

CENTRALIZED PUBLIC PROCUREMENT IN HEALTH CARE FACILITIES

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Abstract: *The implementation of public procurement procedures, particularly centralized procurement procedure in health care institutions is a complex process that involves an interdisciplinary approach and teamwork of professional people in the public procurement procedure. Defining procedures of centralized implementation of public procurement is considered from the point of view of the circumstances in which it is justified to consolidate public procurement, or selecting the cases for centralization of public procurement, and more detailed defining of the above by applying the legislation. It is necessary to introduce obligations on the part of the contracting authority to make plans of public procurement, draft internal plans of the set of preventive measures to prevent corruption and conflicts of interest, and create special services in order to control the appropriateness of planning of the whole public procurement process.*

Keywords: *procurement, centralized procurement, medical facilities*

1. INTRODUCTION

Public procurement represents the procurement of goods, services or works by the contracting authority, in the manner and under conditions prescribed by the Law on Public Procurement.¹

According to the Law on Public Procurement, contracting authority is a user of budget funds, organization for mandatory social insurance and its users in terms of the law governing the budget system; A legal entity established to carry out activities that are in the general interest, that meet any of the following conditions: that more than 50% is funded by the customer, that supervision of the work performed by that legal entity is done by the client, that more than half of the members of the management body of the company is composed of representatives of the contracting authority; Public enterprises.²

The Government of the Republic of Serbia at the beginning of each fiscal year determines in the "Official Gazette of RS" and publishes in the Public Procurement Portal a list of contracting authorities.

1 Art. 3. c. 1 t. 1. Law on Public Procurement "Off. Gazette of the RS", No.124 / 12 of 29.12.2012
2 Art. 2. The Law on Public Procurement "Off. Gazette of the RS", No.124 / 12 of 29.12.2012

The first Law on Public Procurement in the Republic of Serbia entered into force in 2002 and since then has been repeatedly amended. With the entry into force of the Law on Public Procurement in 2009, we can say that our country too has begun to strengthen the concept of public procurement. The Law itself, as well as other related subordinate regulations adopted on the basis of this Law are to a large extent harmonized with the then applicable EU directives. However, the effects which had been achieved in the implementation of the law were described both by the experts and the EU itself as unsatisfying.

It has been observed that every year the number of bidders in tenders declined, as well as that the number of negotiated procedures with the exact same bidders was on the rise. All this resulted in the presence of corruption in the public procurement system. In many cases of public procurement there had been cheating in all three phases of public procurement procedures, and there were many cases where even what was not agreed was still paid; further, a large number of tenders was drafted to suit a specific bidder.

After three years of implementation of the Law on public procurement, it turned out that the law did not improve the system of public procurement as expected, but on the contrary, in some areas such as competition in public procurement constituted a step backwards.

The biggest disadvantages of this law were great exceptions to its application that had no foothold in the European Union directives, the absence of certain procedures envisaged by the directive, lack of regulating concessions for works and procurement in the field of security.³

In addition to all these shortcomings, two good solutions that already existed in the law of 2009, namely the Procurement Officer and the Republic Commission for the protection of rights, through the application of this law experienced a complete failure. There were delays with the implementation of Article 97 of this law that introduced Procurement Officer; this started to be applied at the end of 2010 instead of July 2009 as it was prescribed by law, while the Republican Commission for the Protection of the Rights instead of the legally prescribed period of six months of its entry was formed no sooner than October 2010.

Table 1: Comparative review of the concluded public procurement contracts by year⁴

Year	2008	2009	2010	2011	2012
No of concluded contracts	109.910	91.992	83.693	111.249	83.487
Total value(in 000 din)	234.028.744	190.655.028	273.055.306	293.324.810	297.345.078

All this resulted in the new drafting of a completely new law on public procurement. New hitherto applicable Public Procurement Law was published in the "Official Gazette of RS" No. 124/2012 of 29/12/2012 and entered into force on 06.01.2013. The provision 178 of the Act provides that the law is to be applied starting from 01.04.2013.

