



## **SIGMA**

**Support for Improvement in Governance and Management**

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## **SERBIA**

### **PUBLIC PROCUREMENT**

### **ASSESSMENT JUNE 2006**

## Legal Framework

The Public Procurement Law (PPL) of Serbia, adopted by parliament on 4 July 2002, came into effect on 13 July 2002. It is modelled extensively on the Slovenian procurement law and has also been influenced by the EU Directives and the UNCITRAL Model Law (UML).

A number of amendments to the PPL were approved by the Serbian Government in October 2003 and then passed to the Assembly for adoption in November 2003. The most important change relates to the establishment of a review commission for the protection of bidders' rights, which is to be established within the administrative framework of the Public Procurement Office (PPO), but to be made fully independent of the PPO. The commission has been designed using the Slovenian complaint review system as a model. Other substantial proposed changes to the PPL are the introduction of increased thresholds for the mandatory publication of a procurement notice in a local newspaper, a different application of the restricted procedure, removal of the requirement of prior approval by the PPO for the use of the negotiated procedure in cases of urgency, acceptance of a single tender, and enhancement of the role of the PPO.

The PPL anticipates the preparation of a number of supplementary regulations to support effective implementation and correct application of the PPL. Three such regulations have so far been adopted by the government, covering the opening of tenders, record-keeping and the establishment of tender committees.

The PPL of Serbia maintains generally an acceptable international standard, but a number of important improvements still have to be made, even after the current amendments to the PPL are enacted. There also exist a number of incompatibilities with the EC Directives that need to be addressed by the government and considered in future revisions of the PPL. These include:

- limitations related to the application of the restricted procedure, which are clearly unacceptable;
- the large number of justifications required for the use of the negotiated procedure, which may lead to abuse;
- the need to seek prior approval from the PPO for the use of the restricted and negotiated procedures, except for cases of extreme urgency, which should be reconsidered, in particular regarding the restricted procedure;
- the lack of simplified procedures for contracts up to approximately EUR 50,000 for goods and services and approximately EUR 100,000 for works;
- the lack of concrete justifications for the use of accelerated procedures, including time limits that are too restricted;
- other questionable elements in the PPL, in particular the division of tenders into separate categories during the tender evaluation process.

Recently (December 2005) a draft amendment to the PPL was prepared, which is scheduled to come into force in 2007. The latest version known to Sigma has taken into account some, but not all, of the changes introduced by the new EC Directives 2004/17 and 2004/18, but it will need some further updating to allow a complete match with the *acquis*.

## 2. Institutional Framework

The mandate and key functions of the Public Procurement Office (PPO) are described in the PPL under Part II, where it is stated that the PPO is to be a special organisation with responsibility for effective implementation, supervision and application of the PPL. The PPO, which began its operations on 15 January 2003, is an independent agency under the government. The functions of the PPO as outlined in the PPL are the following:

- Draft regulations for adoption by the government;
- Provide advisory services to contracting entities and tenderers;
- Organise training in the area of public procurement;
- Ensure international co-operation in the area of public procurement;
- Publish notices and distribute handbooks and guidance information;
- Prepare model tender documentation;
- Collect statistical data from contracting entities;
- Monitor **public procurement**;

- **Submit to the government an annual report on public procurement.**

The PPO currently has 23 staff members, headed by a director.. It is organised in four sections: Legal Department, Department of Analysis, Training Department, and Administration. During its first year of operation, the PPO managed to prepare three secondary regulations, three internal regulations covering model tender documents, model notices, and a regulation on low-value contracts. With the expansion of the PPO to 20 employees, there is reason to believe that the Office will be satisfactorily staffed for the normal undertaking of a PPO's duties, considering the number of contracting entities (12,000) and the size of the economy. The capacity of the PPO should also be expanded once it excludes the work related to the prior approval obligations for contracting entities, which is a very time-consuming task.

The quite impressive effort of the PPO to support the implementation of the PPL and the introduction of a new concept for dealing with public procurement should be recognised. However, a number of problems remain at institutional and operational levels.

### **3. Reform Agenda and Capacities**

Some progress has been made in introducing a more EU-compliant public procurement regime, and contracting authorities are aware of their obligations. Effective and independent review procedures have been established, and the PPO has emerged as an independent source of advice for contracting authorities.

Much, however, remains to be done. Quick but thorough work needs to be done to amend the PPL, including a greater emphasis on efficient procurement. Higher priority also needs to be given to providing written guidance and secondary legislation to assist in the practical application of the law. Further work to improve the professionalism of contracting authorities would facilitate the implementation of open procurement based on the principles of non-discrimination and value-for-money.

### **4. Assessment**

The new PPL represents a complete shift in procurement practices compared to the uncompetitive and non-transparent system previously in place in Serbia. The new PPL, largely modelled on the EC Directives (through the Slovenian model), introduces changes and new procedures for the procurement community that are rather complex. The quality of the PPL is generally good, but as indicated above, a number of deficiencies need to be addressed by the government. Unfortunately, the sequencing of the various measures to reform the procurement system was not done in an optimal manner. It would have been more logical and effective to introduce reforms by establishing the PPO as a first measure and letting the PPO be the driving force in the preparation of the procurement community by organising basic training for all users as a start and by issuing some of the more important supplementing regulations and guidelines.

However, the PPO, since its establishment at the beginning of 2003, has been able to initiate and carry out a number of valuable activities, including the provision of training and the preparation of supplementary regulations and model documents to support the implementation of the PPL during its first year of application.

The reform is still in its initial phase, and a great deal of work remains to be done over the coming years. The lack of adequate mechanisms for the review of complaints and for external audit remains a serious problem.

### **5. Recommendations**

- The government should take further steps to revise the PPL so that it is fully aligned with the EC Directives.
- Consideration should be given to the organisation of internal and external audit so as to ensure the integrity of the procurement processes.
- The government, in close consultation with all important stakeholders, should prepare a strategy and detailed action plan for the public procurement reform process, setting out clearly the needs and the measures to be taken.
- The PPO should be strengthened, in particular in terms of training, organisation and IT systems.
- The efficiency of the procurement system should be increased through initiatives to set up arrangements for co-ordinated and centralised purchasing, including the introduction of framework agreements.
- Preparations are required for the future use of electronic procurement.

## **6. External Assistance**

Currently, no external assistance of any real importance is available to Serbia in the area of public procurement. However, the PPO would definitely benefit from external assistance and from closer international co-operation in the following areas:

- Review of the PPL to determine the need for further revisions, with a view to (i) achieving full alignment with the EC Directives, and (ii) introducing appropriate and efficient national procedures for contracts not covered by the Directives;
- Support for the development of the operations of the PPO through the provision of training, experience-sharing with PPOs in other countries, and help with the preparation of operational guidelines and tender and contract documentation;
- Support for the Review Commission and its operations;
- Support in the preparation and conduct of a comprehensive training programme and information programme targeting purchasers at all levels, but in particular units at regional and local levels; an information programme should also be designed for the private sector;
- Support for the introduction of modern techniques for tendering and contracting, such as electronic means and framework agreements.