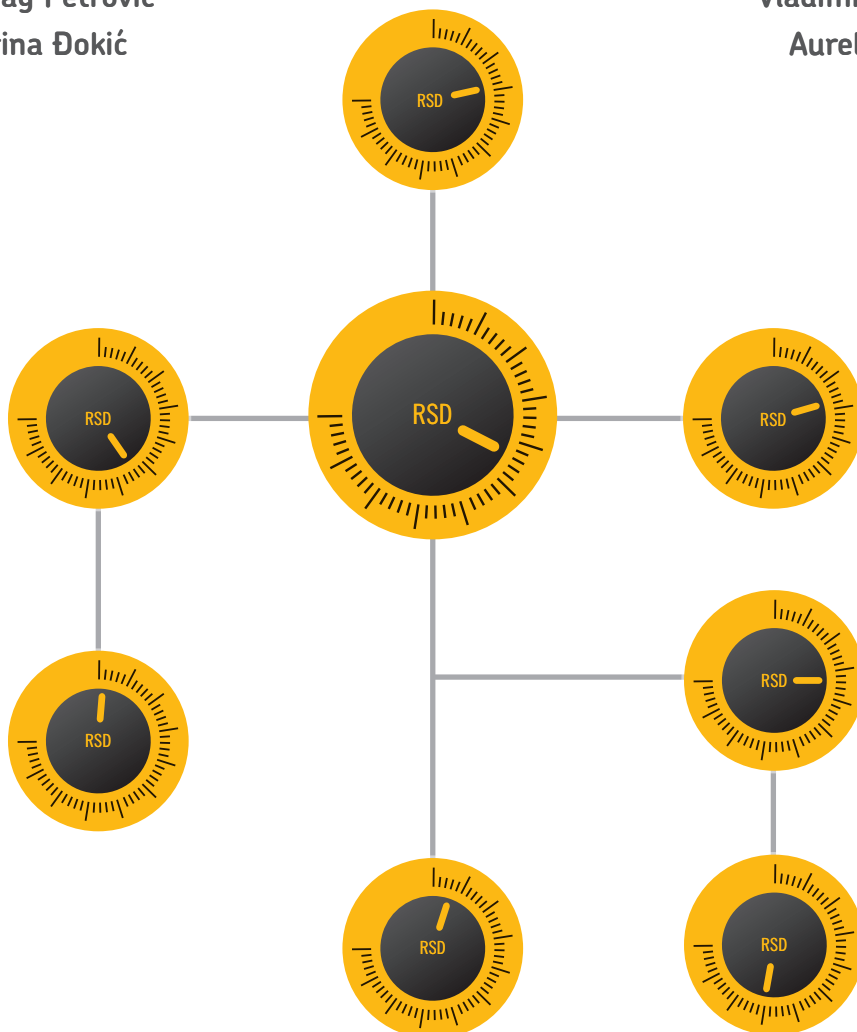


# TOOLKIT FOR CIVIL ASSESSMENT OF PUBLIC EXPENDITURE PERFORMANCE IN THE SECURITY SECTOR

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European Union Programme  
"Civil Society Facility Serbia 2013"



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## LIST OF ABBREVIATIONS

<b>BIA</b>	Security Information Agency ( <i>Bezbednosno-informativna agencija</i> )
<b>BKB</b>	The Purchasing Commission of the Federal Government, Switzerland
<b>DRI</b>	State Audit Institution ( <i>Državna revizorska institucija</i> )
<b>GAO</b>	Government Accountability Office, USA
<b>IPA</b>	Instrument for Pre-Accession Assistance
<b>IPAP</b>	Individual Partnership Action Plan
<b>KPA</b>	Academy of Criminalistic and Police Studies ( <i>Kriminalističko-policijska akademija</i> )
<b>MO</b>	Ministry of Defence ( <i>Ministarstvo odbrane</i> )
<b>MUP</b>	Ministry of Interior ( <i>Ministarstvo unutrašnjih poslova</i> )
<b>NAP</b>	National Action Plan ( <i>Nacionalni akcioni plan</i> )
<b>NATO</b>	North Atlantic Treaty Organisation
<b>NVO</b>	Non-governmental Organisation
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>RS</b>	Republic of Serbia
<b>UJN</b>	Public Procurement Office ( <i>Uprava za javne nabavke</i> )
<b>VMA</b>	Military Medical Academy ( <i>Vojnomedicinska akademija</i> )
<b>VS</b>	Serbian Armed Forces ( <i>Vojska Srbije</i> )
<b>ZJN</b>	Public Procurement Act ( <i>Zakon o javnim nabavkama</i> )

## EDITOR'S PREFACE

Spending on the security sector in Serbia (army, police and BIA) is close to 15 percent of the state budget. Even though these are significant resources, they fail to meet the needs of security sector institutions, which have not seen meaningful investment in more than two decades. It is imperative, therefore, that spending of available resources be as purposeful as possible. Instead we have been witness to numerous cases of irrational spending by these institutions, which have met exaggerated or invented requirements and not the genuine needs of the security sector. The public are well aware of scandals regarding 'body armour', 'satellites', 'Zippo lighters' and 'Putin's military parade. Furthermore, the security sector is rife with numerous, less public, irrational spending. It is, therefore, not unheard of for the poor procurement planning of security institutions to lead to delayed purchase of electricity, resulting in this resource being purchased through so-called 'reserve procurement', which at prices 30 percent higher than market value.

There are three main reasons for this. The first is that the concept of performance-oriented spending is a novelty in Serbia and it is still poorly understood how important this is to achieving savings and better (long-term) functioning of institutions. Secondly, supervisory institutions have been unwilling to move from checking the legality of spending to assessment of whether funds are actually spent on the realisation of the right goals. The DRI has published only two evaluations of procurement expediency but with a focus on efficiency and value for money, rather than on effectiveness. The third reason lies in the complexity of security sector institutions, which are large systems whose functioning is opaque to those on the outside. Raising the level of performance-oriented spending in these institutions can significantly improve the results they are able to achieve, thus improving the level of security throughout society.

It is precisely this problem that led to the creation of this toolkit. We hope that it will improve understanding of the multi-layered concept of performance-oriented spending and will show what it means – or rather, should mean – for the armed forces and police in Serbia. To this end, the toolkit is replete with concrete examples juxtaposing purpose-oriented and inexpedient spending practices. The intended audience for the toolkit are members of parliament, research centres and journalists covering security issues, with the aim of encouraging them to be more diligent in assessing how purposeful spending is in the army and police. The toolkit could also be of use to the DRI, which has yet to face the challenge of auditing expediency (and, more to the point, effectiveness) in these institutions. Additionally, the toolkit will be of use to PRO-CURE, a group of civil society organisations interested in monitoring security sector spending, as methodological handbook for case studies of effective or ineffective spending in these institutions.

# What is Performance-Oriented Security Sector Spending?

Public expenditure can be said to be performance-oriented when it is carried out in a way that is economical, efficient and effective (the three Es) – i.e. when it achieves the aims for which the funds were intended.

Aspect of performance-oriented spending	What it means?
Effective	This describes how well certain aims have been achieved – i.e. the relationship between the planned effects and results of a given activity.
Economical	This describes the minimal expenditure of funds for a given activity, without impacting the resulting quality of goods or services.
Efficient	This describes the relationship between achieved results and the resources expended in the production of goods or provision of services

As highly significant resources are invested in procurement (around 30% of Serbia's national budget), the principle of performance-oriented spending is applied most frequently to (public) procurement. Current legislation on public procurement also supports other principles, such as: competitiveness, transparency and equal conditions for bidders. Therefore, for example, greater transparency and more precise definition of the conditions for the procurement, which allows a larger number of bidders to participate in the tender, will result in increased competitiveness and the procurement authority getting the best possible deal.

Over the last two decades, increasing environmental problems and the awareness that they should be mitigated, has led to environmental concerns and energy efficiency becoming principles underpinning performance-oriented public spending. At a glance, these principles seem contrary to one of the three Es, economy, but increased spending to ensure protection of the environment and energy efficiency will bring benefits and savings in the long term. For instance, investment in 'dirty' technologies may seem cheaper at a given moment than investment in 'green' technologies but the additional costs of assuaging the damage done will eventually be greater than the initial higher cost of green technologies.



Aspect of public procurement	What it means
Competitiveness	This means ensuring the largest possible number of bidders in the procurement process.
Transparency	The procuring authority should ensure that the public procurement process is as public as possible.
Equal conditions for bidders	Obligates the procuring authority to ensure all bidders are on an equal footing.
Environmental protection and energy efficiency	Obligates the procuring authority to procure goods, services and works with a minimal impact on the environment.

## THE MEANING OF EFFECTIVENESS

When assessing performance, the most common principles applied are economy and effectiveness, indeed, whether the expenditure is as small as it possibly can be whilst satisfying the relevant need (i.e. value for money). It is also, however, common to ascertain whether the need itself has been well defined, not only from the perspective of quantity and quality of goods or services required but also from their compliance with strategic and developmental objectives.

There are two main reasons for this. The first is the inadequate strategic and developmental framework of the security sector, which does not define clear priorities and developmental goals, or the priorities defined do not reflect the genuine needs of the security institutions. Secondly, there is a widespread belief in Serbia that performance assessment is a professional and highly technical task and that the inclusion of strategic and developmental documents would certainly lead to the politicisation of the process.

On the other hand, without an evaluation of whether an expenditure contributes to the achievement of given objectives and priorities, it is difficult to assess whether it is truly purposeful. Serbia's security institutions have numerous (real) needs, which it is impossible to satisfy all at once, hence it is important to prioritise. For example, Serbia needs to acquire new fighter aircraft but also needs to invest in rescue and emergency management systems. The issue that is a greater threat to the safety of the country's citizens – aerial attack or floods – should be the investment priority. And that 'should be' determined through the formulation of public policy and expressed in strategies and developmental planning.

The latest standards in performance auditing relate not only to the auditing of transactions but also the analysis of policy documents. National audit institutions conduct analyses of policy planning and future programmes<sup>1</sup>, as well as the work of the audited institution as a whole.<sup>2</sup> The findings result have political repercussions and contribute to improved accountability of the executive branch of government, which is the ultimate purpose of performance auditing.<sup>3</sup>

The purpose of performance-oriented spending is to achieve a planned, rather than opportunistic or ad-hoc, meeting of security sector needs. It is an extremely complex and multifaceted process that involves serious strategic planning; determining of investment and development priorities; defining dynamics for responding to requirements; compiling budgets; planning and execution of procurement; as well as oversight and evaluation of funds spent.

Hence, the performance assessment reasonably considers three levels. The following pages will examine each of these levels of performance-oriented spending analysis.

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1 So, for example, the British National Audit Office regularly analyses the major projects and procurements of the British army and has carried out an analysis of plans for its transformation (Army 2020). For more information, please see: <https://www.nao.org.uk/search/type/report/sector/defence/>, accessed: 12/11/2015

2 The National Audit Office has also conducted a comprehensive performance audit of the Home Office. For more information, see: <https://www.nao.org.uk/wp-content/uploads/2014/11/The-performance-of-the-Home-Office-2013-14.pdf>, accessed 12/11/2015

3 The stated vision of the National Audit Office: "Our vision is to help the nation spend wisely. Our public audit perspective helps Parliament hold government to account and improve public services."  
See: [https://www.nao.org.uk/wp-content/uploads/2013/11/NAO\\_Strategy\\_2014-15\\_to\\_2016-17.pdf](https://www.nao.org.uk/wp-content/uploads/2013/11/NAO_Strategy_2014-15_to_2016-17.pdf), p.2, accessed: 22/02/2016

## Levels of Performance-Oriented Spending Analysis

Current practice defines performance assessment principally as analysis at the micro level. In other words, the performance assessment of a specific public procurement. Analysis at this level aims to answer the question of whether the initiation, implementation and execution of a procurement procedure is conducted in a timely fashion, efficiently and for the maximum benefit to the customer, in accordance with predetermined goals.

Even if the answer to these questions is positive, however, we cannot conclude with confidence whether the procurement was purposeful because we cannot determine whether the acquisition of something else was a greater priority. For example, in a hypothetical scenario where there is a need for an armed forces to procure both helicopters and fighter aircraft but only fighter aircraft are purchased, the procurement will be deemed ineffective even though it might indeed meet all of the performance conditions (e.g. the correct number of aircraft were acquired, with the right capabilities and at the best possible price).

In conducting a performance assessment, it is necessary to examine the bigger picture and include analysis of spending performance at the macro level. A macro-level analysis looks at whether the strategic doctrinal framework of the security sector and its individual institutions clearly outlines strategic and developmental priorities and, hence, enables performance-oriented allocation of budget resources both among and within security sector institutions. Only once macro-level analysis has been conducted can we begin to answer the question of whether a specific acquisition contributes to the achievement of an institution's strategic and developmental objectives.

As an institution's strategy documents specify the objectives and priority areas for its development, they should facilitate the determination of which requirements must be met immediately and to what extent, as well as which ones can be turned to at a later stage.

The actual allocation of resources on medium-term and annual bases, in order to meet requirements defined at the strategic level, is the subject of meso-level analysis. The meso level refers to medium-term and annual planning of finances and procurement. The focus of medium-term and annual planning is to achieve a compromise between the strategic objectives and external economic constraints. This level of analysis deter-

mines whether an institution's resources are allocated comprehensively and in a timely fashion, in accordance with individual requirements, and whether the best solutions for the satisfaction of these requirements have been selected.

From the above, it is clear that in reviewing expenditure performance analysis must be conducted on all three levels – macro, meso and micro – if it is to give a complete answer to the question of whether a specific expenditure or acquisition is purposeful. The next section of the toolkit will examine in greater detail what each of these levels of analysis entails and which documents should be evaluated in order to assess spending performance. For the sake of greater clarity, illustrative examples will be used at each stage. The toolkit will also offer suggested questions to pose when conducting an expenditure performance assessment.

	MACRO	MESO	MICRO
Main questions	<ul style="list-style-type: none"> <li>• Does the strategic developmental framework realistically determine the priorities of the security sector and individual institutions?</li> <li>• Do budgeted for programmes and activities reflect confirmed strategic objectives and priorities?</li> <li>• Are procurement plans in line with the strategic developmental framework?</li> </ul>	<ul style="list-style-type: none"> <li>• Do institutions manage their resources in a timely and comprehensive manner?</li> <li>• Are resources managed in accordance with requirements derived from specific needs?</li> <li>• Has the best possible approach been selected to meet these needs?</li> </ul>	<ul style="list-style-type: none"> <li>• Are the acquired goods, services or works of adequate quality?</li> <li>• Have they been acquired at the best possible price?</li> <li>• Was the procurement conducted in a timely, well-planned and well executed manner?</li> <li>• Was the procurement conducted and executed at the least possible cost to the procuring authority?</li> <li>• Have the objectives of the procurement been met?</li> </ul>
Who decides?	<ul style="list-style-type: none"> <li>• The Government</li> <li>• The National Assembly</li> <li>• The National Security Council</li> <li>• The President</li> <li>• The Minister</li> </ul>	<ul style="list-style-type: none"> <li>• The Government</li> <li>• The National Assembly</li> <li>• The Minister</li> <li>• The relevant department of the institution</li> </ul>	<ul style="list-style-type: none"> <li>• The Minister</li> <li>• The relevant department of the institution</li> <li>• The Commission for Public Procurement Procedure</li> </ul>
Main sources	<ul style="list-style-type: none"> <li>• The National Security Strategy</li> <li>• The Defence Strategy</li> <li>• The Strategic Defence Review</li> <li>• The Medium-term Defence Development Plan</li> <li>• The Law on the Budget</li> <li>• The Procurement Plan</li> </ul>	<ul style="list-style-type: none"> <li>• Medium-term development documents</li> <li>• Medium-term financial plans of the institution</li> <li>• Law on the Budget of the Republic of Serbia</li> <li>• The institutions procurement plans</li> </ul>	<ul style="list-style-type: none"> <li>• The institutions procurement plans</li> <li>• The procurement tender documentation</li> <li>• Minutes and decisions of the procurement commission</li> <li>• The public procurement contract</li> </ul>

**THE MACRO LEVEL:  
PERFORMANCE-LED  
DETERMINING OF STRATEGIC  
PRIORITIES**



## Strategy Documents: The Basis for Performance-oriented Spending

No country in the world has enough resources to meet the needs of its security sector all at once. This is especially true of Serbia where, after years of war, economic sanctions, decades of economic stagnation and weak investment in the security sector, security institutions simply 'need everything'. This is why requirements must be prioritised, placing those that respond to current security threats first and with a timeline and method for how they are to be addressed. The importance of establishing priorities is a result only of limited national resources but also stems from the constantly changing dynamic of security challenges, risks and threats against which the (limited) resources must be mustered. Therefore, organised crime and corruption, for example, pose a greater threat to the security of Serbia's citizens than armed aggression by another state and it is reasonable to allocate greater resources to combat these threats.

