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**Serbia**

**Modernization and Optimization of Public Administration Program**

**Fiduciary Assessment**

April 20, 2016

Global Governance Practice

Europe and Central Asia Region

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FISCAL YEAR

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**ABBREVIATIONS AND ACRONYMS**

|  |  |
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| ACA | Anticorrupion Agency |
| ACG | Anticorruption Guideline |
| AFCOS | Anti-Fraud Coordination Service |
| APML | Administration for the Prevention of Money Laundering |
| BES | Budget Execution System |
| BSL | Budget System Law |
| CTA | Consolidated Treasury Account |
| CTAS | Consolidated Treasury Account System |
| DBB | Direct Budget Beneficiary |
| DLI | Disbursement-linked Indicator |
| EU | European Union |
| F&C | Fraud and Corruption |
| FM | Financial Management |
| FMC | Financial Management and Control |
| FMIS | Financial Management Information System |
| IBB | Indirect Budget Beneficiary |
| INT | Integrity Vice Presidency |
| IPSAS | International Public Sector Accounting Standards |
| IT | Information Technology |
| MoF | Ministry of Finance |
| MPALSG | Ministry of Public Administration and Local Self Government |
| MTEF | Medium-term Expenditure Framework |
| NA | National Assembly |
| NES | National Employment Service |
| OGP | Open Government Partnership |
| PIFC | Public Internal Financial Control |
| PEFA | Public Expenditure and Financial Accountability |
| PforR | Program-for-Results |
| PPL | Public Procurement Law |
| PPO | Public Procurement Office |
| RC | Republic Commission |
| SAI | State Audit Institution |
| SIGMA | Support for Improvement in Governance and Management |
| TA | Treasury Administration |

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**Serbia**

**Modernization and Optimization of Public Administration Program**

**Table of Contents**

**Page**

[**I.** **Introduction** 1](#_Toc442428946)

[**II.** **Financial Management Arrangements** 1](#_Toc442428947)

[A. Planning and Budgeting Arrangements 1](#_Toc442428948)

[B. Transparency 3](#_Toc442428949)

[C. Accounting and Financial Reporting 4](#_Toc442428950)

[D. Treasury Management and Flow of Funds 6](#_Toc442428951)

[E. Internal Controls and Internal Audit 7](#_Toc442428952)

[F. Program Audit 10](#_Toc442428953)

[**III.** **Procurement Assessment** 13](#_Toc442428954)

[A. Legislative and Regulatory Framework 13](#_Toc442428955)

[B. Institutional Framework 14](#_Toc442428956)

[C. Procurement Processes and Procedures 15](#_Toc442428957)

[D. Procurement Planning and Overall Value 17](#_Toc442428958)

[E. E-procurement 18](#_Toc442428959)

[**IV.** **Integrity and Transparency of the Public Procurement System** 18](#_Toc442428960)

[A. Public Access to Procurement Information 18](#_Toc442428961)

[B. Complaints Receiving and Handling Mechanisms 19](#_Toc442428962)

[C. Control Mechanisms 20](#_Toc442428963)

[D. Civil Supervision of Procurement Processes 21](#_Toc442428964)

[**V.** **Institutional Capacity** 22](#_Toc442428965)

[A. Public Procurement Professionals 22](#_Toc442428966)

[B. Public Procurement Office 23](#_Toc442428967)

[C. Republic Commission for the Protection of Rights 23](#_Toc442428968)

[**VI.** **Conclusions on Program-for-Results-specific Procurement Arrangements** 24](#_Toc442428969)

[A. Overall Risk Assessment 24](#_Toc442428970)

[B. Procurement Profile of the Program 24](#_Toc442428971)

[C. Procurement Capacity 24](#_Toc442428972)

[**VII.** **Governance and Anticorruption Arrangements** 26](#_Toc442428973)

[A. Overview of the Fraud and Corruption Legal and Institutional Framework 26](#_Toc442428974)

[B. Alignment with Anticorruption Guidelines 28](#_Toc442428975)

[C. Conclusion 29](#_Toc442428976)

[Annex 1: Key Provisions of the 2012 Public Procurement Law 31](#_Toc442428977)

[Annex 2: Key Actors in Public Procurement in Serbia 33](#_Toc442428978)

[Annex 3: Program Action Plan 35](#_Toc442428979)

**List of Figures**

[Figure 1. Structure of Concluded Contracts by Type of Procedure in Q3 2012 17](#_Toc442384166)

[Figure 2. Structure of Concluded Contracts by Type of Procedure in Q3 2013 17](#_Toc442384167)

**List of Tables**

[Table 1. Summary of Key FM Risks and Mitigation Measures 12](#_Toc442384168)

[Table 2. Average Number of Bids Submitted Per Tender 16](#_Toc442384169)

[Table 3. Usage of the Public Procurement Portal, 2013–2014 20](#_Toc442384170)

# Introduction

1. **An integrated fiduciary systems assessment has been undertaken that incorporates financial management (FM), procurement, and governance issues.** The assessment concludes that there is reasonable assurance that Serbia’s FM systems for the Program (planning, budgeting, accounting, internal controls, funds flow, financial reporting, and auditing arrangements) and procurement will ensure appropriate use of Program funds and will safeguard Program assets. This note is divided as follows. Part one of this assessment covers FM arrangements; part two covers procurement arrangement; and part three covers governance and anticorruption assessment. The Program will be implemented by the Ministry of Public Administration and Local Self Government (MPALSG); the Treasury Administration and the Public Procurement Office (PPO). The capacity of these entities in the abovementioned areas was assessed particularly in the scope of a broader assessment of country public FM systems. Combined fiduciary risk after mitigation measures is rated as substantial.

# **Financial Management Arrangements**

## Planning and Budgeting Arrangements

1. **Planning and budgeting capacity in the Program implementing entities is assessed to be sufficient, and the government is committed to including Program expenditures in the budget.** The MPALSG, the Treasury Administration (TA), and other involved entities prepare financial and medium-term plans. Staff qualified and with substantial experience in budget preparation process are in charge of these tasks. In the process, they adhere to the provisions of the Budget System Law (BSL) and prescribed budget calendar, sequence of steps, and content of budget documentation. Program expenditures are included in financial plans of Program implementing entities for the coming year. Also, Program expenditures have been included in the Annual Budget Law for 2016, as well as in medium-term expenditure ceilings for the two following years. The government is committed to implementation of the Public Administration Reform Strategy and allocation of funds to Program activities in the coming years.
2. **The calendar for preparation of the annual budget is outlined in the BSL.** The calendar provides clarity and comprehensiveness of the budget preparation process.The calendar specifies the timing and involvement of relevant stakeholders. However, deviations from the prescribed deadlines in some steps of the process have been noted in past years. Combined with limited staffing of the Budget Department of the MoF, the delays in adherence to the deadlines meant that there was insufficient time for thorough analysis of budget users’ requests and setting of adequate annual appropriation levels by the MoF. This is reflected in the variance in expenditure composition between the actual and budgeted figures for the principal spenders, reported as ranging from 10 percent to 40 percent annually during the years 2011, 2012, and 2013. Further, identification of priority areas for financing (including national investment priorities) early in the process is rendered ineffective by subsequent MoF instructions for the preparation of the draft annual budget, which are usually not referenced to the priority areas for financing indicated by the budget users. Effective management of budget negotiations to decide upon priority budget allocations is hampered by unclear separation of costs of the existing and new policies in the budget requests. The government has introduced a new bylaw (April 2015) to improve the assessment of the impact of new policies, but it is too early to assess its results. Moreover, the MoF Budget Department negotiates with a large number of direct budget beneficiaries (DBBs), each of whom submits a separate budget request. The number of entities/DBBs was standing at 54 entities in 2014, but the number varies each year.[[1]](#footnote-2)
3. **Implementing entities have submitted their financial plans to the MoF on time and in line with the budget calendar over the past three years.** Track record for timeliness in submission by the government of the annual budget proposal and its approval by the National Assembly (NA) is overall solid.While the submission of the budget proposal to the NA has been on time in 2013 and 2014, submission of the budget proposal for 2015 was delayed and limited the time available for legislative review. On a positive note, budgets for the coming year in the recent past have consistently been adopted by the parliament before the current year end. Annual Budget Law for 2016 will be adopted by December 11, 2015. Financial plans that implementing entities prepare are subject to the MoF’s scrutiny when it comes to specific entity’s budget, and this process lacks better two-way communication. This risk is mitigated by the fact that the government has committed to inclusion of Program expenditures in the budget. Severance cost adds up to 80 percent of the expenditures to be financed by the loan and their inclusion in the budget in the next three years is rather certain. The Budget Department of the MoF, which is in charge of preparing the budget, is understaffed and should be strengthened in the coming years to ensure quality of the budget process.
4. **Medium-term Expenditure Framework (MTEF) estimates and ceilings are generally ineffective in providing the starting point in preparation of the following years’ budgets.** There is a three-year Expenditure Framework in place, articulated in the government’s Fiscal Strategy, which is reviewed but not adopted by the NA. In the absence of procedures for its enforcement, budget beneficiaries largely do not operate within the MTEF and the projections for two years following the budget year are not observed. The actual outturns of past projected figures imply that the MTEF-set ceilings are indicative and largely inconsequential as a medium-term planning instrument. The Program will mitigate this risk by targeting key Programs/Program activities as indicated in the Expenditure Framework, with relatively high certainty of being included in the budget over the implementation period and with realistic cost estimates available.
5. **Revenue outturn is not necessarily in line with the budgeted forecasts.** Government domestic revenues, as referred to in the Annual Budget Law, include tax revenues, nontax revenues, and grants. All revenues, including the own generated revenues from DBBs and IBBs, are deposited in the Treasury, registered in the Treasury system, and reported on the year-end budget execution report as well as on its institutional or sectoral reports when applicable. However, variance between budgeted and actual domestic revenues has been reported in recent years, illustrating an uneven trend. None of the entities involved in the Program are directly charged with revenue collection and any generated own-source revenues are not earmarked. Revenue shortfall to the budgeted figure can lead to decreasing budgeted expenditures through supplementary budgets and hence, pose a risk to the Program Expenditure Framework being implemented; however, this has not happened frequently as reaching toward other sources of financing, such as debt increase was the most common measure of addressing this issue.
6. **Implementing entities do not have a track record of extensive budget changes in line with rules and procedures for in-year changes to the budget appropriations.** The rules for such changesare clearly outlined in the legislation and adhered to.This includes procedures requiring approval of the legislature as well as those managed by the executive.In recent years, in-year changes to budget appropriations have been undertaken in a transparent and predictable manner. On the executive side, decisions for reallocations of annual appropriations require prior approval by the MoF. Any reallocations are capped at 5 percent of the annual appropriation approved for a particular type of expenditure or expense by the DBB or up to 10 percent within a Program appropriation. The government may also use the contingency fund current budget reserve, whose value is capped at 2 percent of the total revenues and income from the sales of nonfinancial assets for the budget year, for unplanned purposes for which no appropriations have been foreseen or for the purposes where the appropriations prove to be insufficient in the course of the year. Decisions on the use of this contingency fund are made by the government upon proposal of the MoF.
7. **The NA decides on any supplementary budgets in the course of the year.** Supplementary budgets have been a regular feature of the public FM system in Serbia in the past years. Variances of actual expenditures compared to originally approved budget exist and are assessed to be of moderate levels. The Program will mitigate this risk by focusing on Programs of relevance and, therefore, certitude with regard to being included in the budget. Additionally, selected Programs will be those with cost estimates, which are based on solid ground and rationale, as confirmed by the assessment.
8. **The structures and procedures for review of the annual budget proposal are firmly established and respected.** Legislative review of the Fiscal Strategy and the annual budget proposal is prescribed in the BSL and parliamentary Rules of Procedure. There is no requirement, and accordingly no deadline, for the MTEF to be approved by the NA. For the annual budget proposal, the legislation foresees a 45-day window (November 1–December 15) for legislative review and approval. The technical part of the legislature review, before plenary deliberation of the annual budget proposal, is carried out by the parliamentary Committee on Finance, State Budget, and Control of Public Expenditure. Insufficient staffing in the Committee Secretariat poses a challenge for a detailed fiscal analysis of the budget proposal. This is partly offset with the information available from analyses of the Fiscal Strategy and proposal of the Annual Budget Law carried out by the Fiscal Council of Serbia. The Annual Budget Law (budget proposal) does not present comparison of the previous year’s outturn with the budgeted figures for the current year, making it difficult for the legislature to easily identify expenditure trends over time.

