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**GOVERNMENT OF THE REPUBLIC OF**  
**SERBIA**  
**ANTI-CORRUPTION COUNCIL**

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**REPORT ON THE PURPOSFULNESS, CONTROL AND**  
**IMPLEMENTATION OF PUBLIC PROCUREMENT IN**  
**SERBIA**

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## INTRODUCTION

Public procurement is a procurement of goods, services or works by the contracting authority, organization, institution or other legal entities which, in terms of the Law on Public Procurement of the Republic of Serbia, considered to be contracting authorities, in the manner and under conditions prescribed by this law.

Adoption of the Law on Public Procurement was intended to prevent corruption and abuse in public procurement and enable procurement under the most favorable conditions in accordance with the principles of public procurement.

The principles of public procurement are:

- Principle of Efficiency and Cost-Effectiveness
- Principle of ensuring competition
- Principle of transparency
- Principle of equality of bidders
- Principle of environmental protection and ensuring energy efficiency

Public procurement can be carried out in the following procedures:

- Open procedure
- Restrictive procedure
- Negotiating procedure with publishing an invitation to place bids
- Negotiating procedure without publishing an invitation to place bids
- Competitive dialogue
- Design contest
- Dynamic procurement system
- Low-value public procurement

Open and restrictive procedures are considered as regular procedures and are the most transparent because they allow participation of all interested parties. Other types of procedures should be carried out if the conditions prescribed by law are met.

The Law on Public Procurement was first adopted in July 2002 and has been amended seven more times so far. Amendments to the Law were published in the Official Gazette of the Republic of Serbia (Official Gazette 43/2003; 55/2004; 101/2005; 116/2008; 124/2012; 14/2015; 68/2015).

All the aforementioned amendments to the Law on Public Procurement were adopted with the aim of solving the problems identified in the implementation of the Law, in order to make the procurement process more efficient and transparent, to reduce the use of public funds, with better legal protection of bidders. One of the important factors in reducing corruption in public procurement is the transparency of public procurement and the way of reporting on the implemented public procurement procedures.

The Law on Public Procurement (“Official Gazette of the RS” No. 116/08) stipulates that contracting authorities are obliged to collect and record data on public procurement and to submit their quarterly reports to the Public Procurement Office, hereinafter referred to as the Office.

The Office, on the basis of individual reports of procuring entities, prepare a consolidated semi-annual and annual report on public procurement, with the proposal of general and specific measures to improve the public procurement system and submits it to the Government of the Republic of Serbia. On the basis of submitted individual reports of the contracting authorities, the Office also prepares an overview of the implemented procedures and concluded contracts and publishes them on the Public Procurement Portal.

It was expected that by publishing the data on public procurement the reporting on the spent public funds should be transparent and accurate.

Unfortunately, even ten years after the establishment of the Public Procurement Portal, there is no real data on how much money is spent in the public procurement process, that is how much the actual implementation of the public procurement contract is, even though the Office produces quarterly and annual reports.

In addition to the fact that the implementation of contracts concluded in the high-value public procurement procedure cannot be viewed on the Public Procurement Portal, the share of procurement that is exempted from the Law on Public Procurement is extremely high.

Also, low-value procurement is shown in aggregate, which creates room for numerous abuses.

In recent years, it has been established that contracts for the disposal of public goods, valued at hundreds of millions of euros, are awarded in a completely non-transparent manner in the form of interstate agreements, that is, international treaties, thereby avoiding the Law on Public Procurement. Such contracts are not available to the public, so the Council processed them from the aspect of possible corruption, which was drafted by the Report on the Transparency of Contracting and submitted to the Government of the Republic of Serbia on October 23, 2019.

The Council did not receive feedback from the Government on this Report, nor did it receive any other reports it forwarded to the Government.

In the meantime, the Government has submitted to the National Assembly a Draft Law on Special Procedures for the realization of projects for construction and reconstruction of line infrastructure facilities of special importance to the Republic of Serbia.

The Government decides on the recognition or realization of each individual project.

According to the aforementioned Draft Law on Special Procedures, the subject of which is the execution of works, the provision of services for the preparation and control of planning and technical documentation, or the provision of project management services, or part of the project, as well as competent supervision of the execution of works and technical inspections for construction and reconstruction projects referred to in Art. 2 of the Law, the open procedure prescribed by the Law on Public Procurement shall apply.

However, if construction and reconstruction projects are carried out on the basis of international treaties or bilateral agreements, the rules defined in those treaties and treaties shall apply.

Bearing in mind that projects worth several billion euros are announced in the Republic of Serbia and that there is a realistic involvement of international entities for such projects, the issue of transparency of such arrangements and the possibility of enormous corruption is re-opened.

. In addition, the Draft Law provides that in case of urgency and jeopardy of the project implementation, the Government may apply a special procedure in the selection of a strategic partner. On this occasion, the Government will form a working group that will select a strategic partner, according to the criteria determined by that working group, in relation to the line infrastructure project. In such a proposal, choosing a strategic partner remains unclear, such as the urgency and jeopardy of the project. This is exactly a circumstance that can be used in any situation where the Government wants to favor a particular strategic partner. Also, such a working group formed through the prescribed criteria can unnecessarily prevent participation of many bidders, and thus reduce competition and open space for corruption.

Non-implementation of the Law on Public Procurement is one of the big generators of corruption, but not the only one, because the Law itself, which has been amended many times, has not produced any results, since there was no control over the implementation of the public procurement procedure.

## **1. HOW PUBLIC PROCUREMENT PRINCIPLES ARE RESPECTED**

### **1.1. PRINCIPLE OF EFFICIENCY AND COST-EFFECTIVENES**

The success of public procurement, in terms of the principle of cost-effectiveness and efficiency, can be measured through a well-balanced procurement plan with the actual needs of contracting authorities and its prompt and efficient implementation, while respecting all other principles of public procurement.

A good procurement plan means that the contracting authorities procure the necessary goods and services, as well as works exclusively with the business plan, in the optimum quantity and quality.

Several steps need to be taken in the public procurement plan, first of all to determine the actual procurement needs in accordance with the financial plan, i.e. the available funds. Based on the real needs and the financial plan, it is necessary to adopt a procurement plan within which the estimated value of the procurement is determined, as well as the type of procurement procedure.

It is not uncommon that in large public companies, where the need for procurement of a wide range of goods and a large number of various services is needed, the procurement plan is rewritten from year to year and slightly adjusted. In this way, neither market analysis is carried out nor the condition of the goods in the inventories of the contracting authorities. Procurement of goods already in stock leads to an increase in inventories. Thus, the accumulated quantities of goods purchased over the years create enormous costs because they are recorded as passive inventories and ultimately liquidated as secondary raw materials at bargain prices. A drastic example of this is the acquisition of expensive spare parts, which are not timely incorporated into a fixed asset that expends over time.

Procurement of goods and services that are not necessary, or procurement in excessive quantities leads to improper spending of public funds at the expense of all citizens of the Republic of Serbia.

The Council requested the information from the State Audit Institution on whether the purpose of public procurement is being monitored, in which entities, as well as reports of possible controls.

