



MONTENEGRO  
PUBLIC PROCUREMENT ADMINISTRATION

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Reference no:  
Podgorica, 16 March 2012

**Subject:** Minutes of the meeting held with the representatives of the Expert Commission for the Area of Rule of Law – Ms. Laura Stefan and Mr. Martin Gluchowski, on 13 March 2012 in the premises of the Public Procurement Administration

Dear Sirs,

In the public procurement field, a new Public Procurement Law (Official Gazette of Montenegro, 42/11) was adopted, and it entered into force on the eighth day as of its publication in the Official Gazette of Montenegro, and it has been implemented since 1 January 2012.

Public Procurement Law (Official Gazette of Montenegro, 42/11)<sup>1</sup> has been harmonized with the Directive 2004/17/EC of the European Parliament and Council, coordinating the procurement procedures of the entities operating in fields of water management, energy, transport and postal services; Directive 2004/18/EC of the European Parliament and Council, coordinating the procedures of awarding contracts for procurement of works, procurement of goods and procurement of services; Directive 2007/66/EC of the European Parliament and Council, amending and supplementing Directives of the Council 89/665/EEC and 92/13/EEC regarding the improved effectiveness of review procedures related to awarding of public procurement contracts. By Regulation of the Commission (EC) no. 1564/2005, establishing standard forms for publication of notices within the public procurement procedure, in accordance with the Directives 2004/17/EC and 2004/18/EC of the European Parliament and Council.

Simultaneously with the Public Procurement Law, the implementing regulations were also adopted<sup>1</sup>: Rulebook on forms in public procurement procedures (Official Gazette of MNE, 62/2011), Rulebook on methodology of expressing sub-criteria into an appropriate number of points, manner of assessment and comparison of bids (Official Gazette of MNE, 63/2011), Rulebook on method of keeping and content of records on violation of anti-corruption rules (Official Gazette of MNE, 63/2011), Rulebook on records of public procurement procedures (Official Gazette of MNE, 63/2011).

The text of the Public Procurement Law and secondary legislation has been published at the internet page of the Public Procurement Administration [www.ujn.gov.me](http://www.ujn.gov.me) as well as on the internet page of the State Commission for Control of Public Procurement Procedures,

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<sup>1</sup> Public Procurement Law (Official Gazette of Montenegro, 42/11), implementing regulations and Strategy for development of public procurement system in Montenegro for the period 2011-2015, was prepared within the Project IPA 2007 "Further Development and Strengthening of the Public Procurement System in Montenegro" and the Working group composed of representatives of the Ministry of Finance, Public Procurement Administration and Commission for Control of Public Procurement Procedures.

[www.kontrola-nabavki.me](http://www.kontrola-nabavki.me). The Law is available both in Montenegrin and in English language.

The area of public procurement is one of the most important components of the whole European integration process. Public procurement is not only one of the foundations of the EU internal market, but it is also foundation of the system of integrity and responsibility, that is necessary for consolidation of the rule of law and functioning of democracy. This is one of the most challenging areas in the process of membership negotiations.

In that regard, the solutions envisaged by the new Public Procurement Law will ensure a complete application of the EU rules and requirements in terms of ensuring free flow of goods, people and capital, pursuing continuity in realization of open market freedom principle, which is in accordance with the Article 76 of the Stabilization and Association Agreement.

Adoption of the new Law resulted primarily from the Work Program of the Government of Montenegro for 2011, as well as from the undertaken commitments envisaged by the National Program of Integration of Montenegro into EU.

Ratio legis of the new Law is removal of deficiencies observed in the practice up to now, clearer definition of responsibilities of the persons conducting public procurement procedures, more efficient mechanisms for prevention of abuse in public procurement by strengthening the system of managing contracting authorities, bidders, categories and contracts (*in order to avoid any ambiguity, the word "managing" is not to be interpreted as "Big Brother" managing, because it is not so. Managing in this context of the Law is a necessary function and each public procurement officer must be aware of all participants related to or involved in the public procurement procedure, aware of his/her needs and his/her expertise in the field of managing those relations in order to increase the value of the contract concerned*), strengthening of control by significant increase of publicity in the procurement procedure – inspection control, the emphasis has been put on a more coordinated obligation of cooperation work of the competent authorities, more systematic capacity improvement and work of all the public procurement stakeholders.

