

LAW ON AMENDMENTS TO THE PUBLIC PROCUREMENT LAW

Article 1

In Public Procurement Law (Official Gazette of Montenegro 42/11, 57/14 and 28/15) in Article 2 paragraph 1 item 2 shall be replaced by the following:

„2) business organizations which fulfil the following conditions:

a) they have the status of legal entity,

b) they were established to perform activities of public interest and do not carry out industrial or commercial activity and

c) where the state, or a local self-government unit possesses over 50% of the shares or stake in that business organization or legal entity, or they are funded by the state, or a local self-government or other contracting authority by more than 50% from the Budget of Montenegro, local self-government unit and other public funds or where the contracting authority supervises the operation of that business organization or where more than half the members of that business organization or legal entity's managing body or supervisory body are appointed by the contracting authority.“

Item 3 shall be deleted.

Item 4 shall become item 3.

Article 2

In Article 3 paragraph 1 after item 10 two new items shall be added:

„10a) procurement of election material;

10b) procurement of goods and services related to the use of the Government's aircrafts;“.

Article 3

In Article 4 item 7, the words: “negotiation, a contest and a request for submission of bids in a shopping method“ shall be replaced by: “negotiation and a contest“.

In item 8, after the words: “framework agreement“ a full stop shall be placed, and the remaining text shall be deleted.

Item 14 shall be amended as follows:

„14) **authorised person of a contracting authority** is the head of the contracting authority, or a person authorized thereby to undertake on its behalf certain actions in the public procurement procedure“.

After item 14 the following item shall be added:

„14a) **authorised person of a bidder** is the executive director, or a person authorized thereby to undertake on its behalf certain actions in the public procurement procedure“.

Item 15 shall be amended as follows:

„15) **decision** is an act by which a contracting authority decides on the selection of the most favourable bid, suspension or the annulment of a public procurement procedure“.

In item 17 the words: “whorequested“ shall be replaced by: “who timely requested“.

Article 4

In Article 15 paragraphs 1 and 2, the words: “reject, or” shall be deleted.

Article 5

In Article 17 paragraph 7, after words: “tender documentation“ a full stop shall be placed, while the remaining part of the text shall be deleted.

In paragraph 8, after words: “tender documentation“ the comma shall be replaced by a full stop, while the remaining part of the text shall be deleted.

Article 6

In Article 19 paragraph 1 item 15 shall be deleted.
Items 16 and 17 shall become items 15 and 16.

Article 7

In Article 20 paragraph 1, after item 5, the semicolon shall be replaced by a full stop, while items 6 and 7 shall be deleted.

Article 8

The Article 21 shall be amended as follows:

“Application of Public Procurement Procedures

Article 21

The contracting authority shall apply the public procurement procedures referred to in Article 20 of this Law, for the following procurement:

- 1) of the goods and services whose estimated value of the public procurement is equal to or exceeds EUR 15,000.00; and
- 2) of the works whose estimated value of the public procurement is equal to or exceeds EUR 30,000.00.

The contracting authority shall perform the procurement of goods, services and works below the values referred to in paragraph 1 of this Article (hereinafter: low-value procurement) in accordance with the Article 30 of this Law, unless that contracting authority performs some of the procedures listed in Article 20 of this Law..

The contracting authority may not divide a subject of public procurement if it represents a whole, with an intention of avoiding application of this Law.“

Article 9

In Article 25 paragraph 1 item 1, indent 3 shall be deleted.

Article 10

Article 29 shall be amended as follows:

“Urgent Procurement

Article 29

The contracting authority may, without conducting the procedures set out in Article 20 of this Law, carry out urgent procurement, with an aim of eliminating and reducing the risk of unforeseen events on which the contracting authority could not or cannot influence, removing the consequences of such unforeseen events, threat to health and life of citizens, provided that it has not been able to conduct the public procurement procedure and to act within the time limits defined by this Law.

The procedure established by the special act of the contracting authority shall be applied to the procurement referred to in paragraph 1 of this Article, respecting the public procurement principles.

The contracting authority shall publish the act referred to in paragraph 2 of this Article on its website.

The form and content of the act referred to in paragraph 2 of this Article shall be determined by the Ministry.“

Article 11

Article 30 shall be amended as follows:

“Low-value Procurement

Article 30

The procedure established by the special act of the contracting authority shall be applied to the low-value procurement, respecting the public procurement principles.

The contracting authority shall publish the act referred to in paragraph 1 of this Article on its website.

Upon application of the low-value procurement, the contracting authority shall ensure an appropriate time limit for a bidder to submit the bid, which may not be shorter than three working days.

The form and content of the act referred to in paragraph 1 of this Article shall be determined by the Ministry.“

Article 12

In Article 54 paragraph 1, the words: “contract notice, contest and shopping“ shall be replaced by: “contract notice and contest“.