On September 13, 2019, the State Audit Institution submitted a reply to the Council under number 037-1742/2019-05/1, informing it that in 2015 it had audited the procurement of five entities, namely: Clinical Center of Serbia, Belgrade; City Transport Agency Kragujevac; PE "Srbijašume" Belgrade; PUC Infostan Technologies, Belgrade; Pharmacy Loznica Health Center, Loznica. The State Audit Institution also informed the Council that the Audit Report on the State Audit that the Report on the Audit of Purposefulness, Efficiency and Cost-effectiveness of Applying the Negotiated Procedure can be found on the website (<https://www.dri.rs/php/document/download/932/1>).

By examining the contents of the Report, it can be concluded that the purpose of public procurement was not audited with the aforementioned entities, but the control of the use of the negotiated procedure in the procurement process, as one of the most non-transparent procedures.

Following the audit, the State Audit Institution has determined the following: "Negotiating procedure without issuing a call for proposals would be more efficient and cost effective if contracting authorities paid more attention to market research, negotiation and control. Prior to launching the negotiated procedure without issuing a call for bids, the audit entities partly investigate the market for the procurement and the bidders, but do not document the results of the research. The audit entities do not do the life cycle cost analysis of the procurement subject. Audit entities do not fully take appropriate measures to achieve the best value for money because they do not sufficiently consider the criteria for awarding the contract and do not fully ensure the principle of value for money. Insufficient coordination of audit entities with the competent authorities leads to the use of the negotiated procedure as the least competitive procedure. Incomplete control and evaluation of all stages and expediency of the procedure may result in ineffective and inefficient public procurement in the negotiated procedure."

The State Audit Institution, in order to improve the negotiation process without issuing a call for proposals, makes the following recommendations to audit entities to:

- thoroughly investigate the market, consider the life cycle costs of the procurement subject and document the same before launching the negotiation process without issuing a call for proposals;
- consider in detail the determination of the award criteria, as well as the parameters to be negotiated, in order to fully ensure the best value for money
- perform and document control of all phases of the negotiated procedure without the publication of a call for proposals, as well as control of the expediency of public procurement.

The Council cited in its entirety the response of the State Audit Institution, which, unfortunately, is not a complete response to the specific request of the Council relating to the control of the purposefulness of procurement by contracting authorities, but to one of the procurement procedures (negotiated without call). If only this one report in the past four years can be characterized as a report on the audit of the purposefulness of public procurement, then the conclusion is that there is no serious external control of the public procurement procedure in Serbia.

When the Law on the Establishment of the State Audit Institution was passed ten years ago, the rationale for the proponents of the Law was that its establishment would significantly contribute to the audit of the purposefulness of public procurement, which had not been done before. Audit of purposefulness involves control, ranging from the procurement plan to the conclusion of the contract and its implementation, as well as the effects of spending public funds.

Therefore, the State Audit Institution is the highest body of audit of public funds and should audit the regularity of business within which is the area of public procurement, that is, control whether public funds are spent in accordance with the basic principles, economy, efficiency and effectiveness. The State Audit Institution has the power to file a request for protection of rights and a request for initiating misdemeanor proceedings for misdemeanors prescribed by the Law on Public Procurement. The Council does not have information that it has used its authority at any time.

Given the fact that neither external nor internal audits of the expediency of public procurement are carried out, contracting authorities may, without any accountability, procure goods and services and perform works, although there is no real need for them, or at least not to the extent of the procurement. Such procurement often gives certain bidders the opportunity to earn big money through the placement of goods, the performance of services and the execution of works, and the contracting authorities the opportunity to “reward” a bidder for the realization of the procurement.

## **1.2. PRINCIPLE OF ENSURING COMPETITION**

Limiting competition among bidders most often occurs when the contracting entity selects a procurement subject whose final realization can only be made by a specific bidder.

By applying the negotiated procedure, if there is no objective need of the contracting authority, there may be a serious restriction of competition.

Contracting authority may not limit competition, and in particular, it may not prevent any bidder from participating in public procurement by unjustified use of the negotiating procedure.

According to the Report of the Public Procurement Office for 2018, the most represented was the negotiating procedure with a specific bidder for technical or artistic reasons, with a total value of 6.29 billion dinars. Negotiating procedure on the basis of emergency and unforeseen circumstances (the so-called “urgency”) with RSD 2 billion was second in representation, followed by the failed open and restrictive procedures, respectively, with 806.8 thousand dinars, while in fourth place is a procedure on the basis of additional works and services in the amount of 504.8 thousand dinars.

The procurement items that were most represented in the negotiation process with the specific bidder in 2018, according to the aforementioned Office’s Report, are: construction works, pharmaceuticals and medical equipment and information technology services.

According to the same Office’s Report for 2018, the intensity of competition has been reduced from three to 2.5 bids per procedure. This trend of decreasing intensity of competition, among other things, is the reason for determining the conditions in the public procurement procedure and preparing technical documentation of the subject of public procurement.

One of the mechanisms for preventing the unjustified application of the negotiated procedure, without the announcement of a public invitation, is the obligation to publish a notice of selection of the most advantageous tender, which is published on the Public Procurement Portal and the Official Gazette.

Bidders not invited to participate in the negotiation procedure may, within eight days, submit a request for protection of rights to the Republic Commission for Protection of Rights in Public Procurement Procedures (hereinafter referred to as the Commission). The Commission may, if certain irregularities and violations of the tenderer's rights are found, impose fines on the contracting authority and the responsible person. The Commission may also terminate the public procurement contract and conduct the first-instance misdemeanor proceedings.

On this occasion, the Council addressed the Commission with a request to provide the Council with information, whether in the period 2016-2019 it applied one of the above measures and to which contracting authorities. On September 16, 2019, the Commission informed the Council by letter 011-00-24 / 2019 that in the period 2016-2019 it received a total of 133 requests for misdemeanor proceedings. Of these 133 requests, the Commission reached only two conclusions rejecting the request for the initiation of the misdemeanor proceedings, as they were filed by unauthorized persons, and two decisions declaring the Commission a really incompetent authority for misdemeanor proceedings. For the other 129 misdemeanor claims, it is uncertain when they will be finalized, though some may have been filed three years ago.

In the part of the Commission's competence relating to the cancellation of the contracts, the Commission informed the Council that the information is available at <http://kjn.rs/special-authorizations/cancellation-of-the-contract/>. From the available data it can be seen that the Commission, in the period 2017-2019, adopted eight decisions on cancellation of the contracts. At

<http://kjn.rs/special-authorizations/new-transactions/>, information is available according to which the Commission, in the period 2014-2019, issued 17 decisions on fines. The fact that such a small number of repressive measures in relation to the number of public procurement contracts, over a period of four years (over four hundred thousand contracts), requires a comprehensive and serious analysis for which the Council is not competent and for which it lacks documentation.

One reason may be that bidders are not aware of how they can protect their rights, while another reason may be corrupt. Namely, the damaged bidder may waive the request if the contracting authority promises to be selected in another procedure or the favored tenderer promises him some benefit.

### 1.3. PRINCIPLE OF TRANSPARENCY

The principle of transparency is, among other things, related to the proper determination of the estimated value of the public procurement, since the estimated value affects the choice of the public procurement procedure, i.e. whether and in what form the public procurement procedure will be advertised.

