



Newsflash

New law on public procurement – which changes lie ahead?

On 12 May 2016, the new law on public procurement was adopted in the Chamber of Representatives. Laga's [newsflash of 13 May 2016](#) already cited some principal themes in the new law. Below, some specific changes are outlined.

- The new law entails an entire set of definitions, which do not necessarily always correspond to those of the law of 15 June 2006. One needs to be wary that some concepts in the new law may have a different meaning to their equivalent under the law of 2006. Additionally, the terminology for the 'negotiated procedure' has changed and the procedure will now be known as the 'competitive procedure with negotiation'.
- The structure of the legislative framework is altered, as the adopted law includes a number of provisions which were previously regulated by Royal Decree. The law now includes articles related to:
 - Notification of the contract and publication deadlines
 - Obligatory and non-obligatory grounds for exclusion and the implicit solemn declaration
 - The selection criteria and award criteria, as well as the method to determine them
 - The reserved contracts for specific services

- The request by contracting authorities to be able to negotiate during a procurement process is met to a certain extent. To achieve this, the scope of application of the competitive procedure with negotiation (previously: negotiated procedure) is significantly expanded by allowing it for, among others, contracts where the needs of the contracting authority cannot be met without adaptation of readily available solutions. However, justification as a prerequisite remains.
- Furthermore, the new law introduces the innovation partnership, aiming for the development of innovative products, services or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.
- The application of the in-house case law is explicitly captured under this law, along with the accompanying cumulative conditions which need to be fulfilled to apply this exception. This codification of ECJ case law aims to reduce any legal uncertainty regarding the application thereof. Furthermore, the law includes provisions for both the horizontal and vertical in-house exception.
- In addition to contracts which were already specifically excluded from the scope of application, the new law introduces a few new categories of contracts which fall outside the scope of the law on public procurement. These include the certification and authentication of documents by a notary public, and legal services related to representation before court of a public authority or in an arbitration- or mediation procedure, or the preparation thereof.
- The previously known category of 'annex IIB-services' is not withheld as such. Instead, a new group of services is created and separately mentioned in annex III of the law. This group includes financial and social services for which a more flexible award method is possible. Also included in this group are legal services, which are not excluded from the scope of the law on public procurement. The more flexible award method for this type of services allows, among others, the free choice of different award procedures, even when the usual and strict conditions for application are not met. Moreover, for these services, contracting authorities are even allowed to organise a *sui generis* procedure.
- The threshold for contracts with a limited value, which can be awarded by approving an invoice, is raised from EUR 8,500.00 to EUR 30,000.00 EUR (VAT excl.).

Kathleen De hornois, Advocaat-vennoot/Avocat associé, Tel.: + 32 2 800 70 60, E-mail: kdehornois@laga.be
Ine Van Herck, Avocat/Advocaat, Tel.: + 32 2 800 70 18, E-mail: ivanherck@laga.be



Laga

Berkenlaan 8B
1831 Diegem
Belgium

A top legal practice in Belgium, Laga is a full service business law firm, highly recommended by the most authoritative legal guides. Laga comprises approximately 140 qualified lawyers, based in Brussels, Antwerp and Kortrijk. Laga offers expert advice in the fields of banking & finance, commercial, corporate/M&A, employment, IT/IP, public/administrative, insolvency and reorganisations, real estate, tax law, tax and legal services for high-net-worth families and individuals (Greenille by Laga), and litigation. Where appropriate to ensure a seamless and comprehensive high-quality service, Laga lawyers work closely with financial, assurance and advisory, tax and consulting specialists, and with select EU and US law firms.

Laga provides thorough and practical solutions tailored to the needs of clients ranging from multinational companies, national large and medium-sized enterprises, and financial institutions, to government bodies.

© 2016, Laga, Belgium - The content and layout of this communication are the copyright of the law firm Laga or its contributors, and are protected under copyright and other relevant and intellectual property rights laws and regulations. No reproduction in any form or through any medium is allowed without the explicit consent of Laga or its contributors.