

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED  
BY BULGARIA**

**ARTICLE 9, PARAGRAPH 1 UNCAC**

**PUBLIC PROCUREMENT**

**BULGARIA (THIRD MEETING)**

**Subparagraph 1 (a) of article 9**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate **systems of procurement, based on transparency, competition and objective criteria** in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The **public distribution of information relating to procurement procedures and contracts**, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

**(Y) Has your country adopted and implemented the measures described above? (Check one answer)**

**(x) Yes**

**Please cite the text(s)**

The Public procurement Law (PPL) contains several provisions aiming at ensuring openness and transparency, and fair competition as a measure for fighting and preventing bid rigging. This law establishes the principles, terms and procedure for the award of public procurements for the purpose of ensuring efficiency in the spending of on-budget and off-budget resources, as well as of the resources associated with the carrying out of relevant public activities specified in the Act.

A Public Procurement Register, open for public consultation has been established (Article 21 PPL). The contracting authorities are obligated to send to the Executive Director of the Agency the information envisaged for entry into the Public Procurement Register in Bulgarian language. The Executive Director of the Agency determines by an order the electronic format and the technical requirements regarding the information to be published in the register.

The Public Procurement Register contains:

1. the decisions to initiate, to modify and to terminate public procurement award procedures;
2. the notices envisaged for entry into the Register;
3. the information on public procurement awards;
4. information on the performed public procurement contracts;
5. information on the progress of the procedure in an appeal proceeding;
6. any other information as shall be specified in the Regulations for Application of this Act.

As a Member State of the European Union, Bulgaria is also party to the Agreement on Government Procurement (GPA) of the World Trade Organization and applies its rules.

#### **Subparagraph 1 (b) of article 9**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate **systems of procurement, based on transparency, competition and objective criteria** in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

...

(b) The **establishment, in advance, of conditions for participation**, including selection and award criteria and tendering rules, and their **publication**;

*Has your country adopted and implemented the measures described above? (Check one answer)*

(Y) Yes

#### **Please cite the text(s):**

In order to prevent the subjective approach in evaluation of tenders when applying the most economically advantageous tender (MEAT) criteria, it is mandatory to mention in the notice for opening the procurement procedure the indicators for the overall assessment and their relative weight or when, for objective reasons, it is impossible to define their relative weight, their sorting in decreasing order (Article 25 (2), item 10 PPL). The evaluation committee in procurement procedures conducted under the PPL has at least five members, one of whom must be lawyer and the remainder should own the necessary professional qualification and practical experience according to the subject-matter and complexity of the particular procurement (Article 34 (2) PPL). In this way, the principle of collective decision-making is introduced, where the decisions taken do not depend upon a single person.

Pursuant to Article 7, items 1 to 4 of PPL contracting authorities should include in the evaluation committee an external expert whose name is taken from the external expert list maintained by the Public Procurement Agency (PPA) and who has qualification relevant to the subject-matter of the public contract (Article 34 (5) PPL). Thus, a higher degree of independence is achieved, as the evaluation committee should include as its own member an expert who does not have subordinate relations with the contracting authority;

Further guarantee for ensuring openness and transparency of the public procurement procedures is the introduction of the three envelope system in tender submission: envelope No 1 bearing the words 'Selection Documents', envelope No 2 bearing the words 'Proposal for Contract Implementation' and envelope No 3 bearing the words 'Proposed Price' (Article 57 (2) PPL, in force from 13 July 2010).

Public opening of the tenders in the presence of tenderers or their authorized representatives, as well as media representatives and non-profit legal entities and non-government organizations (Article 68 (3) PPL);

In case of the most economically advantageous tender (MEAT) - the ranking is publicly announced prior to opening the price envelopes (Article 69a (4) PPL). These rules aim to ensure coherence of the acts performed by the tender evaluation committee and publicity of its operation, so that no elements of the tenders could be changed.

In order to ensure stricter reporting and easier planning of public expenditure, the Public Procurement Law (PPL) obliges the contracting authorities to adopt their internal rules on the award of public contracts, which should contain the step-by-step rules and order for planning and organizing procurement procedures and controlling the implementation of the awarded contracts (Article 8 (7) PPL). The internal rules could foresee the existence of internal controls, ethics and compliances systems or measures as an additional condition for granting public procurement.

Article 47, para.1 of the Public Procurement Law (PPL) explicitly prohibits the participation in public procurement of persons who have been convicted with an effective sentence of bribery under Articles 301 to 307 of Penal Code.

The Executive director of the PPA maintains a list of the persons who have failed to fulfil a public procurement contract, this being established by a final court ruling (art.19, para.2). The contracting authorities are obliged to submit information for such persons to the PPA within a 14 days term from the entry into force of the court decision.

### **Subparagraph 1 (c) of article 9**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate **systems of procurement, based on transparency, competition and objective criteria** in decision-making, that are

effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

...

