



---

# Guidelines for Contracts with Public Authorities

5th Edition

---



---

# Guidelines for Contracts with Public Authorities

2023 Update

---

Public  
Procurement

5th Edition

Contributions  
from the following

# Legalink member firms

---

Prieto Abogados

Jakoby Rechtsanwaelte

Hassans

Szecskay

Dua Associates

Cocuzza

Gasser Partner

Azman Davidson & Co.

Ramos Ripoll & Schuster

Divina Law

Sérvulo & Asociados

PR Legal

Barun Law

López-Ibor Abogados

Hellström

Lindborg & Mazor LLP

Chile

Germany

Gibraltar

Hungary

India

Italy

Liechtenstein

Malaysia

Mexico

Philippines

Portugal

Serbia

South Korea

Spain

Sweden

U.S.A.



PR Legal  
Serbia

## 1. Does your legal system provide specific procedures for the award of contracts by contracting authorities?

Yes, the legal system of the Republic of Serbia regulates matters related to public procurement procedure within the Law on Public Procurements (“Official Gazette of RS” 91/2019) (“**Law**”) which Law is in force from 1 January 2020, as well as within respective by-laws.

More specifically, Article 1 of the Law prescribes the rules of public procurement procedures carried out by contracting authorities or other entities in the cases determined by the Law, for the purpose of concluding contracts on public procurement of goods, services or works, framework agreements, as well as conducting design contests. The Law also regulates:

1. the activities and form of organization of the Public Procurement Office;
2. jurisdiction, regulation and other issues related to the scope of work of the Republic Commission for protection of rights in public procurement procedures;
3. the procedure for the protection of rights in public procurement procedures and other matters of importance for public procurement.

## 2. Do the procedures for the award of contracts depend on the kind of goods, services etc., which are to be procured?

The procedure of contract award in the public procurement procedure does not generally depend on the kind of goods, services and works that are procured pursuant to the provisions of the Law on Public Procurements.

However, pursuant to Article 164 of the Law, the conditions and procedure related to public procurements in the field of defense and security are prescribed in a separate by-law.

Additionally, one of the types of procurement procedures – partnership for innovation (prescribed in Article 59) can be implemented for innovation partnership if the contracting authority has a need for innovative goods, services or works, and cannot be satisfied with procurement of goods, services or works that are available on the market.

General exemptions are prescribed by Article 11 of the Law meaning that the provisions of the Law do not apply to public procurement and design contests that the contracting authorities are obliged to implement, in accordance with the procurement procedures established by:

1. an international agreement or other act on the basis of which an international obligation arose, which the Republic of Serbia concluded with one or more third countries or its narrower political-territorial units and which refers to goods, services or works intended for joint implementation or use by signatory parties;
2. international organizations.



The provisions of the Law on Public Procurements do not apply to public procurement and design contests that are conducted in accordance with procurement rules determined by an international organization or financial institution, if such organization or financial institution fully finances said procurements and design contests. In case of procurements and design contests which are largely co-financed by an international organization or financial institution, the agreed rules shall apply.

Moreover, the services which procurement does not fall under the scope of the Law on Public Procurement are listed numerus clausus within Article 12 of the Law, and predominantly refer to purchase and lease of the land, purchase of time for television and radio broadcasting, arbitrational services, certain legal services, certain financial services, credit and loan, etc.

### **3. Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc., which are to be procured (thresholds) and if so, what are the thresholds?**

PR Legal: According to Article 27, the provisions of the Law do not apply to the following:

1. procurement of goods, services and implementation of design contests which estimated value is less than 1,000,000 dinars (approx. EUR 8,500) and procurement of works which estimated value is less than 3,000,000 dinars (approx. EUR 25,500);
2. the procurement of goods, services and the implementation of design contests which estimated value is less than 15,000,000 dinars (approx. EUR 127,500), for the needs of diplomatic missions, diplomatic and consular missions and the performance of other activities of the Republic of Serbia abroad, as well as the procurement of works for mentioned needs which estimated value is less than 650,000,000 dinars (approx. EUR 5,525,000);
3. the procurement of social and other special services from Article 75 of the Law on Public Procurement (which services are listed in Appendix 7 to the Law and mainly refer to healthcare and social services, administration and educational services, postal services, etc.), which estimated value is less than 15,000,000 dinars (approx. EUR 127,500) when the procurement is carried out by a public contracting authority, i.e. less than 20,000,000 dinars (approx. EUR 170,000) when the procurement is carried out by a sectoral contracting authority.