Apart from the above, the Law also includes some changes that significantly improve implementation of basic public procurement principles: transparency, competition, equality of bidders, efficiency and cost-effectiveness, which are particularly reflected in the following:

- Contracts concluded in public procurement procedures will be available at the PPA Portal, and there was also established an obligation of contracting authorities to submit the contract to the PPA in three days as of the day of contract conclusion in purpose of its publication at the PPA Portal,
- Requirements for conducting of negotiated procedure without prior publication of contract notice are more restrictive, and the percentage for additional quantities of

- goods, works or services that could be procured on basis of the original contract was reduced to 15% of the contract value,
- Public procurement procedure by shopping method may be conducted once a year for the same subject matter of public procurement, and within the value scales envisaged for this type of procedure,
  - Also, the contracted value of public procurement contained in the decision on selection of the most favourable bid may not exceed the estimated value of public procurement determined by the invitation to public tender and tender documents, and the price stipulated by the public procurement contract may not exceed the price contained in the decision on selection of the most favourable bid, the decision on selection of the most favourable bid where the price of the most favourable bid exceeds the estimated value shall be null and void, and the contracting authority that adopts such a decision shall be liable for misdemeanor,
  - The Law envisages that the decision on selection of the most favourable bid, or the public procurement procedure is subject to mandatory review performed by the PPA and the Commission,
  - The rules on exemption of the application of the Public Procurement Law are defined more clearly,
  - There is a clear distinction and positioning of the institutions competent for performance of tasks in the public procurement area,
  - Clearer and more complete definition of certain procedures for conducting of principal procurement procedures (there are special rules for restricted procedure),
  - Establishing an obligation each contracting authority to adopt a Public Procurement Plan with a rationale,
  - Introduction of the Common Procurement Vocabulary for defining the subject of procurement that will be regularly updated and published at the PPA Portal,
  - Institutionalization of professional training and development in the public procurement area,
  - Certification and taking a professional examination in accordance with a special bylaw,
  - Simplification of procedure in terms of submission of proofs on fulfillment of conditions for participation in public procurement procedures,
  - More precise definition of a joint bid and fulfillment of requirements in case of its submission,
  - Identification of a possibility for the establishment of a central public procurement body at the level of state authorities and local self-government units,
  - Possibility of delegating tasks of conducting public procurement procedures to another contracting authority,
  - There is also set a strict obligation to keep the records on public procurement as well as to submit reports on public procurement,
  - Better cooperation between the institutions responsible for the detection and prosecution of criminal offenses,
  - Liability issues,

- The anti-corruption rules and their observance have been additionally accentuated as well as the conflict of interest policy,
- As already mentioned, the Law also deals with the environmental protection issues through introduction of mandatory environmental criteria,
- The Law additionally improves and encourages the e-procurement process.

The process of harmonization of legislation in the public procurement area with the EU rules was included within the IPA 2007 Project – "Further Development and Strengthening of the Public Procurement System in Montenegro", that was actively monitored by the EU Delegation to Montenegro with their experts.

When it comes to the Public Procurement Administration, it will be a key stakeholder in the public procurement procedures with a clear responsibility of managing and supervising the procurement procedures in Montenegro. The PPA is a Government's institution and it represents a leading force in public procurement. The novelty is that the Administration will organize and conduct professional training of the staff and that it will organize professional exams for performance of tasks in public procurement area.

It is important to stress that the new software solution provides great opportunities related to transparency of procedures, that is, all information regarding public procurement are available at the Portal and these are: Public Procurement Plan linked to the Contract notice, Decision on selection of the most favourable bid and the Contract.

During the reporting period, there has been developed a Strategy for development of the public procurement system in Montenegro for the period 2011-2015<sup>1</sup> and the Action Plan for implementation of the strategic document, and these acts were adopted at the Government's session of 22 December 2011. The Strategy comprises the following development components in the period 2011-2015: legislative framework, institutional framework, improvement of the public procurement system (that implies the following: monitoring of public procurement procedures, raising of awareness by education and training at all levels, relations with the NGOs, development and strengthening of electronic communication in public procurement with guidelines for creation of an Action plan for development and introduction of e-procurement, degree of savings, reporting on public procurement, cooperation with bodies and institutions of Montenegro, cooperation with international institutions and study experiences, environmental and social aspects of public procurement, equal opportunities, proposed approach to organizational structure), professional training in the public procurement area and strengthening of administrative capacities, public procurement in the process of EU accession, prevention of corruption in public procurement system, development and strengthening of electronic communication in public procurement and protection of rights in public procurement procedures. At the same time, the Government, at its session of 22 December 2011, adopted a Decision on establishment of a Coordinating body for monitoring and implementing the Strategy of public procurement.

