public procurement law. Public contracts below the specified EU thresholds will be run in accordance with the Irish Guidelines published by the Department of Finance, National Public Procurement Policy Unit.

Given the huge reduction in government revenue on account of the current economic crisis, government funding of infrastructure projects will be significantly cut back. For example, the recent Irish Budget cut hundreds of millions from its capital programme this year affecting roads, schools, social housing and water projects. However, the Government is determined to maintain high levels of public investment and to deliver a large part of the National Development Plan programme.

The lack of government funds should now drive public private partnerships (PPP) to finance and provide infrastructure in Ireland. However, banking liquidity needs to return to the world economy before this can happen in any great way.

Kenya



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Public procurement is governed by the Public Procurement and Disposal Act 2005 (PPDA) and the Regulations under this Act. There is a Public Procurement Oversight Authority established under the Act mandated to ensure that procurement procedures are complied with and to generally monitor and assist with the implementation and operation of the public procurement system. The organisation also provides advice and assistance to procuring entities.

The overall procurement procedure depends on the mode of public procurement. In general the main steps are as follows: invitation to tender, preparation of tender documents in accordance with the PPDA, submission and receipt of tenders before set deadline, opening of tenders and the evaluation of tenders.

The invitation to tender must be advertised at least twice in a newspaper of nationwide circulation. For international tendering, all tender documents must be in English. Advertising must include one or more English language newspaper or other publications that together, have sufficient circulation outside Kenya to allow effective competition.

Section 29 (8) of the PPDA provides that where funding of a project is 100% from the Government of Kenya, exclusive preference shall be given to citizens of

Kenya. The same preference also applies where amounts are below a certain threshold, currently Kshs 250 million. There is a leeway in favour of local companies, which allows them to bid 15% higher than the lowest international bid.

Mohammed Muigai is well grounded in public procurement. Currently, the firm prepares the chapter on public procurement in Kenya in the 'Global Competition Review', an annual publication of the International Bar Association. In 2007, the firm was contracted by State University of New York (SUNY) to lead training on procurement issues for Members of Parliament. The firm is compiling a Compendium Digest of Procurement Cases and Regulations for use by state corporations and other procurement practitioners.

Led by Mohammed Nyaoga, the firm has been involved in several landmark cases, one such being Miscellaneous Civil Application No. 1260 of 2007 (Republic versus the Public Procurement Administrative Review Board and the Kenya Civil Aviation Authority ex parte Selex Sestemi Integrati). This case touched on the constitutionality of section 36 (6) of the Public Procurement Act which provides that "termination under this section (i.e. without entering a contract) shall not be reviewed by the Review Board or a court". The court found that there was nothing unconstitutional in that section, noting that it does not remove the jurisdiction of the High Court in matters that have been determined by the procuring entity to the detriment of any tenderer.

The section only seeks to limit the jurisdiction of the court with regard to certain justified actions by a procuring entity. On whether the Review Board lacks jurisdiction when an award has been made and subsequently terminated by the procuring body, the court held that it had jurisdiction to consider and review the decision of the 2nd Respondent (the procuring entity) to terminate the awarded tender.

UK



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The fiscal stimulus packages in the UK and in continental Europe should in theory give a boost to public procurement although many major projects (in particular PFI projects) are dependent on private sector financing, which has more or less completely dried up. In the UK, we may see changes to the PFI rules to provide for alternative financing structures that use public money or a direct form of pump-priming, such as local authorities being given funding and told to embark on house-building programmes to boost the construction industry. If these changes are introduced or the measures taken to increase bank lending start to have effect, there could be a significant boost to public-sector contracting. Under the EU public procurement directives (implemented in the UK by the Public Contracts Regulations 2006 and the Utilities Contracts Regulations 2006), contracts for supply of goods, works or services awarded by public authorities or utilities which exceed specified financial thresholds must be awarded in accordance with set rules. This involves conducting a selection procedure by way of tenders or negotiation and evaluating the bids received on the basis of the lowest price or the most economically advantageous offer. Contracts that fall outside the scope of the rules and below the specified financial thresholds still have to be let in a way that is consistent with fundamental EU principles of transparency,

equal treatment and non-discrimination.

