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|  | **Comments, proposals, suggestions and remarks**  **-eConsultations, period 26 June - 5 July 2023-** | | |
| **No.** | **Proposal/comment/suggestion/remark** | **Proponent** | **Answer** |
| **1.** | In order to effectively conduct misdemeanor proceedings and legal security, the Network of Judges of Misdemeanor Courts proposes the following amendments to the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 91/19):  In Article 111, paragraph 1, item 1, add subitem (3), which reads: “offence referred to in Article 237, paragraph 1, items 2) and 4) performed by the bidder or candidate referred to in Article 237, paragraphs 1, 3 or 4, that is, to the subcontractor who committed the offence.  In Article 131, paragraph 6, in the second line, after the word “obliged”, insert the words “within 15 days”.  In Article 236, paragraph 1,  item 1, insert the number 27 in the parenthesis before the numbers “29-35”,  item 2, delete the words “award a public procurement contract” and replace them with the words “procure goods, works or services”,  item 9, delete the numbers “1) and 2)” and replace them with the numbers “1)-3)”.  With regard to Article 237, paragraph 1, item 1, the proposal is to review the justification of prescribing the act of execution in question as a misdemeanour, that is, that it should be prescribed as a criminal offence. If this is not the case, the act of committing this misdemeanour should be clearly demarcated by law from the criminal offence under Article 228 of the Criminal Code.  In the case of misdemeanours referred to in Article 237, paragraph 1, item 4, the deadline for the execution of the obligation in question should be prescribed in the penal or material provisions of Article 152, in order to determine the time of execution of the misdemeanour.  In Article 237, paragraph 1, item 6, replace the word "three" with the words "ten".  Also, consideration should be given to prescribing a penal provision for violations of the new Article 152a of the Law on Amendments to the Law on Public Procurement, because contracting authorities who do not publish data on all concluded contracts would be unsanctioned. | Misdemeanour Court of Appeals - Network of Judges | **The proposal is not accepted.**  Prescribing a new basis for exclusion for an economic operator whose responsibility is for misdemeanours from Article 237, paragraph 1, item 2) and 4) of the PPL established by a final judgment would have no purpose, since in accordance with the provisions of Article 237, paragraph 6 of the PPL, the misdemeanour court imposes a measure of prohibition on those economic entities from participating in public procurement procedures, which means that they certainly cannot submit bids in public procurement procedures during the ban period.  **The proposal regarding setting the deadline is accepted**, but we believe that the deadline for submitting a proposal for initiating misdemeanour proceedings to the Public Procurement Office should be set at 30 days, so that the contracting authority has enough time to prepare the proposal and collect the necessary documentation, i.e., evidence.  **The proposal regarding item 1) is not accepted**.  Article 27 of the PPL prescribes thresholds up to which this law does not apply. The inclusion of this article in the provision of Article 236, paragraph 1, item 1) of the PPL has no effect on the assessment of the existence of a violation, bearing in mind that Article 29, paragraph 2 prescribes that the determination of the estimated value of the public procurement item cannot be carried out in the manner that has for the purpose of avoiding the application of this law, nor can the division of the subject matter of public procurement into several procurements be carried out for that purpose. The above certainly includes situations in which the contracting authority divides a public procurement that represents a whole and whose value is above the thresholds prescribed in Article 27 of the PPL into several procurements in order to avoid the application of the PPL.  **The proposal regarding item 2) is accepted.**  **The proposal regarding item 9) is not accepted.**  Namely, the lack of grounds for exclusion from Article 111, paragraph 1, items 1) and 2) of the PPL, must be proven by the bidder. If the bidder does not prove that there are no grounds for exclusion from Article 111, paragraph 1, points 1) and 2) of the PPL, the contracting authority is obliged to exclude that bidder from the public procurement procedure. On the other hand, the existence of grounds for exclusion from Article 111, paragraph 1, item 3) of the PPL, as well as other grounds for exclusion prescribed by the same article of the law, is determined by the contracting authority, i.e. the burden of proof that there are grounds for exclusion from Article 111, paragraph 1, item 3)-5) of the PPL is on the side of the contracting authority/entity, which is certainly obliged to exclude from the public procurement procedure a bidder for whom it determines that there is one of the mentioned grounds for exclusion. The amendment of Article 236, paragraph 1, item 9) of the PPL in the proposed manner could result in the misdemeanour liability of a conscientious contracting authority/entity, who had no knowledge that the bidder violated obligations in the field of environmental protection, social and labour law.  **The proposal is not accepted.**  We consider that the demarcation of this misdemeanour with the criminal offence from Article 228 of the Criminal Code already exists, bearing in mind that the action of the specified criminal offence involves submitting an offer  based on false data, with the intention of influencing the decision-making process of the public procurement contracting authority/entity.  **The proposal was taken into consideration.**  **The proposal is not accepted.**  In accordance with Article 237, paragraph 6 of the Therefore, the deadline for the action of the misdemeanour court begins to run from the day of finality, and not from the day of the judgment, as stated in the explanation of the applicant. Therefore, the deadline for the action of the misdemeanour court begins to run from the day of finality, and not from the day of the judgment, as stated in the explanation of the applicant. Therefore, the explanation that the deadline is inappropriate due to the fact that the court is obliged to wait for the expiration of the eight-day period, in which it is possible to file an appeal against the verdict, cannot be accepted.  **The proposal is accepted.** |
| **2.** | We propose that Article 14, paragraph 1, item 3) of the Law be amended to read as follows:  “Procurement of goods and services that the contracting authority/entity procures for resale, processing and sale, as well as for the provision of services on the market, provided that the contracting authority/entitydoes not have exclusive or special rights to resell or rent those goods, i.e., to provide services for which those goods and services will to use.” | Institute for Molecular Genetics and Genetic Engineering, University of Belgrade | **The proposal is not accepted.**  Bearing in mind that the mentioned exception is provided only by Directive 25/2014 EU (sectoral directive), and that it is defined by the same that the mentioned exception implies procurement for the purpose of resale, processing or renting to third parties on the market, and not for the purpose of providing services and performing works, the mentioned legal provision for public contracting authorities/entities had to be harmonised with the provision of the mentioned directive. For this reason, the application of the aforementioned provision is timed until the accession of the Republic of Serbia to the EU. |
| **3.** | It is proposed to amend Article 152 of the law so that paragraph 5 is added after paragraph 4, which would define further steps in the event that the contracting authority/entity does not conclude a contract with the second-ranked bidder. In paragraph 3, it is stated that the contracting authority/entity can conclude the contract with the first next most favourable bidder. |  | **The proposal is not accepted.**  Article 152, paragraph 3 of the of the Law on Public Procurement stipulates that the contracting authority has the possibility to conclude a contract, that is, a framework agreement with the first next most favorable bidder, if the bidder refuses to conclude a public procurement contract.  Therefore, if the contracting authority/entity does not want to choose this option, the only remaining possibility is to suspend the public procurement procedure.  We are of the opinion that there is no need to specifically define this in the law, given that the contracting authority/entity can end the public procurement procedure either by awarding the contract or suspending the public procurement procedure.  The procedure for rejecting the offer of a bidder who refused to conclude a contract is explained in the instructions on the Public Procurement Portal. |
| **4.** | It is proposed to amend Article 236, paragraph 1, item 11) of the Law so that it reads:  Does not publish, that is, does not make decisions in accordance with the provisions of this law (Articles 146-148) |  | **The proposal is accepted.**  Given that certain decisions in the public procurement procedure are submitted and not published on the Public Procurement Portal (for example, the decision to exclude candidates), we are of the opinion that Article 236, paragraph 1, item 11) of the Law should not be changed, but that it should be added a new offence, which reads:  12) fails to make decisions in accordance with the provisions of this law (Articles 146-148) |
| **5.** | It is proposed to amend Article 147 of the Law so that paragraph 2 is added to the article after paragraph 1, which reads as follows:  The decision on the suspension of the public procurement procedure is made by the contracting authority within 30 days from the expiration of the deadline for submission of bids. |  | **The proposal is accepted.** |
| **6.** | In Article 132, after paragraph 2, paragraph 3 is added, which reads as follows:  “In the case of awarding a contract for the public procurement of computer programme development services, architectural services, engineering services, translation services or advisory services, the contracting authority/entity shall determine the most economically advantageous offer based on the criteria from paragraph 1, items 2) or 3) of this article.” | Business association “Bidders of Serbia” | **The proposal is not accepted.**  The legal provision of the proposed content is defined in order to increase the participation of criteria for awarding contracts that are not based only on price. Statistical data show that the criterion for awarding contracts based only on price is applied in 95% of public procurement procedures.  The proposed solution is fully in line with the EU directive and other European countries have similar solutions.  Regarding the specific dilemmas presented in the comments on the Draft Law, we highlight the following:  - The proposed services represent such types of services, where the quality of their execution depends directly on the quality of the staff who are engaged in the execution of the specific service. For this reason, it was proposed that in the case of these services, in addition to the price, the contracting authority/entity must also take into account elements of quality or apply the cost criterion by applying the cost efficiency approach.  - When it comes to the cost of the life cycle, as a type of criterion for these services, the customer can, for example, when procuring the service of creating project and technical documentation, award additional points to projects that envisage the construction of facilities whose maintenance costs over a certain period of time will be high lower compared to projects that do not provide for it. Certainly, the contracting authority/entity is not obliged to apply this type of criteria for certain services, if its application is not appropriate, as is the case with translation services. But with this type of service, the characteristics of the person translating and his competences are of crucial importance for their quality performance, while the price is less important. For example, in the case of translation services, the contracting authority/entity can award additional points to the bidder who responds more quickly to the contracting authority/entity's invitation to perform a specific translation service or to the bidder who has experience in translating EU directives.  - The Public Procurement Office publishes models of tender documents on its website, in which it promotes the application of criteria for awarding contracts that are not based on price. In addition to the models currently published, models of tender documents for the services proposed in the Draft Law will be created. |
| **7.** | We propose removing the cited Article 15 from the draft amendment of the Law.  Bearing in mind that Article 236 of the PPL defines the offences of contracting authorities/entities, and that the proposal to amend the PPL deletes the non-publication of the public procurement plan (Articles 88) and the non-publication of tender documents in accordance with the provisions of the PPL (Articles 95) as misdemeanours, in accordance with the basic principles of the PPL, and that it can open the door to many abuses by the contracting authorities/entities, which in this way can go completely unpunished. |  | **The proposal is not accepted.**  Based on the content of the explanation, it is concluded that the objection refers to Article 14 and not to Article 15 of the draft Law.  In this regard, we point out that the draft of the Law proposed the amendment of the mentioned violations, bearing in mind that the previous practice and activities undertaken by the contracting authorities/entities on the Public Procurement Portal during the implementation of public procurement procedures show that there is no possibility for the contracting authority/entity to commit these two violations. |
| **8.** | In Article 1 of the DRAFT ON AMENDMENTS AND AMENDMENTS TO THE LAW ON PUBLIC PROCUREMENT, paragraph 1 is amended to read as follows: The title and paragraph 1 of Article 6 shall be amended to read as follows: The contracting authority/entity shall procure goods, services or works of appropriate quality, taking into account the intent, purpose and value of public procurement, i.e., economical spending of public funds and minimal impact on the environment.” Paragraph 2 of this article shall not be amended. |  | **The proposal is accepted.** |
| **9.** | In Article 2 of the DRAFT ON AMENDMENTS AND SUPPLEMENTS TO THE LAW ON PUBLIC PROCUREMENT, add item 8a) which reads as follows: “Publication of the report on the execution of the contract concluded in the public procurement procedure.” The content of this report shall be prescribed and published by the Public Procurement Office within 30 days from the date of entry into force of this Law on Amendments.” |  | **The proposal is not accepted.**  Article 1 of the Law stipulates that this law regulates the rules of public procurement procedures carried out by contracting authorities/entities or other entities in cases determined by this law, for the purpose of concluding a contract on the public procurement of goods, services or works, a framework agreement, as well as conducting a design competition.  Article 154, paragraph 5 of the Law stipulates that the ministry responsible for financial affairs supervises the execution of public procurement contracts.  The draft law proposed the amendment of Article 154, paragraph 5, as follows:  “The Ministry of Finance shall more closely regulate the methods of conducting supervision and oversees the execution of public procurement contracts.”  In order to monitor the execution of contracts, the Ministry of Finance adopts certain by-laws.  Following the above, the subject of regulation of this law cannot be issues related to the execution of public procurement contracts.  In addition to the above, any interested person has the opportunity to contact the contracting authority/entity and request information on the execution of public procurement contracts, in the manner prescribed by the provisions of the Law on Free Access to Information of Public Importance (“Official Gazette of the Republic of Serba”, Nos. 120/2004, 54/ 2007, 104/2009, 36/2010 and 105/2021). |
| **10.** | In Article 9 of the DRAFT AMENDMENTS TO THE LAW ON PUBLIC PROCUREMENT, we propose to amend paragraph 2 in Article 154 by deleting the period at the end of the paragraph, adding a comma and the text "and to publish on the public procurement portal the report on the execution of the contract within longer than 10 days from the date of the final execution of the delivery of goods or the execution of services or performed works.” |  | **The proposal is not accepted.**  The explanation given in the previous item. |
| **11.** | Delete part of the provision from Article 94, paragraph 1, item 1 of the PPL: “does not submit evidence of fulfillment of the criteria for the qualitative selection of a economic operator in accordance with Article 119 of this law”, so that the article after the amendment reads:  The contracting authority/entity may request the economic operator to provide him with a means of security:  1) for the seriousness of the offer, in the event that the bidder abandons his offer within the validity period of the offer, unreasonably refuses to conclude a public procurement contract or framework agreement or does not provide security for the execution of a public procurement contract or framework agreement;” |  | **The proposal is not accepted.**  From the provisions of Article 94, paragraph 1, item 1) of the Public Procurement Law, it follows that the contracting authority/entity has the possibility, but not the obligation, to demand from the economic operator to provide him with a means of security for the seriousness of the offer, among other things, in the event that he does not provide evidence of the fulfillment of the criteria for qualitative selection of a economic operator in accordance with Article 119 of the PPL. In this case, the means of security for the seriousness of the offer is a mechanism of protection of the contracting authorities/entities during the validity period of the offer, and if the bidder does not submit the required evidence within the deadline or does not prove with the evidence provided that he meets the criteria for the qualitative selection of the economic operator, regardless of the reasons that led to in addition, the contracting authority/entity has the possibility to activate the means of security for the seriousness of the offer, if he previously requested it in the tender documentation. The decision on whether to activate the security means in a specific case is made exclusively by the contracting authority/entity. In this sense, we note that the Public Prosecutor’s Office does not distinguish between failure to submit evidence within the deadline, with or without intention, or submission of evidence that does not prove the fulfillment of the criteria for the qualitative selection of a economic operator, since all of the above situations produce equal consequences for the contracting authority/entity. Namely, in each of the mentioned cases, the contracting authority/entity is obliged to reject the bid of that bidder and invite the next bidder who submitted the most favourable bid, that is, to suspend the public procurement procedure, if there are reasons for suspension, by applying Article 119, paragraph 6 of the Public Procurement Law. |
