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NEW LEGISLATION ON PUBLIC PROCUREMENT IN SERBIA

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Abstract: *By implementing the new Law on public procurement Serbia will save a large part of the budget funds in the period of the global economic crisis duration, given the fact that the savings in public procurement are high on the list of priorities in the Republic of Serbia. In Serbia annually on average around 4 billion EUR have been allocated for public procurement, so it is obvious that inefficient and effective public procurement system can greatly contribute to the fight against the crisis. Through harmonization of national legislation with EU directives, the newly adopted Law on Public Procurement provides conditions for the realization of the most important objectives of Serbian foreign policy and it is a full membership in the European Union, and also the accession and use of the EU / IPA funds, bearing in mind the fact that the more Serbia is getting closer to the European Union, the more EU funds is going to be available.*

Key words: *The new Law on Public Procurement, corruption, EU Directives, GDP, savings budgetary resources*

Introduction

Spending of public resources has always been a crucial issue of various economic analysis. It became even more important due to escalation of the world economic crisis, and it has been importantly considered in the EU countries.

Serbia has no tradition in the field of public procurements. Given the fact that the procurement issue was not legally defined in the age of socialism, Serbia encountered the necessity of establishing of completely new legal basis. The initial step was adoption of the first Law on public procurement, passed by the Republic Assembly on 4 July 2002 and which came into effect on 13 July of the same year. Although this law was a solid basis for the beginning steps in Serbian system of public procurement, the necessity of new law adoption was generally accepted. The previous law on public procurement was adopted as a part of legislative and economic reforms on the road to development of market-oriented economy and democratic society with a low level of corruption. This law was mostly based

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on so called “old“ EU Directives (Directive 93/36/EEC, Directive 92/50/EEC, Directive 93/37/EEC, Directive 93/38/EEC), and as a model served the Slovenian Law on public procurements. The next new Law on public procurement was passed by the National Assembly on 22 December 2008, and it entered into force on 6 January 2009. In the same year ten bylaws necessary for the implementation of the Law were adopted.

The adoption of these bylaws was one of the conditions required by European Commission in order to enable the signing of the financial agreement, that was related to availability and use of EU IPA funds intended to Serbia in the forthcoming period.

The New Law on Public Procurement

In December 2012 the new Law on public procurement (the third law on public procurement so far) was passed in Serbia.

The new Law on Public Procurement (Official Gazette of the Republic of Serbia no. 124/2012) (hereinafter the Law) applies as of 1 April 2013. With its application, the old Law on Public Procurement was replaced (Official Gazette of the Republic of Serbia no. 116/2008) including bylaws adopted on the basis thereof, as well as Article 5 Paragraphs 1 and 5 of the Law on Stimulating of the Construction Industry of the Republic of Serbia in Economic Crisis (Official Gazette of the Republic of Serbia no. 45/2010, 99/2011 and 121/2012). Besides the Law on public procurement, a new Law on Budget System has been passed (Official Gazette of the Republic of Serbia no. 93/2012), From the point of public procurement, also is important the Law on Concessions. Namely, according to the Directives 2004/17/EC and 2004/18/EC, the issue of concessions, more precisely, the concessions of public works, alongwith the public procurement, represents the issue of awarding public contracts and has been regulated in the same way. Also, of interest for public procurement system are other laws whose application, with respect to the subject of public procurement and the other issues of importance for the implementation of public procurement, it is not specifically regulated by the Law on public procurement.

The Law brought changes in terms of refining and development of existing solutions that have proven to be a problem in practice, as well as in the introduction of new institutes and concepts that should make the public procurement process more efficient and economical.