The EU directives oblige public authorities throughout the EU to adopt fair and non-discriminatory procedures when awarding contracts. Adherence, in theory, rewards the authorities with a greater variety of potential contractors and, as a result, higher quality and lower cost public contracting. However, although the legislation seeks to impose a level playing field across the EU, and despite the best efforts of the European Commission via enforcement procedures, certain countries and markets are proving hard to penetrate for non-nationals or non-favoured contractors. Recent amendments to the rules designed to give aggrieved tenders more powerful remedies may help to redress the balance.

In the case of cross border procurements, understanding local customs and contracting habits provides a premium. The old business adage 'know your customer' applies. As an international firm, Watson, Farley & Williams' (WFW) network of overseas offices in Europe gives us an edge when assisting clients with cross-border contracts because we can supply the local knowledge that can be key in enabling their bids to be successful.

WFW's public procurement team advises a broad range of public sector, utility and independent contractor clients. The team is currently representing a client in a High Court case involving a novel point of law. Our client was ejected from a tender procedure for a technical breach. The question to be considered by the Court is whether expulsion from the tender procedure was proportionate in light of the relatively insignificant nature of the breach. Should we succeed at full trial, in the future contracting authorities will be precluded from adopting a 'rules are rules' approach to bids. Instead authorities will have to exercise a greater level of judgment when dealing with infractions.

Norway



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The Public Procurement group in Advokatfirmaet Haavind AS includes some of the most outstanding experts in this field, such as the chairman of The Public Procurement Complaints Board of Norway, and the author of the most comprehensive commentary on the Norwegian regulations of Public Procurement. We counsel vendors as well as public bodies in all matters related to a public procurement procedure. We also provide advice in relation to complaints and litigation, and are often used as lecturers, both internal for our clients and external. The public procurement procedure in Norway is governed by the Act on Public Procurement of 1999 (as amended), Public Contracts Regulations 2006 and Utilities Contracts Regulation 2006 (implementing the EU Directives 2004/18 & 17). These regulations incorporate all of the EC rules relating to service, supply and works contracts entered into by public bodies. As a member of the European Economic Area Norway has essentially harmonised its laws and processes with other EU countries. However in Norway there are two levels of threshold values for contracts covered by the Public Contracts Regulations, the national threshold value of NOK 500 000 (approximately €62,500) where tender competitions are to be published nationally, and the EC-threshold values

where the competitions are published throughout the EU.

Providers having participated in a tender procedure have locus standi to bring an alleged breach forward to The Complaints Board of Public Procurements (KOFA). Also providers' branch organisations and potential providers who have lost the possibility to enter a tender procedure because the purchaser has breached his obligation to publish a notice, have locus standi. KOFAs rulings are advisory, but the parties tend to comply with the decisions. In cases of illegal direct procurements KOFA has the authority to impose sanctions. An infringement fee of up to 15% of the contract's value can, at KOFA's discretion, be imposed on a purchaser having wilfully or with gross negligence omitted publication. KOFA's decisions may be brought to court, starting in the District Courts.

Foreign tenderers can from time to time have reason to believe that they have not been subject to equal treatment. It may then be advantageous to contact us for a closer examination of whether or not the purchaser has fulfilled his obligation of transparency, equal treatment and non-discrimination.

In the light of the world economic crisis the Norwegian government has allocated substantial funds for public investments and maintenance of public buildings, to foster the economy through the crisis. The EFTA Surveillance Authority has, in line with the European Commission, recognised the need for an accelerated procurement procedure, shortening the time limits for the restricted procedure from 87 to 30 days. This means that in the near future we will hopefully experience a boost in public procurements. This will probably entail more disputes, as the difficult situation makes it even more important for the vendors to obtain the contracts they tender for.