The priorities of security institutions and policy are not, however, available in individual or even annual procurement plans and must be sought instead in more general strategy documents – both those relating directly to the security sector (e.g. the National Security Strategy) and those of individual institutions (e.g. The Ministry of Interior Development Strategy or the Serbian Armed Forces Medium Term Development Plan). The sector's strategy documents and those of individual security institutions should be harmonised to avoid their objectives and priorities being incompatible or even conflicting. They should also be up-to-date, with it being standard practice to replace old documents with new ones every three to five years.

To avoid the objectives and priorities presented in these documents from simply remaining on paper, they should be included in the budgets of the institutions. Nowadays these are programme budgets, the programme units and activities of which should be the funding of strategy and development priorities of security institutions.

Thus, strategy and development documents identify the needs of security institutions that are more important and urgent for implementation compared to others, and consequently headings and funds are allocated in the budget. Only then is it possible to draft a proper procurement plan.

The best indicator that a country gives serious consideration and planning to strategy can be seen where strategy documents (sectoral and institutional), budgets and budget programmes, including procurement plans and procurement are interconnected and harmonised. In other words, a review of these documents clearly shows that an indi-



vidual acquisition or certain expense contributes not only to meeting specific needs, but also to achieving a given programme objective of an institution specified in the strategy and development documents, and for implementation of which funds have been allocated in the budget.

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## NORWAY

Norway is an example of a country that closely monitors changes on the security front, both close to home and further afield, to shape the development of its security sector. Thus, Norway after the Cold War concluded that the probability of an outbreak of armed conflict with Russia on the ground had diminished and in turn allocated most of its resources to protecting its national interests at sea (fishing and oil), which culminated in the reconstruction and modernisation of the Navy, after 2000 in particular. At the same time, one of the main tasks of ground forces has been participating in international peacekeeping operations.<sup>4</sup> Given Russia's ever increasing activities in the Arctic over the past five years and its more assertive displays of power, Norway's priorities in respect of the development of the armed forces have also changed in recent years. Thus, according to the Long-term Defence Plan<sup>5</sup> and Future Acquisitions Plan for the Norwegian Armed Forces<sup>6</sup>, Norway, between 2015 and 2023, will invest heavily in modernising the air force, i.e. purchasing F-35 fighters, as well as ground forces, in particular those tasked with operating in the far north. All these objectives, priorities and procurement plans are available in strategy and development documents and the system of defence acts in line therewith.

However, in transitional societies it is a fact that strategy documents are drafted poorly, are mutually incompatible, fail to reflect the state of play, are outdated, and applied haphazardly as a consequence. So it come as no surprise that security sector funding is wayward, and more money is spent on maintaining the status quo than on developing the system of security to the desired and planned level.

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4 For more details see: Hakon Lunde Saxi, Norwegian and Danish defense policy A comparative study of the post-Cold War era, The Norwegian Institute for Defence Studies, Oslo, 2010.

5 The New Norwegian Long-term Defence Plan - Summary, Norwegian Ministry of Defence, April 17, 2012, website: <https://www.regjeringen.no/en/aktuelt/the-new-norwegian-long-term-defence-plan/id678767/> accessed: 18 October 2015

6 Future Acquisitions for the Norwegian Armed Forces 2015-2023, Norwegian Ministry of Defence, February 2015, website: <https://www.regjeringen.no/globalassets/departementene/fd/dokumenter/rapporter-og-regelverk/acquisitions-2015-2023.pdf>, accessed: 18 October 2015

## Key Issues

### ***Security sector strategy documents***

- Are there security sector strategy documents in place (National Security Strategy, Defence Strategy)?
- Are the strategy documents outdated?
- Are the strategy documents harmonised?
- Do the strategy documents clearly define security policy objectives and priorities, and how they are to be achieved? Are they achievable?

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### ***Security institutions' strategy documents***

- Have strategy and development documents for the security institutions been adopted?
  - Do these documents set clear objectives and priorities, and ways to achieve them?
  - Are they in line with other strategy and development documents for the security institutions.
  - Are they in line with sectoral strategy documents (e.g. with the National Security Strategy)?
  - Have clear and realistic action plans been adopted for them?
  - Are these documents up-to-date?
- 

## **Programme Budgeting – The First Indication of Expedient Public Expenditure**

Programme budgeting is the allocation of financial resources to state institutions in predetermined units - programmes for the implementation of a given institution's priority objectives as identified in strategy and development documents.<sup>7</sup> It is actually a link between the priority areas of development of state institutions and individual costs and (public) procurement. It allows for monitoring whether funds are being allocated for achieving a defined strategy and development objective, and whether these funds are sufficient. If the programme units of a budget are not properly defined, i.e. not con-

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<sup>7</sup> For programme budgeting in defence see: Katarina Đokić, programme budgeting in the security sector, BCBP: Belgrade, 2015.

nected to strategy documents then the budget allocations for these programmes will not be effective, and consequently individual acquisitions will be ineffective.

Considering that programme budgeting, compared to conventional budgeting, is more transparent and gives a more detailed picture of what funds are being used for, by examining specific budget items it is possible to establish not only whether the programme expenditure is linked to strategy/development objectives but also whether the institutions are carrying out their work effectively. For example, by examining the budget of the Ministry of Defence and the Serbian Armed Forces as well as the Ministry of Interior, it can be seen that considerable resources are allocated to compensation for injuries or damage caused by state authorities and judicial fines and penalties (each institution allocates RSD 580 million). This may point to the fact that these state authorities are not doing their job properly, i.e. that they are causing damage (financial, material and immaterial) to the public and /or their legal departments are not doing their job properly. This immediately raises the question as to what can be done to reduce these costs. For example, invest in improving training, or entrust legal representation to a professional law firm?

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### **THE POLICE ACADEMY - AN EXAMPLE OF INEFFECTIVE PUBLIC EXPENDITURE BY MUP**

The budget of the Ministry of Interior for 2015 was divided into three programme units: Safe Society, Safe City and Higher Education in the field of security. In 2015 approx. EUR 3.4 million was allocated to the last programme, which is actually funded by the Academy of Criminalistic and Police Studies. Having reviewed the MUP Development Strategy 2011-2016<sup>8</sup>, as well as the MUP strategy priorities 2015-2018<sup>9</sup> we cannot establish that investment in higher education in the field of security is a MUP development priority. The assumption that investing in higher education will facilitate improved performance at MUP and the police would be correct if MUP had a policy of hiring graduates from the Academy of Criminalistic and Police Studies (KPA). However, MUP has no policy of hiring KPA graduates nor of tracking how many of them were hired to work in MUP.<sup>10</sup> To make matters worse, neither does KPA track the number of their graduates hired by MUP.<sup>11</sup> Considering that the hiring of KPA graduates holds no importance for MUP then the allocation of funds for KPA amounts to ineffective spending of MUP budgetary funds.

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8 MUP Development Strategy 2011-2016, Ministry of Interior, link: [http://www.mup.gov.rs/cms\\_cir/sadrzaj.nsf/Strategija%20razvoja%20MUP-a%202011-2016.pdf](http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/Strategija%20razvoja%20MUP-a%202011-2016.pdf) accessed: 12 December 2015

9 MUP strategy priorities 2015-2018, the Ministry of Interior, [http://www.mup.gov.rs/cms\\_lat/sadrzaj.nsf/prioritetimup.h](http://www.mup.gov.rs/cms_lat/sadrzaj.nsf/prioritetimup.h) accessed: 25 December 2015

10 MUP reply No. 06/1-4882/15 of 5 October 2015 to the BCBP questionnaire.

11 KPA reply No. 298/2 of 27 August 2015 to the BCBP questionnaire.

## Key Issues

- Are the programmes in the budget related to the objectives, priorities and outcomes identified in the strategy and development documents?
  - Are the programmes related to the powers of the security institutions?
  - Are the funds allocated to the programmes sufficient to achieve the stated objectives?
  - What is the interrelationship between the allocated funds and programmes in the budget? Does the interrelationship reflect the priorities from the strategy and development documents?
  - Do the budget items for the programme contribute to the implementation of programme and strategy/development objectives?
  - Is there a budget item/cost that is unusually high or low in the programme budget? Why is this so?
  - Do programme budgets in different calendar years (e.g. 2015, 2016) continuously contribute to the achievement of strategy objectives and priorities?
  - Are the programmes changed from year to year? Is that justified or substantiated in the strategy documents?
- 

## Procurement Planning – Translating Priorities into Individual Acquisitions

The procurement plan to meet and coordinate strategic priorities security institutions, budget options and the specific needs of the organizational unit within the institution are reported and claimed. Strategy documents and the budget serve as frameworks for selecting what will actually be procured from the large number of acquisition requests in a given year. In an effort to make large acquisitions as purposeful as possible i.e. in line with the strategy goals of development, some countries (such as Norway) prepare medium and long-term procurement plans. Of course, these plans are subject to an annual audit, in order to allow for the various changes in circumstances.

In Serbia, under the Public Procurement Act, the institutions themselves have a duty to regulate procurement planning by way of internal public procurement rules, based on the model drawn up by the Public Procurement Office. In it, the institutions, while taking into account their own (organisational) specificities, regulate:

- procurement planning (criteria, rules and means for identifying public procurement acquisitions and the estimated value, methods for surveying and researching the market),
- responsibility for planning,
- public procurement objectives,
- manner of performing obligations,
- the means of ensuring competition,
- public procurement implementation and oversight,
- method of monitoring the execution of public procurement contracts.

Internal rules and procedures form an actual “roadmap” of responsibility for drafting a procurement plan within an institution, which in turn greatly facilitates internal and external oversight of procurement (expediency).

Pursuant to the Public Procurement Act, security institutions have a duty to prepare an annual procurement plan for the current year by 31 January, consisting of:

- a procurement plan,
- a procurement plan to which the law does not apply, and
- a defence and security procurement plan.

The procurement plan is submitted to the Public Procurement Office and the State Audit Institution.

The law also stipulates that contracting authorities must include the following elements in the plan:

- the number of (public) procurements;
- the item being (publicly) procured;
- the amount of funds earmarked for (public) procurement;
- information on allocation in the budget, or a financial payment plan;
- the estimated value of (public) procurement, annually and in total;
- the type of award procedure, or the provision of this law under which it does not apply to the procurement;
- tentative start date for the procedure;
- tentative contract award date;
- tentative contract performance date.

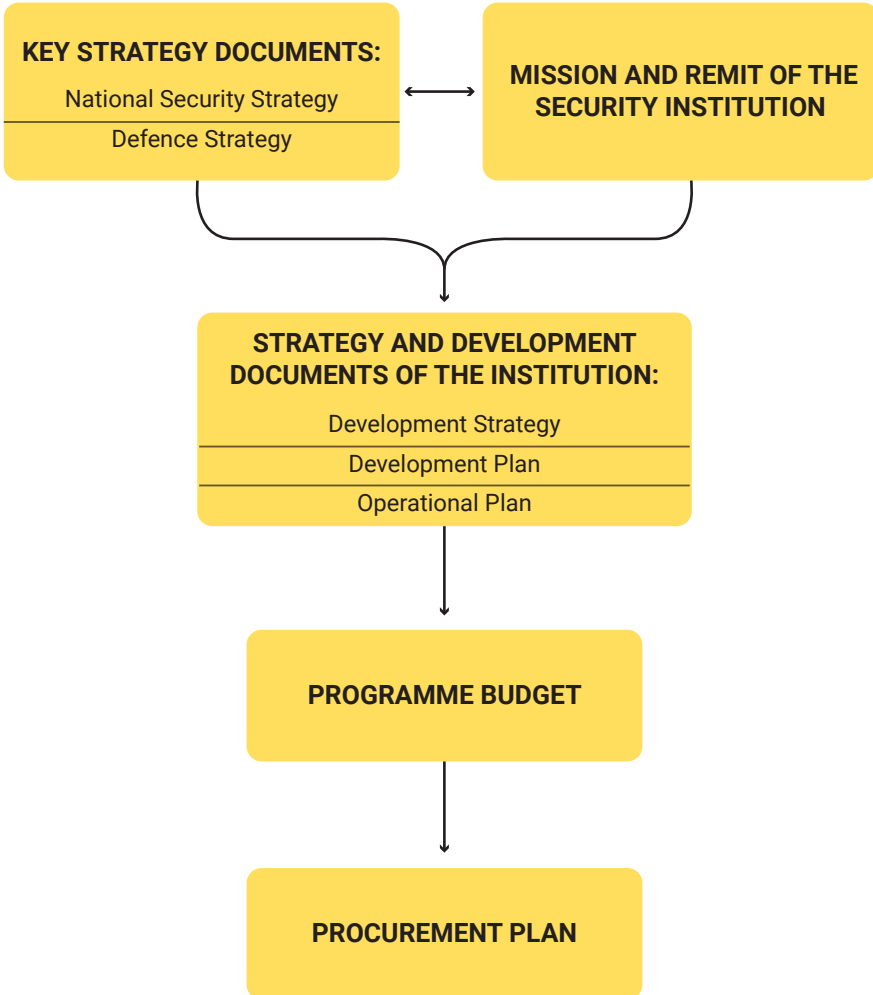
Of particular importance is the provision under which contracting authorities must specifically state in the procurement plan the reasons and justification for each procurement and how the estimated procurement value was calculated.

The estimated procurement value may be increased by a maximum of 10%, save in cases of unforeseen circumstances the occurrence of which does not depend on the will of the contracting authorities (e.g. accidents, natural disasters, emergencies). The procurement plan may be amended but only as part of a budget rebalance, whereby all amendments must be explained and visible in relation to the initial plan. From the point of oversight of procurement (expediency), another important obligation for contracting authorities is to submit procurement plan progress reports for the previous year to the UJN and DRI by 31 March of the current year.

### Key Issues

- Whether a contracting authority has adopted the procurement plan by 31 January?
  - Is the procurement plan in line with the contracting authority's budget and financial plan? Are there any acquisitions that are not included in the strategy and budgetary/ financial documents of the institution, as well as the needs of the organisational units of the contracting authority?
  - Does the procurement plan contain all statutory elements, and whether they have been completed properly?
  - Are individual acquisitions clearly justified in the procurement plan?
  - Does the procurement plan clearly state how the market assessment was made in order to determine the estimated value?
  - Are there written notes (e.g. records) of market research?
  - How did the budget rebalance affect the procurement plan?
  - Were there any acquisitions during the year that were not provided for under the procurement plan?
  - Did the contracting authority adopted an internal procurement rulebook?
  - Does the internal procurement rulebook provide for clear and detailed procurement planning?
-

## A Diagram of Expedient Security Sector Public Expenditure



# THE MESO LEVEL: EXPEDIENT FINANCIAL PLANNING AND PROCUREMENT PLANNING





The remit and strategy objectives of an institution call for the implementation of certain activities. Appropriate resources are needed to carry out these activities<sup>12</sup>. The financial plan is based on the calculation of costs of acquiring and using resources in a given period. In this way, financial planning (should) links the objectives and expenditure of the institution.