Pursuant to Article 64, paragraph 3 of the Law on Public Procurement, the estimated value of the public procurement shall be based on completed examination, research of the market of the public procurement subject matter, which includes check of the price, quality, guarantee period, maintenance and similar, and must be valid at the time of the initiation of procedure.

If the estimated value were determined in this way, i.e. in accordance with the Law, then the contracting authorities would not be able to avoid the use of the prescribed method of advertising and thus not distort competition.

The estimated value of public procurement is the amount of public funds expected to be spent on all payments except VAT, in the implementation of a specific procurement.

The amount of the estimated value depends on whether the contracting authority will be obliged to prepare the tender documentation, except in Serbian, in the foreign language used in international trade.

The amount of the estimated value of the public procurement also determines the procurement procedure of small or large value.

Analyzing public procurement in sixteen local self-governments, in its 2016 Report, the Council noted that low-value procurement was widely represented.

Low-value public procurement, in accordance with Article 39 of the Law, is a procurement whose estimated value does not exceed 5,000,000 dinars.

The Council could not conclude whether the low-value procurement procedure was more represented due to the inadequate estimated value or because of the “shredding” of the high value

procurement, given that it drew data from the tables provided by the local self-governments and not from the original documentation.

The transparency of public procurement is also strongly influenced by the procurement of goods and services to which the provisions of the Law on Public Procurement do not apply. An analysis of the Law in force may indicate that there are more exceptions to which the Law does not apply than is objectively necessary, which can lead to corruption and abuse.

Non-transparency of public procurement is also affected by the non-publication of contracts relating to large state projects, with the explanation that this is a state secret.

#### **1.4. PRINCIPLE OF EQUALITY OF BIDDERS**

Pursuant to Article 12 of the Law on Public Procurement, contracting authority shall ensure equal position of all bidders in all phases of public procurement procedure.

Contracting authority may not impose conditions that would constitute national, territorial, subject-matter or personal discrimination among bidders, or discrimination arising from the classification of the business activity performed by the bidder.

Some examples of bidder discrimination are reflected in the following:

- the application of vague and subjective elements of criteria such as ‘quality’ and ‘special benefits’ assessed by a contracting authority’s committee members;
- special evaluation of the quality of the procurement subject only by some bidders that is irrelevant to the subject procurement;
- evaluation of certain professional references that are not relevant for meeting the specific needs of the contracting authority;
- the application of a methodology for awarding weights that is not objectively verifiable and that benefits certain bidders;
- the requirement that bidders have an annual income multiple times higher than the value of public procurement, etc.

The Council also addressed some of these examples of bidder discrimination in its reports (Report on procurement of IT and measuring infrastructure of devices and installations).

#### **1.5. PRINCIPLE OF ENVIRONMENTAL PROTECTION AND ENSURING ENERGY EFFICIENCY**

Pursuant to Article 12 of the Law on Public Procurement, contracting authority shall procure non-polluting goods, services and works, or those having minimal influence on the environment, or those that ensure adequate decrease in energy consumption - energy efficiency, and, when justifiable, to define environmental advantages of the subject matter of public

procurement. It can be seen from numerous examples that this principle in the Republic of Serbia is only a dead letter and is absolutely not respected.

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## CONCLUSION ABOUT PUBLIC PROCUREMENT PRINCIPLES

Bearing in mind the above principles of public procurement, it can be concluded that the principle of transparency, if respected, can enable broad competition and equality of bidders, all of which together can lead to the realization of the basic principles, which is an effective, cost-efficient and purposeful public procurement procedure, that is, useful spending of public funds.

From the experience so far, the Council cannot claim that the procurement process is carried out in a transparent manner while respecting all other principles. Namely, in many of the reports it did, the Council was not available with the data, starting with the contracts themselves, so their final realization was completely uncertain, unknown and without any control.

As already stated in the Report, for the purpose of improving the general information of contracting authorities and bidders, the Law provides that the Public Procurement Office maintain a Public Procurement Portal, where all citizens of the Republic of Serbia would be provided with information on public procurement, and not only interested bidders and procurers. Such transparency could provide greater insight into public procurement and, therefore, the reporting of potential irregularities to competent institutions.

The Council tried to show on the example of several contracting authorities randomly selected what kind of information the Public Procurement Portal, that is, the Office that maintains the Portal.

## 2. PUBLIC PROCUREMENT OFFICE

The Public Procurement Office, as stated on the Office's website, is a special organization that supervises the implementation of the Law on Public Procurement, passes by-laws and performs professional tasks in the field of public procurement, monitors the implementation of public procurement procedures, controls the implementation of certain procedures, manages the Public Procurement Portal, prepares public procurement reports, proposes measures to improve the public procurement system, provides professional assistance to contracting authorities and bidders, contributes to creating conditions for cost-efficient, effective and transparent use of public funds in the procurement process.

In exercising control of the Office over the implementation of this Law, all state bodies and organizations, services and bodies of territorial autonomy and local self-government, contracting authorities and bidders, that is, applicants, are obliged to submit to the Office the requested information and documents that are in their possession or under their control, within the

time limit set by the Office. Specifically, it is stipulated that the contracting authorities submit to the Office a quarterly report on performed procedures and concluded public procurement contracts, on implemented procurement procedures that are not subject to the provisions of the Law, on suspended and canceled public procurement procedures, as well as a report on the performance of contracts.

Data on contracts concluded in the low-value public procurement procedure, as well as data on procurement to which the Law does not apply, are summarized in the reports.

The correctness and accuracy of the information presented in its quarterly reports is the responsibility of the contracting authorities.

The Public Procurement Office submits a special annual report on the conducted supervision over the implementation of this Law to the Government and the National Assembly Committee in charge of finance, before 30 April of the current year for the previous year.

General procurement indicators for 2018 are presented in the Annual Report on Public Procurement in the Republic of Serbia for the period 01.01.2018-31.12.2018. prepared by the Office.

According to data from the said Report, 3956 contracting authorities submitted data to the Office, on the basis of which the registered value of total procurement in 2018 amounted to RSD 561.9 billion, i.e. about EUR 4.7 billion.

In 2018., the share of public procurement not subject to the Law is 28%, which is RSD 158 billion, i.e. EUR 1.3 billion in relation to the registered value of RSD 561.9 billion.

High-value public procurement amounts to 365.3 billion dinars, i.e. about 3 billion euros.

The share of low-value public procurement is 10% or 38.7 billion dinars, i.e. about 324.9 million euros.

**a)** Procurement to which the Law does not apply, as stated by the Office, is conducted on the following grounds:

- for the supply of energy or fuel for production of energy in the field of energy (30%);
- procurement below the lower limit for low-value public procurement (16%);
- exclusive right to carry out the activity which is subject to public procurement (15%);
- acquisitions from foreign loans (10%);
- loan services (9%);
- when a supervised legal person that is a contracting authority, concludes a contract with contracting authority that performs supervision over it or with another legal person supervised by the same contracting authority (6%);
- procurement of goods and services for resale (3%);
- other 11%.

Procurement to which the Law did not apply were most common in public companies (42%); public utility companies (25%) and local self-governments (17%).

6) Fifty percent of the public procurement to which the Law applies is related to state and local public companies, the largest ones being the contracting authorities: Electric Power Industry of Serbia with RSD 57.7 billion; EPS Distribucija with RSD 15.5 billion; Elektromreža Srbije stands at RSD 7.2 billion, totaling the three entities at RSD 80.4 billion, i.e. around EUR 675.6 million.

