GUIDE

FOR

PUBLIC PROCUREMENT OFFICERS

TABLE OF CONTENTS

1. General information about the public procurement officer...............................................4
2. What regulations should a public procurement officer be familiar with?..........................6

*Law on Public Procurements*.............................................................................................6

*By-laws in the field of public procurement*........................................................................7

*Other regulations*...............................................................................................................8

1. Knowledge of working on the Public Procurement Portal..............................................10
2. How is the market researched?........................................................................................14

*General about market research*.......................................................................................14

*Legal provisions related to market research*...................................................................15

*Market research methods*................................................................................................16

*Methods of collecting information for the purpose of market research*..........................17

1. How is a procurement plan prepared and published?......................................................19

*The importance of procurement planning*.......................................................................19

*Annual Public Procurement Plan*....................................................................................22

*The importance of the annual public procurement plan*..................................................23

1. How are public procurement notices prepared and published?.......................................25

*General information about public procurement announcements*....................................25

*Public invitation*...............................................................................................................27

*Determining deadlines for submitting bids*......................................................................29

1. How are tender documents prepared?..............................................................................31

*Content of the tender documentation*...............................................................................32

*Method of preparing tender documentation*....................................................................33

*Amendments and supplements to the tender documentation*...........................................34

*Technical specification*....................................................................................................35

*Criteria for qualitative selection of an economic operator*.............................................36

*Contract award criteria*...................................................................................................38

1. How are bids reviewed and evaluated?............................................................................44
2. How is the decision terminating the public procurement procedure prepared and published?........................................................................................................................47

*Decision on awarding a contract, i.e., concluding a framework agreement...................*47

*Decision to suspend the procedure*..................................................................................48

*Deadline for making and publishing a decision*..............................................................48

*Documentation review*.....................................................................................................49

*Conditions for concluding a public procurement contract and framework agreement*...50

1. What is the procedure in the event of a request for protection of rights?........................51

*What actions does the public procurement officer take in the event of a request for protection of rights?*.........................................................................................................51

1. *How is the execution of the contract monitored and what actions are taken in that case?* ..........................................................................................................................................54

*Amendments to public procurement contracts*.................................................................57

1. How is contract data recorded?........................................................................................62

*Obligation to publish contract data on the Portal*...........................................................62

*Deadlines for data publication*........................................................................................62

*How to enter data on contracts and contract amendments*.............................................63

*Method of entering data in the case of centralised public procurement*.........................63

*Application of Article 152a of the PPL (contract database) and Article 181, paragraphs 3 and 4 of the* *PPL (collective publication of procurement data)...................................64*

1. Checklist..........................................................................................................................66
2. Useful links *PPL*..............................................................................................................73
3. Sources used.....................................................................................................................74
4. Annex 1 – Manual for preparing for the civil servant exam

for public procurement....................................................................................................75

GENERAL ABOUT THE PUBLIC PROCUREMENT OFFICER

A public procurement officer is a public procurement professional who ensures the proper application of public procurement regulations and the legality of the implementation of the public procurement procedure.

This is a person who is trained to perform public procurement tasks, that is, a person who has all the necessary knowledge and skills to legally and successfully engage in public procurement tasks.

Since the introduction of the public procurement system in the Republic of Serbia, legal solutions regarding the public procurement officer have changed. The conditions for obtaining the status of a candidate for taking the exam have changed, the rules regarding whether the contracting authority must have a public procurement officer on staff have changed, the rules regarding whether and in what situations a public procurement officer is a member of the public procurement commission have changed, and so on.

However, what is common to a public procurement officer, regardless of the different legal solutions, is the fact that the officer is a “professional” in public procurement, that is, a person who specialises in performing tasks in the field of public procurement.

A public procurement officer may, and in certain cases must, be engaged by the contracting authority, but the officer may also be engaged by the bidder. An officer engaged by the contracting authority should be a guarantee of the lawful conduct of the public procurement procedure, while the engagement of an officer by the bidder should guarantee the successful submission of a bid and timely action on various requests from the contracting authority and other participants in the public procurement procedure.

The institution of public procurement officers was first provided for in the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 116/08) and, with certain amendments, was also provided for in the Law on Public Procurement from 2012 (“Official Gazette of the Republic of Serbia”, Nos. 124/12, 14/2015 and 68/2015), and is also provided for in the current Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23, hereinafter referred to as: the PPL).

The provisions of the PPLЗЈН that apply to the public procurement officer are:

* The public procurement officer is a member of the public procurement commission in the manner regulated by Article 92 of the PPL;[[1]](#footnote-1)
* The contracting authority is obliged, among other things, to enable persons performing public procurement tasks to take the exam for public procurement officers, as prescribed by Article 185 of the PPL;[[2]](#footnote-2)
* The Public Procurement Office (hereinafter referred to as: the PPO) regulates the procedure and conditions for obtaining a certificate for a public procurement officer and keep a register of public procurement officers.[[3]](#footnote-3)

A public procurement officer is a person who has obtained a certificate for a public procurement officer after passing an examination organised and conducted by the PPO. In order to prepare for the examination for obtaining the certificate, the PPO has prepared and published on its website the Manual for Preparing for the Examination for a Public Procurement Officer, which was developed within the framework of the EU Public Finance – Management Facility Project, funded by the EU and implemented by the UNDP, and which is attached to this guide. (Annex 1)

In order to assist public procurement officers in carrying out public procurement tasks, this guide has been prepared, which contains basic information on all activities that officials are required to undertake in carrying out public procurement tasks.

This guide also answers the question of what basic knowledge a public procurement officer should possess, namely that a public procurement officer should know:

* legal and by-law solutions in the field of public procurement;
* work on the Public Procurement Portal.
* how is the market researched?
* how is the procurement plan prepared and published?
* how are public procurement announcements prepared and published?
* how is the tender documentation prepared?
* how are offers reviewed and evaluated?
* how is the decision terminating the public procurement procedure prepared and published?
* what is the procedure in the event of a request for protection of rights?
* how is the execution of the contract monitored and what actions are taken in that case?
* how is contract data recorded?

The Guide lists the basic activities undertaken by a public procurement officer, as well as the basic knowledge that he or she should possess in order to perform them. All other information and data related to legal and regulatory solutions in the field of public procurement can be found by the public procurement officer in the Manual.

WHAT REGULATIONS SHOULD A PUBLIC PROCUREMENT OFFICER BE FAMILIAR WITH?

A public procurement officer should be familiar with a set of regulations, the most important of which are, first of all, regulations in the field of public procurement, but also other regulations that are important when performing certain public procurement tasks.

1. Law on Public Procurements

The PPL represents the general normative framework regulating the public procurement system in the Republic of Serbia.

The PPL has been in force since 1 July 2020, with amendments and supplements that have been in force since 1 January 2024.

The provisions of the PPL regulate:

* the rules of public procurement procedures carried out by contracting authorities or other entities in cases specified in the PPL for the purpose of concluding a contract for the public procurement of goods, services or works, a framework agreement, as well as conducting a design contest;
* tasks and form of organisation of the Public Procurement Office;
* jurisdiction, regulation and other issues related to the scope of work of the Republic Commission for the Protection of Rights in Public Procurement Procedures
* procedure for protecting rights in public procurement procedures and other cases in accordance with the law
* other issues of importance for public procurement.

The PPL is in line with European Union legislation, i.e., a system has been established that enables compliance with the fundamental principles of the free movement of goods, freedom of establishment and freedom to provide services and the principles arising from them, such as the principles of economy and efficiency and environmental protection, the principle of ensuring competition and the prohibition of discrimination, the principle of transparency of the public procurement procedure and the principle of equality of economic operators.

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| WarningImportant!  A public procurement officer is not expected to know all articles of the law “by heart”, but rather to know which issues and which areas are regulated by the provisions of the PPL.  Depending on the specific situation, or the activity to be undertaken, the public procurement officer can easily find an appropriate legal solution. |

1. By-laws in the field of public procurement[[4]](#footnote-4)

In order to implement the provisions of the PPL, several bylaws have been adopted. The by-laws were adopted by: the Government of the Republic of Serbia, the PPO and the Minister responsible for finance.

The by-laws adopted by the Government of the Republic of Serbia are:

* Decision on determining the List of contracting authorities referred to in Article 3, paragraph 1, item 1) of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 85/20)
* Decree on Public Procurement in the Field of Defence and Security (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Decree on the organisation and manner of performing centralised public procurement at the national level (“Official Gazette of the Republic of Serbia”, No. 116/20).

The by-laws adopted by the PPO are:

* Rulebook on the content of tender documentation in public procurement procedures (“Official Gazette of the Republic of Serbia”, No. 21/21);
* Rulebook on the bid opening procedure (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on monitoring the implementation of public procurement regulations (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on determining the general procurement glossary (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on the Procedure and Conditions for Obtaining a Certificate for a Public Procurement Officer and Keeping the Register of Public Procurement Officers and Keeping the Register of Public Procurement Officers (“Official Gazette of the Republic of Serbia”, Nos. 93/20, 21/21, 115/23 and 6/04);
* Instruction on how to send and publish public procurement notices (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Instruction for using the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20 and 96/23);
* Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);
* Instruction for publishing data on public procurement that are exempt from the application of the Law.
* Rulebook on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 115/23);
* Rulebook on types of goods for which contracting authorities are obliged to apply environmental aspects in public procurement procedures (“Official Gazette of the Republic of Serba”, No. 115/23);

The by-laws adopted by the minister responsible for finance are:

* Rulebook on the content of the Register of Bidders and the documentation submitted with the application for registration of bidders (“Official Gazette of the Republic of Serbia”, Nos. 17/20, 94/20);
* Dinar value of European thresholds (“Official Gazette of the Republic of Serbia”, No. 119/23) - applied as of 1 January 2024;
* Rulebook on the manner of supervising the execution of public procurement contracts ("Official Gazette of the Republic of Serbia", No. 110/2023).

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| WarningImportant!  The currently valid by-laws are listed here. The public procurement officer is expected to know which legal provisions are more closely regulated by by-laws, as well as to monitor whether certain changes have been made.  For example, the by-law that determines the dinar value of European thresholds is adopted every two years. It is currently in force and has been in effect since 1 January 2024. |

1. Other regulations

In addition to the PPL and the by-laws adopted on the basis of the PPL, other regulations that are directly or indirectly applied in the conduct of public procurement procedures are also of great importance. Public procurement officers are expected to know which issues related to public procurement are regulated by other regulations.

These are the following regulations:

* The Law on General Administrative Procedure (“Official Gazette of the Republic of Serbia”, Nos. 18/16 and 95/18 - authentic interpretation and 2/2003 - Decision of the Constitutional Court), which has wide application in the field of public procurement considering that issues that are not specifically regulated by the PPL, and refer to the procedure for the protection of rights,[[5]](#footnote-5) are accordingly applied provisions of the law regulating administrative procedure and
* Law on Contract and Torts (“Official Gazette of the Socialist Federal Republic of Yugoslavia”, Nos. 29/78, 39/85, 45/89 - Constitutional Court of Yugoslavia, 57/89, “Official Gazette of the Federal Republic of Yugoslavia”, Nos. 31/93, 31/93 - other regulation and “Official Gazette of the Republic of Serbia”, No. 18/20 and “Official Herald of Serbia and Montenegro”, No. 1/2003 - Constitutional Charter). The Law on Contract and Torts is of particular importance with regard to public procurement contracts. The provisions of this law relating to contracts apply to all types of contracts, including those concluded in the public procurement procedure (such as purchase, lease, construction contract), and the rules and principles of the Law on Contract and Torts apply to all issues not regulated by the PPL (or a special regulation governing a specific legal transaction).

Other laws that regulate issues important for this area are also important for the public procurement system, such as: the Law on the Budget System, the Law on Public Enterprises, the Law on Communal Activities and other laws that regulate the areas of water management, energy, transport and postal services, laws that regulate the areas of defence and security, the Law on Public-Private Partnership and Concessions, the Law on Misdemeanours, the Criminal Code, etc.

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| Right pointing backhand index**Reminder**  The public procurement officer may contact the Public Procurement Office if he has certain dilemmas regarding the implementation of legal and regulatory acts in the field of public procurement.  On the PPO website, in the “Contact” section, telephone numbers are published through which they can seek advice and opinions from the PPO.  Consultations regarding the implementation of legal and by-laws are provided every working day from 9:00 to 11:00. |

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| Thumbs up sign**Summary – What regulations should a public procurement officer know?**  The public procurement officer knows:   1. Law on Public Procurement 2. By-laws adopted for the purpose of implementing the PPL and their scope of application 3. Other regulations relevant to public procurement |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Legislative and institutional framework of public procurement in the Republic of Serbia
* Public Procurement Office
* Republic Commission for Protection of Rights in Public Procurement Procedures

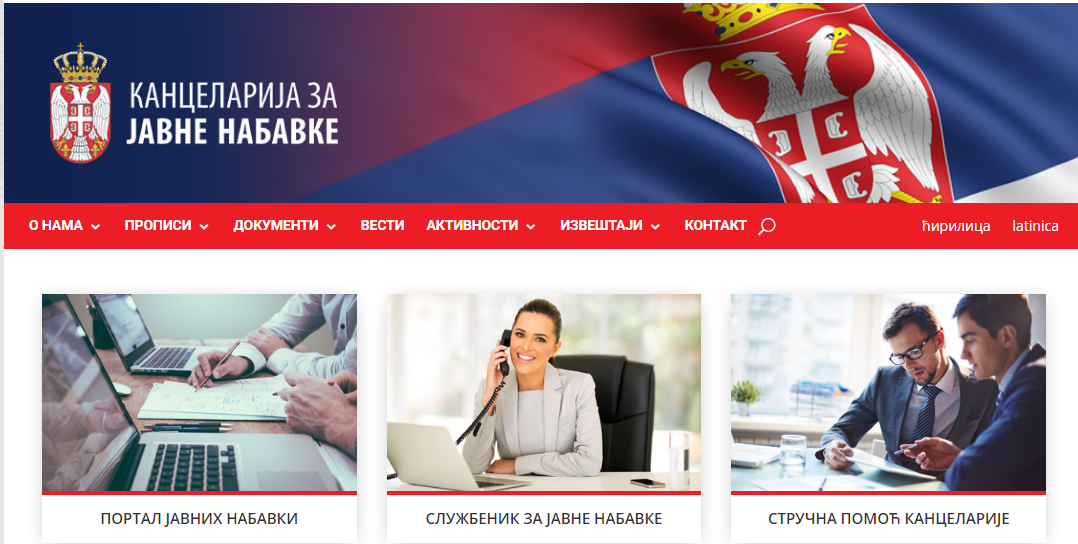
KNOWLEDGE OF WORKING ON THE PUBLIC PROCUREMENT PORTAL

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| ChecklistRelevant legal provisions and by-laws on this topic:  Article 45 – Communication by electronic means Art. 183 and 184 – Public Procurement Portal Instruction for using the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20 and 96/23); |

Public Procurement Portal (hereinafter referred to as: the Portal), as a single information system through which public procurement procedures are conducted, was established based on the provisions of the PPL. The Portal began operating on 1 July 2020, the same day the PPL came into effect.[[6]](#footnote-6)

The portal is accessed via the PPO website.

*Display of the front page of the PPO website and the banner for accessing the Portal*



The legal basis for establishing the Portal is found in Article 45 of the PPL, which stipulates that communication and data exchange in the public procurement procedure shall be carried out electronically on the Portal, in accordance with this Article and the instructions for using the Portal.

In accordance with the aforementioned article, the following is considered to be the communication and exchange of data referred to in paragraph 1 of this article:

1) drafting and sending for publication the advertisement on public procurement and their amendments;

2) electronic availability of descriptive and competitive documentation and amendments to that documentation;

3) inviting business entities to submit bids and applications, to negotiate or dialogue;

4) communication between ordering parties and business entities regarding additional information and clarifications required for the preparation and submission of an offer or application;

5) submission and opening of bids, applications, plans and designs;

6) communication between ordering parties and bidders regarding the submission, additions or clarifications of bids, applications and correction of calculation errors;

7) communication between ordering parties and bidders in connection with the submission of evidence on the fulfilment of the criteria for the qualitative selection of an economic operator;

8) publication and delivery of decisions that the contracting authority is obliged to publish and deliver, in accordance with this law;

9) communication between the PPO and contracting authorities in connection with Article 62, para. 2 and 3 of this law;

10) submission of requests for the protection of rights and publication of the decisions of the Republic Commission for the Protection of Rights in Public Procurement Procedures.

It is precisely the public procurement officer who is expected to know that he is carrying out all of the above activities and communications through the Portal.

In addition to Article 45 of the PPL, which regulates the manner of communication via the Portal, Article 183 of the PPL prescribes the capabilities of the Portal, while Article 184 of the PPL stipulates that the PPO manages the Portal. The technical conditions for the implementation of the Portal, in accordance with Article 184 of the PPL, are provided by the Government Service responsible for the design, harmonisation, development and functioning of the electronic government system, i.e., the Office for Information Technologies and Electronic Government (hereinafter referred to as: the OITeG) and at the same time ensures the accessibility and security of the Portal to all users.

In order to provide assistance to users of the Portal, including public procurement officers, a by-law was adopted, the Instructions for Using the Public Procurement Portal ("Official Gazette of the Republic of Serbia", No. 93/20 and 96/23, hereinafter referred to as: the Instructions), which has also been in force since 1 July 2020.[[7]](#footnote-7)

This Instruction regulates issues such as:

 Who the users of the Portal are;

 How to register on the Portal;

 Allowed file formats published on the Portal;

 Under what conditions do Portal users use the Portal;

 Under what conditions can the PPO change the registration conditions, reject the registration request and block the user account;

 Method of providing technical support to Portal users;

 How to proceed in the event of disruptions in the operation of the Portal;

 Technical conditions required for using the Portal;

 In which cases OITeG may temporarily restrict or permanently disable access to the Portal;

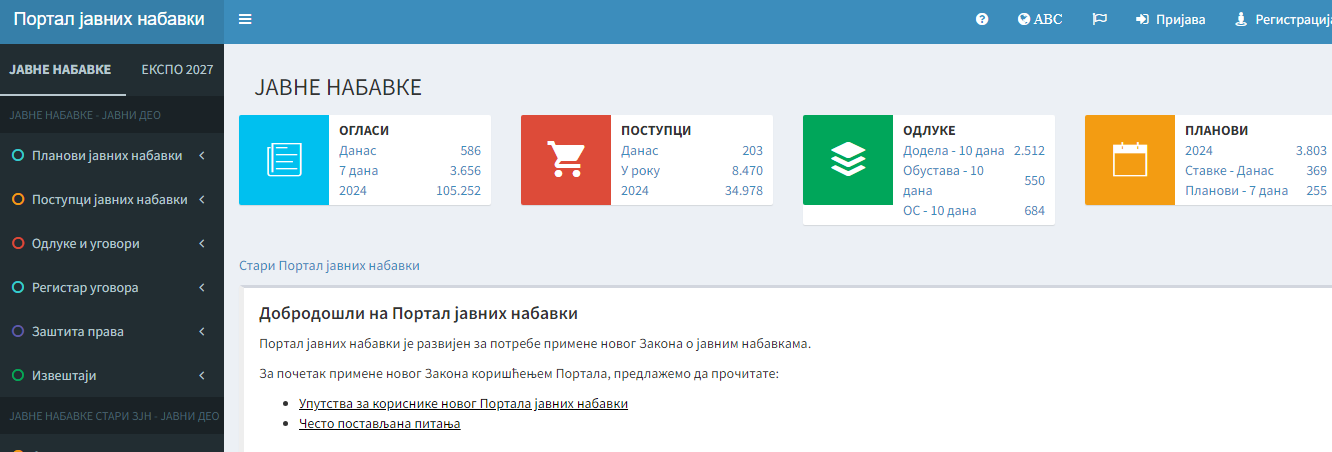
 How to take individual steps/actions on the Portal (preparation and publication of a public procurement plan, public procurement notices, tender documentation, as well as submitting a bid, submitting a request for protection of rights, etc.);

 Determining the unavailability of the Portal.

In addition to these Instructions, the public procurement officer may also use the instructions for using the Portal, which are available on the Portal itself. For proper and lawful implementation

public procurement procedures, it is sufficient for public procurement officers to familiarize themselves in detail with these instructions.[[8]](#footnote-8), [[9]](#footnote-9)

Instructions for using the Portal can be accessed through the Portal itself by clicking on the “?” sign located in the upper right corner.



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| Warning**Important!**  The Portal home page contains information about the version of the Portal currently in use. Public procurement officers are expected to monitor this information and familiarise themselves with all updates. |
| Right pointing backhand index**Reminder**  The Public Procurement Officer may contact the Public Procurement Office if he or she has any specific dilemmas regarding the work on the Portal.  On the PPO website, in the “Contact” section, telephone numbers are published through which they can seek advice and opinions from the PPO.  Consultations regarding work on the Portal are provided every working day from 9:00 AM to 12:00 PM. |

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| Thumbs up sign**Summary - Knowledge of working on the Public Procurement Portal**  The public procurement officer knows:   1. Legal and regulatory provisions regarding the Portal 2. Instructions for using the Portal located on the Portal itself 3. The manner of undertaking all activities on the Portal necessary for the purpose of implementing public procurement procedures, namely:  * preparation and publication of the annual public procurement plan * preparation and publication of public procurement notices * preparation and publication of tender documentation * review and evaluation of offers * preparation and publication of the decision terminating the procedure * action in the event of a request for protection of rights * taking actions related to the execution and amendment of the contract * recording contract data * communication with other participants in the public procurement procedure, etc. |

HOW IS MARKET RESEARCH CONDUCTED?

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| ChecklistRelevant legal provisions on this topic:  Article 29 of the PPL – Method of determining the estimated value of public procurement and its division into lots  Article 89 of the PPL – Market research Article 90 of the PPL – Protection of integrity of the procedure |

***General about market research***

Market research is the first activity that a public procurement officer undertakes in preparation for the development of a procurement plan and the subsequent implementation of procurement procedures.

It is an activity carried out to collect information about the market situation, the availability of procurement items that can meet the requirements of the contracting authority, and to assess the reactions of potential bidders to the proposed procurement item.

Market research includes the collection of information that helps the official, or the contracting authority, to:

* Understand the market structure and types of competition;
* Understand the market from the perspective of economic operators;
* It examines the advantages, opportunities and disadvantages that exist in the market;
* Examines market prices.

Depending on the results of market research, a decision is made:

* how the subject-matter of the procurement will be formed,[[10]](#footnote-10)
* what is the estimated value of the procurement,[[11]](#footnote-11)
* whether the subject-matter of the procurement will be formed by lots or not,[[12]](#footnote-12)
* what type of public procurement procedure will be applied in each specific case,[[13]](#footnote-13)
* what criteria for the qualitative selection of the preparatory entity and the criteria for awarding the contract will be applied;[[14]](#footnote-14)
* on the content of the model contract, etc.

Considering that the successful and efficient implementation of procurement procedures depends on market research, it is important for a public procurement officer to know how market research is conducted, as well as what activities are undertaken to that end.

***Legal provisions related to market research***

The public procurement officer should know that the PPL does not impose market research as an obligation on contracting authorities, but that the need for market research is implied based on the provision of the PPL that regulates the method of determining the estimated value of public procurement. Namely, Article 29, paragraph 1 of the PPL regulates that 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.

The above implies that the estimated value of a public procurement cannot be determined without first conducting market research.

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| WarningImportant!  The market must be approached in a way that ensures respect for the principles of transparency, ensuring competition, prohibition of discrimination and equality of economic operators. |

In addition to the above, the PPL prescribes certain general rules in the event that the contracting authority enters into direct contact/engagement with economic entities. In other words, the public procurement officer must adhere to the rules prescribed by legal provisions when conducting market research.

Article 89 of the PPL regulates that before conducting the public procurement procedure, the contracting authority may 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. Paragraph 2 of the same article stipulates that the contracting authority may seek or take into account the advice of independent experts, competent authorities or economic operators regarding the preparation and conduct of the public procurement procedure, provided that this does not violate the principles of ensuring competition and the prohibition of discrimination, equality of economic operators and transparency.

The PPL pays special attention to protecting the integrity of the procedure.[[15]](#footnote-15)

Namely, in accordance with the provisions of the PPL, the contracting authority may engage experts to assist in the preparation of the public procurement procedure. For example, an IT expert consults the contracting authority in the preparation of technical specifications for the subject-matter of procurement, which includes the development of software for a user portal.

Can that IT expert participate in the public procurement procedure for the development of software for the user portal? The PPL, in Article 90, sets out certain rules relating to this situation, the aim of which is to prevent that IT expert from having an advantage in the public procurement procedure based on information from the preparation phase of the public procurement procedure.

Firstly, the automatic ban on the participation of a bidder whose bid includes that IT expert in a public procurement procedure is not permitted.

Secondly, the contracting authority is obliged to take appropriate measures to ensure that the participation of that IT expert does not distort competition. This means that the contracting authority will take actions to provide other economic operators with relevant information exchanged or generated as part of the IT expert’s participation in the preparation of the procurement procedure and to set reasonable deadlines for the submission of tenders. The contracting authority may make that information available to economic operators as part of the tender documentation or provide them with direct access to all documents.

Third, if by this action the contracting authority cannot ensure competition and equality of economic operators, it will exclude that bidder from the public procurement procedure. Exclusion is possible provided that the contracting authority has specified the grounds for exclusion referred to in Article 112, paragraph 1, item 4) of the PPL in the procurement documentation. If it has not provided for that ground for exclusion in the procurement documentation, the contracting authority cannot exclude that bidder from the public procurement procedure even if it determines that there are grounds for exclusion in its case.

Finally, before excluding from the public procurement procedure a bidder whose bid includes that IT expert, the contracting authority must enable him or her to prove that his or her participation in the preparation of the procurement procedure cannot distort competition.

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| The contracting authority shall be fined from 100,000 to 1,000,000 dinars for a misdemeanour if it fails to act in accordance with the provisions of Article 90 of this Law. |

***Market research methods***

The PPL does not prescribe the manner or method by which market research should be conducted. Market research should be regulated by an internal act of the contracting authority as part of the public procurement planning process.

In accordance with its legal powers, the Public Procurement Office has prepared a model of a special act that contracting authorities are obliged to adopt in accordance with Article 49 of the PPL, which, among other things, regulates the method of planning, i.e., market research. The model of the special act has been published on the Public Procurement Office website in the section "Professional assistance - Model documents of the PPL/2019.[[16]](#footnote-16)

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| ***Excerpt from the model special act published on the PPO website***  ***Market research***  *Article 8*  *Based on the established needs for goods, services and works for the implementation of the planned activities of the contracting authority, the organisational unit whose competence is public procurement and the organisational unit that is the beneficiary of subject-matter of the procurement, i.e., that expressed the need for procurement in the planning process, determine the specifications of the required goods and services and works.*  *The established specifications are the basis for market research.*  *Article 9*  *The market research is carried out by the organisational unit that is the beneficiary of the procurement subject matter, that is, that expressed the need for procurement in the planning process and/or other experts who, on the proposal of this organisational unit, designates the responsible person of the contracting authority.*  *Market research is conducted for the purpose of preparing the public procurement procedure and informing economic operators about the contracting authority's plans and requirements related to procurement.*  *Article 10*  *Market research is carried out by collecting data from available databases and advertisements, via the Internet (price lists and catalogues of economic entities, websites of institutions responsible for collecting and publishing relevant data on market trends), examining previous experiences in procurement of the same procurement subject matter, examining the experiences of other contracting authorities, by collecting data through the Public Procurement Portal, surveys and questionnaires and in other suitable ways depending on the specifics of the subject-matter of procurement, the quantity and type of goods, services and works.*  *A record is drawn up of the conducted market research, which, in particular, contains data on prices and their movements on the market, the availability of the necessary goods, services and works, their quality and warranty period, maintenance conditions, distribution channels, a list of potential suppliers for each subject-matter of procurement with their characteristics, a description of the state of competition on the market of the subject-matter of procurement and other relevant data.*  *All documents created during the market research (documents and information collected using electronic means of communication, e-mails exchanged with market participants, other contracting authorities, minutes, etc.) are attached to the report on the conducted market research and are kept together with it.* |

***Method of collecting information for market research purposes***

Various sources are available to the public procurement officer for analysing market structure, competition levels, and market prices. Some of them are:

* own experience of the employees of the contracting authority relating to previous procedures or knowledge of the market;
* informal discussions and exchange of information with other procurement experts;
* websites, Portal, other publications;
* chambers of commerce;
* dialogue with economic operators;
* marketing materials of economic operators (brochures, catalogues/e-catalogues), which can be a significant source of information regarding detailed product descriptions, business conditions, price lists, etc.

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| Thumbs up sign**Summary – How is the market researched?**  The public procurement officer knows:   1. Legal provisions regarding market research 2. Market research methods 3. Sources for collecting information 4. Consequences of failure to comply with certain legal provisions, especially with regard to failure to comply with Article 90 of the PPL. |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Prevention of corruption and conflicts of interest
* Preparation for the implementation of the public procurement procedure

HOW IS A PROCUREMENT PLAN PREPARED AND PUBLISHED?

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| ChecklistRelevant legal provisions on this topic:  Article 88 of the PPL - Public procurement plan  Article 49 of the PPL - General anti-corruption measures |

***The importance of procurement planning***

After conducting market research, the contracting authority begins planning public procurement and developing a procurement plan.

Public procurement planning is the first action that a contracting authority takes in order to implement public procurement. Public procurement planning is the process in which a contracting authority plans public procurement that it intends to implement in a certain period.

After determining the strategic goals of the contracting authority, a needs assessment is carried out every year to identify goods, services or works that can contribute to the achievement of certain goals.

The contracting authority's professional and responsible persons, and, if necessary, public procurement officers, should discuss with representatives of organisational units and persons who need specific procurement about their needs for the coming year, and in doing so, they should consider the following issues:

* What is being purchased and why?
* What characteristics of the subject-matter of public procurement are necessary, and which are desirable?
* What results do you want to achieve?
* Should the asset be purchased or rented or leased?
* What is the market situation, etc.?

In the public procurement planning process, it is particularly important to emphasise the cooperation of all organisational units of the contracting authority. This primarily refers to the cooperation of the following organisational units:

* Procurement Service - This service is primarily responsible for implementing both public procurement procedures and procurements to which the provisions of the PPL do not apply.
* Financial Service - The financial service provides financial resources, prepares a payment schedule plan, aligns delivery schedules with payment schedules, etc.
* Legal Service - The basic powers of the legal service relate to the interpretation of regulations, the preparation of public procurement contract proposals, participation in complaint procedures, acting in the event of possible court proceedings, etc.
* Professional Service - The professional service is, as a rule, the user of the subject-matter of procurement. This service defines the subject-matter of procurement, technical specifications, participates in the work of the commission as a member, etc.

Considering that a public procurement officer can be a person with a higher education, but regardless of the type of education,[[17]](#footnote-17) he or she can be part of any of the above services. Therefore, regardless of which service he or she is engaged in, it is necessary for the public procurement officer to achieve good cooperation with other services in order for public procurement planning to be successful.

If cooperation between the above organisational units is lacking, the consequences may be the following:

* Procurement of an inadequate (unnecessary) procurement item,
* Poorly determined estimated value,
* Inadequately allocated funds in the financial plan,
* Untimely procurement,
* Violation of the law,
* Business process stall.

In order to assist contracting authorities with planning, a special section is dedicated to this very topic in the model special act that the Public Procurement Office has prepared and published on its website.

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| ***Excerpt from the model special act published on the PPO website***  ***The method of planning public procurements and procurements to which the provisions of the Law do not apply***  *Basic provisions*  *Article 4*  *The Contracting Authority adopts the annual public procurement plan, which contains the data prescribed by the Law.*  *The public procurement plan consists of all public procurements whose implementation is planned in the current budget year.*  *The Contracting Authority also enacts an annual procurement plan to which the provisions of the Law do not apply, which contains the data prescribed by this rulebook.*  *The procurement plan consists of all procurements to which the provisions of the Law do not apply, based on the exceptions prescribed in Articles 11-21 of the* Law *and acquisitions whose estimated value is lower than the thresholds prescribed by Article 27, paragraph 1 of the* Law*, the implementation of which is planned in the current year.*  *Planning criteria*  *Article 5*  *When planning each public procurement, as well as procurements to which the provisions of the Law do not apply, the following criteria are particularly taken into account:*   * + *whether the subject-matter of procurement is in the function of carrying out activities and in accordance with the planned goals defined in the relevant documents (regulations, standards, annual business program, adopted action plans and other planning documents, protocols, etc.);*   + *whether the technical specifications and quantities of a specific subject-matter of procurement correspond to the actual needs of the contracting authority, that is, the end-user;*   + *whether the estimated value of the public procurement is appropriate with regard to the objectives of the procurement, taking into account the technical specifications, the necessary quantities and the state of the market;*   + *whether additional costs are created during procurement, what is the amount and what is the nature of those costs;*   + *whether there are other possible solutions to satisfy the same need and what are the advantages and disadvantages of those solutions compared to the existing ones;*   + *inventory status, monitoring and analysis of indicators related to the consumption of goods (daily, monthly, quarterly, annually, etc.);*   + *collection and analysis of existing information and databases on selected bidders and concluded contracts;*   + *monitoring and comparing the costs of maintenance and use of existing equipment in relation to the costs of purchasing new equipment, the profitability of the investment, the profitability of overhauling the existing equipment, etc.;*   + *environmental advantages of the procurement object, energy efficiency and life cycle costs (acquisition cost, use and maintenance costs, as well as disposal costs after use);*   + *risks and costs in case of non-implementation of the procurement procedure of goods, services or works, as well as the costs of alternative solutions.*   *Participants in procurement planning*  *Article 6*  *Representatives of all organisational units of the contracting authority participate in the planning of public procurements and procurements to which the Law does not apply.*  *The process of drawing up a public procurement plan and procurements to which the Law does not apply is initiated by the responsible person of the contracting authority by giving an order to the head of the organisational unit whose responsibility is public procurement.*  *How to express and determine needs*  *Article 7*  *The head of the organisational unit whose responsibility is public procurement submits a request for the statement of needs for the following year to the heads of all other internal organisational units of the contracting authority.*  *All internal organisational units of the contracting authority shall submit in writing data on the needs for the following year, within the deadline specified in the request for expressing the needs.*  *The needs must be expressed in appropriate quantitative units, described characteristics, quality, with the expressed dynamics of needs and an explanation of the reasons and expediency of the procurement.*  *After collecting the expressed needs, the head of the organisational unit in whose jurisdiction are public procurement affairs consolidates them and checks them in relation to the criteria for planning.*  *If inconsistencies with the planning criteria are observed during the check, the organisational units whose expressed needs have identified inconsistencies are notified in writing about them and invited to eliminate them within a certain period.*  *After checking the stated needs, the organisational unit in charge of public procurement determines the proposal of the contracting authority's real needs and submits it to the responsible person of the contracting authority, and if necessary to other persons determined by the responsible person of the contracting authority.*  *The responsible person of the contracting authority decides on the actual needs of the contracting authority for goods, services and works.* |

***Annual public procurement plan***

As a result of all activities undertaken in the planning process, the contracting authority prepares an annual public procurement plan.

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| WarningImportant!  The annual public procurement plan is a document that transparently makes available to the public a list of all procurement needs of an individual contracting authority in a certain period. |

The public procurement officer is expected to be familiar with the method of developing an annual public procurement plan.

The annual public procurement plan includes a list of public procurement items (and CPV codes), the estimated value of the public procurement items, the type of public procurement procedures to be implemented and the approximate time of initiation of the procedure.[[18]](#footnote-18) Also, the contracting authority shall indicate in the annual public procurement plan if the procurement is implemented through a centralised public procurement body.[[19]](#footnote-19) If this information is missing, the centralised public procurement body will not be able to procure a specific procurement item for a contracting authority that has not indicated this information in its annual public procurement plan.

In accordance with the provisions of the PPL, the contracting authority publishes the annual public procurement plan on the Portal and the contracting authority's website within ten days from the date of adoption.[[20]](#footnote-20)

The contracting authority shall also publish amendments or supplements to the public procurement plan on the Portal and on its website. Planning a new public procurement, changing the subject-matter 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.[[21]](#footnote-21)

The contracting authority 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.[[22]](#footnote-22)

The annual public procurement plan is prepared, published and amended via the Portal. In addition to textual instructions,[[23]](#footnote-23) the Portal also provides video instructions on how to prepare, publish and amend the plan.[[24]](#footnote-24)

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| A fine of RSD 100,000 to RSD 1,000,000 will be imposed on the contracting authority for a misdemeanour, if:   * it makes a division of the procurement subject-matter into several procurements with the aim of avoiding the application of the provisions of this law or the corresponding rules of the public procurement procedure (breach of Articles 29-35 of the PPL) and * procures goods, services or works without previously conducting a public procurement procedure, except when this is permitted by this law (breach of Article 51 of the PPL) |

***Importance of annual public procurement plan***

The annual public procurement plan is a condition for the implementation of public procurement procedures and the contracting authority may initiate a public procurement procedure only if the procurement is foreseen in the public procurement plan.[[25]](#footnote-25)

This requirement is materialised during the preparation of the public procurement procedure on the Portal. The contracting authority is obliged, already at the first step on the Portal, where it enters basic data and parameters that determine the further course of the process in the procedure, to, among other things, enter the item of the public procurement plan on the basis of which it initiates the public procurement procedure.

In exceptional cases, when public procurement cannot be planned in advance or due to urgency, the contracting authority may initiate a public procurement procedure even if the procurement is not provided in the public procurement plan.[[26]](#footnote-26) In this case, the contracting authority shall, when preparing the public procurement procedure on the Portal, indicate in the first step: "Initiation of procurement not foreseen in the public procurement plan".

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| Thumbs up sign**Summary – How is a procurement plan prepared and published?**  The public procurement officer knows:   1. Legal provisions regarding procurement plan 2. The method of public procurement planning 3. Method of preparing and publishing the procurement plan on the Portal 4. How to change the procurement plan 5. The consequences of failure to comply with certain legal provisions, especially with regard to improper determination of the subject-matter and determination of the estimated value of the procurement |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for the field of planning and plan development are:

* Concept and subject-matter of public procurement
* Contracting authorities
* Principles of public procurement
* Mixed procurement
* Thresholds
* Method of determining the estimated value of public procurement and division into parties
* Division of procurement into lots
* Preparation for the implementation of the public procurement procedure

HOW ARE PUBLIC PROCUREMENT NOTICES PREPARED AND PUBLISHED?

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| ChecklistRelevant legal and regulatory provisions on this topic:  Article 91 of the PPL - Initiation of the public procurement procedure  Article 105 of the PPL - Public procurement advertisements Article 106 of the PPL - Public invitation Article 107 of the PPL - Prior information notice Article 108 of the PPL - Periodic indicative notice  Article 109 of the PPL - Notice of contract award, suspension of proceedings or annulment of proceedings, notification for voluntary prior transparency Article 110 of the PPL - Contracting authority’s profile Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20)  Instruction on how to send and publish public procurement notices (“Official Gazette of the Republic of Serbia”, No. 93/20) |

***General about public procurement announcements***

During the implementation of the public procurement procedure, contracting authorities are obliged to publish different public procurement notices, depending on the stage of the procedure. The public procurement officer is expected to know the types of notices, as well as how and when they are prepared via the Portal.

The PPL prescribes the following public procurement announcements:

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| **Type of announcements** | **Purpose** |
| 1) Public invitation; | By sending this announcement for publication, the procedure is initiated |
| 2) Prior information notice; | With this announcement, the contracting authority announces that it will initiate a procedure during the year |
| 3) Periodic indicative notice; | With this announcement the sectoral contracting authority announces that it will launch a procedure during the year |
| 4) Notice on the establishment of a qualification system; | With this notice, the sectoral contracting authority establishes a qualification system |
| 5) Notice on the implementation of the negotiation procedure without publishing a public invitation; | With this notice, the contracting authority informs that it has initiated this type of procedure. |
| 6) Notice of contract award, suspension of proceedings or annulment of proceedings; | With this announcement, the contracting authority informs that it has awarded the contract or suspended the procedure or that the procedure has been annulled |
| 7) Notice on the profile of the contracting authority; | An announcement that the contracting authority can publish on their profile |
| 8) Notice of amendment of the contract; | An announcement by which the contracting authority informs that it has amended the contract |
| 9) Notice for social and other special services; | In the case of social and other special services, the estimated value of which is less than |
| 10) Notice of design competition; | An announcement by which the contracting authority informs that it has amended the contract |
| 11) Notice of the results of the design competition; | An announcement by which the contracting authority informs that it has amended the contract |
| 7) Correction - notification of changes or additional information; | An announcement by which the contracting authority informs about the changes made |
| 13) Notice of voluntary prior transparency; | Announcement by which the contracting authority informs that it has carried out a procurement based on the provisions of Articles 11 - 21 of the PPL. |
| 14) Notice of submitted application for protection of rights; | An announcement by which the ordering party informs that a request for protection of rights has been filed |

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| A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority for a misdemeanour if it fails to publish the announcements referred to in Article 105, paragraph 1,   * item 6) Notice of contract award, suspension of proceedings or annulment of proceedings; * item 8) - Notice of amendment of the contract; * item 11) Notice of the results of the design competition; |

The content of the forms is determined by the Regulation on Determining the Content of Standard Forms for Publishing Public Procurement Notices via the Public Procurement Portal ("Official Gazette of the Republic of Serbia", No. 93/20),[[27]](#footnote-27) while the method of sending and publishing notices is determined by the Instructions on the Method of Sending and Publishing Public Procurement Notices (“Official Gazette of the Republic of Serbia”, No. 93/20).[[28]](#footnote-28)

All public procurement notices are prepared and published via the Portal. Instructions for publishing each individual notice are available on the Portal.[[29]](#footnote-29)

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| Right pointing backhand index**Reminder**  If the estimated value of the public procurement is equal to or greater than 5 million dinars, the contracting authority is obliged to publish the public invitation, prior information notice, periodic indicative notices and notice on the establishment of the qualification system on the Portal of Official Gazettes of the Republic of Serbia and the database of regulations. |

***Public invitation***

A public invitation is an announcement whose publication initiates a public procurement procedure.[[30]](#footnote-30) The public invitation and the tender documentation are prepared and sent for publication at the same time.

The process of preparation of tender documentation is not separate from the process of preparation of public invitation for a specific public procurement procedure, i.e., the preparation of public invitation and tender documentation are parts of a unique and inseparable process of preparation of these documents.

All parts of the tender documentation become visible only at the moment of publishing the public invitation on the Portal, i.e., the contracting authority does not publish the public invitation and tender documentation separately, but the process of publishing the said documents is unique and inseparable. Only after the announcement of the public invitation, interested persons can download the tender documentation.

In the process of preparation of the public invitation and tender documentation, the contracting authority enters data on the specific public procurement procedure through the Portal in a predetermined order. From the above data, the Portal automatically forms certain parts of the tender documentation (criteria for contract award only in the case of automatic ranking, criteria for qualitative selection of economic operators and instructions to bidders on how to make a bid), while other parts of the tender documentation in a predefined order (sample price structure i.e., technical specifications, contract model, etc.). The method of preparing the tender documentation will be discussed in more detail in the next chapter.

The mandatory content of the public invitation is prescribed in Annex 4, Part V of the PPL and is provided as such on the Portal. In other words, when preparing a public invitation via the Portal, the contracting authority cannot fail to enter any mandatory part, given that the Portal instructs it to enter all mandatory data.

However, when preparing a public call for tenders and tender documentation, the public procurement officer is expected to enter the requested data in all respects in the manner prescribed by the provisions of the PPL.

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| ***The content of the public invitation for the public contracting authority is taken from Annex 4, Part V of the PPL.***  1) Name, tax identification number, address including NUTS code, telephone number, fax number, e-mail and website of the contracting authority and, where different, services from which additional information can be obtained. 2) E-mail address or website where the procurement documentation will be available with free, unrestricted and unhindered direct access. When free, unrestricted and unhindered direct access is not possible for the reasons specified in Article 45 of this Law, an indication of how the procurement documentation can be accessed. 3) Type of contracting authority and its main activity. 4) Where necessary, an indication that the contracting authority is a centralised public procurement body or that some other form of joint procurement is applied. 5) CPV codes when the subject-matter of the procurement is divided into lots, this information shall be provided for each lot. 6) NUTS designation of the main place of performance of works in the case of works or NUTS designation of the main place of delivery or provision in the case of goods or services if the subject-matter of the procurement is divided into lots, this information shall be provided for each lot. 7) Description of the procurement: nature and scope of the works, nature and quantity or value of the goods, nature and scope of the services. When the subject-matter of the procurement is divided into lots, this information shall be provided for each lot. Where necessary, a description of all options. 8) Estimated total scope of the contract where the subject-matter of the procurement is divided into lots, this information shall be provided for each lot. 9) Indication of whether the submission of variants is allowed or prohibited. 10) Framework time limit for delivery, performance or provision of the goods, works and services and, if possible, the duration of the contract. (1) In the case of a framework agreement, information on the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years, if possible, information on the value or volume and frequency of the contracts to be awarded, the number and, where appropriate, the proposed maximum number of economic operators to participate in the framework agreement. (2) In the case of a dynamic purchasing system, information on the planned duration of that system, if possible, information on the value or volume and frequency of the contracts to be awarded. 11) Conditions for participation, including: (1) where applicable, information on whether the right to participate is reserved for economic operators referred to in Article 37, paragraph 1 of this Law or that the public procurement contract is performed within the framework of a sheltered employment programme, (2) where applicable, information on whether the provision of services is reserved for a particular profession on the basis of laws and other regulations, reference to the relevant law or other regulation, (3) a list and brief description of the criteria regarding the personal situation of economic operators which may lead to their exclusion and the selection criteria; minimum level(s) of capacity possibly required; information on the information required (declarations, documentation). 12) Type of public procurement procedure; where applicable, reasons for applying a reduction in time limits for reasons of urgency (in open and restricted procedures and competitive procedures with negotiation). 13) If applicable, information on whether the framework agreement is included: (1) framework agreement, (2) dynamic purchasing system, (3) electronic auction (in the case of an open or restricted procedure or a competitive procedure with negotiation). 14) When the subject-matter of procurement is formed by lots, information on the possibility of submitting a bid for one, for several or for all lots; information on any possible restrictions on the number of lots that may be awarded to one bidder. Where the subject-matter of the procurement is not structured by lots, an explanation for this, unless this information is provided in the procurement procedure report, if applicable. 15) In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where the option of reducing the number of candidates to be invited to submit tenders or to take part in the dialogue is used: the minimum and, where appropriate, the proposed maximum number of candidates and the objective and non-discriminatory criteria or rules to be applied for the selection of those candidates. 16) In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, an indication, where appropriate, of the use of successive stages in order to gradually reduce the number of tenders to be negotiated or solutions to be discussed. 17) Where appropriate, the special conditions for the performance of the contract. 18) Criteria to be used for contract award. Except where the most economically advantageous tender has been identified solely on the basis of price, the criteria representing the most economically advantageous tender and their weightings shall be indicated if they are not already specified in the tender documents or, in the case of a competitive dialogue, in the descriptive document. 19) Time limit for submission of tenders (open procedure) or applications (restricted procedure, competitive procedure with negotiation, dynamic purchasing system, competitive dialogue or innovation partnership). 20) Address to which tenders or applications must be sent. 21) In the case of an open procedure: (1) minimum period of validity of the tender, (2) date, time and place of opening of tenders, (3) persons authorised to be present at the opening. 22) Language or languages ​​in which tenders or applications must be drawn up. 23) Where applicable, indication: (1) whether electronic submission of tenders or applications is required/accepted, (2) whether electronic procurement is used, (3) whether electronic invoicing is used, (4) whether electronic payment is accepted. 24) Information on whether the contract relates to a project and/or programme financed by European Union funds. 25) Name and address of the body responsible for protection of rights. Precise information on deadlines for protection or, if necessary, name, address, telephone number, fax number, e-mail address of the service from which this information can be obtained. 26) Date(s) and reference(s) of previous notices relevant for the public procurement(s) to which this call relates. 27) In the case of recurring contracts, the estimated time of publication of further public calls. 150 28) Date of dispatch of the call. 29) Information on whether the contract is covered by the GPV. 30) All other relevant information. |

Incorrectly stating certain data may cause a request for additional clarifications and explanations, which may lead to delays in the procedure and the filing of a request for protection of rights, and certain incorrectly stated data may also constitute grounds for initiating a misdemeanour proceeding.

***Determining the terms for submission of bids***

One of the data listed in the public invitation is the deadline for submitting bids. The methods of determining deadlines are prescribed in the articles of the PPL relating to public procurement procedures.[[31]](#footnote-31) Therefore, for each type of public procurement procedure, specific deadlines for submitting bids are set.

Thus, for example, it is prescribed that the minimum deadline for submitting bids in an open procedure is:

1) 35 days from the day of sending for publication a public invitation for public procurement whose estimated value is equal to or greater than the amount of European thresholds;

2) 25 days from the day of sending for publication a public invitation for public procurement whose estimated value is less than the amount of European thresholds.

3) 15 days from the date of sending the public invitation for the procurement of works whose estimated value is lower than 30,000,000 dinars;

4) ten days from the date of sending the public invitation for the procurement of goods and services whose estimated value is lower than 10,000,000 dinars;

The PPL also prescribes the possibility of shortening these deadlines, namely the deadlines from items 1) and 2), which can be shortened:

* in the event of publication of previous information notice or periodic indicative notice - to 15 days;
* when offers can be submitted by electronic means - to 30 or 20 days;
* for reasons of justified urgency, for which the contracting authority possesses valid evidence - to less than 15 days.

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| The contracting authority shall be fined from 100,000 to 1,000,000 dinars for the violation if it fails to act in accordance with Articles 52-56 and Articles 58, 60 and 63). |

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| Thumbs up sign**Summary - How are public procurement announcements prepared and published?**  The public procurement officer knows:   1. Legal and regulatory provisions regarding the public procurement advertisements 2. Purpose of each individual advertisement 3. Manner of preparing and publishing an advertisement 4. Mandatory content of each individual advertisement and the method of determining individual data 5. Consequences of non-publication of individual advertisements 6. Consequences of incorrect determination of certain mandatory data |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Reserved public procurements
* Language, currency and communication in the public procurement procedure
* Calculation and determination of deadlines
* Publication and transparency

HOW IS THE TENDER DOCUMENTATION PREPARED?

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| ChecklistRelevant legal and regulatory provisions on this topic:  Article 93 - Contents of the tender documentation  Article 94 - Security instruments  Article 95 - Publication and submission of the tender documentation  Article 96 – Amendments, supplements and additional clarifications to procurement documentation  Article 97 – Additional clarifications to procurement documentation  Article 87 – Extension of the deadline for submitting applications or tenders in the event of significant changes to the documentation  Article 98 – General rules on technical specifications  Article 99 – Determination of technical specifications  Article 100 – Use of technical specifications  Article 101 – Prohibition of rejection of bids that meet the requirements  Article 103 – Test report, certificate and other means of evidence  Articles 111 and 112 – Grounds for exclusion  Article 113 – Measures taken by an economic operator to prove its reliability regardless of the existence of grounds for exclusion  Article 114 – Criteria for selecting an economic operator  Article 115 – Fulfilment of the conditions for performing professional activities  Article 116 – Financial and economic capacity  Article 117 – Technical and professional capacity  Article 118 – Statement on fulfilment of criteria for qualitative selection of an economic operator  Article 119 – Method of proving compliance with the criteria for qualitative selection of an economic operator  Article 120 – Evidence of fulfilment of the criteria for qualitative selection of an economic operator  Article 121 – Types of evidence for grounds for exclusion  Article 122 – Types of evidence of ability to perform a professional activity  Article 123 – Types of evidence of financial and economic capacity  Article 124 – Types of evidence of technical and professional capacity  Article 125 - Online Certificate Database (e-Certis)  Article 128 – Register of Bidders in the Republic of Serbia  Article 129 – Official registers of economic operators and certification by competent bodies  Article 130 – Use of the capacity of other entities  Rulebook on the content of tender documentation in public procurement procedures (“Official Gazette of the Republic of Serbia”, No. 21/21) |

***Contents of the tender documentation***

The public procurement officer, together with other members of the public procurement commission, is obliged to prepare the tender documentation in a way that enables and encourages the greatest possible competition, and it must contain all the information that economic operators need to prepare and submit bids, i.e., applications.

The content of the tender documentation is prescribed in detail by the Rules on the Content of Tender Documentation in Public Procurement Procedures ("Official Gazette of the Republic of Serbia", No. 21/21).[[32]](#footnote-32)

Depending on the type of public procurement procedure, the tender documentation shall contain in particular:

* data on the subject-matter of procurement;
* technical specifications;
* criteria for qualitative selection of the economic operator
* contract award criteria
* contract terms;
* data on the basis of which the bidders prepare the bid form;
* data on the basis of which the bidders prepare the form of the statement on fulfilment of the criteria for qualitative selection of the economic operator;
* forms of documents that form an integral part of the offer;
* model contract or framework agreement;
* information about prescribed obligations, and
* other information necessary for the preparation and submission of the bid.

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| WarningImportant!  The data contained in the tender documentation and the data specified in the public call and other advertisements used as a public call must not contradict each other.[[33]](#footnote-33) |

In order to provide assistance to contracting authorities and bidders, the Public Procurement Office has prepared and published on its website the Guidelines for the preparation of tender documentation and the preparation of e-bids on the Public Procurement Portal.[[34]](#footnote-34)

In addition to the above, various models of tender documentation have been published on the PPO website, in the "Expert Assistance" section, which can be used by contracting authorities when conducting public procurement procedures.[[35]](#footnote-35)

***How to prepare tender documentation***

The public procurement officer prepares the tender documentation on the Portal in parallel with the preparation of the public call.

When preparing a public procurement procedure on the Portal, the Portal automatically forms individual parts of the tender documentation and forms from the data previously entered on the Portal by the public procurement officer.

The portal instructs the public procurement officer to enter data on the public procurement procedure in a certain order, from which a public invitation is then formed, a general part - data on the subject-matter of procurement, a description of the criteria for the qualitative selection of the economic operator and instructions on how to prove that these criteria are met, the criteria for awarding the contract (only in the case of automatic ranking) and instructions for bidders on how to make a bid.

Other parts that the Portal does not automatically generate (such as the bid structure form, technical specifications, contract model, etc.) are prepared separately and then uploaded to the Portal.

If the subject-matter of the procurement is formed into lots, each lot may have a separate part or parts of the tender documentation consisting of one or more documents.

The parts of the tender documentation that the public procurement officer uploads to the Portal himself and the parts that are automatically generated on the Portal as a whole constitute the tender documentation with all the data.

The tender documentation is available on the Portal simultaneously with the publication of the public call and can be downloaded from the Portal. The tender documentation from the Portal can be downloaded only by registered Users of the Portal.

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| Right pointing backhand index**Reminder**  The contracting authority cannot request reimbursement from the economic operator of any costs for the preparation and provision of tender documentation, or for the receipt of tender documentation.[[36]](#footnote-36) |

***Amendments and supplements to tender documentation***

If the tender documentation is amended or supplemented within the deadline for submitting bids, the public procurement officer is obliged to send those amendments or supplements without delay for publication on the Portal, i.e., make them available in the same manner as the basic documentation.

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| WarningImportant!  The last day when the contracting authority can submit changes or amendments to the tender documentation for publication on the Public Procurement Portal is the day before the deadline for submitting bids or applications.  In order for the amendment or supplement to the tender documentation to be published on the Public Procurement Portal, the contracting authority must submit a Corrigendum for publication - a notification of amendments or additional information. The Corrigendum will be published the day after it is submitted for publication. Simultaneously with the publication of the Corrigendum, the amended tender documentation becomes visible on the public part of the Portal, and all those interested in this procedure will be automatically notified of the amendment to the tender documentation.  The portal prevents the submission of changes or amendments to procurement documentation for publication on the day the deadline for submitting bids expires. |

In the case of a significant amendment to the tender documentation[[37]](#footnote-37) that requires additional time for economic operators to prepare their bids or applications, the public procurement officer is obligated to extend the deadline for submission of applications or bids.

The extension of the deadline must be proportionate to the importance of the information or changes being published, whereby the deadline for submitting requests for protection of rights referred to in Article 214, paragraph 2 of the PPL may not be less than ten days.[[38]](#footnote-38)

There is no obligation to extend the deadline for submission of tenders if additional information or clarifications of the procurement documentation, which economic operators may request in accordance with Article 97 Of the PPL, were not requested in a timely manner or their importance is not relevant for the preparation and submission of bids or applications.

After the deadline for submitting bids has expired, the procurement documentation cannot be changed or supplemented.

***Technical specification***

The technical specifications, which are an integral part of each tender documentation, describe, clarify and define the subject-matter of public procurement in detail in a manner that enables interested economic operators to prepare and submit a bid that meets the needs and requirements of the contracting authority.

Considering the different procurement subjects that a particular contracting authority needs (for example, software development, construction work on a facility, procurement of computers, etc.), the public procurement officer conducting the procedure cannot be expected to compile this part of the procurement documentation itself.

In this regard, it is of great importance that the preparation of technical documentation involves persons who have expert knowledge in the field to which the specific public procurement procedure relates. This is stated because incorrect or imprecisely drafted technical specifications are the most common cause of problems that may arise later, during the public procurement procedure and contract execution, such as: the need to amend the tender documentation, suspension of the public procurement procedure, filing a request for protection of rights and problems during contract execution. On the other hand, precise and clear technical specifications are a prerequisite for bidders to be able to respond to the contracting authority's requirements. Therefore, technical specifications must be drafted in a way that allows for the greatest possible competition, while at the same time clearly presenting the required level of standards, materials, workmanship and other essential factors relating to the goods, services and works being procured.

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| Right pointing backhand index**Reminder**  If the contracting authority provides within the technical specifications that bidders are obliged to submit certain evidence in their bids proving that what they are offering meets the technical requirements of the subject-matter of procurement (catalogues, samples, etc.), it is necessary to provide such evidence within the Instructions to bidders on how to prepare a bid, in the part relating to the mandatory content of the bid. |

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| WarningImportant!  **Key principles when determining technical specifications**  **Prohibition of discrimination**  Technical specifications may not refer to a particular brand or source or a particular process characterizing the products or services provided by a particular economic operator or to trademarks, patents, types or a specific origin or production, which would have the effect of giving an advantage to or eliminating certain economic operators or certain products. For example, if the customer is purchasing dishwashing detergent, they cannot list "Fairy" in the specification.  An exception to this general rule exists when the subject-matter of the procurement cannot be clearly described in another way, with specifications that are sufficiently precise and understandable to all interested parties. However, the use of this exception must not result in discrimination. For this reason, the Public Procurement Act stipulates that such statements always include the words “or appropriate”.  **Principle of equality**  The contracting authority must assume that products manufactured in accordance with the standards adopted by the standardisation organisation comply with the essential requirements prescribed by the relevant technical regulations. Therefore, the contracting authority may not reject a tender for products solely because they are not manufactured in accordance with those standards, if appropriate evidence is provided showing that those products comply with the essential requirements of the relevant technical legislation.  If there are no common technical rules or standards, the contracting authority cannot reject a bid for products from other countries solely because they comply with different technical rules or standards, without first checking whether they meet the requirements of the subject-matter of the procurement. |

***Criteria for qualitative selection of the economic operator***

The PPL prescribes criteria for the qualitative selection of economic operators that economic operators must meet in order for their bids to be assessed as acceptable, and for contracting authorities to be able to award them a public procurement contract.

In this regard, the PPL prescribes the grounds for exclusion and criteria for selecting an economic operator.

Grounds for exclusion may be mandatory and are prescribed in Article 111 of the PPL. These are the grounds for exclusion that every contracting authority is obliged to provide in the tender documentation. When preparing the tender documentation, the Portal does not allow the contracting authority to proceed to the next step until it has marked all five mandatory grounds for exclusion.

Unlike the grounds for exclusion under Article 111 of the PPL that are mandatory, the contracting authority has the option to provide for grounds for exclusion from Article 112 of the PPL. If the contracting authority provides in the tender documentation one or more grounds from Article 112 of the PPL, these fundamentals become mandatory, and every economic operator is obliged to fulfil them in order for its offer to be assessed as acceptable. On the other hand, if the tender documentation does not provide for this ground for exclusion, the contracting authority will not be able to reject the bidder's bid, despite the fact that it has determined the existence of grounds for exclusion. For example, the contracting authority is conducting a public procurement procedure for foodstuffs and the bid was submitted by a bidder for whom the contracting authority has evidence that in the previous three years from the date of expiry of the deadline for submitting bids, the bidder failed to fulfil obligations under previously concluded public procurement contracts, which resulted in the termination of that contract. If the contracting authority has provided for a basis for exclusion from Article 112, paragraph 1, item 5) of the PPL, it will be obliged to reject the bid of that bidder. If the specified criterion is not specified, the bidder's offer cannot be rejected as unacceptable on this basis.

