

**List of Abbreviations:**

Directorate - Public Procurement Directorate

Commission - Commission for the control of public procurement procedures

The Law - Public Procurement Law

The Government - Government of Montenegro

The Parliament - Parliament of Montenegro

NPI - National Program of Integration

SAA - Stabilization and Association Agreement

EU - European Union

AP - Action Plan

DACI - Directorate for Anti-Corruption Initiative ToT - Training of Trainers

## **I. INTRODUCTION**

This Strategy is based on and derived from the Program of priorities in harmonization of the legislation, aimed at implementing the obligations stemming from the European partnership and the ones defined in the National Program of Integration of Montenegro into the EU for the period 2011 - 2015, the Action Plan for the fight against corruption and organized crime for the period 2011-2014, the Stabilization and Association Agreement, the Government Work Plan and other Government documents that tackle public procurement from various aspects.

In the beginning of this document, emphasis is put on its intention to analyze different options for strategic management of the public procurement procedure in Montenegro. Such an analysis will identify strategic capacities of the Administration (Directorate), as the main actor in the public procurement procedure, responsible for managing and supervising public procurement procedures in Montenegro. As stated, the Administration is the main entity in charge of public procurement, and for that reason this document will mostly refer to this Government institution, especially its needs for human resources in order to be able to meet the tasks assigned to it.

The aims of the integrated public procurement system in Montenegro involve coordinated implementation of public procurement procedures and transparent awarding of contracts involving public procurement, equal treatment of all participants in the public procurement procedures, encouraging market competition and sustainable economic growth, and provision of legal protection.

In 2010, the total contracted value of goods, services and works obtained through public procurement procedures amounted to EUR 376,260,499.89 or approximately 12.14% of GDP (EUR 3.1 billion). In 2009 this share in GDP of Montenegro was 14.43%; in 2008 it was 16.11%, while in 2007 it was 18.92%.

## **II. PURPOSE AND GOAL OF THE STRATEGY**

EU accession of Montenegro involves introduction of adequate institutional organization in accordance with the EU best practices and consistent implementation of regulations in all segments of public procurement.

Having in mind the importance of public procurement and strategic commitment of Montenegro to join the EU, general goals of the Strategy involve the following:

- further improvements in the integrated public procurement system in Montenegro;
- increased efficiency of the public procurement system;
- reduction of irregularities in the public procurement system;
- further harmonization with EU directives and other EU acts;
- encouraging sustainable economic growth of Montenegro and improvement of the living standard.

The Law defines that the Administration performs the tasks of managing, monitoring and counseling the contracting authorities implementing public procurement procedures in accordance with the Law and ensures continuous education of participants in the public procurement procedure.

All recommendations for development of the Administration must focus on the following:

1. Development of human resources involved in public procurement process,
2. Defining the code of ethics and standards of action, involving observance of the main principles of the public procurement system, including the fight against corruption and conflict of interest in the public procurement procedure,
3. monitoring of implementation of the law and standards and procedures from the aspect of legality and justification of provisions,
4. guidelines for the public procurement procedure (models that the contracting authorities should follow),
5. supervising the harmonization of procedures, advantages resulting from the public procurement procedures in Montenegro and making sure that all recommendations support observance of the Law,
6. development of the system of "Green Procurement" - procurement involving implementation and observance of the principles of environmental protection and taking into consideration various socio-economic issues in the public procurement procedures.

Regulated relations between the public and the private sector represent a signal to the businessmen to strengthen their competitive capacities, in order to be more successful in the bidding

process; and the public sector as an entrepreneur applies the principle of the good host and grants equal opportunities to all, thus being in the position to choose the optimal bid. For that reason, this Strategy is primarily aimed at economic growth and its dynamics in the public procurement area. By taking the responsibility for spending the taxpayers' money, this Strategy also attempts to improve the public finance management and grant legal safety to all the participants in the public procurement procedure.