## Transparency

1. **The availability of budget and budget execution documentation to the public is reported as overall partial, although principal documents such as annual budget and year-end financial statements are readily available to the public.** Documentation that must be submitted to the NA for review and approval of the annual budget is specified in the Budget System Law. Nonfinancial performance targets have been included in the budget for the first time in 2015, following the transition to the Program budgeting format aimed at ensuring greater transparency and higher degree of accountability for results. With the exception of a monthly Public Finance Bulletin, which presents aggregate expenditure figures, availability of in-year budget execution reports to the public is partial. The monthly Public Finance Bulletin is published on the website of the MoF, but other official in-year budget execution reports are only available upon request from the relevant institutions (the MoF, government, and NA). In line with the regulation, implementing entities prepare quarterly budget execution reports which include Program expenditures. Although foreseen as a measure in the Anticorruption Strategy, Budget Inspection Annual Report is not yet being made publicly available by the MoF. Financial statements for the budget of the Republic are easily accessible to the public in the form of the proposal of the Law on the Final Account that is submitted by the government to the NA for approval. All external audit reports are widely accessible through the website of the State Audit Institution (SAI). The reports are posted on the website without delay upon their finalization.

## Accounting and Financial Reporting

1. **Adequate capacity of the accounting system is in place to track and report actual Program expenditures against a comprehensive budget classification system.** Budget control and monitoring are managed by the TA through a centralized transaction processing system and captured in the Treasury Main Ledger (TML). The TML, running on the SAP platform, captures all revenue and expenditure transactions with relevant coding structures, which follow the organizational, functional, Program, three-digit economic, six-digit economic, and source-of-funds classification. The accounting arrangements facilitate detailed analysis, as necessary. All the entities involved in the Program use the standard government classifications and their transactions are captured in the TML. This is why the budget execution system operated by the TA through the financial management information system (FMIS) application is in the center of accounting and financial reporting assessment of the Program. The system is assessed to be reliable. Budget beneficiaries, maintain additional accounting records and auxiliary ledgers, which they reconcile with the TML in the course of preparation of their budget execution reports. Accounting and financial reporting in the entities involved in the Program is of acceptable level. Relevant departments of those institutions employ qualified and experienced staff working on accounting and financial reporting. There are written accounting policies and procedures which are applied in practice. They maintain the prescribed accounting records and submit the statutory in-year budget execution reports and annual financial statements.
2. **The government’s accounting and financial reporting is performed on cash basis, with additional information on assets and liabilities.** The reporting meets the World Bank’s requirements of Program financial reporting. Under the Decree on Application of International Public Sector Accounting Standards (IPSAS), the officially prescribed accounting standards for DBBs and IBBs, users of funds of mandatory social insurance organizations and budgetary funds of the Republic as of 2010 are the cash-based IPSAS. All entities involved in the Program are subject to this regulation. However, since there are bylaws issued by the MoF that prescribe specific accounting policies and reporting template, the implication is that IPSAS implementation continues to be indirect (that is, applied within the limits imposed by the National Framework).
3. **A number of in-year budget execution reports of differing level of detail are issued regularly in the course of the year.** Additionally, the deadlines which regulate their preparation in the BSL are observed.The MoF publishes the monthly Public Finance Bulletin, compiled using Treasury data and aggregately reporting on central government revenue and expenditure cash flows, within eight weeks from the end of the respective period. The bulletin does not provide data about individual budget organizations and future commitments. Likewise, the bulletin does not furnish explanation for the variations.
4. **Program expenditures will be reported through quarterly reports on budget execution prepared by the implementing entities.** All DBBs prepare and deliver budget execution reports to the Treasury within 20 days from the end of the quarter (except for the first quarter) on the level of categories of expenditure in line with the Chart of Accounts. Such reports relating to the abovementioned entities on which the Program will focus will be considered as financial reports used for monitoring the Program expenditures. The MoF produces reports on budget execution in the course of the budget year, which are submitted to the government and the NA 15 days after the end of the second and third quarters. No such report is generated for the first quarter. They are aggregated on the highest level of economic classification and thus comparable to aggregate figures contained in the annual budget. The MPALSG and other assessed entities deliver prescribed reports in line with the legislation with no exception and the reports are assessed with reasonable assurance to be reliable. In-year budget execution reports are prepared and submitted in one of the forms that are included also in the final account, namely the Budget Execution Report (Form 5), which ensures consistency between in-year reports and the final account.
5. **Lack of disaggregated data in different types of classification in government in-year reports may restrict monitoring and hinder identification of situations which require attention.** The assessment of objective compliance and of the adequate use of public funds is also limited because of this weakness, even if the reports are prepared using the budget structure and figures. From the perspective of accuracy of data on budget execution to date in the MoF in-year reports, there is no evidence that it contains inaccuracies or omissions. The SAI has not made any objections to the quality of information contained in the in-year budget execution reports. The Treasury has the necessary capacity to generate customized reports on budget execution for any specified parameters and for any required period, with sufficient level of disaggregation capturing both the registered commitments and pending payments from the Budget Execution System (BES).
6. **Annual financial statements are prepared by the TA and made available for audit in June, within six months from the end of the relevant period.** Implementing entities prepare annual financial statements using their accounting records and auxiliary ledgers, after reconciling such information with the TML. The Treasury consolidates and prepares based on such inputs and data in the TML—the government’s annual financial statements (final account). Annual financial statements are submitted to the MoF who submits them for the SAI’s audit in June. Financial information is provided by the DBBs in their financial statements, together with their respective IBBs by the end of March of the current year for the previous year. The deadline for submission is fixed in the BSL and is consistently observed, with a minor slippage of several days in 2013 and 2014. The format of the final account is comparable to that of the approved budget and shows the budget allocation, executed budget figures, and the differences between the two. The final account is subject to the audit and it includes the following financial statements: balance sheet, revenue and expenditure statement, statement of capital expenditures and receipts, cash flow statement, and the budget execution report.
7. **Annual financial statements are generally reliable.** The quality of financial statements is assessed to be adequate as it pertains to budget execution, revenues, and expenditures; therefore, providing reliable information about Program expenditures. Quality and reliability of balance sheet items is somewhat questionable as the cash basis accounting and information system impedes maintaining quality financial information for accrual-based financial items; however, prevailing local regulation prescribes preparation of a balance sheet practically based on a chart of accounts aligned with that of the corporate sector.
8. **Program expenditures are an integral part of the government’s annual financial statements (final account).** Separate financial statements of the implementing entities have not been included in the SAI’s risk-based audit Program in 2015. The final account of the budget of the Republic received a qualified opinion from the SAI for FY2013, both for audit of financial statements and for audit of compliance. The main reasons for a qualified opinion from the audit of the financial statements for FY2013 refer to financial and nonfinancial assets in the balance sheet. Main findings in the audit of compliance for the same year refer to the unsatisfactory establishment of financial management and control (FMC) and internal audit as well as the accounting and information technology (IT) systems.

## Treasury Management and Flow of Funds

1. **The Consolidated Treasury Account System (CTAS) has comprehensive coverage and functions efficiently; hence, it will be relied upon for expenditure payments under the Program.** All Program implementing entities are integrated within the CTAS. It includes all relevant cash resources of the government and captures cash flows related to government revenue and expenditure. The CTAS is the single account of the consolidated treasury accounts (CTAs) of the Republic of Serbia and the local government treasuries for Serbian dinars (RSD). It is managed by the TA. It is used for execution of payments between beneficiaries of budget funds, beneficiaries of Mandatory Social Security Insurance Organizations, and other beneficiaries of public funds included and not included in the CTAS, accounting for interbank payments. All entities involved in the Program are operating within the RSD CTAS. Foreign currency funds have not yet been integrated within the CTA, so foreign currency transactions are consolidated in Treasury reports only in certain intervals. Integration of these funds within the CTA is one of the next steps in the government’s reform and it is expected to be implemented by 2016.
2. **Annual budget execution for DBBs, including the Program implementing entities, is orderly.** Annual budget is executed through the BES, that is, the software application FMIS which is managed by the TA. As of 2015, it covers the DBBs but not the IBBs. Although the treasury does process their payment requests since IBBs do make part of consolidated treasury account, they are not part of budget execution system in FMIS, and their budget execution is not monitored timely. Implementation of earlier plans to extend the coverage to IBBs has been progressively postponed. PFMRP also includes expanding the coverage of the FMIS to IBBs among its reform measures. All the entities involved in the Program are categorized as DBBs and are subject to Treasury-administered controls integrated in the BES.
3. **Ex ante commitment controls are exercised by the implementing entities and subsequently channeled through the TA in the commitment and payment approval stages.** The decision and responsibility (ex ante controls) for assuming any commitments rests with the management of individual budget beneficiaries, including the Program implementing entities. Commitments created by the Program implementing entities must conform to the appropriation approved for such purpose in the budget year. The BES has rigorous application controls that prevent any payments that would exceed the determined quotas or overall annual budget appropriations. Within the year, budget entities respect the limits set by budget appropriations in terms of payments, and the FMIS has integrated hard controls not allowing payments to exceed appropriations. However, entities may assume liabilities without entering it in the FMIS, thus creating liabilities exceeding budget appropriations and accumulating arrears. There is not sufficient monitoring and control over recording commitments in the FMIS by budget beneficiaries after liabilities have been assumed. In addition, it is possible for the budget beneficiaries to assume commitments within the budget appropriation but not be able to execute them against the subsequently set lower monthly quotas. In such cases, the budget beneficiary may apply to the TA for a change of the quota. The legislation requires the TA to decide upon such requests guided by a projection of budget revenue and income, by budget execution of a budget beneficiary in the previous period, and by the appraisal of financial planning performance. If the increase of the quota is not approved, this could potentially lead to outstanding payments.
4. **Cash management practices exercised by the TA are sound.** The TA manages cash liquidity, prepares a cash flow forecast for the fiscal year, and updates it monthly on the basis of actual cash inflows and outflows. In practice, cash planning is on a month-to-month basis, where the DBBs estimate monthly cash requirements through plans for budget execution and the TA approves their ’quota’, that is, ceiling, by the 15th of the preceding month. The Program implementing entities submit such quarterly plans for budget execution each month on a rolling basis.
5. **The funds will be disbursed based on achieved disbursement-linked indicators (DLIs).** There will be advances of the loan funds up to 25 percent of the loan amount. The government will evidence and document achievement of DLIs at the end of each year (2016–2018), and based on the verification of the achieved DLIs by the Bank according to details described in the verification protocol, the advances will be converted to disbursements freeing up space for the next advance up to 25 percent of the loan amount. The DLIs achievement and disbursement will be scalable according to the level of achievement assessed by the task team based on the verification protocol.The level of disbursed funds will be monitored based on the achieved DLIs does so that it does not exceed the level of total Program expenditures incurred over the implementation period. In case the disbursed funds exceed the level of incurred Program expenditures, the excess amount will need to be reimbursed to the Bank. Loan funds will be disbursed to a government account held at the National Bank of Serbia/CTA and will be accounted for in the budget management information system as income.

