



## **SIGMA**

### **Support for Improvement in Governance and Management**

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## **SERBIA**

### **PUBLIC PROCUREMENT SYSTEM**

#### **ASSESSMENT MAY 2008**

#### **1. Summary**

The legislative framework for the public procurement system in Serbia has not changed since Sigma's last assessment in 2007.

The Public Procurement Law (PPL) of Serbia, adopted in 2002 and amended in 2004, is still in force. The law, although partially modelled on the EU Directives, is not fully harmonised. Work on a new public procurement law was undertaken between 2005 and 2007. The new draft law, which will replace the current PPL, was adopted by the government in January 2008 and has been submitted to parliament.

According to the evidence available, the review system works efficiently, although its basic features (status of the Commission for the Protection of Tenderers' Rights, lack of appeal to the court) do not meet EU requirements.

The Public Procurement Office (PPO) has continued to focus on its control function, and its other functions (training, development of the system) seem to have been neglected recently. In 2006 only one training workshop was organised (in co-operation with OSCE). In 2007 no training was provided and there was no work on further guidelines or documents.

In June 2006 the PPO elaborated the comprehensive "Baseline for the Strategy for Upgrading the Public Procurement System in Serbia". However, the recommendations of the Strategy have not yet been implemented.

No EU assistance has been provided to the central public procurement institutions (PPO or Commission for the Protection of Tenderers' Rights). In recent years USAID provided assistance in the area of public procurement, focused on local municipalities. The USAID project ended in July 2007.

#### **2. Legislative Framework**

The Public Procurement Law of Serbia (PPL), adopted by parliament on 4 July 2002, came into force on 13 July 2002. It was modelled extensively on the Slovenian Public Procurement Law, but was also influenced by the EU public procurement Directives, World Bank guidelines and the UNCITRAL Model Law.

A number of amendments to the PPL came into force on 1 July 2004. These amendments included: new (higher) thresholds, introduction of domestic preferences and, most importantly, new regulations regarding the review system (stronger position of the Commission for the Protection of Tenderers' Rights within the PPO).

There is a separate law on the award of concession contracts. A concession is defined as a right granted by a competent government agency to a concessionaire, for up to 30 years, to exploit a natural resource and goods in general use or to conduct business of general concern. A concession opportunity must be advertised in the *Official Gazette of the Republic of Serbia*, in other domestic publications and, where appropriate, on an international level.

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At the beginning of 2003 a number of regulations (secondary legislation) were adopted:

- Regulation on Tender Opening Procedure and Standard Form for Keeping Records on Tender Opening (30 January 2003);
- Regulation on the Standard Forms for Keeping Records of Procurement Procedures and Awarded Contracts (30 January 2003);
- Ordinance on the Criteria for the Formation of Public Procurement Committees (6 March 2003);
- Regulation on Awarding Low-Value Public Procurement Contracts (23 January 2003).

Also at the beginning of 2003 the Public Procurement Office (PPO) published standard forms for public procurement notices. At the same time the PPO elaborated draft standard tender documents. Special regulations have been issued in respect of the exemption from coverage by the PPL of the procurement of specified armaments.

The Serbian PPL generally maintains an acceptable international standard of public procurement regulation. Its main features (principles, scope of regulation, available procedures, requirements for transparency, technical specifications, selection and contract award criteria) are basically in line with the EU public procurement Directives in force at the time of enactment of the PPL (Directives 92/50, 93/36, 93/37 and 93/38).

However, there are several differences as compared to the Directives:

- Definition of procurement entities is not accurate – especially regarding bodies governed by public law and entities operating in the utilities sectors;
- Definitions of exempt and excluded contracts, including secret contracts, are not present and/or are not accurate;
- Thresholds are lower than the EU thresholds;
- Unlike the EU approach, the application of the restricted procedure is limited to special cases and, additionally, the launching of the restricted procedure requires a prior opinion from the PPO;
- Minimum number of participants of the restricted procedure is three instead of five;
- Conditions for the use of the negotiated procedure are different;
- European technical standards are not properly recognised;
- Under the PPL there is no possibility to supplement or clarify documents submitted by tenderers/candidates for qualification;
- All time limits provided in the PPL are shorter than in the Directives (in the case of the open procedure, the limit is 52 days in the Directives and only 30 in the PPL; in the restricted procedure the Directives' limit is 37 as compared to 25 in the PPL); time limits are also calculated from the date of publication of the notices rather than from the date of despatch;
- In the case of works contracts, only companies certified by the Chamber of Commerce of the Republic of Serbia are allowed to participate, which is obviously contrary to the EU Treaty;
- Domestic companies enjoy 20% price preference compared to foreign companies;
- Procedures for the procurement of services differ in many respects;
- There are separate provisions applying to the utilities sector, but exclusions in that sector are broader;
- The review system (especially the status of the Commission for the Protection of Tenderers' Rights) does not meet EU requirements.

The need to address these incompatibilities in a future revision of the PPL has been underlined in previous Sigma assessment reports.

In addition to the above-mentioned manifest differences with EU public procurement law, there are several provisions in the PPL (mostly in areas not directly regulated by the EU Directives) which make Serbian public procurement to some extent bureaucratic and time-consuming. These provisions might complicate procedures and hamper the efficiency of the system, thereby adversely affecting the achievement of good economic results in public tendering. The position may well be significantly worsened in some circumstances if purchasing authorities and the PPO adopt an extremely strict approach to the interpretation

of statutory requirements for the tender process. These provisions, which are questionable in the light of good procurement practice, include:

- The obligation to obtain various approvals (opinions) from the PPO in the course of the procedure (e.g. approval to employ procedures other than the open procedure, to deviate from mandatory technical standards, to divide the contract into lots) and the obligation to send reports to the PPO after each contract award [Apparently the obligation to obtain an opinion from the PPO whenever it is proposed to employ procedures other than the open procedure will no longer be a requirement once the new law is adopted, and this should reduce the burden on both purchasing authorities and the PPO];
- The requirement for very specific proof of the establishment of contractor qualification, such as those in articles 45 and 46 of the current PPL, particularly where court attestation is required [This can be both time-consuming and, when combined with the inability to supplement or clarify information provided, can also lead to the rejection of good tenders on purely administrative grounds. In order to prove their professional, economical, and technical standing, contractors have to submit a large number of documents with each individual bid (article 46, PPL). The required documents refer, inter alia, to a court register or other registration certificate, statements from banks, tax certificates, and licences. The evidence must not be dated more than six months before the date of publication of the public invitation. Tenders with an incomplete or faulty set of documents are rejected in practice. The preparation of this formal part of the tender can be very costly and time-consuming, especially for tenderers participating in dozens or even hundreds of tenders.];
- Calculation of time limits from the date of publication of the notice rather than from the date of dispatch [This may lengthen tender processes.];
- Broad and vague reasons for the cancellation of concluded contracts;
- Extensive penal provisions (including financial penalties imposed on tenderers for non-compliance with the PPL, which is very unusual).

Furthermore, the PPL is very detailed and prescriptive. Its purpose seems to be to limit the discretion of the purchaser (and the supplier) and to make completely transparent all of the procedures to be used in procurement in the diverse sectors of the Serbian public and utility sectors. This extends even to quite low-value procurement. The result is that the Serbian law probably covers a much larger percentage of public procurement than does the *acquis*. The Serbian approach has the advantage of transparency for potential suppliers. It also allows close monitoring by review bodies of abusive practices. However, it risks damaging the flexibility needed by purchasers to obtain value-for-money in a volatile commercial climate. It also reduces the emphasis on the professionalism of the purchaser, confining procurement to the completion of administrative routines. The long-term effect of this may be poor commercial performance.

Utilities are covered by a separate set of provisions in the PPL, which are a little more relaxed, but full alignment with the EU utilities Directive would provide further and desirable flexibilities and potentially result in better commercial outcomes.

Since the current PPL was adopted before the new EU public procurement Directives (2004/17 and 2004/18) were published (March 2004), none of the new instruments in the EU legislative package has been implemented. There is therefore a need to address in future amendments to the PPL (at least in some of them) the new elements of the EU public procurement regime, as follows:

- Framework agreements;
- Competitive dialogue;
- Electronic procurement (including electronic auction);
- Functional description of the subject matter of procurement;
- Social and environmental aspects of procurement;
- Dynamic purchasing system;
- Central purchasing body.

