



# BALKAN TENDER WATCH

## CURRENT STATE OF AFFAIRS IN PUBLIC PROCUREMENT IN WB COUNTRIES

Main Findings by Countries

November, 2019



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## State of Affairs In Public Procurement in Bosnia and Herzegovina

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### Introduction

Certainly, the most alarming finding of the research study<sup>1</sup> related to the general perception of corruption is that a whole of 88% of respondent bidders believe that a high degree of corruption is present in public procurement. Furthermore, the same percentages (88%) of respondents believe that favoring certain bidders is common practice in BiH. We can claim with a high degree of certainty that the public procurement system is still marked by significant corruption, pronounced distrust on the part of its stakeholders, an unsatisfactory level of transparency, a low level of competition, open favoritism of certain bidders through a discriminatory approach to drafting tenders, the absence of accountability even when irregularities are found, as well as many other deviations that undermine the integrity of public procurement to a truly unsettling degree. It is also concerning that cases of abuse in public procurement are not prosecuted before judicial authorities in Bosnia and Herzegovina.

### Legal and Institutional Framework

Despite being identified as an obligation from year to year, changes to the existing legal framework have not been implemented. The current Law on Public Procurement of Bosnia and Herzegovina (LPP BiH) was adopted on 19 May 2014 and entered into force on 27 November 2014. The most significant shortcomings related to compliance with EU principles pertain to preferential treatment of domestic bidders and non-compliance with Directive 2014/24/EU on public procurement, as well as Directive 2014/23/EU on the award of concession contracts and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. Moreover, implementation of the law falls far short of EU practice.

### 2019 EU Guidelines for Improving the Public Procurement System

Looking at the European Commission's Analytical Report from May 2019<sup>2</sup>, it is evident that almost the same recommendations re-appear from year to year, but also that they scarcely address the corruption present in public procurement. According to the report, Bosnia and Herzegovina should in particular:

- adopt the new law on public procurement and establish a specialized procurement function within contracting authorities;
- strengthen the administrative capacities of the Public Procurement Agency and the Procurement Review Body by increasing their staff and providing appropriate training,
- make the procurement process more transparent;

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<sup>1</sup> Research conducted as part of the project "Two Sides of the Same Coin: The Integrity of Contracting Authorities and Bidders in Public Procurement" implemented by the Eda Development Agency and financed by the Open Society Fund of Bosnia and Herzegovina in 2018 and 2019.

<sup>2</sup> Bosnia and Herzegovina Analytical Report, European Commission, Brussels, 29.5.2019 SWD(2019) 222 final

- establish a formal coordination mechanism within the Procurement Review Body to ensure consistent decision-making by its three offices.

### **Planned Changes to Public Procurement Legislation**

At its 117th session held on 10 October 2017, the Council of Ministers of BiH passed the Decision on establishing the working group for drafting the Law on Changes and Amendments to the Law on Public Procurement. The working group was tasked with developing the draft Law on Changes and Amendments to the Law on Public Procurement aimed at gradual alignment with EU Directives, specifically 2014/24/EU on public procurement and 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and at improving existing legal solutions and removing technical deficiencies in the current Law. In late 2018 and early 2019, proposed changes and amendments to the Law were presented to the general public as a pre-draft, but the Council of Ministers of BiH has not initiated the formal procedure for their adoption.

### **Monitoring Public Procurement Procedures**

#### *Public Procurement Monitoring in BiH*

It could be said that the main role in monitoring was envisaged for the Public Procurement Agency of BiH. The Rulebook on public procurement monitoring<sup>3</sup> defines the system for monitoring the application of the Law on Public Procurement and related regulations in Bosnia and Herzegovina by the Public Procurement Agency. The most problematic aspect of the Rulebook on public procurement monitoring is that civil society and the media are almost entirely excluded as sources of information based on which the PPA conducts monitoring activities. This 2016 Rulebook is a 'step back' in terms of enabling reports from civil society and the media to be used for monitoring by the Public Procurement Agency.

