

# Policy Brief



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## Unveiling Challenges in Serbian Public Procurement

### A Call for Change

Public procurement, as a process through which government agencies acquire goods and services from external sources, represents one of the essential areas in Serbia's EU accession process, covered by Chapter 5. The importance of this chapter was heightened in 2020 with the introduction of the Revised Enlargement Methodology.<sup>1</sup> The inclusion of public procurement as an integral component of the *Fundamentals* cluster was a pivotal development, aligning it with other indispensable domains such as the rule of law, democratic institutions, public administration reforms, economic criteria, and more. Upon entering the EU, Serbian companies will gain the valuable right to participate in every public procurement opportunity across the EU alongside businesses from member states. Therefore, Serbia's entire public procurement system, post-accession, must be carefully designed as a level-playing field, ensuring equal opportunities for all potential bidders from across the EU. This proactive preparation will not only facilitate the EU accession process but also equip Serbian companies to access the significantly larger public procurement market within the EU. Additionally, public procurement holds a central position in managing EU Structural Funds because each country independently conducts procurements through these funds. This strategic approach plays a pivotal role in fostering economic growth and enhancing competitiveness during and after the accession process.

Although the EU's endeavour aimed to underscore the paramount importance of fulfilling the public procurement benchmarks, it failed to incite substantive changes on the ground. Numerous challenges persist and continue to exert adverse effects on the functioning of the state. The vulnerability of public procurement in Serbia to irregularities stems from several key issues. A limited number of bidders and a substantial proportion of single-bid procurements indicate restricted competition, resulting in higher prices and diminished value for money. Furthermore, prioritising price criteria over striking a balance between price and quality considerations can undermine the overall quality and effectiveness of the acquired goods and services. Another critical concern is the excessive reliance on exemptions, which can potentially lead to reduced competition and transparency.

These problems underscore the urgency of addressing challenges within the public procurement system. Ensuring transparency and integrity of public procurement is vital to preclude any misuse or mismanagement of public funds and, in turn, deliver high-quality services that genuinely serve the needs of citizens. This is particularly important as a well-functioning public procurement system can be a driving force behind an efficient public sector, building trust, and upholding the principles of accountability and fairness. By analysing the lack of competition and excessive use of exemptions within Serbia's public procurement system, this paper seeks to



<sup>1</sup> European Commission, 2020, *Enhancing the accession process - A credible EU perspective for the Western Balkans*

shed light on critical areas for improvement and pave the way for crucial reforms that will enhance the efficiency and integrity of the public procurement processes in Serbia, benefitting both the government and its citizens alike.

### **Analyzing Trends in Serbia's Public Procurement Landscape**

An upward trend in public procurement in Serbia has been evident over the last decade, in terms of the number of contracts and total contracts' value. In 2012, a total of 92,710 contracts were signed, with a combined value of EUR 2.6 billion. In 2022, the registered value of public procurements significantly increased to EUR 5.6 billion with 251,949 registered contracts.<sup>2</sup> However, the share of public procurement in Serbia's Gross Domestic Product (GDP) has shown moderate fluctuations, ranging from 6.88% to 9.34%<sup>3</sup> (for reference, the share of public procurement in the EU's GDP is about 14%)<sup>4</sup> over the last ten years, with the peak recorded in 2022. This variability suggests that various economic factors, such as inflation, fiscal constraints, GDP growth, national development strategy, and, most significantly, large infrastructure projects as part of the wider economic expansion in Serbia, play a role in shaping the country's procurement landscape. As Serbia continues to evolve economically, the importance of public procurement will be increasing even more in both absolute and relative terms, suggesting a heightened impact on economic development, resource allocation, and public service quality in Serbia.