Key novelties of the introduced legislation are: harmonization with the European Union Directives; more complete and simpler definition of contracting authority (procuring entity); clearer determination of the subject in public procurement of works; cut in the number of exemptions from the application of the law; stricter criteria for the application of exemptions; mechanism of previous control of the commonly used negotiated procedures implementation; mechanisms to prevent conflicts of interest and corruption in public procurement; partial centralization of public procurement, incentive and in certain circumstances the obligation of e-procurement implementation; introduction of a new procedure - **competitive dialogue** and proposing two new forms of existing procedures - **dynamic procurement system** and **framework agreement**, public **procurement of low value** is regulated in a way that allows procedure transparency and competition; it is stipulated the obligation to publish Tender documentation, effectively regulated publication of PP notices (prior indicative notice - PIN) and prescribed compulsory content of public

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(open) call for public procurement; the environmental standards and energy efficiency standards have been introduced as possible parts of technical specifications; a specified method of calculating the estimated value; clearly stipulated **method for making decision properly on awarding public contract**, procedures and deadlines for contracts; clearly and restrictively specified options for changes in the contract.

New legislative solutions should prevent a corrupt behavior, first of all- of the representatives of contracting authority (procuring entities) and bidders, to provide competition, to reduce costs through procurement planning, to reduce costs following the procedure of the contracting authority (procuring entity) and the tenderer (bidder) as well as the procedure duration, and to provide **cut in the number of procedures** for rights protection, and the number of unsuccessful, suspended or reversed procedures.

While drafting the bill, the attention was primarily paid to defining solutions that would prevent possible abuse, that would increase the efficiency of the control, efficiency and speed of procedures, thereby ensuring that the proposed solutions are in line with EU directives and public procurement best practice in member countries.

In drafting of the law were used and **comparatively analyzed legal solutions** and experiences of the countries in the region, the EU member countries, the experiences of international organizations, international experts in this field and other international experiences (e.g. Consip). It also took into account the experience of national experts in the field of public procurement (employed in public procurement by contracting authorities, bidders, businessmen) who have been applying the systems and procedures of public procurement, statistics and other available information related to the implementation of the previous law in the last 11 years.

The aim of the new law is to ensure better control and responsibility, an economical and efficient use of public funds for the procurement carried out by the state authorities, territorial and local self-government, public services, and to incite the competitiveness and equality of bidders in public procurement procedures and to provide them with adequate legal protection. Procurement of goods, services or works, till the introduction of the public procurement regime, was not legally regulated or has been partially and incompletely regulated and referred only to the specific procurement, so that the selection of bidders had depended on the discretionary decision of the contracting authority, and that in turn resulted in inefficient public spending and the creation of an favorable environment for corruption occurrence.

The new law does not apply to some high-value public procurement cases such as the ones funded from international loans and those based on international agreements. These are exempt from the implementation of the law and this limits the scope of its application.

According to the national economy experts assessments, the new law will make room for a cut in the number of direct talks or *tete-a-tete* deals by at least two thirds. The assessments of local experts show that the implementation of new law would ensure EUR 500 to 700 million worth of savings for the state budget and that the full effects of the measures will be felt in 2014.

Another important bylaw will be adopted in autumn to regulate the planning process in the area of public procurement and according to the experts' assessment it will be the crucial stage in the sector.

Corruption

According to the new Law, the Public Procurement Office is responsible for control and prevention of corruption, and there is a newly established institution of "civil supervisor" for the public procurements with estimated value exceeding RSD 1 billion.

In practice this means that the Public Procurement Office reports cases of corruption and irregularities to the competent Prosecutor's office, the State Audit Institution and the Serbian Police.

Editor in Chief of „The Business“ Magazine Radojka Nikolić recalled the words of the head of the EU mission to Serbia Mr. Vincent Degert from 2010, that Serbia due to the corruption in public procurement "is losing 800 million to one billion euros from the budget".

In the past 10 years Serbia has lost at least EUR 5 billion due to corruption in public procurement, given the fact that we annually have lost about EUR 500 million, but it raised a question where the citizens' money had gone.

The Coalition for monitoring public finance estimated that the competent judicial authorities haven't been doing their job well, due to which a number of corruption in public procurement remained unpunished.

Independent regulatory and anti-corruption bodies, in our present case are: the State Audit Office, the Public Procurement Office, the Commission for the Protection of Rights in Public Procurement Procedures, the Commissioner for Information of Public Importance and Personal Data Protection and the Anti-corruption Agency.

