



ANALYSIS AND RECOMMENDATIONS FOR IMPROVING FUNCTIONS

MONITORING OF THE PUBLIC PROCUREMENT OFFICE

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**TABLE OF CONTENTS**

INTRODUCTION

1. PUBLIC PROCUREMENT SERVICES’ WORK AND MONITORING FUNCTION, ACCORDING TO EU PRACTICE
2. PROFESSIONAL TASKS PERFORMED BY THE PUBLIC PROCUREMENT OFFICE AND FUNCTIONS OF OTHER COMPETENT AUTHORITIES RELATED TO THE MONITORING OF PUBLIC PROCUREMENT
3. THE WORK OF CENTRAL PUBLIC PROCUREMENT BODIES IN THE REGION AND THE MEMBER STATES OF THE EUROPEAN UNION
4. MONITORING OF THE IMPLEMENTATION OF PUBLIC PROCUREMENT REGULATIONS CARRIED OUT BY THE PUBLIC PROCUREMENT OFFICE
5. RECOMMENDATIONS FOR IMPROVING THE MONITORING FUNCTION OF THE PUBLIC PROCUREMENT OFFICE
6. CONCLUSION

# INTRODUCTION

The key institutions in the public procurement system in the Republic of Serbia, whose operations, methods of operation and form of organisation are regulated by the Law on Public Procurement[[1]](#footnote-1) (hereinafter referred to as: PPL) are: the Public Procurement Office (hereinafter referred to as: the PPO) and the National Commission for Protection of Rights in Public Procurement Procedures (hereinafter referred to as: the National Commission).

The **PPO** is a special organisation that performs professional activities in the field of public procurement, monitors the implementation of public procurement regulations, participates in drafting laws and other regulations in the field of public procurement and enacts bylaws in the field of public procurement, manages the Public Procurement Portal, records data on public procurement procedures and public procurement contracts, cooperates with domestic and foreign institutions and experts in the field of public procurement in order to improve the public procurement system, provides professional assistance to contracting authorities and bidders, contributes to creating conditions for economical, efficient and transparent use of public funds in the public procurement procedure. In addition, the PPO provides opinions on the implementation of the provisions of the PPL and other regulations in the field of public procurement and examines the existence of grounds for implementing the negotiated procedure referred to in Article 61, paragraph 1, items 1) and 2) of the PPL; The PPO is authorised to submit requests for the protection of rights, as well as requests to initiate misdemeanour proceedings. The PPO also performs tasks related to taking the exam for public procurement officers and maintains a register of public procurement officers.

**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, the Republic Commission decides on requests for the protection of rights, as well as on appeals against the decision of the contracting authority. The Republic Commission monitors the execution and controls the implementation of decisions it has made, annuls public procurement contracts, and imposes fines in accordance with the PPL. In addition to the above, the Republic Commission is authorised to submit requests for the initiation of misdemeanour proceedings when, acting within its competences, it determines that a violation of the Public Procurement Act has been committed that may be the basis for misdemeanour liability. Also, the Republic Commission, within its legal competences, decides on the costs of the rights protection procedure and the costs of preparing a bid, decides on the proposal of the contracting authority that the submitted request for protection of rights does not delay further action in the public procurement procedure, and decides on the proposal of the applicant for protection of rights to prohibit the continuation of the public procurement procedure, the conclusion or execution of the public procurement contract. The Republic Commission is authorised to adopt general legal positions regarding the application of regulations within its competence. The Republic Commission has a president and eight members, who are elected and dismissed by the National Assembly, and it works and decides in panels of three members, except when otherwise provided for by the PPL.

 The State Audit Institution (hereinafter referred to as: SAI), the Ministry of Finance (MFIN), the Ministry of Economy, the Commission for Public-Private Partnership, the Agency for Prevention of Corruption, the Commission for Protection of Competition and the Administrative Court also have a significant role in the field of public procurement.

**The SAI** is the highest public audit body in the Republic of Serbia, which is accountable 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 SAI is authorised to submit requests for the initiation of misdemeanour proceedings.

**The Ministry of Finance**, pursuant to the Law on Ministries,[[2]](#footnote-2) performs state administration tasks related, among other things, to public procurement. **The Budget Inspection** performs tasks related to the control of the implementation of the law and accompanying regulations in the field of financial and material operations and the designated and lawful use of funds by all beneficiaries of funds specified in the law regulating the budget system. Pursuant to Article 154, paragraph 6 of the PPL, the Ministry in charge of financial affairs regulates the manner of supervision and supervises the execution of public procurement contracts.

In accordance with the Law on Public-Private Partnership and Concessions,[[3]](#footnote-3) **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. 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. The aforementioned measure may last up to two years.

