



WASTING OF PUBLIC RESOURCES THROUGH PUBLIC PROCUREMENT

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PUBLISHER:

Transparency Serbia
Palmotićeveva 31
Belgrade
Republic of Serbia
www.transparentnost.org.rs
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PRINT:

Unagraf Beograd

PRINT RUN:

50 pieces



Transparency Serbia is a non-governmental organisation established in 2002, and national chapter and representative of Transparency International in Republic of Serbia. The Organization promotes transparency and accountability of the public officials as well as curbing corruption defined as abusing of power for the private interest in Serbia.



Ministry of Foreign Affairs of the
Netherlands

This project is supported by the Ministry of Foreign Affairs of the Kingdom of the Netherlands within the MATRA program. All opinions expressed are those of Transparency Serbia and cannot be considered to reflect the views of the donor.

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WASTING OF PUBLIC RESOURCES THROUGH PUBLIC PROCUREMENT

Public procurement is recognized by the public as an area in which public resources are wasted, where various illegal arrangements take place between contracting authorities and bidders, between the different bidders, and between official decision-makers with other influential individuals from the government – in short, an area where there is no accountability for misconduct. Through this document, we will show where the greatest threats lie for wasting public funds in the public procurement system and give recommendations that could contribute to improving the situation in this field.

According to the data from the report of the Office for Public Procurement (hereinafter referred to as OPP) for 2023, the share of public procurement in the gross domestic product in 2023 was 10.5%, and the contracted value of public procurement excluding VAT for 2023 amounted to 860 billion dinars. This share represents an increase compared to previous years, when the share of public procurement in GDP was 9.34% and 8.93%, respectively, for 2022 and 2021. Data from last year, and even more so from earlier years, should be taken with a certain reserve, because there are certainly some procurements that are not included in the statistics, which is especially true for contracting based on the provisions of special laws. Also, it is still not certain that the report includes all procurements that are carried out on the basis of interstate agreements. Certainly, procurements that were contracted without the application of the proper procedures were not covered either, although there was no legal basis for this.

Bearing in mind this level of spending in public procurement, as well as the fact that the field of public procurement in Serbia is recognized as one of the areas with a special risk of corruption (in national and EU integration documents)¹ an adequate degree of control would be expected. Indeed, in one way or another, several state authorities participate in the supervision of the public procurement system. However, when the data on the observed irregularities that end up being revealed are taken into account, we come to the conclusion that the existing scope of control is insufficient and that a large number of irregularities remain undetected.

Avoiding the application of the law and exemptions

THE VALUE OF EXEMPTED PROCUREMENT

It is not only the value of public procurements carried out according to regular procedures prescribed by the Law on Public Procurement (hereinafter referred to as LPP) that has increased in the past few years. The value of procurements exempted from the application of the LPP has reached the value of public procurements that were carried out through regular procedures, as shown in the data for 2022 and 2023. In 2023, the value of concluded public procurement contracts amounted to 860 billion dinars, while the value of exceptions amounted to 824 billion dinars (in 2022, the values amounted to 747 billion dinars versus 662 billion dinars in favor of exemptions). The situation was significantly different in 2020 and 2021, when the value of regular procedures was two and three times higher than the value of procurement exempted from the application of the Law. However, concerning data from earlier years, it could rather be that the exempted procurements were not recorded, rather than that their value was actually significantly lower.

The fact that the values of implemented public procurements and procurements exempted from the application of the LPP were almost equal is primarily a reflection of the established practice that the most valuable projects are contracted through interstate agreements and the adoption of special laws, which excludes the rules on public procurement provided for by the LPP. The most recent case is the special law for the EXPO Belgrade 2027 project. It is precisely the procurements that were concluded on the basis of interstate agreements that represent the most valuable exceptions to the application of LPP (316 billion dinars in 2023).