| **12.** | In Article 115 of the PPL, paragraph 2, the words “the contracting authority/entity may” shall be replaced by the words “the contracting authority/entity must”.  In so far as economic operator has to possess a particular authorisation, or a permit issued by the competent authority for the performance of activity which is the subject-matter of public procurement, or to be a member of a particular organisation in order to be able to perform the activity concerned, contracting authority/entity must require them to prove that they hold such authorisation, permit, or membership.  In Article 115 of the PPL, paragraph 3 is added, which reads as follows: The condition from Article 115, paragraph 2 of this law must be fulfilled by the bidder from the group of bidders entrusted with the execution of the part of the procurement for which the fulfillment of that condition is necessary. |  | **The proposal is not accepted.**  The provisions of Article 115, paragraph 2 of the PPL is fully harmonised with the provisions of EU Directive 24/2014.  The Public Procurement Law does not oblige the contracting authority/entity to require business entities to prove in the public procurement procedure that they have the authority, that is, the permission of the competent authority to perform the activity that is the subject matter of public procurement, but this is foreseen as a possibility. When defining the criteria for the selection of an economic operator, the contracting authorities/entities must certainly take into account the provisions of the regulations governing the activity in the field of which the subject of the public procurement is. On the other hand, if for the performance of a certain activity it is necessary to have authorisation, i.e., a permit, in accordance with the regulations governing the subject area, economic operators must certainly possess that authorisation, regardless of whether the contracting authority/entity in the tender documentation required to prove the possession of the same. Bearing in mind the provisions of Article 118, paragraph 1, and in connection with Article 115, paragraph 2 of the Public Procurement Law, it is concluded that if the contracting authority/entity asked the tenderer to prove with a tender documentation that they have a licence to perform certain tasks, it is necessary to prove all economic entities that will be engaged in the subject works, which the contracting authority/entity can determine based on data from the tender form. |
| **13.** | In Article 202 of the PPL, paragraph 4 is added, which reads as follows: “Legal understandings determined at the general session that bind all councils and members of the Republic Commission and are publicly published on the website of that body within 5 days of adoption at the general session.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **14.** | In Article 228 of the PPL, paragraph 7 is added, which reads as follows: “The administrative court is obliged to make a decision within 6 months from the date of receipt of the action.”  In Article 228 of the PPL, paragraph 8 is added, which reads as follows: “If the competent authority, after canceling the administrative act, passes an administrative act contrary to the legal understanding of the court or contrary to the court's objections regarding the procedure, and the plaintiff files a new lawsuit, the court will annul the challenged act and decide on its own administrative matter by judgment.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **15.** | Article 118, paragraph 4 of the PPL is deleted and replaced by the paragraph that reads as follows: “In the statement on the fulfillment of the criteria, economic operators state the data that identify their financial and economic capacity, as well as their technical and professional capacity, and that they meet the conditions for performing professional activities which are provided for in the procurement documentation, and declare that upon request and without delay, they will be able to provide the client with evidence of the fulfillment of the criteria for qualitative selection.” | attorney Dušan Garašanin | **The proposal is not accepted.**  Determining the way to fill out any form, including the form of the declaration of fulfillment of the criteria, cannot be regulated by the Law or by-laws. Namely, if the Law were to prescribe, for example, that the economic operator states in the statement the data that identifies the financial and economic capacity, and if the bidder fills in the specified field in such a way as to indicate “yes” or “I possess”, the question arises of the contracting authority/entity's actions in that case. Does the contracting authority/entity have to immediately reject such an offer or does he have the possibility to ask for clarifications in accordance with Article 142, paragraph 2 of the Law?  If the contracting authority/entity could immediately reject such an offer, the meaning of the statement, as a preliminary proof of the fulfillment of the defined criteria, is called into question. On the other hand, if the contracting authority/entity would have the possibility to ask for additional clarifications, the question arises of the meaning of determining such a legal provision.  Also, we remind you of the provisions of Article 93 of the Law, which stipulates that tender documents must be prepared in a way that enables the preparation and submission of bids, i.e., applications. Therefore, the contracting authority/entity has the obligation to prepare clear and complete tender documentation, so that the bidders are clear about what is required of them in order for the bids to be evaluated as acceptable. If the requirements of the tender documents are not clear, the interested party has the opportunity to contact the contracting authority/entity with a request for additional information or clarifications.  In addition to the above, we remind you that the Public Procurement Portal already contains certain instructions with examples of how the contracting authority/entity can define the criteria and ways of proving them, as well as that the Public Procurement Office has published Guidelines for the preparation of tender documents on its website, which also contain instructions and examples on this topic.  We can certainly continue to work on further familiarising the contracting authorities/entities with the obligations they have in order to prepare the tender documentation in everything in the manner prescribed by the provisions of the Law, both by supplementing the instructions on the Portal and by publishing new guidelines. |
| **16.** | Article 191, paragraphs 3) and 4) are deleted. |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **17.** | Article 198, paragraph 2 is deleted.  In Article 198, after paragraph 4, paragraph 5, the following is added, reading as follows: “In cases of minor importance (procedural decisions, decisions on costs, decisions on suspension of proceedings due to withdrawal, etc.) the decisions are made and signed by the member of the Republic Commission who is the reporter in the case. Decision making in such cases by an individual member is regulated in more detail by the Rules of Procedure of the Republic Commission. |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **18.** | Article 238 of the PPL  It should be checked whether the authorities that submit a request for the initiation of misdemeanour proceedings would have to prove that capacity.  There is no explanation that would show which authorities the proponent had in mind, and to what extent the PPL would be changed (would someone who is now authorised to submit a request lose their authorisation, or would someone who was not authorised until now become that).  Missing deadline (e.g. “with no delay”). | Transparency Serbia | **The proposal is not accepted.**  The provisions of the current Law on Public Procurement specifically prescribe which authorities can submit a request for initiation of misdemeanour proceedings. Article 187, paragraph 1, item 9) of the Public Procurement Law prescribes the basis for submitting a request by the Republic Commission for the Protection of Rights in Public Procurement Procedures, while Article 179, paragraph 1, item 3) of the Public Procurement Law prescribes the legal basis for submitting a request by the Public Procurement Office.  The proposed article provides a legal basis for submitting a request and for other state authorities responsible for controlling the legality of spending public funds, who can submit a request for the initiation of misdemeanour proceedings when, acting within their jurisdiction, they determine that a violation of this law has been committed, which can be the basis for misdemeanour liability.  With regard to the proposal to define the deadline for filing requests, we remind you of the provisions of Article 238 of the PPL, which prescribes the statute of limitations for initiating and conducting misdemeanour proceedings. Therefore, the competent authorities must act in accordance with the aforementioned provision and definitely submit a request when they determine that a violation has been committed that is the basis for misdemeanour liability. Therefore, we are of the opinion that defining the deadline for submitting the request is unnecessary. |
| **19.** | Article 236 of the PPL  It is unclear what the reason for deleting the offence is. |  | The proposal is not accepted.  The previous practice and activities undertaken by the contracting authorities/entities/entities on the Public Procurement Portal during the implementation of public procurement procedures show that there is no possibility for the contracting authority/entity to commit these two violations. |
| **20.** | Amendment of Article 16  It is unclear why all the changes would be applied only from 1 January 2014 (e.g., regarding the initiation of misdemeanour proceedings). |  | **The proposal is not accepted.**  In connection with the above, we note that in the period from 26 July until 15 August 2023, a public hearing has yet to be organised, after which a number of activities need to be undertaken before the draft law is on the agenda of the National Assembly. As it is uncertain when the bill will be adopted, it is set for 1 January 2014 as the date from which the provisions of the same are applied, all in order to leave enough time for the interested parties to familiarise themselves with the new legal solutions.  Certainly, all authorities that have submitted requests to initiate misdemeanour proceedings can continue to do so without interruption. |
| **21.** | Article 227  It is unclear why the Republic Commission would not submit its decision immediately after making it through the Public Procurement Portal (it was suggested that it be submitted within ten days). |  | **The proposal is not accepted.**  The work process of the Republic Commission, in accordance with the provisions of the Public Prosecution Service and the Rules of Procedure of this body, implies that after the decision is made at the session of the Council of the Republic Commission, a written copy of the decision is prepared, and for this reason it is prescribed that it be delivered within a reasonable period of ten days from the date of adoption. |
| **22.** | New Article 152a  The proposed supplement is useful.  In order for the positive effects to be even greater, a new paragraph should be added that would prescribe the obligation to publish contracts concluded without the application of the Law on Public Procurement, based on the exceptions from Article 11 and certain exceptions from Article 12 of the Public Procurement Law (e.g., paragraph 1, items 1), 2), 4) and 11). |  | **The proposal is not accepted.**  The proposed Article 152a envisages the creation of a database on all contracts and contract amendments, so that all data on contracts will be in one place. Therefore, as a novelty, an obligation is being introduced for contracting authorities/entities to publish data on all changes to contracts (not only on changes based on Articles 157 and 158 of the PPL), as well as data on contracts concluded on the basis of Article 27 of the PPL.  Regarding the contract concluded on the basis of Articles 11 and 12 of the PPL, we remind you that data on these contracts are already available on the Public Procurement Portal. Namely, the obligation to publish data on these procurements is prescribed by Article 181 of the PPL. |
| **23.** | Article 6  The proposed change may have adverse consequences.  “Minimum impact on the environment” may be in conflict with achieving “economical spending of public funds”. That is why it is not appropriate and can create confusion when cost-effectiveness, efficiency and environmental protection are defined within the same principle.  Therefore, environmental protection should be defined either as a separate principle, or else put it in the context of cost-effectiveness (so that the additional costs of environmental protection are justified in the scope of additional protection provided through the subject of procurement).  For example, if the additional cost that arises for the contracting authority/entity due to the selection of the lowest possible procurement item (which is the meaning of the term “minimum”) is 50% higher, and environmental protection is only 5% higher, priority should be given to the principle of cost-effectiveness, and if the situation is reversed, the principle of environmental protection. |  | **The proposal is not accepted.**  The new legal solutions will result in raising the level of awareness of participants in public procurement procedures about the importance of environmental protection, as well as more frequent application of ecological aspects in public procurement, i.e., a significantly higher number of green public procurements compared to the previous period. The Draft Law on Amendments to the Law on Public Procurement, in addition to the principles of economy and efficiency, introduces the principle of environmental protection. In this sense, an obligation is introduced for contracting authorities/entities/entities to procure goods, services or works that have a minimal impact on the environment, which is in accordance with the goals defined by the Public Procurement Development Programme in the Republic of Serbia for the period 2019-2023, with the circular economy development programme in the Republic of Serbia for the period from 2022-2024 (“Official Gazette of the Republic of Serbia”, No. 137/22), the goals defined by the Green Agenda for the Western Balkans, as well as other applicable public policy documents. |
| **24.** | Related to Articles 6. - It is necessary to clarify part of the principle “...procurements ...that have a minimal impact on the environment” because it can create confusion for the contracting authority/entity as to whether this principle is fulfilled. | Institute for Public Health of Vojvodina | **The proposal is not accepted.**  The new legal solutions will result in raising the level of awareness of participants in public procurement procedures about the importance of environmental protection, as well as more frequent application of ecological aspects in public procurement, i.e., a significantly higher number of green public procurements compared to the previous period. The Draft Law on Amendments to the Law on Public Procurement, in addition to the principles of economy and efficiency, introduces the principle of environmental protection. In this sense, an obligation is introduced for contracting authorities/entities/entities to procure goods, services or works that have a minimal impact on the environment, which is in accordance with the goals defined by the Public Procurement Development Programme in the Republic of Serbia for the period 2019-2023, with the circular economy development programme in the Republic of Serbia for the period from 2022-2024 (“Official Gazette of the Republic of Serbia”, No. 137/22), the goals defined by the Green Agenda for the Western Balkans, as well as other applicable public policy documents. |
| **25.** | Regarding Article 134 - It can be very problematic for the Public Procurement Office to prescribe the types of goods, services and works for which the contracting authorities/entities are obliged to apply ecological aspects... because the Office does not have close expert knowledge on when it is possible to apply the ecological aspect in regard to the subject procurement, considering its nature and the ability of the market/potential bidders to fulfill the environmental aspect. This can result in the impossibility of procuring the necessary goods, services and works for the contracting authority/entity, and this is precisely the purpose of the Law on Public Procurement - for the contracting authority/entity to acquire the necessary goods, services and carry out the necessary works. The proposal is not accepted. |  | **The proposal is not accepted.**  When passing a by-law that will prescribe the types of goods, services and works for which the contracting authorities/entities will be obliged to apply environmental aspects, the Public Procurement Office will especially take into account the results of the conducted market research, which aims to identify the items of public procurement by of which there are opportunities to contribute to the wider application of green public procurement in the Republic of Serbia by including ecological aspects, without at the same time causing disruptions in the market, in terms of the inability of economic operators to respond to the set requirements and the limitation of competition in the public procurement market. |
| **26.** | Regarding Article 14, paragraph 1, item 3), the solution from the Law on Public Procurement from 2015 should be returned, which reads: “procurement of goods and services that the contracting authority/entity acquires for resale, processing and sale, as well as for the purpose of providing services or performing works on the market, provided that the contracting authority/entity does not have exclusive or special rights to resell or rent those goods, i.e., to provide services or performance of works for which those goods and services will be used”, because this definition is much more precise than the current one and corresponds to the actual needs of the contracting authority/entity. |  | **The proposal is not accepted.**  Bearing in mind that the mentioned exception is provided only by Directive 25/2014 EU (sectoral directive), and that it is defined by the same that the mentioned exception implies procurement for the purpose of resale, processing or renting to third parties on the market, and not for the purpose of providing services and performing works, the mentioned legal provision for public contracting authorities/entities had to be harmonised with the provision of the mentioned directive. For this reason, the application of the aforementioned provision is timed until the accession of the Republic of Serbia to the EU. |
| **27.** | SIDE ACTIVITIES OF PUBLIC PROCUREMENTS  It is necessary to clarify the provision of Article 2, paragraph 1, item 16) of the Law in terms of whether auxiliary public procurement tasks in the implementation of public procurement procedures can be performed by another legal or natural person, apart from the body for centralised public procurement. | Working group of the National Convention on the European Union for Chapter 5 | **The proposal is not accepted.**  The provisions of Article 2, paragraph 1, item 16) of the PPL prescribe that auxiliary public procurement activities consist of providing support for public procurement activities, among other things, in terms of preparation and implementation of public procurement procedures in the name and on behalf of the contracting authority/entity. The aforementioned provision does not exclude the possibility that the aforementioned auxiliary tasks are performed by another legal or natural person, and not only by the body for centralised public procurement. |
| **28.** | EXCEPTIONS  The proposal is to prescribe a simplified public procurement procedure for certain exempted procurements (obligatory publication of an advertisement on the initiation of the procedure - notices for voluntary prior transparency, etc.). |  | **The proposal is not accepted.**  Pursuant to Article 1, paragraph 1 of the PPL, the subject of regulation of this law is public procurement procedures, not procurement procedures to which the provisions of the Public Procurement Law do not apply. In this regard, the mentioned Article 49, paragraph 2 of the PPL stipulates the obligation for the contracting authority/entity to regulate in a separate act the way of planning and implementing procurements to which the law does not apply, from which it follows that each contracting authority/entity prescribes the procedure for the award of contracts for procurement to which the PPL does not apply. |