Finland



LEXIA

LEXIA

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The value of public procurements in Finland currently stands at approximately €22 billion, which equates to 15% of the country's GDP. Fortunately, the global economic crisis has not significantly affected the quantity of public procurements taking place in Finland, as the industry has proved quite resilient in the face of a downturn.

A new Act on Public Procurements came into operation on 31st December 2007 in Finland. Along with the new Act, the Community procurement directive on public procurement was implemented (2004/18/EY). EU case law was taken into account throughout the law-making process.

The Market Court in Finland is responsible for hearing public procurement cases and is empowered to overturn public procurement decisions, adjust the procurement process and order compensatory payments. The court is also responsible for market law cases and the supervision of mergers and acquisitions and competition cases, in which it issues injunctions against illegal restrictions of competition and orders monetary penalties. The appeals from the decisions of the Market Court are made to the Supreme Court in market law cases and to the Supreme Administrative Court in public procurement cases and in most competition cases.

In public procurement cases the Market Court handles offer requests and

tenders from a relatively formal point-of-view, which can prove challenging for many foreign bidders. At Lexia, we deal with many foreign bidders in public procurement cases, and we always advise them to draft the offer so it adheres to the conditions of qualification set out in the offer request and to make sure that the grounds that affect the competitive bidding are expressed in the right way. Careful planning of the offer preparation increases the possibilities of success in the actual competition and also when applying for subsequent legal remedies.

We have found that those procurements carried out by small procurement units usually cause the most problems for the authorities as many don't often retain any staff specialised in public procurement, which makes both the execution of the procurement and the bidding more difficult for all parties involved. When working on these types of procurements we often find that there is an increased need to look after the bidders' interests at the offer drafting phase.

Our public procurement team is an integral part of the competition, public procurement & marketing team. The team primarily assists private procurers in public procurements and our assignments are usually connected with consultation during the bidding stage, assisting with negotiation proceedings and applying for subsequent legal remedies. We also assist our clients with court proceedings related to public procurement. In addition, our firm has assisted procurement units in executing procurement proceedings.

Lexia is an independent Finnish law firm offering high-quality expertise in all areas of domestic and international business law. Our flexible and efficient approach is based on solid professional skills, understanding of the clients' objectives and a strong know-how in various business activities.



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Switzerland is a party to the Agreement on Government Procurement (GPA), which was concluded in 1994 as part of the Uruguay round, and to the bilateral treaty with the EU of 2001 dealing with procurement issues for sector enterprises and local authorities. However, Swiss procurement rules go well beyond the minimum requirements of the GPA.

Public procurements by the Confederation are governed by a federal statute which applies to any procurement by the federal administration and the federal enterprises, while each of the 26 cantons has its own procurement law. Although the cantons have made attempts to partly harmonize their procurement rules, there are still substantial differences to the federal legislation.

The overall procurement process varies from case to case, however typically, all procurements begin with a public tender which either calls for a prequalification of the bidders or directly solicits an offer. Prior to the tender, the authority may engage in a technical dialogue with potential bidders. On the federal level, offers may be negotiated if so indicated in the tender, while no negotiations take place in cantonal or local tenders. The award is subject to judicial scrutiny by the administrative courts of the Cantons and the Federation, with the possibility of

Switzerland

an appeal to the Swiss Supreme Court.

The contracting authority is not allowed to discriminate against bidders based on their legal domicile. However, sometimes a tender may apply criteria which operate as a barrier to market entry. This is often the case for technical specifications. Any bidder is entitled to have such criteria reviewed by the court.

As the government traditionally steps up its spending in a recession, we expect an increased volume in public tenders in the next years. At the same time, public authorities are under cost pressure and often have no adequate resources to handle all the requests of their internal customers. The suppliers of goods and services in turn are eager to participate in public tenders, which translates to a higher number of offers and ultimately, to strong price competition.

Walder Wyss provides counsel and support to both public agencies and private bidders in the procurement process. We represent clients before the administrative courts of all levels to protect their rights and interest. With six lawyers actively involved in public procurement issues, our firm has the largest professional team in the country.