Institutions should, as part of long-term development plans, identify the activities to be undertaken in order to achieve certain objectives and earmark the tentative resources required for the implementation of these activities. Financial plans are limited however by the amount of funds that an institution has at its disposal, and this amount varies depending on the economic situation. Therefore, at the level of medium-term and annual planning (the meso level) long-term plans face real financial constraints, resulting in specific financial plans and procurement plans.

Purposeful spending of limited amounts of money requires comprehensive planning. It involves identifying the resources necessary relative to planned (priority) activities, managing existing resources and identifying what resources are lacking, formulating alternative solutions to ensure the necessary resources and comparing them so as to select the most feasible solution.

The following text provides an overview of questions that should be asked in order to determine the efficiency of planning at this level. Each question includes the following notes:

- What should performance assessors check to determine whether planners at the Ministry of Defence or the Ministry of Interior responded to the given question;
- An explanation as to why it is important that the ministries answer the given question in the planning process;
- Examples that illustrate the risks and issues that arise when planning. Examples are hypothetical, albeit based on existing practice;
- The most important documents in which assessors can find the relevant information.

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<sup>12</sup> In this paper resources include people, equipment, offices and facilities, as well as financial resources for their development, support and maintenance. (Definition from the previous Rules on Planning, Programming, Budgeting and Implementation in the Ministry of Defence and the Serbian Armed Forces. "Official Military Gazette" no. 31/08: Article 3(1)(8).

## HOW TO ACCESS THE DOCUMENTS?

*It is possible that available documents do not contain all the requested information. In this case, assessors are left to rely on interviews or make enquiries with institutions by way of freedom of information requests. Members of parliament can ask parliamentary questions, and the Defence and Internal Affairs Committee may also request information and clarifications from the ministries. Some documents are classified, and these will be marked (T), and are not available to the civil society assessors. They are, however, available to members of parliament (all MPs who are not members of the Security Services Oversight Committee must first obtain security clearance) or to authorised state auditors (also subject to security clearance).*

The list of questions is followed by practical examples showing the application of these questions to the case at hand. The purpose of the examples is to demonstrate the logic of expediency checks at the level of medium-term and annual planning, using only questions that are appropriate to the case at hand.

## Assessing the Expediency of Planning: An Overview of Key Issues

### Issue 1: Has the institution identified the resources necessary to meet the defined goals?

What should be checked

- Have all resources necessary for implementation of a given activity been identified?
- Has the scale of the particular resources necessary to meet the defined goals been identified?
- Has the quality of the particular resources necessary to meet the defined goals been identified?

Importance

The implementation of a specific activity requires the engagement of employees or part-time workers and certain equipment, and may require travel, different types of works, etc. Budget beneficiaries should establish what resources they require for the implementation of different activities in order to express their plans in the form of costs. This obligation is not just one of common sense, but it is grounded in the legal and political framework in which the institutions operate:

- Budget beneficiaries have a statutory duty to incorporate a detailed explanation of expenditure and costs in the draft medium-term and annual financial plans that they submit to the Ministry of Finance.<sup>a</sup>
- Bills sent forward to the National Assembly must, as part of the statement of reasons, include an assessment of the financial resources needed to implement the law.<sup>b</sup> Valid estimates include references to resources that a particular institution will have to provide in order to implement the law (for example, where it is necessary to establish a new organisational unit, which requires manpower, office space, equipment, etc.).<sup>c</sup>
- Strategy action plans should state what resources are required to implement any measures envisaged.
- The Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces stipulate that MO and VS organisational units must begin planning by identifying the actual need for acquisitions, which are necessary for carrying out regular and planned activities within the remit and which are in line with the set objectives.<sup>d</sup> When planning procurement, organisational units are obliged to<sup>e</sup>:
  - » analyse work plans and objectives that are defined in the medium-term and annual planning documents;
  - » check whether the technical specifications and quantities of a particular acquisition correspond to the actual needs of the MO and VS organisational units.
- On the other hand, public procurement guidelines in the Ministry of Interior, do not set down specific criteria to be considered during procurement planning, but they do provide that procurement request should include the facts in connection with the acquisition at hand.<sup>f</sup> MUP otherwise states that, in cases where the workload of some organizational units is increased on account of new powers, the organisational units in question are required to show and explain the needs arising from the additional activities in the procurement plan.

Therefore, when assessing expediency, account must be taken of whether the resources needed to implement each planned activity have been clearly identified prior to preparing the financial plan.<sup>g</sup>

a The Budget System Act: Article 37(2)(2).

b Standing Orders of the National Assembly: Article 151(2)(4).

c See the Information Security Bill: pgs. 21-23.

d Article 12

e Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 9

f Public Procurement Guidelines in the Ministry of the Interior: Article 6(2).

g Vidić, B. and B. Živanović. Programme Budgeting and Public Procurement in MUP. Presentation held at the seminar "Expediency of Security Sector Public Procurement." Niš, 15 April 2015.

## Example

There are plans to increase laboratory testing capacities in order to meet international standards. The laboratories are to be fitted out and employees trained to work with the new instruments. However, during planning there an omission was made in respect of engaging persons to develop work procedures that will meet the desired international standards. This means that the (additional) costs of hiring employees or procuring services to develop procedures will not be duly reported in the financial plan.

## Documents

- Explanatory Note to the proposal of funds required by budget beneficiary that is enclosed to Budget Bill of the Republic of Serbia: does not explicitly list resources but allows for a comparison of economic classifications in the budget with the objectives and indicators of individual programme activities and projects.

MO and VS:

- Long-Term Defence System Development Plan
- Medium-Term Defence System Development Plan (T). Programmes, programme activities and projects, which are part publicly available in the Explanatory Note to the proposal of funds required by budget beneficiary, form an integral part of the Medium-Term Development Plan.
- Annual plans of responsible units (e.g. Equipment Plan, Construction Plan, Scientific Research Plan, etc.), (T)

MUP:

- Strategy action plans - if adopted. If resources are not directly listed, but expressed as financial amounts, the question should be asked as to what the planned amounts relate to and compare the answers to the activities and indicators set out in the action plan.
- Project documentation for each of the projects financed from IPA funds and bilateral projects.

**Issue 2: Has the institution identified which resources already exist and could be used to achieve the defined goals?**

What should be checked

- Is there an adequate record system for human and material resources?
  - Has an inventory been taken during the course of the planning, i.e. a check made as to whether the existing quantity of material resources is sufficient for implementation of the planned activities?
  - Has a check been made during the course of the planning as to whether existing material resources are of the requisite quality for implementation of the planned activities?
  - Has an assessment been conducted during the course of the planning as to whether there is an adequate number of employees to implement the planned activities? Have the know-how and skills of employees been assessed having to the needs arising from the planned activities? Has a need for additional training been identified?
  - Have the costs of using existing resources been clearly expressed and documented?
  - Does the plan include an assessment of the opportunity costs of using existing resources and an assessing as to whether the use of existing resources prevented/impeded the performance of programme activities and projects?
  - During the course of the planning were there instances where departments/offices responsible for procurement planning notified certain organisational units that the proposed procurement plans that these units submitted were not in compliance with the criteria set forth in the internal public procurement rules and other rules of the institutions?
-

## Importance

Institutions often already have certain resources at their disposal necessary to implement a given activity or project. These resources need not be sufficient, but they can certainly be adequately utilised.

When planning, the ideal situation is to first take an inventory of existing resources and compared them with the resources necessary for implementation of the planned activities in order to identify what resources are lacking. It might be the case that the resources necessary for implementation of the activities already exist, but are not of the requisite quality.

The Ministry of Defence and MUP have undertaken in their internal public procurement rules to take account of existing resources when planning procurements:

- The Ministry of Defence includes, inter alia, in procurement planning criteria, levels of supplies and reserves.<sup>a</sup>
- MUP suggests that organisational units provide an explanation of the facts as they stand when making a case for an acquisition. If it concerns equipment, it is necessary to indicate when the existing equipment was procured and whether it is being decommissioned, how much of this equipment is available, the extent of the annual needs, and how they did without this equipment until now [if not procured earlier].<sup>b</sup>

a Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 9(1)(6).

b Public Procurement Guidelines in the Ministry of the Interior: Enclosure 1: Public procurement application form.

## Example

Spare parts are required for the repair of certain types of equipment. There is no proper record of material resources or it is not take into account when planning. As a result, spare parts which are already in stock are procured.

There are plans to introduce a new software application, although most of the existing computers do not support installation of the new software.

## Dokumenta

- Documents that cover records of human and material resources (classifications, lists of jobs, records of movable assets);
- Proposals of financial plans that organisational units, or planners of programmes, programme activities and projects submit to the Finance and Budget Department (MUP)/Budget Administration (MO);
- Proposals of procurement plans that organisational units submit to organisational units in charge of procurement;
- Written notices sent by the Department of Material Affairs (MUP) or the Procurement Department (MO) to organisational units in respect of discrepancies identified with procurement planning criteria in the proposals of the procurement plans<sup>a</sup> (if any). Written notices in which organisational units report on corrections to the proposed procurement plans and determine actual needs (if any).
- Checks on the number of employees as provided for in the next budget year, which the MO and MUP submit to the Ministry of Finance alongside their proposed financial plans (budgets).

*Pay attention to the requirements of the forms on which organisational units submit proposals for financial plans and procurement plans: whether an institution has failed to include a request on a form that would give a clearer picture of the current situation?*

<sup>a</sup> Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 13



### Issue 3: During the planning phase, did the institution assess how long it will be possible to use existing resources?

What should be checked

- Whether organisational units, when making a case for an acquisition, take into account the shelf life of existing material resources?
- Does financial planning include an overview of records in respect of employee numbers and educational profiles of employees that will retire in the near future?
- Does financial planning include a risk analysis of losing employees to the private sector?

Importance

Whether some solutions in the medium and long-term are cost-effective largely depends on the answer to the question of how long it will be possible to use existing resources. If existing material resources are about to expire (or have already expired), the question of the cost-effectiveness of their maintenance arises. In fact, the maintenance of obsolete equipment can be more expensive than the procurement of new equipment. When planning activities note need also be made of the future availability of human resources (whether new recruits, training, etc. will be required), and the cost-effectiveness of investing in their development.

Example

Fuel is not used in order to make savings. However, the chemical properties and the quality of the fuel deteriorates over time. These savings may reduce the ability of the units that are saving the fuel to respond to some urgent tasks.

Certain positions are occupied by employees with educational profiles for which there is great demand in the private sector, and there is a tendency of employees leaving quickly. Every time a new recruit is hired requires an investment in their training for specific aspects of the job. In the long term, a more effective solution for the institutions might if they procured the appropriate service from specialised companies rather than hiring and training new recruits from scratch. (If necessary, institutions when tendering services could stipulate that bidders' employees must have security clearance.)

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Documents

- Proposals of financial plans that organisational units, or planners of programmes, programme activities and projects submit to the Finance and Budget Department (MUP)/Budget Administration (MO).
- Proposals of procurement plans that organisational units submit to Department of Material Affairs (MUP) and the Procurement Department (MO)
- Overviews of the number of employees and funds required for jubilee awards and severance payments on retirement that the MO and MUP submit to the Ministry of Finance alongside their proposed financial plans (budgets)

MO and VS:

- Medium-term plan and defence system development programme and medium-term plans of responsible units (T)
-

#### Issue 4: Has the institution clearly determined what resources are lacking?

What should be checked

- Do the institutions' medium-term plans include an overview of resources that are lacking, i.e. staffing plan, training plan, organisational capacities development plan, equipment plan, development plan for material and equipment capacities?
- Have the priorities of the medium-term plans been transferred to the annual financial plans and procurement plans?

Importance

Once a comparison is made of resources necessary for the implementation of planned activities and those already available to an institution, the resources that are lacking are identified. They should be defined for the medium-term, and for certain demanding activities (for example, equipping the armed forces), and in the long term, taking into account the answers to questions 1, 2, and 3.

Example

The medium-term plan of an institution does not contain clearly state the resources necessary for the implementation of planned activities. The annual financial plan and procurement plans have been prepared ad hoc.

Documents

- Medium-term financial plans
- Annual procurement plans

MO i VS:

- Long-Term Defence System Development Plan of the Republic of Serbia
- Medium-Term Defence System Development Plan and Programme (T).

MUP:

- Development Strategy of the Ministry of Internal Affairs and MUP Development Strategy Action Plan
- Action plans for the implementation of other strategies (if any)
- Project documentation for each of the projects financed from IPA funds and bilateral projects

### Issue 5: Has the institution determined alternative ways to provide the necessary resources?

What should be checked

- Is there a possibility of the necessary resources (including know-how that employees should possess for certain activities) being procured through donations or through international cooperation? Are the terms and conditions of donations taken into account during the planning phase?
- Is it possible to procure a service that would compensate for the lack of certain resources (for example, lack of necessary equipment or a shortage of staff with the appropriate profile for carrying out necessary activities)?
- Is it possible to extend the shelf life of existing resources through the procurement of maintenance services?
- Was market research conducted when preparing the financial plan?

Importance

Often there are several possible solutions available for procuring the necessary resources, including donations and international cooperation and cooperation with local institutes. To make the right choice, an overview of all possible solutions is needed. The risk of ineffectiveness is particularly pronounced if the plan is limited to repeating the practice of previous years, while alternative options to meet specific needs are overlooked.

The Ministry of Defence recognises the need to examine different solutions when it comes to procurement planning. The MO and VS Rules explicitly state that market research should include researching the possibilities of meeting contracting authorities' needs in a different way.<sup>a</sup> In addition, preliminary analyses that are conducted by the Serbian Armed Forces after having established the need for a specific asset (primarily weapons or military equipment) contain an assessment of various alternatives to meet those needs.

Example

Considering that Serbia is committed to participating in peacekeeping missions, one of needs that arises is the transport of units to the mission area. Serbia currently does not possess appropriate transport aircraft. Possible solutions would be: the acquisition of aircraft, procurement of transport services and international cooperation (planes from other countries transporting Serbian units).<sup>b</sup>

## MO and VS:

- Medium-Term Defence System Development Plan and Programme (T).
- Preliminary analyses that are conducted especially for weapons and military equipment and answer the question as to how a specific need will be met.
- Medium-term plans for international military cooperation and civil-military cooperation
- Bilateral cooperation treaties; Individual Partnership Action Plan (IPAP) between the Republic of Serbia and NATO.

## MUP:

- MUP Development Strategy Action Plan
- Medium-term work plan
- Annual work programme
- Annual work plans of organisational units
- International treaties
- Decisions on donations<sup>c</sup>.

It would be useful to request the minutes from the collegium of ministers at which strategy documents and proposals for medium-term and annual financial plans are set forth and check whether alternatives to meet specific needs were discussed.

## Procurement plans:

- Records or other documents containing information on market research;
- Procurement applications that organisational units submit to the organisational units in charge of public procurement.

a Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces, Article 20.

b Example given in Forca (2014): 215.

c Pursuant to the Public Procurement Guidelines, if an acquisition is financed from a donation, the end user must enclose a decision in respect of the donation along with the procurement application. (Guidelines: Article 6(3))

**Issue 6: Have previous activities and procurements been evaluated?**

What should be checked

- Have the same type of activities been implemented in the past, i.e. has a need for them been identified in the past? If so, has an evaluation of the ways in which this need was met been conducted?
  - Was the evaluation of previous activities taken into account when deciding on how to meet the corresponding need (i.e. when identifying possible solutions and the choice between them)?
  - Was the previous solution rated favourable or unfavourable?
  - Was the previous solution, which was rated as unfavourable, selected again?
  - If several solutions were tested, which one had the greatest impact? Which one incurred the least minimum short-term/medium-term/long-term costs? Was the solution that in the past has proven short-term/medium-term/long-term most to be the most cost-effective taken into account when deciding?
-

The evaluation provides information on the effectiveness, efficiency and economy of some already tried and tested solutions, thereby facilitating improvements in planning. In order to obtain this information, a comparative analysis must be made of the implementation of financial plans and procurement plans on the one hand and the level of progress with regard to planned activities and desired results on the other.

