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# THE 2018 SPECIAL LAW FOR STATE HOUSING CONSTRUCTION AND ITS IMPLEMENTATION

How much has housing construction for members of the security forces disrupted the public procurement system?



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How much has housing construction for members of the security forces disrupted the public procurement system ?

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## SUMMARY

The government's decision in 2017 to embark upon a programme to build housing for members of the security forces<sup>1</sup> was followed by the adoption of a "special law"<sup>2</sup> that governs the implementation of this programme somewhat differently to existing regulations. The government's decision was not properly justified: either in terms of considering the various financial approaches to solving the same problem, or from the point of view of legal proceedings.

The Law On Special Conditions for Implementing the Housing Construction Programme for Members of the Security Sector was passed in May 2018 and within the next year and a half it had already been amended twice. The Ministry of Finance adopted a bylaw regulating contract termination and recuperation of costs in the event of a breach of obligations only in January 2020<sup>3</sup>, although the deadline for that had expired on 1 July 2018.

Even though special legislation was justified by the need to more efficiently implement this project, there were significant delays in terms of the programme's implementation, at least relative to what was announced. The reasons for this come partly in the form of objective problems (e.g. the need to demine the sites) at some of the locations.

It already seems likely that the construction of apartments will cost more than announcements claimed would be recuperated from their sale, even when omitting to take into account indirect costs (the waiver of expenditures and contributions for the state-owned companies and local government, administration by governmental bodies and special purpose vehicles). The Government's plans do not indicate if these losses were taken into account. By comparing initial announcements and actual contract values, it could be estimated that the project costs would be up to 20% higher than was envisaged at the beginning.

The special law introduced a complex system of project implementation that grants important roles to the government ministries, other security sector institutions, the Government itself, the Ministry of Construction, the Construction Directorate of Serbia, seven local authorities and ten newly formed companies – one at each site.

On the basis of this special law, public procurement has been conducted by the Ministry of Construction, the Construction Directorate of Serbia and some of the new SPVs. The way the special law has been implemented to date provides no justification whatsoever for its adoption. The contracting authorities have acted almost completely in accordance with regulations that would apply to them under the "regular" Law on Public Procurement.

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<sup>1</sup> Ministry of Defence, "Solving housing issue for members of the security forces", 11 December 2017. <http://www.mod.gov.rs/eng/11941/resavanje-stambenih-pitanja-pripadnika-snaga-bezbednosti-11941>

<sup>2</sup> *Zakon o posebnim uslovima za realizaciju projekta izgradnje stanova za pripadnike snaga bezbednosti [The Law on Special Conditions for Implementing the Housing Construction Programme for Members of the Security Sector]*, "Official Gazette of the Republic of Serbia" 41/2018, 54/2019 and 9/2020.

<sup>3</sup> *Ministarstvo finansija, Pravilnik o uslovima pod kojima se vrši raskid kupoprodajnog ugovora, kao i načinu utvrđivanja i isplate tržišne cene preostale vrednosti stana za pripadnike snaga bezbednosti [Rulebook on contract termination and recuperation of costs of apartments for members of security forces]*, "Official Gazette of the Republic of Serbia" 7/2020.

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The only exception in this regard is the obligation imposed by the law that 80 percent of the materials used be of domestic origin. This provision would otherwise be considered discriminatory and in contravention not only of the Law on Public Procurement, but also a higher legal act, the Stabilisation and Association Agreement, which entered into force on 1 September 2013.<sup>4</sup>

That the special law has not been applied to a greater degree in order to circumvent standard public procurement procedures does not mean that the implemented procedures have been without their dubious occurrences. By analysing individual cases of procurement, we noted the following problematic phenomena: 1) a failure to publish procurement plans and projected costs of procurement; 2) illogical differences in additional conditions for certain procurements with similar purposes; 3) capacity requirements that could be considered discriminatory; 4) insufficient preparation in terms of market research, which was reflected in the cost projections – particularly in the cities of Niš and Vranje.

The level of competition was exceptionally low for surveying services, while there was some competition regarding the awarding of construction contracts. The exceptions being in Niš and Vranje, where the contracts were awarded to the only group of contractors to submit a bid and that, it seems, had political support for this.

Transparency of the decision making process was ensured by the Public Procurement Portal, to the extent that it would also be under the Law on Public Procurement, but not on the joint website of the special purpose vehicles (SPVs), which amounts to a violation of the legal obligations of these contracting authorities. Otherwise, the level of transparency of these SPVs is far below the already low level of transparency of state-owned companies.

## CONSTRUCTION OF APARTMENTS FOR SECURITY SECTOR EMPLOYEES AS AN ILLUSTRATION OF BROADER ISSUES

***In a nutshell: The project of state construction of residential buildings for employees in the security sector reflects two broader issues: undermining of the anticorruption legislation and using major infrastructural projects for political promotion.***

Even though it was adopted in late 2012 as one of the cornerstone anti-corruption promises of the current administration, Serbia's Law on Public Procurement<sup>5</sup> has been repeatedly compromised by its very promoters. In the last seven years, the government has used *en masse* legal means which should only be applied under extraordinary circumstances: bilateral international agreements and adoption of special

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<sup>4</sup> "Sporazum o stabilizaciji i pridruživanju" ["Stabilisation and Association Agreement], available at <https://europa.rs/srbija-i-evropska-unija/kljucni-dokumenti/sporazum-o-stabilizaciji-i-pridruzivanju/>

<sup>5</sup> Zakon o javnim nabavkama [Law on Public Procurement], "Official Gazette of the Republic of Serbia" 124/2012, 14/2015 and 68/2015.

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laws that govern only a single project.<sup>6</sup>

Large-scale infrastructure projects are exceptionally useful for political publicity purposes. This is evident from the numerous announcements, site visits and ceremonial handovers<sup>7</sup> that are part of “officials’ campaigns and which are, according to the findings of Transparency<sup>8</sup>, particularly frequent in the run up to elections. In the past few years, however, even the end of electioneering has not allowed things to return to normal and the daily media presence of high-ranking officials continues, often with reference to infrastructure projects.

The military, police, security services and also veterans are significant in all societies. Traditionally, the military is one of the institutions with the highest levels of public trust.<sup>9</sup> In addition to it being potentially politically popular amongst the broader public to grant members of these services and the families of wartime casualties certain privileges, one should not discount the significance that improving the status of members of the security forces has for the political authorities themselves. On the other hand, the decision to favour one group of public sector employees (in this case by enabling them to purchase subsidised housing) also creates risks for the authorities. Firstly, because others who also have significant roles in the public sector (e.g. teachers, doctors, etc.) will also begin to make similar demands. Secondly, because similar benefits will not be available to those who are employed in the private sector and they may become dissatisfied with this decision by the government.

One way to curtail this potential dissatisfaction is to highlight the purported economic benefits to the country as a whole. A tried-and-tested technique used in such situations is to emphasise the visible benefits and to ignore the (invisible) adverse effects. Every government decision must have its antithesis – if the state invests in housing, it will be left with less money to cover other needs; if it engages the construction industry on its own projects, the private sector will have a harder time hiring construction workers for their needs; making cheaper housing available for certain public sector workers may cause the value of privately-owned housing to decline in the affected towns, and so forth.

It is precisely these arguments (but presented at face value, without considering the potential detrimental consequences) that have so often been presented as justification for similar projects, but also on other occasions (e.g. subsidising employment by investors). Whether, when everything has been taken into account, such projects would result in greater benefit or harm to the overall economy and the citizenry, one thing is certain – intervention by the state carries with it significant administrative costs, even with the best intentions and with the most scrupulous civil servants, as well as numerous opportunities for corruption that would not otherwise exist.

