



# **Scattering public resources through public procurement**

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# Scattering public resources through public procurement

Public procurement is recognized by the public as an area in which public resources are mercilessly spent, where various agreements between contracting authorities and bidders take place and where there is no responsibility for illegalities committed. Through this summary, we will show where the main weaknesses of the public procurement system are and how it is used to scatter public funds, but also give recommendations that could contribute to improving the situation in this area.

## The practice of circumventing the application of public procurement rules and exemptions whose value is the same as of regular procedures

The value of procurements exempted from the application of the Law on Public Procurement (LPPI) has reached the value of public procurements conducted through regular procedures, according to data for 2022 and 2023. In 2023, the value of concluded public procurement contracts amounted to 860 billion dinars, while the value of exceptions amounted to 824 billion dinars (in 2022, the values amounted to 747 versus 662 billion dinars in favor of exceptions). This state of affairs is primarily the result of the continued practice of contracting the most valuable projects through interstate agreements and the adoption of special laws, which excludes the rules on public procurement provided for by the LPP, and the most recent case is a special law for *EXPO Belgrade 2027*. In this way, transparency and competition in procurement are directly reduced, and an extremely large space is opened for price increases and the influence of corruption in the selection of bidders.

The practice of circumventing public procurement procedures is also present through the “rigging” of the estimated values of procurements, so that they are just below the thresholds set by law, according to the TS research. Out of a total of 553 procurements of works contracted in Serbia in the first half of 2024, with a value between 2 and 4 million dinars, **only 15.19%** are contracts whose value is above the threshold for the implementation of the tender (3 million dinars). That this is an “adjustment” of the estimated value of procurement in order to avoid actual bidding is even more eloquently shown by the fact that **by far the largest number of these procurements (37.97%) were** contracted for a value between 2.9 and 3 million dinars (statistically it would be expected that their share would be only 5%), while in the first subsequent group (between 3 and 3.1 million dinars) only four procurements (**0.80%**) were contracted. Moreover, as much as 11.6% of procurements were contracted in

a value that differs from the limit for the implementation of the tender by less than ten thousand dinars.

When it comes to the procurement of goods and services, although the thresholds for the implementation of the law are different (1 million dinars), the findings are similar. When taking into account the procurement of goods and services between the value of 700 thousand and 2 million dinars from the first half of 2024 (a total of 14333 procurements), the largest number of them belongs to the category of contracted with a value between 900 thousand and one million dinars – **31.27%**. For comparison, only 4.53% of contracts fall into the first next category between one million and 1.1 million dinars, and in the category of concluded contracts worth between one million and two million dinars, a total of 37.92% falls. It is astonishing that **as many as 9.98% of procurements** were contracted in a value that differs from the limit for the implementation of the tender by less than ten thousand dinars.

In procurements whose estimated values are below the thresholds prescribed by law, contracting authorities are not obliged to conduct procedures through the Public Procurement Portal, but can directly select the bidders with whom they want to conclude contracts.

Competition in public procurement procedures has been declining in recent years. According to the data of the Public Procurement Office (PPO), the average number of bids in 2023 was 2.4, and in as many as 51% of procedures, only one bid was submitted. Although there is indeed a lack of competition in a large number of areas, this situation is also a product of the widespread practice of setting tender conditions according to those that can be met by certain bidders, as well as the agreements of bidders on the division of the market in certain areas. All this affects the increased spending of public funds through public procurement, and has a negative impact on transparency and competition in procedures.

## Lack of control as an encouraging environment

The control of public procurement procedures is still at an insufficient level, given the number of irregularities that are detected during the exercise of control in the current scope. Impunity for (un)detected irregularities sends the image that there is almost no control in this area.

The monitoring carried out by the Public Procurement Office included 650 procedures in 2022 (1.35% of all procedures), i.e. only every eightieth public procurement was the subject of monitoring. In the same period, the PPO filed 429 requests for the initiation of misdemeanor proceedings, which would mean that in almost 3/4 of the supervised proceedings, an irregularity was noticed, which is prescribed by the LPP as a misdemeanor.

From 1 January 2023, the Budget Inspection has been given the authority to supervise the execution of public procurement contracts. In the same year, the Budget Inspection supervised 82 contracting authorities, where it found a total of 238 irregularities related to the implementation of the LPP, i.e. 2.9 irregularities per supervised entity.

The State Audit Institution also observed a large percentage of irregularities in public procurements during audits of business regularities (the amount of share of irregularities found in public procurements in relation to the amount covered by the audit varies depending on the audited subjects – 44.54%; 18.87% and 14.08%). The largest number of irregularities refers to irregularities in the implementation of the public procurement procedure, irregularities in the execution of the contract and the fact that the public procurement procedure was not carried out, although it should have been.

Although the Criminal Code provides for a specific criminal offense for abuses in public procurement, criminal responsibility for this criminal offense is almost non-existent. In 2023, only 12 convictions were handed down, of which 10 were suspended sentences and two were prison sentences. One of the reasons for such a small number of verdicts lies in the very definition of a criminal offense, which is incomprehensible and difficult to prove, so prosecutors mostly decide to prosecute similar criminal offenses (such as abuse of official position or trading in influence), although the cases are about abuses in public procurement.

All of the above data indicate that the current scope of control is insufficient and that supervision in the field of public procurement should be approached much more seriously and systematically.

## RECOMMENDATIONS:

- The Government and the National Assembly should stop the practice of using international treaties and “special laws” to circumvent public procurement rules, thereby reducing transparency and competition in public procurement and public-private partnerships;
- The scope of control in the field of public procurement should be increased and expanded by strengthening the capacities of the bodies in charge of supervision, control and prosecution, primarily the Public Procurement Office and the Budget Inspection;
- The definition of a public procurement offence should be amended to make prosecution for that body more effective, while prosecutors' offices should act in a more proactive manner to investigate cases where there is a suspicion of corruption in public procurement;

- The Public Procurement Portal should be further improved by introducing functionalities that are currently not available, which would introduce the possibility of additional analysis of available data, such as the visibility of the number of bids in the procedure.