

# Project “Effective Public Procurement in the Service of Economic Growth”

A GUIDE FOR APPLICATION  
OF MOST ECONOMICALLY  
ADVANTAGEOUS TENDER  
IN CONSTRUCTION  
SECTOR PROCUREMENTS



**EFEKTIVNE  
JAVNE NABAVKE**  
PRO Growth Project

*“Effective public procurement in the service of economic growth” is a two-year project to improve the efficiency and transparency of public procurement in Serbia, implemented by NALED with the support of the Swedish International Development Cooperation Agency (SIDA).*

*Members of the work group of the Association of Consulting Engineers of Serbia - ACES, within the project “Effective public procurement in the service of economic growth”, prepared a Guide with recommendations for the application of the most economically advantageous tender not based on price only, in public procurement of construction sector services.*

*The goal of this project is to strengthen capacities through dispersion of knowledge, strengthening dialogue and developing digital solutions. Given the high importance of the citizens’ trust and confidence in the public procurement system, and the competent institutions that monitor the compliance and the implementation of procedures in this area, bearing in mind that the public procurements are highly exposed to irregularities due to the volume of total expenditure, this project endeavors to increase the awareness of the public procurement importance through focusing on green procurement and gender equality respect.*

*The project will strengthen both contracting authorities and tenderers participating in public procurement, but also the wider society - NGOs, media, judicial and control bodies in order to ensure the efficiency and transparency of public procurement in Serbia.*

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# 1 INTRODUCTION

## 1.1 The basis for the preparation of the Guide

After the publication on 24/12/2019 (“Official Gazette of RS” no. 91/2019), the Law on Public Procurement (hereinafter referred to as LPP) entered into force on 01/01/2020, and its application became mandatory on 01/07/2020.

The amendments to LPP were made in order to harmonize it with EU directives, specifically with Directive 2014/24/EU in the part on public procurement of the European Parliament and the Council of Europe dated 26/02/2014.

After a year of implementation, conditions were created for analyzing the effects of the new LPP on the welfare of the economy and citizens, and for asking the question whether and to what extent the LPP increased the transparency of public procurement procedures, created a more favorable framework for competition, and thus contributed to economic growth and market development, ensuring at the same time the optimal quality of provided public services. This *Guide* also analyses the state of public procurement in the construction sector from the perspective of architectural, engineering and planning services, including the construction of buildings, adaptations and reconstructions, taking into account the application of the new LPP, with reference to the application of the previous law.

Due to the needs of the market, and the frequent requests of the contracting authorities that the lowest price should not be the key criterion, but the quality of the selected products, works and services, and also due to the fact that almost all concluded contracts on architectural, engineering and planning services in 2020 were awarded as the most economically advantageous tender based on price, this Guide will highlight the need to apply other criteria in addition to the price.

The *Guide* will explain and indicate the importance of using the **MEAT** criteria (**M**ost **E**conomically **A**dvantageous **T**ender) with recommendations for the application of these criteria. This is also supported by the fact that the national regulations of certain European countries only recognize MEAT as the basis for awarding contracts. A special focus will be on comparing the local practice with positive examples in developed European countries, as well as on the latest trends showing that the use of the lowest price criterion in awarding complex public procurement contracts is declining.

*The Guide* with recommendations for the application of the most economically advantageous tender not based on price only in public procurement of construction sector services was prepared based on the analysis of the current situation and lessons from examples of good practices, and contains a proposal for selecting quality criteria and methodology for assessing the compliance therewith.

The priority of the *Guide* is to provide the contracting authorities with clear guidelines for improving the effectiveness of public procurement, improving the business environment, applying global best practices and clear models, as the base for setting up their procurement. The goal is to make the following recommendations:

- recommendation regarding the application of qualitative criteria in public procurement procedures.
- recommendations for adequate implementation of procedures.

## 1.2 Applied Methodology for conducting the analysis and preparing the Guide

The goal of the analysis is to identify in detail the problems in the currently applied procedures, to show examples of good business practice, criteria that are commonly used in public procurement procedures, and to present a detailed analysis of all proposed steps in the procurement procedure.

The conducted analysis of the state of public procurement of construction sector services focused on the procedures and criteria used in public procurement, such as the election and composition of the committee and its code of conduct, the duration of procedures, appeals, the number of received tenders, criteria for qualitative selection of economic operator, use of criteria other than the price for selection of the most economically advantageous tender, the method of selecting the best tender, concluded contracts, the existence of contract annexes, etc.

The sample contains a representative number of procedures in 105 public procurements. The data was collected from the publicly available [Public procurement portal](#) that was developed for the purposes of implementing the new LPP, as well as from the [old Public Procurement Portal](#). The data was searched by the "Common Procurement Vocabulary" with a focus on procurement in the field of architectural, engineering and planning services, and technical design services. Bearing in mind that the majority of ACES members are engineering - consulting companies with many years of experience in public and other procurements, both as the contracting authority and the bidder, a survey was conducted among the membership, and the results are presented in this *Guide*. In accordance with the project task, and for the purposes of creating a Guide with recommendations, ACES successfully organized an online round table with selected member companies. The representatives of the following member companies significantly contributed to the preparation of the Guide by their comments and suggestions at the round table: Nikola Jelkić (*Putinvest*), Nikola Biorac (*S.P.Z. Centroprojekt*), Nebojša Trbojević (*VPC East*), Dejan Ilić (*Beohidro*), Lea Markštajn-Stojanović (*Beo Čista Energija*), Marija Ibrajter, Zorica Pantović, Marijana Vasić (*Energoprojekt*), Branislav Simović (*Una Consult*).



## 2 REGULATORY FRAMEWORK ANALYSIS

The new Law on Public Procurement, mandatory from 1 July 2020, was adopted in order to harmonize with the regulations and guidelines of the European Union in the field of public procurement, including increasing transparency and more efficient public procurement procedures.

*“The compliance of the legislative framework in the field of public procurement in the Republic of Serbia with the European Union *acquis communautaire* is of utmost importance not only because of the need for public procurement procedures, which represent very professional and complex procedures, to be legal and in conformity with the principles of public procurement, i.e. transparent, efficient, but also to enable the maximum market competition in the public procurement procedure, to enable an equal position of all interested economic operators, without discrimination, especially small and medium-sized enterprises. In addition, the goal of the public procurement legislative framework is to implement the most efficient and transparent procedures in order to achieve positive interaction between the state and economic operators, and for the benefit of society as a whole.”<sup>1</sup>*

The LPP was published in the “Official Gazette of the RS”, no. 91/2019 of 24/12/2019, entered into force on 01/01/2020, and its application started from 01/07/2020, except for the provisions that shall apply from the date of accession of the Republic of Serbia to the European Union.

### **The following annexes are an integral part of the LPP:**

- Annex 1 – List of activities in construction;
- Annex 2 – List of military equipment and list of supplies purchased by contracting authorities in the field of defense;
- Annex 3 – Requirements relating to tools and devices for the electronic receipt of tenders, requests to participate, as well as plans and designs related to design contests;
- Annex 4 – Content of the public procurement notices;
- Annex 5 – Contents of procurement documentation relating to electronic auction;
- Annex 6 – Contents of invitation to submit a tender, invitation to participate in the dialogue, invitation to negotiate, or invitation to submit requests ;
- Annex 7 – Social and other special services;
- Annex 8 – List of international conventions in the domain of social and labor law and conventions on the protection of environment;
- Annex 9 – List of legal acts of the European Union.

### **By-laws and other acts adopted in accordance with the LPP:**

#### **Government of the Republic of Serbia:**

- **Decision on determining the List of contracting authorities referred to in Article 3, paragraph 1, item 1) of the Law on Public Procurement** (“Official Gazette of the RS”, no. 85/2020)
- **Decree on Public Procurement in the Field of Defense and Security** (“Official Gazette of the RS”, no. 93/2020)

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1 (taken from the document: Obrazloženje Nacrta LPP 11.9.pdf, <https://rsjp.gov.rs>).

- **Decree on the organization and manner of performing centralized public procurement at the national level** ("Official Gazette of the RS", nos. 116/2020 and 59/2021)

Public Procurement Office:

- **Rulebook on determining the Common Procurement Vocabulary** ("Official Gazette of the RS", no. 93/2020)
- **Rulebook on the Procedure and Conditions for Obtaining a Certificate for a Public Procurement Officer and Keeping the Register of Public Procurement Officers** ("Official Gazette of the RS", nos. 93/2020 and 21/2021)
- **Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal** ("Official Gazette of the RS", no. 93/2020)
- **Rulebook on the Content of Tender Documentation in Public Procurement Procedures** ("Official Gazette of the RS", no. 21/2021)
- **Rulebook on the bid opening procedure** ("Official Gazette of the RS", no. 93/2020)
- **Rulebook on monitoring the implementation of public procurement regulations** ("Official Gazette of the RS", no. 93/2020)
- **Instructions for using the Public Procurement Portal** ("Official Gazette of the RS", no. 93/2020)
- **Instructions on how to send and publish public procurement notices** ("Official Gazette of the RS", no. 93/2020)
- **Guidelines for the preparation of tender documentation and the preparation of e-tenders**, August 2020, published on the Public Procurement Portal, Public Procurement Office
- **Guidelines for the application of the negotiation procedure without publishing a public invitation**, published on the Public Procurement Portal, Public Procurement Office
- **Instructions for publication of public procurements data exempt from the application of the Law on Public Procurement**, Public Procurement Office
- **Standard form Declaration on the fulfillment of criteria for the qualitative selection of economic operator (IJK)**, May 2020, Public Procurement Office

Minister responsible for financial affairs:

- **Rulebook on the content of the Register of Bidders and the documentation submitted with the application for registration of bidders** ("Official Gazette of the RS", nos. 17/2020 and 94/2020)
- **Dinar value of European thresholds** ("Official Gazette of the RS", no. 93/2020)

## 2.1 The most important innovations in the Law on Public Procurement<sup>2</sup>

A brief overview and review of the most important innovations introduced by the adoption of the Public Law is given below:

### **New thresholds for the application of the LPP**

According to the previous Law on Public Procurement, the limit for application was the same for all types of public procurement and amounted to 500,000 rsd. The LPP introduces new thresholds below which the Law does not apply:

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2 For the purposes of this chapter, the following sources were used: „Ključne karakteristike novog zakona o javnim nabavkama“, Ponudjači Srbije - <https://www.ponudjasisrbije.rs>; Stojković Advokati - <https://statt.rs/sr/novine-u-javnim-nabavkama-u-srbiji/>.

- for goods and services, the threshold is RSD 1,000,000;
- for works 3,000,000 rsd;
- for the purposes of diplomatic missions and diplomatic-consular representative bodies, and performance of other activities of the Republic of Serbia abroad, the thresholds are higher - 15,000,000 for goods and services, and 650,000,000.00 for works;
- Social and other special services (such as Supply services of nursing personnel within the health, social and related services, compulsory social insurance, investigation and security services, education and professional training services in the field of education, healthcare and culture, certain international, postal services, etc.), are transferred to a special procurement regime, so the Law does not apply to the procurement of social and other specific services the estimated value of which is less than 15,000,000 rsd when the procurement is carried out by a contracting authority, i.e. less than 20,000,000 rsd when the procurement is carried out by the contracting entity.

However, even when the contracting authority is not obliged to apply the Law on Public Procurement, the mandatory application of the public procurement principles (economy and efficiency, ensuring competition and prohibition of discrimination, transparency, equality of tenderers, etc.) is stipulated, depending on the applicability thereof.

The **category of European thresholds** is introduced, but it is not important for determining the obligation to apply the law, but for certain rules in the procedure.

### **Exemptions**

The LPP introduces new legal grounds for exemption from the Law on Public Procurement, such as contracts subsidized or co-financed by contracting authorities or "joint venture" contracts of contracting entities, and additionally specifies general exemptions to the LPP, as well as special exclusions for contracting authorities and entities.

### **The method of proving the criteria for the qualitative selection of economic operator**

One of the significant innovations of the LPP is that the economic operator in its bid, i.e. application, instead of the evidence submits a *Declaration of fulfillment of the criteria for qualitative selection of economic operator*, which is a formal statement of the economic operator that it meets all the required criteria, and that there are no grounds for exclusion from the public procurement procedure.

While the previous law provided for the possibility of the Contracting Authority to stipulate in the tender documentation that the fulfillment of all (except the license to perform the activity, if prescribed) or certain conditions shall be evidenced by submitting a declaration, under the new law, the economic operator in its bid, i.e. public procurement application, fills in an e-Declaration that serves as preliminary evidence instead of extracts and certificates issued by competent authorities.

Proving, if necessary, is carried out in the stage of expert evaluation of tenders, by requesting and submitting evidence through the Portal (unless it is evidence that, by its nature, cannot be submitted through the Portal). For public procurement the estimated value of which is higher than 5,000,000 rsd, before making a decision in the public procurement procedure, the evidence must be requested from the bidder who submitted the most economically advantageous tender.

This significantly reduced the costs and time that economic operators needed to prepare the tenders.

### **The most economically advantageous tender - the umbrella criterion for awarding contracts in the public procurement procedure**

The previous Law on Public Procurement defined two basic criteria for contract awarding, namely the lowest offered price or the most economically advantageous tender, where the most economically advantageous tender criterion is based on various criteria elements (offered price, delivery time, cost efficiency, quality, environmental protection, etc.) that the contracting authority determines depending on the subject of the public procurement.

The main principle, i.e. the “umbrella criterion” for awarding contracts in the LPP is the most economically advantageous tender, where the most economically advantageous tender is determined by the contracting authority based on one of three methods, i.e. criteria:

- price, or
- costs by applying a cost-effectiveness approach, such as life-cycle costing, or
- the price-quality ratio, i.e. cost-quality ratio.

### **New Public Procurement Portal**

One of the most significant innovations is certainly the use and application of the new Public Procurement Portal.

The following actions are carried out through the Portal:

- publishing of public procurement plans;
- preparation and publishing public procurement notices on standard forms;
- making available procurement documents, and delivering decisions in public procurement procedures;
- free of charge, unrestricted and direct access, to search, review and download published public procurement notices and procurement documents;
- preparation of procedures and tender documents;
- electronic submission of tenders and applications by economic operators;
- electronic opening of tenders and applications;
- communication and data exchange between contracting authorities and economic operators;
- communication and data exchange between the Public Procurement Office and contracting authorities;
- keeping records of registered subjects;
- the possibility of filing request for the protection of rights in electronic form;
- publishing amendments to the public procurement contract during its term, and the reasons for contract termination.

In this way, the complete public procurement procedure is now carried out through the Public Procurement Portal, notifications, advertisements, tender documents, and forms are standardized, the searching is easier, and the transparency of the procedures is increased.

### **Innovation Partnership**

A new public procurement procedure has been introduced - innovation partnership, which the contracting authorities can implement if they have a need for innovative goods, services or works, which cannot be realized by procuring products, services or works that are available on the market.

The only criterion for awarding the contract in this procedure is price and quality ratio.

### **Equalization of the public procurement procedure with regard to the procurement value**

The Law on Public Procurement no longer foresees the procedure for low value public procurement, meaning that the public procurement procedures are applied regardless of the procurement value, with longer deadlines for submission of tenders and applications for participation implemented in high value procurements.

### **Electronic Catalogue**

The contracting authority is given the opportunity to request or accept the tenders to be submitted in the form of electronic catalogues or that tenders include electronic catalogues. The electronic catalogue is compiled by the candidate or bidder, in accordance with the technical specifications, and in the form determined by the contracting authority.

The electronic catalogue must comply with the requirements applicable to electronic communication tools, as well as with any additional requirements determined by the contracting party, in accordance with the provisions of the law on electronic communication.

### **Security Instruments**

The LPP precisely identifies the security instruments that contracting authorities can request from economic operators in the tender documents. The contracting authority may require an economic operator to supply the security instrument:

- for the seriousness of the offer - not exceeding 3% of the value of the tender without value added tax;
- for the fulfillment of contractual obligations - not exceeding 10% of the value of the public procurement contract without value added tax;
- for remedying defects during the warranty period - not exceeding 10% of the value of the public procurement contract without value added tax;
- for warranting the rectification of damages which might occur in connection with the performance of a specific activity;
- for the refund of the advance payment, in the amount of the advance payment.

### **Legal Protection**

The time limits were additionally specified for:

- the requests for protection of rights, which disputes the actions of the contracting authority in connection with the determination of the type of procedure, the content of the contract notice, and tender documents, and
- requests for the protection of rights, which dispute the actions of the contracting authority undertaken after the time limit for submission of tenders or applications, and which are submitted after the decision of the contracting authority was published on the Public Procurement Portal, i.e. after the day of receipt of the decision in cases when the Law does not require publication on the Public Procurement Portal.

The bidder who was awarded the public procurement contract has the opportunity to comment on the statements contained in the submitted request for the protection of rights. The submitted request for the protection of rights has a mandatory suspensive effect in the further course

of the procedure. It is prescribed that when submitting the request for protection of rights the applicant shall provide a proof of payment of the fee, otherwise the request will be rejected by a decision without inviting the applicant to supplement the request.

The deadline in which the Republic Commission for the Protection of Rights in Public Procurement Procedures is obliged to make a decision has been extended to 30 days from the date of receiving the complete documentation needed for establishing the facts and making decision, compared to the 20 days period prescribed by the previous law. The Republic Commission now has the authority to cancel the public procurement contract based on the reasons established by law.

The deadline for initiating an administrative dispute against the decision of the Republic Commission was reduced from 30 days from the day of delivery of the decision to 15 days from the day of delivery of the decision to the applicant.

### **Modifications of the public procurement contract during its term and termination**

Compared to the previous Law, the LPP specifies the conditions and restrictions for the amendments to the public procurement contract during its term, and the reasons for terminating the contract.

The contracting authority cannot make substantial modification of the public procurement contract, i.e. changes that render the contract materially different in nature from the one initially concluded. If such circumstances arise, which would result in substantial changes to the contract, the contracting authorities are obliged to implement a new public procurement procedure, i.e. to terminate the concluded contract.

The conditions and restrictions for modifications of the contract on various grounds, which can be made without conducting the public procurement procedure, are defined:

- based on provisions of the contract;
- in terms of additional supplies, services or works;
- due to unforeseen circumstances;
- change of a contracting party;
- increase in procurement volume;
- subcontractor replacement.

In the case of changes to the contract in terms of additional supplies, services or works and due to unforeseen circumstances, the contracting authority shall send a contract modification notice for publication on the Public Procurement Portal.

Provisions on modifications of the public procurement contract shall apply accordingly to modifications of the framework agreement.

In addition to the already stated reason for terminating the public procurement contract (substantial modifications of the contract), it is stipulated that the contracting authority shall terminate the contract in the following cases:

- when the economic operator with whom the contract has been concluded should have been excluded from the procedure due to existence of the grounds for exclusion of economic operator;
- when the contract should not have been awarded with a view of a serious infringement of the obligations under the Treaty on the Functioning of the European Union and Directives

2014/24/EU and 2014/25/EU that has been established by the Court of Justice of the European Union, pursuant to Article 258 of the Treaty on the Functioning of the European Union.

## Supervision

The Directorate for Public Procurement continues to operate as the Public Procurement Office. Public Procurement Office shall supervise the work of the contracting authorities in order to prevent, detect and eliminate irregularities that may arise or have arisen in the application of the LPP. The Ministry of Finance shall monitor the execution of public procurement contracts.

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The following chapters give an overview of the LPP and by-laws in the parts that are relevant for this analysis, i.e. for public procurement of construction sector services - architectural, engineering and planning services (drafting design / technical documentation during the construction of buildings, adaptation and reconstruction), the application of the most economically advantageous tender that is not based on price only, and recommendations for improving the legal framework and the implementation of procedures.

The topic of the analysis are public procurement procedures and techniques and legal deadlines, commission for public procurement, content of tender documents, contract awarding criteria, bid submission and opening, contracting.

The order of the topics follows the order of the chapters of the Law on Public Procurement.

The following abbreviations are used in the text:

**MEAT** – the most economically advantageous tender;

**Portal** - Public Procurement Portal.

## 2.2 Basic provisions

### 2.2.1 Services that are the subject of this analysis

Construction sector services - architectural, engineering and planning services, according to the LPP (Concepts and Definitions - Article 2, points 4), 6) and 17)) can be contracted as a public works contract, or a public service contract, or as a design contest:

- 4) **public works contract** means public procurement contract having as its object:
  - (1) execution of works, or both the design and execution of works related to one or more activities referred to in Annex 1 of the Law; (Annex is the list of construction activities that include new construction, renovation and repairs: construction site preparation, construction of complete buildings or their parts; civil engineering; installation work in construction, final construction work, rental of construction equipment or demolition equipment with operators);
  - (2) execution of works or design and execution of works, on the construction of the building;
  - (3) realization of the construction of the building in accordance with the requirements determined by the contracting authority, exercising the decisive influence on the type or design of the work;

- 6) **public service contract** means public procurement contract having as its object the provision of services other than those related to point 4) of this article;
- 17) **design contest** is a procedure that enables the contracting authority to acquire a plan or design, mainly in the fields of urban or spatial planning, architecture, engineering or informatics, selected by a jury in a competition, with or without the award of prizes;

The subject of this analysis is public procurement, i.e. the awarding of contracts for the public procurement of services in accordance with point 6) of this article of the law, i.e. when the subject of public procurement is only services, because in public procurements for awarding contracts that also include design and execution of works, the criteria for the selection of the most economically advantageous tender must be different and primarily focused on the execution of works.

The LPP classifies the design contest under the special procurement regime (as elaborated below) and, although it can be a part of the procedure in which the services contract is concluded, the basic criterion for the selection of bidders is specific and conditioned by contest terms and requirements and the jury's assessment.

## 2.2.2 Contracting Authority according to the LPP

The **Contracting Authority/Entity**, (according to *Article 2, point 1 of the LPP*) is a common term for contracting authority and contracting entity.

**Contracting Authorities** (according to *Article 3 of the LPP*) are:

1. The Republic of Serbia, i.e. republic bodies; The Government of the RS established the list of contracting authorities in the *Decision on Establishing the List of Contracting Authorities from Article 3, paragraph 1, point 1) of the Law on Public Procurement*, ("Official Gazette of the RS", no. 85/2020);
2. authorities of the autonomous province;
3. bodies of the local self-government unit;
4. legal entities established to meet needs in the general interest, not having industrial or commercial character<sup>3</sup>, provided that any of the following conditions are met:
  - (1) they are financed by more than 50% by the contracting authority's funds;
  - (2) they are subject to management supervision by a contracting authority;
  - (3) more than a half of members of their supervisory or management bodies are appointed by the contracting authority;
5. groups of contracting authorities/entities from points 1) – 4).

**Contracting Entities** (according to *Article 4 of the LPP*) are:

1. contracting authorities which perform utility activity;
2. companies that perform a utility activity, over which a contracting authority may exercise a dominant influence, directly or indirectly, by virtue of ownership, financial interest, or governing rules;
3. other entities that perform utility activity on the basis of exclusive or special rights.

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3 The needs deemed to have an industrial or commercial character are the needs met by a legal entity that operates in normal market conditions, aims to make a profit, and bears the losses resulting from its activity (Article 3, paragraph 2 of the LPP).



The list of all registered contracting authorities and entities is available on the Public Procurement Portal.

**Utility activities** (according to *Article 2, point 24 of the LPP*), are activities in the areas of water, energy, transport and postal services defined in articles 165-171 of the LPP.

The following table gives an overview of descriptions of the core activities from Articles 165 to 171 of the LPP with designated areas identified as suitable for public procurement procedures that are the subject of this analysis:

AREA	ACTIVITY	LPP Article
Energy:		
- <b>gas and heat</b>	1) providing or managing the operation of fixed networks intended to provide service to the public in connection with the production, transport or distribution of gas or heat; 2) supply of gas or heat to networks referred to in paragraph 1, point 1) of this Article	165.
- <b>electricity</b>	1) <u>providing</u> or managing the operation of <u>fixed networks</u> intended to provide service to the public in connection with the production, transport or distribution of electricity; 2) supply of electricity to networks referred to in paragraph 1, point 1) of this Article	166.
- <b>Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels</b>	Exploration of the geographical area for: 1) extracting oil or gas; 2) <u>exploring</u> or extracting coal or other solid fuels	171.
Water management	1) <u>providing</u> or managing the operation of <u>fixed networks</u> intended to provide service to the public in connection with the production, transport or distribution of drinking water; 2) supply of drinking water to networks to networks referred to in paragraph 1, point 1) of this Article	167.
Traffic:		
- <b>transport services</b>	<u>providing</u> and management of networks intended to provide services to the public in the field of transport by railway, automated systems, tram, trolleybus, bus or cable car	168.
- <b>ports and airports</b>	the exploitation of a geographical area in order to provide airports, river ports or other terminal facilities to carriers in air or river traffic	169.
Postal services		170.

### 2.2.3 The meaning of other terms in the LPP relevant for this analysis

**Economic operator** (according to *Article 2, point 7*) is any person or group of persons offering supplies, services or works on the market.

**Tenderer** (according to *Article 2, point 8*) is an economic operator that submitted a tender.

**Candidate** (according to *Article 2, point 9*) is an economic operator that submitted an application in a restrictive procedure, competitive procedure with negotiations, negotiated procedure, competitive dialogue, or innovation partnership;

**Innovation** (according to *Article 2, point 19*) is implementation of a new or significantly improved product, service or process, including but not limited to production and construction processes, a new marketing method, or a new organizational method in business practices, workplace organization or external relations, inter alia, with the purpose of helping to solve societal challenges or as a support to smart, sustainable and inclusive growth.

### 2.2.4 Thresholds

In the case of procurement of services and implementation of design contests (Article 28. of the LPP), which include construction sector services that are the subject of this analysis, the contracting authorities/entities are required to apply the provisions of the LPP for procurements the estimated value of which is:

≥ 1,000,000 rsd.

≥ 15,000,000 rsd., when procurement is carried out for the purposes of diplomatic missions and diplomatic-consular representative bodies and performance of other activities of the Republic of Serbia abroad.

For the procurement of services, i.e. the implementation of a design contest, the estimated values of which are lower than stated above, the principles of the Law on Public Procurement shall be applied in the manner appropriate to the circumstances of specific procurement.

#### European thresholds

The same Article 28 of the LPP introduces the category of European thresholds, which is not important for determining the obligation to apply the law, but for certain rules in the procedure.

Until the accession of the Republic of Serbia to the European Union, the ministry responsible for financial affairs publishes the corresponding thresholds in dinars - in accordance with the thresholds published by the European Commission in the Official Journal of the European Union.

From the date of accession of the Republic of Serbia to the European Union, the corresponding values of the European thresholds in dinars will be determined by the European Commission and published in the Official Journal of the European Union.

The following table shows the European thresholds for services according to the document *Dinar value of European thresholds* ("Official Gazette of the RS" no. 93/2020) and indicative amounts are in EUR:

Services / design contest	RSD	EUR (estimate)
<b>Contracting authorities:</b>		
- republic bodies	16,336,267	139,000
- bodies of autonomous provinces, local self-government units and legal entities	25,150,799	214,000
<b>Contracting entities:</b>	50,301,599	428,000

## 2.2.5 Division of procurement into lots

The subject of public procurement can be divided into lots based on objective criteria – according to type, quantity, properties, purpose, place or time of execution, etc. (*Article 36 of the LPP*).

If the contracting authority/entity decides to divide the procurement into lots, it shall determine the subject and scope of each lot, taking into account the possibility of participation of small and medium-sized enterprises in the public procurement procedure when it is justified.

In particular, if the estimated value of the public procurement is equal to or greater than the European thresholds, when determining the subject-matter of procurement, the contracting authority/entity should consider the appropriateness of the dividing of the subject-matter of public procurement into several lots. If the contracting authority/entity concludes that it is not appropriate to divide the subject of public procurement into lots, in the report on the public procurement procedure, it shall indicate in the report on the public procurement procedure the main reasons for such conclusion.

Contracting authorities/entities shall indicate in the contract notice, invitation to submit application or invitation to submit tenders, or to negotiate in the case of a qualification system, whether tenders may be submitted for one, several, or for all lots.

When it is allowed to submit tenders for several or all lots, the contracting authority/entity can limit the number of lots that may be awarded to one tenderer, provided the maximum number of lots per tenderer is indicated in the contract notice, invitation to submit application, or invitation to submit tenders, or to negotiate in the case of qualification system. At the same time, contracting authority/entity shall indicate in the procurement documents the objective and non-discriminatory criteria or rules it intends to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number the contracting authority/entity has indicated.

Division into lots can be applied in all public procurement procedures.

### Comment

*The division of public procurement subjects into lots is used in the procurement of construction sector services - architectural, engineering and planning services (drafting design / technical documentation during the construction of buildings, adaptation and reconstruction). For example, in the construction of roads and civil engineering structures, sections of the route can be determined, which will be awarded in lots. Moreover, the stages of drafting the technical documentation (IDR, PGD, PZI) can be divided into lots.*

## 2.2.6 Reserved public procurements

Contracting authority/entity (*Article 37 of the LPP*) may reserve the right to participate in the public procurement procedure for:

1. economic operators whose main goal is the professional rehabilitation and employment of disabled persons, which are organized in accordance with the law governing the professional rehabilitation and employment of disabled persons;
2. economic operators whose main aim is the social and professional integration of disadvantaged persons that are organized in accordance with the law governing social entrepreneurship. Disadvantaged persons are persons with poor employment prospects, persons with working capacity who exercise rights or services pursuant to regulations on social protection, and other persons with poor employment prospects from the particularly vulnerable categories.

The contracting authority/entity may provide that the public procurement contract is to be executed within the sheltered employment program. On the other hand, whether the contracting authority/entity reserves the right to participate for economic operators that meet the above-mentioned conditions, or the public procurement is carried out within the sheltered employment program, the condition is that at least 50% of the employees in these economic operators, or in the sheltered employment program, are disabled or disadvantaged persons.

### Comment

*During this analysis, no data was found on the above-mentioned economic operators that also meet the professional criteria for rendering construction sector services - architectural, engineering and planning services, so that reserved public procurement could be applied.*

*However, through the public procurement of services that are the subject of this analysis, it is possible to provide support to disadvantaged people or groups by including the responsible development criterion in MEAT selection criteria, which would give a certain advantage to economic operators, i.e. candidates who employ people with disabled or other disadvantaged persons, or who otherwise provide support to these groups.*

*On the other hand, the applicable regulations for rendering services that are the subject of this analysis, i.e. for the design of facilities in terms of the Law on Planning and Construction, regulate the obligation to design in accordance with accessibility standards, but contracting authorities/entities may consider that, whenever possible, the technical specifications or terms of reference provide for conditions that are above the standard level.*

## 2.3 Public procurement procedures

### 2.3.1 Types of procedures and the awarding by contracting authority/entity

The contracting authority/entity can initiate the public procurement procedure if the procurement is foreseen in the annual public procurement plan. Exceptionally, when it is not possible to plan in advance the public procurement, or due to urgency, the contracting authority/entity can initiate the public procurement procedure even if it was not foreseen in the public procurement plan (*Article 88 of the LPP*).

The following table, in accordance with Articles 52-63 of the LPP, gives a summary overview of the types of procedures, with data and comments regarding:

- the type of contracting authority/entity that can carry out the procedure
- conditions for initiating the procedure, i.e. cases in which the procedure can be implemented
- stages of the procedure
- the specificities of the procedure
- application of procedure for architectural, engineering and planning services.

Marks used in the table:

- ✓ - as a rule
- o - only if the conditions prescribed by law are met
- × - may not implement

No.	Public procurement procedure	LPP Article	Contracting authority	Contracting entity	Conditions for initiating the procedure	Stages of the procedure	Specific details	Comment
1	Open procedure	52.	✓	✓	contracting authorities/entities carry out this procedure without special conditions	one stage - submission of complete tenders - all interested economic operators may submit tenders		The procedure can always be applied
2	Restrictive procedure	53 and 54	✓	✓	contracting authorities/entities carry out this procedure without special conditions	1. phase - submission of applications - all interested economic operators can submit an application; the contracting authority/entity evaluates the applications (and prepares a report) and informs the candidates about the qualification; The contracting authority/entity (upon publishing objective and non-discriminatory criteria) can limit the number of candidates with recognized qualifications that will be invited to submit tenders, and in such case, it must invite at least 5 candidates. If the number of qualified candidates is less, the procedure can be continued. 2. phase - the contracting authority/entity sends an invitation to the candidates that were not excluded from the procedure to submit tenders.		The procedure is applied when the subject of the procurement is a more complex project, and when it is necessary to examine the credibility and ability of tenderers to fulfill the public procurement contract.
3	Competitive procedure with negotiation	55 and 56	o	X	the contracting authority can carry out this procedure for the public procurement of supplies, services or works in the following cases: 1) the needs of the contracting authority cannot be met without adapting readily available solutions; 2) <b>the contract includes design</b> or innovative solutions; 3) contract may not be awarded without prior negotiations due to specific circumstances related to the nature, complexity, legal or financial structure of the subject-matter of public procurement, or because of the risks related thereto; 4) contracting authority cannot determine with sufficient precision the technical specifications of the procurement subject-matter; 5) in the previously conducted open or restricted procedure, only unacceptable tenders are received.	Part 1 - submission of applications; all interested economic operators may submit an application in accordance with the public invitation, except in the case from point 5) of the conditions for initiating the procedure, when the contracting authority is not obliged to publish a public invitation if it invites to the procedure only the bidders who submitted bids in the previous procedure and met the criteria for the qualitative selection of economic operator, and if the initial conditions of public procurement have not been significantly changed; the contracting authority evaluates the applications (and prepares a report) and informs the candidates about the qualification; The contracting authority (upon publishing objective and non-discriminatory criteria) can limit the number of candidates with recognized qualifications that will be invited to submit tenders, and in such case, it must invite at least 3 candidates. If the number of qualified candidates is less, the procedure can be continued. Part 2 - candidates whose qualifications are recognized submit initial tenders; negotiations are conducted in several stages; it is possible to reduce the number of candidates by stages in order to reduce the number of tenders; upon notification of the end of negotiations, candidates submit final offers.	Contracting authority shall state in the documents which elements of the description of needs and required characteristics of goods, services or works are minimum requirements that all tenders must meet and cannot change during the procedure, i.e. cannot be negotiated. Negotiations are initiated with qualified tenderers to improve the content of their tenders;	In the negotiation phase, the final elements of the tender are determined in the form of price and other negotiated elements
4	Competitive dialogue	57 and 58	o	✓	the contracting authority can carry out this procedure under the same conditions as for procedure no. 3  contracting entities carry out this procedure without special conditions	Part 1 - submission of applications; all interested economic operators may submit an application except in the case from point 5) of the conditions for initiating the procedure, when the contracting authority is not obliged to publish a public invitation if it invites to the procedure only the bidders who submitted bids in the previous procedure and met the criteria for the qualitative selection of economic operator; The contracting authority/entity evaluates the applications (and prepares a report) and informs the candidates about the qualification;	The contracting authority/entity can provide for rewards or payments for the participants in the dialogue.	The procedure is suitable for application when the subject of the procurement is a project for which the contracting authority/entity needs to determine which are the possible solutions that can satisfy its needs, through dialogue with the candidates, i.e. the solutions they offer.

