

Serbia

Tomic Sindjelic Groza (TSG)

Predrag Groza



1 Relevant Legislation

1.1 What is the relevant legislation and in outline what does each piece of legislation cover?

The relevant legislation includes the Public Procurement Law (Official Gazette of RS No. 124/2012, 14/2015 and 68/2015) (hereinafter, the “PPL”) and various by-laws regulating, in more detail, the specific aspects of public procurement:

- Regulation on Mandatory Elements of Tender Documents in Public Procurement Procedures and Manner of Evidencing Fulfilment of Requirements.
- Regulation on Content of Internal Act Regulating in Detail Public Procurement Procedure within Contracting Authority.
- Regulation on Public Procurement Procedure in the Defence and Security Sector.
- Regulation on Content of Public Procurement Report and Keeping of Public Procurement Records.
- Regulation on Form and Content of Request for Opinion on Justifiability of Applying Negotiated Procedure.
- Regulation on Form of Procurement Plan and Manner of Publication of Procurement Plan on Public Procurement Portal.
- Regulation on Form and Content of Loan Request and Form and Content of Documentation Demonstrating Credit Rating of Procuring Entity.
- Regulation on Evidencing of Domestic Origin of Offered Goods.
- Guidelines on Conditions, Manner and Procedure on Issuance of Certificate on Domestic Origin of Goods in Public Procurement Procedures.
- List of International Organisations and International Financial Institutions whose Public Procurement Procedures may be applied instead of Provisions of Public Procurement Law.
- Regulation on Content of Bidders Registry and Documentation to be submitted along with Application for entering into Bidders Registry.
- Regulation on Civil Supervisor.
- Regulation on Common Procurement Vocabulary.

1.2 Are there other areas of national law, such as government transparency rules, that are relevant to public procurement?

The competition and the PPP (Public-Private-Partnership) regulations are relevant for public procurement. The following points apply:

- an awarded contract on public procurement may be *ex lege* terminated if the Commission for Protection of Competition determines that the competition regulations have been violated in the course of the respective public procurement; and
- election of private partner and/or concession granting, in terms of the PPP regulations, may be subject to the public procurement procedure under the PPL.

1.3 How does the regime relate to supra-national regimes including the GPA, EU rules and other international agreements?

The Republic of Serbia has not acceded to the GPA.

Further, even though the Republic of Serbia is not a Member State of the European Union, it aims to have the public procurement system harmonised with the EU legal framework. This being said, the PPL, as amended in 2015, is harmonised with the latest EU Directives in this field – Directive 2014/24/EU on public procurement, Directive 2014/23/EC on the award of concession contracts, and Directive 2014/25/EC on procurement by entities operating in the water, energy, transport and postal services sectors.

1.4 What are the basic underlying principles of the regime (e.g. value for money, equal treatment, transparency) and are these principles relevant to the interpretation of the legislation?

The basic principles in the public procurement system of Serbia are (i) principle of efficiency and cost-effectiveness, (ii) principle of ensuring competition, (iii) principle of transparency in a public procurement procedure, (iv) principle of equality of bidders, and (v) principle of environmental protection and ensuring energy efficiency.

All these principles are relevant to the interpretation of the legislation.

1.5 Are there special rules in relation to procurement in specific sectors or areas?

The PPL prescribes the specific rules in relation to public procurement in (i) water management, (ii) energy, (iii) transport, (iv) postal services, and (v) defence and security.

2 Application of the Law to Entities and Contracts

2.1 Which public entities are covered by the law (as purchasers)?

The public entities that are covered by the PPL are:

- 1) state bodies, bodies of autonomous province and bodies of local self-government; and
- 2) legal entities established for performing activities of common interest and which do not have an industrial or commercial character, where any of the following conditions are met: (i) over 50% is financed from the contracting authority's funds; (ii) the contracting authority supervises the operation of that legal entity; or (iii) more than half of the members of that legal entity's managing or supervisory body are appointed by the contracting authority.

2.2 Which private entities are covered by the law (as purchasers)?

The PPL also has to be implemented by private entities which perform economic activities in the areas of water management, energy, transport and postal services, pursuant to exclusive or special rights, when conducting the procurement for the purpose of performing these activities.

2.3 Which types of contracts are covered?

The PPL covers the contracts on (i) procurement of goods, (ii) procurement of works, and (iii) procurement of services.

