INNOVATION PARTNERSHIP

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**INTRODUCTION**

Innovation partnership constitutes a type of public procurement procedure introduced to the European Union under Directive 2014/24/ЕU.

The above procedure may be applied when there is no solution suitable for the needs of contracting authority available in the market.

The main feature of innovation partnership is that innovation is created during the contract execution. Namely, in innovation partnership, contracting authority signs the public procurement contract with one or more tenderers offering the best possible solution. Tenderers are expected to create innovative solution and ensure its application. Therefore, contracting authority needs to describe its needs precisely enough so that the potential tenderers could understand the nature and scope of the challenge and have enough information for taking the decision whether to participate in the procedure.

Although the procedure is called ’’partnership’’, and the participants in the procedure – ’’partners’’, it is still a public procurement procedure where all the rules defined by the law are applied respecting the basic principles of public procurement.

Innovation partnership as a special type of public procurement procedure is envisaged in order to enable contracting authorities to establish partnerships aimed at developing and, subsequently, purchasing, new innovative solutions. For that reason, it is essential that innovation partnership be structured so as to enable the necessary’’market attraction’’, i.e. encourage the development of innovative solutions in the free market environment.

**INNOVATION PARTNERSHIP – LEGAL ARRANGEMENTS**

In the Republic of Serbia, Innovation Partnership, as a special type of public procurement procedure, is set forth by the Public Procurement Law (“The RS Official Gazette” no. 91/2019, hereinafter: PPL), the implementation of which commenced on 1 July 2020.

The PPL defines the term innovation as implementation of new or significantly improved product, service or process, including but not limited to production and construction processes, new market method or new organisational method in business practices, organisation of job positions or external relations, *inter alia*, in order to assist in addressing social challenges or as support to smart, sustainable and inclusive growth.

The goal of this procedure is development of innovative goods, services or works and their subsequent procurement

on condition that it is in accordance with the development level and maximum costs agreed between the contracting authority and participants in innovation partnership.

Contracting authority may conducti innovation partnership procedure if:

* they need innovative goods, services or works
* the need cannot be met by procuring goods, services or works available in the market.

Innovation partnership constitutes a competitive procedure for procurement of goods, services or works, conducted in several consecutive phases

abiding by the order of action in research and innovation which can be included in production of goods, provision of services or execution of works.

Contracting authority can establish innovation partnership with one or more partners, by conducting separate research and developing activities.

In innovation partnership procedure interim goals are set for partners to achieve in individual phases and adequate amounts for payment.

Following the set goals, contracting authority may

* terminate innovation partnership after each phase or
* reduce the number of partners by termination of individual contracts in case of innovation partnerships with several partners

on condition that the tendering documentation envisages such option and requirement for exercising them.

Contracting authority is obliged to ensure that the innovation partnership’s structure, especially duration and value of individual phases, reflects

* innovation level of offered solutions
* the course of research and development activities needed for development of innovative solution unavailable in the market.

The estimated value of goods, services or works may not be unproportional to the investment needed for their development.

Regarding the contract award criteria, in innovation partnership procedure the criterion is solely the best price/quality ratio.

**REASONS FOR PUBLIC PROCUREMENT OF INNOVATIVE SOLUTTIONS**

After the Directive 2014/24/ЕU envisaged innovation partnership, many countries in Europe started implementing this type of procedure. Among them Finland, Austria, the Netherlands, Belgium, Sweden, Lithuania, etc.

Below, some of the success stories of conducted innovation partnership procedures are provided, from European countries, which have contributed to market development, quality of public service delivery and accommodation of certain needs of end users that the existing solutions were unable to meet.

* 1. **Better quality service delivery with cost-benefit optimum**

Innovative solutions are rarely procured only for their innovative character. In most cases, innovative solutions become interesting to contracting authorities if they can enable them with the same or even better performance and optimal costs.