| **29.** | THRESHOLDS UP TO WHICH THIS LAW DOES NOT APPLY  Article 27 of the Law on Public Procurement is amended to read:  “The provisions of this law do not apply to:  1) procurement of similar goods, services and implementation of design contests, whose estimated value is less than RSD 1,000,000 and procurement of similar works whose estimated value is less than RSD 3,000,000 on an annual basis;  2) procurement of similar goods, services and implementation of design contests, the estimated value of which is less than RSD 15,000,000, for the needs of diplomatic missions, diplomatic and consular missions and the performance of other activities of the Republic of Serbia abroad, as well as the procurement of similar works for those needs whose estimated values are less than RSD 650,000,000 on an annual basis;  3) procurement of similar social and other special services from Article 75 of this law, the estimated value of which is less than RSD 10,000,000 when the procurement is carried out by a public contracting authority/entity, or less than RSD 15,000,000 when the procurement is carried out by a sectoral contracting authority/entity.  In the case referred to in paragraph 1 of this article, the principles of this law shall be applied in a manner that is appropriate to the circumstances of specific procurements." |  | **The proposal is not accepted.**  The current Law on Public Procurement contains provisions that prescribe the method of determining the subject matter of public procurement. Namely, Article 29, paragraph 3 of the PPL prescribes that the contracting authority/entity determines the subject matter of public procurement in such a way that it represents a technical, technological, functional and other objectively determinable whole. Also, Article 29, paragraph 2 of the PPL stipulates that the determination of the estimated value of the subject matter of public procurement cannot be done in a way that aims to avoid the application of this law, nor can the subject matter of public procurement be divided into several procurements for that purpose.  Based on the aforementioned provisions, as well as the provisions of Article 27 of the PPL, it can be concluded that the thresholds are not applied to the public procurement procedure, as stated in the comment, but to the public procurement subject determined in accordance with Article 29, paragraph 3 of the PPL.  Regarding the allegation that the law should emphasize that it is an estimated value determined on an annual basis, we remind you that the contracting authority/entity adopts a public procurement plan on an annual basis, which further implies that the same will include the procurements that it plans to start in the year in which carry that plan. When determining the subject matter of public procurement, determining the estimated value thereof, as well as applying the thresholds, the contracting authority/entity shall comply with the rules prescribed by the provisions of the PPL.  In addition to the above, the change in the method of determining the subject matter of public procurement, in terms of the introduction of the term “equal procurement”, will not bring major changes, given that the dilemmas related to the method of determining the subject matter of public procurement remained the same, even when the term “equal procurement” existed, but also now that we have a new definition.  Regarding the thresholds for the application of the law, they are determined in accordance with EU directives and the practice of countries in the region. |
| **30.** | SAME TYPE  Article 29 of the Law on Public Procurement is amended to read as follows:  “The estimated value of the public procurement item must be objective, based on the conducted examination and market research of the public procurement item, which includes checking the price, quality, warranty period, maintenance, etc. and must be valid at the time the procedure is initiated.  Determination of the estimated value of the subject matter of public procurement cannot be done in a way that aims to avoid the application of this law, nor can the subject matter of public procurement be divided into several procurements for that purpose.  The contracting authority/entity determines the subject matter of public procurement in such a way that it has a similar purpose and purpose and/or that represents a technical, technological, functional or other objectively determinable entity.” |  | **The proposal is not accepted.**  The provision of Article 29 of the PPL is fully harmonised with the EU Directives.  The current practice of the Public Procurement Office shows that the dilemmas of the contracting authorities/entities regarding the definition of the subject matter of public procurement have not increased in relation to the application of previous legal solutions. For this reason, we believe that the introduction of a definition of the same type of public procurement would not have an impact on reducing the dilemmas of contracting authorities/entities and control authorities regarding the question of whether a specific procurement represents a whole. |
| **31.** | SPECIAL ACT  Article 49 of the Law on Public Procurement is amended to read as follows:  “The contracting authority/entity is obliged to take all necessary measures so that corruption does not occur in the planning of public procurement, in the public procurement procedure or during the execution of public procurement contracts, in order for corruption to be detected in a timely manner, in order to eliminate or reduce the harmful consequences of corruption and so that participants in corruption would be punished, in accordance with the law.  The contracting authority/entity is obliged to regulate in a special act the method of planning, implementation of the public procurement procedure and monitoring of the execution of the contract on public procurement (method of communication, rules, obligations and responsibilities of persons and organisational units), the method of planning and implementation of procurements to which the law does not apply, as and procurement of social and other special services.  The Public Procurement Office regulates the content of a special act for direct and indirect users of budget funds in more detail.  The contracting authority/entity is obliged to publish a special act on its website.” |  | **The proposal is not accepted.**  Enacting a by-law that more closely regulates the content of a special act for direct and indirect users of budget funds would not be expedient, bearing in mind that there are great differences between the mentioned categories of contracting authorities/entities, both in terms of organisation, and in terms of the type and value of the public procurements they carry out. In addition, we remind you that a model of a special act has been published on the website of the Public Procurement Office, which can serve as an example for contracting authorities/entities and whose provisions can be adapted to their needs and organisational structure. |
| **32.** | INVITATION TO SUBMIT BIDS  The proposal is to provide in Article 56, paragraph 6 of the Law on Public Procurement that the deadline can be shortened to 15 days only if there is a justified urgency caused by circumstances that in no case depend on the actions of the contracting authority/entity and if the specified deadline is appropriate for the purpose of the public procurement regarding the time required to prepare an acceptable offer.  Also, our proposal is that the contracting authority/entity must inform the Public Procurement Office, which performs monitoring, of the shortening of the deadline in accordance with this provision, in order to ensure more effective supervision in the application of these provisions. |  | **The proposal is not accepted.**  The aforementioned legal solution is fully in line with EU directives. Through special options on the Public Procurement Portal, the Public Procurement Office has insight into all user activities related to the determination and shortening of deadlines. |
| **33.** | TWO-STAGE PROCEDURES  The proposal is that the procedure for opening applications in two-stage procedures be public, with decisions being delivered to each applicant individually, in such a way as to state the reasons for his exclusion, as well as for the exclusion, as well as the selection of other candidates, so that the admissibility of others can be challenged check-in. |  | **The proposal is not accepted.**  The aforementioned legal solution is fully in accordance with EU directives and as such prevents any contact and agreement between economic operators, that is, candidates. |
| **34.** | NEGOTIATION PROCEDURE WITHOUT PUBLISHING A PUBLIC INVITATION - URGENCY AND SPECIFIC BIDDERS  In the case of the negotiation procedure without the publication of a public invitation, changes should be proposed regarding the publication of tender documents and the mandatory publication of the opinion of the Office. |  | **The proposal is not accepted.**  The method of conducting the negotiation process without publishing a public call according to the provisions of the PPL is fully harmonised with the EU Directives and is carried out in the same way in the countries of the region, both those that are already EU members and those that are in the process of joining. The laws of the surrounding countries do not provide for the publication of tender documents for this type of procedure.  In this regard, we remind you that any interested person can request access to tender documentation from the contracting authority/entity based on the Law on Free Access to Information of Public Importance.  Publishing the opinion of the Office on the merits of applying the negotiation procedure does not contribute to the transparency of this type of public procurement procedure. In addition, any interested person can request information from the PPO on whether it has given an opinion and the content of that opinion, based on the Law on Free Access to Information of Public Importance. |
| **35.** | NEGOTIATION PROCEDURE WITHOUT PUBLISHING A PUBLIC INVITATION - ARTICLE 62,  PARAGRAPH 9 OF THE PPL  Article 62, paragraph 9 of the Law on Public Procurement must be supplemented with a description of the procedure carried out by the contracting authority/entity, and the Portal of Public Procurement must be harmonised with the Law on Public Procurement. |  | **The proposal is not accepted.**  The implementation of the negotiation procedure based on Article 62, paragraph 9 of the PPL is already regulated by the provisions of the PPL.  In the case of the implementation of the negotiation procedure based on Article 62, paragraph 9 of the PPL, the contracting authority/entity is not obliged to publish a notice on the public procurement portal about the implementation of the negotiation procedure, it is not obliged to submit to the Public Procurement Office an explanation and all documentation related to the reasons justifying the implementation of this type of procedure, nor does it have other obligations prescribed by Article 62, paragraphs 1-6 of the PPL (sending in writing via the Public Procurement Portal invitations for negotiations with the simultaneous submission of tender documentation containing the data provided for in paragraph 5 of the aforementioned article of the PPL). Therefore, the contracting authority/entity may, but is not obliged to, during the implementation of the negotiation procedure on this basis, undertake the actions provided for in Article 62, paragraphs 1-6 of the PPL, bearing in mind the urgent need for the subject matter of public procurement in emergency situations, i.e., in the case of procurement of goods that are bought on commodity exchanges, as well as procurement of goods and services on particularly favourable terms from an entity that permanently suspends or has suspended business activities.  When implementing the negotiation procedure based on Article 62, paragraph 9 of the Public Procurement Law, the contracting authority/entity is obliged to keep a record of the negotiation, as well as to publish the decision on the award of the contract and the notice on the award of the contract on the Public Procurement Portal. |
| **36.** | FRAMEWORK AGREEMENT WITH ONE BIDDER  Our proposal is to include in the existing provisions that regulate the framework agreement  a provision that would read as follows:  “If the framework agreement is concluded with one bidder, the tender documentation must contain the framework or maximum quantities of public procurement items.  The contracting authority/entity is obliged to prepare a report on the realised quantities of public procurement items after the execution of the framework agreement.” |  | **The proposal is not accepted.**  The aforementioned legal solution is fully in line with EU directives. The fact that Article 66, paragraph 1 of the PPL, prescribes that a framework agreement is an agreement between one or more contracting authorities/entities and one or more bidders, which determines the conditions and method of awarding contracts during the period of validity of the framework agreement, especially in terms of price and where appropriate quantities, indicates that adding the proposed paragraph 2a would contradict paragraph 1 of this article. |
| **37.** | Article 88 of the Law on Public Procurement is amended to read as follows:  “The contracting authority/entity is obliged, no later than 1 March of the current year, to adopt an annual public procurement plan that must contain the following information:  1) subject matter of public procurement and CPV mark;  2) estimated value of public procurement;  3) type of public procurement procedure;  4) approximate time of initiation of the procedure.  In the public procurement plan referred to in paragraph 1 of this article, the contracting authority/entity shall state if the procurement is carried out through the body for centralised public procurement.  The public procurement plan and all its subsequent changes or amendments are published by the contracting authority/entity on the Public Procurement Portal and on its website within ten days from the date of adoption.  Planning a new public procurement, changing the subject of a public procurement and increasing the estimated value of a public procurement by more than 10% are considered amendments to the public procurement plan.  The contracting authority/entity is not obliged to publish data from the public procurement plan that represent a business secret in the sense of the law governing the protection of business secrets or secret information in the sense of the law governing the confidentiality of data.  The estimated value cannot be considered confidential information or a business secret.  The contracting authority/entity can start the public procurement procedure if the procurement is foreseen in the annual public procurement plan.  In exceptional cases, when public procurement cannot be planned in advance or due to urgency, the contracting authority/entity may initiate a public procurement procedure even if the procurement is not provided in the public procurement plan.  The contracting authority/entity is obliged to adopt an annual Procurement Plan to which the Law does not apply, which must contain the following information:  1) subject of procurement and CPV mark;  2) the estimated value of the procurement;  3) basis for exemption from the application of the Law;  4) approximate time of initiation of the procedure.”  The procurement plan to which the Law does not apply and all its subsequent changes or additions shall be published by the contracting authority/entity on the Public Procurement Portal and on its website within ten days from the date of adoption.” |  | **The proposal is not accepted.**  Regarding the proposal that it is necessary to set a deadline for the adoption of the public procurement plan, we are of the opinion that it is also unnecessary, given that the provisions of the law prescribe a condition for the contracting authority/entity to initiate the public procurement procedure, that the subject of the public procurement must be foreseen in the public procurement plan. So, for the sake of example, it is unnecessary for the contracting authority/entity to adopt the public procurement plan by 1 March, if the need for a procurement arises only during the year.  Also, we are of the opinion that it is unnecessary to burden the contracting parties with the obligation to adopt a procurement plan to which the law does not apply, given that these are procurements that are carried out, not in accordance with the provisions of the PPL and through the Portal, but in accordance with the rules prescribed by the provisions of a special act from Article 49, paragraph 2 of the PPL and without the Public Procurement Portal. The contracting authority/entity can certainly draw up a procurement plan, as suggested in the model of a special act published on the website of the Public Procurement Office, but it is unnecessary to publish it on the Portal.  Regarding the allegations related to the estimated value, we item out that this is an opportunity for the contracting authority/entity, but not an obligation, and that any interested person has the opportunity to contact the contracting authority/entity with a request for access to information of public importance and to request information on the estimated value of the public procurement. |
| **38.** | Article 89 of the Law on Public Procurement is amended to read as follows:  “Before conducting the public procurement procedure, the contracting authority/entity must conduct market research in order to prepare the public procurement procedure and inform economic operators about their plans and requirements in connection with the procurement.  The contracting authority/entity, in terms of paragraph 1 of this article, may request or take into account the advice of independent experts, competent authorities or economic entities in connection with the preparation and implementation of the public procurement procedure, provided that this does not violate the principles of ensuring competition and prohibition of discrimination, equality of economic operators and transparency.  The contracting authority/entity is obliged to record and document in writing all actions undertaken in terms of paragraph 1 of this article.” |  | **The proposal is not accepted.**  Article 29, paragraph 1 of the PPL prescribes that the estimated value of the public procurement item must be based on the conducted examination and market research of the public procurement item, which includes checking the price, quality, warranty period, maintenance, etc. In addition, Article 49, paragraph 2 of the PPL prescribes the duty of the procuring entity to regulate, among other things, the way of planning public procurement, as well as procurements to which the law does not apply, in a special act. In this regard, the mentioned Article 41, paragraph 1 of the Also, we remind you that Article 41, paragraph 1 of the Public Procurement Law stipulates the obligation for the contracting authority/entity to record and document in writing all actions during the planning of public procurement. From the aforementioned legal provisions, it is clear that there is an obligation to conduct market research during the planning of public procurement, as well as the obligation of the contracting authority/entity to record and document all actions undertaken during the planning of public procurement, including market research. |