In order to implement this Strategy and its Action Plan, at the time of their adoption, the Government will also adopt the Decision on the establishment of the Coordination Body for continuous monitoring of Strategy implementation, which will primarily include the representatives of the Ministry of Finance, the Administration and the Commission, as well as other relevant state administration authorities that participate in their implementation. Using the Action Plan as a method to monitor and implement the Strategy, the Coordination body will report quarterly to the Government about progress in its implementation.

Furthermore, in this respect, we will ensure communication with the companies, trade unions and NGOs, through the organization of Q&A meetings, round tables and public discussions, in order to provide for the exchange of views regarding the public procurement system and its institutional, legislative and other novelties. To that end, we will invite all the relevant actors (the Parliament of Montenegro, the employers, the Chamber of Commerce, the Employers' Federation, academic community, governmental bodies, etc.), to participate in the implementation of the aforementioned activities. We plan to have this form of communication with the stakeholders every six months.

### **III. LEGISLATIVE FRAMEWORK**

#### Current situation - Public Procurement Law

The existing legal framework in the public procurement area is based on the Public Procurement Law adopted in July 2006, and the bylaws - the Rulebook on the methodology of transforming the criteria into an adequate number of points, manner and procedure of evaluation and comparison of bids and the Rulebook on the form, content and manner of issuance of the document that ensures regular payments based on public procurement, and standard templates and forms that represent an integral part of the Rulebook. Besides this law that represents *lex specialis* in this field, the Law on General Administrative Procedure (Official Gazette of RoM no. 60/03) and the Budget Law are also applied.

Public Procurement Law (Official Gazette of RoM no. 46/06) has essentially been harmonized with the Directive 2004/18/EC for the classical public procurement sector and Directives 89/665/EC and 92/13/EC in the area of protection of rights. Public procurement in the utilities sector was implemented in accordance with the same procedure as in the case of public procurement in the classical sector.

Harmonization process - Harmonization with the European legislation, international and national standards and practice

Assistance for the harmonization of our legislation is provided through the IPA 2007 program - "Future development and strengthening of the public procurement system in Montenegro", with the active participation of the EU Delegation to Montenegro.

In accordance with Article 76 of SSA and the Public Procurement Law, all the foreign companies are granted equal treatment, i.e. they can be awarded public procurement contracts under the same conditions as the Montenegrin companies, and this is in accordance with Article 35 of the Agreement on amendments and accession to the CEFTA Agreement (CEFTA 2006).

In order to ensure further harmonization with the European legislation and directives, on 29 July 2011 the Parliament of Montenegro adopted the new Public Procurement Law that was published in the Official Gazette no. 42/11 dated 15 August 2011.

Text of the Law has been published on the web page of the PPA: [www.djn.gov.me](http://www.djn.gov.me) in Montenegrin and English language.

The new Law ensures continuity regarding full implementation of the EU rules and requirements from the aspect of ensuring free flow of goods, people and capital, by giving the EU companies, which were established in Montenegro or outside of it, the possibility to sign public procurement contracts in Montenegro under the same conditions as the Montenegrin companies - principle of free open market, in accordance with Article 76 of SAA. Harmonization of legislation in the field of public procurement with the EU standards in the utilities sector (water management, energy, mining, telecommunications, postal

services and transport) in the sense of simplification of procedures will be ensured through this Law, through which Directive 2004/17 EC is incorporated in the national legislation. Besides, this Law also ensures harmonization with the new directive in the field of protection of rights - Directive 2007/66/EC and even more consistent and more comprehensive harmonization with the Directive 2004/18/EC regarding classical public procurement.

