

Draft Law "Amendment to Law no. 162/2020 "On Public Procurement"

Newsletter



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On June 21, 2023, the Council of Ministers submitted for public consultation the draft law “Amendment to Law no. 162 dated December 23, 2020 “On Public Procurement” (**Draft Law**).

The Draft Law is partially harmonized with the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement, repealing Directive 2004/18/EC and the Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on Procurement by entities operating in the water, energy, transport, and postal services sectors, repealing Directive 2004/17/EC.

The proposed Draft Law aims to enhance the regulatory framework of public procurement by incorporating important practices from EU Directives, as well as to streamline and simplify the procurement process while ensuring fairness, competition, and transparency.

The novelties introduced by the Draft Law are focused on the following key pillars:

Procurement Procedures

According to the Draft Law, the "Consultancy Service" procurement procedure is not established as a distinct category of procurement. Instead, it is integrated and treated similarly to other types of services within the procurement process. In this context, the guidelines and procedures that apply to procurement services in general would also be applicable to the procurement of consultancy services.

The Draft Law also includes provisions to facilitate the implementation of complex procurement procedures by introducing the concept of a ‘*procurement service provider*’. This latter may be a public or private body that shall be contracted by the contracting authority when it is considered important to obtain an external expertise to conduct ancillary activities related to the public procurement.

The fee of the performance of ancillary activities for public procurement by the service provider would be up to 1% of the estimated value of the procured contract. The rules for payment of the performance of ancillary activities related to public procurement shall be determined by the decision of the Council of Ministers.

In addition to the aforementioned novelties the Draft Law also introduces the concept of the “*Procurement order*” as a document issued by the contracting authority or entity to formally authorize the commencement of the procurement process.

Financial Thresholds

The Draft Law excludes the application of the law to the procurement of goods, works, and services below a specific monetary limit for the needs of Diplomatic and Consular Representations of the Republic of Albania abroad.

The monetary limits are determined upon decision of the Council of Ministers, taking into consideration the provisions of the European legislation in the field of public procurement.

Bid Evaluation and Selection

The Draft Law stipulates that the calculation of the limit value of the contract is conducted using certified electronic systems through interaction with other systems of the Government Interaction Platform.

The special rules for calculating the value of the contract, including the method of calculation in the systems, the types of systems to be used, and their certifying body, shall be determined by a decision of Council of Ministers.

The Draft Law incorporates the following additional criteria that can result in the immediate disqualification of the economic operators from the selection process during the evaluation stage:

- The economic operator fails to respond twice in a row to the invitation of the contracting authority or entity during the re-opening of the competition.
- The economic operator fails to register the beneficial owners in the register of beneficial owners.
- The economic operator fails to implement the obligations derived from the legislation on wages in force.
- If a person who has been convicted by a final court decision for a serious professional offense holds positions such as a member of an administrative body, manager or supervisor, shareholder or partner of an economic operator, or has representative, decision-making, or controlling powers within the competing economic operator.

Furthermore, the Draft Law stipulates that the contracting authority or entity shall require the winning bidder to provide a contract security issued by insurance companies licensed in the Republic of Albania equivalent to 10% of the contract value as a guarantee to ensure the fulfillment of contractual obligations, before signing the final contract.

Electronic Procurement

To enhance transparency and efficiency in procurement procedures, the Draft Law includes a provision stating that all communication and exchange of information at every stage of the procurement process, from procedure development to lodging complaints, contract signing, and implementation, must be conducted

solely through electronic means of communication.

In this context, the Draft Law introduces the following new concepts:

“*Public procurement passport*” is a dedicated space in the electronic procurement system for the complete documentation of a procurement procedure, which is identified by the reference number.

“*Electronic catalogue*” refers to a digital platform or system that provides a centralized repository of pre-approved goods, services, or works that can be procured by public entities.

Another novelty introduced by the Draft Law is the revised process for submitting complaints in public procurement. According to the proposed changes, complaints must be submitted online to the contracting authority through the electronic complaints system. Before initiating court proceedings, it is mandatory to exhaust all available administrative avenues for redress.



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