Also, as one of the grounds for exclusion from Article 112 of the PPL stipulates the existence of a decision of the competent competition protection authority establishing that an economic operator colluded with other business entities with the aim of distorting competition, in the period of three years preceding the expiry of the deadline for submitting bids. If the contracting authority has provided for this basis for exemption in the procurement documentation, and if the contracting authority has learned that the Commission for Protection of Competition, for example, has issued a decision establishing that the bidder has concluded restrictive agreements aimed at significantly restricting, distorting and preventing competition, which constitutes a violation of competition under Article 10, paragraph 2 of the Law on Protection of Competition, the contracting authority is obliged to exclude that bidder from the public procurement procedure.

Considering the above, when preparing the tender documentation, the public procurement officer is expected to take into account the specific subject-matter of the public procurement, as well as experience from previously conducted public procurement procedures, and to determine, depending on each individual case, whether and which grounds for exclusion under Article 112 of the PPL will be used.

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| WarningImportant!  Exceptions to the obligation to exclude an economic operator from the public procurement procedure:   * Public interest (Article 111, paragraph 3 of the PPL) * Capacity to perform contracts (Article 112, paragraph 2 of the PPL) * Measures to prove reliability (Article 113 of the PPL) |

In addition to the grounds for exclusion under Articles 111 and 112 of the PPL, the public procurement officer may also provide criteria for the selection of an economic operator in the procurement documentation.[[39]](#footnote-39)

The purpose of determining these criteria is for the contracting authority to be sure that it will award the public procurement contract to a bidder that is capable of implementing the contract.

For example, if the contracting authority conducts a public procurement procedure for the execution of works on the construction of a facility, it is reasonable to expect the contracting authority to check whether the bidder to whom the contract will be awarded has experience in performing the works in question, whether it has certain financial capacity, whether it has employees with certain qualifications, etc. Or if the subject-matter of the procurement is such that the bidder must, under some other regulations, have a permit from a competent authority in order to carry out the activity that is the subject-matter of the procurement (for example, a license from the National Bank of Serbia for carrying out insurance business), it is in the contracting authority's interest to require the bidder to prove that it has the said permit.

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| Right pointing backhand index**Reminder**  The public procurement officer, depending on each specific public procurement subject-matter, decides whether and which selection criteria to provide. However, if the tender documentation provides for any of the criteria referred to in Article 114 of the PPL, the public procurement officer must ensure that they are logically related to the subject-matter of the public procurement and proportionate to the subject-matter of the public procurement.[[40]](#footnote-40) |

***Contract award criteria***

In order to procure goods, services or works, the contracting authority conducts a public procurement procedure, which ends with the conclusion of a public procurement contract with the bidder who submitted the most economically advantageous tender. The most favourable bidder is selected using the contract award criteria,[[41]](#footnote-41) which serve as the basis on which the contracting authority chooses only one, the most advantageous offer, from multiple submitted bids and awards the contract to it.

*Selection and definition of criteria for awarding contracts*

The basic rule is that the contracting authority has complete freedom to choose the type of contract award criteria to apply in each specific public procurement procedure.

There are certain exceptions to this rule, namely:

* The contracting authority may determine the price or cost element in the form of a predetermined price or cost, so that the most economically advantageous tender is determined on the basis of quality criteria.
* When conducting competitive dialogue and innovation partnerships, the contracting authority may only use the price-quality ratio as a criterion for awarding the contract.
* In the case of the award of a public procurement contract for software development services, architectural services, engineering services, translation services or consultancy services, the contracting authority shall determine the most economically advantageous tender on the basis of cost criteria by applying the cost-effectiveness approach or on the basis of the price-quality or cost-quality ratio.

*Public procurement principles when defining contract award criteria*

When determining the criteria for awarding a contract, the public procurement officer must respect the general principles of public procurement, and in particular ensure the following:

* Equality and non-discrimination. This means that the criteria for awarding contracts should ensure the possibility of effective competition and must not be defined in a way that would close the market.
* Transparency. Transparency means that the criteria for awarding the contract must be established in advance and that bidders must be adequately informed about them. The purpose of establishing and publishing the criteria for awarding the contract to be applied is to ensure that:
* bidders can prepare their bids adequately and thereby satisfy the stated priorities of the contracting authority;
* the contracting authority checks and evaluates the bids in a transparent and reliable manner and as objectively as possible;
* Relevant authorities, such as the Republic Commission for the Protection of Rights in Public Procurement Procedures, the State Audit Institution, the Public Procurement Office and other state authorities and economic entities, may monitor the course of the procedure in order to prevent the application of discriminatory or impermissible criteria for awarding contracts.

*Weighting methodology:*

The purpose of determining these criteria is for the contracting authority to be sure that it will award the public procurement contract to a bidder that is capable of implementing the contract. This rule shall of course not apply in the case of award criteria based solely on price.

By means of the weighting methodology, the contracting authority communicates to the bidders the relative importance it attributes to each selected criterion. At the same time, the contracting authority, through the weighting system, limits the possibility of making arbitrary decisions during the expert evaluation of bids.

In addition to the criteria for awarding the contract, the public procurement officer also specifies reserve criteria in the procurement documentation on the basis of which it will award the contract in a situation where there are two or more bids that are equal after applying the criteria.

Finally, the PPL also prescribes how the contracting authority will select the most advantageous tender if there are two or more tenders that have the same number of weighting factors, i.e., which are of the same value and which are equal even after applying the reserve criterion. In this situation, the PPL prescribes that the contracting authority will apply a draw. The public procurement officer must prescribe in the procurement documentation how it will conduct the draw.

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| ***Example of defining the method of applying the draw***  *If two or more bids have the same number of points, the bid of the bidder who offered a longer warranty period will be selected as the most favourable.*  *If, after ranking on the basis of the award criteria and the reserve criterion, it is not possible to make a decision on the award of the contract, the contracting authority will award the contract to the bidder who will be drawn by lot.* *The contracting authority shall notify all bidders who have submitted bids of the date when the draw will take place.* *The draw will cover only those bids that are most favourable after the ranking based on the award criteria and the reserve criterion.* *The contracting authority will draw by lot in public, in the presence of the bidder, by writing the names of the bidders on separate papers of the same size and colour, and will fold all these papers and put them in a transparent box from where they will draw only one paper.* *The bidder whose name is on the drawn paper will be awarded a contract.* *After the first paper is drawn, the contracting authority draws the remaining papers one by one and ranks the remaining bidders in the order in which they were drawn.* *The contracting authority will submit to the bidders who do not attend this procedure the minutes from the draw by lot.* |

*Amendment of the defined criteria for awarding the contract*

If, during the deadline for submitting bids, there is a need to amend or supplement the contract award criteria, the public procurement officer is obliged to amend the tender documentation. The amendments to the tender documentation are obliged to be sent without delay for publication on the Public Procurement Portal, i.e., to make them available in the same way as the basic documentation.

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| WarningImportant!  Amendment to the criteria for awarding a contract shall be considered a substantial amendment to the tender documentation. In such a case, the public procurement officer shall be obliged to extend the deadline for submitting applications or tenders, in accordance with Article 87 of the PPL. |

*Contract award criterion based solely on price*

With this type of criteria, the contracting authority accepts the bid that meets all defined criteria for the qualitative selection of the economic entity and that offers the lowest price.

This type of contract award criteria is most often used in public procurement procedures to conclude:

* public procurement contracts for the procurement of simple, standardised products (for example, for the procurement of office supplies)
* public works procurement contracts, for works with an existing project for the execution of works (for example, the contracting authority already has a project based on which it is necessary to build a facility)
* public service contracts, only for some services (for example, for office cleaning services).

*Life cycle costs as a type of contract award criterion*

The most economically advantageous tender can be based on costs using a cost-effectiveness approach, such as life cycle costing.

Life cycle costs are all costs that arise from the use of goods, services or works over their entire life cycle. The life cycle costing methodology is a means of assessing these costs over time.

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| ***Example of life cycle cost criterion 2:*** ***Printer procurement***  *The contracting authority decided to replace the old printers.* *The number of pages to be printed per year is about 30,000 pages.* *The contracting authority determined that a total of three new printers would be sufficient for its needs.*  *A simple market analysis conducted by the contracting authority showed that two types of printers are most suitable for the purpose.* *The printers have the same technical characteristics and performance, but there is a significant difference between their catalogue prices.*  *Initial analysis showed that printer A (purchase price) is much cheaper than printer B.*  *However, the contracting authority continued with the life cycle cost analysis, and analysed the price of consumables, i.e., toner cartridges.*  *After analysing the prices of cartridges, the contracting authority came to the conclusion that the cartridge for printer A is much more expensive than the cartridge for printer B.*  *Therefore, a detailed life cycle cost analysis has shown that the initial purchase price may, in some cases, represent a smaller part of the total costs that the contracting authority has to pay, and that although printer A looks cheaper if only the purchase costs are considered, the result of the life cycle cost analysis leads to the conclusion that printer A is the better choice, because it ensures large financial savings over a longer period of time.* |

*Price-quality ratio as a type of contract award criterion*

The criterion of the most economically advantageous tender, which is not based solely on price, but is determined on the basis of the price-quality ratio, allows contracting authorities to take into account other parameters in addition to price when awarding a contract.

The contracting authority may apply various elements of criteria related to the subject-matter of the procurement, in particular:

* quality, including technical features (for example, when purchasing IT equipment, the contracting authority may consider better resolution, larger working memory, printing speed, etc.)
* aesthetic characteristics (for example, when purchasing furniture for a kindergarten, it is evaluated how the beds fit together (in colour, shape, arrangement options), in relation to the existing furniture, and how they fit in a bedroom that is slightly oval in shape)
* functional features (for example, compatibility with existing equipment, ergonomic keyboard, wireless mouse, lower noise level)
* accessibility (for example, the ability to use IT equipment and software for various user groups (people with hearing or vision impairments))
* a solution for all users (for example, ergonomic solutions that enable the use of payment machines for all categories of users)
* social, ecological and innovative characteristics (for example, cleaning products with a lower proportion of harmful ingredients, engagement of a certain number of people from socially vulnerable categories)
* trade and terms of trade (for example, when purchasing coffee, the requirement that the coffee comes from plantations that meet standards for sustainable agriculture that protect nature, wildlife habitats, and the rights and well-being of workers, their families, and the community)
* the organisation, qualifications and experience of the personnel entrusted with the performance of the contract, when the quality of the personnel can have a significant impact on the level of success of the performance of the contract, or
* after-sales service and technical assistance (for example, service, service availability, response time, user training)
* delivery conditions, such as delivery date, delivery process and delivery deadline or execution deadline (for example, deadlines and method of successive deliveries, possibility of successive deliveries for a large number of users).

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| Thumbs up sign**Summary - How is the tender documentation prepared?**  The public procurement officer knows:   1. What content must the tender documentation have 2. What is considered a significant change to procurement documentation 3. Until what point is it possible to change the tender documentation 4. Method of determining criteria for qualitative selection of an economic operator and evidence proving compliance with those criteria 5. Method of determining technical specifications of the subject-matter of procurement 6. How to define contract award criteria |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Principles of public procurement
* Data protection, documentation and procedure recording
* Language, currency and communication in the public procurement procedure
* Types of public procurement procedures
* Minimum number of candidates (p. 77)
* Techniques and instruments in public procurement procedures
* Special procurements regimes
* Centralised and joint public procurement
* Preparation and implementation of the public procurement procedure

HOW ARE OFFERS REVIEWED AND EVALUATED?

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| ChecklistRelevant legal provisions on this topic:  Article 119 – Method of proving compliance with the criteria for qualitative selection of an economic operator  Article 120 – Evidence of fulfilment of the criteria for qualitative selection of an economic operator  Article 141 – Review and expert evaluation of bids  Article 142 – Additional explanations, control and permitted corrections  Article 143 – Abnormally low bid  Article 144 – Conditions for awarding contracts  Article 145 – Report on the public procurement procedure |

After the bids are opened via the Portal, the public procurement officer, together with other members of the public procurement commission, proceeds to review, expert evaluation and ranking of the bids and prepares a report on the public procurement procedure.

During the review and expert assessment of bids, the public procurement commission determines whether the bids meet the conditions and requirements of the procurement documentation, as follows:

* whether the criteria for qualitative selection of an economic operator have been met;
* whether the requirements and conditions related to the subject-matter of procurement and technical specifications have been met;
* whether a security for the seriousness of the offer has been provided, if required;
* whether the offer contains a calculation error;
* whether the bid is within the estimated value of the subject-matter of public procurement or available funds;
* whether the offer is unusually low.

The Public Procurement Commission first determines whether the criteria for the qualitative selection of economic operators are met based on the content of the statement referred to in Article 118 of the PPL - Statement on fulfilment of the criteria for qualitative selection of an economic operator, which bidders submit in their bid.

After the commission ranks the acceptable bids based on the contract award criteria, it invites the bidder who submitted the most economically advantageous bid to submit, within a period that cannot be shorter than five working days, evidence of compliance with the criteria for the qualitative selection of the economic operator, in uncertified copies.[[42]](#footnote-42)

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| WarningImportant!  In case of doubt about the veracity of the data submitted by the economic operator, the contracting authority may check the submitted data with the issuer of the evidence, the competent authority or a third party that has knowledge of the relevant facts, and exceptionally may request the bidder to submit the original or certified copies of all or individual evidence for inspection. |

*Review and evaluation of bids in multi-stage procedures*

When it comes to multi-phase procedures, economic operators in the first phase, within the deadline for submitting applications, submit an application consisting of a statement on the fulfilment of the criteria for the qualitative selection of the economic operator.

The public procurement committee evaluates the applications submitted in a timely manner on the basis of the criteria for the qualitative selection of the economic operator specified in the procurement documentation, in order to determine whether the economic operator will be capable of performing the public procurement contract and in order to select the candidates to be invited to submit a bid.

Only candidates with recognised qualifications may be invited to submit a bid. Therefore, the public procurement commission must request all candidates to submit evidence of compliance with the criteria for the qualitative selection of the economic operator in order to verify the data provided in the statement of compliance with the criteria. This ensures the proper implementation of the procedure, i.e., it ensures that only candidates who have passed the verification of evidence and meet the criteria for qualitative selection are invited to the second phase of the procedure.

In the second phase of the procedure, before making a decision on awarding the contract or terminating the procedure, the contracting authority already possesses valid relevant evidence and is not obliged to request it again from the bidder that submitted the most economically advantageous tender.

*Contract award criteria*

Based on the results of the review and expert assessment, the public procurement commission rejects unacceptable bids.[[43]](#footnote-43)

Bids that are not rejected are ranked according to the contract award criteria specified in the procurement documentation.

If there are two or more bids that are equal when applying the contract award criteria, the contracting authority will award the contract in accordance with the reserve criteria.

If, even after applying the reserve criteria, there are two or more bids that are equally ranked, the contracting authority will award the contract to the bidder drawn by lot.

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| Right pointing backhand index**Reminder**  The contracting authority is not obliged to reject a bid that exceeds the estimated value of the subject-matter of public procurement. Also, the contracting authority is not obliged to reject a bid that contains an unusually low price. |

*Report on the public procurement procedure*

After conducting an expert assessment of the bids, i.e., applications, the public procurement commission prepares a report on the public procurement procedure. Depending on the type of public procurement procedure, the stage in the procedure, the public procurement instrument or technique applied by the contracting authority in the procedure, the report on the public procurement procedure shall contain the data prescribed in Article 145 of the PPL.

The report on the public procurement procedure is created on the Portal after recording the results of the expert assessment on the Portal.

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| Right pointing backhand index**Reminder**  All members of the public procurement commission (as well as deputy members of the commission, if appointed) are required to sign a statement on the existence or non-existence of a conflict of interest after the opening of bids.[[44]](#footnote-44) |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Selection of participants and award of contracts
* Offers covering products originating in third countries and relations with those countries

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| Thumbs up sign**Summary – How are bids reviewed and evaluated?**  The public procurement officer knows:   1. Sequence of actions when reviewing and evaluating bids 2. Conditions under which an offer must be rejected as unacceptable 3. In which situations is it not mandatory to reject an offer as unacceptable 4. Report on the public procurement procedure 5. The obligation to sign a statement on the existence or non-existence of a conflict of interest |

HOW IS THE DECISION TERMINATING THE PUBLIC PROCUREMENT PROCEDURE PREPARED AND PUBLISHED?

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| ChecklistRelevant legal provisions on this topic:  Article 146 – Contract award decision  Article 147 – Decision to suspend the procedure  Article 148 – Decision on the exclusion of a candidate  Article 149 – Access to documentation  Article 151 – Conditions for concluding a public procurement contract and framework agreement  Article 152 – Conclusion of a public procurement contract and framework agreement |

1. ***Decision on awarding a contract, i.e., concluding a framework agreement***
2. After the public procurement commission prepares a report on the public procurement procedure, the contracting authority makes a decision on the award of the contract if the expert evaluation of the bids determines that the conditions for awarding the contract have been met.
3. The public procurement contract is awarded to the bidder that submitted an acceptable bid that, based on the criteria specified in the procurement documentation, and possibly after applying reserve criteria and drawing lots, was determined to be the most economically advantageous bid.

In a public procurement procedure in which a framework agreement is concluded, the contracting authority awards the framework agreement to the bidder that submitted the most economically advantageous bid and makes a decision to conclude the framework agreement.

If the contracting authority intends to conclude a framework agreement with multiple bidders, it is obliged to state in the public invitation how many bidders it is concluding the framework agreement with.

In that case, the contracting authority concludes a framework agreement with a predetermined number of bidders who have submitted acceptable tenders that have been determined as the most economically advantageous tenders based on the award criteria.

If the contracting authority has not received a predetermined number of candidates or bids for the conclusion of a framework agreement, it is obliged, as a rule, to suspend the public procurement procedure. However, the contracting authority may decide to conclude a framework agreement with a smaller number of bidders, i.e., with a single bidder, if it does not receive a predetermined number of bids that meet the conditions for awarding the framework agreement.

The decision on awarding a contract, or on concluding a framework agreement, must be reasoned and must specifically contain data from the report on the public procurement procedure and instructions on legal remedies.

***Decision to suspend the procedure***

The public procurement procedure shall be suspended if, after conducting an expert assessment, the contracting authority determines that there are legally prescribed reasons for suspending the procedure.[[45]](#footnote-45)

The decision to suspend the procedure must also be reasoned and must specifically contain data from the report on the public procurement procedure, i.e., the reasons for suspending the procedure and instructions on legal remedies.

In the event that the procedure is suspended before the deadline for submitting bids, the Portal permanently disables access to any bids or applications that may have been submitted, and the contracting authority returns to the bidders unopened bids, applications and other documents that were not submitted via the Portal.

The Public Procurement Officer is obliged to publish a notice on the suspension of the procedure on the Portal within 30 days from the date of finality of the decision.

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| Right pointing backhand index**Reminder**  The decision to suspend the procedure is considered final when the deadline for protection of rights expires, which is 10 days from the date of publication of the decision on the Portal. |

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| A fine of 100,000 to 1,000,000 dinars will be imposed on the contracting authority for a misdemeanour if it fails to publish a notice of suspension of the procedure. |

***Deadline for making and publishing the decision***

The contracting authority shall make the decision on awarding the contract, the decision on concluding a framework agreement, or the decision on suspending the procedure within 30 days of the expiry of the deadline for submitting bids, unless a longer deadline has been specified in the tender documentation.

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| WarningImportant!  When determining the deadline for making a decision, the public procurement officer should take into account whether a specific procedure requires a deadline longer than 30 days for making a decision on the termination of the procedure (for example, these are complex bids that require additional time for review and assessment by the public procurement commission). |

The contracting authority is obliged to publish the decision terminating the public procurement procedure on the Portal within 3 days from the date of its adoption.

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| A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority for a misdemeanour if it fails to adopt or publish, or submit, decisions in accordance with the provisions of this Law (Articles 146-148) |

***Inspection of documentation***

After the publication of the decision on the award of the contract, the decision on the conclusion of the framework agreement, or the decision on the suspension of the procedure, the economic operator that submitted the bid, or the application in the public procurement procedure, has the right to inspect and copy the documentation from the procedure, or to take over the documentation in an appropriate manner.

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| Right pointing backhand index**Reminder**  Only economic operators that have submitted a bid, i.e., bidders, regardless of the type of public procurement procedure, have the right to access the documentation from the procedure. The contracting authority may grant access to other interested parties.  Economic operators that submitted an application in the first phase of multi-phase public procurement procedures, but which were excluded from the public procurement procedure by the decision of the contracting authority or did not submit a bid in the second phase of those procedures for other reasons, have the right to access the documentation from the procedure only after the publication of the decision on the award or termination of the procedure.  In these procedures, the contracting authority must, in the first phase, ensure that it does not disclose to any candidate information about other candidates who have submitted an application. For this reason, access to the procedure documentation, including applications from other candidates, is only possible after the decision on award or suspension has been published. |

The documentation from the procedure includes the bids and applications of other economic operators, including their parts that were not submitted electronically, the decision of the contracting authority on the implementation of the public procurement procedure, the report on the public procurement procedure, the minutes of negotiations, all communication between the contracting authority and the bidders during the review and expert evaluation of the bids, etc.

The contracting authority is obliged to enable the bidder to inspect and copy or download the documentation within two days[[46]](#footnote-46) of receiving the request, with the obligation to protect confidential data.

The request for inspection, approval of the request and the inspection itself are carried out via the Portal. Direct access to documentation from the procedure that was not submitted via the Portal is carried out at the contracting authority's premises.

***Conditions for concluding a public procurement contract and framework agreement***

After making a decision on awarding the contract/concluding a framework agreement, the contracting authority proceeds to conclude the contract, i.e., the framework agreement.

The public procurement contract/framework agreement shall be delivered to the bidder within 10 days of the expiry of the deadline for submitting a request for protection of rights.

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| WarningImportant!  In a public procurement procedure in which two or more bids have been submitted, the contracting authority is obliged to wait until the deadline for submitting a request for protection of rights has expired, which is 10 days from the date of publication on the Portal, before concluding a public procurement contract/framework agreement.[[47]](#footnote-47) |

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| A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority for a misdemeanour if it concludes a public procurement contract without meeting the conditions set out in Article 151 of the PPL.  The above also constitutes grounds for annulment of the contract, pursuant to Article 233 of the PPL. |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Selection of participants and award of contracts

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| Thumbs up sign**Summary - How is the decision terminating the public procurement procedure prepared and published?**  The public procurement officer must know:   1. What is the content of the decision terminating the public procurement procedure 2. Deadline for making a decision terminating the public procurement procedure 3. Deadline for publishing the decision terminating the public procurement procedure 4. The manner in which documentation from the procedure is made available for inspection, which documentation is made available for inspection and within what time limit 5. Conditions under which a public procurement contract/framework agreement is concluded 6. Consequences of failure to comply with the law |

WHAT IS THE PROCEDURE IN THE EVENT OF A REQUEST FOR PROTECTION OF RIGHTS?

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| ChecklistRelevant legal provisions on this topic:  Article 204 – Procedure for the protection of rights  Article 211 – Active legal standing in proceedings  Article 213 – Manner of submitting a request for protection of rights  Article 214 – Deadline for submitting a request for protection of rights  Article 215 – Deadline for submitting a request for protection of rights  Article 216 – Consequences of a filed request for protection of rights and interim measures  Article 217 – Content of a request for protection of rights  Article 219 – Preliminary verification of requests for protection of rights in previous proceedings  Article 221 – Preliminary review of requests for protection of rights in proceedings before the Republic Commission  Article 225 – Fees and costs of the procedure |

Economic operators that believe that the contracting authority, when conducting a public procurement procedure, has not acted or is not acting in accordance with the provisions of the PPL, have the opportunity to file a request for protection of rights, indicating possible violations of the regulations and thus protecting their rights and interests.

***What actions does the public procurement officer take in the event of a request for protection of rights?***

Upon receipt of a request for protection of rights, the public procurement officer first examines the fulfilment of the procedural prerequisites for deciding on the merits of the request by determining:

* whether the request is accompanied by proof of payment of the fee, from which it can be determined that the transaction was carried out for the appropriate amount and that it relates to the relevant request for protection of rights;
* whether the request was submitted within the deadline;
* whether the applicant has capacity to sue;
* whether the request has the prescribed content.

If the submitted request does not have the content prescribed by law, the public procurement officer shall invite the requester to supplement the request. There is an exception to this rule if the request for protection of rights is submitted by a representative from the ranks of lawyers, when the request is rejected by decision, without a request to supplement it.[[48]](#footnote-48)

In the event that the procedural requirements for deciding on the merits of the request are not met, the public procurement officer shall issue a decision rejecting the submitted request for protection of rights.

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| WarningImportant!  The Public Procurement Officer publishes a notice of the submitted request for protection of rights on the Portal no later than the day following the date of receipt of the request.  However, considering that the request for protection of rights has a suspensive effect on the public procurement procedure, if the request were submitted on the day of opening the bids, the public procurement officer should publish this notice on the same day, without delay, in order to prevent the Portal from opening the bids.  Acting contrary to the above may result in the annulment of the entire procedure by the Republic Commission for the Protection of Rights in Public Procurement Procedures. |

If, after a preliminary check, it is determined that the submitted request for protection of rights is regular in terms of meeting the procedural requirements for decision-making, the public procurement officer may, within five working days from the date of receipt of the regular request, act in one of the following ways:

* adopts a decision adopting the request for protection of rights and partially annulling the public procurement procedure
* shall prepare a response in which it declares its position on all allegations of the request for protection of rights, in which case the rights protection procedure shall continue before the Republic Commission for the Protection of Rights in Public Procurement Procedures.[[49]](#footnote-49)

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| If the contracting authority fails to act within the prescribed time limit in one of the two specified ways in response to a submitted request for protection of rights, the Republic Commission for the Protection of Rights in Public Procurement Procedures will issue a decision imposing a fine on the contracting authority in the amount of 80,000 to 1,000,000 dinars. |

In the event that the Republic Commission for the Protection of Rights in Public Procurement Procedures, in its decision, orders the contracting authority to undertake certain actions for the purpose of a proper and lawful public procurement procedure, the public procurement officer is obliged to act in accordance with those orders.

Also, the public procurement officer is obliged to submit a report on the implementation of the decision to the Republic Commission, if the Commission so requests.

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| The PPL stipulates a violation for a contracting authority in the amount of 100,000 to 1,000,000 who:   * fails to act in accordance with the decision of the Republic Commission referred to in Article 226, paragraph 4, item 1) of the PPL, which adopts the request for protection of rights as well-founded and annuls the public procurement procedure in whole or in part, and item 9) which adopts the appeal as well-founded and annuls the decision of the contracting authority * fails to submit a report on the implementation of the decision of the Republic Commission. |

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| Thumbs up sign**Summary – What is the procedure in the event of a request for protection of rights?**  The public procurement officer knows:   1. Sequence of actions when assessing the merits of a submitted request 2. What to do if the request does not have the legally prescribed content 3. In which cases is the request rejected 4. Procedure if the request is procedurally correct 5. The obligation to act in accordance with the decision and requests of the Republic Commission for the Protection of Rights in Public Procurement Procedures, as well as the consequences of failure to act in accordance with the above |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Legal protection

HOW IS THE EXECUTION OF THE CONTRACT MONITORED AND WHAT ACTIONS ARE TAKEN IN THAT CASE?

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| ChecklistRelevant legal provisions on this topic:  Article 154 – General rules for the execution of public procurement contracts  Article 155 – General rules on contract amendments  Article 156 – Amendments based on contractual provisions  Article 157 – Changes in respect of additional goods, services or works  Article 158 – Changes due to unforeseen circumstances  Article 159 – Change of contracting party  Article 160 – Increase in procurement volume  Article 161 – Subcontractor replacement  Article 162 – Mutatis mutandis application to amendments to framework agreements  Article 163 – Termination of the contract |

When the contracting authority and the bidder who submitted the most economically advantageous tender and to whom the contract was awarded by the contract award decision conclude a public procurement contract, the contract enters the execution phase.

A public procurement contract must be concluded in accordance with the conditions specified in the procurement documentation and the selected bid, and must be performed in accordance with the conditions specified in the procurement documentation and the selected bid.[[50]](#footnote-50)

The execution of the public procurement contract in accordance with the above is obliged to be controlled by the contracting authority.[[51]](#footnote-51)

In the model of a special act that the Public Procurement Office prepared and published on its website, a special section is dedicated to monitoring the execution of public procurement contracts.

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| ***Excerpt from the model special act published on the website of the Public Procurement Office***  ***Manner of monitoring the execution of a public procurement contract***  *Rules of communication with the other contracting party in connection with the execution of the contract*  *Article 26*  *Communication with the other contracting party (hereinafter referred to as: the selected bidder), in connection with the execution of the public procurement contract, takes place in writing, that is, by mail, e-mail or fax.*  *Communication with the selected bidder in connection with the execution of the public procurement contract can be carried out by the members of the commission for qualitative and quantitative reception or a person authorised by the responsible person of the contracting authority.*  *Immediately after the conclusion of the contract on public procurement, the contracting authority informs the selected bidder about the contact information of the person from the previous paragraph of this Article.*  *In exceptional cases, when written communication is not possible due to technical impossibility, and reasons of urgency dictate that communication regarding the execution of the contract be carried out without delay, communication with the selected bidder can also be done orally, and a written note is drawn up and signed without delay members of the commission for qualitative and quantitative reception, i.e., a person authorised by the responsible person of the contracting authority and an authorised representative of the bidder.*  *Designation of persons for monitoring the execution of public procurement contracts*  *Article 27*  *After the conclusion of the contract on public procurement, the person in charge of the contracting authority makes a decision on the formation of the commission for receiving goods and services.*  *The decision on the formation of the commission for the reception of goods and services determines the tasks of the commission.*  *During the formation of the committee for the acceptance of goods and services, the person in charge of the contracting authority is obliged to take care that the professional competence of the members of the committee is logically related to the nature and specifics of the subject-matter of the contract.*  *The committee referred to in paragraph 1 of this Article shall also perform other necessary actions in connection with monitoring the execution of public procurement contracts.*  *The responsible person of the contracting authority by decision forms a commission for the acceptance of works, after the conclusion of the contract, i.e., after obtaining a positive report of the commission for the technical inspection of the works (if it is about works for which the regulations governing the field of planning and construction stipulate the obligation of a technical inspection of the works), formed by the competent authority, in accordance with the regulations governing the field of planning and construction.*  *Criteria, rules and method of checking the quantity and quality of delivered goods,*  *services provided or works performed*  *Article 28*  *The commission for receiving goods and services, i.e., works, checks:*  *- whether the quantity of delivered goods, services provided or works performed corresponds to the contracted amount;*  *- whether the type and quality of delivered goods, provided services or performed works correspond to the agreed, that is, whether they are in accordance with the required technical specifications and the selected offer.*  *Checking the quality and quantity of contracted works, during execution and after completion of works, is carried out by providers of expert supervision and technical inspection services.*  *Document on the completed receipt of goods, services or works*  *Article 29*  *The members of the commission for the receipt of goods, services or works draw up a record of the receipt of goods, services or works, which confirms the receipt of a certain quantity and the requested type of goods, services or works, receipt of the necessary documentation (contract, delivery note, test report, certificates, etc.), as well as that the delivered goods, services or works correspond in all respects to the agreed.*  *The minutes shall be signed by the members of the commission referred to in paragraph 1 of this Article and the authorised representative of the selected bidder and shall be made in two identical copies, of which one copy shall be retained by each contracting party.*  *The minutes of receipt of goods, services or works make an integral part of the documentation for the execution of the contracted financial obligations of the contracting authority, as a contracting party.*  *Rules of procedure in the case of complaints related to the execution of the contract*  *Article 30*  *In the case when, during the reception of goods, services or works, it is determined that the quantity or quality of the delivery does not correspond to the agreed upon, the reception commission will not perform the reception and draw up a record of receipt, but rather draw up and sign a complaint record, in which it is stated that the delivery is not in in accordance with the contract.*  *The complaint record is also signed by the authorised representative of the selected bidder, who receives a copy of the record.*  *Complaint handling is governed by a contract, in accordance with the law governing contractual relationships and other regulations governing this area.*  *The receipt commission has the option of receiving a partial delivery, provided that this part of the delivery corresponds to the agreed quality and that the agreed payment is not conditional on the complete delivery.*  *The members of the commission and the authorised representative of the selected bidder, after removing the objections given during the receipt, sign the receipt minutes.*  *Rules of the procedure for performance of the contracted means of financial security instruments*  *Article 31*  *The organisational unit responsible for public procurement deals with compliance with the contractual obligations of the selected bidder in terms of financial security.*  *After delivery of the contracted means of financial security, the organisational unit referred to in paragraph 1 of this article checks their correctness.*  *The means of financial security are handed over for safekeeping to the organisational unit in whose jurisdiction is the performance of financial affairs.*  *The organisational unit referred to in paragraph 1 of this article monitors the occurrence of circumstances that require an extension of the validity period of the submitted financial security funds and takes care of undertaking activities aimed at returning the financial security funds to the selected bidder.*  *In the event that the reasons for the realisation of the contracted means of financial security are determined, the organisational unit from paragraph 1 of this article checks the fulfilment of the conditions for the realisation of the contracted means of financial security.*  *If the conditions for the performance of the contracted means of financial security are met, the means in question is submitted to the bank for collection.*  *The organisational unit in whose jurisdiction is the performance of financial affairs keeps records of realised contracted means of financial security, on which it prepares an annual report.*  *Report on the execution of the contract, that is, the framework agreement*  *Article 32*  *On the basis of the records of qualitative and quantitative acceptance, drawn up by the commission from Article 28 of this rulebook, the organisational unit responsible for public procurement issues a report on the execution of the contract, i.e., the framework agreement, which contains a description of the course of contract execution, the percentage of contract execution, observed problems during the execution of the contract and possible proposals for measures to improve the planning procedure, preparation of the public procurement procedure and execution of the contract.*  *The report referred to in paragraph 1 of this article is submitted to the organisational unit that is the beneficiary of the procurement subject-matter, that is, that expressed the need for procurement in the planning process and to the responsible person of the contracting authority.*  *The provisions of Articles 27 - 32 of this Rulebook also refer to the monitoring of the execution of contracts, framework agreements or purchase orders, which were concluded after the implementation of the procurement procedure to which the Law does not apply.* |

***Amendment of the public procurement contract***

During the term of a public procurement contract, certain circumstances may arise that require amendment of the contract.

The PPL stipulates that the contracting authority may not make significant changes to the contract.[[52]](#footnote-52)

On the other hand, the PPL provides for cases in which it is possible to amend a concluded contract without conducting a public procurement procedure.

If the public procurement officer is involved in the contract execution phase, he or she is obliged to determine whether, in a specific case, it is permissible to amend the public procurement contract on any of the following grounds:

*Changes based on contractual provisions*[[53]](#footnote-53)

Before amending a public procurement contract on this basis, the public procurement officer should carefully study the provisions of the procurement documentation and the concluded public procurement contract. The officer should check whether all of the following conditions are met:

|  |  |  |
| --- | --- | --- |
| Are amendments, which may include provisions on price changes or options, provided for in the procurement documentation? | **✔️** | ❌ |
| Are amendments that may include provisions on price changes or options provided for in the public procurement contract? | **✔️** | ❌ |
| Are the changes clearly foreseen? | **✔️** | ❌ |
| Are the changes foreseen in a precise manner? | **✔️** | ❌ |
| Are the changes foreseen in an unambiguous manner? | **✔️** | ❌ |
| Does the public procurement contract specify the scope and nature of any amendments? | **✔️** | ❌ |
| Does the public procurement contract state the conditions under which any changes can be implemented? | **✔️** | ❌ |
| Are you sure that the contractual provisions do not provide for amendments that would change the nature of the contract? | **✔️** | ❌ |

If all answers are affirmative, the change, regardless of the value of the change, is permitted. If not, the public procurement officer must check other legal possibilities that allow him to modify the contract without conducting a public procurement procedure or to conduct a new public procurement procedure.

*Article 157 – Changes in respect of additional goods, services or works*[[54]](#footnote-54)

An amendment to a public procurement contract regarding additional goods, services or works may be implemented without conducting a new public procurement procedure if certain conditions are cumulatively met. Before amending a public procurement contract on this basis, the public procurement officer should check whether the following conditions are met:

|  |  |  |
| --- | --- | --- |
| Is the procurement of additional goods, services or works that were not included in the original public procurement contract necessary? | **✔️** | ❌ |
| Regarding the economic operator with which the initial public procurement contract was concluded, are you sure (points 1) and 2) must be fulfilled): |  |  |
| 1) that a change of economic operator is not possible due to economic or technical reasons, such as compatibility requirements with existing equipment, services or works procured under the original procurement, and | **✔️** | ❌ |
| 2) that a change of economic operator may cause significant difficulties or a significant increase in costs for the contracting authority? | **✔️** | ❌ |
| Are you sure that the increase in the contract value (including previous contract amendments if any) is not greater than 50% of the value of the original contract? | **✔️** | ❌ |
| Are you sure that the amendment to the contract is not intended to avoid the application of the Law? | **✔️** | ❌ |

If all answers are affirmative, the contract amendment is permitted. If not, the public procurement officer must check other legal possibilities that allow him/her to modify the contract without conducting a public procurement procedure or to conduct a new public procurement procedure.

*Changes due to unforeseen circumstances*[[55]](#footnote-55)

Amendment of a public procurement contract due to unforeseen circumstances may be implemented without conducting a new public procurement procedure if certain conditions are cumulatively met. Before amending a public procurement contract on this basis, the public procurement officer should check whether the following conditions are met:

|  |  |  |
| --- | --- | --- |
| Did the need for the change arise due to circumstances that a conscientious contracting authority could not have foreseen? | **✔️** | ❌ |
| Are you sure that the amendment does not change the nature of the contract? | **✔️** | ❌ |
| Are you sure that the increase in the contract value (including previous contract amendments if any) is not greater than 50% of the value of the original contract? | **✔️** | ❌ |
| Are you sure that the amendment to the contract is not intended to avoid the application of the Law? | **✔️** | ❌ |

If all answers are affirmative, amendment of the contract on this basis is permitted. If not, the public procurement officer must check other legal possibilities that allow him/her to modify the contract without conducting a public procurement procedure or to conduct a new public procurement procedure.

*Change of contracting party*[[56]](#footnote-56)

Under certain conditions, changing the contractor without conducting a new public procurement procedure is permitted. Before amending a public procurement contract on this basis, the public procurement officer should check the following:

|  |  |  |
| --- | --- | --- |
| Does another economic operator replace the economic operator with which the contracting authority concluded the initial public procurement contract in the event of general or partial legal succession of that economic operator, following a corporate restructuring, including takeover, merger, acquisition and insolvency? | **✔️** | ❌ |
| Does the other economic operator meet the originally determined criteria for the qualitative selection of an economic operator? | **✔️** | ❌ |
| Are you sure that changing the economic operator will not result in significant changes to the contract? | **✔️** | ❌ |
| Are you sure that the change of economic operator is not aimed at avoiding the application of the Law? | **✔️** | ❌ |

If all answers are affirmative, amendment of the contract on this basis is permitted. If not, the public procurement officer must check other legal possibilities that allow him/her to modify the contract without conducting a public procurement procedure or to conduct a new public procurement procedure.

*Increasing procurement volume*[[57]](#footnote-57)

Under certain conditions, increasing the scope of procurement without conducting a public procurement procedure is permitted. Before amending a public procurement contract on this basis, the public procurement officer should check the following:

|  |  |  |
| --- | --- | --- |
| In the case of a public procurement contract for goods or services, is the value of the modification (including previous modifications to the contract on this basis, if any): |  |  |
| * less than 10% of the original value of the public procurement contract​​ and | **✔️** | ❌ |
| * less than 15,000,000 dinars? | **✔️** | ❌ |
| Are you sure that the amendment does not change the overall nature of the public procurement contract for goods/services, i.e., the subject-matter of public procurement? | **✔️** | ❌ |
| In the case of a public procurement contract for goods or services, is the value of the modification (including previous modifications to the contract on this basis, if any): |  |  |
| * less than 15% of the original value of the public procurement contract​​ and | **✔️** | ❌ |
| * less than 15,000,000 dinars? | **✔️** | ❌ |
| Are you sure that the amendment does not change the overall nature of the public procurement contract for goods/services, i.e., the subject-matter of public procurement? | **✔️** | ❌ |

If all answers are affirmative, increasing the scope of procurement without conducting a public procurement procedure is permitted. If not, the public procurement officer must check other legal possibilities that allow him/her to modify the contract without conducting a public procurement procedure or to conduct a new public procurement procedure.

*Subcontractor replacement*[[58]](#footnote-58)

The bidder with whom the public procurement contract has been concluded may request from the contracting authority:

* changing the subcontractor for that part of the public procurement contract that was originally entrusted to the subcontractor
* introduction of one or more new subcontractors
* to take over the execution of the part of the public procurement contract that it had originally entrusted to the subcontractor.

The obligation of the public procurement officer is to determine, before amending the public procurement contract, whether the new subcontractor meets the criteria for the qualitative selection of the economic operator, i.e., if the bidder in the public procurement procedure used the capacities of the subcontractor to perform that part of the contract in order to prove the fulfilment of the criteria for the qualitative selection of the economic operator, the obligation of the officer is to determine whether that bidder independently possesses those capacities.

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| Right pointing backhand index**Reminder**  In the event of a contract amendment pursuant to Articles 157 and 158 of the PPL, the public procurement officer is obliged to publish a notice of contract amendment on the Portal, within 10 days from the date of contract amendment. |

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| A fine of 100,000 to 1,000,000 dinars will be imposed on the contracting authority for a misdemeanour if it makes changes to the concluded public procurement contract contrary to the provisions of the PPL (Art. 155-161) |

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| Thumbs up sign**Summary – How is contract performance monitored and what actions are taken in that case?**  The public procurement officer must know:   1. Under what conditions the contract is concluded 2. What is considered a material contract amendment 3. Under what conditions is it possible to amend the contract 4. Obligation to publish notice of contract changes 5. Who is responsible for monitoring the execution of the contract 6. What are the consequences of not acting in accordance with the law |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Execution of the contract

HOW IS CONTRACT DATA RECORDED?

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| ChecklistRelevant legal provisions and by-laws on this topic:  Article 154 – General rules for the execution of public procurement contracts  Article 152a – Contract information  Rulebook on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Portal ("Official Gazette of the Republic of Serbia", No. 115/23) |

***Obligation to publish contract data on the Portal***

The Public Procurement Officer is obliged to publish on the Portal data on all contracts concluded after the public procurement procedure has been carried out, and on all amendments to contracts pursuant to Articles 156–161 of the PPL, as well as data on contracts/orders concluded or issued in accordance with Article 27 of the PPL (procurement below thresholds) and their amendments.[[59]](#footnote-59)

Thanks to the contract database/contract register on the Portal, which contains information on all contracts and their amendments, from the conclusion of the contract to its implementation, the transparency of data on contracts and their amendments has been increased.

***Deadlines for data publication***

The public procurement officer is obliged to provide information on contracts concluded after the public procurement procedure and information on contracts/purchase orders concluded or issued in accordance with the provisions of Article 27 of the PPL (procurement below the thresholds) shall be published within 30 days from the date of conclusion of the contract, or, for contracts based on framework agreements and dynamic procurement systems, within 30 days from the date of expiry of the quarter in which the contracts were concluded. A more detailed method of publishing this data is explained in the secondary legislation.[[60]](#footnote-60)

Data on amendments to contracts pursuant to Articles 156, 159, 160 and 161 of this Law, as well as on amendments to contracts/purchase orders concluded or issued in accordance with Article 27 of the PPL (procurement below the thresholds) is published within 10 days from the date of the contract amendment.

The deadline for publishing data on the termination of the contract, framework agreement, or purchase order is 45 days from the termination of the contract, framework agreement, or purchase order. The contract ceases to be valid after both contracting parties have fulfilled their contractual obligations.

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| The contracting authority shall be fined from 100,000 to 1,000,000 dinars for the violation if it fails to act in accordance with Article 152a of the PPL. |

***How to enter data on contracts and contract amendments***

Rulebook on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 115/2023, hereinafter referred to as: Rulebook) provide for a method of entering data on contracts and their amendments, which avoids double entry of certain data.

Duplicate entry of data shall be avoided by publishing the contract award notice referred to in Article 109, paragraphs 1 and 2, of the PPL on the basis of the data entered for contracts, framework agreements and purchase orders in the contract database. In other words, the contracting authority does not enter contract data twice, once for the purpose of preparing the contract award notice, and a second time for the purpose of entering the data into the contract database. It enters the data only once, first into the contract database, after which it prepares and publishes a contract award notice based on the entered data. This is the rule that applies to contracts, framework agreements and purchase orders concluded or issued in public procurement procedures, when there is a legal obligation to publish a contract award notice.

As regards data on contract amendments, double entry of data is avoided by publishing a notice of contract amendment referred to in Article 155 of the PPL based on the data on contract amendments entered into the contract database. In this case too, data on contract amendments is first entered into the contract database, after which a notice of contract amendment is published based on the entered data. This rule applies to contract amendments where there is a legal obligation to publish a notice of contract amendment.

Both in the case of entering contract data for the purpose of publishing a contract award notice and in the case of entering contract amendment data for the purpose of publishing a contract amendment notice, the data in the contract database will be publicly available only after the publication of the aforementioned notices.

All other data, more precisely data on contracts, framework agreements, or purchase orders concluded or issued without applying the provisions of the PPL, in accordance with Article 27 of the PPL, then data on amendments to these contracts as well as data on amendments to contracts from Article 156 and Articles 159–161 of the PPL, will be publicly available in the database on the day of publication.

***Method of entering data in the case of centralised public procurement***

The provisions of the PPL also recognize the implementation of public procurement procedures by authorities for centralised public procurements (hereinafter referred to as: ACPP). Namely, in accordance with legal provisions, the ACPP is a contracting authority that carries out centralised public procurement tasks, and can also perform auxiliary tasks. Contracting authorities may procure goods, services or works on the basis of a framework agreement concluded by the ACPP, on the basis of a contract awarded by the ACPP, as well as by using the dynamic purchasing system managed by the ACPP.

Therefore, these are special situations when the ACPP conducts public procurement procedures and concludes a framework agreement or contract or establishes a dynamic purchasing system, and other contracting authorities procure goods, services or works that were procured through a public procurement procedure conducted by the ACPP.

In this case, in accordance with the provisions of the Rules, data on the concluded framework agreement and amendments are published by the ACPP, and data on each contract concluded on the basis of the framework agreement are recorded by the contracting authorities that conclude the contracts.

Based on the data on the concluded framework agreement entered into the contract database, the ACPP prepares a notice of award of the framework agreement.

Also, given that data on the concluded framework agreement is publicly available only after the publication of the notice on the award of the framework agreement, contracting authorities can record individual contracts only after the said notice is published.

In addition to the above, Article 109, paragraph 2 of the PPL stipulates that the contracting authority is obliged to publish a quarterly summary notice on the award of contracts concluded on the basis of a framework agreement and a dynamic procurement system, within 30 days from the end of the quarter in which the contracts were concluded.

Also, Article 155, paragraph 2 of the PPL stipulates that in the event of a change to the contract referred to in Articles 157 and 158 of this law, the contracting authority shall, within ten days from the date of the change to the contract, send a notice of the change to the contract for publication via the Portal.

In accordance with the provisions of the Rules, these two notices, namely the summary notice on the award of contracts concluded on the basis of a framework agreement and the notice on the amendment of the framework agreement, are carried out by the ACPP. The aforementioned notices are published based on data already entered into the contract database in the manner prescribed by the Rulebook.

***Application of Article 152a of the PPL (contract database) and Article 181, paragraphs 3 and 4 of the*** ***PPL (collective publication of procurement data)***

In addition to the legal obligation prescribed by Article 152a of the PPL, Article 181, paragraph 3, continues to apply. The PPL, which stipulates that the contracting authority is obliged to record data on the value and type of public procurement referred to in Articles 11 – 21 of the PPL, for each basis for exemption separately, as well as public procurement from Article 27, paragraph 1 of the PPL (procurement below thresholds).

Paragraph 4 of this Article stipulates that contracting authorities shall publish the aforementioned data collectively on the Portal no later than 31 January of the current year for the previous year, in accordance with the instructions issued by the Public Procurement Office.

Accordingly, from 1 January 2024, contracting authorities are obliged to publish on the Portal:

* Data on contracts in the manner prescribed by the provisions of the Rules and
* Aggregate data on the value and type of public procurement referred to in Articles 11 – 21 of the PPL, and for each basis for exemption separately, as well as for public procurement from Article 27, paragraph 1 of the PPL.

So, when it comes to procurements under Articles 11 – 21 of the PPL (exemptions from the application of the PPL), contracting authorities are not obliged to act in accordance with the Rules, i.e., they do not publish data on these procurements in the contract database, but only in accordance with Article 181, paragraphs 3 and 4 of the PPL.

When it comes to procurements under Article 27 of the PPL (procurement below thresholds), contracting authorities shall act in accordance with both the Rules and Article 181, paragraphs 3 and 4 of the PPL.

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| A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority if it fails to record data on the value and type of public procurement or fails to publish them on the Portal within the prescribed period (Article 181). |

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| WarningImportant!  By introducing new functionality on the Portal, the method of entering the annual statistical report (Article 181 of the PPL) has been simplified in a way that the Portal automatically calculates the amounts agreed upon based on Article 27, paragraph 1, item 1), 2) and 3) on the basis of all contracts entered into the contract register on these grounds.  In a situation where the total amounts do not match internal records, it is necessary for the public procurement officer to reconcile and correct the individual contract that is already recorded in the contract register on the Portal. |

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| Thumbs up sign**Summary –** How is contract data recorded?  The public procurement officer must know:   1. What data is recorded in the contract register? 2. How contract data is recorded 3. Deadlines for recording contract data 4. The obligation to publish aggregated procurement data and the consequences of failure to comply with the law |

More information on the topics covered in this section, as well as other similar topics, can be found in the Handbook. Topics of importance for this area are:

* Exceptions from the application of the law
* Data on contracts

CHECK LIST

The implementation of a public procurement procedure involves certain rules that the public procurement officer must adhere to in order for the procedure to be implemented and completed in a legal manner.

This guide contains a checklist of steps in the implementation of an open procedure (as the most common type of procedure), which the public procurement officer must follow when preparing and implementing a public procurement procedure. The checklist also includes fields for recording actions taken. The above list can be used for each individual open public procurement procedure, as an aid to public procurement officers in carrying out the basic actions in the procedure.

Considering that an open procedure can be observed through several stages, from planning public procurement to recording data on contract execution, the checklist is divided into several parts:

1. Launch of the procedure;
2. Actions during the bid submission period;
3. Expert evaluation of bids, decision-making, contracting;
4. Execution/amendments to the contract;
5. Protection of rights.
6. ***LAUNCH O THE PROCEDURE***

|  |
| --- |
| PUBLIC PROCUREMENT PLAN |
| Subject-matter of public procurement: |
| Public procurement is foreseen in the public procurement plan for the year \_\_\_\_\_\_\_\_: |
| Public procurement number in the public procurement plan: |
| Estimated value of public procurement in the plan: |

|  |  |
| --- | --- |
| PUBLICATION OF PRIOR INFORMATION NOTICE/PERIODIC INDICATIVE NOTICE | |
| Date of submission for publication on the Portal: | \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Publication date on the Portal: | \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Date of submission for publication on the Portal of Official Gazettes of the Republic of Serbia and the database of regulations: | \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |

|  |  |
| --- | --- |
| DECISION ON IMPLEMENTING THE PUBLIC PROCUREMENT PROCEDURE | |
| Number and date of the decision to conduct the public procurement procedure: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  dated \_\_\_\_.\_\_\_\_.\_\_\_\_\_\_\_\_ (date) |
| Estimated value of public procurement | RSD \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, without VAT |

|  |  |
| --- | --- |
| PUBLICATION OF PUBLIC INVITATION AND TENDER DOCUMENTATION | |
| Date of submission of the public call and competition documentation to the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Date of publication of the public call and competition documentation on the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Date of sending the public invitation for publication on the Portal of Official Gazettes of the Republic of Serbia and the database of regulations: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |

|  |  |
| --- | --- |
| **DEADLINE FOR SUBMISSION OF BIDS** | |
| Date and time for submitting bids: | \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) at \_\_ \_\_ (hours). |
| Date and time of bid opening: | \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) at \_\_ \_\_ (hours). |

1. ***ACTIONS DURING THE BID SUBMISSION DEADLINE***

|  |  |
| --- | --- |
| ADDITIONAL INFORMATION/CLARIFICATIONS AND AMENDMENTS TO THE TENDER DOCUMENTATION | |
| Request from an economic operator for additional information/clarification of the tender documentation received: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| The contracting authority’s response to the request for additional information/clarification sent and published on the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Amendment to the competition documentation sent for publication on the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Amendment to the tender documentation published on the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |

|  |  |
| --- | --- |
| SUSPENSION OF ACTIVITIES IN THE EVENT OF A REQUEST FOR PROTECTION OF RIGHTS | |
| Request for protection of rights received through the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |
| Notice of the filed request for protection of rights published on the Portal: | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |

|  |  |
| --- | --- |
| OPENING OF OFFERS | |
| Minutes of bid opening *(created on the Portal)* | dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |

|  |  |
| --- | --- |
| SIGNING A STATEMENT ON THE EXISTENCE/NON-EXISTENCE OF CONFLICT OF INTEREST | |
| Declaration of existence/absence of conflict of interest: | Business number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ (date) |

1. ***EXPERT EVALUATION OF OFFERS, DECISION MAKING, CONTRACTING***

* Expert evaluation of offers

|  |  |  |
| --- | --- | --- |
| Name of the subject-matter of public procurement: | | |
| Name of bidder/bidder group: | | |
| Subcontractor: | | |
| CHECKING THE BID DOCUMENTATION | | |
| Document | Delivered yes/no | Details |
| Bid form | |  |
| Price structure form |  |  |
| Statement on fulfilment of criteria for qualitative selection of economic operator | |  |
| Form of bid preparation costs |  |  |
| Documentation proving compliance with technical specifications and other required documentation |  |  |
| Samples |  |  |
| Bid bond |  |  |
| Bid audit completed |  |  |
| EVIDENCE ON FULFILMENT OF CRITERIA FOR QUALITATIVE SELECTION OF ECONOMIC OPERATOR | | |
| Exclusion grounds | | |
|  | To be delivered to:  Yes/No | Details |
| Bidder entered in the Bidder Register |  |  |
| The bidder submitted certificates from the competent authorities regarding the proof of the grounds for exclusion (in case it is not entered in the Register of Bidders) |  |  |
| Selection criteria for an economic operator | | |
| Permission from the competent authority | | |
| Requested | Delivered yes/no | Details |
|  |  |  |
| Financial capacity | | |
| Requested | Delivered yes/no | Details |
|  |  |  |
| Technical and professional capacity | | |
| Requested | Delivered yes/no | Details |
|  |  |  |

* Report on the procedure, decision on award / suspension, contracting

|  |  |
| --- | --- |
| REPORT ON THE PROCEDURE AND THE MAKING AND PUBLICATION OF THE DECISION | |
| Document | Case number and date |
| Report on the public procurement procedure |  |
| Decision on awarding the contract/framework agreement/suspension of the procedure made: |  |
| Decision on awarding the contract/framework agreement/suspension of the procedure published: |  |
| Inspection of documentation | |
| Activity | Date |
| Receiving requests for access to documentation: |  |
| Documentation access enabled: |  |
| Contracting | |
| Activity | Date |
| Expiration date for filing a request for protection of rights: |  |
| Sending the contract/framework agreement for signing to the selected bidder: |  |
|  | Case number and date |
| Contract/framework agreement concluded: |  |
| Publication of data in the Contract Register and publication of contract award/procedure suspension notices | |
| Activity | Date |
| Data on the conclusion of a contract/framework agreement published in the Contract Register on the Portal |  |
| Notice of award of contract, i.e., framework agreement/suspension of the procedure published on the Portal: |  |
| Conclusion of a contract/purchase order based on a framework agreement | |
| Activities | Case number and date |
| Conclusion of contract/issued purchase order: |  |
| Activity | Date |
| Data on the conclusion of the contract/issued purchase order published in the Contract Register on the Portal: |  |
| Quarterly notice of award of contracts/purchase orders under the framework agreement published on the Portal: |  |

1. ***CONTRACT EXECUTION* /*AMENDMENTS***

|  |  |
| --- | --- |
| Amendments to the contract/framework agreement | |
| Activity | Date |
| Data on amendments to the contract/framework agreement published in the Contract Register on the Portal: |  |
| Notification of contract amendment pursuant to Articles 157 and 158 of the PPL published on the Portal: |  |
| Execution of the contract | |
| Activity | Date |
| Data on the termination of the contract/framework agreement published in the Contract Register on the Portal: |  |

1. ***PROTECTION OF RIGHTS***

|  |  |
| --- | --- |
| Activity | Date |
| Filing of the request for protection of rights |  |
| Notice of the filed request for protection of rights published on the Portal: |  |
| Copy of the Public Procurement Procedure delivered to the selected bidder in the event of a challenge to the contracting authority's decision: |  |
| The contracting authority's decision to reject the request for protection of rights: |  |
| Delivery of the decision rejecting the request for protection of rights to the applicant and the RC |  |
| Appeal against the contracting authority’s Decision to Reject the PPL: |  |
| Submission of documentation to the RC upon filing an appeal against the contracting authority's decision: |  |
| Decision of the RC regarding the applicant's appeal: |  |
| The contracting authority's response to the submitted request for protection of rights delivered to the RK: |  |
| The contracting authority's decision on the adoption of the request for protection of rights and the partial annulment of the procedure: |  |
| Statement of the applicants on the continuation of the procedure before the RC: |  |
| Documentation submitted to the RC: |  |
| RC decision on the submitted request for protection of rights |  |

**Useful links:**

* Public Procurement Office: [www.ujn.gov.rs](http://www.ujn.gov.rs)
* Ministry of Finance: <https://www.mfin.gov.rs/>;
* Republic Commission for Protection of Rights in Public Procurement Procedures: <https://kjn.rs/>;
* Commission for Protection of Competition: <https://kzk.gov.rs/>;
* Public Procurement Learning Platform: [www.lppp.rs](http://www.lppp.rs);[[61]](#footnote-61)
* Models of tender documentation of the Public Procurement Office: <https://www.ujn.gov.rs/?page_id=1195>;
* Opinions on the application of the provisions of the PPL issued by the Office <https://www.ujn.gov.rs/?page_id=1189>;[[62]](#footnote-62)
* Guidelines for the preparation of tender documentation and the preparation of e-bids on the Public Procurement Portal: <https://www.ujn.gov.rs/?page_id=1190>;
* Guidelines for applying a negotiation procedure without publishing a public invitation: <https://www.ujn.gov.rs/?page_id=1190>;
* Public Procurement Portal: <https://jnportal.ujn.gov.rs>
* Instructions for using the Portal: [Instructions - Overview (visualstudio.com);](https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3779/Uputstva)
* Video instructions for using the Portal:<https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3958/Video-uputstva>;
* Videos of training sessions:<https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3958/Video-uputstva>;
* Model of a special act referred to in Article 49, paragraph 2 of the PPL: <https://www.ujn.gov.rs/?page_id=1195>;
* Link to download the mobile application for the Portal for ANDROID devices:<https://play.google.com>;[[63]](#footnote-63)
* Link to download the Portal mobile app for iOS devices: <https://www.apple.com/app-store/>

**Sources used:**

* Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23);
* Decision on determining the List of contracting authorities referred to in Article 3, paragraph 1, item 1) of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 85/20);
* Decree on Public Procurement in the Field of Defence and Security (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Decree on the organisation and manner of performing centralised public procurement at the national level (“Official Gazette of the Republic of Serbia”, No. 116/20).
* Rulebook on the content of tender documentation in public procurement procedures (“Official Gazette of the Republic of Serbia”, No. 21/21);
* Rulebook on the bid opening procedure (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on monitoring the implementation of public procurement regulations (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Rulebook on determining the general procurement glossary (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on the Procedure and Conditions for Obtaining a Certificate for a Public Procurement Officer and Keeping the Register of Public Procurement Officers and Keeping the Register of Public Procurement Officers (“Official Gazette of the Republic of Serbia”, Nos. 93/20, 21/21, 115/23 and 6/04);
* Instruction on how to send and publish public procurement notices (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Instruction for using the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20 and 96/23);
* Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);
* Instruction for publishing data on public procurement that are exempt from the application of the Law.
* Rulebook on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 115/23);
* Rulebook on types of goods for which contracting authorities are obliged to apply environmental aspects in public procurement procedures (“Official Gazette of the Republic of Serba”, No. 115/23);
* Rulebook on the content of the Register of Bidders and the documentation submitted with the application for registration of bidders (“Official Gazette of the Republic of Serbia”, Nos. 17/20, 94/20);
* Dinar value of European thresholds (“Official Gazette of the Republic of Serbia”, No. 119/23) - applied as of 1 January 2024;
* Rulebook on the manner of supervising the execution of public procurement contracts ("Official Gazette of the Republic of Serbia", No. 110/2023).
* Instructions for using the Portal located on the Portal itself;
* Model of a special act referred to in Article 49, paragraph 2 of the Portal: HTTPs PPL prepared by the Office and published on its website;
* Public Procurement Learning Platform.