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## INSTITUTIONAL FRAMEWORK

For the purposes of Law's implementation, the institutional framework has been provided by establishing the Public Procurement Administration and the State Commission for Control of Public Procurement Procedures.

New Rulebook on internal organization and job classification of the Public Procurement Administration was adopted at the Government's session of 17 November 2011. This Rulebook provided for increase in the number of employees and improvement of the professional structure especially regarding trainings, monitoring of the procedures, information technologies and reporting. In accordance with the new Rulebook, four organizational units were envisaged within the Public Procurement Administration – Department for monitoring implementation of regulations and inspection control, Department for monitoring of public procurement procedures and managing electronic public procurement, Department for professional training and education and international cooperation in the public procurement area and Department for general affairs and finances, by which the number of employees was increased to 18. All necessary information can be found at the web page [www.ujn.gov.me](http://www.ujn.gov.me). In the Public Procurement Administration, on 15 March 2012, there are 14 civil servants and state employees.

## TRAININGS

Representatives of the Public Procurement Administration attended the Conference on Public Procurement organized by the European Bank for Reconstruction and Development, whose aim was the presentation of the Assessment Report on Public Procurement systems in countries where the EBRD has a role of an active promoter of reforms and a donor in numerous projects. This assessment was conducted in 2010, having as its objective to reflect the status of efforts put into the public procurement reform in the countries of the EBRD operations, as well as to encourage, influence and provide guidelines for an ongoing reform within the public procurement sector (more information at the Public Procurement Administration website).

The Public Procurement Administration, on basis of a signed memorandum on cooperation with the **Commission for Prevention of Conflict of Interest** and the **Administration for Anti-Corruption Policy**, actively participated during the whole year at the seminars on anti-corruption policy and prevention of conflict of interest, intended for public officials, judges and prosecutors, state officials, NGO representatives and the media.

A workshop with a topic ‘‘Framework Agreement and Centralized Procurement’’ in the European Union and Croatia was organized by the Public Procurement Administration and SIGMA. On basis of SIGMA study on centralized procurement and examples provided by the Administration for Centralized Procurement of Croatia, the purpose of the Workshop was the exchange of experiences and free discussion on various aspects of framework agreement as well as on practical functioning of centralized procurement bodies. The goal was acquiring better

understanding on how to start awarding of framework agreements and how to successfully develop and organize centralized procurement bodies. Apart from representatives of the Public Procurement Administration of Montenegro, the active participation at the Workshop was taken by the representatives of state authorities, joint stock companies, audit institutions, chamber of economy and others. About 30 attendees participated at the seminar.

In cooperation with the representatives of SIGMA, there had been organized a workshop with a topic ‘‘Implementation of the Utility Directive – Legal and Practical Aspects’’.

By modernization of the system for electronic publication of notices as well as by the legislative reform, one of the global goals has been achieved. That primarily refers to the implementation of EU internal market requirements in the public procurement field as well as fostering of efficiency and transparency in use of public funds. In that regard, the trainings related to use of the new Public Procurement Portal were organized. These trainings were organized for smaller groups of about 15 participants.

Within the Multi-Beneficiary Project IPA 2009 ‘‘Training in Public Procurement for Western Balkans and Turkey’’, the Public Procurement Administration has a role of a ‘‘central institution’’, in purpose of presenting the project at national and regional levels, including representation of the Project in its activities. Within the indicated project, the training of the first group of trainers was conducted, and by the end of February it is necessary to select candidates for national trainers that will attend the second phase of the Training of Trainers in both English and their native tongue.

## **MONITORING OF PUBLIC PROCUREMENT PROCEDURES**

Monitoring of public procurement procedures is one of the significant components within the Directorate’s competences. The Work Program of the Directorate also comprises monitoring of the public procurement procedures as well as the scope of monitoring performed by the Directorate which was proved as an efficient one during the previous period. In the most of the cases, the contracting authorities acted in accordance with the Directorate’s opinion. However, the basic aim of monitoring public procurement is removal of all irregularities observed at the parties covered by the Law. A special aspect of monitoring should be monitoring of public procurement of a high value. Another arising issue is the issue of human resources capacities of the Directorate capable of quality performance of the monitoring tasks. It should be noted that the staff strengthening does not imply only recruitment of new employees, but also the training of the newly appointed staff so that they could be enabled to carry out these tasks within the specific time period.

