

## The Law on Public Procurement – Amendments (Official Gazette of RS No. 68/2015)

The National Assembly of the Republic of Serbia adopted the Law on Amendments to the Law on Public Procurement (*Official Gazette of RS No. 68/2015*) which entered into force on 12 August 2015, with the exception of the provisions governing the duty to report corruption, which shall be applicable as of 1 January 2016.

These amendments essentially seek to further improve the public procurement system (by increasing efficiency and cost-effectiveness of public procurement procedures, ensuring a greater competition among the bidders) and to achieve compliance with the EU directives which were adopted in this field of public procurement in 2014.

We wish to point out the most interesting amendments from the viewpoint of the bidder.

### I Small-value public procurement

Under the most recent amendments, the limit for small-value public procurements has been increased from 3,000,000 RSD to 5,000,000 RSD. Specifically, any public procurement whose value *does not exceed* 5,000,000 RSD is deemed to be a small value public procurement. It should be noted the total estimated value of the same-type procurements at the annual level *must not exceed* 5,000,000 RSD.

The contracting authorities must publish an invitation for submission of bids and tender documentation on the Public Procurement Portal and on their website, however, under the Law, they are now allowed to directly invite *no less than* three potential bidders to submit their bids.

In case of procurements whose estimated value is lower than 500,000 RSD, the contracting authorities are not obliged to apply the provisions of the Law, providing that the total estimated value of the same-type procurements at the annual level is also lower than 500,000 RSD.

### II Additional information and clarifications related to bid preparation

There is an important amendment in this field which has an impact on the procedure for protection of bidders' rights. Specifically, an interested party may request from the contracting authority to provide additional information or clarifications concerning the preparation of the bid, whilst also being *able to report to the contracting authority any observed deficiencies and irregularities in the tender documentation*. Such prior reporting of any deficiencies and irregularities is a *mandatory requirement* for filing a request for the protection of rights (in case the contracting authority refused to remove the deficiencies and irregularities)



challenging the type of procedure, contents of the invitation for submission of bids or the tender documentation.

### **III Mandatory requirements for taking part in public procurement procedure**

The mandatory requirement that the bidder has not been *prohibited from performing the business activity by any measure* has been deleted from the Law, because, in practice, this requirement often led to elimination of bidders, or incorrect bids due to wrong dates in the certificates. The contracting authorities, however, must require the bidders to state explicitly in the bid if they have been prohibited from performing the business activity by any measure in force at the time of submission of the bid.

Furthermore, the contracting authorities are allowed to provide in the tender documentation that the bidders should prove the fulfilment of the mandatory requirements for taking part in public procurement procedure by providing a statement whereby they declare, under penalty of perjury, that they have met these requirements (this option of furnishing proof of eligibility was previously allowed only in small-value public procurement procedures and in certain cases of negotiated procedures whose value did not exceed 5,000,000 RSD). However, the contracting authorities are obligated, prior to deciding on awarding the contract, to request from the bidder whose bid was assessed to be the most favourable, to furnish copies of proof of fulfilment of these requirements (this duty on part of the contracting authorities does not apply in small-value public procurement procedures and in certain cases of negotiated procedures whose value does not exceed 5,000,000 RSD)

### **IV Additional requirement concerning the bidder's financial capacities**

This additional requirement is now limited in the sense that the minimum annual turnover requirement for the bidder *must not exceed twice the estimated value* of the public procurement, except in certain cases when this is necessary due to special risks related to the subject-matter of public procurement.

### **V Joint bid – contents of the agreement of the bidders from the group**

The amendments have simplified the mandatory contents of the agreement whereby the bidders from the group pledge, to themselves and to the contracting authority, to execute the public procurement. Thus, the mandatory elements of the agreement include only those that are indeed relevant to performance and execution of public procurement, specifically (1) the information about the leading member of the group, or the one who will make the bid and represent the group of bidders before the contracting authority and (2) the liabilities of each bidder from the group in contract implementation.

Advokatska kancelarija TSG TOMIĆ SINDJELIĆ GROZA informiše o aktuelnostima u radu kancelarije i zakonodavnom reljefu RS / Die Rechtsanwälte TSG TOMIĆ SINDJELIĆ GROZA informieren über aktuelle Themen der Kanzlei und den Rechtsrahmen der RS / The aim of the TSG Newsletter is to help our clients and friends understand trends and legal developments in various areas of the law in RS/ Юридическая контора ТСГ ТОМИЧ СИНДЖЕЛИЧ ГРОЗА информирует о самых актуальных событиях, о работе конторы и законодательном релiefe PC / Glavni urednik/Chefredakteur /Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proofreader/Лектор: Ivana Radović, Vesna Gašić, Vojislava Katić, Viktorija Topalović, Magda Braun / Br. 79/15

Carice Milice 3, Beograd, Srbija, TEL/FAX +381 (0)11 3285.227, +381 (0)11 3285.208, +381 (0)11 3285.153, office@tsg.rs, www.tsg.rs

## **VI Negative references**

The contracting authorities are no longer under the obligation to reject bids over bidders' negative references, but are allowed to provide for such an option in the tender documentation. The reasons for this amendment are practical in nature, since the instrument of negative references has proved to be quite problematic in practice, *i.e.* in the course of establishing such references and entering them into the list of the Public Procurement Office.

## **VII Price offered higher than the estimated value of the public procurement**

The contracting authorities may award the contract to the bidder whose bid involved a price higher than the estimated value of the public procurement, provided that the price offered is not higher than the comparable market price and that the offered prices in all relevant bids are higher than the estimated value of the public procurement.