2.4 What obligations do purchasers owe to suppliers established outside your jurisdiction?

When the estimated value of public procurement exceeds 250,000,000 RSD (approximately 2,030,000 EUR as of 31 August 2016) for goods and services, or 500,000,000 RSD (approximately 4,060,000 EUR as of 31 August 2016) for works, the contracting authority is obliged to publish the public procurement notice in a foreign language commonly used in international trade in the field of public procurement.

2.5 Are there financial thresholds for determining individual contract coverage?

The contracting authorities are not obliged to apply the provisions of the PPL in cases where the procurement of goods, services and works whose estimated individual value and total value on the annual level is lower than 500,000 RSD (approximately 4,060 EUR as of 31 August 2016).

2.6 Are there aggregation and/or anti-avoidance rules?

The contracting authorities are obliged to honour the following rules when estimating the value of the public procurement:

- 1) the estimated value of the public procurement must cover the entire amount payable to the supplier (bidder);
- 2) the estimated value of the public procurement must be based on completed inquiries, market research relevant for

the public procurement subject, including checking prices, quality, guarantee period, maintenance, etc., and must be valid at the time of the initiation of procedure; and

- 3) the contracting authority cannot determine the value of the public procurement value, nor can it divide up the public procurements that have the same or similar kind, with the intention to avoid (i) the application of the PPL, or (ii) the rules for the determination of the type of the public procurement procedure.

2.7 Are there special rules for concession contracts and, if so, how are such contracts defined?

The concession contracts are governed in the Law on Public-Private Partnerships and Concessions (*Official Gazette* of RS No. 88/2011, 15/2016) (hereinafter, the "PPP Law").

This Law contains the following definition of the concession:

"A concession, for the purposes of the PPP Law, is a contractual PPP with the elements of concession in which a public contract regulates the commercial use of natural resources or assets in general use which are publicly owned or the performance of an activity of public interest which the competent authority transfers to a national or foreign person, for a specific period of time, under specially prescribed conditions, against the payment of a concession fee by the private or the public partner, with the private partner bearing the risk associated with the commercial use of the subject of concession."

2.8 Are there special rules for the conclusion of framework agreements?

The PPL defines the framework agreement as an agreement between one or more contracting authorities and one or more suppliers, which determines the terms of public procurement agreement (such as price and, where appropriate, quantities) to be awarded for a certain period of time.

The contracting authority may conclude the framework agreement, after having conducted any type of public procurement procedure, with one or more suppliers, where the contracting authority is obliged to state the number of suppliers for conclusion of the framework agreement in its invitation for bids or applications. In cases where the contracting authority does not receive the sufficient number of the acceptable bids (as pre-determined in the invitation), it may still conclude the framework agreement with the lower number of suppliers or even with one supplier.

The framework agreement cannot last more than three years; however, if it is awarded to only one supplier, it cannot last more than two years.

The framework agreement cannot be used in a manner that prevents, limits or distorts the competition among the suppliers.

When concluding a specific public procurement agreement, the parties cannot alter the essential elements and terms previously defined in the framework agreement.

If the framework agreement is concluded with one supplier, the public procurement agreement shall be concluded based on the terms defined in the framework agreement and the bid submitted in the public procurement procedure.

However, if the framework agreement is concluded with more than one supplier, then the public procurement agreement will be awarded in a procedure that depends on whether the framework agreement prescribes or not all terms and requirements for the contract awarding. If the framework agreement prescribes all terms

and requirements, then the public procurement agreement will be awarded without the re-opening of the competition among the chosen suppliers (i.e. based on their bids that have been already submitted). Otherwise, the contracting authority will re-open the competition among the chosen suppliers and invite them to submit the bids.

2.9 Are there special rules on the division of contracts into lots?

The public procurement may be divided into separate lots, in which case the contracting authority is obliged to determine the estimated value of each lot separately. The estimated value of the whole public procurement must include the value of all lots over the contract period.

The contracting authority cannot apply the low-value public procurement procedure for one separate lot, if the total value of all lots is higher than the amount being prescribed as the threshold for the low-value public procurement (i.e. 5,000,000 RSD; approximately 40,600 EUR as of 31 August 2016).