(c) The use of **objective and predetermined criteria for public procurement decisions**, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

*Has your country adopted and implemented the measures described above?*

**(Y) Yes**

See the answer under the previous point (art. 9, para.1, letter "b")

### **Subparagraph 1 (d) of article 9**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate **systems of procurement, based on transparency, competition and objective criteria** in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

...

(d) An **effective system of domestic review**, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

*Has your country adopted and implemented the measures described above? (Check one answer)*

**(Y) Yes**

The Law on public procurement assigns some tasks to the Public Procurement Agency (PPA), which allow the Agency to act, in particular, when doubts of bid rigging arise, in the following manner:

1. Bringing the case before the competent authorities in order to exercise their controlling tasks over the observance of the law (Article 19 (2) item 2 PPL). This task allows PPA to address the competent authorities and request them to perform a check when any doubts of lawfulness of the public procurement procedure arise.

2. Upon a received signal, PPA may appeal to the Commission for Protection of Competition (CPC) asking for review of the decisions approving the procurement notices that contain conditions or requirements favoring or unreasonably limiting the participation in the procedure for the award of a public contract (Article 19 (2), item 3 PPL). This task allows PPA to actively attack procurement procedures that have been found corrupt, possibly resulting from contracting authority's try of bid rigging.

3. Bringing for review before CPC contracting authority's decisions in which disregard of procurement rules which, prior to conclusion of the contract, has been established by the European Commission and included in the notification under Article 122p (1) (Article 19 (2), item 4 PPL effective as of 13 July 2010);

4. Performing control over the negotiated procedures without prior publication of a notice pursuant to Article 90 (1), items 3 to 9 and item 12 PPL. The assignment of this task aims to restrict the unlawful conduct of this type of negotiated procedures, which have resulted to be the most opaque and susceptible to bid rigging. The conduct of such award procedure supposes extraordinary and clearly defined in the law circumstances (for instance events of force majeure). PPA checks whether these circumstances have been really come into being or they have just being used to conduct a non-transparent procedure.

With a Decree № 112 of June 4, 2010, the minister of finance is designated as the central authority for public procurement (CAPP). According to the Decree contracts for supply of stationery, toner and automobile fuel (by card for cashless payments) as well as ongoing and thorough cleaning of buildings and the purchase of tickets shall be awarded only through the Central Authority. Some of the goals are to hinder the development of corrupt practices by centralizing the supply, to guarantee maximum transparency by the awarding of the procurement, to provide greater control and greater cost efficiency.

Directorate Chief Inspectorate accomplishes general administrative checks in the administration of the Council of Ministers and the administrations of the state agencies - Council of Ministers' second-level budget spending authorities. The compliance of the internal acts adopted for implementation of the current legislation also constitutes part of the checks. After the amendment of the Public Procurement Act (SG, issue 52 of 2010) the Chief Inspectorate performs checks for inclusion in these acts of provisions which ensure the implementation of Article 68, paragraph 3 of the Public Procurement Act (awareness of the citizens and the business of the public procurement through the mass media).

After the entry into force of the Decree № 229/2009 of the Council of Ministers for adoption of the current Rules of procedure of the Council of Ministers and its administration the regional governors have the status of second-level budget spending units with the Council of Ministers' budget. Having regard to it, our directorate also accomplishes general administrative checks in the regional administrations. Internal acts adopted for the implementation of the Public Procurement Act, updated provisions respectively, are also part of the checks.

### **Subparagraph 1 (e) of article 9**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate **systems of procurement, based on transparency, competition and objective criteria** in decision-making, that are

effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

...

(e) Where appropriate, **measures to regulate matters regarding personnel responsible for procurement**, such as declaration of interest in particular public procurements, screening procedures and training requirements.

*Has your country adopted and implemented the measures described above?*

**(Y) Yes**

According to the Law on public procurement tender evaluation committee members and consultants should declare that they are not 'related persons' within the meaning of Law on prevention and disclosure of conflict of interests (LPDCI) and bear no links with any candidate or tenderer in the award procedure or any of the proposed subcontractors or members of their management or controlling boards, as well as that, within the meaning of LPDCI, they have no private interest of the award of the public contract (Article 35 (1), items 2 and 3 PPL).

Accordingly, candidates or tenderers are debarred to participate in award procedures, if they are related persons within the meaning of § 1, item 1 of Supplementary Provision to the LPDCI in respect to the contracting authority or high rank official within its structure, and so are the persons who have concluded a contract with a person under Articles 21 or 22 of LPDCI (Article 47 (5 PPL).

These provisions do not allow access to procurement procedures of persons in respect of whom reasonable doubts exist of having the possibility to influence the choice of contractor.

With regard to the training: PPA organizes and participates in numerous trainings, aiming to enhance understanding and ensure correct award of public contracts. Some of the trainings are held in partnership with Financial Intelligence Department of State Agency for National Security, dealing with Management of corruption risk in public administration and application of anti-money laundering measures.