## **VIII Decision on awarding the contract and the time limit for filing requests for protection of rights**

This is an important amendment because *the decision on awarding the contract is no longer sent to all bidders, but is published on the Public Procurement Portal and on the contracting authority's website*, which practically means that all bidders are now "forced" to regularly and diligently follow the internet notifications in public procurement procedures they had taken part in, since the period for filing a request for protection of rights against the decision on awarding the contract *commences to run as of the day of publication on the Public Procurement Portal* (the same applies to any decisions on cancelling the procedure, recognizing qualification and concluding framework agreement).

This provision aims to speed up the public procurement procedure and to prevent delays due to the bidders refusing a receipt of the decision.

## **IX Modifications to a public procurement contract during its performance**

Once the public procurement contract has been concluded, it is possible to modify the volume of the subject-matter of procurement by up to 5% of the total value of the original contract, however such increase may not exceed 5.000.000 RSD (and 10.000.000 RSD in public procurement in the fields of agriculture, power supply, traffic and postal services). The possibility of modifying the contract must be clearly and precisely provided for in the tender documentation and the public procurement contract.

## **X Capacity to file a request for protection of rights**

Amendments have been made to the provisions governing the capacity to file a request for the

protection of rights in order to prevent possible abuses by persons who are not bidders or who may not conclude or execute a public procurement contract. Thus, under the amended law, a request for the protection of rights may be filed by the bidder, applicant, candidate, or interested person *who has an interest in the awarding of the contract or framework agreement in the specific public procurement procedure and who has suffered or may suffer damage due to the conduct of the contracting authority in breach of the provisions of the Law.*

A business association no longer may submit a request for the protection of rights on behalf of the above mentioned persons.

#### **XI Consequences of the submitted request for the protection of rights**

Under the present amendments, the submitted request for the protection of rights does not necessarily stay further activities of the contracting authority. In particular, if the request challenges the type of the procedure, the contents of the invitation for submission of bids or tender documentation, the contracting authorities may continue with the procedure (e.g. opening of bids, making professional estimate of the bids), but are not allowed to make a decision on awarding the contract (or cancelling the procedure) nor can they conclude a contract of public procurement until the request for the protection of rights has been decided.

However, the Law allows for making a decision on awarding the contract or conclusion of a public procurement contract even before ruling on the filed request for the protection of rights, where staying of further activities of the contracting authority in the public procurement procedure, or performance of a public procurement contract would cause serious difficulties in the work or operations of the contracting authority which are not commensurate with the value of the public procurement.

#### **XII Contents of a request for the protection of rights**

The mandatory contents of the request for the protection of rights remain the same, the only difference being that the contracting authorities may immediately dismiss the request which does not contain all mandatory elements, while under the earlier version of the law, the contracting authorities were obliged, prior to dismissal of the request, to invite the claimant to supplement and rectify the request within two days.

#### **XIII Fees for filing a requests for the protection of rights**

The fees for filing a request for the protection of rights have been changed as follows:

- 1) 60.000 RSD in a small-value public procurement procedure and in negotiated procedure without prior call for competition;

Advokatska kancelarija TSG TOMIĆ SINDJELIĆ GROZA informiše o aktuelnostima u radu kancelarije i zakonodavnom reljefu RS / Die Rechtsanwälte TSG TOMIĆ SINDJELIĆ GROZA informieren über aktuelle Themen der Kanzlei und den Rechtsrahmen der RS / The aim of the TSG Newsletter is to help our clients and friends understand trends and legal developments in various areas of the law in RS/ Юридическая контора ТСГ ТОМИЧ СИНДЖЕЛИЧ ГРОЗА информирует о самых актуальных событиях, о работе конторы и законодательном релiefe PC / Glavni urednik/Chefredakteur /Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proofreader/Лектор: Ivana Radović, Vesna Gašić, Vojislava Katić, Viktorija Topalović, Magda Braun / Br. 79/15

Carice Milice 3, Beograd, Srbija, TEL/FAX +381 (0)11 3285.227, +381 (0)11 3285.208, +381 (0)11 3285.153, office@tsg.rs, www.tsg.rs

- 2) 120.000 RSD where the request for the protection of rights is filed before opening bids and where the estimated value of public procurement does not exceed 120.000.000 RSD;
- 3) 250.000 where the request for the protection of rights is filed before opening bids and where the estimated value of public procurement exceeds 120.000.000 RSD;
- 4) 120.000 where the request for the protection of rights is filed after opening bids and where the estimated value of public procurement does not exceed 120.000.000 RSD;
- 5) 120.000 RSD where the request for the protection of rights is filed after opening bids and where the aggregate amount of all challenged lots does not exceed 120.000.000 RSD, provided that the procurement was divided into lots;
- 6) 0,1% of the estimated value of public procurement or the price offered by the bidder to whom the contract was awarded, where the request for the protection of rights is filed after opening bids and where such value exceeds 120.000.000 RSD;
- 7) 0,1% of the aggregate estimated value of all challenged public procurement lots, or the price offered by the bidder to whom the contracts were awarded, where the request for the protection of rights is filed after opening bids and where such value exceeds 120.000.000 RSD.

#### **XIV Final provisions**

Any public procurement procedures and the procedures for the protection of rights commenced prior to 12 August 2015 shall be governed by the regulations applicable at the time of their commencement.

Predrag Groza, Attorney-at-Law  
[predrag.groza@tsg.rs](mailto:predrag.groza@tsg.rs)

**DISCLAIMER:**

*The information contained in this newsletter is for general information purposes only and it does not claim to be comprehensive. Furthermore, this text may not serve as a substitute for legal advice in any given legal case.*