# PUBLIC PROCUREMENT SERVICES' WORK AND MONITORING FUNCTION, ACCORDING TO EU PRACTICE

The tasks of public procurement services in EU countries, as well as the description of the tasks related to the monitoring function, can be presented by analysing the OECD/SIGMA publications: Information Paper No. 26 - Organisation of Central Public Procurement Functions and Information Paper No. 27 - Public Procurement Monitoring.[[4]](#footnote-4)

The above documents show that EU Member States generally establish central organisational structures to carry out functions related to the public procurement system as a whole. All stakeholders in public procurement systems rely heavily on the capacity of public procurement services to support the development of national public procurement systems. Central institutions are empowered and entrusted with the tasks of coordination, management and support in the implementation of public procurement legislation. The practical experience of the Member States that have acceded to the EU, as well as candidate countries, demonstrates the importance of central public procurement organisations in carrying out the tasks set out in the EU accession chapter relating to public procurement. In these countries, a key challenge in the process of public procurement reform, together with the reform of the legal framework, is the question of how best to organise a central organisational structure for the coordination, implementation and supervision of public procurement.

The functions performed by these bodies can be classified as either main functions or auxiliary functions.

The main functions are:

* Drafting of basic public procurement policies, which aim to establish a general legal framework for public procurement activities. In this context, the most important function is the preparation and drafting of primary legislation relating to public procurement. Within this function, the tasks usually assigned are: (1) leading the working group in the drafting process; (2) organising the consultation process with the main stakeholders and actors in the public procurement system and (3) participating in other legislative activities relevant to public procurement;
* Secondary policy and regulatory functions, which refer to regulations formally adopted by the government to implement primary legislation in specific areas or to provide instruments to support the implementation of primary legislation. The set of supplementary regulations may include regulations covering technical aspects of the public procurement process, areas not covered by primary legislation or areas for which guidance is needed to clarify implementation; operational guidelines; standard formats for invitations to tender; model tender documents for goods, services and works, including instructions to tenderers, tender forms and technical specifications, as well as model general conditions for goods, services, works and concessions;
* International coordination function (international cooperation);
* Monitoring - monitoring includes all systematic observations of the public procurement system carried out with the aim of assessing how the development and functioning of the system and the desired state defined by policymakers are being achieved. Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC (hereinafter referred to as: Directive 2014/24/EU)[[5]](#footnote-5) requires Member States to assign a monitoring function to “one or more authorities, bodies or structures” which are empowered to report “certain breaches or systemic problems” that have been observed.

Auxiliary functions are:

* Advisory and operational support functions. The aim of these functions is to enable contracting authorities to act efficiently and in accordance with national legislation, the fundamental principles of the Treaty on the Functioning of the EU and good practices, while they include: the organization of a helpdesk function to provide legal and professional assistance to contracting authorities and economic operators on a daily basis; the development of a system of guidelines and operational tools for managing all stages of the public procurement process;
* Publication and information functions (may also include the publication and distribution of information on public procurement legislation and public procurement policy, including sources of additional information, materials and advice). Tasks related to this function may include: providing model calls for tenders and instructions on how to use them; operating an online system for publishing calls for tenders and contract award notices; quality and legality control of calls received; publishing calls and sending calls for tenders to the Official Journal of the EU; maintaining a public procurement register or other public procurement databases; maintaining a list of contracting parties to a public procurement contract; operation of an online information and guidance system to support the public procurement community, including guidance documents, model tender documents and model contracts, as well as for interpretations and comments;
* Professionalisation and capacity building functions, which include: initiating and coordinating national training programmes for contracting authorities; facilitating the implementation of independent teaching and research at universities, colleges and through private enterprises; organizing a research program on public procurement law, economics and public procurement policy; participating in national and international academic and other meetings on the topic of public procurement law, economics and public procurement policy;
* Procurement development and coordination functions, such as the introduction of a system for measuring public procurement results or the development of electronic public procurement.

When we talk about the oversight function (monitoring), public procurement monitoring or supervision is any systematic observation of the public procurement system carried out in a coherent manner with the aim of assessing how the system is functioning and developing over time and to determine whether the desired state defined by policymakers has been achieved. A distinction should be made between the concept of supervision as already defined and the methods and procedures applied to detect and eliminate violations of public procurement rules and regulations in individual public procurement procedures (audits, inspections, compliance checks). Although the detection and suppression of violations of public procurement rules (through compliance assessment) is an instrument for achieving the objectives set for public procurement, supervision as described above is a much broader concept that is not limited to the assessment of legal compliance with regulations. Such public procurement monitoring includes activities such as: data collection and analysis (regarding various aspects of public procurement, e.g. transparency, openness, competitiveness and efficiency), and its results provide the basis for the preparation of regular reports on the functioning of the procurement system and, in particular, for the elaboration of recommendations and proposals for the further development of the procurement system in the future.