The new Law on Public Procurement entered into force on 1 April 2013 and this has been another opportunity to get the entire system against abuse put on a new basis. We expect that all recognized stakeholders in the corruption in public procurement - holders of political power, independent anti-corruption and regulatory bodies, the system of justice, in which the prosecution has especially heavy responsibility and, ultimately, the public in the form of media and organized civil society, will not miss this chance. (Varinac, 2013, 15-34). Therefore, support to the relevant public procurement institutions must become much stronger, also given the fact that in future negotiations for full membership in the EU, one entire negotiation chapter will be devoted to public procurement negotiating. (Knežević, 2010, 81).

In Transparency International's latest Corruption Perception Index (CPI 2012), Serbia had marginally improved its standing, and stood at 80th overall, a score still denoting pervasive corruption problems. The hopes are high that the resources invested in the implementation of the new law to support its objectives will improve the situation.

EU directives

At the level of European Union, the primary objective of the EU Directives is to establish a unified procurement market by stipulating minimum uniform rules and procedures for public contracts awarding. So, the guiding law principles at the national

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level are different from the objectives of the European Union level. On the domestic front is essential to have efficient use of public funds, which is provided by prescribing certain procedures for awarding public contracts and the mechanisms to prevent corruption and ensure competition, while the primary objective at the EU level is creation of unified public procurement market. The stated difference has led to a different regulation of certain issues in the new law from the solutions accepted in the European Union Directives.

A number of different organisations are implicated in procurement at the European level. These organisations are the following:

- Community Legislator

The Community Legislator is, in effect, the Council of the European Communities, acting either alone or in co-operation with the European Parliament. All recent Procurement Directives were adopted by these two institutions acting together, using the co-decision procedure.

- EU member states

For the purposes of the EU, the member states are bound to take all appropriate measures to ensure the fulfilment of the obligations arising out of the Treaty or resulting from actions taken by the institutions of the Community.

- European Commission

Concerning European Commission, in the case of procurement, the responsible directorate-general is DG-Markt (General Directorate for internal market of European Commission). Implementation measures taken by DG-Markt include the adoption of secondary legislation to provide, for example, for the use of standard forms, the Common Procurement Vocabulary (CPV), interpretative guidelines and communications, and general guidelines.

- European Court of Justice

The ECJ ensures observance of the law in the interpretation and application of the Treaty and its implementing rules. (SIGMA/OECD, "Public Procurement Training for IPA Beneficiaries", 2012, 27-28).

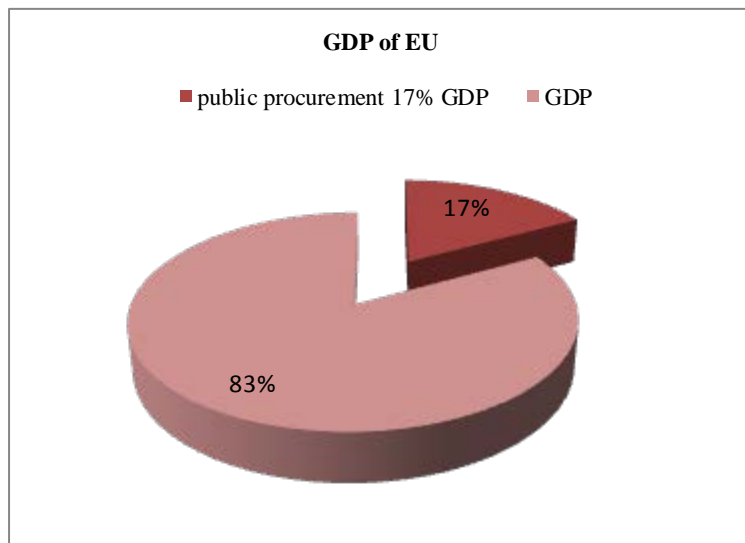
Public Procurement GPD of Serbia and GPD of EU

Public procurements make around 10% of the GPD of Serbia, and experts expect that their value for economic sector will grow in the future. The value of public procurements in 2010 amounted to RSD 273 bn, or 9.96% of the GDP. As the share of public procurements in GDP in 2005 amounted to 7,41%, and the GDP grew in the period from 2005-2010, public procurements went faster and their relative importance increased during the observed five years, " Simultaneously, that means that public procurements have a big importance for economy of Serbia and growth of life standard of citizens and that the growth trends of relative importance would continue in the future, having in mind that average participation of public procurements in GDP of the EU countries amounted to 17% in 2008. (Republic of Serbia Ministry of Finance and Economy) .