Besides full transposition of the Directive 2004/17/EC in the utilities sector (water management, energy, mining, telecommunications, postal services and transport), the Law will ensure improvements in the system and completion of the normative regulations as follows:

- defining the entities obliged to implement the regulations (the Law),
- exceptions from application of regulations (the Law),
- definition of tasks and positioning of responsible institutions for the exercise of activities in the field of public procurement (ministry responsible for finance, administration authority responsible for public procurement and the State Commission),
- clearer and more complete definition of specific procedures for implementation of public procurement activities (especially regarding restricted public procurement procedure regarding definition of qualifications, criteria and sub-criteria in the second phase of the procedure, including the utilities sector, public procurement procedure involving framework agreements, etc.).
- defining the duty of all the contracting authorities to define and publish the public procurement plan,
- define more accurately the assessed value of public procurement,
- introducing a uniform public procurement vocabulary to define the subject matter of public procurement (CPV), which will be regularly updated and published on the web portal of the Administration,
- institutionalization of professional training and education in the field of public procurement, issuance of certificates and taking the professional exam in accordance with the special bylaw,
- clearer normative regulation regarding evidence that confirms that requirements for participation in the public procurement procedure have been met,
- more precise definition of joint bid and meeting the criteria in case it is submitted,
- contracts and annexes to contracts will be published on the PPA web portal,
- checking the possibilities for establishment of the central public procurement body at the level of state administration authorities, local self-government units and public services, and possibilities for entrusting the execution of public procurement procedure to another contracting authority,
- improvements of the procedure with regard to protection of rights, in accordance with the Directive 2007/66/EC, especially with respect to the right to submit the complaint to the contracting authority and the second instance- the Commission,
- defining the period of mandatory suspension of the procedure until the decision on the selection of the most favorable bid is final, that is, postponing the signing of the contract for a certain period,
- introducing extraordinary legal protection methods,
- more complete regulation of record keeping regarding public procurement and submission of reports,
- exercising inspection control in the area of public procurement by the authorized officers - inspectors from the Administration,
- taking adequate measures in order to correct irregularities and submit motions for disciplinary responsibility to be determined in the misdemeanor proceedings,
- introducing fees to pay for the cost of procedure and fees for engaging in the procedure for legal protection,
- improving the clarity of legal provisions - use of specific terms and expressions.

Bylaws and other acts necessary for the implementation of the Law will be adopted within six months from the date of coming into effect of the Law. With the adoption of those regulations, the legislation in the field of public procurement will be fully harmonized with the EU regulations.

Harmonization process in the long run

The new Law represents a step forward in the process of adoption of the European standards in this field and creates all the prerequisites for further harmonization with the European legislation and directives.

Priority activities of the PPA (Public Procurement Administration) in the upcoming period will focus on the following: implementation of requirements of the internal EU market in the field of public

procurement, encouraging efficiency and transparency in the use of public funds and improvements in the legal and operational system for public procurement in Montenegro and further harmonization with the EU legislation and practice in the area of public procurement.

Besides, priority activities will focus on: development of a sustainable, continuous national training system in this field, in order to develop professional skills of the public procurement officers and other employees involved in the implementation of public procurement regulations (judges, auditors, etc.), capacity building of the Administration to exercise its duties, modernization of the system of publishing a contract notice and information about public procurement and raising the awareness at the national level about the importance of the sound and functional system of public procurement.

Basic recommendations contained in the progress reports for Montenegro in the area of public procurement aimed at improving the public procurement system and the priorities in the upcoming period involve the following:

- 1) improvement of efficiency and effectiveness of spending in the public procurement activities,
- 2) increasing the level of transparency of the procedures,
- 3) encouraging competitive bidding,
- 4) elimination of all forms of discrimination,
- 5) reducing the room for abuse,
- 6) ensuring more efficient and independent procedure based on appeals,
- 7) ensuring adequate analytical monitoring of public procurement activities,
- 8) efficient system for sanctioning of violation of regulations in the field of public procurement, with strong preventive effect,
- 9) creating the conditions for PPA to undertake effective monitoring of the public procurement procedures, through preventive supervision and guidance, in order to strengthen the discipline, prevent possible corruptive activities and unethical behavior,
- 10) harmonization of activities with the economic policy of the Government in order to strengthen the efficiency and transparency of work of the state administration through the implementation of the system of electronic public procurement,
- 11) establishment and implementation of rules of behavior that the contracting authorities and their employees would be bound to observe in order to prevent corruptive behavior and develop high ethical standards,
- 12) keeping the list of bidders for which it was evidenced that they were engaged in corruptive activities or have not fulfilled the contractual obligations, with the possibility to introduce the so-called "black list" created by the relevant international bodies,
- 13) proper assessment of value of public procurement, through consistent implementation of the rules - methodology on the assessment of value of contracts for public procurement of goods, works and services and conditions for the framework agreements,
- 14) promotion of increased professionalism, by strengthening line organization through the establishment of special sector for training and IT sector, besides the existing sector for normative/ legislative activities and international cooperation,
- 15) implementation of the new Directive in the field of defense and security, harmonization with the Directive in the area of green public procurement,
- 16) further development of cooperation between PPA and the Ministry of Finance, as well as between PPA and the Ministry for Information Society, in order to develop further the system of electronic public procurement,
- 17) development of the Work Program of PPA for the period 2009 - 2013, which will be further amended in accordance with the Strategy.

## **IV INSTITUTIONAL FRAMEWORK**

The main institutions in the public procurement system are:

- Ministry of Finance,
- Public Procurement Directorate and
- Commission for the Control of Public Procurement Procedures.

In addition, it is necessary to mention state administration bodies which are indirectly related to the public procurement fields, as follows:

- State Audit Institution,
- Directorate for Anti-Corruption Initiative,
- Commission for the Prevention of Conflict of Interest,
- Administrative Court,
- Misdemeanours Council,
- Police Directorate,
- Judicial Council.

Under the Decree on organisation and manner of operations of state administration (Official Gazette of Montenegro 40/11), **MINISTRY OF FINANCE** is the line ministry for the public procurement field. In that sense this ministry, in cooperation with other competent bodies from this field, prepares draft laws, other regulations and general acts, proposes development strategies and other measures in the public procurement field to the Government and supervises implementation of the law. The Department for Property-Legal Affairs and Budget Department within the Ministry of Finance perform these tasks.

**PUBLIC PROCUREMENT DIRECTORATE** is a state administration body which performs administrative and technical tasks in the public procurement field, provides for condition for effective, efficient and transparent spending of public funds, while it also stimulates competitiveness and equality amongst bidders in public procurement procedures. It primarily performs technical tasks aimed towards improvement of the public procurement system and creation of good practice in implementation of the law. Amongst other things, the Directorate also grants necessary prior approval to contracting authorities regarding the selection of the type of procedure, participation and cooperation in the organisation of professional training, monitoring of the public procurement system and harmonisation with the European legislation and case law of the European Court of Justice, raises awareness on public procurement and stimulates development of electronic public procurement system.

The current organisation within the Directorate does not reflect actual needs in terms of quality and timely performance of all the tasked envisaged by the law. In addition, under the new law it will become an administration which is why restructuring is required. The Directorate prepared the new act on internal organisation and job descriptions which is currently considered in the procedure of the Human Resources Management Authority.

The new law envisaged that administrative and related technical tasks in the public procurement field shall be performed the **ADMINISTRATION FOR PUBLIC PROCUREMENT**.

#### **COMMISSION FOR THE CONTROL OF PUBLIC PROCUREMENT PROCEDURES**

is an autonomous body which is competent for the field of protection of bidders' rights and public interest in the public procurement procedure. It is a second instance body which acts on appeals.

**STATE AUDIT INSTITUTION** is an autonomous and supreme state audit body which examines regularity, effectiveness and efficiency of operations of audited entities. Examination of regularity includes the control of compliance of operations with regulations and general standards applicable to the collection of public revenues, expenditure financing, disposal and management of property, fulfilment of obligations, entry and documenting of income and expenditure, property and management of economic operations. In that sense, it examines whether objectives were achieved in performance of tasks with the minimum of invested funds.

**DIRECTORATE FOR ANTI-CORRUPTION INITIATIVE** is an autonomous and independent body which, within the scope of its competences, monitors implementation of the Strategy for the Fight against Corruption. Given that public procurement is the field that is susceptible to corruption, the cooperation between the Directorate and DACI is necessary in that regard.