The Organisation for Economic Co-operation and Development (OECD) recommends that annual financial reports should contain information on actual revenue and expenditure during the past year and an updated forecast for the current year. Furthermore, annual financial reports should include non-financial performance information, including a comparison of performance targets and actual results achieved.<sup>a</sup>

Programme budgeting, which was introduced to Serbia in 2015, should significantly simplify the process of evaluating previous activities. Namely, budget beneficiaries set themselves benchmarks (indicators) on the basis of which they can regularly monitor the performance of their programmes, programme activities and projects. The Ministry of Finance instructs all budget beneficiaries to, by the end of February, conduct an evaluation of results achieved in the previous year, whereby this evaluation should serve as the basis for financial planning going forward. Of course, the success of an evaluation depends largely on the selection of benchmarks and performance level set (for benchmark targets).

In respect of procurement planning, the Ministry of Defence and Ministry of Interior have certain procedures in place for availing of information on past performance in the planning process.

- The Ministry of Defence, as part of public procurement planning criteria, includes
  - » indicators related to the consumption of goods and retention of service providers or works (daily, monthly, quarterly, annually, etc.);
  - » collection and analysis of existing information on previously concluded contracts.
- The Ministry of Interior states that planning procedures include quantitative and qualitative analysis of recent acquisitions and reasons for possible excess inventory.<sup>b</sup> These procedures are not, however, laid down in the Public Procurement Guidelines.

a OECD (2002): 8.

b Vidić, B. and B. Živanović. Programme Budgeting and Public Procurement in MUP. Presentation held at the seminar "Expediency of Security Sector Public Procurement." Niš, 15 April 2015.

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**Example**

An internal audit at an institution finds that it would be more cost-effective to procure lawn care services than pay a person to do the job and maintaining the equipment. The person who has been tending to the lawns retires, and the condition of the equipment is such that it needs to be overhauled. A decision must be made as to whether a new person will be hired and a tender opened for equipment overhaul services or whether a tender will be opened for lawn care services. Are the findings of the internal audit taken into consideration?

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**Documents**

- Documents concerning the annual evaluation of programmes, programme activities and projects
  - Internal audit reports
  - State Audit Institution reports (if any).
  - Analyses of recent procurements prepared by organisational units in charge of procurement and material activities (if any)
  - Final financial statements - check whether they are accompanied by certain conclusions and recommendations?
  - Relevant analyses of civil society organisations (if any)
  - Proposals of financial plans that are submitted by organisational units
  - Proposed procurement plans that are submitted by organisational units
  - The minutes from the collegium of ministers at which the proposed financial plan was finalised for submission or instructions for the preparation of the financial plan for the next year were adopted (MO: ministerial instructions) or Budget Plan (MUP).
-



**Issue 7: During the planning phase, did the institution take into account future events and the costs of each proposed solution?**

What should be checked

- Are political, security, technological or economic changes expected that would increase the costs of implementing a given solution or significantly hamper/prevent its implementation?
- Does the plan phase include an analysis of hidden costs?
- Did the previous analysis of direct and hidden costs of each possible solution take into account future trends and events?
- During the planning phase are the constraints imposed by current laws or laws whose adoption is expected (whether a given solution would be in compliance with the law) taken into account?
- Does the implementation of a selected solution provide a source of additional income?
- Does the implementation of a selected solution provide other benefits that cannot be directly expressed in monetary terms (training of personnel, development of technical capacity for other projects, etc.)?
- During the planning phase is information concerning environmental impact considered?
- During the planning phase is information on the energy efficiency or environmental consequences of the possible solutions considered?
- Did the previous analysis include information on the social benefits of opting for a particular solution (e.g. support for social entrepreneurship)? During the market research phase, did the organisational unit that plans procurement consider the possibility of reserve public procurement contracts?
- Did the previous analysis include information on the possible security risks of opting for given solutions (e.g. the risk of classified information being leaked)?

The cost of opting for a particular solution not only includes the price, for example, the procurement of certain goods, but also all of the so-called hidden costs, future costs related to use, maintenance and decommissioning. In addition, it is important to take into account the long-term feasibility of a particular solution, and also the additional benefits that it can provide.

Hidden costs include:<sup>a</sup>

1. distribution costs (initial transport and delivery costs);
2. operating costs (plants, energy, equipment, staff);
3. maintenance costs (servicing, workshop and institutional maintenance);
4. technical documentation costs (manuals, directories, standards);
5. training costs (training of operators and maintenance personnel)
6. inventory costs (spare parts, materials, warehouses);
7. information system costs (for inventory monitoring);
8. disposal and decommissioning costs..

The existing legal framework also requires the Ministry of Defence and MUP to hidden costs into account during the procurement planning phase.

*The Public Procurement Act prescribes that the estimated value of an acquisition must be based on market research that includes a check of the price, quality, warranty period, maintenance and the like.<sup>b</sup> In addition, when calculating the estimated value of the procurement of services, the contracting authority must include all costs associated with the service that will be incurred by the bidder.<sup>c</sup> The same applies to the procurement of works: the value of the work also includes the value of all goods and services which are necessary for the performance of a public works contract. In addition, the contracting authority must separately indicate in its decision to tender the value of materials, goods and services that it is providing itself.<sup>d</sup>*

a Andrejić and Sokolović (2009): 41.

b Public Procurement Act: Article 64.

c Public Procurement Act: Article 66

d Public Procurement Act: Article 67

Some of the elements of the criterion economically most advantageous tender which proposed the Act<sup>e</sup>, should also be taken into account even when making financial plans and procurement plans, and choosing the best solution to meet a specific need::

- technical and technological advantages;
- environmental benefits and environmental protection;
- energy efficiency;
- after-sales service and technical assistance;
- warranty period and type of warranties;
- obligations concerning spare parts;
- post-warranty maintenance;
- functional characteristics;
- social criteria;
- life cycle costs

The MO and VS Rules also include the following in procurement planning criteria<sup>f</sup>:

- whether the acquisition results in additional costs, what is the amount and the nature of thereof and whether it is cost-effective as such;
- public procurement lifecycle costs (including the costs of training, spare parts and servicing, usage and maintenance, as well as disposal costs).

The US Government Accountability Office (GAO), as part of its procurement assessment methodology, includes a check as to whether decision-makers within the institutions take into account pending legislation that might affect acquisition policies and processes. The GAO also checks whether the impact of unforeseen events and emergencies on procurement has been assessed during the procurement planning phase. Finally, the GAO examines whether long-term financial outlooks have been taken in account during the procurement planning phase.<sup>g</sup>

e Public Procurement Act: Article 85(2).

f Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 9

g GAO, 2005: 15.

## Example

Equipment, the use of which falls into a legislative “grey area”, is being procured for the traffic police, while at the same time there is a campaign to ban use of the equipment concerned. It is likely that the money for the purchase of the equipment will be “wasted”.

When procuring parts of uniforms for units assigned to peacekeeping missions, the weather conditions in which they are to be used (high humidity, high temperature) are not taken into account. The parts of the uniforms become threadbare quickly and become unusable, which ultimately puts the missions and safety of employees at risk.

## Documents

- Records or other documents containing information on market research
- Proposals of financial plans that organisational units, or planners of programmes, programme activities and projects submit to the Finance and Budget Department (MUP)/Budget Administration (MO).
- Proposals of procurement plans that organisational units submit to the organisational unit in charge of preparing the coordinated procurement plan;
- Requests for individual acquisitions submitted by organisational units to the Procurement Department (MO) or the Public Procurement Department (MUP) - pay attention to whether there are any notes on the need to train users and maintenance personnel, the need to procure spare parts and consumables, the need for maintenance, as well as notes regarding the warranty period, shelf life, and the deadline for providing the service.

MO and VS:

- Medium-Term Defence System Development Plan and Programme (T).
- Annual plans of responsible units (equipment plan, construction plan, etc.) (T)
- tactical studies and corresponding prior analyses, minutes of meetings at which they are adopted (primarily applies to NGOs) (T)
- project documentation for capital projects (possibly T)

MUP:

- MUP medium-term plan
- Annual work programme
- Annual work plans of organisational units
- Project documentation for each of the projects financed from IPA funds and bilateral projects (if relevant).

**Issue 8: During the planning phase, did the institution consider the advantages and disadvantages of each proposed solution?**

What should be checked

- Was a preliminary analysis of direct and hidden costs for each of the possible solutions conducted before a decision was made in favour of one?
- Was the preliminary analysis based on market research? What is the time lag between the market research and the cost analysis?
- Does the preliminary analysis include information on the time frame in which it is possible to implement all of the possible solutions (deadlines for the supply of goods/works or services, the time frame required to train employees, the time required to install equipment, etc.)?
- Have all the hidden costs of the various solutions been compared?
- Does the preliminary analysis include a comparison of non-financial risks?
- Does the preliminary analysis include a comparison of the indirect and non-financial benefits of opting for each of the possible solutions?
- Does the cost analysis yield clear conclusions about which solution is most cost-effective in the short/medium/long-term?
- Does the analysis contain clear and substantiated recommendations in favour of one of the possible solutions?
- Does the solution that is eventually adopted reflect the recommendations made in the preliminary analysis?

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**Importance**

A key stage in opting for a particular solution is analysing the pros and cons of each of the solutions put forward. Proposed solutions are compared not only against the direct costs that they incur, but also against the hidden and indirect costs (the need for training, maintenance, and for example, respect for the principle of energy efficiency), based on the results of an earlier evaluation and future expectations. Therefore, planners need to have all the information from the preliminary questions at their disposal in order to make a comprehensive comparison of alternative solutions to meet a specific need.

The Ministry of Defence makes explicit provision for comparing alternative solutions when planning procurement. In fact, Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces requires organisational units, during the procurement planning phase, to assess whether there are other possible solutions to meet the needs and what the pros and cons of these solutions are compared to the existing ones.<sup>a</sup> In addition, the Rules, as part of the planning criteria for each acquisition, include a comparison of the costs of maintaining existing resources with the cost of purchasing new, the cost-effectiveness of an overhaul, as well as the risks and costs in the event no acquisition is made.<sup>b</sup>

a Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 9(1)(5).

b Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 9(1)(8) and (10).

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**Example**

A donation of high fuel consumption vehicles made by a manufacturer that does not have a large number of dealerships in Serbia nor a developed network of service centres, seems at first glance like a better solution than purchasing new vehicles, but the question is whether it is worth it in the long-term.

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## Dokumenta

- Medium-term and annual plans (mentioned above)
- Minutes from the collegium of ministers at which medium-term and annual work plans and financial plans are set forth
- Records or other documents containing information on market research
- Proposals of procurement plans that organisational units submit to the Department of Material Affairs, i.e. Logistics Department of the Police Administration (MUP) and the Procurement Department (MO)

## MO and VS:

- Minutes from the Combat Arms Council, the Council of the J-5 Administration of the VS General Staff, the Main Military Technical Council and the joint collegium of the MO and General Staff at which tactical studies and preliminary analyses are considered.
-

## Issue 9: Is the budget realistic?

What should be checked

- Is the financial planning based on information concerning necessary acquisitions?
- Do the amounts envisaged in certain economic classifications correspond to the actual costs of budgeted goods, services, works and gross salary?
- What percentage of budgeted funds go unspent?
- What percentage of acquisitions are not made in due time?

Importance

A selected solution is effective if it is economical, yet feasible, especially from the standpoint of estimated costs and time. Underestimating the costs of necessary resources or the time required for certain activities (procurement, training, etc.) can lead to money being wasted without results being achieved and actual needs being met. Money is being spent (or has been reserved, and cannot be spent on other activities), and the activity is not implemented fully and the problem in need of solving remains. On the other hand, unusually high amounts of funds allocated to certain economic classifications in the budget are also a “red flag” and call for a review of the planning process.

The Ministry of Finance instructs budget beneficiaries to budget for their capital projects in a way that is “achievable and accountable from the fiscal and economic point of view”, and bearing in mind the economic situation and the level of capital expenditure in previous years.<sup>a</sup>

When it comes to planning specific acquisitions, MO and VS Rules require organisational units to check whether the estimated value of the procurement is appropriate having regard to the objectives of the procurement, and bearing in mind the technical specifications, quantities required and state of play on the market.<sup>b</sup> MUP Guidelines, in more general terms, require organisational units to explain how they determined the estimated value of the procurement.<sup>c</sup>

<sup>a</sup> Guidelines for drawing up the budget of the Republic of Serbia for 2016 and forecasts for 2017 and 2018: 10

<sup>b</sup> Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces: Article 9(1)(3).

<sup>c</sup> Public Procurement Guidelines in the Ministry of the Interior: Article 6(1).



- Budget Act of the Republic of Serbia, including the Explanatory Note to the proposal of funds required by budget beneficiary
- Overview of capital projects that MO and MUP submit to the Ministry of Finance alongside the draft financial plans
- Overview of project loans and an overview of donations that MO and MUP submit to the Ministry of Finance alongside the draft financial plans
- Records or other documents containing information on market research
- Proposals of procurement plans that organisational units submit to the Department of Material Affairs, i.e. Logistics Department of the Police Administration (MUP) and the Procurement Department (MO)
- Written notices sent by the Department of Material Affairs (MUP) or the Procurement Department (MO) to organisational units in respect of discrepancies identified with procurement planning criteria in the proposals of the procurement plans (if any). Written notices in which organisational units report on corrections to the proposed procurement plans and determine actual needs (if any).
- Annual procurement plans :
  - » o procurement plan
  - » o defence and security procurement plan and defence and security procurements to which the Act does not apply (T)
- Annual financial reports
- Internal audit reports
- DRI reports (if any)

#### MO and VS:

- Ministerial instructions;
- Decision on defence financing;
- Requests for commitments on the basis of multi-year contracts on a special form provided by planners of programmes, programme activities or projects to the Budget Administration not later than 10 days of receiving a decision on financing;
- Project documentation for capital projects.

#### MUP:

- Budget plan
- Project documentation for each of the projects financed from IPA funds and bilateral projects.

### Issue 10: Is budgeting and resource use consistent?

What should be checked

- Are costs consistent?
- Is budget expenditure in line with the medium-term forecasts?
- Are there significant changes in expenditure in the same economic classifications from year to year?
- Are there significant changes in the financial plans after they have been presented at the collegium of ministers?
- Are projects completed on time?
- Are there cases of procurement for which no funds have been allocated in the budget at the time of its adoption (unplanned donations, budget rebalance, etc.)?
- Are there cases of acquisitions not being used? If yes, how often do they occur?
- Is there a plan for using and obtaining resources in case of urgent need?

Importance

Frequent changes in priorities or preferences for the way in which a given need is to be met may point to poor planning or a replacement planning process ad hoc to political pressures.

As a result, there is high risk of ineffective spending: unsuitable resources being procured, or projects and activities of the institutions faltering due to fluctuations in funding. In the long run, it is impossible to achieve the set objectives. At the same time, there is a high risk of corruption.

Example

Expenditure allocated for a given project for a given budget year is 20 times higher than projected a year earlier. Predicted resources have not changed. Equipment needed to implement specific activities is procured, which is not included in the medium-term and annual plans. Activities are not implemented, and the equipment remains unused.