## Internal Controls and Internal Audit

1. **Although there is still a long reform path in implementation of Public Internal Financial Control (PIFC), existing systems for internal controls are sufficiently strong to provide a satisfactory control framework for the Program.** Implementation of FMC as defined by PIFC is still in the early stages; however, there is a longstanding traditional system of written internal controls and procedures within all implementing entities, which are properly applied in practice. This system provides a sound framework and covers key controls such as authorized signatories for transactions and approvals, segregation of duties, accounting checks and controls, all operations cycles covered by appropriate internal acts, and so on. There are written internal acts and rulebooks which describe procedures and controls applied for all relevant cycles of transactions. The formulated system is assessed to be adequate and complied with in practice. There is a Legal Framework for a functional PIFC system including FMC and internal audit, but implementation requires improvement.Recent assessments of public administration point to the conclusion that, despite extensive training on FMC concepts, the objectives and benefits of a fully operational FMC system are still poorly understood across the public sector. Operational guidance from the MoF on implementation of managerial accountability in practice is still lacking. This will be necessary in the ongoing transition from input- to result-based management of resources.
2. **The system of internal controls provides adequate safeguard of funds although it often lacks the linkages with major requirements for a modernized sound system of public internal controls**. Features that need to be developed would include setting of objectives, formalized risk assessment procedures, establishment of relevant and cost-effective internal controls to provide reasonable assurance, delegation of responsibilities and authority, documentation and audit trails, and so on. However, this centralized control over inputs still provides a substantially sound control environment and safeguards the use of public funds.
3. **The assessment showed that key internal controls are instituted and applied within Program implementing entities. Those include**

* appropriate authorizations and approvals of all purchases, relevant documentation, transactions of payments, and so on;
* segregation of duties as different persons are responsible for different phases of a transaction;
* reconciliations between accounting records and the TML; and
* original documentation to support all project transactions.

1. **In addition to the above, the TA exercises the following controls for execution of the budget:**

* No payments are processed if they exceed annual budget appropriations (hard control in the FMIS).
* No payments are processed if they exceed monthly payment quotas (hard control in the FMIS).
* Only authorized personnel of users of public funds can access the FMIS.
* Only authorized signatories approve requests for payment.
* Appropriate supporting documentation for payments is needed.

1. **Some controls over nonsalary expenditure are exercised both by the TA and the implementing entities.** On the level of the BES managed by the TA, there is a robust framework of automated controls over transactions in both the registration of the expenditure commitment and payment stages. Segregation of duties for the transactions carried out through the BES is adequate. Coverage of the controls integrated into the BES application includes revenues/expenditures, own-source revenues/expenditures, and received grants/expenditures of DBBs as well as transfers from the Republican budget. Transfers from local government budgets and own-source revenues/expenditures of IBBs or project loans are not executed through the BES.
2. **The internal controls in entities included in the scope of the Program provide a framework for appropriate segregation of duties, authorized signatories and lines of approval, accounting controls including reconciliations, and procurement controls—and will be relied upon for Program implementation.** According to the SAI reports, application of the controls in practice is subject to certain deviations in some cases but, in general, are complied with. Other identified weaknesses include lack of follow-up in the results of conducted annual FMC self-assessments and low level of interest on behalf of the government for implementation of recommendations intended to address systemwide issues in FMC. Selection of Programs to be financed and monitoring of implementation will aim to mitigate this risk through financing implementable Programs which allow for adequate monitoring. On the level of the budget final account, the SAI gave a qualified opinion for compliance for FY2013. For the same year, the SAI’s Sector for Audit of the Budget and Budget Funds reported 2 positive opinions and 17 qualified opinions for the audit of compliance for individual DBBs.
3. **Implementing entities make part of the centralized payroll system in the Treasury, which is assessed to include adequate payroll controls.** The TA is required to manage a registry of employed, elected, appointed, and engaged Persons in the public sector. Recent assessments contain reservations with respect to quality (that is, comprehensiveness and credibility) of this registry due to delays in data gathering and issues with accuracy of the submissions from individual public funds beneficiaries. This is mainly due to the fact that this registry is designed as a self-reporting tool where the TA has no control over the quality or reliability of the data provided. Until the comprehensive registry is fully implemented, the TA relies on its own database of personnel records (established in 2006) to underpin the centralized payroll system for civil servants and employees in the bodies of the Republican administration, which covers about 120,000 civil servants and employees (a fraction of the total number of general government personnel) and undisclosed number of staff in the military, police, and intelligence structures. All the entities involved in the Program are covered with the current centralized payroll system operated by the TA. Recent assessments indicate that the degree of integration between personnel records and payroll, timeliness of changes, and internal controls over changes to personnel records and payroll are satisfactory so the risk to the Program for the participating entities is low.
4. **An internal audit unit has been established and made functional in the Program implementing entities, but similar to the whole public sector it needs substantial institutional, methodological, and capacity developments.** The MPALSG and the TA have one employee each in the internal audit department. Internal audit prepares annual plans based on assessed risks, which are duly implemented. Implementation and follow-up of recommendations of internal audit is limited and needs improvements. The Program will not rely on the findings of internal audit as an instituted and agreed measure of confirming appropriate fiduciary arrangements for the Program during implementation, but it will consult reports of internal audits for entities involved in the Program as an additional source of information. Internal audit reports are considered as an internal enactment of the respective institution and are not normally distributed outside of the institution, except to the SAI, upon request. In recent years, issues have been reported with respect to independence of internal auditors. It has likewise been noted that quality assurance of their work needs further attention. On a positive note, a substantial number of internal audit departments follow strategic/annual risk-based audit plan. A high percentage of practicing public sector internal auditors are trained and certified under a Program designed and implemented by the Central Harmonization Unit of the MoF, involving in-class and practical on-the-job training. The same applies to the implementing entities. Assessed entities have an established internal audit function, which is operational but—as with most of the public sector entities—is in need of further capacity strengthening. Internal audit units consist typically of several people and conduct audits in line with annual audit plans that they prepare. Public sector internal auditors are required to follow internationally recognized International Professional Practices Framework issued by the Institute of Internal Auditors.
5. **The MoF** **Budget Inspection Unit carries out additional control of compliance with laws and regulations.** Findings of the budget inspection, as they pertain to the Program expenditures, will be consulted in the process of monitoring the expenditures.Themandate of the Budget Inspection Unit is very broad and includes DBBs and IBBs, extra-budgetary funds, state-owned enterprises, regional and local governments and their state-owned enterprises, and any other legal entities who have received budgetary funds (for example, lending, subsidies, donations, and so on). In case of noncompliance with the application of laws in terms of material and financial operations and with the intended and legal use of funds by the budget beneficiaries, the inspection may issue administrative acts and decisions, which impose orders to remove irregularities, recover funds during the budget year, and file misdemeanor charges against the inspected entities or responsible persons. At 11 systematized posts, the Budget Inspection Unit remains largely understaffed for discharge of such a broad mandate. For the time being, the work program of the Budget Inspection Unit is determined by the minister of Finance. It is likely that planning of the Budget Inspection Unit’s work will have to be aligned more closely with European Union (EU) PIFC requirements. Under the PIFC concept, inspection should act upon petitions and complaints (in reaction to the problems that have arisen) and upon request of the minister of Finance (in case of suspicion that particular areas may be prone to problems), making it a more effective and flexible instrument for management of irregularities.

## Program Audit

1. **The SAI audit of the government’s annual financial statements (the final account) will be considered as the audit of the Program.** The implementing entities prepare the annual financial statements using their accounting records and auxiliary ledgers after reconciling such information with the TML. The Treasury consolidates based on such inputs and the TML, the government’s annual financial statements (final account) which are subject to financial and compliance audit by the SAI. The audit of the final account for the previous year is delivered by the SAI by the end of the year following the audited period. The SAI issued modified qualified opinion on the final account for 2013. The main reason for such opinion was information on fixed assets completeness and valuation of which could not be verified. The SAI audit of the final account will be considered as the audit of the Program. The Bank has agreed with the SAI that the audit report will include an explanatory note which will detail Program expenditures specifically. The SAI is assessed to have sufficient capacity to produce a reliable audit providing sufficient assurance about the use of Program funds. Program expenditures are an integral part of the final account and are audited annually within the audit of the final account.
2. **The SAI’s capacity is assessed to be adequate as a result of significant development over the past years in terms of the number of staff, organizational structure, and audit methodology.** The mandate of the SAI is exhaustive, and its remit includes financial, compliance (regularity), and performance audits of all public entities, in accordance with national and international auditing standards. The SAI performs its audits based on a risk-based Annual Audit Plan which has to be adopted by the end on the current year for the subsequent calendar year. The SAI subscribes to the International Organization of Supreme Audit Institutions’ International Standards of Supreme Audit Institutions. The institution conducted its first performance audit in 2013 and the most recent development relates to establishing quality control department within the institution. Manuals for financial and compliance audits, performance audits, and quality control have been formally approved by the management in April 2015. As a part of financial and compliance audits, apart from accuracy of financial statements and compliance with laws and regulations, the SAI also examines the FMC systems (including internal control systems) and internal audit.
3. **The SAI independence, mandate, and organization are established and protected by the Constitutional and Legal Framework, which is respected in practice**. The SAI is accountable to the NA. The parliamentary Committee on Finance, State Budget, and Control of Public Spending established a subcommittee to consider the SAI reports in 2015, thereby increasing the capacity for the legislative scrutiny of audit reports. Management and supporting structures to allow the SAI to discharge its mandate are in place. There was significant strengthening of capacity of the SAI over the past years in terms of the number of staff, organizational structure, and development of an audit methodology. Significantly higher resources in the SAI and extensive technical support provided by the twinning project have helped increase the audit coverage and quality. The institution conducted its first performance audit in 2013 and the most recent development relates to establishing a quality control department within the institution.
4. **All the entities participating in the Program are under the scope of the external audit (financial, compliance, performance) carried out by the SAI.** Apart from being part of the final account, separate financial statements for entities involved in the Program have not been included in the SAI risk-based Annual Audit Program in 2014 and audits of 2013 financial statements. However, information available from the SAI reports in earlier years for the participating institutions leaves a general perception that they have a substantial capacity in internal controls and public procurement. The Program will have impact by promoting sound management and control practices.
5. **The SAI system for follow-up on implementation of audit recommendations is effective.** For audit follow-up, the Law on SAI requires the auditee to report to the SAI on how it has addressed the detected irregularities or deficiencies that had not been addressed during the course of the audit. The SAI is managing a database of all issued recommendations, including their status, and reports to the NA on the status through its annual aeport on activities. The SAI Annual Activity Report for 2014 identifies no outstanding recommendations issued in FY2013 by the Sector for Audit of Budget and Budget Funds, with a total of 142 of 229 recommendations fully implemented and the implementation of the balance underway.

Table 1. Summary of Key FM Risks and Mitigation Measures

| **Primary Risks** | **Potential Impact on Program** | **Key Mitigation Measures** |
| --- | --- | --- |
| **Planning and Budgeting** | | |
| Unreliable medium-term expenditure ceilings | Programs included in the Expenditure Framework not executed; risk to achievement of DLIs | Focus on key Programs/Program activities/projects as indicated in the Expenditure Framework with relatively high certainty of being included in the budget over the implementation period and with realistic cost estimates. |
| Inadequate budgetary allocation for Program activities by the government | Programs included in the Expenditure Framework not executed; risk to achievement of DLIs | Funds safeguarded as the Program design ensures achievement of DLIs is a prerequisite for funding  Risk to implementation mitigated by focus on including vital Programs and activities in the Expenditure Framework |
| **Accounting and Financial Reporting** | | |
| In-year reports with varying scope and level of aggregation | May restrict monitoring and determining amount of Program related expenditures and affect disbursement and decision making for sound Program implementation | Specify the frequency, scope, and level of detail for reporting for the participating institutions |
| Poor quality annual financial statements | Poor quality Program annual financial statements could affect Program monitoring and decision making | Specify the frequency, scope, and level of detail for reporting for the participating institutions  Reporting system entails reconciliation of implementing entities’ accounting records and the TML, constituting a double layer reporting mechanism and system of controls  Annual financial statements audited by the SAI |
| **Treasury Management and Funds Flow** | | |
| Delays in releasing and insufficient government funds | Insufficient funds available for Program implementation | Commitment by the government to ensure adequate funding and improvements of commitment control and cash management through technical part of the Program |
| **Internal Controls and Internal Audit** | | |
| Weaknesses in internal control systems and cases of accountability of funds | Risk of Program funds not being used for the intended purposes | Annual risk-based fiduciary reviews/supervision to be conducted on the Program to verify the use of funds for intended purposes  External audit conducted by the SAI |
| Weak capacity of internal audit function for staff numbers and skills and lack of functional independence | Inadequate internal audit coverage | Annual risk-based fiduciary reviews/supervision to be conducted on the Program to verify the use of funds for intended purposes  External audit conducted by the SAI |
| Insufficient capacity of the Budget Inspection Unit to cover all Program expenditures | Risk of Program funds not being used for the intended purposes | Annual risk-based fiduciary reviews/supervision to be conducted on the Program to verify the use of funds for intended purposes  External audit conducted by the SAI |
| **External Audit and Oversight** | | |
| The SAI coverage of Program expenditures during audit of the government’s annual financial statements | Affects timeliness and quality of Program audits | Official letter to the SAI to agree on audit, including additional explanatory note in the audit of the final account, which would detail Program expenditures |
| High incidence of audit report qualifications | Indication of noncompliance with FM procedures and possible misuse of funds | Preparing action plans to address the identified issues and the Bank’s follow-up and monitoring of implementation of the actions |

