

PUBLIC PROCUREMENT IN BOSNIA AND HERZEGOVINA



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PUBLIC PROCUREMENT IN BOSNIA AND HERZEGOVINA

Regulation of the public procurement at the state level is set as one of the key conditions for future accession of Bosnia and Herzegovina to the European Union.

The public procurement system, organized in accordance with the standards of the European Union, should speed up the struggle for development of competition and the struggle against corruption in order to achieve required economic growth of Bosnia and Herzegovina at the European and world's markets.

The objectives to be achieved by the application of the public procurement rules primarily include: obtaining the best value for public money, opening markets, creating competitive markets, equal treatment under the same conditions for business entities at the market.

Of course, the realization of these objectives contributes to the economic security, environmental protection, promotion of domestic production and employment, regional development, social justice etc.

The Parliamentary Assembly of Bosnia and Herzegovina at its 64th session of the House of Representatives held on 13 March 2014 and at the 37th session of the House of Peoples held on 29 April 2014, adopted a new Law on Public Procurement (hereinafter referred to as PPL), published in the Official Gazette of Bosnia and Herzegovina no.39 dated 19 May 2014. The mentioned Law came into force eight (8) days after its publication in the BIH Official Gazette, and shall be applied upon the expiration of six (6) months from the effective date (November 2014)

The new Law on Public Procurement adopted certain changes and specificities compared to the previous Law on Public Procurement and the adoption of this law is welcomed since it contains specific issues that comply with European Union directives.

TYPES OF PUBLIC PROCUREMENT PROCEDURES

The new Law on Public Procurement envisaged existence of the following types of public procurement procedures:

- *Open procedure*
- *Restricted procedure*
- *Negotiated procedure with publication of a procurement notice*
- *Negotiation procedure without publication of a procurement notice*
- *Competition dialogue*
- *Design contest*

Open and restricted procedures are prescribed as basic regular procedures in the course of conclusion of a public procurement contract, while other procedures are applied as an exception when the conditions stipulated in the Law on Public Procurement are met.

OPEN PROCEDURE shall be carried out by the contracting authority in a way that the same shall prepare tender documents, publish procurement notice and make tender documents available to potential applicants. The contracting authority shall then carry out the public opening of timely submitted applications and check qualifications of the applicants under the terms of participation set out in the tender documents and evaluate the same according to the criteria for the award. Finally, the contracting authority shall inform applicants of the outcome of the procurement procedure. The most successful applicant in the open procedure shall be offered a contract by the contracting authority and the same shall also publish a notice on award and submit a report to the Public Procurement Agency.

RESTRICTED PROCEDURE is different compared to the open procedure since the tender documents are to be prepared and submitted in two phases, namely:

- a) Pre-qualification phase and

b) Phase of the call for submission of proposals, which must include the criteria for contract award.

The contracting authority shall publish a procurement notice, which invites all interested candidates to request documents for prequalification phase, which will then be assigned or made available to the candidates. After reviewing qualifications of candidates, the tender documents shall be submitted simultaneously to all qualified candidates along with a notice for submission of proposals, while candidates who did not qualify shall be informed about it. The subsequent procedure is not different compared to the open procedure.

NEGOTIATED PROCEDURE WITH PUBLICATION OF PROCUREMENT NOTICE is specific due to the fact that the contracting authority is obliged to make an announcement on procurement and provide the pre-qualification documents for the candidates, and after checking the qualifications of candidates inform all participants on the results of the qualification. At the same time it is also obliged to invite selected candidates to participate in negotiations on all relevant aspects of the contract as well as set the same requirements and provide the same information to all candidates/bidders. The contracting authority negotiates with each candidate separately, but is obliged to keep a record signed by both parties after the completion of negotiations, where all information provided by candidates regarding the subject of the contract shall be treated as confidential, unless there is consent of the candidate to make it available to third parties. On the end of the negotiations, the contracting authority shall submit the tender documents for the final bid and invite candidates to submit their final bids.