No.	Public procurement procedure	LPP Article	Contracting authority	Contracting entity	Conditions for initiating the procedure	Stages of the procedure	Specific details	Comment
						<p>The contracting authority/entity evaluates the applications (and prepares a report) and informs the candidates about the qualification; The contracting authority/entity (upon publishing objective and non-discriminatory criteria) can limit the number of candidates with recognized qualifications that will be invited to submit tenders, and in such case, it must invite at least 3 candidates. If the number of qualified candidates is less, the procedure can be continued.</p> <p>Part 2 - candidates whose qualifications are recognized are invited to a dialogue; dialogue can be conducted in several stages; it is possible to reduce the number of candidates by stages in order to reduce the number of solutions, provided that this possibility is specified in the procurement documents; upon notification of the end of the dialogue, final offers are submitted;</p> <p>After the evaluation and selection, it is possible to negotiate with the selected tenderer regarding the financial or other conditions of the contract, provided that this does not result in material changes to the basic elements of the tender or the subject of procurement, including the needs and requirements determined in the public invitation or descriptive documentation, or cause market competition distortion and discrimination.</p>	<p>The contracting authority/entity conducts a dialogue with the aim of finding and determining one or more solutions that best meet the needs of the contracting authority/entity; The only criterion for awarding the contract is price and quality ratio.</p>	
5	Negotiating procedure with publication of public invitation	63	X	✓	contracting entities carry out this procedure without special conditions	<p>1. part - submission of applications - all interested economic operators submit an application; the contracting entity evaluates the applications (and prepares a report) and informs the candidates about the qualification; The contracting entity (upon publishing objective and non-discriminatory criteria) can limit the number of candidates with recognized qualifications that will be invited to submit tenders, and in such case, it must invite at least 3 candidates. If the number of qualified candidates is less, the procedure can be continued.</p> <p>2. part - candidates whose qualifications are recognized submit initial tenders; upon notification of the end of negotiations, final tenders are submitted.</p>	<p>Contracting entity shall state in the documents which elements of the description of needs and required characteristics of goods, services or works are minimum requirements that all tenders must meet and cannot change during the procedure. Negotiations are initiated with qualified tenderers to improve the content of their tenders;</p>	Same as procedure under 3
6	Innovation Partnership	59 and 60	o	o	The innovation partnership aims at the development of innovative supplies, services or works and their subsequent purchase, provided that they correspond to the performance level and maximum costs agreed between the contracting authority/entity and participants in the innovation partnership.	<p>Part 1 - submission of applications - all interested economic operators can submit an application; The contracting authority/entity evaluates the applications (and prepares a report) and informs the candidates about the qualification; The contracting authority/entity (upon publishing objective and non-discriminatory criteria) can limit the number of candidates with recognized qualifications that will be invited to submit tenders, and in such case, it must invite at least 3 candidates. If the number of qualified candidates is less, the procedure can be continued.</p>	<p>The contracting authority/entity shall specify in the tender documents a description of the needs for innovative goods, services or works and list the elements of the description that make up the minimum requirements that all tenders must meet, as well as determine the way in which intellectual property rights will be regulated.</p>	

No.	Public procure- ment procedure	LPP Article	Con- tracting authority	Con- tracting entity	Conditions for initiating the procedure	Stages of the procedure	Specific details	Comment
					It is carried out if the contracting authority/entity has a need for innovative goods, services or works, which cannot be satisfied by the procurement of goods, services or works that are available on the market.	Part 2 - it is carried out in several consecutive stages respecting the sequence of actions in the process of research and innovation, which may include the production of goods, the provision of services, or the execution of works; the contracting authority/entity can conduct the procedure in several successive stages in order to reduce the number of tenders to be negotiated; upon notification of the end of negotiations, tenderers submit final tenders.	<p>The temporary goals that the partners should achieve in each phase and the payment of compensation in the appropriate amounts are determined. It can be an innovation partnership with multiple partners, conducting separate research and development activities.</p> <p>The procuring authority/entity enters into negotiations with qualified tenderers to improve the content of their tenders;</p> <p><b>The only criterion for awarding the contract is price and quality ratio.</b></p>	
7	Negotiating procedure without publishing a public invitation	61 and 62	0	0	<p>Both contracting authority and contracting entity can carry out this procedure:</p> <p>1) if only a certain economic operator can deliver goods, provide services or perform works, for any of the following reasons:</p> <p>(1) the aim of procurement is the creation or acquisition of a unique work of art or of an artistic performance;</p> <p>(2) absence of competition for technical reasons, or</p> <p>(3) for the protection of exclusive rights, including intellectual property rights;</p> <p>2) to the extent as is strictly necessary where, for reasons of extreme urgency brought about by events that the contracting authority/entity could not foresee, it is not possible to act within the time limits set forth for open procedures, or restricted procedure, or for competitive procedure with negotiations, or for negotiated procedure with publication, provided that the circumstances invoked by the contracting authority/entity to justify extreme urgency are not in any event caused by the contracting authority/entity's actions.</p>			
					<p>II The contracting authority/entity can carry out this procedure for the procurement of the following services:</p> <p>1) after a design contest conducted in accordance with the provisions of the law, when, in accordance with the rules stipulated in the design contest, the contract is awarded to the winning candidate or one of the winning candidates in the design contest, in which case all winning candidates are invited to negotiations;</p>	negotiations with one or, if possible, several economic operators to whom the invitation was sent	<p>The contracting authority/entity is obliged to publish on the Public Procurement Portal a notice on the implementation of this procedure, with the rationale for the application of this procedure.</p>	<p>This procedure within the scope of the services that are the subject of this analysis is applicable in particular after having an architectural, urban planning - architectural competition, or a competition for the interior design of buildings.</p>



					<p>2) for new services that consist of repetition of similar services that are assigned to the economic operator with which the contracting authority/entity concluded the main contract, if all the following conditions are met:</p> <ul style="list-style-type: none"> <li>(1) such services are in accordance with the basic project for which the main contract was concluded;</li> <li>(2) the main contract was concluded after the public procurement procedure in which the public invitation was announced;</li> <li>(3) the scope of possible services that will be repeated, and the conditions under which they are assigned were specified in the procurement documentation for the main contract;</li> <li>(4) the possibility of applying this procedure was foreseen in the public invitation for the main contract;</li> <li>(5) when determining the estimated procurement value for the main contract, the total estimated value of new services that will be repeated is taken into account, and</li> <li>(6) in case the procedure is carried out by the contracting authority, it is carried out within three years from the conclusion of the main contract.</li> </ul> <p>III The contracting authority may conduct a negotiation procedure without publishing a contract notice if in the open procedure or restrictive procedure it did not receive any tenders, or all tenders were inadequate*, i.e. no application or no adequate application were received**, provided that the initial conditions of the public procurement have not been significantly changed.</p> <p>IV The contracting entity may conduct a negotiation procedure without publishing a contract notice if no tender, or no adequate tender*, or no application, or no adequate application** was submitted in the procedure in which the contract notice was previously published, provided that the initial conditions of the public procurement are not significantly changed.</p>	<p>In the cases referred to in points 1) and 2) of group I, the contracting authority/entity is required to submit to the Public Procurement Office, together with the notice on implementation of this procedure, an explanation and all documentation related to the reasons justifying the implementation thereof. In this regard, the Public Procurement Office is required to examine the explanation and documentation, within 10 days from the day of receipt thereof, and submit an opinion to the contracting authority/entity on the validity of the application of this type of procedure.</p> <p>After publishing the notice on the Public Procurement Portal, the contracting authority/entity is required to send a written invitation to negotiate to one or, if possible, to a larger number of economic operators.</p> <p>The contracting authority/entity is required to submit tender documents with the invitation, in which, in addition to other elements prescribed by law, it shall also state which elements of the description of needs and required characteristics of goods, services or works represent the minimum requirements that all tenders must fulfill and which cannot be changed during the procedure, as well as the elements of the contract to be negotiated and the method of negotiation. Minimum requirements cannot be negotiated.</p>	<p>For example, in the event that the contracting authority/entity decides that the award-winning architectural solution should be further developed by the author of the award-winning work, during the technical documentation stages, this should be envisaged in tender documents, and in that case the first-prize winner (or all award-winning candidates) will be invited to negotiations aimed at awarding a contract for the production of technical documentation.</p>
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*\*An inadequate tender is a tender that does not correspond to the subject of the public procurement, i.e. to the required technical specifications, and clearly cannot meet the needs and requirements of the client specified in the tender documents without significant changes.*

*\*\*An inadequate application is an application submitted by a candidate who does not meet the criteria for the qualitative selection of economic operator.*

### 2.3.2 Minimum time limits for submission of tenders / applications

Time limits for submitting applications and tenders are determined so as to determine the exact date and time by which said applications or tenders can be submitted in a timely manner.

When determining the time limits for submission of applications and tenders, the contracting authorities/entities are required to set appropriate deadlines, especially taking into account the complexity of the procurement subject, and the time required for the preparation of applications and tenders, while respecting the minimum time limits.

The following tables show mandatory minimum time limits for public procurement of services according to the procedures pursuant to Articles 52 to 63 of the LPP. The minimum time limits are shown as the number of days from the sending of the notice for publication to the day of submission of tenders or applications. The number of days shall be counted from the day of sending the notice to publication as a common day in case when it is also published in the European Union journals (where the day of publication in the European Union journals and in the national gazettes does not have to be the same).

The minimum time limits are defined depending on the estimated value of the public procurement - whether it is higher or lower than a certain value, i.e. the European threshold. The possibilities for reducing, i.e. extending the minimum time limit, and by how much, are also prescribed.

*Minimum time limits for submitting **tenders** for public procurement of services in **an open procedure**:*

estimated value of public procurement of services  ET=European Threshold	minimum time limit for submission of tenders - contract notice	reduced time limit			extended time limit
		tenders can be submitted by electronic means	justified urgency, for which the contracting authority/entity has valid evidence	prior information notice / periodic indicative notice	In the case referred to in Article 45, paragraph 6 of the LPP except for justified urgency
	[number of days from the date of sending the call for tenders]				
≥ ET	35 days	30 days	15 days	15 days	40 days
< ET	25 days	20 days	15 days	15 days	30 days
< RSD 10,000,000	10 days	10 days (no reduction)	10 days (no reduction)	10 days (no reduction)	15 days

a) Article 107 of the LPP - The contracting authority has the right to use the reduced time limit if the following conditions are met:

1. prior information notice includes all the information required for the contract notice referred to in Annex 4, part A II of the Law in so far as that information was available at the time of publication of the prior information notice, and
2. the prior information notice was sent for publication at least 35 days and at most 12 months before the date on which the contract notice was sent for publication.

b) Article 108 of the LPP - The contracting entity has the right to use the reduced time limit if the following conditions are met:

1. periodic indicative notice, which is not used as a contract notice, in addition to the information referred to in Annex 4, Part B II, Point 1, includes the information referred to in Annex 4, Part B, Point 2 of the Law in so far as that information was available at the time of publication of the periodic indicative notice,

2. periodic indicative notice was sent for publication at least 35 days and at most 12 months before the date on which the contract notice was sent for publication.

c) if it is not possible to provide the electronic download of tender documents for the reasons prescribed in Article 45,

d) the contracting authority/entity may, simultaneously with sending for publication a contract notice, invite economic operators that are, according to its knowledge, capable of performing the procurement.

**Minimum time limits for submitting applications for public procurement in the restrictive procedure (1st stage of the procedure):**

estimated value of public procurement of services ET=European Threshold	minimum time limit for submitting applications contract notice / periodical indicative notice	reduced time limit justified urgency, for which the contracting authority/entity has valid evidence
	[number of days from the date of sending the call for tenders]	
≥ ET	30 days	15 days
< ET	20 days	15 days

**Minimum time limits for submitting tenders for public procurement in the restrictive procedure (2nd stage of the procedure):**

#### Contracting authorities

estimated value of public procurement of services ET=European Threshold	minimum Time limit for submitting tenders	reduced time limit			extended time limit
		tenders can be submitted by electronic means	justified urgency, for which the contracting authority/entity has valid evidence	prior information notice	In the case referred to in Article 45, paragraph 6 of the LPP except for justified urgency
	[number of days from the date of sending the call for tenders]				
≥ ET	30 days	25 days	10 days	10 days	35 days
< ET	15 days	10 days	10 days	10 days	20 days

**Contracting entities** can set a deadline for submitting tenders with the consent of all candidates so that all candidates in the procedure have the same time limit for preparing and submitting their tenders. If there is no agreement on the time limit for submitting tenders, the minimum time limit for submitting tenders is at least 10 days from the day of sending the invitation to submit tenders.

**Minimum time limits for submitting applications for public procurement in the competitive procedure with negotiations (1st stage of the procedure):**

estimated value of public procurement of services ET=European Threshold	minimum time limit for submitting applications public invitation (contract notice)	reduced time limit justified urgency, for which the contracting authority/entity has valid evidence
	[number of days from the date of sending the call for tenders]	
≥ ET	30 days	15 days
< ET	20 days	15 days

**Minimum time limits for submitting initial tenders for public procurement in the competitive procedure with negotiations (2nd stage of the procedure):**

estimated value of public procurement of services  ET=European Threshold	minimum time limit for submitting initial tenders	reduced time limit			extended time limit
		tenders can be submitted by electronic means	justified urgency, for which the contracting authority/entity has valid evidence	prior information notice	In the case referred to in Article 45, paragraph 6 of the LPP except for justified urgency
	[number of days from the date of sending the request for tenders]				
≥ ET	30 days	25 days	10 days	10 days	35 days
< ET	20 days	15 days	10 days	10 days	25 days

At the end of the negotiations, the contracting authority shall notify the tenderers and set a common deadline for the submission of final tenders.

**Minimum time limits for submitting applications for public procurement in the competitive dialogue and innovation partnership (1st stage of the procedure):**

estimated value of public procurement of services ET=European Threshold	minimum time limit for submitting applications
	[number of days from the date of sending the invitation for tenders]
≥ EP	30 days
< ET	20 days

There are no minimum deadlines stipulated for submitting applications, i.e. tenders for public procurement in the **negotiation process without publishing the contract notice**.

**Minimum time limits for submitting applications for public procurement in the negotiation process with publishing the contract notice (1st stage of the procedure):**

estimated value of public procurement of services ET=European Threshold	minimum time limit for submitting applications contract notice / periodical indicative notice has valid	reduced time limits
		justified urgency, for which the contracting authority/entity has evidence
	[number of days from the date of sending the call for tenders]	
≥ ET	30 days	15 days
< ET	20 days	15 days

Contracting entities can set a deadline for submitting initial tenders with the consent of all candidates so that all candidates in the procedure have the same time limit for preparing and submitting their tenders. If there is no agreement on the time limit for submitting tenders, the minimum time limit for submitting initial tenders is at least 10 days from the day of sending the invitation to submit initial tenders, and in case referred to in Article 46, para 6 of the LPP <sup>c</sup>, i.e. when it is not possible to provide electronic download of tender documents, the minimum time limit is 15 days.

The decision to exclude candidates in the In restricted procedures, competitive procedures with negotiations, competitive dialogues, negotiated procedures with publication of a contract notice and innovation partnerships, is made within 30 days from the expiry of time limit for submission of the applications, unless the contracting authority/entity has set a longer time limit in procurement documents. (Article 148 of the LPP).

## 2.4 Techniques and instruments in public procurement procedures

Public procurement procedures can be combined with techniques and instruments in public procurement procedures:

1. framework agreement
2. dynamic purchasing system
3. qualification system (for contracting entities only)
4. electronic auctions
5. electronic catalogue

### Comment:

*In public procurement of services that are the subject of this analysis (construction sector services - architectural, engineering and planning services) the following techniques are not applicable:*

- *dynamic purchasing system that is intended for procurement items that are generally available on the market and, as such, meet its needs; this system is suitable for centralized public procurement and procurement of general goods;*
- *electronic auction is not used for public procurement of services the subject of which is the execution of intellectual work, i.e. design in construction;*
- *electronic catalogue is used in public procurement of goods, especially in cases where it is necessary to create a large number of lots, or if there is a need for a large number of items offered by economic operators (e.g. procurement of medicines) and additionally, in combination with dynamic purchasing system or a framework agreement, and in centralized procurement, facilitates creation of lots, or search through positions, or creation of individual procurement.*

*Below is a brief description of the framework agreement and qualification system, the techniques that are applied in the implementation of public procurement of services that are the subject of this analysis, i.e. design services in construction industry.*

### 2.4.1 Framework agreement<sup>4</sup> (Articles 66 and 67 of the LPP)

A framework agreement is an agreement between one or more contracting parties/entities and one or more tenderers, which establishes the terms and the manner of awarding contracts during the period of validity of the framework agreement, in particular with regard to price and, where appropriate, quantity

The basic characteristics of the framework agreement are:

- it is concluded after implementing the public procurement procedure;
- contract notice must specify the number of tenderers with whom the framework agreement is concluded;
- its duration can be maximum 4 years (except in special justified cases);
- the public procurement contract must be concluded before the expiry of the framework agreement, but it does not have to have the same duration;

<sup>4</sup> For the purposes of this chapter, the following source was used: Guidelines for framework agreements, Directorate for Public Procurement, December 2019

- if the framework agreement was concluded with several tenderers, the contract may be awarded in one of the following ways:
  - according to the conditions for the contract award established in the framework agreement, without reopening competition among tenderers, if the framework agreement specifies all conditions for rendering the services and objective conditions for the selection of tenderers from the framework agreement who will execute the contract;
  - through reopening competition among tenderers, if the framework agreement does not specify all the conditions for rendering services;
  - partly without reopening competition, and partly with reopening competition, if all the conditions for rendering services are determined in the framework agreement, and if the contracting authority/entity has provided objective criteria in the procurement documentation for the framework agreement, according to which it is determined when the reopening of the competition will be implemented, and specified the conditions from the framework agreement that may be subject to the reopening of competition;
- in case of reopening of competition
  - for each individual contract, an invitation to submit tenders is sent to all tenderers that concluded the framework agreement;
  - A sufficiently long time limit for the submission of tenders must be foreseen for each individual awarded contract, taking into account factors such as the complexity of the procurement subject and the time required for the preparation and drafting the tenders;
  - it must be ensured that tenders submitted in written form are not opened before the deadline for the submission of tenders;
  - the decision on award of the contract is adopted based on the criteria that were defined by the procurement documentation for the framework agreement;
  - the decision on award of the contract is published on the Public Procurement Portal.

**Comment:**

*This technique can be applied in public procurement of services that are the subject of this analysis, especially in cases where the contracting authority/entity needs to conclude contracts for similar projects within a certain period of time (up to 4 years), both for design and for accompanying services (geodetic services, geo-mechanical studies), so it does not have to go through the entire public procurement process every time, or when the aggregation of services achieves better financial effects of the procurement. The contracting authority/entity knows that it will have a need for these services, given that they are repeated, but at the time of concluding the framework agreement it is not possible to provide precise information when, or to what extent, or where.*

*For example, it is possible to create a list by type of technical documentation and form that would represent a price list per unit, that could be contracted through a framework agreement. If the measurements (surface areas) of the planned projects are known, approximate quantities can be given, which will be finally determined in the contract.*

## **2.4.2 Qualification system (according to Article 69 of the LPP)**

Contracting entity may establish and operate a qualification system of economic operators, according to previously established rules, in which, in a defined, usually longer period of time, economic operators can apply and qualify for a certain type of contract that is awarded in the course of the system's duration.

The basic rules for using this technique in public procurement procedures are:

- contracting entity publishes a notice on the establishment of the qualification system, the content of which is prescribed by law;
- during the qualification system period, economic operators can submit an application for qualification at any time;
- the qualification system may include different stages of qualification;
- the contracting entity determines:
  - objective criteria and rules for the qualitative selection of economic operator, and
  - objective criteria and rules for the functioning of the qualification system (hereinafter: criteria and rules), which include the rules for enrollment in the system, the possibility to periodically update the criteria and rules for the qualitative selection of economic operators, if necessary, as well as the duration of the system.
- criteria and rules may also include technical specifications;
- criteria and rules can be updated as needed;
- criteria and rules, as well as data on updated criteria and rules, are published on the Public Procurement Portal;
- the contracting entity informs interested economic operators about the qualification system of other contracting entities, if it determines that this system meets its conditions;
- the contracting entity is obliged to keep written records of qualified economic operators, which can be divided into categories according to the type of contract corresponding to the qualification;
- the decision on the qualification must be delivered to the applicants no later than within 6 months of the submission of the application; if the decision-making process will take longer than 4 months, the contracting entity must inform the applicant thereof within 2 months, with the explanation for the longer decision-making process, and the date by which it will decide on the application;
- during the qualification system period, the contracting entity may exclude from the system the candidate that ceases to meet the qualification requirements;
- if the notification on the establishment of the qualification system is used as a contract notice, the contracts covered by the qualification system are awarded by applying the rules of the second stage of the restrictive procedure, negotiation procedure with publication, competitive dialogue or innovation partnership, by inviting all qualified economic operators in the qualification system, i.e. within certain categories of the qualification system.

**Comment:**

*The qualification system is applied in the procurement of services that are the subject of this analysis for contracting entities who need design services that can be grouped according to certain conditions that economic operators must fulfill depending on the required type of service (e.g. design of pumping stations, pipeline design, design of traffic signals, etc.).*

*This system allows interested economic operators to submit an application at any time during the system's period (or to be excluded from the qualification if they no longer meet the requirements). In this way, the market of service providers in this area is monitored. On the other hand, the contracting authority/entity does not have to carry out the entire contract award process every time; instead, during the system period, it shall invite the candidates that qualified until that moment to submit tender for the award of a specific contract, by applying the rules of the second stage of the restrictive procedure, or negotiation procedure with publication, or competitive dialogue, or innovation partnerships.*

## 2.5 Special procurement regimes

In this chapter, the LPP defines the following:

1. awarding of contracts for social and other special services, and
2. design contest.

**Comment:**

*Social and other special services are specified in Annex 7 of the LPP, and they are classified with health services, social protection services, administrative, international, religious, postal and other services, and therefore construction sector services do not fall into this category.*

*Only the design contest can be applied to the services that are the subject of this analysis.*

### 2.5.1 Design contest (according to Article 77 of the LPP)

The design contest can be organized as:

- a part of procedure leading to the award of a public service contract;
- a procedure in which prizes are awarded or fees are paid to participants of the design contest.

If it is planned to award a subsequent public service contract:

- the contract is awarded in a negotiated procedure without publication;
- the rules for awarding the contract must be provided in the design contest documents;
- one or more awarded candidates are invited to the negotiations, which must be stated in the design contest documents.

Design contest can be open or restrictive and is conducted in compliance with the following rules:

- contracting authority/entity publishes a design contest notice in accordance with the law, which contains, inter alia, information about the type of contest, the deadline for submitting tenders or applications, the number and value of awards, if any, and the criteria that will be used to evaluate designs;
- if the contracting authority/entity decides to limit the number of participants in the contest, it is obliged to establish clear and non-discriminatory criteria for the qualitative selection of the economic operator, provided that the number of candidates invited to participate must be sufficient to ensure real competition; the qualitative criteria for selection and the number of planned participants are specified in the contest notice;
- admission of participants to the design contest cannot be limited:
  - to a certain geographical area or part of that area;
  - on the basis of the requirement that participants can only be legal or natural persons.
- the design, plan or project is selected by an independent jury, composed exclusively of natural persons who are independent of the participants in the contest;
- when a certain professional qualification is required from the participants in the contest, at least one third of the jury members must have the same or corresponding qualification;
- the jury shall be autonomous in its decisions and opinions, and it shall examine the designs, plans or projects submitted anonymously by the candidates solely on the basis of the criteria indicated in the contest notice.
- the participant's anonymity is respected until the jury makes its opinion or decision;



- the jury shall enter in the minutes, which are signed by its members, the ranking made according to the characteristics of each design, plan or project, together with its comments and all questions that need to be clarified;
- candidates may be invited, if necessary, to answer questions recorded in the minutes by the jury in order to clarify certain aspects of the projects; the conversation between the members of the jury and the candidate shall be fully recorded;
- the jury shall submit the minutes (records), opinions and decisions to the contracting authority/entity for decision;
- the contracting authority/entity shall indicate in the contest notice whether the decision of the jury is binding for the contracting authority/entity;
- after the concluding the contest, a notice of the results is sent for publication.

## **2.6 Preparation for conducting the public procurement procedure**

### **2.6.1 Public procurement plan, initiating the procedure, public procurement commission (according to Articles 88 through 92 of the LPP)**

Contracting authority/entity is required to adopt an annual public procurement plan. The annual public procurement plan is an official planning act that represents the basis for initiating each public procurement procedure, except in exceptional cases due to urgency, or when it is not possible to plan in advance.

In accordance with point 11 of the *Instructions for using the Public Procurement Portal*, ("Official Gazette of the RS", no. 93/2020), contracting authorities/entities shall create a standardized plan by filling in the form available on the Portal, which enables uploading and automatic transfer of data to the Portal;

The public procurement plan, and all of its subsequent changes or additions, shall be published by the contracting authority/entity on the Public Procurement Portal and on its website.

Public procurement can be initiated through the Portal if it is foreseen in the annual public procurement plan (except in exceptional cases due to urgency, or when it is not possible to plan in advance)

Before implementing the public procurement procedure, the contracting authority/entity may conduct market research, in order to prepare the procedure, and may request or take into account the advice of independent experts, competent authorities or economic operators relating to the preparation and implementation of the public procurement procedure (Article 89 of the LPP).

The law also prescribes measures aimed at protecting the integrity of the procedure, if the tenderer, candidate or affiliated person was in any way involved in the preparation of the public procurement procedure.

The first step in the initiation of the public procurement procedure by the contracting authority/entity is the adoption of a decision on conducting the public procurement procedure, which in particular contains:

- information on the subject of public procurement;
- type of procedure;
- estimated value of public procurement<sup>5</sup>;
- information on the composition of the public procurement commission, i.e. the person conducting the public procurement procedure.

The public procurement procedure is deemed initiated upon sending for publication a contract notice and other advertisements that are used as a public invitation, except in the case of a negotiation procedure without publication, when the procedure is deemed initiated on the day of sending the invitation to submit tenders.

### **Public Procurement Commission**

- The public procurement procedure is conducted by the public procurement commission appointed by the contracting authority/entity.
- If the estimated value of the public procurement is:
  - > RSD 3,000,000 – the procedure is conducted by the public procurement commission, with an odd number of members, and at least 3 members;
  - ≤ 3,000,000 rsd, the public procurement procedure can be conducted by a person appointed by the contracting authority/entity (hereinafter referred to as “a person appointed by the contracting authority/entity”);
- One member of the public procurement commission must be a person with acquired higher education in the field of law at second-degree studies (graduate academic studies - master, specialist academic studies, specialist vocational studies), i.e. a higher education that is equated by law with the academic title of a master in basic studies lasting at least four years, or a public procurement officer with higher education in second-degree studies (graduate academic studies - master, specialist academic studies, specialist vocational studies), i.e. higher education that is equated by law with the academic title of master in basic studies lasting at least four years, or a person who obtained a certificate for a public procurement officer up to the date of entry into force of this law. Acquiring a certificate is prescribed by the *Rulebook on the procedure and conditions for obtaining a certificate for a public procurement officer and maintaining the Register of Public Procurement Officers*, (“Official Gazette of the RS”, nos. 93/2020 and 21/2021).
- A person who has appropriate professional knowledge in the field that is the subject of public procurement is appointed as a member of the commission, when necessary.
- Members of the public procurement commission, i.e. a person appointed by the contracting authority, may be persons who are not employed by the contracting authority, if the contracting authority does not have employees with appropriate expert knowledge.
- The Public Procurement Commission, i.e. the person appointed by the contracting authority, undertakes all actions in the procedure, and in particular:
  - prepares public procurement notices,
  - prepares tender documents,
  - carries out expert evaluation of tenders and applications,
  - prepares reports on the public procurement procedure,

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5 The contracting authority/entity is not required to publish the estimated value of the public procurement and information from the public procurement plan which constitute business secret in terms of the law governing the protection of business secrets, or of classified information in terms of the law governing confidentiality of data. (Article 88, paragraph 5 of the LPP).

- conducts the necessary communication in the public procurement procedure in accordance with the provisions of this law, and
- undertakes the necessary actions in case of filing a request for the protection of rights.
- Public Procurement Commission, i.e. person appointed by the contracting authority, ensures the legality of the procedure.

**Comment:**

*For the application of the MEAT selection criteria, it is necessary that the members of the commission have appropriate expert knowledge in the field of the public procurement, both in order to successfully form the criteria, and evaluate the tenders.*

*The law envisages the possibility for contracting authorities/entities to hire persons with appropriate professional knowledge as members of the commission if they have no adequate employees, and there are no obstacles in this sense.*

*This is very important in the case of public procurement of services that are the subject of this analysis, because only expertise and experience in the creation of criteria and evaluation of tenders for a specific procurement can lead to the desired results, i.e. the selection of tenderers who will render quality services, which directly affects the reliability of designed solutions, and the reduction of additional costs in the execution of works, which can be significant in the case of "poorly" prepared technical documentation.*

## 2.6.2 Content of tender documents

In accordance with Article 93 of the LPP, the Public Procurement Office adopted the *Rulebook on the content of tender documents in public procurement procedures*, "Official Gazette of the RS" no. 21/2021, which entered into force on 13/03/2021, specifying in detail the content of tender documents prepared by the contracting authority/entity in the public procurement procedure.

The table below gives an overview of the contents of tender documents prescribed by the Rulebook, according to the type of public procurement and the stage or part of the procedure, which is prepared according to the nature of the subject of the procurement (*Articles 2 to 9 of the Rulebook*).

Content of tender documents according to the Rulebook on the content of tender documents in public procurement procedures, "Official Gazette of the RS", no. 21/2021.		open procedure	restrictive procedure	competitive procedure with negotiation and negotiation procedure		competitive dialogue			innovation partnership		negotiation procedure without publishing
		1	2	3		4			5		6
Content of tender documents		Article 2.	Article 3.	Article 4.		Article 5.			Article 6.		Article 7.
1)											
General information on the subject of procurement:											
(1) subject of public procurement		✓	✓	x	✓	x	x	x	✓	x	x
(1 a) the subject of public procurement with a description of the needs and required characteristics of goods, services or works, with an indication of which elements of the description of needs and required characteristics of goods, services or works represent the minimum requirements that all tenders must fulfill and which cannot be changed during the procedure / which cannot be negotiated		x	x	✓	x	x	x	x	x	x	✓
(1 b) description of the contracting authority's/entity's needs		x	x	x	x	a	x	x	x	x	x
(1 v) the subject of public procurement with a description of the needs for innovative goods, services or works, and elements of the description that make up the minimum requirements that all tenders must satisfy		x	x	x	x	x	x	x	x	✓	x
(2) description of each lot, if the subject of public procurement is organized by lots		✓	✓	✓	✓	✓	x	x	✓	✓	✓
2) a Method and time limit for submitting the application		x	✓	✓	✓	✓	x	x	✓	x	x
2) b The manner in which the contracting authority/entity will conduct the dialogue		x	x	x	x	x	✓	x	x	x	x
2) v The manner in which the client will implement the innovative partnership in stages, the temporary goals that the partners should achieve in each stage, the conditions for the termination of the partnership, i.e. the reduction of the number of partners, the conditions, the method of payment and the amount of compensation that will be paid to the partners		x	x	x	x	x	x	x	✓	x	x
The manner of regulating intellectual property rights		x	x	x	x	x	x	x	✓	x	x
3) a Type, technical characteristics (specifications), quality, quantity and description of goods, works or services, method of conducting control and ensuring quality guarantee, execution period, place of execution or delivery of goods, any additional services, etc.;		✓	✓	x	✓	x	x	x	x	x	✓
3) b Type, technical characteristics (specifications), quality, quantity and description of innovative goods, works or services, method of conducting control and ensuring quality guarantee, execution period, place of execution or delivery of goods, any additional services, etc.;		x	x	x	x	x	x	x	x	✓	x
4) Technical documentation and plans		✓	✓	x	✓	x	x	x	x	x	✓
5) a Criteria for the qualitative selection of economic operator (grounds for exclusion and economic operator selection criteria), with instructions on how to prove the fulfillment of those criteria;		✓	✓	✓	x	✓	x	x	✓	x	✓
5) b Criteria related to the ability of economic operators in the field of research and development, and the development and implementation of innovative solutions, with instructions on how to prove the fulfillment of those criteria		x	x	x	x	x	x	x	0	x	x

Content of tender documents according to the Rulebook on the content of tender documents in public procurement procedures, "Official Gazette of the RS", no. 21/2021.		open procedure	restrictive procedure	competitive procedure with negotiation and negotiation procedure		competitive dialogue		innovation partnership		negotiation procedure without publishing
				for the qualification phase	for the negotiation phase	for the qualification phase	for the dialogue phase	for the qualification phase	for the negotiation phase	
6)	Data related to the criteria for awarding the contract, i.e.									
	(1) contract award criteria	✓	✓	✓	✓	✓	✓	✓	✓	✓
	(2) relative importance of each criterion expressed in weights, as well as the methodology for assigning weights for each criterion, except when the criterion is price only,	✓	✓	✓	✓	✓	✓	✓	✓	✓
	(3) when weighting is not possible due to objective reasons, the contracting authority/entity shall list the criteria in descending order of importance	✓	✓	✓	✓	✓	✓	✓	✓	✓
	(4) reserve criteria on the basis of which the contracting authority/entity will award the contract in a situation where there are two or more tenders with equal result after applying the criteria	✓	✓	✓	✓	✓	✓	✓	✓	✓
7)	(5) if a life-cycle costing is used, the data that tenderers must submit, and the method used by the contracting authority/entity based on that data to determine the life-cycle costs;	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Elements of the contract to be negotiated and the manner of negotiation	x	x	x	✓	x	x	x	✓	✓
	Notice if the procedure is carried out in several stages in order to reduce the number of tenders to be negotiated	x	x	x	✓	x	x	x	✓	x
	Notice if the procedure is carried out in several stages in order to reduce the number of solutions for the dialogue	x	x	x	✓	x	✓	x	x	x
	Information based on which the tenderers prepare the tender form	✓	x	x	✓	x	x	x	✓	✓
9) a	Information based on which the tenderers prepare the application or tender form	x	✓	x	x	x	x	x	x	x
9) b	Information based on which the tenderers prepare the tender form	x	x	✓	x	✓	x	✓	x	x
10)	Information based on which the tenderers prepare the declaration form on the fulfillment of the criteria for the qualitative selection of economic operator	✓	✓	✓	x	✓	x	✓	x	✓
11)	Forms of documents that form an integral part of the tender, i.e.									
	(1) the offered price breakdown form	✓	✓	x	✓	x	x	x	✓	✓
	(2) cost of tender preparation form	✓	✓	x	✓	x	x	x	✓	✓
12)	Model contract or framework agreement	✓	✓	x	✓	x	x	x	✓	✓
13)	Instructions to tenderers on how to make tenders	✓	✓	x	✓	x	x	x	✓	✓
14)	Other information necessary for the preparation and submission of applications or tenders	0	0	0	0	0	x	0	0	0

Table No. 11

If the public procurement procedure is carried out for the purpose of concluding a framework agreement, the tender documents also contain:

1. information on whether the framework agreement is concluded with one or more tenderers;
2. duration of the framework agreement;
3. the manner of concluding a public procurement contract based on a framework agreement;
4. information on the contracting authorities/entities who will conclude the framework agreement, on whose behalf the framework agreement will be concluded, or for whom the framework agreement is intended.