## Documents

- Medium-term financial plans
  - Draft annual financial plans
  - Minutes from the collegium of ministers at which draft annual financial plans are finalised
  - Budget Act of the Republic of Serbia
  - Decision on financing (MO)/Budget Plan (MUP)
  - Annual procurement plans
    - » procurement plan
    - » defence and security procurement plan and defence and security procurements to which the Act does not apply (T)
  - Capital Projects: project documentation
  - Annual financial reports
  - Ministerial documents in respect of annual evaluations of programmes, programme activities and projects
  - Internal audit reports
  - DRI reports (if any).
-

## **Practical example: Assessment of expedient planning of procurement for the traffic police**

One of the goals of MUP is to increase overall safety and driver safety. MUP, in its Development Strategy 2011-2016, identifies the need to equip traffic police with modern apparatus and equipment, which will contribute to the adoption of more effective police procedures in

- monitoring,
- emergency regulation,
- direct control, and
- traffic-police safety in specific conditions and circumstances.

So, four mid-term priorities for equipment have been identified.

Traffic police equipment falls under the *Safe Society* programme in the MUP budget. Two projects to increase traffic safety have been overlooked: *Traffic video surveillance Phase I* and *Strengthening of material and technical capacities required for the work of the traffic police*.

At the beginning of the assessment of expediency, it is advisable to request the complete project documentation for each of these two projects. The project documentation should include a description of the current situation, a description of the desired outcome, a schedule and a description of activities and a budget for the project. Project performance benchmarks (indicators) set by the Ministry of the Interior for itself can be found in the Explanatory Note to the proposal of funds required by budget beneficiary that is enclosed to the Budget Bill of the Republic of Serbia.

An assessment of the expediency of medium-term and annual planning in this case would include the following questions:

### **1. Has MUP identified all the resources necessary to equip the traffic police?**

Let's look at the budget for those projects. Projected resources for the introduction of video surveillance:

- buildings and structures
- plant and machinery

Projected resources for strengthening the material and technical capacities required for the work of the traffic police:

- plant and machinery.

Some questions that would help to clarify the budget are: What is meant by buildings and structures (construction, leasing, erecting temporary structures)? What does plant and machinery include? How many sites have been earmarked for video surveillance?

*MUP, in the Explanatory Note to the proposal of funds required, identified the level of traffic video surveillance coverage as a project performance benchmark (indicator). The target value for this benchmark in 2016, 2017 and 2018 just states “increase”. In other words, MUP aims to increase the coverage of traffic video surveillance, but the level of current coverage is not known nor exactly how much it should be increased by.*

## **2. Has MUP identified which resources already exist and could be used to implement the two projects in question?**

For example, are there existing structures on which surveillance cameras can be mounted? Or, does MUP have an updated record on the condition of the traffic police vehicle fleet, including spare parts and vehicle maintenance costs? Was that taken into account during the planning phase?

In addition, it should be checked whether MUP already has appropriations for traffic police needs under a second programme - Safe City, which focuses on supporting the work of police administrations. Is resource planning for the traffic police coordinated between the regional police administrations, the traffic police administration at MUP headquarters and other organisational units of MUP (the Strategic Planning Office, organisational unit in charge of the budget and finance, organisational unit in charge of material affairs, organisational unit in charge of public procurement)?

## **3. Has MUP assessed how long it will be possible to use existing resources for?**

Prior to planning the project and determining which equipment should be procured, was the service life of existing equipment taken into account?

#### **4. Has MUP clearly determined what resources are lacking?**

Is there a document which specifies the number and general features e.g. of video cameras, speed guns or vehicles that are lacking for the adoption of more efficient procedures for implementing the activities listed in the Development Strategy (monitoring, emergency traffic regulation, direct control and safety in special conditions)??

#### **5. During the medium-term planning phase, did MUP develop alternative ways to introduce video surveillance and increase the material and technical capacities required for the work of the traffic police?**

Has the possibility of donations and public-private partnerships (e.g. for video surveillance) been discussed? Has the procurement of vehicles been measured against the procurement of maintenance services? Did MUP consider how the surveillance cameras would be mounted (e.g. using MUP employees and equipment, cooperation with another ministry or public enterprise, procurement of works and services)?

#### **6. Did MUP evaluate the performance of these two projects to date?**

Did the organisational units in charge evaluate the procurements for the needs of the traffic police (price-performance ratio, contract performance issues, etc.)? Did the internal MUP audit comprise an audit of expenditure on traffic police equipment? Have the evaluations on record been taken into account during the medium-term and annual planning phase?

*The fact that the current Development Strategy expires at the end of 2016 calls for an evaluation of the overall implementation of the Strategy and its Action Plan. After that, it is possible to conclude whether the measures taken have contributed to the achievement of certain MUP objectives, such as increasing traffic safety. These conclusions should then be reflected in the further planning of specific projects.*

#### **7. During the planning phase for these two projects, did MUP take into account future events and the costs of each solution?**

In the near future changes might be made legislation (e.g. in the area of video surveillance), new roads constructed or the economic situation might deteriorate, which could result in cuts to the budget for these projects. During the planning phase, did MUP consider these scenarios and the action that should be taken in each of these cases?

Has an analysis of so-called hidden project implementation costs been conducted? Have the hidden costs of every planned acquisition been examined? For example, where vehicles are being procured, have future maintenance costs, spare parts, fuel and lubricants, etc. been factored in during the planning phase? During the market research stage of the financial planning phase has possibility of servicing the vehicles in areas of all police administrations where necessary (service network) been taken into account? This should be taken into account if the vehicles have been donated.

**8. MUP developed various solutions for the introduction of video surveillance and strengthening the material and technical capacities required for the work of the traffic police, did it consider the pros and cons of each of the proposed solutions during the planning phase?**

It should be checked whether the alternatives developed have been compared using different criteria (past experience - if any, the possibility of implementing a particular solution in the event of certain changes in the future, such as changes in the law, hidden costs, environmental impact, etc.). If such an analysis has indeed been conducted, then it should be checked whether it made clear recommendation in favour of a certain solution and whether that recommendation has actually been taken into consideration when drafting the budget.

**9. Is the budget for each of these two projects realistic?**

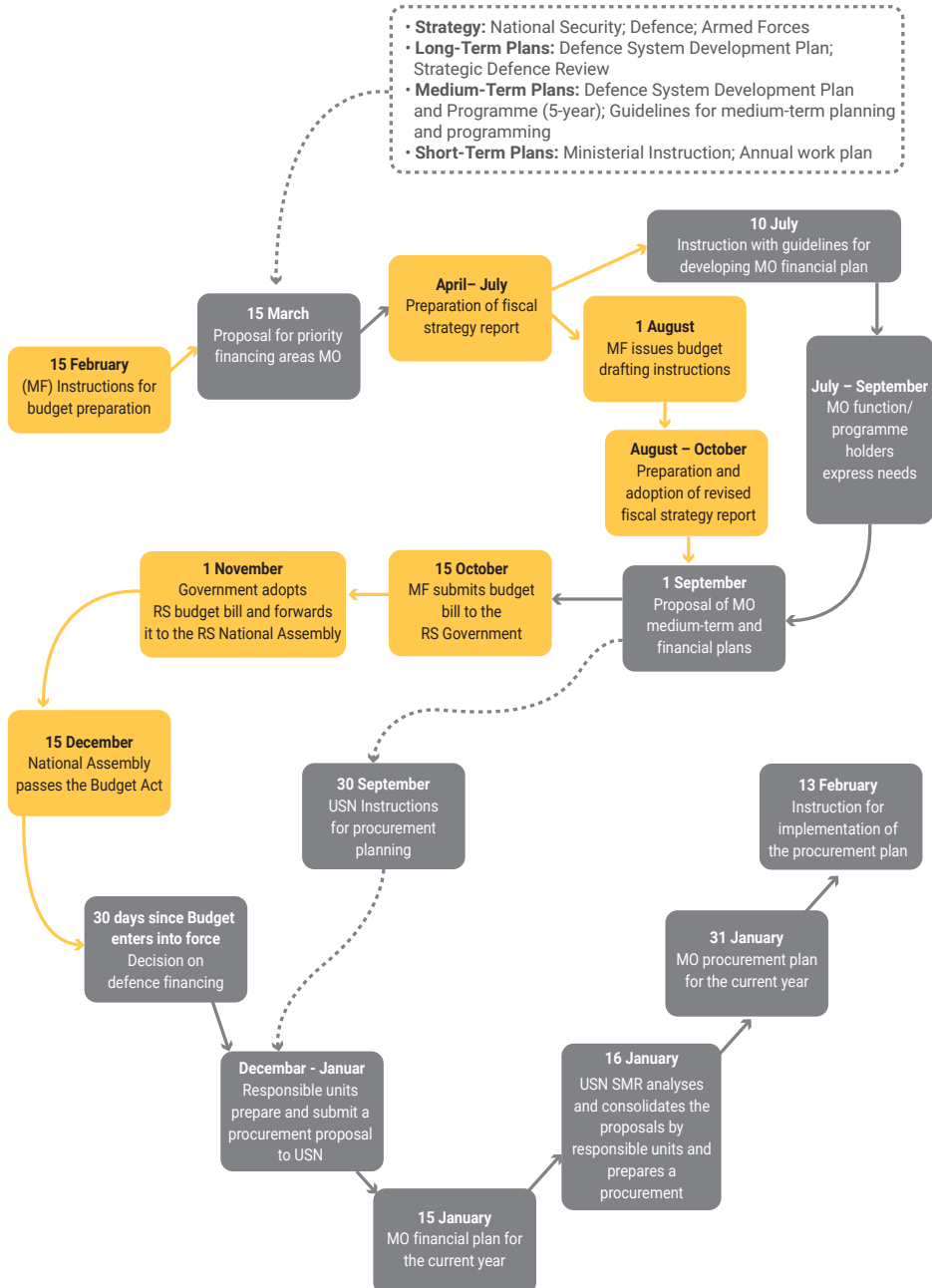
Do the goods, services and works to be procured during the year or in the medium-term actually cost as much as stated in the budget? What percentage of financial resources for the respective projects remained unspent in the preceding year? If it's a larger percentage, explain why the funds have not been spent? Was there a budget overrun in the preceding year, for example, due to acquisitions that significantly exceeded the estimated value?

**10. Is budgeting for traffic police equipment consistent?**

Are the projects on track? Considering that these are multi-year projects - has there been any significant variations in budgeted costs from year to year? Are there budget reallocations during the year? Is the procured equipment being used and is it being used as planned?

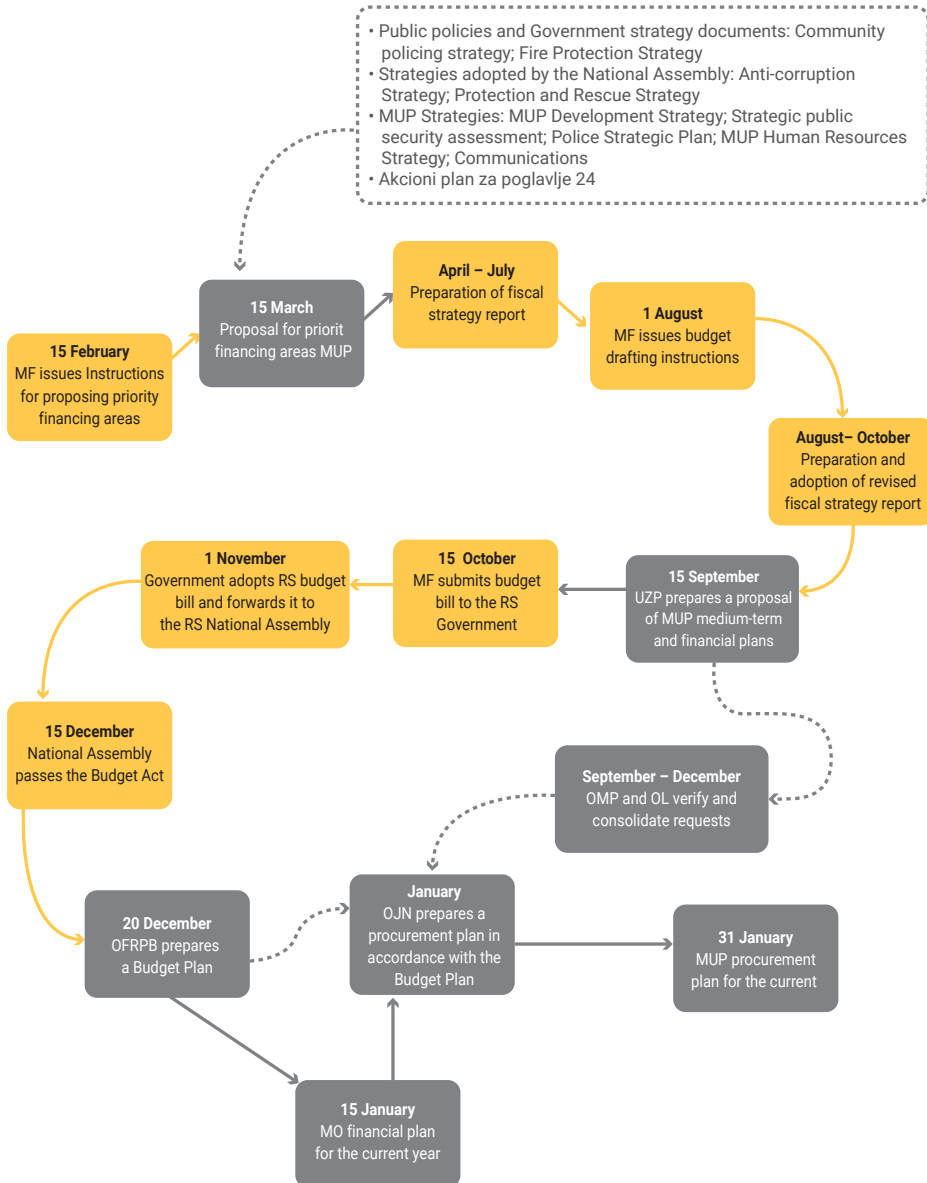
# The Annual Cycle of Planned Public Expenditure by the Ministry of Defence and Ministry of Interior

## The Annual Cycle of Planned Public Expenditure by the Ministry of Defence





## The Annual Cycle of Planned Public Expenditure by the Ministry of Interior



# THE MICRO LEVEL: EXPEDIENT IMPLEMENTATION OF PUBLIC PROCUREMENT PROCEDURES



As already pointed out, in order to successfully determine the expediency of resource expenditure through the procurement system, an analysis of expediency on all three levels must be conducted - macro, meso and micro level. This section of the toolkit provides a framework for determining the expediency of procurement at the micro level of analysis. Micro level is the name given to the phase financial and material resources management cycle which includes the process from adopting the procurement plan, through initiating and implementing procedures, to the execution and implementation of public procurement contracts.

**Determining the expediency of public procurement** is a gradual process of research which determines the extent to which a procurement is justified. !

**Effective public procurement** is where, in addition to timely and rational planning and implementation, goods, services or works of appropriate quality are procured, at the best price, and where the contracting authority's objectives, in keeping with national policies and priorities, are achieved. !

Determining expediency is not a binary operation by way of which we rate procurement as absolutely efficient and not efficient at all, rather it serves as an assessment of where the procurement ranks on a scale of expediency between these two absolute values. The procurement of something absolutely unnecessary for a contracting authority is certainly the most extreme form of inefficient procurement, but in practice instances of breaches of procedural efficiency and cost-effectiveness are much more commonplace, and which result in needs not being met at all and public resources being drained needlessly (time, money, work capacity of employees, etc.). By determining where a procurement lies on the scale of expediency we actually discover the ways in which to improve procurement procedures in the future, to achieve better results using the minimum amount of money and time. Every move up on the scale of expediency may signal that the contracting authority's objectives are being achieved with greater success, and also the large-scale savings on an annual basis, thereby freeing up more funds for other the contracting authority's other needs.