NEGOTIATED PROCEDURE WITHOUT PUBLICATION OF PROCUREMENT NOTICE shall be conducted if all conditions stipulated in Articles 21 and 24 of the Law on Public Procurement are met, with the possibility of maintaining the negotiated procedure with only one candidate. Conditions for qualification must be determined in advance, and after checking qualifications only the qualified candidates may be considered for the further procedure. The

contracting authority in this regard is not obligated to seek documents relating to the verification of the personal skills of the candidate when it comes to conclusion of the contract for reasons of extreme urgency referred to in Article 21, paragraph 1, item d) and reasons of the bid under very favorable terms referred to in Article 22, paragraph 1, item d). Record on the outcome of the qualifications, in which all the relevant facts shall be entered, have to be submitted to those candidates who did not qualify.

Information on the negotiated procedure without publication of a procurement notice understands that the contracting authority shall publish on its website the tender documents which shall be available to all interested candidates. Submission of the initial bids from qualified candidates is a basis for negotiation and the contracting authority is obliged to keep records of negotiations with all candidates, and the same has to be signed by both parties after negotiations. Final bid can only be submitted by one or more of the invited bidders in which case the contracting authority is obliged to make a public opening of final bids. The contracting authority may, after selection is over, announce voluntary *ex ante* transparency notice in which it explains the fulfillment of the conditions set forth in this law that justify the use of the negotiated procedure without publication of a procurement notice, and express its intention to conclude a contract with the most successful bidder. In case of publication of voluntary *ex ante* transparency notice, the contracting authority cannot sign the public procurement contract within 15 days from the date of publication of the notice. Upon completion of the procedure, the contracting authority is obliged to conclude a contract with the most successful bidder or annul the procurement procedure, announce the result of the procedure and submit a report to the Agency, and at the request of the Agency a detailed explanation also.

When it comes to the negotiated procedure, with or without notice, the law provided the conditions for its application, as well as special conditions depending on whether the subject of the procurement are goods, services or works.

Therefore, in a negotiated procedure with publication of a procurement notice:

- Contract for procurement of goods, services or works may be awarded if in the open or restricted procedure, or in the competitive dialogue procedure, bids do not meet qualification conditions and if conditions for award of contract have not been essentially changed i.e. when due to the nature of the subject of public procurement or the risks in the execution of the subject of procurement it is not possible to previously determine the total cost,
- contract for the purchase of services may be concluded if the subject of the procurement are intellectual services,
- contract to procure the work could be concluded if the subject of procurement is work which is to be carried out exclusively for research, testing or development purposes.

Negotiated procedure without publication of a procurement notice can be carried out in exceptional circumstances, when:

- No acceptable bid was submitted either in open or restricted procedure, and the conditions of the contract were not essentially changed compared to the previous procedure,
- No request was submitted in a restricted procedure or no qualified candidates have requested to participate, and the terms of the contract not been essentially changed compared to the previous procedure,
- Due to substantial, demonstrable technical or artistic reasons relating to the protection of exclusive rights for which the contract can be awarded only to a particular bidder,
- The existence of reasons of extreme urgency brought about by events unforeseeable by the contracting authority.

Special conditions for use of the negotiated procedure without publication of notice for procurement of goods, services or works are stipulated in Articles 22, 23 and 24 of the Law on Public Procurement.

Special conditions for use of the negotiated procedure without publication of notice for procurement of goods are provided in the following situations:

- when the goods to be procured are produced exclusively for the purposes of research, experiment, study or development;
- for additional deliveries by suppliers from the main contract, either as a partial replacement or as an extension of existing supplies or installations where a change of supplier would lead to significant technical difficulties in operation and maintenance, provided that the duration of the main contract as well as that of recurrent contracts may not be longer than one year and may not exceed 10% of the value of the main contract;
- For goods bought and sold on the stock market;
- When purchasing goods under exceptionally favorable terms from a business entity which is in the process of liquidation, or from bankruptcy creditor or bankruptcy trustee, or from a creditor on the basis of a business arrangement or similar arrangements.

Special conditions for use of the negotiated procedure without publication of notice for procurement of services or works:

- In the case of contract for public procurement of services, when the contract award procedure follows the process of the design contest;
- For additional services or works, which due to unforeseen circumstances became necessary cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority, provided that the total value of contracts awarded for additional services may not exceed 30% of the value of the main contract i.e. cannot exceed 20% of the value of the main contract when it comes to contract for procurement of works;
- For new services or works that represent the repetition of similar services or works entrusted to the supplier to whom the contracting authority has awarded an earlier contract, provided that such services or works are in accordance with the basic project for which the main contract was awarded, after the open or restricted procedure is conducted. It can only be applied for a

period of three years from the date of signing of the main contract.

