Belgium adopts new public procurement Act

On 14 July 2016, the **Act of 17 June 2016 regarding public procurement** was published in the Belgian Official Gazette. This Act implements the European Directives 2014/24/EU (classic sectors) and 2014/25/EU (specific sectors).

The new Act introduces a number of new elements.

So called B-services are eliminated, certain types of services are explicitly excluded (ie core legal services) and social and other specific services will be subject to a so-called light regime (ie other legal services).

A notable innovation are the **changes in terminology**. The Act mentions ie open procedure (openbare procedure / procédure ouverte) and restricted procedure (niet-openbare procedure / procédure restreinte), competitive procedure with negotiation (mededingingsprocedure met onderhandeling / procédure concurrentielle avec négociation), negotiated procedure without prior publication (onderhandelingsprocedure zonder voorafgaande bekendmaking / procédure négociée sans publication préalable). There is also a **new procurement procedure**, being the innovation partnership (innovatiepartnerschap / partenariat d'innovation). With the new Act, focus will shift towards negotiation procedures and the **competitive procedure with negotiation** will gradually become the normal procurement procedure.

Regarding the **exclusion grounds**, mandatory and optional exclusion grounds remain, but a system of self-cleaning is created allowing any economic operator to request corrective measures. The legislator also introduced the possibility of black listing, allowing to exclude economic operators who failed to execute past public contracts properly.

Regarding the **selection criteria**, the legislator opted for an exclusion system, allowing only selection criteria to be applied that relate to the suitability to pursue the professional activity and/or economic and financial standing and/or technical and professional ability.

Another novelty is the **European Single Procurement Document** (Uniform Europees Aanbestedingsdocument / Document unique de marché européen) (mandatory for procurement above European thresholds, optional for procurement below European thresholds), which will serve as preliminary evidence that the economic operator meets the selection criteria and that the exclusion grounds are not applicable to them.

Regarding the **contract award criteria**, under the new Act public contracts will be awarded to the most economically advantageous tender, identified on the basis of price or cost (ie life-cycle costing) or the best price-quality ratio, including price, costs, quality criteria, environmental criteria and/or social criteria (when directly linked to the subject-matter of the public contract).

Finally, a **new title 4 "Governance"** is inserted, establishing/designating a central instance/body for public procurement (ie a sort of supervisory body) that will monitor the application of public procurement regulations and complaints. Furthermore, the contracting authorities will be obliged to keep almost all documentation concerning a specific public contract for three years.

Multiple Royal Decrees are still to be adopted for this Act to enter into force.

It is expected that the new Public Procurement Act and the Royal Decrees will enter into force by the end of 2016 / beginning of 2017. Until then the current Public Procurement Act of 15 June 2006 and its corresponding Royal Decrees remain fully applicable.