The recent rise in the share of public procurement in GDP in 2022, coupled with a relatively unchanged GDP compared to 2021, reflects an impact of other, non-economic factors as well. One of them is the war in Ukraine, which led to soaring energy sector prices and reshaped future price expectations. The consequent inflation spike introduced additional complexities and uncertainties in public procurement, which would usually require careful price trend monitoring and the inclusion of appropriate contract clauses that can mitigate inflation's effects. Another important driver is the execution of postponed non-medical public procurements during the COVID-19 crisis, as they were deferred to a more opportune time. At the same time, the surge in medical procurements in 2020 and 2021, driven by urgent needs during the pandemic, has influenced the pattern of public procurements, culminating in an increase in 2022. This complex interplay of geopolitical events, crisis management, and urgent needs underlines the multifaceted nature of their impact on the public procurement landscape in Serbia, shaping both short-term trends and long-term considerations for resource allocation and strategic decision-making.

### **Uncovering Deficiencies: Examining Weaknesses in Public Procurement Procedures**

Flaws in the existing public procurement procedures and the excessive use of exemptions pose risks to Serbia's public procurement system. The current public procurement procedures are characterised by ambiguities in guidelines, inadequate evaluation criteria, and lack of transparency,<sup>5</sup> manifested in the low number of offers, which exacerbates risks of favouritism, corruption, and bid-rigging practices. Additionally, frequent use of exemptions undermines fair competition and transparency. Experts warn that Serbian authorities have been prone to excessive use of exempted procurement procedures, even in cases when there was no legal basis for such actions.<sup>6</sup> This raises suspicions over preferential treatment of certain suppliers and reduces accountability in decision-making, eroding public trust in the system. To mitigate these risks, it is essential to implement clear and transparent procedures, strengthen monitoring and oversight mechanisms, and promote competition. By doing so, Serbia can ensure an efficient public procurement system, leading to better value for money and higher-quality goods and services.

The *open procedure* emerges as the predominant public procurement procedure. In 2022, open procedure accounted for 97.83% of the total contracts, with a total value of EUR 5.4 billion. In contrast, the *negotiated procedure without prior publication* constituted 0.97% of the contracts, with an agreed value of EUR 71.5 million (1.29%), while the *competitive procedure with negotiation* comprised only 0.11% of the contracts, with a value of EUR 17.5 million (0.31%).<sup>7</sup> Even though the share of open procedures in total contracts varies across the EU, not many EU countries have as big of a share as Serbia. For instance, in Bulgaria, the practice of in-house contracting, where a contracting authority handles specific activities internally without external resources or services, constitutes over 42% of all government contracts.<sup>8</sup>

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2 Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2022-31.12.2022. godine [ Annual Report on Public Procurement in the Republic of Serbia for the Period January 1, 2022 - December 31, 2022]

3 Authors calculation

4 European Commission, 2022, [Access to public procurement](#).

5 SELDI, 2022, [Public Procurement Integrity in Southeast Europe](#).

6 SELDI, 2022, [Public Procurement Integrity in Southeast Europe](#).

7 Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2022-31.12.2022. godine [ Annual Report on Public Procurement in the Republic of Serbia for the Period January 1, 2022 - December 31, 2022]

8 SELDI, 2022, [Public Procurement Integrity in Southeast Europe](#).

While the prevalence of open procedures is promising, it's important to acknowledge that public procurement in Serbia is multifaceted, with its share of challenges and controversies. The widespread presence of irregularities in public procurement, despite such high usage of open procedures, as the most transparent type of public procurement, underscores the need for a deeper and more comprehensive understanding of the entire procurement system.

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However, there are several issues in the application of this type of procedure in the Serbian public procurement system - the direst ones being the lack of competition manifested in the low average number of offers per procedure and a big share of procurements with a single offer. On average, *open procedure* attracts 2.5 offers per procedure, with the highest number of offers (an average of 4.4) in the “Medical Equipment, Pharmaceutical Products, and Personal Care” category.<sup>9</sup> Only five years ago, the average number of bids per procedure was 3, which demonstrates deterioration.<sup>10</sup> Additionally, in 2022, 51.6% of public procurement procedures received only one offer.<sup>11</sup> Comparatively, the average share of single-bidding offers in the EU is 24%,<sup>12</sup> while EU institutions consider any share higher than 20% to be above the desirable threshold.<sup>13</sup> The improvement of competition in the public procurement system is crucial if Serbia aims to align its practices with the EU standards and become a part of the larger European public procurement system.