MANUAL

FOR PREPARATION FOR THE EXAM FOR

PUBLIC PROCUREMENT OFFICER

January 2024

Table of Contents

1. [Legislative and institutional framework of public procurement in the Republic of Serbia](#_TOC_250117) 83
   * [Legislative framework of public procurement in the Republic of Serbia](#_TOC_250116) 83
   * [Institutional framework of public procurement in the Republic of Serbia](#_TOC_250114) 85
2. [Concept and subject-matter of public procurement](#_TOC_250113) 87
   * [Concept of public procurement](#_TOC_250112) 87
   * [Public procurement contract](#_TOC_250111) 87
3. [Contracting authorities](#_TOC_250110) 88
   * Public contracting authorities88
   * Sectoral contracting authorities 89
4. [Principles of public procurement](#_TOC_250109) 91
   * Principle of economy, efficiency and environmental protection…..………………………………………………………………………91
   * [The principle of ensuring competition and prohibiting discrimination](#_TOC_250107) 92
   * [The principle of transparency of the public procurement procedure](#_TOC_250106) 93
   * [The principle of equality of economic operators](#_TOC_250105) 93
   * [The principle of proportionality](#_TOC_250104) 94
5. [Exceptions from the application of the law](#_TOC_250103) 95
   * [General exceptions](#_TOC_250108) 95
   * [Contracts between related entities](#_TOC_250108) 99
   * [Special exceptions for public contracting authorities](#_TOC_250108) 100
   * [Contracts subsidised or co-financed by public contracting authorities](#_TOC_250108) 102
   * [Special exceptions for public contracting authorities](#_TOC_250108) 103
   * [Contract between sectoral contracting authorities and an affiliated company](#_TOC_250108) 104
   * [Contracts awarded to a joint venture or a sectoral contracting authority that is an integral part of a joint venture](#_TOC_250108) 105
   * [Public procurement in the field of defence and security](#_TOC_250108) 106
   * [Special exceptions for public procurement having defence and security aspects](#_TOC_250108) 106
6. Mixed procurement108
   * [Contracts covering different procurement subject-matters](#_TOC_250108) 108
   * [Contracts to which different procurement rules apply](#_TOC_250108) 109
   * [Contracts awarded by sectoral contracting authorities](#_TOC_250108) 109
   * [Contracts with defence and security elements](#_TOC_250108) 110
7. Thresholds111
   * [Thresholds up to which the law does not apply](#_TOC_250108) 111
   * [Thresholds from which the law does not apply](#_TOC_250108) 111
8. Method of determining the estimated value of public procurement

and division into lots113

* + Method of determining the estimated value of the subject-matter of public procurement113
  + Determines the estimated value of the framework agreement, dynamic procurement system and innovation partnership114
  + Determining the estimated value of public procurement of goods114
  + Determining the estimated value of public procurement of services115
  + Determining the estimated value of public procurement of works116
  + Determining the estimated value of public procurement by lots116

1. Division of procurement into lots118
2. Reserved public procurements119
3. [Data protection, documentation and procedure recording](#_TOC_250102) 121
   * [Data protection and confidentiality determination](#_TOC_250101) 121
   * [Documentation and procedure recording](#_TOC_250100) 122
4. [Language, currency and communication in the public procurement procedure](#_TOC_250099) 123
   * [Language in the public procurement procedure](#_TOC_250098) 123
   * [Currency](#_TOC_250097) 123
   * [Communication in the public procurement procedure](#_TOC_250096) 124
   * [Communication by electronic means](#_TOC_250096) 124
   * [Oral communication](#_TOC_250096)  126
   * Alternative means of access 127
5. [Prevention of corruption and conflicts of interest](#_TOC_250095) 128
   * [General anti-corruption measures](#_TOC_250094) 128
   * [Conflict of interest](#_TOC_250093) 128
6. [Types of public procurement procedures](#_TOC_250084) 130
   * [Open procedure](#_TOC_250083) 130
   * [Restrictive procedure](#_TOC_250081) 132
   * [Competitive negotiated procedure](#_TOC_250081) 137
   * Competitive dialogue143
   * Partnership for innovation147
   * Negotiated procedure without publishing a public invitation149
   * Negotiated procedure with publication of a public invitation154
7. Minimum number of candidates156
   * Invitation to selected candidates156
8. Techniques and instruments in public procurement procedures157
   * Framework agreement 157
   * [Dynamic procurement system](#_TOC_250070) 162
   * [Qualification system](#_TOC_250070) 165
   * [Electronic bidding](#_TOC_250069) 168
9. [Special procurements regimes](#_TOC_250068) 172
   * Social and other special services172
   * Reserved contracts for certain services173
   * Design competition173
10. [Centralised and joint public procurement](#_TOC_250068) 175
    * Affairs of centralised public procurements175
    * [Authority for centralised public procurements](#_TOC_250067) 176
    * [Occasional joint procurements](#_TOC_250066) 177
    * Procurement by a contracting authority involving contracting authorities from different European Union member states177
11. [Calculation and determination of deadlines](#_TOC_250064) 179
    * Calculation of deadlines179
    * Determining the terms180
12. Preparation for the implementation of the public procurement procedure 182
    * [Public Procurement Plan](#_TOC_250064) 182
    * Market research183
    * Protection of integrity of the procedure183
    * Initiation of the public procurement procedure183
    * Public Procurement Committee 184
    * Tender documentation185
    * Technical specifications194
13. Publication and transparency199
    * Public procurement notices199
    * Public invitation200
    * Prior information notice200
    * Periodic indicative notice200
    * Notice of contract award, suspension of proceedings or annulment of proceedings, notification for voluntary prior transparency202
    * Contracting authority’s profile203
14. Selection of participants and award of contracts204
    * Criteria for qualitative selection of the economic operator204
    * Exclusion grounds204
    * Selection criteria for an economic operator207
    * Method of proving compliance with the criteria for qualitative selection of an economic operator209
    * Evidence on fulfilment of criteria for qualitative selection of economic operator211
    * Quality Assurance Systems and Environmental Management Standards213
    * Register of Bidders in the Republic of Serbia214
    * Using the capacities of other entities214
    * Subcontractor215
    * Contract award criteria216
    * **Environmental aspects in public procurement procedures..........................................................................................................218**
    * Offer in the public procurement procedure218
    * Contract award220
    * **Contract information...........................................................................................................224**
15. Execution of the contract228
    * Execution and amendments to public procurement contracts228
16. Public procurement in the field of defence and security232
17. Sectoral activities233
18. Offers covering products originating in third countries and relations with those countries237
19. Public Procurement Office238
20. Public Procurement Portal240
21. Training and advanced training for public procurement241
22. Legal protection242
    * + Republic Commission for Protection of Rights in Public Procurement Procedures242
    * Rights protection procedure244

* Active legal standing in proceedings245
* Manner of submission of a request for protection of rights246
* Proceedings before the Republic Commission250
* Decision of the Republic Commission252

1. Penal provisions256
   * Offences of contracting authorities256
   * Offences of contracting authorities257
2. Transitional and final provisions 259

Introductory notes

The institute of public procurement officers was first provided for in the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 116/08) and, with certain amendments, was also provided for in the Law on Public Procurement from 2012 (“Official Gazette of the Republic of Serbia”, Nos. 124/12, 14/2015 and 68/2015), and is also provided for in the current Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23), which is applied since 1 July 2020.

The provisions of the PPL that apply to the public procurement officer are:

* The public procurement officer is a member of the public procurement commission in the manner regulated by Article 92 of the PPL;
* The contracting authority is obliged, among other things, to enable persons performing public procurement tasks to take the exam for public procurement officers, as prescribed by Article 185 of the PPL;
* The Public Procurement Office prescribes the procedure and conditions for obtaining a certificate for a public procurement officer and keep a register of public procurement officers;

In accordance with the legal authority, the Public Procurement Office has adopted the Regulation on the procedure and conditions for obtaining a certificate for a public procurement officer and maintaining the Register of Public Procurement Officers ("Official Gazette of the Republic of Serbia", No. 93/20, 21/21 and 115/23), which has also been in force since July 1, 2020.

In accordance with the provisions of Article 3 of the aforementioned regulation, the right to take the exam for public procurement officer is granted to a person with higher education, as follows:

- basic studies lasting at least four years (at least VSS VII-1 level) or

- in specialist studies at the faculty or master's studies or doctoral studies or

- basic academic studies worth at least 240 ECTS credits or specialist vocational studies or

- in second-level studies (master's degree, master's degree, specialist academic studies).

Therefore, all persons who meet the above requirements for acquiring the status of a candidate for taking the public procurement officer exam submit an application for taking the exam, in the manner prescribed by these regulations.

In order to prepare for the exam, the Public Procurement Office has prepared this manual, which will help candidates adequately prepare for the successful exam.

**Note:** **The Law amending the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 92/23) entered into force on 4 November 2023, and has been in force since 1 January 2024, except for the provisions of Article 183, paragraphs 3 and 4 of the** **Law, that applies from the date of entry into force of this law.** **All changes and additions to this manual are indicated in bold.**

1. Legislative and institutional framework of public procurement in the Republic of Serbia

## 

## Legislative framework for public procurement in the Republic of Serbia

The applicable Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 91/19, hereinafter referred to as the PPL), has been in force since 1 July 2020. The provisions of the PPL regulate the rules of public procurement procedures carried out by contracting authorities or other entities in cases specified by this law, for the purpose of concluding a contract for the public procurement of goods, services or works, a framework agreement, as well as conducting a design contest. The PPL also regulates: the affairs and form of organisation of the Public Procurement Office, as well as the jurisdiction, organisation and other issues related to the scope of work of the Republic Commission for the Protection of Rights in Public Procurement Procedures, the procedure for the protection of rights in public procurement procedures and other cases in accordance with the law, as well as other issues of importance for public procurement.

The current Law on Public Procurement established a legislative framework in the field of public procurement in the Republic of Serbia that is in accordance with the legislation of the European Union, i.e., a system was established that enables compliance with the basic principles of freedom of movement of goods, freedom of business establishment and freedom of service provision and the principles derived from them arise, such as the principle of economy and efficiency, the principle of ensuring competition and the prohibition of discrimination, the principle of transparency of the public procurement procedure, the principle of equality of economic operators and the principle of proportionality. It was preceded by three laws: the first Law on Public Procurement in the Republic of Serbia from 2002 ("Official Gazette of the Republic of Serbia", No. 39/02, hereinafter: PPL/2002), which was significantly amended and supplemented in 2004, the second PPL from 2008 ("Official Gazette of the Republic of Serbia", No. 116/08, hereinafter referred to as: the PPL/2008) and the third Law on Public Procurement from 2012 ("Official Gazette of the Republic of Serbia", No. 124/12, 14/2015 and 68/2015, hereinafter referred to as: PPL/2015).

In accordance with the PPL, bylaws were adopted by the Government of the Republic of Serbia, the Public Procurement Office and the minister responsible for finance.

The by-laws adopted by the Government of the Republic of Serbia are:

* Decision on determining the List of contracting authorities referred to in Article 3, paragraph 1, item 1) of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 85/20);
* Decree on Public Procurement in the Field of Defence and Security (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Decree on the organisation and manner of performing centralised public procurement at the national level (“Official Gazette of the Republic of Serbia”, No. 116/20)

By-laws adopted by the Public Procurement Office are:

* Rulebook on the content of tender documentation in public procurement procedures (“Official Gazette of the Republic of Serbia”, No. 21/21);
* Rulebook on the bid opening procedure (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on monitoring the implementation of public procurement regulations (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on determining the general procurement glossary (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20)
* Rulebook on the Procedure and Conditions for Obtaining a Certificate for a Public Procurement Officer and Keeping the Register of Public Procurement Officers and Keeping the Register of Public Procurement Officers (“Official Gazette of the Republic of Serbia”, Nos. 93/20, 21/21 and **115/23**);
* Instruction on how to send and publish public procurement notices (“Official Gazette of the Republic of Serbia”, No. 93/20);
* Instruction for using the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20 and 96/23);
* Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);
* Instruction for publishing data on public procurement that are exempt from the application of the Law.
* **Rulebook on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 115/23);**
* **Rulebook on types of goods for which contracting authorities are obliged to apply environmental aspects in public procurement procedures (“Official Gazette of the Republic of Serba”, No. 115/23);**

The by-laws adopted by the minister responsible for finance are:

* Rulebook on the content of the Register of Bidders and the documentation submitted with the application for registration of bidders (“Official Gazette of the Republic of Serbia”, Nos. 17/20 and 94/20);
* Dinar value of European thresholds (“Official Gazette of the Republic of Serbia”, No. 119/23) - applied as of 1 January 2024;
* **Rulebook on the manner of supervising the execution of public procurement contracts ("Official Gazette of the Republic of Serbia", No. 110/2023).**

In addition to the PPL and the by-laws adopted on the basis of the PPL, other regulations that are directly or indirectly applied in the conduct of public procurement procedures are also of great importance.

* The Law on General Administrative Procedure (“Official Gazette of the Republic of Serbia”, Nos. 18/16 and 95/18 - authentic interpretation and 2/23 - Decision of the Constitutional Court), which has wide application in the field of public procurement, given that the provisions of the law regulating administrative procedure, and
* Law on Contract and Torts ("Official Gazette of the Socialist Federal Republic of Yugoslavia", No. 29/78, 39/85, 45/89 - Constitutional Court of Yugoslavia, 57/89, "Official Gazette of the Federal Republic of Yugoslavia", No. 31/93, 44/99 - other regulation and “Official Gazette of the Republic of Serbia”, No. 18/20). The Law on Contract and Torts is of particular importance with regard to public procurement contracts. The provisions of this law relating to contracts apply to all types of contracts, including those concluded in the public procurement procedure (such as purchase, lease, construction contract), and the rules and principles of the Law on Contract and Torts apply to all issues not regulated by the PPL (or a special regulation governing a specific legal transaction).

Other laws that regulate issues important to this area are also important for the public procurement system, such as: Law on the Budget System, Law on Public Enterprises, Law on Communal Activities and other laws regulating the areas of water management, energy, transport and postal services, laws regulating the areas of defence and security, Law on Public-Private Partnership and Concessions, Law on Misdemeanours and the Criminal Code.

## Institutional framework of public procurement in the Republic of Serbia

The basic institutions in the public procurement system, whose operations, methods of operation and form of organisation are regulated by the PPL, are: Public Procurement Office and the Republic Commission for the Protection of Rights in Public Procurement Procedures.

**The Public Procurement Office** (hereinafter referred to as: the Office) is a special organisation that monitors the implementation of public procurement regulations, participates in the drafting of laws and other regulations and adopts bylaws in the field of public procurement, provides opinions on the implementation of the provisions of the PPL and other regulations and provides expert assistance, prepares guidelines, manuals, as well as other publications in the field of public procurement, prepares reports on public procurement, undertakes necessary activities in connection with the negotiations on accession to the European Union, in the field of public procurement and cooperates with domestic and foreign institutions and experts in the field of public procurement in order to improve the public procurement system. In addition, the Office manages the Public Procurement Portal, through which all public procurement procedures are carried out, and is authorised to submit requests for protection of rights, requests to initiate misdemeanour proceedings, and conduct other appropriate procedures before competent authorities when, based on monitoring, it detects irregularities in the application of public procurement regulations.

**The Republic Commission for Protection of Rights in Public Procurement Procedures** (hereinafter referred to as: the Republic Commission) is an autonomous and independent body that ensures the protection of rights in public procurement procedures and is accountable to the National Assembly for its work. Within the framework of its prescribed competences, it decides on requests for protection of rights, decides on appeals against the contracting authority's decisions, monitors and controls the implementation of decisions it makes, annuls public procurement contracts, and imposes fines. In addition to the above, the Republic Commission submits a request to initiate misdemeanour proceedings when, acting within its competence, it determines that a violation of the PPL has been committed that may be the basis for misdemeanour liability. The Republic Commission has a president and eight members, who are elected and dismissed by the National Assembly.

In the field of public procurement, the State Audit Institution, the Ministry of Finance, the Commission for Public-Private Partnership, the Agency for the Prevention of Corruption, the Commission for the Protection of Competition, and the Administrative Court also play a significant role.

**The State Audit Institution** is the highest public audit body in the Republic of Serbia, which is responsible to the National Assembly for the performance of its duties. Within its powers, the SAI performs audits of financial statements, audits of business regularity, which include the examination of financial transactions and decisions in the field of public procurement, as well as audits of business efficiency, which include the examination of the spending of budget funds and other public funds in order to report whether they have been used in accordance with the principles of economy, efficiency and effectiveness, as well as in accordance with the planned objectives. The State Audit Institution is authorised to submit requests for the initiation of misdemeanour proceedings.

**The Ministry of Finance**, on the basis of the Law on Ministries (“Official Gazette of the Republic of Serba”, Nos. 128/2020, 116/2022 and 92/2023) performs state administration tasks related, among other things, to public procurement. According to the provisions of the PPL, the Ministry responsible for finance supervises the execution of public procurement contracts.

In accordance with the Law on Public-Private Partnership and Concessions, **the Public-Private Partnership Commission** provides expert assistance in the implementation of public-private partnership and concession projects, as an interdepartmental public body operationally independent in its work.

**The Anti-Corruption Agency** is an autonomous and independent state body, accountable to the National Assembly. Within its legal authority, the Agency supervises the implementation of the National Anti-Corruption Strategy and the Action Plan for the Implementation of the National Strategy, a special part of which relates to public procurement.

**The Commission for the Protection of Competition** is an autonomous and independent organisation that is responsible for its work to the National Assembly. It is competent to decide on the rights and obligations of market participants. According to this authority, the Commission’s activity includes detecting violations of competition, sanctioning them and eliminating the consequences of violations of competition.

# 

1. Concept and subject-matter of public procurement

**The concept of public procurement**

The term public procurement means:

- procurement based on a public procurement contract of goods, services or works procured by one or more contracting authorities from economic operators selected by those contracting authorities, regardless of whether the goods, services or works are intended for public purposes, as well as

- procurement based on a public procurement contract of goods, services or works procured by one or more sectoral contracting authorities from economic operators selected by those contracting authorities, provided that the goods, services or works are intended for the performance of one of the sectoral activities.

Procurement means procurement based on a public procurement contract for goods, services or works.

**Public procurement contract**

A public procurement contract is a freight contract concluded in written or electronic form between one or more bidders and one or more ordering parties, the subject-matter of which is the procurement of goods, the provision of services or the performance of works

A public procurement contract of **goods** is a public procurement contract whose subject-matter is the purchase of goods, the lease of goods, the leasing of goods (with or without the right to purchase) or the purchase in instalments, and which may include, if necessary, installation and incorporation as ancillary work necessary for the performance of the contract.

A public **works contract** is a public procurement contract whose subject matter is:

* execution of works or design and execution of works related to one or more activities from the Annex to the PPL,
* execution of works or design and execution of works, on the construction of a facility,
* the implementation of the construction of the facility in accordance with the requirements determined by the contracting authority who exercises decisive influence on the type or design of the construction of the facility.

A public **service contract** is a public procurement contract whose subject matter is the provision of services, other than those related to the works that are the subject-matter of the public works contract.

1. Contracting authorities (public and sectoral)

Contracting authority is a common term for a public contracting authority and a sectoral contracting authority.

Contracting authorities are entities that must act in accordance with the provisions of the PPL and bylaws when carrying out the procurement of goods, services or works. The term “contracting authority” is defined in the provisions of Articles 2, 3 and 4 of the PPL.

The division of contracting authorities into public and sectoral has an impact on the application of the provisions of the PPL. Namely, some provisions are applied only by public, some only by sectoral contracting authorities, while provisions that do not explicitly state a public or sectoral contracting authority apply to all contracting authorities.

**Public contracting authorities**

According to the provisions of the PPL, public contracting authorities are:

* The Republic of Serbia, i.e., the republic authorities;
* bodies of the autonomous province;
* local self-government unit bodies;
* legal entities established for the purpose of meeting needs in the general interest, not having an industrial or commercial character, if any of the following conditions are met: that more than 50% are financed from the funds of the contracting authority, that the supervision of the work of these legal entities is carried out by the contracting authority, that more than half of the members of the supervisory or management bodies of these legal entities are appointed by the contracting authority; and
* groups of previously mentioned contracting authorities.

In order to determine the status of public contracting authorities that are legal entities established for the purpose of meeting needs in the general interest, the following conditions must be met.

The first condition is the status of a legal entity, i.e., that the contracting authorities in this category are organisations or companies that have the status of legal entities. The second condition is that the legal entity was established to meet needs in the general interest that do not have a commercial or industrial character. Determining whether a particular legal entity was established for the purpose of meeting needs in the general interest means referring to the provisions of specific sectoral regulations. This is the case, for example, with Article 2 of the Law on Communal Activities stipulates that communal activities belong to the category of activities of general interest. Article 2 of the Law on Public Enterprises stipulates that activities of general interest are: “activities that are determined as such by-law in the areas of: mining and energy, transport, electronic communications, publishing the “Official Gazette of the Republic of Serbia” and publishing textbooks, nuclear facilities, weapons and military equipment, use, management, protection, regulation and improvement of goods of general interest and goods in general use (water, roads, forests, navigable rivers, lakes, coasts, spas, wildlife, protected areas, etc.), waste management and other areas.” Activities within the meaning of paragraph 1 of this article are also communal

activities, as well as other activities designated by law as “activities of general interest”. This legal provision should be interpreted more broadly, so that all activities or affairs whose purpose is to achieve the public interest are considered activities of general interest.

In addition, it is necessary to determine whether or not the needs in the general interest have an industrial or commercial character. In order for a legal entity to be considered a public contracting authority within the meaning of the provisions of the PPL, in addition to the previously mentioned conditions, it is necessary that it was established for the purpose of meeting needs that are not of an industrial or commercial nature, i.e., that the legal entity does not operate under regular market conditions, that it does not aim to make a profit and that it does not bear losses resulting from its operations.

The third condition is that a legal entity established for the purpose of meeting needs in the general interest is controlled by the contracting authority either through financing, so that more than 50% is financed from the funds of the contracting authority, or through supervision, i.e., management, in the sense that supervision of the work of that legal entity is carried out by the contracting authority or that more than half of the members of the supervisory body or management body of that legal entity are appointed by the contracting authority.

Control by the contracting authority is provided alternatively, therefore, it is sufficient that one of the listed methods of control (financing, supervision or management) exists and this condition will be considered to be met.

The Government of the Republic of Serbia, in accordance with the legal provision from Article 3, paragraph 3 of the PPL, made a Decision on determining the List of contracting authorities referred to in Article 3, paragraph 1, item 1) of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, No. 85/20).

**Sectoral contracting authorities**

According to the provisions of the PPL, sectoral contracting authorities are:

* public contracting authorities carrying out sectoral activities,
* companies carrying out sectoral activities over which the contracting authority may exercise, directly or indirectly, a dominant influence by virtue of ownership, financial participation or the rules on which they are organised and
* other entities that perform sectoral activities based on exclusive or special rights.

Prevailing influence is implied in any of the following cases where the contracting authority, directly or indirectly, holds a majority of the company's subscribed capital or controls a majority of the votes attached to the shares issued by the company or can appoint more than half of the members of the supervisory body, i.e., the management body of the company.

Exclusive or special rights are rights granted by a competent authority on the basis of a law, by-law or individual act, which limits the performance of a sectoral activity to one or more entities and which significantly affects the ability of other entities to perform such activity.

An exclusive right is a right based on which a certain person can only perform a certain activity in a certain geographical area, and which is assigned or derives from a law, a special regulation or an individual act, that is, a contract or an agreement, which was adopted or concluded by the Republic of Serbia, territorial autonomy or local self-government. The concept of a special right is defined in the same way, with the difference that in this case it is a right on the basis of which certain persons can carry out a certain activity in a certain geographical area.

Sectoral contracting authorities apply the provisions of the PPL which state that they apply only to sectoral contracting authorities, as well as the provisions of the PPL which apply to contracting authorities, both public and sectoral. Sectoral contracting authorities are subject to special provisions that, among other things, prescribe thresholds up to which the law does not apply, then provisions that prescribe thresholds from which the law applies (European thresholds), special exceptions from the application of the law, types of public procurement procedures, and the like.

4. Principles of public procurement

Public procurement principles are the basic rules for regulating public procurement and guide the actions of contracting authorities when implementing public procurement procedures and spending public funds. Their role in understanding legal provisions is important, and they apply in all public procurement procedures, regardless of the value of the public procurement. In addition, the contracting authority is obliged to act in accordance with the principles of the PPL, even in the case of procurements to which the PPL does not apply, in a manner appropriate to the circumstances of the specific procurement.

The contracting authority is obliged to act in an economical and efficient manner, to ensure competition, equal status of all economic operators, without discrimination, to act in a transparent and proportionate manner **and to procure goods, services and works that have minimal impact on the environment.** In this sense, the contracting authority may not design public procurement with the intention of avoiding the application of the PPL or avoiding the application of the appropriate type of public procurement procedure or with the intention of unjustifiably placing certain economic operators in a more or less favourable position.

The PPL prescribes the following principles: the principle of economy, efficiency **and environmental protection,** the principle of ensuring competition and prohibiting discrimination, the principle of transparency of the public procurement procedure, the principle of equality of economic operators and the principle of proportionality.

## The principle of cost-effectiveness, efficiency and environmental protection

The principle of economy, efficiency **and environmental protection** is treated as fundamental. The contracting authority is obliged to procure goods, services or works of appropriate quality in the public procurement procedure, taking into account the purpose, purpose and value of the public procurement. This practically obliges the contracting authority to spend public funds economically, that is, to achieve the greatest value for money when purchasing, which is one of the basic goals of public procurement.

The contracting authority is obliged to ensure through the public procurement procedure that the object it procures is of appropriate quality (determining technical specifications that correspond to real needs - determining the appropriate subject-matter of procurement), to take into account the purpose for which it is being procured (objective need for the subject-matter of procurement - feasibility of planning, determining the estimated value) and for which purposes the subject-matter of procurement will be used (performance of the contract - use of the subject-matter of procurement for a specific purpose and purpose, depending on the business and activity of the contracting authority), as well as to ensure that the value of the procurement is in accordance with the quality provided (the most favourable price-quality ratio of the subject-matter of procurement - *value for money*).

The contracting authority is also obliged to ensure that the public procurement procedure is carried out and the contract is awarded within the deadlines and in the manner prescribed by the PPL, with as few costs as possible related to the procedure and execution of the public procurement. In addition to the deadlines for submitting bids, deadlines are also set for making a decision on awarding the contract, as well as the deadline within which the contracting authority is obliged to deliver the public procurement contract to the bidder in order to conclude the contract.

**Starting from 1 January 2024, contracting authorities are obliged to procure goods, services and works that have a minimal impact on the environment.** **The above implies the procurement of goods, services and works with a reduced environmental impact compared to the goods, services or works that the contracting authority would normally procure.** **The definition of this principle is in accordance with the goals defined by the strategic document for the development and improvement of public procurement in the Republic of Serbia.**

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## The principle of ensuring competition and prohibiting discrimination

Ensuring competition and prohibiting discrimination is the basic way to ensure the efficient and economical use of public funds. This essentially means that the selection of the most favourable offer is carried out through a procedure that involves competition, because only in this way can the best possible price-quality ratio of the offered goods, services and works be obtained, as well as the best possible conditions for the execution of a specific public procurement contract. The basic form of implementation of this principle in the PPL is the rule on open or restricted procedures as basic public procurement procedures that public contracting authorities can always use to conclude public procurement contracts, i.e., open, restricted, negotiated procedure with publication or competitive dialogue, when public procurement procedures are conducted by sector contracting authorities.

The contracting authority is obliged to ensure the greatest possible competition in the public procurement procedure. This does not mean that in a public procurement procedure every interested person will always be able to submit a bid. This depends primarily on the needs of the contracting authority in a specific public procurement, as well as on the ability of economic operators to implement the subject-matter of a specific public procurement. However, this principle obliges the contracting authority to determine the subject-matter of procurement, within the framework of its objective needs, in a way that enables the greatest possible competition. This means that technical specifications cannot be directed towards the selection of a particular bidder or manufacturer, but must be described in an objective manner that meets the needs of the contracting authority and, as such, is in line with the market offer. Also, the criteria for selecting an economic operator, if required, must be logically related to the subject-matter of the procurement and proportionate to the subject-matter of the procurement. Otherwise, if they unnecessarily exclude individual bidders (criteria that are not necessary or require more than necessary), this principle is violated and competition is restricted.

The above means that the contracting authority is prohibited from restricting competition through the unjustified use of criteria for the qualitative selection of an economic operator, technical specifications and contract award criteria.

## The principle of transparency of the public procurement procedure

The procedures in which decisions are made about public procurement (the public procurement procedure itself, as well as the procedure for protecting rights) must be accessible to participants and the public. Only in this way can effective, "real" competition be ensured, as the primary means of ensuring the efficient and economical use of public funds.

This principle contains the general obligation of the contracting authority to ensure the publicity and transparency of the public procurement procedure, i.e., to comply with the obligations under the PPL that ensure publicity and transparency.

The principle of transparency is achieved, primarily, through the implementation of public procurement procedures through the Public Procurement Portal. According to the provisions of the PPL, this is the only possible way of conducting public procurement procedures. Therefore, the Public Procurement Portal is no longer just a place where contracting authorities will publish public procurement notices, but according to the provisions of the PPL, the entire procedure and communication related to the public procurement procedure takes place on the Public Procurement Portal. Certain announcements are also published on the Portal of Official Gazettes of the Republic of Serbia and the database of regulations.

Transparency is also ensured by opening bids on the Portal, which can be followed by any interested person. After the bids are opened on the Public Procurement Portal, a record of the bid opening is created, which is then made available to the contracting authority and bidders via the Portal. Upon completion of the public procurement procedure, the minutes on the opening of bids become publicly available through the Public Procurement Portal. After the publication of the decision on the award of the contract, or the suspension of the procedure, the economic operator that submitted the bid has the opportunity to inspect the bids and documentation on the conducted public procurement procedure.

The contracting authority is further required to record data on exemptions from the application of the law, separately for each basis for exemption. Contracting authorities publish this data collectively on the Public Procurement Portal no later than 31 January of the current year for the previous year, according to the instructions published by the Public Procurement Office on its website. Based on this and other data obtained while performing tasks within its competence, the Public Procurement Office prepares a special annual report on public procurement, which it publishes on the Public Procurement Portal and on its website. This also ensures data transparency.

Procuring entities acting in accordance with this principle contributes to the achievement of other public procurement principles, primarily ensuring the widest possible competition.

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## The principle of equality of economic operators

The implementation of the principle of equality of economic operators is, along with the implementation of the principle of transparency of the procedure, a basic prerequisite for ensuring competition in public procurement procedures. The contracting authority is obliged to ensure equal treatment for all economic operators in all phases of the public procurement procedure. If, through its actions in the procedure, it places certain economic operators in a privileged position compared to others, or unjustifiably favours some of them, or discriminates against others, then the contracting authority violates this principle and the rights of economic operators in public procurement procedures.

It is important to respect this principle in practice in all phases of the public procurement procedure, without distinction, from the planning of the public procurement procedure itself to the decision on the award, or rather the suspension of the procedure. Thus, the provision of Article 90 of the PPL prescribes the obligation of the contracting authority to, in the event that a bidder, candidate or a person related to it was involved in any way in the preparation of the procurement procedure, take appropriate measures to ensure that the participation of that bidder or candidate does not distort competition. This implies that the contracting authority will undertake activities aimed at providing other economic operators with relevant information that has been exchanged or generated within the framework of the participation of bidders or candidates in the preparation of the procurement procedure and will set appropriate deadlines for the submission of tenders. If even with this procedure the contracting authority cannot ensure competition and equality of economic operators, it will exclude that bidder or candidate from the public procurement procedure.

The aim of this procedure is to prevent the acquisition of advantages based on information or data from the preparation phase of the public procurement procedure. However, the contracting authority is obliged, before excluding an economic operator from the public procurement procedure, to enable that economic operator to prove that its participation in the preparation of the procurement procedure cannot distort competition.

Reserved public procurements also represent a deviation from the principle of equality of bidders, since such procurements are limited in participation, i.e., reserved exclusively for economic operators from a certain group. Through reserved procurement, the aforementioned groups are enabled to participate in the procurement market, and this is so-called positive discrimination, bearing in mind that reserved public procurement affects the achievement of other social goals and responsibilities and encourages the employment of people with disabilities.

## Principle of proportionality

The principle of proportionality is a new principle, which implies the preparation of documentation, i.e., the determination of criteria for the qualitative selection of an economic operator, technical specifications, contract award criteria, deadlines, evidence and other things, in accordance with and proportionate to the subject-matter of public procurement, its scope and nature. In addition, according to the provisions of the PPL, the contracting authority is obliged to implement public procurement in a manner that is proportionate to the subject matter of the public procurement and the objectives it is to achieve.

By prescribing the obligation to respect the principle of proportionality, it is achieved that the contracting authority determines the requirements in accordance with its needs and goals that it intends to achieve by implementing a specific public procurement procedure and implementing the concluded public procurement contract.

1. Exceptions from the application of the law

The PPL distinguishes between general exceptions, special exceptions for public contracting authorities and special exceptions for sectoral contracting authorities. In addition to the exceptions prescribed by the provisions of the PPL/2015, new exceptions have also been prescribed.

**General exceptions**

General exceptions apply to both public and sectoral contracting authorities and are prescribed by the provisions of Articles 11-13 of the PPL.

The provisions of Article 11 of the PPL provide for procurements to which the provisions of the PPL do not apply, but are carried out in accordance with the procurement procedures provided for in:

- international agreements,

- by international organisations, as well as

- on the basis of procurement rules determined by an international organisation or financial institution, if that organisation or institution fully finances the said procurements and design contests, or on the basis of contracted rules, in the event that the procurement, or design contest, is largely co-financed by an international organisation or financial institution.

It is necessary to note that the first of the above exceptions requires that an international agreement be concluded between the Republic of Serbia, on the one hand, and one or more third countries or its narrower political-territorial units. Therefore, this was not a requirement in the PPL/2015, which did not specify who must be a contracting party to an international agreement, and local self-government units or other state bodies or institutions could also conclude them, while now it is necessary for the contracting party to the international agreement to be the Republic of Serbia.

In addition, as a condition for the application of this exception, it is essential that the goods, services or works procured under an international agreement are intended for joint implementation or use by the signatories.

Another of the exceptions from Article 11 of the PPL implies membership in an international organisation that prescribes, or establishes, the procurement procedure that the contracting authority applies during a specific procurement.

With the third exception from Article 11 of the PPL, the rules that will be applied depend on the method of financing a specific procurement. Thus, if an international organisation or financial institution fully finances procurement and design contests, the contracting authority will apply the procurement rules determined by that organisation or institution. However, in the case of procurement and design contests that

is largely co-financed by an international organisation or financial institution, the agreed rules apply. Therefore, with this exception, the method of financing the procurement is important for the application of the procedure, i.e., the rule.

In addition to the group of exceptions relating to international agreements and international organisations, general exceptions, when contracting authorities do not apply the provisions of the PPL, the provisions of Article 12 of the PPL also stipulate the following exceptions:

Item 1) refers to the purchase and lease of land, existing buildings and other real estate, as well as rights related to them.

Item 2) prescribes, as an exception, the purchase of time for television or radio broadcasting, or time for broadcasting program content, from media service providers. All terms listed in this section have the meaning set forth in the law governing electronic media. The media service provider in this case is the economic operator that will provide the service in question, i.e., from which the contracting authority will purchase time for television or radio broadcasting, i.e., time for broadcasting program content.

Item 3) prescribes arbitration and amicable dispute resolution services as an exception, while item 4) exempts certain legal services from the application of the PPL, namely:

* services of representation of the contracting authority by a lawyer in arbitration proceedings or amicable dispute resolution in the country or abroad, as well as before international arbitration or an international body for amicable dispute resolution;
* representation of the contracting authority by a lawyer in legal and other proceedings before courts or other public authorities in the country and abroad or before international courts, tribunals or institutions;
* legal advice services provided by a lawyer during preparation for representation in the proceedings referred to in the previous two paragraphs or if there is a clear indication or high probability that the matter to which the advice relates will become the subject-matter of those proceedings;
* legal services provided by legal representatives or guardians or other legal services whose executors have been selected by the court or who are designated by law to perform certain tasks under the supervision of the court, and
* other legal services that are related, even occasionally, to the exercise of public powers.

Therefore, the public procurement procedure is not carried out when selecting a lawyer who will represent the contracting authority in arbitration or amicable dispute resolution proceedings, court proceedings or proceedings before other public authorities in the country and abroad or before international courts, tribunals or institutions. Also, without the application of the PPL, lawyers will be able to be engaged to provide legal advice in the preparation of all the above-mentioned procedures, but also when such procedures have not been initiated, provided that there is a high probability that they will occur.

Also excluded are legal services provided by legal representatives or guardians or other legal services whose executors have been selected by the court or have been appointed to perform certain tasks under the supervision of the court, as well as legal services related to the exercise of official powers (e.g., bailiffs/enforcement officers).

Item 5) exempts from the application of the Public Prosecution Service the services of notarisation and certification of documents provided by notaries public - notary public services. The Law on Public Notaries ("Official Gazette of the Republic of Serbia", No. 31/2011, 85/2012, 19/2013, 55/2014 - as amended, 93/2014 - as amended, 121/2014, 6/2015 and 106/2015), regulates the organisation, activities, manner and conditions of work, as well as other issues of importance for public notaries. The method of acquiring the authority and position of notaries public, the performance of notaries public duties, the number and arrangement of notary public offices, the rules on the official territory of a notary public, as well as the notary public tariff, are determined. In this way, the second law regulates issues of importance for the provision of notary public services.

Item 6) exempts from the application of the PPL financial services related to the issuance, sale, purchase or transfer of securities or other financial instruments within the meaning of the law regulating the capital market, as well as activities carried out within the framework of the European Financial Stability Facility and the European Stability Mechanism. Financial services in other cases, e.g., insurance services, banking and investment services, are subject to public procurement of services in accordance with Article 2, paragraph 1, item 6) of the PPL.

Item 7) provides for an exception relating to loans and credits, regardless of whether they are related to the sale, purchase or transfer of securities or other financial instruments. The aforementioned exception implies that when procuring any type of loan, as well as all "credit products" (e.g., revolving, permitted overdraft), the contracting authority no longer conducts a public procurement procedure.

Item 8) prescribes as an exception contracts concluded in accordance with the provisions of the law regulating the rights, obligations and responsibilities arising from the employment relationship, i.e., on the basis of work other than a contract for a specific service.

This exception applies to the establishment of an employment relationship, but also to all types of contractual work outside of an employment relationship, except for part-time contracts. Therefore, the contracting authority has the option to conclude a contract for temporary and occasional work, a contract for professional training and advanced training, and a contract for additional work, without applying the PPL, in accordance with the regulations governing employment relations, while concluding a contract for a service, without exception, implies the application of the provisions of the PPL.

Item 9) prescribes an exception relating to civil defence, civil protection and hazard prevention services provided by non-profit organisations, i.e., associations covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, except for the service of transporting patients by ambulance. This is a new exception, but when applying this exception, it is necessary to take into account that these services can only be provided by non-profit organisations, i.e., associations, without applying the provisions of the PPL.

Also, item 10) prescribes a new exception, namely passenger transport services by rail or metro.

Furthermore, item 11) provides that procurement from contracting authorities or groups of contracting authorities that hold an exclusive right on the basis of which they alone may carry out a certain activity in a certain geographical area and which is granted to them or arises from a law, a by-law or an individual act are also exempt.

For the application of this exception, several conditions must be cumulatively met.

First, a person or organisation that has the status of a contracting authority under the provisions of the PPL appears as a bidder in a specific procurement. It is necessary that the contracting authority, which in this specific case acts as a bidder, holds the exclusive right to perform the activity that is the subject-matter of the public procurement. Exclusive right, as a right based on which a specific person can only perform a specific activity in a specific geographical area, and which is granted or arises from a law, by-law or individual act.

An example of such a procurement is the procurement of reserved postal services from the Public Enterprise "Post of Serbia". Reserved postal services as part of the universal postal service entrusted to the public postal operator, according to Article 24 of the Law on Postal Services ("Official Gazette of the Republic of Serbia", No. 72/2019), include: receipt and/or processing and/or transport and/or delivery of letter-bearing postal items weighing up to 50 grams, as well as receipt and/or processing and/or transport and/or delivery of documents in judicial, administrative and misdemeanour proceedings, as registered postal items, regardless of limits, as well as receipt and/or transfer and/or payment of postal orders. Article 18 of the same law stipulates that the Public Enterprise "Post of Serbia" is authorised to provide universal postal services.

It follows from the above that the exclusive right of the Public Enterprise "Post of Serbia" to provide reserved postal services is granted, i.e., it arises from the Law on Postal Services, and that contracting authorities who need to procure the aforementioned services from the Public Enterprise "Post of Serbia" are not obliged to apply the PPL in accordance with Article 12, paragraph 1, item 11) of the PPL.

An exclusive right may also be granted on the basis of an individual act of local self-government. In that case, it is most often about utility services, or utility activities. For example, communal activities include: drinking water supply, purification and drainage of atmospheric and wastewater, production and distribution of thermal energy, municipal waste management, maintenance of streets and roads, etc.

Point 12) prescribes another new exception, which relates to research and development services, except when the subject-matter of public procurement is research and development services covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 if both of the following conditions are met:

* the benefit accrues exclusively to the contracting authority, i.e., they are intended exclusively for its use and performance of its tasks, and
* the contracting authority fully finances this service.

If both of the above conditions are met, and the subject-matter of the public procurement of research and development services is not covered by the above CPV codes, contracting authorities are not obliged to apply the provisions of the PPL.

When applying any of the above exceptions, contracting authorities are obliged to apply the principles of the PPL in a manner appropriate to the circumstances of the specific procurement, as prescribed in Article 12, paragraph 2 of the PPL.

**Contracts between related entities**

Provisions of Article 13 of the PPL stipulates that the provisions of the PPL do not apply to contracts concluded by the contracting authority with another legal entity if all of the following conditions are met:

* the contracting authority exercises control over that legal entity similar to the control it exercises over its own organisational parts;
* a legal entity controlled by the contracting authority carries out more than 80% of its activities in the Republic of Serbia for the purpose of performing tasks entrusted to it by the contracting authority or entrusted to it by other legal entities controlled by that contracting authority;
* There is no private capital participation in the controlled legal entity that has a decisive influence on decision-making, or preventing decision-making, in accordance with applicable regulations.

The contracting authority is considered to exercise control over a legal entity similar to the control it exercises over its own organisational parts if it has decisive influence over the strategic objectives and important decisions of that legal entity. Such control may also be exercised by another legal entity over which the contracting authority exercises control in the same manner.

The aforementioned provision also applies in the case where a controlled legal entity that is a contracting authority concludes a contract with a contracting authority that exercises control over it or with another legal entity over which the same contracting authority exercises control, provided that there is no private capital holding in that legal entity with which the contract is concluded that has a decisive influence.

The second situation refers to contracts that the contracting authority concludes with another legal entity over which the contracting authority does not exercise control, as described in the first situation, if all of the following conditions are met:

* the contracting authority, together with other contracting authorities, exercises control over that legal entity similar to that which they exercise over their own organisational parts;
* a legal entity controlled by those contracting authorities carries out more than 80% of its activities in the Republic of Serbia for the purpose of performing tasks entrusted to it by those contracting authorities or entrusted to it by other legal entities controlled by those contracting authorities;
* There is no private capital participation in the controlled legal entity that has a decisive influence on decision-making, or preventing decision-making, in accordance with applicable regulations.

Contracting authorities are deemed to exercise joint control over a legal entity if all of the following conditions are met:

* the bodies of a controlled legal entity, competent for decision-making, are composed of representatives of all contracting authorities that exercise control over that legal entity (individual representatives may represent some or all contracting authorities)
* those contracting authorities can jointly exercise decisive influence on the strategic objectives and important decisions of that legal entity;
* the controlled legal entity does not have interests different from the interests of the contracting authorities that exercise control over it

The third situation when the provisions of the PPL do not apply refers to contracts concluded by two or more contracting authorities if all of the following conditions are met:

* the contract establishes or determines cooperation between contracting authorities in order to ensure the provision of public services that they are obliged to perform, in order to achieve common objectives;
* the implementation of such cooperation is carried out exclusively for purposes related to the general interest;
* contracting authorities carry out less than 20% of the activities to which the cooperation relates on the open market

To determine the percentage amount, the average of total income generated in the Republic of Serbia for the previous three years or a shorter period if due to the date of establishment, commencement of activity, reorganisation thereof, is taken into account.

**Special exceptions for public contracting authorities100**

Provisions of Article 14 of the PPL provide for special exceptions to the application of the law, which can only be applied by public contracting authorities. These provisions stipulate that the provisions of the PPL do not apply to the following public procurements:

Item 1) prescribes an exception from the application of the PPL for public procurement whose exclusive and direct purpose is to enable the contracting authority to provide or exploit a public communications network or to provide the public with one or more electronic communications services within the meaning of the law regulating electronic communications.

The above exception is intended for public contracting authorities that provide electronic communications services on the market. The reason for this is the complete liberalisation of the electronic communications services market and the existence of competition in this area.

Item 2) exempts procurement of central bank services from the application of the PPL. These services are under the exclusive jurisdiction of the National Bank of Serbia as the central bank, and the procurement of services from the NBS, such as forced collection services, maintenance of a consolidated treasury account, foreign exchange accounts, and the implementation of transactions abroad, are exempt from the PPL.

Item 3) procurement intended for processing and sale, resale or rental to third parties on the market, provided that the public contracting authority does not have the exclusive or special right to sell or rent the subject-matter of the procurement and that other entities may, under equal conditions, sell, resell or rent the subject-matter of the procurement to third parties, are exempt from the application of the PPL. Here it is necessary to distinguish from the exception from the application of the law that was prescribed by the PPL/2015, which exempted from the law the procurement of goods and services that the contracting authority procures for the purpose of further processing and sale, as well as for the purpose of providing services or performing works on the market. So now this exception is somewhat more narrowly prescribed, and public contracting authorities should apply it restrictively, and only in a situation where the condition for its application is met, i.e., when there is competition in the market, i.e., when the public contracting authority does not have the exclusive or special right to sell or rent the subject-matter of procurement. Therefore, it is also necessary that other entities can sell, resell or rent the subject-matter of procurement to third parties under equal conditions.

The application of this exception for contracting authorities is foreseen until the date of accession of the Republic of Serbia to the EU, given that this exception for contracting authorities is not provided for by Directive 2014/24/EU, but is provided for only by Directive 2014/25/EU, which applies to sectoral contracting authorities.

Item 4) defines as an exception procurement for the purposes of producing banknotes, identification documents and excise stamps. These are the procurement of goods and services related to security inks for the production of banknotes, identification documents and excise stamps, procurement of protected papers for the production of banknotes, OVD security elements for the production of banknotes, identification documents, polycarbonate foil and chips for the production of identification documents, retroreflective foil for license plates, rondelles for the production of coins. In addition to the above-mentioned procurements, procurement of money transport services, as well as securing the transport of money, cash shipments and foreign currency are also exempted. In these procurements, it is necessary to ensure data protection and confidentiality (security of money transport), data security, in order to prevent counterfeiting (in relation to the production of banknotes and identification documents).

Item 5) prescribes an exception from the application of the PPL, namely the purchase, development, production or co-production of program content intended for audiovisual media services or radio media services purchased by a public contracting authority that is a media service provider.

This exception can only be applied by public contracting authorities that are also media service providers within the meaning of the regulations governing electronic media. So, this exception can apply, for example: Radio Television of Serbia, Radio Television of Vojvodina.

Item 6) prescribes an exception relating to procedures carried out by a public contracting authority providing postal services for the performance of the activity of providing the following services:

* value-added services that are linked to electronic means and that are provided entirely by electronic means (including the secure sending of encrypted documents by electronic means, address management services and the sending of registered e-mail);
* financial services covered by CPV codes 66100000-1 to 66720000-3 and Article 12, paragraph 1, item 6) of this law, including postal money orders and postal giro orders (money orders without opening payment accounts in banks);
* philatelic services, or
* logistics services (services that are a combination of physical delivery or storage and other non-postal functions).

This exception may be applied by the Public Enterprise "Post of Serbia", given that it is a public contracting authority and that the provision of the aforementioned services is part of the activities of this public enterprise.

When applying any of the above exceptions, contracting authorities are obliged to apply the principles of the PPL in a manner appropriate to the circumstances of the specific procurement, as prescribed in Article 14, paragraph 3 of the PPL.

**Contracts subsidised or co-financed by public contracting authorities**

The provision of Article 15 of the PPL stipulates an obligation for public contracting authorities to apply the provisions of the PPL to the procurement of:

1. works that are more than 50% subsidised or co-financed by one or more contracting authorities, in the case where the contract includes works from Annex 1 of the PPL or works on the construction of hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes, and
2. services that are subsidised or co-financed by more than 50% by one or more contracting authorities and that are related to the works contract referred to in the previous item.

In this case, the procurement is carried out for the needs of persons who are not contracting authorities within the meaning of the provisions of the PPL, but one or more public contracting authorities subsidize or co-finance the contracts, and are obliged to ensure the application of the PPL, whether they do not award such contracts themselves, or they award contracts in the name and on behalf of another entity. At the same time, these procurements for the subject have works specified in Annex 2 of the PPL and Article 15, paragraph 1, item 1) of the PPL, as well as services related to these works. Therefore, this provision cannot be applied when the subject-matter of procurements, which are subsidised or co-financed by one or more contracting authorities, are goods.

**Special exceptions for public contracting authorities**

Provisions of Article 16 of the PPL provides for special exceptions to the application of the law, which may only be applied by sectoral contracting authorities. These provisions stipulate that the provisions of the PPL do not apply to the following public procurements:

Item 1) stipulates that the provisions of the PPL do not apply to procurements carried out by sectoral contracting authorities for a purpose that does not include the performance of their sectoral activities or for the performance of sectoral activities abroad, provided that this does not include the use of a network or territory within the Republic of Serbia and the European Union. Therefore, if sectoral contracting authorities procure goods, services or works for a purpose that does not include their sectoral activity, but some other one, or in another situation if they perform sectoral activity, but abroad, provided that this does not include the use of a network or territory within the Republic of Serbia and the European Union, they are not obliged to apply the provisions of the PPL. These may be, for example, sectoral contracting authorities referred to in Article 4, paragraph 1, item 3), which carry out sectoral activities on the basis of exclusive or special rights, and are not public contracting authorities.

Item excludes the application of the provisions of the PPL for the procurement of drinking water by a sectoral contracting authority that carries out activities in the field of water management, as prescribed in Article 167, paragraph 1 of the PPL, i.e., the activity of providing or managing the operation of fixed networks for the purpose of providing services to the public related to the production, transport or distribution of drinking water and supplying these networks with drinking water. So, in a situation where this sectoral contracting authority procures drinking water, it does not apply the provisions of the PPL.

Item 3) also exempts from the application of the PPL the procurement of energy or fuel for energy production by a sectoral contracting authority that carries out activities referred to in Article 165, paragraph 1, Article 166, paragraph 1 and Article 171 of this Law, i.e., by a sectoral contracting authority that:

* provides or manages the operation of fixed networks for the purpose of providing services to the public in connection with the production, transport or distribution of gas or heat,
* provides or manages the operation of fixed networks for the purpose of providing services to the public in connection with the production, transmission or distribution of electricity or
* carries out the activity of extracting oil or gas and exploring for or extracting coal or other solid fuels.

Item 4) exempts from the application of the PPL procurements by sectoral contracting authorities intended for further sale or rental to third parties on the market, provided that the sectoral contracting authority does not have the exclusive or special right to sell or rent the subject-matter of the procurement and that other entities may sell or rent the subject-matter of the procurement to third parties under equal conditions. In the case of application of this exception, it is necessary that several conditions are cumulatively met, i.e., that the sectoral contracting authority does not have the exclusive or special right to sell or rent the subject-matter of procurement. Therefore, it is necessary that other entities can also sell or rent the subject-matter of procurement to third parties under equal conditions. This exception should be distinguished from the exception for public contracting authorities under Article 14, paragraph 1, item 3), which also includes procurement intended for processing and sale, while this exception only provides for procurement intended for further sale or rental to third parties.

When applying any of the above exceptions, contracting authorities are obliged to apply the principles of the PPL in a manner appropriate to the circumstances of the specific procurement, as prescribed in Article 16, paragraph 2 of the PPL.

**Contract between sectoral contracting authorities and an affiliated company**

The provisions of this Law shall not apply to contracts concluded by a sectoral contracting authority with an affiliated company or awarded by a joint venture organised by several sectoral contracting authorities for the purpose of carrying out sectoral activities to a company affiliated with one of those sectoral contracting authorities, for the procurement of:

* services, provided that at least 80% of the average total revenue of the affiliated company generated from the provision of all services in the Republic of Serbia during the previous three years originates from the provision of services to the sectoral contracting authority or other companies with which it is affiliated;
* goods, provided that at least 80% of the average total revenue of the affiliated company generated from the supply of all goods in the Republic of Serbia during the previous three years originates from the supply of goods to the sectoral contracting authority or other companies with which it is affiliated;
* works, provided that at least 80% of the average total revenue of the affiliated company generated from the performance of works in the Republic of Serbia during the previous three years originates from the performance of works for the sectoral contracting authority or other companies with which it is affiliated.

With this exception, we can distinguish two situations, namely when a contract is concluded by a sectoral contracting authority with an affiliated company and in another situation, when a contract is concluded by multiple sectoral contracting authorities with a company affiliated with one of those sectoral contracting authorities. In both cases, it is a matter of concluding a contract for the purpose of carrying out sectoral activities.

As a condition for the application of this exception, it is stipulated that at least 80% of the average total revenue of the affiliated company generated from the provision of all services, delivery of all goods, or performance of works in the Republic of Serbia during the previous three years, originates from the provision of services, delivery of goods, or performance of works to the sector contracting authority or other companies with which it is affiliated.

An affiliated company, within the meaning of this Article, is any company whose annual financial statements are consolidated with the annual financial statements of the sectoral contracting authority, in accordance with the regulations governing accounting.

If individual companies do not apply the obligations to consolidate their annual financial statements with the annual financial statements of the sectoral contracting authority, they will be considered a related company if:

* may be directly or indirectly subject to the prevailing influence of a sectoral contracting authority, or
* may have a predominant influence on the sectoral contracting authority, or
* the affiliated company is, together with the sectoral contracting authority, under the predominant influence of another company by virtue of ownership, financial share or the rules on the basis of which those companies are regulated.

Prevailing influence is implied in any of the following cases where the contracting authority, directly or indirectly, holds a majority of the company's subscribed capital or controls a majority of the votes attached to the shares issued by the company or can appoint more than half of the members of the supervisory body, i.e., the management body of the company.

## Contracts awarded to a joint venture or a sectoral contracting authority that is an integral part of a joint venture

Another exception applies to sectoral contracting authorities. The application of this exception implies the fulfilment of several conditions. It is necessary that the joint venture has been organised by several sectoral contracting authorities for the purpose of carrying out sectoral activities for a period of at least three years and that the act by which the joint venture was organised provides that the sectoral contracting authorities that make up the joint venture shall be an integral part of it for at least three years.

If this previous condition is met, the provisions of this Law shall not apply to contracts awarded by a joint venture to one of those sectoral contracting authorities or, conversely, to contracts awarded by a sectoral contracting authority to a joint venture of which it is a constituent part.

Article 19 of the PPL defines the term joint venture, which was used in the previous two articles, i.e., it is clarified that a joint venture implies an act on the basis of which several sectoral contracting authorities have organised themselves for the purpose of carrying out sectoral activities.

## Public procurement in the field of defence and security

Exceptions in the field of defence and security are subject to the provisions of Articles 20 and 21 of the PPL.

Item 1) exempts from the application of the PPL procurements and design contests in the field of defence and security to which special procurement rules apply, in accordance with an international treaty or arrangement relating to the deployment of forces and concerning the activities of the Republic of Serbia, a member state of the European Union or a third country.

Item 2) of the PPL exempts procurements where the application of the provisions of this law would oblige the Republic of Serbia to disclose data whose disclosure is contrary to the essential interests of its security, based on a decision of the Government.

Item 3) exempts all procurements intended for the performance of intelligence activities from the PPL.

Item 4) exempts from the application of the PPL procurements that are part of cooperation programs based on research and development of a new product, which are jointly implemented by the Republic of Serbia and one or more Member States of the European Union.

Under item 5), procurements and design contests concluded in a third country are exempted, including procurements for civilian needs, when forces are deployed outside the territory of the Republic of Serbia and the European Union, if operational needs require that contracts be concluded with economic operators in the territory of the activity. In this case, contracts are concluded abroad with economic operators in the territory of the activity.

Item 6) covers procurement and design contests concluded by the Republic of Serbia with state, regional or local government bodies of other states, and relating to the procurement of military equipment or security-sensitive equipment, works and services directly related to such equipment or works and services exclusively for military needs or security-sensitive works and security-sensitive services.

Article 20 of the PPL lists exceptions from the application of the PPL in the field of defence and security, while Article 164 of the PPL lists all procurements, or procurement items to which the provisions of the PPL apply. When applying these exceptions, the Republic of Serbia is obliged to inform the European Commission of all international agreements and other acts to which this Article refers. The Republic of Serbia will fulfil this obligation starting from its accession to the EU, as prescribed by the provisions of the PPL.

## Special exceptions for public procurement having defence or security aspects

Article 21 of the PPL stipulates three more exceptions to the application of the provisions of the PPL in the field of defence and security, namely:

* public procurement contracts and design contests not exempted by Article 20, paragraph 1 of the PPL if the Republic of Serbia, through the application of this law, would be obliged to provide information the disclosure of which it considers would harm the essential interests of its security,
* public procurement contracts and design contests that are not exempted by Article 20, paragraph 1 of this Law, unless the protection of essential security interests of the Republic of Serbia cannot be guaranteed by other measures, such as setting requirements for the purpose of protecting the confidentiality of data that the contracting authority makes available in the public procurement procedure, in accordance with this Law, and
* if the procurement and execution of public procurement contracts and design contests have been declared secret or must be accompanied by special security measures, in accordance with laws, by-laws or administrative acts, provided that the Republic of Serbia has determined that essential security interests cannot be protected by other measures.

The Government decides on the application of all these exceptions, and they can be applied by contracting authorities only if there is a government decision that has as its subject a decision on the application of one of the listed exceptions.

6. Mixed procurement

Mixed procurement can occur in a number of different situations. Thus, we have mixed procurements that include different procurement items (goods, services or works), so different combinations of procurement items can appear in one procurement.

Then, mixed procurement also exists in the case when different procurement rules apply to one procurement, or to one contract resulting from it. This is where the most common overlap occurs between procurements to which the provisions of the PPL apply, i.e., the rules of public procurement procedures and exceptions from the application of the PPL.

Furthermore, mixed procurements are also those that relate to contracts awarded by sectoral contracting authorities. There are multiple sectoral contracting authorities, and the contracts they conclude are intended to perform multiple activities.

And the last of the cases of mixed procurement are contracts with elements of defence and security.

