

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY SERBIA**

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

SERBIA (THIRTEENTH MEETING)

Having in mind the provisions of the Public Procurement Law (hereinafter: PPL), one of the key novelties is the introduction of an e-platform. The provisions of the PPL introduced the obligation of electronic communication and electronic data exchange in public procurement procedures. The Public Procurement Portal, which was established on July 1st, 2020, represents a significant step forward in the process of digitalization of public procurement procedures. Compared to the previous Portal, whose main purpose was "advertising", the new Portal is the unique information system that allows advertising and communication between different economic operators in public procurement procedures.

The new Portal enables contracting authorities to compile and publish plans and notices on the Portal, publish tender documents and decisions in public procurement procedures, as well as many other options and functionalities such as: e-submission of bids, e-auctions, dynamic procurement system, e-planning, e-complaints and e-catalog. Furthermore, the functionalities of the Portal were introduced to make the work easier for the users of the portal, such as: English version of the Portal, the possibility to submit the bid or part of the bid in a foreign language, the possibility of submitting an e-declaration in a foreign language. Besides, the Portal interface was adapted to work on mobile devices. The option of "smart lots" was introduced, which greatly facilitates the creation of public calls as well as the submission of bids in cases where the procedure involves a large number of lots.

The mechanism for monitoring irregularities in public procurement procedures enabling Public Procurement Office to monitor public procurement procedures at all phases was established on the Public Procurement Portal. This functionality of the Portal, which was developed during 2021, greatly facilitates the process of monitoring over the entire public procurement system.

Also, in 2021, Public Procurement Office organized a series of trainings on the implementation of the PPL and Public Procurement Portal, as well as two trainings for representatives of the Special Anti-Corruption Department of the Higher Public Prosecutor's Offices and the Anti-Corruption Department of the Ministry of Interior. The participants of the webinars were presented disputable issues during the processing of cases of abuse related to public procurement.

During 2021, Public Procurement Office also presented the "Guide through the monitoring over implementation of regulations in the field of public procurement", in order to improve cooperation and coordination of competent institutions, which is extremely important for effective elimination of irregularities in the public procurement system.

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY SERBIA

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

SERBIA (SIXTH MEETING)

ITransparency of public procurement process in the Republic of Serbia

- **Publishing public procurement notices**

All public procurement notices should be published² on the Public Procurement Portal as well as on the Contracting Authority website. Time limits for submission of bids are calculated from the day of the publication of a call for proposals on the Public Procurement Portal, which is managed by the Public Procurement Office. Access to the Portal is free of charge to all interested parties.

Public procurement procedures having estimated value exceeding 5,000,000 (approx. EUR 41.000) dinars for goods and services, and 10,000,000 (approx. EUR 83.000) dinars for works, respectively, shall also be published on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases.

According to article 57 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)³

Method of Publishing Notices⁴

Article 57

Public procurement notices are published on the Public Procurement Portal as well as on the contracting authority's website.

Public procurement notices under Article 55, Paragraph 1, items 2), 4) through 6), 9) and 10) in public procurement procedures having estimated value exceeding 5,000,000 dinars for goods and services, and 10,000,000 dinars for works, respectively, shall also be published on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases.

- **Publishing of tender documentation on Public Procurement Portal and Contracting Authority web site for all public procurement procedures includes amendments to tender documentation and all additional clarifications.**

It is regulated by articles 62 and 23 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Publication and Submission of Tender Documents

Article 62

¹Please see NOTA BENE at the end of this document

²above RSD 400.000 (approx. EUR 3.300)

³<http://www.ujn.gov.rs/en/propisi/zakon>

⁴Please have in mind that Articles are not fully quoted, but only the Paragraphs of Articles relating to the issue which is explained

Simultaneously with publishing the invitation to bid, contracting authority has to post tender documents on the Public Procurement Portal as well as on its website.

Amendments to Tender Documents

Article 63

Where contracting authority amends tender documents within the deadline for submission of bids, it has to publish these amendments without delay on the Public Procurement Portal and on its website.

Interested persons may request from contracting authority, in writing, additional information or clarifications concerning the preparation of bid up to five days before the expiry of time limit for bid submission.