The value of registered public procurement is as follows: *JP Putevi Srbije* with RSD 14.9 billion; *JKP GSP "Beograd"* with RSD 10.3 billion; Clinical Center of Serbia and Vojvodina with about 15 billion dinars; *JKP Beogradski vodovod i kanalizacija* with 7.3 billion dinars; *JKP Beogradske elektrane* with RSD 5 billion and Secretariat for Municipal and Housing Affairs of Belgrade with RSD 5.7 billion.

According to the aforementioned indicators, these ten public companies, as contracting authority, registered procurement in 2018 in the amount of RSD 138.4 billion, i.e. about EUR 1.2 billion, which represents one quarter of all registered procurement.

Registered public procurement related to the state administration bodies and to the bodies of the city and municipal administration participate with 27%, health care and social protection account for 17%, while education and science, culture and justice participate with 6%.

According to data from the Office's Report, out of the total number of procurements, in 55% of cases only one bid was received. Based on the documentation submitted by the contracting authorities, the Office did not analyze this phenomenon in the Report, but made assumptions that the restriction of competition reflected in a single bid could be caused by several factors. Namely, according to the Office, this may relate to the type of public procurement procedure, as well as to the market structure of the offer and external conditions, such as the promptness of payment. Certain bidders give up if the length of the payment deadline is very long, or if they are unable to charge for delivery within the agreed time limit which is allowed only to the favored bidders.

When analyzing data in the Office's Report relating to the value structure of high-value public procurement by type of procedure in 2018, it can be concluded that the highest share, i.e. 91% of public procurement, is in open procedure, while in the least competitive negotiated procedure without publishing an invitation to place bids, only 3% of calls for proposals were published.

This data leads to the conclusion that in the Republic of Serbia, the high-value procurement procedure is conducted in an extremely transparent manner, given the high percentage of open procedure representation. However, the concern is that only one bid is submitted in such an open procedure.

The Office's 2018 Report also states that in the suspended public procurement procedures, there is a large part of the procedures in which no bids were submitted. Reasons for not submitting bids, according to the Office, may be from the participants' perception that the procurement is intended for a particular bidder or that the requirements of the users are defined in a way that is not recognized by potential bidders.

The Office's Report is the only document from which certain procurement data in the Republic of Serbia can be viewed and made available to the public, as well as the Public Procurement Portal maintained by the Office.

The extent to which the information published on the Office's Portal is comparable to the information requested by the Council from the contracting authorities themselves can be seen from the example of eight randomly selected contractors by the Council:

- Javno gradsko saobraćajno preduzeće "Novi Sad" (*Public City Transport Enterprise of Novi Sad*)
- JKP Direkcija za javni prevoz grada Niša (*PUC Directorate for Public Transport of the City of Niš*)
- JP "PUTEVI" Kragujevac (*PE ROADS "Kragujevac"*)
- JP Direkcija za izgradnju grada Niša (*PE Directorate for Construction of the City of Niš*)
- Gradska agencija za saobraćaj GAS Kragujevac (*City Transport Agency GAS Kragujevac*)
- JP "Sportski i poslovni centar Vojvodina" Novi Sad (*PE "Sports Business Center Vojvodina", Novi Sad*)
- JKP "BEOGRAD-PUT" (*PUC "BEOGRAD-PUT"*)
- JKP GSP "Beograd" (*PUC GSP "Beograd"*)

For these eight contracting authorities, Table 1a, Table 1b, Table 2a, Table Tb and Table 3 were created in which the data were published on the Office's Portal, as well as the data of the contracting authorities that the contracting authorities submitted to the Council in accordance with the Law on Free Access to Information of Public Importance.

TABLE 1A

## High-value procurement according to Public Procurement Office's data

Company	Year	Estimated value	Total number of contracts	Contracted value without VAT	Year of contract execution	Total number of contracts executed by year of execution	Value of contract execution excluding VAT by years
JKP GRADSKO SAOBRAČAJNO PREDUZEĆE "BEOGRAD"	2016	12.065.864.000,00	801	2.962.812.000,00	2016	118	76.388.000,00
					2017	494	894.541.000,00
					2018	28	452.767.000,00
					2019	13	37.886.000,00
					without data on execution	148	without data on execution
	2017	8.340.895.000,00	745	8.138.000.000,00	2017	160	1.192.772.000,00
					2018	496	5.325.103.000,00
					2019	15	202.033.000,00
					without data on execution	74	without data on execution
					without data on execution	745	6.719.908.000,00
	2018	10.428.451.000,00	744	10.284.632.000,00	2018	156	250.673.000,00
					2019	302	565.558.000,00
without data on execution					286	without data on execution	
					744	816.231.000,00	
GRADSKA AGENCIJA ZA SAOBRAČAJ DOO, GAS DOO, KRAGUJEVAC	2016	8.045.000,00	9	8.299.000,00	2017	8	850.000,00
					without data on execution	1	without data on execution
	2017	1.090.000,00	5	1.008.000,00	2018	9	850.000,00
				without data on execution	3	657.000,00	
				without data on execution	2	without data on execution	
				without data on execution	5	657.000,00	
DIREKCIJA ZA IZGRADNJU GRADA NIŠA	2016	518.782.000,00	64	389.998.000,00	without data on execution	64	without data on execution
					without data on execution	64	0,00
	2017	232.211.000,00	6	162.956.000,00	2017	1	3.094.000,00
				without data on execution	5	without data on execution	
				without data on execution	6	3.094.000,00	
JKP "DIREKCIJA ZA JAVNI PREVOZ GRADA NIŠA", NIŠ	2016	50.700.000,00	3	43.943.000,00	2017	1	without data on execution
					2018	3	43.704.000,00
	2017	60.300.000,00	6	57.838.000,00	without data on execution	4	46.660.000,00
				without data on execution	2	without data on execution	
				without data on execution	6	46.660.000,00	
				2018	1	30.102.000,00	
				without data on execution	5	without data on execution	
					6	30.102.000,00	
JKP "BEOGRAD-PUT"	2016	2.580.161.000,00	146	2.321.351.000,00	2016	19	70.892.000,00
					2017	100	1.190.886.000,00
					2018	27	546.616.000,00
	2017	3.116.895.000,00	147	2.826.246.000,00	2017	146	1.808.394.000,00
					2018	18	175.130.000,00
					without data on execution	117	1.967.182.000,00
				without data on execution	12	without data on execution	
				without data on execution	147	2.142.312.000,00	
2018	4.174.212.000,00	159	3.906.319.000,00	2018	41	403.688.000,00	
				2019	45	954.914.000,00	
				without data on execution	73	without data on execution	
					159	1.358.602.000,00	
JAVNO GRADSKO SAOBRAČAJNO PREDUZEĆE "NOVI SAD"	2016	1.350.235.000,00	84	1.286.300.000,00	without data on execution	84	without data on execution
					without data on execution	84	0,00
	2017	1.215.530.000,00	51	1.152.999.000,00	without data on execution	51	without data on execution
				without data on execution	51	0,00	
				without data on execution	73	without data on execution	
					73	0,00	
JP "SPORTSKI I POSLOVNI CENTAR VOJVODINA", NOVI SAD	2016	86.000.000,00	4	81.276.000,00	2016	1	7.949.000,00
					without data on execution	3	without data on execution
	2017	99.299.000,00	6	98.910.000,00	2017	4	7.949.000,00
					without data on execution	3	30.180.000,00
	2018	88.900.000,00	5	87.060.000,00	2018	6	without data on execution
without data on execution					2	30.180.000,00	
				2018	2	23.150.000,00	
				without data on execution	3	without data on execution	
					5	23.150.000,00	
JP "PUTEVI" KRAGUJEVAC	2016	without data	without data	without data	without data	without data on execution	without data on execution
						0	0,00
	2017	without data	without data	without data	without data	without data on execution	without data on execution
						0	0,00
					without data on execution	0	without data on execution
					without data on execution	0	0,00