In particular, we have special expertise in IT procurement where we have supported a considerable number of clients in the past years. This ranges from simple licensing arrangements to complex long term outsourcing agreements. Also, we currently represent parties to a PPP project for a regional prison. This project is the first of its kind in Switzerland. Furthermore, we have been engaged in procurement cases in the railway and energy sectors as well as in other large infrastructure projects.

Poland



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The principal legislation governing public procurement in Poland is the Public Procurement Law Act, which was adopted on 29 January 2004 (Prawo Zamówie Publicznych, or PPL). PPL, which is supplemented by a large number of statutory regulations, cover the whole scope of public procurement including public procurement procedures, framework agreements, dynamic procurement systems, competitions, concessions procurement, sector procurements, provisions on the President of the Public Procurement Office, remedies and provisions on the obstruction of the PPL regulations.

The PPL focuses on the principles of equal treatment and fair competition, as well as on the principle of 'best value for money'. As far as the public sector is concerned, the PPL applies to contracts that equal or exceed €14,000 in value. If this threshold is met, but the value of the contract does not reach €133,000 or 206,000, (depending on the type of contracting authority) for supplies and services or €5,150,000 for works, a simplified procedure is applied. Sectoral contracting authorities must apply the PPL to contracts, the value of which equals or exceeds €412,000 (for supplies and services) or €5,150,000 (for works).

There are eight different procedures, amongst which the open tender and a

restricted tender procedure are most common. The tender procedure typically begins with the contracting authority making a contract notice in the Public Procurement Bulletin or the Official Journal of the European Union, depending on the contract value. The contracting authority will then select the most appropriate offer from those that were filed on time. The Act on Public Procurement also allows the tendering authority to commence proceedings in the following tender procedures: negotiation procedure with notice, competitive dialog, negotiations without notice, single-source procurement procedure, request for quotations procedure, electronic bidding procedure.


The public procurement team at Wiercinski, Kwiecinski, Baehr (WKB) is headed by partners Tomasz Kwiecinski, Jerzy Baehr, Jan Roliski and Aleksander Stawicki. The partners have recently co-authored a commentary to PPL, published in three editions by the Public Procurement Office and a substantive study of the handbook 'Zielone Zamowienia Publiczne' (Green Public Procurement) for the Ministry of Regional Development, which is a practical handbook for beneficiaries of European funds, co-funded by the European Union within the Operational Programme Technical Assistance.

WKB has rendered public procurement services to many well-known companies. Most recently, the team advised a consortium of a leading advisory company and a UK bank in competing for advisory services for the Polish government. We provided advice throughout the planning stages of all the main road infrastructure projects. The role of WKB was to help collate the relevant documentation and forms required by the tendering authority, as well as to advise on legal protection matters. We are currently advising a public transportation company in a tender concerning 40 trams worth approximately £100 million.


Hungary



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ated procedure without publication of a prior notice'. However, this procedure may only be applied when the conditions set forth by the Hungarian Public Procurement Act are met.

As common in the EU member states, interested parties have the right to initiate remedy procedures in the course of or following the public procurement procedure in front of the Public Procurement Arbitration Committee, should they find that the procedure violates the laws. In addition, the Public Procurement Arbitration Committee may proceed ex officio.

The rules governing the legal remedy proceedings are very strict and a good understanding between the Committee's practice and interpretation of rules, and the rules of civil litigious proceedings is essential. In these cases our clients have grown to lean on our expert legal advice in order to avoid problems later.

Our firm's expertise and experience covers every aspect of the public procurement process. As a result, the team has represented some high profile clients in large cases, including the winning bidder in the first public tender announced by the Hungarian State Railways company for the procurement of electric locomotives for the first time in 40 years. More recently, we advised the winner of the single largest Hungarian tender announced in 2008, for the award of a PPP based concession contract and we provided advice to the Hungarian State concerning the legal and legislative requirements of introducing the electronic, mileage based toll collection system in Hungary.