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<sup>6</sup> A major case of this (ardently criticised by the current authorities whilst they were in opposition) was the Law on Stimulating the Construction Industry of the Republic of Serbia in Response to the New Conditions of the Economic Crisis (“Official Gazette of the RS”, no. 45/10). Even though the Coalition for Oversight of Public Finances and Transparency Serbia initiated a review of the law’s constitutionality – for violating the unity of the legal order in public procurement and violation of international agreements (CEFTA and the Stabilisation and Association Agreement), Serbia’s Constitutional Court rejected the initiative, resorting to economic rather than legal reasoning. (Transparentnost Srbija, „Rešenje Ustavnog suda” [“Constitutional Court Ruling”], 15/03/2020, <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/6443->).

<sup>7</sup> Z. Minić, „Zamagljivanje funkcionerske kampanje” [“Blurring the officials’ campaigns”], *Peščanik*, 5/10/2019, <https://pescanik.net/zamagljivanje-funkcionerske-kampanje/>

<sup>8</sup> The findings (in Serbian only) are available under <https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/10712-funkcionerska-kampanja>.

<sup>9</sup> V. Rokvić and Z. Jeftić, “The Serbian Armed Forces as the Postmodern Military”, *Serbian Political Thought VII(11)*, 2015, pp. 71-89, p. 82, [http://www.ips.ac.rs/wp-content/uploads/2018/03/Vanja-G.-Rokvic-Zoran-S.-Jeftic\\_SPT\\_1\\_2015.pdf](http://www.ips.ac.rs/wp-content/uploads/2018/03/Vanja-G.-Rokvic-Zoran-S.-Jeftic_SPT_1_2015.pdf)

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## FROM ANNOUNCING THE PROGRAMME TO PASSING LEGISLATION

*In a nutshell: The highest state officials' announcement that flats costing under market prices would be constructed was followed by the special law, which was passed in May 2018. However, the implementation has lagged behind the schedule from the very beginning.*

THE LAW ON SPECIAL CONDITIONS FOR IMPLEMENTING THE HOUSING CONSTRUCTION PROGRAMME FOR MEMBERS OF THE SECURITY SECTOR<sup>10</sup> was adopted in the wake of numerous announcements by politicians, including the line ministers and the President of the Republic – who has no purview over this matter. His support for this endeavour was, however, indispensable, which some other participants in this programme (e.g. the Minister of Defence) were keen to highlight in a manner that exceeded the limits of good taste.<sup>11</sup>

The housing construction programme was officially presented to the public in early December 2017 on Happy TV, when the President of Serbia, Aleksandar Vučić, announced<sup>12</sup> that a housing construction project in the country's larger cities would soon produce apartments costing 500-550 euros per square metre in Belgrade and 450-480 euros per square metre in other towns to buy, which is significantly under market prices. As was announced at the time, the state would contribute some 250 million euros to the construction.

The first session of the Preparation Commission for Proposals on the Housing Construction Programme for Members of the Security Sector was held soon after on 11 December 2017 and was attended by the President of Serbia, Aleksandar Vučić, who announced that construction was due to begin the following spring.<sup>13</sup> Following this declaration, Construction Minister Zorana Mihajlović also announced that construction of the first apartments would begin in March. Having followed this story closely, new portal *Insajder* reported in May 2018 that construction had not yet begun<sup>14</sup>.

In response to reporters' questions about why construction had not yet begun, the Ministry of Construction stated that "construction of apartments will begin in August of this year [2018]". The Ministry cited a number of reasons for the delay – from the securing of finances to the preparation and adoption of planning documentation for the selected sites. The Ministry added that, "all of the obligations of the Ministry of Construction, Transport and Infrastructure were executed before the deadlines set out by the dynamic implementation plan for this project."

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10 *Zakon o posebnim uslovima za realizaciju projekta izgradnje stanova za pripadnike snaga bezbednosti [The Law on Special Conditions for Implementing the Housing Construction Programme for Members of the Security Sector], "Official Gazette of the Republic of Serbia" 41/2018, 54/2019 and 9/2020. (Hereafter: The Law on Special Conditions)*

11 Ministry of Defence, "Ministar Vulin: The state again takes care of the people who take care of it", 22/04/2019. <http://www.mod.gov.rs/eng/13854/ministar-vulin-drzava-ponovo-brine-o-ljudima-koji-brinu-o-njoj-13854>

12 <https://insajder.net/sr/sajt/vazno/8666/Novo-obe%C4%87anje-Stanovi-u-Beogradu-za-550-evra-po-kvadratu.htm>

13 Ministry of Defence, "Solving housing issue for members of the security forces", 11 December 2017. <http://www.mod.gov.rs/eng/11941/resavanje-stambenih-pitanja-pripadnika-snaga-bezbednosti-11941>

14 M. Milanović, "Uprkos obećanjima, izgradnja stanova za vojsku i policiju počinje tek u avgustu", *Insajder*, 4 May 2018, <https://insajder.net/sr/sajt/tema/11260/>

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The first cities where the project was launched were Vranje and Niš while, as was stated in the spring of 2018, “construction in Belgrade will be on hold due to local elections”. Specifically, the City Assembly could not adopt the planning documentation for the housing construction.<sup>15</sup> In late 2019, a year and a half after these elections, the public procurement tender for construction works in Belgrade had yet to be announced.

## WHAT IS SO SPECIAL ABOUT THE SPECIAL LAW?

*In a nutshell: Numerous deviations from the Law on Public Procurement were foreseen in order to speed up the construction, which proved not to be the case. The need to initiate this project, in particular the Government’s decision to address the housing needs of security sector employees in this way and not through some other measures, was not properly justified.*

### New Rules in Comparison with the Law on Public Procurement

The Law on Special Conditions for Implementing the Housing Construction Programme for Members of the Security Sector sets out the conditions, criteria, procedure for and manner of the implementation of a housing construction programme for personnel employed by the Ministry of Defence, the Serbian Armed Forces, the Ministry of Interior, the Security Information Agency and the Administration for the Enforcement of Penal Sanctions (part of the Ministry of Justice), as well as for former employees of these institutions, veterans, families of fallen soldiers and soldiers disabled either in wartime or peacetime.

The law introduces specific provisions which are different from the existing legislation: the Law on Expropriation (“Official Gazette of the Republic of Serbia”, nos. 53/95, 23/01 – SUS, 20/09 and 55/13), the Law on Planning and Construction (“Official Gazette of RS”, nos. 72/09, 81/09 – correction, 64/10 – US, 24/11, 121/12, 42/13 – US, 50/13 – US, 98/13 –US, 132/14 and 145/14), the Law on Public Procurement (“Official Gazette of RS”, nos. 124/12, 14/15 and 68/15) and the Law on General Administrative Procedure (“Official Gazette of RS”, no. 18/16). To make it clear, some legislation was needed in order to establish the right for employees of security forces to obtain apartments under privileged conditions and to regulate the distribution of these apartments. However, it was not necessary to regulate issues already regulated in other laws.

It is interesting to note that, as proposed by National Assembly deputies of the ruling party, this law also contains certain political declarations that cannot be considered as legal norms. The following article of this law can be taken as an example: “The adoption of this law secures the overall development of the Republic of Serbia”<sup>16</sup> and “The implementation of this programme secures the overall development of the Republic of Serbia”.<sup>17</sup>

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15 *Ibid.*

16 *The Law on Special Conditions, Article 1, Paragraph 3.*

17 *The Law on Special Conditions, Article 2, Paragraph 4.*



The law also claims that all proceedings implemented on the basis of this law are deemed to be urgent.