3 Award Procedures

3.1 What types of award procedures are available? Please specify the main stages of each procedure and whether there is a free choice amongst them.

The PPL provides for eight different types of public procurement procedures.

In general, a public procurement contract is awarded in open procedure or in restricted procedure. Notwithstanding this general rule, the contract may also be awarded in other procedures, provided that the statutory requirements prescribed for such procedures are met.

The public procurement procedures under the PPL are the following:

1) Open procedure

The open procedure is the procedure wherein all interested persons may submit bids.

2) Restricted procedure

The restricted procedure is the procedure conducted in two phases and wherein all interested persons may submit bids.

In the first phase, the contracting authority invites all interested parties to submit applications and accepts applicants which meet previously set qualifications. In the second phase, the contracting authority invites all applicants with recognised qualifications (candidates) to submit bids.

3) Qualification procedure

The contracting authority may conduct a qualification procedure when (i) it is not possible to foresee the public procurement beforehand from the aspect of volume, quantity and time, and (ii) the subjects of such procurement are occasional services or consumables, or occasional repairs or works in regular maintenance, to be delivered or performed according to the standard and usual specifications rather than according to some specific specifications of the contracting authority.

In the qualification procedure, the contracting authority invites all interested persons to submit bids and accepts applicants which meet previously set qualifications. The decision on recognising qualifications must contain at least five candidates and the period of validity of recognised qualifications, which may last up to three years. During the period of validity of the list of candidates, the contracting authority invites all candidates from the list to submit the bids.

4) Negotiated procedure with public invitation to bid

This procedure may be conducted by the contracting authority (i) when in the open procedure, the restricted procedure or the qualification procedure, or in the competitive dialogue, all bids received were unacceptable, provided that the originally defined requirements for participation in the procedure, technical specifications and criteria are not altered, (ii) in exceptional cases where, due to the nature of goods, services or works, as well as the related risks, it is not possible to estimate the public procurement value in advance, and (iii) in the case of public procurement of services, if the nature of these services is such that their specifications cannot be sufficiently determined in order to facilitate the conducting of open or restricted procedure and there are no conditions to conduct competitive dialogue.

5) Negotiated procedure without public invitation to bid

The contracting authority may conduct negotiated procedure without invitation to bid:

- a) if it did not receive any bid or application in open or restricted procedure, or if all bids were inadequate (and subject to a certain additional requirements);
- b) if, for technical or artistic reasons related to the public procurement subject, or for reasons related to the protection of the exclusive rights, the procurement may be executed only by a particular bidder;
- c) if, for reasons of extreme urgency brought about by extraordinary circumstances or unforeseen events, whose appearance in no case depends on its will, the contracting authority was not able to observe time limits laid down for open or restricted procedure;
- d) in the case of additional goods deliveries and additional works or services, subject to the requirements laid down in the PPL;
- e) for purchases of goods under particularly advantageous conditions from a supplier going through liquidation (apart from involuntary liquidation) or bankruptcy, with the consent of other creditors, in accordance with regulations governing company liquidation and bankruptcy;
- f) in the case of public procurement of goods offered and purchased in commodity exchange; and
- g) in the case of public procurement of services that are part of the follow-up to a design contest organised in accordance with the PPL, if the contract was awarded to the winner or the winners of that contest, and if the contracting authority invites each of the winners to participate in negotiations.

Prior to the initiation of the negotiated procedures under the points b) through e) above, the contracting authority must request the opinion on the justifiability of applying such procedure from the Public Procurement Office of the Republic of Serbia.

6) Competitive dialogue

The competitive dialogue may be conducted when the public procurement subject is particularly complex, so that the public procurement contract cannot be awarded through open or restricted procedure. The subject of the public procurement shall be considered particularly complex if the contracting authority is objectively not able to determine (i) the technical specifications of the public procurement subject, and (ii) legal or economic structure of public procurement.

The contracting authority is obliged to obtain the consent to initiate the competitive dialogue from the Public Procurement Office of the Republic of Serbia.

The contracting authority invites all interested parties to submit applications and recognises qualifications to applicants based on previously set requirements. Subsequently, the contracting authority starts the dialogue with all applicants with recognised

qualifications (candidates) in order to find the solution which would meet its needs. After it identifies the solution(s) capable of meeting its needs, it will invite all candidates not excluded from the dialogue to submit their final bids based on one or more adopted solutions presented during the dialogue.