**Example: With innovation to greener and cheaper energy for citizens – Combined heating plant and electric power plant in Lithuania’s capital city**

**Why did the contracting authority opt for innovation partnership?**

Gas imports have caused significant heating costs for citizens. Besides, great gas consumption in the city made a negative environmental impact, with high carbon-dioxide level.

**What activities were undertaken?**

In 2018., the city decided to invest in innovative, domestic factory producing green energy in order to reduce gas imports and CO2 level. Cogeneration power plant consists of waste incinerator and two biofuel systems. The major part of the investment was provided from the EU structural funds and the European Investment Bank loan.

**What is the final outcome of the procedure?**

Nearly 40% citizens can now ensure their energy demand with reduced CO2 impact. It is estimated that in the next two years, when the system operates in its full capacity, the heating prices for citizens will be reduced by 20%. Besides the above, this way significantly reduces the harmful impact of carbon-dioxide on the environment. At the same time, innovation contributes to economic development owing to unhindered conversion of waste into energy.

* 1. **Meeting the emerging needs**

In some cases, procurement of innovative solutions is necessary in order to meet certain needs or new expectations, which the existing solutions in the market cannot meet adequately.

**Example: Innovative solution as a response to social change – Motivating students to learn by means of technology**

**Why did the contracting authority opt for innovation partnership?**

Many children today are more interested in computer games than in maths or hard sciences. The rate of school and university drop-outs is getting higher as the enthusiasm for learning these “difficult” subjects is sagging. All this affects the opportunities for new generations to find good job positions in economy which is more and more knowledge-oriented.

**What activities were undertaken?**

Some schools in Sweden, Spain, Germany and Finland decided to conduct a joint public procurement procedure in order to solve this problem. Namely, they conducted a public procurement procedure of innovation partnership with seven participating tenderers offering innovative solutions, to test and compare the offered solution after. Four out of seven tenderers were shortlisted for the prototype development phase, and then two tenderers developed innovative tools that the schools decided to apply. Those tools enable primary- and secondary school children to learn in a way similar to video games and adjusted to permanent analyses of behaviour patterns with the help of artificial intelligence.

**What is the final outcome of the procedure?**

With more than 600 students and 45 teachers participating from these four countries, it turned out that with the use of these tools the students are by 55-75% more motivated and successful in mathematics, technical education, physics and chemistry. *Ipso facto*, the probability that they will pursue career in those areas is higher. For example, a school in Finland confirmed that with these innovative solutions the time teachers dedicated to planning and assessment was reduced by 30-40%, and schools made savings in teaching materials (one licence costs ten times less than textbooks for the entire school). Also, the tenderer who offered this solution in Finland had meanwhile expanded his operations onto other market segments, such as company staff training.

* 1. **Modernisation of public services**

Public procurement of innovative solutions can harmonise the way of public service delivery with the expectations of citizens, who increasingly use technology, thus improving their public service experience.

**Example: Innovative solution as a response to environmental issues – Protection of water supply**

**Why did the contracting authority opt for innovation partnership?**

Water remaining from production of coins in Austria contained chemicals in quantities exceeding legal limits.

**What activities were undertaken?**

The Austrian Federal Procurement Agency launched a public procurement procedure in three phases in order to seek innovative solution for the Austrian mint responsible for manufacturing coins. In procurement documentation, the contracting authority precisely envisaged the goals for water purification.

**What was the final outcome of the procedure?**

The selected, easy to embed mechanism for vacuum evaporation filters a broad range of particles, including metal, galvanic, photographic, printed, pharmaceutical and food, which makes it suitable for use in various industries. Besides, the needs of the Austrian mint for running water have been reduced by 97%, thus making annual savings of 4 million litres of water.

* 1. **Encouraging the market to innovation**

When a product is not easily available in the market or when there are only poorer quality products on offer, the contracting authorities’ purchasing power can encourage the market to innovation.

