



SIGMA

Support for Improvement in Governance and Management

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SERBIA

PUBLIC PROCUREMENT SYSTEM

ASSESSMENT MAY 2009

1. Summary

1.1 Main Developments since last year

Since the 2008 Sigma assessment of public procurement in Serbia, significant changes have been made in the legislative framework. A completely new Public Procurement Law (PPL) was adopted by parliament at the end of 2008. The enactment of the new PPL is a positive step forward, as several recommendations of previous Sigma assessments have been taken on board, but the new law still does not fully meet EU requirements. The Public Procurement Office (PPO), in co-operation with the Commission for the Protection of Tenderers' Rights (Review Commission), has organised an extensive awareness-raising campaign throughout the country focusing on the main changes in the new PPL. The new law has been received positively by the Serbian public procurement community.

1.2 Main Characteristics (strengths and weaknesses)

Although the new PPL is based on the current EC Directives, several aspects of the PPL have not been harmonised with the *acquis communautaire*. Not all of the new procurement procedures and techniques have been transposed. The delay in adopting the by-laws associated with the new primary legislation has caused practical difficulties. The new PPL maintains the 20% price preference in favour of domestic suppliers.

The public procurement community needs extensive support from the PPO to benefit fully from the new law. Due to a lack of resources, the PPO is already stretched, and it will need further strengthening in order to be able to provide this support and build on the excellent work already undertaken with local authorities.

The 2008 PPL provides for the establishment of a new Review Commission, but this commission will need qualified staff to meet its obligations. The new commission will be called the Republic Commission for the Protection of Rights in Public Procurement Procedures (Republic Commission). There is a danger that the setting up of the Republic Commission will be delayed, which will cause problems, particularly as the existing Review Commission is struggling to handle its workload.

In order to help raise the profile of public procurement in Serbia, it is important for political support to be expressed clearly. An indication of this support would be to ensure proper premises and technical facilities for the PPO and the Review Commission.

Procurement processes would benefit from a change in the overly formalistic approach that is generally taken. The elaboration of common training materials and a programme for the training of public procurement officers will be important in tackling this problem. The provisions in the new law for the certification of trained staff are also an important step forward.

The development of the PPO's website is an important factor in increasing the transparency of the whole system, as evidenced by its high use.

1.3 Recommendations for Reform

Priority should be given to the following actions:

Short-term priorities:

- Full implementation of the new PPL;
- Adoption of the new by-laws without delay;
- Prioritisation and intensification of training and educational activities led by the PPO and by other organisations, with the aim of increasing the professionalism of the procurement community; certification of public procurement officers, to be carried out in accordance with the timescales set out in the PPL;

- Review and implementation of the Strategy for Upgrading the Public Procurement System in Serbia;
- Strengthening of existing institutions and especially speeding up of the establishment of the Republic Commission for the Protection of Rights in Public Procurement Procedures (Republic Commission) and assurance of its independent operation;
- Production and publication of standard bidding documents for use by the procurement community.

Medium-term priorities:

- Further review of the new PPL, aimed at full harmonisation with the new EC Directives;
- Review of secondary legislation and standard form documents to ensure that they are modernised and simplified in line with the new PPL;
- Preparations for the introduction of electronic procurement.

2. Assessment of the Public Procurement/Concessions System

2.1 Legislative Framework

The first Public Procurement Law of Serbia was adopted by parliament on 4 July 2002 and came into force on 13 July 2002. It was modelled extensively on the Slovenian Public Procurement Law, but was also influenced by the former EC Public Procurement Directives, World Bank guidelines and the UNCITRAL Model Law. A number of amendments to the Public Procurement Law came into force on 1 July 2004.

From 2005 to 2007 a working group led by the Ministry of Finance (PP Working Group), with the participation of the Public Procurement Office (PPO) and other relevant institutions, elaborated a new draft Public Procurement Law (PPL). The new law was adopted by the government on 17 January 2008 and was passed by parliament on 22 December 2008. The new PPL entered into force on 6 January 2009.