Illustration 1.



Illustration 2.



The total value of the registered public procurement in 2011 in Serbia, amounts to around 10% of GDP. However, this data should be interpreted with certain reserve, due to some unrecorded procurement (procurement in the field of defense and security and many other supplies that were unduly exempt from the application of the law, as well as the procurement not registered by procuring entity, or not reported).

It should be kept in mind that in 2011 the reports were filed by around 3,100 procuring entities, and that the number of them is much higher. Some estimates show that

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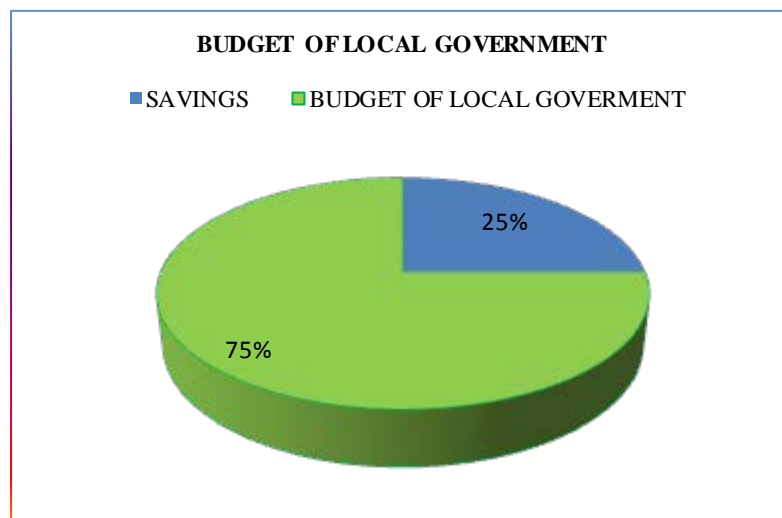
the real share of public procurement is between 12% and 15% of GDP, and if the purchase and lease of real estate which are also public contracts, are added, the share of public procurement in GDP is much higher.

Savings Budgetary Resources in Organizing Public Procurement at the Local Self-government Level in Serbia

The new law envisages partial centralisation in the area of public procurement and the procurements for government bodies, primarily those that cover expendables, and will be implemented by the Administration for JointServices.

It is estimated that the savings by consolidated procurement in the local self-governments budgets in Serbia in 2011 amounted on average up to 25% what indicates the importance of public procurement within public finance management at the local self-government level. Therefore, improving public procurement management and organization has a significant potential for cost savings and local self-government efficiency increase. In order to realize the potential for cost savings and local self-governments efficiency improvement, public procurement must reach the standard of management quality defined as "*a set of best practices*". (Jovanovic, Benković, 2012, 23).

Illustration 3.



Savings by centralization of public procurement is also achieved on the grounds of reducing transaction costs, since several procedures for the same procurement subject are replaced by a single procedure. Consolidating several procedures into one, results in significant savings in man/hours and allows employees to carry out other tasks important for the functioning of their organization. This increases the total amount of savings from centralization, as well as cost-effectiveness of public procurement procedure and efficiency in using resources of contracting authority, primarily human ones. Concentrating knowledge by means of centralizing public procurement facilitates the use of the highest

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level expertise for broader range of contracting authorities covering not only those for whom the public procurement is conducted, but also the others who can approach the body in charge of centralized public procurement seeking advice, model of tender documentation or contract, etc.