TABLE 1 B

### High-value procurement according to the information provided by the contracting authorities

Company	Year	Planned value	Contracted value without VAT	Realized value
JKP GRADSKO SAOBRAČAJNO PREDUZEĆE "BEOGRAD"	2016	15.739.260.457,00	15.670.290.216,79	10.566.854.486,81
	2017	2.631.479.694,00	2.163.512.861,83	1.926.334.852,86
	2018	11.215.475.364,00	10.628.355.011,47	9.000.080.810,16
GRADSKA AGENCIJA ZA SAOBRAČAJ DOO, GAS DOO, KRAGUJEVAC	2016	235.819.000,00	222.658.950,00	219.280.679,00
	2017	3.460.000,00	1.188.108,00	1.118.230,00
	2018	1.931.109.169,00	2.145.705.794,00	945.329.965,82
DIREKCIJA ZA IZGRADNJU GRADA NIŠA	2016	no data	no data	no data
	2017	they did not plan high value procurement	they did not plan high value procurement	they did not plan high value procurement
	2018	29.965.500,00	29.965.500,00	3.199.219,31
JKP "DIREKCIJA ZA JAVNI PREVOZ GRADA NIŠA", NIŠ	2016	50.700.000,00	43.943.340,00	34.028.369,21
	2017	60.300.000,00	57.838.666,27	53.065.732,15
	2018	460.791.688,03	456.598.779,44	83.622.907,66
JAVNO GRADSKO SAOBRAČAJNO PREDUZEĆE "NOVI SAD"	2016	1.817.853.000,00	1.286.300.000,00	869.895.000,00
	2017	1.592.550.000,00	1.152.999.000,00	996.038.000,00
	2018	1.611.050.000,00	1.000.480.000,00	998.438.000,00
JP "SPORTSKI I POSLOVNI CENTAR VOJVODINA", NOVI SAD	2016	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2017	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2018	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
JP "PUTEVI" KRAGUJEVAC	2016	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2017	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2018	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
JKP "BEOGRAD-PUT"	2016	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2017	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2018	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values

TABLE 2A

### Low-value procurements according to Public Procurement Office's data

Company	Year	Total low-value procurement	Estimated value	Contracted value without VAT
JKP GRADSKO SAOBRAČAJNO PREDUZEĆE "BEOGRAD"	2016	8	66.819.000,00	58.051.000,00
	2017	9	70.225.000,00	63.834.000,00
	2018	9	44.031.000,00	41.561.000,00
GRADSKA AGENCIJA ZA SAOBRAČAJ DOO, GAS DOO, KRAGUJEVAC	2016	no data	no data	no data
	2017	3	15.020.000,00	12.593.000,00
	2018	4	8.490.000,00	8.490.000,00
DIREKCIJA ZA IZGRADNJU GRADA NIŠA	2016	9	47.324.000,00	40.183.000,00
	2017	no data	no data	no data
	2018	1	4.000.000,00	1.478.000,00
JKP "DIREKCIJA ZA JAVNI PREVOZ GRADA NIŠA", NIŠ	2016	7	25.800.000,00	24.729.000,00
	2017	5	25.430.000,00	23.924.000,00
	2018	7	13.750.000,00	13.452.000,00
JAVNO GRADSKO SAOBRAČAJNO PREDUZEĆE "NOVI SAD"	2016	8	187.034.000,00	147.971.000,00
	2017	8	139.774.000,00	107.414.000,00
	2018	12	162.480.000,00	135.517.000,00
JP "SPORTSKI I POSLOVNI CENTAR VOJVODINA", NOVI SAD	2016	5	21.385.000,00	18.746.000,00
	2017	9	40.049.000,00	36.403.000,00
	2018	8	40.470.000,00	37.421.000,00
JP "PUTEVI" KRAGUJEVAC	2016	no data	no data	no data
	2017	no data	no data	no data
	2018	no data	no data	no data
JKP "BEOGRAD-PUT"	2016	9	88.485.000,00	76.992.000,00
	2017	10	140.503.000,00	120.410.000,00
	2018	11	120.881.000,00	103.580.000,00

TABLE 2B

### Low-value procurements according to the information provided by the contracting authorities

Company	Year	Total low-value procurement	Estimated value	Contracted value without VAT
JKP GRADSKO SAOBRAČAJNO PREDUZEĆE "BEOGRAD"	2016	82.473.170,00	53.991.588,73	41.235.550,90
	2017	116.582.132,00	81.932.833,66	66.599.474,98
	2018	71.115.100,00	40.170.560,52	17.589.007,98
GRADSKA AGENCIJA ZA SAOBRAČAJ DOO, GAS DOO, KRAGUJEVAC	2016	4.200.000,00	no total was given	673.523,00
	2017	21.800.000,00	12.558.771,00	12.558.771,00
	2018	8.490.000,00	8.490.000,00	7.453.280,00
DIREKCIJA ZA IZGRADNJU GRADA NIŠA	2016	no data	no data	no data
	2017	900.000,00	no procurement of low value was carried out	no procurement of low value was carried out
	2018	5.200.000,00	1.478.000,00	339.796,80
JKP "DIREKCIJA ZA JAVNI PREVOZ GRADA NIŠA", NIŠ	2016	27.300.000,00	24.729.051,45	23.406.223,91
	2017	25.430.000,00	23.922.959,35	21.476.311,27
	2018	17.300.000,00	13.452.429,37	10.892.569,91
JAVNO GRADSKO SAOBRAČAJNO PREDUZEĆE "NOVI SAD"	2016	369.638.000,00	147.971.000,00	47.139.000,00
	2017	321.140.000,00	138.596.000,00	85.974.000,00
	2018	307.625.000,00	135.517.000,00	102.007.000,00
JP "SPORTSKI I POSLOVNI CENTAR VOJVODINA", NOVI SAD	2016	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2017	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2018	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
JP "PUTEVI" KRAGUJEVAC	2016	3.491.664,00	no data	no data
	2017	2.358.332,00	1.119.666,30	629.623,84
	2018	1.189.165,00	1.118.563,00	774.569,48
JKP "BEOGRAD-PUT"	2016	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2017	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values
	2018	they did not separate large and small values	they did not separate large and small values	they did not separate large and small values

