

Prevention corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

I - Information requested from the State parties and signatories in relation to prevent of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and countercorruption in procurement (arts 9 and Conference Resolution 10/9).

1. *Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.*

As first, regarding to **legislation framework related to public procurement and integrity in public procurement**, the Public Procurement Law ("Official Gazette of the RS", Nos. 91119 and 92/23, hereinafter: the PPL), as well as bylaws adopted in order to implement this law, are harmonized with:

- Directive 2014/24/EU of the European Parliament and of the Council of 26th February, 2014 on public procurement and repealing Directive 2004/18 / EC;
- Directive 2014/25 / EU of the European Parliament and of the Council of 26th February 2014 on the procurement of contracting entities performing activities in the field of water, energy, transport and postal services and repealing Directive 2004/17/ EC;
- Directive 2007/66/EC of the European Parliament and of the Council of 11th December 2007 amending Council Directives 89/665/ EEC and 92/13/EEC as regards improving the efficiency of review procedures relating to the award of public contracts;
- Directive 2009/81/EC of the European Parliament and of the Council of 13th July 2009 on the harmonization of procedures for the award of certain works contracts, procurement contracts and service contracts by contracting authorities in the field of defense and security.

The existing normative solutions of the PPL and by-laws have greatly contributed to the development of the public procurement system in the Republic of Serbia. However, in order to achieve complete modernization of this area, it was necessary to implement new solutions, which would increase the efficiency of the entire public procurement system. The provisions of the recent Law on Amendments to the PPL ("Official Gazette of the RS", No. 92/23), which is fully entered into force from January 1st, 2024, is improving certain areas of the public procurement system, compared to the previous period.

The key changes introduced by the Law on Amendments to the PPL are: 1) introduction of environmental protection principles; 2) a public procurement officer, that is, a person who has obtained a certificate for a public procurement officer is a mandatory member of the public procurement commission in public procurement procedures whose estimated value is great than RSD 3,000,000; 3) prescribing a period of 30 days in which the contracting authority is obliged to submit a proposal for the initiation of misdemeanor proceedings to the PPO, if the economic operator does not submit evidence and a statement of the subcontractor, within the legally prescribed period; 4) application of criteria for awarding contracts that are not based only on price, but also on quality, for precisely defined categories of services; 5) the basis for the adoption of a sub-legal act of the PPO, which will prescribe the types of goods, services and works for which the contracting authorities are obliged to apply ecological aspects when determining technical specifications, criteria for the selection of a economic operator, criteria for awarding contracts or conditions for execution public procurement contracts; 6) a provision

is introduced that prescribes the deadline in which the contracting authority is obliged to make a decision on the cancellation of the public procurement procedure; 7) the obligation to make a new decision on the contracts award for contracting authority, in the event that the selected bidder refuses to conclude the contract; 8) creation of a database that, in addition to information on all contracts concluded after the public procurement procedure and their amendments, also contains data on contracts/purchase orders concluded or issued in accordance with Article 27 of the PPL, which prescribes the thresholds up to which the provisions of this Law do not apply; 9) the basis for the adoption of a by-law of the ministry in charge for financial affairs, which regulates the supervision of the execution of the contract; 10) The Commission for Protection of Competition is granted access to the database for the purposes of performing tasks within its jurisdiction; 11) method of registration of economic operators on the Public Procurement Portal; 12) modification and deletion of certain misdemeanors of the contracting authorities, as well as the introduction of new ones; 13) a basis for all state authorities responsible for controlling the legality of spending public funds to submit a request for initiation of misdemeanor proceedings when, acting within their jurisdiction, they determine that a violation of this Law has been committed, which can be the basis for misdemeanor liability; 14) the obligation to submit requests for the protection of rights, appeals and other submissions in the procedure for the protection of rights are exclusively by an electronically means; 15) submitting the decisions of the Republic Commission electronically via the Public Procurement Portal.

