Public Procurement Environment

Presentation in the context of the seminar:

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Presentation outline

- Introduction to Public Procurement
- Public Procurement Legal Framework
- Public Procurement Directorate
- Provisions of the Public Procurement Legislation
- Certification Procedure for EU Funded contracts

Introduction to Public Procurement -1

What is it?

Who is it for?

Why is it there?

When is it used?

Basic Principles Governing Public Procurement stemming from the Treaty

Transparency

Equal treatment

Non Discrimination

Proportionality

Mutual Recognition

Public Procurement Legal Framework -1

- **Law No. 12(I)/2006** providing for the coordination of the procedures for the award of public works, public supply and public service contracts and for related matters.
- **Law No. 11(I)/2006** providing for the coordination of the procedures for the award of public contracts for supplies, works and services in the sectors of water, energy, transport and postal services and for related matters.
- Put in force in February 2006 transpose the EC Directives
- **Law No. 104(I)/2010** providing for the set up of the Tenders Review Authority and for the application of Review procedures.

Public Procurement Legal Framework -2

- Relevant regulations facilitate the application of laws
- Necessary for the Implementation of the Laws
- Regulations are in place for every Contracting Authority, i.e. the State, the Local Authorities, the Bodies Governed by Public Law and for Utilities.
- <u>They provide for</u> :
  - the bodies responsible for the award of contracts, and
  - other procedural aspects to be followed in public procurement procedures, from the drafting of tender documents up to the signature of contracts.

Public Procurement Legal Framework -3

- It applies to the award of all public contracts (as a general rule) having as their subject matter, Works, Supplies and Services
- Is partly applied for works concession contracts and for service contracts listed in Annex II B of the Law.
- Public Procurement in Cyprus is Decentralized and the CAs are:
  - Central government (Ministries, Departments Independent authorities) 78
  - Municipalities and Local Authorities 406
  - Bodies Governed by Public Law 44
  - Utilities Sector 5

Major part of the procurement volume is carried out by mainly 15 contracting authorities

Public Procurement Legal Framework -4

- The Law applies to the associations of Contracting Authorities
- The Law also applies to the award of:

(a) public works contracts subsidized directly by contracting authorities by more than 50% provided that these contracts involve:

- civil engineering activities

- building works for hospitals, schools and university buildings etc

(b) public services contracts related to the above contracts.

Public Procurement Directorate -1

The Public Procurement Directorate of the Treasury has been assigned the role of the Competent Authority for Public Procurement in Cyprus and the goals set are:

- Maximizing economy and efficiency in procurement,
- Fostering and encouraging participation in procurement proceedings by suppliers and contractors in order to promote the EU internal market,
- Promoting competition among suppliers and contractors for the supply of the goods, works or services to be procured,
- Providing for the fair and equitable treatment of all suppliers and contractors,
- Promoting the integrity, fairness and public confidence in, the procurement process
- Achieving transparency in the procedures relating to procurement.

Achieving the above enhances the concept of value for money in procurement. Public procurement is extremely significant for the Cyprus Economy as the annual spending through procurement is just below 10% of the GDP (amount exceeds €1Bn)

Public Procurement Directorate -2

To achieve the set goals, the Public Procurement Directorate:

- Provides support to Contracting Authorities and Economic Operators – Hands on and Telephone support
- Issuing circulars to facilitate and streamline application of the legislation – own initiative
- Provision of consultancy to Contracting Authorities regarding competitions – upon request by CAs
- Certifies the compliance to the procurement legislation for EU Funded contracts
- Issued a Best Practice Guide available in Greek and English for all CAs that includes a set of Standard Tender Documents
- Introduced eProcurement System in 2009 - Awards
- Introduced Framework Agreements, electronic Catalogues and electronic ordering in 2010

Public Procurement Directorate – 3 (eProcurement System)

e-Registration

e-Notification

e-Auctions
e-Catalogues
e-Ordering

e-Evaluation/ e-Awarding

e-Tendering

Public Procurement Directorate -4 (electronic era)

- Faster procurement procedures reducing the lead time from the identification of need until the need satisfaction
- Saving time for the officers involved in public procurement resulting in better and more productive use of the people by the Contracting Authorities
- More competitive environment for public procurement via the increase of the number of interested Economic Operators and enhanced participation in competitions
- More efficient use of human resources by Economic Operators resulting in better prices (EU estimates in the area of 5%)
- Savings in transactional costs for public procurement procedures of 50%-70%
- Strengthening the credibility of public procurement procedures and improvement of the general public perception regarding the area of procurement
- Maintaining information and statistics that are more reliable and of better quality
- Utilise the power of concentrate information as all parties involved are given data regarding public procurement

Provisions of the Public Procurement Legislation -1

- Main Parts of the Law 12(I)/2006
  - Part II – The Community Directives are assimilated here within and provides for the coordination of procedures for the award of public contracts the estimated value of which is equal to or exceeds the thresholds
  - Part III – provides for the coordination of procedures for the award of public contracts below the thresholds
- Exclusions include, amongst others:
  - contracts that the Council of Ministers classifies as confidential or which must be accompanied by special security measures
  - contracts awarded pursuant to an international agreement or the particular procedure of an international organization
  - contracts for the acquisition or rental of land
  - service concession contracts.