The new PPL is based on the present EC Public Procurement Directives and covers, in consolidated form, contracting entities (both public sector and utilities), procurement procedures, and rules on remedies. The new law is still not fully aligned with EC Directives 2004/17 and 2004/18, but Serbia is aware of this fact and has opted to follow a gradual harmonisation approach. The following new instruments of the EU legislative package have been implemented:

- electronic procurement, including electronic auctions (although the detailed rules are to be elaborated in the implementing regulation);
- provision of a functional description of the subject matter of procurement;
- consideration of the social and environmental aspects of procurement (however, again without the detailed rules); and
- central purchasing.

Although the new PPL entered into force at the beginning of January 2009, the associated by-laws had not been adopted at the time of the assessment. These by-laws should be passed by the Minister of Finance within six months after entry into force of the PPL (6 January 2009), except for the secondary regulation on the detailed rules concerning electronic procurement and electronic auctions. According to the information provided to the Sigma assessment team, the new by-laws have been elaborated by the Public Procurement Working Group but are awaiting formal approval. The delay in adopting the new by-laws causes practical problems for purchasers, which was mentioned in several interviews.

The newly elaborated draft by-laws when adopted will cover the following topics:

- List of international organisations with special public procurement rules that can be applied instead of the Serbian Public Procurement Law;
- Rulebook on the public procurement procedure for small-value contracts;
- Rulebook on the criteria for setting up of commissions for public procurement;
- Rulebook on the form and content of the loan application and documentation pertaining to the credit rating of entities applying for the public procurement of loans as a financial service;
- Rulebook on compulsory elements of tender documents in public procurement procedures;
- Rulebook on documents that confirm fulfilment of conditions for preferential treatment of local bidders in public procurement procedures;
- Rulebook on the manner of manipulation of electronic tenders and manner of conducting electronic auctions in public procurement procedures;
- Rulebook on the procedure for tender opening and on the form for keeping records for the procedure of opening bids in public procurement processes;

- Rulebook on public procurement record-keeping and contents of reports;
- Rulebook on the certification of public procurement officials.

At the beginning of 2003 the PPO published standard forms for public procurement notices. These standard forms have been updated and published on the PPO website. The PPO and the Treasury have also prepared a model public procurement plan, which was distributed by the Treasury network to all direct and indirect budget-users. The model, with instructions, is also available on the PPO website.

In 2003, the PPO elaborated draft standard tender documents. Now the PPO is preparing new model tender documentation for goods, services and works; the models will be distributed and made available to all purchasing entities on the website of the PPO.

The new PPL attempts to reduce some bureaucratic burdens. The qualification and award criteria of the new PPL largely reflect those of the EC Directives (although differences remain in the case of the qualification criteria), and it might be considered a step forward that only the tenderer to whom the contract was awarded is obliged to submit the certified copy of the documents required to prove that the mandatory qualification requirements have been met. However, as the new PPL allows for supplementing the originally missing documents in only a few cases, this situation can still lead to the rejection of good tenders on purely administrative grounds, especially if contracting entities continue to adopt a strict approach.

The new PPL is perceived positively by public procurement practitioners. It has introduced important changes that will contribute to increased transparency and professionalisation as well as to solving certain practical problems. The structure of the PPL has improved, e.g. all of the provisions on the possible exemptions or conditions for the use of the negotiated procedure have been brought together.