³ Directive 2009/81 EC on the coordination of procedures for the procurement of certain services of works contracts for the supply of goods and services contracts in the fields of defense and security

⁴ Report on Public Procurement in the Republic of Serbia for 2012, the Public Procurement Office, Belgrade, 2013

The main objective of the new law on public procurement is to establish a more efficient use of public - budgetary resources - through prescribing clear procedures for the award of public procurement contracts, as well as the establishment of a mechanism to prevent corruption in the awarding of public procurement contracts and ensuring competition in public procurement procedures.

As one of the most important novelties whose main goal is the prevention of corruption and increasing competition is the introduction of centralized public procurement, as well as prescribing the transparency of the procedure. The Law on Public Procurement prescribes determination of the body responsible for implementation of centralized public procurement and controlling the announcement on the public procurement procedures and contract award harmonized with EU directives.

The Law especially emphasizes the intention of preventing corruption and conflicts of interest. This area is specifically regulated in Chapter II - Prevention of corruption and conflicts of interest - in which general measures for prevention of corruption are prescribed, preparation of internal documents and control of procurement, the duty of reporting corruption, ban on working engagement of representatives of the contracting party with the supplier, a statement of an independent offer, public disclosure of distortion of competition, conflict of interest and engagement of civil supervisor.

In order to create conditions for the implementation of the Law on Public Procurement of the Government of the Republic of Serbia, Minister of Finance and Director of Administration for public procurement have passed several bylaws which closer regulate the area of public procurement in the Republic of Serbia.

Bylaws of the Government of the Republic of Serbia are the following:

Regulation on Planning and the type of goods and services for which the provisions of the centralized procurement are obligatory⁵

The bylaws brought by the Minister of Finance and Economy are:

Rulebook on the form and content of credit application and the form and content of documents on creditworthiness⁶

Rulebook on the ways of proving that the conditions are met that goods offered are of domestic origin⁷

List of international organizations and international financial institutions, whose special public procurement procedures may be applied instead of the provisions of the Law on Public Procurement⁸

Rulebook on the professional training program and method of taking the professional exam for Procurement Officer⁹

The bylaws passed by the director of the Public Procurement Office:

Regulations on mandatory elements of tender documentation in public procurement procedures and the manner of proving the fulfillment of conditions¹⁰

5 "Off. Gazette of RS " No.29 / 13, 49/13, 51/13 - correction, 86/13

6 "Off. Gazette of RS " No. 31/13

7 "Off. Gazette of RS " No. 33/13

8 "Off. Gazette of RS " No. 33/13

9 "Off. Gazette of RS " No. 77/14

10 "Off. Gazette of RS " No. 29/13 i 104/13

Rulebook on Civil Supervisor¹¹

Rulebook on the content of the report on public procurement and the manner of keeping records on public procurement¹²

Rulebook on the form and content of the request for an opinion on the merits of applying the negotiated procedure¹³

Rulebook on the form and content of the procurement plan and report on izvršenju procurement plan

Rulebook on the contents of the act that regulates the specific procedure for public procurement within the contracting authority¹⁴

The Public Procurement Law defines two types of public procurement procedures, namely:

Basic public procurement procedures:

Open public procurement procedure;

Restrictive procedure;

The qualification procedure;

Negotiated procedure with publication of notice;

Negotiated procedure without publication of the call;

Competitive dialogue;

Public procurement of low value;

Competitive dialogue.

Special types of public procurement procedure:

The Framework Agreement;

System of dynamic procurement;

The electronic auction.

