

23/05/2013

Serbia: Law on Public Procurement

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Regulatory

Publisher: Bojović &
Partners

The new Law on Public Procurement (*Zakon o javnim nabavkama, Official Gazette of the Republic of Serbia no. 124/2012*) (hereinafter the Law) applies as of 1 April 2013. With its application, the old Law on Public Procurement was replaced (*Zakon o javnim nabavkama, Official Gazette of the Republic of Serbia no. broj 116/2008*) including bylaws adopted on the basis thereof, as well as Article 5 Paragraphs 1 and 5 of the Law on Stimulating of the Construction Industry of the Republic of Serbia during Economic Crisis (*Zakon o podsticanju građevinske industrije Republike Srbije u uslovima ekonomske krize, Official Gazette of the Republic of Serbia no. 45/2010, 99/2011 i 121/2012*), pertaining to the selection procedure of the designer, performer of the technical control, purchaser, performer of the professional supervision, as well as performer of the technical inspection or for the purpose of project financing for construction and ordering of further activities in the public procurement process in the case of a request for protection of bidders' rights and public interest.

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

Significant novelties of this Law pertain to the following:

Types of Procedures

The Law provides for eight public procurement procedures compared to the six public procurement procedures stipulated by the former law. Beside novelties in two types of public procurement procedures (open and closed procedures), the Law provides for two new procedures: qualification procedure and competitive dialogue.

Qualification procedure in this Law appears as a special type of procedure, in contrast to the qualification phase in the restrictive procedure which was stipulated as the first stage under the former law, still existing under the new Law. This new procedure is implemented in two phases, so that all interested persons may submit an application during the validity period of the list of candidates, while the purchaser shall, under the terms of the tender documents, recognize their qualification every six months, and shall invite them to submit bids in the second stage of the procedure.

Competitive dialogue appears as a completely new procedure in the public procurement of Serbia taken over from European legislation and it is intended for particularly complex procurements when a purchaser is objectively not able to define all technical specifications of the public procurement, and legal, i.e. economic structure of public procurement.

Compared to the earlier rule that the choice of the most favorable bid is made in an open public procurement procedure, the new Law stipulates that the choice of the procurer is made in either open or restrictive procedure. Thus, the open procedure and the restrictive procedure have now become a rule and can always be used, while other public procurement procedures may be used when the specific conditions prescribed by the Law are fulfilled. In this way, the restrictive public procurement procedure is no longer an exception the application of which is possible only under prescribed conditions.

Open procedure of the public procurement is defined under the new Law as the procedure in which all interested persons may submit their bid.

Restrictive procedure is defined by the new Law as a procedure which is carried out in two phases and in which all interested parties may submit an application.

The new Law on Public Procurement regulates the restrictive procedure in almost the same way as the former law. As in the former law, two phases of this procedure are provided for. In the first phase the purchaser shall determine who fulfills the requirements from the qualification, and in the second stage those who fulfill the previous qualification requirements are called to submit their bid. In contrast to the former law which provided that the customer can implement restrictive procedure when the subject of procurement are such goods, services or works that, given the technical, human and financial capacity, may be supplied, offered or performed only by a limited number of bidders.

In accordance with the Law, the purchaser may implement restrictive procedure even when the procurement is not possible to plan in advance in terms of scope and time, whereas the subject of that procurement are occasional services or consumer goods, i.e. the occasional repairs or maintenance works, which are provided, delivered or performed, not according to special conditions, but in line with market conditions. The Law gives these conditions the quality of a new kind of public procurement.

Conditions for participation in the public procurement

In contrast to the previous solutions with the unique seven conditions for participation in the

procurement procedure, the Law provides mandatory and additional conditions.

Mandatory conditions which the bidder in the public procurement procedure must fulfill, refer to the:

- registration, i.e. entry into register;
- absence of certain felonies of the bidder and its legal representative;
- absence of any injunctions/restrictions pertaining to performance of activities;
- paid taxes and contributions;
- valid bidders' license.

Additional conditions for participation in the procurement procedure are determined by the purchaser in the tender documents. The purchaser can determine additional conditions in terms of financial, business, technical and personnel capacity. In addition, by tender documentation it can also be determined that the bidder must prove that the bankruptcy or liquidation procedure has not been initiated against it, i.e. previous bankruptcy procedure or additional conditions if they are related to social and environmental issues, as well as additional conditions in terms of fulfillment of the obligations that the bidder has toward his subcontractors and suppliers.

Registry of bidders

Important novelty in the Law is a registry of bidders (Article 78 of the Law), i.e. a list of all those who fulfill the mandatory conditions provided by the Law, maintained by the Agency for Business Registers starting from 1 September 2013. Registry of bidders will be available on the website and any person registered with the organization competent for registration may submit an application for registration in the registry of bidders, by submitting documents which prove the fulfillment of mandatory conditions. The entity registered with the registry of bidders is not obliged to prove fulfillment of mandatory conditions when submitting bids and/or applications.

Besides the novelties introduced by the Law, the Public Procurement Office has rendered Rulebooks that precisely regulate procurement plans, tender documentation, reporting methods, as well as a Rulebook relating to the request for an opinion on the negotiation process:

1. Rulebook on mandatory elements of tender documents in public procurement and the manner of proving eligibility (*Pravilnik o obaveznim elementima konkursne dokumentacije u postupcima javnih nabavki i načinu dokazivanja ispunjenosti uslova, Official Gazette of the Republic of Serbia no. 29/2013*);
2. Rulebook on the contents of the report on public procurement and the manner of keeping records of public procurements (*Pravilnik o sadržini izveštaja o javnim nabavkama i načinu vođenja evidencije o javnim nabavkama, Official Gazette of the Republic of Serbia no. 29/2013*);
3. Rulebook on the form and content of a procurement plan and report on the performance of a procurement plan (*Pravilnik o formi i sadržini plana nabavki i izveštaja o izvršenju plana nabavki, Official Gazette of the Republic of Serbia no. 29/2013*);
4. Rulebook on the form and content of requests for opinions on the merits of the application of the negotiated procedure (*Pravilnik o formi i sadržini zahteva za mišljenje o osnovanosti primene pregovaračkog postupka, Official Gazette of the Republic of Serbia no. 29/2013*);
5. Rulebook on the civil supervisor (*Pravilnik o građanskom nadzorniku, Official Gazette of the Republic of Serbia no. 29/2013*);
6. Rulebook on the manner of proving fulfillment of condition that offered goods are of domestic origin (*Pravilnik o načinu dokazivanja ispunjenosti uslova da su ponuđena dobra domaćeg porekla, Official Gazette of the Republic of Serbia no. 33/2013*);
7. List of international organizations and international financial institutions whose special public procurement procedures may be applied instead of the provisions of the Public Procurement Law (*Spisak međunarodnih organizacija i međunarodnih finansijskih institucija čiji se posebni postupci javnih nabavki mogu primenjivati umesto odredaba Zakona o javnim nabavkama, Official Gazette of the Republic of Serbia no. 33/2013*).

The aim of the Law is harmonization with the European Union legislation, as well as to provide conditions for the efficient use of public resources, prevent corruption and conflicts of interest and to achieve a unique public procurement market which fosters competition.