2.1.1 Compatibility with EU Legislation

Although the new PPL is a step forward in the alignment process, there are still several differences compared with the EC Directives. These differences are the following:

- Definition of procurement entities is still not fully aligned – especially regarding bodies governed by public law and entities covered by the utilities sectors (the postal sector is not covered, while the telecommunications sector is covered); public undertakings are generally covered without any restrictions, which might cause difficulties for enterprises that operate in competitive markets.
- Definitions of exempt and excluded contracts are broader than those allowed in the EC Directives and/or they are not accurate, while some possible exemptions seem to be absent. Examples are as follows: *broader* - goods procured with the prior approval of the government from the Republic Commodity Reserves Directorate; services of expert individuals, entrepreneurs or legal persons that perform, for and on behalf of the Privatisation Agency and under its supervision, the activities of receiver; services of voice telephony; *not accurate* - the exemption based on the fact that a contracting authority has exclusive rights might also be applicable to goods and works and in the case when the contracting authority enjoys special rights, the exemption valid for the acquisition, development, production or co-production of programme material does not mention the condition ‘intended for broadcasting by broadcasters’; *not explicitly present* - defence procurement; financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital, and central bank services.
- The exemptions for the utilities sector are broader when compared with the EC Directives. In the case of the telecommunications sector, the exemption is applicable ‘provided that another person may freely offer its services in the same geographic area and under the same conditions’, but how this would be assessed is not set out in the law.
- Unlike the EU approach, the use of the restricted procedure is limited to particular circumstances. The contracting authority may apply the restricted procedure only when the

subject of public procurement is goods, services or works that, with regard to technical, personnel and financial capacity, may be delivered, provided or performed only by a small number of bidders, or in the case when it is not possible to plan public procurement in advance in terms of quantity and time, and the subject of that procurement is occasional services or consumer goods or occasional repairs or maintenance works that are provided, delivered or performed, not according to special requests of a procuring entity, but according to market conditions. The PPL also stipulates that the procuring entity is to decide, within the time limit specified in the call for competition, how long a qualification will be recognised, but this period may not be longer than two years. These provisions are quite unusual for the restricted procedure. It seems that this procedure is being used for the purpose of establishing a system that is similar to that of framework agreements, although such agreements have not been introduced in the new PPL. In addition, the minimum number of participants in the restricted procedure is three instead of five. Otherwise, the open procedure is considered to be the basic procedure, and it is the only procedure applicable without any special conditions.

- As mentioned above, framework agreements, despite a considerable interest in their use expressed by contracting entities, are still not available for use by either public sector bodies or utilities. Competitive dialogue has also not been introduced in the new PPL.
- Although, according to the provisions of the new PPL, certain special rules are available to contracting entities in the utilities sector, not all of the provisions of Directive 2004/17/EC have been transposed, and the new legislation still does not seem to properly address the specifics of utilities and does not provide them with a more flexible framework. Framework agreements are also not available to utilities and, apart from the few special provisions, the general rules are applicable to these contracting entities as well.
- Time-limits are not in line with the requirements of the EC Directives. In the case of the open procedure, the time-limit is 52 days in the Directives and only 30 (22) in the PPL. In the restricted procedure the Directives' limit is 37 days as compared to 25 in the PPL; even if we take into account the different approach followed in calculating the time-limits (time-limit starts from the time of publication of the notice rather than from the date of dispatch), this time-limit is considerably shorter than the one required by the Directives.
- Domestic companies enjoy a 20% price preference compared to foreign companies; the use of the preferential rules (which, for the time being, are in conformity with the international obligations of Serbia) are obligatory and must be taken into account in each and every public procurement procedure.
- The regulation of the review system has been changed positively, but it still does not seem to provide enough guarantees in view of the contradictory nature of the review procedure. Judicial review has been made available without any detailed provisions.

These incompatibilities will need to be addressed in a future revision of the PPL.

2.1.2 Low-value Procurement

As for the rules for low-value procurement, the PPL provides that the Minister of Finance is to regulate the procedures for this level of procurement. This is an improvement on the previous situation, where contracting entities were responsible for preparing their own internal rules for low-value procurement, which led to a variety of practices. Consequently, it is very important that the relevant by-law be introduced urgently. The thresholds relevant to low-value procurement are to be regulated in the annual Budgetary Act.