# Procurement Assessment

## Legislative and Regulatory Framework

1. **The Public Procurement Law (PPL), adopted in December 2012,[[2]](#footnote-3) replaces the PPL of 2008[[3]](#footnote-4) and marks a significant reform of the public procurement system in Serbia.** It represents a notable step toward conformity with the EU procurement directives. Effective since April 1, 2013, and amended in August 2015, the Law regulates the procedures for the award of public contracts and framework agreements, outlines legal protection in relation to public procurement procedures, defines types of procurement procedures, and introduces several improvements to the procurement system, such as increased transparency and a reduction of the number of exceptions. The key provisions of the PPL are outlined in annex I. Amendments to the criminal code passed in December 2012 by the parliament introduced ‘abuse of public procurement’ as a new criminal offense.[[4]](#footnote-5)
2. **Since the adoption of the PPL, the PPO has continuously adopted regulations and model documents for its implementation** (for example, adoption of public procurement secondary legislation, model tender documents, and standard forms, ‘three decrees and one decision concerning centralised procurement, procurement in the field of defence and security and common procurement vocabulary’,[[5]](#footnote-6)adoption of measures aimed at preventing corruption and conflicts of interest in public tenders, and so on).
3. **The issue of public procurement is high on the current administration's agenda.** Improving the public procurement system is part of the third objective of Serbia’s Public Administration Reform Strategy, ‘Improvement of public finances and procurement management’.Thegovernment adopted a Public Procurement Strategy for 2014–2018 and a corresponding Action Plan for 2014–2015 on October 30, 2014.[[6]](#footnote-7) The strategy foresees the amendment of the PPL in 2017 to ensure full harmonization with the *acquis communautaire* (indeed, a few discrepancies remain, including for example, the definition of a contracting authority, a few exemptions from the Law, the retention of the qualification system in addition to other procurement procedures and (...) national preferences").[[7]](#footnote-8)
4. **These are positive developments and show improvements.** In 2013, the European Bank for Reconstruction and Development assessment recorded regulatory gaps in Serbia’s Public Procurement Legal Framework of between 17 percent and 21 percent in key regulatory areas, such as transparency safeguards, efficiency instruments, and institutional and enforcement measures. The assessment pointed out the gap between Serbia's Legal and Institutional Framework and international best practice.[[8]](#footnote-9) The 2013 Enterprise Survey revealed that 40 percent of firms thought they were expected to give gifts to secure a government contract,[[9]](#footnote-10) highlighting the considerable room for improvement regarding integrity standards in public procurement procedures.
5. **The Legal Framework for procurement (PPL and attendant regulations) provides the elements needed for a functional system.** The organization of public procurement processes and the hierarchy between the PPO, the Republic Commission for the Protection of Rights in Public Procurement Procedures (RC), and contracting authorities are clearly defined. The procurement system and procurement operations are mostly decentralized with approximately 4,700 registered contracting authorities, of which about 160 are central government bodies.[[10]](#footnote-11) The PPL applies to all procurement undertaken using government funds, that is, procurement of goods, works, and services purchased by state and local government authorities, state-owned enterprises, and legal persons who use funds provided by the government of Serbia or local self-governments. Limited exceptions are defined in Article 7 of the PPL. According to Articles 32–35 of the PPL, open competitive procurement is the default method of procurement. Articles 36–39 define cases in which other methods can be used under specific circumstances and with specific justifications.[[11]](#footnote-12)

## Institutional Framework

1. **The key actor in Serbia’s public procurement system is the PPO**, a stand-alone organization, accountable directly to the government[[12]](#footnote-13) to which it reports on a yearly basis. The PPO is responsible for drafting public procurement secondary legislation and for coordinating and monitoring the public procurement system in general. It also leads the negotiations with the EU on Chapter 5 (Public Procurement) of the accession process and coordinates the activities of all other involved institutions. However, public-private partnerships and concessions and defence procurement are not in the remit of the PPO. (Following governmental reorganization, responsibility for policymaking in these areas is not clearly defined.)
2. **The RC deals with complaints and appeals against decisions of contracting authorities.** It is an autonomous and independent entity established in 2010 and activated in April 2013. It reports to the NA, which appoints and removes from office its president and members. Until recently, the RC had a total of 54 staff (including the six members and the president of the RC), a 38 percent increase compared to 2013. However, the new Amendment to the PPL foresees an increase in the number of members from six to eight. The RC powers, under the 2012 PPL, include the institution of minor offence procedures against both contracting authority officers and bidders and the imposition of a range of fixed fines for those offences as well as the cancellation of concluded contracts.
3. **The SAI is responsible for the audit of all public funds and reports systematically on public procurement.** In 2011, it reported that illegal acts in public procurement worth almost €415 million had been discovered in 122 departments.[[13]](#footnote-14) Annex 2 presents in greater detail the roles and responsibilities of additional relevant actors in the field of public procurement (for example, the MoF, Anticorruption Agency, Administrative Court) as laid out in the Public Procurement Strategy 2014–2018.

## Procurement Processes and Procedures

1. **The PPL applies to procurement of goods, works, and services purchased by the state and local government authorities.** It also covers state-owned enterprises and legal persons that use funds provided by the government of Serbia or local self-governments**.** Typically, procurement operations are decentralized; there are about 4,900 registered contracting authorities, of which about 166 are central government bodies. The shopping method for contracting may be used for ‘low-value’ contracts (annual estimated value below RSD 5,000,000, approximately €40,000). The PPL obliges contracting authorities to publish notices and bidding documents for shopping on the public procurement portal.
2. **The various public procurement procedures established by the PPL are the following:** open, restricted, qualification, negotiated with invitation to bid, negotiated without invitation to bid, competitive dialogue, design contest, and low-value public procurement procedure.Contracts are awarded through an open or restrictive procedure and for them to be awarded otherwise, specific requirements need to be met. In an open procedure, the contracting authority may award the contract with a bid price higher than the cost estimate only if all bids contain a price higher than the cost estimate and if it is not higher than the comparable market price. Potentially, this provision leads to termination of numerous procedures. Other procedures are restrictive (includes prequalification), qualification, negotiated with invitation to bid, negotiated without invitation to bid, competitive dialogue, design contest, shopping, and framework agreement. To use less competitive public procurement procedures such as negotiated procedure without invitation to bid and competitive dialogue, contracting authorities must obtain prior approval from the PPO. This rule was introduced by the current PPL and use of open procedure increased from 66 percent in 2013 to 85 percent in 2014, while use of negotiated procedure without invitation to bid decreased from 17 percent in 2013 to 5 percent in 2014.
3. **Procurement rules and procedures are clearly established and easily accessible to the public.** Bidding procedures are advertised through the public procurement portal. Publication of bidding documents on the public procurement portal is mandatory. The model of bidding documents are provided by the PPO. The content of the bidding documents is prescribed by the law—it must contain instruction to bidders, bid submission form, qualification requirements, instructions to prove fullfilment of the requirements, a model of contract, technical specifications/bill of quantity/terms of references, and declaration of an independent bid. The contracting authorities are not obliged to follow the standard PPO tender documentation although the template is often used. The relatively high share of procedures that do not use the lowest price criterion exclusively (according to the data of the PPO) indicates that public procurement officers are interested in achieving the objectives of procurement rather than the lowest possible expenditure. A more detailed analysis reveals the most used award criteria: time of delivery of service performance, guarantee period, and method of payment still focus on strictly economic aspects of procurement. The introduction of PPL of 2013 did not increase the level of competition. In 2014, the average number of bids submitted per tender was 2.6.[[14]](#footnote-15) The competitiveness in the procedures with prior publication is at a medium level compared with the EU average[[15]](#footnote-16) and even decreased in the past 2013 The register of bidders was introduced in September 2013; it is maintained by the Serbian Business Registers Agency and is available online at [www.apr.gov.rs](http://www.apr.gov.rs).

Table 2. Average Number of Bids Submitted Per Tender

|  |  |  |  |
| --- | --- | --- | --- |
|  | **2012** | **2013** | **2014** |
| **All contracts** | 2.7 | 2.7 | 2.6 |
| **Services** | 2.3 | 2.4 | 2.3 |
| **Supplies** | 2.7 | 2.7 | 2.7 |
| **Goods** | 3.2 | 3.6 | 2.7 |

*Source:* PPO.

1. **If the annual estimated value of the purchase is less than RSD 500,000 (approximately** €**4,200),** **contracting authorities are not obliged to apply the PPL** **for procurement of goods, services, and works.** However, they are obliged by Law to prevent any conflict of interest, ensure competition, and ensure that the contracting price does not exceed the comparable market price. For low-value contracts (annual estimated value below RSD 5,000,000 (€40,000), contracting authorities may use the ‘shopping method’ but need to publish notice and bidding documents on the public procurement portal. Above these thresholds, contracting authorities who wish to use less competitive methods of contracting (for example, negotiated procedure without invitation to bid, Article 36 of the PPL, or competitive dialogue, Article 37 of the PPL) must obtain prior PPO approval.[[16]](#footnote-17) This provision has reduced the incidence of the negotiated procedure without invitation, from 24 percent of the total value of public procurement in the first half of 2013 to 11 percent in the second half of 2013 and to 4 percent of the total value of public tenders in the first half of 2014.[[17]](#footnote-18) Correspondingly, the use of open competitive procedures increased from 54 percent of the total value of public procurement in the first half of 2013 to 79 percent in the second half of 2013[[18]](#footnote-19) and 86 percent in 2014, according to the Annual Report 2014 of the PPO.[[19]](#footnote-20) The average number of bids per tender remained stable, at 2.7 in 2013 and in the first half of 2014 against 2.6 in 2012.[[20]](#footnote-21)

Figure 1. Structure of Concluded Contracts by Type of Procedure in Q3 2012

*Source:* PPO, Support for Improvement in Governance and Management (SIGMA) Assessment 2014.

Figure 2. Structure of Concluded Contracts by Type of Procedure in Q3 2013

*Source:* PPO, SIGMA Assessment 2014.

1. **The contracting authorities are responsible for the implementation of contracts that originate from public procurement procedures**. As part of their bidding document, contracting authorities need to include a model of the contract to be signed. In addition to the contract notice award, they are also obliged to publish a notice on concluded public procurement contracts. In case of contractual changes, they must make a decision on contract modification, publish it on the public procurement portal, and notify the PPO and the SAI. While contracts are currently not publicly available, it is foreseen that a register of public contracts shall be created and made available through the public procurement portal in the last quarter of 2015.
2. **The Public Procurement Strategy 2014–2018 foresees the promotion of framework agreements over the coming years.** These reduce the administrative burden for contracting authorities and allow them to save time on procurements that are likely to be repeated on a multiyear basis. The strategy also notes that, “in the first year of implementation of the PPL, there were 142 public procurement contracts signed under framework agreements and 204 contracts for centralised public procurement.”