By contracting procurement in this way, transparency and competition are diminished, opening up an extremely large space for price increases that have no justification, as well as for corruptive influences when selecting a bidder or subcontractor. Namely, in these cases, the contracting authorities are given the authority to choose the bidders with whom they want to conclude contracts without conducting any public procurement procedure, with

¹ <https://mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php>

the limitation that they should apply the principles of the LPP, which is an obligation of a more declarative than practical nature. Since there is usually no bidding or competition in such agreements, the effects that it would have in the form of lowering the price or increasing the quality are absent.

That these three are not just potential risks is shown by the case of the alleged letter of Aleksandar Papić addressed to the President Aleksandar Vučić, which was made public by MP Miki Aleksić.² As it was said, the opposition came in the possession of a letter from Aleksandar Papić to Vučić, claiming that the value of the works on the Ruma-Šabac-Loznica road were increased by 25 million euros, of which eight million were allegedly given to SNS. As stated in the letter, the basic price of the works for that contract would be 50 million euros and it was increased by another 25 million euros to satisfy various interest groups, including the ruling party and various subcontractors. MPs Miki Aleksić and Srđan Milivojević stated with that regard that they had submitted this letter to the Prosecutor's Office for Organized Crime (POOC).³

In March 2024, Transparency Serbia tried to find out at what stage the procedure in connection with this case is, through a request for access to information.⁴ In the POOC response, it was stated that MPs Miki Aleksić and Srđan Milivojević submitted a written notification to POOC about the content of the alleged letter, which points out to certain illegalities in the conclusion of the contract on the construction of the Ruma-Šabac highway.⁵ It is also stated that on December 20, 2023, the POOC submitted a request for the collection of necessary information to the Criminal Police Directorate of the MoI, including the contracts on the construction of the highway and expressway Ruma-Šabac-Loznica, contracts that the Belgrade branch of the company AzVirt d.o.o. concluded with the subcontractors, as well as all the contracts on the pledge that the subcontractors gave to the contractor. A request was submitted for obtaining the data on the payments made to the subcontractors, as well as for determining the authenticity of the letter, since it was not signed.

Until the finalization of this document, no information about the investigation in this case has emerged in the public domain.

EXEMPTIONS IN THE LAW ON PUBLIC PROCUREMENT PROPER - AN EXAMPLE OF LEGAL SERVICES

One of the examples of procurement exempted from the application of the Law on Public Procurement (prescribed in that law itself), where there is a strong suspicion of wastage of public resources, is the procurement of legal services. In procurement of this type of services, there is a wide discretion of the client regarding which lawyer (in most cases) the client will choose. On the one hand, the very nature of the services procured in this case may justify the possibility for the client to choose any lawyer they believe will best represent their interests. On the other hand, this possibility carries with it a major risk of concluding a contract for the provision of legal services in a volume and value greater than necessary with the primary aim of extracting money from the budget and transferring it through trusted persons to the ultimate decision makers.

One of the rare cases of discovered abuses in public procurement, which was recently ended by the final conviction of a high-ranking public official, was related to the procurement of this type of service by a public company.⁶ The revelations from that criminal case were not used for the public prosecutor to investigate if this was an isolated case of wasting of public resources or whether the same possibility was used elsewhere. Even more than the prosecutor's office, other state authorities have a reason to act. Even when there are no indications of criminal liability, one can rightfully question the expediency of the procurement of this type of services, especially concerning large clients that have their legal departments, but also in cases where small clients contact a flat fee without being clear as to what specific legal assistance is actually needed.⁷

Although the value of procurement of legal services does not reach the value of some other exemptions, their sum is still extremely large. In 2023, clients spent **a total of 857 million** dinars on the procurement of legal services based on three exemptions provided for by law:

- representation of the client by a lawyer in arbitration or amicable settlement of disputes in the country or abroad, as well as before international arbitration or an international body for amicable settlement of disputes - **203 million dinars.**

2 <https://n1info.rs/vesti/opozicija-dosla-do-pisma-papica-vucicu-pominju-se-milioni-za-sns-zvonko-veselinovic-mali/>