7) Design contest

The contracting authority may conduct the design contest in the fields of urban planning, architecture, construction, engineering, and data processing. The design contest may be organised (i) as the procedure that precedes the awarding of a public procurement contract, or (ii) as the procedure to disburse remuneration to participants.

The design, plan or project is selected by an independent jury consisting of physical persons who are not in conflict of interest.

8) Low-value public procurement procedure

The low-value public procurements are the public procurements of goods, services and works whose estimated individual value and estimated total value on the annual level is within the range of 500,000 RSD (approximately 4,060 EUR as of 31 August 2016) and 5,000,000 RSD (approximately 40,600 EUR as of 31 August 2016).

3.2 What are the minimum timescales?

In general, the time limits for the submission of the bids must be adequate to the time needed for the preparation of an acceptable bid. The PPL provides the minimum timescales, depending on the type of the public procurement procedures, as follows:

- 1) invitation in the open procedure, the first phase of the restricted or qualification procedure – no fewer than 30 or 35 days (depending on the estimated value of the public procurement) from the day of the publication;
- 2) in the second phase of the restricted procedure – no fewer than 20 days from the day of sending of the call to the recognised candidates;
- 3) in the second phase of the qualification procedure – no fewer than eight days from the day of sending the call to recognised candidates;
- 4) in the negotiated procedure with invitation to bid – no fewer than 25 days from the day of the publication of the invitation;
- 5) in the phase of the submission of the final bids in the competitive dialogue – no fewer than 20 days from the day of sending the invitation to the chosen candidates; and
- 6) in the low-value public procurement procedure – no fewer than eight days from the day of the publication of the invitation.

3.3 What are the rules on excluding/short-listing tenderers?

The contracting authority may exclude any tenderer which does not fulfil the mandatory and/or additional requirements for the participation in the public procurement procedure.

In terms of the mandatory requirements, the tenderer must prove (i.e. provide the statement in regard to point 3) below) that:

- 1) it is registered with the competent body, or entered in the appropriate register;
- 2) it or its legal representative have not been convicted for (i) any criminal act as members of an organised criminal group, (ii) a commercial criminal offence, (iii) a criminal offence against the environment, (iv) a criminal offence of receiving or offering bribe, and (v) a criminal offence of fraud;
- 3) it has not been prohibited from performing business activity by any measure in force at the time of publishing tender notice and/or call for competition;

- 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 its territory; and
- 5) it has a valid permit issued by a competent body to carry out economic activity which is the subject of public procurement, if such permit is prescribed under special regulation.

In terms of the additional requirements, the contracting authority may set, in tender documents, these requirements (such as financial, operational, technical, personnel capacities, etc.), provided that they (i) are necessary having in mind the subject of public procurement, and (ii) do not discriminate tenderers and are logically related to the subject of public procurement.

3.4 What are the rules on evaluation of tenders? In particular, to what extent are factors other than price taken into account (e.g. social value)?

Firstly, the contracting authority is obliged to analyse and evaluate all bids submitted in the public procurement procedure and then to reject all unacceptable bids.

Secondly, the contract authority performs the ranking of the acceptable bids by applying the criteria for awarding the contract defined in the tender invitation and the tender documents.

Finally, after having performed the expert evaluation and the ranking of the bids, the contracting authority renders the decision on awarding the contract, provided that it has received at least one acceptable bid.

Factors other than price are taken into account only within criteria 'economically most advantageous bid' (see question 3.5), where these factors (e.g. social value, delivery term, warranty period, etc.), in addition to the price factor, have to be prescribed in advance as elements of the above criteria in tender documentation.

3.5 What are the rules on awarding the contract?

The PPL provides for two main criteria for the contract awarding of the (i) economically most advantageous bid, or (ii) lowest price offered.

3.6 What are the rules on debriefing unsuccessful bidders?

Within five days following the decision on contract awarding, the contracting authority may hold separate meetings with each bidder in order to explain the manner of conducting the procedure, of defining requirements for participation, of determining specification for the public procurement subject, of determining elements of the criterion, and the methodology for weighting points allocation, reasons to reject a bid, ranking of bids, etc.