From 2005 to 2007 a working group led by the Ministry of Finance (with the participation of the PPO and others) worked on preparing a new public procurement law. The new law was adopted by the government on 17 January 2008. It remains to be seen whether the new government will pass on this draft to Parliament.

Apparently the new provisions take on board many of the comments made in previous Sigma assessment reports, although they are still not fully aligned with EC Directives 2004/17 and 2004/18.

No other work has been undertaken in terms of the production of additional manuals, guidelines or training.

The award of low-value contracts is governed by limited provisions in the PPL. The financial threshold for low-value contracts is set annually. Contracting authorities are responsible for preparing their own internal rules governing the award of low-value contracts. Model provisions are set out in regulations, which have been in force since 2003. As implementation is left to the local level and there is no national independent audit body, it is possible that an individual procuring entity's rules may be insufficient in terms of meeting the basic requirements of transparency and equal treatment. Due to the range of different rules for different authorities, there is a risk of further confusion for bidders.

### **Conclusions**

*The 2002 PPL generally maintains an acceptable international standard of public procurement regulation. However, several aspects of the PPL have not been harmonised with the *acquis communautaire*. The new EU Directives have not been transposed. In addition, several provisions (and their strict interpretation by the PPO and contracting authorities) make the system bureaucratic and time-consuming, thus adversely affecting the achievement of good economic results.*

*The problem with documents required from tenderers is a good example of this formal and rigid approach. The preparation of all documents is costly and time-consuming. Tenders with incomplete documents are rejected, and in many cases this results in the loss of substantially valuable tenders. The implementation of provisions equivalent to article 51 of EU Directive 2004/18, which permits economic operators to supplement or clarify pre-qualification certificates and documents, would help. In addition, the establishment of a mandatory qualification list would be helpful. With such a list, tenderers could have all of their required documents checked every six months or every year, and a copy of the corresponding certificate could be included with the tender instead of copies of all of the documents. This option would be particularly attractive for tenderers participating in several tenders. Another possibility to be considered is a reduction of the required documents, making some items voluntary and others mandatory, at the discretion of the procuring entity. In the case of utilities in particular, the introduction of qualification systems is likely to be beneficial.*

### **3. Central Public Procurement Organisation**

The Ministry of Finance is responsible for elaborating legislation in the area of public procurement and proposing it to the government.

Two institutions manage the implementation of the system: the Public Procurement Office (PPO) and the Commission for the Protection of Tenderers' Rights.

The mandate and key functions of the **Public Procurement Office (PPO)** are described in the PPL (Part II). The PPO, which started its operations in January 2003, is an independent agency responsible to the government. The functions of the PPO, as outlined in the PPL, are the following:

- Participation in the drafting of public procurement legislation;
- Provision of consulting services to contracting entities and tenderers;
- Organisation of training in the area of public procurement;
- Issuing of opinions and approvals foreseen by the PPL;
- Elaboration of guidelines and manuals;
- Preparation of standard tender documents and standard contracts;
- Collection of statistical data on procedures and awarded contracts;
- Monitoring of public procurement;
- Co-operation with foreign public procurement institutions;
- Submission to the government of an annual report on the public procurement system.

The PPO currently has approximately 20 staff members, headed by a director. Staff levels have remained stable in 2007.

The PPO has continued to focus on its advisory and control functions. It advises both contracting entities and tenderers. The PPO performs its control functions mainly by issuing various approvals (opinions), which contracting entities are obliged to seek before the procedure is initiated.

Contracting entities are obliged to apply for approvals/opinions when they are going to:

- use the restricted or the negotiated procedure;
- divide a contract into lots;
- award consulting services;
- employ persons with disabilities within certain types of services.

In 2007 the Office received approximately 9,000 requests for opinions/approvals. The statutory timescales for responding have been met, probably to the detriment of the other functions of the PPO.