This means that contracting authorities are obliged to apply the provisions of the Law to the procurement of works, goods, services and the implementation of design contests which estimated value is equal to or greater than the abovementioned thresholds.

In accordance with the threshold values published by the European Commission in the Official Journal of the European Union, the ministry responsible for financial affairs publishes the corresponding values of the thresholds in dinars (hereinafter: European thresholds). The Ministry of Finance publishes the dinar value of the European thresholds in the Official Gazette of the Republic of Serbia and on its website.



#### **4. In what way does the contracting authority have to inform the market about the intended procurement?**

First of all, we would like to emphasize that the Law recognizes several types of public procurement procedures, regardless of the type of goods, services and works which are being procured (please see answer to the question number 2), as follows:

1. open procedure;
2. restrictive procedure;
3. competitive procedure with negotiation;
4. competitive dialogue;
5. negotiation procedure with the publication of a public invitation;
6. partnership for innovation;
7. 7) negotiation procedure without publication of a public invitation.

Pursuant to Article 51 of the Law, the contracting authority awards the contract in an open or restrictive procedure, however, the contracting authority can also award the contract in other public procurement procedures, if the conditions prescribed by the Law are met, except in a procedure under the number (v) - negotiation procedure with the publication of a public invitation.

Additionally, the sectoral contracting authority awards the contract in an open procedure, a restrictive procedure, a negotiation procedure with publication or a competitive dialogue, however, the sectoral contracting authority can also award the contract in other public procurement procedures, if the conditions prescribed by the Law are met, except in a procedure under number (iii) - competitive procedure with negotiation.

In all of the abovementioned public procurement procedures, the contracting authority is obliged to publish a public invitation for the procurement on the Public Procurement Portal since all communication and data exchange in the public procurement procedure is carried out by electronic means on the Public Procurement Portal.

#### **5. Are calls for tender from contracting authorities published on a single or on multiple freely accessible website(s)? If yes, please name the website(s).**

As stipulated in answer to the previous question number 4, pursuant to Article 45 of the Law, all communication and data exchange in the public procurement procedure is carried out by electronic means on the Public Procurement Portal available on a singular website.

Even though access to the Public Procurement Portal is free, certain information and documents are available only to registered users.



**6. Does a potential bidder that is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?**

The Law defines the bidder as economic entity that submitted the bid. The economic entity represents every entity/person or group of entity/persons that offer goods, services or work on market.

Additionally, we were able to determine on the Public Procurement Portal that the public procurement contracts have been awarded in the past to natural persons, entrepreneurs and legal entities as well.

**7. Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?**

Bidders can submit offers individually, or collectively as a group of entities (as well as consortium). Additionally, a bidder is entitled to entrust part of a public procurement contract to subcontractor, whereas a bidder is obliged to deliver appropriate documentation for each entity within the group, i.e. for all subcontractors.

**8. Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?**

Generally, there is no obligation under the Law for potential bidders to register a subsidiary company and/or branch office in Republic of Serbia for the purpose of participating in a public procurement procedure conducted in the Republic of Serbia.

However, certain additional criteria could be prescribed within the tender documentation by the contracting authority, which criteria could, furthermore, limit the possibility of entities from abroad submitting a tender for the contract directly from abroad.

**9. If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?**

Generally, domestic bidders are not favored over foreign bidders and according to one of the principles prescribed in Article 7 of the Law, the contracting authority cannot determine conditions in the public procurement procedure that would directly or indirectly lead to national, territorial or personal discrimination among economic entities, i.e. bidders.