COMPETITION DIALOGUE represents a novelty in the Law on Public Procurement and involves a dialogue with the candidates in order to discuss all aspects of public procurement contracts and find one or more solutions that suit the needs and requirements of the contracting authority. This procedure is admissible if concerning a particularly complex case of procurement as indicated by the technical specifications (description of procurement subject), legal, financial terms of the contract, and if the conclusion of the contract is not possible in an open or restricted procedure. The decision is exclusively made by applying the criterion of the most economically advantageous tender.

The contracting authority must specify their needs and requirements regarding the procurement in the call for proposals through the competitive dialogue and/or in the descriptive documents. Also, they have to deliver the invitation for participation as a bidder in the process of competitive dialogue to the candidates who have timely submitted requests to participate and proved their ability. To the candidates who will not participate in a competitive dialogue, the contracting authority shall submit a decision on the inadmissibility of participation no later than seven days from the date of enactment. The invitation to participate in the competitive dialogue must include details on publication on the basis of which the invitation was sent, additional documents which have to be submitted, the order of importance of criteria for the award of contract, as well as date and place of the beginning of the dialogue and the language of competitive dialogue. The invitation must be accompanied by an information document and any supporting documents or the invitation must contain a notice that the descriptive documents shall be available electronically. The contracting authority may continue the dialogue until it finds a solution or solutions likely to meet its needs and requirements, and at the end of the dialogue phase there must be as many solutions as to ensure market competition. After the dialogue the contracting authority shall invite the candidate or candidates to submit final bids. The law

provides a possibility for the bidder to explain his bid and also precise and amend it but without changing the essential elements of the same.

The contracting authority in the notice must specify the number of candidates who will be invited to participate in the competitive dialogue, provided that this number shall not be less than three, and if they find that the number of suitable candidates is higher than the published number of candidates who will be invited to participate in the competitive dialogue, the contracting authority may invite all or among viable candidates choose the best candidates according to the number and the rules specified in the notice. In the case that the number of suitable candidates is less than the published number the contracting authority may continue by inviting one or more suitable candidates. The reasons for the choice must be stated in the records, and in the absence of suitable candidates the contracting authority must cancel the procedure.

FRAMEWORK AGREEMENT may be concluded after conducting an open procedure, restricted procedure, and negotiated procedure with publication of a notice or competitive request for submission of bids. Exceptionally, the framework agreement may be concluded after a negotiated procedure without publication of a notice after annulled open or restricted procedure, due to the fact that no bids have been received or at least no acceptable bids. One or more bidders with whom the framework agreement might be concluded shall be elected in accordance with the award criteria set in Article 64 of the Law on Public Procurement.

After conclusion of a framework agreement, its provisions cannot be changed and its duration may not exceed four years, unless there are good reasons, especially related to the subject of the procurement framework agreement. The framework agreement may be concluded with several bidders for the same procurement subject matter, but the number cannot be less than three, provided that there is sufficient number of bidders. The framework agreement may be concluded with two bidders in the case of repeated procedure due to insufficient number of bids received.

When a contract is concluded with suppliers with whom the framework agreement is concluded, then the same may be awarded to the best bidder on the basis of the conditions stipulated in the framework agreement. If the conditions for the award of the contract are not stipulated by the framework agreement, the contracting authority shall write to each bidder to submit bids on the basis of precisely defined conditions stated in the framework agreement specifying the deadline for submission of bids. The content of submitted bids shall be treated as confidential until the bid opening, and the minutes of the bid opening shall be submitted to all bidders while the contract shall be awarded to the most favorable bidder.

DESIGN CONTEST shall be conducted in order to enable the contracting authority to choose a participant or participants who offered the best conceptual design, based on the tender documentation which must contain information on the following:

- Subject matter of the contest/description of the project,
- Assessment criteria according to the order of their importance,
- Deadlines,
- Number of successful candidates (one or more),
- Suitable application and use of competition project,
- Money awards, if any,
- Return of the documentation,
- Principles of work of the selection committee.

All interested legal and physical entities may apply for design contest, and the contracting authority may decide to conduct preliminary selection of candidates who will be invited to submit their designs, but considering non-discriminatory qualification requirements stated in the tender documents, which provide real competition.