2.1.3 Concessions/PPPs

The PPL does not cover concession contracts (not even work concessions), and there is a separate law on the award of concession contracts, which was not designed to meet EU standards or best practice. A concession is defined as a right granted by a competent government agency to a concessionaire, for up to 30 years, to exploit a natural resource and goods in general use or to conduct a business of

general concern. A concession opportunity must be advertised in the *Official Gazette of the Republic of Serbia*, in other domestic publications and, where appropriate, at the international level.

Summary

The new Serbian PPL, which is perceived positively by public procurement practitioners, has introduced several important changes that will contribute to increased transparency. The structure of the PPL has improved and bureaucratic burdens have been reduced to a certain extent.

*Although the new PPL is based on the current EC Directives, several aspects of the PPL have not been harmonised with the *acquis communautaire*. Not all of the new procurement procedures and techniques have been transposed and this will need to be addressed in a future revision of the PPL. The introduction of framework agreements for contracting entities in both the classical and utilities sectors would be a particular priority.*

The urgent adoption of the by-laws is a priority for the proper implementation of the new legislation.

The legislative situation in the area of concessions and PPPs remains unsatisfactory; it is necessary for Serbia to ensure full harmonisation with EU requirements in the area of concessions as well.

2.2 Central Public Procurement Organisation

The key central institutions in Serbia are the Public Procurement Office (PPO) and the Commission for the Protection of Tenderers' Rights (Review Commission), which was part of the PPO under the previous PPL. The new PPL provides for a new body, the Republic Commission for the Protection of Rights in Public Procurement Procedures (Republic Commission), to replace the Review Commission.

2.2.1 Public Procurement Organisation

The PPO is an independent body, responsible directly to the Prime Minister and functionally linked to the Ministry of Finance for legislative matters. According to the provisions of the new PPL, the PPO is to perform its activities in the area of public procurement, providing conditions for the economic, efficient and transparent use of public funds and for the promotion of competition and equality of tenderers in the public procurement procedure. The regulations pertaining to the government administration are to apply to the activity and organisation of the Public Procurement Office.

The functions of the Public Procurement Office (PPO) are described in the PPL as follows:

- participation in drafting the regulations pertaining to the sphere of public procurement;
- provision of help-desk activities to contracting entities and tenderers;
- monitoring of public procurement procedures;
- submission of requests for the protection of rights in the case of violation of public interest;
- informing (the body in charge of public fund auditing, budget inspection and other bodies competent to initiate offence proceedings) of irregularities in the conduct of public procurement procedures and in the delivery of public procurement reports that it has identified in the course of performing the activities within its competence;
- issuance of certificates to public procurement officers, as well as maintenance of the register of public procurement officers who have been issued certificates;
- publication and distribution of relevant technical literature;
- preparation of model decisions and other acts adopted by the procuring entity in public procurement procedures;
- collection of information on public procurement in other states;

- collection of statistical and other data on the procedures conducted and public procurement contracts concluded and on the efficiency of the public procurement system as a whole;
- creation and maintenance of the Public Procurement Portal for the purpose of improving the provision of general information to procuring entities and tenderers;
- co-operation with foreign institutions and experts in the area of public procurement;
- co-operation with other government bodies and organisations and compulsory social insurance organisations as well as with territorial autonomous bodies and local government bodies.

The PPO is required to submit to the government by 31 May a public procurement report on the previous year, including proposals for measures to be undertaken.

Under the previous PPL, the PPO's role was focused on control functions. Contracting entities were obliged to apply to the PPO for prior approvals/opinions when they were going to use the restricted procedure or the negotiated procedure, divide a contract into lots, award consulting services, or employ persons with disabilities within certain types of services. As the PPO had to decide on thousands of requests a year within a short deadline, other functions of the organisation suffered. The new PPL has deleted this prior approval function, which will allow the PPO to concentrate on its other important functions.

The PPO actively participated in the preparation of the new PPL and carried out a wide consultation process before the adoption of the new law.