Particularly, regarding the integrity in public procurement, it is regulated in several articles of PPL. First of all, in article 49 of PPL, it is defined following: „Contracting authority/entity shall take all necessary measures to prevent corruption in the public procurement planning, in a public procurement procedure, or during implementation of public procurement contract, in order to detect corruption on time, to remedy or mitigate adverse consequences of the corruption, and to sanction the actors of corruption in compliance with the law. Contracting authority/entity shall regulate in a special act in greater detail the manner of planning, conducting public procurement procedures and monitoring of the execution of the public procurement contract, (the manner of communication, the rules, duties and responsibilities of persons and organizational units), the manner of planning and conducting procurements exempted from the law and procurements of social and other specific services." Further, in article 90 of PPL, it is defined following: "Where a tenderer, candidate or a related person within the meaning of the law regulating the position of economic operators and the law governing corporate income tax has in any way been involved in the preparation of the procurement procedure, the contracting authority/entity shall take appropriate measures to ensure that competition is not distorted by the participation of that tenderer or candidate. The measures referred to in paragraph 1 of this Article shall include the communication to other economic operators of relevant information exchanged in the context of or resulting from the involvement of the tenderer or candidate in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. A tenderer or a candidate may be excluded from the public procurement procedure in relation to paragraph 1 of this Article only if there are no other means to ensure compliance with the obligation of observing the principle of ensuring competition and the equal treatment of economic operators. Prior to the exclusion referred to in paragraph 3 of this Article, the contracting authority/entity shall be obliged to enable the tenderer or candidate to prove that his involvement in the preparation of the procurement procedure cannot distort the competition. Contracting authority/entity is obliged to document the measures taken under this Article in the expert evaluation of the tenders or requests."

Furthermore, according to article 112, paragraph 1, point 4) of PPL it is stipulated

following: "The contracting authority/entity may in the procurement documents provide that it will exclude an economic operator from the public procurement procedure where at any moment during the public procurement procedure it determines that a distortion of competition, due to the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in Article 90 of this Law, cannot be remedied by other measures."

Also, based on article 144, paragraph 1, point 5) of PPL it is regulated following: "Having performed examination and expert evaluation of tenders, the contracting authority/entity shall reject a tender as unacceptable if there is valid evidence of collusion or corruption."

Further, in article 236, paragraph 1, point 6) of PPL, it is defined following: "The Contracting authority/entity shall be fined from RSD 100,000 to RSD 1,000,000 for misdemeanor if it fails to act in accordance with the provision of Article 90 of this Law."

Also, this topic is defined in several articles of by-laws. According to article 10, paragraph 1, point 18) of Rulebook on the Content of Tender Documentation in Public Procurement Procedures ("Official Gazette of RS", No. 21/21), it is defined following: "Instruction to bidders on how to prepare a bid, according to the type of procedure and the nature of the subject of public procurement contains: notification to the bidder to confirm with a statement of integrity, which is an integral part of the bid form, under full material and criminal responsibility that it submitted its bid independently, without agreement with other bidders or interested persons and to guarantee the accuracy of data in the bid." According to article 11, paragraph 1, point 7) of Rulebook on the Content of Tender Documentation in Public Procurement Procedures ("Official Gazette of RS", No. 21/21), it is defined following: "The content of the tender documentation referred to in Articles 2-7 of this Rulebook also includes data on the basis of which the bidders prepare the bid form, which contains: a statement of integrity by which the bidder confirms under full material and criminal responsibility that it submitted its bid independently, without agreement with other bidders or interested persons and to guarantee the accuracy of the data in the bid." Further, according to article 12, paragraph 1, point 5) of Rulebook on the Content of Tender Documentation in Public Procurement Procedures ("Official Gazette of RS", No. 21/21), it is defined following: "The content of the tender documentation referred to in Articles 3-6 of this Rulebook also consists of data on the basis of which candidates prepare the application form, which contains: a statement of integrity by which the candidate confirms under full material and criminal responsibility that it submitted its bid independently, without agreement with other bidders or interested persons and to guarantee the accuracy of the data in the bid."

2. *Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.*

Bearing in mind the provisions of the PPL (2019), one of the key novelties is the introduction of e- platform. PPL introduced the obligation of electronic communication and electronic exchange of data in the public procurement procedures. The Portal is established from July 1st 2020 and represent a significant step forward in the process of digitization of public procurement procedures. Regarding to previous Portal, which main purpose was "advertising", the new Portal is unique information system that enable advertising and communication between different economic operators in public procurement procedures. The Portal enables

customers to have a possibility to compile and publish plans and notices on the Portal, publish tender documentations and decisions in public procurement procedures, and more other options and functionalities like: e-submission of bids, e-auctions, dynamic purchasing system, e-planning, e-complaints and e-catalogue etc.