In case under Paragraph 2 of this Article, contracting authority shall send written reply to the interested person within three days from the day of reception of request and at the same time publish this information on the Public Procurement Portal and on its website.

If contracting authority amends tender documents eight or less days before the deadline for submission of bids, it has to extend the deadline for submission of bids and publish notice on extension of deadline for submission of bids.

After the expiry of time limit set for submission of bids, contracting authority may not amend the tender documents.

- **Public opening of the bids for all public procurement procedures**

It is regulated by article 103 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Opening Bids

Article 103

Opening bids is performed immediately after the end of deadline for submission of bids, on the same day.

Opening bids is public and any interested person may be present.

Only authorized representatives of bidders may be actively involved in the procedure of opening bids.

Contracting authority may decide to exclude the public when opening bids, if necessary to protecting data which are trade secret in terms of the law governing the protection of trade secrets, or data which are secret in terms of the law governing data secrecy and protection.

In the case referred to in Paragraph 4 of this Article, contracting authority makes decision to determine the reasons for exclusion of the public and to decide whether that exclusion of the public refers to representatives of bidders, as well.

- **Publishing all decision on amendments to public procurement contracts on Public Procurement Portal**

It is regulated by article 115 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Amendments to Public Procurement Contract

Article 115

After conclusion of public procurement contract, contracting authority may allow change in price or other essential contractual elements for objective reasons only, which must be clearly and precisely defined in tender documents and contract, or set forth by special regulations.

Where contracting authority intends to amend public procurement contract, it has to make decision on amending contract which has to contain data in accordance with Annex 3L.

Contracting authority shall publish its decision on the Public Procurement Portal and deliver report to the Public Procurement Office and the State Audit Institution within three days from the day of making the decision.

- **Decisions of the Republic Commission for the Protection of Rights in Public Procurement Procedures regarding request for protection of rights submitted by the bidders has to be published on Public Procurement Portal and web site of the Republic Commission**

It is regulated by article 158 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Time Limit for making and Delivering Decision

Article 158

Immediately after having it delivered to parties in the procedure, the decision of the Republic Commission shall be published on its website and posted on the Public Procurement Portal.

- **Data submitted in reports of Contracting Authority about awarded public procurement contracts and executed public procurement procedures should be announced on Public Procurement Portal**

It is regulated by article 132 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Keeping Records and Reports on Public Procurements

Article 132

Contracting authority shall collect and keep records of data concerning public procurement procedures and awarded public procurement contracts.

Contracting authority shall deliver to the Public Procurement Office quarterly reports on:

- 1) conducted public procurement procedures;
- 2) conducted public procurement procedures to which contracting authority did not apply the provisions of this Law;
- 3) conducted negotiated procedures without invitation to bid;
- 4) costs for preparation of bids in public procurement procedures;

- 5) awarded public procurement contracts;
- 6) unit prices for goods, services and works;
- 7) amended public procurement contracts;
- 8) canceled public procurement procedures;
- 9) public procurement procedures with filed request for the protection of rights and canceled procedures;
- 10) execution of public procurement contract.

The Public Procurement Office shall define in detail the contents of reports on public procurements and the manner of keeping records in public procurements.

Contracting authority shall deliver reports referred to in Paragraph 1 of this Article no later than on the 10th day of the month following the relevant quarter.

The Public Procurement Office shall prepare aggregate quarterly reports on conducted procedures and concluded public procurement contracts on the basis of the delivered quarterly reports of contracting authorities, and to post it on the Public Procurement Portal and its website within a month after the expiration of time limit referred to in Paragraph 4 of this Article.

- **Public Procurement Principles defined through the Law on public procurement**

1. Principle of Efficiency and Cost-Effectiveness (Article 9)
2. Principle of Ensuring Competition (Article 10)

Contracting authority is obliged to facilitate as much competition as possible in a public procurement procedure.

Contracting authority may not limit competition, and in particular, it may not prevent any bidder from participating in public procurement by unjustified use of the negotiated procedure or by using discriminatory requirements, technical specifications, or criteria.

3. Principle of Transparency in Public Procurement Procedure (Article 11)
4. Principle of Equality of Bidders (Article 12)
5. Principle of Environmental Protection and Ensuring Energy Efficiency (Article 13)

- **Law on public procurement regulates in which cases Contracting Authority may award contract and in which cases have right to cancel public procurement procedure**

Every decision must state the reasons for contract award, it must be submitted to all bidders and it could be challenged by bidders in defined time limits.