The procedure shall be carried out by a selection committee which then makes a decision on the selection of one or more of the most appropriate designs. The selection committee shall be appointed by the contracting authority, and shall be composed of individuals with recognized

professional reputation, provided that a member of the committee may not be a person whose private interest affects or may affect the impartiality of committee's work. If participants of the competition are required specific professional qualifications, the majority of the members of the selection committee must have the same or equivalent qualification. The content of submitted papers, which are to be submitted anonymously, shall be treated as confidential until the submission deadline, after which the selection committee, in accordance with the evaluation criteria set out in the tender documents (which does not necessarily mean the lowest price or the most economically advantageous proposal) evaluate submitted bids and make decision on the selection of one or more of the most appropriate bids. The committee shall define the said decision in a report on the procedure which has to be signed by all of its members who after completion of the procedure have to be submitted to the contracting authority for further action.

The procurement notice is aimed to provide enough information to all interested parties in accordance with the essential elements of the tender documents, in order to assess whether there is interest to participate in the procurement process. Along with a procurement notice a brief summary in English shall also be published, which contains the minimum information from this notice. All notices during the procurement procedure, including a summary in English (compulsory in case the value of procurement amounts as stated in Article 14, paragraph 5) and prior information notice, the contracting authority shall publish on the portal of public procurement, while the summary of all notices shall be published in the "Official Gazette of BiH", with the possibility of issuing in other publications.

Prior information notice shall be posted at the beginning of the calendar year or immediately after the decision on the planned public procurement, in order to publish a total estimated value of the contract or the framework agreement in accordance with the product groups that the contracting authority intends to award in the next 12 months, or essential features of the contract or the framework agreements that the contracting authority intends to award for public procurement of works.

DEADLINES

Deadlines for receipt of bids in accordance with the law shall be determined by the contracting authority, taking into account the complexity of the case and the time required for the preparation of requests for participation.

Regular deadlines are stipulated in Article 40 of the Law on Public Procurement and the same depend on the types of procedures and the scale value as it follows:

- For the scale value as per Article 14, paragraph 2 and 3 of the Law the minimum period for the open procedure for receipt of bids is 45 days from the date of the publication of a procurement notice on the portal of public procurements, while in the case of a restricted procedure, the negotiated procedure with publication of a procurement notice and the competitive dialogue, the minimum deadline for receipt of requests to participate is 30 days from the date of publication of the notice on the portal of public procurement i.e. in the case of restricted procedures, the minimum deadline for receipt of bids is 35 days from sending invitations to qualified candidates for submission of bids.
- For the scale value as per Article 14, paragraph 4 of the Law, in an open procurement procedure the deadline for receipt of bids cannot be shorter than 20 days from the date of the publication of a procurement notice on the portal of public procurement while in a restricted procedure, the negotiated procedure with publication of the notice and the competitive dialogue the deadline limit for receipt of requests to participate cannot be less than 15 days from the date of the publication of a procurement notice on the portal of public procurement, and the deadline for receipt of bids in restricted procedure cannot be shorter than 15 days from the date of the sending invitations for submission of bids.

The law provides for the possibility of **shortening the regular deadlines** provided that the information in the previous notification contained all the information that should be included in the procurement notice and that it is published at least 52 days but not more than 12 months before

the date of procurement notice on portal of public procurement. Such limits may be shortened for five days if the contracting authority provides unrestricted and direct access to the tender documents and other supporting documents electronically, without charge, from the date of publication on the portal of public procurement, as further specified in Article 41 of the Law on Public Procurement. It should be noted that appropriate application of the Law on Administrative Procedure is also predicted in case that deadlines are not specifically defined by the Law on Public Procurement.

CARRYING OUT PUBLIC PROCUREMENT

Qualification of candidates and bidders

The contracting authority shall in the tender documents specify the conditions for qualification of candidates or bidders and thereby require only the evidence necessary to determine that they meet the set requirements which must be clear, concise and without restriction of competition.