**Example: Innovative solution as a response to public questions –**

**Better health care in hospitals**

**Why did the contracting authority opt for innovation partnership?**

A town in Sweden wanted to purchase catheters free of harmful substances made of PVC materials. Although the said goods were not available in wider market, the town authorities to nevertheless conduct public procurement procedure and publish the contract notice. At the moment, only one economic operator was able to respond to the contracting authority’s invitation and offer the requested goods.

**Which activities were undertaken?**

The town managed to procure the wanted catheters notwithstanding the difficulties.

**What is the final outcome of the procedure?**

In the public procurement procedure conducted after eight years, all economic operators who participated offered good not containing PVC material.

**CONDUCTING THE PROCEDURE**

*REQUIREMENTS FOR APPLICATION OF THE PROCEDURE*

Contracting authority may conduct an innovation partnership procedure if there is a need for innovative goods, services or works, which could not be met by procurement of goods, services or works available in the market.

*THE FIRST PHASE OF THE PROCEDURE*

**Deadline for tender submission**

**Candidate with recognised eligibility**

**Professional tender evaluation**

**Preparation**

**Initiation of the procedure**

**Candidate without recognised eligibility**

**Public contract notice for eligibility phase**

**Limited number of candidates=if defined in the notice**

*THE BEGINNING OF THE PROCEDURE*

The innovation partnership begins with contracting authority taking the following action:

* Market research, in accordance with Article 89 of the PPL
* Including the public procurement contract in the annual procurement plan;
* Taking decision on conducting public procurement procedure, which must include the reasons to apply innovation partnership procedure;
* Form a public procurement committee and name it in the decision to conduct public procurement procedure;
* Preparation of public invitation and tendering documents;
* Publication of public invitation and tendering documents for the eligibility phase on the Public Procurement Portal.

*PROCUREMENT DOCUMENTATION*

Public invitation, given that innovation partnership consists of several phases, necessarily includes deadlines for tender submission, as well as the indicative date for sending invitation to negotiate. Also, the public invitation, if necessary, includes data on using consecutive phases in order to gradually reduce the number of tenders for consideration.

Contracting authority is obliged to define the description of needs for innovative goods, services or works and to name the elements of description making the minimum requirements to be met by all tenders.

The data in tendering documents must be clear enough and precise so that the economic operators could identify the nature and scope of the requested solution and assess their interest in participating.

The prepared tendering documents and public invitation are simultaneously published by the contracting authority on the Public Procurement Portal, unless in cases prescribed by Article 45 of the PPL.

Contracting authority can amend the prepared tendering documents in the way envisaged by Article 96 of the PPL.

The economic operator can ask from contracting authority additional information or clarification regarding the procurement documents in writing, through the Public Procurement Portal. The way of economic operators’ proceeding in this case is set forth in Article 97 of the PPL.

*RECEPTION AND OPENING OF APPLICATIONS*

Applications are submitted electronically through the Public Procurement Portal.

Applications are also opened automatically through the Public Procurement Portal upon the expiry of the tender submission deadline stated in the public invitation.

Application opening in the first phase is not public.

*APPLICATION EVALUATION*

Application evaluation and ranking is done after opening the applications against the criteria for quality selection of economic operators from the tendering documents.

In innovation partnership, the contracting authority selecting the candidates may also apply the criteria relative to the capacity of economic operators in the research and development area and in the area of innovative solution development and application.

During the evaluation of applications, contracting authority may request additional clarification from tenderers, in the way set forth by Article 142 of the PPL.

Following the evaluation of applications, the public procurement committee drafts a report on the procurement procedure, containing the data envisaged by Article 145 of the PPL

The first phase of the innovation partnership ends with making:

* notification of eligibility recognition, submitted by the contracting authority to candidates with recognised eligibility, and
* decision to exclude a candidate justified by the reasons not to recognise their eligibility, for each individual participant who will not be invited to participate in the dialogue.

It is important to mention that contracting authority must ensure not to reveal information on other candidates who have submitted their applications to any candidate.

*MINIMUM NUMBER OF CANDIDATES*

Contracting authority in innovation partnership procedure may limit the number of candidates to invite to negotiations. In that case, the minimum number of candidates is three.