3 <https://nova.rs/vesti/politika/papicevo-pismo-vucicu-o-izvlacenju-miliona-za-sns-objaveno-pre-35-meseca-a-sta-radi-policija-tuzilastvo-tvrdi-nista/>

4 https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Zahtev_TOK_-_auto-put_Ruma-Loznica.pdf

5 https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Odgovor_TOK_-_auto-put.pdf

6 <https://www.politika.rs/sr/clanak/588412/Bivsi-direktor-Infrastrukture-zeleznice-pravosnazno-osuden-na-godinu-zatvora>

7 <https://n1info.rs/vesti/djukanovic-raskinuo-sam-ugover-s-gamzigradskom-banjom-necu-dinar-iz-budzeta/>

- representation of the client by lawyers in court and other proceedings before courts or other public authorities in the country and abroad or before international courts, tribunals or institutions - **590 million dinars.**
- legal counseling services provided by a lawyer during preparation for representation in the procedures referred to in points 1 and 2, or if there is a clear indication or a high probability that the matter to which the counseling relates will become the subject of those proceedings - 64 million dinars.

Table 1: Clients who spent the most money on procurement of legal services based on the three listed exemptions in 2023

Client	Value of concluded contracts (in dinars)
JP SRBIJAGAS NOVI SAD	92.5 million
ELECTRIC POWER COMPANY OF SERBIA (EPS)	61 million
NOVI SAD – GAS	47 million
PUC NOVI SAD HEATING PLANT	30 million
BASIC PUBLIC PROSECUTOR'S OFFICE IN SUBOTICA	29 million
HIGHER PUBLIC PROSECUTOR'S OFFICE IN SREMSKA MITROVICA	29 million
PUC "PARKING SERVIS" NOVI SAD	27 million
HIGH COURT IN SUBOTICA	26 million
JP "VOJVODINAŠUME"	16 million
HIGHER PUBLIC PROSECUTOR'S OFFICE IN SUBOTICA	15 million

WASTING OF PUBLIC RESOURCES THROUGH “FIXING” THE ESTIMATED VALUE

The practice of avoiding public procurement procedures is also present through fixing the estimated values of procurement, so that they are just below the thresholds set by the Law, TS research has shown.⁸ Namely, in procurements whose estimated value is below the legally prescribed thresholds, contracting authorities are not obliged to carry out procedures through the Public Procurement Portal, but can directly select the bidders with whom they wish to conclude contracts.

Fixing purchases so that their value is set below the tender threshold is a well-known practice, not only in Serbia. Even though in such procurements, the contracting authority must respect the principles of public procurement and prepare the requisite documentation, bidders do not have effective means at their disposal to challenge actions that are contrary to those rules. Namely, in the majority of cases, interested companies, if they are not on the "invited list", have no knowledge that the procurement is taking place. True, an increasing number of contracting authorities publish purchases that are "below the threshold" on their websites or even on the Portal, but this is still the exception rather than the rule. Furthermore, bidders do not have an efficient way to search the websites of all the clients who would possibly post calls on that site and to be informed in time that they have a chance of getting the contract. This type of procurement rigging typically involves a wider deal - with other firms that are invited to bid, either not to bid at all or to bid above the value requested by the firm that "should" get the job.

The wasting of public resources through this type of rigged public procurement takes place in a different way - by estimating the value of the procurement very close to the threshold for which a tender does not have to be called. In this way, the possibility provided by the thresholds prescribed by the Law is maximized, and with the beginning of the implementation of the currently valid LPP in 2020, they have been increased many times compared to those from the previous law.

In this research, procurements of works, procurements of goods and services, and procurements of social and other special services were separately analyzed, since for each of the mentioned types of procurements, the LPP foresees different value thresholds for the application of the law. The goal was to determine whether there is a regular and logical distribution in the value ranges of purchases, which would be statistically expected, or whether the largest number of purchases is just below the thresholds.