#### *Public Procurement Monitoring by Civil Society in BiH*

The Open Society Fund BiH organizes and supports the initiative Make Public Procurement Public aimed at documenting various violations of the Law on Public Procurement, based on a representative sample, in order to advocate for full transparency of public procurement at all stages of the procurement cycle. The initiative is in its third year of implementation. In November 2019, monitoring covered 10631 active, ongoing public procurement procedures in the first stage (from planning to contracting) and 281 in the second stage (contracting and implementation). The total value of monitored public procurement was estimated at over BAM 3.6 billion. In addition to this, over 1400 complaints had been submitted to various institutions, of which 14 FOIA complaints (together with all 8 positive judgements to date), 98 information notices to the Public Procurement Agency and 2 positive recommendations of the BiH Ombudsman. In general, it was confirmed that public procurement violates all the principles set down in the Law on Public Procurement in BiH.

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<sup>3</sup>Official Gazette of BiH, 72/16

No Suitable Sanctions for Numerous Acts of Corruption

Regular reports of the Audit Office of the Institutions of BiH, the Audit Office for the Institutions of FBiH and the RS Head Office for Public Sector Auditing continuously point out the numerous abuses and irregularities in public procurement procedures. Identical data with straightforward examples of abuse in public procurement are published daily by the media and non-governmental organizations. In order to examine the response of judicial institutions in BiH to these reports, an activity was launched to gather data on court cases and convictions for abuse in public procurement.<sup>4</sup>

The Criminal Codes of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina do not foresee distinct criminal offences in the area of public procurement. However, the 2017 Criminal Code of Republika Srpska<sup>5</sup> stipulates the criminal offence of abuse in public procurement procedure (Article 250) and unlawful preferential treatment of economic operators (Article 325). The 2017 Criminal Code of the Brčko District<sup>6</sup> also stipulates the criminal offence of abuse in public procurement procedure (Article 236a) and unlawful preferential treatment (Article 377a). Requests for free access to information have been filed with 27 regular courts in Republika Srpska (22 basic courts, 6 district courts and the Supreme Court of Republika Srpska) as well as with 2 courts in the Brčko District (Basic Court and Appellate Court of the Brčko District). Only two basic courts in Republika Srpska failed to respond to the request for free access to information within the regular deadline and were sent urgent reminders. However, the received responses point to discouraging data:

- 23 of the 25 courts in Republika Srpska (92%) have no records of proceedings or cases for criminal offences of abuse in PP or unlawful preferential treatment of economic operators;
- All three court cases for the criminal offence of abuse in public procurement in Republika Srpska ended in final convictions, but with a conditional prison sentence and monetary fine;
- Two court cases for the criminal offence of abuse in public procurement and none for unlawful preferential treatment were conducted before the Basic Court of the Brčko District;
- Both court cases ended with final convictions, but with conditional prison sentences. For one of these cases, appeals proceedings were conducted before the Appellate Court of the Brčko District which confirmed the conviction but retained the conditional prison sentence.

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<sup>4</sup> The research was conducted in October/November 2019 as part of the Balkan Tender Watch project implemented by the Open Society Fund BiH and financed through the European Commission - Programme: DTAf000 Transparency & Accountability- Public Sector (P261), Ref. No. 17276/2z.2

<sup>5</sup> Official Gazette of RS, 64/17

<sup>6</sup> Official Gazette of BD BiH, 13/2017 and 50/2018

## Balkan Tender Watch – Main Findings

### Statistical Data

	2015	2016	2017	2018
Total value of public procurement	BAM 1,468,282,290.48 (EUR 750,720,814.43)	BAM 2,382,987,203.21 (EUR 1,218,402,010)	BAM 2,199,295,525.72 (EUR 1,124,481,946.65)	BAM 3,080,202,646.22 (EUR 1,574,882,605.45)
Value of public procurement as share of GDP (in %)	5.02	7.97	7.02	9.39
Total number of registered contracting authorities	2053	2290	2390	2581
Number of complaints to second instance authority against implemented public procurement procedures	2011	2684	2901	3652
Open procedures (% of value of total implemented procedures)	51.67	61	61.54	68.01
Negotiated procedures (% of value of total conducted)	21.50	11.01	14.00	11.58
Goods (% of total value)	52.08	33.96	39.36	39.00
Services (% of total value)	29.97	34.98	37.06	31.70
Works (% of total value)	17.95	22.05	22.05	29.28
Average number of (acceptable) offers	2.57 (2.18)	2.54 (2.06)	1.97 (1.75)	2.33 (1.95)