Oppenheim is a firm of innovative lawyers, which is exemplified by the feedback we receive from some of our clients which states that 'Oppenheim lawyers have the right background for large transactions'. Furthermore, clients value the lawyers 'great commercial acumen' and praise the firm's 'extremely high standards of work.'

Hungarian public procurement legislation follows the applicable EU directives, although recent amendments to the Hungarian regime have resulted in the stricter application of certain EU directives. As a result, the re-shaped act is somewhat complex and rather difficult to follow. Nevertheless, with professional legal assistance, both the contracting authorities and the bidders can successfully manoeuvre in the course of the given public procurement procedure.

In order to give a concise insight of the Hungarian public procurement legislation, contracting authorities may choose from one-phase and dual-phase procedures. The one-phase method is an open procedure that begins with the publication of the tender notice and the submission of bids. In an open procedure it is the bid that shall also contain the proof of the non-existence of the exclusion grounds and evidence that the bidder meets the suitability criteria. The procedure concludes with the evaluation of the bid, the announcement of results and the conclusion of the contract.

As to the dual-phase procedures, the contracting authority may choose amongst restricted procedures, negotiated procedures and competitive dialogue. The first part of the dual-phase procedures is the PQ phase that will be followed by the bidding one. There is one exception from the obligation to publish a notice when starting the public procurement procedure, namely the application of the 'negoti-

Lithuania



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Lithuania is among the Member States that have implemented the EC Directives on public procurement law into its national legal system. Aside from this, the primary source of public procurement law in Lithuania is the Law on Public Procurement, which encapsulates more or less every provision of the EC Public Procurement Directives without adding anything new, except the regulation of a simplified public procurement procedure, which is used to purchase goods, services or works which are valued below the EC Directives threshold. In addition to regulations imposed by the Public Procurement Council, case-law has a significant impact on local procurement practice in Lithuania.

Each public procurement case is different, however, the fundamental steps remain the same almost every time. Firstly, there must be a notice regarding the purchase, which is to be published in the Official Journal and in the national magazine. Procurement is executed pursuant to the purchase documents that the contracting authority must prepare in order to organise the purchase. The documents must correspond to the principles of transparency, non-discrimination, equivalence, proportionality and mutual recognition, as well as the mandatory requirements that are provided by the law and the EC Directives.

The suppliers are free to submit their bids, which are evaluated according to the procedures stipulated by the law. Then, the preliminary order is announced which is subsequently confirmed and the winner of the tender is awarded the public contract. Any dissatisfied parties have the right to claim breaches of the public procurement law and seek particular remedies, either in national courts or by claiming to the EC Commission on the basis of the principle of effective remedies.

Soloveikas, Markauskas, Aviza, Bagdanskis (SMA) provides the full service to clients taking part in public procurements, ranging from assistance in preparation of bids, analysis of purchase documents to litigation in all instances of national courts or the European Court of Justice, while preventing the rights of the suppliers.

The firm has represented many private and public suppliers against the contracting authorities and vice versa. We have recently successfully represented one of the leading mobile operators in Lithuania in a case against the Social Security Fund and municipal transport company, which executed the public procurement process with many legal flaws. We are also assisting contracting authorities such as the Lithuanian Road Administration under the Ministry of Transport and Communications, Ministry of Economy and several other municipalities. We regularly advise the national railway company in its dealings with the many suppliers that claim the breaches of their rights

The firm's public procurement law practice group, which is led by Dr. Deividas Soloveikas, LL.M, has significant input into the case-law and doctrine of public procurement law in Lithuania

Romania



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In view of accession to the EU in 2007, Romania amended its domestic legislation on public procurement by adopting the Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts.

Establishing the legal framework for the award of public contracts, GEO no. 34/2006 laid down the necessary rules for open and transparent procurement procedures in compliance with the essential requirements of Community law such as transparency, non-discrimination and judicial review of procurement procedures.

Since 2006 the national law has undergone several amendments. The most recent, GEO no. 19/2009, aimed to adopt the necessary measures for improving the Romanian public procurement system and to further harmonise the national legislation with EU Directives, especially with regard to improving the effectiveness of review procedures concerning the award of public contracts.