| **39.** | The proposal is to delete part of the provision from Article 94, paragraph 1, item 1) of the Law on Public Procurement: “failure to provide evidence of fulfillment of the criteria for the qualitative selection of a economic operator in accordance with Article 119 of this law.” |  | **The proposal is not accepted.**  From the provisions of Article 94, paragraph 1, item 1) of the Public Procurement Law, it follows that the contracting authority/entity has the possibility, but not the obligation, to demand from the economic operator to provide him with a means of security for the seriousness of the offer, among other things, in the event that he does not provide evidence of the fulfillment of the criteria for qualitative selection of a economic operator in accordance with Article 119 of the PPL. In this case, the means of security for the seriousness of the offer is a mechanism of protection of the contracting authorities/entities during the validity period of the offer, and if the bidder does not submit the required evidence within the deadline or does not prove with the evidence provided that he meets the criteria for the qualitative selection of the economic operator, regardless of the reasons that led to in addition, the contracting authority/entity has the possibility to activate the means of security for the seriousness of the offer, if he previously requested it in the tender documentation. The decision on whether to activate the security means in a specific case is made exclusively by the contracting authority/entity. In this sense, we note that the Public Prosecutor’s Office does not distinguish between failure to submit evidence within the deadline, with or without intention, or submission of evidence that does not prove the fulfillment of the criteria for the qualitative selection of a economic operator, since all of the above situations produce equal consequences for the contracting authority/entity. Namely, in each of the mentioned cases, the contracting authority/entity is obliged to reject the bid of that bidder and invite the next bidder who submitted the most favourable bid, that is, to suspend the public procurement procedure, if there are reasons for suspension, by applying Article 119, paragraph 6 of the PPL. |
| **40.** | The proposal is that the optional ground for exclusion from Article 112, paragraph 1, item 4) of the PPL be provided as a mandatory ground for the exclusion of economic entities (bidders) from the public procurement procedure, so that it becomes an integral part of Article 111 of the Law on Public Procurement, if, despite the measures, a certain bidder has an advantage over other bidders. |  | **The proposal was taken into consideration.** |
| **41.** | The proposal is that persons who prepare certain parts of the tender documents, as well as managers within the contracting authority/entity whose scope is the implementation of public procurement procedures, as well as the legal representative/head of the contracting authority/entity, should be responsible for the legality of public procurement procedures. |  | **The proposal is not accepted.**  We remind you of the provisions of Article 49, paragraph 2 of the PPL, which stipulates that the contracting authority/entity shall, among other things, more closely regulate the manner of communication, rules, obligations and responsibilities of persons and organisational units in a special act. Therefore, the contracting authority/entity regulates issues related to the obligations and responsibilities of persons in connection with public procurement affairs by a special act, all depending on the internal organisation of each contracting authority/entity.  Regarding the responsibility of the persons who prepare certain parts of tender documentation, we remind you that Article 92 of the PPL prescribes the composition and tasks of the commission for public procurement, and that the task of the commission is, among other things, the preparation of tender documentation. The last paragraph of Article 92 of the PPL stipulates that the commission ensures the legality of the procedure. The responsibility of individual members of the commission is regulated by a special act of the contracting authority/entity and the same cannot be regulated by the provisions of the law.  In the end, the manager of the contracting authority/entity is certainly responsible and the same is already provided for in the provisions of the law. We remind you that Article 236 of the PPL prescribes offences for which, among other things, the responsible person of the contracting authority/entity is also responsible. |
| **42.** | Article 105 of the Law on Public Procurement defines the types of advertisements published by the contracting authority/entity, so we believe that the Law should also provide for the Notice of Execution of Public Procurement Contracts, as a new type of advertisement that would be published on the Public Procurement Portal.  This additional advertisement would be made after the completion of the public procurement and would contain:  • data on the public procurement contract;  • data on the value and degree of execution of the contract (value of delivered goods, services, works);  • data on the level of payment under the contract (how much was paid for the above-mentioned delivered goods, services, works);  • possibly other significant payment data (existence of advances, for example);  • data on compliance with execution deadlines;  • data on measures taken to sanction non-compliance with contractual obligations on the part of the selected bidder (collected contractual fines, implemented means of financial security, etc.). |  | **The proposal is not accepted.**  Article 1 of the Law stipulates that this law regulates the rules of public procurement procedures carried out by contracting authorities/entities or other entities in cases determined by this law, for the purpose of concluding a contract on the public procurement of goods, services or works, a framework agreement, as well as conducting a design competition.  Article 154, paragraph 5 of the Law stipulates that the ministry responsible for financial affairs supervises the execution of public procurement contracts.  The draft law proposed the amendment of Article 154, paragraph 5, as follows:  “The Ministry in charge of financial affairs regulates the manner of supervision and supervises the execution of public procurement contracts.”  In order to monitor the execution of the contract, the ministry in charge of finance issues certain by-laws.  Following the above, the subject of regulation of this law cannot be issues related to the execution of public procurement contracts.  In addition to the above, any interested person has the opportunity to contact the contracting authority/entity and request information on the execution of public procurement contracts, in the manner prescribed by the provisions of the Law on Free Access to Information of Public Importance (“Official Gazette of the Republic of Serba”, Nos. 120/2004, 54/ 2007, 104/2009, 36/2010 and 105/2021). |
| **43.** | CRITERIA FOR QUALITATIVE SELECTION OF THE ECONOMIC OPERATOR - EXCLUSION GROUNDS  The proposal is to delete the five-year limit from the provisions of Article 111, paragraph 1, item 1) of the Law on Public Procurement, because special regulations regulate the issue of deleting the legal consequences of a conviction.  The proposal is to specify the provision of Article 111, paragraph 1, item 5) of the Law on Public Procurement in the part that refers to the exercise of undue influence, especially with regard to what will be considered as evidence of “attempt to do something”, then what considered as an “advantage in the public procurement procedure”, as well as “inappropriate influence on decision-making”, “misleading data” or to be deleted from the mandatory grounds for exclusion if this is not possible.  It is also necessary to reformulate the provision of Article 112, paragraph 1, item 6) of the Law on Public Procurement, because it is too severe a sanction that the bidder cannot participate in the public procurement procedure for three years, if he did not submit the correct data by mistake or for some justified reason he could not submit evidence in the expert evaluation of bids, and the reason did not depend on its actions.  Also, it should be specified that failure to provide evidence refers to all required evidence, and not, e.g. on one piece of evidence that was not submitted, while all the others were. |  | **The proposal is not accepted.**  Although the aforementioned provision specifies the period of time for which the absence of grounds from Article 111, paragraph 1, item 1) of the LPL is proven, the economic operator has the opportunity to provide the contracting authority/entity with evidence that it has taken measures, i.e., to prove its reliability regardless of the existence of grounds for exclusion in the manner prescribed by Article 113 of the PPL.  The provision of Article 111, paragraph 1, item 5) of the PPL is fully in accordance with the EU directive, and with very clear wording indicates the sending of threats, giving false information, etc., and does not specify the form by which the same will be proved, considering the large the number of ways in which it is possible to determine the existence of the mentioned procedures.  With regard to the proposal on the reformulation of the provisions of Article 112, paragraph 1, item 6) of the PPL, we item out the possibility of applying Article 113 of the PPL. |
| It is necessary to regulate in more detail and more precisely the possibility from Article 113 of the Law on Public Procurement, which is given to the contracting authorities/entities, and also to the Republic Commission, which, in the procedure for the protection of rights, if the reasons for the appropriateness and acceptability of offers based on them are challenged, will have to determine whether they have been undertaken take appropriate measures, and establish clear criteria and definitions of disputed terms, which will provide for a strict and concrete course of action of the contracting authorities/entities should the described situations arise. |
| **The proposal is not accepted.**  The aforementioned legal provision is fully in line with EU directives.  In addition to the above, we are of the opinion that the law cannot prescribe the manner of action of the contracting authority/entity for each of the situations that may occur and the manner of decision-making depending on the severity and specific circumstances of each form of unprofessional conduct. Therefore, not only can the law prescribe all possible situations that may occur, but it is absolutely impossible to define and predict them in advance. The final decision must be made by the contracting authority/entity.  Certainly, if the bidder is not satisfied with the decision of the contracting authority/entity, he has the possibility to challenge it with a request for the protection of rights. |
| **44.** | CRITERIA FOR SELECTION OF FULFILLMENT OF REQUIREMENTS FOR PROFESSIONAL ACTIVITY  Proposal to amend Article 115, paragraph 2 of the Law on Public Procurement:  “In so far as economic operator has to possess a particular authorisation, or a permit issued by the competent authority for the performance of activity which is the subject-matter of public procurement, or to be a member of a particular organisation in order to be able to perform the activity concerned, contracting authority/entity may require them to prove that they hold such authorisation, permit, or membership.” |  | **The proposal is not accepted.**  The provisions of Article 115, paragraph 2 of the PPL is fully harmonised with the provisions of EU Directive 24/2014.  The Public Procurement Law does not oblige the contracting authority/entity to require economic operators to prove in the public procurement procedure that they have the authority, that is, the permission of the competent authority to perform the activity that is the subject matter of public procurement, but this is foreseen as a possibility. When defining the criteria for the selection of an economic operator, the contracting authorities/entities must certainly take into account the provisions of the regulations governing the activity in the field of which the subject of the public procurement is. On the other hand, if for the performance of a certain activity it is necessary to have an authorisation, i.e. a license, in accordance with the regulations governing the subject area, economic operators must certainly possess that authorisation, regardless of whether the contracting authority/entity in the tender documentation requested to prove the possession the same. |
| **45.** | CONTRACT AWARD CRITERIA  After paragraph 2, paragraphs 3 to 4 shall be added in Article 132 of the Law on Public Procurement, which read as follows: “In the case of awarding a contract for the public procurement of computer programme development services, architectural services, engineering services, translation services or advisory services, the contracting authority/entity shall determine the most economically advantageous offer based on the criteria from paragraph 1, items 2) or 3) of this article.  The Public Procurement Office prescribes more detailed rules for determining the criteria of the most economically advantageous offer for services from paragraph 3 of this article.” |  | **The proposal is not accepted.**  The legal provision of the proposed content is defined in order to increase the participation of criteria for awarding contracts that are not based only on price. Statistical data show that the criterion for awarding contracts based only on price is applied in 95% of public procurement procedures.  The proposed solution is fully in line with the EU directive and other European countries have similar solutions.  Regarding the specific dilemmas presented in the comments on the Draft Law, we highlight the following:  - The proposed services represent such types of services, where the quality of their execution depends directly on the quality of the staff who are engaged in the execution of the specific service. For this reason, it was proposed that in the case of these services, in addition to the price, the contracting authority/entity must also take into account elements of quality or apply the life cycle cost criterion.  - When it comes to the cost of the life cycle, as a type of criterion for these services, the contracting authority/entity can, for example, when procuring the service of creating project and technical documentation, award additional points to projects that envisage the construction of facilities whose maintenance costs over a certain period of time will be high lower compared to projects that do not provide for it. Certainly, the contracting authority/entity is not obliged to apply this type of criteria for certain services, if its application is not appropriate, as is the case with translation services. But with this type of service, the characteristics of the person translating and his competences are of crucial importance for their quality performance, while the price is less important. For example, in the case of translation services, the contracting authority/entity can award additional points to the bidder who responds more quickly to the contracting authority/entity's invitation to perform a specific translation service or to the bidder who has experience in translating EU directives.  - The Public Procurement Office publishes models of tender documents on its website, in which it promotes the application of criteria for awarding contracts that are not based on price. In addition to the models currently published, models of tender documents for the services proposed in the Draft Law will be created. |
| **46.** | DISCRETION REGARDING SUPPLEMENT TO THE OFFER  The proposal is that the provision of Article 142, paragraph 2 of the Law on Public Procurement be regulated in a way that does not leave such a degree of discretion to the contracting authorities/entities, following the example of laws in EU member states.  It must be specified whether the submission of additional documentation, which could have been submitted but was not submitted when the bids were submitted, is permitted, or whether it is only a question of supplementing the documentation that clarifies the already submitted evidence in the bids. |  | **The proposal is not accepted.**  In accordance with the provisions of Article 142, paragraphs 1 and 2 of the PPL, it is clearly concluded that the contracting authority/entity can request additional explanations, in the event that the bidder or candidate submits incomplete or unclear documentation. The meaning of this norm is reflected in the ability of the contracting authority/entity to require the bidder or candidate to clarify or specify the content of the submitted documentation through an amendment, and not to submit parts of the documentation that contain evidence that was completely omitted, for any reason. |
| **47.** | CONTRACT AWARD CRITERIA  It is necessary to define more precisely how it will be established that there is “valid evidence” of infringement of competition or corruption, as well as what is meant by the term “valid” evidence - does it mean determined infringements of competition and the existence of corruption in special procedures, concrete decisions of competent authorities or court rulings. |  | **The proposal is not accepted.**  In connection with the above, we remind you of the basic difference between Article 112 of the PPL, which prescribes the grounds for exemption, which the contracting authority/entity can define in the tender documentation, and among which the grounds for exclusion are prescribed in item 3, paragraph 1, and Article 144 of the PPL, which are defined grounds for rejecting bids as unacceptable. With regard to Article 112 of the PPL, it is about certain behaviours of bidders, which the contracting authority/entity determines in the tender documentation as grounds for exclusion in accordance with the mentioned article of the PPL, and which occurred in the previous period, that is, they do not relate to a specific public procurement procedure. In this case, the evidence is always the decision of the competent authority. With regard to Article 144 of the PPL, it refers to certain behavior of bidders in connection with a specific public procurement procedure, for which there does not necessarily have to be a decision of the competent authority which determined that such behavior is considered a violation of competition. Certainly, the contracting authority/entity can, after making the decision on awarding the contract, that is, suspending the procedure, ask the competent authorities for an opinion regarding the evidence related to the specific public procurement procedure, which indicates the existence of a violation of competition or corruption. |
| **48.** | SUSPENSION OF THE PROCEDURE  The proposal is that the provision of Article 147, paragraph 1, item 3) of the PPL be “tightened”, so that the condition for suspension is exceptional circumstances due to which the created tender documents no longer meet the needs of the contracting authority/entity, and these exceptional circumstances should have arisen without responsibility of the contracting authority/entity itself (that there was no mistake in the tender documentation, that it was not subsequently noticed that the criteria should have been different, etc.). |  | **The proposal is not accepted.**  The aforementioned proposal is covered by Article 147, paragraph 1, items 1)-3) of the PPL, in which it is prescribed that the contracting authority/entity makes a decision to suspend the public procurement procedure if:  - there are demonstrable reasons, which could not have been foreseen at the time of the initiation of the procedure and which make it impossible for the procedure to be completed;  - there are demonstrable reasons due to which the need of the contracting authority/entity/entity for the procurement in question has ceased, which is why it will not be repeated during the same budget year, that is, in the next six months;  circumstances become known which, if they had been known earlier, would have caused a significant change in the content of the procurement documentation. In this sense, we remind you that the same article prescribes that the Decision on the suspension of the public procurement procedure must be explained, it must contain, in particular, data from the report on the public procurement procedure, that is, the reasons for the suspension of the procedure and instructions on the legal remedy. In particular, we note that the Decision on suspension of the public procurement procedure may be the subject of a challenge to the request for the protection of rights. |