The abovementioned problem happens to be particularly applicable to the media sector.<sup>14</sup> Commencing in 2017, the recently privatised news agency Tanjug embarked on a successful trajectory, effectively obtaining public sector contracts from various ministries for the purpose of “media coverage of their activities”. Each time, Tanjug was the only bidder. An aspect that adds further depth to this matter is the requirement set by each public institution initiating these analogous public procurements. Bidders were mandated to possess “capability for

broadcasting activities” at “a minimum of five television stations with national frequency.” This stipulation inherently eliminated all other prospective bidders from contention. One can only speculate about the reasons why state institutions would even require such services when the media cover their work anyway, or how so many different state institutions devised almost identical public procurements that always end up with the same single bidder.<sup>15</sup> This is just one example indicating that the low number of bids and the high share of single-bid procurements might result from an *intentional* deterioration of competition. Moreover, the low number of offers in public procurement can indeed be indicative of various factors at play, including an underdeveloped market in a specific sector or perception biases that deter potential bidders. However, it is essential to acknowledge that in many cases, such perceptions are well-founded, as they are a result of actual deficiencies in transparency and fairness or the presence of bid-rigging practices.

Another urgent concern revolves around the criteria employed in contract awarding. When contracts are awarded primarily based on price, there is a risk of compromising quality and value for money. The selection process may overlook crucial aspects such as supplier capacity, expertise, and the ability to deliver high-quality goods and services. Furthermore, this approach may discourage suppliers from investing in innovation and quality improvements. In Serbia, in the last year, contracts were predominantly awarded based on the lowest price criterion, accounting for 96% of cases, while the remaining 4% considered both price and quality criteria.<sup>16</sup> Based on the European Commission's performance indicator for award criteria,<sup>17</sup> any share of public procurements where price is the sole criterion that exceeds 80% is regarded as negative. The average share across EU member states is 55.5%. In Slovakia and Latvia, the share exceeds 90%, while Croatia and France stand out with single-digit shares for this award criterion. By promoting a balanced evaluation framework that encompasses both price and quality criteria, Serbia can enhance the value for money, foster innovation, and ensure the delivery of high-quality services across various sectors, aligning with EU standards and best practices.

### ***Beyond the Norm: Uncovering Exemptions from Public Procurement Law in Serbia***

The excessive use of exemptions from the Public Procurement Law (PPL) represents another pressing issue in Serbia's public procurement system. These exemptions often allow government entities to bypass the standard competitive bidding procedures and award contracts directly, typically citing urgent needs or national security concerns. In 2022, a noteworthy surge in public procurement exemptions from PPL regulations

9 Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2022-31.12.2022. godine [Annual Report on Public Procurement in the Republic of Serbia for the Period January 1, 2022 - December 31, 2022]

10 CEP, 2022, [Where are the continued public procurement deficiencies leading Serbia](#).

11 Partneri Srbija, 2022, [Analiza javnih nabavki vakcina protiv gripa i vakcina za obaveznu imunizaciju](#).

12 European Commission, 2022, [Access to public procurement](#).

13 European Commission, 2022, [Access to public procurement](#).

14 BIRN, 2021, [Javne nabavke medijskih usluga](#) [Public Procurement of Media Services]

15 BIRN, 2021, [Promocija ministara: Milionski poslovi za Tanjug](#) [Ministers' Promotion: Million-Dollar Deals for Tanjug]

16 Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2022-31.12.2022. godine [Annual Report on Public Procurement in the Republic of Serbia for the Period January 1, 2022 - December 31, 2022]

