



TOMIĆ STEVIĆ DULIĆ

ADVOKATSKA KANCELARIJA

TSD NEWSLETTER

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Most important news for bidders under the new Law on Public Procurement (RS Official Gazette No. 124/2012)

The National Parliament of the RS has adopted a new Law on Public Procurement (RS Official Gazette No. 124/2012) which entered into force on 6 January 2013, and is to be applied as of 1 April 2013, with the exception of the provisions governing the Register of Bidders – entrepreneurs and legal entities, which shall be applied as of 1 September 2013.

We shall draw you attention to the ten most interesting legal solutions from a bidder's perspective.

I Qualifications Recognised under the Earlier Law

Decisions on recognizing qualifications in restrictive or qualification procedures, made under the earlier Law on Public Procurement (RS Official Gazette No. 116/2008) shall cease to be valid by not later than 6 July 2013.

II Establishing Administration for Joint Services of the Republic Authorities

The new Law provides for establishing of Administration for Joint Services of the Republic Authorities as a body for centralised public procurement for the requirements of government bodies and organizations, including judicial authorities. This centralised body shall commence its activities by not later than 6 September 2013.

III Competitive Dialogue as a New Type of Procedure

The new Law introduces a new type of procedure – competitive dialogue, available to the contracting authorities in cases where the subject matter of public procurement is particularly complex, so that public procurement contract cannot be awarded through open or restricted procedures.

The subject matter of public procurement shall be considered particularly complex if the contracting authority is objectively unable to determine (i) technical specifications of the subject matter of public procurement, or (ii) legal or economic structure of public procurement.

Under this new procedure, the contracting authority invites all interested parties to submit applications and recognizes qualifications to applicants based on the previously set requirements. Then, the contracting authority conducts dialogue with all applicants with recognized qualifications (candidates) in order to find the solution which would meet its requirements. The contracting authority conducts dialogue with a candidate only about the solution offered by that candidate, i.e. it may not disclose to candidates the solutions offered by





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other candidates, or any other information concerning solutions offered by other candidates.

During the course of entire procedure, the contracting authority has to ensure equal treatment to bidders, and the dialogue itself is conducted until the contracting authority identifies the solution(s) capable of meeting its requirements. Subsequently, the contracting authority invites all candidates not excluded from dialogue to submit their final bids based on one or more adopted solutions presented during the dialogue

IV Low-Value Public Procurement

Low-value public procurement is now a procurement of goods, services or works of the same kind, whose total estimated value, at the annual level, is lower than 3.000.000 RSD.

Criticism of low-value public procurement was mainly directed at the lack of publicity and transparency, and the new Law provides that the contracting authority must publish the invitation to bid on the Public Procurement Portal and its own website and invite directly at least three persons performing the activities which are the subject matter of procurement. Such three persons, according to the information obtained by the contracting authority, must be capable of implementing the procurement and submitting their bids. This new legal solution practically allows all interested bidders to acquire information, via the Public Procurement Portal or the contracting authority's website, about the public procurement procedures related to their activities, and they can submit their bids, even though they had not been directly invited.

V Common Procurement Vocabulary

Common Procurement Vocabulary shall in particular be useful to those bidders who search for and find the information about the public procurement procedures they are eligible to participate in via the Public Procurement Portal, since under the new Law, the contracting authorities shall be obliged to use names and designations from the common procurement vocabulary when defining the subject matter of public procurement in public procurement notices.

In that regard, the RS Government shall adopt a by-law determining the common procurement vocabulary in accordance with the corresponding vocabulary in the EU – the CPV (the Common Procurement Vocabulary), which will allow for unification of terminology in public procurement procedures.

VI Requirements for Participation in Public Procurement Procedures

While the previous Law defined seven mandatory eligibility requirements, the new Law provides for five mandatory eligibility requirements. Thus a bidder must prove that:

- 1) it is registered with the competent body, or entered in the appropriate register,



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2) it or its legal representative have not been convicted for any criminal offences as members of an organized criminal group; that it has not been convicted for corporate crime, environmental crime, bribery, acceptance of bribes, fraud (new legal solution!),

3) it has not been prohibited from performing its business activity by any measure in force at the time of publishing tender notice and/or invitation to bid (new legal solution!),

4) it has paid due taxes and other public charges in accordance with the laws of the Republic of Serbia or a foreign country if its registered address is in a foreign country,

5) it has a valid permit issued by the competent body to carry out the business activity which is the subject matter of public procurement, if such permit is required under a special regulation.