Directive 2014/24/EU introduces additional requirements regarding the monitoring of public procurement systems:

* Monitoring bodies: Article 83 Directive requires Member States to ensure that the monitoring of the application of public procurement rules is carried out by “one or more bodies, authorities or structures” (monitoring bodies). Monitoring bodies must be empowered to report on “certain infringements or systemic problems” that they observe;
* Monitoring results: The results of the monitoring activities carried out by the monitoring bodies must be made publicly available. The results must also be made available to the European Commission. Article 83 Directive lays down requirements for regular data collection and reporting to the European Commission every three years. The report submitted to the European Commission must include information, as appropriate, on: the most common causes of incorrect application or legal uncertainty, including possible structural or recurring problems in the application of the rules; the level of participation of small and medium-sized enterprises (SMEs); the prevention, detection and adequate reporting of cases of fraud, corruption, conflicts of interest and other serious irregularities.

The role of monitoring in public procurement is to: assess the way in which the public procurement system is developing as a whole and the direction in which it is moving (certain trends can only be observed after several years of observation) and thus provide significant information that is essential for policymaking; identify the need for any changes in the system; determine short-term and long-term priorities and assess whether they have been achieved; analyse the potential consequences of alternative solutions; provide guidance for public procurement policies and the implementation of decisions made; provide relevant information for decisions made by other policymakers.

# PROFESSIONAL TASKS PERFORMED BY THE PUBLIC PROCUREMENT OFFICE AND FUNCTIONS OF OTHER COMPETENT AUTHORITIES RELATED TO THE MONITORING OF PUBLIC PROCUREMENT

Pursuant to Article 179 of the PPL, the PPO performs the following professional tasks:

# prepares the strategy for the development and improvement of public procurement in the Republic of Serbia;

# monitors the implementation of public procurement regulations and prepares the annual report on the conducted monitoring;

# submits a request for initiating misdemeanour proceedings for misdemeanours prescribed by this Law, submits a request for protection of rights and initiates the implementation of other appropriate procedures before the competent authorities when, based on monitoring, it notices irregularities in the application of public procurement regulations;

# participates in the drafting of laws and other regulations in the field of public procurement and adopts bylaws in the field of public procurement;

# gives opinions on the application of the provisions of this Law and other regulations in the field of public procurement;

# provides professional assistance, prepares guidelines, manuals, as well as other publications in the field of public procurement and ensures that they are equally accessible to contracting authorities/entities and economic operators free of charge;

# collects statistical and other data on conducted procedures, concluded public procurement contracts and prepares a special annual report on public procurement;

# prescribes the procedure and conditions for obtaining a certificate for a public procurement officer and keep a register of public procurement officers;

# manages the Public Procurement Portal;

# undertakes the necessary activities related to the negotiations on accession to the European Union, in the field of public procurement;

# cooperates with domestic and foreign institutions and experts in the field of public procurement in order to improve the public procurement system;

# cooperates with other state bodies and organizations, bodies of territorial autonomy and local self-government;

# performs other tasks, in accordance with the law.

When we talk about exercising control in individual public procurement procedures and the implementation of individual public procurement contracts, we should also point out the authorities that other institutions in the system already have in this regard: the Republic Commission, the Budget Inspection and the SAI.

### **Republic Commission**

Within the framework of its statutory powers, the Republic Commission decides on requests for protection of rights in all public procurement procedures and monitors the implementation of decisions it has made. Any person interested in a specific public procurement procedure may, in accordance with the provisions of the Public Procurement Act, initiate a procedure for the protection of rights and thereby practically initiate a procedure in which the legality of the implementation of a specific public procurement procedure will be reviewed. Therefore, it can be stated that the Republic Commission has a role in exercising control that mainly relates to ongoing public procurement procedures.

***Budget inspection***

The manner of work and powers of the Budget Inspection are regulated by the Law on the Budget System.[[6]](#footnote-6) The tasks of the Budget Inspection are performed by the Ministry of Finance, with the aim of carrying out inspection control over: 1) direct and indirect beneficiaries of budget funds; 2) organisations for mandatory social insurance; 3) public enterprises established by the Republic of Serbia, legal entities established by such public enterprises, legal entities over which the Republic of Serbia has direct or indirect control over more than 50% of the capital or more than 50% of the votes in the board of directors, as well as over other legal entities in which public funds account for more than 50% of the total revenue; 4) autonomous provinces and local self-government units, public enterprises established by local authorities, legal entities established by such public enterprises, legal entities over which local authorities have direct or indirect control over more than 50% of the capital or more than 50% of the votes in the board of directors, as well as over other legal entities in which public funds account for more than 50% of the total income; 5) legal entities and other entities to which budget funds have been directly or indirectly allocated for a specific purpose, legal entities and other entities that are participants in the business that is the subject of control and entities that use budget funds based on borrowing, subsidies, other state aid in any form, donations, grants, etc.