17 European Commission, 2022, [Access to public procurement](#).

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was observed compared to 2021. The value rose significantly from EUR 3.2 billion<sup>18</sup> (40% of total procurements) to EUR 6.4 billion,<sup>19</sup> comprising over half (53%) of the total value of public procurements in the country. In 2020, the last year of enforcement of the old Public Procurement Law, 124,281 contracts were concluded based on the PPL provisions, whereas another 285,219 procurements were conducted using the legally established exemptions. In the next six months, when the new law entered into force, public invitations were opened in 10,741 cases, while as many as 495,719 procurements were exempted from the application of the Law.<sup>20</sup> This was mainly due to an increased threshold for small procurements that are exempted from the application of PPL. While there are legitimate reasons for exemptions in certain cases, the excessive and potentially arbitrary use of exemptions could imply that, despite the existence of comprehensive criteria and guidelines for exemptions from PPL rules are frequently circumvented.

Table 1 - Value of contracts exempted from PPL and contracts in compliance with PPL

	2021	2022
Value of contracts exempted from PPL	EUR 3.2 billion (40%)	EUR 6.4 billion (53%)
Value of contracts in compliance with PPL	EUR 4.8 billion (60%)	EUR 5.6 billion (47%)
Of those: open procedure	EUR 3.8 billion	EUR 5.4 billion

Among the recurrent grounds for exemption as outlined in the PPL, the most conspicuous involves international agreements Serbia might establish with third countries.<sup>21</sup> However, in the Morava Corridor Motorway project, apparently, a situation emerged where neither the PPL’s procedures nor permitted exceptions were deemed applicable. As a result, a special law<sup>22</sup> was introduced,<sup>23</sup> an action that seemingly suspended the basis for the gen-

18 Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2021-31.12.2021. godine [Annual Report on Public Procurement in the Republic of Serbia for the Period January 1, 2021 - December 31, 2021]

19 Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2022-31.12.2022. godine [Annual Report on Public Procurement in the Republic of Serbia for the Period January 1, 2022 - December 31, 2022]

20 See more at the following [link](#).

21 Serbia’s long history of using this exemption dates back to at least 2012 interstate agreement with Azerbaijan and accompanying engagement of the Azvirt company for the Ljig-Preljina highway segment.

22 Lex specialis derogat legi generali

23 Law on special procedures for the implementation of the project of construction and reconstruction of line infrastructure structures of particular importance to the Republic of Serbia (“Official Gazette of RS, no. 9/2020)

eral, overarching regulations governing public procurement, and all that without a constitutional basis.<sup>24</sup> This development allowed the Government to orchestrate the selection procedure for a strategic partner with whom the contract would be finalised. Unsurprisingly, the restrictive criteria, established by the Government via special law, led to a sole application being received, further accentuating the intricacies of the situation. After numerous European Commission warnings<sup>25</sup> and negative impact on the public procurement system, in 2023, the Serbian Government cynically proposed<sup>26</sup> abolishing the Law to close EU accession Chapter 5 and Cluster 1.<sup>27</sup> Although the Law was immediately repealed<sup>28</sup> in August 2023, alternative avenues for non-procurement contracts such as intergovernmental agreements endure. While the aforementioned exemptions may sometimes be vital for international commitments, their misuse poses significant risks, including diminished competition, decline in public trust in procurement’s transparency, inflated costs, possible misuse of funds, and full-blow corruption.