Only procurements carried out in the first half of 2024 were observed, and the data was collected through a new section on the Public Procurement Portal called the Register of Contracts. In this part of the Portal, from January 2024, data will also be published on completed procurements, the estimated values of which are below the thresholds prescribed by law, which enables the public to have a better insight into what the contracting authorities procure and with whom they conclude contracts..

Procurement of works

Out of a total of 553 works procurements that were contracted in Serbia from the beginning of 2024, until July 8, the value of which ranges between two and four million dinars, **only 15.19%** are contracts whose value is above the threshold for the implementation of the tender (3 million dinars). On the other hand, statistically, it would be justified to expect that the clients had an equal need for works worth between two and three million dinars, as well as for those whose value is between three and four million dinars.

That it is a matter of "fixing" the estimated value of the procurement in order to avoid actual competition is even more clearly shown by the fact that **by far the largest number of these procurements (37.97%)** were contracted for a value between 2.9 and 3 million dinars (it would be statistically expected that their share should be only 5%), while in the first following group (between 3 and 3.1 million dinars) only four procurements (0.80%) were contracted.

Moreover, as many as 11.6% of procurements were contracted at a value that differs from the limit for tender implementation by less than ten thousand dinars.

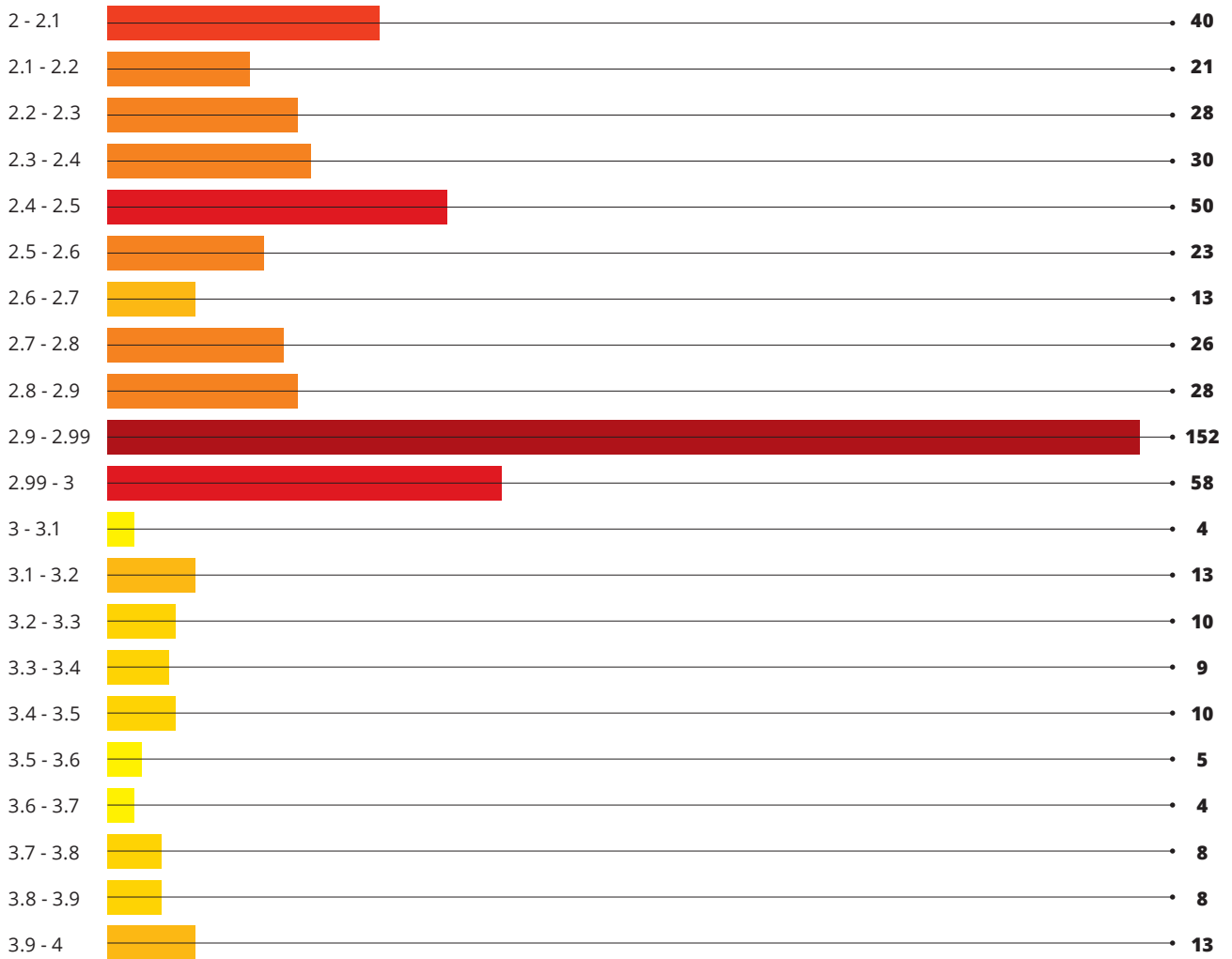
8 https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Inicijativa_za_monitoring_KJN_-_Nabavke_ispod_pragova.pdf