| **49.** | EXECUTION AND AMENDMENTS TO THE CONTRACT  It is necessary to prescribe the method of supervision over the execution of public procurement contracts by the Ministry of Finance, the criteria by which the ministry will act in the selection of contracts that will be supervised, the procedure for the notification of participants in the public procurement procedure or interested persons in connection with the implementation of a specific contract, the procedure according to determined deviations from the agreed provisions in implementation, as well as the availability of information to the interested public about the performed supervision.  Possibly, it could be stipulated by a by-law, although it is more logical that it be regulated by the law itself.  Also, the contracting parties must be enabled and required to publish data on the Portal regarding all grounds for amending the contract. |  | **The proposal is not accepted.**  Article 9 of the Draft Law on Amendments to the Law on Public Procurement stipulates that the ministry responsible for financial affairs shall regulate the manner of supervision and supervise the execution of contracts on public procurement. The aforementioned implies the adoption of a by-law by which the Ministry of Finance will more closely regulate the way of supervising the execution of public procurement contracts.  Also, please note that Article 8 of the Draft Law on Amendments to the Law on Public Procurement stipulates the obligation to publish data, among other things, on all contract amendments based on Articles 156-161 of the PPL, which means that contracting authorities/entities will be obliged to publish data on the Public Procurement Portal not only about changes made based on Articles 157 and 158 of the PPL, as it is the case now, but also on the changes made according to all the other bases provided by law for changing public procurement contracts. |
| **50.** | MONITORING THE IMPLEMENTATION OF PUBLIC PROCUREMENT REGULATIONS  Article 180 of the Law on Public Procurement is amended to read as follows:  “Monitoring of the implementation of regulations on public procurement is carried out by the Public Procurement Office in order to prevent, detect and eliminate irregularities that may arise or have arisen in the application of this law.  The monitoring procedure is carried out on the basis of the annual monitoring plan that the Public Procurement Office adopts by the end of the current year for the following year, ex officio and based on notification of irregularities.  The annual monitoring plan includes at least 1% of the number of public procurement procedures conducted in the previous year.  Ex officio monitoring is carried out in the case of conducting a negotiation procedure without prior publication from Article 61, paragraph 1, items 1) and 2) of this law, for public procurements whose estimated value is greater than RSD 1,000,000,000, as well as in respect of compliance with the principles of this law for procurements that are exempt from the application of the law, whose estimated value is greater than RSD 1,000,000,000.  Monitoring is also carried out on the basis of notifications from legal or natural persons, state administration bodies, bodies of autonomous provinces and local self-government units, and other state bodies.  The monitoring carried out during the implementation of the public procurement procedure does not stop the public procurement procedure.  State administration bodies, bodies of autonomous provinces and local self-government units and other state bodies, contracting authorities/entities, as well as economic operators are obliged, at the request of the Public Procurement Office, within 15 days from the receipt of the request, to submit the requested data and notifications that are from importance for the implementation of monitoring.  Monitoring is not carried out:  1) if it is determined that the Public Procurement Office is not competent, in which case the Office immediately informs the competent authority, as well as the authority or person who submitted the notification, in compliance with the regulations on the protection of whistleblowers;  2) if a period of three years has passed since the end of the public procurement procedure or the conclusion of the contract without conducting the procedure;  3) if the applicant cannot be determined from the notification and the notification does not contain enough information for action.  The Public Procurement Office prepares an annual summary report on the conducted monitoring, which it submits to the Government and the National Assembly and publishes on its website no later than 31 March of the current year for the previous year.  The Office publishes the findings of the monitoring of the public procurement procedure on the Public Procurement Portal, within 15 days from the end of the procedure, and informs the contracting authority/entity and the submitter of the notice referred to in paragraph 5 of this article.  The Public Procurement Office more closely regulates the manner of implementation of monitoring.” |  | **The proposal is not accepted.**  The Public Procurement Office (hereinafter referred to as: the Office), in accordance with Article 180 of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 91/19, hereinafter referred to as: the PPL), monitors the implementation of regulations in the field of public procurement on the manner prescribed by the Rulebook on Monitoring the Implementation of Regulations on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 93/20, hereinafter referred to as: the Rulebook).  As one of the types of monitoring, regular monitoring is prescribed, which is carried out on the basis of the annual monitoring plan. During the selection of monitoring subjects, the equal representation of all contracting structures is taken into account, and the risk assessment is also carried out on the basis of the monitoring carried out in the previous year and the analysis of the state of previously carried out activities of the Office. In the current practice of conducting monitoring on this basis, the Office's annual monitoring plan for each subsequent year predicted a larger number of contracting authority/entitys compared to the monitoring plan from the previous year. Bearing in mind that the number of contracting authority/entitys, and therefore the number of procedures that are the subject of monitoring, increases from year after year, we are of the opinion that the subject of the regulation of the PPL should not be prescribing the percentage amount of procedures that will be controlled. Also, in connection with the proposal to amend the PPL with regard to prescribing the obligation to carry out monitoring when it comes to procurements whose value is greater than one billion dinars, we note that the Office will consider, when preparing the annual monitoring plan, to include also the contracting authorities/entities who carried out the mentioned procedures, taking into account the circumstances of the specific case, as well as the personnel capacities of the Office.  In connection with the allegations that the LPP does not contain rules on the actions of the Office in the event that it is not competent to monitor, we item out that the same is prescribed in Article 10 of the Rulebook, and that the aforementioned does not need to be foreseen by changes to the PPL.  When it comes to the allegations that the PPL does not give the possibility for the Office to carry out monitoring in case of submission of an anonymous report, we item out that they are not correct, considering that Article 180, paragraph 5, item 3) of the PPL stipulates that monitoring is not carried out if from the notification the applicant cannot determine the data relevant to the procedure. Therefore, from the aforementioned legal provision, it can be concluded that the monitoring procedure is not carried out when both of the aforementioned conditions are cumulatively met. Therefore, if an anonymous report is submitted to the Office indicating specific irregularities in a certain public procurement procedure, the Office in that case conducts the monitoring procedure and undertakes all activities in accordance with the PPL.  With regard to the annual monitoring report, we point out that it contains data that are exhaustively listed in Article 12 of the Rulebook, and which refer to all activities undertaken by the Office during monitoring during the previous year. Therefore, we are of the opinion that it is not necessary to specifically stipulate that it is a summary report on the conducted monitoring. At the same time, we item out that the aforementioned report is published by the National Assembly on its website, and that it is publicly available to all interested parties.  In addition to the above, we would like to item out that after each monitoring procedure, the Office informs the applicant of observed irregularities, and in connection with the actions of the subject of monitoring undertakes all the activities prescribed by the provisions of the PPL. The results of each individual monitoring report are contained in the annual monitoring report, which is publicly available. Also, please note that in a certain number of monitoring procedures, the Office acts according to the requests of the competent prosecutor’s offices and authorities of the Ministry of the Interior, before which the procedure for a specific criminal complaint is ongoing. Therefore, we believe that the publication of the results of the conducted monitoring at a stage when a certain procedure under their jurisdiction is in progress before other authorities, may result in the obstruction of the said procedure. |
| **51.** | PROHIBITION OF INFLUENCE ON THE REPUBLIC COMMISSION  The provision of Article 188 of the Law on Public Procurement should be specified, because formulated in the current way it covers a wide range of actions, so that almost every mention of the work of the Republic Commission can be classified as an attempt to influence or a public appearance to influence the course of proceedings before the Commission. |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **52.** | PREVENTION OF CONFLICT OF INTEREST AND EXCEMPTION  Article 196, paragraph 4 of the PPL is amended to read as follow: “The president or a member of the Republic Commission cannot decide in the rights protection procedure or in another procedure in accordance with this law if he owns any percentage of shares, that is, the action of participants in the rights protection procedure.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **53.** | REASONS FOR THE DISMISSAL OF THE PRESIDENT AND MEMBERS OF THE REPUBLIC  COMMISSION  Article 197 of the Law on Public Procurement, among the reasons for the termination of the mandate of the President and members of the Republic Commission, would have to include unprofessional performance of the function. |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **54.** | METHOD OF ORGANISING THE WORK OF THE REPUBLIC COMMISSION  The proposal is to precisely define “complex” situations in which it is possible to decide on a larger number of members of the Republic Commission, but so that the “broader” council is formed before the case is assigned to work.  Also, it is necessary to consider the possibility that, within the provisions of Article 201 of the PPL, which regulates the general session of the Republic Commission, provide, among other things, for decision-making in specific, more complex cases, and in this way ensure greater transparency in the work and a greater degree of objectivity in the actions of the Republic Commission, especially in those specific, complex situations. |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **55.** | LEGAL UNDERSTANDING  Article 201 of the PPL is amended to read as follow:  “The Republic Commission in its regular session:  1) adopts the rules of procedure;  2) adopts binding principled legal positions in connection with the application of regulations under its jurisdiction;  3) decides by acting on the decision of the Administrative Court, which annulled the decision of the Republic Commission in an administrative dispute;  4) determines legal understandings in connection with the application of regulations under its jurisdiction with the aim of harmonising the legal practice of the Council of the Republic Commission.”  Principled legal positions and legal understandings related to the application of regulations under the competence of the Republic Commission are necessarily published on the website of that authority as soon as possible from the day of adoption at the general session.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **56.** | REQUEST FOR PROTECTION OF RIGHTS IN PUBLIC INTEREST  Article 211, paragraphs 2 and 3 of the PPL is amended to read as follow:  “A request for the protection of rights can be submitted by a economic operator, a candidate, or a bidder who had or has an interest in the award of a specific contract, i.e., a framework agreement, and who indicates that due to the actions of the contracting authority/entity contrary to the provisions of this law, he was damaged or could be damaged (in hereinafter referred to as: applicant).  A request for the protection of rights in the public interest will be submitted without delay by the Public Procurement Office, the State Audit Institution, the Budget Inspection, the public prosecutor and the public ombudsman, when, in the exercise of their powers, they learn from whistleblowers or other persons about a violation of regulations that may have harmful effects. consequences for public funds, and such a request can also be submitted when they learn of other irregularities in public procurement procedures.  Authorities and organisations referred to in paragraph 2 of this article are not obliged to submit a request for the protection of rights based on the notification of a economic operator that initiated the procedure for the protection of rights in the subject public procurement procedure or failed to do so within the prescribed period.  In the case of submitting a request for the protection of rights referred to in paragraph 2 of this article, the provisions of this law that apply in the case of a request submitted by the applicant referred to in paragraph 1 of this article, except for the obligation to pay a fee for submitting a request for the protection of rights, shall be applied accordingly.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **57.** | MANNER OF SUBMISSION OF A REQUEST FOR PROTECTION OF RIGHTS  Article 213 of the Law on Public Procurement is amended to read as follows:  “The request for the protection of rights shall be submitted electronically through the Public Procurement Portal simultaneously to the contracting authority/entity and the National Commission.”  Article 219, paragraph 9 of the Law on Public Procurement is amended to read as follows:  “The complaint is submitted electronically through the Public Procurement Portal simultaneously to the National Commission and the contracting authority/entity.” |  | **The proposal is already covered by Articles 11 and 12 of the Draft Law on Amendments to the Law on Public Procurement.**  It follows that before submitting the proposal, the proposer did not familiarize himself with the text of the draft Law on Amendments and Supplements to the Law on Public Procurement, which is the subject matter of public consultations, and in which Article 11 stipulates that Article 213, paragraph 1, is amended to read as follows: “The request for the protection of rights shall be submitted electronically through the Public Procurement Portal simultaneously to the contracting authority/entity and the Republic Commission.” Also, Article 12 of the Draft Law on Amendments to the Law on Public Procurement stipulates that Article 219, paragraph 9, is amended to read as follows: “The complaint is submitted electronically through the Public Procurement Portal simultaneously to the National Commission and the contracting authority/entity.” |
| **58.** | PRESENTATIONS TO THE COMMITTEE FOR FINANCE, REPUBLIC BUDGET AND CONTROL OF SPENDING OF PUBLIC FUNDS OF THE NATIONAL ASSEMBLY  It is necessary that the Law on Public Procurement foresees the possibility of submitting petitions to the work of the Republican Commission, so that the competent committee can submit a petition from the contracting authority/entity or bidder, that is, another interested person who believes that his rights have been seriously violated in the proceedings before the Republic Commission.  In the same way, if the competent committee of the assembly comes to know in another way that indicates the unprofessional and unscrupulous performance of the function by the members of that body, the competent committee should be able to request the Republic Commission to submit a report within a certain period on each individual case in which was deciding. In that case, the Republic Commission would have the obligation to submit all the documentation on a specific case to the competent committee within the given time limit, and the member of the panel of the Republic Commission that decided on it.  subject would be invited to orally explain the position of the Republic Commission on the subject and the decision made in front of the competent committee, at a public session.  Also, it is necessary to oblige the Finance Committee to regularly consider the aforementioned petitions at public meetings. |  | **The proposal is not accepted.**  The matter to which the given proposal refers is subject to the regulation of other regulations. |
| **59.** | ADMINISTRATIVE DISPUTE  It is necessary to provide for the shortening of the deadlines for submitting the lawsuit to the defendant authority as well as the submission of the response to the lawsuit by that authority, with the necessary determination of a shorter deadline for making a decision of the Administrative Court in administrative disputes in public procurement procedures.  It is necessary to consider the possibility of stipulating that in certain cases, for example, over certain value limits, the filed lawsuit has a suspensive effect, unless the Administrative Court decides otherwise. Another possibility would be to grant the Administrative Court clearer authority and set a shorter deadline for the introduction of a temporary measure that would suspend the execution of the decision of the Republic Commission for a certain period. It is also necessary to regulate more precisely the judicial control over the procedure for the protection of rights in public procurement procedures by means of provisions that would refer to active identification for the initiation of administrative  dispute. Capacity to sue in the procedure would have to refer to the contracting authority/entity, which in terms of competence represents a higher instance than the contracting authority/entity that carries out the procurement (e.g., founder for public companies, ministries for hierarchically lower state administration bodies, etc.).  It would be important to consider the possibility of giving clearer powers to the Administrative Court in terms of handling disputes with full jurisdiction (to make a decision that changes the decision of the Republic Commission). |  | **The proposal is not accepted.**  The matter to which the given proposal refers is subject to the regulation of other regulations. |
| **60.** | FEE AND PROCEDURE COSTS  The proposal is to delete Article 225, Paragraph 7 of the Law on Public Procurement:  Also, the Law on Public Procurement would have to precisely define what are the necessary and justified costs of the rights protection procedure, so that the parties to the procedure would be familiar with the manner in which the costs will be allocated to them and what those costs are.  The proposal is that the applicant be recognised for the necessary costs of the rights protection procedure, which would include the paid amount of the fee for the submitted application, the preparation of a request for additional clarifications of the competition documentation (for those applicants who, after the questions have been asked, also submitted a request for the protection of rights), a request for the protection of rights , supplements to the request for the protection of rights, written statement on the continuation of the procedure before the Republic Commission, reasoned submissions (opinions in response to the contracting authority/entity's request), appeals, requests for reimbursement of costs (when requested by a separate submission). |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL.  . |