Since one of the principal activities of the Directorate is publication of invitations to public tenders and decisions on contract awards on its internet page, the activities related to publication of notices and decisions are a daily work and they are reflected in continuous monitoring and directing of the course of public procurement procedure. In the course of the forthcoming period it is planned, depending on the allocated resources, to establish a new software solution, which would be a basis for introduction of an electronic public procurement system.

In accordance with the Article 63 of the PPL of Montenegro, the competent authority – Public Procurement Administration, in the preparation phase of the notices, or in the phase

of their publication at the Public Procurement Portal, the officers of the Administration provide technical instructions for ensuring the compliance of these notices with the requirements defined by the Law. Officers of the Directorate monitor and take care of regularity of contract notices in the publication phase, in terms of both their form and contents. Interventions, in constant electronic and telephone communication, are daily activities of the Directorate's officers aimed at removal of indicated irregularities (the average number of these advisory services and interventions is ten per day).

In purpose of establishing an efficient monitoring system, the decisions adopted by the Commission are a vital instrument, and they are published at the web page of the Commission. The coordinated cooperation between the Directorate and the Commission is pursued with an aim of realization of the monitoring findings.

Another vital component of the monitoring of public procurement procedures is electronic publication of the notices and electronic system for submission of reports by the contracting authorities.

The obligation of publication of contract notices at the Public Procurement Portal for the contracting authorities has been established by the provisions of Articles 7 and 107 of the PPL of Montenegro.

Solution for this situation is electronic publication of notices with advanced search function intended for use of the Directorate's staff, as well as creation of reports in accordance with specified parameters, so that they could obtain more precise analyses, in purpose of a more simplified monitoring of the public procurement system. For that purpose, a new software solution was provided by the Project IPA 2007.

As for the challenges ahead, it may be said that public procurement is in its essence a development issue and as such it should be understood, efficient and cost-effective spending of funds generated from the taxpayers enables satisfying of larger number of needs of citizens and businesses.

The reason for this is the fact that, according to reports, the share of public procurement in Montenegrin GDP is about 15% (about € 500,000,000.00).

Ensuring freedom of competition amongst the bidders provides an opportunity to a larger number of companies to get the job and to develop themselves further.

Apart from the national, the international aspect of public procurement is also important. A prerequisite for using pre-accession funds, as well as other forms of international support, is existence of a regulated public procurement system that implies an efficient monitoring and control over regularity of public procurement procedures. Thence the building and functioning of the public procurement system relying on institutions with adequate capacities is of a vital importance.

### **PROCUREMENT STATISTICS for 2011 – preliminary data**

The contracting authorities have the obligation to submit to the Public Procurement Administration a report on conducted public procurement procedures and contracts concluded during the previous year, no later than 28 February of the current year. Statistical data on conducted public procurement procedures for the previous year, 2011, in accordance with the Law, will be submitted to the Government for adoption until 31 May of the current year, at the latest.

The following table shows preliminary data for 2011 (number of contracting authorities, awarded contracts above EU thresholds, public procurement procedures used, small-value procurement, average number of submitted bids).

<b>A. Number of contracting entities</b>		
Central government	<b>185</b>	
Regional and local authorities	<b>93</b>	
Other (bodies governed by public law)	<b>497</b>	
Utilities	<b>199</b>	
Total number of contracting entities	<b>974</b>	
<b>B1. Awarded public contracts/Contracting entities</b>	<b>Total (estimated) value (Mio EURO)</b>	<b>Total number</b>
Central government	90.105.000,00	1287
Regional and local authorities	84.356.000,00	600
Other (bodies governed by public law)	31.831.000,00	1458
Utilities	155.351.000,00	676
Total public contracts awarded	361.643.000,00	4021
<b>C1. Awarded public contracts above the EU thresholds</b>		
Works	/	/
Services	6.200.000,00	13
Goods	19.027.424,24	27
Mixed contracts	/	/
Total public contracts above the EU thresholds	25.227.424,24	40
<b>D. Procurement methods used (above the national thresholds)</b>		
Open procedure	314.918.724,40	3498
Restricted procedure	2.459.172,40	9
Negotiated procedure with prior publication of a notice	397.807,30	6
Negotiated procedure without prior publication of a notice	35.802.657,00	121
Other procedures (competitive dialogue, etc.)	8.064.638,90	387
<b>D1. Low- value procurement (estimated)</b>	24.824.000,00	2157
<b>E. Participation rate (average number of submitted tenders)</b>	5,24	
Works	3,97	
Services	5,06	
Goods	6,7	