## Procurement Planning and Overall Value

1. **Procurement planning is incorporated into legislation.** Procurement planning is linked to the available budget and procurement procedures cannot be launched if the budget is not available. All ministries and contracting authorities prepare annual procurement plans by January 31 of the planned year and submit them to the PPO and the SAI within 10 days from the day of adoption. “Contracting authorities may change their procurement plan in the case of a revised budget or amended financial plans, but the PPL encourages them to do so in a transparent manner that highlights the specific changes relative to the original plan and that provides accompanying justifications. Changes in the procurement plans are submitted to the PPO and the SAI, prominently including changes to contract elements such as price and contract duration. Contracting authorities must also report quarterly to the PPO on conducted public procurement procedures and contracts awarded. Exemptions from the PPL are clearly defined by Article 7.”[[21]](#footnote-22) With the implementation of the recent PPL Amendment, procurement plans will be published on the public procurement portal as of January 2016 (for now, procurement plans were not published on the public procurement portal; instead, each contracting authority was encouraged to publish it on its own website). According to the statistics provided by the PPO, the total number of purchasing entities in 2012 was 3,529.[[22]](#footnote-23) In 2013, approximately 83,000 public contracts were awarded, with an approximate total value of RSD 262,938,735,000 (approximately €2,390,352,000.00).[[23]](#footnote-24)

## E-procurement

1. **The PPL envisages the possibility of submitting bids electronically and provides for the introduction of** **special e-procurement techniques**, such as electronic auctions and a dynamic procurement system. The Public Procurement Strategy 2014–2018 specifies that, “as regards the use of e-procurement, the PPL stipulates that the Administration for Joint Services Office of Republic Bodies, as the body in charge of centralised public procurements for the purposes of public authorities and organisations, must establish the information system and use the dynamic procurement system and electronic auctions whenever feasible.” However, the PPL does not set a specific time frame for the implementation of these systems to which the contracting authorities would have to adhere.
2. **In practice there has been no experience to date with the use of e-bidding, e-auctions, and the dynamic procurement system in Serbia.** The potential of online tools is still underused and the objective of establishing and operating a unified, comprehensive e-procurement platform that would incorporate functionalities such as e-announcement, e-communication and bidding, e-catalogue, e-auction, and e-dynamic procurement system, is still far away.[[24]](#footnote-25)

# Integrity and Transparency of the Public Procurement System

## Public Access to Procurement Information

1. **Procurement laws and regulations are freely and easily accessible to the public.** The procurement law and bylaws are published in the Official Gazette and can be downloaded on the website of the PPO ([www.unj.gov.rs](http://www.unj.gov.rs)). According to the PPL, all public procurements announcements andcontract awards must be published by contracting authorities on the public procurement portal for all types of procedures, including small-value public procurement procedures. Furthermore, the PPL has also introduced the mandatory publication of information on contract amendments and execution; the PPO opinions on the justifiability of negotiated procedures, negative references, filed requests for the protection of bidders’ rights, RC decisions; quarterly reports by contracting authorities on contracts signed and procedures conducted; and so on. Access to the content posted on the portal and downloads by bidders and other interested parties is free of charge. In practice, government bidding opportunities and contract awards are promptly posted on the public procurement portal **(**[www.portal.ujn.gov.rs](http://www.portal.ujn.gov.rs)); while data on procurement complaints and their resolution is posted on the portal of the RC ([www.kjn.gov.rs/sr/odluke](http://www.kjn.gov.rs/sr/odluke)) and on the public procurement portal.
2. **Significant progress has been achieved in the use of the public procurement portal, which became operational on April 1, 2013.** In the first year of its implementation, daily visits soared to 5,000—more than 600 percent of the number of visits to the previous version of the portal. “New software for the electronic collection of procurement records and plans has been made available to contracting authorities.”[[25]](#footnote-26) In addition, the average number of public procurement procedures announced daily has been about 130, about 200 percent higher than under the previous PPL.[[26]](#footnote-27) In the last quarter of 2014, the portal had 500,000 visits.[[27]](#footnote-28)

Table 3. Usage of the Public Procurement Portal, 2013–2014

|  |
| --- |
| * 6,456 registered users—more than twice as much as on the old portal |
| * 27,358 posted public procurement procedures |
| * 161 published decisions by the RC |
| * 2,150 opinions on negotiated procedure |
| * An average of 137 posted tenders per day—an increase of more than 60% when compared with the old portal |
| * An average of 6,170 daily visits—when compared with the old portal, this number reflects an increase of more than 700%. |

*Source:*OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia, April 2014*. p. 26.

1. **Further improvements of the portal are planned in the 2014–2015 Open Government Partnership (OGP) Action Plan for Serbia**. The OGP Action Plan foresees the introduction of new features such as the ability to publish purchasers’ procurement plans, an English version of the e-portal, better tools for searching the decisions of the RC, a registry of public contracts, and a reporting system to the PPO. Trainings and technical assistance for users are also envisaged in the OGP Action Plan. A Central Registry of Bidders has been established and is operational since September 1, 2013, with more than 2,000 economic operators already registered (SIGMA 2014).

## Complaints Receiving and Handling Mechanisms

1. **The RC is responsible for the administrative procurement complaints system.** A complaint may be lodged against any phase of public procurement procedure as well as against decisions on contract awards. Among other responsibilities, the RC “(a) requests for protection of rights and appeals filed against the conclusion of the contracting authority, (b) monitors and controls implementation of its decisions, (c) annuls public procurement contracts, and (d) imposes fines on contracting authorities and conducts minor offense proceedings in the first instance.”[[28]](#footnote-29) The Commission issues decisions that are binding for all parties, without precluding subsequent access to an external higher authority. Further appeals can be made to the Administrative Court. The process for submission and resolution of complaints is clearly set out in the PPL by Articles 148–155 and 157 and is publicly available on the website of the RC (http://www.kjn.gov.rs/sr/zastita\_prava/zahtev-za-zastitu-prava.html). Fees charged in the procedures of complaints, as detailed in Article 156 of the PPL, are believed to be reasonable and do not prohibit access by concerned parties.[[29]](#footnote-30)
2. **The number of appeals submitted to the RC increased significantly over time** (2,067 cases received in 2013 compared to 1,622 in 2012).[[30]](#footnote-31) From the entry into force of the new Legal Framework in April 2013 until December 2013, the RC entirely annulled public procurement procedures in 296 cases.[[31]](#footnote-32) In the same period, it did not annul any public procurement contracts.[[32]](#footnote-33) It received 1,696 cases and reached a decision on 1,609 of these cases.[[33]](#footnote-34) Compared to the same period in 2012, the number of requests for protection of rights increased by 39 percent.[[34]](#footnote-35) Over the whole year of 2013, the RC reached a total of 1,966 decisions, as compared to 1,700 in 2012. During the first half of 2014, the RC entirely annulled the public procurement procedure in 244 cases related to the protection of rights.[[35]](#footnote-36) In the same period, it did not annul any public procurement contracts.[[36]](#footnote-37) It received 1,442 cases and made 1,282 decisions (958 for protection of rights and 80 upon appeals to conclusions of the contracting authorities).[[37]](#footnote-38) Comparing the January 1–June 30 periods for 2013 and 2014, there were 37.66 percent more cases received in the latter and 41.58 percent more cases resolved.[[38]](#footnote-39)
3. **Due to a very high number of appeals, there are certain delays in the RC’s work.** Article 158 of the PPL states that the RC shall decide upon request for protection of rights whose content is in accordance with Article 151 of the PPL within 20 days from receipt of the request and not later than 30 days. The maximum number of days for decision on a complaint was reduced by 2015 amendment to 20 days. The RC shall decide upon appeal to conclusions of the contracting authorities within eight days from the day of receiving the appeal. In the second half of 2013, the average period deciding upon a request for protection of rights was 23.61 days and the average period for deciding an appeal to conclusions of the contracting authorities was 14 days.[[39]](#footnote-40) In the first half of 2014, the respective averages were 19.84 days and 13.19 days.[[40]](#footnote-41) Between April and December 2013, out of the 1,609 decisions, 341 were not made within the deadline specified by the PPL.[[41]](#footnote-42) During the first half of 2014, out of the 1,282 decisions, 177 decisions were not made within the deadline specified by the PPL.[[42]](#footnote-43)

## Control Mechanisms

1. **An important role in the process of control is carried out by the SAI**. There are well-defined policies and procedures within the SAI for audit of public procurement procedures. In accordance with the PPL, contracting authorities are obliged to submit their procurement plans to the SAI. This rule applies to any contractual changes that appear during implementation. This submission must be done promptly and it is an important tool for prevention of irregularities. In the process of an audit, the SAI audits the type of the procedure and all related decisions, bids, evaluation report, decision of contract award, and the contract itself. The physical inspection of contract outcomes is the subject of an audit. The audit report contains all findings with recommendations to the subject of audit and it is published. The most common findings are due to poorly prepared procurement plans, lack of experience in public procurement, and particularly unrealistic needs assessments. The SAI monitors implementation of its recommendations and can impose implementation of its recommendations by undertaking further legal steps.
2. **The PPO and the SAI can initiate misdemeanor proceedings when they learn, in any way, of a violation of the PPL.** Since the entry into force of the new Law on Misdemeanours in March 2014, the PPO initiated 26 misdemeanour procedures against contracting authorities.[[43]](#footnote-44) The RC is responsible for conducting first-instance proceedings. The PPL extends the deadline for misdemeanour cases in public procurement to three years of the date of commission of the infringement. The PPO and the RC can also initiate proceedings to annul public procurement contracts and pronounce fines.
3. **The PPL includes a separate chapter dedicated to prevention of corruption and conflict of interest in public procurement** including

* the duty of every contracting authority to pass an internal act, which regulates in detail the manner of planning of public procurement, conduct of the procedures, implementation of contract, and oversight of public procurement;
* protection of integrity of the procedure by excluding all persons who were involved in the preparation of a public procurement from eligibility as bidders and the duty of contracting authorities to reject bids in such cases;
* the duty to report corruption to the PPO, the Anticorruption Agency, and the public prosecution office as well as to provide protection to persons who reported corruption;
* the duty of bidders to submit a Bidder’s Statement on independent bid and the duty to report violation of competition to the Competition Commission and provide protection to persons who report it; and
* the duty to appoint a civil supervisor for all procurements for which the estimated value exceeds RSD 1 billion.

## Civil Supervision of Procurement Processes

1. **The PPL mandates monitoring by a civil supervisor whenever the estimated cost of the public procurement procedure exceeds RSD 1 billion (approximately** €**8.5 million).** Civil supervisors are appointed by the PPO on a case-by-case basis and receive no remuneration for their work, which brings into question the sustainability of this mechanism of control. Persons eligible to be appointed as civil supervisors are prominent experts in the field of public procurement or organizations dealing with public procurement, anticorruption, or prevention of conflicts of interest. Neither a person employed with or otherwise engaged by the contracting authority and/or person(s) related with the contracting authority nor members of a political organization qualify as potential civil supervisors.
2. **Civil supervisors perform their supervision** **by** (a) following and analyzing information posted on the public procurement portal and/or contracting authorities’ websites, contracting authority’s legal acts issued before initiating, during the course, and upon conclusion of public procurement procedure, up to the moment of the submission of report; (b) direct insight into actions taken by the contracting authority in public procurement procedure; (c) direct insight into contracting authority’s communication with stakeholders/bidders, contracting authority’s internal communication, and contracting authority’s communication with other bodies in relation to the given public procurement; and (d) obtaining additional requested information from contracting authority.
3. **Civil supervisors are entitled to act upon reports on suspected corruption in the public procurement procedure under their supervision**, to take measures in cases of reasonable doubt in terms of legality of public procurement procedure, notifying the relevant state bodies and the public; to alert the contracting authority to deficiencies and failures in conducting the procedure; and to issue orders, guidelines, and instructions for remedying such deficiencies and failures as well as to file requests for the protection of rights. Upon the completion of the public procurement procedure, the civil supervisor submits a report on the conducted public procurement procedure to the NA within 20 days from the conclusion of contract or from the decision to cancel the procedure. In 2015, there were 48 appointed civil supervisors (the number grew from eight in 2013, to 30 in 2014, and 48 in 2015). To date, seven civil society organizations were appointed as civil supervisors.[[44]](#footnote-45)

# Institutional Capacity

## Public Procurement Professionals

1. **Serbia has made progress in public procurement training and certification.** By the end of August 2015, 881 public procurement officers[[45]](#footnote-46) had passed the exam. The SAI has 60 certified auditors and all municipalities are trained in implementing audit findings. There is a growing need for training public procurement officials. Although training and certification is required by the Law, the PPO is not obliged to organize and deliver training in preparation for the exams. The target value expressed in Serbia's 2015–2017 Public Administration Reform Action Plan is 2,300 certified public procurement officials by 2017.
2. **A contracting authority whose total value of planned public procurement per year exceeds RSD 25,000,000 (approximately €210,000)** **has to employ (at least one) public procurement officer.** According to the PPL, to get certified, the public procurement officer needs to pass a written exam, which involves theoretical and practical knowledge in public procurement and related areas. At least 75 percent of the questions need to be answered correctly for the candidate to pass the exam. The PPO issued a manual for the preparation of the exam and made it available on its website free of charge. Exam sessions are held 4–6 times per month, for 200–250 candidates. Between October 2014 and March 2015, 21 examinations were held, testing 751 candidates, of which 420 passed the exam (success rate of 56 percent).[[46]](#footnote-47)
3. **While progress has been made, public procurement training needs to be further developed.** Indeed, from the perspective of contracting authorities and bidders, lack of professional skills can become an issue, in particular with regard to the proposed introduction of new working methods such as greater centralized procurement, framework agreements, dynamic purchasing systems, and e-auctions. The level of understanding of common public procurement procedure among end users and their ability to contribute to the process of defining technical specifications can also be strengthened and will improve the overall efficiency of the procurement process.