## State of Affairs In Public Procurement in Kosovo

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### Kosovo's legal harmonization with the EU legislation

The primary legislation for Public Procurement in Kosovo is the Law on Public Procurement, which to date has undergone eight (8) amendments.<sup>7</sup> Law No. 04/L-042 on public procurement, entered into force on 4<sup>th</sup> of October 2011. Since then, the new law **has been amended three times**. Two of the amendments entered into force in January<sup>8</sup> and March<sup>9</sup> 2016. These amendments were initiated to align the existing law with the EU directive 2014/24/EU of the European Parliament and of the European Council.

The Law on Public Procurement consists of 12 chapters and 135 articles. **The current legislation needs further alignment with EU regulations, especially with the Utilities Directive and the Concessions Directive**. Furthermore, the **legislation needs to embrace sustainable procurement**, which is part of the National Strategy for public procurement, and to be **harmonized with the law on protection of competition**.

The legal framework for public procurement is largely aligned with the EU acquis on public procurement, including some provisions from the 2014 EU Directives on public procurement.<sup>10</sup> However, **the 2014 Directives are not yet fully transposed into the legislation**. Fundamental public procurement policy aims, such as transparency, equal treatment, and free and undistorted competition, are enshrined in the Public Procurement Law.<sup>11</sup>

### Statistical data on Public Procurement

Kosovo's budget for 2018 was 2,080,480,837.00 Euros<sup>12</sup> (an increase of 270 million Euros from 2017), out of which 641,298,561.48 Euros<sup>13</sup> (or 30% of the total budget) were allocated to public procurement.

According to the data, 88.57% of awards are made using the open procedure. This is a significant increase by **26.16%** in using this procedure when comparing to 2017. However, in 2018, PPRC started counting annex contracts according to the procedure used for the original award, which indicated in the increased number of reported open procedures<sup>14</sup>. Additionally, in 2018 there was an increase of **0.30%** in procedures using price quotation and **0.21%** in minimal value procedures in

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<sup>7</sup>Law No. 04/L-042 on Public Procurement amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092.

<sup>8</sup>Law No. 05/L-068 to amend and supplement Law No. 04/L-042 amended and supplemented by Law No. 04/L-237, entered into force on 21.01.2016

<sup>9</sup>Law No. 05/L-092 to amend and supplement Law No. 04/L-042 amended and supplemented by Law No. 04/L-237, entered into force on 01.03.2016

<sup>10</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities in the water, energy, transport and postal services sectors, Official Journal of the European Union (OJEU) No. L 94/243.

<sup>11</sup> Law No. 04/L-042 on Public Procurement amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092.

<sup>12</sup>[Law No. 06/L-020 on the budget of Republic of Kosovo for 2018](#)

<sup>13</sup>[PPRC Annual Report 2018](#)

<sup>14</sup>[PPRC Annual Report 2018](#)

comparison to 2017. Also, there is a **1.6%** increase in negotiated procedures after the award. 2018, marked a **28.3%** decrease of investments in motorways.

The year of 2018 witnessed an increase of competition in public procurement, average 5 offers per tender comparing to 4.17 from 2017<sup>15</sup>. This came as a result of separation of centralized procurements and big projects into LOTS and full implementation, followed by training of Economic Operators provided by PPRC, of the e-procurement platform<sup>16</sup>. This average remains well above the EU average of 2-4 bids per tender<sup>17</sup>. Kosovo has retained a satisfactory competition rate of average 5.3 offers per tender during the period 2011 – 2018. However, only 2.28% of contracts are signed with foreign economic operators. With 97.72% of contracts awarded to local vendors, public procurement remains an important stakeholder in the local economy.