The budget inspection has access to all data, documents, reports and information necessary for the performance of its functions in the entities over which inspection control is carried out, and has at its disposal appropriate resources (staff, premises and equipment) that ensure the performance of its functions.

The work of the budget inspection is also subject to the Law on Inspection Supervision.[[7]](#footnote-7) Inspection supervision is a state administration task whose content and concept are determined by the law regulating the work of state administration, carried out by state administration bodies, bodies of autonomous provinces and bodies of local self-government units, with the aim of ensuring the legality and security of the business and conduct of supervised entities by preventive action or imposing measures and preventing or eliminating harmful consequences for goods, rights and interests protected by law and other regulations.

The Decree on the work, powers and characteristics of the budget inspection[[8]](#footnote-8) stipulates that the budget inspection carries out inspection control of the implementation of the law in the field of material and financial operations and the designated and lawful use of funds by the entities subject to inspection control. The budget inspection carries out inspection control activities according to the work program, while the possibility of carrying out extraordinary inspection control is also envisaged (in this regard, it should be borne in mind that information on the possibility of submitting reports of irregularities and illegalities in the use of public funds is also published on the official website of the Ministry of Finance). Inspection control is carried out by inspecting the business books, reports, records and other documentation of the subject of inspection control, while the budget inspection has the right to inspect the documentation on the business that is the subject of inspection control and of other persons, participants in that business. After the inspection, a record of the inspection is drawn up in which, if illegalities or irregularities are determined during the inspection control procedure, the following is stated: 1) the legal basis; 2) the evidence on the basis of which they were determined; 3) the measures proposed for their elimination; 4) the deadlines for their elimination.

Article 57 of the Law on the Budget System stipulates that contracts for the procurement of goods, financial assets, provision of services or performance of construction works, concluded by direct and indirect beneficiaries of budget funds and beneficiaries of funds of mandatory social insurance organisations, must be concluded in accordance with the regulations governing public procurement, while this law stipulates that failure to comply with the aforementioned provision constitutes a misdemeanour (in this way, the budget inspection is practically enabled to submit a request for the initiation of misdemeanour proceedings in relation to any violation of the provisions of the Public Procurement Law, in accordance with the authorisation granted by Article 104 of the Law on the Budget System). Budget System Law).

When it comes to the area of ​​public procurement, it is important to note that Article 154, paragraph 6 of the PPL regulates that the ministry responsible for finance shall regulate in more detail the manner of supervision and shall supervise the execution of public procurement contracts. In this regard, the Ministry of Finance has adopted a by-law - the Rulebook on the manner of supervision over the execution of public procurement contracts.[[9]](#footnote-9)

### **SAI**

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.

This institution, therefore, like the budget inspection, carries out control in relation to public procurement (primarily in relation to the regularity of the implementation of the public procurement procedure and the implementation of concluded contracts). The circle of audit subjects, in accordance with the Law on the State Audit Institution,[[10]](#footnote-10) is set in such a way that it is even significantly wider than the circle of persons who are contracting authorities in accordance with the PPL.

The SAI has the authority to submit requests to initiate misdemeanour proceedings (as well as criminal charges) in connection with the audit performed.

# THE WORK OF CENTRAL PUBLIC PROCUREMENT BODIES IN THE REGION AND THE MEMBER STATES OF THE EUROPEAN UNION

An analysis of the work of central public procurement bodies in the region, which includes Bosnia and Herzegovina, Montenegro and Macedonia, can be concluded that these bodies perform the main functions described in the previous chapter of the analysis (participation in the creation of public procurement policy and the drafting of public procurement regulations, international coordination and supervisory function), as well as work related to advisory assistance, education and certification in the field of public procurement, as well as work related to the management of the Public Procurement Portal.

By analysing the work of central public procurement bodies in EU member states, in relation to the monitoring function, it can be concluded that different member states have different solutions, with the same purpose of ensuring legal proceedings, detecting irregularities in public procurement and implementing activities to strengthen the system.

In this regard, some Member States, such as Slovenia, have a solution whereby a central public procurement institution (Public Procurement Directorate) ensures monitoring of public procurement regulations. In this regard, when the Public Procurement Directorate identifies or receives information regarding specific violations of regulations or systemic problems, it informs the budget inspectorate, the state audit, the body responsible for the protection of rights, the body responsible for the protection of competition or the anti-corruption agency. The Public Procurement Directorate is, in this regard, obliged to act in accordance with the aforementioned article of Directive 2014/24 and to inform the European Commission of the irregularities observed. The Public Procurement Directorate is also obliged to ensure that information and guidance regarding the application and interpretation of EU public procurement legislation are available to participants in the system, and to provide them with support in this regard. In addition to the above, the Public Procurement Directorate monitors public procurement through the collection, analysis and dissemination of data related to public procurement.

