



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**

25/IV Savska Street, Belgrade

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THE MINISTRY OF HEALTH

Nemanjina 22-26
Belgrade

The Ministry of Health has submitted to the Commission for the Protection of Competition the Proposal for a Regulation on Amendments to the Regulation on Planning and the Type of Goods and Services for which centralized public procurement is conducted, for the purpose of giving an opinion.

Pursuant to Article 22, and in relation to Article 21, paragraph 1, item 7) of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", 51/2009 and 95/2013) the Council of the Commission for Protection of Competition, at its 105th meeting held on January 13, 2023, passes the following

OPINION

Proposal for the Regulation on Amendments to the Regulation on Planning and the Type of Goods and Services for which centralized public procurement is conducted (hereinafter: Proposal for a regulation), proposes the amendment of the Regulation on planning and types of goods and services for which centralized public procurement is carried out ("Official Gazette of RS", no. 34/19, 64/19, 17/20, 21/20 and 51/22, hereinafter: the current Regulation), in the form of an additional expansion of the types of goods and services (Article 11 of the current Regulation) for which centralized public procurement is carried out, and to the complete implant material in orthopedics that is provided from the funds of mandatory health insurance .

Bearing in mind the competence of the Commission for the Protection of Competition (hereinafter: the Commission), as well as the fact that the previous amendments to the current Regulation prescribed the expansion of the list of goods and services for which centralized public procurement is carried out, we hereby indicate to the following.

The implementation of centralized public procurement can have positive effects, which are cited as reasons for adopting the regulation. However, it can also have limiting effects in the form of a reduction in the number of bidders who meet the conditions for participation in the public procurements in question, given that, as a rule, it is a matter of public procurements of high value that imply the fulfillment of specific conditions for submitting bids, as well as the engagement of significant material and human resources of potential bidders, which may limit the possibilities of participation of certain market participants (primarily small and medium-sized enterprises) in such public procurement procedures.

In addition, public procurements that are periodically repeated (which is also a feature of centralized public procurements) are, as a rule, characterized by predictability and the participation of a certain group of bidders, which can represent a potential danger of "rigging" or "falsification" of bids in public procurement procedures. The commission conducted several proceedings for the investigation of competition violations, which had as their subject the so-called bid rigging, and there were also procedures related to centralized public procurement. A number of these cases were concluded by legally binding decisions of the Commission on determining the violation of competition, which were also confirmed by the decisions of the competent courts.

The provided rationale of the proposed regulation, does not state whether the proposer or any other organization or institution has conducted market research or analysis, how many market participants are there who deal with implant materials in orthopedics, both the current ones and those who could enter this market in the short term and without major costs, and the like. Also, past experiences related to the application of the regulation in question were not mentioned. Therefore, it cannot be reliably concluded how the centralized public procurement of goods, which are specified in the current Regulation and in the Proposal for a Regulation, affected the competition on the market.

The Council of the Commission points to the obligation of the contracting authority to, when designing centralized public procurements, pay increased attention to the activities of designing procedures for the relevant public procurements in order to reduce the risk of rigged bids and to increase the number of potential bidders (e.g. division by lots and the like).

In addition to the realization of the effects listed as the reasons for the adoption of the regulation, the proponent of the regulation as well as the contracting authority should bear in mind that it is necessary for centralized public procurements to be designed and implemented in a way that encourages the further development of competition on the market. Bearing in mind that the Commission has not been invited to state and give its opinion on the current Regulation, we hereby wish to point out that the above also applies to the procurement of other mentioned goods and services.

In accordance with the above, we refer to the Instructions for the detection of "rigged" offers in connection with the public procurement procedure ¹, which the Commission for the Protection of Competition published on its website, which can help in identifying potential risks, i.e. predicting measures to eliminate risks or reduce them to an acceptable measure.

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.

¹ <https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Uputstvo-za-otkrivanje-namestenih-ponuda-u-postupku-javnih-nabavki.pdf>