It should be emphasized that the rules on mixed procurement cannot be applied with the aim of avoiding the application of the PPL or the law regulating public-private partnerships and concessions.

## Contracts covering different procurement subject-matters

The provisions of Article 23 explain the situation when the subject-matter of a public procurement contract consists of different procurement items, i.e., goods, services and works or some combination of the aforementioned procurement items. In this case, the procurement is carried out and the contract is awarded, in accordance with the provisions of the PPL applicable to the main subject-matter of the contract.

Therefore, it is necessary for the contracting authority to determine which of the procurement subjects is the main one and, accordingly, to apply other provisions of the PPL to the entire, mixed procurement, i.e., to apply the rules relating to the main subject. The method of determining the main subject-matter of procurement is as follows:

* if the subject-matter of a public procurement contract consists partly of goods and partly of services, the main subject-matter of the contract is determined depending on which part of the subject-matter of the procurement has the higher estimated value or
* If the subject-matter of a public procurement contract consists partly of services and partly of social and other special services, the main subject-matter of the contract is determined depending on which part of the subject-matter of the procurement has the higher estimated value.

When determining the main subject-matter of procurement, it is necessary for contracting authorities to take into account the concepts of public procurement contracts for goods, services and works. It is also necessary to take into account Annex 7, which defines social and other special services, and thus ensure the proper application of these legal provisions relating to mixed procurement.

## Contracts to which different procurement rules apply

Also, mixed procurements exist in situations where different procurement rules apply to a single procurement, or to a single contract resulting from it. For example, there may be an overlap of procurements to which the provisions of the PPL apply, i.e., the rules of public procurement procedures and exceptions from the application of the PPL. Thus, if the subject-matter of the contract is a procurement to which the rules on public procurement procedures prescribed by this Law apply and a procurement to which the provisions of this Law do not apply, and the different parts of the contract are objectively separable, separate contracts may be awarded in accordance with the rules relating to the separate parts or a single contract in which case the rules on public procurement procedures apply, except when the subject-matter of the procurement also includes procurement in the field of defence and security, in which case the contract shall be awarded in accordance with Article 26 of the PPL, which regulates contracts with elements of defence and security.

In addition to the above, if the subject matter of the contract is the procurement of goods, services or works and the procurement has elements of a concession, the contract shall be awarded in accordance with the provisions of this Law if the estimated value of the goods, services or works is equal to or greater than the thresholds up to which the Law does not apply.

## Contracts awarded by sectoral contracting authorities

The third situation in which mixed procurement exists relates to contracts awarded by sectoral contracting authorities.

There is a possibility that the contract for the subject matter has a procurement intended for performing multiple activities. The sectoral contracting authority may then award separate contracts for the purposes of each of the activities it carries out in accordance with the rules applicable to the relevant activity or may award a single contract.

Then, it is possible that the sectoral contracting authority decides to award a single, comprehensive contract and then applies the rules relating to the activity for which the subject-matter of the procurement is primarily intended. This rule does not apply when the subject-matter of the procurement also includes procurement in the field of defence and security. The contract shall then be awarded in accordance with Article 26 of the PPL, which regulates contracts with elements of defence and security.

In the event that it is not possible to objectively determine the primary purpose of the contract, the contract shall be awarded according to the following rules of the public procurement procedure:

- which relate to contracting authorities in the case of contracts covering the subject-matter of procurement intended for a sectoral activity and another activity that is not sectoral,

- which relate to sectoral contracting authorities in the case of contracts covering the subject matter of procurement intended for sectoral activity and procurement to which the provisions of the law governing concessions apply;

- which relate to sectoral contracting authorities in the case of contracts covering the subject-matter of procurement intended for a sectoral activity and another activity to which the provisions of this Law relating to sectoral contracting authorities and public contracting authorities, nor the provisions of the law regulating concessions, do not apply.

## Contracts with defence and security elements

Mixed procurements also occur in a situation where the contract for the subject matter has a procurement that partly includes the subject matter of the procurement to which the rules on public procurement procedures in the field of defence and security apply or the subject matter of the procurement to which the provisions of this Law do not apply in accordance with Articles 20 and 21 of the PPL.

This implies that part of the subject matter of the procurement is also a public procurement in the field of defence and security or, in the second case, that part of the subject matter of the procurement is a procurement in the field of defence and security to which the provisions of this Law do not apply, as prescribed in Articles 20 and 21 of the PPL.

In the above situations, if the different parts of the contract are objectively separable, separate contracts may be awarded in accordance with the rules applicable to the separate parts or a single contract may be awarded.

A single contract may be awarded if the different parts of the contract cannot be objectively separated or if the different parts of the contract can be separated and the award of a single contract is justified by objective reasons and the purpose of the award of a single contract is not to avoid the application of the provisions of this Law.

The award of a contract in the above situations shall be carried out in accordance with the provisions of this Law relating to procurement in the field of defence and security, if part of the contract consists of procurements to which those provisions apply, or without the application of the provisions of this Law, if part of the contract consists of procurements that constitute exceptions to the application of the PPL, in accordance with Articles 20 and 21 of the PPL.

1. Thresholds

Thresholds represent limit values, or amounts, according to which it is determined whether the provisions of the law are applied or not. Therefore, the PPL distinguishes between thresholds up to which the law does not apply and thresholds from which the law is applied (European thresholds). It is necessary to distinguish between these thresholds, given that procurements below the thresholds to which the law does not apply are carried out in accordance with the rules prescribed by the contracting authority in the internal act referred to in Article 49 of the PPL. It is also necessary to take into account the thresholds from which the law applies, i.e., the European thresholds, bearing in mind that the application of certain provisions of the PPL, which relate to deadlines, publication of advertisements, etc., depends precisely on the estimated value of those procurements, which are above the European thresholds.

## Thresholds up to which the law does not apply

The provisions of the PPL do not apply to:

1) the procurement of goods, services and the implementation of design competitions, the estimated value of which is less than 1,000,000 dinars, and the procurement of works, the estimated value of which is less than 3,000,000 dinars;

2) the procurement of goods, services and the implementation of design competitions, the estimated value of which is less than 15,000,000 dinars, 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 to the procurement of works for these needs, the estimated value of which is less than 650,000,000 dinars.

3) procurement of social and other special services referred to in Article 75 of this Law, the estimated value of which is less than 15,000,000 dinars when the procurement is carried out by a public contracting authority, or less than 20,000,000 dinars when the procurement is carried out by a sectoral contracting authority.

In the first case, it makes no difference whether the procurement is carried out by public or sectoral contracting authorities, so these thresholds apply to all contracting authorities, who, without applying the provisions of the PPL, can carry out procurement of goods and services with an estimated value of less than 1,000,000 dinars and procurement of works with an estimated value of less than 3,000,000 dinars. Therefore, contracting authorities will not be obliged to conduct a public procurement procedure for the procurement of goods or services with a value of no more than 999,999 dinars, or the procurement of works with a value of no more than 2,999,999 dinars. In a situation where the estimated value of the procurement of goods or services is 1,000,000 dinars, and the estimated value of the procurement of works is 3,000,000 dinars, contracting authorities are obliged to apply the provisions of the PPL.

If the contracting authority is not obliged to apply the provisions of the PPL in accordance with the provisions of Article 27 of the PPL requires the contracting authority to apply the principles of this law in a manner appropriate to the circumstances of the specific procurement.

## Thresholds from which the law does not apply

The contracting authority is obliged to apply the provisions of this Law to the procurement of works, goods, services and the implementation of design contests whose estimated value is equal to or greater than the thresholds specified in Article 27 of this Law. Therefore, all procurements of goods and services with an estimated value of 1,000,000 dinars or more, as well as procurements of works with an estimated procurement value of 3,000,000 dinars or more, are required to be carried out by contracting authorities in accordance with the provisions of the PPL.

The ministry responsible for finance publishes the dinar value of the European thresholds in the "Official Gazette of the Republic of Serbia" and on its website, in accordance with the threshold values published by the European Commission in the Official Journal of the European Union. From the date of accession of the Republic of Serbia to the European Union, the values of the European thresholds in dinars are determined by the European Commission and published in the Official Journal of the European Union.

1. Method of determining the estimated value of public procurement and division into lots

The estimated value of a particular public procurement represents the amount of funds that the contracting authority expects to spend on the procurement of a particular good, service or work.

“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.

According to the PPL/2015, avoidance of the application of the law could be determined by checking whether the contracting authority separated identical procurements in order to keep them below the limit for the application of the law, and for this purpose, the concept of identical public procurement was prescribed as a procurement that has the same or similar purpose, whereby the same bidders, in relation to the nature of the activity they perform, can fulfil it. The essence of this provision was that the contracting authority must objectively assess the value of a particular procurement, i.e., it must not misuse it by underestimating it.

The provisions of the PPL do not prescribe the concept of equivalence, but they do prescribe the obligation of the contracting authority to determine the subject-matter of public procurement in such a way that it represents a technical, technological, functional and other objectively determinable whole. In this sense, attention should be paid to the subject-matter of the procurement as a whole, and not to the place or method of execution of the procurement. For example, roof reconstruction work represents an identifiable whole as such and it does not matter whether it is carried out on one or more buildings. Therefore, the public procurement of roof reconstruction works on each facility cannot be a separate entity for each facility, but rather the subject-matter of procurement is viewed as a whole and in this regard, i.e., the total estimated value of all works, determines which rules of the PPL will be applied.

## Method of determining the estimated value of the subject-matter of public procurement

The estimated value of the subject-matter of public procurement is expressed in dinars, excluding value added tax. This amount includes an estimate of the total payments to be made by the contracting authority, including all contract options and possible contract extensions. It is necessary that all of the above payments be provided for in the tender documentation, i.e., that the values of all options, i.e., contract extensions, are included in the estimated value. Therefore, it is not possible for the contracting authority to pay for individual contract options or its extension, unless it has provided for this in the tender documentation and unless the amount of the options and extensions has been included in the estimated value.

Also, if the contracting authority foresees the payment of awards or fees to bidders or candidates, it is obliged to include the value of such awards or fees in the estimated value of the subject-matter of public procurement.

A specific situation is one in which the contracting authority is organised in such a way that it has multiple separate organisational units. Then, the estimated value is determined in such a way that it includes the estimated value of the subject-matter of public procurement for all organisational units.

However, there is an exception to this rule. It is necessary for a separate organisational unit to be independent and responsible for its own public procurement. In that case, the estimated value of the subject-matter of public procurement can only be determined at the level of that organisational unit.

An organisational unit is considered to be independently responsible if it is independent at each stage of the procedure. Therefore, it is necessary for it to independently plan procurements, implement public procurement procedures and conclude public procurement contracts financed from funds allocated within a special budget section at its disposal.

## Determines the estimated value of the framework agreement, dynamic procurement system and innovation partnership

This article determines, for the techniques provided for in the PPL, in the case of a framework agreement and a dynamic procurement system, the estimated value of the subject-matter of public procurement as the maximum value of all contracts envisaged for the duration of that framework agreement or dynamic procurement system.

In the case of an innovation partnership, the estimated value of the subject-matter of public procurement includes the maximum estimated value of all phases of the envisaged partnership, i.e., all research and development activities to be carried out. The estimated value should also include the value of goods, services or works that will be developed and procured after the completion of the envisaged partnership.

## Determining the estimated value of public procurement of goods

The estimated value of public procurement of goods should be determined in accordance with market conditions, i.e., according to their real values and quantities. Determining the estimated value in this way is possible if the subject-matter of public procurement is standard goods that are generally available on the market or goods whose procurement is repeated periodically. When purchasing such goods, the estimated value is determined based on the following rules:

1. the total actual value of all contracts for the same subject matter awarded in the previous 12 months or during the previous budget year, adjusted, if possible, for changes in quantity or value that would occur in the following 12 months or
2. total estimated value of successive deliveries within 12 months of the first delivery.

Other rules apply if the public procurement of goods is carried out through rental, leasing or instalment purchase. The estimated value is then determined based on:

* the total estimated value of the contract for its entire duration, when the term for which the contract is concluded is 12 months or shorter;
* the total estimated value of the contract for the first 12 months and the estimated value for the remaining period until the expiration of the contracted term, when the term for which the contract is concluded is longer than 12 months;
* the monthly estimated value of the contract multiplied by 48, when the contract is concluded for an indefinite period or the duration of the contract cannot be determined.

The essence is that, when it comes to a contract for the procurement of goods that is concluded for a specific period, the estimated value is calculated for the entire duration of the contract, and when the contract is concluded for an indefinite period, the monthly estimated value is multiplied by 48.

## Determining the estimated value of public procurement of services

The rules for calculating the estimated value of public service procurement differ depending on the nature of the services that are the subject-matter of public procurement. The most common public procurements are for routine services or services whose procurement is repeated periodically. In this case, the calculation of the estimated value of the public procurement of services can be carried out on the basis of:

1. the total actual value of all contracts for the same subject matter awarded in the previous 12 months or during the previous budget year, adjusted, if possible, for changes in quantity or value that would occur in the following 12 months or
2. the total estimated value of successively provided services within 12 months of the first service performed.

Furthermore, certain, specific services may also be the subject-matter of public procurement. In the case of public procurement of certain services, the contracting authority shall take into account the following when calculating the estimated value:

* for insurance services – the amount of the premium, as well as other fees;
* for banking and other financial services – fees, commissions, interest and other charges;
* for design services – fees, commissions and other types of compensation or rewards.

In addition to the above, there are also services in which the total price will not be determined. The estimated value of this type of service is determined based on:

* total estimated value for the duration of the contract, if the contract is concluded for a fixed period of up to 48 months, or
* the monthly estimated value of the contract multiplied by 48, when the contract is concluded for an indefinite period or the term is longer than 48 months.

Finally, in the case of public procurement contracts for services related to the preparation of technical documentation, technical control of technical documentation, expert supervision, design supervision, as well as technical inspection of the performed works, the contracting authority may determine the estimated values according to the market values of these services in the Republic of Serbia.

## Determining the estimated value of public procurement of works

In accordance with Article 34 of the PPL, the estimated value of public works procurement is calculated by adding the value of goods and services necessary for the performance of the works to the total value of the works. When calculating the estimated value of the works, the contracting authority must also take into account the total estimated value of the goods and services that the contracting authority may make available to the contractor, provided that they are necessary for the performance of the works.

Therefore, the total estimated value of the public works procurement also includes the value of certain goods and services necessary for the performance of the public works procurement contract, if they exist, as well as the estimated value of goods and services that the contracting authority may make available to the contractor. The contracting authority must include all of this in the estimated value of the public procurement of works.

The contracting authority may also determine the total value of the works, as well as the goods and services necessary for the performance of the works, based on the values from the technical documentation of the Feasibility Study with the conceptual design, the Construction Permit Design or the Work Execution Design.

This provision of Article 34 of the PPL is a novelty compared to the previous law, and is envisaged in accordance with the regulations governing the field of planning and construction.

## Determining the estimated value of public procurement by lots

Pursuant to Article 36 of the PPL, when the subject-matter of public procurement is divided into lots, the contracting authority determines the estimated value of each lot separately, so that the estimated value of the public procurement structured by lots is actually the sum of the estimated values of all lots, for the entire period for which the contract is concluded.

The contracting authority cannot avoid the application of this law for a single lot if the sum of the values of all lots is equal to or greater than 1,000,000 dinars for goods and services, or 3,000,000 dinars for works. This means that the contracting authority makes an assessment based on the total estimated value of the procurement, including all its lots, i.e., logical units, and taking into account whether the subject-matter of public procurement represents a technical, technological, functional and other objectively determinable unit.

Here, the PPL provides an exception to the rule, and the contracting authority does not have to apply the provisions of this law to the procurement of one or more lots if the individual estimated value of that lot is less than 300,000 dinars for goods or services, or less than 500,000 dinars for works, and if the total estimated value of all those lots does not exceed 1,000,000 dinars for goods and services, or 3,000,000 dinars for works. For example: The contracting authority has structured the subject-matter of public procurement of goods into three lots, of which the estimated value of lot 1 is: 170,000 dinars; lot 2: 250,000 dinars, lot 3: 750,000 dinars. In this case, the contracting authority will be able to implement the first and second lots without applying the PPL, given that the individual estimated value of both lots is less than 300,000 dinars, while their sum is less than 1,000,000 dinars.

1. Division of procurement into lots

The division of procurement into lots was envisaged as a possibility in the PPL/2015. However, the provisions of the PPL now introduce new possibilities for contracting authorities when it comes to dividing procurement into lots.

The contracting authority, as before, may form the subject-matter of public procurement into several lots based on objective criteria, namely according to the type, quantity, properties, purpose, place, time of procurement, etc. Also, when determining the subject and scope of an individual lot, the contracting authority should take into account the possibility of participation of small and medium-sized enterprises in the public procurement procedure, when justified. Here, it is left to the contracting authority to assess whether there is room for enabling small and medium-sized enterprises to participate in the public procurement procedure, or whether for this reason it is necessary to form the subject-matter of public procurement into lots.

However, the PPL introduces an obligation for the contracting authority, that if the estimated value of the public procurement is equal to or greater than the European thresholds, when determining the subject-matter of the procurement, it must consider the appropriateness of forming the subject-matter of the public procurement into multiple lots. If the contracting authority determines that it is not appropriate to divide the subject-matter of public procurement into multiple lots, it shall state in the report on the public procurement procedure the reasons why the subject-matter of public procurement was not divided into multiple lots. Therefore, in this case, the contracting authority is obliged to explain if it has not acted in accordance with this provision, that is, if it has not divided the subject-matter of public procurement into multiple lots, and the estimated value of the public procurement is equal to or greater than the amount of the European thresholds.

If the contracting authority decides to divide the subject-matter of public procurement into multiple lots, it is obliged to specify in the public invitation, call for applications or call for tenders, or in the negotiation in the case of a qualification system, whether tenders may be submitted for one, more or all lots.

Namely, this is a new possibility for the contracting authority introduced by the provisions of the PPL, where in addition to determining the number of lots for which bids can be submitted (one, more or all), the contracting authority has the option to limit the number of lots that can be awarded to one bidder. Therefore, in the case where submission of bids for several lots or for all lots is permitted, if the maximum number of lots per bidder is specified in the public invitation, call for applications or call for tenders, it may determine that only one lot may be awarded to one bidder.

On this occasion, i.e., when it decides that only one lot may be awarded to a single bidder, the contracting authority must state in the procurement documentation the objective and non-discriminatory criteria or rules that it intends to apply when deciding on the award of the contract for lots in the event that the application of the contract award criteria would lead to a single bidder being awarded more lots than the maximum number determined by the contracting authority, i.e., in the specific example of one lot.

1. Reserved public procurements

Reserved public procurement implies that only certain categories of persons participate in the public procurement procedure, which certainly represents a deviation from the principle of equality of bidders, but in this case, it is not considered a discriminatory condition, because these are vulnerable categories of persons who need assistance in terms of employment.

Provisions of Article 37 of the PPL allow the contracting authority to determine that certain categories of persons have the right to participate in the public procurement procedure, and only:

* business entities whose primary goal is the professional rehabilitation and employment of persons with disabilities that are organised in accordance with the law regulating the professional rehabilitation and employment of persons with disabilities or
* economic operators whose primary goal is the social and professional integration of disadvantaged persons that are organised in accordance with the law regulating social entrepreneurship. These are people who are difficult to employ, people who are able to work and who exercise rights or services in accordance with social protection regulations, and other people who are difficult to employ from particularly vulnerable categories.

Also, the contracting authority may provide that the public procurement contract is performed within the framework of a sheltered employment programme. In each of these cases, the condition for participation in reserved public procurement is that in the listed economic operators or within the framework of the sheltered employment program, at least 50% of employees are persons with disabilities or persons in a disadvantaged position.

This percentage of employees who are persons with disabilities or persons in a disadvantaged position aligns the provisions of the PPL with the provisions of the laws regulating the field of professional rehabilitation and employment of persons with disabilities.

If the contracting authority decides to conduct reserved public procurement, it is obliged to state this in the public invitation, or in the periodic indicative notice and the notice on the establishment of a qualification system when using these notices as a public invitation.

An economic operator that has the right to participate in a public procurement procedure shall prove the conditions for participation with regard to employees who are persons with disabilities or persons in a disadvantaged position by entering them in the appropriate register, by a certificate from the competent authority, or in another appropriate manner.

It may happen that a joint bid or a bid with a subcontractor is submitted in a reserved public procurement. It should be emphasized that in this case, all participants in the joint bid and all subcontractors must be entities that meet the conditions for employing persons with disabilities or persons in a disadvantaged position, i.e., they must have evidence of registration in the appropriate register, confirmation from the competent authority or other appropriate means.

The provisions prescribing the conditions for reserved public procurement also apply to the conclusion of public procurement contracts for goods produced by these economic operators, i.e., economic operators whose primary goal is the professional rehabilitation and employment of persons with disabilities or the social and professional integration of persons in a disadvantaged position.

Equally important is how the implementation of public procurement contracts concluded in reserved public procurement takes place. In this regard, the contracting authority is obliged to control the execution of the public procurement contract in accordance with the conditions specified in the procurement documentation and the selected bid. This is necessary to avoid a situation where a public procurement contract is performed by a person who did not conclude the contract and does not meet the conditions for participation in the reserved public procurement.

1. Data protection, documentation and procedure recording

## Data protection and confidentiality determination

Protection and determination of data confidentiality are provided for both the bidder and the ordering party. Article 38 of the PPL requires the contracting authority to keep confidential all data that the economic operator has made available to the contracting authority in the public procurement procedure and that it has designated as such in accordance with the law governing the protection of business secrets or that constitute secret data within the meaning of the law governing the confidentiality of data, including but not limited to technical or business secrets. Also, the contracting authority is obliged to keep as a business secret data on economic operators interested in participating in the public procurement procedure and data on submitted applications and bids until the applications or bids are opened.

This means that the contracting authority has an obligation to protect the bidder's data that is marked as confidential in the bid, in accordance with other regulations, and not to make it available to another bidder, e.g., when inspecting the documentation. In addition, the PPL stipulates that the economic operator is obliged to state the legal basis on which the data was marked as confidential and to explain the reason for confidentiality.

An economic operator may not mark as confidential information the statement and data on the fulfilment of the criteria for the qualitative selection of the economic operator, as well as catalogues, the offered price and price elements, as well as other data related to the criteria for awarding the contract and the conditions for the execution of the contract. Data related to offered conceptual solutions, technical solutions, etc. are most often marked as confidential.

If an economic operator participating in the public procurement procedure consents, the contracting authority may disclose to other participants confidential information submitted by that economic operator, whereby consent may only be given for the disclosure of individually specified data and may not be of a general nature.

The contracting authority may also request protection of the confidentiality of data that it makes available to economic operators. Pursuant to Article 39 of the PPL, in order for business entities to be subject to an obligation to protect confidentiality, such data must constitute a business secret within the meaning of the law governing the protection of business secrets or secret data within the meaning of the law governing the confidentiality of data. The obligation of the person who received data designated as confidential to safeguard and protect it exists regardless of the degree of that confidentiality.

The contracting authority may require the download of the tender documentation or a specific part of the tender documentation, if access to the tender documentation cannot be provided by electronic means.

## Documentation and recording of the procedure

The contracting authority is obliged to record all actions and documents during all three phases of the public procurement process, i.e., during planning, implementation of the procedure and execution of the public procurement. The contracting authority will record and document all actions in writing. Accordingly, the contracting authority will also record the actions and documents that precede the initiation of the public procurement procedure. After that, the contracting authority is obliged to record all actions and documents during the implementation of the public procurement procedure: the decision to implement the public procurement procedure, the statement of the commission members on the absence of a conflict of interest, the public invitation, the tender documentation, the minutes of the opening of bids, the report on the expert assessment of bids, the decision to award the contract, i.e., the suspension of the procedure, etc. The contracting authority will also record all documents related to the execution of the contract, i.e., the public procurement contract itself, any amendments to the contract, etc.

Recording the procedure, starting from the planning process, through the implementation of the procedure, including the process of executing the public procurement contract, also enables audit and control, both internal and external.

Furthermore, the contracting authority is obliged, in accordance with the regulations governing the field of documentary materials and archives, to keep all documentation related to public procurement, i.e., to keep any document created during the planning of public procurement, the implementation of the public procurement procedure and the execution of the public procurement contract, for at least five years from the conclusion of the individual public procurement contract or framework agreement, i.e., five years from the suspension or annulment of the public procurement procedure. In accordance with the above, the Public Procurement Portal stores and archives documentation exchanged on the Public Procurement Portal.

1. Language, currency and communication in the public procurement procedure

## Language in the public procurement procedure

The PPL, in Article 42, paragraph 1, prescribes the general rule that the contracting authority shall prepare the tender documentation and conduct the public procurement procedure in the Serbian language. The contracting authority has the option to prepare procurement documentation in a foreign language.

Bidders shall submit bids in Serbian, and the contracting authority may allow the bid or part of the bid to be submitted in a foreign language. This particularly concerns the part of the offer relating to technical characteristics, quality and technical documentation. If the contracting authority allows bidders to submit part of the tender in a foreign language, it is obliged to state in the procurement documentation which part of the tender can be submitted in a foreign language and in which foreign language.

In the event that the contracting authority allows bidders to submit a bid or part of a bid in a foreign language, and then, during the review and evaluation of the bids, determines that part of the bid should still be translated into Serbian, it will invite the bidder to provide a translation of that part of the bid into Serbian within a reasonable period of time. If, however, it is determined that there is a discrepancy between the versions of the procurement documentation, i.e., between the bid in Serbian and in a foreign language, the version of the procurement documentation, i.e., the bid in Serbian, is taken as relevant.

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## Currency

Values in the public procurement procedure are expressed in dinars.

The contracting authority may allow the bidder to express the price in the bid in a foreign currency, and in that case, it will state in the tender documentation that the appropriate middle exchange rate of the National Bank of Serbia on the day when the bid opening began will be used for the conversion into dinars.

The PPL allows the contracting authority to allow bidders to express the price in the offer in a foreign currency instead of in dinars. If the contracting authority allows bidders to express their bids in a foreign currency, it is obliged to state in the tender documentation that the appropriate middle exchange rate of the National Bank of Serbia on the day when the bid opening began will be used for conversion into dinars. Therefore, the contracting authority will first convert the prices in the offer that are expressed in foreign currency into dinars, and then compare them once they have been converted. From the above it follows that it depends solely on the contracting authority whether the prices in the offer will be expressed in a foreign currency and in which one. On the other hand, bidders must follow the instructions given in the tender documentation regarding the type of foreign currency in which the bid price may be expressed.

## Communication in the public procurement procedure

A significant novelty introduced by the provisions of the PPL relates precisely to communication in the public procurement procedure. Namely, all participants in the public procurement procedure, i.e., the contracting authority and economic operators, communicate in the public procurement procedure by electronic means, orally and through alternative means of access.

Electronic communication means communication through the Public Procurement Portal. In accordance with the PPL, communication can also take place via mail, courier service, and electronically - by sending an e-mail. Email is a common method of communication in all phases of the public procurement procedure, from market research to the execution phase of the public procurement contract, and the PPL stipulates that if a contracting authority or economic operator has submitted a document from the public procurement procedure by email, the document will be deemed to have been received on the day of sending. The aim of this legal provision is to remove doubts and overcome misunderstandings in communication between participants in the public procurement procedure.

## Communication by electronic means

Communication by electronic means involves the use of the Public Procurement Portal (hereinafter referred to as: the Portal). All communication and data exchange in the public procurement procedure takes place via the Portal, except in cases provided for by the PPL. Communication is regulated by the Instructions for using the Public Procurement Portal ("Official Gazette of the Republic of Serbia", No. 93/20) and the instructions for users published on the Portal.

According to the provisions of the PPL, communication implies that both the contracting authority and the economic operators, i.e., bidders, perform all actions related to the public procurement procedure on the Portal. These actions include drafting and sending for publication public procurement notices, amendments and supplements to public procurement notices, making descriptive and tender documentation electronically available, as well as amendments and supplements to that documentation. Also, contracting authorities, through the Portal, invite economic operators to submit bids and applications, to negotiate or dialogue. All communication between contracting authorities and economic operators regarding additional information and clarifications necessary for the preparation and submission of a bid or application takes place via the Portal. Then, the Portal is used to submit bids and open bids, applications, plans, and designs. After the bids are opened, the Portal is the means of all communication between the contracting authorities and bidders regarding the submission, additions or clarifications of the bid, registration and correction of calculation errors. Furthermore, communication between contracting authorities and bidders regarding the submission of evidence of compliance with the criteria for the qualitative selection of an economic operator takes place on the Portal. Finally, the contracting authority publishes on the Portal the decisions that it is obliged to publish according to the provisions of the PPL.

In addition to communication between contracting authorities and economic operators, the Portal also hosts communication between the Public Procurement Office and contracting authorities regarding the implementation of a negotiated procedure without publication of a public call, in two cases:

* if only a particular economic operator can supply the goods, provide the services or perform the works, for any of the following reasons: the purpose of the procurement is the creation or acquisition of a unique work of art or artistic performance; the absence of competition for technical reasons or due to the protection of exclusive rights, including intellectual property rights; and
* to the extent necessary, if due to extreme urgency caused by events which the contracting authority could not have foreseen, it is not possible to act within the deadlines set for open procedure or restrictive procedure or competitive negotiated procedure or negotiated procedure with publication, provided that to which the contracting authority justifies extreme urgency must not in any case be caused by its actions.

In the above cases, the contracting authority is obliged, simultaneously with the publication of the notice on the implementation of the negotiated procedure without publication, to submit to the Public Procurement Office an explanation and all documentation regarding the reasons justifying the implementation of that type of procedure. The Public Procurement Office must examine the existence of grounds for conducting this type of procedure within ten days from the day of receipt of the explanation and documentation and to submit an opinion to the contracting authority on the grounds of this kind of the procedure.

Also, the Portal facilitates communication between participants in the public procurement procedure and the Republic Commission for the Protection of Rights in Public Procurement Procedures. So, requests for the protection of rights and **other submissions in the rights protection procedure** are submitted, as well as decisions of the Republic Commission for the Protection of Rights in Public Procurement Procedures are published.

There are exceptions to the stated rule that all communication in the public procurement procedure takes place on the Portal. Namely, communication and exchange of data by electronic means on the Portal, which relate to the submission of part of the offer, application, plan or design, are not mandatory if:

* due to the specialised nature of procurement, the use of electronic means requires special tools, equipment or file formats that are not generally available or are not supported through generally available applications;
* applications that support file formats suitable for the description of offers use file formats that cannot be processed by any other open or generally available application or are subject to a proprietary licence protection system, so the customer cannot download or use them remotely;
* the use of electronic means requires specialised office equipment that is not widely available to contracting authorities;
* certain items such as samples, projects, models and the like cannot be submitted by electronic means;
* it is necessary to submit original documents that cannot be submitted by electronic means;
* the provisions of this law governing public procurement for defence and security purposes are applied to procurement.

It is necessary to note that the above cases, when communication via the Portal is not mandatory, relate only to part of the offer, application, plan or design. Then communication can take place via mail, courier service, or by combining them with electronic means.

Also, the customer is not obliged to use communication via the Portal due to the risk of violating the security of electronic means or due to the protection of particularly sensitive information, including confidential data.

Therefore, if, for the above reasons, access to the tender documentation cannot be provided electronically, i.e., via the Portal, the contracting authority is obliged to specify in the public call the manner in which the tender documentation is to be downloaded, i.e., the measures required for the protection of confidential data. Thereafter, the Contracting Authority will explain in the tender documentation and in the report on the public procurement procedure the reasons for using means of communication other than electronic means.

**Oral communication**

Oral communication between the contracting authority and economic operators in the public procurement procedure, according to the provisions of the PPL, is not a rule. The PPL provides for it exceptionally, when that communication does not relate to essential elements of the public procurement procedure.

Despite the fact that oral communication, when permitted, cannot relate to essential elements of the public procurement procedure, i.e., the procurement documentation, application and tender, its content must be adequately documented.

An adequate or satisfactory way of documenting oral communication involves the preparation of written notes or minutes, audio recordings, etc.

The most common situations where the need for oral communication may arise occur during the planning phase of public procurement, i.e., when contracting authorities research the market in order to determine estimated values. Then, contracting authorities can also organize a dialogue with economic operators at this stage, in order to inform them of what they plan to procure and to assess how they can best meet their needs in specific procurements. Also, if the contracting authority, as a requirement for participation in the public procurement procedure, foresees the obligation of the economic operator to visit a specific location in order to prepare a bid in accordance with the procurement requirements, communication must certainly take place orally.

Therefore, in all these situations, the contracting authority should document the oral communication in some way it deems most appropriate, in order to dispel doubts of other participants in the procedure regarding the content of the oral communication.

**Alternative means of access**

In terms of Article 47 of the PPL, the contracting authority may, only when it deems it necessary, require the use of tools and devices that are not widely available. In that case, the contracting authority must provide an alternative means of access. In order for the contracting authority to be considered to have provided an alternative means of access, the following conditions must be met.

Firstly, the contracting authority must provide free, unlimited and unhindered direct access electronically to those tools and devices from the date of publication of the notice or from the date on which the call for applications was sent and if it states in the text of the notice or call for applications the internet address at which those tools and devices are available.

The second condition is that the contracting authority ensures that bidders who do not have access to these tools and devices or who do not have the possibility to obtain them within the given time limit, provided that the lack of access is not the responsibility of the bidder, can access the procurement procedure using temporary tokens available free of charge via the internet.

Third, it is necessary for the contracting authority to support an alternative channel for electronic submission of bids.

When it comes to public works contracts, the contracting authority may require the use of special electronic tools such as virtual displays of building models, etc., provided that it must then provide an alternative means of access until such tools become generally available.

1. Prevention of corruption and conflicts of interest

## General anti-corruption measures

The PPL contains a special chapter that prescribes mechanisms for preventing corruption and conflicts of interest. Article 49 of the PPL provides for general measures to prevent corruption. It is thus stipulated that the contracting authority is obliged to take all necessary measures, primarily preventive ones, in order to prevent the occurrence of corruption at any stage of public procurement, i.e., during public procurement planning, in the public procurement procedure or during the execution of the public procurement contract. The goal is to detect corruption in a timely manner, to eliminate or reduce the harmful consequences of corruption, and to punish participants in corruption in accordance with the law. Preventive measures aim to reduce the risk of irregularities and possible corruption in the public procurement process.

According to the same provision, the contracting authority 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. It is also the obligation of the contracting authority to publish this act on its website.

Therefore, by means of a special act, the contracting authority, in addition to regulating the conduct of employees and organisational units within the contracting authority, in all phases of the public procurement procedure, also regulates their conduct during the execution of the public procurement contract. Furthermore, a special act regulates the procurement of social and other special conditions, i.e., the procedures in which these services will be procured, etc. Finally, the subject-matter of the internal act are also procurements to which the law does not apply. This segment should certainly be regulated in the most detailed way, so that there are no doubts and misunderstandings in the actions of the contracting authority's employees and organisational units in these procedures.

## Conflict of interest

The provisions of the PPL stipulate an obligation for the contracting authority to take all measures to identify, prevent and eliminate conflicts of interest in connection with the public procurement procedure. Primarily, these measures are of a preventive nature, in order to identify and prevent, or eliminate, conflicts of interest. The primary goal of these measures that the contracting authority is obliged to take is to prevent violations of the principles of ensuring competition and equality of economic operators.

Before taking the above measures, it is necessary to determine whether a conflict of interest exists between the contracting authority and the economic operator. Conflict of interest is the name given to situations in which representatives of the contracting authority who are involved in the conduct of the procedure or who can influence the outcome of the procedure have a direct or indirect financial, economic or other private interest, which could be considered to call into question their impartiality and independence in the procedure.

Therefore, it is necessary that on the contracting authority's side there are persons who either participate in the public procurement procedure itself, or are involved in it in some other way, which in any case implies that these persons can influence the outcome of the procedure.

At the same time, the existence of a direct or indirect financial, economic or other private interest is prescribed as an essential element of a conflict of interest, given that the existence of any of the aforementioned types of interest could be considered to call into question the impartiality and independence of those persons in the procedure.

Conflict of interest primarily involves the relationship between the contracting authority and the economic operator in situations where the contracting authority's representative participates in the management of the economic operator or when the contracting authority's representative holds more than 1% of the shares, i.e., shares, of the economic operator.

A bidder, a member of a group of bidders and a subcontractor are considered to be an economic operator for the purposes of the provisions regulating conflicts of interest.

The following are considered to be the representative of the contracting authority: - the manager of the contracting authority, i.e., the responsible person of the contracting authority, - a member of the management, executive or supervisory board of the contracting authority, - a member of the public procurement commission, i.e., the person conducting the public procurement procedure. It is understood that these persons participate in the public procurement procedure or are otherwise involved in the public procurement procedure (e.g., a manager makes decisions in the public procurement procedure), and that they certainly have an influence on the outcome of the procedure.

Other persons who are not specifically listed in the PPL, but who in some way influence the outcome of the procedure, may also be considered representatives of the contracting authority. For example, a person who is not a member of the public procurement commission, but due to their expertise participates in the preparation of procurement documentation, such as technical specifications. The provisions of the PPL relating to the representative of the contracting authority shall also apply to related persons of the representative of the contracting authority, i.e., to persons who are related to the representative of the contracting authority in: blood relationship in a direct line, collateral relationship up to the third degree of kinship, in-law relationship up to the second degree of kinship, relationship between adopter and adoptee, marriage, regardless of whether the marriage has ended or not, extramarital union, relationship between guardian and ward.

If a conflict of interest is determined, or if it becomes known, the contracting authority's representative is obliged to exclude himself from the public procurement procedure at any stage of that procedure.

In order to somehow ensure that there is no conflict of interest, the contracting authority's representative signs a statement on the existence or non-existence of a conflict of interest. The PPL/2015 prescribed that the declaration on the existence or absence of a conflict of interest be suppressed when drafting the tender documentation, however, this PPL stipulates that the declaration be signed after the opening of bids or applications. This moment of signing the statement is considered more logical because at that stage of the procedure, the contracting authority's representatives can have more information about the bidders and more easily learn about the (non)existence of a conflict of interest.

1. Types of public procurement procedures

Article 51 of the PPL prescribes the types of public procurement procedures that contracting authorities may apply. Those are:

Public procurement procedures are:

1. open procedure;
2. restrictive procedure;
3. competitive negotiated procedure;
4. competitive dialogue;
5. negotiated procedure with publication of a public invitation;
6. partnership for innovation;
7. negotiated procedure without publishing a public invitation.

As the new feature of the PPL is the division of contracting authorities into public and sectoral, certain types of procedures apply only to public, or rather, only to sectoral contracting authorities. Namely, a competitive procedure with negotiation can only be conducted by a public contracting authority under the conditions specified in the PPL, while a negotiated procedure with the publication of a public invitation can only be conducted by a sectoral contracting authority.

In this regard, the provisions of the PPL stipulate that the public contracting authority shall, as a rule, award contracts in an open or restricted procedure, and may also do so in other public procurement procedures if the conditions prescribed by this law are met, while it may not conduct a negotiated procedure with the publication of a public call, which is intended for sectoral contracting authorities.

On the other hand, a sectoral contracting authority, as a rule, awards contracts in an open procedure, a restricted procedure, a negotiated procedure with publication or a competitive dialogue, and may also do so in other public procurement procedures if the conditions prescribed by this Law are met, while it may not conduct a competitive procedure with negotiation, which is intended for public contracting authorities.

## Open procedure

An open procedure is a procedure in which all interested economic operators can submit a bid. It is provided as a rule, so that contracting authorities can always implement it, regardless of the subject and value of the public procurement. The PPL does not provide for any special conditions for its initiation, except for the general conditions for initiating any public procurement procedure.

The launch of an open procedure may be preceded by a prior information notice published by public contracting authorities or a periodic indicative notice published by sectoral contracting authorities. Based on the data from these notices, interested parties will have information about when the contracting authority will publish a general public invitation and what it intends to procure. This type of advertisement is published on the Public Procurement Portal and the contracting authority's profile and gives the contracting authority the opportunity to shorten the deadline for submitting bids.

The contracting authority is obliged to publish a public invitation in an open procedure. The minimum deadline for submitting bids in an open procedure is:

* 35 days from the day of sending for publication a public invitation for public procurement whose estimated value is equal to or greater than the amount of European thresholds;
* 25 days from the day of sending for publication a public invitation for public procurement whose estimated value is less than the amount of European thresholds.
* 15 days from the date of sending the public invitation for the procurement of works whose estimated value is lower than 30,000,000 dinars;
* ten days from the date of sending the public invitation for the procurement of goods and services whose estimated value is lower than 10,000,000 dinars;

The minimum deadlines for submitting bids in an open procedure, of 35 and 25 days from the date of sending the public invitation to tender, may be shortened to 15 days in the event of publication of a prior information notice or a periodic indicative notice. For the aforementioned shortening of the deadline, it is necessary that the prior information notice contains all the information required for the public call from Annex 4. Part A II of this Law to the extent that such information was available at the time of publication of the previous information notice. The second condition for shortening the deadline is that at least 35 days have passed from the date of sending the previous information notice for publication, and a maximum of 12 months have passed before the date of sending the public invitation for publication.

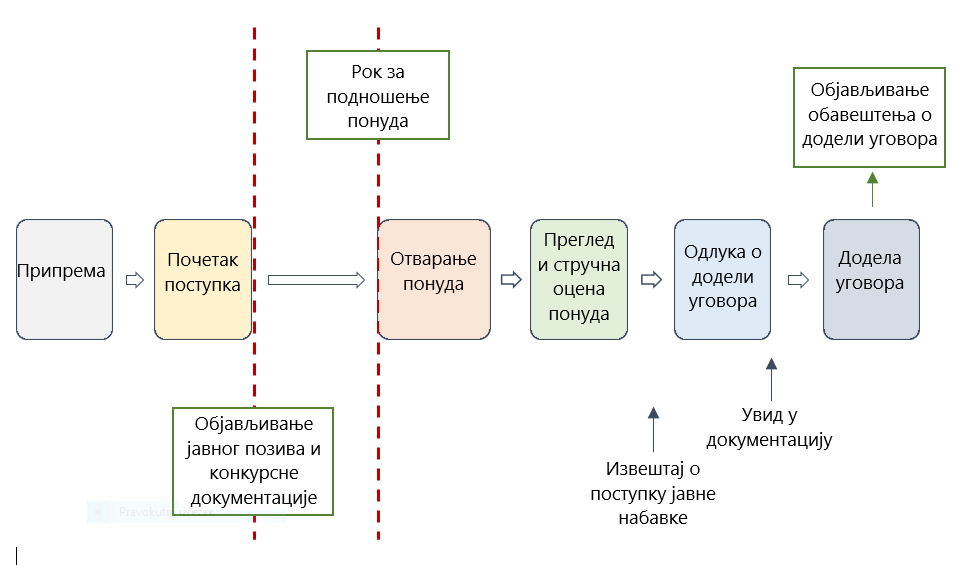
Also, Article 52 of the PPL stipulates that the deadlines for submitting bids in an open procedure, of 35 and 25 days from the date of sending the public invitation to tender, may be shortened by five days by the contracting authority, when bids can be submitted electronically.

Also, the contracting authority may, in another situation, set a shorter deadline for submitting bids. Namely, if, due to justified urgency, for which there is valid evidence, the deadline of 35 or 25 days is not appropriate, the contracting authority may set a shorter deadline, but not shorter than 15 days from the date of sending the public invitation for publication.

Furthermore, according to legal provisions, the contracting authority is obliged to extend the minimum deadlines for submitting bids in an open procedure by five days, when communication does not take place via the Portal due to the fact that free, unlimited and unhindered direct access to the tender documentation cannot be provided by electronic means.

This obligation to extend the deadline by five days does not apply to emergency situations when the student has the option of shortening the deadline.

*Graphical representation of the flow of the open public procurement procedure*



## Restrictive procedure

The restrictive procedure is Article 53 of the PPL defines it as a procedure that is carried out in two phases and in which all interested economic operators can submit an application. For this type of procedure, as well as for open procedures, the PPL does not prescribe any special conditions that must be met in order for it to be implemented, with the exception of the general condition from Article 88 of the PPL must be fulfilled for all types of public procurement procedures, namely that the procurement is foreseen in the contracting authority's annual public procurement plan. Article 51 of the PPL stipulates that the award of contracts shall be carried out in an open or restricted procedure, while in other public procurement procedures, the award of contracts may be carried out if the conditions prescribed by the PPL are met. It clearly follows from the above legal provisions that open and restrictive procedures are the rule, that is, that public contracting authorities can always use these procedures to select the most advantageous offer.

In practice, the restrictive procedure will generally be implemented when the nature of the subject-matter of public procurement of goods, services or works is such that, due to technical, personnel, business and/or financial capacities, only a limited number of bidders can implement the public procurement in question, i.e., deliver the goods, provide the service or perform the works. This type of procedure is primarily intended for complex public procurements, which require significant capacities that a relatively small number of entities possess.

The contracting authority, therefore, assesses when it is appropriate for a particular subject-matter of public procurement to limit the possibility of submitting a bid only to a certain number of persons who have the appropriate capacities. This is given as an opportunity to contracting authorities to ensure, through prior selection in the further course of the procedure, that the bid will be submitted, or the public procurement will be implemented, by persons who are objectively able to do so. Thus, due to the nature of public procurement in the field of defence and security and the fact that the application of an open procedure cannot restrict the right to submit bids, a restrictive procedure is envisaged as a rule, with the aim of prior selection of potential bidders who may be allowed to submit bids.

Only candidates whose qualifications have been recognised may be invited to submit a bid in the second phase of the restrictive procedure.

The contracting authority is obliged to publish a public invitation in the first phase of the restricted procedure. In the first phase of the restrictive procedure, the minimum deadlines for submitting applications are 30 days, or 20 days from the date of sending the public invitation to tender, or from the date of sending the invitation to submit an application, depending on the estimated value of the public procurement.

Therefore, the deadline for submitting applications is 30 days from the date of sending the public call for public procurement whose estimated value is equal to or greater than the European thresholds, or from the date of sending the call for applications when the sectoral contracting authority uses a periodic indicative notice as a public call, while the deadline for submitting applications is 20 days from the date of sending the public call for public procurement whose estimated value is less than the European thresholds, or from the date of sending the call for applications when the sectoral contracting authority uses a periodic indicative notice as a public call.

It is necessary to clarify here that the sectoral contracting authority has the option to use a periodic indicative notice as a public call, provided that the periodic indicative notice:

* contains a description of the goods, services or works that will be the subject-matter of the contract to be awarded;
* to contain a statement that the contract will be awarded by a restricted procedure or a negotiated procedure without additional publication of a public call and that interested economic operators are invited to express their interest;
* to contain in addition to the information from Annex 4 Part B II. item 1) and information from Annex 4 Part B II. item 2);

that at least 35 days and no more than 12 months have elapsed from the date of sending for publication of the periodic indicative notice before the sectoral contracting authority sends the invitation to submit an application.

Also, the contracting authority has the option to set a shorter deadline for submitting applications, but not shorter than 15 days. The condition for this possibility is the existence of justified reasons of urgency, for which the contracting authority has valid evidence, and if as a result the deadlines of 35 or 25 days were not appropriate. The contracting authority must substantiate justified urgency with evidence and prove that failure to shorten the deadlines would have consequences for the contracting authority's business or similar.

Candidates submit applications via the Portal, and then they are evaluated by the contracting authority. Only timely submitted applications will be taken into consideration. The contracting authority evaluates the applications based on the criteria for the qualitative selection of the economic operator specified in the procurement documentation. The contracting authority shall prepare a report on the assessment of applications and shall deliver a notification of recognition of the qualification to each candidate whose qualification has been recognised, and a decision explaining the reasons why the qualification was not recognised to the candidate whose qualification was not recognised, taking care not to disclose information about other candidates. Here, there is a difference in the contracting authority's treatment of a candidate whose qualification is recognised and a candidate whose qualification is not recognised. In the first case, the contracting authority delivers to the candidate a notification of the recognition of the qualification, while in the second case, the contracting authority delivers to the candidate a decision on the exclusion of the candidate, which contains an explanation of why the qualification was not recognised*.*

When conducting the first phase of the restrictive procedure, the contracting authority may limit the number of candidates whose qualifications have been recognised and who will be invited to submit tenders, in which case it is obliged to provide the candidates whose qualifications have been recognised who will not be invited to submit tenders with a reasoned decision, taking care not to disclose information about the other candidates.

Therefore, in this case, the contracting authority treats candidates whose qualifications have been recognised, but who will not be invited to submit bids, in the same way as in the case of candidates whose qualifications have not been recognised, i.e., it delivers a decision with an explanation to them.

*Graphical representation of the flow of the first phase of the restrictive procedure*

After the first phase of the restrictive procedure, in which it has determined the candidates whose qualifications have been recognised, the contracting authority conducts the second phase of the restrictive procedure in which it sends a call for tenders to the candidates whom it has not excluded from the public procurement procedure. Therefore, it excludes from the procedure candidates whose qualifications are not recognised, as well as candidates whose qualifications are recognised, but the contracting authority does not invite them to submit bids, because it has limited the number of candidates.

There is a difference in determining the minimum deadline for submitting bids depending on whether the procedure is conducted by a public or sectoral contracting authority.

When the procedure is carried out by a public contracting authority, the minimum deadline for submitting bids is 30 days from the date of sending the invitation to submit bids, for public procurement whose estimated value is equal to or higher than the European thresholds, or 15 days from the date of sending the invitation to submit bids, for public procurement whose estimated value is lower than the European thresholds.

When it comes to sectoral contracting authorities, the provisions of the PPL do not prescribe a specific deadline, but rather leave the sectoral contracting authorities the option to set a deadline for submitting bids with the consent of all candidates. The aim of this legal provision is that all candidates in the procedure have the same deadline for preparing and submitting their bids, and that they can set a shorter deadline, if this does not affect their ability to submit bids.

If the candidates do not agree with the deadline proposed by the sector contracting authority, the minimum deadline for submitting bids is at least ten days from the date of sending the invitation to submit bids.

On the other hand, the contracting authority is also given the opportunity to shorten the deadlines for submitting bids from 30 days, or 15 days from the date of sending the invitation to submit bids, to a minimum of ten days from the date of sending the invitation to submit bids, if the contracting authority has published a prior information notice. For the aforementioned shortening of the deadline, it is necessary that the prior information notice contains all the information required for the public call from Annex 4. Part A II of this Law to the extent that such information was available at the time of publication of the previous information notice. The second condition for shortening the deadline is that at least 35 days have passed from the date of sending the previous information notice for publication, and a maximum of 12 months have passed before the date of sending the public invitation for publication.

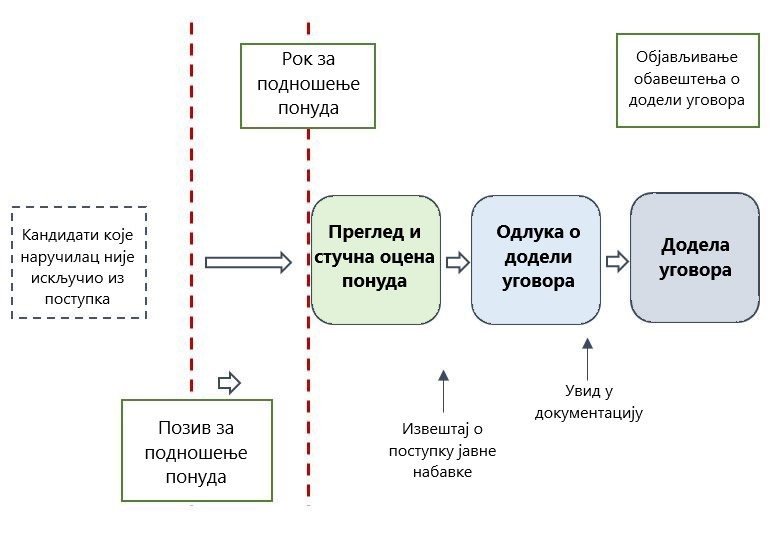
The contracting authority may set a shorter deadline for the submission of tenders, but not shorter than ten days from the date of sending the invitation to submit tenders, for reasons of justified urgency, for which the contracting authority has valid evidence, if the deadline it should apply is not appropriate. The condition for this possibility is the existence of justified reasons of urgency, for which the contracting authority has valid evidence, and if as a result the deadlines of 35 or 25 days were not appropriate. The contracting authority must substantiate justified urgency with evidence and prove that failure to shorten the deadlines would have consequences for the contracting authority's business or similar.

Also, as in the open procedure, the contracting authority may shorten the deadline for submitting bids by five days, when bids can be submitted by electronic means.

Furthermore, according to legal provisions, the contracting authority is obliged to extend the minimum deadlines for submitting bids in an open procedure by five days, when communication does not take place via the Portal due to the fact that free, unlimited and unhindered direct access to the tender documentation cannot be provided by electronic means.

This obligation to extend the deadline for submitting bids in the second phase of the restrictive procedure by five days does not apply to emergency situations when the bidder has the option of shortening the deadline.

*Graphical representation of the flow of the second phase of the restrictive procedure*



## Competitive negotiated procedure

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In addition to the restrictive procedure, another type of public procurement procedure that takes place in stages. In the first phase of the competitive procedure with negotiation, interested economic operators submit an application, and those that qualify proceed to the second phase of this procedure, in which negotiation takes place. Competitive procedure with negotiation is a new type of procedure. It is intended only for public contracting authorities and is used in cases specified in Article 55 of the PPL, for public procurement of goods, services or works when:

* the needs of the contracting authority cannot be met without adapting readily available solutions;
* the contract includes design or innovative solutions;
* the contract cannot be awarded without prior negotiations due to specific circumstances related to the nature, complexity, legal or financial structure of the subject-matter of public procurement or related risks;
* the public contracting authority cannot determine with sufficient precision the technical specifications of the subject-matter of procurement, within the meaning of the provisions of the PPL;
* all bids were unacceptable in a previously conducted open or restricted procedure.

The contracting authority publishes a public call for tenders, based on which any interested economic operator may submit an application.

When a competitive procedure with negotiation is carried out in a case where all bids in a previously conducted open or restricted procedure were unacceptable, the contracting authority is not obliged to publish a public invitation. Of course, for this procedure to be carried out by the contracting authority, it is necessary to meet the condition that it invites all and exclusively bidders who have submitted a bid in an open or restricted procedure and met the criteria for the qualitative selection of an economic operator to submit initial bids. Also, as a second condition for the application of this option, it is necessary that the initial conditions of public procurement have not been significantly changed.

The qualification of candidates in the first phase of the competitive procedure with negotiation is carried out on the basis of the criteria for the qualitative selection of the economic operator, which the contracting authority is obliged to specify in the procurement documentation. Also in the procurement documentation, the contracting authority determines the criteria for awarding the contract, the subject-matter of the procurement with a description of the needs and required characteristics of the goods, services or works, specifying which elements of the description of the needs and required characteristics of the goods, services or works represent the minimum requirements that all tenders must meet and which cannot be changed during the procedure. In order for economic operators to be able to determine the nature and scope of the procurement, and accordingly assess their interest in submitting applications, the information in the procurement documentation must be sufficiently clear and precise.

Interested business entities submit applications via the Portal. Applications are opened automatically on the Portal, after the deadline for submitting applications has expired. The minimum deadline for submitting applications is 30 days, or 20 days from the date of sending the public invitation to tender, depending on the estimated value of the public procurement. For public procurement whose estimated value is equal to or greater than the European thresholds, the minimum deadline for submitting applications is 30 days from the date of sending the public call for tenders, while for public procurement whose estimated value is less than the European thresholds, the minimum deadline for submitting applications is 20 days from the date of sending the public call for tenders.

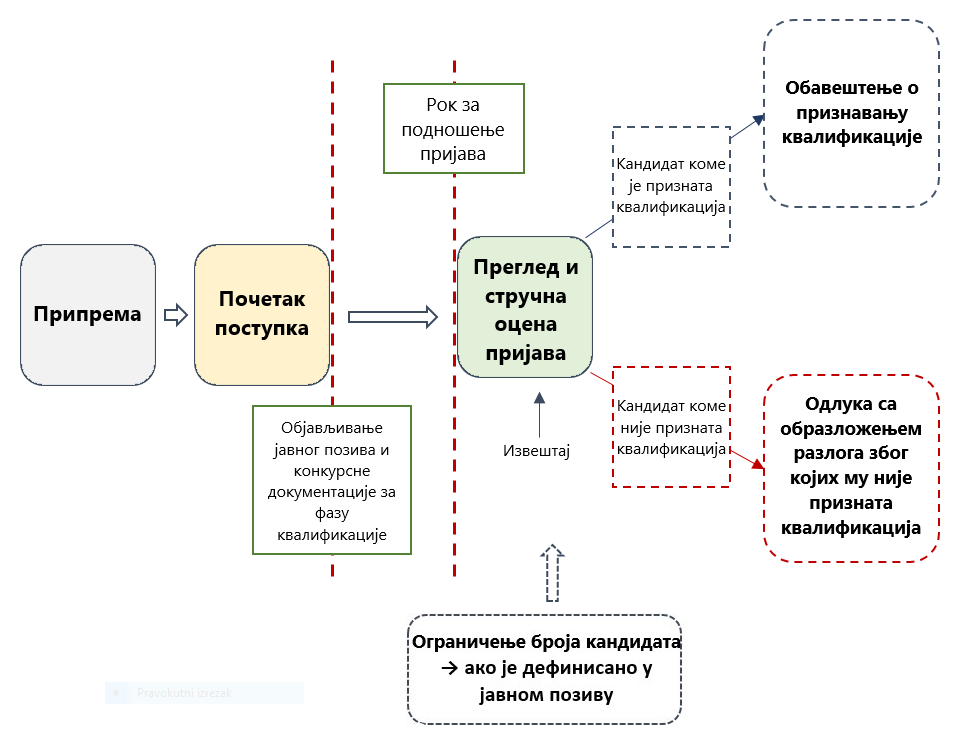
The contracting authority may also set a shorter deadline for submitting applications. This deadline cannot be shorter than 15 days, unless the stated deadlines are inappropriate due to justified urgency, for which the contracting authority has valid evidence. The condition for this possibility is the existence of justified reasons of urgency, for which the contracting authority has valid evidence, and if as a result the deadlines of 30 or 20 days were not appropriate. The contracting authority must substantiate justified urgency with evidence and prove that failure to shorten the deadlines would have consequences for the contracting authority's business or similar.

Based on the criteria for the qualitative selection of an economic operator specified in the procurement documentation, the contracting authority shall qualify the candidate. Only timely submitted applications will be taken into consideration. The contracting authority shall prepare a report on the assessment of applications and shall deliver a notification of recognition of the qualification to each candidate whose qualification has been recognised, and a decision explaining the reasons why the qualification was not recognised to the candidate whose qualification was not recognised, taking care not to disclose information about other candidates. Here, there is a difference in the contracting authority's treatment of a candidate whose qualification is recognised and a candidate whose qualification is not recognised. In the first case, the contracting authority delivers to the candidate a notification of the recognition of the qualification, while in the second case, the contracting authority delivers to the candidate a decision on the exclusion of the candidate, which contains an explanation of why the qualification was not recognised*.*

When conducting the first phase of a competitive procedure with negotiation, the contracting authority may limit the number of candidates whose qualifications are recognised and who will be invited to submit initial tenders, in which case it is obliged to deliver a decision on exclusion with justification to the candidates whose qualifications are recognised and who will not be invited to submit initial tenders, taking care not to disclose information about the other candidates.

Therefore, in this case, the contracting authority treats candidates whose qualifications have been recognised, but who will not be invited to submit bids, in the same way as in the case of candidates whose qualifications have not been recognised, i.e., it delivers a decision with an explanation to them.

*Graphical representation of the flow of the first phase of the competitive procedure with negotiation*



After the first phase of the competitive procedure with negotiation, in which it has determined the candidates whose qualifications have been recognised, the contracting authority conducts the second phase of the competitive procedure with negotiation. In the second phase, the public contracting authority sends an invitation to submit initial bids to candidates that it has not excluded from the public procurement procedure. Therefore, it excludes from the procedure candidates whose qualifications are not recognised, as well as candidates whose qualifications are recognised, but the contracting authority does not invite them to submit initial bids, because it has limited the number of candidates.

The minimum deadline for submitting initial bids is 30 days, or 20 days from the date of sending the invitation to submit initial bids, depending on the estimated value of the public procurement. For public procurement whose estimated value is equal to or greater than the European thresholds, the minimum deadline for submitting bids is 30 days from the date of sending the invitation to submit initial bids, while for public procurement whose estimated value is less than the European thresholds, the minimum deadline for submitting initial bids is 20 days from the date of sending the invitation to submit initial bids.