It is regulated by articles 107, 108 and 109 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Conditions for Awarding the Contract

Article 107

Contracting authority shall reject all unacceptable bids after analyzing and evaluating all bids in public procurement procedure.

Contracting authority shall rank acceptable bids by applying the criterion for awarding the contract defined in the call for competition and the tender documents.

After having performed expert evaluation of bids, contracting authority makes decision on awarding the contract, if it has received at least one acceptable bid.

Decision on Awarding the Contract

Article 108

Decision on awarding contract must be reasoned and must specifically contain data from the report on expert evaluation of bids, except for information under Article 105, paragraph 2, points 9) and 10) of this Law.

Contracting authority shall send the decision on awarding contract to all bidders within three days from the day of making such a decision.

Decision on Cancelling Public Procurement Procedure

Article 109

Contracting authority makes decision on cancelling public procurement procedure on the grounds of report on expert evaluation of bids, if the requirements were not met for awarding contract or for decision on concluding framework agreement, or if requirements were not met for making decision on recognizing qualification.

Contracting authority may cancel public procurement procedure for objective and verifiable reasons which could not have been foreseen at the time of initiating the procedure and which make it impossible for initiated procedure to be completed, or due to which contracting authority's need for the relevant procurement ceased, for which reasons it will not be repeated during the same budget year or within the next six months.

Contracting authority shall explain in writing its decision to cancel the public procurement procedure, particularly stating the reasons for cancelling the procedure, and deliver it to the bidders within three days from the day of making such a decision.

- **Requirements for Participation in Public Procurement Procedures**

Law on public procurement defines obligatory requirement for bidders in order to participate in public procurement procedure as well as additional conditions for participation (business, financial, administrative or technical capacities) which could be necessary for specific public procurement. Requirement for bidders must be defined in advance and specified through tender documentation.

It is regulated by articles 75 and 76 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Requirements for Participation in Public Procurement Procedures Mandatory Eligibility Requirements

Article 75

Bidder in public procurement procedure must prove that:

- 1) It is registered with the competent body, or entered in the appropriate register;
- 2) It or its legal representative have not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;
- 3) It has not been prohibited from performing economic activity by any measure in force at the time of publishing tender notice and/or call for competition;
- 4) It has paid due taxes and other public charges in accordance with laws of the Republic of Serbia or a foreign country if its registered address is in its territory;
- 5) It has valid permit issued by competent body to carry out economic activity which is the subject of public procurement, if such permit is stipulated by special regulation;

Additional Requirements

Article 76

Contracting authority in tender documents also sets additional requirements for participation in public procurement procedure.

Contracting authority in tender documents sets additional requirements for participation in public procurement procedure concerning financial, operational, technical and personnel capacities whenever it is necessary having in mind the subject of public procurement.

Contracting authority sets requirements for participation in the procedure in such way so not to discriminate bidders and to be logically related to the subject of public procurement.

- **Criteria for Awarding Contract are known in advance and announced through tender documentation**

It is regulated by articles 84 and 85 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Criteria for Awarding Contract Determining the Criterion

Article 84

Elements of the criterion on the basis of which contracting authority will award contract must be described and weighted, must not be discriminatory, and must be logically related to the subject of public procurement.

In tender documents, contracting authority shall state, describe and weight the criterion and all elements of the criterion it intends to apply, and in particular methodology for allocation weights for each element of the criterion, which will enable subsequent objective verification of bid evaluation.

When evaluating bids, contracting authority shall apply only the criterion and elements of the criterion contained in tender documents, in the way they were described and evaluated.

Types of Criteria

Article 85

The criteria for evaluating bids are:

- 1) economically most advantageous bid, or
- 2) lowest price offered.

Criterion of economically most advantageous bid is based on various elements of the criterion, depending on the subject of public procurement, such as:

- 1) offered price;
- 2) discount to the pricelist of contracting authority;
- 3) date of delivery or performance of services or works within the minimum acceptable deadline that does not compromise the quality, and the maximum acceptable deadline;
- 4) current costs...