The Rulebook also provides a more detailed regulation of the content of the following tender documents:

- Instructions to tenderers on how to make tenders
- Information based on which the tenderers prepare the tender form
- Information based on which the candidates prepare the tender form
- Offered price breakdown form
- Cost of tender preparation form
- Security Instruments

**Comment:**

*The tender documents that the contracting authority/entity prepares and publishes on the Public Procurement Portal consist of several parts. In accordance with the Instructions for using the Public Procurement Portal (Point 13), during the preparation of the public procurement announcement, the Portal shall instruct the contracting authority of the specific order for entering data on the public procurement procedure from which certain forms and parts of the tender documents are formed, and other parts that are not formed automatically on the Portal shall be posted on the Portal by the contracting authority/entity.*

*This facilitates the preparation of tender documents for the contracting authorities/entities. Contracting authorities/entities may need more time to fill in the basic data, when filling in the data for the preparation of the advertisement, but standard parts of the tender documents are generated from them, such as contract award criteria (only in the case of automatic ranking), criteria for qualitative selection of the economic operator, instructions to the tenderers on how to make tenders, i.e. how to prove the fulfillment of the criteria, declaration on the fulfillment of the criteria, while the other parts of the tender documents are prepared independently by the contracting authority/entity and uploaded to the Portal in a predefined order (contract awarding criteria in case of manual ranking, offered price breakdown form, technical specifications, contract model, etc.). Furthermore, based on the data entered by the contracting authority/entity, the Portal creates a tender form that is generated after the tenderer enters the data.*

### 2.6.3 Security Instruments

Article 94 of the law stipulates that the contracting authority/entity may request the economic operator to submit a security instrument according to the following table:

No.	Purpose of the security Instrument	amount of the security Instrument
1	for the seriousness of the tender, in the event the tenderer: <ul style="list-style-type: none"> <li>- withdraws the tender within the validity period,</li> <li>- fails to supply evidence on fulfilment of criteria for qualitative selection of economic operator in compliance with Article 119 of the Law,</li> <li>- unreasonably refuses to conclude a public procurement contract or framework agreement, or</li> <li>- fails to provide security for the execution of the public procurement contract or framework agreement;</li> </ul>	≤ 3% of the tender value without VAT
2	for fulfillment of contractual obligations	≤ 10% of the value of the public procurement contract without VAT
3	for remedying defects within the warranty period	≤ 10% of the value of the public procurement contract without VAT
4	for warranting the rectification of damages which might occur in connection with the performance of a specific activity;	not stipulated
5	for refund of advance payment	in the amount of the unused advance payment

Direct beneficiaries of budgetary funds that are included in the consolidated account of the Treasury of the Republic of Serbia, not having their own account and executing their expenditures and costs through the budget of the Republic of Serbia are not obliged to supply the security required in accordance with this Article.

**Comment:**

*For the services that are the subject of this analysis, it is appropriate to request all listed security instruments, except item no. 3, and their amount is adjusted to the specific public procurement.*

*Rulebook on the content of tender documentation in public procurement procedures*, "Official Gazette of the RS", no. 21/2021, in Articles 15 and 16 additionally stipulates that the security instrument by which tenderers ensure the fulfillment of their obligations in the public procurement procedure, as well as the fulfillment of their contractual obligations, can be specified in the tender documents, and that the security instrument may be:

- 1) bank guarantee;
- 2) mortgage;
- 3) guarantee of another legal entity with appropriate creditworthiness;
- 4) one of the forms of pledge of securities or other movables;
- 5) promissory note;
- 6) insurance policy, etc.

The security instrument shall last at least as long as the deadline for fulfilling the tenderer's obligation that is the subject of security.

In the case of an agreed advance payment, the contracting authority/entity may not pay any amount before receiving the requested security for the refund of the advance payment.

**Comment:**

*For the services that are the subject of this analysis, depending on the value of the public procurement, it is appropriate to require a bank guarantee or promissory note as security for the seriousness of the tender, the fulfillment of contractual obligations and the refund of advance payments.*

*for warranting the rectification of damages that occur in connection with the performance of activity (point 4 in the above table) for the services of drafting planning documents, drafting and technical control of technical documentation, it is common practice to accept a general professional indemnity insurance against liability prescribed in Article 129a of the Law on Planning and Construction, provided that for higher values of services, i.e. more complex subjects of public procurement, the tenderer may be required to provide an insurance policy for a specific public procurement, i.e. service, with required amount of the insured sum and insurance duration.*

## **2.6.4 Publication and delivery of tender documents**

Simultaneously with sending for publication the contract notice, the invitation to submit application, or the invitation to tender or invitation to negotiate in the qualification system, contracting authority/entity shall also send tender documents for publication on the Public Procurement Portal; in the case that the tender documents cannot be published by electronic means (plan or design cannot be delivered in electronic form, or in case of public procurement in the field of defense and security) the contracting authority/entity shall specify in the invitation that tender documents shall be transmitted by other means.

The contracting authority/entity, if necessary, can modify and supplement the tender documents until the deadline for submission of tenders expires, and if such amendments affect the preparation of the tender, the deadline for submission of tenders must be extended, especially if the changes pertain to the criteria for qualitative selection of economic operator, for contract awarding criteria, or technical specifications of procurement subject.

The law also specifies the deadlines by which the tenderer can submit a request for additional clarifications, as well as the deadline in which the contracting authority/entity must submit an answer.

The subject of dispute in the procedure for the protection of rights may be deficiencies or irregularities in procurement documentation, but only if the economic operator pointed them out to the contracting authority/entity in a timely manner, during the public procurement procedure, in writing via the Public Procurement Portal.

## **2.7 Publication and transparency**

### **2.7.1 Public procurement notices**

Public procurement notices published by contracting authorities/entities pursuant to Article 105 of the LPP are:

- (1) contract notice;
- (2) prior information notice;
- (3) periodic indicative notice;



- (4) notice on the existence of the qualification system;
- (5) notice on the conduct of the negotiation procedure without publication of a contract notice;
- (6) notice on the contract award, suspension of the procedure or cancellation of the procedure;
- (7) notice on the contract authority/entity's profile;
- (8) contract modification notice;
- (9) notice on social and other specific services;
- (10) design contest notice;
- (11) notice on the results of the design contest;
- (12) corrigendum – notice on changes or additional information;
- (13) voluntary ex ante transparency notice;
- (14) notice on submitted request for protection of rights.

Advertisements are published through the Public Procurement Portal on standard forms, the content of which, in accordance with the law, has been prescribed by the Public Procurement Office in *the Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal* "Official Gazette of the RS", no. 93/2020

The Public Procurement Portal enables the contracting authorities/entities to electronically draft and send for publication public procurement notices on standard forms. Electronic drafting of public procurement notices involves entering data by using the application on the Public Procurement Portal.

The notices specified in points 1) to 4), in public procurement procedures with estimated value equal to or greater than RSD 5,000,000, are also published on the Portal of the Official Gazette of the Republic of Serbia and the regulations database.

From the date of accession of the Republic of Serbia to the European Union, notices for public procurements with estimated value equal to or greater than the amount of the European thresholds will be published in the Official Gazette of the European Union (*Article 105 of the LPP*).

The method of sending and publishing public procurement notices, as well as other issues relevant for the publication of public procurement notices, is regulated by the *Instruction on how to send and publish public procurement notices*, "Official Gazette of the RS", no. 93/2020.

The contracting authority/entity is required to publish a contract notice in all public procurement procedures, except in the negotiated procedure without publication of a contract notice, and in all cases otherwise regulated by the provisions of the law (*Article 106 of the LPP*).

The prior information notice is used only by the contracting authority to announce its intention to procure goods, services or works by publishing on the Public Procurement Portal, and in that case, it has the right to use a reduced time limit for submitting tenders, i.e. applications, under the conditions of Article 107 of the LPP, as described in the public procurement time limit tables presented in Clause 2.3.2 hereof.

The periodic information notice is used only by the contracting entity to announce its intention to procure goods, services or works on the Public Procurement Portal, and in that case and subject to conditions specified in Article 108 of the LPP, it has the right to use a reduced time limit for submitting tenders, i.e. applications, as described in the public procurement time limit tables presented in Clause 2.3.2 hereof.

- Obligation to publish other notices according to the LPP as stated in Article 109:
- contracting authority/entity shall send for publication the contract award notice within 30 days from the date on which public procurement contract or framework agreement was concluded;
- in the case of contracts concluded on the basis of framework agreement and dynamic purchasing system contracting authority/entity shall quarterly publish grouped contract award notices, within 30 days of the end of each quarter within which the contracts were concluded;
- exceptionally, the contracting authority/entity is not required to publish certain data on the award of a public procurement contract or a framework agreement if their publication would be contrary to the provisions of the LPP, or could otherwise be contrary to the general interest, if it would cause damage to the legitimate business interests of a particular economic operator, or could lead to the breach of competition on the market;
- In case of suspension or cancellation of a public procurement procedure, contracting authority/entity shall publish information thereof in the contract award notice form within 30 days from the day the decision on suspension or cancellation of a public procurement procedure became final;
- contracting authority/entity may publish a voluntary ex ante transparency notice for procurements that are not subject to provisions of the LPP.

## 2.7.2 Common Procurement Vocabulary

The contracting authority/entity must use the **Common Procurement Vocabulary** codes in the description of the procurement subject in public procurement notices. The Common Procurement Vocabulary, in accordance with the corresponding vocabulary in the European Union - CPV (Common Procurement Vocabulary), was determined by the Public Procurement Office in accordance with the law, by the *Rulebook on establishing the Common Procurement Vocabulary*, "Official Gazette of the RS", no. 93/2020.

### **Comment:**

*The table below is an extract from the Common Procurement Vocabulary with services that can be applied to public procurement of services that are the subject of this Analysis, within the base code 71000000 -8 Architectural, construction, engineering and inspection services.*

COMMON PROCUREMENT VOCABULARY	
MAIN VOCABULARY	
Mark	Name
71000000-8	<b>Architectural, construction, engineering and inspection services</b>
71200000-0	<b>Architectural and related services*</b>
71210000-3	<b>Advisory architectural services</b>
71220000-6	<b>Architectural design services*</b>
71221000-3	Architectural services for buildings
71222000-0	Architectural services for outdoor areas
71223000-7	Architectural services for building extensions
71230000-9	<b>Organization of architectural design contests</b>
71240000-2	<b>Architectural, engineering and planning services*</b>
71241000-9	Feasibility study, advisory service, analysis
71242000-6	Project and design preparation, estimation of costs*

71243000-3	Draft plans (systems and integration)
71245000-7	Approval plans, working drawings and specifications
71246000-4	Determining and listing of quantities in construction
71250000-5	<b>Architectural, engineering and surveying services*</b>
71251000-2	Architectural and building-surveying services*
71300000-1	<b>Engineering services* (mainly used for technical control)</b>
71320000-7	<b>Engineering design services*</b>
71321000-4	Engineering design services for mechanical and electrical installations for buildings
71321200-6	Heating-system design services
71321300-7	Plumbing consultancy services
71321400-8	Ventilation consultancy services
71322000-1	Engineering design services for the construction of civil engineering works*
71322100-2	Quantity surveying services for civil engineering works
71322200-3	Pipeline-design services*
71322300-4	Bridge-design services
71322400-5	Dam-design services
71322500-6	Engineering-design services for traffic installations
71323000-8	Engineering-design services for industrial process and production
71323100-9	Electrical power systems design services
71323200-0	Plant engineering design services
71324000-5	Quantity surveying services
71325000-2	Foundation-design services
71327000-6	Load-bearing structure design services
71330000-0	Miscellaneous engineering services*
71332000-4	Geotechnical engineering services
71333000-1	Mechanical engineering services
71334000-8	Mechanical and electrical engineering services
71335000-5	Engineering studies
71336000-2	Engineering support services
71340000-3	Integrated Engineering Services
71356000-8	Technical services*
71356400-2	Technical planning services
71400000-2	Urban planning and landscape architectural services
71410000-5	Urban planning services*
71420000-8	<b>Landscape architectural services</b>
71421000-5	Landscape gardening services

*\* the names or codes used by the contracting authorities/entities in the public procurement procedures that we came across in our research*

## 2.8 Selection of participants and contract award

### 2.8.1 Criteria for the qualitative selection of economic operator

The criteria for the qualitative selection of economic operator are:

#### A. The grounds for exclusion, and in particular:

- cases when the contracting authority/entity is required to exclude the economic operator in accordance with Article 111 of the LPP (criminal act, taxes and contributions evasion, non-compliance with environmental protection, social and labor rights, conflict of interest, undue influence);
- cases when the contracting authority/entity may stipulate in the tender documents that it will exclude the economic operator, in accordance with Article 112 of the LPP (bankruptcy/liquidation<sup>6</sup>, major case of unprofessional conduct, distortion of competition, non-fulfillment of obligations from previous public procurement or concession contracts, previously submitted false data in public procurement procedures)

**B. Criteria for selection of economic operator** that may relate to:

- fulfillment of the conditions for performing professional activities;
- financial and economic capacity;
- technical and professional capacity.

The **contracting authority/entity shall determine the criteria for selection of economic operator whenever necessary**, bearing in mind the subject-matter of public procurement. Where contracting authority/entity determines the selection criteria, it shall indicate in the contract notice the required level of capacities and the appropriate means of evidencing thereof.

Articles 116 to 118 of the LPP provide guidelines on what the contracting authority/entity may request for each of the criteria

**Fulfillment of the conditions for performing professional activities**

The contracting authority/entity may require evidence of registration in the appropriate register of business entities, or a professional register (if it is maintained in the country of the economic operator's headquarters); if necessary for the execution of the procurement, it can be required that the economic operator has a certain authorization, i.e. a permit, etc.

**Financial and economic capacity**

In order to ensure the financial and economic capacity required for the execution of the public procurement contract, the contracting authority/entity may determine that economic operators must have:

- a certain minimum income, including a certain minimum income in the industry covered by the public procurement subject, which must not be higher than twice the estimated value of the public procurement (except in exceptional cases due to special risks) over a period of no longer than the last three financial years, depending on the date of establishment of the economic operator, i.e. commencement of its business operations;
- a certain ratio between assets and liabilities, or other financial indicator in connection with the financial statements of economic operators for a period of no longer than the last three financial years; in this case, the contracting authority/entity is required to specify in the tender documents transparent, objective and non-discriminatory methods and criteria for their evaluation
- appropriate level of professional liability insurance.

If the subject of procurement is divided into lots, the aforementioned conditions are determined in proportion to each individual lot. Exceptionally, a minimum income may be required in

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6 In accordance with paragraph 2 of Article 112 of the LPP, contracting authority/entity may decide not to exclude the economic operator in bankruptcy/liquidation, if it establishes that economic operator in question will be able to perform the public procurement contract, taking into account the legislation and measures on the continuation of business.

relation to several lots, in the event that an individual tenderer is selected for several lots that are executed simultaneously.

In the case where reopening the competition in the process of concluding a contract based on a framework agreement, the minimum income is calculated based on the expected maximum value of individual contracts to be executed at the same time or, if this is not available, based on the estimated value of the framework agreement.

### **Technical and professional capacity**

The contracting authority/entity may determine these conditions in order to ensure that the economic operator has the necessary personnel and technical resources and experience needed for the execution of public procurement contracts with an appropriate level of quality, and in particular it may require that the economic operator has adequate experience with regard to previously executed contracts.

Article 124 of the LPP stipulates the following evidence that can be submitted (one or more) regarding the fulfillment of these conditions relating to services, and consequently what the requirements may be:

- a list of works performed over a maximum period of three years prior to expiry of the time limit for submission of tenders, i.e., applications, with amounts, dates and names of beneficiaries, and if necessary to ensure an adequate level of competition, contracting authorities/entities may indicate that evidence of relevant works carried out in the period longer than three years will be taken into account;
- data on engaged technical persons or bodies, regardless of whether they are directly employed or belong to economic operator, and especially with regard to responsibility for quality control;
- a description of the technical means and measures used by the economic operator to ensure quality, and the means for study and research at its disposal;
- educational and professional qualifications of service providers or their management staff, provided that these qualifications are not evaluated within the contract awarding criteria;
- declaration of the economic operator on accepting the quality control to be performed by contracting authority/entity, or authorized body in the country in which the economic operator is established, that will perform control on behalf of the contracting authority/entity in terms of the economic operator's production or technical capacities and, where necessary, in terms of the quality control measures that will be applied, where the services to be rendered are complex or required for a specific purpose;
- information on environmental protection management measures, which the economic operators will be able to apply during the execution of the contract;
- a declaration on the average annual number of employees of the service provider, and the number of management staff in the last three years before the deadline for submitting tenders, i.e. applications;
- statement about the tools or technical equipment available to the service provider for the execution of the contract;
- indication of the portion of the contract that the economic operator intends to subcontract, if the subcontractor's capacity is used for evidencing relevant criterion for qualitative selection;

If contracting authority/entity establishes that economic operator has conflicting interests, i.e. interests which may adversely affect the performance of the public procurement contract, it may be deemed that economic operator does not possess required professional capacity. This is the case when, for example, the economic operator uses its available professional capacities to perform another job, and its ability to execute a public procurement contract might be perceived as compromised.<sup>7</sup>

**Comment:**

*The law gives the opportunity and leaves it up to the contracting authority/entity to assess which of the mentioned criteria for selection of economic operator is adequate for a specific procurement.*

*Fulfillment of the conditions for performing professional activity is a mandatory criterion for the services that are the subject of this analysis, where economic operators, i.e. service providers should possess the appropriate licenses prescribed by the Law on Planning and Construction.*

*Small and medium-sized enterprises should be taken into account when defining the conditions for financial and economic capacity to be met by economic operator.*

*Some of the possible requirements for technical and professional capacity mentioned above can be one of the sub-criteria for selecting MEAT under the price-quality ratio criterion. For example, with the services in question, professional qualifications, i.e. the experience of designers, is extremely important, which usually results in higher price of the services, and therefore adequate weighting provides the best price-quality ratio.*

## **2.8.2 The method of proving the fulfillment of criteria for the qualitative selection of economic operator**

One of the main innovations of the Law on Public Procurement is that economic operator in the tender, i.e. application, does not submit the evidence of fulfillment of the criteria for the qualitative selection of the economic operator, but instead fills out an e-Declaration on the fulfillment of the criteria for the qualitative selection of the economic operator (e-Declaration of fulfillment of the criteria), which confirms that there are no grounds for exclusion, and that it meets the required criteria for the selection of economic operator.

The e-Declaration is integrated on the Portal and tenderers fill out the e-Declaration through forms on the Portal when making an e-tender directly based on the data, i.e. the criteria and conditions selected and defined by the contracting authority/entity during the preparation of the procedure on the Portal.

Proving, if necessary, is carried out in the stage of expert evaluation of tenders, by requesting and submitting evidence through the Portal, unless it is evidence that, by its nature, cannot be submitted through the Portal.

Before making a decision in the public procurement procedure, the contracting authority/entity is obliged to require the tenderer who submitted the most economically advantageous tender to deliver, within a reasonable period, not less than five business days, uncertified copies of the

<sup>7</sup> "Manual for the preparation of the public procurement officer exam", November 2020, for Public Procurement Office.

evidence of the fulfillment of the criteria for the qualitative selection of the business entity - for public procurement whose estimated value is higher than RSD 5,000,000.

The contracting authority/entity may, regardless of the estimated value of the public procurement, ask the tenderers and candidates to submit all, or part of the evidence on the fulfillment of the criteria for the qualitative selection of the economic operator, in order to verify the data specified in the statement on the fulfillment of the criteria, if this is necessary for the proper implementation of the procedure.

### **2.8.3 Evidence on fulfillment of the criteria for the qualitative selection of economic operator**

Articles 120 through 124 define evidence on the fulfillment of the criteria, and from the date of accession to the European Union, the contracting authorities/entities will use the e-Certis system to obtain data on the type and form of such evidence, and on the competent authorities that issue such data and evidence in the European Union member states, and the contracting authorities/entities will be obliged to primarily require the type and form of evidence that is included in the e-Certis system.

If the contracting authority/entity, for the purpose of evidencing the criteria for qualitative selection, requires the submission of certificates from independent bodies confirming the economic operator's compliance with specific quality assurance standards, including accessibility for persons with disabilities, it is obliged to provide reference to quality assurance systems that are based on the appropriate standards, which have been verified by accredited bodies.

If the contracting authority/entity requires the delivery of certificates from independent bodies confirming the economic operator's compliance with specific systems or standards for environmental management, it is obliged to provide reference to the Eco-Management and Audit Scheme (EMAS) or other recognized environmental management systems, in accordance with the law governing environmental protection, or environmental management standards, based on appropriate European or international accredited bodies standards.

**Comment:**

*In order to ensure that the contractors apply environmental protection measures or quality management in the procurement of services that are the subject of this analysis, the tenderers may be required to implement a quality management system according to the ISO 9001 standard, or environmental management system according to the requirements of the ISO 14004 standard, as one of the criteria for a qualitative selection or for the contract award. The appropriate evidence in that case would be a certificate of an independent accredited body.*

### **2.8.4 Contract award criteria**

According to the general rules for determining the contract award criteria (*Article 132 of the LPP*) in the public procurement procedure, the contracting authority/entity shall award the contract to the most economically advantageous tender (MEAT) determined on the basis of one of the following criteria:

- 1) price, or

- 2) costs by applying a cost-effectiveness approach, such as life-cycle costing in accordance with Article 134 of this law (described in Chapter 2.8.4.2 hereof), or
- 3) **the price-quality ratio, i.e. cost-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public procurement contract in question, which may in particular include:**
  - (1) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, trading and its conditions;
  - (2) organization, qualification and experience of staff assigned to performing the contract, where the quality of the staff can have a significant impact on the level of performance of the contract, or
  - (3) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The contracting authority/entity may determine the element of price or cost as a predetermined price or cost, so that the economically most advantageous tender is identified on the basis of the quality criteria.

#### **2.8.4.1 General rules for determining criteria**

When determining the criteria, the following must be observed (*Art. 133 of the LPP*):

- The contract award criteria shall be described and weighted, they shall not be discriminatory, shall be linked to the subject-matter of the public procurement contract, and shall ensure the possibility of effective competition.
- The contract award criteria shall be considered to be linked to the subject-matter of the public procurement contract where they relate to the supplies, works or services that are the subject matter of the contract in any respect and at any stage of their life cycle, including the factors that relate to a specific production process, execution of works, delivery of supplies, or provision of services, or to trading of the above, or to a specific process for another stage of their life cycle, even where such factors do not form a part of their material substance.
- The contracting authority/entity shall determine the criteria in a manner which will enable its subsequent objective verification and evaluation of tenders, as well as verification of information supplied by tenderers, in order to assess the extent to which the tenders fulfil the contract award criteria, and in the case of doubt, the contracting authority/entity shall verify the correctness of information and evidence supplied by tenderers.
- The contracting authority/entity shall specify in the procurement documents the relative weightings for each contract award criterion, and shall indicate the methodology for allocating the weighting to each criterion, except where the criterion is the price only.
- The weightings may be expressed by providing for a range with an appropriate maximum spread.
- Where weighting is not possible due to objective reasons, the contracting authority/entity shall indicate the criteria in descending order of importance.
- The contracting authority/entity shall also determine in the procurement documentation the reserve criteria on the basis of which it will award the contract in a situation where there are two or more tenders that are equal after applying the criteria.
- When evaluating tenders, the contracting authority/entity shall apply only those criteria indicated in the procurement documents, in a manner they are described and weighted therein.



#### 2.8.4.2 Life cycle costs (under Article 134 of the LPP)

Life cycle costs shall, to the extent relevant, cover parts or all of the following costs over the life cycle of a supply, service or works:

- 1) costs borne by the contracting authority/entity or other users, such as:
  - (1) acquisition costs,
  - (2) usage costs, such as consumption of energy and other resources,
  - (3) maintenance costs
  - (4) end of life-cycle costs, such as collection and recycling costs;
- 2) costs attributed to external environmental factors linked to the supply, service or works during its life cycle, provided their monetary value can be determined and verified, and which may include the cost of emissions of greenhouse gases and of other pollutant emissions, as well as other climate change mitigation costs.

Where the contracting authority/entity uses the life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority/entity will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs imputed to external environmental factors shall fulfil all of the following conditions:

- 1) it is based on objectively verifiable and non-discriminatory criteria, and where it has not been established for repeated or continuous application, it shall not unduly favor or disadvantage certain economic operators;
- 2) it is accessible to all interested parties;
- 3) the data required can be provided with reasonable effort by diligent economic operators, including economic operators from third states parties to the Agreement on Government Procurement – GPA, or other international agreements by which the European Union and the Republic of Serbia are bound.

Contracting authority/entity shall apply a common method for the calculation of life-cycle costs, where the obligation to apply this method is laid down by legislative acts of the European Union listed in Annex 9, Part II of the Law.

**Comment:**

*"The 'Price only' criterion for award should be applied in procurement procedures when only price differentiates submitted tenders and other features of procured supplies, services or works are set in the tender documentation as not distinguishing aspects".<sup>8</sup>*

*The cost criterion, i.e. the cost efficiency approach, has its full application in the procurement of goods (apparatus, devices, systems, vehicles), but it is not adequate for the procurement of services related to the execution of intellectual work, i.e. drafting of technical documentation for the construction of buildings.*

*According to the analysis of the procurement of the services in question under both the old and the new law, it was concluded that the usual practice (in approx. 95% of the*

<sup>8</sup> "Guidelines for choosing the most economically advantageous tender", Public Procurement Office, December 2019, <http://eupodrska.ujn.gov.rs/>.

*procurements covered by the analysis) is that the contracting authorities/entities, as the selection criterion, require a certain minimum level of technical capacities that the contractors must meet, and the most economically advantageous tender is determined almost exclusively on the basis of price criteria. With this approach, in the case of an inadequately high criterion, a smaller number of tenders is received and competition is reduced, and in the case of an inadequately low criterion, a large number of tenders is received, and the lowest price does not always provide the required quality.*

*Part 5 of this Guide provides a detailed overview and recommendation of an adequate selection of criteria in order to select the most economically advantageous tender based on the price-quality ratio.*

## 2.8.5 Tender in the public procurement procedure

### 2.8.5.1 General

One of the novelties in the Law on Public Procurement is that the **tender, i.e. the application, is submitted by electronically via the Public Procurement Portal**, unless the law stipulates otherwise.

The general rules regarding the submission, the validity and the costs of preparation of tenders are prescribed by Articles 135 through 138 of the Public Procurement Law:

- the tenderer may submit only one tender, i.e. application.
- A tenderer who has submitted a tender/application independently may not simultaneously participate in a joint tender/application, or as a subcontractor, nor the same person can participate in several joint tenders/applications - the contracting authority/entity shall be obliged to reject all tenders submitted contrary to this provision.
- Within the time limit for the submission of tenders, a tenderer may modify, supplement or recall its tender, in the same manner in which it was submitted.
- Contracting authorities/entities may authorize or require submission of tenders with variants, and shall indicate so in the contract notice, together with minimum requirements to be fulfilled for each variant
- the contracting authority/entity shall determine the tender validity period, which cannot be shorter than 30 days from the day of opening of tenders.
- in case of expiration of the tender validity period, the contracting authority/entity shall request the bidder in writing to extend the tender validity period.
- costs for preparation and submission of a tender shall be borne solely by the tenderer, who may not ask the contracting authority/entity to compensate these costs.
- exceptionally, if the public procurement procedure is suspended for reasons attributable to contracting authority/entity, the contracting authority/entity shall compensate the tenderer for the costs of making a sample or model, if they are made in accordance with the contracting authority/entity's technical specifications, and the costs of obtaining security instruments, provided that the tenderer asked for reimbursement of the said costs in its tender.

### 2.8.5.2 Receiving and opening tenders

**Receiving tenders** under Article 139 of the LPP

- Upon receiving the electronic tender, the tenderer shall be given a confirmation of receipt of the tender, indicating the date and time of receipt.

- If parts of the tender cannot be submitted electronically in terms of Article 45, paragraph 3, the contracting authority/entity is required to indicate the time of receipt on the envelope or box in which they are delivered. Where the parts of tender are delivered directly, the contracting authority/entity shall give the tenderer a confirmation of receipt.
- If the parts of the tender, which are not submitted electronically, are submitted late, after the opening procedure is completed, the contracting authority/entity will return any unopened part of the tender to the tenderer, with an indication that it was submitted late.
- It is forbidden to provide information on the received tenders until the opening of tenders, and the contracting authority/entity is required to save the tenders so as to prevent them from coming into possession of unauthorized persons.

### **Opening of tenders**

A significant novelty of the LPP is that the opening of tenders is carried out automatically by the Public Procurement Portal, in accordance with the procedure described below, and all the necessary findings related to the tender opening procedure are recorded and listed by the Public Procurement Commission in the public procurement procedure report.

*Rulebook on the tender opening procedure "Official Gazette of the RS", no. 93/2020*, prescribes in more detail the manner of opening tenders, the content of the minutes on the opening of tenders, and other issues relevant for the tender opening in the public procurement procedure.

The opening of tenders in the public procurement procedure is public, except in the case:

- 1) when the contracting authority/entity applies electronic auction;
- 2) when it is necessary for the protection of data that represent a business secret in the sense of the law governing the protection of business secrets or represent secret data in the sense of the law governing the secrecy of data.

The opening of tenders is attended by at least one member of the public procurement commission, or a person appointed by the contracting authority/entity (hereinafter the "Commission").

Authorized representatives of tenderers and other persons may attend the public opening of tenders. Only members of the Commission and authorized representatives of tenderers, who submitted the authorization to participate in the tender opening procedure, shall have the right to actively participate in the public opening of tenders.

During the opening of tenders, the commission may not perform the expert evaluation thereof.

The opening of tenders is carried out automatically through the Public Procurement Portal at the time of opening the tenders specified in the public invitation. The Public Procurement Portal shall open tenders according to the order of arrival.

If parts of the tender that cannot be submitted by electronic means through the Public Procurement Portal are requested in the public procurement procedure, the Commission shall open them according to the order of arrival - the contracting authority is obliged to state the data on the parts of the tender in the public procurement procedure report.

If parts of the tender were submitted late, the contracting authority shall return the unopened parts of the tender to the tenderer upon completion of the opening procedure, indicating in the public procurement report they were submitted late.

The procuring authority/entity must enable the authorized representative of the tenderer attending the public opening of tenders to:

- on the Public Procurement Portal, inspect the tender form of all tenderers, and
- determine that the parts of the tender requested in the public procurement procedure, which cannot be submitted by electronic means through the Public Procurement Portal, have been submitted before expiry of the time limit for submission of tenders.

The authorized representative of the tenderer present at the public tender opening procedure may file objections to the public tender opening procedure, which the contracting authority/entity is required to record.

The contracting authority/entity shall state the objections to the public tender opening procedure in the public procurement procedure report.

Public Procurement Portal shall:

- form a record (minutes) of the opening of tenders from the data entered by tenderers through the Public Procurement Portal in the tender form;
- automatically make the record of the tender opening available to the contracting authority/entity and all tenderers, thus ending the tender opening procedure through the Public Procurement Portal;
- enable tenderers to inspect the bid form of all tenderers.
- upon completion of the public procurement procedure, the minutes on the tender opening shall be publicly available at the Public Procurement Portal.

The opening of all tenders, except for the final tenders, shall not be public in the case of:

- the negotiated procedure with publication;
- competitive procedure with negotiation, as well as
- when electronic auction is used.

When the tender opening is not public, the Public Procurement Portal automatically makes the record of the tender opening available to the contracting authority/entity, thus ending the tender opening procedure through the Public Procurement Portal.

## **2.8.6 Contract Award**

Description of the procedure after opening of tenders is provided below, with reference to the Article of the LPP. The procedure is accordingly applied to applications.

### **Examination and expert evaluation of tenders and applications according to Article 141 of the LPP**

Following the opening of tenders, i.e. applications, an examination, expert evaluation and ranking of tenders, i.e. applications, shall be carried out based on the conditions and requirements stipulated in the procurement documents, and a report on the public procurement procedure shall be compiled.

### **Additional clarifications, control and permitted corrections (Article 142 of the LPP)**

- the contracting authority/entity may request additional clarifications that will help it in examination, evaluation and comparison of tenders or applications, and it may also perform control (site inspection) of the tenderer or its subcontractor.

- if the data or documentation submitted by a tenderer or candidate is incomplete or unclear, the contracting authority/entity may, while observing the principles of equality and transparency, request the tenderers or candidates to supply necessary information or additional documents within an appropriate time limit, which shall not be shorter than five days.
- acting in accordance with the previous paragraphs, must not result in changing the elements of tender that are of relevance for applying the contract award criteria, or in changing the offered procurement item.
- if the tender contains a calculation error, the contracting authority/entity shall request the tenderer to accept the correction of the calculation error, and the tenderer is required to submit its response within five days from the day of receipt of such request.
- if the tenderer does not agree to the correction of the calculation error, the contracting authority/entity shall reject its bid.
- in the event of disparity between the unit price and the total price, the unit price shall prevail.

#### **Abnormally low tender according to Article 143 of the LPP**

An abnormally low tender in the sense of this law is a tender containing the price or cost which substantially deviates from comparable market price or cost, thus raising doubts regarding the feasibility of execution of the public procurement in accordance with the requirements of the contracting authority/entity set in the procurement documents.

If the contracting authority/entity estimates that the tender is abnormally low, it is obliged to request the tenderer to explain the price or cost specified in the tender, within a reasonable period of time, with the content of the explanation in accordance with the law.

The contracting authority/entity may reject the tender only if the submitted explanation and evidence do not adequately account for the abnormally low tender.

The law also prescribes the conditions and obligations for rejecting tenders for reasons other than abnormally low tender (state aid or non-compliance with obligations related to environmental protection, social and labor law, etc.).

#### **Conditions for awarding contract (Article 144 of the LPP)**

The contracting authority/entity, after examination and expert evaluation, shall reject the offer or application as unacceptable, if:

- 1) it determines that there are grounds for exclusion of economic operator;
- 2) the criteria for the selection of economic operator have not been met;
- 3) the requirements and conditions related to the subject-matter of procurement and technical specifications have not been met;
- 4) the security instrument for the seriousness of the tender in accordance with the procurement documents has not been submitted;
- 5) there is valid evidence of collusion or corruption;
- 6) it establishes other deficiencies due to which it is not possible to determine the actual content of the tender, or to compare it with other tenders.