This also means that all bidders (foreign or domestic) need to deliver respective evidence (e.g. appropriate data, confirmation or statement) that they fulfil the criteria for the qualitative selection:

1. Absence of grounds for exclusion (e.g. that a bidder and its legal representative have not been criminally convicted in previous five years for certain crimes, that a bidder settled all its tax responsibilities, that a bidder is not under bankruptcy or liquidation proceeding, etc.);
2. Ability to perform professional activities;
3. Financial and economic capacity;
4. Technical and professional capacity.



## 10. **Is a multinational bidding consortium allowed to submit a bid?**

There are no obstacles for multinational bidding consortium to submit a bid in a public procurement procedure conducted in the Republic of Serbia, under the same conditions as domestic bidding consortium.

## 11. **In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail, or digital?**

Pursuant to Article 42 of the Law, the contracting authority conducts a public procurement procedure and prepares tender documentation in local - Serbian language. Exceptionally, the contracting authority is entitled to also prepare tender documentation in a foreign language.

On the other hand, the rule is that the bidder submits the bid in local - Serbian language. However, it is possible for the contracting authority to allow the bid or part of the bid to be submitted in a foreign language. A note that in case of a dispute, the version of tender documentation, i.e. bid in Serbian language, shall prevail.

Additionally, pursuant to Article 44 of the Law, the contracting authority and economic entities, i.e. bidders in a public procurement procedure communicate through the Public Procurement Portal and via mail, courier service and electronically - by sending electronic mail, in accordance with the provisions of the Law and the instructions for using the Public Procurement Portal.

However, according with Article 46 of the Law, communication between the contracting authority and economic entities, i.e. bidders in the public procurement procedure can exceptionally be conducted verbally, if such communication does not relate to essential elements of the public procurement procedure (e.g. bid, applications and other essential documentation) and provided that such verbal communication is adequately documented.

## 12. **Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?**

The Law prescribes minimum deadlines for submitting bids, depending on the type of procedure in which the procurement is conducted.

I. In an open procedure, pursuant to Article 52 of the Law, minimum deadline for submitting bids is:

1. 35 days from the date of sending the public invitation for publication, for public procurement which estimated value is equal to or greater than the amount of the European thresholds;
2. 25 days from the day of sending the public call for publication, for public procurement whose estimated value is less than the amount of the European thresholds;
3. 15 days from the day of sending the public invitation for publication, for the procurement of works whose estimated value is lower than 30,000,000 dinars (approx. EUR 255,000);
4. ten days from the day of sending the public invitation for publication, for the procurement of goods and services which estimated value is lower than RSD 10,000,000 (approx. EUR 85,000).

In case of publication of a preliminary information notice or a periodic indicative notice, the contracting authority may shorten the minimum deadline under points 1) and 2) to 15 days, under conditions stipulated in the Law on Public Procurement regarding publication of such notice.





Additionally, deadlines for submitting bids according to the minimum deadlines from points 1) and 2) can be shortened by five days, when offers can be submitted electronically.

The contracting authority can set a shorter deadline for submission of bids, but not shorter than 15 days from the day of sending the public invitation for publication, if the minimum deadline referred to in points 1) and 2) above is not appropriate for reasons of justified urgency, for which the contracting authority needs to have valid proof.

II. Since restrictive procedure is conducted in two phases, in which all interested entities can submit an application in the first phase, and only candidates whose qualifications are accepted can be invited to submit a bid in the second phase.

Therefore, pursuant to Article 54 of the Law, minimum deadline for submitting bids in a second phase of restrictive procedure is:

1. 30 days from the date of sending the public invitation for publication, for public procurement which estimated value is equal to or greater than the amount of the European thresholds;
2. 15 days from the date of sending the public invitation for publication, for public procurement which estimated value is less than the amount of the European thresholds.

