



Legal base and regulation of public procurement

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1. Legal base

- Directive 2004/17/EC
- Directive 2004/18/EC
- Directive Directive 2007/66/EC amending Council Directives 89/665/EEC and 92/13/EEC
- Public procurement act
 - General rule on public procurement
- Public procurement in the water, energy, transport and postal services act:
 - Infrastructural activities;
 - Extends the range to private entities
 - Less formalized rules and procedures
- Legal Protection in Public Procurement Procedures Act

Public procurement act

- Procurement phase
- Defines contracting authorities, procedures, terms, selection criteria, award criteria
- Penal provisions
- Contents of the contract not regulated
- Contractual law not fully in force; special nature of legal relationship

Public procurement act

Structure (1)

- Part I:
 - Chapter 1: definitions, principles, thresholds for publication, methods for calculating the estimated value, exceptions in public procurement.
 - Chapter 2: procedures.
 - Chapter 3: Technical specifications
 - Chapter 4: Qualification assessment and selection criteria
 - Chapter 5: time limits
 - Chapter 6: notices
 - Chapter 7: communication

Public procurement act

Structure (2)

- Part II:
 - Chapter 1: common provisions, phases of the procedure
 - Chapter 2: Special provisions in public procurement procedures
- Part III: rules governing design contests
- Part IV: reports and statistics
- Part V, VI: body for misdemeanours, penal provisions
- Part VII: transitional and final provisions

Contract

- Contractual relationship
 - contracting authority
 - candidate or tenderer
- Civil legal nature
 - Principle of equality
 - No authoritative relationship
- Pecuniary interest
 - Commercial purposes of candidate or tenderer

Contracting authorities

- Two legislative acts:
 - bodies governed by public law
 - contracting authorities in the field of economic infrastructure Osebe javnega prava
- Bodies governed by public law
 - Authorities of the Republic Slovenia and of self-governing local communities
 - Public funds, public agencies, public institutes,
 - Public commercial institutions, and
 - Other bodies governed by public law.
- Activity, legal person, financing
- In-house
- Joint public procurement



Treatment of economic operators

- Status of natural or legal person
- Professional competence
- No specific legal form of groups of candidates
- Liability for execution of contract
- Subcontractors:
 - structure of the contract price

Civil nature

- Contracting authorities are performing public functions – public procurement rules do not interfere
- Public procurement rules govern relationships when public entities emerge as demanders for goods, works or services
- Contracting authorities do not appear in the authoritative function, but as equal entities – contractual relationship

Pecuniary interest

- Pecuniary nature of contractual (civil) relationships
- Bilateral obligation
- Economic operator must demonstrate commercial purposes

Public contracts

- Contracting authorities must identify the specific contract and follow the specific rules regarding the type of contract:
 - Public works contracts
 - Public supply contracts
 - Public service contracts
- Distinction important:
 - Thresholds for publication
 - Different procedures
 - particular rules on subsidised housing schemes
 - additional exemptions related to certain procedures

Procedure – legal nature

- Procurement law provides for mandatory conduct of contracting authorities
- Procurement rules interfere in the institutes of contractual law
- Importance of legal nature:
 - Is award of a contract mandatory?
 - Liability in the event of a breach of public procurement rules
- Invitation to submit offers



Scope:

Thresholds for EU publication

- for public supply contracts
 - 125.000 EUR (contracting authorities from the List of contracting authorities)
 - 193.000 EUR (other contracting authorities)
- for public service contracts
 - 125.000 EUR (contracting authorities from the List of contracting authorities)
 - 193.000 EUR (other contracting authorities)
- for public works contracts
 - 4.845.000 EUR



Scope:

Thresholds for SI publication

- for public supply and service contracts
 - 20.000 EUR
- for public works contracts
 - 40.000 EUR



Scope – Infrastructure: Thresholds for EU publication

- for public supply and service contracts
 - 387.000 EUR
- for public works contracts
 - 4.845.000 EUR



Scope – Infrastructure: Thresholds for SI publication

- for public supply and service contracts
 - 40.000 EUR
- for public works contracts
 - 80.000 EUR

General exceptions not subject to public procurement

- Infrastructure
- Enabling, providing or exploiting public telecommunications networks
- Disclosure of classified information
- Different procedural rules:
 - international agreement
 - particular procedure of an international organisation
- service concessions
- exclusive rights
- ensuring fundamental conditions for survival