The contracting authority has the option to shorten the deadline for submitting initial bids to ten days, if it has published a prior information notice. For the aforementioned shortening of the deadline, it is necessary that the prior information notice contains all the information required for the public call from Annex 4. Part A II. PPL to the extent that this information was available at the time of publication of the previous information notice. The second condition for shortening the deadline is that at least 35 days have passed from the date of sending the previous information notice for publication, and a maximum of 12 months have passed before the date of sending the public invitation for publication.

The contracting authority may set a shorter deadline for submitting initial bids. This deadline cannot be shorter than 15 days, unless the stated deadlines are inappropriate due to justified urgency, for which the contracting authority has valid evidence. The condition for this possibility is the existence of justified reasons of urgency, for which the contracting authority has valid evidence, and if as a result the deadlines of 30 or 20 days were not appropriate. The contracting authority must substantiate justified urgency with evidence and prove that failure to shorten the deadlines would have consequences for the contracting authority's business or similar.

The contracting authority may shorten the deadline for submitting initial bids by five days, when bids may be submitted by electronic means.

Furthermore, according to legal provisions, the contracting authority is obliged to extend the minimum deadlines for submitting initial bids by five days, when communication does not take place via the Portal due to the fact that free, unlimited and unhindered direct access to the tender documentation cannot be provided by electronic means.

This obligation to extend the deadline for submitting initial bids by five days does not apply to emergency situations when the learner has the option of shortening the deadline.

After the deadline for submitting initial bids has expired, the contracting authority negotiates the initial and all subsequent bids with the bidders. Negotiations are underway to get the best possible offer. Negotiations are not only held in the case of a final offer. A record of the negotiations shall be drawn up.

Exceptionally, a public procurement contract may be awarded without negotiation, based on initial bids, if such a possibility was provided for in the public invitation. This happens in situations where an initial offer has been sent, but the bidder has not entered into negotiations. Therefore, his initial offer will be considered final.

The minimum requirements relating to the description of the needs and required characteristics of the goods, services or works and the contract award criteria specified in the procurement documentation cannot be the subject-matter of negotiations. Therefore, it can be concluded that the subject-matter of negotiation may be price, payment method, warranty period and elimination of possible defects during the warranty period, delivery, and the like.

In the negotiation process, the contracting authority must ensure equal treatment of all bidders. Also, it cannot provide information that some bidders could use to the detriment of others, bearing in mind that this could be considered discriminatory.

The contracting authority may negotiate in one or more stages. In doing so, the contracting authority may reduce the number of bids to be negotiated, applying the contract award criteria specified in the procurement documentation, and must specifically highlight this possibility in the procurement documentation.

If the public contracting authority uses this option, it is obliged to deliver the decision to exclude the bidder from further negotiations to the bidders who will not be invited to the next stage of the procedure.

Also, the public contracting authority is obliged to simultaneously inform in writing all bidders whose bids have not been excluded from further negotiations of all changes to the technical specifications or other procurement documentation, except for those that represent minimum requirements. In this case, the contracting authority must enable bidders to prepare and resubmit their tenders in accordance with the changes made.

Bidders who are not excluded from further negotiations will be notified of the completion of negotiations. The contracting authority will set a single deadline for submitting final bids. This deadline is not determined by the provisions of the PPL, but is left to the public contracting authority to decide.

After receiving the final bids, the contracting authority will proceed to their evaluation and make a decision on the award of the contract based on the specified criteria.

*Graphical representation of the flow of the second phase of the competitive procedure with negotiation*

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## Competitive dialogue

Competitive dialogue is a type of procedure that was also prescribed by the PPL/2015. This PPL also provides for the possibility of conducting a competitive dialogue. The application of competitive dialogue is intended for situations where the subject-matter of public procurement is particularly complex, and the public procurement contract cannot be concluded through the application of regular public procurement procedures, i.e., through an open or restrictive procedure.

It should be emphasized that the contracting authority may use the competitive dialogue for the procurement of goods, services or works under the conditions under which it may also apply the competitive procedure with negotiation, i.e., when:

* the needs of the contracting authority cannot be met without adapting readily available solutions;
* the contract includes design or innovative solutions;
* the contract cannot be awarded without prior negotiations due to specific circumstances related to the nature, complexity, legal or financial structure of the subject-matter of public procurement or related risks;
* the contracting authority cannot determine the technical specifications of the subject-matter of procurement with sufficient precision;
* in a previously conducted open or restricted procedure when all bids were unacceptable.

On the other hand, sectoral contracting authorities are not required to use competitive dialogue, and can use this procedure regardless of the above conditions.

A situation where the contracting authority cannot determine the technical specifications of the subject-matter of procurement, for example, would exist if the contracting authority wants to connect the banks of a river, but does not know whether building a bridge or a tunnel would be a better solution. In a specific case, the contracting authority can determine the technical characteristics of a bridge or tunnel, but does not know whether the construction of a bridge or a tunnel is a better solution, and the application of competitive dialogue would be justified in this case. Also, in the case of the procurement of a complex IT project where there are a large number of technical solutions on the market, the contracting authority could conduct a competitive dialogue in order to get what it needs through discussions with the candidates.

The contracting authority is obliged to publish a public call, while the sectoral contracting authority is obliged to publish a public call or a periodic indicative notice or a notice on the establishment of a qualification system. An exception to the obligation for public contracting authorities to publish a public invitation exists in the case when the public contracting authority invites all and exclusively bidders who have submitted a bid in an open or restricted procedure and met the criteria for the qualitative selection of an economic operator to participate in that procedure.

The criteria for awarding the contract and the indicative deadlines for implementing the procedure are specified in the public call (public contracting authorities), or in the public call or periodic indicative notice or notice on the establishment of a qualification system (sector contracting authorities), and they may also state their needs and requirements in the descriptive documentation.

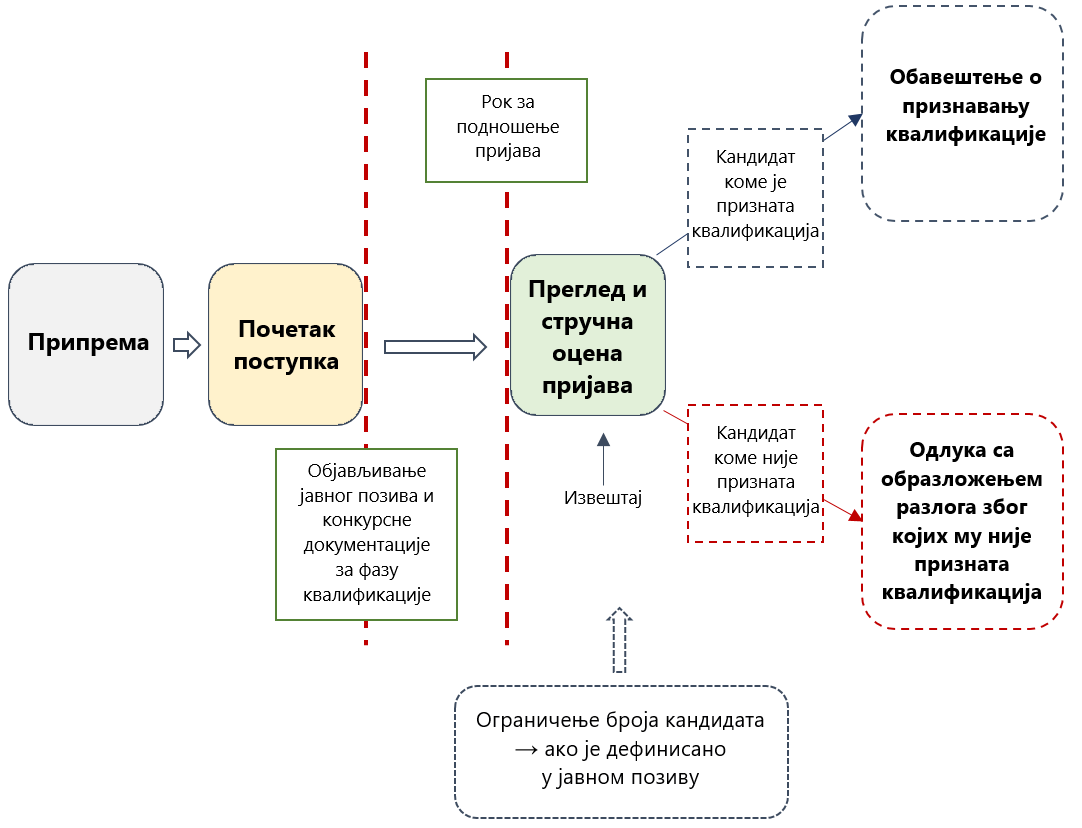
In the first phase of the competitive dialogue, all interested economic operators submit applications. The minimum deadline for submitting an application is 30 days, or 20 days from the date of sending the public invitation to tender, depending on the estimated value of the public procurement. For public procurement whose estimated value is equal to or greater than the European thresholds, the minimum deadline for submitting applications is 30 days from the date of sending the public call for tenders, while for public procurement whose estimated value is less than the European thresholds, the minimum deadline for submitting applications is 20 days from the date of sending the public call for tenders.

Based on the criteria for the qualitative selection of the economic operator specified in the procurement documentation, the contracting authority evaluates the applications. Only timely submitted applications will be taken into consideration. The contracting authority shall prepare a report on the assessment of applications and shall deliver a notification of recognition of the qualification to each candidate whose qualification has been recognised, and a decision explaining the reasons why the qualification was not recognised to the candidate whose qualification was not recognised, taking care not to disclose information about other candidates. Here, there is a difference in the contracting authority's treatment of a candidate whose qualification is recognised and a candidate whose qualification is not recognised. In the first case, the contracting authority delivers to the candidate a notification of the recognition of the qualification, while in the second case, the contracting authority delivers to the candidate a decision on the exclusion of the candidate, which contains an explanation of why the qualification was not recognised*.*

When conducting the first phase of the competitive dialogue, the contracting authority may limit the number of candidates whose qualifications have been recognised and who will be invited to the dialogue, in which case it is obliged to deliver a decision on exclusion with justification to the candidates whose qualifications have been recognised and who will not be invited to the dialogue, taking care not to disclose information about the other candidates.

Therefore, in this case, the contracting authority treats candidates whose qualifications have been recognised, but who will not be invited to the dialogue, in the same way as in the case of candidates whose qualifications have not been recognised, i.e., it delivers to them a decision on exclusion with an explanation.

*Graphical representation of the flow of the first phase of the competitive dialogue*



The contracting authority delivers an invitation to participate in the dialogue to candidates whose qualifications have been recognised, i.e., who have not been excluded from the public procurement procedure, and initiates a dialogue with them with the aim of finding and determining one or more solutions that best meet the needs of the contracting authority. Minutes are taken of the dialogue.

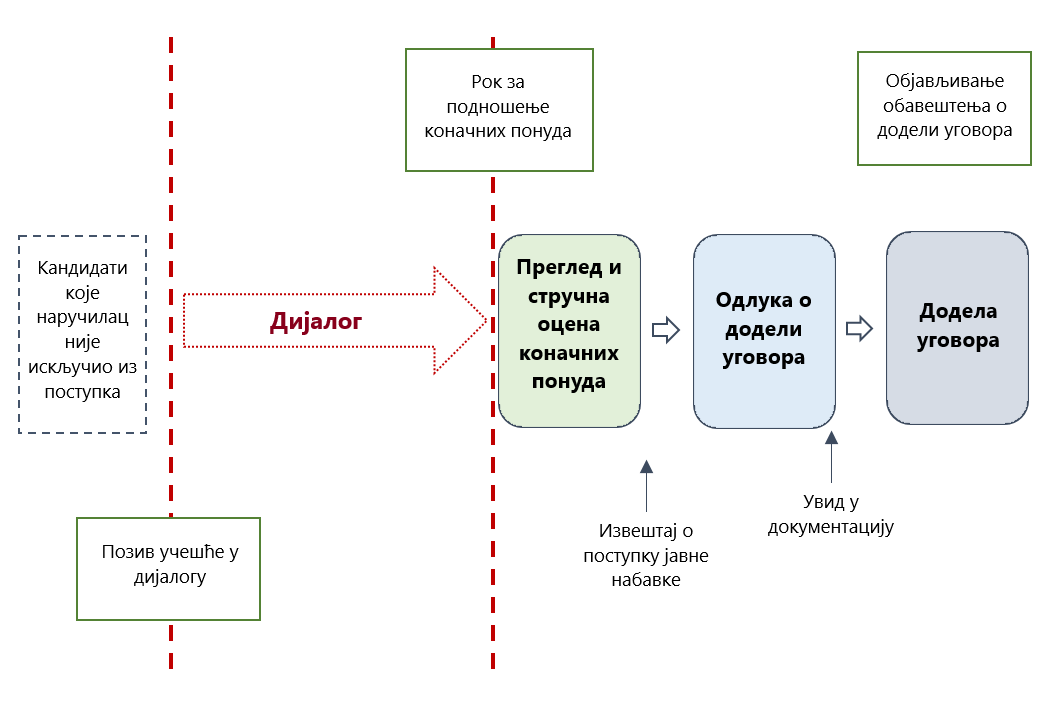
During the dialogue, the contracting authority must ensure equal treatment of all candidates, and in particular must not provide information in a discriminatory manner that could be used by certain candidates to the detriment of others. In this regard, the contracting authority must be particularly careful not to disclose to other participants in the procedure proposed solutions or confidential information submitted by any candidate or bidder, unless there is the consent of that candidate or bidder.

The dialogue may be conducted in multiple stages in order to reduce the number of solutions to be discussed during the dialogue phase, which the contracting authority is obliged to specify in the procurement documentation and determine the criteria for awarding the contract. The contracting authority is obliged to deliver the decision to reject the solution to the participant in the dialogue whose solution was rejected.

The contracting authority continues the dialogue until it identifies one or more solutions that can meet its needs. After that, the next phase of the competitive dialogue begins, in which the contracting authority invites the participants in the dialogue, whose solutions have not been rejected, to submit final bids.

The final bids are evaluated based on the award criteria specified in the public invitation or descriptive documentation. In a competitive dialogue, the criterion for awarding a contract is exclusively the best price-quality ratio. After evaluating the final bids, the contracting authority may conduct negotiations with the bidder it has determined has submitted a bid that represents the best price-quality ratio. Negotiations are conducted to confirm the terms contained in the offer and to specify the terms of the contract. The results of negotiations may not result in material changes to the basic elements of the bid or the subject-matter of the procurement, distort competition or cause discrimination.

*Graphical representation of the flow of the second phase of the competitive dialogue*



## Partnership for innovation

The PPL prescribes a new public procurement procedure - partnership for innovation. This procedure is carried out by contracting authorities if they have a need for innovative goods, services or works that cannot be met by purchasing goods, services or works that are available on the market. Also, the implementation of innovation partnerships aims to develop innovative goods, services or works and their subsequent procurement.

According to the provisions of the PPL, innovation is the implementation of a new or significantly improved product, service or process, including but not limited to production and construction processes, a new market method or a new organisational method in business practices, workplace organisation or external relations, among other things, with the aim of helping to solve societal challenges or supporting smart, sustainable and inclusive growth.

The estimated procurement value of an innovation partnership must also correspond to the amount of investment required for the development of innovative goods, services or works.

An innovation partnership is implemented in several successive phases, which may include the production of goods, the provision of services, or the execution of works. In each phase, the goals that partners need to achieve in that phase are determined, and at the same time, the compensation amounts are also determined. After each phase, the contracting authority may terminate the innovation partnership or, in the case of an innovation partnership with several partners, reduce the number of partners by terminating individual contracts. Of course, in order to implement all of the above options, the contracting authority must provide for them in the tender documentation.

As in the competitive dialogue, in the innovation partnership the criterion for awarding the contract can only be the best price-quality ratio.

Therefore, the innovation partnership is also implemented in multiple phases. The contracting authority is obliged to publish a public call for proposals in the innovation partnership procedure. In the first phase, any interested economic operator can submit an application.

In the tender documentation, the contracting authority describes the needs for innovative goods, services or works and lists the minimum requirements that all bids must meet. The contracting authority must do this in a clear and precise manner so that economic operators can determine the nature and scope of the solution sought and assess their interest in participating in the procedure.

The contracting authority may establish an innovation partnership with one or more partners, conducting separate research and development activities.

Interested business entities submit applications via the Portal. Applications are opened automatically on the Portal, after the deadline for submitting applications has expired. The minimum deadline for submitting applications is 30 days, or 20 days from the date of sending the public invitation to tender, depending on the estimated value of the public procurement.

For public procurement whose estimated value is equal to or greater than the European thresholds, the minimum deadline for submitting applications is 30 days from the date of sending the public call for tenders, while for public procurement whose estimated value is less than the European thresholds, the minimum deadline for submitting applications is 20 days from the date of sending the public call for tenders.

The criteria for the selection of candidates may also contain criteria related to the ability of business operators in the field of research and development and implementation of innovative solutions.

Based on the criteria for the qualitative selection of an economic operator, which must be specified in the procurement documentation, the contracting authority conducts the qualification of candidates. Only timely submitted applications will be taken into consideration. The contracting authority shall prepare a report on the assessment of applications and shall deliver a notification of recognition of the qualification to each candidate whose qualification has been recognised, and a decision explaining the reasons why the qualification was not recognised to the candidate whose qualification was not recognised, taking care not to disclose information about other candidates.

There is a difference here in the contracting authority's treatment of a candidate whose qualification is recognised and a candidate whose qualification is not recognised. In the first case, the contracting authority delivers to the candidate a notification of the recognition of the qualification, while in the second case, the contracting authority delivers to the candidate a decision, which contains an explanation of why the qualification was not recognised.

The contracting authority may limit the number of candidates whose qualifications have been recognised and who will be invited to negotiations, in which case it is obliged to deliver a decision on exclusion with justification to the candidates whose qualifications have been recognised and who will not be invited to negotiations, taking care not to disclose information about the other candidates.

Therefore, in this case, the contracting authority treats candidates whose qualifications have been recognised, but who will not be invited to negotiations, in the same way as in the case of candidates whose qualifications have not been recognised, i.e., it delivers to them a decision on exclusion with an explanation.

The contracting authority, through the Portal, sends an invitation to qualified candidates, i.e., candidates who have not been excluded from the public procurement procedure, to submit initial bids. After receiving the initial bids, the contracting authority negotiates with the bidders about the initial and all subsequent bids. The goal of negotiations is certainly to improve the content of the offers. The final bid is not negotiable and after receiving the final bids, the contracting authority draws up minutes.

The minimum requirements and criteria for awarding the contract, which are specified in the procurement documentation, cannot be the subject-matter of negotiations.

Negotiation is conducted in successive stages to reduce the number of offers to be negotiated. The contract award criteria specified in the public call for proposals, call for applications or tender documentation shall be applied.

It is the obligation of the contracting authority to ensure equal treatment of all bidders during negotiations. This includes non-discriminatory treatment and not providing information that could be used by some bidders to the detriment of others.

The contracting authority is obliged to deliver the decision on exclusion from further negotiations to the bidders who will not be invited to the next stage of the procedure.

All bidders whose bids are not excluded from further negotiations must be simultaneously informed in writing of any changes to the technical specifications or other procurement documentation, in order to have sufficient time to prepare and resubmit amended bids. After the negotiations are completed, the contracting authority informs the remaining bidders of the completion of the negotiations and sets a single deadline for submitting final bids.

All offers, from initial, through amended to final, are submitted via the Portal. When the contracting authority receives the final bids, it checks whether they comply with the minimum requirements specified in the procurement documentation. After that, the contracting authority proceeds to the evaluation of the final bids and awards the public procurement contract based on the contract award criteria.

## Negotiated procedure without publishing a public invitation

This type of public procurement procedure takes place in several stages, and differs from other public procurement procedures prescribed by the PPL in that it is less transparent. It is precisely for this reason that the opinion of the Public Procurement Office is necessary for certain grounds on which this procedure is carried out. The negotiated procedure without publication of a public invitation is a procedure that somewhat conflicts with the principle of ensuring competition, however, the fact is that there are situations when, from the item of view of the principle of efficiency, it is justified to directly conclude a contract with a specific bidder*.*

However, although they are not obliged to publish a public invitation, contracting authorities are still obliged to act in accordance with the principle of ensuring competition, i.e., to at least try to ensure effective competition by sending a written invitation to negotiate to one or, if possible, a larger number of economic operators, except in cases where the PPL explicitly provides for the possibility of negotiating with a single bidder.

As already stated, the PPL does not regulate the negotiation procedure and contracting authorities are free to prescribe their own rules as long as they remain within the framework of the basic principles of the PPL. In this regard, it is, first of all, important that the prescribed negotiation procedure does not violate the principle of equality of bidders, i.e., contracting authorities must ensure equal treatment of bidders during negotiations.

According to the provisions of the PPL, the contracting authority may conduct a negotiated procedure without publishing a public call for tenders in precisely defined cases. Namely, Article 61, paragraph 1, stipulates that the contracting authority may conduct a negotiated procedure without publishing a public call for tenders:

* if only a certain economic operator can deliver goods, provide services or perform works, and
* to the extent necessary, due to extreme urgency caused by events that the contracting authority could not have foreseen.

For the application of the first of these two cases, there must be some reason why only a certain economic operator can deliver goods, provide services or perform works. Therefore, according to the provisions of the PPL, these reasons are: the creation or purchase of a unique work of art or artistic performance, as the objective of the procurement in question; then the absence of competition for technical reasons or due to the protection of exclusive rights, including intellectual property rights.

Another basis for applying this type of procedure is exceptional urgency caused by events that the contracting authority could not foresee, due to which it is not possible to act within the deadlines set for an open procedure or a restricted procedure or a competitive procedure with negotiation or a negotiated procedure with publication. At the same time, the condition for the application of this procedure is that the circumstances by which the contracting authority justifies exceptional urgency must not be caused by its actions.

In the event of conducting a negotiated procedure without publishing a public call for tenders for the above reasons, the contracting authority is obliged to notify the Public Procurement Office (hereinafter referred to as: the Office) shall submit an explanation and all documentation regarding the reasons justifying the implementation of that type of procedure. The Office must examine the existence of grounds for conducting this type of procedure within ten days from the day of receipt of the explanation and documentation and to submit an opinion to the ordering party on the grounds for application of this type of procedure.

The condition for conducting a negotiated procedure without publishing a public call for tenders on the above grounds is possible only if there is no suitable alternative or replacement, and the lack of competition is not the result of the intention to give an unjustified advantage to a particular economic operator or to place it in a disadvantageous position.

The PPL distinguishes the bases for applying this type of procedure depending on the subject-matter of public procurement, i.e., whether the specific case concerns public procurement of goods, services or works.

The PPL, in Article 61, paragraph 3, exhaustively lists the situations in which contracting authorities may conduct a negotiated procedure without publishing a call for tenders for the procurement of goods. According to this provision, the contracting authority may conduct a negotiated procedure without publishing a public call for tenders for the procurement of goods, as follows:

* for additional deliveries by the original supplier intended for partial replacement of products, materials or installations or expansion of the scope of existing products, materials or installations, if the change of supplier would oblige the contracting authority to procure material with different technical characteristics, which would cause non-compliance or disproportionately large technical difficulties in operation and maintenance, provided that for public contracting authorities the duration of such contracts may not exceed three years;
* in the case of public procurement of goods that are listed and purchased on commodity exchanges;

The first case implies that the additional procurement of goods is intended for the partial replacement of products, materials or installations or the expansion of the scope of existing products, materials or installations. The condition for applying this procedure in the above case is that changing the supplier would oblige the contracting authority to procure material with different technical characteristics, which would result in non-compliance or disproportionately large technical difficulties in operations and maintenance. In addition, a limitation is provided for the duration of these contracts, which may not last longer than three years.

Another case of applying the negotiated procedure without publishing a public call for tenders for the procurement of goods is the public procurement of goods that are listed and purchased on commodity exchanges.

It also provides for the possibility of conducting a negotiated procedure without publishing a public call for tenders relating to the procurement of goods or services, on particularly favourable terms, from a supplier who is permanently suspending or has suspended business activities, from a bankruptcy or liquidation trustee within the framework of an appropriate procedure, an arrangement with creditors or other appropriate procedure according to the regulations of the country of the economic operator.

Furthermore, the contracting authority may conduct a negotiated procedure without publishing a public call for tenders for the procurement of services, as follows:

* following a design contest conducted in accordance with the provisions of this Law, when, in accordance with the rules laid down in the design contest, the contract is awarded to the winning candidate or to one of the winning candidates in the design contest, in which case all winning candidates are invited to negotiate;
* for new services consisting of the repetition of similar services awarded to an economic operator with which the contracting authority has concluded a basic contract.

In the second case, when the new services consist of the repetition of similar services, which are awarded to an economic operator with which the contracting authority has concluded a basic contract, it is necessary to meet all of the following conditions:

* such services are in accordance with the basic project for which the basic contract was concluded;
* the basic contract was concluded after a public procurement procedure in which a public call was announced;
* the procurement documentation for the main contract specified the scope of possible recurring services and the conditions under which they were awarded;
* the public call for the basic contract provided for the possibility of applying this procedure;
* in determining the estimated value of the procurement for the basic contract, the total estimated value of new services that will be repeated is taken into account;
* In the event that the procedure is carried out by the public contracting authority, this procedure shall be carried out within three years from the conclusion of the main contract.

Also, the contracting authority may conduct a negotiated procedure without publishing a public call for tenders for new works consisting of the repetition of similar works awarded to an economic operator with which the contracting authority has concluded a basic contract, if all of the following conditions are met:

* such works are in accordance with the basic project for which the basic contract was concluded;
* the basic contract was concluded after a public procurement procedure in which a public call was announced;
* the procurement documentation for the main contract specified the scope of possible recurring works and the conditions under which they were awarded;
* the public call for the basic contract provided for the possibility of applying this procedure;
* in determining the estimated value of the procurement for the basic contract, the total estimated value of new works that will be repeated is taken into account;
* In the event that the procedure is carried out by the public contracting authority, this procedure shall be carried out within three years from the conclusion of the main contract.

Furthermore, another possibility of applying the negotiated procedure without publishing a public call for tenders is prescribed differently for public and sectoral contracting authorities. Namely, the public contracting authority may conduct a negotiated procedure without publishing a public call for tenders if, in an open procedure or a restricted procedure, it has not received any tenders or all tenders are non-responsive, or no applications or no responsive applications, provided that the initial conditions of the public procurement have not been significantly changed.

On the other hand, the sectoral contracting authority may conduct a negotiated procedure without publishing a public call for tenders if no tenders or no suitable tenders or no applications or no suitable applications have been submitted in a procedure in which a public call for tenders was previously published, provided that the initial conditions of the public procurement have not been significantly changed.

For the purpose of applying this basis for conducting a negotiated procedure without publishing a public call, Article 61 of the PPL stipulates what constitutes an inappropriate bid and what constitutes an inappropriate application. Therefore, an inappropriate tender is a tender that does not comply with the subject-matter of the public procurement, i.e., the required technical specifications, so that it obviously cannot meet the needs and requirements of the contracting authority specified in the tender documentation without significant changes. An inappropriate application is defined as an application submitted by a candidate who is determined not to meet the criteria for the qualitative selection of an economic operator.

Article 61 of the PPL distinguishes between public and sectoral contracting authorities in another place regarding the grounds for applying the negotiated procedure without publishing a public call for tenders. Thus, the public contracting authority may conduct a negotiated procedure without publishing a public call for tenders for the procurement of goods if the goods are produced exclusively for the purposes of research, experimentation, study or development, provided that the quantity of goods produced does not generate profit or cover the costs of research and development.

On the other hand, a sectoral contracting authority may conduct a negotiated procedure without publishing a public call for tenders for the award of a contract exclusively for the purposes of research, experimentation, study or development, and not with the aim of making a profit or covering the costs of research and development, and if the award of that contract does not prevent the possibility of competitive award of future contracts.

In addition to the above, the sectoral contracting authority has another option to conduct a negotiated procedure without publishing a public call for tenders, namely for the procurement of goods in the case of a bargain purchase when the goods can be purchased using a particularly advantageous opportunity that is available only in a very short time at a price significantly lower than usual market prices. This possibility is only provided for the sector contracting authority in this type of procedure.

Provisions of Article 62 of the PPL prescribes the course of the negotiation procedure without publishing a public call. First of all, the contracting authority is obliged to publish a notice on the Public Procurement Portal about the implementation of a negotiated procedure without publishing a public call and to explain in that notice the justification for applying that procedure.

All obligations that the contracting authority has when implementing this type of procedure are listed, and they concern communication with the Public Procurement Office. After publishing a notice on the implementation of a negotiated procedure without publishing a public invitation, the contracting authority is obliged to send a written invitation to negotiate to one or, if possible, a larger number of economic operators.

The contracting authority is obliged to submit, along with the invitation, the tender documentation, which specifies the criteria for the qualitative selection of the economic operator and the criteria for awarding the contract, the subject-matter of the procurement with a description of the needs and required characteristics of the goods, services or works, with special emphasis on the minimum requirements that all offers must meet, as well as the elements of the contract that will be negotiated and the method of negotiation.

The minimum requirements from the tender documentation cannot be the subject-matter of negotiations. The contracting authority is obliged to keep minutes of the negotiation.

The contracting authority must ensure equal treatment of all candidates during negotiations, and in particular must not provide information in a discriminatory manner that could be used by certain bidders to the detriment of others.

The PPL prescribes more flexible procedures for contracting authorities in the event of implementing an urgent procedure, as follows:

- for the purpose of procurement to ensure basic living conditions in cases of natural disasters or technical and technological accidents whose consequences threaten the safety, health and lives of people, material goods or the environment, in accordance with the regulations governing emergency situations, and

- in the case of public procurement of goods that are listed and purchased on commodity exchanges and under particularly favourable conditions from a supplier who permanently suspends or has suspended business activities, from a bankruptcy or liquidation administrator within the framework of an appropriate procedure, an arrangement with creditors or other appropriate procedure.

The first of the above cases was exempted from the application of the law by the PPL/2015, while this PPL provides for the application of a negotiated procedure without publishing a public call for tenders for the procurement in question. The possibility of more flexible procedures for the contracting authority implies that the contracting authority is not obliged to publish a notice on the implementation of a negotiated procedure without publishing a public call, then to explain to the Office the application of this type of procedure and submit documentation, then it is not obliged to send a call for negotiations, nor to submit tender documentation.

## Negotiated procedure with publication of a public invitation

This type of procedure is intended only for sectoral contracting authorities. The PPL does not prescribe any special conditions for the application of this procedure. When implementing this procedure, the sectoral contracting authority uses a public call, a periodic indicative notice or a notice on the establishment of a qualification system.

The negotiation process with the publication of a public call is carried out in two phases. In the first phase, all interested economic operators apply, and in the second phase, those candidates who are invited because they are qualified submit a bid. They first submit initial bids, then subsequent bids until the final bid.

The minimum deadline for submitting applications is 30 days, or 20 days from the date of sending the public call for proposals or sending the invitation to submit an application when a periodic indicative notice is used as a public call, depending on the estimated value of the public procurement. For public procurement whose estimated value is equal to or greater than the European thresholds, the minimum deadline for submitting applications is 30 days, while for public procurement whose estimated value is less than the European thresholds, the minimum deadline for submitting applications is 20 days. The deadline for submitting applications may be shorter, but not shorter than 15 days, provided that a deadline of 30 or 20 days is not appropriate due to justified urgency, for which the sector contracting authority has valid evidence.

In the procurement documentation, the sectoral contracting authority is obliged to determine the criteria for the qualitative selection of the economic operator, the criteria for awarding the contract, the subject-matter of the procurement with a description of the needs and required characteristics of the goods, services or works, along with specifying the minimum requirements that all tenders must meet. In doing so, the sectoral contracting authority must ensure that the information in the procurement documentation is sufficiently clear and precise so that economic operators can determine the nature and scope of the procurement and, accordingly, assess their interest in submitting applications.

Based on the criteria for the qualitative selection of the economic operator specified in the procurement documentation, the sectoral contracting authority evaluates the submitted applications. Only timely submitted applications will be taken into consideration. The contracting authority shall prepare a report on the assessment of applications and shall deliver a notification of recognition of the qualification to each candidate whose qualification has been recognised, and a decision explaining the reasons why the qualification was not recognised to the candidate whose qualification was not recognised, taking care not to disclose information about other candidates. Here, there is a difference in the contracting authority's treatment of a candidate whose qualification is recognised and a candidate whose qualification is not recognised. In the first case, the contracting authority delivers to the candidate a notification of the recognition of the qualification, while in the second case, the contracting authority delivers to the candidate a decision, which contains an explanation of why the qualification was not recognised.

When conducting the first phase of the negotiated procedure with the publication of a public call, the sectoral contracting authority may limit the number of candidates whose qualifications have been recognised and who will be invited to submit initial tenders, in which case it is obliged to deliver a decision on exclusion with justification to the candidates whose qualifications have been recognised and who will not be invited to submit initial tenders, taking care not to disclose information about the other candidates.

The sector contracting authority invites all candidates whose qualifications have been recognised, i.e., who have not been excluded from the public procurement procedure, to submit initial bids. The sector contracting authority may determine the deadline for submitting initial bids with the consent of all candidates so that all candidates in the procedure have the same deadline for preparing and submitting their bids. If they cannot agree on a deadline for submitting bids, the minimum deadline for submitting initial bids shall be at least ten days from the date of sending the invitation to submit initial bids.

Furthermore, according to legal provisions, the contracting authority is obliged to extend the minimum deadlines for submitting initial bids by five days, when communication does not take place via the Portal due to the fact that free, unlimited and unhindered direct access to the tender documentation cannot be provided by electronic means.

The sectoral contracting authority must ensure equal treatment of all bidders during negotiations and must not provide information in a discriminatory manner that could be used by certain bidders to the detriment of others. The final bids are evaluated by the sector contracting authority to check whether they comply with the minimum requirements of the procurement documentation and then the public procurement contract is awarded based on the award criteria.

1. Minimum number of candidates

In procedures conducted in multiple stages, i.e., in a restricted procedure, competitive procedure with negotiation, negotiated procedure with publication of a public call, competitive dialogue and innovation partnership, the contracting authority may limit the number of candidates it will invite to submit tenders or to participate in the dialogue.

The minimum number of candidates is the possibility that the contracting authority has in the first phase of the procedure, after the qualification of the candidates, to decide not to invite all the candidates who qualified to the second phase, and thus limit the number of candidates. If the contracting authority uses this option, the PPL stipulates that the minimum number of candidates in a restricted procedure is five, and in a competitive procedure with negotiation, a negotiated procedure with publication of a public call, a competitive dialogue and an innovation partnership, three candidates.

In the event of using this option, the contracting authority must specify in the public call or call for applications the objective and non-discriminatory criteria or rules that it intends to apply to reduce the number of candidates, the minimum number of candidates it intends to invite, and the maximum number, if necessary.

If the number of candidates who meet the criteria for the qualitative selection of an economic operator is less than the minimum number specified in the public call or the call for applications, the contracting authority may continue the procedure by inviting candidates who meet the criteria for the qualitative selection of an economic operator.

The contracting authority may not invite other economic entities that have not submitted an application or candidates who have not met the criteria for the qualitative selection of an economic operator.

**Invitation to selected candidates**

Selected candidates within the meaning of this provision of the PPL are candidates who qualified in the first phase of a multi-phase procedure, and who were not excluded by the application of the possibility of reducing the number of candidates by the contracting authority.

The contracting authority will simultaneously invite all selected candidates in writing to submit their tenders in the restricted procedure, competitive procedure with negotiation, competitive dialogue, innovation partnership and negotiated procedure with publication of a public call or, in the case of competitive dialogue, to participate in the dialogue.

1. Techniques and instruments in public procurement procedures

# Framework agreement

From the current, very widespread practice of applying framework agreements in EU countries, it can be said that their use represents a significant contribution to the development of the efficiency and cost-effectiveness of public procurement procedures, given that a larger number of contracts can be concluded on the basis of a single public procurement procedure, by multiple contracting authorities and with multiple bidders. Therefore, by applying this technique, when concluding individual contracts, the repeated implementation of lengthy and demanding procedures is avoided, the outcome of which can often be unsuccessful.

Otherwise, the use of framework agreements plays a particularly important role in the implementation of centralised public procurement. In this sense, the Directorate for Joint Affairs of the Republic Bodies, as the body for centralised public procurement, significantly applies this mechanism in practice, by concluding framework agreements after the public procurement procedure, on the basis of which contracting authorities who are users of centralised public procurement conclude individual contracts when the need arises.

However, a framework agreement can also be of great importance for individual contracting authorities, since it significantly saves time and other necessary resources when conducting public procurement procedures that are expected to be repeated every year, especially in those procurements where the contracting authority is not able to precisely determine the quantities and time of occurrence of a particular need.

In practice, a framework agreement is applied in frequent, i.e., continuous procurement of goods, services and works, i.e., in situations when the contracting authority needs to conclude a larger number of contracts with the same subject-matter of procurement in a certain period. Then the contracting authority can conduct a public procurement procedure, in which it will select one or more bidders with whom it will conclude a framework agreement, and later, when a specific need arises for the subject-matter of procurement from the framework agreement, the contracting authority will conclude a public procurement contract in the manner provided for by the framework agreement.

This increases the efficiency of the public procurement procedure itself, and most importantly, contracting authorities ensure the continuity and security of their business by reducing the risk of an unsuccessful outcome of public procurement procedures.

In the practice of EU countries that widely apply this form of public procurement procedure, framework agreements are most often used for the following procurement items: food, medicines, consumables, clothing and footwear, fuel, transportation, ongoing maintenance of equipment, vehicles and facilities, etc.

Considering that a framework agreement is not equally suitable for all procurement subjects, it is important that contracting authorities first carry out an analysis of the justification for applying a framework agreement in each individual procurement case, i.e., to assess the appropriateness of its application (whether there are certain economic and other advantages and which ones).

Also, as with the application of the usual public procurement procedure, contracting authorities are obliged to pay special attention to ensuring that by concluding a framework agreement they do not distort competition in the market, or that they do not violate any other principle of public procurement.

The key features of framework agreements are as follows:

- framework agreement means an agreement between one or more contracting authorities and one or more bidders, which determines the conditions and methods of awarding contracts during the period of validity of the framework agreement, in particular with regard to price and, where appropriate, quantity;

- a framework agreement does not represent a new, special type of public procurement procedure, but rather implies a flexible mechanism, or rather a technique for concluding individual public procurement contracts, which can be used within any public procurement procedure;

- a framework agreement does not constitute a contract on the basis of which public procurement is implemented, but specific public procurement contracts are concluded during its validity period and in accordance with the conditions established by that agreement;

- a framework agreement does not represent a typical legal contract, given that there is no obligation to carry out public procurement on its basis, but rather that obligation arises through the conclusion of individual contracts;

- contracting authorities are not obliged to conclude individual contracts based on a framework agreement.

Article 66, paragraph 1 of the PPL stipulates that a framework agreement is an agreement between one or more contracting authorities and one or more bidders, which determines the terms and conditions of the award of the contract during the period of validity of the framework agreement, in particular with regard to price and, where appropriate, quantity. Its purpose is to determine the essential terms of the public procurement contract, especially in terms of price, quantity, deadlines, etc., as well as the conditions and criteria on the basis of which the most favourable offer will be selected, i.e., public procurement contracts will be concluded.

The contracting authority may conclude a framework agreement after the public procurement procedure prescribed by this Law has been carried out.

Therefore, a framework agreement can be concluded between:

* + one contracting authority and one bidder;
  + one contracting authority and several bidders;
  + multiple contracting authorities and one bidder;
  + multiple buyers and multiple bidders;
  + centralised public procurement bodies and one bidder;
  + centralised public procurement bodies and multiple bidders.

If a framework agreement is concluded with multiple bidders, the procurement documentation must contain objective conditions for the selection of the bidder from the framework agreement with whom the contract will be concluded on the basis of the framework agreement, as well as the criteria for awarding the contract in the event of reopening of competition among bidders within the meaning of Article 67, paragraph 3, item 2) of the PPL, as well as partial reopening of competition and partial non-reopening of competition within the meaning of Article 67, paragraph 3, item 3) of the PPL.

The duration of a framework agreement is no longer determined by whether it is concluded with one or more bidders. The PPL stipulates that a framework agreement concluded by a contracting authority cannot last longer than four years, except in specially justified cases related to the subject-matter of public procurement, which the contracting authority must justify.

A public procurement contract concluded on the basis of a framework agreement must be concluded before the expiration of the framework agreement, provided that its duration does not have to coincide with the duration of that framework agreement, but may be shorter or longer if necessary.

Therefore, the duration of a public procurement contract, which is concluded on the basis of a framework agreement, is not limited by the provisions of the PPL, but the conclusion period must be in accordance with the nature of the subject-matter of the procurement, cannot be unreasonably long, and of course must be in accordance with the regulations governing the budget system and financial operations. The duration of a public procurement contract is also indirectly limited by the provision that stipulates that a framework agreement and a contract concluded on the basis of a framework agreement cannot be used in a manner that would prevent, restrict or impair competition and equality of bidders.

The contracting authority is obliged to state in the public invitation how many bidders it will conclude a framework agreement with. A contracting authority that intends to conclude a framework agreement with several bidders may conclude a framework agreement with a smaller number of bidders, i.e., with one bidder, if it does not receive a predetermined number of bids that meet the conditions for awarding the framework agreement. Public procurement contracts based on a framework agreement may be concluded by contracting authorities that have concluded a framework agreement, contracting authorities on whose behalf the framework agreement was concluded, as well as contracting authorities for which it can be clearly determined from the procurement documentation that the framework agreement is intended. Therefore, all other persons who are not intended to be beneficiaries of the framework agreement, or who will conclude a contract based on the framework agreement, cannot participate in its conclusion. A public procurement contract concluded on the basis of a framework agreement cannot contain conditions that are changed in relation to the conditions established in the framework agreement.

If a framework agreement is concluded with one bidder, the contract is concluded within the conditions stipulated by the framework agreement. When concluding a contract, the contracting authority may request the bidder with whom the framework agreement was concluded to supplement its bid in writing with data for the implementation of the contract, if necessary.

If the framework agreement is concluded with several bidders, the public procurement contract based on the framework agreement may be concluded in one of the following ways:

* according to the conditions for awarding the contract set out in the framework agreement, without reopening competition among bidders, if the framework agreement sets out all the conditions for the delivery of goods, provision of services or performance of works and the objective conditions for the selection of the bidder from the framework agreement who will perform the contract;
* 2) reopening of competition among bidders, if the framework agreement does not determine all the conditions for the delivery of goods, provision of services or performance of works;
* partly without reopening of competition, and partly with reopening of competition, if the framework agreement specifies all the conditions for the delivery of goods, provision of services or performance of works and if the contracting authority has provided in the procurement documentation for the framework agreement objective criteria according to which it is determined when it will conduct the reopening of competition and has listed the conditions from the framework agreement that may be the subject-matter of the reopening of competition.

The first two methods were also provided for in the PPL/2015, while the third method is a combination of the first two methods. Therefore, the contracting authority is obliged to state in the tender documentation for the conclusion of a framework agreement that it will award public procurement contracts based on that framework agreement by reopening competition among suppliers. Therefore, the contracting authority conducts a reopening of competition based on the terms of the framework agreement. In this regard, the contracting authority also has certain obligations when reopening the competition:

First, for each individual contract it awards, the contracting authority must send a written invitation to all bidders with whom it has concluded a framework agreement to submit a tender. Secondly, it is obliged to provide for a sufficiently long deadline for submitting bids, taking into account factors such as the complexity of the subject-matter of the procurement and the time required for the preparation and compilation of bids. Thirdly, the contracting authority is obliged to ensure that bids submitted in writing are not opened before the deadline for submission of bids. And after all of the above, the contracting authority makes a decision to award the contract to the bidder who submitted the most favourable bid based on the contract award criteria that were specified in the procurement documentation for the framework agreement and publishes it on the Public Procurement Portal.

*Graphical representation of the process flow for concluding a framework agreement*



**Dynamic procurement system**

The dynamic procurement system is another technique prescribed by the PPL. The dynamic purchasing system is applied to procurement items that are generally available on the market. The contracting authority establishes and operates a dynamic procurement system exclusively by electronic means on the Public Procurement Portal, applying the rules of the restrictive procedure. The dynamic purchasing system is open to all economic operators that meet the criteria for qualitative selection throughout its duration and they can join the dynamic purchasing system free of charge. The duration of the dynamic procurement system is not prescribed by the PPL, but is determined by the contracting authority in a public call, or rather, in a notice on the establishment of a qualification system.

The dynamic procurement system can be divided into categories of goods, services or works and is then obliged to specify in the procurement documentation the criteria for the qualitative selection of the economic operator for each of the listed categories.

In a dynamic procurement system, any interested economic operator may submit an application throughout its duration, and all candidates admitted to the system have access to the system throughout its duration. The contracting authority cannot limit the number of candidates that will be admitted to the dynamic procurement system, i.e., reduce the number of candidates, as provided for in multi-stage public procurement procedures.

In the dynamic procurement system, different deadlines apply depending on the phase in question. If it is the first phase, the minimum deadline for submitting applications is 30 days, or 20 days from the date of sending the public call for proposals or sending the invitation to submit an application when a periodic indicative notice is used as a public call, depending on the estimated value of the public procurement. For public procurement whose estimated value is equal to or greater than the European thresholds, the minimum deadline for submitting applications is 30 days, while for public procurement whose estimated value is less than the European thresholds, the minimum deadline for submitting applications is 20 days.

In the second phase, the minimum deadline for submitting bids is ten days from the date of sending the invitation to submit bids to candidates admitted to the system.

Even in the dynamic procurement system, sector contracting authorities can set a deadline for submitting bids with the consent of all candidates, so that all candidates in the procedure have the same deadline for preparing and submitting their bids. However, if candidates cannot agree on the length of the deadline for submitting bids, the minimum deadline for submitting bids shall be at least ten days from the date of sending the invitation to submit bids. In the dynamic procurement system, the contracting authority does not have the option to shorten the deadlines for submitting bids.

In a dynamic procurement system, the contracting authority is obliged to publish a public call stating that it is establishing a dynamic procurement system and its duration. Also, the contracting authority is obliged to provide in the tender documentation at least information on the nature and estimated quantity of the envisaged procurement and all necessary information regarding the dynamic purchasing system, including information on how the dynamic purchasing system is managed, the electronic equipment used, as well as technical connections and specifications. The contracting authority is also obliged to indicate the division into categories of goods, services or works and the characteristics that describe them, as well as to ensure free, unlimited and unhindered direct access to the procurement documentation by electronic means throughout the entire period of the dynamic procurement system.

The contracting authority is obliged to assess the application within ten working days from the date of receipt of the application, in accordance with the criteria for the qualitative selection of the economic operator and make a decision on the admission of the economic operator to the dynamic procurement system. This deadline may be extended to 15 working days if justified by the need to study additional documentation or to verify whether the criteria for the qualitative selection of the economic operator have been met.

The contracting authority may extend the deadline for the evaluation of applications, provided that it has not sent any invitations to submit tenders during the extended deadline and that it has specified in the procurement documentation the amount by which it intends to extend the deadline for the evaluation of applications. After evaluating the applications, the contracting authority is obliged to deliver a decision on the results of the evaluation of the applications to all economic operators without delay.

Thereafter, the contracting authority simultaneously, by electronic means, invites all selected candidates included in the dynamic purchasing system to submit a tender for each individual procurement within the system.

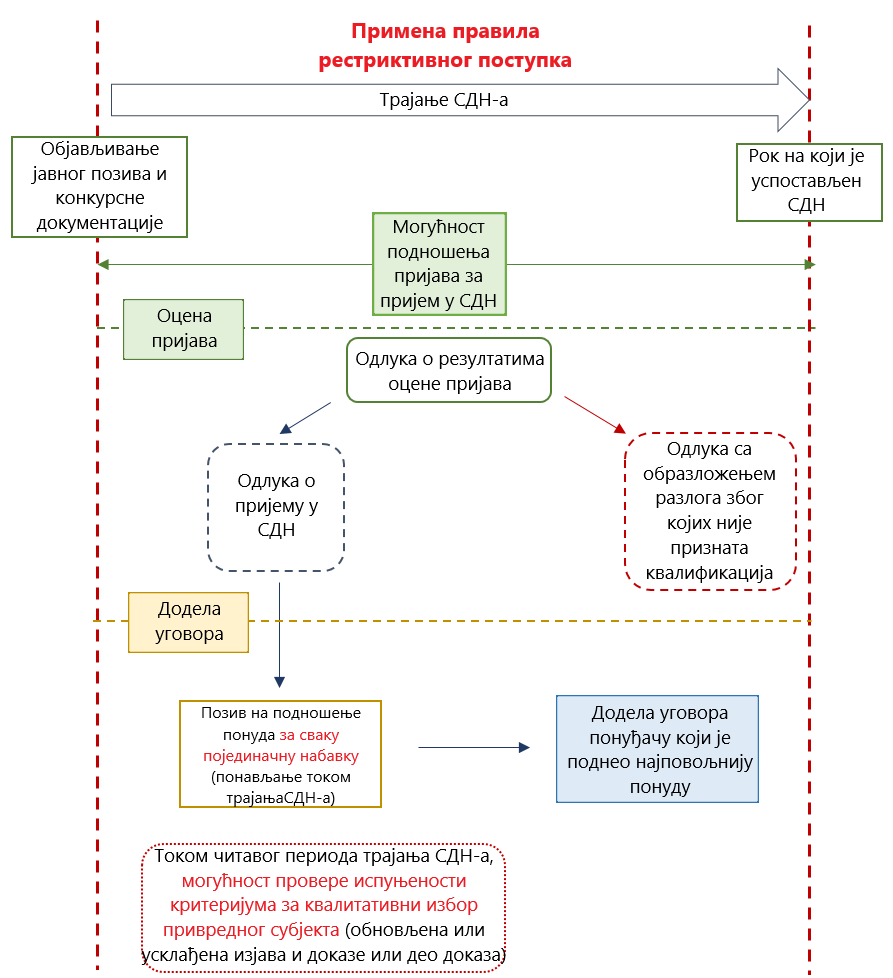
After receiving and evaluating the bids, the contracting authority awards the public procurement contract within the dynamic procurement system to the bidder that submitted the most advantageous bid based on the contract award criteria specified in the public call, i.e., the call for applications.

During the duration of the dynamic procurement system, the contracting authority may require the selected candidates included in the system to submit an updated and harmonised statement on the fulfilment of the criteria for the qualitative selection of the economic operator. Candidates are required to submit this statement within five working days from the date of submission of the request.

Also, contracting authorities may, regardless of the estimated value of the public procurement, request bidders and candidates to submit all or part of the evidence of compliance with the criteria for the qualitative selection of an economic operator in order to verify the data specified in the statement of compliance with the criteria, if this is necessary for the proper implementation of the procedure.

The contracting authority is obliged to announce in the public call if it changes the period of the system during the duration of the dynamic procurement system. Also, if the dynamic purchasing system is terminated before the deadline for which it was established, the contracting authority is obliged to publish this information in the contract award notice form.

*Graphical representation of the dynamic purchasing system flow*



**Qualification system**

The qualification system is also a special technique prescribed by the PPL, which is intended for sectoral contracting authorities. It is implemented in such a way that the sectoral contracting authority first conducts the pre-qualification of economic operators, and then carries out the procurement, when the need for the subject-matter of procurement arises.

First of all, the sectoral contracting authority publishes a notice on the establishment of the qualification system and is obliged to enable economic operators to submit an application for qualification at any time during the entire period of the qualification system. The sectoral contracting authority is obliged to publish in the notice on the establishment of a qualification system, if the duration of the system changes during the duration of the qualification system and if the qualification system ends before the deadline for which it was established, the sectoral contracting authority is obliged to publish this information in the contract award notice form.

The qualification system may include different qualification phases.

When establishing a qualification system, the sectoral contracting authority shall determine objective criteria and rules for the qualitative selection of an economic operator and objective criteria and rules for the functioning of the qualification system, which shall include rules for entry into the system, the possibility of periodically updating the criteria and rules for the qualitative selection of an economic operator, if necessary, as well as the duration of the system.

These criteria and rules for the functioning of the qualification system may also contain technical specifications. This is not an obligation, but an option that the PPL gives to the sectoral contracting authority, if it considers it necessary to define technical specifications in order to establish a qualification system.

The sectoral contracting authority may update the criteria and rules as necessary, and is obliged to send data on the updated criteria and rules for publication on the Public Procurement Portal.

The sectoral contracting authority shall inform interested economic operators about the qualification system of other sectoral contracting authorities, if it determines that that system meets its requirements. Here, the assumption is that the sectoral contracting authority considers that the interested economic operators that it intends to inform about the qualification system of other sectoral contracting authorities meet the conditions of the qualification system of that sectoral contracting authority, given that that system meets its conditions, which these economic operators have met.

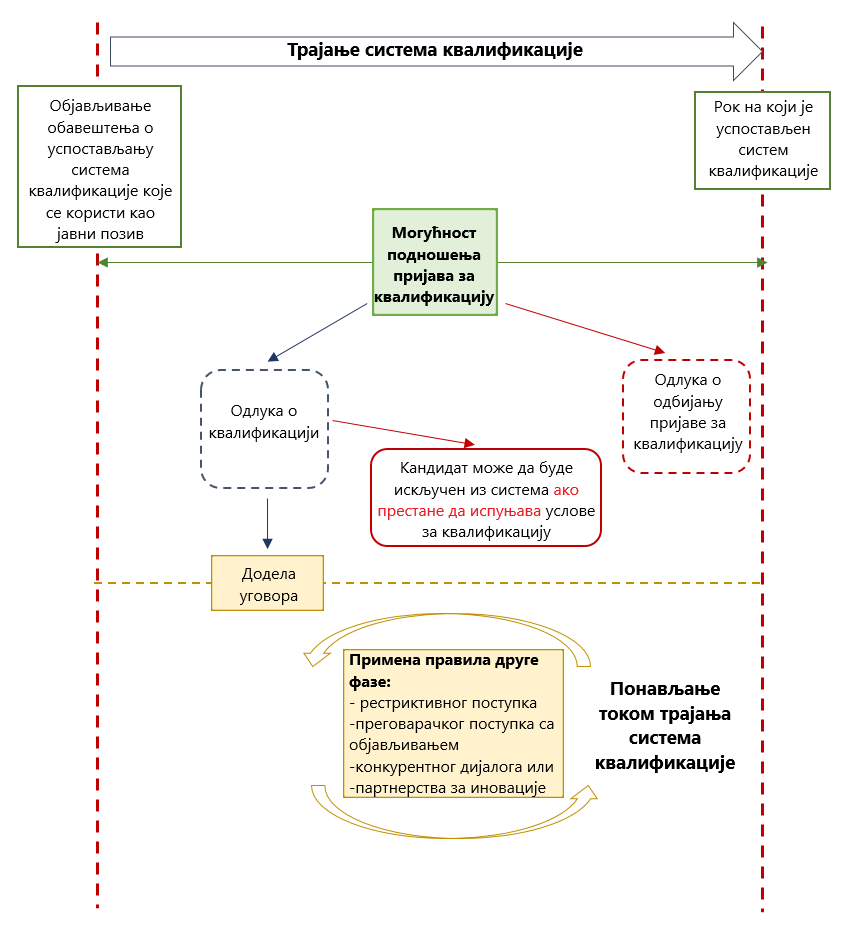
The sectoral contracting authority is obliged to keep written records of qualified economic operators, which can be divided into categories according to the type of contract for which the qualification is appropriate.

Also, the sectoral contracting authority is obliged to make a decision on qualification and to deliver it to the applicants no later than six months from the date of submission of the application. In a situation where the sectoral contracting authority assesses that the decision-making process will take longer than four months from the date of submission of applications, it is obliged to inform the applicant within two months from the date of submission of the application of the reasons justifying a longer period of time for decision-making. At the same time, the sectoral contracting authority shall inform the applicant of the date by which it will decide on his request. And then the deadline cannot be longer than six months from the date of filing the application.

The sector contracting authority is obliged to deliver the decision to reject the qualification applications, explaining the reasons for the rejection, to the applicant without delay, and no later than 15 days from the date of the decision, while the reasons for rejection must be based on the qualification criteria. During the duration of the qualification system, the sector contracting authority may exclude a candidate from the system if the candidate ceases to meet the qualification requirements. In that case, the sector contracting authority is obliged to deliver to the candidate who will be excluded from the qualification system a decision on exclusion from the system at least 15 days before the date of termination of the qualification, with an explanation of the reasons justifying the exclusion from the system.

The notice on the establishment of a qualification system may be used by the contracting authority as a public invitation. In that case, contracts covered by the qualification system are awarded by applying the rules of the second phase of the restricted procedure, the negotiated procedure with publication, the competitive dialogue or the innovation partnership, by inviting all qualified economic operators in the qualification system, i.e., within certain categories of the qualification system.

*Graphical representation of the qualification system flow*



**Electronic bidding**

**Conditions**

Article 71 The PPL prescribes the conditions for the implementation of electronic auctions. Electronic bidding is an instrument in public procurement procedures that the contracting authority uses for the purpose of negotiating with bidders, i.e., obtaining new offers from bidders and their mutual competition.

Contracting authorities may use electronic auctioning in open procedures, restricted procedures, competitive procedures with negotiation and negotiated procedures with publication, in the procedure for reopening competition on the basis of a concluded framework agreement, as well as for the award of contracts within the framework of a dynamic procurement system. The contracting authority then determines that it will award the public procurement contract after conducting an electronic auction.

It should be emphasized that the subject-matter of electronic auction cannot be contracts for the public procurement of services or works whose subject matter is the performance of intellectual work, such as design services in construction, and which cannot be ranked using automatic evaluation methods.

The contracting authority is obliged to ensure that the implementation of the electronic auction is fully documented throughout all phases.

The contracting authority must state the implementation of electronic auction in the public invitation or call for applications.

**Method of implementing electronic auctioning**

The contracting authority conducts the electronic auction on the Portal. Article 72 of the PPL stipulates that electronic bidding is conducted as a repetitive electronic process, in which new lower prices or new values of certain elements of the contract award criteria are submitted and bids are ranked using automatic evaluation methods.

The criteria on the basis of which electronic auctions are conducted may be:

* price only, if the contract is awarded on the basis of price alone or
* price and/or new values of certain elements of the contract award criteria specified in the procurement documentation, if the contract is awarded on the basis of the best price-quality ratio or on the basis of the lowest cost applying the principle of cost-effectiveness.

Before the start of the electronic auction, the contracting authority will carry out an initial evaluation of the bids, in accordance with the conditions from the tender documentation regarding technical specifications, criteria for qualitative selection of the economic operator and criteria for awarding the contract, and will then prepare a report on the expert evaluation of the bids. Thereafter, the contracting authority shall simultaneously, by electronic means, invite all bidders who have submitted tenders that meet the conditions for the award of the contract to participate in the electronic auction on a specified date and at a specified time.

The contracting authority shall deliver an invitation to participate in the electronic auction separately to each bidder and shall attach the result of the initial evaluation of its bid to the invitation. In doing so, the contracting authority cannot disclose information about other bidders. The opening of bids in the case where the contracting authority applies electronic auctioning is not public.

Bidders will be informed of the mathematical formula to be used in the electronic auction in the invitation. The mathematical formula contains the weight of all elements of the criteria for the most economically advantageous tender that are established in the public invitation or tender documentation, unless the price is the only criterion, in which case all ranges are reduced to a certain value in advance. If submission of bids with variants is permitted, a separate mathematical formula is determined for each variant.

The electronic auction may be conducted in several consecutive phases and may not begin before the expiry of two working days from the date of sending the invitation to participate in the electronic auction.

According to the provisions of the PPL, the Contracting Authority is obliged to send to all bidders during the electronic auction, at the time of any change, without delay, the data necessary to determine their relative rank in relation to other bidders. The contracting authority will fulfil this obligation through the Portal, which will inform bidders about the ranking at the prescribed times. Also, the number of bidders in each phase of the auction will be published on the Portal, and the identity of the bidders will not be revealed to other bidders until the end of the electronic auction.