Those conditions are related to the following requirements in respect of:

- **Personal abilities** (Article 45). – non-convictions for certain criminal acts (participation in a criminal organization, corruption, fraud or money laundering) to the bidder or candidate is not in the process of bankruptcy nor is subject to bankruptcy or liquidation proceedings, or that is not in the process of suspension of business activities, that they have settled all obligations relating to contributions for pension, disability insurance and health insurance, as well as due obligations relating to the payment of direct and indirect taxes.
- **Ability to perform professional activities** (Article 46) - authorization to perform professional activity that is related to the subject of the procurement.
- **Economic and financial abilities** (Article 47) - bidder i.e. candidate shall demonstrate this ability with relevant document issued by a bank or other financial institution, with business balance sheets or extracts from the balance-sheets, for a period not longer than the

last three financial years or from the date of registration, then by a statement of the overall turnover of the candidate/bidder as well as turnover related to the segment covered by the contract when necessary.

- **Technical and professional abilities** (Article 48) – can be proved with the submission of the list of completed contracts with a certificate issued by the counterparty on the implementation of the same and, if necessary, references and certificates issued by certain independent bodies attesting that the candidate/bidder meets certain standards of quality assurance. This represents the general conditions, while depending on the subject of the contract it may require special requirements in terms of educational and professional qualifications of the service provider and/or of its managerial personnel, engaged technical staff or technical authority, technical equipment and training, measures relating to the management of environmental protection, measures of energy efficiency, and all depending on whether it is a public procurement of goods, services or works (regulated by Articles 49, 50 and 51 of the Law on Public Procurement)

TENDER DOCUMENTS

It is a duty of the contracting authority to prepare the tender documents in accordance with the laws and regulations as well as with standard models of the tender documents stipulated by the Agency for Public Procurement, which will provide complete information about the contractual terms of the contract and award procedure. In doing so, it is allowed to change and amend tender documents but not later than 5 days before the deadline for receipt of applications for participation, and in this regard the contracting authority may extend the deadline for submission of the same but the period may not be shorter than seven days.

Tender documents minimally contain the following information:

- Information on the contracting authority, the contact person for information or clarification

- Procedure for the award of the contract and whether the same envisaged the framework agreement
- Description of goods, services or works, with specified mark and title stated in the Common Procurement Vocabulary (CPV)
- Specifications of the subject matter of the contract
- Possibility of submitting bids per lot;
- Deadlines for the execution of contracts;
- stating possibilities for submission of alternative bids and the minimum requirements that must be met in the case of alternative bids;
- Requirements for qualification of candidates i.e. bidders, as well as evidences for assessment thereof;
- Criteria for awarding contracts;
- Period of validity of bids;
- Bid Security, performance guarantee and any other guaranty required for interim payments
- Place, date and time for receipt of requests to participate i.e. bids;
- Place, date and time for opening of bids;
- Information on the calculation of price where applicable;
- Language requirements;
- Draft contract or basic elements of the contract.

Questions concerning the technical specification are further detailed in Article 54 of the Law on Public Procurement.

If necessary, interested participants may send a written request seeking clarification of the tender documents, no later than ten days before the deadline for submission of requests or bids, and the contracting authority shall respond in writing to all candidates who have purchased the tender documents within three and no later than five days before the deadline for submission of requests to participate or bids.

Depending on whether the response of the contracting authority implies a modification of the tender documents, the deadline for submission of requests to participate and the submission of bids may be extended for at least seven days, especially if bids can be prepared only after a visit is

made to the site of works or services in order to make all bidders familiar with the information needed for the preparation of bids.

PREPARATION OF BIDS

In preparing the bid candidates / bidders are required to comply with the requirements and conditions of the tender documents, and they can amend or modify the bid within the specified period of time, but in case the amendment and changes affect the bid price, the new price must always be specified. In case of withdrawal of the bid, prior the expiry of deadline for submission of bids, the bidder may request in writing the return of their unopened bid.

Required elements of the bid are:

- Information on the Bidder (name and registered office address)
- Proof of the guarantee
- The price and all the elements it includes, as well as the necessary explanations
- Evidence of the eligibility of bidders according to the requirements of the tender documents
- Quotation that it is the alternative bid, if permitted
- Date of bid
- The signature of the bidder or an authorized person on the basis of the enclosed power of attorney
- Bid must be verified with the stamp of the bidder
- List of documents attached to the bid

The bid must be safely packed and all pages have to be numbered, except the evidence of guarantee and printed literature, brochures, catalogues, but all of these rules related to preparing a bid must be stated in the tender documents.