## Recommendations

Findings from different sources illustrated in this summary reveal the urgent need to intervene in several areas of Public Procurement, both in legislative and procedural level. The key recommendations to mitigate the current situation in public requirement in Kosovo are as per following:

- 1) Kosovo's Government shall immediately initiate procedures to create and maintain the general supply catalogue and digitalization of archives as tools for proper market research and planning of public procurements;
- 2) Kosovo's Government shall put more emphasis on the Cost Management to avoid identified problems in planning, budget execution, entering liabilities without funding, and penalties due to delayed payments;
- 3) PPRC shall install mechanisms to enforce the Code of Ethics and Integrity for Procurement Officials.
- 4) Per the EU acquis, PPRC shall focus on establishing the lines of involvement with the Competition Agency with the effort of stimulating a suitable environment for small and medium-sized enterprises;
- 5) Per the EU acquis, Kosovo's Government shall focus on creating a demand for innovative products and/or services;
- 6) Per the EU acquis, the Public Procurement Review Body should improve the quality of its decisions and improve the online platform, particularly ensure that decisions are machine readable.
- 7) Enable a better environment for CSOs to monitor public procurement activities and strengthen inter-institutional cooperation.

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<sup>15</sup>[PPRC Annual Report 2017](#)

<sup>16</sup> Information received from PPRC on September 17, 2019

<sup>17</sup>[Tenderio](#)



## State of Affairs in Public Procurement in Montenegro

In 2018, the process of public procurement regulation took one step forward and two steps back. Under the pretext of more rational and efficient work, the *Public Procurement Directorate* was abolished, and the *Ministry of Finance* assumed tighter control through the *Directorate for Public Procurement Policy*. Relations with NGOs have worsened when it comes to co-operation in drafting a new **Draft Law on Public Procurement**, thus confirming the European Commission's position that the contribution of NGOs is often neglected.

Inadequate planning, insufficient transparency, rigging of tender conditions, modifying of public procurement contracts by annexes, urgent procurement even when it is not urgent, secret when it should not be secret, inadequate control of contract implementation are just some of the corrupt issues that cast a shadow over the public procurement system in Montenegro.

Main statistical indicators on public procurement			
1	Total annual value of PP	€ 449.373.407,93	
2	Share in GDP	9,8 %	
3	Share of PP in budget expenditures	19 %	
4	Value of PP according to the subject of public procurement	goods	€198.591.595
		services	€ 90.191.610
		works	€160.590.194
5	Value structure of PP according to the type of implemented procedure (in %)	Open procedure	79 %
		Negotiating procedures	1,55 %
		Other procurement <sup>18</sup>	19,45%
6	Value structure of PP according to the type of implemented procedure	Open procedure	€355.736.568,00
		Negotiating procedures	€6.976.126,00
		Other procurement	€86.660.713,00
7	Intensity of competition	3,14	

### Comments on the level of harmonization with the EU requirements

*2019 European Commission Progress Report on Montenegro* states that Montenegro should particularly focus on public procurement in the following period. Montenegro remains **moderately prepared** for membership in the area of public procurement, which may be particularly vulnerable to corruption. **Limited progress** was made in 2018 and preparations are underway for new laws on concessions and public procurement, with a view to alignment with the *2014 EU Public Procurement Directive*. These alignments are planned for the first half of 2019 but have not yet been included in the parliamentary procedure. The competent institutions are expected to prepare a detailed and comprehensive plan for the implementation of electronic public procurement supported

<sup>18</sup>Other procurement include: small value procurement with 16%, urgent procurement with 3% and limited procurement with 0,44%

by the Project "Implementation of the Electronic Public Procurement System in Montenegro" funded within IPA 2014 assistance from the European Union. It is evident that it is necessary to improve the functioning of the system of legal remedies, as well as the administrative capacity of the State Commission for the Control of Public Procurement.