The contracting authority/entity may reject as unacceptable the tender:

- 1) which exceeds the amount of the estimated value of the subject-matter of public procurement or available funds;
- 2) determined to be abnormally low in accordance with the previous section.

The non-rejected tenders shall be evaluated and ranked according to the contract award criteria laid down in the procurement documents.

Where two or more tenders are equally ranked following the application of the contract award criteria, the contracting authority/entity shall award the contract in accordance with the reserve criteria.

Where even the application of the reserve criteria results in two or more equally ranked tenders, the contracting authority/entity shall award the contract to the tenderer chosen by drawing lots.

### **Report on the public procurement procedure (Article 145 of the LPP)**

Following the expert evaluation of tenders or requests to participate, the procurement commission shall compile a report on the public procurement procedure, which shall include in particular the following information:

- 1) the subject-matter of public procurement, estimated value of public procurement, both in total and separately for each lot;
- 2) the value of the contract, framework agreement or dynamic purchasing system;
- 3) basic information about tenderers or candidates;
- 4) the name of the selected tenderer or a candidate, the reasons for selecting its tender or accepting its request to participate, the share of the contract or framework agreement to be performed by a subcontractor and names of subcontractors, if any;
- 5) the results of assessing the tenders and fulfilment of the criteria for qualitative selection of economic operator and, where applicable, criteria or rules for the reduction of number of candidates, tenders, and solutions, as follows:
  - (1) the names of the selected candidates or tenderers and the reasons for their selection;
  - (2) the names of the rejected/excluded candidates or tenderers, the reasons for the rejection of their applications or tenders, and prices offered in those tenders;
- 6) the reasons for the rejection of tenders established to be abnormally low;
- 7) the method for ranking of the tenders;
- 8) circumstances justifying the application of the negotiation procedure without publication of a contract notice;
- 9) circumstances justifying the application of competitive procedure with negotiations and competitive dialogues conducted by the contracting authority;
- 10) the reasons why the contracting authority/entity has decided to discontinue a public procurement procedure;
- 11) the reasons why electronic means were not used for submitting tenders (from Article 45, para. 3 and 5 of the law - cases when electronic communication is not mandatory);
- 12) detected conflict of interests and subsequent measures taken in that regard, where applicable;
- 13) the explanation of reasons due to which the subject-matter of the public procurement has not been divided into lots in accordance with Article 36 paragraph 2 of the Law (when the estimated value of the public procurement is greater than or equal to the value of the European thresholds, the contracting authority(entity is required to consider the division into lots).

The report on the public procurement procedure is not necessary for contracts concluded based on the framework agreement, with one tenderer or with several tenderers without re-opening the competition.

The contracting authority/entity shall submit the report on the public procurement procedure to the Public Procurement Office or other competent authority, upon their request, and within the time limit they set.

**Contract award decision according to Article 146 of the LPP**

As stated, the contracting authority/entity shall adopt a contract award decision if it has been established during the expert evaluation of tenders that the conditions for the contract award have been met. The contract award decision shall be reasoned and shall specifically contain data from the report on the public procurement procedure as well as instructions on legal remedy.

The contracting authority/entity may award the contract to a tenderer whose tender contains an offered price higher than the estimated value of the public procurement.

The contracting authority/entity shall take the contract award decision within 30 days from the expiry of time limit for the submission of tenders, unless it has defined a longer time limit in the tender documents.

The contracting authority/entity shall publish the contract award decision on the Public Procurement Portal within three days from the day the decision was taken.

Where publication of certain data from the contract award decision would be contrary to the provisions of the Law, or would otherwise be contrary to the public interest, or would cause damage to the legitimate business interests of a particular economic operator, or might prejudice fair competition on the market, such data from the decision shall not be published.

The provisions of this Article shall apply accordingly to the taking of decision to conclude a framework agreement.

**Decision on suspension of procedure under Article 147 of the LPP**

This article prescribes the cases when the contracting authority/entity can make a decision to suspend the procedure, which must be explained in accordance with the law.

In the event of suspension of the procedure before the deadline for submitting tenders, the Public Procurement Portal shall permanently disable access to tenders or applications, and the contracting authority/entity shall return to tenderers unopened tenders, applications and other documents that were not submitted through the Public Procurement Portal.

The contracting authority/entity shall publish the decision on suspension of the procedure on the Public Procurement Portal within three days from the day the decision was taken.

In the decision to suspend the public procurement procedure, the contracting authority/entity is required to decide on the costs of preparation of the tender from Article 138, paragraph 2 of the law.

**Decision on exclusion of candidates under Article 148 of the LPP**

As stated, in restricted procedures, competitive procedures with negotiations, competitive dialogues, negotiated procedures with publication of a contract notice and innovation partnerships, the contracting authority/entity shall take decision on exclusion of candidate (reasoned in line with the law) for each individual participant which will not be invited to tender or to participate in dialogue, in accordance with previously defined criteria for qualitative selection of economic operator and/or the criteria or rules for the reduction of number of candidates in those procedures, and on the basis of the outcome of the examination and evaluation of requests to participate.

The decision on exclusion shall be taken within 30 days from the expiry of time limit for submission of applications, unless the contracting authority/entity has set a longer time limit in procurement documents.

### **Inspection of documents under Article 149 of the LPP**

As stated, after publishing the contract award decision, decision on conclusion of framework agreement, or decision on suspension of the procedure, the contracting authority/entity shall, within two days from the date of receiving the written request, enable the economic operator who submitted a tender, i.e. application in the public procurement procedure, to inspect and make copies of documents from the procedure, at the expense of the applicant, i.e. to download the documents in an appropriate manner, whereby the contracting authority/entity shall be obliged to protect confidential data in line with the provisions of the Law.

The provisions of Art. 141–149 of the law shall apply accordingly to the examination and evaluation of applications.

## **2.8.7 Public procurement contract and framework agreement**

The contracting authority/entity may conclude a public procurement contract, i.e. a framework agreement, after taking a contract award decision, or decision on concluding a framework agreement if:

- within the time limit set forth by the Law, no request for the protection of rights has been filed, or
- if the request for the protection of rights was dismissed or rejected by a final decision, or
- if the rights protection procedure has been suspended.

Before the expiration of the time limit for submitting a request for the protection of rights, the contracting authority/entity may conclude a public procurement contract:

- 1) based on the framework agreement;
- 2) in the case of applying the dynamic procurement system;
- 3) if only one tender was submitted, which is acceptable;
- 4) in the case of application of the negotiation procedure without prior publication of the contract notice referred to in Article 61, paragraph 1, point 2) of the law (refers to works - new works that are the repetition of similar works for which the contract has already been awarded to the economic operator, in the public procurement procedure for which a contract notice was published).

The contracting authority/entity is required to deliver the public procurement contract, i.e. the framework agreement to the tenderer within ten days from the expiry of the time limit for submitting request for the protection of rights.

Where a tenderer refuses to conclude a public procurement contract, or a framework agreement, the contracting authority/entity may conclude the contract /framework agreement with the next most advantageous tenderer. If in that case, due to the weighting methodology, it is necessary to do so, they will re-evaluate the tenders and make the contract award decision.



## 2.9 Contract Performance

### 2.9.1 Performance and modifications of public procurement contracts

A public procurement contract shall be performed in accordance with the conditions specified in the procurement documents and the selected tender, and the contracting authority/entity shall control the performance of the public procurement contract in accordance with the conditions specified in the procurement documents and the selected tender.

The contracting authority/entity shall not make substantial modification of the public procurement contract.

A modification of contract is considered substantial where it renders the contract materially different in character from the one initially concluded, or where the nature of the initially concluded contract would be substantially modified, whereas a substantial modification of the contract always exists where one or more of the following conditions are met:

- 1) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than the one initially accepted, or would have enabled greater competition in the public procurement procedure preceding to the conclusion of the contract;
- 2) the modification changes the economic balance of the contract in favor of the economic operator with whom the contract has been concluded in a manner which was not provided for in the initial contract;
- 3) the modification considerably extends the scope of the contract;
- 4) the change of economic operator with whom the public procurement contract has been concluded, except in cases referred to in Article 159 of the Law (legal succession, corporate restructuring)

The Ministry responsible for financial affairs supervises the performance of public procurement contracts.

The contracting authority/entity may modify a public procurement contract during its term without conducting public procurement procedure in following cases:

- changes based on contractual provisions (Article 156 of the LPP) - irrespective of the modification value, where the modifications have been provided for in the procurement documents and the public procurement contract in a clear, precise and unequivocal manner, and which may include the price revision clauses or options; contractual provisions cannot provide for modifications that would change the nature of the contract;
- changes regarding additional services<sup>9</sup> (Article 157 of the LPP) - additional services became necessary, but were not included in the original public procurement contract, where a change of the economic operator with whom the contract has been concluded:
  - 1) cannot be made for economic or technical reasons such as requirements of compatibility under the initial procurement, and

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<sup>9</sup> In the event of contract modifications, the contracting authority/entity is required to send the contract modification notice for publication on the Public Procurement Portal within ten days from the date of the contract modification (Article 155, paragraph 2, of the LPP).

- 2) would cause significant inconvenience or substantial increase in costs for the contracting authority/entity. The total increase in the value of all contract modifications (if the contract is modified several times) in this case cannot exceed 50% of the value of the original contract, and cannot be aimed at avoiding the application of the LPP; contracted surplus works shall not constitute modification of the public procurement contract.
- changes due to unforeseeable circumstances<sup>10</sup> (Article 158 of the LPP) - if all the following conditions are met:
  - 1) the need for modification was created by circumstances that a diligent contracting authority/entity could not foresee;
  - 2) the modification does not change the nature of the contract;  
The total increase in the value of all contract modifications cannot exceed 50% of the value of the main contract and cannot be aimed at avoiding the application of the LPP.
- change of contracting party (Article 159 of the LPP) - in the case of general or partial legal succession, corporate restructuring according to the terms of this Article.
- increase in the volume of procurement (Article 160 of the LPP) - if all the following conditions are met (restrictions refer to the total value of all changes, if the contract is changed several times):
  - 1) the value of modification shall be below 10% of the initial value of a public procurement contract, and
  - 2) the value of modification shall be below RSD 15,000,000.00 in the case of a public service contract.  
A contract modification may not alter the overall nature of the contract i.e. of the subject of public procurement.
- replacement of subcontractors (Article 161 of the LPP) - when the economic operator with whom the contract was concluded, during the performance of the public procurement contract, requests:
  - 1) to change the subcontractor for that part of the public procurement contract that was originally assigned to the subcontractor, and with the request it shall submit to the contracting authority/entity evidence that there are no grounds for exclusion from Article 111 of the Law with respect to the new subcontractor;
  - 2) to introduce one or more new subcontractors, whose total share shall not exceed 30% of the public procurement contract value, without VAT, regardless of whether a part of the public procurement contract was initially subcontracted to the subcontractor or not, and with the request it shall submit to the contracting authority/entity evidence that there are no grounds for exclusion from Article 111 of the Law with respect to the new subcontractor;
  - 3) to take over the performance of the part of the public procurement contract that has been initially subcontracted.

The contracting authority/entity shall not approve the request of the economic operator in case:

- referred to in points 1) and 2), where the economic operator with whom the contract has been concluded in the public procurement procedure, for proving the fulfilment of the criteria for qualitative selection of economic operator has relied on the capacities of the

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<sup>10</sup> In the event of contract modifications, the contracting authority/entity is required to send the contract modification notice for publication on the Public Procurement Portal within ten days from the date of the contract modification (Article 155, paragraph 2, of the LPP).

subcontractor now to be replaced and the new subcontractor does not fulfil the same requirements or the exclusion grounds exists;

- referred in point 3) of this Article, where the economic operator with whom the contract has been concluded in the public procurement procedure, for proving the fulfilment of the criteria for qualitative selection of economic operator has relied on the capacities of the subcontractor for the performance of that part of the contract, and it does not possess such capacities of its own.

The provisions of Art. 154 to 161 shall apply accordingly to modifications of the framework agreement.

## 2.9.2 Contract Termination

The contracting authority/entity shall terminate a public procurement contract if:

- 1) circumstances arise that would result in a significant change to the contract, which would require the implementation of a new public procurement procedure;
- 2) the economic operator with whom the contract has been concluded should have been excluded from the procedure due to existence of the grounds for exclusion of economic operator;
- 3) the contract should not have been awarded with a view of a serious infringement of the obligations under the Treaty on the Functioning of the European Union and Directives 2014/24/EU and 2014/25/EU that has been established by the Court of Justice of the European Union, pursuant to Article 258 of the Treaty on the Functioning of the European Union.

### **Comment:**

*Currently, some contracting authorities/entities publish contract modifications in their annual reports (which is essentially a report on procurements that are exempt from the application of the law), and certain data can be found there, however, there is no connection with a specific contract, so a deeper analysis is not possible. In order to increase transparency and the ability to monitor the effects of the new law on public procurement, especially in the part related to application of the contract award criteria, when implementing public procurement contracts, it is recommended to prescribe a procedure that would provide insight into the performance of contracts concluded after implementing the public procurement, which can also be made through the contracting authority/entity's report for each individual public procurement, stating any modifications of the contract, i.e. any modifications of the price, term, scope of services in relation to the main contract, as well as the contracting authority/entity's assessment of the success of the contract performance.*

## 2.10 Public Procurement Portal

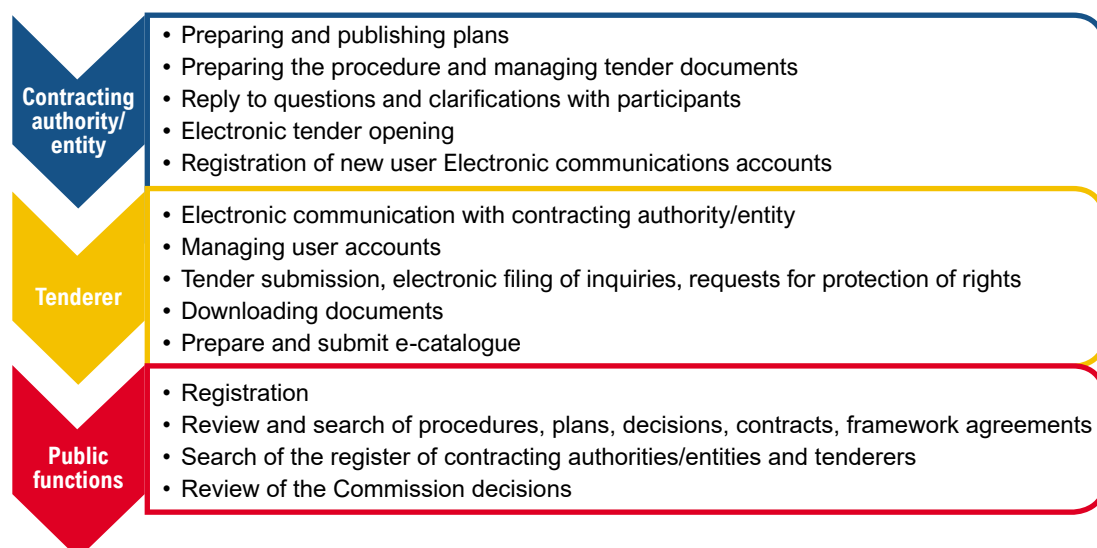
The Public Procurement Portal is a unified information system enabling (Article 183 of the LPP):

- 1) contracting authorities/entities to draw-up, send for publication and publish the public procurement notices in standard forms, make available procurement documents, and publish and deliver decisions in public procurement procedures, as well as to publish the public procurement plans;

- 2) contracting authorities/entities to send public procurement notices in standard forms to the Publication Office in order to publish those in the Official Journal of the European Union;
- 3) any interested persons to have free of charge, unrestricted and direct access, to search, review and download published public procurement notices and procurement documents;
- 4) economic operators to submit tenders, requests to participate, plans and projects;
- 5) opening of tenders, applications, plans and projects;
- 6) communication and exchange of information between contracting authorities/entities and economic operators, in accordance with the provisions of the Law;
- 7) communication and exchange of information between the Public Procurement Office and contracting authorities/entities (in connection with the initiation of the negotiation procedure without prior publication);
- 8) filing requests for the protection of rights, other communication and exchange of documents between tenderers, contracting authorities/entities and the Republic Commission for the Protection of Rights in Public Procurement Procedures;
- 9) keeping records of registered subjects;
- 10) management of the database published and exchanged on the Public Procurement Portal;
- 11) access to the database, for the Public Procurement Office, the Republic Commission for the Protection of Rights in Public Procurement Procedures, the State Audit Institution, and the Republic Public Prosecutor's Office, for the needs of performing activities under the scope of their respective competences.

The use of the Public Procurement Portal is free of charge for all users.

## FUNCTIONS OF THE NEW PORTAL



(taken from "Serbian Bidders Association")

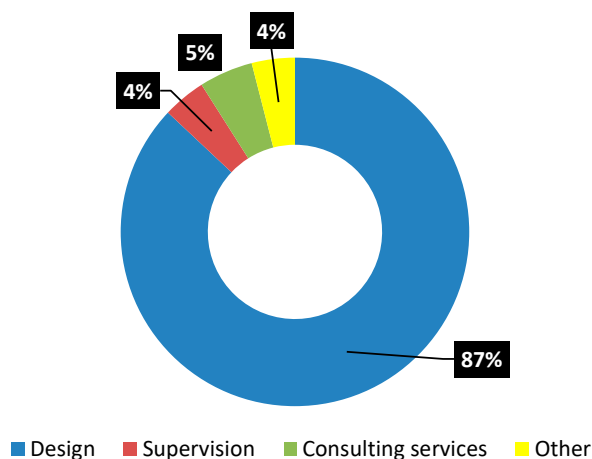
The use of the Public Procurement Portal in public procurement procedures is regulated by the Instruction for using the Public Procurement Portal ("Official Gazette of RS", No. 93/20) , which were adopted by the Public Procurement Office and the Office for Information Technologies and eGovernment.

### 3 ANALYSIS OF THE STATE OF PUBLIC PROCUREMENTS

The Association of Consulting Engineers of Serbia - ACES, as part of the project "Effective public procurement in the service of economic growth" to improve the efficiency and transparency of public procurement in Serbia, implemented by NALED with the support of the Swedish International Development Cooperation Agency (SIDA), conducted a survey of one hundred and six (106) selected procurement subjects. The subject were investigated from the internet site Public Procurement Portal, namely, seventy-six (76) cases at the new Public Procurement Portal and thirty (30) selected procurement subjects at the old Public Procurement Portal. The data was searched according to the "Common Procurement Vocabulary" with a focus on the procurement of services in the construction sector, primarily architectural, engineering and planning services (production of technical/design documentation during building construction, adaptation and reconstruction).

#### 3.1 Subject and types of procedures

In the research of selected subjects of procurement procedures carried out under the new law passed in 2020, the most common subject are design services (87%), i.e. creation of design and technical documentation, followed by site supervision services (4%), consulting services (5%), and others engineering services (4%). The examined samples of procurement procedures carried out according to the old law related to the procurement of design services, i.e. the creation of design and technical documentation.



The found subjects, relating to design, which in the researched sample have a share of 87%, according to the Common Procurement Vocabulary were grouped under following CPV codes:

**CPV codes according to the Common Procurement Vocabulary by which the samples were searched - Design**

Design	
<b>71220000</b>	Architectural design services
<b>71240000</b>	Architectural, engineering and planning services
<b>71242000</b>	Project and design preparation, estimation of costs

<b>71250000</b>	Architectural, engineering and surveying services
<b>71251000</b>	Architectural and building-surveying services
<b>71320000</b>	Engineering design services
<b>71322000</b>	Engineering design services for the construction of civil engineering works
<b>71322200</b>	Pipeline-design services

**CPV codes according to the Common Procurement Vocabulary by which the samples were searched - Supervision**

<b>Supervision</b>	
<b>71240000</b>	Architectural, engineering and planning services
<b>71248000</b>	Supervision of project and documentation (design supervision)

It can be observed that procurements of the same/similar services are marked with different codes. The example of ambiguous marking of the procurement subjects are given below, and all of them relate to design.

**CPV codes according to the Common Procurement Vocabulary relating to design**

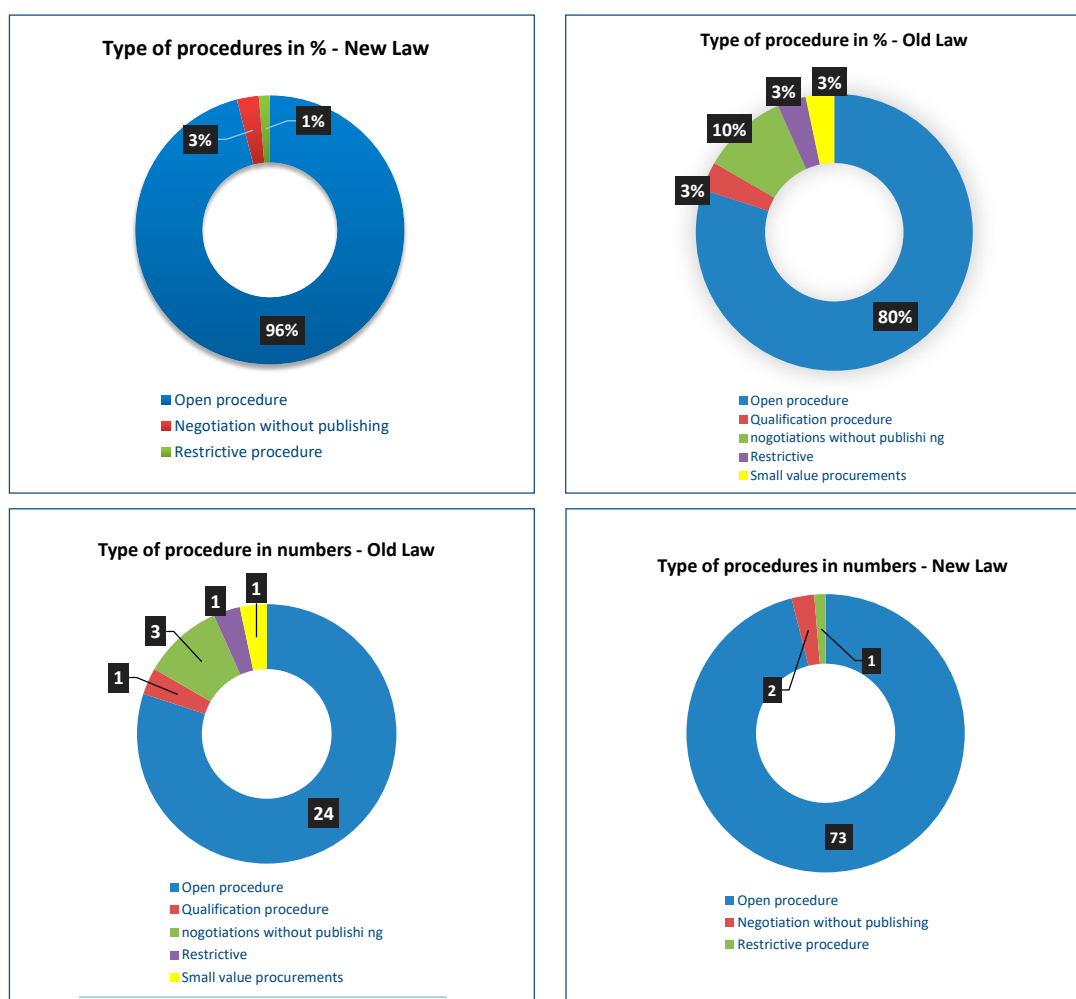
<b>71220000</b>	Architectural design services
<b>71320000</b>	Engineering design services
<b>71242000</b>	Project and design preparation, estimation of costs
<b>71322000</b>	Engineering design services for the construction of civil engineering works
<b>71322200</b>	Pipeline-design services

It can be concluded that different codes are used for the same types of services, which makes it difficult to search for a certain type of procurement, and the essential difference between these service procurements marked with different codes is unclear.

With respect to the types of procedures, as a reminder, public procurement procedures are:

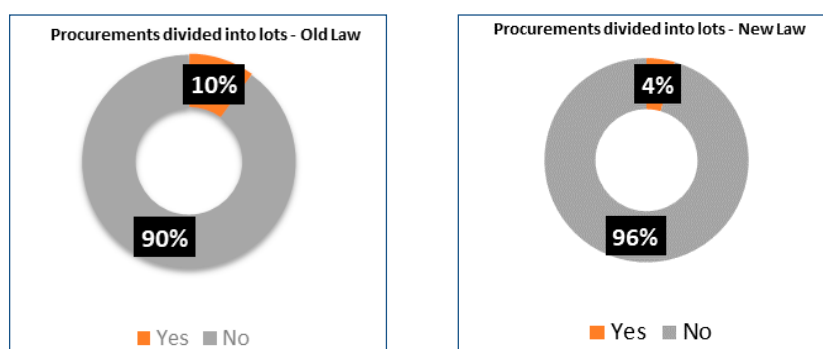
- 1) open procedure;
- 2) restrictive procedure;
- 3) competitive procedure with negotiation;
- 4) competitive dialogue;
- 5) negotiated procedure with publication;
- 6) innovation partnership;
- 7) negotiated procedure without publication;

Based on the research of a sample of public procurements carried out under the new law passed in 2020, it was observed that 96% of public procurements were classified as an open procedure, while restrictive procedures and negotiation procedures without publishing were recorded in a very small number. Research on selected procurement cases conducted under the old law shows that 80% of procedures are classified as open procedures, while restrictive procedures, negotiation procedures without publication are in the minority. Types of public procurement procedures such as competitive procedure with negotiation, competitive dialogue, innovation partnership in the procurement of architectural, engineering and planning services, (production of technical/design documentation during building construction, adaptation and reconstruction) were not found.



Based on the research of a sample of public procurements carried out under the new law passed in 2020, 73 procedures were classified as an open procedure, while restrictive procedures and negotiation procedures without publishing were recorded in a very small number. The research of selected procurement cases carried out under the old law shows that 24 procedures are classified as open procedures, while restrictive procedures, negotiation procedures without publication are in the minority.

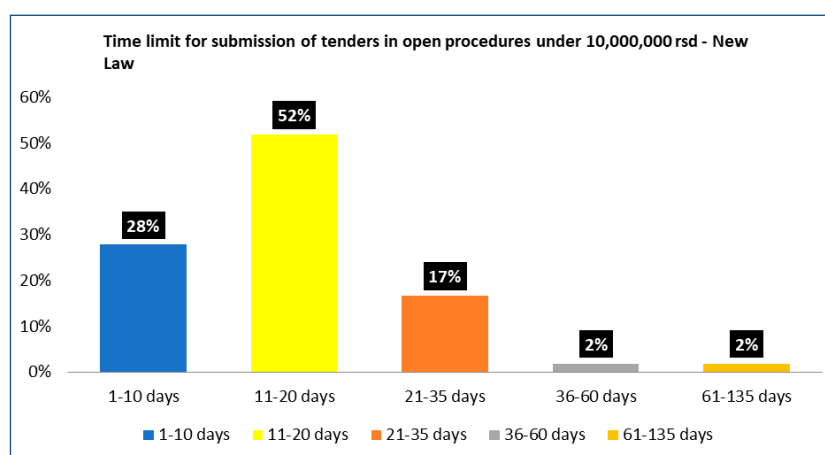
In the observed procurement samples, it is concluded that the procurements divided into lots are represented in a smaller percentage. Four percent (4%) of procurements carried out under the new law were divided into two or more lots, while 96% of procurements were not divided into lots. In the sample of procurements under the old law, 10% of procurements were divided into two or more lots, and 90% of procurements were not divided into lots.



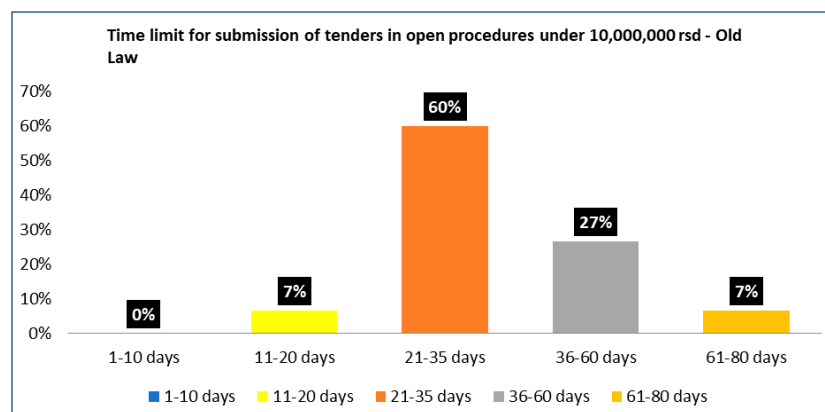
## 3.2 Time limits

In the aspect of time limits for submission of tenders, open procedures were chosen for the analysis, as the type of procedure identified as the most common. Observing the sample of procurements carried out under the new law, the results of the research show that in open procedures with a value of less than RSD 10,000,000, 52% of contracting authorities/entities use set the time limit between 11 and 20 days for submitting tenders.

In 2% of cases with an unusually long deadline (108 days), procurement procedure was classified as an open procedure. The reason for the unusually long time limit is the submitted request for the protection of rights, due to which the procedure has been suspended. The request was rejected in its entirety by the decision of the Republic Commission for the Protection of Rights, after which the time limit for submission of tenders was extended by changes in the tender documentation, and the procedure was continued.

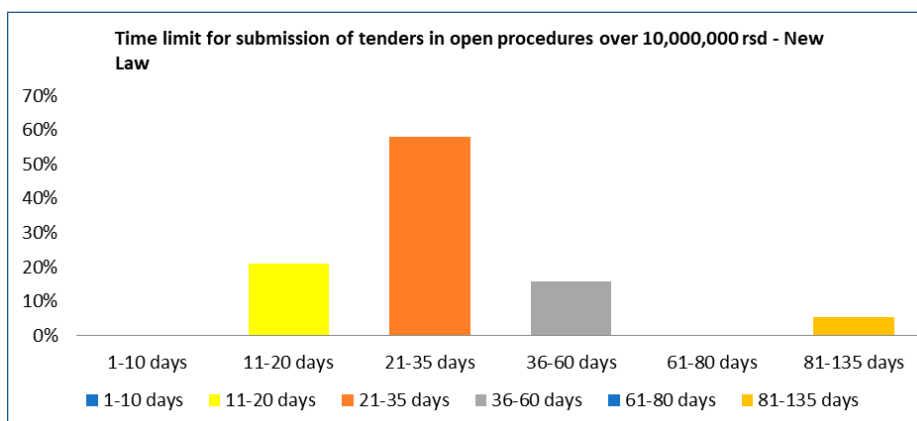


The research of procurements carried out under the old law show that in open procedures with a value of less than RSD 10,000,000, 60% of contracting authorities/entities set the time limit between 25 and 35 days for submitting tenders.

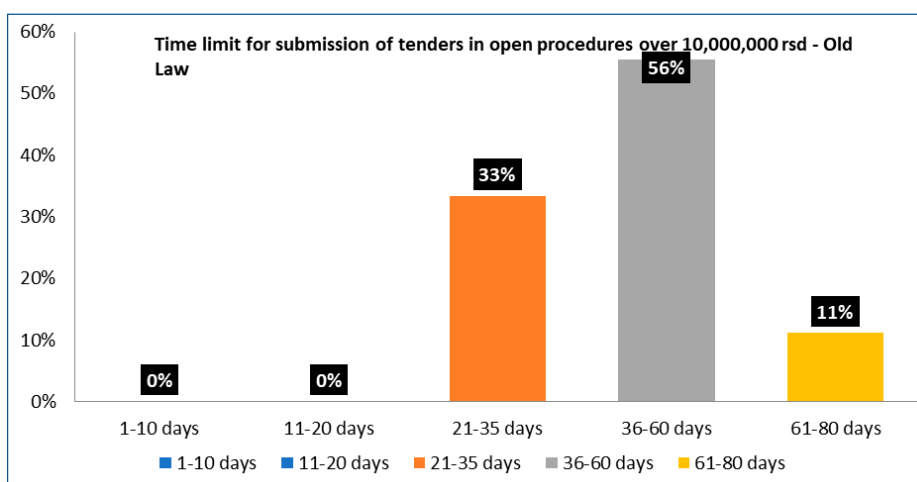


In the open procedure procurements carried out under the new law with a value of more than 10,000,000 rsd, 21% of contracting authorities/entities set the time limit between 11-20 days, 58% of contracting authorities/entities set the time limit between 21-35 days, while the time limits longer than 35 days account for a smaller percentage.





The research of open procedure procurements carried out under the old with a value exceeding RSD 10,000,000, show that 56% of contracting authorities/entities set the time limit between 36 and 60 days for submitting tenders.



When comparing the time limits for submission of tenders, and analyzing procurements conducted under the new law and procurements conducted under the old law, the following can be concluded:

- In procurements of less than 10,000,000.00 rsd, the time limit for submission of tenders has been reduced significantly. In procurements carried out under the new law, 52% of contracting authorities/entities set the time limit between 11-20 days for the submission of tenders, while in procurements carried out under the old law, 60% of contracting authorities/entities set the time limit between 21-35 days for the submission of tenders.
- In procurements with value over 10,000,000.00 rsd, the time limit for submitting tenders has also been significantly reduced. In procurements carried out under the new law, 58% of contracting authorities/entities set the time limit between 21-35 days for the submission of tenders, while in procurements carried out under the old law, 56% of contracting authorities/entities set the time limit between 36-60 days for the submission of tenders.

It can be assumed that the reason for this is that the reduced time limit (number of days) for the submission of tenders was a result of simplified procedure for submitting tenders, and a smaller volume of documentation required from the tenderers.

### 3.3 Criteria for qualitative selection

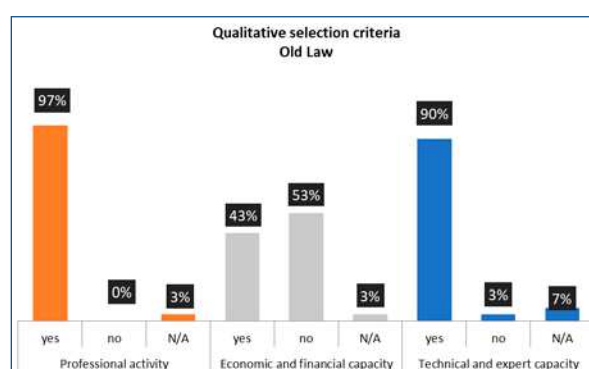
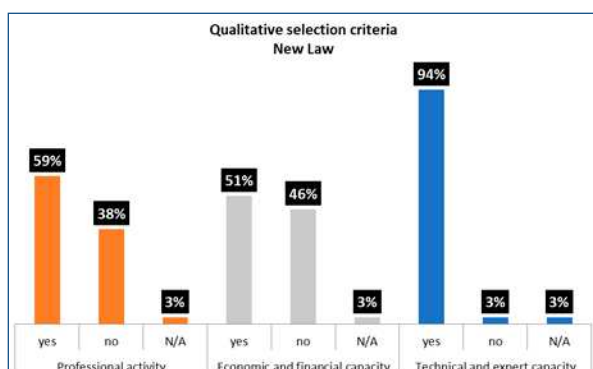
Criteria for the qualitative selection of economic operator were analyzed. The analysis does not include the grounds for exclusion defined by law, but focuses on additional conditions, i.e. criteria for the selection of economic operator in the public procurement procedure relating to:

- 1) fulfillment of the conditions for performing professional activities;
- 2) financial and economic capacity;
- 3) technical and professional capacity.