## Public Procurement Office

1. **The PPO lacks both adequate human and financial resources to satisfactorily discharge its duties.** Eight new posts were created in the PPO, but further reinforcement of its administrative capacity is needed in view of its new responsibilities.[[47]](#footnote-48) In June 2015, there were 23 staff working for the PPO. According to its director, the number of employees should be raised to 36.[[48]](#footnote-49) The PPO has set itself the goal “to assist cities and regional centers to upgrade their expertise in public procurement which would enable them to assist other municipalities.”[[49]](#footnote-50)
2. **Insufficient staffing has led to delays in the issuance of PPO opinions and low response rates for certain requests addressed to the institution.** “The large number of requests for various approvals has caused serious problems in practice, and the PPO has been unable to meet all of its obligations in a proper and timely fashion.”[[50]](#footnote-51) In the case of issuing opinions on the use of negotiated procedures for instance, the PPL stipulates a time limit of 10 days. In 2013, the PPO received 2,411 requests related to this but could only issue 2,150 opinions, of which, the opinions were within the imparted time limit only in a few cases. A positive trend was noticed in the last months of 2013, starting in November, when the delays started to be consistently reduced: according to data provided by the PPO, the average number of days for producing an opinion was reduced from 13 days in November 2013 to 10 days in December, 9 days in January 2014, and 4 days in February.[[51]](#footnote-52) The limited time to analyze applications raises questions both on the feasibility and the quality of examination. The PPO’s report ‘Activities on the Law applications from April 1, 2013, until January 31, 2014’ states that “940 written requests for opinions on interpretation and application of provisions of the Law were received during the reported period. Of those, 358 requests were answered in writing, while the rest remained unanswered due to lack of capacity within the PPO.”

## Republic Commission for the Protection of Rights

1. **The RC comprises experienced professionals**, **familiar with the Legal Framework for procurement** and establishes a list of experts (who need to be on the list of the standing court experts and have passed the exam for public procurement officer, in line with Article 143 of the PPL), who participate in the work of the RC, depending on current needs.[[52]](#footnote-53) The RC exercises its authority to suspend procurement processes in practice, in line with Article 163 of the PPL.
2. **The RC faces significant challenges to cope with the growing number of appeals promptly.** The number of appeals submitted to the RC has increased significantly (2,067 cases were received in 2013 as compared to 1,622 in 2012). In 2013, the RC held a total of 422 sessions and made 1,879 decisions. The same year, the RC built up its enforcement record by reviewing the implementation of 635 of its decisions and concluded that, in 24 cases, they had not been properly enforced by the contracting authorities.[[53]](#footnote-54) Although in 2013, the RC’s average time to resolve a request for protection of rights was within the time limit imparted (an average of 19.26 days; thus within the 20 days time limit) and the PEFA assessment notes that the RC mainly makes and delivers decisions within the time frame specified in Article 158 of the PPL, several contracting authorities have reported delays, sometimes even in noncomplex cases. All three requests for the cancellation of procurement contracts submitted to the RC in 2013 were considered unfounded but the justification for these decisions was considered insufficient. Some inconsistencies between the current Misdemeanour Law and the PPL blocked the possibility of initiating misdemeanour procedures.[[54]](#footnote-55) Although the RC’s staff recently increased to a total of 54 employees, further strengthening of the institutional capacity, through the provision of adequate financial and human resources as well as technical capabilities will be essential to ensure the sustainability of the RC’s work.

# Conclusions on Program-for-Results-specific Procurement Arrangements

## Overall Risk Assessment

1. The assessment concludes that there is reasonable assurance that Serbia's procurement systems for the Program (planning, bidding, evaluation, contract award, and contract administration arrangements and practices as well as complaint mechanims and management and mitigation of fraud and corruption [F&C] risk) will achieve the intended results through its procurement processes and procedures.

## Procurement Profile of the Program

1. Procurement under the Program will follow the government procedures. The procurement procedures to be conducted under the Program are relatively modest and consist of IT equipment, consultancy, and training services. None of the planned procurement activities, based on their estimated values at the time, will require review and approval of the Operational Procurement Review.

## Procurement Capacity

1. **The implementing agencies will be the MPALSG, the MoF (Treasury), the PPO, the National Employment Service (NES), the government Human Resource Management Services, and the SAI.** The procurement capacity of these insitutions is reviewed below:

* The MPALSG was established last year and has a Secretariat which has the responsibility of procurement. Within the Secretariat, there is a Division for Administrative Matters, Human Resources, and Public Procurement staffed with three professionals, out of which one is a certified procurement officer who has acceptable level of experience in public procurement. The ministry conducts procurement procedures for services (total value for 2015 is approximately RSD 50 million, around US$450,000) and some minor procurement for goods (total value for 2015 is approximately RSD 4,000,000, around US$36,000). Works and goods are procured on behalf of the ministry by the centralized government procurement body—the Administration for Joint Services of Republic Bodies.
* The PPO’s Department for Financial Affairs has one certified procurement officer who has acceptable capacity and conducts minor procurement procedures such as services for maintenance of the public procurement portal. This procurement is conducted through negotiated procedure without invitation to bid because the vendor has ownership of the source code in line with the Copyright Law. The approximate value of this procurement is RSD 2,000,000 (approximately US$18,000).
* Within the Treasury, the Department for Legal and Administrative Affairs is responsible for procurement. There are five permanent professionals and additional staff to assist the Treasury on a temporary basis who are responsible for procurement. They have acceptable level of experience in public procurement. Procurement is mostly focused on IT services and equipment, software maintanance, licensing, and so on. Procurement includes some goods, minor works, and a modest range of services.
* The Public Procurement Department within the NES has a total of six staff sufficiently experienced in public procurement. Procurement operations consist of standard goods, minor works, and consluting services.The government Human Resource Services has a Department for Legal, Financial, and General Affairs, which is responsible for procurement. Procurement operations mainly consist of selection of consulting services for training.
* Within the SAI there is a Department for Legal and General Affairs that is responsible for procurement. Two professionals are certified public procurement officers with a sound level of experience in public procurement. The most used types of procedures are open and low cost, while negotiated procedures without invitation are rarely used. The total estimated value of public procurement for 2015 is approximately RSD 33,000,000 (approximately US$300,000). Procurement undertaken consists of standard goods, some IT equipment, and software.

1. **Framework agreements, signed by the Administration for Joint Services of the Republic Bodies are also used for procurement of common goods**. The Department for Legal and General Affairs, the Department for Financial Affairs and Accounting, and the IT Department are responsible for contract management. Modification of contracts is not common and termination of any contract has not occurred so far. Advance Payment Guarantees and Performance Guarantees are mandatory.
2. **Contracting authorities are responsible for contract management.** In accordance with the PPL, the contracting authority shall post a decision of contract award on the public procurement portal within three days of making the decision. The contracting authority shall send a public procurement contract to the bidder to whom it was awarded within eight days from the day of expiration of deadline for filing requests for the protection of rights. If the awarded bidder refuses to sign the contract, the contracting authority may award the bid to the second most advantageous bidder. Withing five days of concluding a contract, the contracting authority shall publish a notice on the concluded public procurement contract.
3. After conclusion of a public procurement contract, the contracting authority may allow changes in price and other essential contractual elements due to objective reasons, which must be clearly and precisely defined in the tender documents and in public procurement contracts or set forth by special regulations. In case of contract modification, the contracting authority has to make a decision on modifying the contract. The decision has to contain information on the initial contract value, modified contract value (if changed), and objective reasons for contract modification, with an excerpt from the tender documentation or from relevant legislation, which contains the grounds for modification. This decision has to be published on the public procurement portal within three days from the day of making the decision. Contracting authorities have to submit a report on contractual modifications to the PPO and to the SAI. Mandatory quarterly reports prepared by contract authorities delivered to the PPO, among others, have to contain information on awarded public procurement contracts, amended public procurement contracts, and execution of public procurement contracts.

# Governance and Anticorruption Arrangements

## Overview of the Fraud and Corruption Legal and Institutional Framework

1. **An overarching Anticorruption Strategy for the period 2013–2018 is in place and its implementation is under way.** Progress on the implementation of the respective Action Plan is reported by the public entities and holders of the public authorities charged with its implementation through six-monthly and annual reports. Overall monitoring of the implementation of the strategy is carried out by the Anticorruption Agency (ACA) and reported annually to the NA. The EU Screening Report for Chapter 23: Judiciary and Fundamental Rights from 2013 states that the “Anticorruption Strategy and Action Plan provide an adequate framework” for addressing the impediments to better transparency and accountability in public service. Thestrategy, dealing with the issues of prevention, institution building and training, contains a section dedicated to public finance. Specific fields covered in the section on public finance include (a) public revenues; (b) public expenditure; and (c) PIFC, external audit, and safeguarding of the EU’s financial interests. All the entities involved in the Program have adopted Integrity Plans.
2. **A Legal Framework for anticorruption activities is largely in place.** Serbia has signed and ratified all major international instruments against corruption, but recent assessments indicate that more needs to be done on aligning the national legislation to consistently apply them. Fraud- and corruption-related offences are sanctionable under the Criminal Code and include, among other things, passive bribery and active bribery, embezzlement, fraud, obtaining and using credit and other benefits under false pretenses, abuse of trust, money laundering, abuse of position by a responsible person, malfeasance in public procurement, abuse of authority in economy, forging of documents, forging of an official document, and abuse of office and trading in influence. The Law on Protection of Whistle-Blowers has entered into force in June 2015 and some rules on whistle-blowers’ protection are included in the Law on Free Access to Information of Public Importance and the Law on Civil Servants. The Law on Civil Servants and the Code of Conduct for Civil Servants also contain measures to increase integrity in the public sector. The Law on Public Procurement contains a dedicated chapter on the prevention of corruption, requiring the purchasing authority to take corruption prevention measures at all stages of the procurement process and the duty to report corruption. Likewise, the law addresses potential conflicts of interest in the procurement procedure.
3. **Specific institutions in the Anticorruption Framework are established and functioning.** The Anticorruption Institutional Framework includes the following:
4. *Anticorruption Agency.* This is an independent and autonomous state authority, founded by the virtue of the Law on the ACA, for which implementation started on January 1, 2010. The ACA is accountable for its work to the NA. The ACA has numerous preventive, oversight, and supervisory authorities for prevention and suppression of corruption. Acting in accordance with its legal mandate, key responsbilities of the ACA are the following:

* Oversees implementation of the National Anticorruption Strategy and associated action plans
* Imposes measure due to the violation of the ACA Law
* Resolves conflict-of-interest situations
* Initiates changes in the Anticorruption Legal Framework
* Issues its opinion and instructions for the implementation of the ACA Law and National Anticorruption Strategy and associated Action Plans