Alternative bid is the one in which the bidder provides an alternative offer for the subject of public procurement and the contracting authority has to specify in the tender documents whether they approve alternative

bid. Otherwise it is not allowed. Alternative bid also has to meet the minimum requirements of the tender documents.

The contracting authority in the tender documents specifies the validity period of the bid, which may not be shorter than 30 days, and if the bidder in the bid does not specify the period of its validity, it is considered valid for the period specified in the tender documents and cannot be shorter. The bidder may accept or reject the request of the contracting authority to extend the period of validity of the bid, and if he does not respond to a written request of the contracting authority regarding the extension of the validity period of the bid, or does not agree to extend the validity period, or fails to provide a security guarantee related to the seriousness of the bid, then it shall be considered that the bidder refused the request of the contracting authority, and that particular bid shall not be considered in the further course of the proceedings, but does not lose the right to refund the bid security guarantee. If the bidder agrees to the request for extension he is required to provide a bid guarantee extension for the bid relating to the seriousness of the bid.

Types of securities for bid are:

- **Bid security** - in case the bidder withdraws its bid within the validity period of the bid; the bid security cannot be required from the bidder if the contract value is less than 100,000.00 BAM and cannot exceed 1.5% of the estimated contract value

- **Security for the Performance of the Contract** - in the event that the bidder who is awarded the contract fails to fulfill its obligations under the contract or fails to fulfill them properly; this security cannot be required in an amount exceeding 10% of the contract value.

Form of bid security relating to the seriousness of the bid and performance of the contract shall be determined by secondary law issued by the Public Procurement Agency.

If a bid is submitted by a group of candidates tender documents must precisely specify what each member of the group separately submits, provided that the contracting authority may ask the group to establish a new legal entity in order to participate in the procurement process, or

may require the existence of a specific legal form in order to execute the contract, as defined in Article 62 of the Law on Public Procurement.

OPENING OF BIDS

Bids shall be opened at a public bid opening, immediately after the deadline for receipt of bids. All bidders who timely submitted their bids or their authorized representatives may attend the bid opening procedure.

A copy of the minutes of the bid opening shall be submitted to all bidders immediately or no later than 3 days from the date of bid opening.

The contracting authority shall award a contract on the basis of one of the following criteria:

- The most economically advantageous bid (in the tender documents the contracting authority has to define the sub-criteria for the assessment such as: quality of the procurement subject, price, operating costs, cost effectiveness, delivery deadlines, etc.).
- The lowest price.

If the contracting authority considers that the offered price is abnormally low, then shall require the bidder to send a written explanation for the offered price and depending on the explanation the contracting authority shall decide in respect of such bid. The contracting authority rejects a request to participate or bid if the candidate/bidder has not submitted the required evidence or if the same is incomplete, or if the bid is not in accordance with the requirements of the tender documents.

The public procurement procedure can be terminated in the following cases:

- With the conclusion of the public procurement contract or framework agreement or
- Cancellation of the public procurement procedure (*in the event that within a specified period none of bids is submitted, neither is submitted a request to participate in a restricted procedure, in a negotiated procedure with or without publication of procurement notice or competitive dialogue; if at least 3 bids are not submitted,*

if a conclusion of the framework agreement is anticipated; if none of the received bids is acceptable; prices of bids are higher than the funds available for the procurement).

The decision on the selection of the most convenient candidate or decision to cancel the procurement procedure, the contracting authority shall issue within the time specified in the tender documents as well as the validity period and no later than 7 days from the date of expiry of the bid. The decision shall be submitted to candidates / bidders within three days and no later than 7 days from the date of the decision either electronically, with registered mail or directly. The contracting authority shall submit to the selected bidder proposal of the contract in order to sign the same but only after the expiry of 15 days from the date when all bidders were informed on the selection of the most convenient bid.

The bidder who was awarded the contract cannot subcontract without the prior written consent of the contracting authority.

In the section IV of the Law, there are specific provisions for sectorial contracting authorities who are engaged in the areas such as water supply, energy, transport and postal services, as well as details in relation to their entering into contracts for the purposes of activities in these areas.

Public procurement procedures for the award of contract with lower value are:

- **Competitive request for quotations** (estimated value of procurement of goods or services is less than 50,000.00 BAM, and procurement of works is less than 80,000.00 BAM).