### Cultivating Progress: Key Actions to Foster Integrity in Serbia’s Procurement

This paper has shed light on two pivotal issues plaguing Serbia’s public procurement landscape: the lack of healthy competition and the widespread misuse of exemptions. These challenges, if left unaddressed, pose substantial risks to the integrity and efficiency of the procurement system. The prevalence of ambiguous guidelines, inadequate evaluation criteria, and dearth of transparent procedures contribute to the limited number of offers, opening the door to potential favouritism, corruption, and bid-rigging practices. The excessive use of exemptions further compounds these problems. The

24 Petrović, Bogdan. [What’s hiding behind the Behtel company?](#) [Šta se krije iza Behtela?]. Nedeljnik Vreme. 2019.

25 European Commission. [Serbia report 2020](#). Page 73. European Commission. [Serbia report 2021](#). Page 29.

26 [Biznis.rs. Proposed repeal of the Law on special procedures for the construction of infrastructure of special importance](#) [Predloženo ukidanje zakona o posebnim postupcima kod izgradnje infrastrukture od posebnog značaja]. 2023.

27 Contrary to expectations, Negotiation Clusters were never intended to be considered as “closed,” and they should not be conflated with *acquis* chapters. Moreover, in line with the EU’s “fundamentals first” approach, the chapters related to the rule of law are envisioned to be among the final ones to be concluded during the negotiation process.

28 [The Law on Cessation of Validity of the Law on Special Procedures for Realization of Projects of Construction and Reconstruction of Linear Infrastructural Objects of Special Importance of the Republic of Serbia](#) (“Official Gazette of RS”, no. 62/2023).

pattern of one-bid procurements and the over-reliance on price as the sole criterion in awarding contracts exemplify the urgent need for reform. By tackling these issues head-on, Serbia has the opportunity to revitalise its procurement processes. Some of the steps Serbia can take towards that goal are to:

- **Enhance transparency and prevent misuse of public funds:** Establish and apply robust monitoring and oversight mechanisms for the public procurement process.
- **Encourage a competitive procurement environment:** Enhance supplier registration system and procurement guidelines, and actively seek bids from various suppliers.
- **Include both price and quality criteria:** Increase the frequency of including both criteria in the evaluation process in order to motivate suppliers to prioritise high-quality goods and services.
- **Address overuse of exemptions:** Mitigate the overuse of exemptions by carefully considering and justifying each and every exempted case.
- **Invest in procurement training programs:** Enhance the personnel's understanding of best practices and compliance with regulations.
- **Conduct a comprehensive review of procurement regulations:** Review Serbia's public procurement regulations to address existing ambiguities, inconsistencies, and loopholes and regularly update the procurement framework to ensure alignment with international best practices and changing economic conditions. However, such updates should never be used as an opportunity to lower the standards for public procurement and depart from EU best practices.
- **Engage with international partners for knowledge exchange:** Collaborate to exchange knowledge and experiences, facilitating the adoption of global best practices and identifying areas for improvement.

Resolving these challenges is of extreme importance not only to protect public funds but also to foster a more competitive, transparent, and accountable marketplace. Reforms that bolster the clarity and transparency of procurement procedures, encourage genuine competition, and promote the inclusion of both price and quality considerations in award criteria can help create a level playing field for suppliers, thereby stimulating innovation and enhancing the overall quality of goods and services. Such transformations would not only boost the public sector's efficiency but also bolster citizens' and, more importantly, businesses' trust in the system and its ability to serve their needs effectively. Showing that it is committed to adopting European values and principles in the process of alignment, with such reforms, Serbia would facilitate smoother integration into the EU's single market. Ultimately, a revitalised public procurement system aligned with international standards can play a pivotal role in driving Serbia's economic growth, resource allocation, and the well-being of its citizens, positioning the country for a prosperous future.

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European Policy Centre - CEP - is a non-governmental, non-profit, independent think tank, based in Belgrade. It was founded by a group of professionals in the areas of EU law, EU affairs, economics and public administration reform, with a shared vision of changing the policy making environment in Serbia for the better – by rendering it more evidence based, more open and inclusive and more substantially EU accession driven. Profound understanding of EU policies and the accession process, the workings of the Serbian administration, as well as strong social capital combine to create a think tank capable of not only producing high quality research products but also penetrating the decision making arena to create tangible impact. Today, CEP organises its work into four programme areas:

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