**End of electronic bidding**

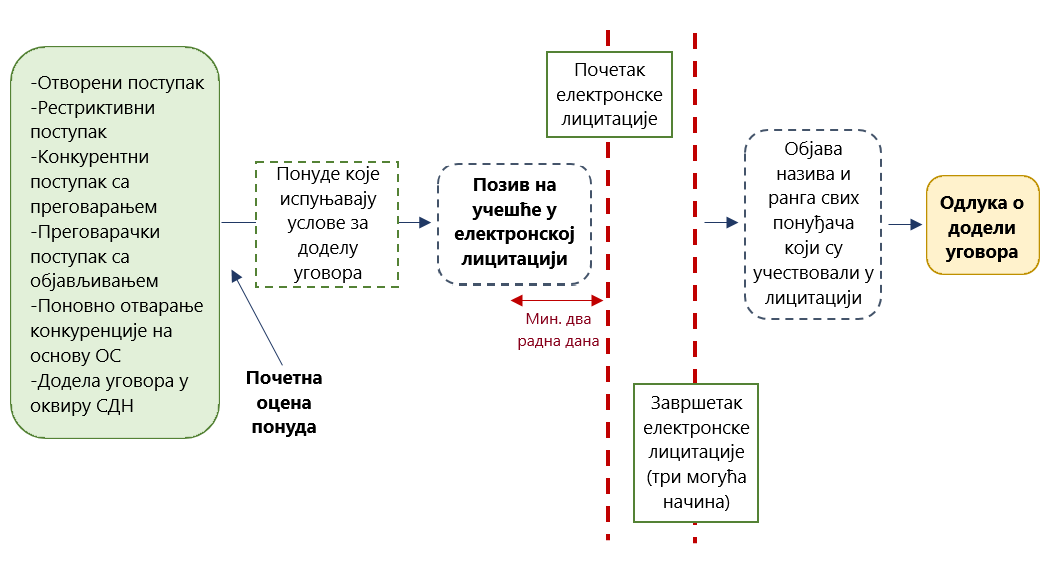
The electronic auction ends in one or more of the following ways:

* at a previously determined time (date and time);
* when no new prices or new values have been submitted that meet the conditions regarding the predetermined minimum reduction, provided that the previously determined time that must elapse after the receipt of the last offer has elapsed;
* upon completion of the number of phases of the electronic auction specified in the tender documentation.

The method of completing the auction is determined by the ordering party.

The contracting authority is obliged to specify in the invitation to participate for each individual phase of the electronic auction the time that must elapse after receipt of the last bid before completing the electronic auction. After the end of the electronic auction, the contracting authority shall, without delay, publish the name and rank of all bidders who participated in the auction and shall make a decision on the award of the public procurement contract based on the contract award criteria and the results of the electronic auction. In the event that the electronic auction is terminated before completion due to unforeseen circumstances related to technical reasons, the contracting authority is obliged to notify all participants thereof without delay, provided that it may conduct a new electronic auction or suspend the public procurement procedure.

*Graphical representation of the process using electronic bidding*



**Electronic catalogues**

The PPL prescribes another instrument in public procurement procedures. These are electronic catalogues. The contracting authority may require or allow tenders to be submitted in the form of electronic catalogues or that tenders shall contain electronic catalogues. In addition to such an offer, which is submitted in the form of an electronic catalogue, other documentation may be attached.

The candidate or bidder compiles an electronic catalogue on the Portal in accordance with the technical specifications and in the form specified by the contracting authority.

When the contracting authority requires or allows tenders to be submitted in the form of electronic catalogues, it shall state this in the public invitation, the call for applications or, if the notice on the establishment of a qualification system is used as a public invitation, state this in the invitation to tender or to negotiate. Also, the contracting authority is obliged to provide in the procurement documentation all necessary information regarding the format, electronic equipment used, as well as technical connections and specifications for the catalogue.

When a framework agreement is concluded with several bidders by submitting tenders in the form of electronic catalogues, the contracting authority may determine that the reopening of competition for individual contracts shall take place on the basis of updated catalogues and on that occasion the contracting authority shall use one of the following methods:

* invites bidders to resubmit their electronic catalogues, adapted to the requirements of that contract or
* informs bidders that it intends to collect from the electronic catalogues already submitted the data necessary for drawing up tenders adapted to the requirements of that contract, provided that the use of such a possibility was foreseen in the tender documentation for the framework agreement.

Also, when the contracting authority re-opens competition for individual contracts, it is obliged to inform all bidders of the date and time when it intends to obtain the information necessary for drawing up tenders that are adapted to the requirements of that individual contract. In addition, the contracting authority is obliged to enable bidders to refuse such data collection. The contracting authority is obliged to determine an appropriate period between the moment of notification and the actual collection of data.

Before awarding the contract, the contracting authority is obliged to present the obtained data to the bidders and enable them to dispute or confirm that the bid prepared in this manner does not contain material errors. The contracting authority may award contracts based on a dynamic purchasing system by requiring that tenders for individual contracts be submitted in the form of an electronic catalogue.

The contracting authority may award contracts based on a dynamic purchasing system. In that case, candidates subsequently complete the electronic catalogue, after being notified of the contracting authority's intention to compile bids in the specified manner.

1. Special procurements regimes

# Social and other special services

Social and other special newspaper services are in the PPL. These services are listed in Appendix 7 of the PPL, and the provisions of the PPL regulate the award of contracts and framework agreements for these procurements. Contracting authorities may procure social and other special services in an open procedure, a restricted procedure, a competitive procedure with negotiation and a negotiated procedure without publication of a public call for tenders. When implementing such procurement, contracting authorities are obliged to respect the principles of public procurement, in particular the principles of transparency, equality of bidders and economy.

Therefore, from the provisions of the PPL that prescribe social and other special services, it can certainly be concluded that they are in a special, more lenient regime. This special regime is primarily reflected in the determination of deadlines in these procurement procedures, as well as in reporting on these services.

When implementing social and other special services, contracting authorities are obliged to publish a public call or a prior information notice, a periodic indicative notice or a notice on the establishment of a qualification system, in accordance with the provisions of the PPL. Exceptionally, the contracting authority is not obliged to publish these advertisements if the conditions for applying the negotiated procedure without publication of a public call are met. The deadlines in the procedure for awarding public procurement contracts for these services may be shorter than the deadlines prescribed for certain types of public procurement procedures, whereby the contracting authority is obliged to set appropriate deadlines for submitting applications and tenders, particularly taking into account the complexity of the subject-matter of the procurement and the time required for preparing applications and tenders.

When the procurement procedure for social and other special services results in the award of a contract, contracting authorities are obliged to publish a contract award notice, in accordance with the provisions of the PPL. Contracting authorities may group and publish contract award notices on a quarterly basis, within 30 days of the end of the quarter.

Also, when awarding public procurement contracts for social and other special services, contracting authorities are obliged to apply the provisions of the PPL relating to the determination of the subject matter of the contract and technical specifications. They should then certainly take into account the need to ensure quality, continuity, accessibility, affordability, availability, as well as comprehensiveness of services, the special needs of different categories of users, including vulnerable and disadvantaged groups, the participation and empowerment of service users, and innovation. After conducting the procedures for social and other special services, the contract is awarded by applying the contract award criteria.

# Reserved contracts for certain services

Like social and other special services, newspaper contracts are also reserved in the PPL. A distinction should be made between reserved public procurement and reserved contracts for certain services. In both of the above institutes, a bid can be submitted by an economic operator that meets certain conditions and is distinguished from other business entities by them.

Therefore, in accordance with the above, the contracting authority may reserve the right to participate in public procurement procedures and may award a public procurement contract to organisations that are primarily established with the aim of providing certain categories of services, then reinvesting profits in order to achieve the organisation's objective, provided that the distribution or redistribution of profits must be based on the principles of participation. In addition, the management or ownership structure of these contracting organisations must be based on employee ownership or on the principles of active employee participation or require the active participation of employees, service users or stakeholders. Finally, it is necessary that the organisation that has been reserved the right to participate in public procurement procedures and has the possibility of being awarded a public procurement contract has not been awarded a contract for the services in question in the previous three years.

A contracting authority that intends to award a contract in accordance with this article of the law is obliged to state in the public invitation that only an organisation that meets the specified conditions may be a bidder.

Reserved contracts can last a maximum of three years.

Only certain services may be the subject-matter of reserved contracts, namely: health services, social protection services and cultural services covered by the CPV codes specified in Article 76, paragraph 1 of the PPL.

# Design competition

According to the provisions of Article 2, paragraph 1, item 17) of the PPL, a design competition is a procedure that enables the contracting authority to obtain a plan or design, most often in the field of urban or spatial planning, architecture, engineering or IT, with the selection being made by a jury, after a competition has been conducted, with or without the award of prizes.

There are two ways a design competition can be organised. Therefore, a design contest can be part of a procedure in which a public service contract is concluded or it can be organised as a procedure in which prizes are awarded or fees are paid to participants in a design contest.

In the first case, when a design contest is organised as part of a procedure for the conclusion of a public service contract, the estimated value of the public procurement is determined on the basis of the estimated value of the public service procurement including possible prizes or fees to the participants in the design contest.

In the second case, where a design contest is a procedure in which prizes are awarded or fees are paid to participants in a design contest, the estimated value of the public procurement is determined as the total amount of prizes or fees including the estimated value of the public procurement of the service that may be awarded.

By definition, a design contest is a procedure, and contracting authorities who intend to conduct a design contest are not obliged to publish a public call. Contracting authorities must announce their intention to conduct a design contest through a design contest notice, the content of which is determined by the provisions of the PPL. This notice must also state where the contracting authorities intend to award a subsequent service contract, following a design contest conducted in accordance with the provisions of this Law, when, in accordance with the rules laid down in the design contest, the contract is awarded to the successful candidate or to one of the successful candidates in the design contest, in which case all successful candidates are invited to negotiate.

The contracting authority may not limit the admission of participants to a design competition to a specific geographical area or part of that area, nor may it require that participants in a design competition be exclusively legal or natural persons.

On the other hand, the contracting authority may limit the number of participants in a design contest, in which case it is obliged to establish clear and non-discriminatory criteria for the qualitative selection of the economic operator, provided that the number of candidates invited to participate must be sufficient to ensure real competition.

An independent jury plays a significant role in the implementation of the design competition. The jury must consist exclusively of natural persons who are independent of the participants in the design competition. The jury selects the design, plan or project. When participants in a design competition are required to have a specific professional qualification, at least one third of the jury members must have that qualification or an equivalent qualification.

The jury reviews and evaluates designs, plans and projects solely on the basis of the criteria stated in the competition notice. The anonymity of participants is respected until the jury reaches its opinion or decision. The jury draws up minutes of its work, and candidates may be invited, if necessary, to answer questions in order to explain certain aspects of the projects. The jury is obliged to submit the minutes, opinions and decisions to the contracting authority for decision-making.

The contracting authority is obliged to send a notice of the results of the competition for publication after the design competition has been conducted, the content of which is prescribed by the provisions of the PPL.

18. Centralised and joint public procurement

This area is covered by Articles 78–84 of the PPL, which specifically regulates the following:

* + Centralised public procurement operations;
  + Authority for centralised public procurements;
  + Occasional joint purchases.

In addition to the above, this area also includes procurement by contracting authorities involving contracting authorities from different European Union member states.

**Centralised public procurement tasks**

Centralised public procurement activities are defined in Article 2, paragraph 1, item 15) as activities carried out:

* for the purpose of obtaining goods or services intended for contracting authorities or
* for the award of public procurement contracts or the conclusion of framework agreements for goods, services or works to be used by contracting authorities.

In the first case, the contracting authority may procure goods or services from a centralised public procurement body, which carries out centralised public procurement tasks.

In the second case, the contracting authority may procure goods, services or works:

* on the basis of a framework agreement concluded by the centralised public procurement body that carries out centralised public procurement tasks, by concluding public procurement contracts on the basis of the framework agreement concluded by the contracting authorities that have concluded the framework agreement, the contracting authorities on whose behalf the framework agreement was concluded, as well as the contracting authorities for whom it can be clearly established from the procurement documentation that the framework agreement is intended;
* based on a contract awarded by a centralised public procurement body that carries out centralised public procurement tasks;
* using a dynamic purchasing system managed by a centralised public procurement body that carries out centralised public procurement tasks.

The public call for tenders must state whether the dynamic purchasing system operated by the centralised public purchasing body can also be used by other contracting authorities. The contracting authority that procures goods, services or works on the basis of framework agreements is responsible for fulfilling obligations regarding the parts of the procurement procedure that it conducts independently, such as:

* conducting the reopening of competition procedure, in accordance with the framework agreement concluded by the centralised public procurement body;
* determining which of the economic operators, parties to the framework agreement, should be awarded a contract based on the framework agreement concluded by the centralised public procurement body;
* awarding contracts within a dynamic purchasing system managed by a centralised public procurement body.

The contracting authority may award a contract for the performance of centralised public procurement tasks to a centralised public procurement body without applying a public procurement procedure, which may also include the performance of auxiliary procurement tasks, namely technical infrastructure that enables contracting authorities to award public procurement contracts or conclude framework agreements for goods, services or works, as well as advice on the preparation and implementation of public procurement procedures or the preparation and implementation of public procurement procedures on behalf of and for the account of a specific contracting authority.

**Authority for centralised public procurements**

According to the provisions of the PPL, no state body is explicitly designated as a body for centralised public procurement. The PPL stipulates that the authority for centralised public procurements is the contracting authority that carries out centralised public procurement tasks, and may also carry out ancillary public procurement tasks, and that it is obliged to implement centralised public procurement in a manner that ensures market access for small and medium-sized enterprises, whenever possible.

Centralised public procurement activities can be carried out at the republic, provincial or local government level. A joint body for centralised public procurement may be formed for several local governments, which will carry out centralised public procurement tasks. The organisation and manner of performing centralised public procurement tasks is regulated by law, Government regulation, decision of the contracting authority or agreement between contracting authorities. When centralised public procurement tasks are performed at the republic level, the Government regulation contains provisions on the centralised public procurement body, contracting authorities for whose needs the centralised public procurement body conducts procedures, then determines the subjects of centralised public procurement, the method of planning and conducting centralised public procurement, the conditions for performing auxiliary public procurement tasks, as well as other tasks and other matters of importance for the work of the centralised public procurement body. In this regard, the Government adopted the Regulation on the Organisation and Manner of Performing Centralised Public Procurement at the Republic Level ("Official Gazette of the Republic of Serbia", No. 116/20), which stipulates that centralised public procurement at the republic level is performed by the Administration for Joint Affairs of Republic Bodies, as the body for centralised procurement at the republic level.

**Occasional joint procurements**

According to the provisions of Article 80 of the PPL, contracting authorities can determine whether they will conduct the procurement independently or jointly. Therefore, contracting authorities may jointly implement a certain public procurement procedure or one contracting authority may authorize another contracting authority to implement a public procurement procedure on its behalf and for its account or to take certain actions in that procedure. In this case, the contracting authorities shall determine their rights and obligations by a special agreement.

So, there are several ways to implement public procurement here, namely:

* that the public procurement procedure as a whole is carried out jointly in the name and on behalf of all contracting authorities participating in the joint procurement, when all contracting authorities are jointly and severally liable for legal action;
* that one contracting authority conducts the procedure as a whole for its own account and for the account of other contracting authorities, when all contracting authorities are also jointly and severally liable for the lawful conduct;
* that the public procurement procedure is not carried out jointly in its entirety, in which case the contracting authorities are jointly liable only for those parts of the procurement procedure that they carry out jointly, while each contracting authority has sole responsibility for fulfilling its obligations with regard to the parts of the procurement procedure that it carries out in its own name and for its own account.

Furthermore, in addition to joint implementation, it is envisaged that one contracting authority may authorize another contracting authority to conduct a public procurement procedure on its behalf and for its account or to undertake certain actions in that procedure. In this case, the contracting authorities are jointly and severally liable for legal action.

**Procurement by a contracting authority involving contracting authorities from different European Union member states**

In addition to the previously mentioned possibilities for joint implementation of public procurement, the PPL also prescribes the possibility for the contracting authority to jointly implement the public procurement procedure with contracting authorities from different European Union member states. These are mainly situations where procurement is carried out to meet the needs of multiple contracting authorities, some of which are based in the Republic of Serbia, while others are from European Union member states.

On this occasion, the contracting authority may use the services of centralised public procurement bodies that carry out centralised public procurement tasks in a Member State of the European Union. In the event of the application of any of the above options, the provisions of the PPL, other laws and regulations in the Republic of Serbia must not be avoided, i.e., the application of these options must not have the aim of avoiding the regulations of the Republic of Serbia, including the provisions of the PPL.

In addition to the above, Article 82 of the PPL stipulates that a centralised public procurement body based in a Member State of the European Union shall carry out centralised public procurement activities in accordance with the law of the Member State in which it is based. The law of the Member State of the European Union in which the centralised public purchasing body is established shall also apply to the award of contracts under a dynamic purchasing system managed by the centralised public purchasing body, the conduct of the reopening of competition procedure, in accordance with a framework agreement concluded by the centralised public purchasing body, as well as to the determination of the economic operators, parties to the framework agreement, to whom a contract is to be awarded on the basis of a framework agreement concluded by the centralised public purchasing body.

Application of the provisions of Article 82 of the PPL is foreseen from the date of accession of the Republic of Serbia to the European Union.

Therefore, as defined by the provisions of Article 81 of the PPL, the contracting authority may jointly conduct a public procurement procedure with one or more contracting authorities from the Member States of the European Union, for the purpose of awarding a public procurement contract, concluding a framework agreement, managing a dynamic purchasing system or awarding a contract based on a framework agreement or awarding a contract within a dynamic purchasing system. In this case, the contracting authorities shall, by a separate agreement, regulate the responsibilities of each party and the relevant national regulations applicable, the internal organisation of the public procurement procedure, including the conduct of the procedure, the allocation of the goods, services or works to be procured and the conclusion of the contract. The conclusion of an agreement is not mandatory if the listed issues are regulated by an international agreement concluded between the Republic of Serbia and the Member States of the European Union.

In addition to the above, Article 84 of the PPL stipulates that a contracting authority may, with another contracting authority from a Member State of the European Union, establish a joint entity or other entities established in accordance with European Union law, whereby those contracting authorities agree on the relevant national procurement rules of one of the following Member States:

* the national regulations of the Member State in which the joint entity has its registered office, or
* the national regulations of the Member State in which the joint entity carries out its activities.

This agreement may apply for an indefinite period or may be limited to a specific period of time, specific types of contracts or the award of one or more individual contracts, as determined by the contracting authorities to which the agreement applies. And the application of the provisions of Article 84 of the PPL is foreseen from the date of accession of the Republic of Serbia to the European Union.

1. Calculation and determination of deadlines

## Calculation of deadlines

The provisions of Articles 85 to 87 of the PPL regulate the method of calculating deadlines in public procurement procedures. Therefore, deadlines are now regulated by the PPL unless otherwise specified. Deadlines are determined in days, months and years.

In a situation where the deadline is set in days, the day on which the notification was made, or the day on which the event from which the duration of the deadline is calculated falls, is not included in the deadline, but the beginning of the deadline is calculated from the first following day, or the first following working day if the deadline is set in working days. So, if a public invitation is sent for publication on Tuesday, that day does not count towards the deadline, so the first day of the deadline is Wednesday.

The deadline can also be set in months or years. In that case, the deadline ends with the expiration of the day, month, or year whose number corresponds to the day when the notification was made, or the day on which the event from which the duration of the deadline is calculated falls. This means that if any of the deadlines specified in months or years begins on 25 July 2020, and lasts for one year, it expires on 25 July 2021. If that day does not occur in the last month, the deadline expires on the last day of that month. This means that if the deadline lasts 6 months, for example, it starts on 31 May 2020, and ends on 30 November 2020, given that November does not have 31 days.

The beginning and course of the deadline are not affected by public holidays, Saturdays and Sundays, unless the deadlines are expressed in working days. If the last day of the deadline falls on a public holiday, Saturday or Sunday, the deadline expires on the first following working day. Any period consisting of at least two days must include two business days. A working day is not a public holiday, Saturday or Sunday.

The procedure in the event of unavailability of the Public Procurement Portal is prescribed by the Instructions for Using the Public Procurement Portal ("Official Gazette of the Republic of Serbia", No. 93/20).

The User of the Portal shall report unavailability of the Portal without delay to the Office. Upon receipt of the application, the Office checks the user application without delay and in the event of a determined unavailability of the Portal, the Office without delay:

* inform about the unavailability by e-mail of the interested economic operators and the contracting authority in the public procurement procedure, without revealing the identity of the applicant;
* publish a notice of unavailability on the website of the Office or on the Portal, if the unavailability refers to several public procurement procedures at the same time.

Exceptionally, if the unavailability of the Portal is removed within less than one hour from the receipt of the application and if at least two hours remain from the elimination until the deadline for submission of bids, it will be considered that the unavailability has not occurred. If the unavailability of the Portal is determined, the deadline for submission of bids does not run until the unavailability is eliminated.

After eliminating the unavailability of the Portal, the Office shall, without delay:

* inform about the availability of the Portal by e-mail to the interested Users of the Portal in the public procurement procedure, and
* publish a notice on the availability of the Portal on the website of the Office and on the Portal, if the unavailability was related to several public procurement procedures at the same time.

After receiving the notification on the availability of the Portal, the contracting authority extends the deadline for submission of bids by at least four days.

**Determining the terms**

According to the provisions of the PPL, the contracting authority is obliged to set reasonable deadlines when setting deadlines for submitting applications and tenders. The contracting authority must take into account the complexity of the subject-matter of procurement and the time required to prepare applications and tenders. Also, the contracting authority is obliged to respect the minimum deadlines specified in the PPL, which are prescribed for each public procurement procedure separately.

As a rule, deadlines for submitting applications and bids are set in such a way as to determine the exact date and time by which the said applications or bids can be submitted in a timely manner.

In certain types of procedures, i.e., competitive dialogue, innovation partnership and negotiated procedure without prior publication of a public call, the PPL does not prescribe a specific deadline, but rather the obligation of the contracting authority to set an appropriate deadline for the submission of initial, all subsequent and final bids.

If the preparation of tenders requires a site visit or an on-site inspection of the documents supplementing the procurement documentation, the contracting authority is obliged to set the deadline for submitting tenders, which must be longer than the minimum deadlines prescribed by the provisions of this Law specifically for each type of procedure, in such a way that all interested economic operators can familiarize themselves with all the information necessary for the preparation of the tender.

In certain cases, the contracting authority is obliged to extend the deadline for submitting applications or tenders. Therefore, this obligation exists if additional information or clarifications regarding the procurement documentation are not made available within the legally prescribed period, i.e., no later than the sixth day, or the fourth day before the expiry of the deadline set for submitting bids or applications for public procurement, depending on the amount of the estimated value of the specific public procurement, i.e., whether it is equal to or higher than the European thresholds or lower than the European thresholds. Furthermore, the obligation to extend the deadline also exists in the event that the procurement documentation has been significantly modified. Therefore, procurement documentation should be considered to have been substantially amended when the amendments would necessarily require economic operators to take additional time to prepare a tender or application, especially if those amendments relate to the criteria for the qualitative selection of an economic operator, the criteria for awarding the contract or the technical specifications of the subject-matter of the procurement.

Finally, the contracting authority is obliged to extend the deadline for submitting applications or tenders if the Public Procurement Portal was not available during the four-hour period prior to the expiry of the deadline for submitting applications or tenders. In this case, the contracting authority is obliged to extend the deadline for submitting applications or tenders by at least four days.

In the first two cases, the contracting authority is obliged to extend the deadline for submitting bids or applications, in proportion to the importance of the information or changes being published, whereby no less than ten days may remain until the deadline for submitting a request for protection of rights. Given that a request for protection of rights challenging the actions of the contracting authority in relation to determining the type of procedure, the content of the public invitation and the tender documentation is considered timely if it is received by the contracting authority no later than three days before the expiry of the deadline for submitting bids or applications, regardless of the method of submission, this deadline should be extended by a minimum of 13 days.

An exception to the obligation to extend the deadline for submitting bids or applications is provided for, which applies in a situation where additional information or clarifications were not requested from the contracting authority in a timely manner or their importance is not significant for the preparation and submission of bids or applications.

In all cases, the contracting authority is obliged to send a correction for publication - a notification of changes or additional information - regarding the extension of the deadline.

1. Preparation for the implementation of the public procurement procedure

# Public procurement plan

Public procurement planning is generally one of the most demanding business activities, on which the successful outcome of the public procurement process depends. If this phase of the procedure is not given enough attention and if it is not carried out by professional personnel, it may be the cause of numerous irregularities that will occur during the procedure.

The contracting authority is obliged to adopt an annual public procurement plan containing the following: data on the subject-matter of public procurement and CPV code, the estimated value of the public procurement, the type of public procurement procedure and the approximate time for initiating the procedure. Also, the contracting authority shall state in the public procurement plan whether the procurement is carried out through a centralised public procurement body.

The public procurement plan covers only public procurement. For this reason, every contracting authority should have another act to plan all procurements to which the PPL does not apply. This way, the planning phase would be carried out in a proper manner, and any internal or external control would be able to easily review the situation with the contracting authority.

The contracting authority is obliged to publish the public procurement plan, as well as all subsequent amendments or supplements to it, on the Public Procurement Portal and on its website within ten days from the date of adoption. An amendment to the public procurement plan is considered to be

* planning new public procurement,
* change of the subject-matter of public procurement and
* increase in the estimated value of public procurement by more than 10%.

The contracting authority 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. Therefore, the contracting authority certainly does not have to publish the estimated value of the public procurement, while it does not publish other data if it can be considered confidential.

The contracting authority can start the public procurement procedure if the procurement is foreseen in the annual public procurement plan. By way of exception to this rule, the contracting authority may initiate a public procurement procedure even if the procurement is not foreseen in the public procurement plan, when the public procurement cannot be planned in advance or for reasons of urgency.

**Market research**

The contracting authority should conduct market research before drawing up a public procurement plan, in order to properly prepare the public procurement procedure and to adequately meet the needs for goods, services or works.

Market research also involves informing business entities. So, the contracting authority informs them of their plans and requirements regarding the procurement.

When planning, the contracting authority may seek or take into account the advice of independent experts, competent authorities or economic operators, provided that this does not violate the principles of ensuring competition and the prohibition of discrimination, equality of economic operators and transparency. This is because the contracting authority does not have enough experts for every public procurement it needs, and cannot prepare the procurement documentation properly. Of course, on the other hand, the contracting authority should be careful not to put some of the economic operators with which it is in dialogue in a more favourable position.

**Protecting the integrity of the process**

Due to the above, the PPL prescribes the protection of the integrity of the procedure. Namely, if a bidder, candidate or a person related to it was in any way involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that the participation of that bidder or candidate does not distort competition.

This implies that the contracting authority will also provide other economic operators with relevant information that was exchanged or generated within the framework of the participation of the bidder or candidate in the preparation of the procurement procedure. Also, the contracting authority is obliged to determine appropriate deadlines for submitting bids, so that all interested economic operators can make acceptable bids.

If there is no way to act in accordance with the above, the bidder or candidate may be excluded from the public procurement procedure, in order not to violate the obligation to respect the principles of ensuring competition and equality of economic operators. The contracting authority is obliged, before exclusion, to enable the bidder or candidate to prove that its participation in the preparation of the procurement procedure cannot distort competition.

The contracting authority will document and describe all measures taken in the report on the expert assessment of applications, i.e., bids.

**Initiation of the public procurement procedure**

According to the provisions of the PPL, the contracting authority makes the decision to implement the public procurement procedure. Therefore, it is no longer a decision to initiate a public procurement procedure, as provided for in the PPL/2015. The decision to conduct the procedure shall contain, in particular:

- data on the subject-matter of public procurement,

- type of procedure,

- the estimated value of public procurement in total and for each lot separately, as well as

- information on the composition of the public procurement commission, i.e., the person conducting the public procurement procedure.

In the case of applying a competitive procedure with negotiation, competitive dialogue, innovation partnership and negotiated procedure without publication of a public call, the contracting authority shall also state in this decision the reasons for applying that procedure, while the sectoral contracting authority shall state these reasons in the case of applying an innovation partnership and negotiated procedure without publication of a public call.

A public procurement procedure is considered initiated by sending for publication a public invitation and other advertisements used as a public invitation. This rule does not apply to a negotiated procedure without publication of a public invitation. This procedure is considered initiated on the date of sending the invitation to submit bids.

**Commission for Public Procurement**

The contracting authority appoints a public procurement commission that conducts the public procurement procedure. The commission must have an odd number of members, and at least three members.

By way of exception to this rule, the contracting authority is not obliged to appoint a public procurement commission when the estimated value of the public procurement does not exceed 3,000,000 dinars. In that case, the public procurement procedure is carried out by a person appointed by the contracting authority.

Therefore, when the public procurement commission conducts the procedure, **one member of the public procurement commission must be a public procurement officer with higher education in basic academic studies of at least 240 ECTS credits or master's academic studies, specialist academic studies, specialist vocational studies, i.e., basic studies lasting at least four years or specialist studies at a faculty, or a person who has obtained a certificate for a public procurement officer by the date of entry into force of this law**.

When the contracting authority deems it necessary, it will appoint a person with appropriate professional knowledge in the field that is the subject-matter of the public procurement as a member of the commission. Also, the contracting authority may appoint persons who are not employed by the contracting authority to the public procurement commission, if the contracting authority does not have employees with appropriate professional knowledge.

According to the provisions of the PPL, the tasks of the public procurement commission, i.e., the person implementing public procurement, are primarily to undertake all actions in the procedure. This includes the preparation of public procurement notices, preparation of tender documentation, expert evaluation of bids and applications, preparation of reports on the public procurement procedure, all necessary communication in the public procurement procedure and necessary actions in the event of a request for protection of rights. The Public Procurement Commission ensures the legality of the implementation of the procedure and is responsible for all actions in the procedure.

# Tender documentation

**Contents**

One of the tasks of the public procurement commission, i.e., the person conducting public procurement, is the preparation of tender documentation. The outcome of the public procurement procedure depends on this preparation, i.e., whether economic operators will be able to prepare an acceptable bid based on such tender documentation and, equally importantly, whether the contracting authority will procure goods, services or works that meet its actual needs. Therefore, the tender documentation must be prepared in a way that enables the preparation and submission of a bid, or application.

The content of the tender documentation is determined depending on the type of public procurement procedure and is prescribed in detail by a by-law, namely the Rules on the Content of Tender Documentation in Public Procurement Procedures ("Official Gazette of the Republic of Serbia", No. 93/20).

The tender documentation in an open procedure, according to the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) subject-matter of public procurement,

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of control and provision of quality guarantee, deadline for execution, place of execution or delivery of goods, possible additional services, etc.;

3) technical documentation and plans;

4) criteria for qualitative selection of the business entity (grounds for exclusion and criteria for selection of the business entity), with instructions on how to prove the fulfilment of these criteria;

5) data related to the contract award criteria, as follows:

(1) contract award criteria;

(2) relative importance in the weights for each criterion, as well as the methodology for assigning weights for each criterion, except when the criterion is only price,

(3) where weighting is not possible for objective reasons, the contracting authority shall specify the criteria in descending order of importance,

(4) reserve criteria on the basis of which the contracting authority will award the contract in a situation where there are two or more tenders that are equal after the application of the criteria,

(5) if the life-cycle cost is used, the data to be provided by bidders and the method used by the contracting authority on the basis of that data to determine the life-cycle costs;

6) forms of documents that are an integral part of the offer, as follows:

(1) offer form;

(2) offered price structure form;

(3) bid preparation cost form;

(4) Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);

7) model contract or framework agreement;

8) instructions to bidders on how to prepare a bid.

The tender documentation in an open procedure may contain other information necessary for the preparation and submission of bids.

The tender documentation in a restrictive procedure, according to the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) subject-matter of public procurement,

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) criteria for qualitative selection of the business entity (grounds for exclusion and criteria for selection of the business entity), with instructions on how to prove the fulfilment of these criteria;

3) manner and deadline for submitting the application;

4) type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of control and provision of quality guarantee, deadline for execution, place of execution or delivery of goods, possible additional services, etc.;

5) technical documentation and plans;

6) data related to the contract award criteria, as follows:

(1) contract award criteria;

(2) relative importance in the weights for each criterion, as well as the methodology for assigning weights for each criterion, except when the criterion is only price,

(3) where weighting is not possible for objective reasons, the contracting authority shall specify the criteria in descending order of importance,

(4) reserve criteria on the basis of which the contracting authority will award the contract in a situation where there are two or more applications that are equal after the application of the criteria,

(5) if the life-cycle cost is used, the data to be provided by bidders and the method used by the contracting authority on the basis of that data to determine the life-cycle costs;

7) forms of documents that are an integral part of the offer, as follows:

(1) offer form;

(2) offered price structure form;

(3) bid preparation cost form;

(4) Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);

8) model contract or framework agreement;

9) instructions to bidders on how to prepare a bid.

The tender documentation in the restrictive procedure may also contain other information necessary for the preparation and submission of applications, i.e., bids.

The tender documentation in the competitive procedure with negotiation and the negotiated procedure with publication of a public invitation, for the qualification phase, according to the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) the subject-matter of the public procurement with a description of the needs and required characteristics of goods, services or works, stating which elements of the description of needs and required characteristics of goods, services or works are minimum requirements that all bids must meet and cannot change during the procedure;

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) criteria for qualitative selection of the business entity (grounds for exclusion and criteria for selection of the business entity), with instructions on how to prove the fulfilment of these criteria;

3) manner and deadline for submitting the application;

4) data related to the contract award criteria, as follows:

(1) contract award criteria;

(2) relative importance in the weights for each criterion, as well as the methodology for assigning weights for each criterion, except when the criterion is only price,

(3) where weighting is not possible for objective reasons, the contracting authority shall specify the criteria in descending order of importance,

(4) reserve criteria on the basis of which the contracting authority will award the contract in a situation where there are two or more applications that are equal after the application of the criteria,

(5) if the life-cycle cost is used, the data to be provided by bidders and the method used by the contracting authority on the basis of that data to determine the life-cycle costs;

The tender documentation in the competitive procedure with negotiation and the negotiated procedure with publication of a public invitation, for the negotiation phase, according to the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) subject-matter of public procurement,

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of control and provision of quality guarantee, deadline for execution, place of execution or delivery of goods, possible additional services, etc.;

3) technical documentation and plans;

4) data related to the contract award criteria, in the manner prescribed in paragraph 1, item 4) of this Article;

5) elements of the contract to be negotiated and the manner of negotiation;

6) a note if the procedure is carried out in several phases in order to reduce the number of bids being negotiated;

7) forms of documents that are an integral part of the offer, as follows:

(1) offer form;

(2) offered price structure form;

(3) bid preparation cost form;

(4) Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);

8) model contract or framework agreement;

9) instructions to bidders on how to prepare a bid.

The tender documentation in the competitive procedure with negotiation and the negotiated procedure with the publication of a public invitation may also contain other information necessary for the preparation and submission of applications, i.e., bids.

The tender documentation in the competitive dialogue, for the qualification phase, according to the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) description of the needs of the Contracting Authority;

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) criteria for qualitative selection of the business entity (grounds for exclusion and criteria for selection of the business entity), with instructions on how to prove the fulfilment of these criteria;

3) manner and deadline for submitting the application;

4) data related to the contract award criteria, as follows:

(1) contract award criteria;

(2) the relative importance in the weights for each criterion, as well as the methodology for assigning weights for each criterion,

(3) where weighting is not possible for objective reasons, the contracting authority shall specify the criteria in descending order of importance,

(4) reserve criteria on the basis of which the contracting authority will award the contract in a situation where there are two or more applications that are equal after the application of the criteria,

(5) if the life-cycle cost is used, the data to be provided by bidders and the method used by the contracting authority on the basis of that data to determine the life-cycle costs;

The tender documentation for the competitive dialogue, for the dialogue phase, according to the nature of the subject-matter of procurement, contains:

1) the manner in which the contracting authority will conduct the dialogue;

2) a note if the procedure is carried out in several phases in order to reduce the number of decisions on which dialogue will be conducted;

3) data related to the contract award criteria, in the manner prescribed for the qualification phase;

The tender documentation in the competitive dialogue, for the phase of submitting final bids, according to the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) description of the needs of the Contracting Authority;

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of control and provision of quality guarantee, deadline for execution, place of execution or delivery of goods, possible additional services, etc.;

3) technical documentation and plans;

4) data related to the contract award criteria, in the manner prescribed for the qualification phase;

5) forms of documents that are an integral part of the offer, as follows:

(1) offer form;

(2) offered price structure form;

(3) bid preparation cost form;

(4) Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);

6) model contract or framework agreement;

7) instructions to bidders on how to prepare a bid.

The tender documentation in the competitive dialogue may also contain other information necessary for the preparation and submission of applications or tenders.

The tender documentation in the innovation partnership, for the qualification phase, according to the nature of the subject-matter of the procurement, contains:

1) general information on the subject matter of procurement:

(1) subject-matter of public procurement,

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) criteria for qualitative selection of business entity (grounds for exclusion and criteria for selection of business entity), and may also contain criteria related to the ability of business entities in the field of research and development and implementation of innovative solutions, with instructions on how to prove fulfilment of these criteria;

3) the manner in which the contracting authority will implement the innovative partnership by phases, temporary goals that partners should achieve in each phase, conditions for termination of partnership, i.e., reduction of number of partners, conditions, method of payment and amount of compensation to be paid to partners;

4) the manner in which intellectual property rights will be regulated;

5) manner and deadline for submitting the application;

6) data related to the contract award criteria, as follows:

(1) contract award criteria;

(2) the relative importance in the weights for each criterion, as well as the methodology for assigning weights for each criterion,

(3) where weighting is not possible for objective reasons, the contracting authority shall specify the criteria in descending order of importance,

(4) reserve criteria on the basis of which the contracting authority will award the contract in a situation where there are two or more applications that are equal after the application of the criteria,

(5) if the life-cycle cost is used, the data to be provided by bidders and the method used by the contracting authority on the basis of that data to determine the life-cycle costs;

The tender documentation in the innovation partnership, for the negotiation phase, according to the nature of the procurement subject-matter, contains:

1) general information on the subject matter of procurement:

(1) the subject-matter of the public procurement with a description of the needs for innovative goods, services or works and descriptive elements that constitute the minimum requirements that all tenders must meet,

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) type, technical characteristics (specifications), quality, quantity and description of innovative goods, works or services, manner of control and quality assurance, deadline, place of execution or delivery of goods, possible additional services, etc.;

3) data related to the contract award criteria, in the manner prescribed for the qualification phase;

4) elements of the contract to be negotiated and the manner of negotiation;

5) a note if the procedure is carried out in several phases in order to reduce the number of bids being negotiated;

6) forms of documents that are an integral part of the offer, as follows:

(1) offer form;

(2) offered price structure form;

(3) bid preparation cost form;

(4) Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);

7) model contract or framework agreement;

8) instructions to bidders on how to prepare a bid.

The tender documentation in the innovation partnership may also contain other information necessary for the preparation and submission of applications or bids.

The tender documentation in a negotiated procedure without publication of a public invitation, in accordance with the nature of the subject-matter of procurement, contains:

1) general information on the subject matter of procurement:

(1) the subject-matter of the public procurement with a description of the needs and required characteristics of goods, services or works, stating which elements of the description of needs and required characteristics of goods, services or works are minimum requirements that all bids must meet and cannot be negotiated,

(2) description of each lot, if the subject-matter of the public procurement is formed by lots;

2) type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of control and provision of quality guarantee, deadline for execution, place of execution or delivery of goods, possible additional services, etc.;

3) technical documentation and plans;

4) criteria for qualitative selection of the business entity (grounds for exclusion and criteria for selection of the business entity), with instructions on how to prove the fulfilment of these criteria;

5) data related to the contract award criteria, as follows:

(1) contract award criteria;

(2) relative importance in the weights for each criterion, as well as the methodology for assigning weights for each criterion, except when the criterion is only price,

(3) where weighting is not possible for objective reasons, the contracting authority shall specify the criteria in descending order of importance,

(4) reserve criteria on the basis of which the contracting authority will award the contract in a situation where there are two or more tenders that are equal after the application of the criteria,

(5) if the life-cycle cost is used, the data to be provided by bidders and the method used by the contracting authority on the basis of that data to determine the life-cycle costs;

6) elements of the contract to be negotiated and the manner of negotiation;

7) forms of documents that are an integral part of the offer, as follows:

(1) offer form;

(2) offered price structure form;

(3) bid preparation cost form;

(4) Statement on fulfilment of criteria for qualitative selection of economic operator (SFC);

8) model contract or framework agreement;

9) instructions to bidders on how to prepare a bid.

The tender documentation in the negotiated procedure without publishing a public invitation may contain other information necessary for the preparation and submission of bids.

If the public procurement procedure is conducted for the purpose of concluding a framework agreement, according to the type of procedure and the nature of the subject-matter of public procurement, the tender documentation shall also contain:

1) information on whether the framework agreement is concluded with one or more bidders;

2) the duration of the framework agreement;

3) the manner of concluding the public procurement contract on the basis of the framework agreement;

4) information on the contracting authorities that will conclude the framework agreement, on whose behalf the framework agreement will be concluded, or for which the framework agreement is intended.

If a dynamic procurement system is formed, according to the nature of the subject-matter of public procurement, the tender documentation contains:

1) information on the nature and estimated quantity of the planned procurements and, if any, the division into categories of goods, services or works and the characteristics that describe them;

2) information on the planned duration of the system;

3) if possible, information on the value or order of the size and frequency of contracts to be awarded;

4) all necessary information regarding the dynamic purchasing system, including information on how the dynamic purchasing system is run, the electronic equipment used and the technical connections and specifications;

5) longer deadline for evaluation of applications that the contracting authority intends to apply.

If an electronic auction is conducted, the tender documentation shall contain the data provided for in Annex 5 of the Law.

The data contained in the tender documentation and the data specified in the public call and other advertisements used as a public call must not contradict each other.

**Security instruments**

For every stage of the public procurement process, security measures are an important instrument. Depending on the stage of the procedure for which the contracting authority requests security, there are different types of security for the seriousness of the offer, for the fulfilment of contractual obligations, for the elimination of defects within the warranty period, for liability for damage caused if it occurred in connection with the performance of a certain activity, and for the return of the advance payment.

The contracting authority requires a security for the seriousness of the bid in order to somehow secure itself, or collect it, in the event that the bidder withdraws its bid within the bid validity period, fails to provide evidence of compliance with the criteria for the qualitative selection of the economic operator, unreasonably refuses to conclude a public procurement contract or framework agreement, or fails to provide security for the performance of the public procurement contract or framework agreement. Therefore, like all other means of security, the contracting authority may, but does not have to, require a security for the seriousness of the offer from the economic operator.

This security cannot exceed 3% of the bid value excluding value added tax.

Furthermore, during the contract execution phase, contracting authorities may request a security for the fulfilment of contractual obligations, in order to ensure that the other contracting party will fulfil the obligations stipulated in the contract. This security cannot exceed 10% of the value of the public procurement contract excluding value added tax.

In addition to the above, the PPL provides for the possibility of using security deposits to eliminate defects within the warranty period. This security cannot exceed 10% of the value of the public procurement contract, excluding value added tax.

Also, the contracting authority may request a means of securing liability for damage caused, if it occurred in connection with the performance of a certain activity.

Finally, the contracting authority may request a security deposit for the refund of the advance payment, which must be in the amount of the advance payment.

The provisions of the PPL exempt users of budget funds who are included in the consolidated account of the Treasury of the Republic of Serbia and do not have their own account, but rather execute their expenditures and expenses through the budget execution account of the Republic of Serbia.

**Publication and submission of tender documentation**

The procedure for publishing tender documentation, as well as public procurement notices, takes place on the Portal. The contracting authority is obliged to send the tender documentation for publication, simultaneously with the publication of the public call, call for applications or call for tenders or negotiations in the qualification system. Exceptionally, when the tender documentation cannot be published by electronic means on the Public Procurement Portal, for reasons determined by the provisions of the PPL, contracting authorities are obliged to state in the public call or in the call for applications or in the call for tenders or negotiations in the qualification system that the tender documentation will be sent by means other than electronic means.

Also, the tender documentation will not be published on the Portal if it contains confidential data. In that case, the contracting authority shall also state in the public call or in the call for applications or in the call for tenders or negotiations in the qualification system the measures aimed at protecting the confidential information it requires, as well as the manner in which the tender documentation can be downloaded. The contracting authority cannot request reimbursement from the economic operator of any costs for the preparation and provision of tender documentation, or for the receipt of tender documentation.

**Amendments, supplements and additional clarifications to procurement documentation**

The PPL allows for amendments or supplements to procurement documentation, primarily to enable economic operators to prepare an acceptable bid based on such tender documentation and for the contracting authority to procure goods, services or works that meet its actual needs. However, the contracting authority is obliged to, if it has amended or supplemented the procurement documentation within the deadline for submitting bids, send all such amendments and supplements for publication on the Portal, i.e., make them available in the same manner as the basic documentation. Also, in the event of a change or amendment, the contracting authority is obliged to comply with the provisions of the PPL relating to deadlines, or their extension if the conditions are met. The contracting authority may not change or supplement the procurement documentation after the deadline for submitting bids has expired.

PPL regulates that the economic operator may request from the contracting authority in writing through the Public Procurement Portal additional information or clarifications regarding the procurement documentation, and may indicate to the contracting authority if it considers that there are deficiencies or irregularities in the procurement documentation, no later than: The PPL prescribes a deadline within which the contracting authority may be informed of deficiencies or irregularities in the procurement documentation. The deadlines are at the latest:

* on the eighth day before the expiry of the deadline set for the submission of tenders, for public procurement whose estimated value is equal to or greater than the amount of European thresholds;
* on the sixth day before the deadline for submission of bids, for public procurement whose estimated value is less than the amount of European thresholds.

If a request for additional information or clarifications is submitted in a timely manner, the contracting authority shall publish the additional information and clarifications on the Public Procurement Portal, i.e., make them available in the same manner as the basic documentation. It is important to note that on this occasion the ordering party does not provide information about the applicant.

The deadlines for providing additional information or clarification are:

* on the eighth day before the expiry of the deadline set for the submission of tenders, for public procurement whose estimated value is equal to or greater than the amount of European thresholds;
* on the fourth day before the expiry of the deadline set for submitting tenders or applications for public procurement whose estimated value is less than the European thresholds and in procedures in which the contracting authority has used the possibility of shortening deadlines for reasons of urgency.

If the economic operator has not pointed out any shortcomings or irregularities in the procurement documentation, they cannot be the subject-matter of challenge in the rights protection procedure.

# Technical specifications

**General rules on technical specifications**

Technical specifications must be part of every tender documentation, in order to define the subject-matter of public procurement in as much detail as possible. Namely, technical specifications determine the required characteristics of the works, goods or services being procured and other facts and circumstances that are important for the preparation of the bid. This other information may relate to the place and deadlines for execution, special requirements regarding the method of execution of the subject-matter of procurement, warranty periods, etc.

Also, technical specifications are important for the evaluation of bids, as well as for the execution of contracts. Namely, all bids that do not comply with the required technical specifications will be assessed as unacceptable, while the contracting authority cannot accept the delivery of a procurement item whose characteristics do not meet the required technical specifications.

Technical specifications are defined differently depending on the subject-matter of the procurement.

Thus, in a public works contract, technical specifications imply the totality of technical requirements contained in the tender documentation, which define:

* the required characteristics of materials or goods so that they fulfil the purpose intended by the contracting authority, such as the level of impact on the environment and climate change,
* solutions for all requirements (including accessibility for people with disabilities),
* method of assessing compliance,
* performance,
* security,
* dimensions,
* quality assurance procedures,
* terminology, symbols,
* testing and testing methods,
* packaging, labelling and marking,
* instructions for users and production processes and methods at each stage of the life cycle of the works,
* rules relating to design and costing,
* conditions for testing, controlling and accepting works
* construction methods or techniques, and
* any other technical conditions that the contracting authority may prescribe, in accordance with general or special regulations, in relation to the completed works and the materials or parts they incorporate.

In public procurement contracts for goods or services, technical specifications imply the determination of the required characteristics of goods or services, such as:

* the level of impact on the environment and climate change,
* solutions for all requirements (including accessibility for people with disabilities)
* conformity assessment,
* performance,
* product use,
* security
* dimensions,
* product requirements regarding the name under which the product is sold,
* terminology, symbols,
* testing and testing methods,
* packaging, labelling and marking,
* user instructions,
* production processes and methods at each stage of the life cycle of a good or service and
* conformity assessment procedures.

When drawing up technical specifications, the contracting authority may also refer to standards adopted by a recognised standardisation body, for repeated or permanent application, with which compliance is not mandatory.

There are several groups of standards, depending on which institution issues them and their availability, they are divided into international, European and national standards.

In addition, the contracting authority may also use the following as technical specifications:

* European Technical Assessment, which means a documented assessment of the performance of a construction product in relation to its essential characteristics, in accordance with the relevant European Assessment Document;
* technical reference, which means any document, other than European standards, produced by European standardisation bodies, in accordance with procedures adapted to the development of market needs.

The contracting authority shall draw up technical specifications in a way that provides equal access to all economic operators and does not unduly restrict competition in the public procurement procedure. In addition, the technical specifications may state whether the transfer of intellectual property rights will be required.

**Determining technical specifications**

Technical specifications can be determined in several ways.

The first way is to determine technical specifications in the form of features or functional requirements. In these cases, for example, environmental characteristics or sufficiently precise parameters necessary to determine the subject matter of the contract are provided.

The second way involves determining technical specifications by reference to technical specifications, to national standards transposing European standards, to European Technical Assessments, common technical specifications, international standards, other technical reference systems established by European standardisation bodies or, in the absence of any of them, to national standards, national technical approvals or national technical specifications relating to the design, costing and execution of works and the use of goods, each reference being accompanied by the words "or equivalent".

Furthermore, the third way of determining technical specifications is to combine features or functional requirements with reference to technical specifications. Finally, the fourth way is a combination of the first two ways, i.e., referring to technical specifications for certain features and referring to features or functional requirements for other features.

**Using technical specifications**

PPL, which stipulates that technical specifications cannot refer to a specific brand or source or a specific process that characterizes the products or services provided by a particular economic operator, or to trademarks, patents, types or a specific origin or production, which would have the effect of giving advantage to or eliminating certain economic entities or certain products, unless the subject-matter of the contract justifies it.

Exceptionally, if the subject-matter of the procurement cannot be described sufficiently precisely and intelligibly, a reference is permitted, whereby such a reference must be accompanied by the words "or equivalent". The bidder is obliged to prove in its bid in an appropriate manner that the goods, services or works that comply with the standard meet the requested characteristics or functional requirements of the contracting authority.

**Using tags**

When determining technical specifications, contracting authorities may use recognised designations. This means that the contracting authority may, in the technical specifications, contract award criteria or contract performance conditions, require certain labels as proof that the goods, services or works meet the required specific environmental, social or other characteristics.

In order for the ordering party to use this option, certain conditions must be met. Therefore, it is necessary that the request for the label refers exclusively to criteria related to the subject-matter of public procurement and that it is appropriate for defining the characteristics of the subject-matter of public procurement. Then, that the request for the label is determined on the basis of objectively verifiable and non-discriminatory criteria, and that the labels are determined in an open and transparent procedure with the participation of all interest groups, such as state authorities, service users, social partners, consumers, producers, distributors, non-governmental organisations, etc. It is also necessary that the labels are accessible to all interested parties and that the label requirements are determined by a third party over whom the economic operator that applied for the label cannot exercise decisive influence.

If the contracting authority requires a specific label, it is obliged to accept all labels that confirm that the goods, services or works meet the requirements of the appropriate label. However, when an economic operator is clearly unable to obtain a specific label requested by the contracting authority in the tender documentation or a corresponding label, the contracting authority is obliged to accept another appropriate means of proof, which may include the manufacturer's technical documentation, provided that the economic operator proves that the goods, services or works it offers meet the requirements of the specific label or the specific requirements stipulated by the contracting authority.

**Test report, certificate and other evidence**

Contracting authorities may require economic operators interested in participating in a public procurement procedure to prove compliance with technical specifications by means of a test report from a conformity assessment body or a certificate issued by a conformity assessment body. A conformity assessment body is a body that performs conformity assessment tasks, including testing, inspection, etc.

Also, contracting authorities may request reports or certificates to prove that the criteria for awarding the contract or the conditions for performing the contract have been met.

In addition to reports and certificates issued by conformity assessment bodies, contracting authorities are obliged to accept other appropriate means of evidence, such as the manufacturer's technical dossier. This alternative evidence may be accepted provided that:

* the economic operator is unable to obtain the test report or certificate or was unable to obtain it within the appropriate time limits, provided that the inability to obtain it is not caused by its actions and
* that the economic operator thus proves that the goods, services or works it offers meet the requirements or criteria set out in the technical specifications, the contract award criteria or the conditions for the performance of the contract.

**Making technical specifications available**

An economic operator interested in a specific public procurement contract may request the contracting authority to make available to it the technical specifications that it regularly uses for its public procurement contracts for supplies, services or works or the technical specifications that it intends to apply to contracts for which a periodic indicative notice is used as a public call for tenders. In that case, the sectoral contracting authority is obliged to act in accordance with this request. This occurs in a situation where the sectoral contracting authority uses a periodic indicative notice as a public call, and for the purpose of preparing an application, it would be important for the economic operator to familiarize itself with the content of the technical specifications that the sectoral contracting authority intends to apply in a specific public procurement.

Technical specifications shall be made available by electronic means with free, unlimited and unhindered direct access or by other appropriate means of communication, if electronic communication is excluded for reasons stipulated in the provisions of the PPL.

1. Publication and transparency

## Public procurement notices

The provisions of Articles 105 to 109 of the PPL regulate public procurement announcements and the actions of contracting authorities in relation to those announcements. All announcements are published on the Portal, while some of the announcements are also published on the Portal of Official Gazettes of the Republic of Serbia and the database of regulations, namely announcements in public procurement procedures whose estimated value is equal to or greater than 5,000,000 dinars. The form for their publication is available on the Portal. Contracting authorities can also publish on the contracting authority's profile, which as a term appears for the first time in the PPL and represents a section on the contracting authority's website that relates to public procurement.

These provisions stipulate that public procurement notices whose estimated value is equal to or greater than the European thresholds will also be published in the Official Journal of the European Union, with this provision applying from the date of accession of the Republic of Serbia to the European Union.

The provisions of the PPL provide for 14 announcements:

* public invitation;
* prior information notice;
* periodic indicative notice;
* notice on the establishment of a qualification system
* notice on the implementation of the negotiation procedure without publishing a public invitation;
* notice of contract award, suspension of proceedings or annulment of proceedings;
* notice on the contracting authority’s profile;
* notice of amendment of the contract;
* notice for social and other special services;
* notice of design competition;
* notice of the results of the design competition;
* Correction - notification of changes or additional information;
* notice of voluntary prior transparency;
* notice of submitted request for protection of rights.

The content of these public procurement notices is listed in Annex 4 of the PPL. It should be noted that the prior information notice is used only by the contracting authority, while the periodic indicative notice and the notice on the establishment of a qualification system are used only by the sectoral contracting authority.

## Public invitation

A public call is an announcement that contracting authorities (both public and sectoral) are obliged to publish in all public procurement procedures. Annex 4 of the labelling PPL prescribes the content of this announcement, especially for public, especially for sectoral contracting authorities. Contracting authorities shall not publish a public invitation only in a negotiated procedure without publishing a public invitation and in cases where this is otherwise regulated by the provisions of this Law.

The public call is published via the Portal, on a standard form whose content is prescribed by the Regulation on Determining the Content of Standard Forms for Publishing Public Procurement Notices via the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 93/20). Therefore, the Portal itself creates this ad, based on the data entered by the contracting authority when preparing the procedure.

## Prior information notice

The prior information notice is used only by the contracting authority. With this notice, the contracting authority can announce its intention to procure goods, services or works. Annex 4 of the PPL prescribes the content of the prior information notice. Publishing this notice is not an obligation, but an option for public contracting authorities. Also, the contracting authority may publish a prior information notice on the contracting authority's profile. However, in order for the contracting authority to publish a prior information notice on the contracting authority's profile, it must first send the notice to the Portal, and indicate on its profile the date of sending that notice for publication.

When publishing a prior information notice, the public contracting authority has the right to use a shortened deadline for submitting a bid, as follows: in an open procedure 15 days, in a restricted procedure 10 days and in a competitive procedure with negotiation 10 days.

The contracting authority may use the aforementioned shortened deadlines if certain conditions are met, i.e., if the prior information notice contains all the information necessary for the public invitation, to the extent that this information was available at the time of publication of the prior information notice and if at least 35 days and no more than 12 months have passed since the date of sending the prior information notice for publication, before the date of sending the public invitation for publication.

**Periodic indicative notice**

The periodic indicative notice is used only by the sectoral contracting authority. With this notice, the sectoral contracting authority can announce its intention to procure goods, services or works. Annex 4 of the PPL prescribes the content of the periodic indicative notice. The sectoral contracting authority may also publish a periodic indicative notice on its contracting authority profile. In order for a sectoral contracting authority to publish a periodic indicative notice on its contracting authority profile, it must first send the notice to the Portal, and indicate on its profile the date of sending that notice for publication.

Unlike a public contracting authority, a sectoral contracting authority may use a periodic indicative notice as a public call in a restricted procedure or a negotiated procedure with publication of a public call. In the event that a periodic indicative notice is used as a public invitation, it must:

* contain a description of the goods, services or works that will be the subject-matter of the contract to be awarded,
* contain a statement that the contract will be awarded by a restricted procedure or a negotiated procedure without additional publication of a public call and that interested economic operators are invited to express their interest,
* in addition to the information from Annex 4 relating to the notice on the publication of the periodic indicative notice, it must also contain information on the main activity of the sectoral contracting authority and
* that at least 35 days and no more than 12 months have elapsed from the date of sending for publication of the periodic indicative notice before the sectoral contracting authority sends the invitation to submit an application.

When a sectoral contracting authority uses a periodic indicative notice as a public call, economic operators shall express their interest in participating in the public procurement procedure to the sectoral contracting authority, in writing, within the deadline specified by the sectoral contracting authority in the periodic indicative notice. This deadline may not be shorter than 35 days from the date of sending the periodic indicative notice for publication. In this regard, the sectoral contracting authority simultaneously sends a written invitation to submit an application without additional publication of a public call only to those economic operators that have expressed their interest.

After the call for applications, the sectoral contracting authority applies the rules of the first phase of the restrictive procedure or the negotiated procedure with publication of a public call. Further, the sectoral contracting authority delivers a call for tenders or initial offers to candidates who have not been excluded from the public procurement procedure and applies the rules of the second phase of the restricted procedure or the negotiated procedure with publication of a public call.

A periodic indicative notice may last for a maximum of 12 months from the date of sending the notice for publication. Exceptionally, in the case of public procurement contracts for social and other specific services, the periodic indicative notice may cover a period longer than 12 months.

When publishing a periodic indicative notice, the sectoral contracting authority has the right to use a shortened deadline for submitting tenders, namely 15 days in an open procedure, provided that the periodic indicative notice, in addition to the information from Annex 4 relating to the notice of publication of the periodic indicative notice, also contains information on the sectoral contracting authority's main activity and that at least 35 days and no more than 12 months have elapsed since the date of sending the periodic indicative notice for publication, and before the date of sending the public invitation to publication.

**Notice of contract award, suspension of the procedure or**

**cancellation of the procedure, notice for voluntary prior transparency**

Annex 4 of the PPL and the content of this announcement specifically prescribes for public, and especially for sectoral, contracting authorities.

Regarding notification in the event of contract award, the Contracting Authority is obliged to send the contract award notice for publication within 30 days from the date of conclusion of the public procurement contract or framework agreement. Also, the contracting authority publishes a quarterly summary notice on the award of contracts concluded on the basis of a framework agreement and a dynamic purchasing system, within 30 days from the end of the quarter in which the contracts were concluded. In addition, it should be noted that, by way of exception to the above rule, the contracting authority does not have to publish certain data on the award of a public procurement contract or framework agreement if their publication would be contrary to the provisions of the PPL or would otherwise be contrary to the general interest, if it would harm the legitimate business interests of a particular economic operator or could lead to distortion of competition in the market.

Another situation is the publication of this notice in the event of suspension or cancellation of the public procurement procedure. In that case, the contracting authority is obliged to publish the information in the contract award notice form within 30 days from the date of finality of the decision to suspend or annul the public procurement procedure.