Figure 1: Procurement of works immediately above and below the threshold for conducting tenders



THE NUMBER OF CONTRACTED PROCUREMENT OF WORKS

IN THE FIRST HALF OF 2024 - JUST BELOW AND JUST ABOVE THE THRESHOLD FOR THE IMPLEMENTATION OF TENDERS (3 MILLION DINARS)



*RSD millions

Procurement of goods and services

When it comes to the procurement of goods and services, although the thresholds for applying the Law are different compared to those that apply to works (one, versus three million dinars), the findings are similar. When taking into account procurements of goods and services worth between 700 thousand and two million dinars from the first half of 2024 (a total of 14,333 procurements), the largest number of them fall into the category of contracts with a value between 900 thousand and one million dinars - **31.27%**.

For the sake of comparison, **only 4.53% of contracts** fall in the first following category between one million and 1.1 million dinars, and a total of 37.92% fall into the category of concluded contracts worth between one million and two million dinars.

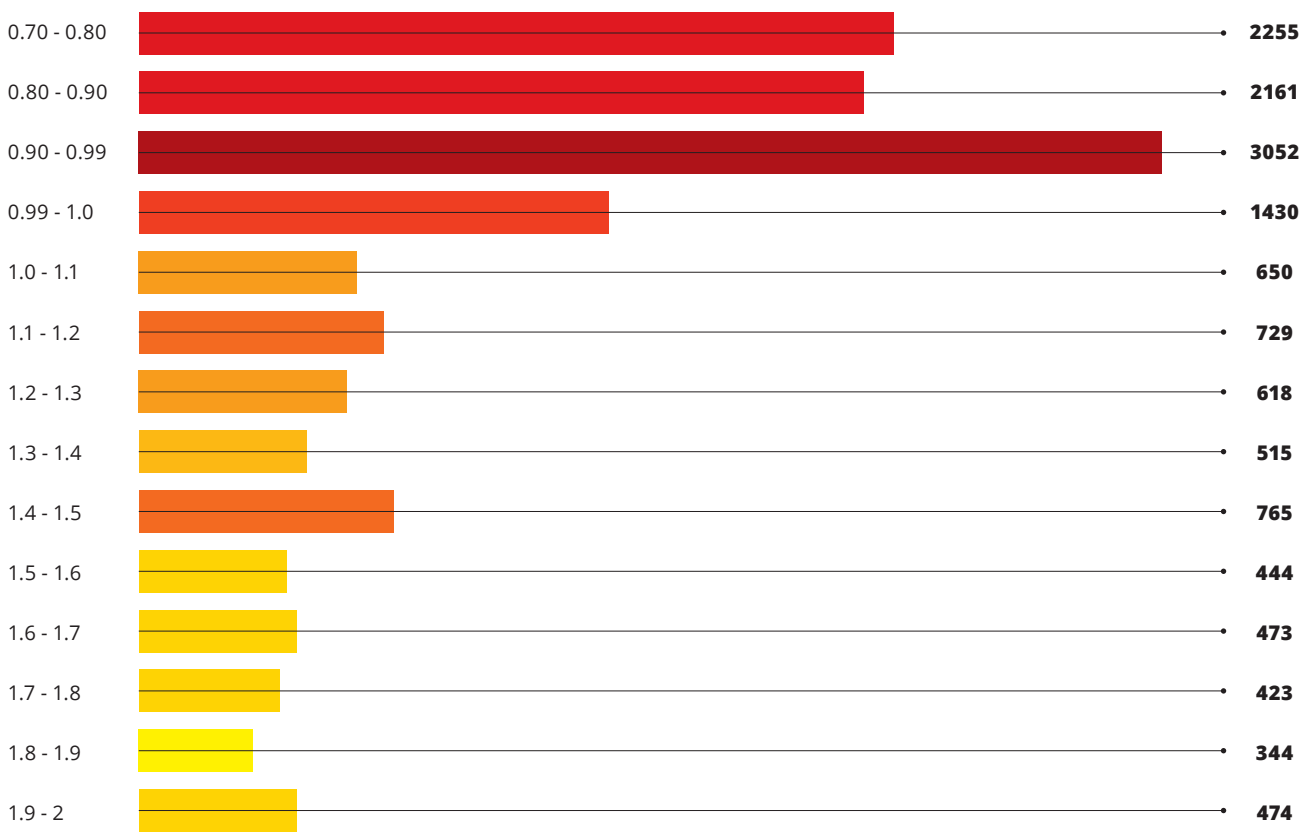
In as many as **9.98% of cases**, the ordering parties and their bidders made it sure that almost nothing of what was planned remained in the budget - the agreed prices differed from the limit for the implementation of the tender by less than ten thousand dinars.

Figure 2: Procurement of goods and services immediately above and below the threshold for conducting tenders



THE NUMBER OF CONTRACTED PROCUREMENT

GOODS AND SERVICES IN THE FIRST HALF OF 2024 - JUST BELOW AND JUST ABOVE THE THRESHOLD FOR THE IMPLEMENTATION OF TENDERS



*RSD million