The global economic crisis is affecting all parts of the economy and in order to address the situation there has been a decrease in public spending, which inevitably results in a decrease in the amount of public contracts awarded. The Common Platform of Anti-crisis Solutions proposed by the Romanian Government in January 2009, provided for the decrease of goods and services procurement by about €850 million in 2009.

Also with regard to preventing the effects of the economic crisis, The National

Authority for Regulating and Monitoring Public Procurement adopted a normative act, which allows contracting authorities to accelerate the restricted procedure, as well as the negotiated procedure with prior publication of a contract notice by invoking the exceptional nature of the current economic situation as a reason for urgency. Thus, the overall time limit of the procedure has been reduced from 87 days to 31 days for the restricted procedure, and 21 days for the negotiated procedure, with prior publication of a contract notice. This will apply throughout 2009 and 2010 for all major public projects.

With a broad experience in establishing the legal framework applicable to public projects as well as the most efficient contract award procedure, VASS Lawyers' public procurement team assists contracting authorities in all aspects of structuring and implementing public procurement projects. The team has advised an array of clients ranging from Government officials, national companies or local authorities in concession projects to institutional public-private partnerships. The team has also represented clients in public procurement contracts for infrastructure works, delegation agreements of the sanitation service management, as well as in award procedures of various supply and services contracts.

Moreover, VASS Lawyers has represented various private companies participating in award procedures as bidders or as sub-contractors. The law firm advises economic operators on all stages of public procurement projects, including drafting requests for clarification on tender documentations, verifying or drawing-up of bids responding to calls to tender, filing challenges against contracting authorities' decisions, or concluding and executing public procurement contracts, subcontracting or consortium agreements.

In order to provide its clients with the full range of public procurement services, VASS Lawyers is setting-up a network of partners specialised in technical assistance for procurement projects, as well as a network of public procurement lawyers from all EU member states.

Macedonia



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The first Macedonian Law on Public Procurement came into effect in 1998. Later in 2004 a new Law on Public Procurement was adopted, with amendments that followed in 2005. Today, we have the Law on Public Procurement, which was adopted in November 2007 and applicable from January 2008, with amendments in 2008. The Public Procurement Law increases the transparency of tendering procedures, provides consistency with other legislation and strengthens the legal protection of bidders. It also brings Macedonia another step closer to the harmonisation of its legislations with EU standards.

Further to the Law on Public Procurement, the legal procedures ensure competition among economic operators, equal treatment and non-discrimination of economic operators, transparency and integrity in awarding public contracts and rational and efficient utilisation of funds in the contract award procedures.

Typically, the public procurement procedure begins with the contracting authority preparing a procurement plan covering its procurement needs for the current year. This will specify the types of supplies needed, services and works to be completed according to the CPV, the expected time of initiating the procedure, the estimated value of contracts and the type of procedure to be used for each contract. After this has been decided the next step is to estimate the value of public contracts, come to a public procurement decision, prepare the tender documentation and publish the

notices, including the prior information notice, contract notice and contract award notice.

Macedonia is establishing an electronic system for public procurements (MESPP), which is aligned with the EU procurement directives. The MESPP essentially provides an easy-to-use, secure, efficient and transparent on-line solution for electronic public procurements and covers all phases of the process, including eSourcing, eNoticing, eAccess, eSubmission and eAwarding.

Mostrova Law firm was established in 2007 by Aneta Mostrova, attorney at law and the firm provides legal assistance and advice during the entire process of tendering procedures. With a deep knowledge and understanding of the tendering procedures, Public Procurement Law, Concession Law, and Public Private Partnership Law, we can be involved in all stages of the process, from bidding procedures to conclusion of contracts.