### Most interesting cases

**No. 1** - Small value procurement accounted for 16% of total procurement value (around €70 million). There is no legal obligation to regulate this procurement, instead, the procedure established by the contracting authority by a special legislation is applied. Unfortunately, most contracting authorities left the possibility in their legislation to reach an agreement with the bidder by direct agreement. There is also no percentage limitation of these purchases in relation to the total procurement, in order to avoid possible abuse and unlimited use of this mechanism. The most controversial part about these procurements is the inability to remedy them. Most of the contracting authorities in their internal acts prevented bidders who were not selected in the procedure from filing a complaint on the outcome of the procedure.

**No. 2** - Emergency procurement accounts for 3% of the total value of procurement. The contracting authority may conduct urgent procurement in order to eliminate and prevent the risk of unforeseen events that the contracting authority could not or cannot influence, eliminate the consequences of these unforeseen events, endanger the health and life of citizens, if it is not able to carry out the public procurement procedure and act within the deadlines set by law. Implementation of urgent procurement no longer requires the approval of the competent authority, leaving the contracting authority to practically self-assess urgent cases without any control.

**No. 3** - Following the amendments to the law during 2017, a negative practice was established to declare public procurement secret. Most commonly exempt are contracting authorities dealing with security and defense, such as the National Security Agency, the Ministry of Defense and the Ministry of the Interior. The European Commission Report on Montenegro for 2019 states that procurement in the field of defense and security still needs to be fully regulated. Thanks to interstate bilateral agreements, it is not completely clear how much state money is spent on this basis in total. These agreements exclude the regular application of public procurement procedures under domestic law, and do not ensure transparency and competition to a sufficient extent.

**No. 4** - Despite a well-planned procurement and a well-conducted tender procedure, it is possible to have poor public procurement if its implementation is not conducted responsibly and conscientiously until the end. For this reason, it is very important that the annex to the public procurement contract be announced as well as the contract. In practice, *the principle of transparency of the public procurement procedure*, in accordance with the *Article 7* of the current Law on Public Procurement, ensures that **amendments to the contract** are published. No annex to the contract has been published on the procurement portal. By not publishing this document, exposure to corruption in the procurement process enhances the corruption mechanism of unauthorized contract annexes. The actual cost of the procurement in this case is higher if there is a possibility that the bidders for the same procurement could have made a better offer than the total price of the procurement in the new situation.

### Recommendations

The following are general recommendations for improving Montenegrin public procurement system:

- 1) harmonize Montenegrin Law on Public Procurement with the EU Directives;
- 2) improve the quality of the *Public Procurement Report in Montenegro* and prescribe legal obligation to provide detailed reasoning of public procurement in terms of purpose;
- 3) foresee the possibility of modifying the procurement plan as an exception;
- 4) regulate by Law the implementation, reporting and record keeping of public procurement in the field of security and defense;
- 5) exceptions to the application of the Public Procurement Law should be an exception, not a rule;
- 6) enable filing a complaint to urgent and small value procurement;
- 7) legally bind contracting authorities to create and publish a report on implemented public procurement;
- 8) law should stipulate the obligation of the Parliament of Montenegro to appoint the members of the Commission for protection of rights, based on a public competition;
- 9) prescribe mandatory control of public procurement worth over half a million Euros.

## State of Affairs in Public Procurement in North Macedonia

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After criticism from all stakeholders, the old and non-functional Law on Public Procurements – adopted in 2008 and frequently amended thereafter - is finally replaced with a completely new law, which entered into effect on 1 April 2019.

In addition to alignment with the EU Directive on Public Procurement from 2014, the new law attempts to “correct” a series of problems in the system of public procurements in North Macedonia.

In particular, it addresses the two problems that have been indicated by all stakeholders as the most burning issues under the old law and concerned use of lowest prices as the single criterion for tender award and mandatory organization of electronic auctions. Hence, except for lowest price, the new legal provisions introduced other selection elements, while e-auctions became optional with an idea to be organized in cases when there is standard and equal quality and therefore it is logical for the selection to be based on prices offered.

