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September 2015

## News in the field of public procurement – new legislation, a new authority and new case law

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The field of public procurement is facing major changes. On 11 February 2014 three new EU directives were adopted:

- The Directive of the European Parliament and of the Council on public procurement.
- The Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors.
- The Directive of the European Parliament and of the Council on the award of concession contracts.

The bill with the new legislative proposals that is going to replace the current law on public procurement, the law on procurement by entities operating in the water, energy, transport and postal services sectors and to introduce a new law on the award of concession contracts will be presented in autumn 2015. The rules are scheduled to enter into force on 1 April in 2016.

The new rules mean, *among other things*:

- that contracting authorities will have additional flexibility to use the negotiated procedure with prior publication;
- that framework agreements with several economic operators do not have to be concluded with at least three economic operators;
- that rules on so-called dynamic purchasing systems are introduced;
- that regulations for the amendment of public contracts are introduced and
- that new grounds for mandatory and optional elimination are introduced.

In parallel, change of the legal remedies that are available in public procurement are subject to review. The suggested changes have been presented in the Review Commission's report, which was presented 2 March 2015. The overall aim has been to increase the efficiency of procurements in connection with application for reviews.

Some of the proposals, which are scheduled to enter into force on 1 January 2017, mean: that suppliers gets an obligation to point out faults and defects identified in the tender documents during the tender period – if the suppliers fails to do so the supplier cannot invoke the faults later on in court;

- that new facts and evidences cannot be invoked in the Administrative Courts of Appeal as a general rule and
  - that a time limit of 90 days for the Administrative Courts to handle cases regarding applications for review is introduced.
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1 September 2015 the Commission of Public Procurement and Conditions of Collective Agreements handed over its interim report. The commission had been asked to analyze how explicit requirements regarding terms under collective agreements can be incorporated into the future procurement laws and submit proposals on how such measures should be designed. The report proposes that the authority *may* impose special labor conditions for how a contract *must* be fulfilled and that the authority must impose such conditions when it is needed with regard to the industry to which the contract relates and other circumstances that can lead to unfair working conditions. The report proposes, among other things, that the contracting authorities shall require that the work performed in public procurements should be carried out with reasonable employment conditions. According to the proposal contracting authorities shall set the salary, vacation and working hours as conditions in contracts in public procurement.

To top it all off, Sweden also have a new authority for public procurement support, the Procurement Agency, which began operating on September 1, 2015.

Finally, no less than six cases with exciting procurement matters awaits to be settled by the Supreme Administrative Court, at the same time as several rulings from our Administrative Courts of Appeal has been issued. There is a lot going on in the field of public procurement, as usual.

Anna Ulfsdotter Forssell and Martin Bogg will have a breakfast seminar in Delphi's office in Stockholm October 8, 2015 in which the most important news in public procurement law will be presented. There will also be opportunities to ask questions. Invitations will be sent out shortly.

In the spring of 2016, Anna, Martin or any of their colleagues in Delphi's public procurement group will have further seminars on the new public procurement laws which enter into force on 1 April, 2016.



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