European legal exception to speed up procurement: Negotiated procedure



COVID-19 pandemic put enormous importance on public procurement to guarantee and preserve the supply of medical and personal protective equipment. The urgency required during the crisis has raised the question of how and when states should utilize legal exceptions to accelerate procurements.

An important exception that during Pandemic has frequently been used among contracting parties in most European states is the adoption of negotiated procedure without publication of a contract notice. The Law provides that such procedure may be chosen by the contracting authority in case of unforeseen events which make it impossible to comply with the statutory time limits or the open or restricted procedures. Negotiated

procedure is only to be used in extreme urgency situations and the purchase of medical equipment is a strictly necessary circumstance that allows it.

Negotiated procedure by-passes the bureaucratic obstacle and the timetable of a classic open tender avoiding that potential tenderers might ask for more time to submit a tender or might avoid being unable to provide the contracting authority with all requested information. Through this procedure the tenderers should not demonstrate their eventual inability to comply with all the tender documents.

Flexibility of public procurement is the rule. Sanctions and fines for delay or non-execution are avoided if the contractor demonstrates that the delay or non-execution is exclusively attributable to the COVID-19 outbreak or justified by the health measures taken by the Authority. Suspension of the contract is possible in compliance with law and just in exceptional cases the COVID-19 crisis can generate a termination of the contract on force majeure basis.

Force Majeure Argoment will follow soon.

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without necessarily a judicial litigation solution.