Article 13

In Article 58 paragraph 2 shall be amended as follows:

“A public procurement officer shall: prepare public procurement plans, prepare texts of decisions on the launch of public procurement procedures, provide interested persons with parts of tender documents involving classified information which are subject to regulations governing data confidentiality, conduct public procurement procedures referred to in Articles 29 and 30 of this Law, keep documents pertaining to public procurements, keep records of public procurements, prepare and submit reports on the conducted public procurement procedures to the authorised person of the contracting authority, perform technical and administrative tasks in the implementation of public procurement procedures and other tasks in accordance with this Law.“

Article 14

In Article 59 paragraph 1, the words: “except for the procedures conducted by shopping method and direct agreement“ shall be deleted.

Article 15

Article 76 shall be amended as follows:

“A bidder shall prepare the bid as a whole, where each first page of every sheet and total number of sheets are marked by the ordinal number, except for the bid guarantee, catalogues, photographs, publications and the like.

Documents made by the bidder, as the integral part of the bid shall be personally signed by the authorised person of the bidder or the persons authorized by that bidder.

Bids shall be bound with a red tape in such manner that prevents subsequent inserting, removing or replacing of sheets without damaging any of the sheets.

Bids and samples required by tender documentation shall be submitted in an appropriate closed wrapping (envelope, package, etc.) in a manner that ensures with a certainty upon opening of the bid that it is opened for the first time.

The wrapping of the bid shall contain the following information: the bid, the number of tender documentation, title and seat of the contracting authority, title, seat, name and address of the bidder and the following text: “Do not open before public opening of bids“.

Article 16

In Article 78 paragraph 5, the words: “conclusion on rejection“ shall be replaced by the words: “decision on refusal“.

Article 17

In Article 84 paragraph 3 shall be amended as follows:

“A bid price shall be written in figures.“

Article 18

In Article 91 paragraph 3, the words: “paragraph 1 item 1 indents 2 and 3” shall be replaced by the words: “paragraph 1 item 1 indent 2”.

Article 19

In Article 98 paragraph 5, in introductory sentence, the words: “i.e. the public procurement officer” shall be deleted.

In paragraph 6, the words: “or the public procurement officer” shall be deleted.

Article 20

In Article 101 paragraph 1 shall be amended as follows:

“Review, assessment and evaluation of bids shall be conducted by the Commission for the opening and evaluation of bids without participation of the bidders.”

In paragraph 3, the words: “or the public procurement officer”, shall be deleted.

In paragraph 6, the words: “or the public procurement officer”, shall be deleted.

Article 21

„In Article 102 paragraph 1, the words: “or the public procurement officer” shall be deleted.

Paragraph 3 shall be deleted.

In paragraph 4 the words: “in paragraphs 2 and 3” shall be replaced by the words: “in paragraph 2”.

Paragraph 4 shall become paragraph 3.

Article 22

„In Article 103 paragraph 1, the introductory sentence shall be amended as follows:

“Commission for the opening and evaluation of bids shall keep and prepare minutes of the review, assessment, comparison and evaluation of bids including the following:”.

In item 12 the words: “or the public procurement officer” shall be deleted.

Article 23

In Article 104 paragraph 2, after the words: “evaluation of bids” a full stop shall be placed, while the remaining part of text shall be deleted.

Article 24

In Article 105 paragraph 2, after the words: “evaluation of bids” the comma shall be replaced by a full stop, while the remaining part of text shall be deleted.

After paragraph 3, the following new paragraph shall be added:

“Decision on suspension of a public procurement procedure shall contain the following:

- 1) data on the contracting authority and the bidders who submitted their bids,
 - 2) subject of public procurement as a whole or by lots; the number of tender documentation,
 - 3) total estimated value of the subject of public procurement or the estimated value by lots,
 - 4) conditions for participation in public procurement procedure determined by the tender documentation,
 - 5) explanation of the reasons for the suspension of the public procurement procedure,
 - 6) instruction on legal remedy,
 - 7) date of issuing and signature of the authorized person of the contracting authority.”
- Paragraph 4 shall become paragraph 5.

Article 25

In Article 106 paragraph 2, after the words: “evaluation of bids” the comma shall be replaced by a full stop, while the remaining part of text shall be deleted.

