

The new Law on Public Procurement took effect on 01st July 2020

With the adoption of the new Law on Public Procurement, the Republic of Serbia has continued to harmonise domestic regulations in this field with European Union Directives.

The primary aim of the new Law on Public Procurement is to, on the one hand, increase efficiency and competition in public procurement procedures, by reducing the administrative burden and the costs of participating in procedures (which is especially important for small and medium enterprises), and, on the other hand, to increase transparency and efficiency in the implementation of public procurement by introducing a new - significantly improved and multifunctional - Public Procurement Portal.

In the following sections we will point out some provisions of the new Law, which we found to be particularly interesting from the perspective of the bidder. We note that due to the number, it is not possible to feature all of the reforms in this Newsletter, nor to fully cover all aspects of the topics that will be discussed.

I. Thresholds for Applying the Law on Public Procurement

Thresholds for applying of the Law have been changed and increased (the previous threshold was 500,000 dinars). Specifically, contracting authorities are not required to apply the provisions of the Law on Public Procurement for the procurement of goods, services and design contests with an estimated value of less than 1,000,000 dinars and for the procurement of works with an estimated value of less than 3,000,000 dinars.

Of course, for procurements that fall below the prescribed threshold of application, the contracting authorities are obliged to respect the general principles of the Law in a manner that befits the circumstances of the specific procurement, as well as to regulate such procurements with an internal act.

Likewise, the Law on Public Procurement now recognises the category of “European thresholds,” which pertain to the value thresholds that the European Commission publishes in the Official Journal of the European Union. Of course, these European thresholds are not directly applicable in Serbia, rather, our Ministry of Finance will periodically publish the value of these thresholds in dinars on their Internet website and in the Official Gazette of the Republic of Serbia.



Predrag Groza, Attorney-at-Law

The purpose of the European thresholds in public procurement procedures, primarily relates to the time limits for the submission of bids, that is, time limits for the clarification of tender documents; as well as the obligations of the contracting authorities to divide (that is, mandatorily consider the possibility of dividing) the contracts into several lots in situations where the estimated value of the contract is equal to or greater than the value of the European thresholds.

II. *Public Procurement Procedures*

While there is no longer a procedure for low-value public procurements, a new procedure has been introduced (Innovation Partnership), which can be implemented in the event that there is a need for innovative goods, services and works that are not available on the market.

The aim of the Innovation Partnership is to develop innovative goods, services and works and to subsequently procure them. So, this procedure is carried out in several successive phases during which candidates offer their innovative solutions based on intermediate targets that are set by the contracting authorities and ultimately, the candidates whose innovative solutions are not excluded during the development and research phases, are invited to submit their final bids.

However, the question still remains as to the scope of this new procedure, that is, how many such procurements we will have in practice.

III. *Framework Agreements*

The main reform regarding framework agreements is in relation to their duration. Specifically, the contracting authority can conclude a framework agreement that is valid for up to four years (previously three years) regardless of the number of suppliers, and in exceptional situations, which the contracting authority must justify, can conclude a framework agreement exceeding four years duration.

IV. *Public Procurement Portal*

Probably one of the most important developments is the new Public Procurement Portal <https://jnportal.ujn.gov.rs/>, which elevates the implementation of public procurement to a whole new level.

In particular, a significant part of the public procurement procedure is moved to and completed through the new Portal, for example the submission of bids is done electronically; same applies for the bids opening and generating of the minutes thereof. Additionally,

communication with the contracting authority regarding the clarification of or changes to tender documents is conducted through the Portal. The electronic submission of requests for the protection of rights through the Portal has also been introduced (even though the possibility to submit these requests in person or by registered mail remains). Furthermore, interested persons will be able to sign up to the Portal to receive information and notifications regarding certain procurements according to various filters (by the subject of the procurement, by the contracting authority, etc.).

V. *The Clarification of Tender Documents*

As previously mentioned in this Newsletter, communication with the contracting authority is now conducted through the Public Procurement Portal, this especially applies to questions, additional information and the clarifications of tender documents.

