

# Subcontracting

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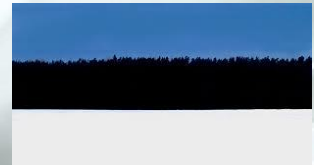


# Principles on the new EU directives

- **Promotion of SME's in public procurement**
  - subcontracting is a method
- **Option to rely on capacities of subcontractors**
  - *In that case joint liability may be required*
- **Protection of subcontractors**
  - *Option to stipulate direct payments to subcontractors if payments due*
- **Transparency is a must**
  - Subcontractors have the same obligations as main contractors re social, labour or environmental law
    - *Replacement required if mandatory grounds of exclusion occur*
  - Information about subcontractors must be given to contracting authority



# Estonian current and draft law





## Current regulation in Estonia

- Subcontracting very slightly regulated, mostly a contractual matter
- Bidder's option to rely on subcontractors' qualification:
  - reference
  - resource
- However, no obligation (or option) to control subcontractors' qualification by the contracting authority
- Security clearance if applicable
- Prohibited to be a bidder and a subcontractor (to another bidder) in the same procurement to hinder cartels



## Estonian draft law

- More precise regulation re **reliance on subcontractors' qualification** and how it must be reflected in performance of the contract. If so:
  - *Contracting authority may request joint liability*
  - *Mandatory check of grounds for exclusion*
- Option to request **information about**:
  - share of subcontracting and subcontractors
  - check their qualification and grounds for exclusion + obligation to replace subcontractor if grounds for exclusion occur
- No direct prohibition to be a subcontractor and a bidder in the same procurement (?)



# Estonian draft law

## Rules to be postponed till 2019

- **Stricter rules in construction** works procurements:
  - *Contracting authority must collect data on who is at the construction site on an ongoing basis*
  - *Check of grounds for exclusion of all subcontractors*
- No direct payments but option to **halt payments** to the main contractor by reasoned request of a subcontractor (!)
  - *Legal consequences unclear!*



# Lithuanian (current and new) law





## Current regulation and case law in Lithuania

- **Obligation to indicate subcontractors.** Indication of **share** of the contract intended to subcontract is **optional**
- Specific rules regarding restriction to subcontract for the **essential works** indicated by the contracting authority (*declared unlawful by the ECJ last month*)
- **Change** of a subcontractor **only in cases specifically allowed** under the contract or with the consent of the PPO
- Frequent **restrictions** in the tenders for a subcontractor to participate in more than 1 bid





# Current regulation and case law in Lithuania

- „**Unofficial**“ subcontractors are being used in some cases
- Restrictions to engage *quasi-subcontractors* (?), future employees
- **Subcontractors are not being blacklisted** although local regulation of the blacklisting is very strict





## New regulation in Lithuania (from July 1)

- When relying regarding economic and financial standing, the contracting authority may require **joint liability**
- More detailed rule regarding indication of **share** of the contract intended to subcontract and **proposed subcontractors**
- **Direct payments to the subcontractor**  
(under trilateral agreements)
- After the award **change** of a subcontractor is to be performed **under the contract conditions**  
(conditions has to be included into the contract)



**Latvia**





## LATVIA: Subcontracting

- **Exclusion grounds apply** to subcontractors whose share of work is at least 10% of the contract price
- Contracting authority **must request disclosure of subcontractors** whose share of work is at least 10%, but may request disclosure of all subcontractors
- Share of work is determined by adding share of work of subcontractors which are **'related' in the meaning of Group of Companies Law.**
- **Change** of a subcontractor or **involvement** of a new subcontractor must be **approved by the Contracting authority**
  - Contracting authority may **ask subcontractor's opinion** about reasons for change



## LATVIA: Subcontracting

- Contracting authority **should not accept a change of a subcontractor** if:
  - The proposed subcontractor does not qualify
  - Change of a subcontractor would lead to change of the initial proposal of a tenderer which could influence a decision on award of a contract
- Contracting authority **should not accept involvement of a new subcontractor** if this would lead to change of the initial proposal of a tenderer which could influence a decision on award of a contract
- In case of works and services contract, or if supply contract includes installation or works, **involvement of subcontractors in 'particularly important' tasks may be limited** due to required technical and professional skills.



# LATVIA: Subcontracting

- **Direct payments to subcontractors** are possible:
  - subject to a request by a subcontractor
  - in works contracts
  - if the general contractor has accepted the works, supplies and services but delays payment to a subcontractor
  - with prior consultations with the general contractor
  - procedure must be described in the contract
  
- Subcontractor may be a **party to the contract**





Thank you!

**ESTONIA**

Pärnu mnt 15  
10141 Tallinn  
phone +372 6 400 900  
estonia@sorainen.com

**LATVIA**

Kr. Valdemāra iela 21  
LV-1010 Riga  
phone +371 67 365 000  
latvia@sorainen.com

**LITHUANIA**

Jogailos 4  
LT-01116 Vilnius  
phone +370 52 685 040  
lithuania@sorainen.com

**BELARUS**

ul Nemiga 40  
220004 Minsk  
phone +375 17 306 2102  
belarus@sorainen.com

[www.sorainen.com](http://www.sorainen.com)