Which members of the security forces can exercise the **right to purchase more affordable housing**, and the conditions thereof, are determined at the behest of the relevant minister or head of the relevant governmental body. In each case, individual rights under this law are granted to those persons who do own their own home or do not have an appropriate residence, rather than to those who have secured housing, either by previously obtaining housing from the state (e.g. for officers) or through private investment, inheritance or any other means. However, what remained not regulated and therefore may be spoiled by corruption, is the distribution of apartments once they are built, i.e. in which order will eligible buyers have the opportunity to actually purchase the apartment, if the demand is higher than supply.

The **developer** for construction within the residential complexes is the Republic of Serbia “or an enterprise established by the Republic of Serbia”.<sup>18</sup> These enterprises are to be established for each individual site. The developer for the utilities and other infrastructure within the residential complexes is also to be the Republic of Serbia, with construction of utilities and other infrastructure for the purposes of the residential complexes leading up to the site boundary are to be developed by the local authority in which the residential complex is to be constructed.

**Project management** will be handled by an enterprise engaged by the developer in order to provide: advisory and consultancy services for all aspects of planning and construction; to manage design and construction administration; to provide building surveyor services; and to organise meetings with contractors and surveyors as needed. This enterprise will report to the developer on all of these activities and will also propose any corrective action that needs to be taken.<sup>19</sup>

The law states that **resources for the production of lacking urban planning documentation may be provided** by the local authority in which the programme is being implemented, “in accordance with capacities and budget planning dynamics” and its powers. Therefore, this provision does not obligate local authorities but merely enables them to do so. They would have to elaborate why such a decision is in the public interest of their respective cities and municipalities. On the other hand, resources for the production of technical documentation, as well as all other ancillary technical documentation and studies is to be provided by the national government. In principle, the Republic of Serbia is also to finance and build the residential buildings, utilities and all other infrastructure within the residential complexes. However, “resources for the construction of buildings can also be provided and financed by an enterprise”.<sup>20</sup>

The national government will also finance **expropriation required for the construction of the residential complexes**. It is envisaged that the cost of construction will be precisely determined upon the completion of the building permit schematics and construction documents.

It is envisaged that the **list of potential future homeowners** will be drawn up and that a ministerial decision is mandated.<sup>21</sup> This list should be updated biannually and is to be submitted to the established enterprise.

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18 *The Law on Special Conditions, Article 3, Paragraph 2.*

19 *The Law on Special Conditions, Article 3, Paragraph 2.*

20 *The Law on Special Conditions, Article 4, Paragraph 4.*

21 *The Law on Special Conditions, Article 5.*

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Once building permits are approved, the developer will announce a call for purchase of units in the residential buildings. The final calculation of the size and value of the units will be concluded once a certificate of occupancy is issued. The proceeds from the sale of the affordable housing units are considered revenue for the national budget or of the established enterprise. A currently serving security sector employee who exercises their right to purchase a residence in accordance with this law is obliged to continue their employment for the next ten years and may not divest themselves of the residence within the next ten years. The prohibition of divestment also applies to other users (e.g. family members).<sup>22</sup>

**The procedure for conducting public procurement** is regulated by Article 9 of the Special Law. The contracting authority is the developer, or “a person to whom the developer delegates the authority to exercise the rights of the developer.” In practice, the developer was either the Ministry of Construction, or one of state-owned enterprises established for the implementation of this project. It is envisaged that **open public procurement procedure** will be applied to selection of the project manager, design, quality assurance, contractors, construction surveyors and building surveyors, as well as project finance for the construction of the residential buildings and ancillary infrastructure within the residential complexes. According to the general rules of public procurement, this procedure would be applied even had this provision not been included in the law.

However, the **time limits stipulated for individual activities are different (shorter) from usual**. The minimum time limit for submission of bids, for example, is 15 days.<sup>23</sup> According to Article 95 of the Law on Public Procurement, the time limit for submission of bids is usually 30 to 35 days, depending on the value of the procurement, and that this can be shorter only where a previous notification had been published.

Fulfilment of requirements and other conditions for participating in the tender is proved by **submitting a statement**.<sup>24</sup> Requesting a copy of evidence of fulfilment of requirements<sup>25</sup> from the best bidder is prescribed as a possibility rather than an obligation. It is problematic that the contracting authority does not have to ask for full evidence later, not even from the winner of the tender.

Another difference to the usual legal procedure lies in the fact that a **request for the protection of bidders’ rights** does not halt further public procurement activities by the contracting authority. In the regular course of affairs, the Law on Public Procurement (Articles 149 and 150) allows the procedure to continue in spite of a submitted request but only given that certain conditions are met. The Special Law also envisages shorter time limits than the Law on Public Procurement for the competent authority (Republic Commission) to deliberate on the submitted request for the protection of rights (five days from receipt of a proper request or three days for appeals). According to Article 158 of the Law on Public Procurement, these time limits are 20 and eight days respectively. According to the Special Law, the Republic Commission must deliver its decision in two days, while the Law on Public Procurement envisages five days.

Even though the open procedure is envisaged as the rule, the contracting authority can always conduct another (negotiated) procedure for the public procurement, if the proper conditions are in place. In contrast to the Law on Public Procurement, however, in procurement for this programme, there is no obliga-

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22 The Law on Special Conditions, Article 8, Paragraph 2.

23 The Law on Special Conditions, Article 9, Paragraph 3.

24 The Law on Special Conditions, Article 9, Paragraph 4.

25 Such as that there is no tax debt, that they have certain number of machines and employees etc. Instead of evidence, bidders are submitting “full liability statements”. This is an option in general procurement regulation.

tion to consult the Public Procurement Office on the justifiability of applying the negotiated procedure<sup>26</sup>.

Under standard public procurement procedure, the **selection of bidders** is carried out by the contracting authority, but in this case it is carried out by the Government of the Republic of Serbia, on the proposal of a commission comprising representatives of security sector institutions, the ministry responsible for construction and the established enterprise, in cases where the developer of the residential complex is an enterprise.<sup>27</sup> This increases the risk of channelling political influence on the selection of bidders.

Article 10 stipulates that **the cost of construction per square metre must not exceed the dinar equivalent of 500 euros** according to the average official exchange rate of the National Bank of Serbia on the day the contract is concluded, excluding value added tax.

The law stipulates that contracts entail construction of entire buildings on a turnkey basis; construction deadlines; and the waiver of amendments to cost and deadlines, including additional works, except in the case of *force majeure*. The developer – or the seller (most probably specialised state-owned SPV enterprises established in each city where the project is implemented) – **determines the purchase price of the flats** of a residential building at each individual site.

The Government **decides on individual locations** for the construction of residential complexes upon proposal of the commission which it establishes. The commission comprises of the prime minister, the relevant line ministers, the governor of the National Bank and other members appointed by the government.<sup>28</sup> City and municipality authorities are obliged to ensure that urban planning documents are adopted.

Deviation from public procurement rules is reflected in the stipulation (in Article 14) that, “construction of the residential buildings will primarily use construction products, materials, equipment and installations from **domestic producers**, amounting to at least 80% of the total quantity of required construction products, materials, equipment and installations.”<sup>29</sup>

It is envisaged that the city or municipality authorities may **exempt the developer from their obligation to pay zoning contributions**<sup>30</sup> or may reduce the amount, which significantly reduces the cost of construction. A similar effect is likely to be achieved through the exemption from paying land conversion fees, taxes and filing fees, as well as the contributions to be paid for connecting the residential buildings to communal utilities and other infrastructure.