The law also gives great importance to the negative references, which in Article 82 defines as an obligation of the Purchaser to reject the bid if it has proof that the tenderer in the past three years acted contrary to the prohibitions regarding the protection of the integrity of the proceedings, did breach competition, submitted false information in the offer, or without good reason refused to conclude the public procurement contract which was granted, or refused to submit evidence and collaterals on commitments made in their offer. The contracting authority is obliged under Article 83 No.11. to reject the offer if it has evidence confirming that the bidder did not comply with their obligations under previously signed contracts, which are related to the same subject of procurement, for the period of the previous three years.

It is particularly important to emphasize Article 115, which refers to the amendments of public procurement contracts and which stipulates that after the conclusion of a public procurement authority may permit change of price or other essential elements of the contract only for objective reasons which must be clearly and precisely defined in tender documents and the contract or stipulated by special regulations.

11 "Off. Gazette of RS " No. 29/13

12 "Off. Gazette of RS " No. 29/13

13 "Off. Gazette of RS " No. 29/13

14 "Off. Gazette of RS " No. 106/13

2. THE PROCEDURE FOR CENTRALIZED PROCUREMENTS

The Public Procurement Law in Article 48 envisages the establishment of a centralized body for public procurement, which represents the contracting authority in accordance with the law in public procurement procedures and that concludes framework agreements or award contracts for goods, services or works intended for contracting authorities or directly acquires goods or services the needs of the customer. The body of the centralized procurement can therefore, according to the Law on Public Procurement, be formed on the national, provincial and local government levels. Also, the law gives the possibility that more local governments may establish a single body for centralized procurement.

The Health Insurance Act¹⁵ provides that the Republic Health Insurance Fund performs centralized public procurement in the name of medical institutions of health institutions network plan by the Government of the Republic of Serbia.

The method and procedure planning needs of medical institutions, organization and implementation of centralized public procurement as well as the types of goods and services to which the provisions of the centralized procurement for the needs of medical institutions, regulated by the Regulation on the planning and the type of goods and services to which the provisions of the centralized procurement.¹⁶

The plan of needs of medical institutions for which centralized procurement must be performed is adopted by the Management Board of the institution upon the proposal of the health institution.

Professional service of health care institutions needs to prepare a plan of needs for which centralized procurement must be executed according to the Expert methodological instruction for making requirement plan. Expert methodological instruction is established by the Institute of Public Health of Serbia, after receiving approval from the Ministry of Health.

The Institute of Public Health is required to at least 30 days before the deadline for submission of the plan needs medical institutions, deliver professional and methodological guidance to all health institutions. As the deadline for the submission of the needs of medical institutions Regulation on Planning and the type of goods and services to which the provisions of the centralized procurement is determined July 20 of the current year, for the plan of needs for the coming year.¹⁷

The Institute of Public Health of Serbia on the basis of the collected, pooled plans of needs of medical institutions prepares a proposal of a centralized public procurements and submits it to the National Expert Committee established in accordance with the Law on Health Care. National Expert Commission shall, within 15 days, give an opinion on the proposal of a procurement plan, which may propose amendments to the information from the Procurement Plan in the areas for which they are established.

After determining the final plan of the centralized public procurement, the Governing Board of the Institute of Public Health of Serbia at the proposal of the director of the insti-

15 Art. 122, paragraph 1. t.19b, the Law on Health Insurance, "Official Gazette", no. 107/05, 109/05 - corr., 57/11, 110/12 - decision US 119/12

16 Regulation on Planning and the type of goods and services to which the provisions of the centralized procurement "Off. Gazette", No.29 / 13, 49/13, 51/13 - correction, 86/13

17 Art. 8. Regulation on Planning and the type of goods and services to which the provisions of the centralized procurement "Off. Gazette", No.29 / 13, 49/13, 51/13 - correction, 86/13

tute delivers centralized public procurement plan and submits it to the Republican Fund for Health Insurance no later than 15 August of the current year for the next budget year.¹⁸

The National Fund for Health Insurance, no later than November 1 of that year, or no later than the following day from the day when the Government of the Republic of Serbia adopted a draft law regulating the budget of the Republic of Serbia and the proposed decisions on giving consent to financial plans of organizations for mandatory social insurance, begins with the procedures of centralized public Procurement for the next fiscal year.