The contracting authority can set a shorter deadline for submission of bids, but not shorter than ten days from the day of sending the public invitation for publication, if the deadline is not appropriate for reasons of justified urgency, for which the contracting authority needs to have valid proof.

III. In the competitive procedure with negotiation, the contracting authority sends an invitation for submission of initial bids to candidates which have not been excluded from the public procurement procedure.

Pursuant to Article 56 of the Law, minimum deadline for submitting bids in the restrictive procedure is:

1. 30 days from the date of sending the public invitation for publication, for public procurement which estimated value is equal to or greater than the amount of the European thresholds;
2. 15 days from the date of sending the public invitation for publication, for public procurement which estimated value is less than the amount of the European thresholds.

In the remaining types of public procurement procedures bids are not submitted, but rather applications and, thus, different minimum deadlines are prescribed.

### **13. Can the bidders claim their costs for preparing their bid? If so what are the conditions for and the maximum amount of reimbursement?**

PR Legal: Pursuant to Article 138 of the Law, the costs of preparation and submission of a bid are borne exclusively by the bidder and a bidder cannot claim compensation from the contracting authority.

Exceptionally, if a procurement procedure is suspended for reasons which arise from the side of contracting authority, the contracting authority is obliged to compensate the bidder for costs of making a sample or a model (if such sample or model is made in accordance with the technical specifications of the contracting authority) as well as costs of obtaining collateral, only in case a bidder requested reimbursement of the specified costs in his bid.



**13. Can the bidders claim their costs for preparing their bid? If so what are the conditions for and the maximum amount of reimbursement?**

PR Legal: Pursuant to Article 138 of the Law, the costs of preparation and submission of a bid are borne exclusively by the bidder and a bidder cannot claim compensation from the contracting authority.

Exceptionally, if a procurement procedure is suspended for reasons which arise from the side of contracting authority, the contracting authority is obliged to compensate the bidder for costs of making a sample or a model (if such sample or model is made in accordance with the technical specifications of the contracting authority) as well as costs of obtaining collateral, only in case a bidder requested reimbursement of the specified costs in his bid.

**14. Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?**

PR Legal: Pursuant to general rules mentioned in Article 132 of the Law, the contracting authority awards the contract to the most economically advantageous bid, determined on the basis of one of the following criteria:

1. prices; or
2. costs by applying the cost efficiency approach, such as the life cycle cost determined in more detail in the Law on Public Procurement;
3. the relationship between price and quality, i.e. cost and quality, which is evaluated based on criteria, including qualitative, ecological and/or social aspects, related to the subject of the public procurement contract, which in particular may include:
  - a. quality, including technical features, aesthetic and functional features, availability, solution for all users, social, environmental and innovative features, trade and terms of trade;
  - b. the organization, qualifications and experience of the personnel entrusted with the performance of the contract, when the quality of the personnel can have a significant impact on the level of success of the performance of the contract, or
  - c. after-sales service and technical assistance, delivery terms, such as delivery date, delivery process and delivery time or performance time.

The contracting authority can determine the price or cost element in the form of a predetermined price or cost, so that the most economically advantageous offer is determined on the basis of quality criteria.

Nevertheless, pursuant to Article 133 of the Law, the contracting authority is obliged to specify the criteria for awarding the contract in tender documentation.

The criteria for awarding contracts must be described and evaluated, must not be discriminatory, must be related to the subject of the public procurement contract and must enable effective competition.



**15. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so, please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?**

All entities, candidates, or bidders, whether domestic or foreign, who had or have an interest in the award of a specific contract and who indicate that they were damaged or could be damaged as a result of the award of a contract, due to contract authorities actions, are entitled to submit request for protection of rights, pursuant to Articles 204 and 211 of the Law.

Pursuant to Article 213 of the Law, the request for protection of rights is submitted electronically via Public Procurement Portal, simultaneously to contracting authority and to the Republic Commission for the protection of rights in public procurement procedures (“Republic Commission”), or in writing, by direct delivery or by registered mail to the contracting authority, in which case the applicant is obliged to submit a copy of a request to the Republic Commission as well.