The implementation of provisions of this law is to be overseen by the ministry responsible for construction affairs.<sup>31</sup>

Secondary legislation pertaining to this law was not passed in due time. Namely, the Ministry of Finance had to adopt an act in which it would more closely regulate, “the conditions under which the contract of sale can be terminated, as well as the method of determining and paying the market rate for residual value”<sup>32</sup>.

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26 See: *Law on Public Procurement*, Article 36.

27 *The Law on Special Conditions*, Article 9, Paragraph 11.

28 *The Law on Special Conditions*, Article 11.

29 *The Law on Special Conditions*, Article 14, Paragraph 3.

30 *The Law on Special Conditions*, Article 24.

31 *The Law on Special Conditions*, Article 25.

32 *The Law on Special Conditions*, Article 8, Paragraph 7.

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The act was due by July 2018, but the Ministry only adopted it in January 2020. Furthermore, the Rules of Procedure for the commission and the decisions on the selection of individual construction sites, referred to in Article 11 of the Special Law, have not been published yet.

## Insufficient Justification and Unexplored Alternatives

The government has justified this legislative approach by calling upon “national security policy”.<sup>33</sup> The sponsors of the law have claimed that members of this sector are the largest group with unresolved housing requirements. On 11 December 2017, at the Palace of Serbia in Belgrade, the first session was held of the Preparation Commission for Proposals for the Housing Construction Programme for Members of the Security Sector (the Armed Forces of Serbia, the Police, the Administration for the Enforcement of Penal Sanctions and the Security Information Agency).

One of the conclusions of this governmental commission was that, for the purposes of faster and more effective implementation, it was necessary to draft a special law. The purported necessity of passing a special law is, “reflected in the fact that the programme will be implemented simultaneously at several different locations in several different cities, which requires a systematic approach to resolution of all issues and the overcoming of all potential problems that may arise during the implementation phase itself”<sup>34</sup>. As practice later showed, implementation of the programme did not begin at the same time – or even at all, in some locations – even two years after the law had been adopted.

The adoption of the “lex specialis” was justified by claiming that the project is of significance for the national security of the Republic. It is also claimed that implementation of the law will increase GDP in the construction sector, that it will generate business for the domestic construction industry and that it will create jobs, “since provisions of this law stipulate an obligatory participation by domestic economic entities”<sup>35</sup>. In reality, these provisions of the law do not stipulate the engagement of domestic contractors but only indirectly the use of construction materials produced domestically.

At a session of the governmental commission responsible for implementation of the programme, it was decided that the first phase would involve the construction of a total of 1,578 apartments in six cities as follows: 600 apartments in Belgrade, 400 in Novi Sad, 188 in Niš, 190 in Vranje, 200 in Kraljevo and 200 in Kragujevac. The estimated cost of construction for the first 1,578 apartments is 64,355,716 euros. This amount excludes value added tax.<sup>36</sup>

This projection of the costs includes expenditure for the construction of utilities at the proposed sites and the construction of the required infrastructure. The justification states that the precise expenditure necessary for the implementation of this law will be determined upon completion of the building permit schematics.

In an analysis of the impact of the law<sup>37</sup>, the government also addressed the issue of alternative approaches but, apparently, not adequately. This document states that the capacity to provide and sell hous-

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33 *Predlog zakona o posebnim uslovima za realizaciju projekta izgradnje stanova za pripadnike snaga bezbednosti [Bill of the Law on Special Conditions for Implementing the Housing Construction Programme for Members of the Security Sector]. National Assembly of the Republic of Serbia, n.d. [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi\\_zakona/1179-18.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/1179-18.pdf) (hereafter: *Bill of the Law on Special Conditions*)*

34 *Bill of the Law on Special Conditions, p. 14.*

35 *Ibid.*

36 *Bill of the Law on Special Conditions, p. 15.*

37 *Bill of the Law on Special Conditions, pp. 16-17.*

ing to members of the security forces is regulated separately for employees of the Ministry of Defence, the Armed Forces of Serbia and other security sector employees. This law would, as it states, unify these approaches. It is not clear, however, that the unification of these provisions in a different manner – by extending the rights enjoyed by Ministry of Defence and Serbian Armed Forces employees to other governmental institutions – was considered. It is good to note here that public sector employees in Serbia are not generally entitled to a right to housing. However, such a right is traditionally recognised for members of the Armed Forces.

The analysis does not, however, address the issue of other options, such as raising salaries or providing affordable mortgages to security sector employees, to enable them to suitably resolve their own housing needs, or the provision of temporary housing for the duration of their service.

The Government anticipated that the law will have a direct impact on members of the security forces in that they will “all under equal conditions be able to permanently address their housing requirements, provided stipulated conditions are met”. This argument obviously does not stand up to scrutiny, given the status of security sector employees who have already resolved their housing needs privately. Namely, they are not entitled to any benefits within this project if the apartment owned by them or a family member is considered “adequate”.

A positive impact for the Republic of Serbia is seen in the fact that the right to purchase affordable housing, without the opportunity to sublet, will have a positive effect (probably in terms of their determination to remain in service). As is clear, the Government did not consider the alternative approach of reintroducing temporary use of state-owned housing for security sector employees.

Furthermore, the Government’s analysis of the economic impacts does not mention the use of the aforementioned 65 million euros in other ways (subsidies to other industries, tax cuts or similar).

## PROJECT IMPLEMENTATION

*In a nutshell: The media were uncritically reproducing announcements and information about the project implementation. The number of flats to be constructed in the first project phase had been increased from 5,000 to 8,000 even before the first building were completed. The estimated contract value for construction works in Niš and Vranje was up to 20% lower than the price offered by a single bidder, which seems to have enjoyed political support. As the tender requirements were not set in a way to prevent competition, the question is if the contracting authority had misjudged the market or the other potential bidders stayed away for other reasons. In some other cities, more competition in public procurement was secured, but there were also examples of single-bid procedures in which the tender requirements were indeed discriminatory. Special purpose vehicles established by the government for this project lack transparency.*

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## What the Public Learned from Media Reports

In July 2019, national TV channel RTS reported that the apartment buildings in Vranje will be completed by the following January and that the Construction Directorate of Serbia was satisfied, “both with the contractor and oversight and with all those working on the project”<sup>38</sup> – the representative of Turkey’s Taşyapı was also satisfied. “Our plan is 8,000 apartments to begin with and I believe that we will genuinely enable people who work in this sector to buy affordable apartments. And similarly, we are also thinking, very intensively and seriously, to broaden this project and programme to other employees also in the public sector, such as say teachers and doctors”, said the Construction Minister.<sup>39</sup> It was also reported that Niš was preparing the ground for the next phase of construction comprising of 2,000 apartments, in Kraljevo 200 apartments were being built and site preparation and foundation works were underway for two buildings in Kragujevac.<sup>40</sup>

Changes to the law passed in July 2019 broadened the category of people who have the right to apply for these apartments to include veterans, the families of wartime casualties and military personnel injured in either wartime or peacetime. At that time, it was said that the cost of the programme was around 325 million euros.<sup>41</sup>

During public discussion, the Minister of Construction, Zorana Mihajilović, said that the government planned to build 8,022 apartments for security forces personnel in the first phase and that work on all planned projects will commence by 2020: “216 apartments for members of the security services will be built in Kragujevac, 548 in Novi Sad and 190 in Sremska Mitrovica.” According to announcements, the cost per square metre will be 500 euros in Belgrade and Novi Sad, 450 in Niš, 400 in Vranje and Kraljevo and 430 in Kragujevac and Sremska Mitrovica<sup>42</sup>.