The findings presented for all observed types of procurement show that determining the estimated value of the procurement so that it is slightly below the threshold is a widespread practice among contracting authorities. Harm to public resources can occur here in several ways. The first one has already been mentioned, and that is for the contracting parties to maximize the value of the procurement so that it is just below the threshold, in order to avoid the procedures prescribed in the Law and advertising the procurement on the Portal. Another way, which is less likely, is that for the contracting authorities lower the value of the procurement, which would otherwise be above the threshold, in order to avoid the procedures and directly select the bidder with whom they want to conclude the contract. In both scenarios, there are serious risks of corruption.

The actual existence of these risks is shown by the recent news about the arrest of the former state secretary in the Ministry of Education on suspicion of influence peddling in public procurement.⁹

9 <https://www.srbija.gov.rs/vest/798085/uhapseno-osam-osoba-zbog-trgovine-uticajem-i-zloupotrebe-sluzbenog-polozaja.php>

In the statement of the MoI at the beginning of July 2024, it is said that "police officers of Service for Combating Organized Crime (SBPOK), in cooperation with members of the Information Security Agency (BIA), and on the order of the Public Prosecutor's Office for Organized Crime", made an arrest due to the suspicion that the state secretary "used his position to influence the heads of five schools from the territory of the city of Niš to award contracts to the company Avenija sistem in the process of procurement - works on investment maintenance of facilities, and in return demanded money. The managers for five educational institutions were also arrested for embezzlement, as well as two employees of the company that was allegedly "fixed" contracts. The procurement documentation was prepared by an employee of that company, and the state secretary demanded at least 10% of the value of the contracts obtained for himself from the "actual owner of the company" and allegedly received 24 thousand euros.