Finally, the contracting authority may publish a notice for voluntary prior transparency for procurements to which the provisions of the PPL do not apply, i.e., for procurements carried out on the basis of the provisions of Articles 11 - 21 of the PPL. Publishing a notice for voluntary prior transparency means that the contracting authority intends to make a procurement that was not carried out in accordance with the provisions of the PPL transparent. The publication of this notice also has an impact on the procedure for the protection of rights, i.e., on the deadlines for submitting requests for the protection of rights that challenge the legality of the contract award by applying the provisions of Articles 11 - 21 of the PPL, and the request will be considered timely if it is submitted within ten days from the date of publication of the notice for voluntary prior transparency, if the contracting authority has published the said notice.

**Contracting authority’s profile**

The ordering party can publish the profile on its website. Therefore, contracting authorities form a contracting authority profile as part of their website, in which they publish all data on public procurement, in accordance with the provisions of the PPL.

The contracting authority's profile publishes general data about the contracting authority, the public procurement plan, the prior information notice or periodic indicative notice, information on public procurement procedures, as well as other data related to public procurement.

1. Selection of participants and award of contracts

## Criteria for qualitative selection of the economic operator

The section of the PPL "Selection of participants and award of contracts" regulates the criteria for the qualitative selection of an economic operator and the criteria for awarding contracts. Therefore, the criteria on the basis of which the contracting authority will conduct an expert assessment of the submitted bids, and then the criteria on the basis of which it will award a public procurement contract to one of the bidders whose bid is assessed as acceptable.

We divide the criteria for qualitative selection of an economic operator into two groups:

* Grounds for exclusion, and
* Selection criteria for an economic operator.

The grounds for exclusion can also be divided into two groups. These are the grounds for exclusion that are mandatory and must be provided for by the contracting authority in every public procurement procedure and the grounds for exclusion that the contracting authority may provide for in the procurement documentation.

On the other hand, the criteria for selecting an economic operator are a possibility and contracting authorities can provide for them in the procurement documentation. These criteria may relate to:

* fulfilment of conditions for performing professional activity;
* financial and economic capacity;
* technical and professional capacity.

## Exclusion grounds

The first group of grounds for exclusion are mandatory grounds for exclusion, which the contracting authority is obliged to provide in the procurement documentation and to exclude the economic operator from the public procurement procedure if the economic operator does not prove the non-existence of any of these grounds, or if the contracting authority determines the existence of any of the individual grounds for exclusion.

1. The first ground for exclusion relates to criminal offenses. Therefore, the basis for excluding an economic operator exists if the economic operator does not prove that it and its legal representative have not been convicted by a final judgment in the period of five years preceding the expiry of the deadline for submitting bids or applications, unless a final judgment has determined another period of prohibition from participating in the public procurement procedure. This ground for exclusion lists the criminal offenses to which it applies.

So, those are:

* a criminal offence committed as a member of an organised criminal group and a criminal offence of association for the purpose of committing criminal offences;
* criminal offence of abuse of office of a responsible person, criminal offence of abuse in connection with public procurement, criminal offence of accepting bribes in performing economic activities, criminal offence of giving bribes in performing economic activities, criminal offence of abuse of official position, criminal offence of trading in influence, criminal offence bribing and the criminal offence of receiving bribe, the criminal offence of fraud, the criminal offence of unjustified obtaining and using credit and other benefits, the criminal offence of fraud in economic activities and the criminal offence of tax evasion, the criminal offence of terrorism, the criminal offence of public incitement to commit terrorist acts, the crime the act of recruiting and training for committing terrorist acts and the crime of terrorist association, the crime of money laundering, the crime of financing terrorism, the crime of trafficking in human beings and the crime of establishing slavery and transporting persons in slavery.

1. The second ground relates to the settlement of due taxes and contributions, and exists if the economic operator fails to prove that it has settled due taxes and contributions for mandatory social security or that it has been granted a deferral of debt payment, including all accrued interest and fines, by a binding agreement or resolution, in accordance with a special regulation.
2. The third ground relates to compliance with environmental protection regulations and labour regulations, and exists if the contracting authority determines that the economic operator, in the period of two years preceding the expiry of the deadline for submitting bids, i.e., applications, has violated obligations in the field of environmental protection, social and labour law, including collective agreements, and in particular the obligation to pay the agreed salary or other mandatory payments, including obligations in accordance with the provisions of international conventions listed in Annex 8 to this Law.
3. The fourth ground implies the existence of a conflict of interest, within the meaning of the PPL, which cannot be eliminated by other measures.
4. The fifth and final mandatory ground for exclusion exists if the contracting authority determines that the economic operator has attempted to exert undue influence on the decision-making process of the contracting authority or to obtain confidential information that could give it an advantage in the public procurement procedure or has submitted misleading information that could influence decisions regarding the exclusion of the economic operator, the selection of the economic operator or the award of the contract.

If the contracting authority determines that any of the above grounds exist, or if the economic operator fails to prove the non-existence of any of the above grounds, the contracting authority will exclude the economic operator from the public procurement procedure. Exceptionally, the contracting authority may waive the exclusion of an economic operator from the public procurement procedure even when there are grounds for exemption if, in a specific case, there are overriding reasons relating to the public interest, such as public health or environmental protection.

The second group of grounds for exclusion are the grounds for exclusion that the contracting authority can provide for in the procurement documentation. If the contracting authority provides for them in the procurement documentation, these bases become mandatory.

Among these grounds for exclusion, we distinguish 6 grounds.

1. The first ground exists in the event that the contracting authority determines that the economic operator is bankrupt, that it is unable to pay or is in liquidation proceedings, that its assets are being administered by a bankruptcy (liquidation) administrator or a court, that it is in an arrangement with creditors, that it has ceased to carry out business activities or is in any equivalent situation arising from a similar procedure under national laws and regulations.
2. The second ground refers to the determination that a legally binding judgment or decision of another competent authority has established the liability of the economic operator for a serious form of unprofessional conduct that calls into question its integrity, in the period of three years preceding the expiry of the deadline for submitting bids or applications, unless a legally binding judgment or decision of another competent authority has established another period of prohibition of participation in the public procurement procedure.
3. The third condition exists if the contracting authority determines that a decision of the competent competition protection authority has established that the economic operator has colluded with other economic operators with the aim of distorting competition, in the period of three years preceding the expiry of the deadline for submitting bids.
4. The fourth ground is when the contracting authority determines that there is a distortion of competition due to the prior participation of the economic operator in the preparation of the procurement procedure, in terms of the provisions prescribing the protection of the integrity of the procedure, which cannot be remedied by other measures.
5. The fifth ground provides for the exclusion of an economic operator from the public procurement procedure when the contracting authority determines that the economic operator, in the period of three years preceding the expiry of the deadline for submitting bids, has not fulfilled its obligations under previously concluded public procurement contracts or previously concluded concession contracts, the consequence of which was the termination of that contract, the collection of security deposits, compensation for damages or other.
6. Finally, the sixth ground for exclusion exists when the contracting authority determines that an economic operator in public procurement procedures in the period of three years preceding the expiry of the deadline for submission of bids submitted false data necessary for verifying the grounds for exclusion or the criteria for selecting an economic operator or that it was unable to provide evidence of compliance with the criteria for qualitative selection of an economic operator, if it used a statement of compliance with the criteria for qualitative selection of the entity as a means of proof.

The contracting authority may waive the exclusion of an economic operator in the event that it has established that the economic operator is bankrupt, that it is unable to pay or is being wound up, that its assets are being administered by a bankruptcy (liquidation) administrator or a court, that it is in an arrangement with creditors, that it has ceased to carry out business activities or that it is in any equivalent situation arising from a similar procedure under national laws and regulations. It may waive the exclusion if it determines that the economic operator will be capable of performing the public procurement contract, taking into account the regulations and measures for the continuation of business.

The bidder can "clear itself" of certain grounds for exclusion, the existence of which has been established by the contracting authority, i.e., for which there is evidence provided for by the PPL, i.e., it can prove its correctness despite the existence of some of the grounds. Namely, in these cases, the contracting authority will not reject the bid even though some of the grounds for exclusion exist.

Therefore, an economic operator that has grounds for exclusion related to criminal offenses, then violation of regulations in the field of environmental protection and social and labour law, and finally conflict of interest, can provide the contracting authority with evidence that it has taken measures to prove its reliability regardless of the existence of grounds for exclusion. In these cases, the economic operator proves that:

* to have paid or undertaken to pay compensation in respect of any damage caused by a criminal offence or unprofessional conduct and
* to have fully clarified the facts and circumstances by actively cooperating with the investigative bodies and
* to have taken specific technical, organisational and personnel measures that are appropriate to prevent the commission of criminal offences or unprofessional conduct.

If it accepts these measures and does not reject the bid, the contracting authority is obliged to explain the reasons for accepting or rejecting the measures. The contracting authority will not exclude an economic operator from the public procurement procedure if it has assessed that the measures taken are appropriate.

An economic operator that has been banned from participating in public procurement procedures or concession award procedures by a final judgment is exempted from the application of the above measures. Therefore, these entities do not have the right to use the aforementioned measures until the expiration of the ban.

## ECONOMIC OPERATOR SELECTION CRITERIA

The criteria for selecting an economic operator in a public procurement procedure can be compared with the additional conditions for participation in a public procurement procedure, provided for in the PPL/2015. These conditions apply to:

* fulfilment of conditions for performing professional activity;
* financial and economic capacity;
* technical and professional capacity.

When it deems it necessary for the successful implementation of a public procurement contract, the contracting authority will determine some or all of the above criteria for the selection of an economic operator. Therefore, on this occasion, the contracting authority must take into account the subject-matter of the public procurement.

Also, when determining the criteria for selecting an economic operator, the contracting authority may only require a level of capacity that ensures that the economic operator will be able to perform the public procurement contract, and the required criteria must be logically related to the subject-matter of the procurement and proportionate to the subject-matter of the procurement.

The contracting authority will determine the criteria in the public invitation, i.e., the required level of capacity and appropriate methods of proving them.

Therefore, the evidence and capacity of the criteria required cannot be disproportionate to the subject matter of the public procurement and the needs of the contracting authority for the implementation of a specific public procurement contract.

1. **Fulfilment of conditions for performing professional activity**

This condition implies that the economic operator is entered in the business register, court register, professional register or other appropriate register, if such register is kept in the country where the economic operator has its registered office.

Also, in addition to registration, this condition may include possession of a specific authorisation, i.e., a permit from the competent authority to perform the activity that is the subject-matter of public procurement, or membership in a specific organisation in order to be able to perform the activity in question. In such cases, the contracting authority may require the economic operator to prove possession of such a permit, authorisation or membership.

1. **Financial and economic capacity**

The criterion of financial and economic capacity which ensures that economic operators have the financial and economic capacity necessary for the execution of the public procurement contract.

Under this criterion, economic operators may be required to:

* have a certain minimum income, including a certain minimum income in the area that is included in the subject-matter of public procurement for a period of no more than the last three financial years, depending on the date of establishment of the business operator, i.e., the start of the activities of the business operator.
* have a certain asset-liability ratio or other financial indicator in relation to the financial statements of economic operators for a period of no more than the last three financial years;
* have an appropriate level of professional liability insurance

It should be particularly emphasized that the minimum revenue must not exceed twice the estimated value of the public procurement. Of course, the PPL also provides for an exception in cases where this is necessary due to special risks associated with the subject-matter of public procurement, which the contracting authority must explain in the procurement documentation.

Certainly, when determining criteria relating to the ratio of assets to liabilities or some other financial indicator, the contracting authority will specify transparent, objective and non-discriminatory methods and criteria for their assessment in the tender documentation. When the subject-matter of public procurement is divided into multiple lots, the conditions are determined proportionally to each individual lot.

1. **Technical and professional capacity**

In addition to the above criteria, the contracting authority may also specify conditions regarding technical and professional capacity. These conditions ensure that the economic operator has the necessary human and technical resources and experience required to perform the public procurement contract with an appropriate level of quality. In particular, it may be required that the economic operator has sufficient experience in terms of previously executed contracts.

In a situation where the contracting authority determines that an economic operator has conflicting interests, i.e., interests that may negatively affect the performance of the public procurement contract, it may consider that the economic operator does not have the necessary professional capacity. This can happen, for example, when an economic operator uses the professional capacities, it has to perform some other tasks, thus calling into question its ability to perform a public procurement contract. In a public procurement procedure whose subject is the supply of goods that includes installation or installation work, provision of services or performance of works, the professional capacity of an economic operator to perform the installation or installation work, provision of services or performance of works may be assessed in relation to its skills, efficiency, experience and reliability.

## Article 119 – Method of proving compliance with the criteria for qualitative selection of an economic operator

## Statement on fulfilment of criteria for qualitative selection of economic operator (SFC)

The criteria for the qualitative selection of an economic operator, and therefore the grounds for exclusion and the criteria for the selection of an economic operator, shall be proven by the economic operator with a statement on the fulfilment of the criteria for the qualitative selection of an economic operator (hereinafter referred to as: statement on the fulfilment of the criteria). The statement of compliance with the criteria is submitted via the Portal on a standard form, as part of the electronic offer.

By introducing a statement of compliance with the criteria as a means of proof, the bid submission phase has been simplified for both economic operators and contracting authorities. By requiring evidence only from bidders whose bid is assessed as the most favourable, the submission of unnecessary documentation in all public procurement procedures is avoided.

In addition to the absence of grounds for exclusion and the fulfilment of the required criteria for the selection of the economic operator, by means of a statement on the fulfilment of the criteria, the economic operator confirms that it also meets the criteria or rules determined for reducing the number of capable candidates as provided for in the provisions of the PPL, if applicable.

In a situation where the bid or application is submitted by a group of economic operators, the bid or application shall include a separate statement from each member of the group of economic operators, which shall refer to the relevant capacities of the group member.

In addition to submitting a bid by a group of economic operators, the PPL also regulates the situation when an economic operator intends to entrust part of the contract to a subcontractor or to use the capacities of other entities. In this case, the economic operator submits a separate declaration of compliance with the criteria for the subcontractor, for its relevant capacities, or the entity whose capacities it uses.

The economic operators shall state in the statement on the fulfilment of the criteria the issuers of evidence on the fulfilment of the criteria for qualitative selection of the economic operator and state that they will be able to submit that evidence to the Contracting Authority upon request and without delay.

The contracting authority should keep in mind that an economic operator may use a declaration of compliance with the criteria that it has already used in a previous public procurement procedure, if it confirms that the data contained therein are still correct.

Therefore, when economic operators submit a statement on the fulfilment of the criteria with their bid, the contracting authority will, before making a decision in the public procurement procedure, require the bidder that submitted the most economically advantageous bid to submit, within a reasonable period of time, no shorter than five working days, evidence of the fulfilment of the criteria for the qualitative selection of the economic operator, in uncertified copies.

There is an exception to this rule when it comes to a public procurement procedure whose estimated value is equal to or lower than 5,000,000 dinars. Then the ordering party is not obliged to act in the specified manner. However, the contracting authority may, regardless of the estimated value of the public procurement, request bidders and candidates to submit all or part of the evidence of compliance with the criteria for the qualitative selection of the economic operator in order to verify the data specified in the statement of compliance with the criteria, if this is necessary for the proper implementation of the procedure.

In addition, the contracting authority does not have to require bidders and candidates to submit evidence of compliance with the criteria for the qualitative selection of an economic operator when, based on the data provided in the declaration of compliance with the criteria, it can obtain evidence, i.e., inspect evidence of compliance with the criteria for the qualitative selection of an economic operator, or when it already possesses valid relevant evidence.

The contracting authority may invite bidders or candidates to supplement or clarify the evidence of compliance with the criteria for the qualitative selection of an economic operator, in accordance with the provisions of the PPL regulating additional explanations that will assist it in reviewing, evaluating and comparing tenders or applications.

After the contracting authority requests the bidder who submitted the most economically advantageous tender to submit uncertified copies of evidence of compliance with the criteria for qualitative selection, it is possible that the bidder does not submit the requested evidence within the given deadline or does not prove that it meets the criteria for qualitative selection of the economic operator with the submitted evidence. In that case, the contracting authority is obliged to reject the offer of that bidder and then has several options:

* to invite the next bidder who submitted the most favourable bid or
* to suspend the public procurement procedure, if there are reasons for suspension.

## Evidence on fulfilment of criteria for qualitative selection of economic operator

In the procurement documentation, the contracting authority is obliged to list certificates, documents, statements and other evidence by which the economic operator proves that it meets the criteria for the qualitative selection of the economic operator. If the contracting authority doubts the veracity of the data submitted by the economic operator, it may check the submitted data with the issuer of the evidence, the competent authority or a third party that has knowledge of the relevant facts. In addition, the contracting authority may require the bidder to submit the original or certified copies of all or some of the evidence for inspection.

Evidence for the absence of grounds for exclusion is provided for in the provisions of Article 121 of the PPL. The absence of grounds for exclusion related to criminal offenses is proven by confirmation from the competent court, or the competent police department. Furthermore, the economic operator shall prove that it has paid all due taxes and contributions by means of a certificate from the competent tax authority and the mandatory social insurance organisation or by means of a certificate from the competent authority that the bidder is in the privatisation process.

Regarding the criteria relating to bankruptcy, liquidation or other form of insolvency, the economic operator shall submit a certificate from the competent court or other competent authority.

In a situation where an economic operator is headquartered in another country, the contracting authority will accept as evidence that the stated grounds for exclusion do not exist an extract from the criminal record or other appropriate register or, if this is not possible, an appropriate document from the competent judicial or administrative authority in the country of the economic operator's headquarters, or the country of which the person is a citizen, as well as a confirmation from the competent authority in the country of the economic operator's headquarters.

In addition, it is possible that the country in which the economic operator is headquartered, or the country of which the person is a citizen, does not issue the aforementioned evidence or that the evidence does not include all the necessary information. In that case, the economic operator may, instead of evidence, submit its written statement made under criminal and material liability, certified before a judicial or administrative authority, notary public or other competent authority of that state, stating that the stated grounds for exclusion of the economic operator do not exist.

One of the criteria for selecting an economic operator is the ability to perform a professional activity, which is proven by an extract from a court, business, professional or other appropriate register kept in the country where the economic operator is headquartered. Also, this criterion is proven by a permit from a competent authority or a certificate of membership in a specific organisation, issued in the country where the economic operator is headquartered, if authorisation, membership or permit is required.

The second criterion for the selection of an economic operator is its financial and economic capacity. This criterion is proven by an appropriate bank statement or proof of relevant professional liability insurance; financial statements or extracts from financial statements, if publication of financial statements is mandatory; a statement of the economic operator's total revenue and, if necessary, a statement of revenue from goods, services or works to which the public procurement contract relates, in the last three available accounting and financial years, depending on the date of establishment or commencement of the economic operator's activities, if information on such revenue is available.

If, for justified reasons, the business entity is not able to provide the above-mentioned documents and evidence required by the contracting authority, it can prove its financial and economic capacity with any other document from the content of which the contracting authority can undoubtedly determine the fulfilment of the required financial and economic capacity.

Finally, the third criterion, technical and professional capacity, is proven by submitting one or more pieces of evidence. Evidence can be:

* a list of works carried out during a period of no more than five years before the deadline for submitting bids, i.e., an application with certificates of satisfactory performance and outcome of the most important works,
* a list of deliveries of relevant goods or services provided during the period of no more than three years before the deadline for submitting bids or applications, with amounts, dates and names of beneficiaries,
* **data on technical persons or bodies, regardless of whether the technical persons are employed or engaged in work in an economic operator, i.e., whether the bodies belong to the economic operator, especially in terms of responsibility for quality control, and in the case of public works procurement contracts in terms of performance of works;**
* a description of the technical means and measures used by the economic operator to ensure quality and the means for study and research at its disposal;
* educational and professional qualifications of service providers or contractors or their management staff, provided that these qualifications are not evaluated within the criteria for awarding the contract;
* data on supply chain management and monitoring systems that the economic operator will be able to use when executing the contract;
* a statement by the economic operator on acceptance of quality control to be carried out by the contracting authority or an authorised body in the country in which the economic operator is established, which will carry out control on behalf of the contracting authority, with regard to the production or technical capacities of the economic operator;
* 8) data on environmental protection management measures, which the business entity will be able to apply during the execution of the contract;
* statements about the average annual number of employees of service providers and contractors and the number of management staff in the last three years before the deadline for submitting bids, i.e., applications;
* 10) statement about the tools, operating or technical equipment available to the service provider or contractor for the performance of the contract;
* data on the part of the contract that the economic operator intends to subcontract if the relevant criterion for qualitative selection proves the use of subcontractor capacity;

In addition to the above evidence, and with regard to goods that are the subject-matter of public procurement, samples, descriptions or photographs may be required as evidence, the authenticity of which must be confirmed if requested by the contracting authority, as well as certificates from official institutions or quality control agencies whose competence is recognised, which confirm the compliance of the goods with clearly defined technical specifications or standards.

To prove the criteria for selecting an economic operator, contracting authorities can also use the online certificate database (e-Certis) and thus obtain information on the type and form of evidence and on the competent authorities that issue such data and evidence in the European Union member states.

## Quality Assurance Systems and Environmental Management Standards

With this criterion, the contracting authority requires that the economic operator possess certain standards, and the evidence is most often certificates or attestations issued by accredited bodies confirming the economic operator's compliance with certain quality assurance standards, including accessibility for people with disabilities. If the economic operator does not have access to certificates or cannot obtain them for objective reasons, the contracting authority will accept certificates based on the relevant European or international standards of accredited bodies. In this case, the contracting authority is obliged to recognize equivalent certificates from bodies established in European Union member states or bodies established in other countries, as well as other evidence of equivalent quality assurance measures if the economic operator cannot obtain the aforementioned certificates for objective reasons, in order to prove that these measures are in line with the required quality assurance standards.

If the contracting authority requires that an economic operator prove that it has a certain environmental management standard, it is obliged to refer to the Environmental Management and Audit System (EMAS) or other recognised environmental management systems. The contracting authority is obliged to recognize equivalent certificates from bodies established in European Union member states or certificates from bodies established in other countries.

## Register of Bidders in the Republic of Serbia

The Register of Bidders is maintained by the Business Registers Agency, which is obliged to enable business entities to be registered in the Register of Bidders in accordance with this Law. The register of bidders is available on the website of the Business Registers Agency.

Interested economic operators submit a request for entry in the register of bidders and documents proving the absence of grounds for exclusion related to criminal offenses and taxes and contributions.

The competent tax authority and the competent court, or the competent police department, are obliged to notify the Business Registers Agency thereof without delay, after determining changes or imposing a sanction or measure on a person registered in the register of bidders.

An economic operator that is entered in the register of bidders has no grounds for exclusion related to criminal offenses and taxes and contributions.

A bidder is deleted from the bidder register based on the bidder's request for deletion or ex officio if it ceases to meet any of the legally prescribed conditions.

## Using the capacities of other entities

A novelty in the PPL is the use of the capacity of other entities as a way of proving that the criteria for selecting economic operators have been met. Therefore, economic operators can prove the criteria for qualitative selection, which relate to financial and economic and technical and professional capacity, using the capacities of members of a group of economic operators or using the capacities of other entities.

In the public procurement procedure, an economic operator may, for the purpose of proving the criteria for qualitative selection relating to technical and professional capacity, use the capacities of other entities, regardless of the legal nature of their mutual relationship, in the manner prescribed by this Article. Therefore, it does not matter whether it is in a specific relationship with other entities, i.e., whether it submits a bid as a member of a group or a bid with a subcontractor.

All members of a group of economic operators in the group are jointly and severally liable for the performance of the public procurement contract.

If an economic operator uses the capacities of other entities, it must prove to the contracting authority that it will have the necessary resources at its disposal for the performance of the contract, by accepting the obligation of other entities to make those resources available to the economic operator.

In terms of proving the criteria for qualitative selection relating to educational and professional qualifications or relevant professional experience, an economic operator in a public procurement procedure may use the capacities of other entities, if those entities will, as subcontractors, perform the works or provide the services for which that capacity is required, and the economic operator is obliged to prove that those entities meet the relevant criteria for the selection of an economic operator and whether there are grounds for their exclusion. Therefore, if the contracting authority proves these criteria through a subcontractor, the subcontractor must also provide those services, i.e., perform the work with the capacities to which the criteria refer.

At the same time, the contracting authority may require that the bidder itself or a member of a group of bidders directly perform certain, essential tasks, when a public works contract, public service contract or public supply contract includes assembly or installation tasks.

## Subcontractor

In a public procurement procedure, the contracting authority may not require economic operators to entrust part of the public procurement contract to a subcontractor unless otherwise provided for by a special regulation or international agreement.

In a situation where an economic operator intends to entrust the performance of part of the contract to a subcontractor, it shall state in the offer which part of the contract it intends to entrust to the subcontractor, information about the subcontractors, and that the contracting authority will directly pay the subcontractor for the part of the contract that it has performed, if the subcontractor requests that its receivables be paid directly. This data is specified in the public procurement contract, if the economic operator has entrusted a part of the public procurement contract to a subcontractor.

If the subcontractor requests, the contracting authority is obliged to directly pay the subcontractor's due receivables for the part of the contract that he has performed. If there is no provision for immediate payment of due claims to the subcontractor for the part of the contract that he executed, the contracting authority/entity is obliged, after payment, to ask the business entity with which he concluded the contract to provide him with proof and a statement from the subcontractor that he has paid the subcontractor his claims within 60 days. This is a novelty in the PPL, precisely because of previous bad practice, which has shown that even if the contracting authority pays the person with whom it concluded the contract, that person still does not pay its subcontractors. This was often the reason for terminating the contract. In order to prevent this situation in the future, the Contracting Authority is obliged to submit to the Public Procurement Office a proposal for initiating a misdemeanour proceeding **within 30 days**, if the economic operator with which it concluded the contract does not submit proof and a statement from the subcontractor within 60 days that it has made payments to the subcontractor.

However, despite the participation of subcontractors in the implementation of the contract, the economic operator is fully responsible to the contracting authority for the performance of contractual obligations.

## Contract award criteria

In addition to the criteria for the qualitative selection of an economic operator, the PPL also provides criteria for the award of contracts. While the first type of criteria is applied to evaluate bids, contract award criteria are used to select the most economically advantageous bid. Therefore, in the public procurement procedure, the contracting authority awards the contract to the most economically advantageous tender, which it determines based on one of the following criteria: price or costs by applying a cost-effectiveness approach, such as life cycle cost or price-quality ratio, i.e., cost-quality.

The last criterion, which refers to the price-quality ratio, or cost-quality ratio, is assessed on the basis of criteria, including qualitative, environmental and/or social aspects, related to the subject matter of the public procurement contract. These criteria may include:

* quality, including technical features, aesthetic and functional features, availability, solution for all users, social, environmental and innovative features, trade and terms of trade;
* the organisation, qualifications and experience of the personnel entrusted with the performance of the contract, when the quality of the personnel can have a significant impact on the level of success of the performance of the contract, or
* after-sales service and technical assistance, delivery terms, such as delivery date, delivery process and delivery time or performance time.

**From 1 January 2024, contracting authorities are obliged to apply a contract award criterion in certain public procurement procedures that is not based solely on price, but on the price-quality ratio, i.e., cost-quality, as well as life cycle costs.** **These are certain services, where the quality-of-service provision primarily depends on the quality of the person who will be engaged to provide specific services.** **The following services are involved:**

* **computer programme development services,**
* **architectural services,**
* **engineering services,**
* **translation services, and**
* **advisory services.**

When the contracting authority determines that the price or cost element is determined as a predetermined price or cost, then the most economically advantageous tender is determined on the basis of quality criteria.

The contracting authority will determine the criteria for awarding the contract in the procurement documentation, where it describes and evaluates them. The criteria must not be discriminatory and must be related to the subject matter of the public procurement contract, and must also enable effective competition.

The contracting authority determines the criteria in a manner that will enable it to subsequently objectively check and evaluate the bids, as well as to verify the data submitted by the bidders. Contracting authorities will check the accuracy of the data and evidence submitted by bidders if they doubt their correctness or reliability.

For each contract award criterion, the contracting authority shall determine the relative importance in weightings in the procurement documentation and shall state the methodology for assigning weightings for each criterion. The contracting authority does not act in the specified manner when the criterion is only price. The contracting authority also specifies reserve criteria in the procurement documentation, which it will apply in a situation where there are two or more bids that are equal after applying the criteria. The contracting authority may evaluate bids only on the basis of the criteria contained in the procurement documentation.

Life cycle costs as one of the contract award criteria include parts or costs during the life cycle of goods, services or works. Life cycle is all consecutive and/or interrelated phases, including necessary research and development, production, trade and terms of trade, transport, use and maintenance during the life of goods or works or the provision of a service, from the acquisition of raw materials or generation of resources to disposal, disposal and end of service or use. Therefore, life cycle costs can refer to costs borne by the contracting authority or other users, e.g., purchase costs, usage costs, maintenance costs, end-of-life costs, such as collection and recycling costs; costs attributed to external environmental factors, etc.

In the case of using life cycle costing, the contracting authority will specify in the procurement documentation the data that bidders need to submit and the method that the contracting authority will use on the basis of that data to determine life cycle costs, which must be based on objectively verifiable and non-discriminatory criteria. It is also necessary that the method for determining life cycle costs is accessible to all interested parties and that the requested data can be provided by conscientious economic operators.

**Environmental aspects in public procurement procedures**

**The amendments to the Law, which have been in force since 1 January 2024, stipulate that contracting authorities will be obliged to apply environmental aspects when determining technical specifications, criteria for selecting an economic operator, criteria for awarding contracts or conditions for the performance of public procurement contracts for the procurement of certain goods, services and works.** **In this regard, the Office adopted the Rulebook on the types of goods for which contracting authorities are obliged to apply environmental aspects in public procurement procedures ("Official Gazette of the Republic of Serbia", No. 115/23).** **The aforementioned regulation determines the types of goods during the procurement of which contracting authorities are obliged to apply environmental aspects, as well as the mandatory share of procurement items with environmental aspects in public procurement procedures in relation to the total volume of public procurement items.**

**These are the following goods:**

* **photocopier paper;**
* **computer equipment (desktop computers, laptop computers and monitors);**
* **office electronic equipment (printers, scanners, multifunctional devices, etc.);**
* **air conditioners (standard air conditioners, inverter air conditioners for heating and cooling, etc.);**
* **cleaning products (hard surface cleaning products, textile cleaning products, etc.).**

**In accordance with the provisions of this Rulebook, the share of procurement items with environmental aspects in public procurement procedures in relation to the total volume of public procurement items must be at least 10%.** **So, if a customer purchases 300 products, at least 30 products must have environmental characteristics.**

## Offer in the public procurement procedure

According to the provisions of the PPL, the bid is submitted electronically via the Portal. There are exceptions to this rule provided for in the PPL.

A bidder may submit only one bid, which may be amended, supplemented or withdrawn within the bid submission deadline. Also, a bid may be submitted by a group of bidders as a joint bid. It is important to note here that the contracting authority cannot require a group of bidders to join together in a specific legal form in order to submit a joint bid. Exceptionally, the contracting authority has this option only if it is necessary for the implementation of the contract.

Like the PPL/2015, the provisions of this PPL stipulate that a bidder who has submitted a bid independently cannot simultaneously participate in a joint bid or as a subcontractor, nor can the same person participate in multiple joint bids. If any of the above cases occur, the ordering party is obliged to reject such offers.

In addition to the bids mentioned above, there are also bids with variants, the submission of which the contracting authority may allow or require, by stating them in the public invitation. Variants must be related to the subject matter of the contract.

During the public procurement procedure, the contracting authority assesses whether the tenders with variants meet the minimum requirements set out in the procurement documentation and applies to them the contract award criteria also set out in the procurement documentation. Also, when a tender with variants requested by the contracting authority has led to the conclusion of a public procurement contract for services instead of goods or a public procurement contract for goods instead of services, the contracting authority may not reject such a tender with variants.

During the preparation of the procurement documentation, the contracting authority determines the validity period of the offer. This deadline cannot be shorter than 30 days from the date of opening of bids. If the bid validity period expires, the contracting authority is obliged to request in writing from the bidder an extension of the bid validity period. If the bidder accepts the request to extend the bid validity period, he cannot change the bid.

As for the costs of preparing and submitting a bid, they are borne exclusively by the bidder and cannot request reimbursement of costs from the contracting authority, unless the public procurement procedure is suspended for reasons attributable to the contracting authority. In that case, the contracting authority will reimburse the bidder for the costs of producing the sample or model, if they are produced in accordance with the contracting authority's technical specifications, and the costs of obtaining security. Of course, in order for the contracting authority to have an obligation to reimburse costs, it is necessary for the bidder to request reimbursement of the listed costs in its bid.

The receipt and opening of bids is carried out on the Portal. The bidder receives confirmation of receipt of the bid with an indication of the date and time of receipt, also via the Portal. Parts of the offer that cannot be submitted electronically will be sent by post, courier service, etc., and the ordering party is obliged to mark the time of receipt on the envelope or box in which they are located upon receipt. If these parts of the bid were submitted untimely, the contracting authority will, upon completion of the opening procedure, return the unopened parts of the bid to the bidder, with a note that they were submitted untimely.

It is prohibited to provide information about received bids until the bids are opened, and the contracting authority is obliged to store the bids in such a way that they do not come into the possession of unauthorised persons.

Bids are opened on the Portal immediately after the deadline for submitting bids, i.e., on the same day. The opening of bids is public, which means that participants in the public procurement procedure, as well as all interested parties, can follow the opening of bids on computers or at the premises of the contracting authority. The public may be excluded from the bid opening procedure only exceptionally, if necessary to protect data that constitutes a business secret or confidential data within the meaning of the law governing the confidentiality of data, as well as in the case of conducting an electronic auction.

## Contract award

**Review and expert evaluation of bids and applications**

After opening the bids, i.e., applications, the contracting authority will conduct a review and expert evaluation of the bids. The contracting authority will rank the bids that are assessed as acceptable based on the conditions and requirements from the procurement documentation. Based on all of the above, the contracting authority will prepare a report on the public procurement procedure, on the basis of which a decision will be made in a specific public procurement procedure.

During the expert evaluation of bids, the contracting authority may request additional explanations that will assist it in reviewing, evaluating and comparing bids or applications. The contracting authority may also carry out control or inspection of the bidder, or its subcontractor. In addition, the contracting authority may require the bidder to submit necessary information or additional documentation if the data or documentation submitted by the bidder or candidate is incomplete or unclear. In doing so, the contracting authority must of course respect the principles of equality and transparency. The deadline for submitting additional information or documentation cannot be shorter than five days. Also, the contracting authority must ensure that this procedure does not lead to changes in the elements of the tender that are important for the application of the contract award criteria or to changes in the offered subject-matter of procurement.

In a situation where the bid contains a calculation error, the contracting authority is obliged to request the bidder to accept the correction of the calculation error, and the bidder is obliged to submit a response within five days from the date of receipt of the request. If the bidder does not agree to correct the calculation error, the contracting authority will reject its bid. In the event of a difference between the unit price and the total price, the unit price shall prevail.

When evaluating bids, the issue of unusually low bids is particularly important. In the sense of the PPL, it is a bid that contains a price or cost that significantly deviates from the market price and raises doubts about the possibility of carrying out public procurement in accordance with the requirements of the contracting authority set out in the procurement documentation. In the event that the contracting authority assesses that the bid is unusually low, it will require the bidder to explain, within a reasonable period of time, the price or cost stated in the bid, so that this explanation relates to the cost-effectiveness of the production process, services provided or construction method; the chosen technical solutions or exceptionally favourable conditions that the bidder has for the delivery of goods, provision of services or performance of works; the originality of the goods, services or works offered by the bidder; the engagement of subcontractors; the possibility for the bidder to receive state aid, etc.

After receiving this explanation, the contracting authority may reject the bid only if the submitted explanation and evidence do not provide an adequate explanation for the unusually low bid.

**Contract award criteria**

After the review and expert assessment, the contracting authority will reject the bid, or application as unacceptable, if it determines that there are grounds for excluding the economic operator; if the criteria for selecting the economic operator are not met; the requirements and conditions related to the subject-matter of the procurement are not met and the bid is not in accordance with the technical specifications; a security for the seriousness of the bid has not been submitted in accordance with the procurement documentation; there is valid evidence of infringement of competition or corruption; or if other shortcomings are found that make it impossible to determine the actual content of the bid or to compare it with other bids.

Also, the contracting authority may reject as unacceptable a bid that exceeds the estimated value of the subject-matter of public procurement or available funds. The PPL/2015 prescribed the conditions for the application of this option, while this PPL leaves it to the contracting authority to decide whether or not to reject an unacceptable bid that exceeds the estimated value of the public procurement. A bid that is determined to be abnormally low may also be rejected.

The provisions of the PPL that prescribe the conduct of the contracting authority in relation to the review and evaluation of bids and the decision-making process in the public procurement procedure also apply to applications.

After the review of the bids, all bids that have not been rejected are evaluated and ranked according to the contract award criteria specified in the procurement documentation. If there are two or more bids that are equal when applying the contract award criteria, the contracting authority will award the contract in accordance with the reserve criteria. If, even after applying the reserve criteria, there are two or more bids that are equally ranked, the contracting authority will award the contract to the bidder drawn by lot. So, it is clear here that the draw is not a reserve criterion, but a method of selecting between bids that are the same, i.e., equally ranked, both after applying the criteria and after applying the reserve criteria.

After conducting an expert assessment of the bids or applications, the Public Procurement Commission prepares a report on the public procurement procedure. The report contains the data prescribed by Article 145 of the PPL, as follows:

* the subject-matter of public procurement, the estimated value of public procurement in total and separately for each lot;
* the value of the contract, framework agreement or dynamic purchasing system;
* basic information about bidders or candidates;
* the name of the selected bidder or candidate, the reasons why its bid was selected or the application was accepted, the part of the contract or framework agreement that will be performed by the subcontractor and the names of the subcontractors, if any;
* the results of the evaluation of the bids and the fulfilment of the criteria for the qualitative selection of the economic operator and, if applicable, the criteria or rules for reducing the number of candidates, bids and solutions, as follows:
* the names of the selected candidates or bidders and the reasons for their selection;
* the names of rejected/excluded candidates or bidders, the reasons for the rejection of their applications or tenders and the offered price of those tenders;
* reasons for rejecting a bid found to be abnormally low;
* method of ranking bids;
* circumstances justifying the application of a negotiated procedure without publication of a public call;
* circumstances justifying the application of a competitive procedure with negotiation and a competitive dialogue conducted by the contracting authority;
* the reasons why the contracting authority decided to suspend the public procurement procedure;
* reasons why electronic means of submitting bids were not used;
* the conflict of interest that has been identified and the measures taken in this regard, where applicable;
* Explanation of the reasons why the subject-matter of public procurement was not divided into lots.

Based on the report on the public procurement procedure, the contracting authority shall make a decision on the award of the contract within 30 days of the expiry of the deadline for submitting bids, unless the contracting authority has specified a longer deadline in the tender documentation. The contracting authority may award a contract if the conditions for this have been met, and may also award a contract to a bidder whose bid contains a bid price higher than the estimated value of the public procurement.

The contract award decision shall contain, in particular, data from the report on the public procurement procedure, must be reasoned and include instructions on legal remedies. The contracting authority is obliged to publish the decision on awarding the contract on the Portal within three days from the date of its adoption.

In addition to awarding a contract, the contracting authority may also terminate the public procurement procedure by deciding to suspend the procedure. Of course, the reasons for this situation are also prescribed in Article 147 of the PPL, when:

* 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 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.
* no offer or application has been submitted;
* no candidate meets the criteria for the qualitative selection of an economic operator;
* in public procurement whose estimated value is less than the amount of the European thresholds, in all bids the offered price is equal to or higher than the amount of the European thresholds;
* did not receive a predetermined number of candidates or offers for the conclusion of a framework agreement, except in the case provided for by the provisions of the PPL;
* after reviewing and expertly evaluating the bids, determine that all bids are unacceptable.

In the case of suspension of the procedure before the deadline for submitting bids, the Public Procurement Portal permanently disables access to bids or applications, and the ordering party returns unopened bids, applications and other documents that were not submitted through the Public Procurement Portal to bidders.

The decision to suspend the public procurement procedure must also contain, in particular, data from the report on the public procurement procedure, i.e., the reasons for suspending the procedure, must be explained and contain instructions on legal remedies. **The decision to suspend the procedure must be made within 30 days of the expiry of the deadline for submitting bids, unless the contracting authority has specified a longer deadline in the tender documentation.** Also, the decision to suspend the procedure must be published on the Public Procurement Portal within three days of its adoption.

In addition to the decision on awarding a contract and the decision on suspending the procedure, the provisions of the PPL also prescribe the conditions, method of adoption and content of the decision on excluding a candidate. This decision is made in a restrictive procedure, competitive procedure with negotiation, competitive dialogue, negotiated procedure with publication of a public call and innovation partnership. The decision is made according to predefined criteria for the qualitative selection of an economic operator. When making this decision, the contracting authority also applies criteria or rules for reducing the number of candidates in these procedures. The contracting authority shall make a decision on the exclusion of candidates for each individual participant who will not be invited to submit a tender or conduct a dialogue. Like other decisions, the decision to exclude a candidate must be reasoned and contain, in particular, the reasons for failure to meet the criteria for the qualitative selection of the economic operator or the criteria or rules for reducing the number of candidates, if applicable, as well as instructions on legal remedies. The deadline for making this decision is 30 days from the expiration of the deadline for submitting applications, and the contracting authority may specify a longer deadline in the procurement documentation.

An economic operator that has submitted a bid or application in a public procurement procedure has the right, after the publication of the decision on the award of the contract, the decision on the conclusion of a framework agreement, or the decision on the suspension of the procedure, to request from the contracting authority to allow it to inspect the documentation and copy the documentation from the procedure, or to take over the documentation in an appropriate manner. The ordering party is obliged to act in accordance with this request within two days of receiving the written request.

**Public procurement contract and framework agreement**

The public procurement contract, that is, the framework agreement, is concluded in writing with the bidder to whom the contract, that is, the framework agreement, was awarded. A public procurement contract can also be concluded in electronic form. The contracting authority/entity is obliged to deliver the contract on public procurement, that is, the framework agreement to the bidder within ten days from the expiration of the deadline for submitting a request for the protection of rights.

A public procurement contract, or framework agreement, may be concluded after the decision on awarding the contract, or the decision on concluding the framework agreement, has been made. The condition for concluding a public procurement contract, or framework agreement, is that a request for protection of rights has not been submitted within the legally prescribed period or that the request for protection of rights has been rejected or refused by a final decision. A public procurement contract, or framework agreement, may be concluded even if the rights protection procedure has been suspended.

Of course, the PPL also provides for an exception here, when the Contracting Authority can conclude a public procurement contract even before the expiration of the deadline for submitting a request for protection of rights. So, these are the following situations in which a public procurement contract is concluded on the basis of a framework agreement. Then, when the contract is concluded in the case of applying a dynamic purchasing system. Furthermore, a public procurement contract may be concluded before the expiry of the deadline for submitting a request for protection of rights if only one bid has been submitted, which is acceptable. Finally, in the case of the application of the negotiated procedure without prior publication of a public call referred to in Article 61, paragraph 1, item 2) of this PPL, the public procurement contract may be concluded before the expiry of the deadline for submitting a request for protection of rights.

The public procurement contract will be concluded when the specified conditions are met. However, a situation is possible in which the bidder refuses to conclude the public procurement contract, i.e., the framework agreement. The contracting authority can then conclude a contract, or framework agreement, with the next most favourable bidder. **In this case, the contracting authority will make a new decision on the award of the contract, i.e., the conclusion of a framework agreement.**

The public procurement contract, that is, the framework agreement, must be concluded in accordance with the conditions specified in the procurement documentation and the selected offer. The contract based on the framework agreement is concluded in writing, and the purchase order can have the same legal effect, if it contains all the essential elements of the contract.

**Data on contracts**

**Starting from January 1, 2024, contracting authorities are obliged to publish data on the Public Procurement Portal about:**

* **all contracts concluded after the public procurement procedure has been carried out,**
* **all amendments to the contract pursuant to Articles 156–161 of the** **PPL,**
* **contracts/purchase orders concluded or issued in accordance with Article 27 of the** **PPL and their amendments.**

**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**  **are PPL shall be published within the period prescribed by Article 109, paragraphs 1 and 2 of the** **PPL, while data on contract amendments are provided pursuant to Articles 156, 159, 160 and 161 of the** **PPL, as well as data on contracts/orders concluded or issued in accordance with Article 27 of the** **PPL shall be published within the deadline prescribed by Article 155, paragraph 2 of the** **PPL.**

**On the Public Procurement Portal, the contracting authority publishes the following information about contracts/framework agreements/purchase orders:**

**1) data on the subject-matter of procurement:**

**(1) public procurement reference number on the Public Procurement Portal;**

**(2) subject-matter of public procurement and designation from the unified system of classification of public procurement subject-matter (CPV designation);**

**(3) type of public procurement subject;**

**(4) data on the contracting authority;**

**(5) the type of public procurement procedure, i.e., the legal basis referred to in Article 27 of the** **PPL;**

**2) basic information about the contract/framework agreement/purchase order:**

**(1) information on whether the contract/framework agreement/purchase order is published;**

**(2) date of conclusion;**

**(3) registry number of the contracting authority;**

**(4) information on whether a contract/framework agreement/purchase order is being concluded for several lots;**

**(5) information on whether the bidder hires subcontractors;**

**3) data on the economic operator:**

**(1) name;**

**(2) seat and country;**

**(3) tax identification number;**

**(4) identification/registration number:**

**(5) designation from the nomenclature of statistical territorial units (NSTJ designation);**

**(6) information on whether the bidder is a micro, small, medium or large enterprise;**

**4) data on subcontractors, if the bidder hires subcontractors:**

**(1) the part of the contract/framework agreement/purchase order entrusted to the subcontractor (by subject or quantity, value with and without VAT or percentage);**

**(2) information on whether the customer will directly pay the subcontractor for the part of the contract/framework agreement/order that the subcontractor executed;**

**5) party information:**

**(1) registry number of the contract/framework agreement/purchase order for each lot;**

**(2) value of the contract/framework agreement/purchase order excluding VAT;**

**(3) the value of the contract/framework agreement/purchase order including VAT;**

**(4) currency;**

**(5) duration of the contract/framework agreement/purchase order;**

**6) value and duration of the contract/framework agreement/purchase order:**

**(1) total value excluding VAT;**

**(2) total value, including VAT;**

**(3) currency;**

**(4) duration of the contract/framework agreement/purchase order;**

**7) data on the termination of validity of the contract/framework agreement/purchase order:**

**(1) information on whether it was executed, terminated, annulled or unilaterally cancelled;**

**(2) the expiry date of the contract/framework agreement/purchase order;**

**(3) the value of the contract/framework agreement/purchase order.**

**The contracting authority shall publish information on the termination of the contract no later than 45 days from the termination of the contract/framework agreement/purchase order.**

**On the Public Procurement Portal, the contracting authority submits the following information about changes to the contract/framework agreement/purchase order:**

**1) registry number of the change at the contracting authority;**

**2) date of change;**

**3) the legal basis for the amendment by applying the provisions of the PPL, or a description of the amendment in the case of application of Article 27 of the** **PPL;**

**4) value of the change excluding VAT;**

**5) value of the change including VAT;**

**6) value after modification excluding VAT;**

**7) value after adjustment for VAT;**

**8) duration of the contract/framework agreement/purchase order after amendment;**

**data on the new contracting party in case of change based on Article 159 of the** **PPL;**

**data on the new subcontractor in case of change based on Article 161, paragraph 1, items** **1) and 2) of the PPL and data on taking over the performance of a part of the contract from a subcontractor in the case of a contract based on Article 161, paragraph 1, item 3) of the PPL;**

**11) description and nature of the change;**

**description of the circumstances due to which the change was necessary in case of application of Art. 157 and 158 of the** **PPL.**

**Based on all the above data, a database of contracts, framework agreements and purchase orders and amendments to contracts, framework agreements and purchase orders is created on the Public Procurement Portal.**

**If the contracting authority is obliged to publish a contract award notice or a contract modification notice, the data in the database on that contract and that modification will be publicly available on the date of publication of the contract award notice referred to in Article 109 of the** **PPL and notifications of contract amendments referred to in Article 155 of the** **PPL.**

**If the contracting authority is not obliged to publish a contract award notice and a contract amendment notice, the data on that contract and that contract amendment will be publicly available in the database on the date of publication.**

**In the case of centralised public procurement, the data on the concluded framework agreement and changes are published by the body for centralised public procurement, and data on each contract concluded on the basis of the framework agreement is recorded by the contracting authorities who conclude the contracts.**

**The authority for centralised public procurement publishes a summary notice on the award of contracts concluded on the basis of a framework agreement and a notice on amendments to the framework agreement in the manner prescribed by the provisions of the Law.**

**In order to implement this legal provision, the Office adopted the Regulation on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal ("Official Gazette of the Republic of Serbia", No. 115/23).**

1. Execution of the contract

## Execution and amendments of public procurement contracts

A public procurement contract must be concluded in accordance with the conditions specified in the procurement documentation and the selected bid, and must be performed in accordance with the conditions specified in the procurement documentation and the selected bid. The execution of the public procurement contract in accordance with the above is obliged to be controlled by the contracting authority.

Namely, the contracting authority cannot make significant changes to the public procurement contract. For a contract amendment to be considered substantial, it must result in a material change in the character of the contract compared to the contract originally concluded, i.e., if it would significantly change the nature of the contract originally concluded. For a contract to be considered a material modification, one or more of the following conditions must be met:

* the amendment introduces conditions that, if they had been part of the original public procurement procedure, would have enabled the inclusion of other candidates in relation to those who were originally selected or the acceptance of a different offer in relation to the initially accepted one or would have enabled greater competition in the preceding public procurement procedure conclusion of the contract;
* the amendment changes the economic balance of the contract in favour of the economic operator with which the contract was concluded in a manner not provided for in the original contract;
* the amendment significantly increases the scope of the contract;
* change of the economic operator with which the public procurement contract was concluded, except in cases permitted by the PPL.

**As a basic rule, the provisions of the Law stipulate that contracted surplus works do not constitute an amendment to the public procurement contract.** **Therefore, in the event of surplus work that was contracted, the contracting authority is not obliged to change the public procurement contract.**

Supervision of the execution of public procurement contracts is carried out by the Ministry responsible for finance.

**“The Ministry in charge of financial affairs regulates the manner of supervision and supervises the execution of public procurement contracts.”**

Provisions of Articles 156 - 161 of the PPL prescribes situations in which the contracting authority may amend the contract without conducting a public procurement procedure. This, of course, concerns contract amendments during the term of the public procurement contract.

First of all, a public procurement contract can be amended based on the contractual provisions, regardless of the value of the amendment. The condition for amending the contract is that the contracting authority has clearly, precisely and unambiguously foreseen these amendments in the procurement documentation and the public procurement contract, while it is necessary to specify the scope and nature of any amendments in the public procurement contract. In any case, the contractual provisions cannot be subject to changes that would change the nature of the contract. Adjusting the price according to the agreed criteria is not considered a change in price, and in that case, there is no change to the contract within the meaning of the PPL.

In the event of the need to procure additional goods, services or works, the public procurement contract may also be amended. First of all, in this case, the condition is that the goods, services or works have become necessary and that without them the public procurement contract cannot be implemented. It is also a condition that the additional goods, services or works were not included in the original public procurement contract. The essence of these provisions is that another economic operator could not be engaged for the procurement of additional goods, services or works because this would not be possible primarily due to economic or technical reasons, and on the other hand, it could cause significant difficulties or a significant increase in costs for the contracting authority.

Therefore, the amendment of the contract in the above situations is limited in such a way that the increase in the value of the contract cannot exceed 50% of the value of the original contract and cannot have the aim of avoiding the application of this law. The stated value limit applies to the total value of all amendments, if the contract is amended multiple times.

A public procurement contract may also be amended due to unforeseen circumstances, provided that the need for amendment arose due to circumstances that a diligent contracting authority could not have foreseen and that the amendment does not change the nature of the contract.

As in the previous case, and due to a change in the contract due to unforeseen circumstances, the increase in the value of the contract cannot be greater than 50% of the value of the original contract and cannot have the aim of avoiding the application of this law. The stated value limit applies to the total value of all amendments, if the contract is amended multiple times.

A public procurement contract, which was concluded following a public procurement procedure conducted in accordance with the provisions of the PPL/2015, after 1 July 2020, shall be amended in accordance with the contractual provisions and the provisions of this PPL.

In the event of a change to the contract referred to in Articles 157 and 158 of the PPL, the contracting authority is obliged to send a notice of contract amendment for publication on the Public Procurement Portal within ten days from the date of contract amendment. Therefore, after 1 July 2020, the contracting authority is obliged to publish a notice of contract modification only if the modification is made with respect to additional goods, services or works, in the manner prescribed by Article 157 of the PPL and in the event of changes made due to unforeseen circumstances, in the manner prescribed by Article 158 of the PPL. In the event of a contract amendment carried out pursuant to the provisions of Articles 156, 159, 160 and 161 of the PPL, the contracting authority does not publish a notice of contract amendment on the Public Procurement Portal.

Publication of a notice of amendment to the contract referred to in Article 155 of the PPL and for public procurement contracts concluded after a public procurement procedure conducted in accordance with the provisions of the PPL/2015, is enabled on the Public Procurement Portal, whose operation is aligned with the provisions of the PPL.

In addition to the listed reasons for amending a public procurement contract, the contract may also be amended to change the contracting party. Therefore, a public procurement contract can be amended in order to change the economic operator with which the contracting authority concluded the original public procurement contract. This occurs in the case of general or partial legal succession of that economic operator, following corporate restructuring, including takeover, merger, acquisition and insolvency, by another economic operator that meets the originally determined criteria for the qualitative selection of the economic operator, provided that this does not result in a material change to the contract and is not intended to avoid the application of this law.

The public procurement contract may be amended in such a way as to increase the scope of the procurement.

It is necessary that the following conditions are met for the contract to be amended in this regard:

* the value of the change must be less than 10% of the original value of the contract on public procurement of goods or services, or less than 15% of the original value of the contract on public procurement of works and
* the value of the change must be less than 15,000,000 dinars in the case of a public procurement contract for goods or services, or less than 50,000,000 dinars in the case of a public procurement contract.

The stated limitation applies to the total value of all amendments, if the contract is amended multiple times. Amendments to the contract cannot change the overall nature of the contract, i.e., the subject matter of public procurement.

The contracting authority may amend the public procurement contract in the event that the economic operator with which the contract was concluded, during the performance of the public procurement contract, requests the contracting authority:

* changing the subcontractor for that part of the public procurement contract that was originally entrusted to the subcontractor;
* the introduction of one or more new subcontractors, whose total share may not exceed 30% of the value of the public procurement contract without value added tax, regardless of whether a part of the public procurement contract was initially entrusted to the subcontractor or not,
* to take over the execution of the part of the public procurement contract that it had originally entrusted to the subcontractor.

It is necessary for the economic operator with which the contract was concluded to provide the contracting authority with evidence that there are no grounds for exclusion for the new subcontractor.

The PPL also provides for restrictions on contract amendments in this regard, when the economic operator with which the contract was concluded in the public procurement procedure, in order to prove the fulfilment of the criteria for the qualitative selection of the economic operator, used the capacities of the subcontractor that it is now replacing, and the new subcontractor does not meet the same conditions or there are grounds for exclusion. Also, in a situation where the economic operator with which the contract was concluded in the public procurement procedure, in order to prove the fulfilment of the criteria for the qualitative selection of the economic operator, used the capacities of a subcontractor to perform that part of the contract, and the economic operator does not independently possess those capacities, the contracting authority cannot allow the amendment of the contract.

At the end of the chapter on contracts, it is necessary to state the situations in which the contracting authority terminates the public procurement contract. Therefore, this is a situation when circumstances arise that would result in a significant change to the contract, which would require the implementation of a new public procurement procedure, as well as a situation when an economic operator with which a public procurement contract was concluded in a public procurement procedure should have been excluded from the procedure due to the existence of grounds for the exclusion of an economic operator. In addition, the reason for terminating the contract is also a situation where, due to a serious breach of obligations under the Treaty on the Functioning of the European Union, Directive 2014/24/EU and Directive 2014/25/EU, which has been established by a judgment of the Court of Justice of the European Union, in accordance with Article 258. of the Treaty on the Functioning of the European Union, the contract should not have been awarded.

1. Public procurement in the field of defence and security

Directive 2009/81/EC regulates public procurement in the field of defence and security, and the regulations relating to public procurement in the field of defence and security have been aligned with this directive. 93/20) adopted by the Government of the Republic of Serbia, which regulates the types of public procurement procedures, the conditions and manner of their implementation, as well as communication in the public procurement procedure.

The provisions of the PPL define the subject matter of public procurement in the field of defence and security, as follows:

* military equipment, including any component, component or assembly thereof;
* safety-sensitive equipment, including any part, component or assembly thereof;
* goods, services or works directly related to the equipment referred to in this paragraph during any period or throughout its life;
* services and works exclusively for military purposes;
* security-sensitive works and security-sensitive services.

Also, according to the provisions of the PPL, military equipment is defined as equipment that is specially manufactured or adapted for military purposes and intended for use as weapons, ammunition or military material. This includes, in particular, military equipment from Annex 2.I of the PPL. In addition, security-sensitive equipment, services and works, according to the provisions of the PPL, are goods, services and works for security purposes, which include, require and/or contain secret data.

1. Sectoral activities

## Gas and thermal energy

One of the sectoral activities is activities in the field of gas and thermal energy. This activity involves the provision or management of fixed networks for the purpose of providing services to the public in connection with the production, transport or distribution of gas or heat and the supply of these networks with gas or heat.

This activity, when provided by a sectoral contracting authority, shall not be considered a sectoral activity within the meaning of the PPL if the production of gas or heat by that contracting authority is a necessary consequence of carrying out an activity that is not one of any of the sectoral activities from the PPL and provided that the sole purpose of supplying the public network is the economic exploitation of that production and amounts to no more than 20% of the revenue of that contracting authority, based on the average for the previous three years, including the current year.

## Electricity

Sectoral activities in the field of electricity include the provision or management of fixed networks for the purpose of providing services to the public in connection with the production, transmission or distribution of electricity and the supply of electricity to those networks.

This activity, when provided by a sectoral contracting authority, shall not be considered a sectoral activity within the meaning of the PPL if the production of electricity by that contracting authority is carried out because the consumption of electricity is necessary for the performance of an activity that is not one of any of the sectoral activities from the PPL and provided that the supply of the public network depends only on that contracting authority's own consumption and does not exceed 30% of that contracting authority's total energy production, based on the average for the previous three years, including the current year.

**Water management**

Activities in the field of water management are the provision or management of fixed networks for the purpose of providing services to the public related to the production, transport or distribution of drinking water and the supply of those networks with drinking water.

At the same time, the provisions of the PPL relating to sectoral contracting authorities shall apply to contracts or design contests awarded or organised by contracting authorities carrying out any of the above water management activities and which are related to any of the following activities:

* hydraulic engineering projects, irrigation or land drainage, provided that the quantity of water intended for drinking water supply represents more than 20% of the total quantity of water obtained from those projects or irrigation or drainage installations;
* disposal or processing of wastewater.

The supply of drinking water to fixed networks intended for the provision of services to the public by a sectoral contracting authority carrying out water management activities is not always considered a sectoral activity. Therefore, it is not a sectoral activity if the production of drinking water by that contracting authority is carried out because the consumption of drinking water is necessary for it to carry out an activity that is not one of the water management activities or other sectoral activities. The second condition is that the supply to the public network depends only on the customer's own consumption and does not exceed 30% of the customer's total drinking water production, based on the average for the previous three years, including the current year.

## Transportation services

The sectoral activities in the field of transport include activities related to the provision and management of networks intended to provide services to the public in the field of transport by rail, automated systems, tram, trolleybus, bus or cable car.

A network in the field of transport exists in cases where the service is provided under operating conditions determined by the competent authority, such as conditions on the required lines, the capacity to be provided or the frequency of the service.

## Ports and airports

Port and airport activities, according to the provisions of the PPL, are activities related to the exploitation of a geographical area in order to provide airports, river ports or other terminal facilities to carriers in air or river transport.

## Postal services

Postal services also fall under the sectoral activity, and according to the provisions of the PPL, they refer to the provision of postal services and services other than postal services, provided that they are provided by a person who also provides postal services and that the conditions under which that activity is directly exposed to competition on the market are not met.

