

# INSIDER

## PUBLIC PROCUREMENT

How to increase the price of a signed procurement contract and prevent exclusion based on low wages?

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### LATVIA PERMITS AMENDMENTS TO PUBLIC PROCUREMENT CONTRACT PRICES

Latvia has become an early adopter of a provision of the Directive 2014/24. It permitted amendments to any public procurement contract price, irrespective of its signing date. The new rules permit amending the price without providing any basis for it, insofar as:

- (1) For goods and services contracts – the increase is limited of 10% of the initial contract price and does not exceed the publication thresholds (you can find them [here](#)).
- (2) For works contracts – the increase is limited of 15% of the initial contract price and does not exceed the publication thresholds (you can find them [here](#)).

The government has not published the expected budgetary impact of these changes. We expect the purchasing entities will (a) start lowering procurement prices to save funds for potential increases or (b) provide for ironclad clauses in public procurement contracts prohibiting any price increases.

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### LATVIA: A NEW PUBLIC PROCUREMENT EXCLUSION CRITERION BASED ON WAGES

If you are bidding in a Latvian public sector tender together with a Latvian company, you must make sure their employees' wages are above the country's average.

From August 1, 2015, Latvian-based bidders or subcontractors must submit prove that their employees' wages are at least 80% of the country's average. Otherwise, the procuring entity will consider the bid abnormally low and may exclude the bidder.

#### How will the procuring entity identify the noncompliant entities?

The procuring entity may consider the bid abnormally low if it also meets the following criteria:

- a) at least one employee of the Latvian bidder or its Latvian subcontractor
- b) earned less than 80% of
- c) the average hourly rate in their profession



- d) in the first nine months
- e) of the last 12 months
- f) moreover, the State Revenue Service (“SRS”) has found no justification for it.

### **How will the procuring entity check the wage level?**

The SRS calculates the hourly rate by adding up the data about the working hours per employee, their wage and hourly rate. Therefore, the review of the wage level will mean auditing the veracity of these data in the Latvian Electronic Declaration System (“EDS”). That may include a SRS visit to the bidders or subcontractors offices.

From July 1, 2015, all entities will be able to check their standing according to the new rules in a special section of the EDS. They will thence print a report on compliance with the average rate and submit it with their bid. Submission of such a statement will be mandatory.

If the test report indicates incompliance with the rule, then we recommend drafting its justification. The contracting entity will be obliged to assess it and ask the SRS to verify it.

### **How can the bidder ensure compliance?**

Today, the accountants or employees responsible for inputting EDS data can check for their business’s compliance with the new rules. The SRS publishes monthly data on the average wages on its webpage. If you find discrepancies, we advise to take the following steps:

- Step 1** Understand why the employee’s wage is lower than 80% of the average hourly rate in the profession. For example, you may check whether the correct profession code has been used;
- Step 2** Review the documents, which regulate the employee wages together with your in-house counsel and attorneys at VILGERTS;
- Step 3** Draft a justification regarding the objective reasons behind the lower wages and proof that the business has paid all the required labor taxes.

As a result, the bidder or subcontractor will have a justification that can be submitted to the procuring entity, possibly together with the EDS printout. During the SRS review, the company will be certain that their internal documents match the EDS data and there are objective reasons for paying lower wages.

If the procuring entity does not consider these explanations or if the SRS does not acknowledge reasonable employee wages of an honest taxpayer, we advise the bidders to file a complaint with the Public Procurement Monitoring Bureau. If it does not dismiss the procuring entity’s finding that the bid is abnormally low, then we recommend disputing the constitutionality of the new rules. We have already prevented an unfair procurement exclusion procedure by proving its unconstitutionality.

### **Background to the new rules**

This is another attempt at solving Latvia’s low labor tax return rate with public procurement instruments. Law firm Vilgerts proved in 2010 that similar rules were unconstitutional.

## Law Firm VILGERTS

We are a leading business law firm in Latvia with affiliated offices in Estonia, Lithuania and Belarus. We help our international and local clients in their most challenging legal matters as well as everyday legal issues. We are more than 20 business-minded lawyers with a strong academic background. We take client matters personally and create solutions to achieve goals efficiently.

### Public procurement practice group



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