The requirements concerning financial, operational, technical and personnel capacities are under the new Law considered as additional requirements, which a contracting authority may set in tender documents whenever it is necessary, having in mind the subject matter of public procurement

VII Register of Bidders – Entrepreneurs and Legal Entities

As of 1 September 2013, the Business Registers Agency shall keep a public Register of Bidders – Entrepreneurs and Legal Persons (Register) who meet mandatory requirements for participation in public procurement procedures. This Register will be available on the website of the Business Registers Agency.

Any interested bidder may apply to be registered with the Register by submitting documents which prove that it has met the mandatory requirements. A person registered with the Register will not be obliged to prove that it meets mandatory requirements when submitting a bid or an application.

Organizations authorized to issue evidence of meeting the requirements, or the bodies authorized to pronounce sanctions and measures preventing participation in public procurement procedures, are under the obligation to notify the Business Registers Agency without delay in case they should detect any changes or pronounce any sanctions or measures against any person registered with the Register. In such case, the Business Registers Agency shall, acting in officio, expunge such person from the Register.

VIII Negative references

The new Law provides a more comprehensive solution to this issue.

Under the new Law, a contracting authority is under the obligation to reject a bid in case there is a negative reference, while under the previous Law, such rejection



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was a possibility, not an obligation on part of the contracting authority.

The Law provides for compiling a list of negative references to be maintained by the Public Procurement Office and available on the Public Procurement Portal. Furthermore, contracting authorities must submit, immediately and without delay, evidence of any negative references to the Public Procurement Office.

IX Essential Deficiencies in a Bid

The new Law defines essential deficiencies in a bid on account of which a contracting authority must refuse the bid. In this way, the new Law allows the contracting authorities to accept the most favourable bid even though it may have a minor formal deficiency (such as absence of initials on each and every page).

The essential deficiency exists if:

- 1) bidder fails to prove it meets mandatory requirements for participation,
- 2) bidder fails to prove it meets additional requirements,
- 3) bidder fails to provide the requested collateral,
- 4) offered period of validity of the bid is shorter than that stipulated,
- 5) bid contains other deficiencies, rendering it impossible to determine the actual contents of the bid, or compare it with other bids.

Other deficiencies, not recognised as essential, may be amended (if necessary) in the course of the public procurement procedure.

X Protection of Rights in Public Procurement Procedure

Time limits for submission of applications for protection of rights have been changed.

An application for protection of rights challenging the type of procedure, the contents of the invitation to bid or tender documents is considered timely if received by the contracting authority not later than seven days before the expiry of the time limit for submission of bids, and in case of low-value public procurement procedures and qualification procedures, if received by the contracting authority not later than three days before the expiry of the time limit for submission of bids, regardless of the manner of delivery.

After the contracting authority has made a decision on awarding the contract, on concluding a framework agreement, on recognizing qualifications, or cancelling the procedure, the time limit for filing an application for protection of rights is ten days from receipt of the decision, and in case of low-value public procurement, five days from receipt of the decision.



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In case of a negotiated procedure without publishing the invitation to bid, the time limit for filing an application for protection of rights is ten days from the day of publishing the decision to award contract on the Public Procurement Portal.

Fees for submission of applications for protection of rights have been changed as follows:

- 1) 40,000 RSD in low-value public procurement procedures and in negotiated procedures without publishing invitation to bid,
- 2) 80,000 RSD where the application for protection of rights is filed before opening of bids, or where the estimated value of public procurement or the price offered by the bidder to whom the contract was awarded, does not exceed 80,000.000 RSD,
- 3) 0,1% of the estimated value of public procurement or the price offered by the bidder to whom the contract was awarded, where such value exceeds 80,000.00 RSD.

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