On the other hand, central public procurement bodies in individual member states, in addition to the aforementioned (systemic) supervision, also carry out other related activities, which include so-called inspection tasks, such as: checking legal compliance in individual public procurement procedures or giving prior approval to tender documents in individual public procurement procedures (above a certain value, if financed from EU funds, etc.).

Thus, for example, in Poland, the central public procurement body, in addition to systematic monitoring, can also initiate ad hoc controls in individual public procurement procedures, in the event of a reasonable suspicion that public procurement rules have been violated during the public procurement procedure.

In Romania, a special organizational unit has been formed within the central public procurement body to carry out the so-called ex-ante control of certain parts of tender documents before their publication, while a similar authority exists in Slovakia, when public procurement is financed or co-financed from EU funds.

Analysing the public procurement systems in EU member states, it can also be concluded that there are special bodies that control individual public procurement processes. Thus, in Italy, for example, the anti-corruption body controls public procurement procedures and the execution of public procurement contracts. In Portugal, public procurement control is carried out by the Court of Auditors and the Financial Inspectorate, while the Law on Public Procurement pays special attention to the supervision of the execution of public procurement contracts, by appointing a "contract manager" for the execution of the contract, who performs tasks related to the supervision of the execution of the contract.

# MONITORING THE IMPLEMENTATION OF PUBLIC PROCUREMENT REGULATIONS

The PPO, as the central institution in the public procurement system, by performing its duties in accordance with its legal authority, significantly influences the creation of public procurement policy and the efficiency and legality of the actions of all participants in the system (both by creating a transparent public procurement system through the management of the Public Procurement Portal, and by improving professionalism and regularity in actions through the creation of professional training programs and the drafting of appropriate models, guidelines, etc.).

One of the most important roles of the PPO is to monitor the implementation of public procurement regulations.

Article 180 of the PPL regulates that monitoring of the implementation of regulations on public procurement is carried out by the PPO in order to prevent, detect and eliminate irregularities that may arise or have arisen in the implementation of the PPL.

Pursuant to Article 180, paragraph 7 of the PPL, the Office has also adopted a by-law – the Regulation on Monitoring the Implementation of Public Procurement Regulations,[[11]](#footnote-11) which regulates the monitoring procedure itself in detail.

Below, all segments of the monitoring carried out by the PPO will be presented (who are the monitoring subjects, what types of monitoring exist, what activities the PPO undertakes when conducting monitoring, etc.).

***Monitored entity***

Monitoring subjects are persons whose actions are monitored by the Public Procurement Office when implementing regulations in the field of public procurement.

Those are:

1. Public administration bodies;
2. Bodies of the autonomous province and bodies of local self-government units;
3. Other state bodies:
4. Other contracting authorities.

***Types of monitoring***

According to the type, monitoring can be:

1. Regular
2. Extraordinary
3. Controlling
4. Supplementary

*Regular monitoring* is carried out according to the adopted annual monitoring plan and in the case of conducting a negotiation procedure without publishing a public invitation.

*Extraordinary monitoring* is carried out upon receipt of a notification from a legal or natural person, state administration body, autonomous province body and local self-government unit and other state bodies.

*Control monitoring* is carried out in order to determine the implementation of the recommendations that the Office sent to the monitored entity in its report on the conducted monitoring.

*Additional monitoring* is carried out ex officio in order to establish facts of importance for monitoring, which are not established in regular, extraordinary or control monitoring.

***How is the monitoring process initiated?***

The monitoring procedure is initiated ex officio or upon the received notification of a legal or natural person, state administration body, autonomous province body and local self-government unit and other state bodies.

Interested parties may submit a notice:

* in writing to the address of the registry office of the PPO: Nemanjina 22-26, as well as
* electronically to the e-mail address: office@ujn.gov.rs.

***When can interested parties submit a notification of observed irregularities to the Public Prosecution Service?***

Interested parties may submit a notification on the observed irregularities both during the public procurement procedure and after the completion of the procedure and the conclusion of the public procurement contract.

When an interested party identifies certain irregularities in the application of public procurement regulations, a detailed notification on the type of observed irregularity is submitted to the PPO, which determines the further actions of the PPO and the monitoring procedure itself.

***How is the monitoring process carried out?***

The monitoring procedure is carried out:

1. based on the annual monitoring plan;
2. in the case of conducting a negotiated procedure without publishing a public invitation referred to in Article 61, paragraph 1, items 1) and 2) of the PPL;
3. on the basis of a notification from a legal or natural person, state administration body, autonomous province body and local self-government unit and other state bodies.