1. *Anticorruption Council.* The council is an expert advisory body of the government, founded with a mission to oversee all the aspects of anticorruption activities; propose measures to be taken to fight corruption effectively; monitor their implementation; and make proposals for the adoption of regulations, Programs, and other acts and measures in this area. The council was established under provisions of the Law on Government (Article 26) in 2001. The council consists of the president, vice president, and five members.
2. *The PPO.*In line with the stated anticorruption aims, the PPO is proactively discharging its obligations from the Anticorruption Strategy. The PPO has prepared a Model (template) Internal Plan for Anticorruption in Public Procurement for the purchasing authorities, whose total annual value of procurement is estimated at over RSD 1 billion. Similar model internal enactment that regulates in more detail the internal public procurement procedure within the purchasing authority has been developed and made available. The PPO’s Rulebook on Contents of the Public Procurement Report and Manner of Maintaining Records on Public Procurement is in force.
3. *The SAI.*The SAI is required by the law to submit to the competent authority, without delay, any evidence relating to misdemeanors or criminal offences, and that body is required to inform the SAI of its decision. It has been noted that this additional duty potentially takes away resources from the audit work. From the Program perspective, this segment of the SAI mandate could be the critical resource in addressing possible instances of F&C involving Program funding.
4. *Republic Commission for Protection of Rights in Public Procurement Procedures.* The RC has the status of legal entity and is responsible to the NA of Serbia. The NA elects and relieves of duty the president and members of RC, upon the proposal of the Committee for Finance of the NA and after the open application procedure has been conducted. The RC has the following key competences:

* Decides on request for protection of rights
* Decides on appeal on procuring entity's conclusion
* Decides on appeal on conclusion made by the PPO
* Imposes fines on contracting authorities and accountable persons of the contracting authority and proposes compulsory retirement of managers or accountable persons of the contracting authority
* Imposes fines on claimants in case of misuse of request for protection of rights
* Annuls public procurement contracts
* Initiates minor offence proceedings in the first instance for the offences prescribed by PPL

1. *Administration for the Prevention of Money Laundering (APML).* The APML is the financial-intelligence unit of the Republic of Serbia, which is the central anti-money laundering and counter-terrorist financing body in the system. The APML’s powers and responsibilities are provided for in the Law on the Prevention of Money Laundering and Terrorist Financing. The obliged entities under the AML/CFT Law send reports on suspicious transactions and persons to the APML, which then analyzes these reports and collects any additional data about them. Also, the APML can start collecting and analyzing data upon the initiative of another state authority such as the Court, Prosecutors’ Office, Security Information Agency, Privatization Agency, Securities Commission, police, and so on.
2. **In the context of EU integration, the MoF has established an Anti-Fraud Coordination Service (AFCOS).** This is an independent national authority responsible for protecting the EU's financial interests from fraud. It coordinates the sharing of information between the national fraud prevention authorities and the European Commission Anti-Fraud Office. AFCOS is still not fully operational and is missing a comprehensive legal basis to determine its duties, competences, and arrangements for cooperation with the European Commission. A full AFCOS network, including all other relevant national authorities in the area of prevention, detection, investigation and prosecution, is yet to be established.
3. **Institutional responsibilities for investigating and prosecuting corruption are clear, but their capacities remain inadequate.** The specialized prosecution office for organized crimes also has jurisdiction over high-level corruption cases. Throughout Serbia, around 40 prosecutors work on corruption cases. There is no similar degree of specialization at the level of the police or the courts. Inter-institutional cooperation is formalized in the memoranda on cooperation between the competent institutions. In March 2014, a memorandum on cooperation has been concluded between the SAI, PPO, RC, MoF, Ministry of Economy, ACA, Anticorruption Council, and Commission for Protection of Competition, which regulates the manner of cooperation, coordination, and data exchange in the field of anticorruption. It is too early to assess the results of the memorandum and how it addresses the remark from the EU Screening Report on judiciary which states that “inter-agency cooperation has improved to a certain extent, but needs to be further developed. In particular, databases should be better interconnected and a safe platform to exchange intelligence should be established.”

## Alignment with Anticorruption Guidelines

1. **Program implementation will be aligned with the ACG applicable to Program for Results operations.** The Government of Serbia has agreed to implement the Program in accordance with the ACG applicable to PforR operations dated February 1, 2012, and revised on July 10, 2015. These guidelines will be operationalized in the following ways under the Program:
   1. **Sharing of information on fraud and corruption allegations:** Through the official exchange of letters, the SAI will confirm agreement to share with the World Bank any indications or allegations of Fraud and Corruption (as defined by the ACG) in connection with the Program from the public, Government representatives, its own investigation, or otherwise, together with the investigative and other actions that it proposes to take with respect thereto, every six months.
   2. **Application of World Bank debarment and suspension lists of firms and individuals under the Program:**The Ministry of Finance will share with the procuring entities the names of firms and individuals on the World Bank Group’s debarment and suspension lists and will ensure that these firms and individuals are not allowed to bid for contracts or benefit from a contract under operation during the period of debarment or suspension. The Ministry of Finance and Public Procurement Office will check compliance and report to the World Bank every six months as part of the reporting requirement of the operation.
   3. **Investigation of Fraud and Corruption Allegations:** All allegations of fraud and corruption will be investigated by the SAI and the prosecutor’s office and those found to be credible will be prosecuted. The SAI will report to the World Bank every six months on the actions taken in any such investigations; and promptly, upon the completion of any such investigation, report to the Bank the findings thereof. The World Bank’s Institutional Integrity Vice-Presidency (INT) may also jointly with the SAI, or on its own initiative, investigate any allegations or other indications of Fraud and Corruption (as defined in the ACG) in connection with the Program or any part of the Program. In all such cases the Program managers and SAI will collaborate with INT to acquire all records and documentation that INT may reasonably request from the operation regarding the use of the Program financing. If the borrower or the Bank determined that any person or entity has engaged in Fraud and Corruption (as defined in the ACG) in connection with the Program, the Borrow will take timely and appropriate actions , satisfactory to the World Bank, to remedy or otherwise address the situation to prevent its recurrence.
   4. **Cooperation with representatives of the Bank:** the Borrow shall fully cooperate with representatives of the Bank in any inquiry conducted by the Bank into allegations or other indicators of Fraud and Corruption (as defined in the ACG) in connection with the Program, and shall take all appropriate measures to ensure the full cooperation of relevant persons and entities subject to the Borrower’s jurisdiction in such inquiry.
2. **The Assessment concludes that the Fraud and Corruption risk will remain high.** Several fraud and corruption related cases have been filed by SAI in the recent past**.** In the course of 2014, on the basis of the audit of financial statements from 2013 for all sectors (i.e. central and local Government, public enterprises, extra-budgetary funds), SAI has filed 139 reports (111 for misdemeanor charges, 13 for economic crimes and 15 for criminal charges). Until March 2015 (latest available data), further 103 reports were filed (95 for misdemeanor charges, 6 for economic crimes and 2 for criminal charges). Additionally, starting from March 2014, when the new Law on Misdemeanor Offences entered into force, Public Procurement Office has filed 26 requests for initiation of misdemeanor proceedings to the Republic Commission for Protection of Rights in Public Procurement Procedures. The Program Action Plan details important actions that would have to be undertaken by the implementing agencies to ensure that Program activities are not affected by Fraud and Corruption.

## Conclusion

1. **The country’s Institutional and Legislative Framework in mitigation of F&C risks continues to gradually strengthen.** An assessment of the Legal and Institutional Framework for Anticorruption together with the effectiveness of country systems for tackling F&C was undertaken as part of the Program’s Technical Assessment. The assessment concluded that while the level of corruption remains high, the Institutional and Legal Framework for tackling corruption is progressively improving and existing government commitment to addressing corruption is high.
2. **The World Bank’s Guidelines on Preventing and Combating Fraud and Corruption in Program for Results Financing would apply to the whole Program.** If requested, the Bank should be provided access to any information related to contracts under said Program (even if held by third parties/contractors) and the Bank should have the right to investigate any allegations of fraud and corruption within the Program. As part of its statutory mandate to audit Government finances, irrespective of source, the Serbia Audit Institution will share, with the World Bank, information on allegations of fraud and corruption. The Borrower’s commitment to follow the Guidelines is confirmed in the Minutes of Negotiations.
3. **It has been agreed that the SAI will share with the Bank any indications or allegations relating to F&C identified during the SAI’s work.** The SAI has a statutory mandate to audit all government finances irrespective of their source. Thus, financing from grants and loan are equally covered with the SAI Law. The SAI’s mandate covers tackling F&C, and given the nature of the lending, an official exchange of letters will set out a mechanism to allow for exchange of information on the integrity of spending related to the activities covered by the Program.

**Annex 1: Key Provisions of the 2012 Public Procurement Law**

Key provisions include the following:

1. **Adoption of procurement plans.** The 2012 PPL requires that contracting authorities adopt an annual procurement plan and submit it electronically to both the PPO and the SAI within ten days of its adoption. Contracting authorities may only initiate procurement procedures that were envisaged in the plan and for which funds have been allocated (the procurement plans have a tight margin of flexibility for the modification of items and fund allocations—only in limited circumstances can a subsequent variation be permitted.)
2. **Publication of all procurement notices on the procurement portal.** This targets in particular low-value contracts, which represent a substantial part of purchasing activities. Low-value contracts are defined as contracts valued under RSD 5 million (approximately €40,000). Below RSD 500,000 (€4,200) the provisions of the PPL do not apply. The contracting authorities have to publish their notices and bidding documents on the procurement portal (free of charge). Moreover, whenever a contracting authority wants to initiate a negotiated procedure without a call for competition, it is obliged to publish a notice accordingly. The new portal became operational on April 1, 2013, and its number of registered users has more than doubled compared to the old portal. The average number of posted tenders per day also increased by more than 60 percent.[[55]](#footnote-56)
3. **De-bureaucratization, notably through the establishment of a Central Registry of Bidders and a simplified bidding process.** The Central Registry of Bidders became operational on September 1, 2013, and features more than 2,000 registered bidders. It facilitates the verification of mandatory eligibility requirements for participation in public procurement procedures. In addition, the 2012 PPL allows bidders to prove their eligibility by submitting copies rather than original documents and to avoid supplying evidence that is publicly available on the websites of competent bodies. Only the (potential) winner of the procedure will have to supply original documents, if requested by the contracting authority.
4. **Expanded control functions for the PPO.** The PPO is now required to give its prior approval for noncompetitive procedures (negotiated procedure without invitation, competitive dialogue) and certain decisions of contracting authorities.
5. **Monitoring of public procurement for larger contracts (over RSD 1 billion, that is, approximately €8,950,000) by civil supervisors.** These supervisors are either experts in the domain of public procurement or in associations dealing with the prevention of corruption or conflicts of interests.
6. **Sanctions for noncompliance** **of contracting authorities, procurement officers, and bidders.** “Contracting authorities may be fined up to RSD 1,000,000 (approximately €8,950) for breaching procedural or technical obligations. For more serious violations, such as failure to follow public procurement procedures when no exemption exists or accepting bids of interested persons, fines may go up to RSD 1,500,000 (approximately €13,400). Bidders who provide inaccurate or false information, hire undisclosed subcontractors, or act as an interested person can be fined up to RSD 1,000,000 (approximately €8,950). Individuals (physical persons) acting for a contracting authority or bidder may also be fined a more modest sum.”[[56]](#footnote-57)

The 2012 PPL also comprises a few specific anticorruption provisions:

1. **Mandatory corruption prevention plans.** Both the PPO (in cooperation with the ACA) and contracting authorities with an estimated annual value of public procurement in excess of RSD 1 billion dinars (ca. €8,950,000) have to adopt internal action plans for combating corruption in public procurement procedures.
2. **Post-employment restrictions for procurement staff, provisions to prevent conflicts of interest**, **and a duty to report corruption.**
3. **Whistle-blower protection.** This measure introduces a right to indemnification for individuals who are sanctioned (for example, dismissed) as a result of reporting a violation.
4. **Specific eligibility requirements.** The PPL provides, as a mandatory eligibility requirement, that the bidder or its legal representative must not have been convicted for any criminal act. Amendments to the Criminal Code of December 2012 introduced criminal responsibility for aggravated cases of abuse in the domain of public procurement.