As from the adoption of the new Public Procurement Law by parliament in December 2008 and up until 15 March 2009, representatives of the Public Procurement Office and the Review Commission have provided training in 107 municipalities (out of a total of 150 municipalities in Serbia) and in 20 cities (out of a total of 23) in all 20 districts (out of 23 in total). The total number of registered participants was 2,365. This training activity was highly appreciated by contracting entities and economic operators. They were not completely satisfied with the help-desk activities provided by the PPO, however, and in this regard the PPO needs to increase its efforts.

The PPO currently has 26 staff members, headed by a director.

The PPO's staff resources are stretched and their technical facilities are inadequate. Sufficient budget resources should be provided for the recruitment of qualified staff and for improving the technical facilities, including the premises of the PPO.

Baselines for the Strategy for Upgrading the Public Procurement System in Serbia were prepared by the PPO, Ministry of Finance, Review Commission, Police, Prosecutor's Office and District Court in 2006, but the strategy still has to be elaborated and adopted. The adoption of the Strategy is urgently needed and should be followed by the preparation of an action plan with a clear definition of responsibilities.

2.2.2 Review Commission

The primary objective of the Review Commission is to ensure the full legal security of all participants in the process of the award of public procurement contracts. The Review Commission was previously part of the PPO, but as it did not have its own budget its independence was limited. The new PPL establishes the new review commission as an autonomous and independent legal entity responsible directly to the National Assembly, with a separate budget. The new Republic Commission for the Protection of Rights in Public Procurement Procedures (Republic Commission), to replace the old Review Commission for the Protection of Tenderers' Rights (Review Commission), will be comprised of five members: the chairperson and four members, who will be elected and dismissed by the National Assembly on the proposal of the government. The chairperson and members of the Republic Commission will be elected for a five-year period and may be re-elected only once.

According to the new PPL, the Republic Commission is to be elected within six months of the date on which the PPL entered into force (so by 6 July 2009). Until the new Republic Commission starts to function, the present Review Commission will remain in place. There is a clear risk that the present

Review Commission will need to continue its work after 6 July 2009. At the time of the assessment, the setting up of the new Republic Commission had not yet begun, the number of staff had not yet been determined, and its budget for 2009 had not been allocated separately.

At present the Review Commission has insufficient staff (currently 13), which has led to delays in making decisions (more details are provided in section 2.4.1 below). The Review Commission is also facing difficulties in terms of technical facilities, and its premises need to be improved.

The Public Procurement Working Group of the Ministry of Finance performs tasks related to the drafting of the PPL and the by-laws, as well as participating in the interpretation of the provisions of the PPL.

Summary

The PPO and the Public Procurement Working Group played an important role during 2008 in the process of adoption of the new PPL. To make sure that the benefits of the new law are realised, the PPO needs to be able to give more support to the public procurement community. The PPO needs to be strengthened, in terms of both improved facilities and the recruitment of skilled staff, so that more emphasis can be put on training and advisory functions. Co-operation with the private sector would help, especially in the area of training public procurement officers.

The establishment of the new Republic Commission to replace the present Review Commission needs to be completed urgently. Here too, sufficient skilled staff and adequate support facilities are very important.

The strategy for the improvement and development of public procurement in Serbia still has to be adopted and implemented.

2.3 Procurement Operations and Practices

2.3.1 Publication of Procurement Notices

Provisions for the publication of procurement opportunities are basically in line with the requirements of the EC Directives. The PPL requires contracting entities to publish procurement notices as well as the results of procurement procedures (contract award notices), information on the termination of procedures, and annual Prior Indicative Notices (PIN) for procurement above a specified threshold. Publication of these notices is required in the *Official Gazette of the Republic of Serbia* and on the website of the PPO (<http://www.ujn.sr.gov.yu>). The publication of notices on low-value procurement in the *Official Gazette* is voluntary and is only required on the PPO's website. The PPO has published model notices (standard forms) for use by contracting entities.