**COMMISSION FOR THE PREVENTION OF CONFLICT OF INTEREST**, within the scope of its competences, cooperates with the bodies which perform public procurement tasks in terms of collecting and exchange of data on the existing and potential existence of the conflict of interest of all the participants in the public procurement procedure.

**ADMINISTRATIVE COuRt**, within the scope of its competences, decides on the legality of administrative acts as well as on the legality of other individual acts when so prescribed by law,

and also decides on extraordinary legal remedies against enforceable rulings rendered in the misdemeanour procedure, while it also performs other tasks envisaged by the law.

**MISDEMEANOURS COUNCIL** is competent to decide on appeals lodged against the first instance decisions passed by local misdemeanour bodies and ministries, other administrative bodies and local government bodies.

**POLICE DIRECTORATE** performs tasks which, amongst other things, relate to the prevention and detection of criminal offences and misdemeanours, finding and arresting of the perpetrators of criminal offences and misdemeanours and their bringing before the competent authorities.

**JUDICIAL COUNCIL**, in addition to the competences defined in the Constitution, indirectly provides for efficient operation of the public procurement system which is established in the legal system of Montenegro.

## **V IMPROVEMENT OF THE PUBLIC PROCUREMENT SYSTEM**

With the aim of reaching as higher quality of the public procurement system as possible, this Strategy defines steps of the Directorate in the following segments:

1. monitoring of public procurement procedures,
2. awareness raising through education and trainings at all levels,
3. relations with NGO sector,
4. development and strengthening of electronic communication in public procurement, with guidelines for preparation of the action plan for development and introduction of e-procurement,
5. degree of savings,
6. reporting on public procurement,
7. cooperation with bodies and institutions of Montenegro,
8. cooperation with international institutions and experiences from studies,
9. environmental and social aspects of public procurement,
10. equal opportunities,
11. Proposed approach to the organisational structure.

### **1. Monitoring of public procurement procedures**

Monitoring of public procurement procedures represents one of important components in the competences of the Directorate. Activities Programme of the Directorate also envisages monitoring of public procurement procedures and defines subject and scope of monitoring conducted by the Directorate which has so far proven to be efficient. In the majority of cases, contracting authorities complied with opinions given by the Directorate. However, the main objective of monitoring of the public procurement is to eliminate all irregularities detected in operations of entities that are obliged to implement the law. A special aspect of monitoring should be monitoring of the high-value public procurement. The second issue raised here is staff capacity of the Directorate for conducting quality monitoring. One should also have in mind that staff capacity building does not mean only recruitment of new employees, but it also means training of newly recruited employees so as to make them capable of the quality performance of these tasks within a specified period of time.

Since one of the main activities of the Directorate is to publish calls for public competition in public procurement procedures and decisions on contracts award on its website, the publication of calls and decisions is an everyday job and is reflected through continuous monitoring and guidance of public procurement procedures. In the time to come, it is planned to establish new software solution, depending on the amount of provided funds, to serve as a basis for introduction of electronic public procurement system.

In the stage of publication of calls, the Directorate staff monitors and takes care of regularity of the call for public competition in terms of both, its form and substance. Interventions in continuous electronic and phone communication are everyday activities of the Directorate staff

aimed at elimination of identified irregularities (around ten pieces of advice and interventions of this kind are given on a daily basis).

Very important instrument aimed towards establishing the most efficient monitoring system are decisions of the Commission which are published on the website [www.kontrola-nabavki.me](http://www.kontrola-nabavki.me). There is a coordinated cooperation between the Directorate and Commission aimed towards implementation of monitoring findings.

Another component which is important for monitoring of public procurement procedures is electronic publication of notifications and electronic system for delivery of reports by the contracting authority. This is important because these activities are conducted by hand (manually) for the time being.