| **61.** | OFFENCES OF THE CONTRACTING AUTHORITIES/ENTITIES  Article 236, paragraph 1, item 2) of the Law on Public Procurement should be deleted and this action should be provided as an integral part of the criminal offence of Abuse in Public Procurement. |  | **The proposal is not accepted.**  The amendment proposed by the submitter of this proposal implies the need to amend the corresponding provision of Article 228 of the Criminal Code, the proposal of which is the responsibility of other authorities.  Awarding a contract without implementing the public procurement procedure prescribed by the PPL in a situation where the conditions prescribed by this law were not met in certain cases may constitute the act of committing the criminal offence of abuses in connection with public procurement. However, there are certainly situations in which the awarding of a contract without a public procurement procedure does not have all the features of a criminal offence from Article 228 of the Criminal Code, and we believe that there is a justified reason for the aforementioned action to be considered a misdemeanour. |
| **62.** | PROCUREMENTS IN THE FIELD OF DEFENCE AND SECURITY  1. Article 20 Article 20 of the PPL, in paragraph 1 after the words: “provisions of this law shall not be applied by contracting authorities/entities to the award of contracts”, the word “public” should be deleted.  2. In Article 20 of the PPL, paragraph 1, item 3) should be expanded to read as follows: “when the procurement is necessary and exclusively aimed at the needs of intelligence activities”.  3. Article 20 of the PPL - Add three new paragraphs that read as follows: “The government prescribes the conditions, manner and procedure for awarding procurement contracts and design contests in which the provisions of this law do not apply based on paragraph 1, items 2, 3 and 6.”  Within nine months from the adoption of this law, the Government shall issue a list of goods, services and works for which the application of the public procurement procedure would lead to the disclosure of data whose disclosure is in conflict with the interests of the national security of the Republic of Serbia.  For the procedures for awarding the procurement contract from paragraph 1 of this article, the contracting authority/entity is obliged to regulate the rules and method of determining the subject of procurement and the estimated value, the method of market research, the method of ensuring competition, the method of monitoring the execution of the contract and the rules of procedure in connection with the amendment of the contract.ˮ  4. Article 20 of the Public Procurement Law - After Article 20, add article that reads as follows: “The contracting authority adopts the annual procurement plan referred to in paragraph 20 of this article and submits it to the Government for adoption no later than January 31 of the current year. The Government informs the competent committees of the National Assembly about the adoption of the submitted procurement plan. The competent committees of the National Assembly are the committee responsible for the budget and finances and the committee responsible for defense and internal affairs, i.e., the control of the security services if the contracting authority/entity is the security service specified in the law regulating the basics of the security services.  The contracting authority/entity shall submit an annual report on the procurements from Article 20 of this law to the Government and competent committees of the National Assembly from paragraph 1 of this Article by 31 March of the current year, for the previous year. In particular, the report contains data on the subject of the procurement, the manner in which the procedure was carried out, submitted bids, the criteria for selecting the most favourable bid, the concluded contract and the supplier.  The form and content of the report from paragraph 2 of this article shall be regulated in more detail by the Government.”  5. Article 21 of the PPL should be deleted.  6. Article 26 of the PPL - In paragraph 2, delete the words: “or if different parts of the contract can be separated and the award of one contract does not aim to avoid the application of this law.”  Also, paragraph 3 should be added, which reads as follows: “The contracting authority/entity is obliged to provide in the annual defense and security procurement plan from Article 20 of this law and in the annual defense and security procurement plan from Article 164 of this law in a separate part, he shall list the planned procurements in which the different parts of the contract cannot be objectively separated, in accordance with paragraph 2 of this article and explain the objective circumstances that make it impossible to separate the parts of the contract.”  7. Article 164 of the PPL - Add three new paragraphs that read as follows: “Military equipment is equipment specially made or adapted for military purposes, intended for use as weapons, ammunition or military material.”  Security-sensitive equipment, services and works are goods, services and works for security purposes, which include, require and contain classified information.  When carrying out procurements from paragraph 1 of this article, the contracting authority/entity is obliged to prevent the existence of conflicts of interest, to ensure, when possible, competition and d the agreed price is not higher than the comparable market price.  The contracting authority/entity adopts the annual procurement plan from paragraph 1 of this article and submits it to the Government for adoption no later than January 31 of the current year. The Government informs the competent committees of the National Assembly about the adoption of the submitted procurement plan. The competent committees of the National Assembly are the committee responsible for the budget and finances and the committee responsible for defense and internal affairs, i.e. control of the security services if the contracting authority/entity is the security service specified in the law regulating the basics of the security services.”  8. Article 164 of the PPL - Add a new article of the Law after Article 164, which reads as follows:  "The contracting authority/entity shall submit an annual report to the Government and competent committees of the National Assembly on the procurements carried out under Article 164 of this law by 31 March of the current year, for the previous year." The competent committees of the National Assembly are the committee responsible for the budget and finances and the committee responsible for defense and internal affairs, i.e., the control of the security services if the contracting authority/entity is the security service specified in the law regulating the basics of the security services.  The report referred to in paragraph 1 of this article particularly contains data on the subject of the procurement, the manner in which the procedure was carried out, submitted bids, selection criteria, the concluded contract and the supplier.  The form and content of the report from paragraph 1 of this article shall be regulated in more detail by the Government.” |  | **The proposal was taken into consideration.** |
| **63.** | Article 6  In Article 1 of the DRAFT ON AMENDMENTS AND AMENDMENTS TO THE LAW ON PUBLIC PROCUREMENT, paragraph 1 is amended to read as follows: The title and paragraph 1 of Article 6 shall be amended to read as follows: “The contracting authority/entity/entity shall procure goods, services or works of appropriate quality, taking into account the intent, purpose and value of public procurement, i.e., cost-effective spending of public funds and minimal impact on the environment.” Paragraph 2 of this article shall not be amended. | **TENDERI, DOO, KRAGUJEVAC** | **The proposal is accepted.** |
| **64.** | 45, paragraph 2 of the  In Article 2 of the DRAFT ON AMENDMENTS AND SUPPLEMENTS TO THE LAW ON PUBLIC PROCUREMENT, add item 8a) which reads as follows: “Publication of the report on the execution of the contract concluded in the public procurement procedure.” The content of this report shall be prescribed and published by the Public Procurement Office within 30 days from the date of entry into force of this Law on Amendments.” |  | **The proposal is not accepted.**  Article 1 of the Law stipulates that this law regulates the rules of public procurement procedures carried out by contracting authorities/entities or other entities in cases determined by this law, for the purpose of concluding a contract on the public procurement of goods, services or works, a framework agreement, as well as conducting a design competition.  Article 154, paragraph 5 of the Law stipulates that the ministry responsible for financial affairs supervises the execution of public procurement contracts.  The draft law proposed the amendment of Article 154, paragraph 5, as follows:  “The Ministry in charge of financial affairs regulates the manner of supervision and supervises the execution of public procurement contracts.”  In order to monitor the execution of contracts, the Ministry of Finance adopts certain by-laws.  Following the above, the subject of regulation of this law cannot be issues related to the execution of public procurement contracts.  In addition to the above, any interested person has the opportunity to contact the contracting authority/entity and request information on the execution of public procurement contracts, in the manner prescribed by the provisions of the Law on Free Access to Information of Public Importance (“Official Gazette of the Republic of Serba”, Nos. 120/2004, 54/ 2007, 104/2009, 36/2010 and 105/2021). |
| **65.** | 154  In Article 9 of the DRAFT AMENDMENTS TO THE LAW ON PUBLIC PROCUREMENT, we propose to amend paragraph 2 in Article 154 by deleting the period at the end of the paragraph, adding a comma and the text "and to publish on the public procurement portal the report on the execution of the contract within longer than 10 days from the date of the final execution of the delivery of goods or the execution of services or performed works.” |  | **The proposal is not accepted.**  The explanation is given under the previous item. |
| **66.** | In Article 66, after paragraph 2, add a new paragraph 2a) which reads as follows: “If the framework agreement is concluded with one bidder, the tender documentation must contain the framework or maximum quantities of public procurement items. |  | **The proposal is not accepted.**  The aforementioned legal solution is fully in line with EU directives. The fact that in Article 66, paragraph 1 of the PPL, it is prescribed that a framework agreement is an agreement between one or more contracting authorities/entities and one or more bidders, which determines the conditions and method of awarding contracts during the period of validity of the framework agreement, especially in terms of price and where appropriate quantities, indicates that adding the proposed paragraph 2a would contradict paragraph 1 of this article. |
|  | After paragraph 10, add paragraph 10a) which reads as follows: “After execution of the framework agreement, the contracting authority/entity is obliged to prepare a report on the realised quantities of public procurement items and publish it on the Portal within 10 days from the date of expiry of the deadline for which the framework agreement was concluded.” |  | **The proposal is not accepted.**  The explanation given in the previous item. |
| **67.** | Article 94, paragraph 1, item 1)  Delete part of the provision from Article 94, paragraph 1, item 1 of the PPL: “does not submit evidence of fulfillment of the criteria for the qualitative selection of a economic operator in accordance with Article 119 of this law”, so that the article after the amendment reads: “The contracting authority/entity can demand from the economic operator to provide it with a means of security:  1) for the seriousness of the offer, in the event that the bidder abandons his offer within the validity period of the offer, unreasonably refuses to conclude a public procurement contract or framework agreement or does not provide security for the execution of a public procurement contract or framework agreement;” |  | **The proposal is not accepted.**  From the provisions of Article 94, paragraph 1, item 1) of the Public Procurement Law, it follows that the contracting authority/entity has the possibility, but not the obligation, to demand from the economic operator to provide him with a means of security for the seriousness of the offer, among other things, in the event that he does not provide evidence of the fulfillment of the criteria for qualitative selection of a economic operator in accordance with Article 119 of the PPL. In this case, the means of security for the seriousness of the offer is a mechanism of protection of the contracting authorities/entities during the validity period of the offer, and if the bidder does not submit the required evidence within the deadline or does not prove with the evidence provided that he meets the criteria for the qualitative selection of the economic operator, regardless of the reasons that led to in addition, the contracting authority/entity has the possibility to activate the means of security for the seriousness of the offer, if he previously requested it in the tender documentation. The decision on whether to activate the security means in a specific case is made exclusively by the contracting authority/entity. In this sense, we note that the Public Prosecutor’s Office does not distinguish between failure to submit evidence within the deadline, with or without intention, or submission of evidence that does not prove the fulfillment of the criteria for the qualitative selection of a economic operator, since all of the above situations produce equal consequences for the contracting authority/entity. Namely, in each of the mentioned cases, the contracting authority/entity is obliged to reject the bid of that bidder and invite the next bidder who submitted the most favourable bid, that is, to suspend the public procurement procedure, if there are reasons for suspension, by applying Article 119, paragraph 6 of the PPL. |
| **68.** | In Article 115 of the PPL, paragraph 2, the words “the contracting authority/entity may” shall be replaced by the words “the contracting authority/entity must”. In so far as economic operator has to possess a particular authorisation, or a permit issued by the competent authority for the performance of activity which is the subject-matter of public procurement, or to be a member of a particular organisation in order to be able to perform the activity concerned, contracting authority/entity may require them to prove that they hold such authorisation, permit, or membership.” In Article 115 of the PPL, paragraph 3 is added, which reads as follows: “The condition referred to in Article 115, paragraph 2 of this law must be fulfilled by the bidder from the group of bidders entrusted with the execution of the part of the procurement for which the fulfillment of that condition is necessary. |  | **The proposal is not accepted.**  The provisions of Article 115, paragraph 2 of the PPL is fully harmonised with the provisions of EU Directive 24/2014.  The Public Procurement Law does not oblige the contracting authority/entity to require economic operators to prove in the public procurement procedure that they have the authority, that is, the permission of the competent authority to perform the activity that is the subject matter of public procurement, but this is foreseen as a possibility. When defining the criteria for the selection of an economic operator, the contracting authorities/entities must certainly take into account the provisions of the regulations governing the activity in the field of which the subject of the public procurement is. On the other hand, if for the performance of a certain activity it is necessary to have an authorisation, that is, a license, economic operators must certainly have that authorisation, regardless of whether the contracting authority/entity in the tender documentation required to prove their possession. Bearing in mind the provisions of Article 118, paragraph 1, and in connection with Article 115, paragraph 2 of the Public Procurement Law, it is concluded that if the contracting authority/entity asked the tenderer to prove with a tender documentation that they have a licence to perform certain tasks, it is necessary to prove all economic entities that will be engaged in the subject works, which the contracting authority/entity can determine based on data from the tender form. |
| **69.** | In Article 202 of the PPL, paragraph 4 should be amended to read as follows: “Legal understandings determined at the general session that bind all councils and members of the Republic Commission and are publicly published on the website of that body within 5 days of adoption at the general session.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **70.** | In Article 228 of the PPL, paragraph 7 should be added so that it reads  “The administrative court is obliged to make a decision within 6 months from the date of receipt of the action.”  In Article 228 of the PPL, paragraph 8 should be added “If the competent authority, after canceling the administrative act, passes an administrative act contrary to the legal understanding of the court or contrary to the court's objections regarding the procedure, and the plaintiff files a new lawsuit, the court will annul the challenged act and decide on its own administrative matter by judgment.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **71.** | Paragraph 9 in Article 220 (or paragraph 10 in Article 216) of the Law on Public Procurement is added, which reads:  In the event that in a specific public procurement procedure where continuous delivery or execution of the procurement object is necessary and agreed upon, more than one right protection procedure is initiated or the contracting authority/entity, due to circumstances beyond its control, does not receive the decision of the Republic Commission within the time limit specified in Article 227 of this law, the contracting authority/entity may, for the sake of the smooth performance of the work process, which is related to the subject matter of public procurement, amend the existing contract or framework agreement in accordance with Article 158 of this law until finality  of the resolution of the Republic Commission, if the retention of the further public procurement procedure would cause great difficulties in the work or business of the contracting authority/entity, which must be explained. | Chambers of Public Procurement of Serbia | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **72.** | In Article 38, after paragraph 3, paragraph 4 is added, which reads as follows:  (paragraph 4 of the same article becomes paragraph 5).  “If the economic operator designates information from paragraph 3 of this article as confidential, in which another participant in the procedure wants to exercise the right of inspection, the ordering party will invite the economic operator to consent to its disclosure, and will warn it that the refusal of consent is a basis for evaluation offers as unacceptable.” |  | **The proposal is not accepted.**  It is clear from the provisions of Article 38, paragraph 3 of the PPL that a economic operator may not mark as confidential information the statement and data on the fulfillment of the criteria for the qualitative selection of the economic operator, catalogues, the offered price and price elements, as well as other data related to the criteria for contract award and contract execution conditions. In this sense, marking the data from paragraph 3 as confidential was in contradiction with the mentioned provision. In addition to the above, please note that when submitting a bid, certain functionalities of the Public Procurement Portal prevent the bidder from marking certain data specified in Article 38, paragraph 3 of the PPL as confidential. For example, the Portal prevents bidders from marking as confidential the declaration of fulfillment of criteria for the qualitative selection of a economic operator, catalogs, offered price, price elements, etc. When it comes to data on the fulfillment of the criteria for the qualitative selection of a economic operator, there is no specified restriction on the Public Procurement Portal, but in the sense of the aforementioned article, it should be considered that the data proving the fulfillment of a certain capacity, i.e., the criteria for the qualitative selection, the bidders could not to mark as confidential. In addition, it is the responsibility of the contracting authority to check, during the review of bids, whether the bidder has acted in accordance with the obligations prescribed in Article 38 of the PPL, as well as to check whether the data in question has been marked as confidential in accordance with the laws protecting their confidentiality. Bearing in mind all of the above, if the tenderer marks as confidential those data which cannot be marked as such in accordance with Article 38 of the PPL, i.e., which the contracting authority/entity determines do not represent a business secret or secret data in the sense of the aforementioned laws, the contracting authority/entity is obliged to make such data available to other participants in the procedure in accordance with Article 38, paragraph 4 of the PPL. |