According to reports from late October 2019<sup>43</sup>, construction of 1,530 apartments was underway in six cities: Niš, Vranje, Kraljevo, Kragujevac, Novi Sad and Sremska Mitrovica. A public call for the construction of apartments in Belgrade was due to be announced by late 2019, pertaining to the “Lakat krivina” site where 300 apartments (of a total of 1,000) are to be built. The ministry claimed that construction works “in all towns are progressing in accordance with agreed deadlines”, with the exception of Niš, where the deadline for completion has been pushed back due to the removal of explosives from the site. The same media report noted that, “construction of around 8,000 apartments in seven towns is projected for the first phase of the project.” Earlier announcements foresaw the construction of a smaller number of apartments (5,203) in six towns.

Based on media reports, in 2019 construction works began in Vranje, Niš, Kraljevo, Kragujevac and Sremska Mitrovica.<sup>44</sup>

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38 M. Nikolić, “Kako teče izgradnja stanova za pripadnike snaga bezbednosti” [“How the construction of flats for members of security forces is going”], RTS, 27 July 2019. <http://www.rts.rs/page/stories/sr/story/125/drustvo/3604659/kako-tece-izgradnja-stanova-za-pripadnike-snaga-bezbednosti.html>

39 Nikolić (2019).

40 Nikolić (2019).

41 “Proširena lista pripadnika snaga bezbednosti koji mogu da konkurišu za stanove” [“The list of members of security forces who are eligible for housing is extended”], N1, 26 July 2019. <http://rs.n1info.com/Vesti/a502950/Prosirena-lista-pripadnika-snaga-bezbednosti-koji-mogu-da-konkurisu-za-stanove.html>

42 “The list of members of security forces who are eligible for housing is extended” (2019).

43 “Gradi se 1.530 stanova za pripadnike snaga bezbednosti” [1,530 flats are being built for members of security forces], Tanjug/Dnevnik, 27 October 2019. <https://www.dnevnik.rs/ekonomija/naslovi/gradi-se-1530-stanova-za-pripadnike-snaga-bezbednosti-27-10-2019>

44 *Ibid.*

In November 2018, news organisations reported the formation of seven special purpose vehicles that would be tasked with the construction of housing for security forces personnel.<sup>45</sup> These reports add that “in the first phase of implementation of affordable housing construction project for members of the armed forces until 2020, the cost of which is projected at 64.35 million euros, should result in the construction of 578 apartments”. “The plan is to construct 5,203 apartments by 2020 and the apartments would primarily be intended for members of the military, police and young scientists...” According to these claims, the first phase of construction is planned for six locations: Belgrade, Novi Sad, Niš, Vranje, Kraljevo and Kragujevac. Interestingly, this report, which was reproduced by many news organisations, did not explain the obvious inconsistency of the Government forming enterprises in seven towns for construction in six.

The intentions of the government are illuminated in an interesting manner by Minister Mihajlović’s statement of January 2019.<sup>46</sup> She stressed that 80 percent of the equipment and construction materials for the project would be domestically sourced, which would have a positive effect on the construction industry. From this it can be surmised that addressing the housing needs of security forces personnel was chosen as the least controversial option from the point of view of state investment and the resolution of legal issues through a special act, meanwhile the intention is there to extend state-backed construction as a concept, once this current project is concluded.

## Works in Niš and Vranje

On 5 October 2018, the Ministry of Construction, Transport and Infrastructure announced the first tender for construction works in Vranje and Niš. The Vranje tender<sup>47</sup> was estimated at 630 million dinars excluding VAT, for the construction of a total of 12,985.46 square metres of space (186 apartments and subterranean spaces). When these values are recalculated, it can be concluded that the government initially estimated that the construction of one gross square metre (including basements and garage space) should cost around 400 euros, without value added tax. When taking into account the “loss” from converting gross space into the “net” liveable space, it can be concluded that the government initially calculated that the construction of these units would cost far more than the price at which they would be sold (the announced 400 euros per square metre in Vranje).

The contracting authority placed additional requirements on potential bidders. The first of these relates to the bidder’s financial capacity over the preceding three years to the amount of 1.5 billion dinars, which is 2.5 times greater than the projected cost of works in Vranje. This requirement appears to be reasonable. Bidders were also asked to fulfill an additional requirement that their accounts had not been blocked for more than 15 days in the preceding 12 months. Even though this requirement is an indicator of the liquidity of the company with which the government is entering into an agreement, it is possible to question the extent to which it diminishes competition and whether it affects some of the domestic companies that the government intended to indirectly assist through the procurement.

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45 These are SPV Avala from Belgrade, SPV Ibar from Kraljevo, SPV Pčinja from Vranje, SPV Tisa from Novi Sad, SPV Dunav from Novi Sad, SPV Lepenica from Kragujevac and SPV Sava from Sremska Mitrovica. (“Vlada osniva preduzeća za izgradnju jeftinih stanova” [The Government is setting up enterprises to build cheap apartments]. *Tanjug/Večernje novosti*, 14 November 2018. <http://www.novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:760517-Vlada-osniva-preduzeca-za-izgradnju-jeftinih-stanova>)

46 “Izradnja jeftinih stanova počinje krajem januara” [“Construction of cheap apartments is starting at the end of January”], *Politika*, 2 January 2019, <http://www.politika.rs/sr/clanak/419460/Ekonomija/Izradnja-jeftinih-stanova-pocinje-krajem-januara>

47 Public procurement 2074720, last updated 5 October 2018, available (in Serbian only) at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2074720>

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In terms of human resources capacity, the contractor is required to: employ nine engineers with precisely defined licences; have a minimum of 120 employees; employ a person responsible for safety regulations; be in possession of a valid ruling on meeting the requirements for issuing energy efficiency certificates for multiple occupancy buildings and an engineer responsible for this; to be in possession of a ruling on fire protection measures. It is particularly requested that the “bidder at all times has a sufficient number of employees for the uninterrupted execution of works”.<sup>48</sup>

The bidder’s commercial capacity is evidenced by the contractor having completed construction works on buildings totaling an area no less than 50,000 square metres. This is more than four times greater than the area of the works in Vranje but the time period is sufficiently long so that this requirement does not equate to discrimination or, at least, not for companies that have been operating for a longer time, while newly established firms could complain about discriminatory requirements.

Commercial capacity also entails possession of the four aforementioned certificates of compliance with standards. A bank guarantee for the seriousness of the offer was requested at five percent of the offer price. In addition, a letter of intent was requested from a commercial bank to issue a bank guarantee for refund of the advance payment to the tune of 10 percent of its value, as well as for five percent of the offer for corrections during the warranty period.

Bidders were required to submit a list of the materials and equipment to be assembled and this list was an integral component of the bid. This specification would show that 80 percent of the construction products and materials are sourced from domestic manufacturers. It was not stated how these claims would be confirmed, nor how the 80 percent participation figure would be calculated (e.g. by quantity or by value).

The tender documentation for this procurement was amended on five separate occasions, mainly as a result of queries submitted by interested parties. However, none of these changes to the documentation resulted in the contracting authority receiving bids it found acceptable. Moreover, only one bid was submitted, from a consortium comprising of a Belgrade-based subsidiary of a Turkish company Taşyapı and Millennium Team from Belgrade, who submitted a joint bid with two other Serbian companies with a total share of 1.2 percent.<sup>49</sup>

This bid was significantly more expensive than the projected cost, amounting to 746 million dinars, excluding VAT, or about 20 percent more than the contracting authority had announced it would find acceptable.

This raises the question as to why the bidders even bothered to compile a bid, which they not only knew would not be acceptable on price, but was not even complete in other areas (it did not include an agreement between the bidders on joint execution of a contract). One of the possible answers is that the bidders correctly estimated the costs and knew that no one could work with the ministry’s calculation of 400 euros per square metre of gross space, excluding VAT. The other possible answer is the bidders’ confidence that for some reason or other, no other bids would be submitted and that the contract would have to be awarded according to a negotiated procedure in which it would be possible to agree the required price.