Considerable savings have been made by abolishing the requirement to publish high-value contracts in a national newspaper. The publication on the website of the PPO is free of charge, which in the opinion of the PPO brings significant savings (as the publication of one page in the newspapers costs around 1,000 EUR) and also provides the private sector with an excellent information source on business opportunities, which is an extensive improvement compared with the previous system. An additional major advantage of the new publication system is the facilitated gathering of procurement data as part of PPO's monitoring functions: in addition to the notices related to individual public procurement procedures, the quarterly and annual reports of contracting entities will also be published on the PPO website.

During the period from 15 January to 15 March 2009, more than 1,054 public notices were published on the website free of charge. The PPO employees administer the Public Procurement Portal and provide assistance to clients, including legal assistance related to public procurement procedures. The average number of external visitors to the website is approximately 400 daily.

2.3.2 Availability and Use of Standard Tender Documents

Basic tools for conducting public procurement procedures are in the process of being elaborated by the PPO. Some contracting entities, especially those carrying out centralised public procurement functions, are also planning to introduce standard tender documents.

2.3.3 Electronic Procurement

There are basic provisions in the new PPL concerning electronic procurement. The details will be set out in secondary legislation, but there is no timescale for the adoption of this legislation.

2.3.4 Framework Agreements and Centralised Purchasing

Provisions concerning framework agreements have not been introduced in the new PPL. There are no specific provisions in the PPL allowing for the establishment of framework contracts either. The new PPL allows for co-ordinated purchasing arrangements: the contracting entity may authorise another procuring entity to conduct the public procurement procedure or undertake specific actions in that procedure on its behalf. Some contracting entities are moving towards a more centralised approach, especially municipalities (e.g. City of Belgrade).

2.3.5 Practice regarding Tender Security

The annual budgetary law sets the thresholds above which contracting entities should request a tender security as well as its value. According to tenderers, the need to provide a tender security could constitute a barrier to participation in public procurement and thereby restrict competition. In particular, small and medium-sized companies may be discouraged from participating.

2.3.6 Organisation of the Procurement Process within Contracting Entities

Contracting entities are required to set up a tender committee for each procurement process, in accordance with criteria set by the government. The committees are set up for individual public procurement procedures, taking into account the special experience justified by the subject matter of the contract.

2.3.7 Training and Support

Following the adoption of the new PPL, an intensive awareness-raising campaign throughout the country was organised by the PPO, in close co-operation with the Review Commission. Training was also organised by the PPO with the Chamber of Commerce, Transparency International and TAIEX.

The new PPL contains provisions concerning the employment of public procurement officers. These officers are employed on a full-time basis with the contracting entity. In accordance with the new law, they will be trained and will acquire a certificate indicating that they are competent to carry out their activities. This training should lead to increased professionalisation. As there are around 12,000 contracting entities in Serbia and trained officials in public procurement are lacking, a huge range of training activities will need to be undertaken in the future. This training represents an important challenge for Serbian authorities. As well as issuing certificates, the PPO will keep records on public procurement officers and elaborate a common training programme. It will probably need external assistance for the development of these activities.

2.3.8 Size of Procurement Market (number of contracting authorities, number and value of contracts, etc.)

The total number of purchasing entities is 12,000. The total number of contracts awarded in 2008 was 109,910, worth 234,028,744,000 RSD (about 2.5 billion EUR).

The general interest among economic operators to participate in procurement procedures appears to be good. The participation rate is satisfactory, and based on the experiences of contracting entities, the number of tenderers/candidates is usually sufficient, although this is very much dependant on the subject matter of the contract.

2.3.9 Openness to Foreign Competition

The mandatory use of domestic preferences (20%), although not contrary to the international obligations of Serbia, would be expected to result in a lower level of foreign participation, and this seems to have been the case in recent years.

Summary

The development of the PPO's website has been an important factor in increasing the transparency of the whole system, as evidenced by its high use.

Despite the positive fact that considerable efforts have been made to support contracting entities, as well the supply side, with training, further support to purchasers is required to strengthen the operational side of public procurement. It is extremely important to urgently elaborate common training materials and a programme for training public procurement officers, possibly with foreign assistance and in co-operation with private sector training companies. Intensive support is required for the implementation of the rules of the new PPL.