The solution for this situation is electronic publication of notifications with advanced search for the Directorate staff, including preparation of reports on the basis of given parameters in order to reach the level of higher quality analyses by application of modern technologies, and all that with the aim of simplifying the monitoring of public procurement procedures for which the new software solution has been provided under IPA 2007 project.

## **2. Awareness raising through education and training at all levels and administrative capacity building of contracting authorities**

Awareness raising through education and training at all levels is another measure that should result in effective, efficient and transparent spending of public funds. This matter is very important, particularly having in mind the total amount of funds spent in this field which ranges between 15% and 16% of GDP. Particular purpose of this activity is to identify objectives of communication and tasks of the awareness raising campaign. The purpose is to disseminate information on reforms in the public procurement field with the aim to improve understanding of the public in terms of benefits derived from efficient public procurement system in Montenegro. Awareness raising campaign includes setting communication goals and tasks aimed towards guiding the activities.

The Directorate cooperates with all the media with the aim of promoting the significance of public procurement. Such cooperation has been reflected through frequent, almost monthly, appearances of representatives from institutions that are directly involved in public procurement process in radio and television shows. Therefore, at the end of 2010 the contract was signed with *Press Clipping* with the aim of monitoring public procurement in Montenegro and the region by means of electronic and print media.

In order to raise awareness, activities of the Directorate and the Commission were presented in videos at the public broadcasting service of Montenegro.

### **2.1. Way of communication:**

- preparation of comments to the public procurement regulations (in cooperation with the Commission), brochures, publications and other technical literature, as well as the documents for practical implementation of these regulations (brochures with all the public procurement regulations - regulations are available in English as well, text of the law with the comment, handbooks for practical implementation of public procurement regulations, brochures on how corruption undermines public procurement processes and practical instruction on how to report irregularities in public procurement, newsletters on activities within the newsletter of the Ministry of Finance),
- communicate messages in a concrete way and in simple language, by establishing the link between activities undertaken in that direction and benefits for the participants,
- provision of legal aid, i.e. information to all the participants, interested parties and general public in the public procurement field (improvement of help desk centre),
- development of special means for communicating information such as video clips, press releases etc. which are intended for dissemination through the media, as well as the preparation of the campaigning material, technical literature and presentations, with the aim of providing importance, values and vision of further development of the public



procurement system in Montenegro.

## **2.2. Objectives of communication:**

- informing entire public and participants in the public procurement procedure about all the relevant activities of entities responsible for the public procurement system, and these include trainings, events organised in parallel with selected trainings and seminars, press conferences etc.
- informing entire public and participants in the procedure about the improvement of legislative framework, as well as on the benefits derived from those activities for the country, business community and general public of Montenegro,
- informing participants about clearly defined and divided scope of tasks and competences between the Directorate and the Commission with the aim of raising awareness on what these institutions represent and what they are doing.

## **3. Relations with NGO sector**

The main institutions in the public procurement system have different types of cooperation with the NGO sector. Such cooperation is reflected in providing responses to the requests filed for free access to information.

In January 2010 the Directorate began to prepare draft Public Procurement Law which is why invitation for participation was extended to MANS, Institute Alternative, European Movement in Montenegro, CEMI, CDT and other non-governmental organisations which are recognised and whose participation can make contribution to the highest possible quality preparation of the law. After the public debate on the draft Public Procurement Law was finished, the working group set up for preparation of the law also organised meetings with the representatives from NGO sector, and all that with the aim of considering and accepting proposals and suggestions to the draft law which is an indication of openness and readiness of the competent state bodies for all types of cooperation.

Furthermore, cooperation of the competent bodies with the NGO sector is also reflected in turnout and active participation at: conferences, round tables, seminars, workshops and other forms of events organised by NGOs on the topic of the public procurement system in Montenegro and the region, fight against corruption and implementation of the Law on Free Access to Information.

Particular focus should be placed on the "National Conference Dedicated to AntiCorruption Policies" organised by MANS every year and round table organised by the Institute Alternative on the topic of "Public Procurement in Montenegro - Transparency and Accountability".