The contracting authority invites at least three bidders to submit their offers for the procurement of goods, services or works and must publish an additional procurement notice in the public procurement portal. Even one acceptable offer will be sufficient for the conclusion of the contract, not later than 10 days from the completion of the procurement procedure.

- **Direct agreement** (purchase of goods, services or works whose estimated value is equal to or lower than 6,000.00 BAM).

The contracting authority after testing market requires a written proposal or quotation from one or more bidders or accepts the offered price.

LEGAL PROTECTION

Institutions responsible for monitoring the implementation of the Law on Public Procurement are the Public Procurement Agency of Bosnia and Herzegovina and Procurement Review Body of Bosnia and Herzegovina. Seat of the Agency is in Sarajevo and there are two branch offices based in Banja Luka and Mostar. Agency's responsibilities are set out in Article 92 of the Law on Public Procurement of Bosnia and Herzegovina (PRB).

Procurement Review Office of Bosnia and Herzegovina is an independent organization based in Sarajevo and two branches based in Banja Luka and Mostar (whose establishment is still in progress). PRB based in Sarajevo shall be responsible for deciding on appeals for procurement value exceeding 800,000.00 BAM, while offices in Banja Luka and Mostar shall be responsible for the value of procurement up to 800,000.00 BAM. Until the branches are established, a decision on the appeal for all public procurement procedures shall be brought by PRB in Sarajevo. Jurisdiction of branches shall be determined depending on the entity seat of the contracting authority.

Parties in the process of legal protection are: appellant, the contracting authority and the selected bidder but any other business entity with a legal interest in a public procurement procedure may also act as a party. Appeals shall be addressed to the contracting authority in at least three copies. The contracting authority shall, within 5 (five) days from receipt of the complaint determine timeliness, admissibility and whether it has been made by an authorized person. If the contracting authority determines that the appeal is untimely, illicit or filed by an unauthorized person, then they will reject the same with a conclusion which can also be appealed by the appellant to the PRB within 10 days from the date of receiving the conclusion.

If the appeal is timely, allowable and issued by an authorized person, the contracting authority may determine if the same is partially or fully established and with its decision correct the action, take an action or may put out of force an existing decision or ruling or even replace it by another decision or ruling, or cancel the procurement procedure and inform the participants in the procurement process within five days from the date of the appeal. Such decision of the contracting authority can be appealed with PRB through the contracting authority within five days from the date of receiving the decision. If the contracting authority acting on appeal determines that an appeal is timely, allowable and issued by an authorized person, but it is not founded, it shall, within five days from the date of receipt of the same forward it to the PRB, with its pleading to the allegations of the appeal, as well as along with full documentation in connection with the proceedings against which the appeal was filed.

Deadlines for filing an appeal:

- No later than seven days before the deadline for submission of requests to participate or bids in relation to data from the notice;
- No later than 10 days from the obtaining tender documentation (appeal to requests from TD)
- No later than 10 days after receipt of the minutes of the bid opening, in relation to the acts, conduct, omissions or failures to act in the process of bid opening;
- No later than 10 days after receipt of the decision on the individual right of public procurement in relation to the process of review and evaluation of capabilities, and the review, evaluation and selection of the best bidders;
- No later than 10 days after the deadline for making a decision on individual rights from public procurement in relation to the process of review and the review, evaluation and selection of the best bidders.

Appeal shall be filed not later than 30 days after becoming aware that the contract was concluded without a public procurement procedure,

and no later than one year from the date of conclusion of the contract in the process.

In case of award of contracts under the framework agreement referred to in Article 32, paragraph (5) of the Public procurement Law or under the dynamic purchasing system referred to in Article 123 of this law, an appeal shall be submitted not later than 30 days if the contracting authority informs the bidders that the contract, on the basis of a framework agreement or dynamic purchasing system, is concluded in relation to the award of contracts under the framework agreement or dynamic purchasing system.

In the case of a negotiated procedure without publication and process of the contract award on procurement of services listed in Annex II, section B, the appeal shall be submitted no later than:

- 10 days from the date of publication of voluntary ex ante transparency notice of, if this notice has been published;
- . 30 days from the date of publication of the contract award, if voluntary ex ante transparency notice was not published

In the procurement procedures of small value an appeal can be filed within five days from receipt of the decision on the selection of the most suitable bidder.

The appellant who failed to file an appeal loses the right for a review on the same basis, at a later stage.