**Annex 2: Responsibilities of Key Actors in Public Procurement in Serbia**

The 2014–2018 Public Procurement Development Strategy lays out the following:

1. **The Public Procurement Office** is a special organization which oversees the implementation of the PPL; participates in the drafting of regulations in the field of public procurement; passes secondary legislation and provides technical services in the field of public procurement; oversees the conduct of public procurement procedures; controls the application of specific procedures; manages the public procurement portal; prepares reports on public procurements; proposes measures to improve the public procurement system; provides technical assistance to contracting authorities and bidders; and facilitates cost-effective, efficient, and transparent use of public funds in public procurement procedures. It is also authorized to file requests for launching misdemeanour procedures and procedures for annulment of public procurement contracts. The PPO is an institution which, in accordance with PPL and subject to the government’s approval, conducts Serbia’s EU accession negotiations in the field of public procurements and prepares plans and regulatory instruments in connection with public procurement.
2. **The Republic Commission for the Protection of Rights in Public Procurement Procedures** is an autonomous and independent body of the Republic of Serbia that ensures the protection of rights in public procurement procedures and is responsible to the parliament. As part of its statutory powers, it decides on requests for the protection of rights in all public procurement procedures; oversees compliance with its decisions; annuls public procurement contracts; imposes fines on contracting authorities and responsible persons of contracting authorities and submits proposals for dismissal of managers or responsible persons of contracting authorities; fines applicants in case of abuse of requests for the protection of rights; conducts infringement proceedings in the first instance for infringements specified in PPL; initiates procedures for annulment of public procurement contracts; and performs other duties provided by the law.
3. **The State Audit Institution** is the supreme body in charge of auditing public funds in the Republic of Serbia. It reports to the NA of the Republic of Serbia about its activities. As part of its statutory powers, the SAI audits financial statements, audits the lawfulness of operations which includes reviews of financial transactions and decisions in the field of public procurement, and audits the purposefulness of operations, which includes inspection of spending of budget funds and other public funds to report whether they have been used in accordance with the principles of cost-effectiveness, efficiency, and effectiveness and in accordance with the planned objectives.
4. **The Ministry of Finance** is, under the Law on Ministries (Official Gazette of RS No. 44/14), vested with public administration duties which, among other things, includes public procurements. Under the PPL, the MoF is responsible for adopting certain implementing regulations. The Budget Inspection Unit within the MoF has responsibility related to the control of implementation of the laws and secondary legislation in the field of financial and material operations and appropriate and lawful use of funds by all spending units listed in the BSL.
5. **The Ministry of Trade, Tourism, and Telecommunications** is, under the Law on Ministries, vested with public administration duties relating to concessions and public-private partnerships. It is also in charge of regulations pertaining to e-procurement.
6. **The Commission for Public-Private Partnership (CPPP)**, in accordance with the law, the CPPP, provides technical assistance in the implementation of public-private partnership projects and concessions, as an independent interdepartmental public body.
7. **The Anticorruption Agency** is an autonomous and independent public authority. It reports to the NA. The agency’s statutory powers include overseeing the implementation of the National Anticorruption Strategy and the Action Plan on implementation of the National Strategy, which includes a chapter dealing with public procurement.
8. **The Commission for the Protection of Competition** is an autonomous and independent organization formed under the Law on Protection of Competition. It reports to the NA. The commission is responsible for deciding on the rights and responsibilities of market participants. As part of this responsibility, the commission is in charge of identifying any breaches of competition, punishing them, and eliminating any consequences of such breaches of competition.
9. **The Administrative Court** is a court with special jurisdiction which adjudicates administrative disputes and rules on the lawfulness of final administrative enactments in administrative disputes. Under the PPL, decisions of the RC are not subject to appeal but may be challenged in an administrative dispute within 30 days after the decision was received or in cases where the RC has not adopted and delivered and a decision within the time limits set out in the PPL.
10. **The Administration for Joint Services of Republic Bodies** is the body in charge of centralized public procurement for national authorities and organizations including judicial authorities. The conditions for and manner of conducting public procurement by the Administration for Joint Services, the list of contracting authorities for which centralized procurement is conducted, and the list of procurement items subject to centralization shall be defined in detail by the government.

**Annex 3: Program Action Plan**

| **Action Description** | **DLI** | **Covenant** | **Due Date** | **Responsible Party** | **Completion Measurement** |
| --- | --- | --- | --- | --- | --- |
| **Fiduciary Assessment** | | | | | |
| Increased involvement of the budget beneficiaries establishing the budgetary allocations and multiyear budget requirements |  |  | December 31, 2017 | MoF | Adherence to budget calendar and evidence of effective two-way process in budget preparation |
| Regular periodic reporting on comprehensive data on arrears |  |  | December 31, 2016 | Beneficiaries of public funds | Evidence of regular reports on arrears |
| Improved medium-term planning and consideration of medium-term targets in preparation of respective annual budgets |  |  | December 31, 2016 | Beneficiaries of public funds; MoF | Assessment of annual budgets and medium-term plans |
| Instituting ex ante controls for contractual commitments |  |  | December 31, 2016 | MoF; Beneficiaries of Public Funds; | Instituted mechanism of controls over contractual commitments before assuming them |
| Improved control over multiannual contractual commitments |  |  | December 31, 2016 | MoF;  Beneficiaries of Public Funds; | Implementing a systematic approach to approve, record, and monitor multiannual contractual commitments |
| The Government to strengthen the complaint handling mechanism to improve its effectiveness efficiency in handling complaints |  |  | December 31, 2016 | PPO/RC | Reports of activities in the first six months of Program effectiveness |

1. Beneficiaries of the Budget of the Republic of Serbia are classified into DBBs and IBBs. The TA maintains a publicly available registry of all DBBs and IBBs. [↑](#footnote-ref-2)
2. Official Gazette 124/2012. [↑](#footnote-ref-3)
3. Official Gazette 116/2008. <http://www.lexology.com/library/detail.aspx?g=f188efa0-0f2b-4324-b299-9ce1e2b97369> [↑](#footnote-ref-4)
4. Bertelsmann Foundation. 2014. *Serbia Country Report*. Bertelsmann Transformation Index. [↑](#footnote-ref-5)
5. European Commission. *Serbia Progress Report, October 2014.* [↑](#footnote-ref-6)
6. Available at [www.ujn.gov.rs](http://www.ujn.gov.rs). [↑](#footnote-ref-7)
7. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia, April 2014.* [↑](#footnote-ref-8)
8. For more information on the legal reform in Serbia, see <http://www.ebrd.com/legal-reform-in-serbia.html>. [↑](#footnote-ref-9)
9. World Bank Group and IFC. 2013. *Serbia Country Profile*. Enterprise Surveys. [↑](#footnote-ref-10)
10. World Bank. *Public Expenditure and Financial Accountability (PEFA) Performance Report Serbia*, *March 2015*. [↑](#footnote-ref-11)
11. Ibid. [↑](#footnote-ref-12)
12. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia, April 2014*. [↑](#footnote-ref-13)
13. Bertelsmann Foundation. 2014. *Serbia Country Report*. Bertelsmann Transformation Index. [↑](#footnote-ref-14)
14. PPO data. [↑](#footnote-ref-15)
15. Most EU advertised tenders receive between 4 and 6 bids, with an average of 5.4 bids: EU Public Procurement Legislation: *Delivering Results - Summary of Evaluation Report*, European Commission, Internal Market and Services, p. 13. [http://ec.europa.eu/internal\_market/publicprocurement/docs/modernising\_rules/executive-summary\_en.pdf.](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/executive-summary_en.pdf) [↑](#footnote-ref-16)
16. The PPO must decide whether to permit the requested procedure and respond to this effect within 10 days in cases of negotiated procedure without invitation to bid and within 15 days in cases of competitive dialogue. [↑](#footnote-ref-17)
17. European Commission. *Serbia Progress Report*, *October 2014*. [↑](#footnote-ref-18)
18. PPO 2013 Annual Report, p. 9. [↑](#footnote-ref-19)
19. UNDP (United Nations Development Programme). *Draft country programme document for Serbia (2016–2020)*. June 2015. DP/DCP/SRB2. [↑](#footnote-ref-20)
20. European Commission. *Serbia Progress Report*, *October 2014*. [↑](#footnote-ref-21)
21. World Bank. *Public Expenditure and Financial Accountability (PEFA) Performance Report Serbia, March 2015*. [↑](#footnote-ref-22)
22. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia*, *April 2014*. [↑](#footnote-ref-23)
23. PPO 2013 Annual Report, table 3, p. 7. [↑](#footnote-ref-24)
24. Republic of Serbia. 2014. *Action Plan for Implementation of OGP Initiative in the Republic of Serbia for 2014 and 2015.* [htp://www.opengovpartnership.org/country/serbia](http://www.opengovpartnership.org/country/serbia). [↑](#footnote-ref-25)
25. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia, April 2014*. [↑](#footnote-ref-26)
26. Public Procurement Development Strategy of the Republic of Serbia for the period 2014–2018. [↑](#footnote-ref-27)
27. UNDP Article 2015, “Strengthening the Serbian public procurement system.” (June). [↑](#footnote-ref-28)
28. World Bank. *Public Expenditure and Financial Accountability (PEFA) Performance Report Serbia*, *March 2015*. [↑](#footnote-ref-29)
29. Ibid. [↑](#footnote-ref-30)
30. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia*, *April 2014*. [↑](#footnote-ref-31)
31. Reports by the Republic Commission for the periods April 1, 2013–June 30, 2013, p. 5 and July 1, 2013–December 31, 2013, p. 7. [↑](#footnote-ref-32)
32. Reports by the Republic Commission for the periods April 1, 2013–June 30, 2013, p. 93 and July 1, 2013–December 31, 2013, p. 238. [↑](#footnote-ref-33)
33. Reports by the Republic Commission for the periods April 1, 2013–June 30, 2013, p. 108 and July 1, 2013–December 31, 2013, p. 261. [↑](#footnote-ref-34)
34. European Commission. *Serbia Progress Report*, *October 2014*. [↑](#footnote-ref-35)
35. Report by the Republic Commission for the period January 1, 2014–June 30, 2014, p. 7. [↑](#footnote-ref-36)
36. Report by the Republic Commission for the period January 1, 2014–June 30, 2014, 252–255. [↑](#footnote-ref-37)
37. Report by the Republic Commission for the period January 1, 2014–June 30, 2014, p. 291. [↑](#footnote-ref-38)
38. Ibid. [↑](#footnote-ref-39)
39. Report by the Republic Commission for the period July 1, 2013–December 31, 2013, p. 265. [↑](#footnote-ref-40)
40. Report by the Republic Commission for the period January 1, 2014–June 30, 2013, p. 293. [↑](#footnote-ref-41)
41. Reports by the Republic Commission for the periods April 1, 2013–June 30, 2013, p. 107 and July 1, 2013–December 31, 2013, p. 261. [↑](#footnote-ref-42)
42. Report by the Republic Commission for the period January 1, 2014–June 30, 2014, p. 288. [↑](#footnote-ref-43)
43. European Commission. *Serbia Progress Report*, *October 2014*. [↑](#footnote-ref-44)
44. http://www.worldbank.org/content/dam/Worldbank/document/eca/georgia/11-procurement/Serbia\_ENG.pdf. [↑](#footnote-ref-45)
45. Data obtained from the PPO. [↑](#footnote-ref-46)
46. http://www.worldbank.org/content/dam/Worldbank/document/eca/georgia/11-procurement/Serbia\_ENG.pdf. [↑](#footnote-ref-47)
47. European Commission. *Serbia Progress Report, October 2014*. [↑](#footnote-ref-48)
48. UNDP Article 2015, "Strengthening the Serbian Public Procurement System." (June). [↑](#footnote-ref-49)
49. Ibid. [↑](#footnote-ref-50)
50. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia*, April 2014. [↑](#footnote-ref-51)
51. Ibid. [↑](#footnote-ref-52)
52. World Bank. *Public Expenditure and Financial Accountability (PEFA) Performance Report Serbia*, March 2015. [↑](#footnote-ref-53)
53. European Commission. *Serbia Progress Report, October 2014*. [↑](#footnote-ref-54)
54. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia, April 2014*. [↑](#footnote-ref-55)
55. OECD-EU SIGMA. *Public Administration Reform Assessment of Serbia*, April 2014, 26–27. [↑](#footnote-ref-56)
56. <http://www.lexology.com/library/detail.aspx?g=f188efa0-0f2b-4324-b299-9ce1e2b97369>. [↑](#footnote-ref-57)