TABLE 3

### Exempt public procurements according to the Public Procurement Office

Company	Year	Total exempt procurements	Estimated value	Contracted value without VAT
JKP GRADSKO SAOBRAČAJNO PREDUZEĆE "BEOGRAD"	2016	7	29.568.000,00	28.957.000,00
	2017	8	374.685.000,00	336.345.000,00
	2018	5	245.171.000,00	206.559.000,00
GRADSKA AGENCIJA ZA SAOBRAČAJ DOO, GAS DOO, KRAGUJEVAC	2016	3	1.015.000,00	1.331.000,00
	2017	4	1.519.000,00	1.508.000,00
	2018	3	1.242.000,00	946.000,00
DIREKCIJA ZA IZGRADNJU GRADA NIŠA	2016	8	194.698.000,00	77.779.000,00
	2017	4	1.228.000,00	983.000,00
	2018	3	3.147.000,00	2.868.000,00
JKP "DIREKCIJA ZA JAVNI PREVOZ GRADA NIŠA", NIŠ	2016	12	20.536.000,00	13.220.000,00
	2017	12	21.316.000,00	14.838.000,00
	2018	12	20.648.000,00	16.013.000,00
JAVNO GRADSKO SAOBRAČAJNO PREDUZEĆE "NOVI SAD"	2016	4	148.087.000,00	25.750.000,00
	2017	4	140.114.000,00	27.896.000,00
	2018	4	149.029.000,00	26.765.000,00
JP "SPORTSKI I POSLOVNI CENTAR VOJVODINA", NOVI SAD	2016	8	18.130.000,00	17.896.000,00
	2017	7	21.464.000,00	21.476.000,00
	2018	5	20.826.000,00	20.529.000,00
JP "PUTEVI" KRAGUJEVAC	2016	no data	no data	no data
	2017	no data	no data	no data
	2018	no data	no data	no data
JKP "BEOGRAD-PUT"	2016	14	597.447.000,00	126.142.000,00
	2017	14	651.148.000,00	151.453.000,00
	2018	18	815.547.000,00	168.613.000,00

The data in these tables indicate several conclusions:

- that they were incomplete, that is, the contracting authorities neither submitted all the data on public procurement to the Office, although this is their legal obligation, nor to the Council;
- From such incomplete data, it can be observed that the differences in the stated values of the planned, contracted and realized public procurements presented on the Public Procurement Portal and the values submitted by the contracting authorities to the Council are extremely large;
- the biggest differences in the data are noticeable with the largest customers, in this case PUC GSP Belgrade.

Having noticed such differences, the Council addressed a letter to PUC GSP Belgrade asking them to explain the difference, that is, according to PUC GSP, contracted public procurement of high value for the observed period is by seven billion more than the value shown on the Office's Portal for the same period.

By letter number 8276/3 dated 17 October 2019, PUC GSP Belgrade informed the Council that it had provided data for the plan year rather than the calendar year and that, therefore, large differences in the data were possible.

When looking at the Table made up of the data published by the Public Procurement Office of PUC GSP Belgrade, it is evident that the Office has shown the number and value of public procurement contracts concluded in the calendar year, while the execution of those contracts may be in the year of closing and several following.

For example, in 2016, according to the Office's data (shown in Table 1a), PUC GSP Belgrade concluded 801 public procurement contracts, while the performance of those contracts is as follows: 2016 - 118 contracts worth RSD 76.4 million; 2017 - 494 contracts worth RSD 894.5 million; 2018 - 28 contracts worth RSD 452.8 million; 2019 - 13 contracts in the amount of RSD 37.9 million. There are no data on the Public Procurement Portal for performance of 148 procurement contracts concluded in 2016. Adding the aforementioned amounts by year, we get about 1.5 billion dinars of the value of execution of the high-value public procurement contracts concluded in 2016, which is drastically different from the data provided by PUC GSP to the Council (10.6 billion dinars).

According to the data provided by PUC GSP Belgrade to the Council (shown in Table 1b), high-value contracted public contracts for 2016 amount to RSD 15.7 billion, and RSD 10.6 billion were realized. The huge differences in the data on contracted and realized public procurement for 2016 provided by PUC GSP Belgrade to the Council and the data submitted to the Office cannot be explained by the discrepancy of the planning and calendar year, because it is not planned and estimated values but exact data, that is, contracted and realized public procurement.

Namely, every contract for public procurement has a date of contract conclusion and the Office recorded them in each calendar year when it was concluded, while the realization, i.e. execution of the contract should be accompanied by appropriate financial documents, as proof that

in accordance with the contract, delivered contracted quantity of goods was paid and the contracted volume of works and services was executed.

The following question arises: on the basis of which information of the contracting authority the Public Procurement Portal recorded the contracted RSD 2.9 billion for 2016, while the contracting authority submitted to the Council the information that it was RSD 15.7 billion. Also, it is not clear how it is possible that there is such a big difference in the data on the implementation, i.e. execution of the contract (for 2016, the difference is RSD 9.1 billion). Nonetheless, in the telephone communication with PUC GSP Belgrade, the Council was informed that it the realization of the public procurement contract was presented in the value of delivered goods and works and services performed, and not with the final payment of the contracted quantities of goods and the volume of contracted works and services in accordance with the agreed prices. The realization of the contract based on the quantity presented in this way, without knowing what was paid for that quantity, makes it impossible to monitor the execution of the contract. Namely, the contract could have been changed, not only with regard to the contracted price, but also the quantity, quality and delivery time of the procurement in question.

The data on public procurement published on the Public Procurement Portal and the data submitted to the Council by the selected eight contracting authorities do not match, not only with PUC GSP Belgrade, but also with the others.

The Office informed the Council in oral communication that the contracting authorities largely did not provide information on the performance of the contract, and that the Office had no mechanisms to sanction it.

#### 4. PUBLIC PROCUREMENT REALIZATION

As can be seen from the previous analysis, there are no real data on the implementation of the public procurement contracts or the competent state body that deals with the implementation itself, although this should be the responsibility of the State Audit Institution, as part of the audit of the expediency of public procurement. The fact is that SAI does not have the capacity, that is, a sufficient number of executors to audit contracts for 4,000 contracting authorities that supply the Office with information, but it would have to audit high-value procurement, in line with the potential risks of corruption and abuse. The data of the Public Procurement Office that it annually registers the value of procurement of around RSD 500 billion does not mean that the amount of procurement is realized. Contract performance data published on the Public Procurement Portal is not credible for a number of reasons. The first and most important reason is that not all contracting authorities provide the Office with information on how the contract implementation was proceeded, i.e. whether there was a change in certain parameters from the contract, how much was delivered and how much was actually paid for the delivered goods, services and works. In order for a successful public procurement to be successful, it is of utmost importance that it is implemented in accordance with the conditions determined by the most favorable bid of the bidder, that is, that it is indeed paid and delivered in accordance with what is agreed in terms of quantity,

price and quality. Changing the provisions of a contract during its implementation beyond the legally prescribed procedures, in a completely non-transparent procedure, can have a high degree of corruption.

Based on the above data of the Office, as well as the data of the contracting authorities, which they submitted to the Council, it can be observed that by years the amount of execution of the contract, i.e. realization, is much lower than the contracted value.