The research of procurements conducted under the new law show that 59% of contracting authorities/entities use criteria related to professional activity, whereby the contracting authorities/entities often require the economic operator to prove that it is registered in the companies register, court register, professional or other appropriate register, as well as the authorization/permit of the competent authority to perform activities that are the subject of public procurement. Analyzing the values of procurements in which this percentage of contracting authorities/entities requires the professional activity criteria, it was observed that of the above percentage of contracting authorities/entities, 40% of the procurements are worth more than 10,000,000.00 rsd.

The research shows that 51% of contracting authorities/entities include the financial and economic capacity criteria in the procurement documentation, which ensures that economic operators have the financial and economic capacity necessary for the performance of public procurement contracts, and most often the conditions refer to a certain minimum income in the area that is included in the subject of public procurement for a period of no more than the last three financial years. Analyzing the values of procurements in which this percentage of contracting authorities/entities requires the financial and economic capacity criteria, it was observed that of the above percentage of contracting authorities/entities, 41% of the procurements are worth more than 10,000,000.00 rsd.

With respect to technical and expert capacity, as much as 94% of the contracting authorities/entities determine the conditions in order to ensure that the economic operator has the necessary personnel and technical resources and experience needed for the execution of public procurement contracts with an appropriate level of quality, and in most cases, it is required that the economic operator has adequate experience with regard to previously executed contracts. In 5% of cases in which the contracting authority/entity did not specify the conditions regarding technical and professional capacity, the value of the procurement was less than 10,000,000.00 rsd.



### 3.4 Contract award criteria

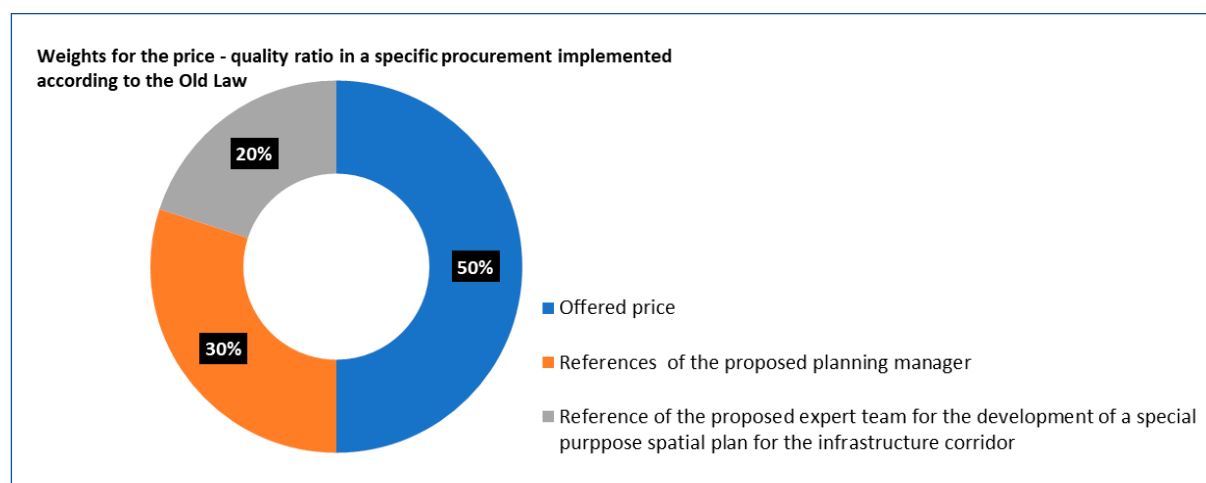
As a reminder, according to the general rules for determining the contract award criteria, in the public procurement procedure, the contracting authority/entity shall award the contract to the most economically advantageous tender (MEAT) determined on the basis of one of the following criteria:

- 1) price, or
- 2) costs by applying a cost-effectiveness approach, (life-cycle costing, in accordance with the law), or
- 3) the price-quality ratio, i.e. cost-quality ratio.

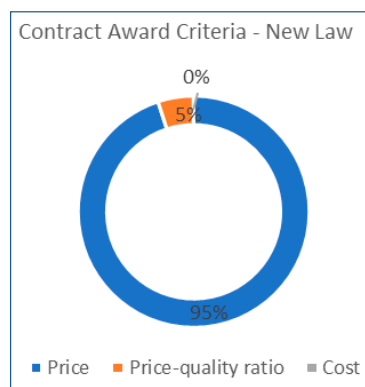
Analyzing the procurement procedures carried out under the old law, 97% of the contracting authorities/entities determine the most economically advantageous tender as criterion for awarding the contract based on the price only. Only 3% of the contracting authorities/entities used the price-quality ratio criterion. It is concluded that only 3% of contracting authorities/entities use quality criteria, while it is not recorded that cost criteria were used.



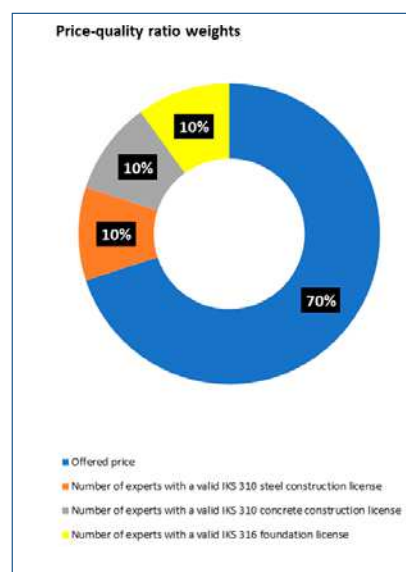
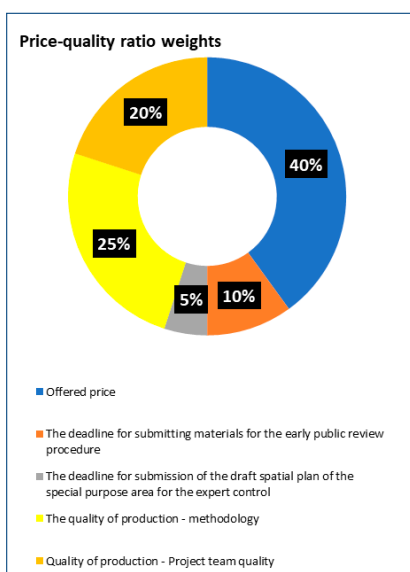
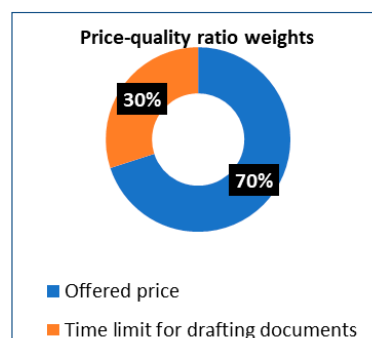
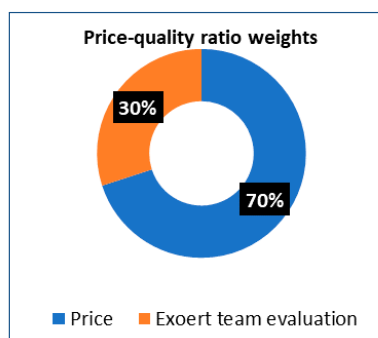
In the group of 3% of contracting authorities/entities who awarded contract to the most economically advantageous tender based on the price-quality ratio, the relative weighing of each contract award criterion was determined, indicating the methodology for allocating weighing to each criterion. In the specified percentage, the contracting authorities/entities used the following weights:



On the other hand, analyzing procurement procedures carried out under the new law, an increase of 2% is observed among the contracting authorities/entities who award the contract to the most economically advantageous tender based on the price - quality ratio, and now that percentage is 5%. More precisely, it is concluded that there is a growth in the percentage of contracting authorities/entities who use quality criteria. A high percentage of using the price as the only criterion for awarding the contract to the most economically advantageous tender is still present.

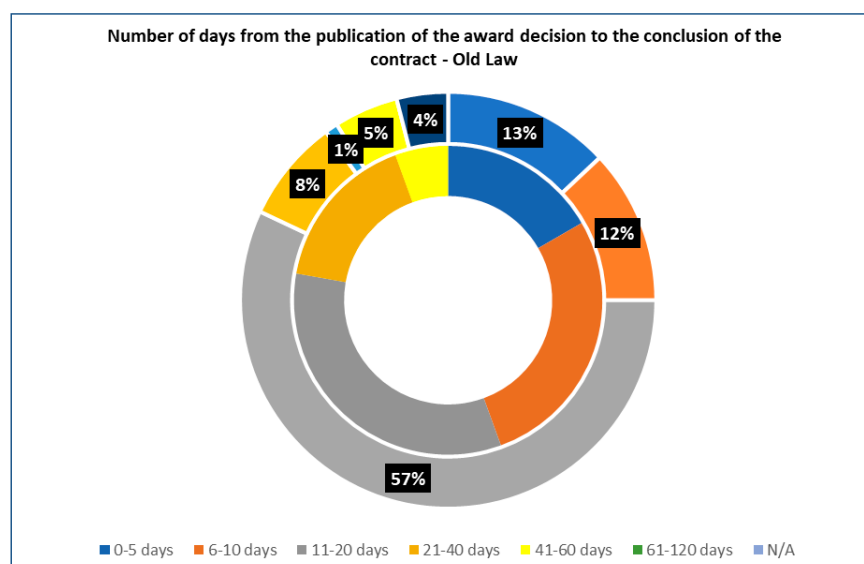
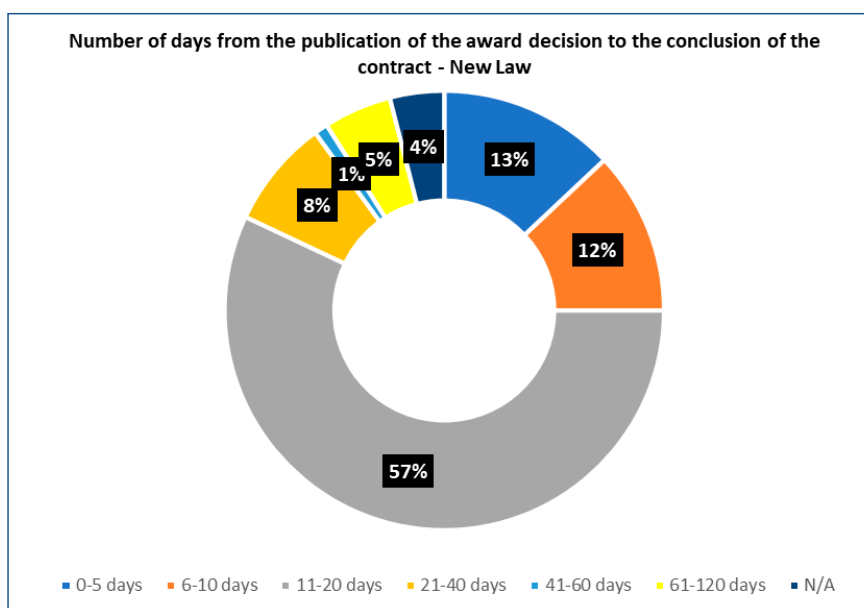


Only 5% (4 procurements of sampled 76 procedures) of contracting authorities/entities award contract to the most economically advantageous tender based on the price-quality ratio, and specify in the procurement documents the relative weighting of each contract award criterion, indicating the methodology for allocating weighting to each criterion. In the specified percentage, the contracting authorities/entities used the following weightings:



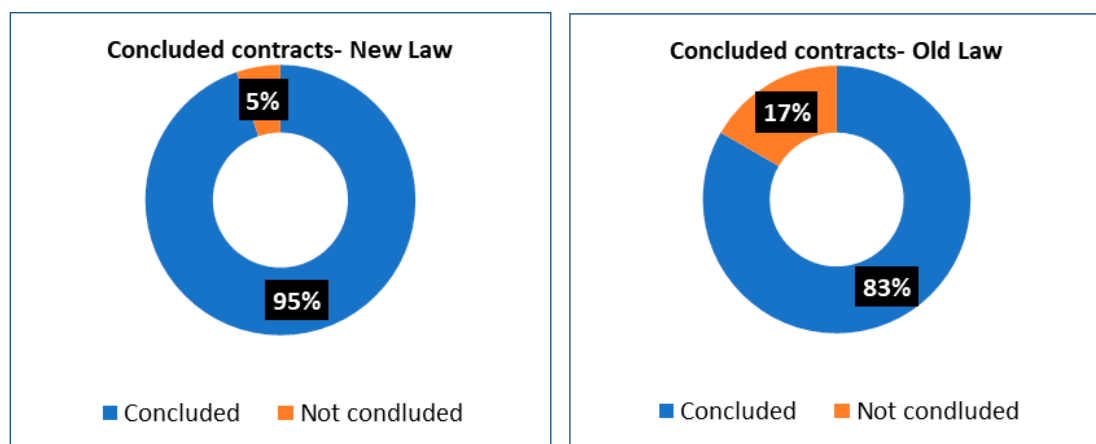
### 3.5 Contracts

Regarding the number of days from the publication of the Contract award decision to the conclusion of the contract, research has shown that in open procedures, both under the new and old law, the majority of contracting authorities/entities conclude the contract within 11-20 days from the date of the contract award decision, namely 57% under the new law, and 33% under the old law.



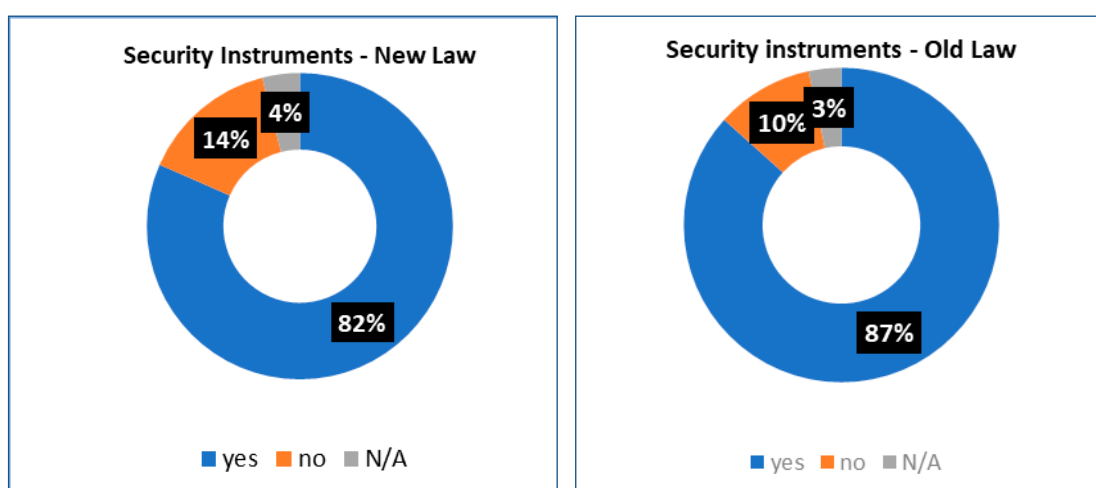
With respect to the statistics of concluded contracts, the results of the research show that in the examined samples there is a significantly higher percentage of concluded contracts compared to unconcluded ones. In the procurements carried out under the new law, contracts were concluded in 95% of the procurements. In 5% of the cases in which the contracts were not concluded, the reasons given were that in most cases all tenders were unacceptable, or no tenders were received.

After the adoption of the new law on public procurement, an increase in the percentage of concluded contracts was observed.

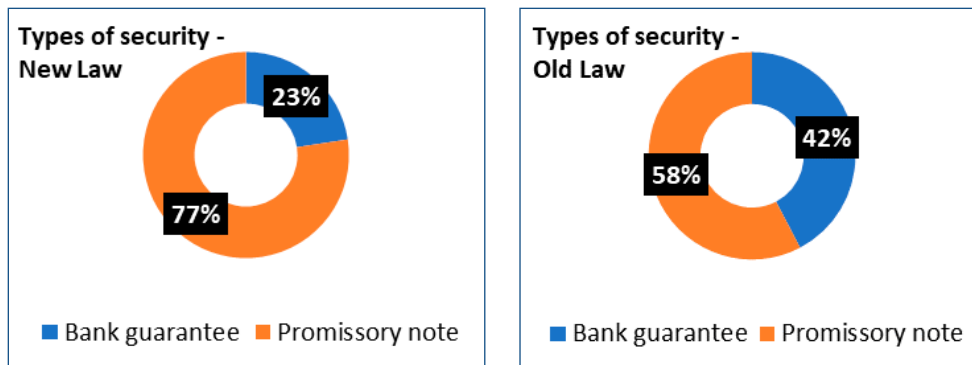


Analyzing the contracting authorities/entities who require a financial security instrument during the implementation of procurement, we came to the conclusion that the percentage has not changed significantly since the adoption of the new law. The conclusion is that a large number of contracting authorities/entities still require a financial security instrument when conducting public procurement.

In 82% of cases, the contracting authorities/entities require security instruments, while in 14% of cases, the contracting authorities/entities financial security instruments are not included in the required documentation. Analyzing the value of purchases in which security instrument is required, in 34% of cases the value of purchase is greater than 10,000,000.00 rsd, and we come to the conclusion that the value of the purchase does not affect the choice of the contracting authority/entity to request a security instrument, and that it is a common practice to require a financial security instrument for procurements with value both under and over 10,000,000.00 rsd.



Of the 82% of contracting authorities/entities who require security instruments, 77% of them specify promissory notes as the required security, while 23% of contracting authorities/entities opt for bank guarantees



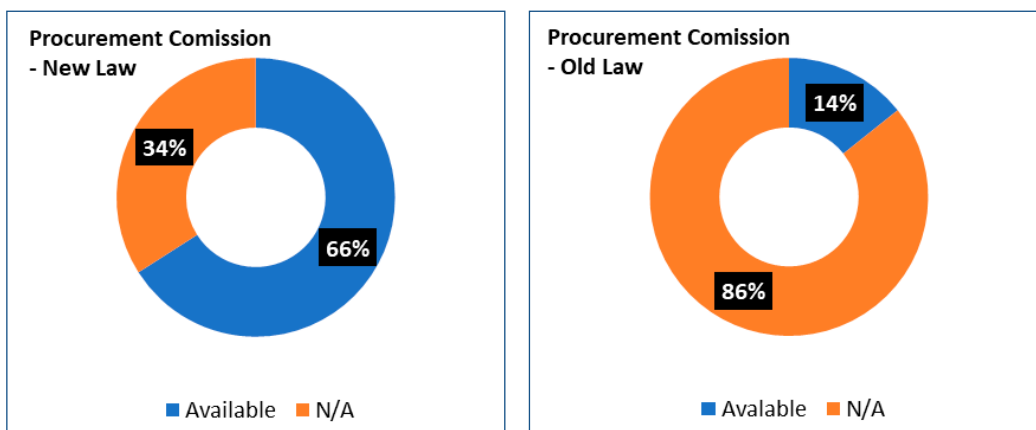
Analyzing the procurements with the value less than 10,000,000.00 rsd, in 93% of cases a promissory note is used as security, and bank guarantee in 7% of cases. It is concluded that in procurements under 10,000,000.00 rsd, the required security instrument is mainly promissory note.

On the other hand, analyzing procurements with values greater than 10,000,000.00 rsd, in 58% of cases a bank guarantee is used as a security, while a promissory note is used in 42% of cases. It is concluded that in procurements over 10,000,000.00 rsd, the required security instrument is mainly bank guarantees.

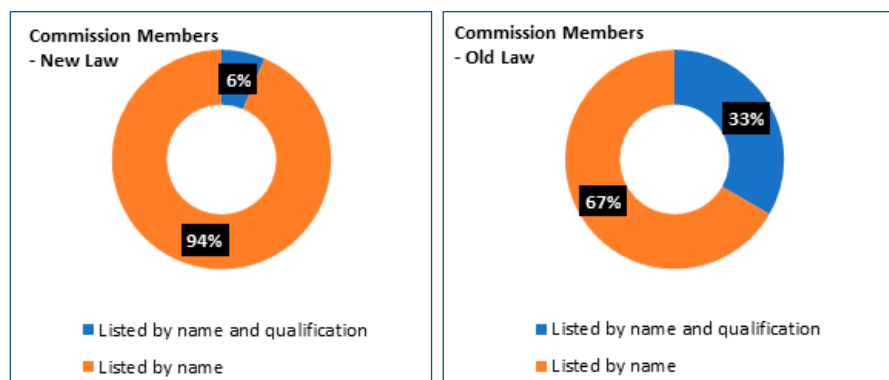
### 3.6 Public Procurement Commission

If the estimated value of the public procurement does not exceed the amount of 3,000,000 rsd, the contracting authority/entity is not obliged to appoint a public procurement commission, in which case the public procurement procedure is carried out by a person appointed by the contracting authority/entity.

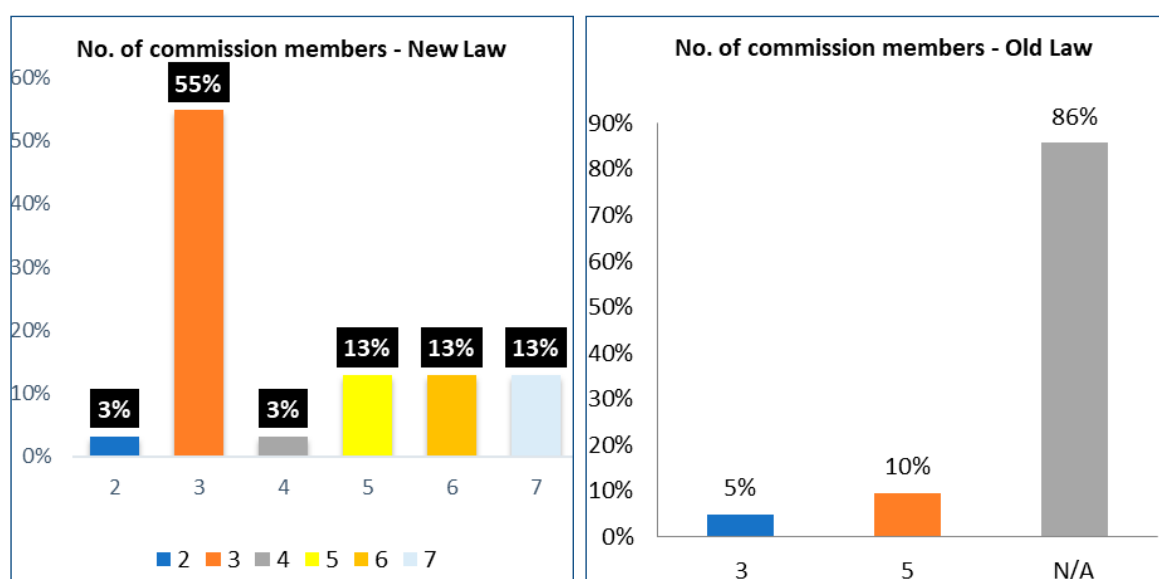
Analyzing procurement procedures, in a selected sample of procurements larger than the stated amount, the data about the commission is available in 66% of cases. In 34% of cases - procurements below 3,000,000 rsd that are not required to appoint a commission, the contracting authority/entity has exercised their right and there is no information about the commission, i.e. the commission was not formed. There is a noticeable increase in the transparency of data on the Commission in procurements carried out under the new law, compared to those carried out under the old law, where the percentage of data availability was only 14%.



In procurements carried out under the new law, in which data on the commission is available, in 94% the commission members were listed by name, while in procurements carried out under the old law this percentage is 67%. The number of procurements in which the professional qualifications of the commission members are also mentioned is significantly lower.



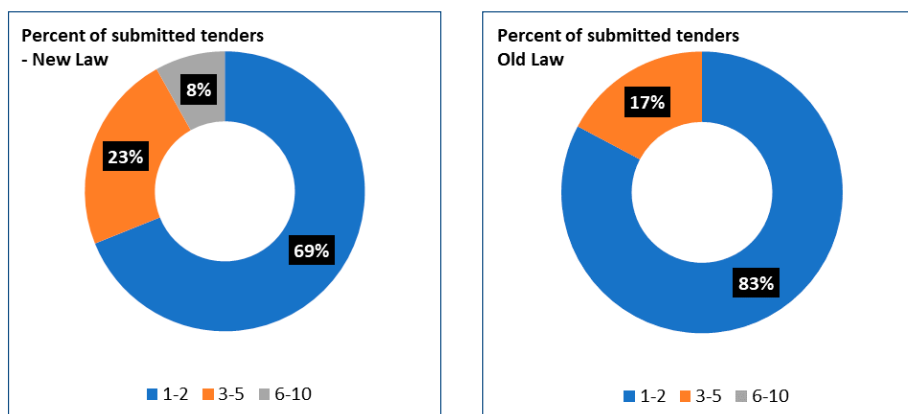
According to Article 92, Paragraph 3 of the LPP, the Commission must have an odd number of members, and at least three members. In the selected sample of procurements where the contracting authority/entity is required to appoint a commission, the following data is observed. In procurements carried out under the new law, 55% of the contracting authorities/entities opt for 3 members of the Commission. Compared to procurements carried out under the old law, a significant increase in the availability of data on the number of commission members is recognized. In the observed sample of procurements carried out under the old law, in 86% of cases there is no data on the number of commission members. Furthermore, the research of a sample of procurements carried out under the new law shows a number of contracting authorities/entities who organized a commission with an even number of members, contrary to the above-mentioned article of the Law. There is 13% of contracting authorities/entities who appointed six (6) commission members in procurements, and 3% of contracting authorities/entities with four (4) commission members.



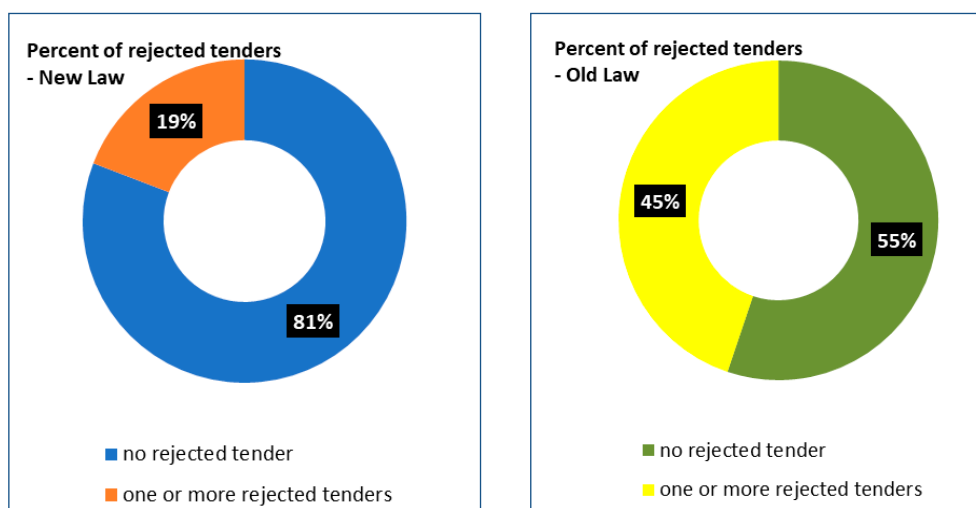


### 3.7 Number of submitted tenders

In terms of the number of tenders submitted for announced public procurements, the data show that in procurements carried out under the new law, a small number of tenders were received in 69% of cases, between one and two (1-2) tenders, while in 23% of cases it was between three and five (3-5) tenders. The analysis of the number of tenders submitted in procurements carried out under the old law shows that in 83% of cases the number of received tenders was 1-2. Since the adoption of the new law, and in comparison with the application of the old law, there has been a noticeable increase in the percentage of the number of submitted tenders. In particular, in 23% of procurements the number of received tenders was three to five (3-5), over five tenders (6-10) were received in 8% of procedures, while in the remaining 69%, the number of received tenders was one or two (1-2). It can be concluded that with the implementation of the new law, the number of tenders received per procedure has increased.



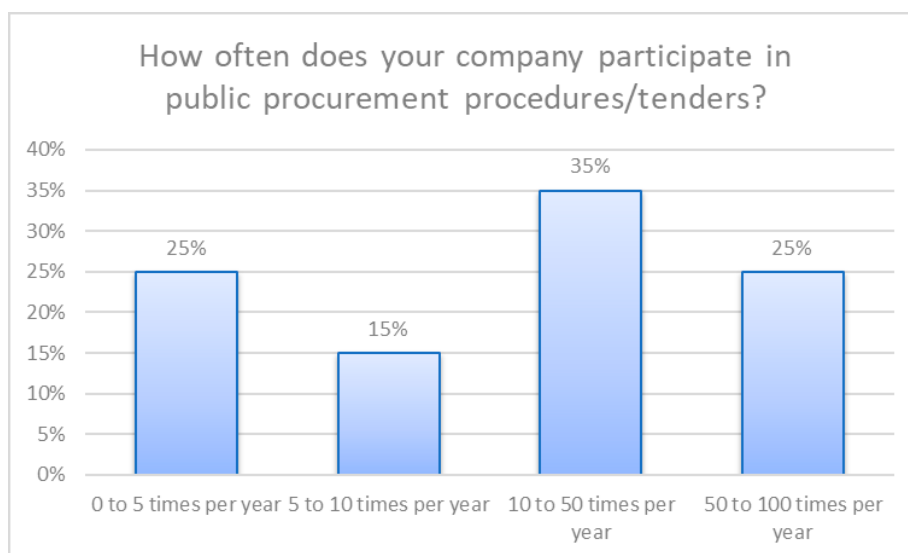
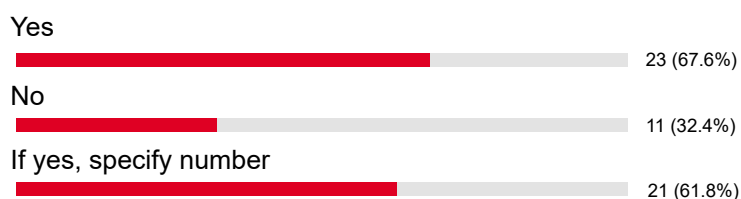
Analyzing the percentage of rejected tenders in relation to the number of submitted tenders, the following conclusions are reached. In procurements carried out under the old law, the percentage of rejected (incorrect/unacceptable) tenders was 45%, while in 55% of cases there were no rejected tenders. On the other hand, in the procurements carried out under the new law, an improvement can be observed, namely in the increase in the percentage of procurements in which there were no rejected tenders. The conclusion is that the application of the new law has significantly reduced the number of incorrect/unacceptable tenders.



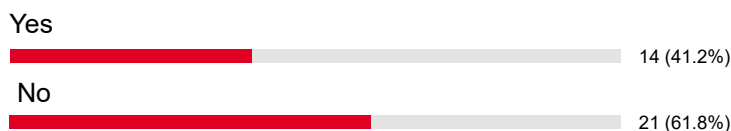
## 3.8 Survey results

As part of the project, the Association of Consulting Engineers of Serbia - ACES, conducted a survey among its members, who perform activities in the construction sector, mostly as designers/consultants. The results of the survey are presented below, and the Appendix 2 of this Guide provides comments submitted by survey participants regarding the questions asked, i.e. recommendations for improving existing practice in public procurement procedures.

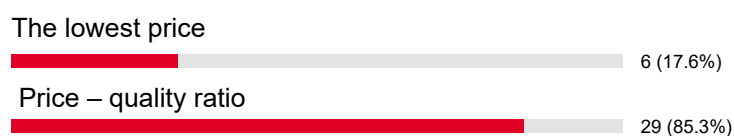
### **"Does your company participate in public procurement procedures/tenders and how often?"**



### **"Do you think that the procurement procedures are carried out transparently and in accordance with the regulations and laws of the RS?"**



### **"In your opinion, which of the above criteria should be used when selecting economic operator (Tenderer) in procurement procedures"**



**“If the criterion of price - quality ratio is used for the selection of economic operator in procurement procedures, do you think that quality should have more weight than price?”**

Da



Ne



**“Do you think that procurement procedures would be more efficient/effective in case of performance monitoring after the selection of economic operator?”**

Da



Ne

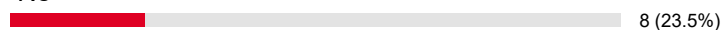


**“Do you think that there should be a register of tenderers (companies) where their evaluations for each completed procurement could be reviewed?”**

Da



Ne



## 4. EU REGULATIONS AND PRACTICES IN THE FIELD OF PUBLIC PROCUREMENT

### 4.1 DIRECTIVE 2014/24/EU

Directive 2014/24/EU of the European Parliament and the Council of Europe of 16 February 2014, was published in the Official Journal of the European Union on 28 March 2014.

The Directive deals with public procurement procedures in the countries of the European Union. For the purposes of this analysis, Subsection 3 is the most important. It defines in detail the overall contract award process. It consists of three Articles:

- Article 67 - Contract award criteria,
- Article 68 - Life cycle costing, and
- Article 69 - Abnormally low tenders

#### **Article 67 - Contract award criteria**

Without prejudice to national laws, Article 67 defines that the award of public contracts shall be based on the MEAT (most economically advantageous tender) criteria.

MEAT shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio. Price-quality ratio is assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:

- a) Quality
- b) Organization, quality and experience of staff
- c) after-sales service and technical assistance, time-limits, etc.

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

Member States are allowed not to use price only or cost only as the sole award criterion, or to restrict their use to certain categories of contracting authorities or certain types of contracts.

Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services in any respect and at any stage of their life cycle, including factors involved in:

- a) the specific process of production, provision or trading of those works, supplies or services; or
- b) a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.

Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.

The contracting authority shall specify the relative weighting which it gives to each of the quality criteria, where this is not identified on the basis of price alone. Weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

### **Article 68 - Life-cycle costing**

Life-cycle costing shall cover parts or all of the following costs over the life cycle of a product, service or works:

- a) costs borne by the contracting authority/entity or other users, such as:
  - i. costs relating to acquisition;
  - ii. costs of use, such as consumption of energy and other resources;
  - iii. maintenance costs;
  - iv. End-of-life costs such as collection and recycling costs.
- b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

Where contracting authorities assess the costs using a lifecycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

- a) it is based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favor or disadvantage certain economic operators.
- b) it is accessible to all interested parties;
- c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA (the Agreement on Government Procurement) or other international agreements by which the Union is bound.

Whenever a common method for the calculation of lifecycle costs has been made mandatory by a legislative act of the Union, that common method shall be applied for the assessment of life-cycle costs.

