

The briefing of the President of the Public Procurement Council

on the public procurement thresholds applicable in 2011

(Public Procurement Bulletin, n° 5/2011; 12 January 2011)

Article 34(2), 178(2), 244(2) and 258(2) of the Act CXXIX of 2003 *on Public Procurement* (hereinafter referred to as the 'PPA') stipulate that Community thresholds as well as national thresholds be published by the Public Procurement Council in the Public Procurement Bulletin.

In order to meet this requirement of notification, the Public Procurement Council hereby notifies the participants of contract award procedures of the thresholds applicable in 2011, as follows.

I. Community thresholds

The Community thresholds established in the directives on public procurement shall be *verified* by the European Commission (hereinafter referred to as the 'Commission'), as a general rule, *every two years*, in conformity with the procedure set out in the relevant directives (Article 69 of the Directive 2004/17/EC¹, Article 78 of the Directive 2004/18/EC² and Article 68 of the Directive 2009/81/EC³), and shall, if necessary, be revised in accordance with the thresholds set in the WTO Agreement on Government Procurement (GPA).

The Community thresholds expressed in euro and in national currencies (in HUF) shall be published in the Official Journal of the European Union, for the subsequent two years⁴.

As a result of the latest verification, which has taken place in autumn 2009, **Commission Regulation (EC) No 1177/2009 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts**⁵ (hereinafter referred to as the 'Regulation') has been adopted. The abovementioned source of law stipulates that the Community thresholds, which were lowered compared to the thresholds of 2008-2009, be applied as of 1 January 2010, and *they will remain in force unaltered in 2011*, in the absence of a new verification.

These Community thresholds have been inserted into Articles 30-32 and Articles 176-177 – concerning Community thresholds – of the PPA by way of Article 88(d) and (o) – entering into force 15 September 2010 - of **the Act LXXXVIII of 2010 on the amendment of the Act CXXIX of 2003 on public procurement (hereinafter referred to as the 'PPA amendment')**.

¹ *Directive 2004/17/EC* of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134/114, 2004)

² *Directive 2004/18/EC* of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134/114, 2004)

³ *Directive 2009/81/EC* of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216/76, 2009)

⁴ Article 34(1) of the PPA, Article 178(1) of the PPA

⁵ OJ L 314/61, 1 December 2009

Accordingly, **from 1 January 2011 to 31 December 2011, the public procurement thresholds applicable to public procurements reaching Community thresholds**, taking into consideration the Communication n°2009/C 292/01 from the Commission⁶, are as follows:

- *for the purposes of Chapter IV of the PPA (contracting authorities of the classical sector):*
 - EUR 125,000, which corresponds to **HUF 32,861,250** in the national currency⁷;
 - EUR 193,000, which corresponds to **HUF 50,737,770** in the national currency⁸;
 - EUR 4,845,000, which corresponds to **HUF 1,273,702,050** in the national currency⁹.
- *for the purposes of Chapter V of the PPA (contracting entities in the utilities sector):*
 - EUR 387,000, which corresponds to **HUF 101,738,430** in the national currency¹⁰;
 - EUR 4,845,000, which corresponds to **HUF 1,273,702,050** in the national currency¹¹.

II. National thresholds

For the purposes of simple contract award procedures as referred to in Chapter VI and VII of the PPA, the national thresholds applicable in 2011 are set forth by the **Act CLXIX of 2010 on the 2011 Budget of the Republic of Hungary** (hereinafter referred to as the 'Budget Act'), which **have not amended the thresholds applicable up to 31 December 2010**.

Accordingly, the national thresholds applicable in case of simple contract award procedures **from 1 January 2011 to 31 December 2011** are as follows:

- *Under Chapter VI of the PPA* (public procurements to be awarded in simple contract award procedures of contracting authorities in the classical sector), according to Article 244(1) of the PPA and Article 74(1) of the Budget Act:
 - in case of public supplies: **HUF 8 million;**
 - in case of public works: **HUF 15 million;**
 - in case of public works concessions: **HUF 100 million;**
 - in case of public services: **HUF 8 million;**
 - in case of service concessions: **HUF 25 million;**
- *Under Chapter VII of the PPA* (public procurements to be awarded in simple contract award procedures of contracting entities in the utilities sector), according to Article 258(1) of the PPA and Article 74(2) of the Budget Act:
 - in case of public supplies: **HUF 50 million;**
 - in case of public works: **HUF 100 million;**
 - in case of public services: **HUF 50 million.**

⁶ Communication from the Commission - Corresponding values of the thresholds of Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council (OJ C 292/01 2 December 2009)

⁷ this threshold is applicable under Article 30(a), 32(a) and 33 of the PPA

⁸ this threshold is applicable under Article 30(b), 32(b)-(d) and 33 of the PPA

⁹ this threshold is applicable under Article 31(1)-(2), and 143 of the PPA

¹⁰ this threshold is applicable under Article 176(1), and 177 of the PPA

¹¹ this threshold is applicable under Article 176(2) of the PPA

Furthermore, we would like to draw the contracting authorities' attention to Article 251(2) of the PPA¹², which have an effect only on procedural rules, and sets out that **instead of publishing as per Article 249 (1), the contracting authority shall send an invitation to tender** – containing the data stipulated in Article 249 (2) – **to at least three tenderers simultaneously, directly and in writing, provided the estimated value of the public procurement does not reach**

- in case of public supplies: **HUF 25 million,**
- in case of public services: **HUF 25 million,**
- in case of public works: **HUF 80 million.**

¹² Under Article 86(2) of the amendment of the PPA, Article 68(2) amending Article 251 of the PPA has entered into force 15 September 2010. The amended provisions shall be applied to public procurements, design contests and contracts concluded on the basis of such contract award procedures, as well as review procedures requested, initiated or launched ex officio in relation thereto, and preliminary dispute settlements requested after the abovementioned entering into force.