In this case, the question of the basis on which the state secretary could influence the managers of educational institutions can be raised. Since the secretaries of state do not formally have any role in approving the public procurement of these institutions, financial plans or in appointing and dismissing staff, it is obvious that demands for a percentage took place through some of the informal channels of power. These could be, for example, connections within a political party / coalition, or the possibility of influencing some of the other people in the ministry who have the proper authority. All this requires an investigation not only in terms of procurement rigging, but also as to the reasons why the heads of educational institutions were willing to enter into a corrupt scheme. Also, the responsibility of the managers of educational institutions should not only include the setting up specific procurement procedures, but also to making plans that clearly did not reflect the actual situation (whereby the interested company was willing to give up at least 10% of the value of the contract for bribery).

According to data from the Public Procurement Portal, in the first half of 2024, the company Avenija sistem concluded five contracts on the procurement of works that are "below the threshold":

Table 2: Ugovori koje su naručioci zaključili sa preduzećem Avenija sistem u 2024. godini

Customer	Subject of procurement	Date of conclusion	Total amount
University of Niš - Faculty of Technology	Renovation of sanitary premises in the building of the Faculty of Technology in Leskovac	27 May 2024	2,948,535.00
Elementary school "Branko Miljković"	Renovation of part of the facade	4 June 2024	2,994,450.00
Elementary school "Jastrebački partizani"	Adaptation of the IO Azbrešnica facility	10 May 2024	2,999,250.00
Faculty of Occupational Safety in Niš	Painting and renovation of the facade of the main building of the Faculty of Occupational Safety in Niš	7 June 2024	2,986,560.00
Faculty of Occupational Safety in Niš	Final masonry works	26 February 2024	881,250.00

Similar contracts, the value of which is below the threshold, may have existed in earlier years, when there was no legal obligation to publish them. It seems that the MoI suspected some more rigged procurements, because the sum of those that are visible does not match the allegations about the given bribe (the total value of all these deals without VAT is about 110 thousand euros). And this mini analysis shows that the allegations that were previously presented to be justified, namely that many procurements whose value is slightly below the thresholds set by the law are rigged and that public resources are misused and wasted in this way.

LACK OF CONTROL AS AN ENABLING ENVIRONMENT

The control of public procurement procedures is still at an insufficient level, taking into account both the share of irregularities that are carried out, as well as the number and value of procedures that are controlled in relation to the total number and value of public procurements carried out in one year. Although there are problems when it comes to punishment for those irregularities that have been discovered, the main source of impunity in the public procurement system remains the inadequate scope of control.

The Office for Public Procurement, a key organization in the public procurement system, is vested with the authority to monitor the implementation of regulations on public procurement. There are several types of monitoring that the OPP can perform, and the initiative for monitoring can be submitted by any interested person, as well as other state bodies, for example, the Agency for the Prevention of Corruption or the Prosecutor's Office.

In 2023, monitoring carried out by the OPP covered 782 procedures (1.63% of the total number), which means that only every eightieth public procurement was the subject of this type of monitoring.¹⁰ In the same period, the Public Prosecutor's Office submitted 218 requests for the initiation of misdemeanor proceedings, which would mean that in a quarter of the supervised proceedings (27.88%), an irregularity was observed that the Public Prosecutor's Office recognizes as an offense, which is a very high percentage, bearing in mind that many instances of monitoring are carried out and are based on the annual work plan of the OPP, i.e., without indications that there have been any irregularities.

As of January 1, 2023, the Budget Inspection of the Ministry of Finance was authorized to supervise the execution of public procurement contracts. Until January 2023, this was an area in which no systemic supervision was carried out at all, and this was precisely the area in which a large number of irregularities occurred.