The Portal is improving every year by new functionalities, so Portal up to now has 18 versions. New functionalities of the Portal have been introduced in order to make the work easier for the users of the Portal, such as: the English version of the Portal, the possibility to submit the bid or part of the bid in a foreign language, the possibility of submitting an e- Statement in a foreign language. In addition to the above, the interface of the Portal is adapted to work on mobile devices. The "smart lot" option has been introduced, which greatly facilitates the creation of contract notice as well as the submission of bids in cases where the procedure involves a large number of lots. Also, it is possible for the contracting authorities to publish the notices and conduct activities related to multi-phase public procurement procedures that have been initiated in accordance to provisions of the previously PPL which was into force.

Additionally, in 2024, one of the changes introduced by the Law on Amendments to PPL is creation of a database on Public Procurement Portal that, in addition to information on all contracts concluded after the public procurement procedure and their amendments, also contains data on contracts/purchase orders concluded or issued in accordance with Article 27 of the PPL, which prescribes the thresholds up to which the provisions of this Law do not apply. In addition, the PPO shall perform monitoring over application of public procurement legislation for the purpose of preventing, detecting and removing irregularities that may arise or that have arisen in the application of this Law. The monitoring procedure shall be carried out pursuant to an annual monitoring plan that is adopted by the Public Procurement Office by the end of the current year for the following year, in the event of the implementation of the negotiation procedure without prior publication referred to in Article 61, paragraph 1, points 1) and 2) ex officio, as well as on the basis of notification from a legal or natural person, state administration body, the autonomous province authority and the local self-government unit and other state authorities. The conducting of monitoring is facilitated a lot by data on Public Procurement Portal and the established system of red flags which help us during the monitoring.

- 3. Please outline actions required to strength or improve the measures described above and any specific challenges you might be facing in this respect,*

During 2023, the PPO organized several trainings for contracting authorities and bidders.

The PPO, in cooperation with National Alliance for Local Economic Development (NALED), held a webinar on March 27, 2023 to promote the Public Procurement Learning Platform for contracting authorities and bidders. The aforementioned Platform was developed within the project "Effective public procurement in the service of economic growth" which was supported by the Swedish Agency for international Development and Cooperation (SIIIA). Webinar participants are first introduced to how they can create an account in order to access the platform. After that, the content of the platform was presented to the participants, which, in addition to nine thematic modules covering all stages of the public procurement procedure, also contains the opinions of the PPO, links to guidelines, manuals, instructions, model acts, etc. Also, the participants had the opportunity to get to know how they can check their knowledge through the test provided in each thematic module.

The Action plan for the implementation of the Public Procurement Development Program

(2019-2013), as part of the "Strengthening the Institutional Framework" measure, envisages the organization of training for judges. In this regard, in October and November 2023, within the framework of the Project "Public Procurement and Good Governance for Improving Competitiveness", and organized by NALED, representatives of the PPO held trainings in Belgrade, Novi Sad and Nis for commercial court judges. Representatives of the PPO presented the amendments to the PPL and the most common irregularities in public procurement procedures to the judges of commercial courts.

On November 23, 2023, within the framework of the Project "Public Procurement and Good Governance for Improving Competitiveness", organized by NALED, representatives of the PPO held a webinar for bidders on the topic "New legal solutions, new functionalities of the Public Procurement Portal and promotion of the public procurement learning platform". The participants were presented with new legal solutions in the field of public procurement and new functionalities of the Public Procurement Portal in accordance with the new legal solutions. The second part of the webinar was dedicated to the promotion of the public procurement learning platform. More than 200 bidders joined the webinar.

In cooperation with NALED, on November 29, a workshop "Application of social criteria in public procurement" was held in Belgrade. Tender documentation models for the reserved public procurement of protective equipment, for the public procurement of maintenance of green areas through the system of dynamic procurement and procurement of food were presented.

The PPO, in cooperation with the Chamber of Commerce of Serbia, organized free training on the topic: „Public procurement Portal, new functionalities and promotion of mobile applications". The training was organized online on November 30, 2023.

The Action plan for the implementation of the Public Procurement Development Program (2019-2023), within the measure "Improvement of electronic procurement", provides for the organization of training and promotion of the Public Procurement Portal, mobile applications and new functionalities of the Public Procurement Portal in local self-government units. In this regard, due to the great interest and exclusivity of the topic, PPO, in cooperation with the Serbian Chamber of Commerce, held a free webinar during the fourth quarter, which was attended by more than 400 representatives of contracting authorities and bidders from over 30 cities and municipalities, mostly from Belgrade, Novi Sad, Nis, Kraljevo, Subotica and Zrenjanin. The goal of the training was to familiarize the representatives of the contracting authorities and bidders with the new functionalities of the Public Procurement Portal in accordance with the new legal solutions. Also, one part of the webinar was devoted to answers to questions and dilemmas related to work on the Public Procurement Portal, as well as the promotion of the mobile application for accessing the Public Procurement Portal.

