

REPUBLIC OF SERBIA  
MINISTRY OF FINANCE  
Kneza Milosa st., no 20  
11000 Belgrade

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The new Law on Public Procurement was adopted in December 2019, and its implementation started on July 1, 2020. Although it brought numerous improvements, above all electronic procurement and enhanced Public Procurement Portal, it left unregulated an important segment of the public procurement procedure – the monitoring of the public procurement contracts performance.

In this regard, we point out that in the execution stage of public contracts the entire previously conducted public procurement procedure may be rendered meaningless, if the selected bidder is allowed unfounded price increase, if public funds are paid for something that hasn't been completed, or if the contracting authority tolerates non-compliance with deadlines and with the required quality of goods, services or works, which are the subject of public procurement, without activating financial guarantees that he requested (bill of exchange, bank guarantee, etc.).

The law remained unclear regarding the manner in which the Ministry of Finance, designated to monitor the public contracts performance (Article 154, paragraph 5), will manage such monitoring, especially having in mind the number of contracts concluded each year in Serbia. Namely, the Law does not prescribe the monitoring procedure, nor does it provide for the authority to pass a bylaw which would regulate that procedure in more detail. In this regard, the Center for Applied European Studies - CPES addressed the Ministry of Finance and the Public Procurement Office asking who will perform the monitoring within the Ministry, whether it is planned to adopt a special act regulating the monitoring procedure, and whether the contract performance data will be published on the Portal. From the responses obtained from the Ministry and the Office, however, it is not possible to determine whether any concrete measures are planned in terms of improving and more precisely regulating the supervision over the execution of contracts, which would significantly increase the transparency of this stage of the public procurement procedure.<sup>1</sup>

If the idea was that this work should be performed by the Budget Inspectorate at the Ministry of Finance, we point out that this will not be possible for those contracting authorities that are not budget beneficiaries, such as public enterprises, which are the largest contracting authorities in the Republic of Serbia (see the list of the largest contracting authorities from the annual reports of the Public Procurement Office). Also, it remains unclear whether the Ministry of Finance will monitor all or only some public procurement contracts, and how will it select the contracts that will be controlled. Certainly, the lack of any contracts performance data on the Public Procurement Portal will additionally complicate this monitoring. Due to all the above inaccuracies in terms of monitoring the execution of public contracts, we believe that this stage, crucial for the fight against corruption, is not sufficiently transparent.

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<sup>1</sup> More details at <https://cpes.org.rs/initiatives/?lang=en>

Namely, the law requires contracting authorities to publish the contract modification notice only if the modification concerns adding goods, services or works, or unforeseeable circumstances (Articles 157 and 158 of the law). The law, however, does not provide for the possibility of publishing any other information on the extent of contract performance. Therefore, it is not possible to access data on the value and degree of execution of the contract, i.e. the value of delivered goods, services, works, data on payments made under the contract, data on deadlines compliance, or any penalties imposed on the contractor for failing to meet contractual obligations (charged contractual penalties, realized financial guarantees, etc.).

In this regard, we recall the fact that one of the closing benchmarks for the EU accession negotiations for Chapter 5: Public procurement is that Serbia puts in place adequate administrative and institutional capacity at all levels and takes appropriate measures to ensure the proper implementation and enforcement of national legislation in this area in good time before accession, including, in particular, “the strengthening of control mechanisms, including close monitoring and enhanced transparency of the execution stage of public contracts and systematic risk assessments with prioritization of controls in vulnerable sectors and procedures”.

In accordance with the above, we emphasize that we can propose to the Ministry very constructive, simple, and yet effective ways to monitor the execution of public contracts, which would include creating simple e-forms for collecting basic contract performance information. These forms would be filled in periodically (monthly, quarterly or over another specific period) by contracting authorities and then made publicly available on the Ministry’s website or the Public Procurement Portal. These e-forms would contain information on:

- the public procurement contract;
- the contract value and the extent of contract performance (the value of delivered goods, services or works);
- payments made (how much was paid for the delivered goods, services or works);
- any other relevant payment information (e.g. any amounts paid in advance);
- meeting the performance deadlines;
- the penalties imposed on the contractor for failing to meet contractual obligations (charged contractual penalties, realised financial guarantees).

The listed information would be made publicly available on the website of the Ministry of Finance or the Public Procurement Portal (except for contracts that are confidential under positive regulations).

This would be a simple and effective way to facilitate the control of contract performance since the Ministry receives basic data from the contracting authorities, and in case of discrepancies or any inconsistencies in the completed data, further concrete actions can be initiated in terms of more detailed control over the execution of a specific contract.

The mere existence of such a platform would already be a significant step in the exercise of powers and obligations related to the monitoring of the execution of public procurement contracts.

At the same time, public availability of these data and forms (on electronic platforms of the Ministry and/or the Public Procurement Portal) would mean fulfillment of obligations of the Republic of Serbia from the negotiation process related to "close monitoring and enhanced transparency of the execution stage of public contracts and systematic risk assessment".

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