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<sup>48</sup> Public procurement 2074720.

<sup>49</sup> Obaveštenje o obustavi postupka javne nabavke [Notification on cancellation of the public procurement procedure], 3 December 2018, available at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/Obavestenje00bustaviPostupkaJavneNabavke.aspx?idd=2139787&idp=2074720&vz=2>.



In Niš<sup>50</sup>, the projected cost for a slightly larger surface area was also 400 euros per gross square metre, amounting to 674 million dinars. The requirements were the same as those in Vranje and the tender documentation had to be amended for the same reasons. Ultimately the tender fell through for the same reasons – the same bidder as in Vranje demanded 808.8 million dinars excluding VAT, or exactly 20 per cent more than the Government of Serbia had estimated the deal was worth.

The Ministry of Construction, as the contracting authority, was then faced with two possibilities. The first would be to examine why these two tenders fell through and to reissue a new tender that would eliminate the reasons for the previous failure. For example, if no other bidders had applied because the technical, financial and other requirements were too stringent, then perhaps a correction would have been possible. If bidders from other countries, particularly those from the region (e.g. Bosnia, Macedonia, Bulgaria or Albania) had not submitted bids because they were not informed in time or because they would struggle to produce certain certification in Serbia, then that part of the tender documentation could have been corrected to increase competition. If a greater number of companies had not participated because their capacities were at the time engaged across other construction sites, then the value of the tender should have been re-evaluated to make this government contract more competitive.

In any case, the ministry should have analysed the situation following the failed tenders and examined the rigour of its previous activities. This is especially true in terms of market analysis. That is, if the contracting authority had conducted a market analysis and concluded that it would be able to attract bids for the projected cost of 400 euros per gross square metre but arrived at a situation in which not only did it not receive any interest, but the single submitted bid was 20 per cent higher, there are only two possible outcomes: either the market analysis was very wide of the mark or some illicit agreement among potential bidders had taken place.

Perhaps under pressure from deadlines and political announcements, the contracting authority chose another path, from Article 35, Paragraph 1, Item 1 of the Law, to complete the procurement under negotiated procedure, where the single bidder that had submitted the previously unacceptable offer would be invited to negotiations, without a new tender being issued. In this procedure, the law prescribes only one restriction, that the conditions of the tender cannot be altered and that the price of the initial bid cannot increase.

Among other things, the decision to award the contract<sup>51</sup>, dated 14 December 2018, states that the Ministry of Construction, Transport and Infrastructure had, on 12 July 2018, through a ruling on use of the current budget reserve, received 528,130,000 dinars for housing construction for members of the security services and that the ministry subsequently concluded contracts for the production of project and technical documentation with a value of 145,581,600 dinars.

The government approved expenditure of 1.4 billion dinars plus value added tax for the construction of housing in Niš and Vranje. This approval came in the form of a Government Conclusion dated 4 October 2018. It is interesting that the approved amount is greater than the cost of the apartments by around 100 million dinars. The Decision further states that in December 2018, funds amounting to 2.049 million dinars remained on the budget line to which these procurements belong.

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50 *Public procurement 2074712, last updated 12 October 2018, available (in Serbian only) at Public Procurement Portal [portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2074712](http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2074712)*

51 *Odluka o dodeli ugovora [Decision to award contract], 14 December 2018, available at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/DodelaUgovora.aspx?idd=2155838&idp=2155810&vz=2>*

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In November the Government authorised the ministry to enter into negotiations. The contracting authority allowed the bidder six days to “supplement its bid to the extent to which the bid that had been deemed unacceptable would become acceptable”. The new offer was exactly the same as the initial one and remained the same through three rounds of negotiations.

Since the contracting authority had minimal negotiating leverage, it only remained for the offer to be either accepted or not, in accordance with legal restrictions. According to the law, the contracting authority may only accept an offer that is higher than the estimated value of the procurement if the offered price is not greater than a comparable market rate. This is why the Ministry consulted the (publicly owned enterprise) CIP Institute of Transportation. The response confirmed that cost estimates with unit prices for all segments of the technical documentation had been submitted, that the documentation was complete and that the offered price was comparable to the market rate. The contract was awarded on the basis of this confirmation.

What is questionable in this situation is that the contracting authority initially estimated that the cost of the works was 20 percent lower than what was later deemed to be “comparable to the market rate”. In other words, the contracting authority either incorrectly conducted market research or the CIP Institute of Transportation provided an inaccurate evaluation.

The government approved the construction contracts for Niš and Vranje to a value of 1,546 million dinars plus VAT. The fact that there was an unplanned expenditure of 360 million dinars raises the question as to what other expenditures remained unrealised due to this. Given that the work on the other sites was delayed, it is possible that there was no immediate damage caused by this by the end of the financial year.

## Problems in Vranje

Implementation of this project ran into problems even before construction had begun in earnest. In March 2019, the deputy director-general and one manager from the (publicly owned enterprise) CIP Institute of Transportation, responsible for works oversight, as well as the director of the Serbian subsidiary of Turkish company, Taşyapı, which was the main contractor, were “arrested on suspicion of accepting bribes during selection of subcontractors”.<sup>52</sup> CIP officials and the Taşyapı director are suspected of asking the owner of Vodogradnja for 20,000 euros in order to hire his company as a subcontractor. CIP is tasked with oversight and the Turkish company is the main contractor for housing construction in Niš and Vranje. The prosecution claims that, Taşyapı, the main contractor for the so-called “rough in” stage of construction, concluded a contract with Vodogradnja as a subcontractor, “even though another company had made a more favourable offer for the supply of concrete”.

The statement also adds that CIP officials had requested money from the also suspected owner of Vodogradnja so as to influence other CIP officials not to report failings in terms of the quality of concrete or completed works during their site inspections. It is also claimed that on 28 February 2019, the owner of Vodogradnja gave a suspected CIP official part of the money, amounting to 10,000 euros, which was found on the CIP official’s person during a search.<sup>53</sup>

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<sup>52</sup> “Izgradnja stanova za bezbednjake: Hapšenje zbog sumnje na mito prilikom angažovanja podizvođača” [“Housing construction for members of security forces: Arrest on suspicions of bribe during hiring of subcontractors”], *Insajder*, 2 March 2019, <https://insajder.net/sr/sajt/vazno/13622/>

<sup>53</sup> *Ibid.*

It is worth noting here that the part of the Law on Public Procurement which was not repealed by the special law provides no possibility for hiring subcontractors that are not listed in the bid that was awarded the government contract.<sup>54</sup>

According to media reports, the owner of the Turkish company was embroiled in a corruption scandal that erupted in 2013 in his home country. The owner of this company was said to be one of three prominent businessmen who were arrested at the time on suspicion of illegal activities pertaining to government contracts and bribery. A number of ministers involved in this scandal later resigned and the investigation was quashed by the Turkish President, Recep Tayyip Erdoğan, who claimed that it was all a ploy by Islamic scholar, Fethullah Gülen, who was been in exile in the USA since 1999.<sup>55</sup>

Furthermore, according to investigative portal *Insajder*, Taşyapı entered the Serbian market following the signing of a series of memoranda and agreements in May 2018, when a Serbian delegation headed by the country's president visited Turkey. On that occasion a memorandum of understanding was signed between the ministry and Taşyapı and also, on the basis of this, a framework agreement was signed between the Government of Serbia and that company regarding infrastructure projects, including the Belgrade-Sarajevo highway<sup>56</sup>. It should be noted that when this public procurement was negotiated, there was no reference to the provisions of the intergovernmental agreement or memorandum – instead the tender was organised on the back of provisions of the special law.