***How is the annual monitoring plan adopted and how does the Office select the monitoring entities to be covered by the plan?***

The annual monitoring plan is adopted by the end of the current year for the next year and is prepared on the basis of the established situation in the field of public procurement and risk assessment. Depending on these circumstances, the PPO also determines the monitoring entity. The annual monitoring plan is not published and is not publicly available.

The annual monitoring plan must include:

1. review of entities subject to monitoring;
2. time period for monitoring;
3. seat of entities subject to monitoring;
4. data on the resources of the PPO that will be allocated for monitoring, and
5. other data important for conducting monitoring.

***In which situations and in what way does the Office conduct monitoring when it comes to the negotiation procedure without publishing a public invitation?***

The monitoring procedure is carried out in the case of a negotiated procedure without publishing a public invitation:

1. if only a certain economic operator can deliver goods, provide services or perform works, for any of the following reasons:
2. the purpose of the procurement is to create or purchase a unique work of art or artistic performance;
3. lack of competition for technical reasons;

 (3) for the protection of exclusive rights, including intellectual property rights;

2) 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 case of conducting a negotiated procedure in these cases, the contracting authority must submit an explanation and all documentation related to the reasons justifying this type of procedure to the Office at the same time as publishing the notice on conducting a negotiated procedure without publishing a public invitation.

The PPO 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 its application.

When conducting monitoring on this basis, the Office controls whether the contracting authorities act in accordance with the opinion of the Office on the validity of this type of procedure, as well as whether the public procurement procedure is conducted in accordance with the provisions of the PPL.

***What information should be included in the notification of observed irregularities?***

Example of a notification upon which the PPO can immediately act

|  |  |
| --- | --- |
| *Name and seat of the controlled entity* | *Public Enterprise ABBG Beograd* |
| *Subject-matter of procurement* | *Purchase of computers* |
| *Type of procedure* | *Open procedure* |
| *Value of the procurement, if known* | *6,000,000.00 dinars* |
| *Factual basis of the indicated irregularity* | *The contracting authority made a significant change to the contract by increasing the scope of procurement by more than 30% of the original value of the contract* |
| *Evidence supporting the stated facts* | *Basic public procurement contract, annex to the concluded contract and link to the public procurement procedure in question* |
| *Legal qualification of the indicated irregularity* | *The stated actions of the procuring entity are not in accordance with Article 160 of the* *PPL, which stipulates that the public procurement contract may be amended in such a way as to increase the scope of procurement, but only if the change value is less than 10% of the original contract value.* *This is a violation prescribed by Article 236, paragraph 1, item 14) of the PPL.* |
| *Data on the submitter of the notification*  | *Petar Petrović* *Solunska 66* |

In the process of conducting monitoring, the applicant may be required by the PPO to clarify or provide additional explanations regarding the allegations from the submitted notification, as well as to supplement the notification.

***Does the PPO conduct monitoring based on each notification submitted?***

No. The PPO does not monitor:

1. If it is determined that the PPO is not competent;
2. If the period of 3 years has elapsed from the completion of the public procurement procedure or the conclusion of the contract without conducting the procedure;
3. If from the notification it is not possible to determine the submitter and data of importance for the procedure.

***What information can the Office request from the monitored entity, and which is important for conducting monitoring?***

The PPO may request the following information from the monitoring entity:

1. data on the responsible person of the monitored entity (name and surname, personal ID number, address of residence);
2. procurement documentation;
3. public procurement contract or framework agreement, if concluded;
4. statement of the monitored entity;
5. website where the documentation or its part is available;
6. other documentation and data related to the monitored entity.

***What are the consequences for the monitored entity in the event of non-submission of the required documentation at the request of the PPO?***

The monitored entity shall submit the requested documentation within 15 days from the day of receipt of the request. If the requested documentation is not submitted within the prescribed period, the PPO may submit a request to initiate a misdemeanour proceeding. The provisions of the PPL state the conduct of the monitored entity prescribed as an offence, for which a fine in the amount of 100,000 to 1,000,000 dinars is envisaged for the contracting authority, i.e., a fine in the amount of 30,000 to 80,000 dinars for the responsible person of the contracting authority.

***How is the required documentation submitted?***

The required documentation shall, as a rule, be submitted in an uncertified copy, unless the request does not explicitly require delivery in the form of an original or a certified copy or in electronic form.

After the monitoring, the documentation submitted in the original form is returned to the monitored entity.

***Does the PPO inform the notifier of the results of the monitoring carried out?***

Yes. After the monitoring, the Office informs the submitter of the notification on the results of the conducted monitoring and on that occasion indicates the description of actions carried out during the monitoring, factual basis in case of established irregularities, evidence on which decisive facts were established, legal qualification of established irregularities or conclusion that no irregularities were identified in the implementation of the monitoring, but also a recommendation on the manner of preventing or eliminating irregularities, if applicable.