The contents of public invitation and manner of contracting authority’s proceeding if the number of eligible candidates who meet the criteria for qualitative selection of economic operators is lower than minimum, is defined under Article 64 of the PPL.

*THE SECOND PHASE OF THE PROCEDURE*

**Contract award notice publication**

**Deadline for final tender submission**

**Candidates eliminated by the contracting authority**

**Contract award**

**Negotiations**

**Contract award decision**

**Professional evaluation of final tenders**

Report on Availability of documents

the procedure

**Invitation to negotiate – submission of initial tenders**

*INVITATION TO SHORTLISTED CANDIDATES*

All selected candidates are invited by contracting authority in writing, via the Public Procurement Portal, to negotiate, i.e. to submit their initial tenders.

The invitation to negotiations must include data defined in Annex 6 to the PPL, including the deadline for initial tender submission, as well as notification that the tendering documents are simultaneously available on the Public Procurement Portal.

*RECEPTION AND OPENING OF TENDERS*

Tenders are submitted electronically through the Public Procurement Portal.

Tender opening is also done automatically, through the Public Procurement Portal, upon the expiry of the deadline for tender submission stated in the invitation to negotiate.

Tender opening in the second phase is public. The public can be excluded in the way and in cases set forth by Article 140 of the PPL.

*NEGOTIATIONS*

Contracting authority negotiates with tenderers the initial and all following tenders, but not the final offers.

Negotiations are held with tenderers in order to improve the contents of the tender and contracting authority makes minutes of the negotiations thereon.

The subject of negotiations may not be minimum requirements and contract award criteria, stated in the tendering documentation.

Contracting authority is obliged to ensure equal treatment of all tenderers during negotiations and may not impart information in a discriminatory way as individual tenderers could use it to the detriment of others.

*NEGOTIATIONS IN CONSECUTIVE PHASES*

By applying the criteria from the public notice, public invitation for submission of applications or tendering documents, contracting authority may conduct negotiations in consecutive phases in order to reduce the number of tenders for negotiation.

In order to use this opportunity, contracting authority must envisage it in the procurement documentation.

Contracting authority is obliged to provide the tenderers who do not get invited to the next phase of the procedure with the decision on elimination from further negotiations.

Contracting authority is obliged to inform all tenderers whose tenders have not been eliminated from further negotiations of any amendments to technical specifications or other procurement documents in writing, except those that constitute minimum requirements and if it is necessary to enable the tenderers with enough time to prepare and submit amended tenders.

Also, contracting authority is obliged to inform all tenderers of completion of negotiations and set a single deadline for submission of final offers.

*TENDER EVALUATION*

Tender evaluation and ranking are done upon tender opening, based on the conditions and requirements from the tendering documentation.

During tender evaluation, contracting authority may request additional information from tenderers, in the manner envisaged by Article 142 of the PPL.

Having conducted tender evaluation, public procurement committee makes a report on the public procurement procedure with data envisaged by Article 145 of the PPL.

Before taking a decision to award the contract or cancel the procedure, contracting authority is obliged to request from the tenderer who has submitted the most economically advantageous tender to submit evidence of compliance with quality selection criteria for economic operators no later than five working days, in plain copies (not verified).

Regarding the request for additional clarification, control (insight) of the tenderer, account control, as well as action in case of abnormally low prices, specific PPL provisions applicable to all types of public procurement procedure shall be applied.

*REPORT ON PUBLIC PROCUREMENT PROCEDURE*

After conducting tender evaluation, the public procurement committee produces a report on the public procurement procedure.

The report includes data set forth by Article 145 of the PPL.

The report on public procurement procedure is not mandatory for contracts concluded pursuant to framework agreements.

*CONTRACT AWARD*

Having conducted tender evaluation, contracting authority refuses tenders as not eligible for the reasons defined by Article 144 of the PPL.