The competitive side of the public procurement market is satisfactory.

2.4. Control, Review and Integrity

2.4.1 Complaints Review

The review procedure consists of two stages: the first stage begins with a request to the contracting entity and the second stage with a request to the Commission for the Protection of Tenderers' Rights (Review Commission). The new commission, when established, will be called the Republic Commission for the Protection of Rights in Public Procurement Procedures (Republic Commission).

At first the request (called "request for protection of rights") is submitted directly to a contracting entity (with one copy to the Review Commission). A request may be filed by any person who has an interest in concluding a contract for the particular public procurement. A request may also be submitted by the PPO, a public attorney, or a government body or organisation authorised to supervise the contracting entity's business activity. The new PPL explicitly states that all decisions of the contracting entity can be challenged by a request. A request may be filed at any time during the procedure, e.g. when the content of a call for competition or tender documents is disputed, prior to the expiry of the time limit for the submission of bids, or – in the case of a decision of the procuring entity – within eight days of the date of receipt of the decision.

Submission of the request results in the automatic suspension of the contract award procedure (and the public procurement contract may not be concluded prior to the expiry of the time limit for submission of a request for the protection of rights) unless – on the request of the contracting entity – the Review Commission decides otherwise (which rarely happens). Within 10 days of receipt of the request for the protection of rights, the contracting entity is to take a decision – either to accept the request, thus annulling the procedure wholly or partially, or to reject the request. According to the new PPL, the decision of the Commission must be accompanied by an explanation. If a tenderer is not satisfied with the decision of the contracting entity regarding the request, or has not received the resolution of the contracting entity within the 10-day period, he/she may submit an appeal to the Commission – within three days.

The Review Commission is a second-instance body in the review procedure, and it decides on appeals filed by dissatisfied tenderers. The manner of operation of the present Commission is regulated by its Rules of Procedure, adopted in 2004. The Commission makes its decisions in sessions by a majority vote. The competences of the Commission, as defined by the PPL, include the possibility to cancel entirely or partially a public procurement procedure. The Commission's decision should be reached – according to both the previous PPL and the new one – within 15 days (plus five additional days in more complex cases) of the date of delivery of the complete documentation. The Review Commission so far has been unable to respect these deadlines, due to the fact that it is seriously understaffed and suffers from poor technical conditions. On average, the decision-making process lasts for two months,

and as a result the review system at the moment is a weak element in the Serbian public procurement system.

According to the new PPL, the complainant will continue to pay the same fee to start a review procedure: 60,000 RSD (approximately 600 EUR) in the case of higher-value procurement and 30,000 RSD (approximately 300 EUR) for low-value procurement. The amount of the fees does not seem to restrict the propensity to complain.

In 2008 the Commission issued 585 decisions; 294 decisions upheld the appeal request – which meant the cancellation of the procedure, either wholly (151 requests) or partially (143 requests) – and the remaining requests were refused or dismissed. Over the past five years (2004-2008), an increasing number of requests have been submitted by tenderers, and the proportion of upheld requests has increased.

The previous PPL did not require the Review Commission to make its decisions available, although some of these decisions were collected and published in a document. This meant that practitioners could not learn from these decisions. In accordance with the new PPL, the Commission's decisions will be published on the PPO's website.

According to the Review Commission, the most common problems have remained quite similar (e.g. discriminatory or unclear tender documents; discriminatory conditions for participation; incorrect setting of contract award criteria; selection of a tenderer whose tender was not ranked as the best). The Commission has recently experienced, however, more 'sophisticated' practices that favour certain tenderers, such as the adjustment of technical specifications to favour the preferred tenderer, but this is difficult to prove, especially in the early stages of the procedure.

Decisions of the Review Commission may be challenged in court. An administrative dispute may also be initiated when the Commission fails to make and deliver the decision within the time limits specified in the PPL.