In contrast to previous legal requirements, according to which the contracting authority was obliged to publish the answers to every individual enquiry/request within three days of receiving the enquiry/request, this functions significantly differently, in that the contracting authority only has an obligation to publish additional information and clarifications no later than the eighth or sixth day (depending on the estimated value of the public procurement) before the deadline for the submission of bids. Essentially, this means that the contracting authority can collect all of the enquiries and requests from business entities and then by way of a single publication, just before the deadline, provide the business entities with all of the requested additional information and tender document clarifications.

VI. *Collateral*

For the first time in the Republic of Serbia's public procurement system, the Law on Public Procurement stipulates the collateral that the contracting authority may request in the tender documentation from the business entities: 1) **collateral to ensure that the bid is genuine** (max. 3% of the value of the bid, excluding VAT); 2) **collateral for the fulfilment of contractual obligations** (max. 10% of the value of the public procurement contract, excluding VAT); 3) **collateral for the elimination of defects within the warranty period** (max. 10% of the value of the public procurement contract, excluding VAT); 4) **collateral for the liability of damages caused if the damages are the result of performing certain activities**; and 5) **collateral for the return of advance payments** (in the amount of the requested advance payment).

VII. *Means of Proof of the Fulfilment of Criteria for Qualitative Selection*

There are no longer any low-value public procurements, nevertheless the new Law on Public Procurement has an innovative approach (introduced in 2015) towards low-value procurements, whereby business entities by means of a single declaration prove their fulfilment of the qualitative selection criteria.

Hence the administrative burden for business entities is reduced and participation in public procurement procedures is facilitated.

The obligation to subsequently provide specific evidence, with respect to the fulfilment of the qualitative selection criteria, exists only for those bidders who submitted the most economically advantageous offer. The contracting authority will contact that bidder to submit the necessary evidence prior to awarding the contract.

VIII. *The Register of Bidders*

Legal entities and sole traders that are registered in the Register of Bidders are obliged to renew their entry in the Register, you can read more on that topic here <https://tsg.rs/en/news/register-of-bidders-deadline-for-mandatory-re-enrolment-is-1-july-2020/>.

IX. *Criteria for Awarding Contracts*

Public procurement contracts are awarded to the most **economically advantageous offer** based on one of the following criteria: 1) price; 2) using a cost-effectiveness approach (life-cycle costing); or 3) price-quality ratio, that is, cost-quality.

At first glance, one may gain the impression that the new Law on Public Procurement no longer recognises the lowest price criterion. The excessive application of the criterion in practice (over 90% of the overall value of procurements in 2018 implemented the use of this criterion) renders the public procurement system meaningless, as it usually leads to the procurement of goods and services of dubious (poor) quality.

However, we must clarify that the lowest price criterion is still applicable, as the 'price' criterion, and is allowed. Thus, we believe that it is very important to systemically educate the contracting authorities on the necessity of awarding contracts that are precisely suited to their specific needs, so as to eliminate the common practice of basing procurements on the lowest price.

X. *Procedure for the Protection of Rights*

In this section, the Law on Public Procurement introduces significant reforms that render the procedure for the protection of rights better and more efficient.

In this respect, the new Law on Public Procurement has expanded the active legitimacy of requests for the protection of rights. Furthermore, the bidder who has been awarded the public procurement contract has been given the opportunity to respond to the allegations contained in the submitted request for the protection of rights. In addition, the mandatory suspensive effect of the submitted request for the protection of rights (on the completion of the public procurement procedure, etc.) has been restored. You can read more about this here <https://tsg.rs/en/newsletter/novelty-regarding-the-protection-of-bidders-rights-in-public-procurement-procedures/>.

One of the reforms in this section that we found to be unfavourable was the shortening of the deadline for the initiation of administrative disputes against the decisions of the Republic Committee, from 30 to 15 days. The general impression is that the sole purpose of this provision is to reduce the burden on the Administrative Court and the exposure to lawsuits within public procurement and not to provide bidders with effective legal protection.

The new Law on Public Procurement was published in the Official Gazette of the Republic of Serbia no. 91/2019 and its application commenced on the 01st July 2020.

For all questions regarding the new Law on Public Procurement, please feel free to contact us here: predrag.groza@tsg.rs.