Failure to adequately monitor the execution of the public procurement contract may result in the bidder not being sanctioned in accordance with the contractual penalties, i.e. not paying penalties for delay, or failing to activate guarantees or other financial security for the proper performance of the work. Also, if it is certain that the bidder will not fulfill the contractual obligations, it is necessary to terminate the contract in a timely manner and bring legal action unless there is no other way to cover the costs related to the execution of the public procurement contract. All bidders who fail to fulfill their obligations under the contract in any way, and if this information is made available to the public, could result in them not participating in any future procurement.

### 3. CONTROL OF PUBLIC PROCUREMENT

The Law on Public Procurement stipulates, among other things, that the Public Procurement Office, in addition to supervising the implementation of the Law on Public Procurement, also performs the following tasks that indirectly control the regularity of the contracting authorities' conduct over the implementation of the Law:

- Examines the fulfillment of requirements for conducting negotiating procedure under Article 36 of this Law and for competitive dialogue;
- Initiates misdemeanor procedure when learns in any way of a violation of this Law which may constitute grounds for misdemeanor liability;
- Develops a model of an internal plan to prevent corruption in public procurement;
- Informs the State Audit Institution and Budgetary Inspection when it identifies irregularities in conducting public procurement procedures;
- Initiates the procedure for annulment of a public procurement contract;
- Files request for protection of rights;
- Appoints civil supervisor.

Within the Public Procurement Office there is a Group for Control of Public Procurement Procedures with only three full-time employees. According to the Supervisory Report for 2018, the approval of the competent authority was given to strengthen the capacity of the Group with three more executors. The Council has no information as to whether their involvement has taken place.

Taking into account all the above competences of the Public Procurement Office in the area of supervision and control on the proper conduct of contracting authorities, the Council addressed the Office with a request for access to the following information:

- how many misdemeanor procedures and procedures for the actions for annulment of public procurement contracts the Office has initiated;
- whether the Office has informed the State Audit Institution and the Budgetary Inspection on any irregularities detected in the conduct of public procurement procedures.

The Public Procurement Office, in its response No. 07-00-13 / 19 dated 11/09/2019, informed the Council that it had not filed any claims with the competent courts for the annulment of the contracts. Regarding the initiation of misdemeanor proceedings, the response of the Office is that in 2018, only three misdemeanor proceedings were filed.

Based on the Office's response to the Council, it can be concluded that the Office did not even address the State Audit Institution and that it addressed the Budgetary Inspection twice in the competent municipalities of Bečej and Prijepolje.

The Report on the Supervision of the Implementation of the Public Procurement Law for 2018, which the Office submitted to the Council, stated that during that year the Office cooperated with police departments throughout Serbia in six cases, as well as in 36 requests submitted by the prosecution. In addition, there were seven requests by the Anti-Corruption Agency, as well as 88 cases of monitoring of reported irregularities by other institutions, whistleblowers, associations, employees of the contracting authorities themselves and anonymous reports. Almost two-thirds of the complaints, according to the Office, were submitted by the bidders. The Prosecutor's Office, the police and the Anti-Corruption Agency requested certain clarifications, expert assistance, as well as documentation available to the Administration from the Directorate.

About the outcome of the procedures related to criminal charges in the area of public procurement, the Council addressed the special departments of the Higher Public Prosecutor's Office for Combating Corruption for combating corruption in Belgrade, Novi Sad, Nis and Kraljevo.

**1.** The Special Department for the Suppression of Corruption in Belgrade informed the Council that since the beginning of its work, that is, from 1 March 2018 until 15 November 2019, a total of 176 persons were prosecuted for the criminal offense of Misuse Related to Public Procurement under Article 228 of the CC (formerly Article 232 of the CC).

The Prosecution further states:

- pre-criminal proceedings are pending against 95 persons;
- decisions on dismissal of criminal charges were issued for 70 persons;
- three investigative orders were filed;
- indictments were filed against 14 persons;
- a total of one acquittal was issued and four suspended sentences were pronounced.

**2.** The Special Department for the Suppression of Corruption in Novi Sad informed the Council that in the period from 1 March.2018 until 1 November 2019, 31 criminal charges were filed on the grounds of the criminal offense of misuse in public procurement referred to in Article 234 of the former Criminal Code, that is, Article 228 of the current Criminal Code. The Prosecution further states that the outcome of these criminal charges is as follows:

- for 15 cases certain notices are being collected at the pre-trial stage;
- decision on dismissal of criminal charges was issued in 5 cases;
- evidence is being taken in three cases before the High Public Prosecutor's Office;
- three cases were referred to the jurisdiction of other prosecutors' offices;
- orders for conducting investigations have been issued in two cases that have not yet been completed;
- charges were filed in three cases, with one conviction, one acquittal and one case still pending.

3. In the period from 1 March 2018 until 31 December 12 2018, the Higher Public Prosecutor's Office in Niš established eight cases in the Special Department for the Suppression of Corruption pertaining to the criminal offense of misuse in connection with public procurement referred to in Article 228 of the CC. Of the given number:

- one case is at the stage of evidentiary proceedings, that is, taking the necessary checks to evaluate allegations in the criminal complaint;
- five criminal charges were dismissed by the prosecutor's decision;
- one criminal complaint was forwarded to the competent prosecutor's office;
- an indictment was filed in one case, on the basis of which a conviction was issued.

In the period from 1 January 2019 until 31 October 10 2019, a total of twenty cases were formed and of the following:

- fourteen cases are at the stage of evidentiary proceedings;
- three criminal charges were dismissed by the prosecutor's decision;
- indictments were filed in three cases, of which two convictions were issued, while the third indictment is still pending.

4. The Special Department for the Suppression of Corruption in Kraljevo informed the Council that from the period of its establishment until 19 November 2019 it filed 11 criminal charges in the KTKo register, due to the criminal offense of malpractice in connection with public procurement referred to in Art. 228 paragraph 2 of the Criminal Code. Out of these 11 complaints, only one conviction was rendered, one was rejected, while 9 cases were still being processed, that is, checks and evidence were taken.

The above data suggest that in all four prosecutors' offices there are very few criminal charges filed, compared to hundreds of thousands of public procurement contracts, and a devastatingly small number of convictions. The reasons for this outcome may be the following: insufficient knowledge of the procurement procedures themselves, inaccessible documentation and the fact that corruption in public procurement is difficult to prove.

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## CIVIL SUPERVISOR

The provisions of the current Law on Public Procurement provide that the public procurement procedure, whose estimated value exceeds one billion dinars, is monitored by a civilian supervisor appointed by the Public Procurement Office in accordance with the Law. Persons eligible to be appointed for a civil supervisor are prominent experts in the domain of public procurement or in the field related to subject matter of public procurement, as well as associations dealing with public procurements, prevention of corruption, or prevention of conflict of interest. According to the Office, since the beginning of the implementation of the Law, individuals who are experts in the subject of public procurement were not interested in performing the duties of civil supervisor. Also, other civil society entities have not shown more serious interest, although there are a large number of public procurement contracts with an estimated value of more than one billion dinars.

During 2018, the Office appointed civilian supervisors in 47 proceedings and received 11 reports.

As a civilian supervisor, the following entities have participated in monitoring the procurement procedures with an estimated value of more than one billion dinars:

- Transparency Serbia Belgrade
- Association against corruption Zrenjanin
- Business association of Serbian bidders in public procurement procedures, Kragujevac
- Association "Legal Scanner" Belgrade
- Belgrade Center for Security Policy
- CRNPS-Association "Center for Development of Non-Profit Sector" Belgrade

In the meantime, according to the Office, the Belgrade Center for Security Policy informed the Office that it was no longer able to act as a civilian supervisor, and that CRNPS was no longer at the aforementioned address and was inaccessible to the Office.