Paragraph 4 shall be amended as follows:

“Decision on selection of the most favourable bidder shall contain the following:

- 1) data on the contracting authority and the bidders who submitted their bids;

- 2) subject of public procurement as a whole or by lots; the number of tender documentation;
- 3) total estimated value of the subject of public procurement or the estimated value by lots;
- 4) conditions and criteria with the sub-criteria provided in the tender documentation;
- 5) proofs submitted by the bidders in their bids;
- 6) title of the bidder whose bid was selected for conclusion of the public procurement contract for the subject of procurement as a whole or by lots, or title(s) of one or more bidder(s) for conclusion of a framework agreement;
- 7) explanation of the reasons for the selection of the most favourable bid;
- 8) reasons for refusal of the bid (invalid and untimely bids);
- 9) instruction on legal remedy;
- 10) date of issuing and signature of the authorized person of the contracting authority.“

Article 26

In Article 107 after paragraph 7, the following paragraph shall be added:

„If a bidder referred to in paragraph 1 of this Article fails to sign the contract or to provide a guarantee for contract performance, the contracting authority may conclude a contract with the next best bidder, provided that the price difference does not exceed 10% of the initially selected bid, or can annul the public procurement procedure.“

Paragraph 8 shall become paragraph 9.

Article 27

In Article 108 paragraph 1 item 1, the words: “paragraph 1 items 1, 2 and 3“ shall be replaced by the words: “ paragraph 1 items 1 and 2“.

Article 28

In Article 112 paragraph 1, the words: “conditions, rules and value scales“ shall be replaced by the words: “conditions and rules“.

Article 29

Title of the Article 116a shall be amended as follows:

“Subject of Procurement in the Field of Defense and Security“.

In paragraph 1, the introductory sentence shall be amended as follows:

“The procurement in the field of defense and security, within the meaning of this Law, shall be the procurement of the following:“.

After paragraph 1, the following two paragraphs shall be added:

“Types of procurement procedures referred to in paragraph 1 of this Article and the manner of their implementation shall be governed by regulation of the Government.

The provisions of Chapter VI of this Law shall be applied for the protection of rights in procurement procedures referred to in paragraph 1 of this Article.“

Article 30

In Article 116b paragraph 1 at the ending of item 7, the full stop shall be replaced by a comma and the following two items shall be added:

„8) procurements conducted by the state authorities of Montenegro with the state authorities of the member states of the European Union or the third countries, related to the following:

- a) procurement of military equipment or security sensitive equipment;
- b) works and services directly connected to the equipment referred to in indent 1 of this item; or
- c) works and services exclusively for military purposes or security sensitive works and security sensitive services;

9) procurement of supplies, services and works referred to in Article 116a of this Law whose estimated value is equal to or below EUR 20,000 for supplies and services, or EUR 40,000 for works”.

Paragraph 2 shall be amended as follows:

“The procurements referred to in paragraph 1 of this Article shall be conducted in accordance with the special act of the contracting authority.”

Paragraph 3 shall be deleted.

Article 31

Articles 116c to 116i shall be deleted.

Article 32

In Article 117 paragraph 1 after item 1, a following item shall be added:

„1a) keep records on conducted procurements referred to in Articles 29, 30 and 116a of this Law;“.

Article 33

In Article 118 paragraph 1, the full stop at the end of the text shall be deleted, and the following words shall be added: “as well as the report on conducted procurements and concluded contracts referred to in Articles 29, 30 and 116a of this Law“.

Article 34

In Article 121, the word: “general“ shall be deleted.

Article 35

In Article 122 paragraph 7 shall be amended as follows:

“In the case referred to in paragraph 4 of this Article, appeals may be lodged by the interested person from the date of publication or submission of tender documents no later than ten days before the date required for opening the bids.“

Article 36

In Article 125, paragraph 2 shall be amended as follows:

“An appellant shall, along with the appeal, enclose the evidence on payment of the reimbursement for the procedure costs.“

In paragraph 3 the words: “EUR 8,000“ shall be replaced by the words: “EUR 20,000“.

After paragraph 3, the following two paragraphs shall be added:

“The State Commission shall refuse the appeal as incomplete by the decision, if the appellant, along with the appeal:

1) fails to submit the evidence on payment of the reimbursement for launching the appeal proceedings within the time limit for the appeal submission; or

2) submit the evidence on payment of the reimbursement for launching the appeal proceedings in the amount below the one prescribed in paragraph 3 of this Article.“

In paragraph 5 the words: “the contracting authority shall reimburse such appellant for its costs referred to in paragraph 3 of this Article“ shall be replaced by the words: “the State Commission shall reimburse such appellant for its costs referred to in paragraph 3 of this Article“.

Paragraphs 4, 5 and 6 shall become paragraphs 6, 7 and 8.

Article 37

In Article 126 paragraph 2, the words: “dismiss the appeal by its conclusion“ shall be replaced by the words: “refuse the appeal by its decision“.

Article 38

Article 132 shall be amended as follows:

“In the appeal proceedings, the State Commission may adopt decisions by which it:

- 1) suspends the appeal proceedings;
- 2) refuses the appeal as unlawful, untimely and lodged by unauthorised person.