The contracting authority is obliged to organise the meeting (notification) with the bidders, in cases where:

- the estimated value of the public procurement was higher than 250,000,000 RSD (approximately 2,030,000 EUR as of 31 August 2016) for goods and services or 500,000,000 RSD (approximately 4,060,000 EUR as of 31 August 2016) for works; and
- most bids were refused in the course of the bid evaluations.

3.7 What methods are available for joint procurements?

Under the PPL, it is possible for several contracting authorities to jointly conduct the public procedure, where all contracting

authorities involved need to render a separate decision by which each of them accepts to participate in the respective joint procurement.

3.8 What are the rules on alternative/variant bids?

Where the criterion for the bid selection is economically the most advantageous bid, the contracting authority may allow the submission of the bids with variants. This has to be explicitly stated in the invitation and tender documents, otherwise it will be presumed that the bids with variants are not allowed.

If it allows the bids with variants, the contracting authority must define in the tender documents which requirements any variant must fulfil in order to be applicable.

3.9 What are the rules on conflicts of interest?

The conflict of interests exists where the relation between the contracting authority and the bidder may impact impartiality of the contracting authority in rendering a decision in the public procurement procedure, namely: (i) if the contracting authority's representative or a related person is involved in the bidder's management; (ii) if the contracting authority's representative or a related person owns more than 1% of the bidder's share or stocks; and (iii) if the contracting authority's representative or a related person is employed or working with the bidder or has a business relationship with the bidder.

The contracting authority cannot award the public procurement contract to the bidder in the case of the existence of a conflict of interest, provided that such conflict has influenced or may have influenced on the rendering of decision in the public procurement procedure.

4 Exclusions and Exemptions (including in-house arrangements)

4.1 What are the principal exclusions/exemptions?

The contracting authorities do not apply the provisions of the PPL in the case of:

- 1) procurements conducted under the rules of or financed by the international organisations and the international financial institutions;
- 2) procurements for the purpose of ensuring the basic living conditions in the case of natural disasters or technical/technological accidents;
- 3) procurements of arbitration and amicable dispute resolution services;
- 4) labour-related contracts (employment);
- 5) acquisition or lease of real estate; and
- 6) credit granting, etc.

4.2 How does the law apply to "in-house" arrangements, including contracts awarded within a single entity, within groups and between public bodies?

The PPL does not apply to the contracts awarded by the contracting authority to another contracting authority that holds the exclusive right to economic activities which are the subject of the public procurement.

Furthermore, the law provides for the additional exemptions to its application in regard to the contract award to another legal entity if the following prerequisites are cumulatively met:

- 1) the contracting authority exercises the supervision over such legal entity;
- 2) more than 80% of activities in the Republic of Serbia of such legal entity are the activities that are delegated to it by the contracting authority itself or by other legal entity over which the contracting authority exercises the supervision; and
- 3) there is no private equity in the supervised legal entity that may decisively influence on the decision-making.

5 Remedies

5.1 Does the legislation provide for remedies and if so what is the general outline of this?

There is a two-tier remedy system under the PPL.

Firstly, anyone, who has a legal interest in the contract award and has suffered or may have suffered damage arising out from a decision or action (including omission) of the contracting authority, may file an appeal (i.e. request for the protection of rights) against the contracting authority's decision or action to the Republic Commission for Protection of Rights in Public Procurement Procedures (hereinafter, the "**Republic Commission**").

Secondly, the Republic Commission's decision may be challenged by an appeal in administrative dispute in front of the Serbian Administrative Court.

5.2 Can remedies be sought in other types of proceedings or applications outside the legislation?

In addition to the remedies as shown in question 5.1, it is possible to claim damages in civil court proceedings.

5.3 Before which body or bodies can remedies be sought?

The request for the protection of rights (hereinafter, the "**Request**") is to be filed with the contracting authority, while its copy is simultaneously filed with the Republic Commission as well. In cases where the contracting authority does not accept the Request, the final decision is within the competence of the Republic Commission.

The administrative appeals against the Republic Commission's decisions are within the competence of the Serbian Administrative Court.

5.4 What are the limitation periods for applying for remedies?

The Request challenging the type of procedure, the contents of the invitation or tender documents, shall be filed in time if received by the contracting authority at the latest seven days (three days in the case of a low-value public procurement procedure or the qualification procedure) before the expiry of the deadline for the submission of bids.