A request for the protection of rights can be submitted during the entire public procurement procedure and no later than ten days from the date of publication of the decision of the contracting authority ending the public procurement procedure on the Public Procurement Portal.

A request for the protection of rights contesting the actions of the contracting authority in relation to the determination of the type of procedure, the content of the public invitation and tender documentation shall be considered timely if received by the contracting authority no later than three days before the deadline for submission of bids, i.e. applications, regardless of the method of delivery.

A request for the protection of rights contesting the actions of the contracting authority, which are taken after the deadline for submission of offers or applications, is submitted within ten days from the date of publication of the decision of the contracting authority on the Public Procurement Portal, i.e. from the day of receipt of the decision in cases where publication on the Public Procurement Portal is not prescribed by the Law.

**16. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services, etc., to be procured? If so, what are the conditions?**

There are no special conditions for activating primary legal protection, every economic entity interested in awarding a contract has the right to participate in the procedure for the protection of rights under the same conditions, as well as the right to fair legal protection, pursuant to the principle of accessibility to the protection of rights mechanism stipulated in Article 208 of the Law.



**17. If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g., through damage claims, etc. (secondary legal protection)? If so, what are the principal conditions that have to be presented to a court in order to receive a damage award?**

PR Legal: Firstly, we would like to emphasize that the procedure for protection of rights, as primary legal protection, is consisted of:

1. previous procedure conducted by the contracting authority; and
2. procedure before the Republic Commission.

Pursuant to Article 220 of the Law, within five working days from the day of receipt of the procedurally correct request for the protection of rights, the contracting authority shall:

1. render a decision approving the request for the protection of rights and partially annul the public procurement procedure, if the contracting authority considers that the allegations are well-founded; or
2. submit to the Republic Commission a response for it to decide on the request for the protection of rights, if the contracting authority considers that validity of allegations may result in the annulment of the public procurement procedure as a whole, or the contracting authority considers that the allegations are not founded.

Therefore, pursuant to Article 228, the administrative dispute before the Administrative Court of the Republic of Serbia can be initiated against the decision of the Republic Commission within 15 days from the receipt of respective decision, since there is no possibility to appeal to the decision of the Republic Commission, as it is final. Additionally, the administrative dispute before the Administrative Court of the Republic of Serbia can be initiated in case the Republic Commission did not render a decision at all in the prescribed deadline (a note that the Republic Commission is obliged to decide on the request for the protection of rights within 30 days from the day of receipt of complete documentation).

Nevertheless, pursuant to Article 229 of the Law, the right to compensation for damages, which occurred due to violation of the Law can be realized in the procedure before the competent court.



## 18. Can your office

### **i. give legal advice to foreign clients concerning the relevant formal conditions for preparing a proper bid, etc., and assist in the procurement procedure in your country?**

Yes, our law office is fully competent to provide assistance and give legal advice to clients in every aspect of public procurement procedure.

### **ii. represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?**

Yes, our law office is fully competent to represent foreign clients seeking primary and secondary legal protection before all public offices/courts in the Republic of Serbia.

### **iii. Please name a contact person within your office for questions of public procurement law**

Milan Petrović, Managing Partner

A: Studentski trg 10/4, 11 000 Belgrade, Serbia

P: +381 (0) 11 420 80 20

M: +381 (0) 63 8620 634

E: [milan.petrovic@prlegal.rs](mailto:milan.petrovic@prlegal.rs)

Sara Ostojić, Senior Associate

A: Studentski trg 10/4, 11 000 Belgrade, Serbia

P: +381 (0) 11 420 80 20

M: +381 (0) 64 53 33 799

E: [sara.ostojic@prlegal.rs](mailto:sara.ostojic@prlegal.rs)

W: [www.prlegal.rs](http://www.prlegal.rs)

Please note that this legal overview is to be considered exclusively informative, with no intention of providing legal advice. If you should need additional information or legal advice, please contact us directly.

This legal overview is up to date in April 2023.