Contracting authority may refuse a tender as ineligible if it exceeds the estimated value of the subject of the contract or the available funds, as well as a tender identified as abnormally low, in accordance with relevant provisions.

Tenders not refused shall be evaluated and ranked against the contract award criterion specified in the tendering documentation.

*CONTRACT AWARD DECISION*

If the contracting authority, following the conducted tender evaluation, establishes that conditions for contract award have been met, they shall take a decision to award the contract or to conclude a framework agreement.

The contract award decision, or decision on framework agreement conclusion, is made within 30 days from the expiry date of the tender submission deadline, except if the tendering documentation set a longer deadline. The decision shall be published on the Public Procurement Portal no less than three days from the day of decision taking.

The decision shall be reasoned and in particular include data from the report on the public procurement procedure and instruction on legal remedy.

*DECISION TO CANCEL THE PROCEDURE*

In case of cancellation decision, for reasons stipulated by Article147 of the PPL, contracting authority shall take a decision to cancel the public procurement procedure and publish the decision on the Public Procurement Portal within three days upon the day of decision taking.

The decision must be reasoned, including in particular the data from the report on the public procurement procedure, i.e. the reasons for cancelling the procedure and instruction on legal remedy.

Should contracting authority cancel the procedure before the submission deadline expires, the Public Procurement Portal shall permanently deny access to tenders submitted and the contracting authority shall return to respective tenderers unopened tenders, applications and other documents not submitted through the Public Procurement Portal.

*INSIGHT INTO DOCUMENTATION*

Following the contract award decision, framework agreement conclusion decision or procedure cancellation decision, contracting authority is obliged to enable the economic operator who submitted a tender in that public procurement procedure with insight into and copying the documents within two days from receiving their written request through the Portal, i.e. enable them to take over the documents in an adequate way, with an obligation to protect confidential documents in keeping with the PPL provisions.

*CONCLUSION OF THE CONTRACT AND FRAMEWORK AGREEMENT*

Contracting authority may conclude a public procurement contract or framework agreement after taking the decision on contract award or conclusion of framework agreement, provided that no review claim has been filed or that review claims have been rejected or refused, as well as in case the review claim has been cancelled.

Contracting authority may conclude public procurement contract or framework agreement before the review submission deadline expires in cases envisaged by Article 151 of the PPL.

Public procurement contract, i.e. framework agreement, must be concluded in accordance with certain procurement documents and selected tender.

Within 30 days from conclusion of the public procurement contract or framework agreement, contracting authority is obliged to send the contract award notice for publication.

**ЗАКЉУЧАК**

**CONCLUSION**

Innovation partnership, as a special type of public procurement procedure, was first introduced into the public procurement system with the Public Procurement Law (The RS Official Gazette“ no. 91/19), implemented as of 1 July 2020.

Innovation Partnership is not only a great challenge for contracting authorities, who encounter this type of public procurement for the first time, but also a great opportunity for innovation companies with know-how and capacities to respond to the contracting authorities’ need for innovative solutions.

The so-far analysis have shown that the procurement of innovation solutions in the Republic of Serbia is especially favourable for utilities, such as water management, electric power supply, waste management, etc, but also for health care sector.

Innovative technologies have become an indispensable part in resolving the problems of waste water and environment protection, so it is expected that precisely by using this type of public procurement procedure will contribute to creating solutions that not only meet the needs of contracting authorities, but resolve the issues of public importance.

The main prerequisites for the success of innovation partnership are:

* good assessment whether the research and development phase is really necessary;
* gathering a team of experts in the area that is the subject of the public procurement contract;
* cooperation between contracting authority and partners during the whole public procurement procedure;
* following the principle of equal treatment of partners throughout the public procurement procedure.

In order to promote innovation partnership, this document has been prepared as a potential source of inspiration for all stakeholders involved with public procurement, primarily referring to contracting authorities and tenderers, but also to end users of procured innovative solutions, as well as decision- and policy makers with the key contribution to creation of more enabling environment.