After the contracting authority renders the decision (on awarding contract, on concluding a framework agreement, on recognising qualification or on cancellation of the procedure), the time limit for filing the Request is 10 days (five days in the case of the low-value public procurement) from the publication of the respective decision at the Public Procurement Portal.

The administrative dispute may be initiated by the appeal against the Republic Commission's decision within 30 days following the receipt of the respective decision.

5.5 What measures can be taken to shorten limitation periods?

There are no such measures prescribed in the legislation.

5.6 What remedies are available after contract signature?

The Republic Commission may, *ex officio* or upon request by an interested party, annul a public procurement contract when it determines that the contracting authority awarded the contract in contravention with the provisions of the PPL.

5.7 What is the likely timescale if an application for remedies is made?

There is a statutory deadline of 20 days (starting from the receipt of the completed documentation which is necessary for the determination of all relevant facts) for the Republic Commission to render its decision in regard to any filed Request.

The administrative disputes before the Serbian Administrative Court last, on average, one-and-a-half to two years.

5.8 What are the leading examples of cases in which remedies measures have been obtained?

The main examples when the remedies been obtained refer to (i) discriminatory requirements and/or requirements which are not logically related to the subject of the concrete public procurement, and (ii) the wrongful evaluation and ranking of the submitted bids.

5.9 What mitigation measures, if any, are available to contracting authorities?

The Request, filed in the course of the public procurement procedure (or against the decision of the contracting authority), does not have an automatic suspense effect, meaning that the contract authority may decide to continue with the procedure; however, it cannot render the decision on contract awarding (or exercise the contract, if the contract is concluded before the Request) until the Republic Commission rules on the Request filed.

Exceptionally, the contracting authority may render the decision on contract awarding or even exercise the contract if it estimates (or the Republic Commission approves) that the further prolongation of the public procurement procedure (or fulfilment of the contract) would cause great difficulties in the business operations of the contracting authority which are disproportionate to the value of the public procurement (or would jeopardise the interest of the Republic of Serbia).

6 Changes During a Procedure and After a Procedure

6.1 Does the legislation govern changes to contract specifications, changes to the timetable, changes to contract conditions (including extensions) and changes to the membership of bidding consortia pre-contract award? If not, what are the underlying principles governing these issues?

The PPL provides that the contract authority may allow and accept the amendments to the tender documents until the expiry of the deadline for bid submissions. If the amendments are made and published no more than eight days before the deadline for the bid submissions, then the contracting authority must prolong this deadline accordingly.

After the submission of the final bid, no changes in the membership of the bidding consortia are allowed; otherwise, such joint bid and the consortium itself will be disqualified.

6.2 What is the scope for negotiation with the preferred bidder following the submission of a final tender?

Following the submission of the final tender, no negotiations are allowed with the preferred bidder in the course of the open and restricted procedure, while the negotiations are, generally and to a certain extent, possible in the negotiated procedures provided that the main principles of the public procurement (such as fair competition and equal treatment of the bidders) are followed by the contracting authority.

6.3 To what extent are changes permitted post-contract signature?

The PPL allows, subject to certain conditions, two types of changes after the conclusion of the public procurement contract, provided that the possibility of a change is always clearly and precisely defined in the tender documents and the contract, or set forth in special regulations.

Firstly, the contract authority may allow the increase of the volume of the public procurement contract up to 5% of its initial value; however, such increase cannot exceed 5,000,000 RSD (approximately 40,060 EUR as of 31 August 2016).

Secondly, it is possible to change the price or other essential contractual elements for objective reasons only.

Changing the subject of the public procurement is not possible under any circumstances.

6.4 To what extent does the legislation permit the transfer of a contract to another entity post-contract signature?

The transfer of the contract to another entity is not allowed under the PPL.

7 Privatisations and PPPs

7.1 Are there special rules in relation to privatisations and what are the principal issues that arise in relation to them?

There are no special rules in regard to privatisations that are regulated in the PPL.

7.2 Are there special rules in relation to PPPs and what are the principal issues that arise in relation to them?

The PPP and granting concessions are governed in the PPP Law which prescribes the general rule that a private partner is to be elected either in the procedure pursuant to the provisions of the PPL or the procedure for granting concessions pursuant to the provisions in the PPP Law.