Taking into account my vast experience in this field, I have completed many administrative and court cases with much success, especially those including foreign clients. As an example, I represented a large foreign company that was taking part in a public procurement procedure. The procedure was not fully in line with the law, so I made many remarks and suggestions in that respect. During the process I succeeded to demonstrate that the procedure should be nullified. Therefore, the public tender was renewed, ensuring that it was in full compliance with the Law and by-laws. All of the relevant corrections were made within the framework of the administrative procedure and with no involvement of the court.

I am often involved in lecturing on the subject of public procurement, either for academic courses and seminars or for representatives of economic operators and contracting authorities. I also have long-standing professional experience in government bodies and was the first Director of the Public Procurement Bureau of the Ministry of Finance.

Cyprus



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The economic crisis has made the sourcing of financing for public procurement projects a more complex and more difficult matter, with lending institutions going to great lengths, into much greater detail and making higher demands of sponsors in terms of financial and legal due diligence. In addition to this, the actual cost of borrowing for projects has soared, which makes the public procurement process all the more difficult.

In a bid to encourage and promote the continued growth of the Cyprus economy despite the economic down turn, the government of Cyprus has renewed its commitment to the completion of all public procurement infrastructure and tourist projects.

Ioannides Demetriou is a full services law firm with a very strong public procurement practice. The two founding partners Pambos Ioannides and Andrew Demetriou are recognised leaders in the procurement field and have advised some of the country's largest organisations within the procurement field including the Electricity Authority of Cyprus (Power stations and new LNG Terminal), Hermes Airports Ltd (Cyprus International Airports Concession) and Kinyras Consortium (Paphos – Polis road project). The firm has also advised on the Islands Marina development Projects.

Ioannides Demetriou comprises a team of highly qualified and specialist lawyers with a wealth of talent and breadth of experience in all areas of law. The team is in a position to meet and exceed the expectations and demands placed upon them by the firm's enviable client base, which includes international and local banks, public bodies, public and private foundations, universities, international and local contractors and consultants and major international and local commercial enterprises, concession holders and businesses.

Cyprus is fully harmonised with the EU procurement directives 2004/17/EU and 2004/18/EU as well as Regulation 2083/2005 and has established the Tenders Review Authority in order to provide for an effective remedy in public procurement cases.

Proceedings before the Tenders Review Authority are commenced by way of Hierarchical Recourse and the decisions of the Tenders Review Authority are subject to recourse before the Supreme Court of Cyprus.

Invariably public procurement projects in Cyprus are carried out by multinational joint ventures and our long standing experience in working with major contractors, banking institutions and law firms from different jurisdictions, as well as the depth of knowledge of all aspects of public procurement law and financing, enables us to dovetail the provision of our legal services to achieve the aims of project sponsors and financiers in a cost effective and efficient manner.

In addition to this, the firm has an excellent reputation among public awarding authorities in Cyprus, which makes us a valuable addition to any team. Aside from the in depth knowledge of Cyprus procurement and contract law that we possess, we also have steadfast relations within the public administration, which can be a great asset in negotiations with an awarding authority.



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Public procurement legislation in the US is vast, but Federal Statutes 10 U.S.C. 2304 and 41 U.S.C. 253 stipulate that U.S. Contracting Officers who are charged with undertaking procurements for the U.S. Government shall promote and facilitate full and open competition in soliciting offers and awarding Government contracts, consistent with the need to fulfil the Government's requirements efficiently. Much of the newly-appropriated Stimulus money will be spent as required under these provisions.

More specifically, the selection of sources for architectural or engineering contracts is in accordance with the provisions of U.S.C. 1102, et seq., and is a competitive procedure. The use of the multiple award schedule issued under the procedures established by the Administrator of General Services must be consistent with the requirements of 41 U.S.C. 259(b)(3)(A). These procurements are subject to an elaborate set of socio-economic statutory provisions. There are statutory requirements for set-asides of particular procurements to certain size-limited small businesses under the Small Business Act, as amended by Pub. L. 100-656. Contracting officers may set aside solicitations