## **Article 69 - Abnormally low tenders**

According to this Article, the contracting authority/entity shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

The explanation may in particular relate to:

- a) the economics of the manufacturing process, of the services provided or of the construction method;
- b) the technical solutions chosen or any exceptionally favorable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
- c) the originality of the work, supplies or services proposed by the tenderer;
- d) compliance with obligations referred to in Article 18(2) ("Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labor law established by Union law, national law, collective agreements or by the international environmental, social and labor law provisions listed in Annex X."),
- e) compliance with the obligations referred to in Article 71 (which defines the conditions under which subcontracting can be carried out),
- f) the possibility of the tenderer obtaining state aid.

The contracting authority/entity shall assess the information provided by the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to above.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in Article 18(2).

Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU (The Treaty on the Functioning of the European Union), specifying the conditions for economic operators to obtain state aid without distorting competition. Where the contracting authority rejects a tender in those circumstances, it shall inform the European Council thereof.

Upon request, Member States shall make available to other Member States by means of administrative cooperation any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed in paragraph 2 hereof.

## 4.2 EFCA/FIDIC recommendations – How to apply MEAT criteria

The International Association of Consulting Engineers FIDIC (*Fédération Internationale Des Ingénieurs – Conseils*), founded in 1913 with headquarters in Geneva, today gathers 103 national engineering-consulting associations around the world, with approximately 1.5 million experts in the field of construction and related disciplines. FIDIC defines standardized models of contracts for different types of construction projects, reducing project risks and protecting the interests of all stakeholders. FIDIC standards provide legal protection, enhanced safety and decrease possibility of corruption. In this manner, transparency of the process and investor's trust are built, facilitating project management and enabling risk detection and easier problem resolution in early phases of the project, to the satisfaction of the contracted parties. FIDIC members endorse the Code of Ethics, which demands professional competence, impartiality, open and fair competition.

In cooperation with the national association and local partners, FIDIC organizes trainings, seminars, conferences, and other events, and publishes international contracts and business practice documents, to meet the following objectives:

- maintaining high ethical and professional standards;
- Development of the profession of consultant engineers, the exchange of information and opinions;
- Discussions on problems of common interest among organizations, members and international financial institutions;
- Improving the image of engineers-consultants as leaders;
- Commitment to promoting conservation and environmental protection.

EFCA (*European Federation of Engineering Consultancy Associations*) is the only federation to represent the engineering consultancy industry and related expert services in Europe, employing approximately one million experts. EFCA represents the interests of FIDIC in Europe and gathers 28 national consulting engineering associations from Europe.

The goals of this organization are, among others, to create a positive impact on the European Union legislation in order to increase competitiveness and promote transparency in public procurement procedures in member countries.

EFCA aims to support EU institutions as a promoter of professional knowledge and experience, help member associations in achieving common European goals, and present the views of consulting engineers to European institutions and agencies.

FIDIC and EFCA established a working group with a primary goal to define new criteria for evaluating tenders in public procurements. Public procurements in the EU have a significant share of over 14% in the total GDP with over 250,000 public companies participating in public procurement processes.

One of the goals of setting the criteria was to enable greater participation of small and medium-sized enterprises in the market, as well as to promote the use of electronic platforms when conducting public procurement.

The position of the working group is that subcontracting should be limited and transparency should be increased, since long chains of subcontracting are not economical, they reduce functioning and increase the exploitation of workers, primarily on the construction site.

The most important goal of the European Parliament is to replace the criteria for awarding public procurement based on the lowest offered price principle - **MEAT – Most Economically Advantageous Tender**.

Article 67 of the Directive 2014/24/EU defines a new criterion for the contract award where the contracting authorities are obliged to use MEAT. Although Article 67, paragraph 2, still leaves the option to make the selection based on price alone, EFCA recommends the use of the MEAT criteria, independently or in addition to the contract award criteria based on price alone.

EFCA prepared a guideline for the application of MEAT criteria in which it defined a five-step methodology for identifying quality criteria related to the procurement in question. Since the method of deriving quality criteria is not always a simple and unambiguous process, the guide uses proven European methodologies to prepare adequate contract award criteria.

Special emphasis was placed on the difference between price and cost. Price is not considered the most important criterion for awarding a contract, given that a lower price may mean a higher total cost during the lifetime of the facility. When only the price is taken into account, it is almost certain that the final product, whether it is a road, a building or the entire infrastructure, will not be designed or executed in an optimal way.

During the procurement process, the contracting authority first selects consultants and contractors based on the selection (prequalification) process. MEAT criteria are applied in the second stage. MEAT criteria deal with the evaluation of submitted tenders through a set of contract award criteria.

It is important to note that the application of qualitative criteria differs in EU countries. Several countries use the principle of "best value procurement" (BVP) to award contracts to consultants or contractors. The objective is very similar to the one underlying the application of MEAT criteria, but it is based on completely different principles of project management.

FIDIC recommends the selection of tenderers based only on quality conditions (QBS - Quality Based Selection) relying on the principle of the highest quality tender in terms of offered teams, company experience, proposed work methodology, respect and improvement of environmental protection conditions, efficient use of energy in relation to the defined project budget. In this approach, the price is determined by the contracting entity, and is non-negotiable, thus the offered quality is the only award criterion.

At the European level, a new framework for the implementation of projects in the field of construction is being analyzed and prepared, using the Collaborative Contract Agreements model, which is already widely used in the USA and Australia. In Europe, Germany and the Netherlands started with pilot public projects (railway projects) based on these principles. The main difference compared to other contract models is that this type of contract foresees an equal sharing of the risks of the stakeholders in its realization. Unlike standard contract models, in collaborative contracts agreements the investment-technical team is composed of the personnel of the contracting authority, the contractor, the expert supervision service, and the



project manager who makes decisions based on the agreement. This work organization greatly reduces problems arising from poor communication, or lack of information, and consequently disputes are reduced to a minimum. This kind of innovative approach certainly requires a special procedure when selecting the stakeholders. Within the EU, procedures that are closest to "innovation partnership" procedures are considered and used.

**Below is an overview of the EFCA methodology, which aims to help contracting authorities/entities to systematically derive, through 5 basic steps, good MEAT criteria that must be properly linked to the subject-matter of the public procurement. Furthermore, the general principles recommended by EFCA for determining the tenderer eligibility criteria, selection criteria and contract award criteria are also provided. At the end of this chapter, there are several examples prepared by EFCA as an illustration of possible approaches when using the MEAT criteria.**

### 4.2.1 Methodology

The methodology for applying MEAT criteria is based on the following 5 basic steps:

- Formulate the main project goals
- Derive possible quality criteria
- Choose a maximum of 4 quality criteria
- Attribute weights to the criteria
- Testing ("crash test")

#### Step 1 - Formulate the main project goals

The first step looks simple, but it may cause some discussion in the project team. The project goal necessarily defines the needs, the impact on the environment, the framework for realization and identifies the stakeholders. The project goal cannot be defined only as the scope of the project, which answers the question "what" is the scope of the project. In order to reach the project goal, it is necessary to agree on the question "why" the project is being implemented.

For example, if a road is being widened, it is necessary to ask why the widening is being done. The answer would be that the widening of the road is being made with the aim of reducing traffic congestion. This is one of the most important goals of the project.

In accordance with the EU directives, the scope of the project should be clearly established at the start of the procedure so that tenderers can decide whether or not to participate. As far as goals are concerned, two different types of goals are defined:

- goals associated with the product (the realized project)
- goals concerning the realization process

The former is used to select the services of a consultant, and the latter are used to select a contractor.

#### Step 2 – Derive possible quality criteria

There is a wide range of possible criteria that could be used to elicit the 'best' offer to a tender but they must always fit the project and its goals. When formulating the quality award criteria, it is necessary to consider the following aspects:

- The criteria must be related to the contract, i.e. the assignment of responsibilities of the stakeholders
- Non-discriminatory conditions must be ensured (restrictions regarding social status, gender or racial affiliation, geographic or national origin, and other conditions regarding the compliance with the UN equality recommendations).
- The information of the partners submitting the tender must be verifiable
- The selection guidelines should give enough information to the tenderers
- The weighting of the quality criteria must be well thought out and must be effective, and clearly presented to the tenderer
- A graduated ranking possibility is necessary so that a real quality ranking of tenders is possible instead of giving "yes/no" score points for only fulfilling a requirement
- Fulfilling the criteria incurs costs on the tenderers – the more criteria they have to satisfy, the higher the costs of preparing the tender.
- Innovation is not a quality criterion in itself, but if wanted in a project, innovation should be assessed by the added value to the project goals

The award criteria are designed differently for consulting services and execution of the works.

Eight different fields in which criteria can be set, are defined below:

- Functionality
- Availability
- Aesthetics
- Sustainability (of the product)
- Sustainability (of the process)
- Lifecycle costs
- Risk management
- Environment

Within these fields, there are themes or subjects that can also be used. The following lists are just a suggestion, they can be expanded by developing additional criteria, based on the requirements of the project, key stakeholders or the client

### Functionality

Criterion	Consultants	Contractors
Noise	√	√
Pollution	√	√
Educational functionality	√	√
Storage capacity		√
Diversity and flexibility	√	√
Compliance with the quality system	√	
Compliance with purposes	√	
Functionality	√	
Distinctive entrepreneurship	√	√
Quality of living space	√	

**Availability**

Criterion	Consultants	Contractors
Delivery deadlines (goods, equipment, materials)		√
Implementation planning	√	√
Impact on the surrounding infrastructure during the works, and other disruptions to regular operations	√	√
Defining the project life cycle and the phases during the exploitation of the procurement subject	√	√

**Aesthetics**

Criterion	Consultants	Contractors
Comprehensiveness of the project	√	
Design	√	
Transparency	√	
"Green" project	√	
Natural materials	√	
Spatial integration	√	
Project quality	√	
Quality of space	√	
Urban integration	√	
User comfort	√	
User satisfaction	√	

**Sustainability (of the product)**

Criterion	Consultants	Contractors
Noise reduction	√	√
Reduction of energy consumption	√	√
Reduction of CO 2 emissions	√	√
Reuse of materials and equipment (Circularity), care of waste and waste materials	√	√
Sustainable use of materials (long life, recycling possibility, maintenance complexity, etc.)	√	√

## Sustainability (of the process)

Criterion	Consultants	Contractors
Social return	√	√
Emission measurement and calculation CO <sub>2</sub> during the implementation of the work	√	√
Using the Quality System	√	√
Project PR	√	√
"Efficient" demolition (reduction of the impact of noise, dust, waste, disturbance of the environment, speed of work, etc.)		√

## Lifecycle costs

Criterion	Consultants	Contractors
Operating costs, maintenance and reconstruction costs (O&M, OPEX)	√	
Total cost of ownership (TCO)	√	

## Risk management

Criterion	Consultants	Contractors
Risk register with mitigation measures	√	√
Project management	√	√
Project organization	√	√
Geotechnical risks	√	√
Project implementation control	√	√
Execution methodology		√
Register of risks observed during the implementation of the work and ways of solving them	√	√
Cooperation with other stakeholders	√	√
Feasibility	√	

**Environment**

Criterion	Consultants	Contractors
<b>Communication with stakeholders</b>	√	√
Information about the project and the impact on the environment	√	√
Safety of the environment and stakeholders	√	√
Environmental interference	√	√
Accessibility of information (transparency)	√	√
Noise reduction	√	√
Reduction of unpleasant odors and other pollution	√	√

Some organizations, in addition to the above-mentioned criteria, also use other interpretations of quality criteria, like 'professionalism of project staff'. Part of the offer is then a description of the project team, its members and their qualifications, including references on similar size and scope projects. The way to apply this criterion is the use of interviews either individually or with the whole team.

The quality criteria must be clearly described in the tender documents, so that the tenderers know from the start what the demands are, and how they will be assessed and reviewed.

**Step 3 – Choose a maximum of 4 quality criteria**

Once the award criteria have been developed, their number must be limited. The first reason is statistical. The more criteria, the higher the dampening effect. Also, with the increase in the number of criteria, the importance of price increases, which is contrary to the principles of MEAT criteria. Another reason is the increase in costs for tenderers. The more criteria, the more time it takes to prepare tenders, and thus the tenderers' costs for tender preparation are higher.

**The maximum number of quality criteria recommended is four.**

In general, you should not choose two criteria from the same group, unless you want to emphasize a certain group of criteria when assessing tenders.

The way in which the four criteria are selected is subjective for each member of the team that prepares the public procurement. If it is possible to rank the project goals, it should be possible to rank the criteria as well. After the ranking is completed, the highest ranked criteria are chosen - if there is no other way then by voting of the team members.

It is recommended that, if possible, meetings be held with everyone involved in the selection process. Also, there is a possibility to ask the participants of the tender selection committee to weigh each group of criteria (from 1 to 10), and based on this result, select the four quality criteria that will be used for the selection of tenderers.

## Step 4 - Attribute weights to the criteria

Having chosen the four criteria, each needs to be given a relative weighting.

The first decision is about the ratio between price and quality. A lot of arguments can be given, but there is a general opinion that quality has a significant influence if price and quality are equal in weight. However, the goal of the MEAT criteria is for quality to be a more important element for making a choice decision than price. In that case, it is recommended that the price does not exceed 20% - 30% in relation to the quality.

*Note: For example, FIDIC recommends the use of QBS (Quality Based Selection), where the selection is made only on the basis of quality, and the price is fixed and forms no element in the tender evaluation.*

The second decision is the relative weighting between the 4 (or less) quality criteria. It is recommended that this decision be made after a discussion within the team. Quality criteria that contribute more to the achievement of the project's goal should have a greater weight.

The weighting method described above is a proven objective method for selection of tenderers, if the expert panel is chosen in a broad and representative way.

## Step 5 - Testing ("crash test")

The last step is testing, i.e. performing the so-called "crash test". It is necessary to assign data from a virtual tender to the criteria and ask the following questions related to the result:

1. How big is a difference in price if you want the tenderer with the lowest tender to prevail over the tenderer with the highest result in terms of quality?
2. How big a financial difference is there if two tenderers are almost equal?
3. How much extra would you pay if the second tenderer has a higher quality and the lowest price tenderer doesn't win?

With this test you can get a feeling for the influence of quality related to price. If the result is not satisfactory, the ratio between price and quality can be corrected.

### 4.2.2 Eligibility criteria (minimum requirements for participation in the procurement procedure)

Eligibility criteria must show an objective relation to the subject-matter of procurement. If we compare them with our legal regulations, the eligibility criteria are the criteria for selection of economic operator (Art. 114 of the Law on Public Procurement. The requirements must be adequate regarding scope and extent of the contract and to the actual risks in connection with the project. Regarding planning (design) services, there is a tendency to have excessive eligibility criteria and thus create unnecessary burdens for market access especially for SMEs.

**Professional authorization:** In case of low contract values, the requirement of an authorization for the offered planning services is often sufficient as it is legally combined with minimum professional legal requirement in most countries.

**Economic capacity:** for proving the economic independence, professional liability insurance is an important factor. Requirements of minimum turnovers can be misleading as the office structure of companies predominantly engaged in consulting activities very much differ from the structure of other companies that are part of the building process. Excessive requirements can be a burden for many potential service providers with an SME structure. This can considerably reduce the intellectual competition and thus hinder perfect solutions.

**Technical capacity:** Most relevant are the qualifications of the personnel that are active in the project. This can be proved by qualification / CPD certificates and personnel references. Additionally, it is possible to require company references. It is important that such requirements are not excessive, normally it is sufficient to ask for references with half the volume of the contract item (e.g. for planning a retirement home, references in housing are sufficient). Reference periods for the execution of services and works should be adequate, because it has been proved that unrealistically short periods can significantly reduce intellectual competition without bringing added value.

**Reliability:** In many cases the proof of legal authorization, which is often bound to certain legal requirements, makes this requirement superfluous. Engineers are very much in favor of self-declarations where Tenderers can make claims about their organizations and only have to provide supporting, official documentation (from banks, liability insurance, social security, etc.) if they actually win the final award. By allowing such self-declarations, potential tenderers are more inclined to participate in competitions as there is less red tape up-front, and contracting authorities can benefit from having a broader selection of offers.

#### **4.2.3 Selection criteria (for two-stage procedures to select the most suitable participants)**

A two-stage procedure is one in which you first select a number of tenderers (5), on the basis of size, references, etc. These five are then invited to submit an offer related to the public procurement project in question.

In contrast to eligibility criteria the evaluation range for selection criteria can be very broad. Selection criteria should be listed in order of importance, and the scoring system should be transparent.

##### **Potential selection criteria:**

- Additional qualifications of key personnel receive additional score points
- Personnel references / team constellations exceeding the key personnel qualifications that are evaluated according to content-related parameters
- Company references exceeding the eligibility references that are evaluated according to content-related parameters
- Examples of good business practice that are evaluated by a commission according to sub-selection criteria related to the task assignment in the second stage of the procedure
- Knowledge management e.g. shown by lecture series / publication series in connection with the subject-matter of procurement

- Proposal for solution, concept
- Continuous professional development

#### 4.2.4 Award criteria

The award criteria are used for evaluating (scoring) tenders. They, therefore, have to be, in contrast to the company-related eligibility and selection criteria, contract (procurement subject-matter) related. Consulting services as intellectual services require the use of the 'most economically advantageous tender' (MEAT).

This means that the quality aspects of the tender are more important than the pure price aspects. The economic efficiency of the project is essential and more important than the score points that assess the offered price.

In comparison with the criteria defined according to the Law on Public Procurement in Serbia:

- the criteria listed as eligibility criteria in clause 4.2.2 correspond to the qualitative criteria for selection, which determine the minimum requirements for the tenderer's qualification,
- the criteria listed as selection criteria in clause 4.2.3 correspond to the contract award criteria from the LPP, which determine additional requirements and evaluate the quality of the tenderers, and form a "shortlist" in a two-stage procedure,
- the criteria listed as award criteria in clause 4.2.4 correspond to the contract award criteria from the LPP, which are not related to the tenderer itself, but to the subject-matter of the procurement and which, according to EU recommendations, can be evaluated in the second stage of procurement in addition to price, based on the MEAT principle.

#### 4.2.5 Examples illustrating the implementation of MEAT criteria

Below are examples that illustrate some of the "innovative" ways in which the MEAT methodology can be applied, i.e. the introduction of qualitative criteria when selecting tenderers.

These examples illustrate some of the possible ways to define quality criteria for different procurement items, all depending on the specific goals of the project. The quality criteria are not introduced in the "classic", usual way, where the quality criteria are weighted directly in relation to the price in a certain percentage (e.g. 70%:30%), but indirectly, through fictitious increases or decreases in the offered price, depending on the degree of fulfillment of the set project goals, i.e. qualitative criteria related to those goals.

#### **EXAMPLE PROJECT 1: COMPLETE DESIGN SERVICES FOR OFFICE BUILDING**

**Explanation:** this is an example whereby costs and benefits are financially quantified, with some subjective elements. Since the estimated amount of the tender is not defined, it is difficult to conclude what price - quality ratio should be applied. Therefore, a method was applied where efficient use of space and sustainability (assessment of how efficient the building is in



terms of consumption of energy), as the main goal of the project, are valorized through scoring. The evaluation of these project performances is exact, but involves subjective assessment.

The procuring authority/entity will award the contract in accordance with the award criterion 'economically most advantageous tender' (MEAT) on the basis of best price-quality ratio. An integral part of the offer is also the concept design, with the presentation of the project idea. The tenderers must explain how the set quality criteria for the award will be achieved as part of their tender, in the context of the overall project performances.

## 1. Calculation

The calculation is done in such a way tenderers are awarded a fictitious 'discount' according to the points achieved depending on the achievement of the set criteria, i.e. the project performances. In this table the total maximum fictitious discount is given. This 'discount' will be subtracted from the financial offer and the price for a detailed design (1) and (2). The result will be the basis of the final score.

Sub-criteria	Further distribution	Calculation	Maximum fictitious discount
(1)	Financial offer for the creation of project documentation	• offer • hourly rates	
(2)	Detailed design (optional)	• offer	
(3)	The project performances shown in the Conceptual design	• ease of use • gross / net ratio • sustainability	- € 75.000 - € 25.000 - € 25.000
(4)	Project and risk control		- € 40.000
		<b>Total amount</b>	<b>xxx</b>

The four sub-criteria are explained below.

### (1) Financial offer

The fee by stages in the financial offer must be specified in the form provided in the tender documentation. The total fee and fees for the planned design phases are fixed until the end of the contract. All additional costs must be included in the fee. If the contract is awarded, this fixed price per phase will apply to the contracting authority/entity. Incorrect or "too low" estimation of the number of working hours of individual team members is the responsibility of the tenderer.

For the purpose of possible additional work, hourly rates will be agreed upon when awarding the contract. The hourly rates per function are fixed until the end of the Contract.

If the contract is awarded, and if the tenderer is instructed to include additional work, these hourly rates shall be applied according to the table showing the hourly rates for the different staff profiles. Tenderers are required to apply the prescribed tender formats and to adhere to the principles stated in the tender documentation. Tenderers who have made changes and/or additions to the format will be excluded from the award.

## **(2) Detailed design**

The honorarium for this phase is fixed until the end of the Contract. Any additional costs must be included in the fee, specified in the form that is an integral part of the tender documentation.

If the Contract is awarded to a tenderer and they are also instructed to work out the implementation design, the fixed price that you have offered will apply to this phase. An incorrect (i.e. 'too low') estimate of the number of hours of team members will become the full responsibility of the Contractor. Tenderers are required to apply the prescribed tender formats and to adhere to the principles stated in the tender documentation. Tenderers who have made changes and/or additions to the format will be excluded from the award.

## **(3) Project performances in the concept design**

(A) To what extent are the layout of the building and landscaping efficient and aligned with the intended use?

Assessment takes place on the basis of the qualitative assessment method as described below:

- 3 points: €75,000
- 2 points: €45,000
- 1 point: €20,000
- 0 points:

So a very good offer scores 3 points and will earn a € 75,000 'fictitious' discount.

A score from 0 to 3 is awarded on the basis of the following points:

- optimal design / use is possible taking into account the desired logistics and the mutual relations between the different planned components
- proper zoning of space
- the need for vertical traffic
- flexibility (possibility of expanding the capacity of business area or parking in the future)
- care for the environment

(B) To what extent does the project have a positive factor of favorable use of space shown through gross/net area ratio?

Assessment is carried out in accordance with NEN 2580: 2007 / local standard, based on which the "fictitious discount" is determined:

- 89% < VF: €25.000
- 88% < VF <89%: €17.000
- 87% < VF <88%: €11.000
- 86% < VF <87%: €7.000
- 85% < VF <86%: €4.000
- 84% < VF <85%: €2.000
- 80% < VF <84%: €1.000
- VF <80%:

(C) To what extent does the project fulfill the building sustainability criterion?

Assessment takes place on the basis of the building's energy consumption (EPC) in accordance with NEN 7120: 2012 / local standard, based on which the "fictitious discount" is determined

- EPC <0,0%: €25.000
- 0,0% <EPC <0,1%: €18.000
- 0,1% <EPC <0,2%: €12.000
- 0,2% <EPC <0,3%: €7.000
- 0,3% <EPC <0,4%: €3.000
- 0,4% <EPC:

**(4) Project and risk control**

The extent to which the Tenderer guarantees that the objectives of this project are realized.

Assessment takes place on the basis of the qualitative assessment method as described below:

- 3 points: €40,000
- 2 points: €24,000
- 1 point: €10,000
- 0 points:

In doing so, attention is paid to the following points:

- comprehensive coordination of the design process
- providing the necessary expertise
- assuring design integration of the various disciplines
- ensuring solidity of planning
- possibilities optimization of design planning (acceleration)
- assuring the planned project budget is not exceeded

**The table below sets out the arguments for awarding each rank, 1 to 3. The explanation given by the tenderer in the methodology provided in the tender is evaluated**

3	<ul style="list-style-type: none"> <li>• it is relevant, applicable and well formulated and the tenderer has demonstrated that it has understood the assignment properly; and</li> <li>• is fully based on the principles of this project; and</li> <li>• has one or more innovative or positively distinctive elements that fit in with this project.</li> </ul>
2	<ul style="list-style-type: none"> <li>• it is relevant, applicable and well formulated and the tenderer has demonstrated that it has understood the assignment properly; and</li> <li>• it is fully based on the principles of this project</li> </ul>
1	<ul style="list-style-type: none"> <li>• is relevant, applicable and adequately formulated and the tenderer has demonstrated that it has sufficiently (largely) understood the assignment; and / or</li> <li>• it is largely based on the principles of this project.</li> </ul>
0	<ul style="list-style-type: none"> <li>• it is relevant, applicable and adequately formulated and the tenderer has demonstrated that it has sufficiently (largely) understood the assignment; and / or</li> <li>• it is largely based on the principles of this project.</li> </ul>

## **EXAMPLE PROJECT 2: BUILDING RENOVATION WORKS**

**Explanation:** This is an example of a possible definition of quality evaluation criteria, with four criteria, which is considered optimal. They are related to the project goals. There is some subjectivity in the description, but the elements are structured. There is a good match between the description of the criteria and the method of evaluating their fulfillment. The example is not only related to design, but also to the execution of works. The evaluation itself (scoring) is not the subject of this example, but it illustrates in a good way the possible introduction of different qualitative criteria, depending on the goals of the project/procuring authority.

### **1. Social return**

Social return is included as a criterion because this issue is central to the contracting authority/entity's core business. The tenderer must describe how social return will be accomplished.

#### **Fulfillment of the criteria**

The Tenderer must explain social return in concrete (SMART) terms and present concrete actions in his action plan. This is related, among other things, to the extent in which the organization of the tenderer:

- provides for a policy to promote employment, and opportunities for the creation of employment (through ensuring adequate number of full-time jobs);
- takes into account the employment time frame when opening new jobs;
- undertakes measures in favor of workers and/or persons in environments with difficult working conditions/environments with difficult employment opportunities;
- ensures the mission and vision of the client is reflected in the solution that is proposed for the project;

### **2. Transition plan**

For the contracting authority/entity, ongoing operations during the implementation phase are of great importance. The tenderer must demonstrate in a transition plan how the accessibility of the building will be guaranteed during implementation. The tenderer must describe how business operations can be continued throughout the execution period and include a scheme of support mechanisms.

#### **Fulfillment of the criteria**

The Tenderer must submit a transition plan that includes planning, in this, the Tenderer must describe the extent their work will impact on the operational management. This must concern, among other things, the extent to which:

- construction works prevent work in the building
- the construction method causes inconvenience for the users
- the building remains accessible during execution
- regular use can be continued

### **3. Communication and corporation**

The tenderers must describe how they will collaborate and communicate with the contracting authority and with the staff working in the building during the implementation period. For this the Tenderer must submit a view on communication and cooperation.

### **Fulfillment of the criteria**

Tenderers must demonstrate how cooperation and communication with the contracting authority during execution will be guaranteed. Also, they must provide for the communication with the users, employees who are present at the premises during the execution. Tenderers describe the way in which they will give form and content to building, strengthening and maintaining sustainable and constructive cooperation and communication during all phases. For this, tenderers must draw up a communications plan. This must include, among other things:

- name and profile of the proposed key officer (project manager), as well as a proposed adequate replacement if required (with at least equivalent expertise);
- the way of communication and cooperation during the design phase, the specific factors of success and failure assessment and the description of appropriate measures for elimination;
- the way of communication and cooperation during the execution phase, the specific factors of success and failure assessment and the description of appropriate measures for elimination;
- the way of communication with the users, employees in the building, during the execution, and explanation how and to what extent the specific target group is considered;
- measures to prevent lack of clarity and possible discussion points.

### **4. Opportunities for improvement and risks**

The tenderer must describe the potential opportunities for improvement in the project. Prices associated with opportunities for improvement do not form part of the project budget. For each potential opportunity, the tenderer must state the price he wishes to receive if the contracting authority wishes to use such opportunity. When it is necessary to carry out research in order to determine the possibility of achieving improvements, the tenderer must include the research costs in the requested bonus. It is up to the tenderer to assess the ratio between the bonus for the proposed improvement and the associated costs, and it is up to the contracting authority to accept it or not.

The tenderer must describe how he will control the most important risks and how he creates added value for the contracting authority. The Tenderer is expected to take into account all possible risks that may arise during the execution of the work based on their knowledge and experience, and develop (preventative) control measures for this. In addition, it is expected that the Tenderer, based on his expertise and experience, is also capable of managing risks during the implementation process (remedy control measures).

### **Fulfillment of the criteria**

The tenderer needs to define the extent of the scope for creating improvement opportunities. This concerns, among other things, the extent to which:

- the tenderer identifies opportunities for improvement;
- the tenderer identifies effective management measures to take advantage of the opportunities;
- a relatively small investment results in a relatively large added value

The costs and what it entails in terms of risk of time overrun, schedule delay and quality issues must be indicated for each opportunity. The Tenderer must define the extent to which the management of risks is interpreted. This concerns, among other things, the extent to which:

- efforts are made to control the most important risks in an effective way (preventative control measures),
- the most important building risks are measurably and demonstrably controlled.

### **EXAMPLE PROJECT 3: INFRASTRUCTURE, A MUNICIPAL ROAD**

**Explanation:** this is an example with one criterion, which is as simple as possible. It is related to the project goal and the project size (small). It may involve a very SMART assessment but also carries the risk of providing the wrong incentive. No information is asked about the specific measures to close the road to traffic. This example is not directly related to design, but also to execution, and same as the previous example, it illustrates one of the ways in which qualitative criteria can be introduced when deriving MEAT.

As an important goal of the project, the municipality attaches value to an implementation process in which the nuisance for motorized traffic that uses the road is limited as much as possible. The municipality has therefore included this aspect as a MEAT criterion.

The most economically advantageous tender is the tender with the lowest evaluation price (EP) determined based on the following award formula:

$$EP = I + (10,000 \times G)$$

EP: evaluation price

I: price offer of the relevant Tenderer (in EUR)

G: maximum number of days of road closure for motorized traffic

10.000: estimated value of the contracting authority/entity's costs in euros per day of road closure

The tenderer must specify the number of days when the road will be closed for motor vehicle traffic (G), which should be justified in the manner defined by the contracting authority/entity, in order to assess the feasibility of the plan. Only consecutive days may be offered. These consecutive days may be divided over a maximum of 2 periods. Closing a part of a day counts as a whole day. The closure may only take place within the implementation period.

Each day of delay in relation to the offered deadline is penalized by an adequate clause in the contract in the amount of 10,000 EUR/day.

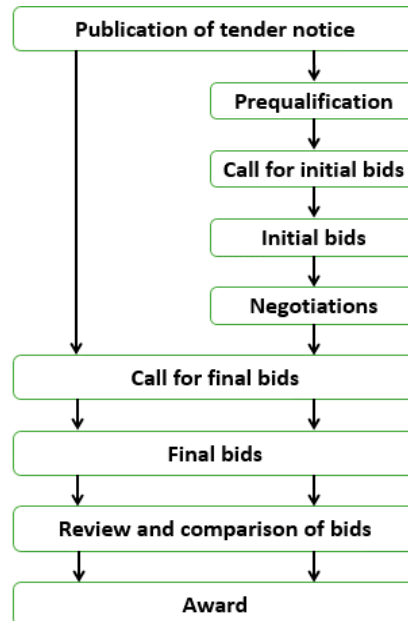
## **4.3 The Finnish model**

For the purposes of presenting positive practice from the EU countries, the Finnish model was chosen as one of the most effective. The Finnish tender selection model in the public procurement sector is based on the standardization method when evaluating tenders based on price and quality.

According to data from the European Commission, Finland spends about 18% of GDP (34 billion Euros) for public procurement of supplies, services and works. Tenders are published on the Finnish public procurement portal HILMA, or on the EU public procurement portal TED, if the procurement is above a certain threshold value.

Foreign companies can participate in all tenders, but tenders on HILMA are published exclusively in the two official languages of Finland: Finnish and Swedish. The goal of public procurement regulation is more efficient use of state money and ensuring that adequate quality is obtained for the money spent. An additional goal is to increase the market competitiveness of both local companies and companies from EU countries.

Tenders can be one-tier or two-tier as shown in the graphic below.



Source: **Bergmann – Infrastructure Finland Opportunities 2016/17**

According to Finland's new law on public procurement from 2016, threshold procurement values are defined above which it is necessary to announce a public procurement tender:

- For services and supplies, if the purchase value exceeds €60,000 (without VAT)
- For construction works if the procurement value exceeds €15,000 (without VAT)

In addition to local legislation, there are procurement threshold values defined by the EU. If public procurement exceeds the defined limit, it is subject to somewhat stricter EU rules. The last defined thresholds are:

- €5,350,000 (without VAT), for the execution of works
- €428,000 (without VAT), for services and supplies

Practice has shown that the partnership between the client and the consultant, together with the application of consultant fees that depend on the results of its work, creates the greatest value for the client.

In addition, according to the results of the market research, it was concluded that input data for the project, design and project management have the greatest impact on project productivity. From these results, we can conclude that investing in a good consultant pays off. Unfortunately, the reality is different when selecting consultants.

Some of the problems that arise in practice when choosing consultants are:

- the planned weightings of price and quality are not realized in the evaluation of tenders, although in theory quality has a high weighting factor,
- quality-related points are most often evaluated with a small variation between tenderers, while price-related points are used in the full range,
- in this way, the price has too much influence on the final result and the lowest offer usually wins,
- therefore, consulting companies aim for the lowest possible price that entails the smallest amount of resources allocated to the project.

The costs of consulting services are relatively easy to calculate:

**Cost = Price of expert personnel x time of engagement**

From the previous formula, it can be clearly concluded that if the consulting firm plans to offer the lowest price, it can do so in two ways:

- By reducing the price of expert staff, hiring less experienced (cheaper) expert staff; or
- By reducing the working hours of expert staff. This reduces their interaction with the client, leads to insufficient understanding of the client's task and wishes, reduces the possibility of analyzing more alternative solutions, reduces interaction with contractors and users in order to fulfill their requirements and needs, etc.

The choice of a consultant based on the lowest price leads to the choice of inadequate project solutions and, most often, increased investment costs and project life cycle costs.

By applying standardization methods, a better final goal is achieved, meaning that the effect of price and quality on the final choice is in accordance with the assigned weights.

In order to achieve this, the following should be taken into account:

- the points attributed to price and quality must be standardized in order to apply the planned weights in the evaluation of tenders,
- deviations in price and quality must be taken into account in order to have an independent assessment.

The Department of Mathematics and Statistics of the University of Helsinki has developed a method that uses statistical methods to achieve the planned quality-price ratios. The method was tested on 150 examples in Finland between 2005 and 2007, mainly in the public procurement sector. The testing rendered excellent results, and afterwards it was presented in Brussels before the officials of the European Council.

The standardization method implies that the expected value (mean value)  $\mu$  is subtracted from each variable value  $x$  and that the resulting number is divided by the standard deviation  $\sigma$ .

$$Z = \frac{x - \mu}{\sigma}$$



This is applied to both price and quality scores, and then both parameters are multiplied by assigned weight and added together. The highest obtained value gives the best offer.