The PPO publishes in its annual report basic statistical data on the public procurement system in Serbia. The last published report provided data for 2006. Trends seem to be stable. The data cover about 150,000 contracts awarded yearly (which includes low-value contracts), for a total value of approximately 169 billion RSD (approximately 2,116,360,000 EUR). High-value contracts account for 86% of the total contract value. With regard to these high-value contracts, in terms of the total value of contracts awarded, 52% concern supplies, 36% construction work and 12% services. The open procedure is the most commonly used (47%) for these high-value contracts, but other procedures are also popular: restricted procedure – 26%, negotiated procedure without prior publication of notice – 23%, and negotiated procedure with prior publication of notice – 4%. Despite the need to seek the prior opinion of the PPO before using procedures other than the open procedure, quite a high number of restricted and negotiated procedures are applied. The continued high number of uncompetitive procedures (especially the negotiated procedure without prior publication) may indicate a dangerous tendency to avoid transparency and openness. It must also be noted, however, that introduction of the new law in 2002 – 2004 has distinctively increased the number of open procedures (in 2002 only 28% were open procedures, whereas negotiated procedures without publication made up 63% of all procedures).

Other functions of the PPO prescribed by the PPL seem to have been neglected recently.

In June 2006 the PPO elaborated a comprehensive “Baseline for the Strategy for Upgrading the Public Procurement System in Serbia”. However, the recommendations included in the strategy have not yet been implemented.

The Commission for the Protection of Tenderers’ Rights is discussed below, under section 5.1.

### **Conclusions**

***The role of the PPO should be reconsidered. At the moment the PPO focuses only on its one function (control) which is carried out rather superficially due to huge number of cases on one side and limited resources on the other side. Other functions of the PPO (development of the system, training, advice) appear seriously neglected. The strategy for improvement and development of the public procurement in Serbia remains not implemented.***

## **4. Procurement Operations and Practices**

***Advertisement of procurement opportunities:*** Provisions for the publication of procurement opportunities are basically in line with the requirements of the EU Directives. The PPL requires contracting authorities to publish procurement notices (public invitation) as well as results of procurement procedures (contract award notices). The PPL also requires publication of an annual prior indicative notice (PIN) where procurement above a specified threshold is envisaged. The PPO has published model notices for use by contracting authorities, together with true examples.

The PPL requires all bidding opportunities above the low-threshold value (in open, restricted and negotiated procedures with notice as well as in design contests and processes used by utilities for establishing tenderers’ qualifications) to be announced in the *Official Gazette of the Republic of Serbia*.

For contracts above higher thresholds, the notice must appear in a newspaper distributed throughout the entire territory. For contracts at the highest thresholds, the notice must also be in a language of international

commerce or appear in an international business publication, technical or professional magazine that is publicly available.

**Cost and availability of the Official Gazette:** *The Official Gazette of the Republic of Serbia* is published twice a week and is available in hard (printed) copy and online upon payment of an annual subscription. The annual subscription rates amount to 26,000 RSD for a hard (printed) copy in Serbia (approximately 325 EUR) and 52,000 RSD for a hard (printed) copy abroad (approximately 650 EUR). Procuring entities pay to advertise in the *Official Gazette*. The fee depends on the size of the advertisement, and the rate is 250 RSD (3 EUR) per line (row) of text.

**Availability and use of standard tender documents:** Basic tools for conducting public procurement procedures were elaborated and published by the Public Procurement Office (PPO) in 2003-2004: secondary legislation (containing also standard forms) and standard tender documents. The PPO also published a basic commentary on the secondary legislation and forms. All of these documents are available on the website of the PPO (<http://ujn.sr.gov.yu>). The PPO has an advisory role on the conduct of tender processes. Since 2004 no new publications have been published, and no new in-depth guidelines and manuals have been prepared.

**Electronic procurement:** There are no specific provisions in the PPL facilitating electronic procurement. Some contracting authorities do publish their procurement notices on their own websites in addition to publication in the *Official Gazette*.