***Does the PPO notify the notifier if it does not conduct monitoring?***

Yes. If it does not conduct monitoring, the PPO prepares an official note, of which it informs the notifier, if known, without delay.

***Who has access to the Annual Monitoring Report and is it publicly available?***

The 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. The National Assembly publishes the Annual Report on the conducted monitoring of the Office on its website <http://www.parlament.gov.rs/akti/izvestaji-/izvestaji-.1785.html>, so that it is available to all interested persons.

***What possibilities are available to the Office, if it notices irregularities in the public procurement procedure that was the monitored entity?***

The actions of the PPO after the monitoring process depends on the type of irregularity identified.

Depending on the irregularities identified, the Public Prosecution Service may:

1. Submit a request for initiating misdemeanour proceedings, if it is an irregularity that is prescribed as a misdemeanour by the provisions of the PPL;
2. File an application for protection of rights;
3. Submit a request for annulment of the public procurement contract in accordance with Article 233 of the PPL;
4. Initiate the implementation of other appropriate procedures before the competent authorities.

It is important to note that the statute of limitations for initiating and conducting misdemeanour proceedings, in accordance with the provisions of the PPL, occurs three years after the date of the misdemeanour prescribed by the provisions of this law.

In addition to the above, a request for annulment of a public procurement contract may be submitted by the PPO either with a request for protection of rights or as a separate request. If the request for annulment of the public procurement contract is submitted separately, it may be submitted within 60 days from the day of finding out the reason for annulment, and no later than within six months from the day of concluding the contract.

Therefore, in order to successfully implement the monitoring procedure, it is desirable that the notifier first of all correctly recognizes the observed irregularity, and to inform the Office about it in a timely manner, in order to be able to take the measures available to it.

Also, the PPO may submit a request for the protection of rights in the public interest, within the deadlines prescribed by the provisions of the PPO.

**Graphical overview of the monitoring process flow**

Submitter of notification

Report

Filing a request to initiate misdemeanour proceedings

Rights Protection Request

Data

Monitoring

Request for annulment of contract

Monitored entity

# RECOMMENDATIONS FOR IMPROVING THE MONITORING FUNCTION OF THE PUBLIC PROCUREMENT OFFICE

Systematic monitoring of the implementation of public procurement procedures involves a series of activities aimed at preventing the occurrence of irregularities and enabling their easy detection and effective sanctioning in a systematic and continuous manner. When it comes to sanctioning irregularities, not only in the field of public procurement, but also in other areas, it must be noted that two circumstances are very important. First, there must be clear rules and it must be ensured that these rules are available to those who will apply them, and that those who will apply them can easily obtain clarifications of the same rules in order to have as few dilemmas as possible in their application. On the other hand, efficient and effective sanctioning of irregularities must be ensured, in which the most important role is played by the courts misdemeanour and general jurisdiction courts that try criminal cases and cases in which contractual disputes are resolved), and in the public procurement system, the Republic Commission, as well as the SAI and the budget inspection. The functioning of all areas of private and social life that are regulated by the norms of a legal system depends on the functioning of the judicial system, because every legal norm must be based, first, on a disposition – a rule that must be applied, and then on a sanction – a threat that something will be taken against someone who does not respect the rule. If there is no sanction, then the disposition would not have made sense either.

The PPO is one of the key institutions in the public procurement system in the Republic of Serbia, which plays a very important role in achieving both of the above circumstances in public procurement. The PPO can make all rules easily accessible to all users, through a number of different activities that will be discussed below, and on the other hand, the PPO, with its expert knowledge and experience, can help the bodies that sanction irregularities to be more efficient and to perform their work at a high level of expertise, leaving as few dilemmas as possible as to why something was sanctioned and how it was sanctioned. This is based on the fact that the PPO employs experts who have the necessary knowledge and experience that can help prevent irregularities, but they can also help bodies that have repressive mechanisms and powers to undertake activities in the field (with the contracting authorities themselves), such as inspection bodies, state audit, police and prosecutors. These authorities would then use their powers in a quality and efficient manner, in order to achieve the basic goal of sanctioning irregularities, which is certainty in detection and sanctioning (punishing). The PPO would exercise this role in all phases of the public procurement process, through various activities. All these activities could, in general, be summarized as follows:

* ensuring the prerequisites for all relevant information on public procurement to be published and publicly available, primarily on the Public Procurement Portal;
* education of all stakeholders in public procurement, not only those who directly implement or participate in public procurement procedures, but also employees in state bodies and institutions that have specific tasks related to the control and suppression of irregularities in public procurement, as well as employees in the media and representatives of civil society who can play an important role in revealing irregularities;
* systematic monitoring of the practices of competent authorities, such as the Republic Commission and the SAI, in order to identify the most common irregularities identified by these authorities, and to take preventive action (through public awareness and special education techniques) and prevent the recurrence of these irregularities;
* preparation of model acts and documentation, which will help contracting authorities and bidders, as well as control bodies, to more easily participate in public procurement procedures or to more easily control those procedures, so that the models will be clear, transparent and contain all necessary notes and explanations so that those who apply them understand their content and the reasons for their application;
* taking initiatives aimed at closer cooperation between competent authorities and institutions in public procurement, in order to exchange necessary knowledge and experience and to harmonize practice in the application of the provisions of the PPL.

