**Application of Article 152a of the Law on Public Procurement**

**Are contracting authorities obliged to publish invoice information on the Public Procurement Portal?**

Article 152a of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23, hereinafter referred to as: the PPL) stipulates the obligation to publish contract data on the Public Procurement Portal starting from 1 January 2024.

Namely, this article stipulates that the contracting authority shall publish on the Public Procurement Portal data on all contracts concluded after the public procurement procedure has been carried out, on all amendments to contracts pursuant to Articles 156-161 of this law, as well as data on contracts/purchase orders concluded or issued in accordance with Article 27 of this law and their amendments.

In order to implement this legal solution, the Public Procurement Office has adopted the 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), which has been in force since 1 January 2024.

One of the uncertainties in the application of the new legal solution relates to the obligation to publish invoice data. Namely, some contracting authorities carry out certain procurements, for which there is a basis for exemption from the application of the PPL, in a way that they do not conclude contracts, framework agreements or issue purchase orders, but pay for delivered goods, performed services and performed works only on the basis of the issued invoice. In this case, contracting authorities often do not carry out the procedures that they are obliged to prescribe in their special acts under Article 49, paragraph 2 of the PPL, nor do they enter the relevant procurements into the Procurement Plan to which the law does not apply. Procurements to which the Law does not apply

In this regard, it is first necessary to point out that contracting authorities, within the meaning of the PPL, are obliged to procure goods, services and works through legally prescribed public procurement procedures, which, as a rule, result in the conclusion of a public procurement contract.

On the other hand, the PPL also prescribes situations in which contracting authorities are not obliged to carry out public procurement procedures provided for by this law when procuring certain goods, services or works. Exceptions to the application of this law are prescribed in Articles 11-21 of the PPL, as well as Article 27 of the PPL, which establishes the thresholds up to which the law does not apply.

 In this regard, we remind you that Article 49, paragraph 2 of the PPL provides that the contracting authority is obliged to regulate in more detail, by a special act, the method of planning, implementing the public procurement procedure and monitoring the performance of the public procurement contract (method of communication, rules, obligations and responsibilities of persons and organizational units), the method of planning and implementing procurements to which the law does not apply, as well as procurements of social and other special services. The above also implies the adoption of a procurement plan to which the law does not apply, which will contain all procurements to which the law does not apply and the grounds for exemption from the provisions of the PPL.

In accordance with the above, it is concluded that in all situations where there is a basis for exemption from the application of the PPL, the contracting authority has an obligation to act in accordance with the rules prescribed by the act referred to in Article 49, paragraph 2 of the PPL and the principles of public procurement in a manner appropriate to the circumstances of the specific procurement. When conducting procurements, there is an obligation to apply public procurement principles in a manner appropriate to the circumstances of the specific procurement.

Considering the above, and the fact that some contracting authorities do not implement procedures for certain procurements, nor do they enter them in the Procurement Plan to which the law does not apply, it is necessary to specifically note that the provisions of the PPL do not prescribe the possibility in which any procurement may be excluded from the application of the rules prescribed by the act referred to in Article 49, paragraph 2 of the PPL and the principles of public procurement.

 In addition to the above, the contracting authority should certainly provide for a special procedure for conducting proceedings based on the prescribed exceptions to the application of the PPL by the act referred to in Article 49, paragraph 2, of the PPL, taking into account the specificities of each basis, and to conduct the procurements in question precisely in the manner prescribed by that act, with the mandatory application of the principles of this law in a manner appropriate to the circumstances of the specific procurement.

In this sense, after carrying out the procedure prescribed by the act referred to in Article 49, paragraph 2 of the PPL, with mandatory compliance with the principles of public procurement, the contracting authority has the possibility, based on Article 27 of the PPL:

1) conclude a procurement contract or issue a purchase order;

2) conclude a framework agreement, and

3) conclude a contract or issue a purchase order based on a previously concluded framework agreement.

However, if the ordering party has not acted in the described manner, i.e. has not carried out the procedure prescribed by a special act and has not concluded a contract or framework agreement, i.e. has not issued a purchase order, it is obliged to record the data contained in the invoice in the contract database. This can be done by selecting the “purchase order” field and making a special note that it is an invoice.

Since this case concerns a procurement carried out in accordance with Article 27 of the PPL, contracting authorities are obliged to record data on these procurements in the contract database. In addition to the above, we note that contracting authorities are obliged to bring their operations and the manner of conducting public procurement and procurement procedures into line with all applicable regulations.