Provisions of the Public Procurement Legislation -2 (Thresholds)

Community Thresholds	Supplies	Services	Works
State	€130.000	€130.000	€5.000.000
Local Authorities and Bodies Governed by Public Law	€200.000	€200.000	€5.000.000
Utilities (operating in the areas of energy, water, transport)	€400.000	€400.000	€5.000.000

The thresholds are set for a period of two years (until 31.12.2013)

Provisions of the Public Procurement Legislation -3 (Procedures)

- **open procedure** - whereby any interested economic operator may submit a tender˙
- **Restricted procedure** - where any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender˙
- **negotiated procedure** - whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these˙
- **competitive dialogue** - where any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender˙
- **Simplified procedures –** available for contracts with values up to €50.000.
- **Tender Documents –** Important as they describe the way the competition runs and should respect the principles. Whatever is included is binding.

Provisions of the Public Procurement Legislation -4

Simplified Procedures for low value purchasing

- For contracts of value up to €2.000 the contracting authority may award the contract directly to any economic operator.
- For contracts of value up to €15.000 the contracting authority may award the contract by asking for the submission of written or oral tenders from a limited number of economic operators of its choice.
- For contracts of value up to €50.000 the contracting authority sends tender documents to at least 4 economic operators of its choice for the submission of tenders within 7 days. The dispatch of the tender documents to fewer than four economic operators should be adequately justified.

Provisions of the Public Procurement Legislation -5

Notices are published to the:

- the Official Journal of the European Community,
- the Official Gazette of the Republic, and
- the e-procurement system.

A Contract can be awarded either to the tender offering

- the lowest price or
- to the Most Economically Advantageous Tender

The Procedures followed for below EU threshold procurement are the same as those applied for contracts above the thresholds with exception to the obligation to publish the notices to the OJEC and the applicable time limits for the Applications to Participate and the Receipt of Tenders

Provisions of the Public Procurement Legislation -6

- **State Bodies responsible for the award of contracts**
  - The Tender Boards
  - The Evaluation Committees
  - Steering Committees
- **Observers**
  - The Accountant General
  - The Auditor General
  - The Attorney General

Provisions of the Public Procurement Legislation -7

- Thresholds for awarding contracts by

1. The Tender Board – Unlimited Value
2. The evaluation Committee- Up to :

(i) EU thresholds for public services and public supplies contracts

(ii) 855.000 Euro for public works contracts

Provisions of the Public Procurement Legislation -8

- Powers of Tender Boards and Evaluation Committees
  - To evaluate tenders (applies only for evaluation committees)
  - To reject any tenders that do not conform to the requirement
  - To award a contract
  - To cancel a tender for specific reasons mentioned in the Regulations
- Tender documents are binding to the process and Economic Operators have the right to file a Hierarchical Review to the Tenders Review Authority or to the Supreme Court

Certification Procedure for EU Funded contracts -1

Role of Public Procurement Directorate:

- Responsible for the Certification of compliance with Public Procurement Legislation, and the principles governing them for Projects of the:
- Structural Funds, Cohesion Fund and of the European Fishery Fund (Planning Bureau Circular dated 29/9/2011)
- European Territorial Cooperation (National procedures Guide for the Operators Materialising Projects in the Context of EES Programs 2007 – 2013)
- Rural Development Program 2007 – 2013 (Council of Ministers Decision No. 68.383 dated 11/2/2009).

Certification Procedure for EU Funded contracts -2

In this way:

- Compliance of the public procurement procedures to the National and Community Legislation is secured
- The necessary confirmation for the Administrative Authority (Planning Bureau) is ensured

However,

- The certification of the legality of the tender documents by the competent authority **DOES NOT** refer to the subject matter and/or the technical specifications and/or the terms of reference, which always remain the **responsibility of each Contracting Authority**.

Certification Procedure for EU Funded contracts -3

Compliance Certification Procedures

At every stage of the process (as a general rule):

- Tender documents,
- Addenda and Clarification issued,
- Contract award process,
- Negotiated process,

there is a need to obtain the prior approval by the Competent Authority

- Contracting Authorities have to use the Standard Tender Documents prepared by the PPD for all contracts exceeding €15.000

NOTE: Projects initially financed by own resources and would, at a later stage, be proposed for co-financing, should (as a prerequisite) have adhered to the above procedures

Thank you for your attention

For more information you can visit

http://www.treasury.gov.cy

http://www.treasury.gov.cy/ppd

http://www.eprocurement.gov.cy