PPO, in cooperation with NALED, organized a free webinar for contracting authorities on the topic "New legal solutions, new functionalities of the Public Procurement Portal and promotion of the public procurement learning platform", which was held on December 15, 2023.

The Action plan for the implementation of the Public Procurement Development Program (2019-2013), as part of the "Strengthening the Institutional Framework" measure, envisages the organization of training for the preparation of exams for public procurement officers. In this regard, during the months of October and December 2023, the PPO, with the support of USAID and the Project for the Improvement of Public Procurement, held two trainings for the

preparation of taking the exam, which were attended by 300 participants. The goal of the training was to improve the knowledge and understanding of public procurement of persons who deal with public procurement, both with contracting authorities and bidders, as well as to help prepare for the exam for public procurement officers organized by the PPO. The training included a presentation of the legal and institutional framework in the field of public procurement, the role of institutions responsible for regulation, monitoring and supervision of public procurement, types of public procurement procedures, determining deadlines, criteria for the qualitative selection of a business entity, criteria for awarding contracts, protection of rights and other important topics in the field of public procurement.

The Action plan for the implementation of the Public Procurement Development Program (2019-2023), as part of the "Strengthening administrative capacities and education" measure, foresees the activities of the organization of training on the application of environmental and social aspects in public procurement procedures, the application of the innovation partnership procedure and strengthening integrity, preventing conflicts of interest and corruption in public procurement. In this regard, the first training for contracting authorities and bidders was held on November 6, 2023 by the PPO with the support of the Serbian Chamber of Commerce - Regional Chamber of Commerce of the South Backa Administrative District. The second training for contracting authorities and bidders was also held by the PPO with the support of the Serbian Chamber of Commerce on December 14, 2023. The training was attended by more than 100 representatives of contracting authorities and bidders.

Furthermore, some trainings with support by USAID, SIGMA, were organized for the PPO employees on different topics, such as innovation partnership, training for trainers, recent practice from EU Court of Justice in the field of public procurement etc.

Particularly, regarding monitoring in public procurement, in 2023, representatives of the PPO held following trainings:

In May, in organization with NALED and PPO, four workshops were held on topic "Public procurements for courts and prosecutor's offices as contracting authorities in procedure". The participants had an opportunity to become familiar with public procurements, procurement on which Law doesn't apply, contract award criteria, as well with concluding and amendments on contract;

In September representatives of PPO are together with representatives of Prosecutor and Police, participate on workshop regarding to challenges in detection and prosecution of criminal offenses related to public procurement. The aforementioned workshop was organized as part of the Project for the Improvement of Public Procurement - USAID, together with the Bureau for the International Fight against Narcotics and Law Enforcement of the Embassy of the United States of America - INL, in cooperation with the Supreme Public Prosecutor's Office of the Republic of Serbia. The workshop was implemented in an interactive way through a discussion on the application of special evidentiary actions in the detection and collection of evidence for a criminal offense in connection with public procurement and the possibility of applying the methodology of "red flags" to detect illegal activities in the field of public procurement;

The Action plan for the implementation of the Public Procurement Development Program (2019-2023), as part of the "Strengthening the Institutional Framework" measure, envisages the organization of training for judges. In this regard, in October and November 2023, within

the framework of the Project "Public Procurement and Good Governance for improving Competitiveness", and organized by NALED, representatives of the PPO held trainings in Belgrade, Novi Sad and Nis for commercial court judges. Representatives of the PPO presented the amendments to the PPL and the most common irregularities in public procurement procedures to the judges of commercial courts.

During the Q4 of 2023, in cooperation with the PPO and USAID, and within the framework of the Project for the Improvement of Public Procurement, two trainings were held for representatives of the police and prosecution on the topic "Advanced use of the Public Procurement Portal for the police and prosecution". PPO representatives presented the basic and advanced functionalities of the Public Procurement Portal to the participants.

All above mentioned indicates that the public procurement system is improved in terms of transparency and competition, as well as in terms of preventing corruption and eliminating irregularities in the public procurement system.

4. *Do you require technical assistance in relation to the measures described above? If so, please specify forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.*