In the same year, the Budget Inspection carried out supervision of 82 contracting authorities, where it found a total of 238 irregularities related to the implementation of the Public Procurement Law, that is, 2.9 irregularities per supervised entity.¹¹ When this data is viewed against the total number of clients – ordering parties (there are currently 6.183 registered on the Portal), we come to the conclusion that 3.83% of active clients were monitored. In the annual report on the work of the Budget Inspection, it is not stated what was the scope of control per supervised subject, i.e., whether it included all procedures that the entity carried out during a specific period or whether randomly selected procedures were controlled, or those that are suspected of entailing irregularities during the execution of the contract.

Things are not much better when it comes to the "control" of the regularity of public procurements carried out by interested business entities. The Republic Commission for the Protection of Rights in Public Procurement Procedures annually decides on less than a thousand requests (932 in 2023),¹² which means that the potential business partners of the stated have contested less than 2% of the procurements carried out in this manner. Close to half of the procedures were completely or partially cancelled.

The State Audit Institution also observed a large share of irregularities in public procurement during audits of business regularity (the number of irregularities found in public procurement in relation to the amount covered by the audit varies depending on the subjects of the audit and the type of audit procedure - 44.54%; 18.87% and 14, 08%).¹³ The largest number refers to irregularities during the implementation of the procurement procedure, irregularities during the execution of the contract and the fact that the public procurement procedure was not carried out even though there was no reason for exemption.

Although the Criminal Code provides for a specific criminal offense for abuse in public procurement, criminal liability for that criminal offense is virtually non-existent. In 2023, only 12 convictions were handed down, of which 10 were suspended sentences, and two were prison terms. One of the reasons for such a small number of verdicts lies in the very definition of the criminal offense, which is incomprehensible and difficult to prove, and prosecutors

10 Report of the Office for Public Procurement on the conducted monitoring for 2023, http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/14_saziv/KONACAN%20izvestaj%20o%20sprovedenom%20monitoringu%2027.3.2024..pdf

11 Annual Report on the Work of the Budget Inspection for 2023, <https://mfin.gov.rs/sr/kontrola-javnih-sredstava-1/godinja-izvetaj-o-radu-budzetske-inspekcije-za-2023-godinu-1>

12 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/14_saziv/02-862_24.pdf

13 Annual report on the work of SAI for 2023, <https://www.dri.rs/storage/newaudits/izvestaj%20o%20radu%20DRI%20za%202023%20god.pdf>

generally decide to conduct proceedings for similar criminal offenses (such as, for example, abuse of office or trading in influence), although it concerns misconduct in public procurement.

All said elements indicate that the current scope of control is insufficient and that supervision in the field of public procurement should be approached more seriously and systematically. The current level of repression does not provide a convincing picture that the perpetrators of irregularities in public procurement will be held accountable, whether for a misdemeanor or especially for a criminal offense.

RECOMMENDATIONS

In order for the scope of control to increase and the number of irregularities decrease, and for the public procurement system to be more transparent and competitive, Transparency Serbia makes the following recommendations:

- The Government and the National Assembly should stop the practice of using international treaties and "special laws" to circumvent public procurement rules, thereby reducing transparency and competition in public procurement and public-private partnerships.
- The scope of control in the field of public procurement should be increased and expanded by strengthening the capacity of the authorities responsible for supervision, control and prosecution, primarily the Office for Public Procurement and the Department for Budget Inspection of the Ministry of Finance.
- The definition of the criminal offense of public procurement should be changed in order to make the prosecution of that criminal entity more effective, while prosecutors' offices should act in a more proactive manner in order to investigate cases where there is suspicion of corruption in public procurement.
- The public procurement portal should be further improved by introducing functionalities that are not currently available, which would allow for the possibility of additional analysis of the available data, such as, for example, the visibility of the number of tenders currently in procedure.



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This project is supported by the Ministry of Foreign Affairs of the Kingdom of the Netherlands within the MATRA program. All opinions expressed are those of Transparency Serbia and cannot be considered to reflect the views of the donor.