8 Enforcement

8.1 Is there a culture of enforcement either by public or private bodies?

It can be said, without any doubt, that there is a significant culture of enforcement in the Serbian public procurement system.

In 2015, there were 1,901 decisions in total passed by the Republic Commission in regard to the Requests filed against the contracting authorities' decisions or actions. Furthermore, the Serbian Administrative Court ruled, in 2015, in 113 administrative proceedings against the decisions of the Republic Commission, out of which 36 appeals were accepted and the decisions of the Republic Commission were annulled (*Statistical Reports of the Republic Commission for January – December 2015*).

8.2 What national cases in the last 12 months have confirmed/clarified an important point of public procurement law?

There were no fundamental national cases in the last 12 months that clarified an important point of the PPL. The Serbian public procurement system gradually develops from year to year and shows a steady progress, so most of the milestone issues have already been addressed and resolved in the past.

9 The Future

9.1 Are there any proposals to change the law and if so what is the timescale for these and what is their likely impact?

There were significant amendments to the PPL in 2015; therefore, it is not expected to have changes in the Serbian public procurement system in the following months, apart from the necessary harmonisation with the new Law on Administrative Procedure which was adopted in March 2016.

9.2 Are any measures being taken to increase access to public procurement markets for small and medium-sized enterprises and other underrepresented categories of bidders?

One of the goals of the public procurement system in Serbia is to increase the participation of the SME in the public procurement procedures. Many legislation changes in the recent years have been made with this aim, including – the strengthening of the Public Procurement Portal (which makes the public procurement procedure much more transparent) and implementation of the Bidders Registry at the Serbian Business Registries Agency (which eases the documenting of fulfilment of the mandatory requirements in the public procurement procedures), etc.

Further, the Public Procurement Office, in co-operation with the Serbian Chamber of Commerce, continuously conducts the education and trainings of the SME in order to assist them to better understand the public procurement potentials for their business.

9.3 Have there been any regulatory developments which are expected to impact on the law and if so what is the timescale for these and what is their likely impact?

There are no regulatory developments at the moment which are expected to have a significant impact on the law.



Predrag Groza

Tomic Sindjelic Groza (TSG)
TSG Tomic Sindjelic Groza Law Office
No. 3 Carice Milice Street
Belgrade
Republic of Serbia

Tel: +381 113 285 228
Email: predrag.groza@tsg.rs
URL: www.tsg.rs

Predrag Groza is a Junior Partner in Tomić Sindjelić Groza Law Firm ("TSG").

He graduated from the Faculty of Law of the Belgrade University in 2001. He completed the bar exam and became an attorney-at-law in 2007. He has been a registered attorney for intellectual property at the Serbian Intellectual Property Office since 2008. He is also a professional representative at the European Patent Office ("EPO") since 2010.

Predrag's experience with public procurement started with the adoption of the first public procurement law in Serbia in 2002. At that time, he was employed at the public company JAT Airways, where he, as a young in-house lawyer, was engaged in many tender commissions and responsible for the lawful conduct of many public procurement procedures. Since joining TSG in 2006, he has been using this "insider" knowledge to advise domestic and foreign clients in all public procurement matters. Predrag is also one of the Serbian contributors for the annual editions of the World Bank Group "*Benchmarking Public Procurement for [year] – Assessing public procurement systems in (...) economies*".

His expertise also includes intellectual property, corporate law, antitrust, commercial law (contracts), media law and personal data protection.

TSG

LAW OFFICE TOMIĆ SINDJELIĆ GROZA

TSG Law Office was founded in 2000 by a group of Serbian lawyers of international orientation. Today, a highly efficient team of professionals renders legal services, under the protected trademark, TSG, in German, English and Serbian.

TSG's practice areas include corporate law, mergers & acquisitions, foreign investments & state incentives, commercial law, franchising, intellectual property, antitrust, public procurement, employment law, real estate & construction, media, litigation & enforcement, etc.

TSG's professional team has been described as "*creating an atmosphere of mutual trust and co-operation with investors in a very volatile and challenging environment*", "*very responsive and responsible, the team at TSG Tomić Sindjelić Groza takes an active role in representing its clients and offers personal and tailor-made advice*". "*These lawyers find the time to understand client's business, before giving advice. Their attentive approach is outstanding.*" (*The Legal 500 2008, The Legal 500 2010, The Legal 500 2014.*)