## The relationship between expediency and legality

A precondition for determining public procurement expediency is the legality of the public procurement procedure at all stages. If it is conducted contrary to the law, circumventing or violating the rules governing this area, the procurement, as a rule, should be immediately evaluated as ineffective. Practically speaking, illegal procurements are assessed as ineffective because they are the most frequently challenged in any of its phases: or the procedure is discontinued at the expense of the contracting authority, or proceedings are initiated before the Commission for the Protection of Bidders' Rights or before the Administrative Court, leading to annulment of the procedure, also always to the detriment of the contracting authority. Basically speaking, violating the principle of the rule of law should prove enough to discredit the expediency of any procurement. Tolerating illegal procurement essentially discredits the legal system by sending a signal that breaking the law is allowed depending on the context. Unfortunately, in Serbia such cases occur occasionally. However, as the laws are not and can never be an absolute and perfect masterpiece, it should be noted that in practice cases occur (rarely) in which illegal procurement is successfully implemented, without damaging being caused to the legitimate parties thereto, and above all, even served a higher public interest (e.g. achieving major cost savings). Although no positive outcome of illegal procurement should be allowed to serve as its justification, such cases may serve to highlight the need to amend regulations to reconcile practice with the needs of the public interest. Therefore, when assessing expediency it would be most prudent for each procedure to be examined comprehensively and for as much information as possible to be gathered in order for the assessment itself to be effective.

## Assessing the expediency of public procurement procedures: Overview of Key Issues

The first step in assessing the performance of procurement should be collecting all relevant documentation relating to the procurement procedure in question and determining the legality (or not) of the procedure. Having determined the legality, the expediency of the procurement may be examined.

*A tentative list of documents relevant for certain procurement procedures are listed in the appendix to the toolkit. !*

Considering that PUBLIC procurement is the focus of the analysis, each document should be publicly available, in accordance with the provisions of the Freedom of Information Act<sup>13</sup>. Many documents related to individual procurement procedures can be found on the websites of the contracting authorities and the Public Procurement Office's Public Procurement Portal. Documents that under the current Public Procurement Act<sup>14</sup> do not have to be made public can be obtained by making a freedom of information request to the contracting authority. However, the practice of gratuitously labelling documents as classified has still not been stamped out at the Ministry of Interior and Ministry of Defence, which poses an additional challenge when examining the expediency of procurements by these contracting authorities.

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### INTERNAL PROCUREMENT RULEBOOK - A CONTRACTING AUTHORITY'S MOST IMPORTANT NORMATIVE DOCUMENT

Kernel to the examination of procurement procedures by contracting authorities is the normative document regulating the procedures the contracting authorities - the internal procurement rulebook. The duty to adopt this document is provided for under the current Public Procurement Act, which stipulates that contracting authorities must adopt an instrument which will regulate public procurement procedures in detail, in particular the planning of acquisitions (criteria, rules and methods for determining the items to be procured and the estimated value, the method for surveying and researching the market), responsibility for planning, objectives, public procurement procedures, the manner of executing procedural obligations, how to ensure competition, implementation and control of public procurement, how the execution of public procurement contracts are to be monitored<sup>15</sup>. In October 2015, the Ministry of Defence adopted an instrument entitled "Rules for Comprehensive Regulation of Public

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<sup>13</sup> "Freedom of Information Act." *Official Gazette of the Republic of Serbia*, nos. 120/2004, 54/2007, 104/2009 and 36/2010

<sup>14</sup> "Public Procurement Act" *Official Gazette of the Republic of Serbia*, nos. 124/2012, 14/2015 and 68/2015.

<sup>15</sup> *Ibid*, Article 22 (1)

Procurement by the Ministry of Defence and the Serbian Armed Forces”<sup>16</sup>, while the Ministry of Interior in November of the same year passed a by-law entitled “Public Procurement Guidelines in the Ministry of Interior”<sup>17</sup>. Both documents can be of assistance in determining the expediency of certain acquisitions by these contracting authorities.

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This part of the toolkit presents **16 general questions** concerning **the** basic categories of expediency in each procurement. The questions are arranged according to the principles of expediency which arise - the principles of effectiveness, efficiency and economy. Each question is further delineated through **a number of sub-questions** whose answers actually answer the general question. Each question states the **importance** that it holds for the procurement procedure and the potential damage that may be caused to the contracting authority, bidders or other public interest. Each question includes appropriate **examples of inefficiency** which serve to give the reader a clearer picture of the problem related to this issue. At the end, a list is given of the **relevant documents** necessary for answering the sub-questions.

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16 MO Rules are available at <http://www.nabavke.mod.gov.rs/sadrzaj.php?id2=18169>

17 MUP Guidelines are available at [http://www.mup.gov.rs/cms\\_cir/oglasni.nsf/Uputsvo%20za%20spovodjenje%20javnih%20nabavki%20MUP-a.pdf](http://www.mup.gov.rs/cms_cir/oglasni.nsf/Uputsvo%20za%20spovodjenje%20javnih%20nabavki%20MUP-a.pdf)

**Effective** procurement achieves **its objectives**, and has a positive relationship between the predicted and actual effects of the acquisitions.

**Question 1: Is the subject of procurement even a necessity for the contracting authority?**

Sub-questions

- Is the acquisition included in the procurement plan?
- Does the procurement correspond to the activities that are set out in the contracting authorities' annual work plans or other strategic and doctrinal documents?<sup>a</sup>

<sup>a</sup> See the chapters "Macro level", "Mezo level" and the "Appendix: List of documents relevant for assessing expediency"

Importance

The starting point for determining the expediency of procurement is recognising whether the subject of the procurement is even necessary for the contracting authority. In order to do so it is necessary to verify that the procurement complies with all of the contracting authority's planning documents and action plans. It must be determined whether the procurement is included in the procurement plan, and whether the procurement meets or contributes to meeting the objectives laid down in the contracting authority's annual, mid-term and strategic and doctrinal documents.

If the subject of procurement is included in the procurement plan, but its purpose does not comply with the objectives in the contracting authorities' plans and strategic documents, the expediency of the procurement can be seriously questioned.

Example

- The Ministry of Defence is carrying out high-value repair works of tourist facilities in its property, even though it was decided to privatise these facilities later that same year. This issue of justification of such a large investment arises.
- The Ministry of Interior is sending staff for training on software that will, according to the development action plan, be replaced at the end of the year with new updated software.

Documents

- Contracting authority's annual procurement plan
- Contracting authority's annual work plan
- Contracting authority's medium-term strategy documents
- Contracting authority's long-term strategy documents



## Question 2: Is the planned subject of procurement already in stock?

### Sub-questions

- Has the contracting authority justified its need for the subject of procurement in the annual procurement plan along with checking the current stock level of this subject?
- Is there a provision in the contracting authority's internal public procurement rules for a stock level check when determining needs?
- Is there a written record of whether stock levels of the subject of procurement were checked during the planning phase?
- Does the contracting authority have an operational stock level monitoring system?
  - » Is this system regularly updated?
  - » Does the system cover all of the contracting authority's organisational units?

### Significance

Ordering goods that the contracting authority already has in stock is almost always detrimental, sometimes calamitous. It results in unnecessary additional costs which, as evidenced by the case studies, can be extremely high. Money spent procuring goods that are already in stock could have been spent that year on other needs not included in the procurement plan.

### Example

- A few years ago the procurement of extremely expensive bearings for the overhaul of a power utility facility was halted at the last minute when it was discovered that there were several bearings in stock.
- In 2014, the Ministry of Defence issued a tender for the procurement of batteries necessary for the overhaul of MIG 21 and MIG 29 fighter jets. The procurement failed, and Serbia started negotiations with the Russian Federation about procuring the batteries. Following a visit by the Russian President, Russia donated two batteries to Serbia. Following delivery, subsequent stock checks during 2015 showed there were as many as 18 of these batteries in storage.

### Documents

- Contracting authority's procurement plan for the year in question
- Documents/internal service of the contracting authority based on which the stock levels were determined

### Question 3: Will the procurement provide exactly what is needed?

Sub-questions

- Is the subject of procurement defined in sufficient detail so as to avoid the procurement of similar, but unnecessary or detrimental goods?
- Is there a written record of the quality required of the subject of procurement?
- Is there a written explanatory note regarding the quantity of the required subject of procurement?
- Is the wanted version of the subject of procurement clearly set apart from other similar versions of the same subject?

Significance

Where a contracting authority has failed to accurately identify the required subject of procurement, either mistakenly or through wilful misconduct, there is a risk of bidders tendering a good or service that does not serve the contracting authority's needs. The award has been made, time spent, the contract is legally binding, the money spent, the goods or service delivered, but they are of no use to the contracting authority in meeting its needs.

Example

Due to the flawed technical specification a medical institution in Serbia procured a version of medical devices that were unusable and not intended for the original purpose. The procedure was suspended at a late stage having cost time, financial resources, as well as to the detriment of health workers and patients in Serbia.

Dokumenta

- Contracting authority's annual procurement plan
- Decision to initiate procurement procedure
- Tender documentation for the procedure in question
- Documents underlying the tender documentation for the procedure
- Minutes of committee meetings for the public procurement in question

**Question 4: Does this procurement create external (positive or negative) effects on other public interests?**

Sub-questions

- Is there a written record discussing the positive and negative impacts of the subject of procurement on the environment or to human health?
- Were the specific needs of men and women who will eventually use the subject of procurement taken into consideration during the planning phase?
- Has the contracting authority examined the possibility of giving preference to suppliers who are committed to certain socially beneficial activities?
- Has the contracting authority examined the possibility of giving preference to suppliers who are committed to suppliers included in the social entrepreneurship programme?
- Has the contracting authority examined are there any security risks that the implementation of the procurement could pose?

Significance

Planning a procurement by solely relying on the needs of the contracting authority can result in unrecognized damages to public interests not directly related to a contracting authority's sphere of activity, such as the environment, public and staff health, safety, etc.

Also, depending on the capabilities and policies of contracting authorities, procurement can be planned to include requirements that would give a certain advantage to tenderers who in carrying on their business endeavour to achieve and support socially beneficial activities, officially supported by current state policy, such as inclusion, cultural needs, health care, environmental protection, the fight against discrimination...

Example

- Having failed to take gender statistics into account when planning the procurement of stockings for uniformed police officer, MUP RS procured only large size stockings, thereby overlooking 10% of the force made up by women.
- The procurement of paint and varnish at a military post, considered to a greater extent than usual to hazardous to human health, was blocked at the last moment.

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Documents

- Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces:
  - Public Procurement Guidelines in the Ministry of the Interior
  - Tender documentation for the procedure in question
-

**Efficient procurement is timely and rationally planned, implemented and carried out, at the least cost to the contracting authority, using a suitably selected procedure, with no complaints by bidders or deadline delays.**

### Question 5: Has the procurement schedule been well planned?

Sub-questions

- Has the procurement plan for the current year been adopted on time, in accordance with the law and the contracting authority's internal regulations?
- Has the procurement plan later been amended? To what extent?
- Has the procurement been launched in accordance with the planned procurement schedule?
- Have outside stakeholders done their job on time (e.g. Government approval of the Annual Defence and Security Procurement Plan, appointment of a civil supervisor by the UJN)?

Significance

After the contracting authority's procurement plan has been adopted, the contracting authority's competent organisational unit draws up a procurement schedule. When drawing up the schedule, the competent organisational unit takes into account the predefined provisional dates for the conclusion and execution of contracts, the type of procedure, complexity of the tender documentation and other statutory deadlines, paying particular attention to the importance that each procurement has for the contracting authority. The procurement schedule is published in the procurement instructions (or equivalent contracting authority document) that are drawn up by the competent organisational unit. It should contain an explanation of how procedures are prioritised based on the criteria set by the contracting authority.

A poorly planned procurement schedule or subsequent amendments thereto could lead to a subject of procurement being delayed or even cancelled. This leaves the contracting authority open to the risk of serious damage. This is particularly true of goods and services the absence of which compromises continuity of supply and maintenance of the projected level of operational and functional capabilities of the contracting authority. In the case of MUP and MO the damage could be particularly significant given that the activities of these institutions are primarily aimed at safeguarding the security of the Republic of Serbia and its citizens.

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**Case study**

- Due to a poorly planned procurement schedule, a procurement of electricity was launched shortly prior to expiry of the previous contract. As the procedure was not conducted while the pre-existing contract was still valid, the contracting authority was for a time forced to pay the supplier a much higher (emergency) electricity price which significantly dented its budget.
- Due to the technical errors and frequent changes to the procurement plan, the procurement of medical supplies and materials necessary for histopathological analyses at the VMA was not implemented in the year it should have been. Consequently, the VMA was unable to provide some of its services until the following year.

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**Documents**

- Public Procurement Instructions of the competent OJ including explanatory notes
  - Contracting authority's procurement plan for the year in question
  - Decision to initiate procurement procedure
-

**Question 6: Have the procurement deadlines been set rationally, without prejudicing the contracting authority and the competitiveness of the procedure?**

Sub-questions

- How has the contracting authority set the following deadlines:
  - » Bid submission deadline (Art. 94 of the ZJN);
  - » Bid validity period (Art. 90 of the ZJN);
  - » Contract award decision deadline (Art. 108 of the ZJN);
  - » Original documents submission deadline (Art. 79 of the ZJN);
  - » Financial security validity periods (Art. 61 of the ZJN).
- Did the contracting authority in setting the bid submission deadline bear in mind the time required to prepare an acceptable bid?
- Did the contracting authority set the other deadlines reasonably when conducting the procurement procedure concerned?

Importance

The law, in certain instances, allows contracting authorities to set procedural deadlines, albeit within statutory time frames. By setting the procurement procedure deadlines, a contracting authority may impact on the number of bidders tendering. Due to frequent delays and shifts in other deadlines that have repercussions on the procurement cycle, contracting authorities are inclined to set deadlines as short as legally permissible.

Damaging one of the bidders, by failing to rationally set a deadline, the contracting authority may cause bidders to file a request for protection of rights, which can lead to further delays in the procedure. The contracting authority is also entitled to request financial securities for bidding and contract performance. Besides the fact that some of these securities are expensive, their validity periods can sometimes overlap. This can make some bidders increase their prices or just dissuade them from tendering because they cannot afford to have that amount of funds reserved for this purpose all at once.

For its own benefit, the contracting authority should find the right balance between the need for urgency and the interest of having a good competition.

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**Primer**

- The contracting authority is implementing several competitive procurements of drugs and medical devices giving the shortest legal deadline for the submission of bids. Several small pharmaceutical companies are forced to choose which contracts to tender for because they cannot compile the documentation for all procedures in such a short deadline.
- A bidder from abroad is not in a position to submit the necessary documents on time because the contracting authority set a deadline that was too short, despite a request sent by the bidder.

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**Dokumenta**

- Procurement plan for the year in question
  - Call for tenders
  - Tender documentation for the procedure in question
  - Amendments to the tender documentation
  - Minutes of opening of bids and expert evaluation of bids
-



**Question 7: Are the factors of the criterion of most economically advantageous tender clear and objectively verifiable?**

Sub-questions

- Has each factor of the criterion of most advantageous tender been explained in the tender documentation?
- Are the explanations clear and are they based on objectively verifiable information that can be found in the bids?
- Is the weighting relative to the importance of each factor of the criterion?

Importance

If bids for the procedure concerned are being evaluated using the criterion of most economically advantageous tender, special attention must be paid to the way in which the factors of the criterion which determine the most economically advantageous tender are worded (delivery date, warranty period, environmental benefits, life-cycle costs ...). Using this criterion to evaluate bids results gives a list of bidders who meet the general and additional requirements, and whose bids vary by various advantages and disadvantages. The contracting authority assigns certain number of points to each factor of the criterion - i.e. quantitatively expresses them through the weights, allowing for a bid ranking list to be drawn up.

