

PUBLIC PROCUREMENT

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Improving the administrative and expert capacity of the Commission for protection of rights in public procurement procedures and the State Audit Institution so that they can effectively monitor the planning and execution of public procurement	2013			√
Establish closer co-operation between, on the one hand, the Public Procurement Authority and the Republic Commission for protection of rights in public procurement procedures and the Administrative Court in order to exchange knowledge and information.	2022			√
Contracting exemptions from the implementation of the Law on Public Procurement in international agreements with third countries should be significantly reduced.	2022		√	

CURRENT SITUATION

On December 23rd 2019, the Serbian Parliament adopted the Law Public Procurement Law (RS Official Gazette No 91/2019), hereinafter: the Law). The Law entered into force on January 1, 2020 and started to be applied as of July 1 2020. The law is to a significant extent harmonized with EU acquis, notably Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport, and postal services sectors and repealing Directive 2004/17/EC.

On October 26, 2023, the Serbian Parliament adopted amendments to the Law on Public Procurement. The changes will enter into force on January 1, 2024, and, in the opinion of the Foreign Investors Council, they represent a step forward in improving the transparency, legality, and efficiency of public procurements. Namely, the obligation of public procurement officials to participate in procedures whose value exceeds certain thresholds is introduced, whereas contracting becomes more transparent. Progress is also being made in appeals procedures. The quality of contracting for certain services seems to become a priority because the price is no longer the decisive award criterion (e.g., architectural services, IT services, etc.). Finally, for the first time, a significant place is also given to environmental protection, which now the contracting authorities must consider when planning and implementing public procurement.

POSITIVE DEVELOPMENTS

The public procurement market in the Republic of Serbia in 2022 accounted for 9.34% of GDP, which is higher compared to 2021, when it was 8.93%. The average number of bids per tender remained at a stable 2.5, but that is still lower than 2017 when the average number of offers per procedure was 3.5. The number of contracts awarded to foreign bidders remained at low level of 1% .

When it comes to contracts awarded in the negotiation procedures without prior notice their values accounted for 1.29% which represents a substantial decrease increase compared to previous year.

The value of public procurements, that are exempt from the implementation of the Law on Public Procurement, amounted to approx. 4.4 billion euros, of which the highest percentage (27.69%) represents are procurement of public contracting authorities intended for processing and sale, further resale or leasing to third persons in the market.

REMAINING ISSUES

In the previous year, limited progress was made in the field of fight against corruption and integrity in the field of public procurement.

Furthermore, intergovernmental agreements with third countries continue to violate the principle of equal treatment of bidders, the prohibition of discrimination, transparency and the protection of competition. The implemen-

tation of these agreements is often inconsistent with the adopted solutions in both domestic and EU law. In 2023, the Law on linear infrastructure projects was repealed, which enshined discretionary decision-making, which is good news.

The capacities of the Commission for protection of rights in public procurement procedures and Public Procurement Authority remain limited. Also, the professional capacity of the Administrative Court to decide in complex and numerous cases remains low due to the lack of adequate training.

FIC RECOMMENDATIONS

- Improving the administrative and expert capacity of the Commission for protection of rights in public procurement procedures and the State Audit Institution so that they can effectively monitor the planning and execution of public procurement.
- Establish closer co-operation between, on the one hand, the Public Procurement Authority and the Republic Commission for protection of rights in public procurement procedures and the Administrative Court in order to exchange knowledge and information.
- Contracting exemptions from the implementation of the Law on Public Procurement in international agreements with third countries should be significantly reduced.