In addition, MANS set up a phone line in agreement with the Directorate for reporting corruptive activities in public procurement.

## **4. Development and strengthening of electronic communication in public procurement, with guidelines for preparation of the action plan for development and introduction of e-procurement**

The development and strengthening of electronic communication in public procurement is a component which represents one of priorities in development of the public procurement system.

Information technologies and knowledge in that field are at a relatively low level compared to the EU. Therefore, this segment requires a special systematic approach to the improvement and development of the public procurement system.

The Directorate will additionally empower this activity in cooperation with the Ministry for Information Society.

The Directorate designed a new website under the project "Capacity Building for the Public Procurement Commission" funded by CARDS and in cooperation with the company FINEUROP which was responsible for implementation of the project mentioned above with the aim of higher

quality data management and easier electronic communication between bidders and contracting authorities. The website is a starting point for improvement and introduction of the electronic public procurement system.

New website of the Directorate [www.djn.gov.me](http://www.djn.gov.me) was activated in July 2009. This website represents improvement of conditions and enables advanced search and easier access to information on concrete data related to public competitions, decisions, amendments and other available data. The average number of visitors per day is 4,386.

Funds available under this project were used to upgrade the existing website which resulted in considerable progress in the electronic public procurement field and completion of the first phase of implementation of the electronic system project. The second phase is a subject of joint activity of the Directorate and the Ministry for Information Society which will be completed in the time to come in accordance with the operations plan.

Introduction of a complete, modern electronic public procurement system will not be possible until 2013/14, i.e. until completion of the regulatory framework for upgraded public procurement system and creation of a good database of the Directorate for public procurement notifications. Electronic public procurement system will also directly depend on the development of the overall electronic operations of state bodies of Montenegro and application of general regulations on electronic operations, commerce and manner of delivery by electronic means in accordance with the rules of general administrative procedure. Naturally, it should be emphasised at this point that introduction of the electronic public procurement system is a significant investment.

## **5. Savings**

The main objective of improving the public procurement system is to generate the highest possible level of savings in spending public funds. That is achieved by:

- good and timely planning and management of concluded contract,
- establishment of central public procurement authorities.

### **5.1 Planning and Contract Management**

First of all this objective is achieved through regular and timely planning of procurement, as well as through the guidance of the public procurement process by the Directorate, with the support of the Ministry of Finance and in cooperation with entities obliged to implement the law for the purpose of conducting optimal procedure in a specific procurement. Savings are also generated through implementation of awarded contracts in an efficient and effective manner, without additional costs incurred during contract implementation.

Therefore, good planning and good management constitute the basis for savings.

### **5.2 Establishment of central public procurement authorities**

This form of organising public procurement is conducted if contracting authorities delegate powers for public procurement procedures to the CENTRAL AUTHORITY which conducts public procurement procedures to meet the needs of these contracting authorities (for certain subjects of public procurement, for instance procurement of fuel, office supplies, official vehicles etc.) with the aim of rationalising costs of public procurement procedures. Risks of corruption are reduced by establishment of the central authority.

In that sense the law envisages the possibility for the public procurement procedure to be conducted by another contracting authority and also provides for authorisation for the Government or competent local government body to stipulate that certain public procurement for meeting the needs of state administration bodies and public services or local government bodies may be conducted in an integrated manner by a designated contracting authority serving as central public procurement authority.

Contracting authority may, simultaneously with adoption of the decision on initiation and conducting of the public procurement procedure, authorise another contracting authority, after obtaining consent of that contracting authority, to conduct public procurement procedure or undertake certain actions in that procedure on its behalf and for its account.

## **6. Reporting on public procurement**

The law lays down the obligation for the Directorate to prepare and deliver annual report on public procurement for the previous year to the Government for consideration and adoption until 31 May of the current year at the latest.

For the purpose of operating efficient reporting system, the law lays down the obligation for the Directorate to submit annual report for adoption to the Parliament until 30 June of the current year for the previous year. Non-adoption of this report by the Parliament is the reason for dismissal of the Commission.