II Deadline for Submission of Bids

Minimum time limits for submission of bids are defined by the Law on public procurement for all procurement procedures (except for negotiated procedure without invitation to bid, in which Contracting Authority determine time limits for applications, but it have to set an adequate time limit to the bidder to submit its application)

According to the Public Procurement Annual Report from 2014, 85% of all public procurement procedures were conducted through open procedure.

It is regulated by article 95 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Time Limits for Submission of Bids in Open Procedure, and of Application in Restricted and Qualification Procedures, and in Competitive Dialogue

Article 95

Time limit for submission of bids in **open procedure**, or for submission of applications in restricted and qualification procedures and in competitive dialogue cannot be shorter than:

- 1) 40 days from the day of published call for competition, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law;
- 2) 30 days from the day of published call for competition, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law;

Time limits for submission of bids in **open procedure** or applications in the restricted and qualification procedures and in competitive dialogue cannot be shorter than:

- 1) 30 days from the day of published call for competition, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law and where contracting authority published prior indicative notice within time limit not shorter than 30 days, and no longer than six months prior to publishing the call.
- 2) 22 days from the day of published call for competition, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law and where contracting authority published prior indicative notice within time limit not shorter than 30 days, and no longer than six months prior to publishing the call.

III Review of the procurement procedures, including system of appeal

Procedure of the Protection of Rights is defined by articles from 148 till 158 of Law on public procurement. In practice, first degree includes appeal submitted to Contracting Authority and second degree includes appeal submitted to Republic Commission for protection of for the Protection of Rights in Public Procurement Procedures. Republic Commission is independent body founded by the National Assembly of the Republic of Serbia.

Public Procurement Office is a special organization which monitors the application of the Law, initiates misdemeanor procedure when learns in any way of a violation of this Law which can be the grounds for minor offence liability, as well as other jurisdictions defined by article 136 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15).

Auditing of financial reports of Contracting Authorities containing public procurement data is executed by State Audit Institution which is independent body founded by the National Assembly of the Republic of Serbia.

IV Conflict of interest

The Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15) in articles 54, 29 and 30 defines conflict of interest issues.

The Public Procurement Committee

Article 54

Persons that may be involved in conflict of interests for the specific subject of public procurement cannot be appointed to the Committee.

After making decision, members of the Committee shall sign a statement confirming that they are not involved in any conflict of interest in given public procurement.

Prevention of Conflict of Interest

Conflict of Interest

Article 29

Conflict of interests for the purpose of this Law exists where relation between contracting authority and bidder may impact impartiality of contracting authority in making decision in public procurement procedure, namely:

- 1) if contracting authority's representative or with him or her related person is involved in bidders' management;
- 2) if contracting authority's representative or with him or her related person owns more than 1% of bidder's share or stocks;
- 3) if contracting authority's representative or with him or her related person is employed or working with bidder or has business relationship with the bidder;

Prohibition on Awarding Contract

Article 30

Contracting authority cannot award public procurement contract to bidder in case of existing conflict of interest.

Person involved in conflict of interest cannot be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom was awarded contract.

V Administrative capacities

According to the Law on public procurement there is no obligation to carry out rotation of employees or similar activities. In order to strengthen public procurement system in the Republic of Serbia, Law on public procurement foreseen professionalization of staff in charge for procurement processes. Professionalization of personnel in Contracting Authorities includes certification of Public Procurement Officers through exam.

By previous Law on public procurement 1.810 Public Procurement Officers were certified. By new Law the certification exam was passed by 293 candidates out of 525 in 4 month period from November 2014 till the end of February 2015.

Public Procurement Officer

Article 134

Contracting authority shall define, in its bylaw on job classification, the position within which will be performed tasks in public procurement activities.

Contracting authority whose overall annual value of planned public procurements exceeds the sevenfold amount referred to in Article 39, Paragraph 1 of this Law, must have at least one public procurement officer.

A public procurement officer is person trained to perform public procurement tasks.

The Public Procurement Office determines the manner and the program for professional training and examination for public procurement officers.

The Public Procurement Committee

Article 54

In public procurement procedures whose estimated value is three times higher than amount in Article 39, Paragraph 1 of this Law, member of the Committee shall be public procurement officer.