

Public procurement contracting in Austria

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Austria is looking back on a long tradition of public procurement provisions. The roots date back to 1910 when the K&K-administration issued a regulation on public procurement already containing all of today's basic principles e.g. transparency, fairness and equal treatment of bidders. The next milestone was the standard A 2050 issued by the Austrian Standards Institute in 1953, which was 1963 declared binding for all procurement procedures carried out by federal institutions.

After joining the EU, Austria had to implement the respective directives into national law. First step was the public procurement act of 1993 (Bundesvergabegesetz 1993), inspired by the already mentioned A 2050.

The year 2006 brought – after a series of amendments – a completely new public procurement act (Bundesvergabegesetz 2006). This act is now applicable to all procurement activities of public (federal, state and local) authorities as well as entities operating in the water, energy, transport and postal services sectors both below and above the European thresholds.

Today the act consists of 351 articles compared to 108 articles in the initial act of 1993. Reason for this development is the growing complexity of public procurement in general but also the latest – and numerous – decisions of ECJ as well as relevant decisions of Austrian supreme courts and of course the new directives (2004/17/EC and 2004/18/EC) on European level.

At this point a word may be lost on the relation of federal and state administration in Austria and its effect on public procurement legislation. Following the Austrian constitution, procurement law is in competence of the federal administration, but has to be unanimously approved by the states. This of course means long and complex negotiations in case of a new legislative project in this field.

When it comes to legal protection concerning public procurement carried out by state and local administration, the competence still is with the states. This means Austria has all in all 10 (on state-level slightly) different procurement acts. One for the actual public procurement law (implementing the directives 2004/17/EC and 2004/18/EC and legal protection for federal procurement) and 9 different “state procurement laws” only dealing with the procedure of legal protection in case of a procurement activity by state or local administrations.

Thus there are 10 different institutions providing legal protection in the field of public procurement. The Bundesvergabeamt (www.bva.gv.at) for federal causes and 9 different state institutions dealing with – inter alia – procurement matters on state level.

As a result of the development during the last 15 years, public procurement law in Austria nowadays proves to be a subject for specialised legal advisors only. Medium and large law firms employ expert lawyers on a regular basis, which might be quite common in other European countries as well.

One key issue of public procurement in Austria was and still is training of procurement staff. Even smallest mistakes – which still can be found in almost every procurement process today - must be avoided under any circumstances. A task, that proves to become harder with growing complexity of public procurement laws.