**Framework agreements and centralised purchasing:** There are no specific provisions in the PPL allowing for the establishment and operation of framework agreements. The Administrative Agency for Joint Services undertakes centralised purchasing on behalf of government departments to support functions such as the maintenance of premises and purchase of office equipment and stationery. There is evidence that some contracting authorities are adopting or moving towards centralised purchasing approaches. For example, the Ministry of Defence conducts centralised procurement, and utilities companies are considering doing so.

**Tender security:** There are no detailed provisions obliging contracting authorities to require tender security, but the PPL permits them to do so.

**Tendering committees:** Contracting authorities are required to set up tender committees (commissions) for each procurement process, in accordance with criteria set by the government.

**Availability of professional training and support:** Training is available through some private sector providers, and the USAID programme has worked for several years at a local municipality level.

The educational activity of the PPO has been neglected. Since 2004 no new publications have been published, and no new in-depth guidelines and manuals have been prepared. Initial training was provided in 2004. Only one course was provided by the PPO in 2006 and none was provided in 2007. There is an urgent need to revive PPO-led training and educational activities aimed at improving professional skills, facilitating sharing of experience between procurement professionals, and increasing the knowledge of the procurement community (in both public and private sectors).

More detailed and specialised guidelines and manuals need to be prepared and elaborated, providing further instructions on how to prepare and conduct procurement processes, including addressing specific areas of concern such as how to conduct low-value procurement and how to set clear criteria and implement evaluation processes. Serbian procurement should also become familiar with the EU public procurement system, as its importance for Serbia will increase in the coming years.

**Openness to foreign competition (percentage of contracts awarded to foreign companies):** In 2006, Serbian suppliers were awarded 98% of the contracts, representing 91% of total contract value. Of the balance, 1% (5% of contract value) was awarded to suppliers in EU Member States and 1% (4% of contract value) to suppliers based elsewhere. This represents a very significant reduction in the value of contracts awarded to EU companies, i.e. down from 19% in 2002. One of the reasons for this low level of foreign participation may be the application of domestic preferences (20%).

**Barriers to competition:** Barriers to competition may have been created by inappropriate levels of charges for tender documents. Overly restrictive pre-qualification requirements, particularly when combined with the obligation to reject otherwise appealing tenders on purely administrative grounds, may also have resulted in non-commercial outcomes. A lack of common quality standards is a problem for both procuring entities and bidders.

## Conclusions

*Several bureaucratic features of the Serbian public procurement system may hamper the achievement of good economic results by public purchasers. Due to rigid requirements related to formal documents required from suppliers, often tenders offering a good price and good quality are rejected for minor reasons. The procedures are time-consuming. Participation in the system is expensive, for public institutions as well as for economic operators participating in tenders.*

*There is little professional assistance available for procurement officers. No training courses were organised by the PPA in 2007. No guidelines or manuals have been published since 2004.*

## 5. Control, Review and Integrity

### 5.1 Complaints Review

The review procedure is regulated in Part VIII of the Public Procurement Law (PPL).

The procedure consists of two stages: before the contracting entity and then before the Commission for the Protection of Tenderers' Rights.

At first the request (called "request for protection of tenderers' rights") is submitted directly to a contracting entity (with one copy to the Commission). A request may be filed by any person who has or has had an interest in being awarded a contract. A request may also be submitted by the Public Procurement Office (PPO). Although the current law is not very precise on the issue, it seems that not all decisions of the contracting entity can be challenged by request (setting of contract award criteria and restrictions in participation). If this interpretation is correct, it would be against EU law, which requires that all decisions of the procuring entity be subject to review procedures. A request may be filed at any moment of the procedure, but no later than eight days after receipt of the contract award notice. Submission of the request results in automatic suspension of the contract award procedure, unless the Commission decides otherwise. Within 10 days of receipt of the request for the protection of tenderers' rights, the contracting entity should take a decision – either to accept the request, thus annulling the procedure wholly or partially, or to reject the request. If a tenderer is not satisfied with the decision of the contracting entity regarding the request, he may submit an appeal to the Commission – within three days of receipt of the contracting entity's decision.