The most important positive impact of the standardized method is the fact that tenderers are informed in advance that the dominant selection factors are good quality, experience and adequate resources, and not the lowest price.

With this in mind, tenderers must offer high quality in order to win the tender. This is the reason why consultants:

- offer the best expert staff,
- prepare a better work plan,
- offer adequate resources for implementation,
- leave enough time to find the best solution for the project,
- leave enough time for communication and interaction with the client, other designers, contractors and end-product users.

The client gets the best offer and is certain to get the best quality of service. Good planning and design reduces project errors to a minimum, reduces disputes and claims during implementation.

The final product meets or exceeds the client's expectations. Quality, user experience and efficiency throughout the life cycle increases.

Below is an example that illustrates this methodology. The method of scoring quality is not described, but only the method of final evaluation of tenders based on the proposed methodology with the application of standard deviation.

Determination of weights for price and quality: Price:Quality=25%:75%

Rank	Name	Cost (€)	Quality Points (max 100)	25% Cost	75% Quality	Sum
6	Company 1	430,965.00	89.00	0.340	0.259	-0.081
8	Company 2	228,565.00	82,00	0,132	-0,995	-0,863
1	Company 3	365,500.00	94.00	-0.187	1.154	0.967
2	Company 4	220,135.00	92.00	0.152	0.796	0.948
7	Company 5	175,300.00	85.00	0.257	-0.458	-0.201
3	Company 6	202,365.00	88.00	0.194	0.080	0.273
4	Company 7	415,600.00	90.00	0.304	0.438	0.134
5	Company 8	165,000.00	86.00	0.281	-0.279	0,002
9	Company 9	363,965.00	82.00	-0.184	-0.995	-1.179

The assessment is carried out using standardization methods. Points for price and points for quality are calculated based on the following formula:

$$\text{Price points} = \frac{\text{Offered price} - \text{Average price}}{\text{Price deviation}} \frac{\text{Offered price} - \text{Average price}}{\text{Price deviation}}$$

$$\text{Quality points} = \frac{\text{Offered quality} - \text{Average quality}}{\text{Quality deviation}} \frac{\text{Offered quality} - \text{Average quality}}{\text{Quality deviation}}$$

$$\sigma = \sqrt{\frac{\sum (x_i - \mu)^2}{N}}$$

; determined based on the following formula:

where  $x_i$  is individual value of price/quality,  $\mu$  is the mean value of price/quality, and  $N$  is the total number of tenders.

	Cost	Quality
<b>Mean value</b>	285,266.11 €	87.56
<b>Deviation</b>	107,081.88 €	4.19

***Therefore, the final ranking is obtained according to the principles of the smallest deviation from the mean values for the assessed quality and price, and by multiplying them by the appropriate weighting. Bidder number 3 submitted the most economically advantageous offer.***

## **5 GUIDE TO PUBLIC PROCUREMENT IN THE FIELD OF CONSTRUCTION SECTOR SERVICES**

### **5.1 Introduction**

The quality of services in the construction sector, which are the subject of this analysis, has a decisive influence on the quality of works and the quality of buildings, their lifespan, construction costs and the costs of using buildings (life cycle costs), and indirectly also on the deadlines for project implementation, considering that in the case of e.g. technical documentation of inadequate quality, there may be a need for modifications and additions.

Therefore it is necessary first to choose an adequate procurement procedure, and to define the qualitative criteria, on which the final selection of the tenderers depends, in an adequate way, so that they:

- show an objective attitude towards the subject-matter of procurement,
- be clearly defined, with a prescribed method for proving their fulfillment,
- be appropriate for a specific project,
- take into account the real risks related to the project; excessive requirements that do not correspond to the size/complexity of the project prevent adequate competition,
- take into account small and medium-sized enterprises when defining requirements primarily in terms of financial and economic capacity.

In the following text, the Guidelines are given that should help the contracting authorities/entities in the procurement of services in the construction sector, in terms of:

- selection and implementation of the procedure (5.2.1)
- selection of the commission composition (5.2.2)
- preparation of tender and other documentation (5.2.3)
- defining qualitative selection criteria (5.3.1)
- defining contract award criteria (5.3.2)
- determining the methodology for evaluating the criteria when applying MEAT criteria (5.3.3)
- dealing with fixed and abnormally low prices (5.4)

Finally, an example is given of evaluation based on the price-quality ratio for more complex projects and projects of higher value (5.5).

## **5.2 Guidelines regarding public procurement procedures in the field of construction sector services**

### **5.2.1 Selection and implementation of the procedure**

According to the LPP (Article 52), the following is defined:

Public procurement procedures are:

- 1) open procedure;
- 2) restrictive procedure;
- 3) competitive procedure with negotiation;
- 4) competitive dialogue;
- 5) negotiated procedure with publication;
- 6) innovation partnership;
- 7) negotiated procedure without publication;

As a rule, contracting authority awards contracts in open or restricted procedures, and may also award contracts in other public procurement procedures if the requirements regulated by the Law are met, with the exception of negotiated procedure with publication of the contract notice.

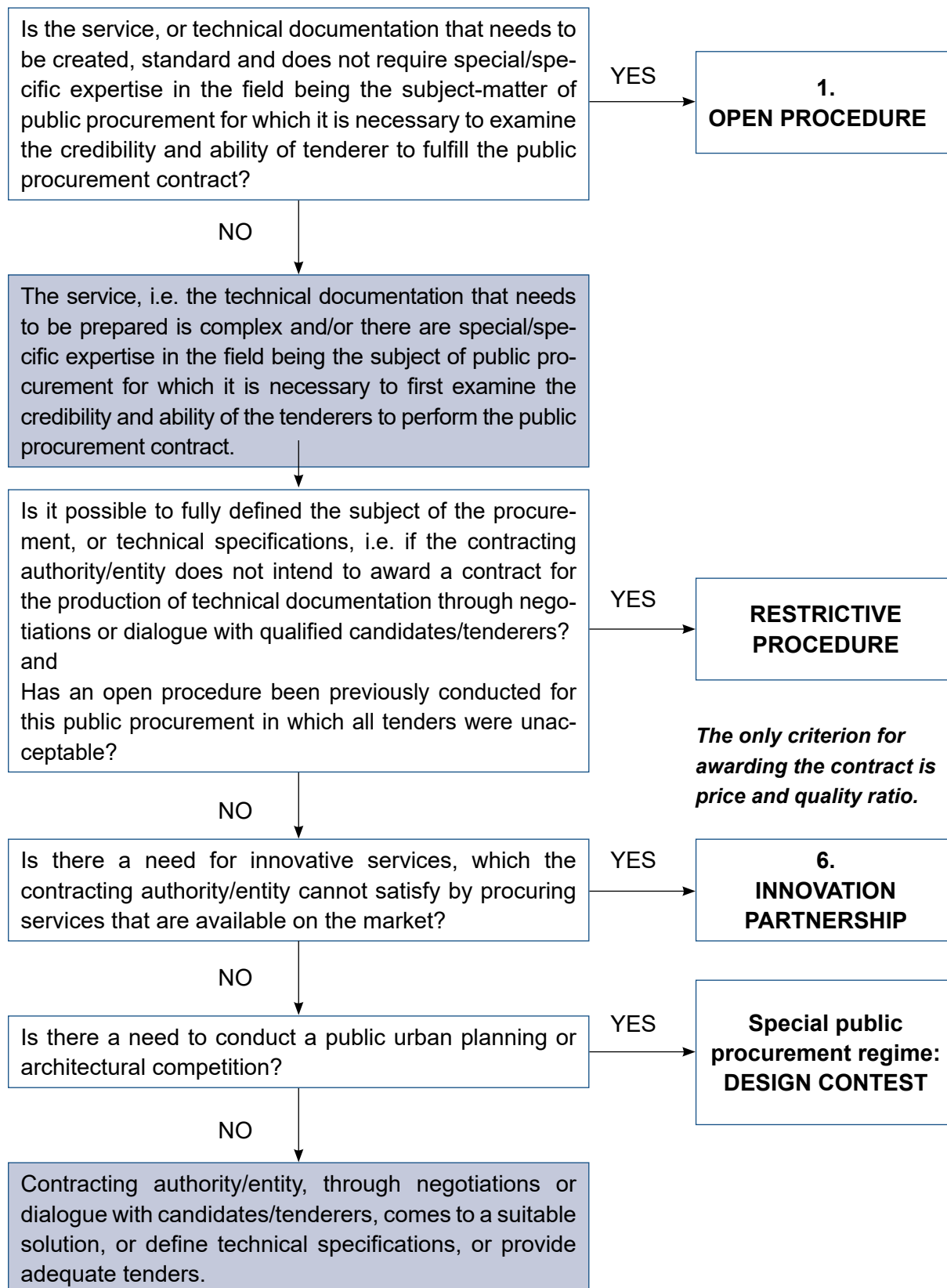
As a rule, contracting entity awards contracts in open procedure, restricted procedure, negotiated procedure with publication, or in competitive dialogue, and may also award contracts in other public procurement procedures, if the requirements set forth by the Law are met, with the exception of the competitive procedure with negotiations.

The following diagrams present the selection and implementation of procedures, with clearly stated criteria prescribed by the LLP, which can serve as an aid to contracting authorities/entities when selecting the procedure to be implemented in public procurement.

In addition to the conditions that must be met in accordance with the LPP, when deciding on the procedure to be applied for construction sector services, contracting authorities/entities can also be guided by the following issues:

- Is the service, or technical documentation that needs to be created, standard and does not require special/specific expertise in the field being the subject-matter of public procurement?
- Is it necessary for the service to first examine the credibility and ability of the tenderers to perform the public procurement contract?
- Is it possible to fully defined the subject of the procurement, or technical specifications, i.e. if the contracting authority/entity does not intend to award a contract for the production of technical documentation through negotiations or dialogue with qualified candidates/tenderers?
- Has an open procedure been previously conducted for this public procurement in which all tenders were unacceptable?
- Is there a need for innovative services, which the contracting authority/entity cannot satisfy by procuring services that are available on the market?
- Is there a need to conduct a public urban planning or architectural competition?
- Can the contracting authority/entity, through negotiations or dialogue with candidates/tenderers, come to a suitable solution, or define technical specifications, or provide adequate tenders?

Diagrams are given below that can serve as guidelines for the contracting authorities/entities when choosing an adequate procedure and its implementation.



Does one of the following cases apply to the public procurement in question?

- 1) Only a certain economic operator can provide services or perform works, for any of the following reasons:
  - (1) the aim of procurement is the creation or acquisition of a unique work of art or of an artistic performance (not applicable to the subject procurement of construction sector services);
  - (2) absence of competition for technical reasons, or
  - (3) for the protection of exclusive rights, including intellectual property rights;
- 2) to the extent as is strictly necessary where, for reasons of extreme urgency brought about by events that the contracting authority/entity could not foresee, it is not possible to act within the time limits set forth for open procedures, or restricted procedure, or for competitive procedure with negotiations, or for negotiated procedure with publication, provided that the circumstances invoked by the contracting authority/entity to justify extreme urgency are not in any event caused by the contracting authority/entity's actions.

**The client is obliged to submit documentation to the Public Procurement Office for an opinion**

YES

**7. NEGOTIATED PROCEDURE WITHOUT PUBLICATION**

or

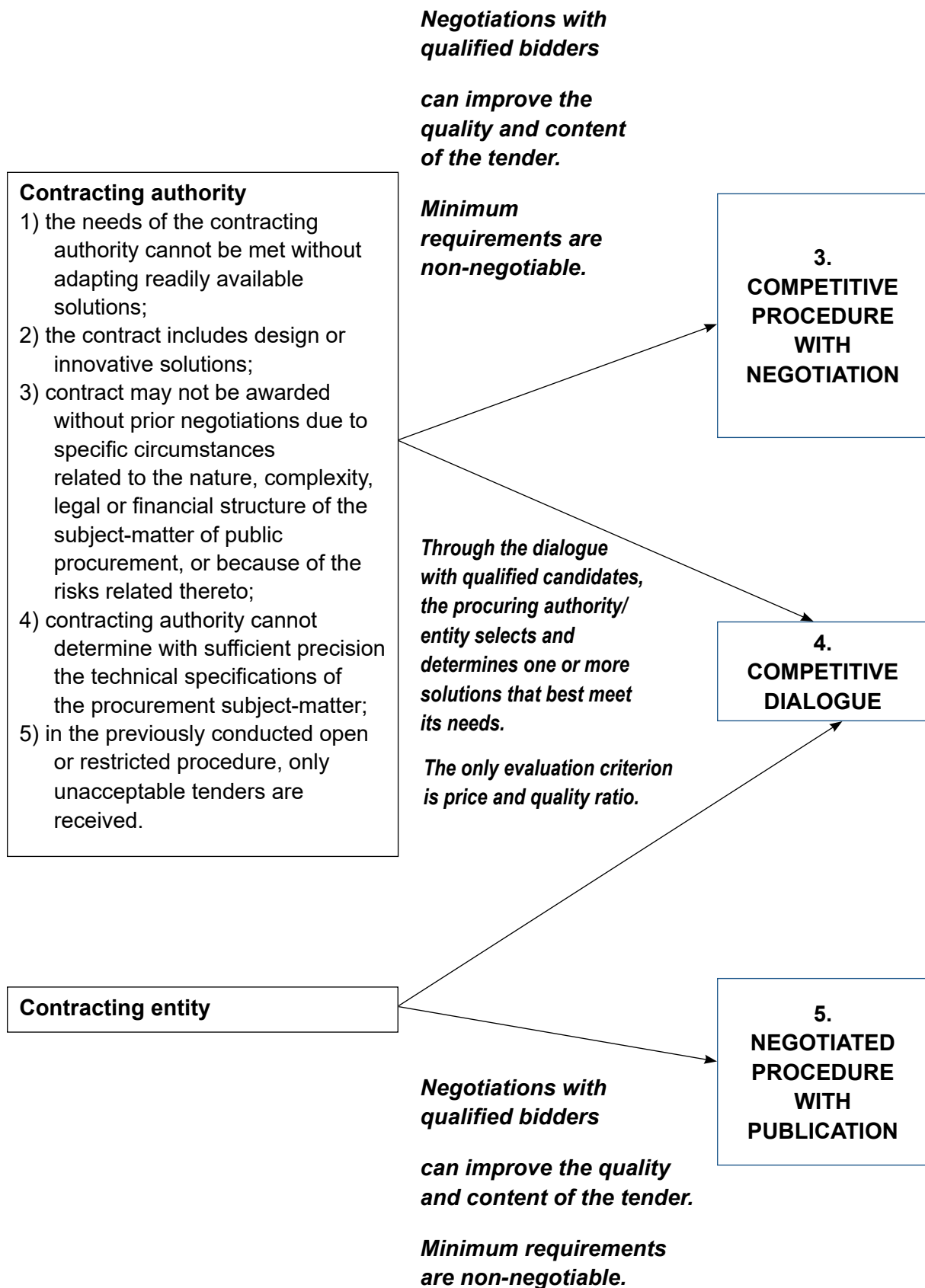
- 1) after a design contest conducted in accordance with the provisions of the Law on Public Procurement, when, in accordance with the rules stipulated in the design contest, the contract is awarded to the winning candidate or one of the winning candidates in the design contest, in which case all winning candidates are invited to negotiations;
- 2) for new services that consist of repetition of similar services that are assigned to the economic operator with which the contracting authority/entity concluded the main contract, if all the following conditions are met:
  - (1) such services are in accordance with the basic project for which the main contract was concluded;
  - (2) the main contract was concluded after the public procurement procedure in which the public invitation was announced;
  - (3) the scope of possible services that will be repeated, and the conditions under which they are assigned were specified in the procurement documentation for the main contract;
  - (4) the possibility of applying this procedure was foreseen in the public invitation for the main contract;
  - (5) when determining the estimated procurement value for the main contract, the total estimated value of new services that will be repeated is taken into account, and
  - (6) in case the procedure is carried out by the contracting authority, it is carried out within three years from the conclusion of the main contract.

The contracting authority - in the open procedure or restrictive procedure did not receive any tenders, or all tenders were inadequate\*, i.e. no application or no adequate application were received\*\*, and the initial conditions of the public procurement have not been significantly changed.

Contracting entity - no, or no adequate tender\*, or no application, or no adequate application\*\* was submitted in the procedure in which the contract notice was previously published, and the initial conditions of the public procurement are not significantly changed.

YES

possibility

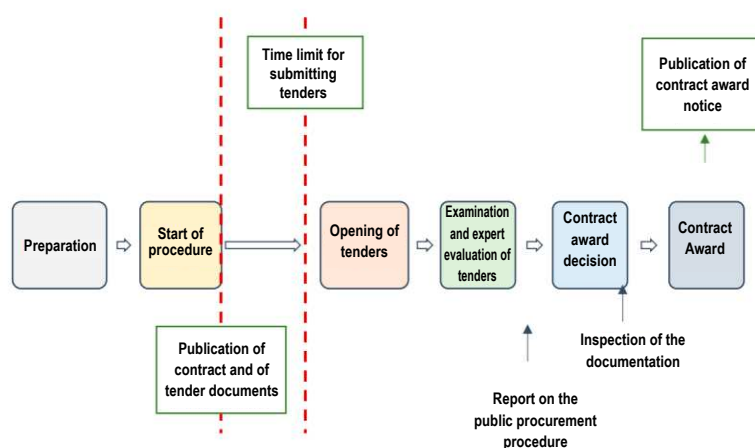


## DIAGRAMS FOR IMPLEMENTATION OF PROCEDURES

taken from <http://eupodraska.ujn.gov.rs/dokumenta/>

### ONE-TIER PROCEDURE

#### 1. OPEN PROCEDURE



### TWO-TIER PROCEDURES

#### 2. RESTRICTIVE PROCEDURE

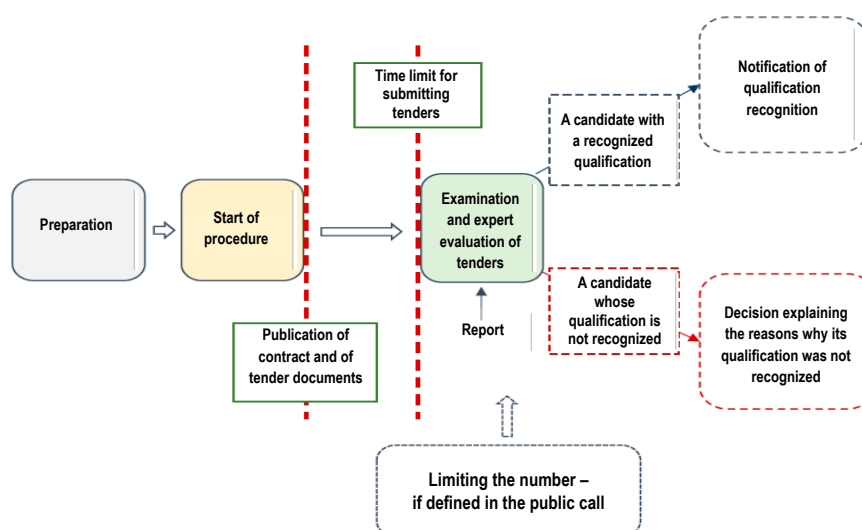
#### 3. COMPETITIVE PROCEDURE WITH NEGOTIATION (Contracting Authorities only)

#### 4. COMPETITIVE DIALOGUE

#### 5. NEGOTIATED PROCEDURE WITH PUBLICATION (Contracting Entities only)

#### 6. INNOVATION PARTNERSHIP

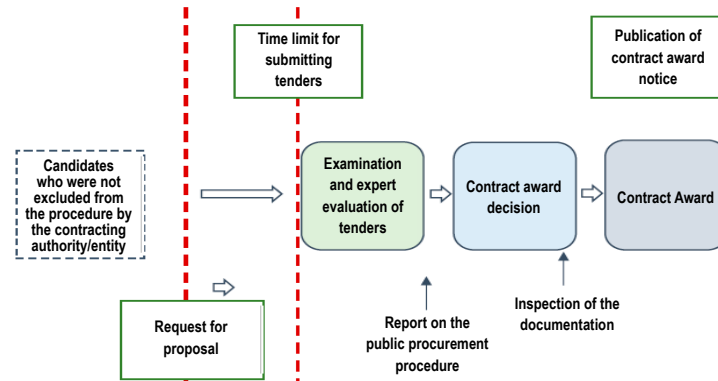
### FIRST STAGE – ALL PROCEDURES





## SECOND PHASE

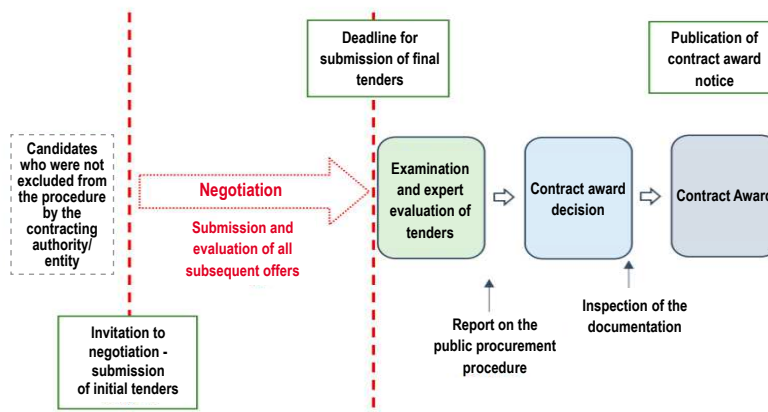
### 2. RESTRICTIVE PROCEDURE



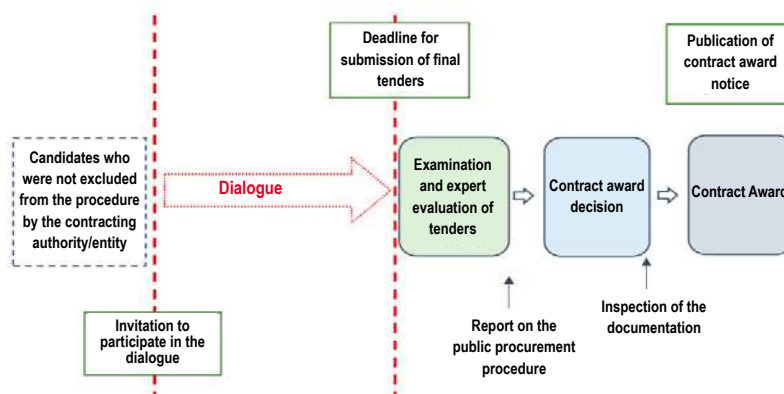
### 3. COMPETITIVE PROCEDURE WITH NEGOTIATION (Contracting Authorities only)

### 5. NEGOTIATED PROCEDURE WITH PUBLICATION (Contracting Entities only)

### 6. INNOVATION PARTNERSHIP



### 4. COMPETITIVE DIALOGUE



## 5.2.2 Composition of the Commission

For the application of the MEAT selection criteria, it is necessary that the members of the commission have appropriate expert knowledge in the field of the public procurement, both in order to successfully form the criteria, and evaluate the tenders.

The law envisages the possibility for contracting authorities/entities to hire persons with appropriate professional knowledge as members of the commission if they have no adequate employees, and there are no obstacles in this sense.

This is very important in the case of public procurement of services that are the subject of this analysis, because only expertise and experience in the creation of criteria and evaluation of tenders for a specific procurement can lead to the desired results, i.e. the selection of tenderers who will render quality services, which directly affects the reliability of designed solutions, and the reduction of additional costs in the execution of works, which can be significant in the case of "poorly" prepared technical documentation.

## 5.2.3 Preparation of tender and other documentation

In the case of the construction sector services, it is important that the contract that regulates the mutual rights and obligations of the contracting authority/entity and the tenderer is defined in an adequate way, in order to ensure that the service is rendered in accordance with the defined project goals, and to ensure its execution in a manner suitable for such goals.

As for the **security instruments** that should be requested from the tenderers, and stipulated by the LPP, in the case of construction sector services, the following recommendations can be used:

- For the seriousness of the tender, 3% of the value of the tender (without VAT).
- For the fulfillment of contractual obligations, for designing 10% of the tender value (without VAT), and for site supervision or project management services, it is not usual to request this security instrument, but the breach of contractual obligations is resolved by termination of the contract with the application of penalty provisions. Excessive requirements have a negative effect on the investment, because in the end the cost of the bank guarantee definitely falls on the contracting authority/entity because the tenderers calculate its value in the tender.
- For remedying defects within the warranty period, it is not applicable for services, but for design, for example, it is necessary to define in the contract the designer's obligation to comply with the objections of the technical control or the revision committee (if applicable).
- It is appropriate to require liability insurance for the damage that might occur in connection with the performance of a specific activity in the amount equal to the tender, where the duration of the professional liability insurance should be tied to the planned project realization period until the issuance of the use permit, and not to the service rendering period, considering that any defects can most often be determined only during the construction, i.e. the execution of the works to which the service relates.
- For the refund of the advance payment, in the amount of the advance, with the possibility of reduction to the amount of the unrealized advance during the realization of the contract.

## 5.3 Guidelines regarding qualitative criteria

### 5.3.1 Selection criteria

Within the qualitative criteria for the selection of economic operators, the LLP stipulates grounds for exclusion, i.e. conditions for participation that must be met (Article 111), as well as conditions for participation that the contracting authority/entity can additionally prescribe in procurement (Article 112). Only tenders from tenderers that meet these conditions, i.e. that are not subject to any grounds for exclusion, can be further considered according to the Selection Criteria.

Criteria for selection of economic operator may relate to:

- fulfillment of the conditions for performing professional activities;
- financial and economic capacity;
- technical and professional capacity.

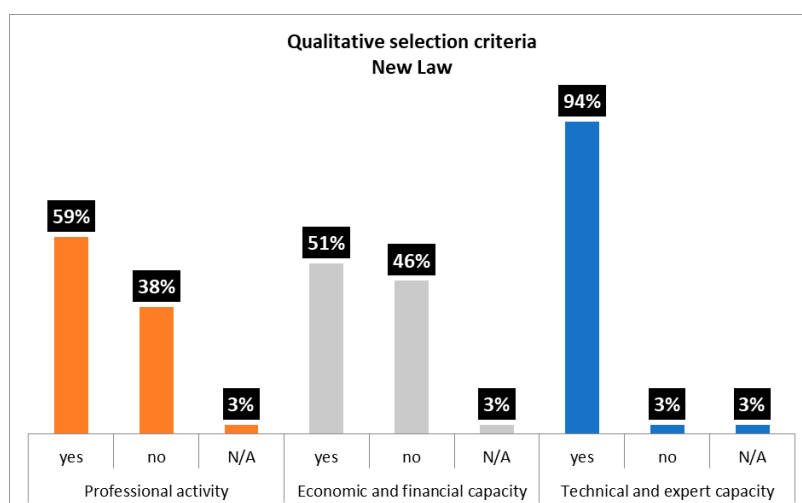
The **LPP prescribes** that the contracting authority/entity shall determine the criteria for selection of economic operator **whenever necessary, bearing in mind the subject-matter of public procurement**. Where contracting authority/entity determines the selection criteria, it shall indicate in the contract notice the required level of capacities and the appropriate means of evidencing thereof.

These are the criteria used to determine the eligibility of tenderers for the procurement in question, tenders from tenderers who do not meet the given criteria cannot be taken into account, regardless of the price offered. These criteria are used to determine the **minimum requirements** that the tenderer must fulfill in order to perform the service in question with quality.

**In the case of construction services that are the subject of this analysis, it is necessary to always define the selection criteria**, primarily because the fulfillment of the conditions for performing professional activity is a mandatory criterion for the services that are the subject of this analysis, where economic operators, i.e. service providers should possess the appropriate licenses prescribed by the Law on Planning and Construction.

**The results of the analysis** of the state of public procurement show the following:

- 59% of contracting authorities/entities use criteria related to professional activity, whereby the contracting authorities/entities often require the economic operator to prove that it is registered in the companies register, court register, professional or other appropriate register, as well as the authorization/permit of the competent authority to perform activities that are the subject of public procurement.
- 51% of contracting authorities/entities include the financial and economic capacity criteria in the procurement documentation, and most often the conditions refer to a certain minimum income in the area that is included in the subject of public procurement for a period of no more than the last three financial years.
- 94% of the contracting authorities/entities determine the conditions in order to ensure that the economic operator has the necessary personnel and technical resources and experience needed for the execution of public procurement contracts with an appropriate level of quality, and in most cases it is required that the economic operator has adequate experience with regard to previously executed contracts.



The aim of this Guide is to give specific guidelines to the contracting authorities/entities for adequately defining these qualitative eligibility criteria for procurements in the field of construction sector services - architectural, engineering and planning services (production of technical/project documentation during building construction, adaptation and reconstruction).

## General recommendations regarding selection criteria

The selection criteria (eligibility criteria) should:

- show an objective attitude towards the subject-matter of procurement,
- be clearly defined, with a prescribed method for proving their fulfillment,
- be appropriate for a specific project,
- take into account the real risks related to the project; excessive requirements that do not correspond to the size/complexity of the project prevent adequate competition,
- take into account small and medium-sized enterprises when defining requirements primarily in terms of financial and economic capacity.

### 5.3.1.1 Criterion of fulfilling the conditions for performing professional activity

The fulfillment of the conditions for performing professional activities in Serbia is correlated with the minimum professional conditions prescribed by law. According to the Law on Planning and Construction (hereinafter referred to as the LPC), economic operators are required to have a special license only for facilities from Article 133 of the LPC, while in other cases the only prescribed condition is registration with the companies register (regardless of the activity).

## Recommendations regarding the performance of professional activities:

- 1) In case of construction sector services, tenderers should be registered for the activity corresponding to the services (architectural or engineering activities).
- 2) Fulfillment of this condition can be the sole criterion only in the case of:
  - small value procurements, when the estimated value of the service is low, as well as
  - less complex projects, when the services that are the subject of procurement are related to less complex projects.
- 3) The following should be used to determine the limits regarding low value/complexity:

- procurements with an estimated value of  $\leq 3,000,000$  rsd, for which the law prescribes that they be carried out by a person appointed by the contracting authority/entity (there is no obligation to form a commission), can be deemed small value procurements;
- facilities in categories A and B defined in accordance with the LPC, can be considered less complex projects, to which the service is linked.

### **5.3.1.2 The criterion of fulfillment of the conditions of financial and economic capacity**

**LPP stipulates** that in order to ensure the financial and economic capacity necessary for the execution of the public procurement contract, the contracting authority/entity may determine that economic operators must have:

- a certain minimum income, which must not be higher than twice the estimated value of the public procurement (except in exceptional cases due to special risks) for a period of no more than the last three financial years;
- a certain ratio between assets and liabilities, or other financial indicator in connection with the financial statements of economic operators for a period of no longer than the last three financial years; in this case, the contracting authority/entity is required to specify in the tender documents transparent, objective and non-discriminatory methods and criteria for their evaluation;
- appropriate level of professional liability insurance.

The research shows that 51% of contracting authorities/entities include the financial and economic capacity criteria in the procurement documentation, and most often the conditions refer to a certain minimum income in the area that is included in the subject of public procurement for a period of no more than the last three financial years. Analyzing the values of procurements in which this percentage of contracting authorities/entities requires the financial and economic capacity criteria, it was observed that of the above percentage of contracting authorities/entities, 41% of the procurements are worth more than 10,000,000.00 rsd.

**The law on planning and construction stipulates** the obligation to have professional liability insurance, for designers in the minimum amount of 15,000 euros for entrepreneurs, i.e. 50,000 euros for companies, however, it is recommended that the amount of this insurance be adequate, i.e. proportional to the value of the procurement.

### **Recommendations regarding financial and economic capacity:**

- 1) For the construction sector services, for purchases of greater value, the fulfillment of the financial and economic capacity conditions should be ensured.
- 2) As proof of fulfillment of this criterion, for procurements with estimated value  $> 3,000,000$  rsd, the tenderer must have:
  - income at least in the amount of twice the estimated value of the public procurement for a period of no more than the last three financial years (which is also the maximum amount defined by law)
  - professional liability insurance in an amount equal to the estimated value of the purchase.
- 3) For construction sector services, it is preferable to link duration of the professional liability insurance to the planned project realization period until the issuance of the use

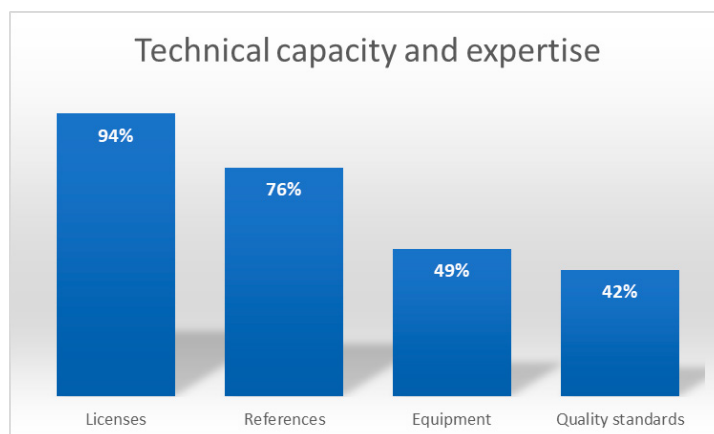
permit, and not to the service rendering period, considering that any defects can most often be determined only during the construction, i.e. the execution of the works to which the service relates.

### **5.3.1.3 Criteria for fulfillment of technical and professional capacity conditions**

**The LPP stipulates** that the contracting authority/entity may determine these conditions in order to ensure that the economic operator has the necessary personnel and technical resources and experience needed for the execution of public procurement contracts with an appropriate level of quality, and in particular it may require that the economic operator has adequate experience with regard to previously executed contracts, **and the following evidence that can be requested is prescribed:**

- a list of works performed over a maximum period of three years prior to expiry of the time limit for submission of tenders, and if necessary to ensure an adequate level of competition, contracting authorities/entities may indicate that evidence of relevant works carried out in the period longer than three years will be taken into account;
- data on engaged technical persons or bodies, regardless of whether they are directly employed or belong to economic operator, and especially with regard to responsibility for quality control;
- a description of the technical means and measures used by the economic operator to ensure quality, and the means for study and research at its disposal;
- educational and professional qualifications of service providers or their management staff, provided that these qualifications are not evaluated within the contract awarding criteria;
- declaration of the economic operator on accepting the quality control to be performed by contracting authority/entity, or authorized body in the country in which the economic operator is established, that will perform control on behalf of the contracting authority/entity in terms of the economic operator's production or technical capacities and, where necessary, in terms of the quality control measures that will be applied, where the services to be rendered are complex or required for a specific purpose;
- information on environmental protection management measures, which the economic operators will be able to apply during the execution of the contract;
- a declaration on the average annual number of employees of the service provider, and the number of management staff in the last three years before the deadline for submitting tenders, i.e. applications;
- statement about the tools or technical equipment available to the service provider for the execution of the contract;
- indication of the portion of the contract that the economic operator intends to subcontract, if the subcontractor's capacity is used for evidencing relevant criterion for qualitative selection;

**The results of the analysis** of the state of public procurement show that the contracting authorities prescribe these conditions in almost all procurements (95%), but they mainly refer to prescribing mandatory licenses of engaged persons (94% of cases), which are already prescribed by law for responsible designers, as well as the references of the bidding company in the previous three years (76% of cases), while other requirements, present to a lesser extent, refer to equipment and quality standards.



