



**THE NEW SERBIAN
LAW ON
PUBLIC
PROCUREMENT**

JPM

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NEW SERBIAN LAW ON PUBLIC PROCUREMENT – FURTHER HARMONISATION WITH ACQUIS COMMUNAUTAIRE

Publisher: JPM Janković Popović Mitić

NBGP Apartmani, Vladimira Popovića 6

www.jp.m.rs

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Design and prepress: JPM Janković Popović Mitić

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On December 24, 2019, Serbian Parliament enacted Law on Public Procurements (“Official Gazette RS” No. 91/2019) – “the Law”. The Law entered into force on January 1, 2020 and started to be applied as of July 1, 2020.

The intention of the lawmaker is to harmonise further public procurement procedures with Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

In accordance with Strategy of Development of Public Procurements for Period 2014-2018 (“Official Gazette RS” No. 122/14), the main goals to be achieved by the Law are, inter alia, as follows:

- a) strengthening competition on public procurement market;
- b) reducing irregularities in public procurement system;
- c) increasing cost-effectiveness and efficiency of public procurements; iv) promoting and enhancing ecological and social aspect in public procurements, participation of small and medium enterprises and innovations.

The main novelties provided in the Law are as follows:

1. Exceptions in the application of the Law can be challenged before the Republic Commission for Protection of Bidders' Right in Public Procurements ("the Commission"). The request for annulment of the awarded contract shall be submitted along with a request for protection of the right. In case the Commission annuls the contract, it shall sentence the contracting authority to fine in the amount up to 30% of the awarded contract;
2. Financing procurements under donation is not provided as an exception in the application of the Law;

New thresholds for application of the Law are prescribed:

- a) Above estimated value of RSD 1.000.000, 00 for procurement of goods and services;
 - b) Above estimated value of RSD 3.000.000, 00 for procurement of works;
 - c) Above estimated value of RSD 15.000.000, 00 for procurement of goods and services and above the estimated value of RSD 650.000, 00 for procurement of works for diplomatic missions and diplomatic and consular office abroad;
 - d) The above-estimated value RSD 15.000.000, 00 for procurement of social and other special services conducted by the public contracting authority and above estimated value RSD 15.000.000, 00 for public procurements conducted by the sectorial contracting authority.
3. Contracting authority can limit the number of lots to be awarded by one bidder even in the case when the bidder can submit offers for several or all lots, under the condition that maximal number of lots is determined in the public invitation;
 4. The general rule that all communication and exchange of documents in public procurement procedures shall be performed electronically on Public Procurement Portal is established;
 5. The new public procurement procedure is prescribed - partnership for innovation, in case when the contracting authority needs innovative products, services, or works which are available on the market;
 6. There are differences in the procedure - negotiation procedure without publishing the public invitation concerning grounds for initiation (new repetitive services and works awarded to the prior bidder with whom the basic contract is concluded and procurement of goods for research purposes, experimenting, examination or development) and manner to conduct this procedure;
 7. Negotiation procedure with a public invitation can be conducted only by sectorial contracting authorities;
 8. Framework agreement cannot last more than four years (this period does not apply to contracts concluded on the ground of framework agreement);
 9. Sectorial contractual authorities may establish and maintain a system of qualification for companies;
 10. Sectorial contractual authorities may establish and maintain system of qualification for companies;
 11. The Law introduces new services subject to public procurements - social and other special services for which less formal regime is established (certain health services, social services, education services, etc.);

12. Collateral for seriousness of bids in public procurement procedures is reduced to 3% of the value of offer (VAT excluded);
13. Terms for contracting authorities to provide clarifications to bidders in regard tender documents are extended;
14. Public contracting authorities may publish on their profile prior informative notification to inform companies its intention to execute certain public procurement procedure to reduce terms for submission of offers while sectorial contracting authorities may publish on their profile periodical indicative notification for the same purposes;
15. Companies are not obliged to provide documents to prove fulfilment of conditions to participate in tender procedure; they can provide statement on fulfilment defined tender requirements; contracting authority is obliged to request from selected bidder to submit documents proving fulfilment of conditions to participate in tender procedures for which estimated value is above RSD 5.000.000, 00 (non-certified copies);
16. Companies may prove tender conditions by capacities of subcontractors (financial, economic, HR, references and technical requirements) - not only as single or joint bidders, while, on the other side, technical requirements (technical equipment) can be proved by capacities of other companies which do not joint bidder or subcontractors);
17. Criteria for awarding the contract must be most economically favourable offer;
18. Awarded contract may be amended/value of contract increased for not more that 50% of the contract for the following reasons:
 - a) change of the awarded bidder is not possible due economical or technical reasons (compatibility requirements with existing equipment, services or works procured in the prior public procurement;
 - b) change of awarded bidder may cause significant difficulties or costs for the contacting authority
19. Awarded contract may be changed due to unpredicted circumstances and contractual party may ne changed as well to status changes on side of the contractual party;
20. Scope of the awarded contract may be changed for less than 10% for goods and services and 15% for works and the value of change must be lesser than RSD 15.000.000, 00 for goods and services and RSD 50.000.000, 00 for works;
21. Subcontractors can be replaced under certain conditions;
22. Terms for submission of request for protection of right ("request") are amended;
23. Foreign applicants must appoint proxy for receipt of documents;
24. The applicant must submit the proof on paid fee along with the request, otherwise, the request shall be rejected;
25. The contracting authority must deliver the request to selected bidder which can provide its opinion on the request.



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