The composition and functions of the *Commission for the Protection of Tenderers' Rights* are defined in Part VIII of the PPL. The Commission is established within the PPO (it is independent in its decisions, but its administration, staff and budget are linked to the PPO). The position of the Commission was strengthened by the 2004 amendment to the PPL. The Commission consists of five members nominated by the government, assisted by seven legal staff. The provisions of the PPL do not guarantee the real independence of the Commission from the government.

Although the PPL describes the conditions for removal of members of the Commission, the relevant provisions are so vague and imprecise that they could be abused. In the past it has occurred that one of the members was removed by the government for rather unclear reasons and without a court judgment. In 2007 the membership of the Commission remained stable, with no changes apart from the filling of a member vacancy.

The Commission is a second-instance body in the review procedure, and it decides on appeals filed by dissatisfied tenderers. The manner of operation of the Commission is regulated by its Rules of Procedure, adopted in 2004. The Commission makes its decisions in sessions by a majority vote. The competences of the Commission, as defined by the PPL, include the possibility to cancel entirely or partially a public procurement procedure that has been put in question. The Commission's decision should be reached within 15 days (plus 10 additional days in more complex cases) of delivery of the complete documentation. There are no hearings; the decision-making process is based only on received documents. The decisions of the Commission are final; the parties cannot appeal to the court.

The damages may be subject to separate proceedings before the court.

As indicated above, the current manner of nominating and removing members of the Commission does not guarantee proper independence of the institution. The new legislation does not appear to adequately address the need for genuine independence, free of institutional or political influence.

From an EU perspective, two other aspects of the review procedure are hopefully included in the new amending legislation: all decisions of contracting authorities should be subject to review and introduction of judicial control over the Commission's decisions.

In 2007 the Commission issued 536 decisions; 264 decisions accepted the appeal request – which meant the cancellation of the procedure, wholly (111 requests) or partially (153 requests) – and the remaining requests were refused or dismissed.

According to the Commission, the most common problems continue to relate to:

- discriminatory or unclear tender documents;
- discriminatory conditions for participation;
- application of regional preferences;
- biased technical specifications;
- incorrect setting of contract award criteria (abuse of the “quality” criterion, application of the “previous experience” or “special advantage” criterion);
- application of criteria that were not previously stated in tender documents and in the tender notice;
- selection of a tenderer whose tender was not ranked as the best.

In 2007, there was an increase in complaints relating to incorrect use of technical specifications.

### **Conclusions**

*The very basic features of the Serbian review system are not in line with EU requirements – as formulated by Directive 89/665. As the Commission for the Protection of Tenderers' Rights is not really independent and does not have a judicial character, parties do not have the opportunity to present their positions in hearings, and decisions of the Commission are final and not subject to judicial review.*

*The new draft law would create more independence by moving the Commission, its administration, staff and budget out of the PPO. In future it would fall under the control of the Assembly (parliament). However, it may be the case that, even with these reforms, the Commission would still not be sufficiently independent and free from potential external influence. According to articles 102-103 of the new draft law, the chairman and members of the Commission are to be appointed by the National Assembly on the basis of proposals by the government. They could be dismissed on a number of specified grounds, including failure to perform in a professional and conscientious manner. The government would submit the proposal together with evidence of the grounds for dismissal. The person being dismissed would have the right to address the National Assembly on that matter – it is assumed that the National Assembly could reject a proposal made by the government to dismiss the chairman or a member. However, as there is no evidence in the draft law of an independent review or right of judicial appeal, there would therefore appear to be a potential for political influence.*

*There are also serious deficiencies in the Serbian public administration, which could undermine the efficiency of implementation of the public procurement system. In Serbia there is still no supreme audit institution, and internal control systems, including internal audit, and procedures in the public sector are embryonic. Therefore the instruments that usually would support implementation of the PPL are weak, ill-defined or absent.*

### **5.2 External Audit**

Currently there is no supreme audit institution in Serbia and, in addition, the internal audit system has not been fully implemented. The State Auditing Institution Advisory Board was appointed in September 2007, but no state auditor has been elected by the State Assembly. In practice there is neither a proper audit of procurement procedures on a regular basis nor an audit of the execution of concluded contracts.