In theory this bid selection method has great advantages, but only where the factors of the criterion are determined as objectively as possible. However, in practice this was often problematic. First of all because the contracting authority determines the relative importance of each factor of the criterion, which means that lots of room is left for subjective evaluations and thus for errors and abuse. In doing so, whether intentional or not, factors of the criterion can be used to favour or discriminate against certain bidders.

In order to properly assess whether the contracting authority has objectively determined the relative importance of each factor of the criterion, the explanation given for each factor (if they have even been given) should be examined and determined whether they are objectively verifiable.

Example

The contracting authority has specified "special benefits" as one of the factors of the criterion of most economically advantageous bid for the subject of procurement. For this factor the contracting authority failed to specify objective criteria by way of which special benefits can be quantified in the bids. Relying on this criterion, the committee has selected a more expensive bid that included a larger number of "special additional benefits". However, these benefits are not used when implementing the subject of procurement.

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Dokumenta

- Minutes of committee meetings at which the tender documentation was drafted
  - Tender documentation for the procurement concerned
  - Additional explanations and answers to questions from interested parties
  - Minutes of the expert evaluation of bids
  - Report on the expert evaluation of bids
-

### Question 8: Are changes during the contract term justified?

#### Sub-questions

- Has the contracting authority changed the important elements of the procurement contract after its conclusion (quantities, prices or other)?
- If so, is the rationale given objective and justified?
- Has the contracting authority and the supplier annexed the contract?

#### Importance

The Public Procurement Act allows the contracting authority to amend the concluded contract under specified conditions, thus to increase the quantities of the procured subject, modify the price or other important elements of the contract. The law stipulates that amending can be done only if there is an objective need for it and if it is stipulated by the contract. In similar fashion, the contracting authority also can annex the procurement contracts. Unjustified changes of the prices, deadlines, conditions and forms of payment, qualities and quantities of the procurement subject, can all imply corruptive motives from both the contracting authority and the supplier. In order to properly assess whether the changes are justified we need to look whether the changes are envisaged by the tender documentation, and whether written rationale is present in the decision to change the contract. In case of an annex we need to check whether the important elements of the original contract are changed by it.

#### Example

During the tender procedure, the contracting authority asks that the contract execution be done within an unrealistically short deadline. Only one bidder, who was colluding with a member of the tender commission, fulfilled this stipulation. After concluding of the contract with the bidder, contracting authority issued a decision to change the deadline for contract execution to realistic timeframe. The decision had a justification for this change, but no one questioned this decision.

#### Documents

- Tender documentation for the procurement concerned
- Public procurement contract
- Decision to amend the public procurement contract
- Annex to the public procurement contract

### Question 9: Was the estimated value determined rationally and in keeping the market analysis?

Sub-questions

- Is there a record of the market research for the procurement concerned?
- Was the market research conducted in accordance with the institution's internal public procurement rules?
- Were the received bids within the scope of the estimated value of the procurement?

Importance

Accurate determination of the estimated value of a procurement is very important, both for comprehensive annual procurement planning, and for each procurement procedure. Value is estimated through market research, by reviewing past experiences with the subject of procurement, researching bidders' tenders using the Internet or otherwise. The estimated value of a procurement dictates the price in above which all offers will be rejected.

Estimating the value of a particular procurement too low may lead to the rejection of all bids as unacceptable, despite the obtained bids being in line with the market prices of the goods concerned. Estimating the value too high leads to the "entrapment of funds" that the contracting authority cannot use until the next budget modification.

The law allows for a deviation from the estimated value of up to 10% without the need to amend the procurement plan, prior to initiation of the procedure, but only if the funds are provided for under the contracting authority's financial plan. Responsibility for determining the estimated value rests with the end user organisational units requesting the subject of procurement. The organisational unit in charge of procurement has the right to verify and correct that estimate. End users keep market research records. An examination of their contents can show whether the market research was conducted in accordance with the contracting authority's internal regulations.

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**Example**

A contracting authority procures an annual amount of medicine for its medical facility in lots. For the estimated value of one medicine contracting authority used the price achieved the previous year. Unfortunately, all bidders offered a new higher market price for this medicine. Due to this, the contracting authority was forced to reject all the bids as unacceptable and subsequently called a new tender for the procurement of this medicine. As a result, the medical institution was forced to operate for several months without this medicine, while officials in the procurement department had to work overtime.

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**Documents**

- Market research record for the procurement concerned
  - Procurement plan with estimated values
  - Tender documentation for the procurement concerned
  - Additional explanations and questions from interested parties
  - Minutes of the expert evaluation of bids
-

**Economical** procurement is the one where the goods, services or works are acquired at **the best price and of the appropriate quality**.

**Question 10: Has an appropriate quantity of the subject of procurement been acquired?**

Sub-questions

- Is the acquired quantity of the subject of procurement in line with the needs expressed in the procurement plan?
  - Are the criteria used to determine the required quantity of the subject of procurement objectively verifiable?
  - Has the contracting authority required sufficient quantities of the subject of procurement for the length of the contract?
  - Has the contracting authority checked its stocks prior to determining the needed quantity of the subject of procurement?
  - Has the contracting authority checked whether the delivered quantities of the subject of procurement are in line with the order?
-

## Importance

The contracting authority suffers extra costs and possible damages if the quantity of the subject of procurement has not been determined in accordance with its actual needs. Most damaging is the case where the quantity is underestimated. In this case, the contracting authority will not be able to perform the function that depends on the procured resources during a given time. The procurement of larger quantities than needed may not cause too much damage, especially if the subject of procurement can be used for storage and resupply. However, if the nature of the subject of procurement is such that it must be immediately implemented, such as various services or works, or goods with a shorter shelf life, then the damage to the contracting authority can also be high.

Considering that quantities are not reported in the procurement plan, rather only estimated values of procurement (which only indirectly indicates the planned quantities), it is necessary to verify on which criteria the commission determined the required quantities. Were all the contracting authority's organisational units consulted for needed quantities? Were stocks checks made? Was the duration of the contract taken into account? Was a control system established to ensure the delivery of requested quantities?

It is particularly important to examine disclosed needs for the subject of procurement in cases of centralised procurements. If the justification for required quantities cannot be found in technical specification, it could perhaps be found in the minutes of committee meetings for the procurement concerned.

## Example

- The medical facility failed to take into account the expansion of its capacities later in the year and procured less medicines and medical devices than needed.
- Lack of oversight of the quantities of material needed for construction works have resulted in the building being poorly built, which after only a few years required new allocation of new funds for the repairs.
- The procurement of specialised trainings for a smaller number of personnel than the one engaged in tasks for which the trainings are required.

## Documents

- Procurement plan for the year in question
- Tender documentation for the procurement concerned
- Minutes of the meeting of the public procurement committee
- Delivery control reports for the subject of procurement

### Question 11: Has the baseline quality of the subject of procurement been defined adequately?

#### Sub-questions

- Has the baseline quality of the subject of procurement been defined in the technical specification?
- Does the contracting authority have standardized required quality standards for the subject of procurement? Have they been applied in this case?
- Has the contracting authority performed a market analysis and user experiences with the subject of procurement?
- Has the contracting authority had previous experience with the same or similar subject of procurement? If so, was the experience with that subject of procurement noted somewhere? If so, did the contracting authority consult those notes when developing the baseline quality in the technical specification?
- Has the contracting authority envisaged quality control process for this procurement?

#### Importance

Almost all subjects of procurements have variations in quality. Contracting authority can require a baseline quality of the subject of procurement below which it would not serve its purpose. When they happen, these cases often impose additional costs in money and time and, eventually, lead to a new emergency procurement. Proper defining of the baseline quality for the subject of procurement is crucial for fulfilling the contracting authority's objectives, especially if the procedure is being carried out using the criterion of lowest bid price. Practice in Serbia tells us that the failure to adequately define the baseline quality for a subject of procurement remains the biggest obstacle for the use of the straightforward criterion of lowest bid price. Baseline quality is usually prescribed defined quality standards, and is determined based on a contracting authority's estimated needs, market research, and previous experience with the same subject of procurement in the past. Ensuring the quality of a subject of procurement in the field of security is of special importance. Substandard equipment can, in extreme cases, can also mean the difference between life and death.



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**Example**

- After more than 10 years, large quantities of new uniforms for members of the police force has been procured. Already in the first year many uniforms became worn and torn. This caused deep dissatisfaction among members of the police and the protests that ensued, ultimately, led to a new tender costing the police.
- Due to the pressure to make savings and the lack of expertise laboratory technical staff ordered non-original parts for the repair of a crucial and expensive piece of laboratory equipment. Although the parts were compatible, they were manufactured from the cheapest materials, which subsequently resulted in a total failure of the equipment. No funds were available for the expensive repair.
- Savings were made during the centralised procurement of cheaper office supplies for the needs of all regional police departments, but shortly thereafter it transpired that the procured pens were unusable because they sometimes worked and sometimes not.

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**Documents**

- Contracting authority's procurement plan
  - Notes or testimony about previous experiences with the subject of procurement within the contracting authorities (if any)
  - Contracting authority's internal quality standard regulations
  - Market analysis record for the subject of procurement
  - Technical specification for the subject of procurement
-

**Question 12: Has the quality for the subject of procurement been set unjustifiably high?**

Sub-questions

- Has the purpose of the subject of procurement been clearly defined?
- Has the contracting authority explained the quality standards sought for the subject of procurement?
- Has a market analysis been conducted for the subject of procurement?
- Based on what criteria did the contracting authority determine the standard of quality for the subject of procurement?

Importance

In order to achieve its objectives, contracting authority needs to adequately define the quality of the subject of procurement. Institutions of the security sector in Serbia employ about 80.000 people and they have limited resources. There is always a need for additional investments, so there can be no justification for allocating more resources for procurement of goods and services that have better characteristics than needed for performing its function. Luxurious procurements arise usually due to the erroneous assessment of needs, poor market research or improper selection of the subject of procurement. There are also cases where contracting authorities have been misled by certain suppliers/manufacturers to the effect that only original products will guarantee the performance contracting authority needs. In these cases, contracting authority deliberately defines the characteristics of the subject of procurement to suit only original products, which leaves room for the manufacturer to maintain objectively unjustified high prices. Another serious problem in assessing quality might arise when interpreting the way in which a certain quality of the subject of procurement affects the quality of the contracting authority's operations. A contracting authority may claim that high-powered vehicles are necessary for the successful execution of their tasks. However, in such situations, it must be verified if there is a more detailed justification for the contracting authority's position on this procurement.

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**Example**

- For the purpose of equipping an organisational unit that deals with administration, computers were procured with advanced graphics hardware which on its own accounts for 30% value of the whole procurement. None of the employees needed to use the capabilities provided by the hardware.
  - A contracting authority procured office furniture. High-quality, handmade furniture was ordered. The value of the procurement was threefold the amount that would have been spent ordering functional, good quality furniture. The question is what purpose exclusive furniture serves in staff-only offices.
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**Documents**

- Contracting authority's procurement plan
  - Notes or review from the previous experience the contracting authority had with the subject of procurement (if any)
  - Market analysis record for the subject of procurement
  - Tender documentation for the subject of procurement
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### Question 13: Do the selection criteria distort competition in the procedure?

Sub-questions

- Are the additional criteria logically related to the subject of procurement?
- Are the additional criteria appropriate to the objectives of the procurement?
- Is there a written record (minutes of committee meetings or responses to bidders' questions) in which the additional criteria are explained?

Importance

By laying down additional criteria in the tender documentation, the contracting authority sets out the criteria that bidders must meet in order to be invited to tender. These criteria may relate to the necessary financial, commercial, technical and human capacities of bidders. The purpose of setting these criteria is to that the contracting authority can protect its interests, increasing the chance of only credible bidders applying to tender who are able to deliver the subject of procurement under the terms and conditions and in the quantity required by the contracting authority. However, if these criteria are not logically related to the subject of procurement they may restrict competition.

Additional criteria that distort competition, known as discriminatory criteria, appear in procurement procedures or as a result of intentional abuse or as a result of an over-protective approach by a contracting authority. Defining the criteria gives power to the contracting authority to "silently" favour one bidder in the market and thus ensure it is awarded the contract. A bidder in these instances often tenders less favourable terms and conditions and a price that is higher than the market price, which is detrimental to the contracting authority's interests and ultimately the public interest. There are also cases when the discriminatory criteria are published without malice, arising from a contracting authority's interest to ensure its procurement, indirectly favouring only bidders with the highest capacities. Such a policy may lead to the long-term distortion of competition in the market which is especially prevalent in economies in which the state is the largest employer. Therefore, it is essential that the weight of criterion provided for under the tender documentation be properly determined. It can be seen from the explanations for the criteria if they have been set relative to the objectives the contracting authority wants to achieve and relative to the specific nature of the subject of procurement.

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**Example**

- In laying down additional criteria for the procurement of 100 tons of canned food, the contracting authority requested that bidders meet technical capacities whereby they must own a temperature controlled warehouse having a minimum capacity of 3,000 tons for storing the goods.
- A contracting authority procures large quantities of medicines over an extended period. Wishing to ensure that only serious bidders participate in this procedure, the contracting authority stipulates that bidders must have written authorisation from the manufacturer to sell medicines in this procurement.
- The contracting authority stipulates that bidders tendering for the supply of printing cartridges must have at least two registered vehicles and six employees, without specifying their features or functions, and in the absence of a clear link with the interest of fulfilling their contractual obligations.

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**Documents**

- Tender documentation for the procurement concerned
  - Additional clarifications and responses to bidders' questions
  - Minutes of the committee meeting for the procurement concerned
-

### Question 14: Is technical specification defined in a way to distort competition during the procedure?

Sub-questions

- Is the technical specification of the subject of procurement in line with the purpose for which it is being procured?
- Does the technical specification, in terms of usability and quality of the subject of procurement, contain redundant criteria which may be discriminatory?
- Is there a written record (minutes of committee meetings or responses to bidders' questions) in which the specification is explained?

Importance

Notwithstanding additional criteria, competition in a procurement procedure can also be distorted when the technical characteristics of the subject of procurement are defined haphazardly. The technical specification is the part of the tender documentation in which the contracting authority defines the required characteristics of the subject of procurement. The law stipulates the specification for the subject of procurement must be objective, and meet the needs of the contracting authority. A crucial provision in the law states that a contracting authority cannot include any provision in the tender documentation that would lend advantage to or eliminate certain bidders.

By laying down certain specific details in the technical specification a contracting authority may restrict or eliminate competition, while adhering to the provisions of the law, without reference to a specific manufacturer, origin or construction. Motives for "adjusting" technical specifications can be down to corruption, but also to the desire of a contracting authority to acquire a subject of procurement which it is subjectively convinced has the most appropriate quality. Regardless of the reasons, it is essential to determine whether there is a clear explanation as to how such restrictive specifications protect the interests of the contracting authority. A proper assessment of the justification of technical specification requires good knowledge of the subject of procurement and current market conditions. Questions, comments and additional clarifications by other bidders in the procedure can be of great assistance, as well as consultations with procurement experts.

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**Example**

The procurement service of the contracting authority which is drafting a technical specification for the procurement of computer products has an affinity towards a particular manufacturer. The necessary technical characteristics for the computers stipulate technology patented by that company only, despite the fact that this technology is not necessary for the purpose for which the contracting authority is procuring the computers.

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**Documents**

- Market analysis record for the subject of procurement
  - Tender documentation for the procurement concerned
  - Additional clarifications and responses to bidders' questions
  - Minutes of the committee meeting for the procurement concerned
-

**Question 15: Did the contracting authority envisage mechanisms of financial security in accordance with its interests and the competitiveness protection principle?**

Sub-questions

- Did the bidding require some kind of financial security?
- Was the value of financial security proportional to the potential damages that the contracting authority can sustain in case the bidder/supplier fails to meet its obligations?
- Was the value of financial security unjustifiably higher than the potential damages to the contracting authority?
- Was there a justification for the selected type and value of the required financial security?