The provisions of the PPL prescribe some terms, and thus a postal item is defined as a shipment addressed in the final form in which it is to be delivered, including letter-post items, books, catalogues, newspapers, magazines and postal packages containing goods that have or do not have commercial value, regardless of weight. Furthermore, it is stipulated that postal services are services that include the receipt, sorting, forwarding and delivery of postal items, which include universal postal services and services that do not fall within the scope of the universal postal service. In addition to the above, the concept of services other than postal services is also defined, namely services provided in the areas of postal service management (pre- and post-dispatch services, including mail processing management services) and other services related to postal items, such as direct mail without an address.

## Oil and gas extraction and exploration or extraction of coal or other solid fuels

The sectoral activity of oil and gas extraction and exploration or extraction of coal or other solid fuels includes activities related to the exploration of a geographical area for the purpose of extracting oil or gas and the exploration or extraction of coal or other solid fuels. The term supply in terms of activities in the field of gas and heat energy, electricity and water management includes collection/production, wholesale and retail, with the provision that the provisions of the PPL relating to oil and gas extraction apply to gas production in the form of gas extraction.

## Activities directly exposed to competition

Provisions of Article 173 of the PPL prescribe the conditions under which activities can be considered to be directly exposed to competition. In that case, the provisions of the PPL shall not apply to the award of contracts and design contests intended for the performance of sectoral activities if the Republic of Serbia or the sectoral contracting authority proves that the sectoral activity performed in the Republic of Serbia is directly exposed to competition on a market to which access is not restricted.

The application of this provision of the PPL has been postponed until the date of accession of the Republic of Serbia to the European Union, and the direct exposure of an activity to market competition will be decided on the basis of criteria that are aligned with the competition rules of the Treaty on the Functioning of the European Union. These criteria may include the characteristics of the products or services in question, the existence of alternative products or services that are considered substitutable on the supply or demand side, prices, as well as actual or potential competition from more than one supplier of the product or service. When assessing market competition, the market activities in question and the relevant geographic market are taken into account. The relevant geographic market on the basis of which exposure to competition is assessed represents a territory in which certain economic operators participate in the supply and demand of products or services, in which the conditions of market competition are sufficiently homogeneous and which may differ from other neighbouring territories, in particular in that the conditions of market competition in that territory are significantly different.

When assessing market competition, particular account is taken of the nature and characteristics of the products or services in question, the existence of entry barriers or customer preferences, significant differences in the market shares of undertakings between the relevant territory and other neighbouring territories or significant differences in prices. If the Republic of Serbia or a sectoral contracting authority considers that, based on the criteria applied for the assessment of market competition, a certain activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to the European Commission to determine that the sectoral directive and the provisions of the PPL do not apply to the award of contracts or the conduct of design contests for the performance of that activity.

The provisions of the PPL do not apply to the award of contracts and the conduct of design contests intended for the performance of a sectoral activity if the European Commission adopts an implementing act within the prescribed period establishing that the activity is directly exposed to the market or fails to adopt an implementing act within the prescribed period.

Also, the application of the provisions of Articles 174 and 175 of the PPL has been postponed until the date of accession of the Republic of Serbia to the European Union.

1. Offers covering products originating in third countries and relations with those countries

This provision regulates the conduct of sectoral contracting authorities in a situation where tenders include products originating from third countries with which the European Union has not concluded an agreement guaranteeing economic operators from the European Union equal and effective access to the markets of those countries. This provision does not call into question the obligations of the Republic of Serbia in relation to third countries. Third countries whose access to the public procurement market is not restricted on the basis of a Decision of the Council of the European Union are not taken into account for determining the share of products originating from third countries.

Therefore, according to this article of the PPL, any bid submitted for the purpose of concluding a contract for the public procurement of goods may be rejected if the share of products originating from third countries exceeds 50% of the total value of the products covered by the bid. Bid prices are considered equal if the price difference is no more than 3%. A tender will not have an advantage over another tender if acceptance of the tender would oblige the sector contracting authority to procure equipment with technical characteristics different from those of the existing equipment, which would lead to non-compliance, technical difficulties in operation and maintenance or disproportionate costs.

1. Public Procurement Office

According to the provisions of Article 241 of the PPL, on the day of the commencement of the application of the PPL, i.e., starting from 1 July 2020, the Public Procurement Administration continues to operate as the Public Procurement Office. Therefore, only the name has changed, while the status of the Public Procurement Office, as a separate organisation, has remained unchanged.

The Public Procurement Office is headed by a director appointed by the Government from among experts in the field of public procurement, following a public competition, and further regulated by the provisions of Article 178. The PPL prescribes the conditions for performing these tasks.

The regulations on state administration apply to the Public Procurement Office, i.e., its work and organisation.

Article 179 of the PPL prescribes the tasks performed by the Office, including the preparation of a strategy for the development and improvement of public procurement in the Republic of Serbia, monitoring the implementation of public procurement regulations, and preparing an annual report on the monitoring conducted. Furthermore, the Office is authorised to submit a request to initiate a misdemeanour proceeding, submit a request for protection of rights, and initiate the implementation of other appropriate procedures before the competent authorities when, based on monitoring, it detects irregularities in the application of public procurement regulations. The Office also participates in the drafting of laws and other regulations in the field of public procurement and adopts bylaws in the field of public procurement and provides opinions on the implementation of the provisions of this law and other regulations in the field of public procurement. In addition, the Office provides professional assistance to contracting authorities and economic operators, prepares guidelines, manuals, as well as other publications in the field of public procurement and ensures that they are equally accessible free of charge, collects statistical and other data on implemented procedures, concluded public procurement contracts, and prepares a special annual report on public procurement. The Office, within its competence, prescribes the procedure and conditions for obtaining a certificate for a public procurement officer and maintains a register of public procurement officers. Considering the significant innovation introduced by the PPL, in terms of submitting electronic bids and electronic communication via the Portal, the Office also has the authority to manage the Portal.

Also, the Office has no less significant competences in relation to negotiations on accession to the European Union, in the field of public procurement, and to that end, as well as to improve the public procurement system and perform other tasks within its competence, the Office cooperates with domestic and foreign institutions and experts in the field of public procurement.

One of the Office's responsibilities is monitoring the implementation of public procurement regulations. The Office carries out these tasks with the aim of preventing, detecting and eliminating irregularities that may arise or have arisen in the application of the PPL.

The Public Procurement Office conducts monitoring based on the annual monitoring plan, Monitoring is also considered to be the consideration of the grounds for conducting a negotiation procedure without prior publication on certain grounds provided for in the PPL, as well as the Office's actions based on a notification from a legal or natural person, state administration body, body of an autonomous province and local self-government unit, and other state bodies.

Monitoring shall not be conducted if it is determined that the Public Procurement Office is not competent, if a period of three years has elapsed since the completion of the public procurement procedure or the conclusion of the contract without the procedure being conducted, and if the applicant and data relevant to the procedure cannot be determined from the notification.

The Public Procurement Office prepares an annual report on the conducted monitoring, which is submitted to the Government and the National Assembly no later than 31 March of the current year for the previous year.

Furthermore, the Office's competence also includes recording data on public procurement procedures and public procurement contracts. The contracting authority is obliged to record data on the value and type of public procurements that represent exceptions to the application of the PPL, as prescribed in Articles 11 - 21 of the PPL.

In addition to the above, the Public Procurement Office prepares a special annual report on public procurement containing:

* data on the most common causes of incorrect application of this law,
* data on the level of participation of small and medium-sized enterprises in public procurement procedures,
* statistical data on public procurement in the Republic of Serbia,
* data on measures taken in the prevention, detection and reporting of corruption, conflicts of interest and other irregularities in the application of the PPL
* proposed measures to combat irregularities and corruption in public procurement, strengthen the efficiency of the public procurement system and increase competition in public procurement procedures, as well as other data of importance for the public procurement system.

This report is submitted to the Government by the Public Procurement Office and published on the Public Procurement Portal by March 31 of the current year for the previous year.

1. Public Procurement Portal

The Portal functionalities introduced by the provisions of the PPL are a particularly significant innovation compared to the Portal that functioned in accordance with the provisions of previously applicable regulations. Namely, the Portal, in accordance with the provisions of the PPL, enables contracting authorities to compile, send for publication and publish public procurement notices on standard forms, then make procurement documentation available and publish and deliver decisions in public procurement procedures, as well as publish public procurement plans.

The use of the Public Procurement Portal is available to all users free of charge. Therefore, all interested parties have free, unlimited and direct access, search, view and download of published public procurement notices and procurement documentation through the Portal. Furthermore, business entities submit offers, applications, plans and projects through the Portal. The portal enables the opening of bids, applications, plans and projects, as well as communication and data exchange between contracting authorities and economic operators and communication and data exchange between the Public Procurement Office and contracting authorities.

The rights protection procedure, i.e., the submission of a request for rights protection, other communication and exchange of documentation between the bidder, the contracting authority and the Republic Commission for the Protection of Rights in Public Procurement Procedures, can also be carried out via the Portal.

The portal enables the Public Procurement Office, the Republic Commission for the Protection of Rights in Public Procurement Procedures, the State Audit Institution, **the Commission for the Protection of Competition** and the Republic Public Prosecutor's Office to access the database for the purposes of performing tasks within their jurisdiction.

The technical conditions for the implementation of the Portal are provided by the Government Service responsible for the design, harmonisation, development and functioning of the electronic government system, while at the same time ensuring the accessibility and security of the Public Procurement Portal to all users.

1. Training and advanced training for public procurement

PPL stipulates that the contracting authority is obliged to provide training for the performance of public procurement tasks and to pass the exam for a public procurement officer, as well as continuous training, for persons performing public procurement tasks.

The procedure and conditions for obtaining a certificate for a public procurement officer and maintaining a register of public procurement officers are prescribed by the Regulation on the procedure and conditions for obtaining a certificate for a public procurement officer and maintaining a register of public procurement officers ("Official Gazette of the Republic of Serbia", No. 93/20, 21/21, 115/23 and 6/24),adopted by the Public Procurement Office.

1. Legal protection

## Republic Commission for Protection of Rights in Public Procurement Procedures

The protection of rights in public procurement procedures is ensured by the Republic Commission for the Protection of Rights in Public Procurement Procedures, which is an autonomous and independent body of the Republic of Serbia.

According to the provisions of the PPL, the Republic Commission is within its competence to decide on a request for protection of rights, decide on an appeal against a decision of the contracting authority, decide on a proposal by the contracting authority that the submitted request for protection of rights does not delay further proceedings in the public procurement procedure, decide on a proposal by the applicant for protection of rights to prohibit the continuation of the public procurement procedure, the conclusion or execution of a public procurement contract, decide on the costs of the procedure for protection of rights and the costs of preparing a bid.

In addition to making decisions, the Republic Commission monitors and controls the implementation of the decisions it makes, then imposes fines, cancels contracts, and submits a request to initiate misdemeanour proceedings when, acting within its jurisdiction, it determines that a violation of this law has been committed that may be the basis for misdemeanour liability. At the same time, the Republic Commission cooperates with domestic and foreign institutions and experts in the field of public procurement, with the aim of improving the public procurement system, and in particular the protection of rights and other procedures within the competence of the Republic Commission.

Given that the Republic Commission is an autonomous and independent body, any attempt to influence and influence the decision-making of the Republic Commission is prohibited, and the use of public powers and public appearances to influence the course of the procedure and the decision-making of the Republic Commission is prohibited.

The Republican Commission has a president and eight members, who are elected and dismissed by the National Assembly, after a public competition, for a period of five years.

The conditions for the election of the President and members of the Republic Commission are prescribed in Article 191 of the PPL.

The provision of Article 194 of the PPL stipulates the liability of the president and members of the Republic Commission, and it is established that they cannot be held liable for the opinion expressed or the vote cast when making a decision within the competence of the Republic Commission, nor can they be held liable for damages for the opinion expressed or the vote cast when making a decision, unless it involves the commission of a criminal offence. In this way, the President and members of the Republican Commission are ensured full autonomy and independence in their work.

Within the organisation of the Republic Commission, there is also the Service of the Republic Commission, which performs professional, general - legal, financial - material and administrative - technical tasks necessary for the work of the Republic Commission.

In order to prevent conflicts of interest of the President, or a member of the Republic Commission, it is stipulated that he/she may not perform any other public function, perform a function in a political party, or perform any other function, service, job, duty or activity that could affect his/her independence in work and actions or that would diminish his/her reputation or the reputation of the function of President, or a member of the Republic Commission.

Also, the president or member of the Republic Commission may not decide in a rights protection procedure or in another procedure if:

* there are reasons to doubt their impartiality,
* with a participant in that procedure, a legal or authorised representative of the participant, or with legal representatives, members of the administrative bodies or supervisory bodies of the participant, is in a relationship that casts doubt on his impartiality, including: a business relationship, a blood relationship in the direct line, regardless of the degree of kinship, and in the collateral line up to the fourth degree, marriage, regardless of whether it has ended or not, an extramarital union, in-laws up to the second degree, guardianship, as well as the relationship between an adopter and an adoptee,
* if it owns more than 3% of the shares, i.e., shares of the participant in the rights protection procedure,
* if he/she was previously employed by a participant in the rights protection procedure, except in cases where more than two years have passed since the termination of the employment relationship.

In the event of any of the above reasons, a party to the proceedings has the right to request the disqualification of the President or a member of the Republic Commission, which is decided by the President of the Republic Commission or at a session of all members of the Republic Commission, convened and chaired by the Deputy President of the Republic Commission, if the request is for the disqualification of the President of the Republic Commission.

The mandate of the President and members of the Republic Commission shall terminate upon dismissal for the following reasons:

* if he has been convicted of a criminal offence to an unconditional sentence of imprisonment for a term of at least six months and if the offence for which he has been convicted makes him unworthy of performing his duties,
* if he/she is convicted of a criminal offense related to a violation of this Law,
* if, through unscrupulous conduct, he/she damages the reputation, impartiality and independence in decision-making of the Republic Commission,
* if loss of working capacity is determined,
* if it is determined that he/she does not meet the selection criteria,
* if he resigns,
* the expiration of the period for which it was elected.

The competent committee shall submit a reasoned proposal for the dismissal of the President or member of the Republic Commission, together with evidence for his dismissal, to the National Assembly. If it determines that the conditions have been met, the President or member of the Republic Commission must be given the opportunity to state the reasons for his dismissal in the National Assembly.

The Republican Commission operates and decides in a majority of three members, except as otherwise provided for by this Law. Each panel shall consist of at least two members elected in accordance with Article 191, paragraph 2 of the PPL, one of which is the president of the council. If he/she deems it necessary, based on the complexity of the decision-making in a specific case, the President of the Republic Commission may, on his/her own initiative or at the request of a member of the Republic Commission, decide to make decisions in panels with a larger number of members, provided that the number of panel members must always be odd. The sessions of the Council of the Republic Commission are not public. The presence of all council members is required at a council session in order for the decision to be valid. Members cannot abstain from voting, and decisions are made by a majority vote of the council members.

General meetings are convened at the initiative of the President or at the request of at least four members of the Republican Commission. The general meeting, consisting of the president and at least six members, is convened by the president of the Republican Commission. Decisions at the general meeting are made by a two-thirds majority of votes.

At the general session, the Republic Commission adopts the rules of procedure, adopts binding legal principles regarding the application of regulations within its competence, makes decisions acting on the decision of the Administrative Court which annulled the decision of the Republic Commission in an administrative dispute, and establishes legal understandings regarding the application of regulations within its competence in order to harmonize the legal practice of the Council of the Republic Commission. Legal understandings established at the general session are binding on all chambers and members of the Republic Commission.

Finally, it should be emphasized that the Republic Commission is accountable to the National Assembly for its work and submits an annual report on its work for the previous year by March 31 of the current year.

**Rights protection procedure**

The provision of Article 204 of the PPL defines the procedure for the protection of rights as a legal protection procedure regarding a public procurement procedure in accordance with the PPL, a contract award procedure in accordance with the law regulating public-private partnerships and concessions, as well as in other cases in accordance with the law. The procedure for the protection of rights is initiated by submitting a request for the protection of rights.

The procedure for protecting rights consists of several stages, namely the preliminary procedure, which is carried out by the contracting authority, and the procedure before the Republic Commission.

These provisions of the PPL define a request for protection of rights as a submission indicating violations of the regulations in accordance with which the procedure is being conducted. At the same time, the PPL prohibits filing a request for protection of rights in order to achieve a goal other than the one for which that right was recognised.

The PPL also provides for a limitation regarding the content of a request for protection of rights, in the sense that a request for protection of rights cannot challenge the determination of the type of procedure, the content of the public invitation and the tender documentation, if the subject-matter of the challenge is possible shortcomings and irregularities that were not previously pointed out to the contracting authority in the manner prescribed by law.

The provisions of Articles 205 to 210 of the PPL prescribe the principles of the procedure for the protection of rights in public procurement procedures, according to which the protection procedure is based on the principles of legality, efficiency, accessibility, adversarial nature and literacy.

According to these provisions, the principle of legality implies that in the procedure for the protection of rights, participants are obliged to act in accordance with the regulations on the basis of which the procedure to which the procedure for the protection of rights relates was initiated. Furthermore, the principle of efficiency prescribes the manner of conduct of participants in the protection procedure, and implies that the initiated procedure is completed within the deadlines and in the manner prescribed by the PPL, i.e., with as few costs as possible related to the rights protection procedure, ensuring that the factual situation is properly determined and a decision is made in accordance with the regulations, and that the identified cases of violation of the regulations are eliminated in the shortest possible time. This, of course, implies that decisions made in the rights protection procedure should be effectively implemented, in terms of eliminating irregularities and completing the public procurement procedure in the manner prescribed by the PPL.

Also, any person interested in the award of a contract has the right to participate in the rights protection procedure, under the same conditions. Every person also has the right to fair legal protection. These rights guarantee compliance with the principle of accessibility. Furthermore, according to the principle of adversarial proceedings, participants in the rights protection procedure will be allowed to state their views on facts that are important for decision-making under the provisions of the PPL.

Acting in accordance with the principle of literacy implies that decisions in the procedure for the protection of rights are made on the basis of written documentation, unless otherwise prescribed by the PPL.

During the protection of rights, the provisions of the law governing administrative proceedings apply to certain issues. Therefore, it concerns representation through a proxy, rules on delivery and notification; calculation of deadlines; restoration to the previous state; rules on public documents; resolution and correction of errors in the resolution; costs of the procedure; interruption of the procedure; previous issue; language of the procedure; repetition of the procedure; review of the file and notification of the progress of the procedure; minutes.

The application of the provisions of the law regulating administrative procedures is carried out respecting the principles of the PPL and the specificities of public procurement procedures and the protection of rights.

**Active legitimation in the procedure**

In the rights protection procedure, an important question is which persons have the right to file a request for rights protection. According to the provisions of the PPL, a request for protection of rights may be submitted by an economic operator, candidate, or bidder who had or has an interest in the award of a specific contract, or framework agreement, and who indicates that due to the contracting authority's actions contrary to the provisions of the PPL, it has been damaged or could be damaged due to the award of the contract, or framework agreement contrary to the provisions of the PPL.

It is important to emphasize here that this is a person who had or has an interest in the award of a specific contract, i.e., a framework agreement. Therefore, this is where the answer to the question of why this person specifically indicates that he or she has been harmed or could be harmed due to the award of the contract, or framework agreement, due to the contracting authority's actions contrary to the provisions of the PPL.

In addition to these persons, a request for protection of rights in the public interest is submitted by the Public Procurement Office, the State Audit Institution and the competent attorney's office. These institutions submit a request in the public interest when, in the exercise of their powers, they learn of irregularities in public procurement procedures. The aforementioned institutions are not obliged to submit a request for protection of rights based on a notification from an economic operator that initiated a protection of rights procedure in the public procurement procedure in question or failed to do so within the prescribed time limit.

**Filing a request for protection of rights**

**In accordance with the applicable provisions of the PPL, a request for protection of rights is submitted electronically via the Public Procurement Portal to the contracting authority and the Republic Commission simultaneously, with the date of submission via the Public Procurement Portal being considered the date of receipt.** **Therefore, the current PPL, unlike the previously valid legal solutions, no longer provides for the possibility that a request for protection of rights can be submitted in writing, by direct delivery or by registered mail to the contracting authority, in which case the applicant was obliged to submit a copy of the request to the Republic Commission, but rather it is submitted exclusively via the Public Procurement Portal.**

The deadlines for submitting requests for protection of rights vary depending on the stage of the public procurement procedure in which they are submitted. A request for protection of rights may be submitted during the entire public procurement procedure, unless otherwise specified by the PPL, and no later than ten days from the date of publication on the Public Procurement Portal of the Contracting Authority’s decision terminating the public procurement procedure in accordance with the PPL. The request for protection of rights which disputes the actions of the Contracting Authority in connection with determining the type of procedure, content of the public invitation and tender documentation will be considered timely if received by the Contracting Authority no later than three days before the deadline for submission of bids or applications. The request for protection of rights challenging the actions of the Contracting Authority undertaken after the deadline for submission of bids shall be submitted within ten days from the date of publication of the Contracting Authority’s decision on the Public Procurement Portal, or from the date of receipt of the decision in cases where publication on the Public Procurement Portal is not provided.

When it comes to a negotiated procedure without publication of a public call, a request for protection of rights challenging the actions of the contracting authority in relation to determining the type of procedure, the content of the notice on the conduct of the negotiated procedure, the invitation to submit bids and the tender documentation shall be considered timely if it is received by the contracting authority no later than ten days from the date of publication of the notice on the conduct of the negotiated procedure, i.e., receipt of the tender documentation, amendments and supplements to the tender documentation.

After the expiration of the deadline for submitting the request for protection of rights, the applicant may not supplement the request by stating the reasons related to the actions that are the subject-matter of dispute in the submitted request or disputing other actions of the contracting authority with which it was or could be acquainted before the deadline for the protection of rights, which it did not item out in the submitted request. Here too, it is necessary to emphasize that a request for protection of rights cannot challenge the actions of the contracting authority undertaken in the public procurement procedure if the reasons for its submission were or could have been known to the applicant before the expiry of the deadline for submitting the request, and the applicant did not submit it before the expiry of that deadline.

If in the same public procurement procedure, a request for protection of rights has been submitted again by the same applicant, that request may not challenge the actions of the Contracting Authority that the applicant knew or could have known when submitting the previous request.

The contracting authority is obliged to publish the notification of the submitted request for protection of rights on the Public Procurement Portal no later than the day following the date of receipt of the request for protection of rights.

Furthermore, the provisions of Article 215 of the PPL stipulate the submission of a request for protection of rights challenging the legality of the award of a contract by applying the exceptions provided for in Articles 11 - 21 of the PPL. It follows from these provisions that the request will be considered timely if it is submitted within ten days from the date of publication of the notice for voluntary prior transparency, if the contracting authority has published the said notice. An applicant who has failed to submit a request for protection of rights shall not be entitled to submit a request for protection of rights after the publication of the contract award notice, if the contracting authority publishes the said notice. If the contracting authority has published only a contract award notice, for contracts concluded by applying the exceptions from the provisions of Articles 11 - 21 of the PPL, a request for protection of rights challenging the legality of concluding such a contract will be considered timely if it is submitted no later than 30 days from the date of publication of the contract award notice. Finally, if the contracting authority does not act in any of the above ways, i.e., does not publish either a notice for voluntary prior transparency or a contract award notice, a request for protection of rights challenging the legality of a contract concluded without a previously conducted public procurement procedure will be considered timely if it is submitted within 60 days from the date of knowledge of such a contract, and no later than six months from the date of conclusion of the contract.

In the event of a request for protection of rights, the contracting authority must suspend the continuation of the public procurement procedure until the completion of the protection of rights procedure. The only exception to this rule is the negotiation procedure referred to in Article 61, paragraph 1, item 2) of this Law.

However, the Republic Commission, upon a reasoned proposal by the contracting authority, may allow the contracting authority to continue the implementation of the public procurement procedure before the end of the rights protection procedure if it proves or makes probable the existence of reasons relating to the possibility of damage disproportionately greater than the value of the subject-matter of public procurement, the protection of public interest, a possible threat to life, human health, the environment or other serious danger. The PPL also provides for cases in which the Republic Commission, upon a proposal by the contracting authority, may decide that the contracting authority may continue the execution of the public procurement contract until a decision is made on the submitted request for protection of rights. Also, in the case of conducting a negotiated procedure referred to in Article 61, paragraph 1, item 2) of the PPL, the applicant may propose that the Republic Commission issue a decision prohibiting the contracting authority from continuing the public procurement procedure, i.e., concluding or executing a public procurement contract.

According to the provisions of the PPL, a request for protection of rights contains the name and address of the applicant and the contact person; the name and address of the contracting authority; information about the public procurement that is the subject-matter of the request, i.e., the decision of the contracting authority; facts and evidence of violations of regulations and the signature of the applicant. The request for protection of rights shall be accompanied by an authorisation for representation in the rights protection procedure, if the applicant undertakes actions in the procedure through a proxy. In addition, the applicant who has a permanent or temporary residence, i.e., a seat abroad, is obliged to appoint a proxy for the receipt of letters in the Republic of Serbia in the request for protection of rights, stating all data necessary for communication with the designated person. Along with the request for protection of rights, the applicant is obliged to submit proof of payment of the fee.

The first stage in the rights protection procedure is the preliminary procedure. At this stage, the contracting authority shall promptly deliver a copy of the request for protection of rights to the selected bidder, who may submit his/her opinion regarding the submitted request, which must be received by the contracting authority no later than two working days from the date on which the selected bidder received a copy of the request.

The contracting authority, at this stage of the protection procedure, pays special attention to checking the request for protection of rights, i.e., determines whether:

* proof that the fee has been paid is submitted with the request for protection of rights,
* a request for protection of rights submitted within the deadline,
* the applicant has active identification,
* The request for protection of rights has the content prescribed by law.

The contracting authority acts differently if the request does not comply with any of the following conditions:

* if the request for protection of rights does not have the prescribed content, so that further action is impossible, the contracting authority will without delay invite the applicant to supplement the request for protection of rights within three working days,
* if proof has been paid is not submitted along with the submitted request for the protection of rights, the ordering party will reject such a request by decision without first inviting the applicant to supplement the request,
* if the applicant who has a place of residence or domicile, i.e., headquarters abroad, in the request for the protection of rights, does not appoint a representative to receive letters in the Republic of Serbia and provide all the information necessary for communication with the designated person, the contracting authority will reject such a request by decision without calling the applicant to complete the request.
* The contracting authority will reject the request for protection of rights by decision if it is submitted by a person who does not have active identification or if it is submitted untimely, as well as if the applicant fails to supplement the request for protection of rights within the prescribed period in accordance with the invitation for supplementation,
* if there are deficiencies in the content of the submitted request for the protection of rights submitted on behalf of the applicant by a representative from the ranks of lawyers that prevent further action, the ordering party will reject such a request by decision without first inviting the applicant to supplement the request.

The contracting authority shall deliver the decision rejecting the request to the applicant and the Republic Commission within three days from the date of its adoption, and the applicant may file an appeal against the decision to the Republic Commission within three days from the date of receipt of the decision. **The appeal shall be submitted electronically through the Public Procurement Portal simultaneously to the Republic Commission and the contracting authority/procuring entity, whereby the date of submission through the Public Procurement Portal is considered the date of submission.** The contracting authority is obliged to submit to the Republic Commission, within three days of receiving a copy of the appeal, the necessary documentation from the public procurement procedure for the purpose of deciding on the appeal.

If it does not issue a decision rejecting the request, the contracting authority shall, within five working days from the date of receipt of the procedurally correct request for protection of rights:

* to issue a decision adopting the request for protection of rights and partially annulling the public procurement procedure, in which it will respond to all allegations in the request for protection of rights, which it will deliver to the applicant, bidders and the Republic Commission within three days from the date of issue. The contracting authority makes such a decision if it considers that the allegations are well-founded or
* to submit to the Republic Commission a response in which it will state its position on all allegations in the request for protection of rights and complete documentation from the public procurement procedure, for the purpose of deciding on the request for protection of rights, and to submit a copy of the response to the applicant. The contracting authority will act in this way if it believes that the merits of the allegations may result in the annulment of the public procurement procedure as a whole or if it believes that the allegations are unfounded.

The applicant may submit to the Republic Commission and the contracting authority their opinion regarding the contracting authority's response within two working days from the date of receipt of the response.

Also, if the contracting authority has not assessed all the allegations in the request for protection of rights as well-founded, the applicant may, within two working days from the date of receipt of the decision, submit **a written statement to the Republic Commission and the contracting authority on the continuation of the procedure before the Republic Commission, which will decide in accordance with Article 226.** **PPL, whereby the day of submission through the Public Procurement Portal is considered the day of receipt.**

**If the contracting authority does not act in the manner described in the previous two paragraphs, the applicant may, within 20 working days from the date of submission of the request for protection of rights, submit to the Republic Commission and the contracting authority a written statement on the continuation of the procedure before the Republic Commission, whereby the date of submission via the Public Procurement Portal is considered the date of receipt.**

The contracting authority, within three days of receiving the applicant's statement, shall submit to the Republic Commission the complete documentation necessary for deciding on the application for protection. If the applicant does not submit a statement on the continuation of the procedure before the Republic Commission, it will be considered that the procedure for the protection of rights has not even been initiated. The contracting authority will suspend the rights protection procedure by decision in a situation where it receives a written notification of withdrawal of the request for rights protection, and before taking the aforementioned actions prescribed by law.

**Proceedings before the National Commission**

This article regulates the procedure of the Republic Commission after receiving the response of the contracting authority when it considers that the allegations in the request for protection of rights are not founded or the written statement of the applicant on the continuation of the procedure before the Republic Commission. During its proceedings, the Republic Commission conducts a preliminary check of the request for protection of rights, i.e., determines whether the request for protection of rights is accompanied by proof that the fee has been paid, whether the request for protection of rights, i.e., the written statement on the continuation of the procedure before the Republic Commission, was submitted within the deadline; whether the applicant has active legal status; whether the request for protection of rights has the content prescribed by law.

Depending on the facts it determines, the Republic Commission will take further action. Thus, if the submitted request for protection of rights is not accompanied by proof that the fee has been paid, the Republic Commission will reject such a request by decision without prior invitation to the applicant to supplement the request. Therefore, unlike the PPL/2015, the applicant no longer has the opportunity to supplement the submitted application in this regard. If the applicant who has a place of residence or domicile, i.e., headquarters abroad, in the request for the protection of rights, does not appoint a representative to receive letters in the Republic of Serbia and provide all the information necessary for communication with the designated person, the contracting authority will reject such a request by decision without calling the applicant to complete the request. Here, the provisions of the PPL are also exclusive, and the consequence of not appointing a proxy in this case is also a reason for rejecting the request. On the other hand, if the request for protection of rights does not have the prescribed content, which prevents further action, the Republic Commission will immediately invite the applicant to supplement the request for protection of rights within three working days.

The reason for rejecting the request is also the submission of the request by a person who does not have active identification or it is submitted untimely, as well as if the applicant fails to supplement the request for protection of rights within the deadline in accordance with the invitation for supplementation. In addition to the above, the Republic Commission will also reject a request submitted on behalf of the applicant by a proxy from the ranks of lawyers, if the content of the submitted request for protection of rights contains deficiencies that prevent further action. The Republic Commission will, by decision, reject a statement on the continuation of the procedure before the Republic Commission that is inadmissible or was submitted after the deadline. The Republic Commission delivers these decisions to the applicant and the contracting authority.

Before making decisions within its competence, the Republic Commission may request additional documentation, data, explanations and opinions from the contracting authority, the applicant or other participants in the procedure, competent authorities and other persons and may obtain insight into other documents from the parties to the public procurement procedure, as well as collect other data for making a decision. The contracting authority, the applicant and the selected bidder will have the opportunity to express their opinion on the evidence and facts obtained by the Republic Commission, if necessary for making a decision. **If the aforementioned communication is carried out via the Public Procurement Portal, the day of sending via the Public Procurement Portal is considered the day of receipt.** Also, the Republic Commission may, at the initiative of the contracting authority, the applicant or on its own initiative, request an expert opinion from any legal or natural person who has the relevant expertise and knowledge necessary to determine the factual situation. An expert opinion cannot be given if there are reasons for its exclusion.

One of the novelties in the PPL is the holding of an oral hearing, which can be proposed by the contracting authority and the applicant if the complexity of the factual or legal situation requires it. The proposal to hold an oral hearing is decided by the Republic Commission, which may decide to hold an oral hearing even if the ordering party and the applicant have not proposed holding one, if it deems it necessary for establishing the facts in the rights protection procedure. The Republic Commission shall deliver a notification with an explanation of the decision to hold an oral hearing to the contracting authority and the applicant for protection of rights.

The fee payable for a request for protection of rights pursuant to the provisions of the PPL is 120,000 dinars, if the request for protection of rights is submitted in accordance with Article 214, paragraphs 2 and 4, and Article 215 of the PPL, regardless of the amount of the estimated value of the public procurement. Further, Article 225 of the PPL prescribes the amount of the fee depending on which article of the PPL the request is submitted on and depending on the estimated value of the public procurement. Therefore, if the request for protection of rights is submitted after the deadline for submitting bids, i.e., within ten days from the date of publication of the contracting authority's decision on the Portal, the applicant for protection of rights is obliged to pay a fee in the amount of:

- 120,000 dinars if the estimated value of the public procurement does not exceed 120,000,000 dinars,

- 120,000 dinars if the sum of the estimated values of all contested lots does not exceed 120,000,000 dinars, if the public procurement is structured by lots,

0.1% of the estimated value of the public procurement, if that value is greater than 120,000,000 dinars, and a maximum of 1,200,000 dinars,

* 0.1% of the sum of the estimated values of all contested lots if the public procurement is structured by lots, if that value is greater than 120,000,000 dinars, and a maximum of 1,200,000 dinars.

After a decision has been made on the submitted request, and if the request for protection of rights is not well-founded, the contracting authority may exercise the right to have the applicant reimburse the necessary and justified costs of the rights protection procedure. On the other hand, if the request for protection of rights is well-founded, the applicant may exercise the right to have the contracting authority reimburse the necessary and justified costs of the rights protection procedure. The Republic Commission may decide that each party shall bear its own costs or determine the costs in proportion to the adopted request for protection of rights.

It is necessary to emphasize that reimbursement of costs can be requested until the decision of the contracting authority, i.e., the Republic Commission, on the submitted request for protection of rights is made, and the parties must precisely state the costs for which they are requesting reimbursement. The decision on costs is within the exclusive competence of the Republic Commission, and the contracting authority cannot decide on the reimbursement of costs of the rights protection procedure.

**Decision of the Republic Commission**

The Republic Commission issues a decision, i.e., decides depending on the established violations of the PPL and is obliged to state its position on violations of the PPL that the applicant could not have known about, and which influenced the decision of the contracting authority in the public procurement procedure.

The Republic Commission will present evidence that it deems to be influential in making a correct and lawful decision on the submitted request for protection of rights.

According to the provisions of the PPL, the Republic Commission may, by decision:

* adopt the request for protection of rights as well-founded and annul the public procurement procedure in whole or in part;
* rejects the request for protection of rights as unfounded;
* rejects the request for protection of rights, in accordance with the provisions of the PPL;
* suspend the proceedings upon receipt of a written notification of withdrawal of the request for protection of rights before a decision is made;
* reject the appeal against the decision of the contracting authority, in accordance with the provisions of the PPL;
* adopts or rejects the proposal referred to in Article 216, paragraphs 2, 5 and 6. PPL;
* imposes fines;
* cancels the contract;
* accepts the appeal as well-founded and annuls the decision of the contracting authority;
* rejects the appeal as unfounded and confirms the decision of the contracting authority;
* suspends the proceedings upon receipt of a written notification of withdrawal of the appeal, before a decision is made;
* rejects the written statement on the continuation of the procedure before the Republic Commission, in accordance with the provisions of this law;
* decides on the costs of the rights protection procedure.

The Republic Commission is obliged to explain its decision and may order the contracting authority to take certain actions within a period that cannot exceed 25 days in order to properly and lawfully complete the public procurement procedure. The Republic Commission is obliged to decide on the request for the protection of rights with a decision within 30 days from the day of receipt of the complete documentation that is required to determine the factual situation and make a decision. The Republic Commission is obliged to decide on the appeal against the decision of the contracting authority within eight days from the day of receipt of the complete documentation required for determining the factual situation and making a decision. The deadline within which the Republic Commission is obliged to make a decision may exceptionally be extended by 15 days, of which the applicant and the contracting authority shall be informed, together with the reasons for the extension of the deadline. The Republic Commission shall deliver the decision **to the contracting authority, the applicant and the selected bidder within ten days from the date of its adoption electronically via the Public Procurement Portal, whereby the date on which the decision is delivered via the Public Procurement Portal to the aforementioned persons shall be considered the date of receipt of the decision in accordance with this Law**. After delivering it to the parties in the procedure, the decision of the Republic Commission is published on the website of the Republic Commission and on the Public Procurement Portal. The contracting authority is obliged to inform all participants in the procedure about the decision of the Republic Commission.

The provisions of the PPL stipulate that decisions of the Republic Commission may be reviewed in court proceedings. Namely, against the decision of the Republican Commission

An administrative dispute may be initiated within 15 days from the date of delivery of the decision to the applicant. Also, an administrative dispute can be initiated when the Republic Commission has not made a decision within the legally prescribed deadlines. The initiation of an administrative dispute does not postpone the execution of the decision of the Republic Commission. The Republic Commission shall notify the contracting authority of the initiated administrative dispute.

A novelty in the PPL is the right to compensation for damage caused by a violation of the provisions of the PPL, which can be exercised in proceedings before the competent court. This right existed before, prescribed by other regulations, but now the PPL explicitly guarantees the possibility of protecting this right in court proceedings.

The contracting authority is obliged to act in accordance with the orders of the Republic Commission contained in its decision, and the Republic Commission may request the contracting authority to submit a report on the implementation of the decision of the Republic Commission within the deadline set by the Republic Commission.

The Republican Commission is also responsible for imposing fines. The Republic Commission may, by decision, impose a fine on both the ordering party and the applicant. The contracting authority will be fined by decision in the amount of 80,000 to 1,000,000 dinars and the contracting authority's responsible person in the amount of 20,000 to 80,000 dinars, if the contracting authority:

* fails to act upon a submitted request for protection of rights in the manner and manner prescribed by law,
* fails to submit additional documentation, data, explanations or opinions, as requested by the Republic Commission,
* if it does not allow the bidder or candidate access to the documentation on the conducted public procurement procedure.

The Republic Commission will issue a decision imposing a fine on the applicant in the amount of 80,000 to 1,000,000 dinars and on the applicant's responsible person in the amount of 20,000 to 80,000 dinars, if the applicant fails to submit additional documentation, data, explanations or opinions, in accordance with the request of the Republic Commission.

The Republic Commission determines the amount of the fine, taking into account the severity of the identified irregularities, the estimated value of the public procurement, the impact of the irregularity on the outcome of the public procurement procedure and the rights of other persons in the procedure, the duration and frequency of the irregularities, as well as the willingness to eliminate the consequences of the irregularity. A fine may be imposed no later than three years from the date of the violation.

A fine is imposed by a final decision which, after being delivered to the person to whom it applies, is published on the website of the Republic Commission. An administrative dispute may be initiated against this decision within 15 days from the date of receipt. The initiation of an administrative dispute does not postpone the execution of the decision.

In addition to the above-mentioned powers, the Republic Commission also annuls public procurement contracts if, acting upon a submitted request for protection of rights or at the request of a person, it determines that the contracting authority:

* concluded a public procurement contract by applying the negotiated procedure without publishing a public call, and the conditions stipulated by this law for the application of that procedure did not exist, or failed to publish a notice on the implementation of the negotiated procedure without publishing a public call and the decision on the award of the contract;
* concluded a public procurement contract before the expiration of the deadline for submitting a request for protection of rights;
* concluded a public procurement contract after submitting a request for protection of rights, and before the decision of the Republic Commission;
* concluded a public procurement contract contrary to the decision of the Republic Commission;
* concluded a public procurement contract in violation of the provisions and conditions of the framework agreement or concluded a public procurement contract using a dynamic procurement system, contrary to the provisions of the PPL;
* concluded a contract without a previously conducted public procurement procedure, which the contracting authority was obliged to implement according to the provisions of the PPL.

A request for cancellation of the contract is submitted with a request for protection of rights or within 60 days from the date of learning of the reason for cancellation, and no later than six months from the date of conclusion of the contract. The Republic Commission decides on the annulment of the contract by a decision deciding on the request for protection of rights or by a special decision.

When the Republic Commission annuls a public procurement contract, the contract ceases to be valid from the date of the decision. Exceptionally, the Republic Commission will not annul a public procurement contract if, taking into account all relevant facts, the gravity of the violations of the law, the actions of the contracting authority, as well as the remaining period of validity of the contract, it determines that annulment of the public procurement contract would have disproportionate consequences for the work or business of the contracting authority or the interests of the Republic of Serbia, but will impose a fine on the contracting authority in the amount prescribed by the PPL.

The Republic Commission also submits a request to initiate misdemeanour proceedings when, in the procedure for the protection of rights, it determines that a violation of the provisions of this law has been committed, which may be the basis for misdemeanour liability.

The provisions of the PPL also provide for special authorisation of the organisation responsible for the protection of competition. The Commission for the Protection of Competition may impose a ban on an economic operator from participating in a public procurement procedure if it determines that the economic operator has violated competition in a public procurement procedure within the meaning of the law regulating the protection of competition. This measure can last up to two years. An administrative dispute may also be initiated against the decision of the organisation responsible for competition protection within 30 days from the date of receipt of the decision.

1. Penal provisions

**Offences of contracting authorities/procuring entities**

The penal provisions of the PPL prescribe the actions of contracting authorities and bidders that are considered violations. The same provisions also prescribe fines for violations, both for contracting authorities and bidders, as well as for responsible persons.

The actions of contracting authorities that constitute violations within the meaning of the provisions of the PPL are:

* division of the subject-matter of procurement into multiple procurements with the aim of avoiding the application of the provisions of the PPL or the relevant rules of the public procurement procedure (Articles 29-35);
* **procurement of goods, services or works without a previously conducted public procurement procedure, except when permitted by this law (Article 51);**
* procurement of goods, works or services through a negotiated procedure without publishing a public call for tenders, without the legally prescribed conditions for the application of that procedure having been met (Article 61);
* failure to set deadlines for submitting bids or applications in accordance with the PPL (Art. 52-56 and Articles 58, 60 and 63);
* failure to comply with the provisions of Article 90 of the PPL;
* failure to publish the announcement referred to in Article 105, paragraph 1, item 6), 8) and 11) of the PPL;
* conclusion of a public procurement contract with a bidder who meets the grounds for exclusion referred to in Article 111, paragraph 1, items 1) and 2) of the PPL, and there is no basis for applying the provisions of Article 111, paragraph 3 and Article 113 of the PPL;
* failure to submit a proposal to initiate misdemeanour proceedings under Article 131, paragraph 6 of the PPL to the Public Procurement Office;
* **failure to make or publish, or to deliver, a decision in accordance with the provisions of the PPL (Articles** **146 - 148);**
* conclusion of a public procurement contract without meeting the conditions set out in Article 151 of the PPL; failure to act in the execution of a public procurement contract in accordance with Article 154, paragraph 1 of the PPL;
* changes to the concluded public procurement contract contrary to the provisions of the PPL (Articles 155-161);
* failure to provide the Public Procurement Office with requested data and notifications that are important for conducting monitoring within the prescribed period (Article 180);
* failure to record data on the value and type of public procurement or their publication on the Public Procurement Portal within the prescribed period or failure to submit data on an individual public procurement procedure or a concluded contract to the Public Procurement Office (Article 181);
* failure to comply with the decision of the Republic Commission (Article 226, paragraph 4, items 1) and 9));
* failure to submit a report on the implementation of the decision of the Republic Commission (Article 230);
* **failure to act in accordance with Article 152a of the PPL.**

For the above violations, the contracting authority will be fined from 100,000 to 1,000,000 dinars, and the responsible person of the contracting authority will be fined from 30,000 to 80,000 dinars. Also, a representative of the contracting authority who participates in the public procurement procedure contrary to the provisions of this law on conflict of interest (Article 50) will be fined from 30,000 dinars to 80,000 dinars for a misdemeanour.

**Bidder violations**

The actions of bidders that constitute violations within the meaning of the provisions of the PPL are:

* submitting a statement in an application or tender that contains false information or, at the request of the contracting authority, submitting a document that contains false information (Articles 118, 119 and 130);
* failure to submit evidence and statements referred to in Article 131, paragraph 5 of the PPL to the contracting authority upon its request within the prescribed period;
* engaging, as a subcontractor, a person not listed in the bid and in the public procurement contract, contrary to the provisions of the PPL (Articles 131 and 161);
* failure to conclude a public procurement contract at the request of the contracting authority unless there are reasons that the bidder could not influence or foresee, prevent, remedy or avoid, and due to which the conclusion or execution of the contract in accordance with the conditions of the procurement documentation and the selected tender is not possible (Article 152).

For the above violations, the bidder, candidate, or subcontractor will be fined from 100,000 to 1,000,000 dinars, the responsible person of the bidder, candidate, or subcontractor will be fined from 30,000 to 80,000 dinars, the entrepreneur as a bidder, candidate, or subcontractor will be fined from 30,000 to 200,000 dinars, and the natural person as a bidder, candidate, or subcontractor will be fined from 30,000 to 80,000 dinars.

A novelty in the PPL is that a bidder or candidate, or subcontractor, may be issued a protective measure prohibiting participation in public procurement procedures, which prohibits that person from participating in public procurement procedures for a period that cannot exceed two years. This measure is intended for two cases. The first case refers to the situation if direct payment of due receivables to the subcontractor for the part of the contract that he has performed is not foreseen. In this situation, the contracting authority is obliged, after making payment to the economic operator with which it concluded the contract, to request that it provide proof and a statement from the subcontractor within 60 days that it has paid the subcontractor's claims.

Therefore, if the bidder fails to submit the aforementioned statement, he/she commits a violation for which this protective measure is imposed. Furthermore, if a bidder fails to conclude a public procurement contract at the request of the contracting authority, unless there are reasons that the bidder could not influence or foresee, prevent, eliminate or avoid, and due to which the conclusion or execution of the contract in accordance with the conditions of the procurement documentation and the selected tender is not possible, a protective measure of prohibition of participation in public procurement procedures will also be imposed.

The court decides on the protective measure of prohibition of participation in public procurement procedures, and the statute of limitations for initiating and conducting misdemeanour proceedings begins three years after the date of the misdemeanour.

1. Transitional and final provisions

The transitional and final provisions of the PPL stipulate that public procurement procedures that were initiated before the date of entry into force of this Act will be completed in accordance with the regulations under which they were initiated. Therefore, if a procedure was initiated before 1 July 2020, under the provisions of the PPL/2015, it is clear that that public procurement procedure will be completed under the provisions of that law, and that contracting authorities will publish everything related to that public procurement procedure on the old Public Procurement Portal.

It is also stipulated that contracting authorities are obliged to bring the public procurement plan into line with the provisions of the PPL. In practice, contracting authorities must have a public procurement plan that they will enter into the new Public Procurement Portal. In this plan, contracting authorities should include all public procurements from the annual public procurement plan, for which procedures have not been initiated by 1 July 2020, as well as new public procurements that contracting authorities need to implement, and which were not foreseen in the annual public procurement plan.

In the same way, it is stipulated that the regulations under which the public procurement procedures in respect of which the rights protection procedure was initiated are applied to the procedures, and the regulations under which the public procurement procedures in respect of which the fine and contract cancellation procedure was initiated are applied to the procedures for fines and contract cancellation under the jurisdiction of the Republic Commission.

Furthermore, the transitional and final provisions relate to the regulation of the work of state bodies, and it is stipulated that on the day of the commencement of the application of the PPL, the Public Procurement Administration will continue to operate as the Public Procurement Office, and that the President and members of the Republic Commission elected in accordance with the provisions of the PPL/2015 will perform their functions until their termination.

The adoption of bylaws for the implementation of the PPL is scheduled for the date of entry into force of this law, i.e., by 1 July 2020, so it can be stated that at the time of preparation of this manual, all bylaws have been adopted and entered into force.

Application of certain provisions of the PPL (Article 14, paragraph 1, item 3) and 4) and Article 127, paragraph 2. PPL) are fixed until the date of accession of the Republic of Serbia to the European Union, while certain provisions of the PPL will apply from the date of accession of the Republic of Serbia to the European Union (Article 1, paragraph 4, item 9), Article 2, paragraph 1, item 4), sub-item (3), Article 4, paragraph 5, item 2), Article 11, paragraphs 5 and 6, Article 20, paragraph 2. and 3, Article 28, paragraph 4, Article 82, Article 84, Article 105, paragraph 10, Article 107, paragraph 4, Article 108, paragraph 4, Article 125, Article 127, paragraph 3, Article 134, paragraph 3, item 3) and paragraph 4, Article 143, paragraph 6, Article 163, paragraph 1, item 3), Articles 173 - 175, Article 176, paragraph 8, Article 177 and Article 183, paragraph 1, item 2) of the PPL.

1. *Article 92, paragraph 4 of the* *PPL – in the public procurement commission, one member must be a public procurement officer with a higher education in undergraduate academic studies in the scope of at least 240 ECTS points or master’s academic studies, specialist academic studies, specialist vocational studies, i.e., undergraduate studies for the duration of at least four years or specialist studies at a university or a person who obtained a certificate for a public procurement officer by the date of entry into force of this law.* [↑](#footnote-ref-1)
2. *Article 185, paragraph 1 of the* *PPL stipulates that the contracting authority is obliged to provide training for the performance of public procurement tasks and to pass the exam for a public procurement officer, as well as continuous training, for persons performing public procurement tasks.* [↑](#footnote-ref-2)
3. *Article 185, paragraph 2 of the* *PPL prescribes the procedure and conditions for obtaining a certificate for a public procurement officer and keep a register of public procurement officers.* [↑](#footnote-ref-3)
4. *By-laws were adopted and published on the website of the PPO.* *By-laws are available via the link:* [*https://www.ujn.gov.rs/?page\_id=815*](https://www.ujn.gov.rs/?page_id=815) [↑](#footnote-ref-4)
5. *Article 212 of the* *PPL - The following issues in procedures within the competence of the Republic Commission, unless otherwise prescribed by this law, shall be subject to the provisions of the law regulating administrative procedures, taking into account the principles of this law and the specificities of public procurement and rights protection procedures:*  *1) representation through a proxy; 2) rules on delivery and notification; 112 3) calculation of deadlines; 4) restoration to the previous state; 5) rules on public documents; 6) decision and correction of errors in the decision; 7) costs of the procedure; 8) termination of the procedure; 9) previous question; 10) language of the procedure; 11) repetition of the procedure; 12) review of the file and notification of the progress of the procedure; 13) minutes.* [↑](#footnote-ref-5)
6. *From 1 July 2020, i.e., from the date of establishment of the Portal, to the time of writing this guide, a total of 19 versions of the Portal have been published.* *Each version of the Portal contains certain functionalities that, compared to the previous version, enable more efficient, simpler and more transparent implementation of public procurement procedures and submission of bids.* [↑](#footnote-ref-6)
7. *This by-law is published on the PPO website.*  *The bylaw can be accessed via the link:* [*By-laws - Public Procurement Office*](https://www.ujn.gov.rs/?page_id=815) [↑](#footnote-ref-7)
8. *From January 1, 2024, the exam for obtaining a certificate for a public procurement officer consists not only of a written part, but also of a practical part, i.e., knowledge of working on the Portal.* [↑](#footnote-ref-8)
9. *Instructions for using the Portal can be accessed via the link:*[*Instructions - Overview*](https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3779/Uputstva)  [↑](#footnote-ref-9)
10. *The subject-matter of public procurement is regulated by Article 29 of the* *PPL* [↑](#footnote-ref-10)
11. *The estimated value of public procurement is regulated by Articles 29-35 of the* *PPL* [↑](#footnote-ref-11)
12. *The way of forming the public procurement subject-matters into lots is regulated by Article 36 of the* *PPL* [↑](#footnote-ref-12)
13. *The types of public procurement procedures are regulated by Article 51 of the* *PPL* [↑](#footnote-ref-13)
14. *Criteria for qualitative selection of the economic operator are regulated by Art. 111 – 117 of the* *PPL, whereas the contract award criteria are regulated by Art. 132 – 134а of the PPL.* [↑](#footnote-ref-14)
15. *Article 90* *PPL* [↑](#footnote-ref-15)
16. *The special act model can be accessed via the following link:* [*https://www.ujn.gov.rs/?page\_id=1195*](https://www.ujn.gov.rs/?page_id=1195) [↑](#footnote-ref-16)
17. *Article 92, paragraph 4 of the* *PPL - in the public procurement commission, one member must be a public procurement officer with a higher education in undergraduate academic studies in the scope of at least 240 ECTS points or master’s academic studies, specialist academic studies, specialist vocational studies, i.e., undergraduate studies for the duration of at least four years or specialist studies at a university or a person who obtained a certificate for a public procurement officer by the date of entry into force of this law.* [↑](#footnote-ref-17)
18. *Article 88, paragraph 1 of the* *PPL* [↑](#footnote-ref-18)
19. *Article 88, paragraph 2 of the* *PPL* [↑](#footnote-ref-19)
20. *Article 88, paragraph 3 of the* *PPL* [↑](#footnote-ref-20)
21. *Article 88, paragraph 4 of the* *PPL* [↑](#footnote-ref-21)
22. *Article 88, paragraph 5 of the* *PPL* [↑](#footnote-ref-22)
23. *Textual instructions are accessible via the link:* [*Public Procurement Plan - Preparation and publication - Overview*](https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3825/Plan-javnih-nabavki-priprema-i-objavljivanje) [↑](#footnote-ref-23)
24. *Video instruction is accessible via the link:* [*Public Procurement Plan*](https://www.youtube.com/watch?v=4YvscFzhu2k&t=12s)*.* [↑](#footnote-ref-24)
25. *Article 88, paragraph 6 of the* *PPL* [↑](#footnote-ref-25)
26. *Article 88, paragraph 7 of the* *PPL* [↑](#footnote-ref-26)
27. The Rulebook can be accessed via the link:

    [*https://www.ujn.gov.rs/wp-content/uploads/2021/02/Pravilnik-o-utvrdjivanju-sadrzine-standardnih-obrazaca-za-objavljivanje-oglasa-o-javnoj-nabavci-preko-Portala-javnih-nabavki-93\_2020-273.pdf*](https://www.ujn.gov.rs/wp-content/uploads/2021/02/Pravilnik-o-utvrdjivanju-sadrzine-standardnih-obrazaca-za-objavljivanje-oglasa-o-javnoj-nabavci-preko-Portala-javnih-nabavki-93_2020-273.pdf) [↑](#footnote-ref-27)
28. *Instruction is accessible via the link:*[*Упутство-о-нацину-слања-и-објављивања-огласа-о-јавној-набавци-93\_2020-371.пдф*](https://www.ujn.gov.rs/wp-content/uploads/2021/02/Uputstvo-o-nacinu-slanja-i-objavljivanja-oglasa-o-javnoj-nabavci-93_2020-371.pdf) [↑](#footnote-ref-28)
29. *By-laws are available via the link:*[*Instructions - Overview*](https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3779/Uputstva)  [↑](#footnote-ref-29)
30. *Article 91 of the* *PPL), begins with the publication of a public invitation and other advertisements used as a public invitation (except in the case of a negotiated procedure without publication of a public invitation, when the procedure is considered to have been initiated on the day of sending the invitation to submit bids), and ends when the contracting authority publishes a notice of contract award, suspends the procedure or cancels the procedure.* [↑](#footnote-ref-30)
31. *Public procurement procedures are regulated by Articles 52 to 63 of the* *PPL* [↑](#footnote-ref-31)
32. *The Rulebook can be accessed via the link:* [*https://www.ujn.gov.rs/?page\_id=815*](https://www.ujn.gov.rs/?page_id=815) [↑](#footnote-ref-32)
33. *Article 93, paragraph 3 of the* *PPL* [↑](#footnote-ref-33)
34. *The Guidelines are accessible via the link:*[*https://www.ujn.gov.rs/?page\_id=1190*](https://www.ujn.gov.rs/?page_id=1190) [↑](#footnote-ref-34)
35. *Models of tender documents can be accessed via the link:* [*https://www.ujn.gov.rs/?page\_id=1195*](https://www.ujn.gov.rs/?page_id=1195) [↑](#footnote-ref-35)
36. *Article 95, paragraph 4 of the* *PPL* [↑](#footnote-ref-36)
37. *Article 87, paragraph 2 of the* *PPL* [↑](#footnote-ref-37)
38. *The request for protection of rights which disputes the actions of the Contracting Authority in connection with determining the type of procedure, content of the public invitation and tender documentation will be considered timely if received by the Contracting Authority no later than three days before the deadline for submission of bids or applications.* [↑](#footnote-ref-38)
39. *Article 114 of the* *PPL* [↑](#footnote-ref-39)
40. *For example, the contracting authority is conducting a public procurement procedure with an estimated value of 10,000,000 dinars.* *Within the framework of financial and economic capacity, the contracting authority may provide that the tenderer must prove that it has generated a minimum income of 20,000,000 dinars in the requested period, in accordance with Article 116 of the* *PPL* [↑](#footnote-ref-40)
41. *Article 132 of the* *PPL* [↑](#footnote-ref-41)
42. *Article 119 of the* *PPL prescribes cases in which the contracting authority is not obliged to require the bidder to submit evidence of compliance with the criteria for the qualitative selection of the economic operator.* [↑](#footnote-ref-42)
43. *Article 144, paragraph 1, prescribes the grounds for rejecting an offer as unacceptable.* [↑](#footnote-ref-43)
44. *Article 50 paragraph 8 of the* *PPL* [↑](#footnote-ref-44)
45. *Article 147 of the* *PPL* [↑](#footnote-ref-45)
46. *Having regard to the provision of Article 85, paragraph 8 of the* *PPL, it is two working days* [↑](#footnote-ref-46)
47. *Article 151, paragraph 2 of the PPL prescribes cases when the contracting authority is not obliged to wait for the deadline for submitting a request for protection of rights to expire.* [↑](#footnote-ref-47)
48. *Other grounds for rejecting a request for protection of rights are prescribed in Article 219 of the* *PPL* [↑](#footnote-ref-48)
49. *Article 220 of the* *PPL* [↑](#footnote-ref-49)
50. *Article 154, paragraph 1 of the* *PPL* [↑](#footnote-ref-50)
51. *Article 152, paragraph 2 of the* *PPL* [↑](#footnote-ref-51)
52. *What is considered a material amendment to a contract is prescribed in Article 154 of the* *PPL* [↑](#footnote-ref-52)
53. *Article 156 of the* *PPL* [↑](#footnote-ref-53)
54. *Article 157 of the* *PPL* [↑](#footnote-ref-54)
55. *Article 158 of the* *PPL* [↑](#footnote-ref-55)
56. *Article 159 of the* *PPL* [↑](#footnote-ref-56)
57. *Article 160 of the* *PPL* [↑](#footnote-ref-57)
58. *Article 161 of the* *PPL* [↑](#footnote-ref-58)
59. *Article 152а of the PPL* [↑](#footnote-ref-59)
60. *Rulebook on the method of publication and type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 115/2023, hereinafter referred to as:* [↑](#footnote-ref-60)
61. *A platform where public procurement officers can find all data and information related to public procurement in the Republic of Serbia.* *The platform contains:*

    *Legal and by-law solutions in the field of public procurement, as well as other areas related to public procurement;*

    *Examples of good practice from the country and abroad;*

    *Opinions and positions of the competent authorities in the field of public procurement (PPO, Republic Commission for the Protection of Rights in Public Procurement Procedures, hereinafter referred to as:* *RC)*

    *Document models (model tender documents, guides, guidelines, analyses)*

    *Referral to relevant websites.*

    *The platform is intended for both buyers and sellers.* [↑](#footnote-ref-61)
62. *In accordance with the provisions of the PPL, the Public Procurement Commission provides an opinion on the application of legal and regulatory regulations in the field of public procurement.* [↑](#footnote-ref-62)
63. *The Portal's mobile application for Android and IOS devices provides access to the electronic procurement system of the Republic of Serbia and is intended for all interested parties.* *All functions used on the Public Procurement Portal are available on the mobile application. The application for Android and IOS mobile devices can be downloaded by scanning the QR code located on the Portal's front page.* [↑](#footnote-ref-63)