Illustration 4. Comparative overview of purchase prices for decentralized and centralized public procurement - City of Niš

Subject of public procurement	Individual procurement	Consolidated procurement	Savings (%)
School chair	15.0	12.0	20
Computer desk	65.5	32.0	51
Computer configuration	197.5	182.0	8
Monitor	115.0	93.5	19
Computer configuration with monitor	314.0	253.0	20

* prices are in EUR, pursuant to average exchange rate of the National Bank of Serbia on the day of concluding contract

Source: Official data from the Niš City Administration for Finance, Local Self Government Revenues and Public Procurement from 08.05.2012

Conclusion

The main objective of the new Law on Public Procurement is to provide conditions for **efficient use of public funds**, by stipulating **clear procedures** for awarding public contracts, or mechanisms to **prevent corruption** and ensure **competition, effective use of budget funds during the global economic crisis, as well as approximation to EU standards, with the aim of EU accession**. Serbia will have to make additional efforts to align with the EU acquis in the area of public procurement and to implement it effectively in the medium term.

References

1. "Corrigendum to Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of standard contract notices)", *Official Journal L 285* of 29.10.2001), *Official Journal L 214*, 9.8.2002, p. 1–88 (DA, EN, FR, IT, FI, SV)
2. "Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts", *Official Journal L 111*, 30.4.1994, p. 115–115 (ES, DA, EL, EN, FR, NL, PT)

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3. "Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors", *Official Journal L 82*, 25.3.1994, p. 40–40 (DE, FR)
4. "Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ", *Official Journal L 134*, 30/04/2004 P. 0001 – 0113
5. "Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ", *Official Journal L 134*, 30/04/2004 P. 0114 – 0240
6. Jovanović P, Benković S, 2012, *Management Journal for Theory and Practice Management*, Belgrade, 2012/64, p. 25
7. Republic of Serbia Ministry of Finance and Economy, www.mfp.gov.rs (09.07.2013.)
8. Knežević B, 2010, *Javne nabavke: ušteda budžetskog novca i približavanje evropskim standardima*, p. 81, Belgrade, Shool bisnis n. 3/2010 UDC 658.6/.9.
9. Public Procurement Law, *Official Gazette of the RS*", No. 124/2012
10. Public Procurement Law, *Official Gazette of the Republic of Serbia no. 116/2008*
11. SIGMA/OECD, 2012, "Public Procurement Training for IPA Beneficiaries", Torino, Sigma Papers, p 27, 28
12. Varinac S, 2013, *Uređene javne nabavke za manje korupcije u Srbiji*, Prokuplje, Toplički centar za demokratiju i ljudska prava, p. 15-34
13. Law on Stimulating of the Construction Industry of the Republic of Serbia Economic Crisis, *Official Gazette of the Republic of Serbia no. 45/2010, 99/2011 i 121/2012*
14. Law on the Budget System, *Official Gazette of the Republic of Serbia no. 93/2012*

NOVI ZAKON O JAVNIM NABAVKAMA U REPUBLICI SRBIJI

Rezime: *Primenom novog zakon o javnim nabavkama Srbija će uštedeti veliki deo budžetskih sredstava u periodu trajanja svetske ekonomske krize, s obzirom da se uštede u javnim nabavkama visoko na listi prioriteta Republike Srbije. U Srbiji se u proseku godišnje odvoji oko 4 milijarde evra za javne nabavke, tako da je očigledno da se efikasnim i efektivnim sistemom javnih nabavki može veoma doprineti u borbi protiv krize. Usklađivanjem domaćeg zakonodavstva sa direktivama EU, Novousvojenim zakonom o javnim nabavkama se obezbeđuju uslovi za ostvarivanje najvažnijih ciljeva srpske spoljne politike a to je punopravno članstvo u Evropskoj uniji, a takođe i korišćenje EU/IPA fondova, imajući u vidu činjenicu da što se više Srbija bude približila evropskoj uniji, to će joj više sredstava iz fondova EU biti dostupno.*

Ključne reči: *Novi Zakon o javnim nabavkama u Republici Srbiji, korupcija, direktive EU, BDP, ušteda budžetskih sredstava*