Importance

By requiring a bidding or a contract financial security, contracting authority is insured in the case a bidder or the supplier fails to meet its obligations. The form of this security is discerned by the contracting authority. It can be one of the many forms of securities like mortgages, promissory notes, guarantees given by other legal entity, bank guarantees, insurance policies, etc. Contracting authority can ask for financial security in different phases: guarantee for the bid – insurance that the bidder will not withdraw its offer if it wins the tender; guarantee for the contract performance – insurance that the supplier will meet all the contract obligations, and the guarantee for refund of the advance payment (if there is any).

It is very important for the contracting authority to secure itself from any possible damages that could come from the side of the bidder/supplier. Therefore the value of the security should be high enough to compensate the possible damages. On the other hand, asking for too expensive securities can negatively affect the competitiveness in the tender procedure. Latest research done by the Republic of Serbia Public Procurement Office points exactly to this – increasing number of bidders are unable to compete for tenders due to the fact that the contracting authorities request expensive bank guarantees much more often than before. Bank guarantees are the safest, but also the most expensive financial security that can be used for procurement. Contracting authority should explain and justify the requested financial security. If there is no such explanation in the tender documentation, maybe it can be found in the minutes of the procurement committee meetings or in the answers given to the interested parties during the bidding process.



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**Example**

Military medical facility procures much needed medicine, but requests a very demanding and expensive bank guarantee for contract performance from the bidders. The rationale of the contracting authority is to ensure uninterrupted supply of important medicine. As a result of this condition only two major international suppliers were able to bid for this tender. Both offered similar prices, very close to the estimated value of the tender. The facility gave a contract to the bidder that gave more favourable offer. However, the winning price was four times higher than the price achieved in the last year tender in which five bidders fought for the contract.

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**Documents**

- Minutes from the procurement committee meetings
  - Tender documentation for the procurement concerned
  - Answers to the questions of the bidders and interested parties
-

**Question 16: Did the contracting authority take other important aspects of the subject of procurement into account?**

Sub-questions

- Did the contracting authority recognise the importance of these elements of the bid:
  - » Delivery date/contract implementation date
  - » Warranty period
  - » Quality and availability of support
  - » Life cycle costs (delivery, usage, maintenance and disposal)
  - » Energy efficiency and environment protection
- Are these elements incorporated in the tender requirements?

Importance

Price is not the only factor determining how economical the procurement is. There are also other factors and “hidden costs” that come with every subject of procurement. They are delivery or execution time, warranty conditions, post-warranty maintenance, cost of disposal, energy efficiency and potential harm to the environment of the subject of procurement. Without serious consideration of these factors contracting authority can sustain financial losses and other damages in the long- or mid- term. These damages often significantly exceed the value of the procurement.

It is important to see whether the contracting authority has considered these factors and incorporated them in tender documentation. These requirements can be set by technical specification, through additional requirements for bidders, elements of the criterion of the economically most advantageous bid, or a model contract.

Example

Contracting authority procured vehicles for its needs. Tender was won by the bidder that gave the lowest price for the vehicles, but also a bidder that has very underdeveloped service network in Serbia with expensive spare parts. Even though this problem was not felt in the first year of exploitation, contracting authority soon could not count on all of the vehicles to be used, because there was always a vehicle that waited for a spare part or repair in the authorised shop.

Documents

Tender documentation of the procurement concerned

## GENDER-SENSITIVE PUBLIC PROCUREMENT

In order public procurement to be wholly expedient, it should not be viewed simply in the context of economic development, rather it is necessary to understand its wider social impact. Given that goods, services and works are procured as part of socially established patterns, public procurement could further deepen these social norms in a way that encourages gender inequality and in doing so have discriminatory effects on women. Therefore, it is necessary to realise how the different roles of men and women affect the organisation, implementation and realisation of public procurement, and the consequences they have. In order to achieve this, public procurement should be analysed from a gender perspective. This does not mean that the gender dimension of public procurement should be based on the counting of women and men, rather on the fact that certain decisions and ways of implementing public procurement can directly affect the quality of life and work for men and women. For example, prior to deciding on what to purchase, a check should be made as to whether there is a gender dimension to the subject of procurement, i.e. whether it corresponds to the actual needs of women. Then the market needs to be analysed and if certain savings are achieved, a thorough examination should be made as to whether those savings came at the expense of the needs of women. The decision as to who the goods will be procured from is important and it would be prudent to analyse whether and how the bidder adheres to the principle of gender equality. In short, gender analysis of public procurement should serve as an initial step for the expedient implementation and socially responsible organisation of public procurement processes. Steps for gender analysing public procurement will be described in detail hereunder.

# Public procurement planning

## Importance:

During the planning phase it is necessary to conduct a preliminary review which will examine whether the subject public procurement has a gender dimension to it, and to this end it is necessary to collect and analyse all the available data. In order to achieve this, it is important to classify the collected data by gender i.e. whenever it is possible to use gender-sensitive statistics. This is a key precondition and necessary basis for determining differences between the sexes and assessing gender impact on public procurement.<sup>18</sup>

It is important that a gender perspective be integrated into the public procurement system from the start. In this way it is possible to ensure that the needs of women and men in later procurement processes are taken into account. Pursuant to the ZJN (2012), the contracting authority may initiate a public procurement procedure only if the acquisition has been pre-defined in the procurement plan. The plan defines the subject of procurement, the estimated value thereof, the type of procedure and the dates for initiation of the procedure, and the conclusion and execution of contracts.

It is important that the contracting authority state in particular the reasons and justification for the public procurement in the procurement plan<sup>19</sup>. In this regard, it is necessary that the contracting authority, whenever possible, analyse the subject of procurement so as to look at its effects on men and women.

## Questions:

- Does the subject public procurement have a gender aspect?
- Does the institution keep gender statistics?
- When analysing the subject public procurement in the public procurement plan, have its effects on men and women been examined?
- Are the different effects on men and women presented clearly in the public procurement plan?

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<sup>18</sup> *Equal opportunities for women and men in public procurement contracts: a few recommendations*, Institute for equality of women and men, 2014.

<sup>19</sup> Public Procurement Act

**Example:**

When procuring socks or shoes for police officers, it is necessary to obtain data on the shoe sizes worn by men and women and plan the procurement using this information. However, where staff training services are being procured, it is necessary, using gender statistics, to determine the number of men and women who have previously had the opportunity to attend similar training to identify gender differences or current trends in training.

**Establishment of a committee****Importance:**

Prior to issuing a call to tender, it is necessary to form a public procurement committee. The committee has, *inter alia*, the task of preparing the tender documentation, and to expertly evaluate the bids received, prepare a draft decision on the most advantageous bid.<sup>20</sup>

It is therefore essential that professionals who participate in the committee have knowledge of gender equality. Lack of adequate resources and staff with expertise in gender equality may later lead to failure to take the gender perspective into account in the public procurement process.

**Questions:**

- Do persons participating in the work of the committee have knowledge of gender equality?
- Has at least one person involved in the work of the committee had the opportunity to attend training sessions on gender equality?
- Is the committee comprised of male and female members?

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<sup>20</sup> “Official Gazette of the Republic of Serbia”, no. 50/2009

## Preparation of tender documentation

### Importance:

It is necessary, in terms of bid preparation, to ensure that the technical specifications contain provisions that clearly indicate gender differences of the subject of procurement and take into account the needs of women and men when describing the subject of procurement.

### Questions:

- Is it possible to integrate the gender perspective into a given subject of procurement?
- Were gender-sensitive statistics taken into account during the market analysis phase?
- Where services are being procured, whether they affect women and men differently?
- Are technical specifications gender-sensitive and are they congruous with the contracting authority's actual needs and at the same time take into account the different needs of women and men?
- What impact will the procurement have on men and women after execution of the public procurement contract?

## Evaluation and selection of bidders

### Importance:

When compiling a written report on the expert evaluation of bids, the law stipulates that it is necessary for the committee to prepare a written report on the expert evaluation of bids.<sup>21</sup> This report should also contain information on bidders and their business policies that are supposed to indicate their level of respect for gender equality.

### Question:

- Does the report contain information on bidders and their business policies that indicate the level of respect for gender equality?

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<sup>21</sup> Article 105 of the Public Procurement Act ( "Official Gazette of the Republic of Serbia" no. 124/12)

**Example:**

Security institutions in Serbia have gender equality advisers<sup>22</sup> who may be included in the evaluation and selection of bidders or at least consulted in this process.

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**CASE STUDY OF GOOD PRACTICE IN SWITZERLAND**

In Switzerland, the Federal Public Procurement Act of 1994 clearly stipulates that all bidders holding public contracts must implement a policy of equal pay for their employees. In order to determine with greater ease whether the principle of equal pay is being adhered to, Switzerland developed a special software called Logib. This is software that examines and analyses the qualifications of employees (education, experience, length of service), the job classification rules, number of employees, scope of activities, etc. This tool allows you to find out whether the policy of equal pay for women and men is being implemented and adhered to in a company. Although this tool exists in Germany and Austria, their application is not mandatory, while in Switzerland equal pay is a criteria for bidders to access the public procurement process. Moreover, the Swiss Public Procurement Decree provides that a contracting authority may initiate an inspection if it finds that the salaries of women and men differ. If this is the case, the contracting authority may be subject to various forms of sanctions. In addition, having successfully been awarded a public contract, a contractor must confirm with the Purchasing Commission of the Federal Government (“Beschaffungskommission des Bundes” or “BKB”) that its subcontractors also adhere to the equal pay policy.<sup>23</sup>

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## Conclusion and execution of contracts

**Importance:**

Contractors may provide for special contract performance conditions which may be related to respect for equality between women and men. In some cases, the contract performance conditions can be specified with a view to promoting gender equality.

**Question:**

- Are there special conditions that contractors may submit concerning respect for equality between women and men?

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<sup>22</sup> On the basis of the National Action Plan (NAP) for the implementation of UNSC Resolution 1325 in Serbia introduced a gender equality advisor to minister/director in charge of the security sector.

<sup>23</sup> [http://ec.europa.eu/justice/gender-equality/files/exchange\\_of\\_good\\_practice\\_de/summary\\_report\\_de\\_2011\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/exchange_of_good_practice_de/summary_report_de_2011_en.pdf)

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## Example:

It is possible to include requirements that staff or consultants who are responsible for the jobs have knowledge and skills in respect of gender equality as well as that contractor partners work to that end. When concluding a contract it is possible to include training for this purpose in order to improve theoretical and then practical knowledge that will be used in public procurement.<sup>24</sup>

## Enclosed: List of documents relevant for assessing expediency

### Defence planning documents

- National Security Strategy
- Defence Strategy
- Strategic Defence Review
- Long-Term Defence System Development Plan of the Republic of Serbia
- Medium-Term Defence System Development Plan and Programme
- Medium-term plans of responsible units

### Strategic framework of the Ministry of Interior

- Ministry of Interior Development Strategy<sup>25</sup> and the corresponding action plan
- Community Policing Strategy and Community Policing Strategy Action Plan
- National Anti-Corruption Strategy of the Republic of Serbia
- National Strategy for Protection and Rescue in Emergency Situations
- Fire Protection Strategy
- Ministry of Interior Communication Strategy
- Strategic Assessment of Public Safety<sup>26</sup>
- Police Strategic Plan<sup>27</sup>
- MUP Human Resources Strategy<sup>28</sup>
- Action Plan for Chapter 24

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<sup>24</sup> This information is listed in the European Charter on Gender Equality at Local Level. The Charter is available at: [http://euintegracije.skgo.org/upload/Document/Doc/2014\\_01/Brosura\\_POVELJA\\_200x200\\_Final\\_2012\\_WEB\\_1str.pdf](http://euintegracije.skgo.org/upload/Document/Doc/2014_01/Brosura_POVELJA_200x200_Final_2012_WEB_1str.pdf)

<sup>25</sup> At the time of going to press, the MUP Development Strategy 2011-2016 was in effect.

<sup>26</sup> Instrument provided for under the new Police Act (2016)

<sup>27</sup> Instrument provided for under the new Police Act (2016)

<sup>28</sup> Instrument provided for under the new Police Act (2016)



## Documents relevant for monitoring financial planning, budgeting and implementation

- Rules on Planning, Programming, Budgeting and Implementation in the Ministry of Defence and the Serbian Armed Forces. "Official Military Gazette" no. 31/08. It is important to note that these rules contain definitions of planning, programmes, projects, resources, etc. used by MO.
- Fiscal strategy for the [coming] year including forecasts for the [next two years] (e.g. Fiscal Strategy for 2016 including forecasts for 2017 and 2018). Fiscal strategy prepared by the Ministry of Finance and approved by the Government of the Republic of Serbia. The National Assembly examines the adopted fiscal strategy and reports to the Government on its comments and recommendations.
- Ministry of Finance Guidelines for drawing up the budget of the Republic of Serbia for the [coming] year and forecasts for the [next two years].
- Guidelines for the preparation of the financial plan, which, based on Instructions from the Ministry of Finance are prepared by MO and MUP organisational units responsible for budget and finance, and furnished to other organisational units
- Proposals for medium-term and financial plans that budget beneficiaries (MUP and MO) submit to the Ministry of Finance
- Budget Act of the Republic of Serbia (for the year in question) Along with the Budget Bill, the Government furnishes the National Assembly with an *Explanatory Note to the proposal of funds required by budget beneficiary*;
- Ministerial instructions of the Minister for Defence
- Budget plan of the Ministry of Interior
- Internal audit reports
- DRI reports

## Normative documents of importance for assessing procurement procedure expediency

- Public Procurement Act
- Rules on the content of the internal rules that governs public procurement in detail within the contracting authority
- Rules on Obligatory Tender Documentation Elements
- Rules on the form and content of the procurement plan and procurement plan implementation report
- Rules for Comprehensive Regulation of Public Procurement by the Ministry of Defence and the Serbian Armed Forces:
- Public Procurement Guidelines in the Ministry of Interior
- Public procurement plan of the contracting authority for the year in question

## Documents related to individual procurement procedures

- Prior notification (optional)
- Request to initiate a procedure
- Rationale for launching a negotiated procedure without publication of the invitation to tender (depending on the procedure)
- Decision to initiate the procedure
- Decision establishing a public procurement committee
- Declaration by committee members in respect of no conflict of interest
- Tender documentation
- Document on the basis of which the tender documentation is drafted (including the market analysis record on the basis of which the estimated value is calculated)
- Design contest invitation (depending on the procedure)
- Notice of dynamic purchasing system (depending on the procedure)
- Notice of recognition of qualifications (depending on the procedure)
- Notice of launching a negotiated procedure without publication of the invitation to tender (depending on the procedure)
- Call for tenders
- Call for tenders in English (optional)
- Tender documentation amendments (optional)
- Questions from interested parties (optional)
- Minutes of committee meetings for the public procurement in question
- Minutes of the bid opening
- Record and report on the expert evaluation of bids
- Bidders' decisions regarding the procurement (optional)
- Applications for the protection of rights and documents related to protection of rights proceedings (optional)
- Notice of contest results (depending on the procedure)
- Notice of extension of bid submission deadline, or applications (optional)
- Decision to amend the public procurement contract (optional)
- Notice of concluded framework agreement (depending on the procedure)
- Notice of cancellation of public procurement procedure (depending on the outcome)
- Notice of suspension of public procurement procedure (depending on the outcome)
- Notice of concluded contract (depending on the outcome)
- Framework agreement (depending on the procedure)
- Supply contract (depending on the outcome)
- Goods delivery record(s) (depending on the outcome)
- Other documents employed to check eligibility criteria laid down by the technical specification (depending on the procedure and the outcome).

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