In this regard, it should be noted that on 4 November 2023, the Law on Amendments to the Public Procurement Law[[12]](#footnote-12) entered into force and has been applied since 1 January 2024, except for the provision of Article 21, paragraph 1 of this Law (registration of new economic entities on the Public Procurement Portal) which applies from the date of entry into force of this Law.

One of the important novelties provided for in the Draft Law on Amendments to the Law on Public Procurement is the creation of a database on the Public Procurement Portal, which, in addition to information on all contracts concluded after the public procurement procedure and all amendments thereto, also contains data on contracts/orders concluded, i.e., issued in accordance with Article 27 of the PPL, which prescribes the thresholds up to which the provisions of this they do not apply the law;

Considering that this solution allows for significantly greater transparency regarding data on contract amendments, data on awarded contracts/issued purchase orders for procurements whose value is below the thresholds for the application of the PPL, the Public Procurement Office and other authorities responsible for controlling the legality of spending public funds have easier access to data important for performing tasks within their jurisdiction, and therefore increased control of these public procurement procedures is expected.

In addition to the above, in order for the monitoring carried out by the Public Procurement Office to yield as many results as possible, it is recommended that, in accordance with the staffing capacities of the PPO, it should cover as many contracting authorities as possible, and thus the number of public procurement procedures carried out, all with the aim of identifying and preventing irregularities in the application of public procurement regulations. In this regard, it is also necessary to increase the number of employees who will be engaged in monitoring tasks.

1. **CONCLUSION**

Public procurement is an important component in any modern economy and has a significant impact on the country’s progress and development. The use of public funds by public and sectoral contracting authorities, i.e., the procurement of goods, services and works of these contracting authorities, significantly affects market competitiveness. That is why it is crucial to protect the integrity of the public procurement procedure, in order to achieve greater benefits for society and protect competition in the free market.

Public procurement monitoring is understood as any systematic observation of the public procurement system carried out in a coherent manner with the aim of assessing how the system is functioning and developing over time and to determine whether the desired state defined by policymakers has been achieved.

Various types of oversight and control in relation to public procurement are necessary and the system cannot be effective without any of them, but it is necessary to ensure that each institution in the system has clear responsibilities and authorities in this regard.

In this regard, cooperation and coordination of all competent institutions in the public procurement system, in terms of monitoring the implementation of public procurement regulations is extremely important for the effective elimination of irregularities in the public procurement system.

In addition to the above, new legal and regulatory solutions, as well as the established functionalities of the Public Procurement Portal, greatly contribute to the improved implementation of monitoring over the implementation of public procurement regulations.



1. “Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23 [↑](#footnote-ref-1)
2. “Official Gazette of the Republic of Serba”, Nos. 128/2020, 116/2022 and 92/2023 - as amended [↑](#footnote-ref-2)
3. “Official Gazette of the Republic of Serba”, Nos. 88/2011, 15/2016 and 104/2016 [↑](#footnote-ref-3)
4. For information on functions in individual EU member states, see Chapter 4 of this analysis. [↑](#footnote-ref-4)
5. Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [↑](#footnote-ref-5)
6. “Official Gazette of the Republic of Serbia”, Nos. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 - corr., 108/2013, 142/2014, 68/2015 - as amended, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019, 72/2019, 149/2020, 118/2021, 138/2022, 118/2021 - as amended and 92/2023 [↑](#footnote-ref-6)
7. “Official Gazette of the Republic of Serbia”, Nos. 36/2015, 44/2018 – as amended and 95/2018 [↑](#footnote-ref-7)
8. “Official Gazette of the Republic of Serbia”, No. 93/2017 [↑](#footnote-ref-8)
9. “Official Gazette of the Republic of Serbia”, No. 110/2023 [↑](#footnote-ref-9)
10. “Official Gazette of the Republic of Serbia”, Nos. 101/2005, 54/2007, 36/2010 and 44/2018 – as amended [↑](#footnote-ref-10)
11. “Official Gazette of the Republic of Serbia”, No. 93/20 [↑](#footnote-ref-11)
12. “Official Gazette of the Republic of Serbia”, No. 92/23 [↑](#footnote-ref-12)