

## NOTIFICATION OF NATIONAL IMPLEMENTING LEGISLATION

### Communication from Latvia

The following communication has been received from the Permanent Mission of the Republic of Latvia with the request that it be circulated to the Committee on Government Procurement.

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With reference to the draft offer of the Republic of Latvia, contained in document GPA/SPEC/5 of 22 June 1999, in relation to the accession of the Republic of Latvia to the Agreement on Government Procurement, I have pleasure in submitting the following information on Latvian government procurement legislation.

### LEGISLATION<sup>1</sup>

1. Law on State and Local Government Procurement of 24 October 1996.
2. Regulations of the Cabinet of Ministers No. 98 of 18 March 1997 "Regulations on Tendering Procedures and Competitions of Awarding State and Local Government Procurement".
3. Regulations of the Cabinet of Ministers No. 99 of 18 March 1997 "Regulations on Awarding State and Local Government Contracts by the Request for Quotations Method".
4. Regulations of the Cabinet of Ministers No. 100 of 18 March 1997 "Documentation Procedures for the State and Local Government Procurement Awarding Process".
5. Regulations of the Cabinet of Ministers No. 101 of 18 March 1997 "Regulations on Examination of Complaints in Relation to the Awarding of State and Local Government Contracts".

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<sup>1</sup> Available for consultation in the Secretariat (Office No. 3012) and on the government procurement page of the WTO website (<http://www.wto.org/wto/govt>).

## CHECKLIST OF ISSUES

### I. GENERAL ELEMENTS

1. *Has the Agreement been transposed into national law and/or does it apply directly?*

The Agreement has been transposed into national law. In addition, if an international treaty which has been ratified by Saeima provides for provisions that differ from the provisions of Law on State and Local Government Procurement, the provisions of the international Agreement shall be applied (Section 4 of the Law on state and Local Government Procurement).

2. *In the case that entities below the federal or central state level are covered: are these categories of entities autonomous from federal or central state level government in the implementation of the Agreement?*

These categories of entities are autonomous in the implementation of the Agreement, but the Government has the right to control them.

3. *In the case that Annex 3 entities are covered: are these categories of entities autonomous in the implementation of the Agreement or do they apply the legislation provided by the federal/central or sub-central level?*

It is provided that Annex 3 entities will apply a new "Law on Works, Supplies, Lease and Services Procured by Public Utilities" which is submitted in Saeima (Parliament). Saeima has passed the first reading and it is prepared for the second reading.

4. *Which main differences (if any) exist between the implementing laws at the federal or central level, the sub-central level and for Annex 3 entities?*

There is no difference.

5. *To what extent is information technology used in the process of government procurement?*

Invitation for tendering (competition) shall be published in the government official newspaper "Latvijas Vestnesis", which is also available electronically on the Internet ([www.lv-laiks.lv](http://www.lv-laiks.lv)).

### II. SPECIFIC ELEMENTS

6. *Identify the specific provisions in your legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

Principles of national treatment and non-discrimination are reflected in Section 6 of the Law on State and Local Government Procurement.

7. *Article IX:2 of the Agreement foresees that the invitation to participate may take the form of a notice of proposed procurement. If your implementing legislation provides for this opportunity, give details.*

According to Section 15 of the Law on State and Local Government Procurement the tender notice has to follow certain models. The tender notice shall give details of the project, provide where and when the tenders shall be delivered and call for tenders or suppliers who wish to be considered to make tenders.

8. *Article IX:3 of the Agreement foresees that entities at the sub-central level as well as Annex 3 entities may use a notice of planned procurement or a notice regarding a qualification system as an invitation to participate. If your implementing legislation provides for this opportunity, give details.*

Latvian legislation does not provide for such an opportunity.

9. *In the case of selective tendering procedures: to what extent are entities allowed to use permanent list of suppliers or is there a requirement for list of suppliers to be selected on a contract-by-contract bases?*

Latvian legislation does not provide for use of permanent list of suppliers, the list of suppliers is selected on a contract-by-contract basis.

10. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

Negotiation process is foreseen in Section 24 of the Law on State and Local Government Procurement. The confidentiality of these negotiations shall be guaranteed.

11. *Article XI contains the time-limits for tendering and delivery. Time-limits shall normally be "not less than X days". Does the domestic legislation reflect the various minimum time-limits as set out in the Agreement? If not, give information or any longer time-limits which have been established.*

In tender (competition) procedures the time-limit for receipt of tenders shall not be less than 40 days from the publishing of notice. In urgent cases, the time-limit could be set shorter, but not less than 10 days. The time-limit for delivery is not fixed.

12. *To what extent does the implementing legislation allow entities, in pursuance of Article XII:1, to permit tenders to be submitted in several languages (one of which has to be a language of the WTO)? To what extent do entities use this flexibility?*

The entities are allowed to permit tenders to be submitted in any language parallel to the Latvian language, which is the official language in Latvia.

### **III. CHALLENGE PROCEDURES – ARTICLE XX**

13. *Paragraph 3 of Article XX requires each Party to provide its challenge procedures in writing and make them generally available. Please provide this information.*

Section 30 of the Law on State and Local Government Procurement states that:

1. Any competitor that claims to have suffered loss or other damage due to an infringement of this Law by the procuring entity in the procurement proceedings may seek review except in cases mentioned in Paragraph 3 of this Article.
2. The complaints may be submitted to administrative institutions in accordance with the Regulations on Review for Public Procurement approved by the Cabinet of Ministers.

3. The following activities of the procuring entity shall not be subject to the review:
  - 3.1. the selection of a method of procurement;
  - 3.2. the selection of methods and criteria for comparison and evaluation of offers;
  - 3.3. the setting of limitations on the basis of nationality of competitors;
  - 3.4. the rejection of all offers;
  - 3.5. the selection of methods and criteria for checking the qualification of competitors;
  - 3.6. organizing of a request for proposals as a closed competition.
4. The decisions of state and municipal institutions on the submitted complaints may be subject to juridical review in the manner set by current legislation - e.g. in the regular court.

14. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so.*

- (i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days". What are the limits in domestic legislation?*

The time-limit to launch a complaint in domestic legislation is 30 days.

- (ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:*

- *How are its members selected?*
- *Are its decisions subject to judicial review?*
- *If not, how are the requirements of paragraph 6 of Article XX taken into account?*

The Court is responsible for challenge procedures.

- (iii) *What is the applicable law by reference to which the challenge body will examine complaints?*

- Law on State and Local Government Procurement;
- Cabinet Regulations:
  - Regulations about Tendering and Competitions for Awarding a State and Local Government Procurement;
  - Regulations about Price Poll for Awarding a State and Local Government Procurement, Documentation Procedure of Awarding a State and Local Government Procurement;
- Law On the Procedures for Examination of Applications, Complaints and Proposals in State and Local Government Institutions;
- Civil Code;
- Civil Process Code.

(iv) Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial conditions?

- Do these measures include the possibility to suspend the procurement process? On what conditions?

The Law on State and Local Government Procurement doesn't foresee such rapid interim measures.

(v) How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?

Only a court may order compensation for losses and damages.

(vi) Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.

The complaint shall be examined within 15 days from the moment of its receipt by the institution. If deemed necessary, it is possible to extend the complaint processing term by another period of 15 days.

(vii) What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?

In the Court, the complainant must cover the state fee to conduct a challenge procedure. The fee depends on the value of the claim.

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