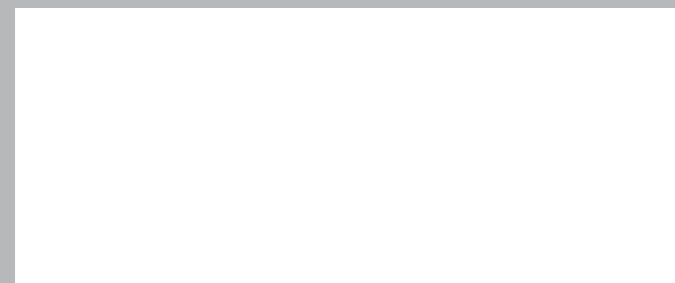
to allow only service-disabled, veteran-owned small business concerns to compete under the Veterans Benefits Act of 2003 (15 U.S.C. 657f).

Within the public procurement process the public agency usually develops a scope of work or identifies its needs. In the case of construction, they may utilise an outside architectural or engineering firm to prepare a design or in the area of technology, a consultant to develop a statement of need. The agency will select a procurement method based on the type of goods, material or services sought, the urgency of the need, and what the statutory and regulatory authority allows. The agency will then provide the information for bidders or the request for proposals to a bidders or offerors list and advertise in limited publications.

Depending on what is being procured, the award may go to the lowest responsive and responsible bidder, or be negotiated on a best value basis, with factors such as performance, experience with the agency and life cycle costs being taken into consideration.

Foreign direct investment (FDI) is increasingly important in public private partnerships for public works, transportation and clean and waste water projects being performed on a concession basis, and are frequently the key to the success of the project. A majority of states have legislation providing for such projects, and sometimes unsolicited proposals can be considered. However, the statutory laws of the USA often contain restrictions on foreign sellers in the form of Buy American Requirements, which are complex and have many exceptions to include compliance with World Trade Agreements.

Ukraine



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There is no rigid legislative framework in India encompassing all aspects of public procurements within the country. Instead, different procurement rules apply to the central government, the state governments, the central public sector units and to state public sector enterprises. These procedures vary depending on the value and nature of the items being procured.

At the central level, procurement is regulated through executive directives such as the General Financial Rules, 2005 (GFR) which is a compendium of general provisions in the form of executive instructions to be followed by procuring entities under the control of the central government. Also, most state governments have promulgated their own set of rules along the lines of GFR. These rules have been designed to ensure the expeditious procurement of goods and services as well as to ensure, inter alia public accountability, transparency and impartiality in the procurement process.

As an overarching principle, and subject to a few exceptions, the Supreme Court of India has laid down that any award of contracts for public procurement in India has to be through a competitive bidding or tendering process. Any other method, especially nomination, shall be viewed as a breach of the fundamental right of equality before law except where it is expressly provided in the applicable rules.

India

Thus, the fact that a varied set of rules apply to the procurement process in India, necessarily entails the requirements of a full service law firm specialized in various practice areas. Luthra & Luthra's public procurement team regularly renders premium legal services to its clients in various sectors such as telecom, aviation, defence, information technology and power.

Though we have assisted clients across all sectors, the most challenging work pertains to those that relate to defence procurement. While it is true that in all sectors, including the defence sector, the formats and procedure for the bid and the selection process are laid down; in the defence sector there are two primary challenges.

Namely, the fact that a majority of high stake defence deals in India are pursuant to global tenders, thus necessitating the participation of foreign bidders (given that foreign bidders are subject to certain additional conditions), and secondly on account of the difficulties emanating from negotiating contracts with the Ministry of Defence since the Defence Procurement Procedure, 2008 specifies that all contracts for the supply of defence equipment will follow a set format. As such, we often find that the Ministry of Defence is not readily amenable to agreeing to any deviations from this set format, even when the unique facts of the specific procurement merit the non-inclusion of certain ostensibly standard provisions.

It also comes as a surprise to several foreign bidders that such standard contract documents are short on detail and often do not envisage several possible eventualities. Contract negotiation in such a scenario, and with transaction values in Indian defence procurement routinely exceeding USD 500 million, assume critical significance. It is a matter of great pride for our firm that we have created a niche practice in this area.