In the Report on the Supervision of the Implementation of the Law on Public Procurement, there was a noticeable decline regarding the submission of the Report of Civilian Supervisors, so that according to the Office's findings, this mechanism proved to be inappropriate, inefficient and as such unsustainable.

On that occasion, the Council requested from Transparency Serbia, as one of the civilian supervisors, a report on the monitoring of public procurement procedures worth over one billion dinars, and received information that in 2018 the organization was not able to actively supervise. Specifically, Transparency Serbia states that in 2018 the Public Procurement Office re-appointed Transparency Serbia as a civilian supervisor without their prior consent, that is, without examining the possibility of independently financing such supervision. Transparency further states that it last performed active supervision in 2017 and published the data on its website under the heading Civic Supervision of Procurement of Suburban Transportation Services in Belgrade - line 500.

In a telephone communication with several other civilian supervisors, the Council received similar information and that the role of the civilian supervisor was completely meaningless.

Namely, all appointed civilian supervisors do not have the capacity to do such a large and serious job, such as supervision of the implementation of public procurement procedures exceeding one billion dinars. The number of such public procurements is large and the number of executors who would deal with it is extremely small, with no material compensation for such work. In addition, according to civilian supervisors, the contracting authorities themselves posed a serious problem because they did not disclose all documentation accompanying the procurement process.

According to the Report on Supervision of the Implementation of the Public Procurement Law for 2018, procurement worth more than one billion dinars related to the procurement of energy, electricity, insurance, urban and suburban transport, works on corridors and other infrastructure, as well as many others, remained without any control of the appointed civilian supervisors.

## 5. CONCLUSION

According to the reports of the Public Procurement Office, public procurement to which the Law on Public Procurement is applied, which worth several billion euros, is registered every year. Viewed by years, this value had grown year by year (from € 1.5 billion in 2003 to € 3.4 billion in 2018).

The highest values of registered public procurement relate to republic and local public companies, among which is the Electric Power Industry of Serbia in the first place.

As already stated by the Council, the Public Procurement Office, in its reports, provides information on registered (contracted) public procurement, but not information on the actual realization of contracted procurement. Namely, it is not known whether goods and services have been delivered in full under these contracts and whether payment has been made by the contracting authority within the agreed time according to the agreed price. It is also not known whether there were any changes to the contract and whether the change was in compliance with the Law on Public Procurement. Based on these facts, it can be concluded that there is no information on how much public funds are spent in the Republic of Serbia on the basis of the procurement of goods and services and works.

The fact that large public companies that are not restructured engage the most procurement funds and that there is neither internal nor external control over the expediency of these expenditures suggests that the state suffers unprecedented damage on an annual basis.

Several amendments to the Law on Public Procurement have not solved the problem of controlling the spending of public funds. Certain changes to the procurement process itself can certainly make the procedure shorter, but it does not mean that the procurement in question is appropriate, transparent and selected in the most competitive procedure.

The Public Procurement Office, with the new proposal of the law Public Procurement Bureau instead of Public Procurement Office, does not justify the purpose of its existence if it does not have the capacity to more seriously control the information submitted by the contracting

authorities instead of just recording the information. The seriousness of the oversight of the conduct of public procurement procedures is sufficiently demonstrated by the fact that three executors in the Group for Supervision were hired to do so.

The Office does not bear responsibility for the data submitted by the contracting authorities, when it comes to their completeness and accuracy, nor does it sanction the contracting authorities who do not provide the data at all.

Bearing in mind that in accordance with the Law, the contracting authorities are responsible for the accuracy of the information they submit to the Office and not only that, but also for the successful and lawful implementation of the public procurement procedure, the question arises as to who controls the public procurement procedures conducted by the contracting authorities.

The answers which the Council received show that neither the State Audit Institution nor the Budget Inspectorate does this in a serious way. In addition to the fact that there is no external control, there is neither a system of internal financial control that has been put in place, which would imply the responsibility of executives with clients, not only misdemeanor but also criminal.

According to the new Draft Law, which is in the parliamentary procedure, the Public Procurement Office should monitor the implementation of public procurement regulations and when, on the basis of monitoring, it finds irregularities in the application of public procurement regulations, requests the initiation of misdemeanor proceedings, requests for protection of rights, or notifies the other competent authority by filing a criminal complaint.

The very supervision and monitoring of the implementation of the public procurement procedure is very important, if they are not established for the sake of form, but to substantially assist the competent institutions.

In the vast amount of data obtained by the Office, and in the future by the Public Procurement Bureau (*Kancelarija za javne nabavke*), it is very important how many executors process the data in the part of supervision and monitoring, how educated and professional they are, and what conclusions they will make. Also, it is certainly most important that the competent institutions, to whom these conclusions are delivered, act upon them.

Noticing a number of problems in public procurement procedures, notably transparent and controlled, which creates room for enormous corruption, given the value of billions of euros annually, the Council makes specific recommendations to improve the public procurement system. Noticing a number of problems in public procurement procedures, in the first place that they are not transparent and controlled, which creates room for enormous corruption, given the value of billions of euros annually, the Council makes specific recommendations to improve the public procurement system.

## 6. RECOMMENDATIONS

- 1) that the Public Procurement Office, in cooperation with the eight contracting authorities selected by the Council in its analysis, verify the discrepancies in the information obtained by the Council and inform the Council of the reasons for the disagreement;
- 2) that the State Audit Institution also include in their audit plans these eight entities from the Council's Report, which noted huge differences in the data in relation to the data of the Public Procurement Office and which relate to contracted and realized public procurements;
- 3) that the Public Procurement Office, in its annual public procurement reports in the Republic of Serbia, make sure to present the information on the total number of realized public procurements rather than just the registered ones;
- 4) that the Public Procurement Office strengthen their capacity in the number of experts;
- 5) that the Public Procurement Portal be improved;
- 6) that the Public Procurement Office annually prepare public procurement reports with a broader explanation of the observed phenomena, primarily by analyzing the factors limiting competition;
- 7) that internal financial control of the contracting authorities be established, as well as possible criminal liability of their executives in the procurement process;
- 8) that a register of all contracting authorities using public funds in the procurement process be established, starting at the local, provincial and republic levels;
- 9) that the Public Procurement Office control whether all contracting entities using public funds submit all the information provided for the reporting process and if they do not, then sanctions are imposed on responsible persons;
- 10) that the capacities of the Budget Inspectorate be strengthened, that is, the number of experts who would be in control of public procurement, starting from the local level to the provincial and republican ones;
- 11) that the State Audit Institution perform a mandatory annual audit of the expediency of public procurement with all contracting authorities whose value of public procurement exceeds one billion dinars, since the proposal of the new Law abolishes the Civil Supervisor;
- 12) that in the implementation of construction and reconstruction projects of line infrastructure facilities of special importance for the Republic of Serbia, public procurement be carried out in an open transparent procedure without exceptions.

VICE-PRESIDENT

Prof. dr. Miroslav Milicevic