Damages may be subject to separate proceedings before the court, but such proceedings are rare. The PPL also sets out cases where the contract concluded is to be deemed as null and void.

Summary

The review and remedies system in its current form remains a weak element in the public procurement system. However, with the new review procedures and the establishment of the new Republic Commission, there should be significant improvements, as long as the Commission is adequately resourced.

The regular publication of the decisions of the Commission on the website of the PPO is essential so that lessons may be learned, by purchasers and suppliers alike.

2.4.2 External Audit

The supreme audit institution (SAI) has yet to become operational in Serbia, although the State Auditing Institution Council, which is responsible for monitoring audit activities, was appointed in September 2007. The proper technical facilities are still missing for the operation of the SAI, and the process for the recruitment of state auditors is progressing slowly. Experienced personnel stay in the private sector, which makes it difficult to recruit experienced staff. The representatives of the Council expressed their need for training, including public procurement training, and requested Sigma assistance in this regard.

2.4.3 Integrity of Procurement Operations

Anti-corruption provisions are provided in the new Public Procurement Law. These rules state that a contracting authority may refuse a tender where there is relevant proof that a tenderer/bidder tried to bribe a member of the public procurement commission, a person participating in the preparation of tender documents, a person participating in the planning of public procurement, or any other person in order to influence these persons to unveil inside information or to affect the decision-making of the

contracting authority in any phase of the public procurement procedure. A tender may also be refused where a tenderer has tried to threaten any of the above-mentioned persons.

The new PPL has introduced public bid-opening, together with the obligation that above a certain threshold a second copy of the tenders is to be forwarded to the Review Commission immediately after the bid-opening.

Transparency International Serbia is very active in the area of public procurement. It has proposed further amendments to the new PPL and has started court proceedings against procuring entities that have not fulfilled their reporting obligations under the PPL.

Summary

The supreme audit institution has not yet become operational in Serbia.

The new PPL provides for increased transparency. Transparency International is very active in making sure that the law's transparency obligations are fulfilled.

3. Reform Dynamics

3.1 Indigenous Reform Actors, Processes, Powers

As already indicated above, the Strategy for Upgrading the Public Procurement System in Serbia has not yet been elaborated, although the baseline for the Strategy was prepared in 2006 by the Public Procurement Office (which co-ordinated the activity), the Ministry of Finance, the Commission for the Protection of Tenderers' Rights (Review Commission), the Police, the Prosecutor's Office and the District Court.

The PPO is aware of the fact that the adoption of the Strategy is a priority and should be immediately followed by the preparation of an Action Plan with clear definition of responsibilities (who should do what and in what time period). The preparation of both documents (Strategy and Action Plan) is needed urgently.

For the further development of the Serbian public procurement system, the demonstration to the Serbian public procurement community and to citizens of a sustained, high-level commitment is essential. This political support could be explicitly shown if the government, as also suggested by Transparency International Serbia, secured appropriate working premises and stimulating conditions of employment for the staff of the Review Commission, the PPO, internal audit organs, budget inspection, and eventually the supreme audit institution.

4. Recommendations for Assistance

The PPO and the Review (/ Republic) Commission (as well as the Ministry of Finance with regard to the review and drafting of legislation) would definitely benefit from external assistance and from closer international co-operation in the following areas:

- Review of the PPL, amending legislation and secondary legislation to determine further revisions, with a view to (i) achieving full alignment with the new 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 relevant institutions in other countries, elaboration of standard training materials and a training programme for public procurement officers, and assistance in the preparation of guidelines and manuals;
- Support for the Review (/ Republic) Commission and its operations;

- Support in the preparation and conduct of a comprehensive training programme targeting contracting entities at all levels, as well as a training and information programme for the private sector;
- Support for the introduction of modern procurement techniques, such as electronic procurement and framework agreements.

The PPO is preparing a twinning project but is awaiting the adoption of the by-laws to the PPL before finalising this co-operation.