In general, the new law liberalizes all public procurements and introduces new possibilities for contracting authorities to procure what is truly needed by getting the best value for the money spent. Under the law, but also previously, a series of measures had been introduced to increase transparency in public procurements. The new law introduced the long-awaited administrative control (ex-ante) conducted by the Bureau of Public Procurements in the case of large-scale tender procedures and based on risk assessment. In the first seven months, such controls were performed for 80 tender procedures, and for 10 of them instructions were issued to annul procurement procedures, while for 18 of them instructions concerned repetition of the bid-evaluation process. BPP’s capacity is still insufficient for efficient and complete performance of such controls.

Nevertheless, the monitoring of public procurements in the first seven months from the entry in effect of the new Law on Public Procurements shows that public procurements are still implemented according to old and bad practices, like nothing had changed.

In this period, high 97% of tender procedures still use lowest prices as the selection criterion for the most favorable bid; more than 90% of them organized electronic auctions; competition is not significantly improved; more than 30% of tender procedures are annulled; every fifth tender procedure was not presented with any bids; every third tender procedure was presented with only one bid; and there are numerous reports by the media and civil society organizations about problematic tender procedures.

Representatives from contracting authorities mainly refer to three reasons for such practices: lack of knowledge about the manner in which opportunities under the new law could be used; fear that they might make errors and consequences therefore; and their lack of motivation, primarily in relation to the responsibility they bear.

At system level, the competent institution, i.e. the Bureau of Public Procurements, did not increase its capacity in order to be able to adequately respond to increased competences, especially those related to faster and timely development of the multitude of bylaws arising from the Law on Public Procurements, as well as full and efficient implementation of the newly-introduced administrative control on implementation of tender procedures. Models of tender documents for all types of procurement procedures have not been developed, as well as detailed manual for application

of the criterion ‘economically most favourable bid’ according to the new law. No efforts have been made to organize more frequent training for people working on public procurements. Also, there are no broader consultations on drafting the relevant secondary legislation, as well as the new Law on Public Procurements in the Field of Defence and Security, which was adopted in August 2019.

Otherwise, as regards public procurements in 2018, as the last completed year, they were implemented according to the old law, almost by inertia, with all the problems affecting public procurements for many years. The new government elected in mid-2017 had failed to institute faster reforms in the field of public procurements and has lost almost two years before implementation of the new law that is fully aligned with the EU Directive from 2014.

After the major drop in 2017, total value of public procurements in 2018 started to increase again (by 22%) and reached 755 million Euros, i.e. 7% of GDP and 22% of the state budget.

Year	Value (mil. euros)	% of GDP	% of budget
<b>2016</b>	962	10%	30%
<b>2017</b>	625	6%	19%
<b>2018</b>	755	7%	22%

Analysis of the randomly selected sample of tender procedures in 2018 shows that the major problems are identified in the stage related to performance of public procurement contracts, primarily due to lack of adequate control and internal rules with contracting authorities on monitoring contract performance. In general, such rules are missing for all stages of public procurement procedures that are not regulated by the law. Another omnipresent problem with analyzed tender procedures concerns low competition, i.e. low number of bids received.

Evident poor planning of tender procedures is another important problem, viewed regarding frequent changes made to annual plans for public procurements. Oftentimes, contracting authorities disrespect relevant deadlines and fail to use external experts for development of technical specifications, which are indicated as source of problems in implementation of tender procedures and corruption. Another frequent problem is use of discriminatory eligibility criteria for companies.

However, in order to improve state-of-affairs in public procurements, the new Law on Public Procurements must be fully enforced, while contracting authorities should use all possibilities offered by this law for procurement of necessary goods, services and works by obtaining the best value for the money spent. To achieve that, more frequent and massively attended thematic trainings should be organized by the Bureau of Public Procurements, accompanied with manuals on practical application of the selection criterion defined as economically most favorable bid.

On the other hand, reduction of corruption in public procurements will largely depend on full implementation of the newly-introduced control in tender procedures by the Bureau of Public Procurements, as well as involvement of all system institutions in this fight, primarily the Public Prosecution Office and the State Commission for Prevention of Corruption. Additional measures in that regard need to be anticipated under the new 5-year National Strategy on Prevention of Corruption and Conflict of Interests, whose implementation will start in 2020.