| **73.** | In Article 115, after paragraph 2, the following paragraph 3 is added, reading as follows:  “If the contracting authority/entity requires that the economic operator has a certain permit, i.e., the authorisation referred to in paragraph 2 of this article, it is obliged to provide in the procurement documentation how this criterion will be proven in the case of submitting a joint offer.” |  | **The proposal is not accepted.**  The provisions of Article 115, paragraph 2 of the PPL is fully harmonised with the provisions of EU Directive 24/2014.  The Public Procurement Law does not oblige the contracting authority/entity to require economic operators to prove in the public procurement procedure that they have the authority, that is, the permission of the competent authority to perform the activity that is the subject matter of public procurement, but this is foreseen as a possibility. When defining the criteria for the selection of an economic operator, the contracting authorities/entities must certainly take into account the provisions of the regulations governing the activity in the field of which the subject of the public procurement is. On the other hand, if for the performance of a certain activity it is necessary to have an authorisation, that is, a license, economic operators must certainly have that authorisation, regardless of whether the contracting authority/entity in the tender documentation required to prove their possession. Bearing in mind the provisions of Article 118, paragraph 1, and in connection with Article 115, paragraph 2 of the Public Procurement Law, it is concluded that if the contracting authority/entity asked the tenderer to prove with a tender documentation that they have a licence to perform certain tasks, it is necessary to prove all economic entities that will be engaged in the subject works, which the contracting authority/entity can determine based on data from the tender form. |
| **74.** | In Article 29, after paragraph 1, paragraph 2 is added, which reads as follows:  (paragraph 2 of the same article becomes paragraph 3.  (paragraph 3 of the same article becomes paragraph 4.  “The method of market examination shall be regulated by the Contracting authority/entity in more detail by a special act from Article 49, paragraph 2 of this Law.” |  | **The proposal is not accepted.**  Article 49, paragraph 2 of the PPL prescribes the duty of the contracting authority/entity to regulate in a special act, among other things, the way of planning public procurements and procurements to which the Public Procurement Law does not apply, which certainly includes the method of researching the market of the subject matter of public procurement. Namely, Article 29, paragraph 1 of the PPL prescribes that the estimated value of the public procurement item must be based on the conducted examination and market research of the public procurement item, which includes checking the price, quality, warranty period, maintenance, etc. Bearing in mind the above, it is clear that an integral part of public procurement planning is the previous market research. In addition, in the model of a special act published on the website of the Public Procurement Office, one of the ways in which the contracting authority/entity can more closely regulate the method of market research is presented. |
| **75.** | Article 118, paragraph 4 of the PPL is amended to read as follow:  "In the statement of fulfillment of the criteria, economic operators provide identification data with which they define the financial, economic, technical and professional capacity at their disposal, that is, with which evidence they will confirm the fulfillment of the conditions for performing professional activities that are provided for in the procurement documentation, declare the existence of grounds for exclusion and declare that upon request and without delay, they will be able to provide the client with evidence of the fulfillment of the criteria for qualitative selection.” |  | **The proposal is not accepted.**  Determining the way to fill out any form, including the form of the declaration of fulfillment of the criteria, cannot be regulated by the Law or by-laws. Namely, if the Law were to prescribe, for example, that the economic operator states in the statement the data that identifies the financial and economic capacity, and if the bidder fills in the specified field in such a way as to indicate “yes” or “I possess”, the question arises of the contracting authority/entity's actions in that case. Does the contracting authority/entity have to immediately reject such an offer or does he have the possibility to ask for clarifications in accordance with Article 142, paragraph 2 of the Law.  If the contracting authority/entity could immediately reject such an offer, the question arises of the meaning of the statement, as preliminary evidence of the fulfillment of the defined criteria. On the other hand, if the contracting authority/entity would have the possibility to ask for additional clarifications, the question arises of the meaning of determining such a legal provision.  Also, we remind you of the provisions of Article 93 of the Law, which stipulates that tender documents must be prepared in a way that enables the preparation and submission of bids, i.e., applications. Therefore, the contracting authority/entity has the obligation to prepare clear and complete tender documentation, so that the bidders are clear about what is required of them in order for the bids to be evaluated as acceptable. If the requirements of the tender documents are not clear, the interested party has the opportunity to contact the contracting authority/entity with a request for additional information or clarifications.  In addition to the above, we remind you that the Public Procurement Portal already contains certain instructions with examples of how the contracting authority/entity can define the criteria and ways of proving them, as well as that the Public Procurement Office has published Guidelines for the preparation of tender documents on its website, which also contain instructions and examples on this topic.  We can certainly continue to work on further familiarising the contracting authorities/entities with the obligations they have in order to prepare the tender documentation in everything in the manner prescribed by the provisions of the Law, both by supplementing the instructions on the Portal and by publishing new guidelines. |
| **76.** | In Article 119, after paragraph 6, the following paragraph 7 is added, reading as follows:  (paragraph 7 of the same article becomes paragraph 8).  “If the economic operator submits evidence that does not relate to the capacities that it has determined in the content of the Declaration on the fulfillment of criteria for qualitative selection, it is obliged to explain why it has changed the capacities that it has determined in the statement, and the contracting authority/entity will assess in each specific case whether there are objective circumstances which the bidder could not have predicted, and which justify such action.” |  | **The proposal is not accepted.**  Pursuant to Article 119 of the PPL, the bidder who submitted the most economically advantageous offer is obliged to submit the required evidence within the deadline, i.e. to prove with the submitted evidence that he meets the criteria for the qualitative selection of the economic entity, previously stated in the Statement on the fulfillment of the criteria for qualitative selection. If a certain circumstance occurs on the part of the bidder, in terms of a change in capacity that he stated in the Statement, the bidder is obliged to prove that the said change has no effect on the already performed expert evaluation of the bids. In this sense, the subject of the regulation of this law cannot be issues related to the obligations of the bidder in the above manner. |
| **77.** | Article 130, paragraph 5 is amended by the following paragraph, which reads as follows:  “Exempted from paragraph 3 of this article, when proving criteria for qualitative selection related to educational and professional qualifications from Article 124, paragraph 1, item 5) of this law or to relevant professional experience from Article 124, paragraph 1, items 1) and 2) of this law, the economic operator whose capacities are used must have the status of a subcontractor, in which case it must be engaged in the execution of that part of the procurement for which those capacities are needed.” |  | **The proposal is not accepted.**  The provisions of Article 130, paragraph 5 of the Law clearly stipulates that a economic operator can use the capacities prescribed by Article 124, paragraph 1, item 5) and Article 124, paragraph 1, items 1) and 2) on the condition that that economic operator, in the capacity of a subcontractor, performs works, that is, provides services for which that capacity is required. The purpose of this provision is to clearly prescribe that the economic operator, which will participate in the execution of the contract using its educational and professional qualifications and its relevant experience, must be registered as a subcontractor in the offer.  However, with regard to the allegation from the comments on the Draft Law that the said position needs to be changed in such a way that it is clear that when the capacities of other persons of the members of the group of bidders or subcontractors are used, such bid participant must participate in the realisation of the work in question, we remind you that the said conclusion derived from other legal provisions.  Namely, Article 118, paragraph 1 of the Law stipulates that the economic operator in the bid, i.e., application, shall submit a statement on the fulfillment of the criteria for qualitative selection of the economic operator on a standard form, confirming that:  1) there are no grounds for exclusion;  2) it meets the required criteria for the selection of an economic operator;  3) it meets the criteria or rules set for reducing the number of eligible candidates in accordance with Article 64 of this Law, if applicable.  Paragraph 2 of the same article stipulates that if a bid or application is submitted by a group of economic entities, a separate statement of each member of the group of economic entities containing the data referred to in paragraph 1, items 1) and 2) of this article for the relevant capacities of the group member. This very term “relevant capacities” indicates that each economic operator should prove that it has the capacities with which it participates in the specific public procurement procedure, and which it states in the offer form.  For example, if in the tender documents the contracting authority/entity predicted that, among other things, it is necessary to carry out excavated soil removal works, and demanded that the economic operator prove that it has a truck, and the subcontractor states in the offer that it will be engaged in excavated soil removal work, it is obliged to proves that he has the relevant capacity, i.e., the truck with which he will perform the requested work.  Otherwise, the provision of Article 118 would lose all meaning. Certainly, it is the contracting authority/entity who should clearly define in the tender documentation what he requires from the bidder and how the economic operators participating in the bid can prove the fulfillment of the required criteria.  If the statements about the participation of each economic operator in the specific procedure are not completely clear, the contracting authority/entity has the possibility to ask for additional clarifications, respecting the principles of public procurement.  We remind you that the Public Procurement Office publishes opinions on the application of certain provisions of the law on its website, among others, on the method of proving the criteria for the qualitative selection of an economic operator. |
| **78.** | In Article 29, after paragraph 2, paragraph 3 is added, which reads as follows:  (paragraph 3 of the same article becomes paragraph 4.  (paragraph 5 of the same article becomes paragraph 6.  (paragraph 6 of the same article becomes paragraph 7.  “The contracting authority/entity shall make the decision to suspend the public procurement procedure within 30 days from the expiration of the deadline for submission of bids, unless the contracting authority/entity has specified a longer period in the tender documentation.” |  | **The proposal is accepted.**  We assume that the wrong article of the law, which needs to be amended, was listed by mistake. Instead of Article 29, suspension of proceedings is regulated by Article 147 of the Law. |
| **79.** | In Article 216, after paragraph 4, the following paragraph 5 is added, reading as follows:  (Paragraph 5 of the same article becomes paragraph 6.  Paragraph 6 of the same article becomes paragraph 7.  Paragraph 7 of the same article becomes paragraph 8.  Paragraph 9 of the same article becomes paragraph 10.)  “With the exception of paragraphs 1 and 2 of this article, the contracting authority/entity may, for the sake of the smooth performance of the work process, which is related to the subject matter of public procurement, continue activities in the suspended public procurement procedure until the finality of the decision of the Republic Commission, if the retention of further public procurement procedure caused major difficulties in the work or business of the contracting authority/entity, which must be explained in the decision on the continuation of the activity made by the responsible person of the contracting authority/entity and which must be published on the Public Procurement Portal.” |  | **The proposal is not accepted.**  Bearing in mind the indisputable assessment of the highest degree of compliance of the text of the current Law on Public Procurement with Directive 2007/66/EC, which regulates precisely the area of legal protection, as well as with EU Directives 2014/24/EU and 2014/25/EU, and the fact that Adequate transposition of EU acquis into RS legislation in this area, along with the good practice of relevant institutions, in a continuous period of several years, results in the existence of an efficient and effective system of legal protection in the public procurement system of the Republic of Serbia, which by all standards does not deviate from the best practice of EU member states, it follows that there is no basis for the proposed changes to the existing provisions of the PPL. |
| **80.** | In Article 236, paragraph 1, after item 12), item 12a) is added, which reads as follows: "12a) does not act within the time limit and in the manner referred to in Article 152, paragraph 2 of this law.” |  | **The proposal was taken into consideration.** |
| **81.** | Article 87, paragraph 5 is amended to read as follows: “In the case referred to in paragraph 1, item 3) of this article, the Public Procurement Office is obliged to allow the contracting authority to extend the deadline for submission of applications or offers by at least four days.” |  | **The proposal is not accepted.**  With regard to the allegations from the comments of the proposer about the “absurd and illegal” behaviour of the Public Procurement Office, in the case when it informs the contracting authorities/entities of the obligation to postpone the deadline for submitting bids in case of unavailability of the Portal, we remind you that the way of behavior of both the Office and other participants in the proceedings public procurements, regarding the operation or unavailability of the Portal, regulated by a secondary legal act, namely the Instructions for the use of the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/2020).  You can download the aforementioned instructions from the website of the Office, in the regulations/bylaws section.  In addition to the above, the meaning of “suggesting” to the contracting authorities/entities to postpone the deadline for submission of offers is a reminder to the contracting authorities/entities to act in accordance with the provisions of Article 87, paragraph 1, item 3) and paragraph 5) of the Law, which stipulate that the contracting authority/entity is obliged to extend the deadline for submission of bids for at least four days in case the Public Procurement Portal is not available during the period of four hours before the deadline for submission of bids.  Once again, we note that the unavailability of the Portal is determined by the Office, in the manner and in the cases prescribed by the by-law, therefore, in a completely legal manner. |
| **82.** | In Article 135, paragraph 7, the words “who independently submitted the offer” are deleted.  so the norm of paragraph 7 now reads: “A bidder may not participate in a joint bid or as a subcontractor at the same time, nor may the same person participate in several joint bids.” |  | **The proposal is not accepted.**  Article 135, paragraph 7 of the PPL prohibits that a bidder who submitted an offer independently cannot be a subcontractor in another bid at the same time (precisely because of the responsibility for the performance of the contract that rests with the bidder who submitted the bid independently, if its bid was chosen as the most favourable). In addition, it is a fact that bidders who submit a joint bid are liable unlimitedly jointly and severally with the contracting authority/entity (responsibility for the execution of the contract rests with the group of bidders, if that bid is chosen as the most favourable), and it is concluded that there is an analogy between the submission of an independent bid and a joint bid. It follows from the above that it would not be allowed for a bidder who is a member of a joint bid to participate in the same public procurement procedure as a subcontractor in another bid, just as it is not allowed for a bidder who submitted a bid independently to simultaneously participate in another bid as a subcontractor. |
| **83.** | In Article 111, paragraph 1, item 3) is changed in such a way that after the word “determine” the words “that is, come into possession of relevant evidence” are added and reads: “The contracting authority/entity is obliged to exclude the economic operator from the public procurement procedure  if:  ...  3) if it determines, or comes into possession of relevant evidence, that the economic operator in the period of the previous two years from the expiration of the deadline for submission of bids, i.e., applications, violated obligations in the field of environmental protection, social and labour law, including collective agreements, and in particular the obligation to pay contracted wages or other mandatory payments, including obligations in accordance with the provisions of international conventions listed in Annex 8 of this law.” |  | **The proposal is not accepted.**  The term “ascertain” means any of the ways in which the contracting authority/entity can find out about the existence of relevant facts, as well as the way to “come into possession” of them. |
| **84.** | Article 124, paragraph 1, item 3)  I propose that the above-mentioned paragraph of Article 124 be amended so that it reads:  “3) data on technical persons or bodies, regardless of whether the technical persons are employed or engaged in work in a business entity, especially in terms of responsibility for quality control, and in the case of public works procurement contracts in terms of performance of works; | **Biljana Arsenijević** | **The proposal is accepted.** |