### General recommendations regarding technical and professional capacity:

- 1) For the relevant services in the construction sector only for procurements of higher value (>3,000,000 dinars) and projects of greater complexity, which require specific knowledge and experience (category V), it is necessary to ensure that the conditions of technical and professional capacity are met.
- 2) The goal is to obtain a sufficient number of quality tenderers whose tenders would be further considered from the aspect of price, or price - quality ratio. In this sense, **the selection criteria in terms of technical and professional capacity should be defined as minimum** criteria, which tenderers must fulfill with respect to the procurement in question, and not in general.

### Recommendations regarding the selection of qualitative criteria in terms of technical and professional capacity:

- 1) The most relevant are the qualifications of the persons who will actively participate in the project, regardless of whether they are employed or hired persons. This applies not only to the licenses prescribed by law, which are generally required by the contracting authorities, but also to their work experience in jobs relevant to the service (length of work experience in that activity, relevant references on similar projects). For specific projects, it is preferable to define special qualifications or references from similar projects, or training certificates in special areas (e.g. LEED/BREEAM certificate or similar in the field of "green construction", project management certificate PMP, FLC, FIDIC or similar in the field of management and contracting, etc.)
- 2) The references of the tenderer are also relevant, but it is important that they are adequately defined. It is important that such requirements are not excessive, normally it is sufficient to ask for references corresponding 50% to the relevant procurement (e.g. for planning a retirement home, references in housing are sufficient).
- 3) The law prescribes reference periods longer than 3 (three) years only in exceptional cases, but they should be longer (5-10 years); unrealistically short periods can significantly reduce intellectual competition without bringing added value, especially in type of projects that are not implemented often.
- 4) It is preferable to introduce criteria related to quality control, i.e. to prescribe that tenderers must possess relevant certificates or self-developed procedures for quality control (e.g. ISO 9001, PMI), especially for more complex projects with the participation of a larger number of persons.

- 5) It is preferable to promote horizontal criteria for larger procurements, e.g. environmental protection through providing for appropriate relevant certificates for tenderers (e.g. ISO 14001).
- 6) The criteria should be defined by the commission members - it is very important that they are experts with relevant experience in the field of the procurement in question, so that the criteria are defined adequately for the procurement in question.

### 5.3.2 Contract award criteria

**The LPP stipulates**, according to the general rules for determining the contract award criteria (*Article 132 of the LPP*) in the public procurement procedure, the contracting authority/entity shall award the contract to the most economically advantageous tender (MEAT) determined on the basis of one of the following criteria:

- price, or
- costs by applying a cost-effectiveness approach, such as life-cycle costing in accordance with Article 134 of this law, or
- the price-quality ratio, i.e. cost-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public procurement contract in question, which may in particular include:
  1. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, trading and its conditions;
  2. organization, qualification and experience of staff assigned to performing the contract, where the quality of the staff can have a significant impact on the level of performance of the contract, or
  3. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

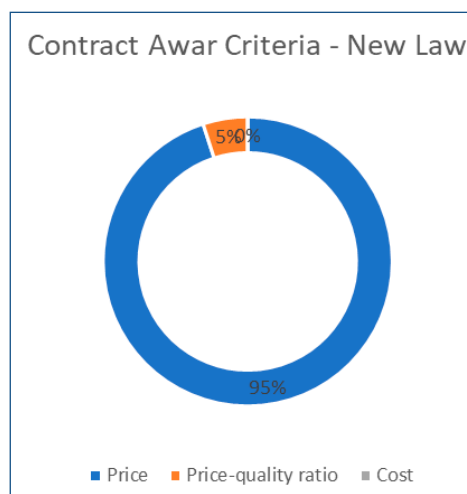
The contracting authority/entity may determine the element of price or cost as a predetermined price or cost, so that the economically most advantageous tender is identified on the basis of the quality criteria.

The results of the public procurement analysis show that only 5% (4 procurements of sampled 76 procedures) of contracting authorities/entities award contract to the most economically advantageous tender based on the price-quality ratio, and specify in the procurement documents the relative weighting of each contract award criterion, indicating the methodology for allocating weighting to each criterion.

In these procurements, the contracting authorities/entities used the following weights:

- Time limit 30% Price 70%
- Expert team evaluation 30%: Price 70%
- Number of licensed experts 30%: Price 70%
- Team evaluation 20%: Time limit 15% Methodology 25%: Price 40%





*“The ‘Price only’ criterion for award should be applied in procurement procedures when only price differentiates submitted tenders and other features of procured supplies, services or works are set in the tender documentation as not distinguishing aspects”.<sup>11</sup>*

It can be stated that the contracting authorities/entities predominantly define the selection criteria (adequacy criterion), by applying requirements for conditions already prescribed by law (licenses), as well as requests for references, and the selection is made solely on the basis of price, while very rarely they decide to apply a procedure in which the quality of tenders would be evaluated separately, within the framework of the most economically advantageous tender (MEAT).

**With this approach, when only qualitative selection criteria are defined, and the award is made only on the basis of price, in the case of an inadequately high criterion, a smaller number of tenders is received and competition is reduced, and in the case of inadequately low criterion, a large number of tenders is received, where the lowest price, as a rule, does not always provide the required quality!**

The cost criterion, i.e. the cost efficiency approach, has its full application in the procurement of goods (apparatus, devices, systems, vehicles), but it is not directly applicable for the procurement of services related to the execution of intellectual work, i.e. drafting of technical documentation for the construction of buildings, and other services in construction sector.

However, the cost criterion can be introduced indirectly into the evaluation, through the evaluation of the methodology or conceptual design, if applicable to the procurement in question, given that the choice of technical solutions directly affects the life cycle costs.

**The quality of services in the construction sector, which are the subject of this analysis, has a decisive influence on the quality of works and the quality of buildings, their lifespan, construction costs and the costs of using buildings (life cycle costs), and indirectly also on the deadlines for project implementation, considering that in the case of e.g. technical documentation of inadequate quality, there may be a need for modifications and additions.**

<sup>11</sup> “Guidelines for choosing the most economically advantageous tender”, Public Procurement Office, December 2019, <http://eupodrska.ujn.gov.rs/>.

### **General recommendations regarding contract award criteria (MEAT selection):**

- 1) MEAT should be determined, **as a rule, based on the price-quality ratio criterion**, and mandatory for procurements of greater value or greater complexity - it is recommended for procurements with an estimated value > 10,000,000 rsd or procurements whose subject-matter are specific projects where specific knowledge and experiences can significantly affect the quality of the service provided (e.g. hospitals, concert halls, buildings under protection, etc.).
- 2) The contract award criteria (other than the price) should be well balanced with the criteria for the qualitative selection of the economic operator (conditions for participation), which are eliminatory, and which affect the number of tenders that are further evaluated according to the contract award criteria.
- 3) As an illustration, the qualitative selection criteria can define minimum conditions regarding experts with specific experiences and qualifications, or minimum references that are more closely related to the procurement in question, but later in the MEAT selection process, additional references may be evaluated, thereby additionally performing a qualitative comparison of tenders that met the minimum conditions defined by the qualitative selection criteria.
- 4) Under the assumption of well-balanced selection criteria, which ensure that only the tenders of quality tenderers are evaluated during the selection of MEAT based on the price-quality ratio, it is recommended that the price evaluation be 20%, and not higher than 30%.

#### **5.3.2.1 Selection of contract award criteria**

Quality criteria in the field of construction sector services, which can be evaluated to select MEAT, can be divided into the following key groups:

- A. **Credibility, qualifications and experience of tenderers that are relevant to the subject of procurement**
  - Reputation and credibility (recommendations, awards, certificates, appearance in the media), which may be important for the quality of the procurement subject
  - Qualifications in special areas of importance for the subject of procurement, i.e. evidence of training such as, for example, LEED/BREEAM certificate or similar in the field of "green construction", project management certificate PMP, FLC, FIDIC or similar in the field of management and contracting, etc., if not specified in the selection criteria.
  - The tenderer's experience significant for the subject of the procurement, which exceeds the minimum defined by the selection criteria.
- B. **Criteria related to project goals**
  - Methodology, knowledge management, continuous professional development
  - Conceptual design/preliminary concept, if applicable for procurement
- C. **Management structure and key personnel**
  - Experience of the professional team engaged in the execution of the contract, qualifications, licenses, specific experience on similar projects, knowledge of certain specific standards, etc. that exceed the minimum defined by the selection criteria

**Criteria B relating to the project goals are of great importance.** In order for the contracting authority/entity to be able to objectively evaluate the fulfillment of these criteria, it is necessary

to clearly define these goals in the tender documentation, as well as the way in which the evaluation will be carried out.

For example, the project goals can be: achieving a high level of sustainability, reducing pollution, high level of energy efficiency, reducing traffic density, efficient use of space, high standards in terms of applied materials and equipment, maximum adaptability of the project to the unhindered movement of people with disabilities, short periods, i.e. the imminence of the commencement of works, the maximum fulfillment of the requirements of the building users, etc. In that case, the tenderers must describe their plan, either through a presentation of the methodology they will apply when performing the service, or through a concept proposal, as to how they intend to achieve these goals.

Contracting authorities/entities should, to the greatest extent possible, clearly define the parameters based on which the fulfillment of these criteria will be evaluated, as well as the "weight" that the fulfillment of each of the parameters carries in the evaluation. Given that the evaluation of the fulfillment of these criteria is largely subjective, it is necessary that it be performed by experts who should clearly explain the "score" they assigned in the evaluation. It is recommended that each member of the commission independently perform an evaluation, so that the final "score" is determined either through discussion and consensus, or as the mean value of individual scores.

Some of the recommendations and possible ways to define these objectives and criteria, which are based on European experiences and practices, are given in Chapter 4.

### **5.3.3 Methodology for evaluating the criteria when applying MEAT criteria**

Defining an adequate methodology for evaluating the criteria when applying the MEAT criteria is of crucial importance for ensuring a service that will have an optimal price-quality ratio. In order to make this possible, it is necessary to follow the recommendations listed below.

#### **General recommendations regarding the evaluation methodology (allocation of weights):**

- 1) The groups of criteria used to determine the quality of A, B and C are equally important and, as a rule, they should be assigned approximately the same number of weights, but this certainly depends on the project itself and its objectives.
- 2) Considering that each of the mentioned groups of criteria can have a large number of sub-criteria, which need to be valued with high-quality and based on merits, it is recommended to introduce valorization points defined in the range 0-100 for less complex criteria, i.e. 0 -1000 for more complex criteria (with a large number of sub-criteria), and to assign each group of criteria A, B and C with an approximate number of points in the range 25-40, i.e. 250-400.
- 3) The points obtained in this way according to the quality criteria are divided by 100 or 1000 and multiplied by the maximum quality weight in percentages, and added to the weighted price, according to the formula given below. An example of this kind of scoring is given at the end of this Guide.

- 4) For certain sub-criteria, it is preferable to award all tenderers the same number of points for a certain minimum fulfillment, for example up to 2/3 of the envisaged points for that sub-criterion, and for any additional fulfillment of criteria that exceeds that minimum, to award a smaller number of additional points up to the maximum number of points for that sub-criterion. This is so that the additional fulfillment of the criteria would not have too much influence on the final score.
- 5) It is very important that the quality criteria defined within the qualitative selection criteria and contract award criteria are properly balanced with each other, in accordance with the subject of the procurement. Qualitative selection criteria defined too strictly reduce competition, while in the case of a "low threshold" set for these criteria, in combination with vaguely defined selection criteria, there may be a risk that the contract will be awarded to an inadequate tenderer (with no relevant experience) for the subject of procurement.
- 6) In the case of two-tier procedures, it is preferable to define the minimum number of points necessary for qualification in stage 2. It is recommended that it be 70% of the maximum envisaged points (e.g. 70 out of 100 or 700 out of 1000) and/or 50% of the maximum points envisaged for each group of criteria.

### **Recommendations regarding the formula for calculating the final score**

- 1) Tenders with the lowest price receive the maximum number of weights within the price criteria
- 2) The final score is determined as follows (for points that evaluate quality in the range of 1-100, the number 1000 in the formula should be replaced with 100):

$$Fn = (Pn/1000) * X + (Cmin/Cn) * Y$$

Fn – final score in percent (1-100) Tenderer no. n

Pn – number of points of tenderer no. n from the evaluation of qualitative criteria

Cn – Tenderer n's financial offer in rsd (eur)

Cmin – minimum financial offer in rsd (eur)

X – evaluation in percent (weighting) of the tender based on qualitative criteria in percent, recommended 80% (minimum 70%)

Y – evaluation in percent (weighting) of the tender based on price criteria in percent, recommended 20% (maximum 30%)

- 3) When determining the methodology for selecting MEAT based on the price-quality ratio, it is preferable, before the final adoption of the maximum weights/points for each criterion and sub-criterion and evaluation of the price-quality ratio, to carry out testing (the so-called "Crash Test"). It is necessary to assign data from a virtual tender to the criteria and ask the following questions related to the result:
  - How big is a difference in price necessary for the tenderer with the lowest tender to prevail over the tenderer with the highest result in terms of quality?
  - How big a financial difference is there if two tenderers are almost equal?
  - How much extra would you pay if the second tenderer has a higher quality and the lowest price tenderer doesn't win?

With this test you can get a feeling for the influence of quality related to price. If the result is not satisfactory, the ratio between price and quality can be corrected.

## 5.4 Fixed price and abnormally low price guidelines

**The LPP prescribes that** the contracting authority/entity may determine the element of price or cost as a predetermined price or cost, so that the economically most advantageous tender (MEAT) is identified on the basis of the quality criteria.

Furthermore, the LPP regulates the abnormally low tender, which in the sense of this law is a tender containing the price or cost which substantially deviates from comparable market price or cost, thus raising doubts regarding the feasibility of execution of the public procurement in accordance with the requirements of the contracting authority/entity set in the procurement documents.

The LPP stipulates that if the contracting authority/entity estimates that the tender is abnormally low, it is obliged to request the tenderer to explain the price or cost specified in the tender, within a reasonable period of time, with the content of the explanation in accordance with the law.

The contracting authority/entity may reject the tender only if the submitted explanation and evidence do not adequately account for the abnormally low tender.

The LLP also prescribes the conditions and obligations for rejecting tenders for reasons other than abnormally low tender (state aid or non-compliance with obligations related to environmental protection, social and labor law, etc.).

### Recommendations regarding fixed price

- 1) A pre-defined price or cost can represent a risk for the procuring authority/entity, because if it is too low, not enough quality tenderers will come forward, and if it is too high, the price will be higher than what the tenderers would normally offer.
- 2) The possibility of determining MEAT based on quality only, with a previously determined price, should be used only in the case when it is possible to adequately estimate the price, based on previous experience and expertise, and if there is sufficient input data. In that case, it is necessary for experts to evaluate the fixed prices.

### Recommendations regarding abnormally low price

- 1) An abnormally low price can represent a big risk for the contracting authority, because it can cause great problems in implementation if turns out that the price is not enough to cover the tenderer's costs.
- 2) Given that, in practice, contracting authorities/entities will avoid rejecting abnormally low prices without any specific merit, it is suggested that any price that deviates by more than 20% from the average price of all tenders in the subject procurement is considered an abnormally low price.

## 5.4 Example of evaluation based on the price-quality ratio for more complex projects and projects of higher value.

This clause gives an example of a possible ways to define:

- qualitative selection criteria that are eliminatory by nature, and represent the minimum requirements that all tenderers should meet, and
- qualitative award criteria, based on which the tenders that met the conditions defined by the selection criteria are evaluated and compared.

Scoring is given hypothetically, to illustrate the calculation of the final ranking of the three tenders:

- Tenderer 1, who won the highest score in the qualitative evaluation and has the highest offered price;
- Tenderer 2, who has the lowest score in the qualitative evaluation, but still exceeds the minimum recommended threshold of 70% and 50% for each criterion for continuing to phase 2 in two-tier procedures, and has the lowest offered price;
- Tenderer 3, which won a high score in the qualitative evaluation, but not the highest, and has a medium price.

Combined scoring was performed according to the principle Quality : Price = 70% : 30%.

From this example, it can be seen that by adequately evaluating qualitative criteria, which clearly promote the experience and professional capacity of the tenderer, as well as by adequately evaluating the price - quality ratio, it is possible to ensure that better tenderers in terms of quality are ranked better in the final score, and on the other hand, to ensure the selection of the tender that is not the most expensive one.

### ***I - Criteria for the qualitative selection of economic operator***

**Note:**

- **When checking the grounds for exclusion of economic operator, in order to conclude that there are no grounds for exclusion, it is necessary that each criterion be marked with "NO".**
- **When checking the criteria for the selection of economic operator, in order to conclude whether the tenderer meets the relevant criteria, and to be marked as "PASSED", it is necessary that each criterion be marked with "YES".**
- **When after the check it is established that economic operator has the mark "YES" in the conclusion about the existence of grounds for exclusion, or it has the mark "FAILED" in the conclusion related to the criteria for the selection of economic operator, the final conclusion shall state that the economic operator shall not be evaluated in further procedure according to the contract award criteria.**

No.	Grounds for exclusion	Are there grounds for exclusion?	
1	Grounds for exclusion of economic operator pursuant to Article 111 of the LPP that must be applied	YES/NO	Ref.
1.1	The economic operator failed to prove that either it or its legal representative has not been convicted by final judgment for one or more criminal acts (Article 111, paragraph 1, point 1))	NO	Explain, make reference to the document submitted by the bidder as evidence
1.2	The economic operator failed to prove it has settled due taxes and contributions for compulsory social insurance, or that the payment of debt has been postponed (Article 111, paragraph 1, point 2))	NO	Explain, make reference to the document submitted by the bidder as evidence
1.3	Violation of applicable obligations in the area of the environmental protection, social and labor law was determined (Article 111, paragraph 1, point 3))	NO	Explain
1.4	There is a conflict of interest, which cannot be remedied by other measures (Article 111, paragraph 1, point 4))	NO	Explain
1.5	It was determined that the economic operator has undertaken to unduly influence the decision-making process of the contracting authority/entity or has provided misleading information in the public procurement process (Article 111, paragraph 1, point 5))	NO	Explain
2	<b>Additional grounds for exclusion - Article 112 of the LPP</b> - The recommendation is that in the case of procurement in the construction sector, the conditions listed under 2.1 - 2.6 must be prescribed and controlled for the period prescribed by law (3 years).	YES/NO	Ref.
2.1	It was established that the economic operator is bankrupt, insolvent, or is in the process of liquidation, or has ceased to perform business activities, etc., in accordance with Article 112, paragraph 1, point 1) and paragraph 2.	NO	Explain
2.2	Responsibility of the economic operator has been determined of grave professional misconduct (Article 112, paragraph 1, point 2))	NO	Explain
2.3	Collusion with other business entities with the aim of distorting competition was determined (Article 112, paragraph 1, point 3))	NO	Explain
2.4	It was determined that the competition was distorted, due to the prior involvement of the economic operator in the preparation of the procurement procedure, which cannot be eliminated by other measures (Article 112, paragraph 1, point 4))	NO	Explain
2.5	Non-fulfillment of obligations from previously concluded public procurement contracts, or previously concluded concession contracts was established, resulting in termination of that contract, collection of security instruments, compensation for damages, etc. (Article 112, paragraph 1, point 5))	NO	Explain

No.	Grounds for exclusion	Are there grounds for exclusion?	
2.6	It was determined that false information had previously been submitted, or evidence had not been provided in public procurement procedures (Article 112, paragraph 1, point 6))	NO	Explain
	<b>Conclusion on the existence of grounds for exclusion (YES/NO)</b> #To conclude that there are no grounds for exclusion, it is necessary that each criterion be marked with "NO"	NO	

No.	Criteria for the selection of economic operator	Fulfillment of conditions	
1	<b>Fulfillment of the conditions for performing professional activities</b> (in accordance with the recommendations from Clause 5.3.1.1)	YES/NO	Ref.
1.1	The economic operator is registered for the activity corresponding to the subject of public procurement - architectural or engineering activities	YES	Specify the reference document
1.2	Economic operator has an appropriate license in the case of procurement of services for which the Law on Planning and Construction stipulates a mandatory license of the economic operator (the so-called "grand license") for the facilities referred to in Article 133 of the LPC.	YES	Specify the reference document
2	<b>Financial and economic capacity</b> (in accordance with the recommendations from Clause 5.3.1.2)	YES/NO	Ref.
2.1	Minimum annual income requirement. For the subject services worth over 3,000,000 rsd, the recommendation is to request the maximum amount prescribed by law (in the amount of twice the estimated value of the public procurement in the period of the last three financial years).	YES	Specify the reference document
2.2	Professional liability insurance. For the services in question, it is recommended to always require insurance in an amount equal to the estimated value of the public procurement, with an appropriate duration equal to the planned time of project realization until the issuance of the use permit.	YES	Specify the reference document
3	<b>Technical and professional capacity</b> (in accordance with the recommendations from Clause 5.3.1.3)	YES/NO	Ref.
3.1	Conditions regarding the relevant references of the economic operator. In order to ensure an appropriate level of competition, i.e. a sufficient number of tenders that will be evaluated according to the MEAT criteria, it is recommended that the reference period be longer (5 years), and that the requirements are not excessive. Given that the fulfillment of this condition is eliminatory by nature, it is sufficient that the required minimum references correspond 50% to the subject of public procurement, e.g. it is sufficient to refer to the types of facilities in certain areas (construction, industry, infrastructure), with a condition that illustrates the complexity level of the project relevant for procurement (minimum floor area, height, span, infrastructure capacity, estimated investment, etc.)	YES	Specify the reference document, justify the compliance of the submitted data with the conditions set within this criterion



No.	Criteria for the selection of economic operator	Fulfillment of conditions	
3.2	Conditions regarding the technical resources of the economic operator. These conditions should be defined in relation to the resources that are essential for the service in question, such as specific equipment, licenses for the use of software, etc., which the economic operator must fulfill.	YES	Specify the reference document, justify the compliance of the submitted data with the conditions set within this criterion
3.3	Conditions related to human resources. These conditions should be relevant for proving the organizational capacity, i.e. the tenderer's ability to perform the service in question with an appropriate quality, such as, for example, required minimum number of employees/engaged persons with specific licenses, professional qualifications/experiences on projects of appropriate complexity level. The number of employees should not be required in general, or conditions should be specified regarding their professional qualifications, etc., if they are not relevant for the service in question. The educational and professional qualifications required in the selection criteria cannot be evaluated under the contract award criteria.	YES	Specify the reference document, justify the compliance of the submitted data with the conditions set within this criterion
3.4	Conditions related to the possession of specific certificates or policies related to horizontal criteria. If it is necessary for the tendered to possess these certificates for the performance of the service in question, they can be part of these selection criteria, but if the possession of certificates is preferable for the procurement in question, but not necessary, these criteria can be included and evaluated as contract award criteria		

No.	Criteria for the selection of economic operator	Fulfillment of conditions	
3.4.1	The condition regarding possession of training certificates in special areas (e.g. LEED/BREEAM certificate or similar in the field of "green construction", project management certificate PMP, FLC, FIDIC or similar in the field of management and contracting, etc.)	YES	Specify the reference document
3.4.2	The condition regarding the quality control of the economic operator, i.e. the possession of a relevant certificate or a self-developed procedure for quality control (e.g. ISO 9001, PMI)	YES	Specify the reference document
3.4.3	A requirement for economic operator regarding the environmental protection management measures, i.e. possession of a relevant certificate (e.g. ISO 14001 or similar)	YES	Specify the reference document
3.4.4	Condition of fulfillment of horizontal criteria that should be met by the tenderer if it is in accordance with the adopted strategy of the contracting authority/entity: Application of socially responsible business policy, fulfillment of certain social criteria (inclusion, gender equality, protection of workers' rights, etc.), fulfillment of conditions related to "green procurement", etc.	YES	Specify the reference document
	<b>Fulfillment of the criteria for the selection of economic operator (PASSED/FAILED)</b> <i># In order to conclude whether the tenderer meets the relevant criteria, and to be marked as "PASSED", it is necessary that each criterion be marked with "YES".</i>	PASSED	

**II - Contract award criteria****price criterion** - max 30 weightsPrice weight (PC) =  $(C_{min}/C) \times 30$  $C_{min}$  = the price of the lowest bid

C = offered price

**quality criteria** - max 70 weights (max 1000 points)

Group A criteria – Credibility, qualifications and experience of tenderers that are relevant to the subject of procurement;

Group B criteria – evaluation of the proposed methodology for the realization of public procurement contracts;

Group C criteria – assessment of performance team members.

Max. total number of points for all criteria groups A+B+C = 1000.

Quality weight (PK) =  $(\text{no. of points}/1000) \times 70$ .**A - Assessment of credibility, qualifications and experience that are relevant to the subject of procurement**

			Max number of points	Tenderer 1	Tenderer 2	Tenderer 3
<i>For the sake of transparency, it is necessary to indicate the number of points and refer to specific tenders submitted by the tenderers, with an explanation of the scoring</i>						
A.1	Reputation and credibility		50	35	40	40
	Recommendations of previous clients, related to the area relevant to the subject of procurement	30		30	30	30
	Certificates or other documents related to responsible business in the field relevant to the subject of procurement, if they are not specified under 3.4.4 within the selection criteria	10		0	10	0
	Awards, if they are relevant to the subject of procurement	5		0	0	5
	Affirmative reference in analyzes and market research, appearance in publications and media, in relation to the area relevant to the subject of procurement	5		5	0	5
A.2	Qualifications (if not included in the selection criteria under 3.3.1-3.4.3)		70	70	0	0
	For example, the condition regarding possession of training certificates in special areas that are relevant and can contribute to the quality (e.g. LEED/BREEAM certificate or similar in the field of "green construction", project management certificate PMP, FLC, FIDIC or similar in the field of management and contracting, etc.)	70		70	0	0

		Max number of points		Tenderer 1	Tenderer 2	Tenderer 3
A.3	Tenderer's experience relevant to the subject of procurement		250	250	190	210
	The subject of evaluation is tenderer's experience relevant for the specific subject of procurement: for example, for the determined minimum number of projects (e.g. 2) of similar/same type/complexity (this needs to be precisely defined in order to be scored objectively) in the period of the previous x years (e.g. 10), 120 points are awarded, and for each additional project an additional 30 points, up to the max. number for this item	210		210	150	210
	An additional number of points can be defined if the tender has worked on a project of the same specific type	40		40	40	0
TOTAL GROUP A CRITERIA		370		355	230	250

**B - Assessment of the proposed methodology for contract performance**

			Max number of points	Tenderer 1	Tenderer 2	Tenderer 3
<b><i>For the sake of transparency, it is necessary to indicate the number of points and refer to specific tenders submitted by the tenderers, with an explanation of the scoring</i></b>						
B.1	Did the tenderer properly understand the terms of reference?		30	30	30	30
B.2	Are all work segments properly considered in proportion to their complexity and scope?		30	30	30	30
B.3	Evaluation of the tenderer's approach and methodology with respect to the terms of reference		80	60	60	80
	The structure of the methodology, is it presented in detail?	40		40	40	40
	Are the activities presented in a clear and logical way?	20		10	10	20
	Are the procedures proposed clearly and are they relevant for the expected result?	20		10	10	20
B.4	Evaluation of the organizational structure and implementation plan		140	80	80	140
	Is the organizational structure, responsibility matrix and other organizational details, such as coordination with other project participants, presented?	80		50	50	80

		Max number of points		Tenderer 1	Tenderer 2	Tenderer 3
	Is the implementation plan presented?	30		30	30	30
	Is the implementation plan presented in a logical and realistic manner?	30		0	0	30
<b>TOTAL GROUP B CRITERIA</b>		<b>280</b>		<b>200</b>	<b>200</b>	<b>280</b>

### C - Evaluation of the expert team - key experts for contract performance

			Max number of points	Tenderer 1	Tenderer 2	Tenderer 3
<b>For the sake of transparency, it is necessary to indicate the number of points and refer to the specific attachments of the offer submitted by the tenderers with an explanation of the scoring.</b> Requirements in terms of experience, concrete experience on projects relevant to the subject of procurement, professional qualifications and licenses (if they are not conditioned by the selection criteria), etc., are defined here. You can define the minimum number of points to satisfy minimum requirements, and then assign additional weightings for additional experience or professional qualification, etc., up to max. number of points for this item.						
C.1	Project leader/Key expert		110	110	90	110
	Example: An expert with a minimum of 15 years of experience as a team leader (or chief designer or project manager) on complex projects with a valid professional license (specify license numbers relevant to the subject of procurement) receives 60 points. For each additional year of experience as a team leader, the expert receives an additional 2 points up to max. number for this item.	80		80	80	80
	Additional weights are assigned to an expert with experience as a team leader on a project that is the same as the subject of procurement (the number of weights can be defined for 1 project (e.g. 10) and scored up to the maximum number for this item.	30		30	10	30
C.2	Expert 1		80	80	60	70
	Example: An expert with a minimum of 10 years of experience as a responsible designer on projects with a valid professional license (indicate the license numbers relevant to the field in question - e.g. architecture) receives 50 weightings. For each additional year of experience, the expert receives an additional 2 points up to max. number for this item.	70		70	60	60

		Max number of points		Tenderer 1	Tenderer 2	Tenderer 3
	Additional points are awarded to an expert with experience as a team leader on a project that is the same as the subject of procurement (the number of weightings for 1 project (e.g. 5) can be defined and points can be scored up to the maximum number for this item).	10		10	0	10
C.3	Expert 2		80	80	60	70
	The same requirements as for Expert 1, for a different area, e.g. machine installations	80		80	60	70
C.4	Expert 3		80	80	60	70
	The same requirements as for Expert 1, for a different area, e.g. electrical installations	80		80	60	70
<b>TOTAL CRITERIA GROUP C</b>		<b>350</b>		<b>350</b>	<b>270</b>	<b>320</b>

**Recapitulation of the quality criteria assessment**

Quality Criterion		Max number of points	Tenderer 1	Tenderer 2	Tenderer 3
A	Credibility of qualifications and experience	370	355	230	250
B	Methodology	280	200	200	280
C	Professional team - key experts	350	350	270	320
Total number of points - quality criterion		1000	905	700	850
<b>Total number of weights - quality criterion</b> <b>PK = (no. of points / 1000) x 70</b>		70	63.35	49.00	59.50

**Combined scoring based on price and quality criteria to determine the final score**

Tenderer	Financial offer (C)	Weighted price (PC)	Weighted quality (PK)	Total weightings (P = PC + PK)	Ranking
Tenderer 1	RSD 20,000,000	18.00	63.35	81.35	2
Tenderer 2	RSD 12,000,000	30.00	49.00	79.00	3
Tenderer 3	RSD 16,000,000	22.50	59.50	82.00	1

Weights from 1-100

Lowest price (Cmin)
RSD 12,000,000

**FORMULA:**

$$PC = (Cmin/C) \times 30$$

$$PK = (No. of points / 1000) \times 70$$

$$P = PK + PC$$

## 6 LITERATURE

- 1) *Law on Public Procurement* ("Official Gazette of RS", no. 91/2019)
- 2) *Decision on determining the List of contracting authorities referred to in Article 3, paragraph 1, item 1) of the Law on Public Procurement* ("Official Gazette of the RS", no. 85/2020)
- 3) *Decree on Public Procurement in the Field of Defense and Security* ("Official Gazette of the RS", no. 93/2020)
- 4) *Decree on the organization and manner of performing centralized public procurement at the national level* ("Official Gazette of the RS", nos. 116/2020 and 59/2021)
- 5) *Rulebook on determining the Common Procurement Vocabulary* ("Official Gazette of the RS", no. 93/2020)
- 6) *Rulebook on the Procedure and Conditions for Obtaining a Certificate for a Public Procurement Officer and Keeping the Register of Public Procurement Officers* ("Official Gazette of the RS", nos. 93/2020 and 21/2021)
- 7) *Rulebook on determining the content of standard forms for publishing public procurement notices through the Public Procurement Portal* ("Official Gazette of the RS", no. 93/2020)
- 8) *Rulebook on the Content of Tender Documentation in Public Procurement Procedures* ("Official Gazette of the RS", no. 21/2021)
- 9) *Rulebook on the bid opening procedure* ("Official Gazette of the RS", no. 93/2020)
- 10) *Rulebook on monitoring the implementation of public procurement regulations* ("Official Gazette of the RS", no. 93/2020)
- 11) *Rulebook on the content of the Register of Bidders and the documentation submitted with the application for registration of bidders* ("Official Gazette of the RS", nos. 17/2020 and 94/2020)
- 12) *Dinar value of European thresholds* ("Official Gazette of the RS", no. 93/2020)
- 13) *Instructions for using the Public Procurement Portal* ("Official Gazette of the RS", no. 93/2020)
- 14) *Instructions on how to send and publish public procurement notices* ("Official Gazette of the RS", no. 93/2020)
- 15) *Guidelines for the preparation of tender documentation and the preparation of e-tenders, August 2020, published on the Public Procurement Portal, Public Procurement Office*
- 16) *Guidelines for the application of the negotiation procedure without publishing a public invitation, published on the Public Procurement Portal, Public Procurement Office*
- 17) *Instructions for publication of public procurements data exempt from the application of the Law on Public Procurement, Public Procurement Office*
- 18) *Standard form Declaration on the fulfillment of criteria for the qualitative selection of economic operator (IIK), May 2020, Public Procurement Office*
- 19) *Explanation of the Draft Law on Public Procurement*,  
<https://rsjp.gov.rs/upload/Obrazlo%C5%BEenje%20Nacrta%20LPP%2011.9..pdf>
- 20) *EU Project to support the further improvement of the public procurement system in Serbia, documents and guidelines* <http://eupodraska.ujn.gov.rs/dokumenta/>
- 21) *"Key features of the new law on public procurement (Ključne karakteristike novog zakona o javnim nabavkama)", Tenderers of Serbia -* [https:// www.ponudjaci.rs/bije.rs/](https://www.ponudjaci.rs/bije.rs/)

- 22) Stojković Advokati - <https://statt.rs/sr/novine-u-javnim-nabavkama-u-srbiji/>
- 23) Public Procurement Portal – new, <https://jnportal.ujn.gov.rs/>
- 24) Public Procurement Portal – old, <http://portal.ujn.gov.rs/Default.aspx>
- 25) "Directive 2014/24/EU" – Directive of the European Parliament and the Council of Europe on public procurement from 02.26.2014.
- 26) "How to derive MEAT criteria", EFCA recommendations for the application of MEAT criteria, 2019
- 27) "Standardisation method in quality and price evaluation of bids", Matti Mannonen, Association of Finnish Consulting Firms SKOL, 2014
- 28) Bergmann – Infrastructure Finland Opportunities 2016/17







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