### **5.3 Integrity of Procurement Operations**

**Anti-corruption provisions in the PPL:** There are limited anti-corruption provisions in article 17 of the PPL. These provisions require a procuring entity to reject a tender if there is verifiable evidence of corruption of current or former public officials. There are no anti-collusion or conflict-of-interest provisions in the PPL.

**Anti-corruption institutions:** There is no functioning, independent anti-corruption agency (its creation is being discussed). However, an anti-corruption commission does exist.

## 6. Capacity to Further Develop the Public Procurement System

In 2002-2004 some progress was made in introducing a more EU-compliant public procurement system, and contracting authorities are aware of their obligations. The basic requirements of transparency have been met. Effective review procedures have been established, and the Public Procurement Office (PPO) has emerged as an independent source of advice for contracting authorities and tenderers. At the end of 2007, the PPO and the Ministry of Finance engaged with contracting authorities and tenderers in consultation on the new amending law. This consultation process was welcomed by the participating organisations.

Generally, the development of the system has been stopped. The Public Procurement Law (PPL) has not been modernised since 2004.

The Strategy for Upgrading the Public Procurement System in Serbia, adopted in June 2006, has not been implemented.

### *External Assistance*

There is no external EU assistance available at the moment, and Serbia has not had an EU project aimed specifically at improving the public procurement system.

The PPO and the Commission for the Protection of Tenderers' Rights (as well as the Ministry of Finance with regard to the review and drafting of legislation) would definitely benefit from external assistance and from closer international co-operation in the following areas:

- Review of the PPL, amending legislation and secondary legislation to determine further revisions, with a view to (i) achieving full alignment with the new EU Directives, and (ii) introducing appropriate and efficient national procedures for contracts not covered by the Directives;
- Support for the development of the operations of the PPO through the provision of training, experience-sharing with relevant institutions in other countries, and help with the preparation of guidelines and manuals;
- Support for the Commission and its operations;
- Support in the preparation and conduct of a comprehensive training programme targeting contracting entities at all levels, as well as a training and information programme for the private sector;
- Support for the introduction of modern procurement techniques, such as electronic procurement and framework agreements.

## 7. Summary and Next Steps

### *General Assessment*

The public procurement system introduced in Serbia in 2002-2004 represents a complete shift in procurement practices compared to the uncompetitive and non-transparent system previously in place. The Public Procurement Law (PPL) was largely based on the EU Directives at the time. However, as indicated above, in certain aspects the public procurement system is still far from EU standards. The new EU Directives, which modernise the EU public procurement regime, have not been transposed. The adoption of amendments to the PPL is the condition *sine qua non* of the modernisation and harmonisation of the Serbian public procurement regime. The review system needs to be changed in accordance with EU requirements.

Greater emphasis should be given to the effectiveness of the system. Modern procurement techniques (framework agreements, electronic procurement) should be implemented. Public procurement institutions should give high priority to training and educational activities by organising more training for both contracting authorities and bidders and by publishing guidelines and manuals. Further work to improve the professionalism of contracting authorities and procurement officers working within those organisations would facilitate the implementation of open competitive procurement based on the principles of non-discrimination and value-for-money.

The capacity and independence of public procurement institutions (both the PPO and the Commission for the Protection of Tenderers' Rights) need urgently to be strengthened.

**Recommendations:**

Priority should be given to the following actions:

***Short-term Priorities***

- Adoption and full implementation of the new amending public procurement law adopted by the government in January 2008 so as to modernise and simplify the PPL and harmonise it with EU legislation and practice;
- Prioritisation and intensification of training and educational activities led by the PPO and by other organisations, with the aim of increasing the professionalism of the procurement community;
- Review and implementation of the Strategy for Upgrading the Public Procurement System in Serbia;
- Strengthening of existing institutions (especially the Commission for the Protection of Tenderers' Rights) and guarantee of its independence;
- Production of additional practical guidance and manuals for use by the procurement community.

***Medium-term Priorities***

- Further review of the new PPL aimed at full harmonisation with the new EU Directives;
- Review of secondary legislation and standard form documents to ensure that they are modernised and simplified in line with the new amending public procurement law;
- Preparations for the introduction of electronic procurement.