## Procurement of Works in Other Towns

Unlike construction in the first two cities, in all of the other cases thus far, public procurement was carried out by companies formed in the meantime by the Government of Serbia.

A common weakness of all of these procurements and a major difference compared with procurements by the ministry in Vranje and Niš is that **the projected costs of the procurement were not made public ahead of contract awarding**. To be sure, the publishing of such information is not a legal requirement. However, in circumstances in which previous procurement tenders had fallen through precisely because the offered price significantly exceeded that which was acceptable to the contracting authority, the publishing of projected costs could only have served to increase competition and reduce space for speculation.

### Sremska Mitrovica

In Sremska Mitrovica, the procurement was projected to be 809,653m039.30 dinars, excluding VAT. It is not clear what surface area of liveable space this covers, since we could not find this information in parts of the tender documentation, on the public procurement website, on the dedicated site of the project, nor on the site of the Construction Directorate of Serbia.

Even so, from the documentation for a separate tender (project oversight services), it is possible to conclude that in Sremska Mitrovica the same surface area has been contracted as in Niš (13,898 gross

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<sup>54</sup> Law on Public Procurement, Article 80, Paragraph 12.

<sup>55</sup> "Projekat izgradnje stanova za pripadnike službi bezbednosti: Već na početku pritvor zbog sumnje na davanje mita" [Housing construction project for members of security services: Arrests at the very beginning of the project on suspicion of bribe], *Insajder*, 5 March 2019, <https://insajder.net/sr/sajt/tema/13640/>

<sup>56</sup> *Ibid.*

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square metres). This would mean that the cost of the construction has been estimated at 58,281 dinars per square metre (around 485 euros). This is significantly higher than in the (unsuccessful) projection of costs in Niš and Vranje, that is, it is more in line with the final negotiated cost in these cities.

When it comes to the requirements of the tender<sup>57</sup>, they are noticeably different than in the Niš and Vranje tenders in terms of expected bidders' capacities. There were also differences in the financial capacity requirements – here it was required that bidders have a total income of 2 billion dinars over the preceding three years, which is proportionally similar to the previous tenders, however, significantly more rigorous requirements were made regarding liquidity – the bidder must have had no stoppages to their accounts for three years and must have remained profitable during the same period. In terms of turnover, the requirement is somewhat less restrictive. The bidder must show that they have built multi-storey buildings with a total area of 30,000 square metres over the preceding eight years (in Vranje and Niš this figure was 50,000) and that the total value of those works is at least 1.2 billion dinars.

Even though these were different contracting authorities, all of these differences may indicate that shortcomings were identified in the previous procurement processes in Vranje and Niš, but no information has been made available about this. Another possibility is that the requirements of the tender were made more stringent in order to limit competition.

Under this tender, the contracting authority received three bids, among which the differences were not significant. The bid accepted was one that submitted the lowest price under "supplemented offer", which was submitted at the same time as the initial offer and just three minutes before the deadline.

The initial decision on awarding the contract was different and was made on 31 May. Even though, under the provisions of the special law, it was not necessary to await the decision of the Commission on applications for the protection of rights, it seems that this was done and the contracting authority did not award a contract until the Commission's decision, which arrived on 27 June 2019. This was wise, since the Commission partly overturned the contracting authority's previous decision, which caused a different group of contractors to be selected.<sup>58</sup> The result of this competitive procurement was that the final expenditure was 61 million dinars (7.5 percent) lower than anticipated.

## **Kragujevac and Kraljevo**

Competition also had a positive effect in Kragujevac. Here the tender, which attracted three groups of bidders, resulted in expenditure that was 101,846,072 dinars (10.76 percent) lower than planned. One of the bids was rejected as unacceptable because it lacked a bank guarantee of the offer's seriousness. The remaining bids differed on price.<sup>59</sup>

The planned cost of works in Kragujevac was 945,846,072 dinars, for a total of 16,251 square metres, which is 58,202 dinars (around 493 euros) per square metre. The final cost was 51,935 dinars or around 440 euros per square metre.

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57 Public procurement 2316110, last updated 25 April 2019, available (in Serbian only) at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2316110>

58 Republička komisija za zaštitu prava u postupcima javnih nabavki. Odluka broj 4-00-566/2019 [Decision of the Republic Commission No. 4-00-566/2019], Belgrade, 27 June 2019. <http://kjin.rs/wp-content/pdf/566-2019odlukark.pdf>

59 Public procurement 2237028, last updated 1 March 2019, available (in Serbian only) at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2237028>.

In Kraljevo<sup>60</sup>, five bidders competed for the contract, resulting in costs of 89,371,684 dinars (10.32 percent) lower than planned. The unit cost for the construction of a total of 14,880 square metres were projected to be the same as in Kragujevac and the final costs will be slightly higher. The agreed cost of works in Kraljevo was 52,195 dinars or around 442 euros per square metre.

Of the five bids received in Kraljevo, three were rejected because the bidders failed to submit bank guarantees for the seriousness of their offers, and one bidder also failed to determine a deadline for the completion of works.

It is important to note that an earlier tender was attempted in Kraljevo, in which the state-owned company anticipated that it could pay just 42,885 dinars (363 euros) per square metre, but this tender attracted no bids.

Also interesting is the breach of formal protocol observed in the Kraljevo tender. The contracting authority announced a “decision on awarding the contract through negotiated procedure without issuing a call for bids”<sup>61</sup>, even though the process was not conducted under negotiated procedure at all, but through an open procurement procedure. This procedure was justified on the company’s website as follows: “DUE TO THE LACK OF A ‘CONTRACT AWARD DECISION’ THIS DECISION PERTAINING TO THE OPEN PROCEDURE vjn 01/19 WAS ISSUED IN THIS MANNER FOR REASONS OF URGENCY”. Three days later, the decision was published under its rightful name.

The requirements for participation in these two tenders were very similar, both to one another and to the requirements of the Sremska Mitrovica tender.

## Procurement of Services

### Procurement by the Ministry of Construction

#### Demining Services in Niš

On 5 April 2019<sup>62</sup> the Ministry of Construction entrusted the task of clearing out cluster munitions and other unexploded ordnance from the site of the Niš housing construction to Millennium Team, the only company to submit a bid. The contract was worth 16.7 million dinars, excluding VAT. As is stated in the decision to award the contract, there were 23.5 million dinars in the budget and the projected cost was 19.5 million.

In terms of experience, the tender requires bidders to have demined areas twice the size of the site in Niš, to possess demining equipment, two machines “with a capacity between 10,000m<sup>2</sup> and 15,000m<sup>2</sup>” (it is not clear why the bidder cannot possess a single machine with a capacity twice this, or four machines with half this capacity). Moreover, these machines “must be in serial production (and have been in produc-

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<sup>60</sup> Public procurement 2236967, last updated 8 April 2019, available (in Serbian only) at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2236967>

<sup>61</sup> Odluka o dodeli ugovora u pregovaračkom postupku bez objavljivanja poziva za podnošenje ponuda [Decision to award contract in negotiation procedure without issuing a call for bids, 5 April 2019, available at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/OdlukaODodeliUgovora.aspx?idd=2286900&idp=2236967&vz=2>

<sup>62</sup> Odluka o dodeli ugovora [Decision to award contract], 5 April 2019, available at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/DodelaUgovora.aspx?idd=2285876&idp=2250669&vz=2>

tion for at least 10 years)", which is a requirement that is hard to justify, as it is reasonable to assume that such machines will show defects within a shorter production run.