## State of Affairs in Public Procurement in Serbia

### Introduction

Main problems in the area of public procurement in Serbia, year by year are remaining the same. Significant funds are spent by procurers disobeying the law, intergovernmental agreements concluded with third countries and their implementation unduly restrict competition, do not comply with the basic principles of public procurement, such as transparency, equal treatment and non-discrimination, extremely low level of competition in general, tender documentation “written” for concrete bidder, etc.

Main institutions dealing within the PP system are practically “invisible”, which results in inefficient oversight and control of concrete public procurement cases and especially contract execution.

### Statistical data

Year	Value (mil. Euros)	% of GDP	% of budgetary expenditures
2016	2723	7.86%	30%
2017	2826	7,21%	31%
2018	3415	7.98%	35%

### New Law on Public Procurement

New Law on Public Procurement in the moment of writing this text is waiting to be adopted by National Assembly of the Republic of Serbia. Although, there was some transparency during the public debate now you cannot find anywhere the proposed version of the Law.

There were many arguable innovations in Draft Law, here we will mention just few of them.

#### 1. Thresholds

It is prescribed that thresholds for conducting of public procurement will be increased in order to comply even more with the EU requirements. It will cause many problems and open even more space for corruption in this field. Bearing in mind that average value of contract in 2018 was around 27.000 Euros and that the proposed solution is to increase the threshold to more than 40.000 Euros it is clear how much public procurement cases will stay “in dark” because procurers will not be obliged to conduct rules of the Law, i.e. to conduct public procurement at all.

#### 2. Civic observer

Current Law has one special mechanism for oversight of public procurement cases that worth more than 8.5 million Euros. It is prescribed that each of these procurements must be controlled by civic observer (NGO that deals in the area of fight against the corruption, public

money spending, etc.) This mechanism so far revealed some of the biggest corruption cases in this field. Nevertheless, government did not include this mechanism in the Draft Law.

### **3. Issues of Intergovernmental agreements, public private partnerships and concessions**

Although EC in every single progress report raise these issues as main problems in the field of public procurement new Draft Law is not resolving any of them. Significant funds are spent through contracts resulted from intergovernmental agreements. Main characteristics of these contracts are that they are excluded from application of PP law, they are “closed for public” – you cannot find any documentation regarding them publicly available and they are perceived as “nests” of corruption.

#### **Level of competition remains one of the main problems**

Although, you can find promising data within the official reports published by national authorities, situation on the ground is much different. You can find official data that average number of bidders per tender is 2.5 but the reality is that over 70% of all conducted tenders have just one bidder. Bidders do not use their right to file the complaint even when they know that certain tender is rigged because they are afraid that it could affect their business in the future and that they will not win any tender because of that. *“It is more profitable to remain silent in these situations”* is the most common answer that you can get when you ask them regarding this issue.

#### **Prescribed system of sanctions does not work**

Republic of Serbia introduced separate criminal act in Criminal Code related to misuse of funds in public procurement. Although it passed more than 7 years from the number of verdicts so far is negligible. Bearing in mind that we witness misuse of funds related to public procurements on daily basis it is more than clear that there is no political will for effective implementation of criminal sanctions. It is more or less the same with misdemeanor procedures.

#### **Recommendations**

- 1) It is necessary to revise proposed solutions prescribed by Draft Law and reopen wide public debate that will include both business sector and professional associations as well as NGOs dealing in this area;
- 2) Public private partnerships and concessions must be much better regulated, and their control must be effective in order to shrink space for corruption and to preserve significant funds spent through them;
- 3) Public authorities that deal in the area of public procurement need to be much more effective in their work, especially in monitoring and control of PP contracts execution;
- 4) It is necessary to increase level of competition in this field in order to curb corruption as well as to ensure the much higher quality of goods, services and works;
- 5) Secure effective implementation of prescribed sanctions.