However, we have some clarifications regarding this Table, and they are as follows:

B1: In the row B1 there are Low-value procurements, so-called shopping method. The value scales for shopping method are defined in the Article 19 of the Public Procurement Law (Official Gazette of Montenegro, 46/06). All information is available at the web page of the Public Procurement Administration <http://www.ujn.gov.me/>.

B2: The Public Procurement Law of Montenegro (Official Gazette of Montenegro, 46/06



and 42/11) does not regulate the issue of concessions; these issues are in the competence of the Ministry of Economy <http://www.mek.gov.me/>.

D1: This row contains data related to the direct agreement, which is defined by the Article 78 of the Public Procurement Law (Official Gazette of Montenegro, 46/06), and these contract values are up to EUR 2.000.

List of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. Public Property Administration, governance over public property, EUR 3.298.000,00
2. Montenegrin Electric Enterprise, production, distribution and supply of energy, EUR 424.752.528,00
3. Directorate for Transport, governance, construction and maintenance of public roads, EUR 58.345.000,00
4. Directorate for Public Works, preparation works, investment works, studies, EUR 28.685.250,00
5. Agency for Construction and Development of Podgorica, construction and development of the Capital City, EUR 24.607.462,58
6. Health Insurance Fund, EUR 15.887.739,58
7. National Police, EUR 9.365.445,54
8. Ministry of Defense, EUR 4.491.000,00
9. Clinical Centre of Montenegro, EUR 4.671.200,00
10. Railway Infrastructure of Montenegro, EUR 14.874.864,31

List of 10 biggest public contracts/concessions awarded and/or advertised in 2011 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

1. Directorate for Transport, road construction, EUR 4.442.147,17, Bemax D.O.O. Podgorica
2. Municipality of Budva, construction works, EUR 1.436.729,34, Flamer Stone Nikšić
3. Directorate for Transport, road construction, EUR 3.347.368,33, Tehnoput Podgorica
4. Directorate for Transport, road construction, EUR 2.932.222,12, Bemax D.O.O. Podgorica
5. Directorate for Transport, road construction, EUR 2.066.666,61, Tehnoput Podgorica
6. Municipality of Bar, construction works, EUR 2.100.000,00, Put A.D.
7. Directorate for Transport, road construction, EUR 3.420.046,00, Mehanizacija i programat
8. Montenegrin Fund for Joint and Dwelling Construction, construction works, EUR 1.975.563,11, Bast D.O.O

9. Directorate for Transport, road construction, EUR 3.173.052,46, Bemax D.O.O. Podgorica
10. Directorate for Public Works, construction works, EUR 1.116.450,61, ArtIng D.O.O.

The statistics concerning the **new Public Procurement Law** in the view of Your questions that were referring to the following:

- Number of contract notices published at the Portal during the period 1 January - 15 March 2012 : **548**
- Number of contracts published at the Portal during the period 1 January - 15 March 2012: **64**
- Number of inspection controls conducted during the period 1 January - 15 March 2012: **19**,
- Number of parties subject to the Law's application in 2012: **718**,
- Number of trainings conducted in cooperation with the Commission for Prevention of Conflict of Interest during 2011: **6**,
- Cooperation with the Administration for Anti-corruption Initiative on development of implementing regulations (published in the Official Gazette of Montenegro, 63/11),
- The budget of the Public Procurement Administration for 2012 (Official Gazette of Montenegro, 66/11, page 65), is EUR **269,703.70**,
  - Gross salaries and contributions EUR 116,136.70,
  - Other personal income EUR 18,000.00,
  - Expenditures for supplies and services EUR 130,566.00,
  - Capital expenditures EUR 5,000.00
- Average monthly salary in the Public Procurement Administration for February 2012 amounted to EUR **454.11**.

Director of the Administration

Mersad Z MUJEVIĆ