## Project Management Services

Procurement<sup>63</sup> began on 20 September 2018 and concluded in November of the same year and the ministry awarded a contract for management of the Housing Construction Programme for Members of the Security Sector. Even though the contract was awarded to the Construction Directorate of Serbia, this was not done on the basis of a decision brought by the government, rather through a procedure open to other companies.

The Government Conclusion dated 7 June 2018 gave the investor the right to execute works for the Ministry of Construction. The law prescribes that the project manager be a legal entity engaged by the investor and that provides consultation services in all aspects of planning and construction, as well as overseeing the dynamics and progress of works, etc.

The Ministry of Construction obtained approval from the Ministry of Finance for a multi-year management contract, valued at 13.5 million dinars in 2018, 54 million in 2019 and 40.5 million in 2020. For the year that the tender was announced, 13.5 million had been secured for this budget line. The only bid was submitted by the Construction Directorate of Serbia. For managing the construction of 109,846 square metres of residential space, this company asked for a total of 105,840,000 dinars including VAT or 88.2 million excluding value added tax – i.e. around 960 dinars per square metre, including taxes.

According to information from the tender documentation, the phase that was designated as "Phase I" projected construction at six sites, amounting to 1,517 apartments and totalling 109,846m<sup>2</sup>.

**Table 1**  
**Area and number of apartments by city – Phase I**

1	Vranje	12,986	186
2	Niš	13,898	190
3	Kraljevo	14,700	200
4	Sremska Mitrovica	13,898	190
5	Kragujevac	14,700	200
6	Novi Sad	39,664	551

63 Public procurement 2057191, last updated 20 September 2019, available (in Serbian only) at Public Procurement Portal <http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=2057191>

Among the additional requirements for participation in the tender, there are some whose validity is disputable. Bidders are required, for example, to have had an operating income of no less than a billion dinars over the preceding three years, which is eleven times the value of the contract and discriminates against potential participants.

### Demining in Novi Sad

Although the tender for demining services in Novi Sad<sup>64</sup> attracted only one bidder, the offered price was significantly lower (by 16.5 percent) than projected. The procedure was conducted as an open tender and the only question that remains, is whether the prescribed requirements for participation were such that they destimulated greater competition.

### Surveying Services – Procurement by SPVs

For procurement of surveying services in Sremska Mitrovica, the difference between the projected and contracted costs was negligible and the only bidder was the CIP Institute of Transport.

It seems that the issue here was the cost projection. In Kragujevac, the surveying contract also went to CIP, with no competition, but at a cost significantly lower (30 percent) than projected.<sup>65</sup> However, it is unusual that for this contract, CIP charged significantly less for its services than in Sremska Mitrovica, even though the total cost of works was similar, so it can be assumed that surveying of these works was similarly demanding. The tender for surveying services in Novi Sad was competitive and here the contract was awarded to a group of bidders, which offered a lower price than CIP. The competitive nature of the tender led to savings of 25 percent.

Finally, two large surveying contracts that cover six separate SPVs were awarded to CIP. One was competitive and the other was not, but both times, the difference in costs compared with those projected was minimal.

Only one bidder applied for the fire safety contract in Novi Sad. It is interesting that the scope of the services was not determined in advance, instead the offer was submitted and accepted on the basis of one day of work, with a maximum contracted amount that can be paid out.

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<sup>64</sup> Z. Strika, "Za razminiranje dela Jugovićevo spremjeno 68 miliona dinara" [68 million dinars earmarked for demining Jugovićevo neighbourhood], 021.rs, 5 September 2019, <https://www.021.rs/story/Novi-Sad/Vesti/222865/Za-razminiranje-dela-Jugoviceva-spremljeno-68-miliona-dinara.html>

<sup>65</sup> SPV Lepenica doo Kragujevac, Odluka o dodeli ugovora [Decision to award contract], 5 April 2019, available at Public Procurement Portal, <http://portal.ujn.gov.rs/Dokumenti/DodelaUgovora.aspx?idd=2286872&idp=2237060&vz=2>.

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# THE TRANSPARENCY (OR LACK THEREOF) OF THE CONSTRUCTION COMPANIES

## The Formation of Special Purpose Vehicles

Already by 9 November 2018, not long after concluding a contract with the Construction Directorate of Serbia, the government adopted a decision on establishing seven special purpose vehicles. These companies were founded to implement the housing construction programme, after which they would cease to exist. All were established with the minimum permitted capital. The intention is to finance them from “the budget, credit and operating income”. The companies are to be managed by a board and a director. Three representatives of the government, appointed by the Ministry of Economy, sit on the board. In place of selecting a director through open competition, as is the case with other companies founded by the government, here the director is named in the founding decision as, “the Construction Directorate of Serbia d.o.o., a legal entity!”<sup>66</sup>

It has, therefore, become even less clear why it was necessary to appoint a separate company to manage the project if the task was to be entrusted to the same company that, as director of ten government-established companies (three new ones were established in Niš in 2019), is already involved in the construction of these residential buildings. This construction means, in practice, as shown by the announced procurement, means that these companies “outsource the construction work”.

## Joint Website

The programme has its own website: <https://www.ssb-srbija.rs/>

The site contains some relevant information, such as the number of apartments planned and application forms. This is also the only place on the internet where at least some information on the ten newly formed state-owned companies can be found. In short, none of them has its own website. This fact has public procurement implications. According to the Law on Public Procurement, each contracting authority conducts its own procurement through the Public Procurement Portal and its own website.<sup>67</sup> It can be concluded that this joint website is the website of these state-owned companies as they are listed at the bottom of the site, along with the Construction Ministry.

In terms of public procurement, there is another, much greater, problem. A visitor to the site could easily become confused as only two procurements whose contracting authority was one of the SPVs are available on the site.

Additionally, another major drawback from the point of view of the Law on Public Procurement is that no public procurement plans have ever been published by these companies.

The contact details have also been listed inconsistently, indicating that some of these companies exist only on paper, while others already perform certain functions.

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<sup>66</sup> Decisions for each individual SPV were published in “Official Gazette of the Republic of Serbia” 86/2018.  
<sup>67</sup> Law on Public Procurement, Article 30, Paragraph 4.



In any case, according to this website, the total number of apartments to be constructed is as follows:

Vranje 484<sup>68</sup>

Niš 2,690<sup>69</sup>

Kraljevo 947<sup>70</sup>

Sremska Mitrovica 190<sup>71</sup>

Kragujevac 972<sup>72</sup>

Novi Sad 1,972<sup>73</sup>

## CONCLUSION

A special law was passed in Serbia to legislate construction of government-subsidised flats across Serbia, which employees in the security forces would buy under standard market prices. The government has justified this legislative approach by calling upon national security. However, the Government's decision to address the housing needs of security sector employees in this way and not through some other measures, was not properly justified. The special law has foreseen numerous deviations from the public procurement legislation for the sake of urgency, but in practice, there have been significant delays in the project implementation. Also, by comparing initial announcements and actual contract values, it could be estimated that the project costs would be up to 20% higher than was envisaged at the beginning. Procurement of construction services was marred by insufficient transparency and dubious phenomena such as discriminatory capacity requirements from bidders and low competition.

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68 <https://www.ssb-srbija.rs/gradovi/vranje/>

69 <https://www.ssb-srbija.rs/gradovi/nis/>

70 <https://www.ssb-srbija.rs/gradovi/kraljevo/>

71 <https://www.ssb-srbija.rs/gradovi/sremska-mitrovica/>

72 <https://www.ssb-srbija.rs/gradovi/kragujevac/>

73 <https://www.ssb-srbija.rs/gradovi/novi-sad/>