| **85.** | 85, paragraphs 6, 7 and 9 of the  I suggest that the above paragraphs of Article 85 be amended so that it reads:  State and religious holidays, Saturdays and Sundays do not affect the start and course of the deadline, unless the deadlines are expressed in working days.  If the last day of the deadline falls on a public or religious holiday, Saturday or Sunday, the deadline expires on the first following business day.  The term working day in the sense of this article does not include state and religious holidays, Saturdays and Sundays. |  | **The proposal is not accepted.**  According to the provisions of the Law on State and Other Holidays in the Republic of Serbia, a religious holiday means several religious holidays, some of which are non-working only for certain religious communities. For example, a religious holiday means the first day of patron saint’s day, and that day is non-working only for Orthodox believers who celebrate that particular patron saint’s day. Also, Yoon Kippur is a religious holiday and the first day of that religious holiday is closed only for members of the Jewish religious community. Therefore, these religious holidays are not non-working for all residents of the Republic of Serbia, but only for certain categories.  In addition to the above, we remind you that any contracting authority/entity has the option of choosing which day to open bids or which day to prepare procurement documentation. |
| **86.** | We propose that Article 14, Paragraph 1, Item 3) of the Law be amended to read:  “Procurement of **goods and services** that the contracting authority/entity procures for resale, processing and sale, as well as for the provision of services on the market, provided that the contracting authority/entitydoes not have exclusive or special rights to resell or rent those goods, i.e., to provide services for which those goods and services will to use.” | Union of Employers of Serbia | **The proposal is not accepted.**  Bearing in mind that the mentioned exception is provided only by Directive 25/2014 EU (sectoral directive), and that it is defined by the same that the mentioned exception implies procurement for the purpose of resale, processing or renting to third parties on the market, and not for the purpose of providing services and performing works, the mentioned legal provision for public contracting authorities/entities had to be harmonised with the provision of the mentioned directive. For this reason, the application of the aforementioned provision is timed until the accession of the Republic of Serbia to the EU. |
| **87.** | Amending **Article 147 of the** **Law on Public Procurement is proposed so that paragraph 2 is added to the article after paragraph 1, which reads as follows:**  The decision on the suspension of the public procurement procedure is made by the contracting authority within 30 days from the expiration of the deadline for submission of bids. |  | **The proposal is accepted.** |
| **88.** | It is proposed to amend Article 152 of the law so that paragraph 5 is added after paragraph 4, which would define further steps in the event that the contracting authority/entity does not conclude a contract with the second-ranked bidder. In paragraph 3, it is stated that the contracting authority/entity can conclude the contract with the first next most favourable bidder. |  | **The proposal is not accepted.**  Article 152, paragraph 3 of the of the Law on Public Procurement stipulates that the contracting authority has the possibility to conclude a contract, that is, a framework agreement with the first next most favorable bidder, if the bidder refuses to conclude a public procurement contract.  Therefore, if the contracting authority/entity does not want to choose this option, the only remaining possibility is to suspend the public procurement procedure.  We are of the opinion that there is no need to specifically define this in the law, given that the contracting authority/entity can end the public procurement procedure either by awarding the contract or suspending the public procurement procedure.  The procedure for rejecting the offer of a bidder who refused to conclude a contract is explained on the Public Procurement Portal. |
| **89.** | Articles 11 and 12 of the Draft Law on Amendments to the Law on Public Procurement We propose to delete these provisions of the Draft Law, that is, to retain the existing solutions in the current Law in Articles 213, paragraph 1 and 219, paragraph 9. |  | **The proposal is not accepted.**  Economic operators that are interested in participating in the public procurement procedure communicate with the contracting authority/entity in the procedure through the Public Procurement Portal, which refers to:   1. communication regarding additional information and clarifications required for the preparation and submission of an offer or application; 2. submission and opening of bids, applications, plans and designs; 3. communication regarding the submission, additions or clarifications of bids, applications and correction of calculation errors; 4. communication in connection with the submission of evidence on the fulfillment of the criteria for the qualitative selection of an economic operator.   According to the data of the Republic Commission during the period of application of the current PPL, over 97% of requests for the protection of rights were submitted through the Public Procurement Portal, and it does not follow that the proposal provided for in Articles 11 and 12 of the Draft Law on Amendments to the Law on Public Procurement limit the right to submit requests for the protection of rights and appeals. It is in everything in accordance with the principles of the procedure of protection of the rights. |
| **90.** | Article 14 of the Draft Law relating to Article 236 of the Law  Amending Article 236, paragraph 1, item 11) of the Law is proposed so that it reads:  Does not publish, that is, does not make decisions in accordance with the provisions of this law (Articles 146-148) |  | **The proposal is accepted.**  Given that certain decisions in the public procurement procedure are submitted and not published on the Public Procurement Portal (for example, the decision to exclude candidates), we are of the opinion that Article 236, paragraph 1, item 11) of the Law should not be changed, but that it should be added a new offence, which reads:  12) fails to make decisions in accordance with the provisions of this law (Articles 146-148); |
| **91.** | Specifying the amendment is suggested in Article 236, paragraph 1, items 5) and 7) which are intended for deletion. |  | **The proposal is not accepted.**  In this regard, we point out that the draft of the Law proposed the amendment of the mentioned violations, bearing in mind that the previous practice and activities undertaken by the contracting authorities/entities on the Public Procurement Portal during the implementation of public procurement procedures show that there is no possibility for the contracting authority/entity to commit these two violations. |
| **92.** | We suggest that the matter proposed by Article 8 of the Draft Law should be prescribed in two articles of the Draft Law on Amendments to the Law on Public Procurement.  We suggest amending Article 8 of the Draft Law, which reads:  “After Article 152, Article 152a is added, which reads as follows:  “The contracting authority/entity shall publishe the data on all contracts concluded on the Public Procurement Portal after the public procurement procedure has been carried out, on all changes to contracts based on Articles 156 - 161 of the Law, as well as data on contracts/orders concluded or issued in accordance with Article 27 of the Law.  The data on contracts concluded after the implementation of the public procurement procedure and data on contracts/orders concluded or issued in accordance with the provisions of Article 27 of the Law shall be published within the period prescribed by Article 109, paragraphs 1 and 2 of this Law.  The data on amendments to the contracts on the basis of Articles 156, 159, 160 and 161 of this Law shall be published within the period prescribed by Article 155, paragraph 2 of this Law.  The Public Procurement Office further regulates the manner of publication and the types of data, in terms of paragraph 2 and 3 of this article, through detailed regulations.”    to read as follows:  "Article 155, paragraph 2, is amended to read as follows:  “In the case of amending the contract referred to in Articles 156 – 161 of the Law, as well as the data on contracts/orders concluded or issued in accordance with Article 27 of this Law, the contracting authority/entity is obliged to send the notification about the change to the contract for publication on the Public Procurement Portal within ten days from the date of the change to the contract.”  We suggest amending Article 9 Draft Law so that it reads as follows:  “Article 109, paragraph 1 is amended to read as follows:  The contracting authority/entity is obliged to send the contract award notification for publication within 30 days from the date of conclusion of the public procurement contract or framework agreement, as well as data on the contracts/orders concluded or issued in accordance with the provisions of Article 27 of the Law.” | Ministry of Finance, Tax Administration - Central Office | **The proposal is not accepted.**  Article 8 of the Draft Law on Amendments to the Law on Public Procurement envisages the obligation of the contracting authority to publish on the Public Procurement Portal data on all contracts concluded after the implementation of the public procurement procedure, on all contract amendments based on Articles 156-161 of the Law, as well as data on contracts/purchase orders concluded or issued in accordance with Article 27 of the Law. Therefore, it is about the publication of data on contracts and their amendments, and not about the publication of the Notice of Contract Amendments, as a special type of advertisement on public procurement prescribed by Article 105, paragraph 1, item 8) of the PPL, which the contracting authority/entity is obliged to publish only in the case changes to the contract based on Articles 157 and 158 of the PPL. The amendment provided for in Article 8 of the Draft Law creates a legal basis for the creation of a database on the Public Procurement Portal, which, in addition to information on all contracts concluded after the public procurement procedure and all changes thereof, also contains data on contracts/orders concluded or issued in accordance with Article 27 of the Law on Public Procurement, which prescribes the thresholds up to which the provisions of this law are not applied. Such a solution will enable significantly greater transparency in terms of data on changes to contracts, data on awarded contracts/issued purchase orders for procurement whose value is below the thresholds for the application of the Law on Public Procurement, which will make it much easier for authorities responsible for controlling the legality of spending public funds to view the data of significance for the performance of tasks within their jurisdiction, but also to the interested public. In this regard, we remind that Article 8 of the Law regulates that the Public Procurement Office further regulates the manner of publication and the types of data, in terms of paragraph 2 and 3 of this article, through detailed regulations.  With regard to the proposal related to the addition of a new article to the text of the Draft Law, which concerns the deadline for publishing contract award notices, we note that the deadline for publishing this type of announcement on public procurement is already prescribed by the PPL.  When it comes to contracts/orders concluded, i.e., issued in accordance with Article 27 of the PPL, the Draft Law stipulates that the contracting authorities/entities publish data on concluded contracts/orders, not the Contract Award Notice as a special type of advertisement prescribed by Article 105, paragraph 1, item 6) of the PPL, with the fact that the deadline for the publication of such data is the same as the deadline for the publication of contract award notices. |
| **92.** | Articles 7.  Article 152, paragraph 4 is amended to read as follows:  “The contracting authority/entity will once again carry out an expert evaluation of the bids and make a decision on awarding the contract, i.e. a framework agreement if, in the case referred to in paragraph 3 of this article, due to the weighting methodology, it is necessary to determine the next most favourable bidder, or if there is a duty of the contracting authority/entity to, in accordance with Article 119, paragraph 1 of this law requires the first and next most favourable bidder to submit proof of fulfillment of the criteria for the qualitative selection of a economic operator, so that the review and expert evaluation of bids and applications can be carried out in accordance with the provisions of the law.” | Association of Professionals in Public Procurement of the Republic of Serbia | **The proposal is not accepted.**  In accordance with Article 119, paragraph 1 of the PPL, before the adoption of the contract award decision, the contracting authority/entity is obliged to request from the bidder who submitted the most economically favourable bid to submit evidence of fulfillment of the criteria for qualitative selection of the economic operator. Given that evidence of the fulfillment of the criteria for qualitative selection is provided only by the bidder whose offer is the most economically advantageous, in a situation where that bidder refuses to conclude a public procurement contract after the finality of the decision on the award of the contract, the contracting authority/entity is obliged to ask the first and next most favourable bidder submission of proof of fulfillment of criteria for qualitative selection (exception in the case when the estimated value of the public procurement is equal to or lower than RSD 5,000,000). If the contracting authority/entity did not have the obligation to re-evaluate the bids and make a new decision on the award of the contract, which it publishes on the Public Procurement Portal, the next most favourable bidder would not have the opportunity to request an inspection of the documentation within the legally prescribed period and possibly challenge the legality of the contract award. to the second-ranked bidder. |
| **93.** | Articles 8.  We believe that the proposed provision of the Draft is not precise and clear enough to understand its true meaning, and in order to be able to propose an alternative provision that would be in accordance with the ratio legis of the provision itself, which (ratio legis) we cannot fully assume. However, the said ambiguity can certainly affect the creation of dilemmas and ambiguities in the application of the provision.  For example, the question arises as to what is the new qualitative value and ratio legis for the publication of data on all contracts concluded after the public procurement procedure, if they are published within the period referred to in Articles 109, paragraphs 1 and 2 of the PPL, given that the provisions in this regard already exist, as well as the prescribed content of the advertisement (Contract award notice...).  Information and data that are known within the period referred to in Articles 109, paragraphs 1 and 2 (30 days from the conclusion of the contract or framework agreement, that is, within 30 days from the end of the quarter in the case of contracts concluded on the basis of the framework agreement) are already contained in the aforementioned advertisement. Within that period, there are usually no new qualitative data (e.g., on the execution of the contract) in relation to the data already contained in the Notice on the award of the contract from Articles 109 of the PPL. If there is no qualitatively different data, this provision should perhaps be limited to the publication of data on contracts concluded on the basis of Articles 27 of the PPL (or alternatively, instead of adding a new provision of Article 152a, foresee a corresponding new paragraph within Article 27 of the PPL or within Article 181, paragraph 4, of the PPL, so as not to duplicate the data on the value and type of purchases from Article 27, paragraph 1 of the PPL).  If the intention was that these data contain some qualitatively different (new) data compared to the information contained in the Contract Award Notice from Articles 109 of the PPL, consider then, in relation to the type and time of creation of the desired data (e.g., if the intention is to publish data on the execution of the contract), whether the deadline for the publication of data prescribed by Articles 109, paragraphs 1 and 2 of the PPL appropriate for the type and time of creation of the desired data, or some other deadline should be set that is appropriate for the type and time of creation of the data that should be published.  Similarly, it is possible to consider that the obligation to publish data and information about contract changes based on Articles 156, 159, 160 and 161 of the PPL are edited with the appropriate change in Article 155, paragraph 2 of the PPL, instead of adding this completely new article, which will foresee the obligation of the contracting authority/entity to send for publication a notice of contract changes for all basis of contract changes from Articles 156 and 161 of the PPL.  In the case of appropriate changes in the already existing articles of the PPL (instead of adding a new article 152a), consider where it would be necessary to regulate the method of publication and the type of data by the Public Procurement Office. For the application of Articles 27 of the PPL it is certainly necessary considering that data as such is not published now, while with regard to the publication of data on changes to the contract in connection with Articles 156, 159, 160 and 161 of the PPL, depending on whether new types of advertisements are foreseen or not. |  | **The proponent did not make a concrete proposal or suggestions in the form of regulations.**  Regarding the dilemmas presented in the explanation, we provide the following clarification:  Article 8 of the Draft Law on Amendments to the Law on Public Procurement envisages the obligation of the contracting authority to publish on the Public Procurement Portal data on all contracts concluded after the implementation of the public procurement procedure, on all contract amendments based on Articles 156-161 of the Law, as well as data on contracts/purchase orders concluded or issued in accordance with Article 27 of the Law. Therefore, it is about the publication of data on contracts and their changes, and not about the publication of the Contract Award Notice and the Contract Change Notice, as special types of announcements on public procurement prescribed by Article 105, paragraph 1, items 6) and 8) of the PPL; The amendment provided for in Article 8 of the Draft Law creates a legal basis for the creation of a database on the Public Procurement Portal, which, in addition to information on all contracts concluded after the public procurement procedure and all changes thereof, also contains data on contracts/orders concluded or issued in accordance with Article 27 of the Law on Public Procurement, which prescribes the thresholds up to which the provisions of this law are not applied. Such a solution will enable significantly greater transparency in terms of data on changes to contracts, data on awarded contracts/issued purchase orders for procurement whose value is below the thresholds for the application of the Law on Public Procurement, which will make it much easier for authorities responsible for controlling the legality of spending public funds to view the data of significance for the performance of tasks within their jurisdiction, but also to the interested public.  With regard to the suggestion related to the appropriateness of the deadline for publishing data, we remind you that Article 8 of the Draft Law stipulates that data on contract changes made pursuant to Articles 156-161 of the PPL is published within the period prescribed by Article 155, paragraph 2 of the PPL, i.e. within 10 days from the day of the change. When it comes to contracts/orders concluded or issued in accordance with Article 27 of the Public Procurement Law, the deadline for publishing data on the same is set as for the publication of contract award notices, i.e., within 30 days from the date of conclusion of the contract.  In this regard, we remind that Article 8 of the Law regulates that the Public Procurement Office further regulates the manner of publication and the types of data, in terms of paragraph 2 and 3 of this article, through detailed regulations. |