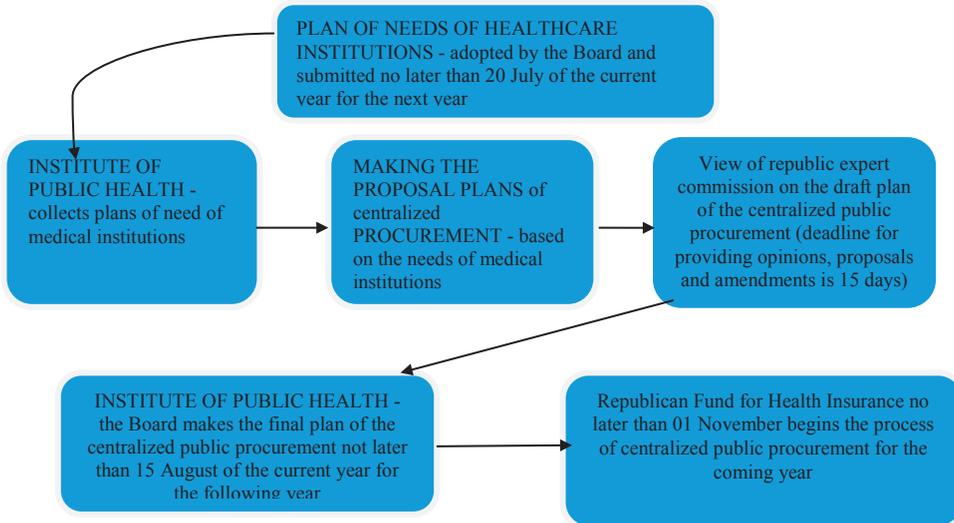


Figure 1: Scheme of the process of implementation of the centralized public procurement in the health sector

3. CONCLUSION

For the first time there has been introduced the obligation of contracting authorities to draft procurement plan and submit it to the Public Procurement Office and the obligation of contracting authorities to make the plan for the execution of public procurement. Further, a set of preventive measures to prevent corruption and conflicts of interest was established, as well as the obligation for contracting annually on procurement spend more than one billion dinars to draw up internal plans to prevent corruption and to set up special departments to control the appropriateness of planning specific procurement from of the needs and activities of the customer, the criteria for drawing up technical specifications, the way the market test, the justification criteria for awarding contracts, enforcing contracts, and particularly the quality of the goods delivered and services rendered or performed works, inventory and usage of goods and services. The Service department must submit a report on the control conducted with recommendations to the Head of the procuring entity and the authority exercising oversight over the operations of the contracting entity.

18 Art. 9. Paragraph 6. Regulation on Planning and the type of goods and services to which the provisions of the centralized procurement "Off. Gazette of RS ", No.29 / 13, 49/13, 51/13 - correction, 86/13

There has also been introduced the institute of civil supervisor who is responsible to oversee the procedure of public procurement worth over one billion dinars. Civil supervisor has constant access to procedures, documentation and communication of the contracting authority with the interested parties or bidders. We emphasize that the law foresees the obligation of the Purchaser that, before launching a negotiated procedure, requests the opinion of the Public Procurement on the merits of applying the negotiated procedure.

It remains to be seen how the new law will be implemented in perspective. The first effects of the law can be expected in the current year of 2014 when the purchasers started to submit plans and reports on the execution of procurement.

It is also expected that the Public Procurement Office in cooperation with the Agency for the Fight against Corruption should develop a plan for the fight against corruption, with which the part of the law on the prevention of corruption and conflict of interest will be complete.

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- [6] Pravilnik o načinu dokazivanja ispunjenosti uslova da su ponuđena dobra domaćeg porekla „Sl. glasnik RS“ br. 33/13
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