CONTENT OF APPEAL

Appeal should contain the following information:

- The name of appellant, residence or head office of the appellant, the name of the attorney or representative of the appellant if any;
- The name of the contracting authority against whom the appeal was filed;
- Number and date of the procurement procedure and information on the publication of the procurement notice, if the notice is published;

- The number and date of the decision on the selected bid, decision on cancelation of the procedure or any other decision of the contracting authority;
- Other information concerning actions, failures to act or activities of the contracting authority that is the subject of proceedings or on the procurement subject;
- A description of the facts;
- A description of the violation of the laws and bylaws and explanation for the same;
- The proposed evidence;
- Proof of payment of the administrative fee for the appeal;
- The signature of the appellant or the signature of an authorized person or representative (if any) and stamp (if the appellant possess it).

Appellant shall file an appeal in the PRB through the contracting authority.

The fee for an appeal is prescribed in Article 108 of the Law on Public Procurement of BiH. Filed appeal delays the continuation of the public procurement, delivery and /or execution of the contract on public procurement or framework agreement until the decision of the PRB.

DECIDING ON APPEAL

In the procedure of legal protection the PRB may:

- Suspend the appeal procedure because an appeal is withdrawn;
- Dismiss the appeal for lack of jurisdiction, inadmissibility, irregularities, and untimeliness or because it was filed by a person who does not have legal capacity;
- Dismiss the appeal if not founded;
- Annul decision, procedure or action in the case it breached the law or bylaws;
- Decide on the request of the contracting authority to continue the public procurement;
- Annul the public procurement contract or framework agreement in the circumstances specified in paragraph (2) of this Article.

PRB will cancel the public procurement contract or framework agreement if the contracting authority:

- changed the negotiated procedure without publication of notice or if the procedure for the award of contract for procurement of service listed in Annex II, section B in conflict with the law;
- Failed to publish procurement notice on the procurement portal of public procurement if it is required by this law;
- Concluded a contract or framework agreement contrary to Article 98 of the law if it prevents the PRB to consider the appeal prior to the conclusion of the contract or framework agreement;
- Concluded the contract or framework agreement without applying the public procurement procedure, except in cases where this is permitted by law.

The PRB decides on the merits of a decision and in other cases with a conclusion. They are expected to bring the conclusion or decision on the appeal within 15 days from the date when the contracting authority completes the appeal, but not later than 30 days from the date of receipt of the appeal from the contracting authority.

Decision or conclusion of the PRB is final and enforceable. If there are more appeals relating to the same procurement procedure, the chairman of the PRB may issue a decision on merging those proceedings into one, without establishing the existence of any other requirements for merging.

In this case brings one decision on the appeals in this procurement procedure. Deadlines are calculated from the date of receipt of the last appeal.

Against the decision of the PRB contracting authority and the participants in the proceedings may initiate administrative dispute with the Court of Bosnia and Herzegovina within 30 days of receipt of the decision. The contracting authority or a participant in the proceeding may file a request for postponement of a final decision or a conclusion of the PRB, together with the appeal which initiated the administrative dispute. Considering the public interest and damages, which may be caused by the postponement of a final decision of the PRB, the BIH Court in a separate decision, postpones the execution of a final decision of the PRB for a certain time or until the decision of the court on the complaint in an administrative dispute. The PRB files violation report with the competent court, when it finds that there were violations of public procurement

procedure under the provisions of the Law on Public Procurement. In cases where there was no any appeal proceedings, the Agency files a violation report with the competent court, when it finds a violation of this law that is under its jurisdiction.



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The Law Firm "Sajić" is the partnership Banja Luka which was founded in 2003 with headquarters in Banja Luka.

We almost predominantly deal with civil and commercial law. We provide legal advice in all areas of law, represent clients before all courts and government institutions in the Republic of Srpska and Bosnia and Herzegovina, participate in negotiations with domestic and foreign legal and physical entities, give opinions and recommendations regarding the application of regulations, etc.

Our team consists of 20 employees, of which six lawyers. Each of us specializes in just a few narrow fields of law, which allows us to provide our clients with high quality, professional service.

*The services we provide in the area of **Public procurement** are providing advice regarding legal regulations on public procurement, providing advice in connection with the tender documents, submission of applications for participation in the public procurement, protection of rights of participants in the proceedings before the Contracting Authority and the Office of Appeals.*