If it does not refuse the appeal for the reasons referred to in paragraph 1 item 2 of this Article, the State Commission shall examine the legality of the appeal act within the limits of the requirements specified in the appeal, while taking into account ex officio the existence of essential violations prescribed by the Law.

After examining the appeal in accordance with paragraph 2 of this Article, the State Commission shall, by means of a decision:

- 1) refuse the appeal as groundless, when it establishes that the contracting authority conducted properly the public procurement procedure or action, or that the decision was correct and based on the Law;
- 2) adopt the appeal as a whole or partly, annul the decision or the public procurement procedure or action in the part where the irregularity was established, including discriminatory provisions of tender documentation.

Contracting authority shall act in accordance with the decision referred to in paragraph 3 item 2 of this Article and notify the State Commission thereof within the prescribed time limits.

If the contracting authority has not implemented the decision of the State Commission within the determined time limit, it shall inform the Government of Montenegro or local self-government unit thereof, as well as the public procurement inspectorate."

Article 39

In Article 134 paragraph 1 item 3, the words: "to the restriction of tender documents" shall be replaced by the words: to "the restriction of market competition".

Article 40

In Article 136 paragraph 1 shall be deleted.

After paragraph 2 the following paragraph shall be added:

"The lawsuit filed against the decision of the State Commission does not have an impact of suspension to the conclusion of a public procurement contract".

Paragraph 2 shall become paragraph 1.

Article 41

Article 138 paragraph 1 shall be amended as follows:

"The State Commission shall have a president and six members performing their functions as a profession."

In paragraph 3 after the words: "shall be appointed by the Government", the following words shall be added: "on the proposal of the Ministry".

After paragraph 5 the following paragraph shall be added:

"Notwithstanding paragraph 5 of this Article, a member of the State Commission may be a graduate economist who passed civil service exam, with no less than five years of work experience, or at least five years of the experience in public procurement area."

Paragraph 6 shall become paragraph 7.

Article 42

In Article 147 paragraph 1 the words: "competent state authority" shall be replaced by the words: "the public procurement inspector".

Article 43

In Article 149 paragraph 1 item 8 the words: "contract notice phase I, contest and shopping" shall be replaced by the words: "contract notice phase I and contest".

In item 15 the words: "(Article 105 paragraph 4)" shall be replaced by the words: "(Article 105 paragraph 5)".

In item 19 the words: "(Article 107 paragraph 8)" shall be replaced by the words: "(Article 107 paragraph 9)".

In item 25 after the words: “conducted public procurement procedures“ a comma shall be placed and the following words shall be added: “conducted public procurement procedures and on concluded public contracts referred to in Articles 29, 30 and 116a of this Law“.

In item 30 the words: “(Article 132 paragraph 5)“ shall be replaced by the words: “(Article 132 paragraph 4)“.

Article 44

In Article 149a the words: “(Article 16 paragraph 2)“ shall be replaced by the words: “(Article 16 paragraph 3)“.

Article 45

After Article 150 the following article shall be added:

“Initiated Procedures

Article 150a

Public procurement procedures initiated before this Law enters into force shall be completed by the regulations under which they have been initiated.

Public procurement procedures in the field of defense and security, until adoption of the regulations referred to in Article 116a paragraph 2 of this Law, shall be conducted in accordance with the Law on Public Procurement (*Official Gazette of Montenegro* 42/11, 57/14 and 28/15).”

Article 46

After Article 151a the following new article shall be added:

“Appointment of the Members of the State Commission

Article 151b

Appointment of two Members of the State Commission shall be conducted within 90 days as of the day of entering into force of this Law.“

Article 47

After Article 153b the following three new articles shall be added:

“Harmonization of Secondary Legislation

Article 153c

The secondary regulations deriving from the Law on Public Procurement (*Official Gazette of Montenegro* 42/11, 57/14 and 28/15) shall be harmonized with this Law within 30 days from the day of entering into force of this Law.

Time-limit for Secondary legislation

Article 153d

The secondary regulations referred to in Articles 29 and 30 of this Law shall be adopted within 30 days from the day of entering into force of this Law.

The Government shall adopt the secondary regulation referred to in Article 116a paragraph 2 of this Law within six months from the day this Law enters into force.

Time-limit for Harmonization of the Public Procurement Plan

Article 153e

The contracting authorities shall harmonize their public procurement plans with this Law within 30 days from the day of entering into force of this Law.

In the process of harmonization of public procurement plans in accordance with this Law, the contracting authorities are not obliged to obtain consent referred to in Article 38 paragraph 4 of this Law, if there is no change in the plan regarding the amount of the estimated value of public procurement and the position of the budget, or financial plan, where the funds have been planned for public procurement. “

Article 48

This Law shall enter into force on the day of its publication in the Official Gazette of Montenegro.