With the aim of further development of the public procurement system, the Directorate signed agreements on cooperation with DACI and Commission for the Prevention of Conflict of Interest in which signatories agreed on: delivery of periodic reports on reporting the cases of corruption and conflict of interest, reporting on implementation of measures from the Action Programme for the fight against corruption with regard to preventive action and exchange of data in that regard.

Since the obligation has been laid down the Directorate has delivered quarterly reports to DACI, within the scope of its competences, on the results achieved under the Intensive Promotion Program and results achieved in fulfilling obligations laid down in the Innovated AP for implementation of the Program for the Fight against Corruption and Organised Crime for the period July-September 2010 and October-December 2010.

As for the fulfilment of undertaken obligations which were laid down in the Innovated AP for implementation of the Program for the Fight against Corruption and Organised Crime from 2010, the quarterly reports were regularly delivered to the National Commission for application of the AP for implementation of the Program the Fight against Corruption and Organised Crime about the level of implementation of measures defined in the Program, with the emphasis on certain barriers encountered in their implementation.

## **7. Cooperation with bodies and institutions of Montenegro**

One of the aspects of further development of the public procurement system is strengthening of mutual cooperation between state bodies and institutions.

As for the obligations undertaken under the SAA, the Directorate regularly informs the competent working bodies of the Parliament - Subcommittee on Internal Market and Trade and Subcommittee on Stabilisation and Association.

In order to be better informed, exchange experience and overcome potential problems, the Directorate maintains and nurtures cooperation with representatives from state bodies, organisations and institutions, as well as with business community and Chamber of Commerce in particular. All aspects of cooperation include coordination with the Ministry of Finance. Cooperation has been successful with the Ministry of Interior and State Administration, Ministry of Justice, Ministry of Defence, Ministry of Sustainable Development and Tourism, Ministry of Economy, Ministry of Culture, Ministry of Science, Ministry of Education and Sports, Ministry of Foreign Affairs and European Integration, Directorate for Anti-Corruption Initiative, Property Administration, Commission for the Prevention of Conflict of Interest, Constitutional Court, Administrative Court, Misdemeanours Council, Human Resources Management Authority, Police Directorate, Supreme Court, State Prosecutor, Protector of Human Rights and Freedoms, Health Insurance Fund, Pension and Disability Insurance Fund, Central Bank of Montenegro, Directorate of Public Works, State Audit Institution, Herceg-Novi municipality, Tivat municipality, Podgorica municipality, Electric Power Company of Montenegro AD Niksic, PROCON, other bodies and institutions and the private sector.

It is important to mention that the agreement on cooperation was signed between the Directorate and DACI in December 2010 with the aim of improving the exchange of data and information and defining mutual obligations of signatories for the purpose of timely reporting, detection and processing of criminal offences with elements of corruption. The Directorate delivers to DACI the information paper on reported corruption cases every six months. Signatories will participate in the training programmes for employees in state bodies and institutions who receive and process reported cases with elements of corruption and will also jointly prepare every future training programme for representatives from institutions that receive information on potential corruptive behaviour.

Over the last year, the Directorate held several press conferences on the topic of "How to Prevent Corruption in Public Procurement" and was also involved in the training programme "Receiving and Processing Reported Cases and Protection of Persons Reporting Corruption".

The Directorate signed agreement on cooperation with the Commission for the Prevention of Conflict of Interest and in that way it considerably improved cooperation and undertook significant measures for elimination of the conflict of interest.

Cooperation with the Ministry of Foreign Affairs and European Integration goes in line with the NPI for the period 2008-2012 and other requirements and programmes.

Cooperation with the Commission takes place through consolidation of views and giving opinions on implementation of regulations in the public procurement field.

## **8. Cooperation with international institutions**

There is a continuous and active reporting on the condition in the public procurement system in Montenegro in the framework of the enhanced permanent dialogue with EU representatives. The latest Progress Report of the European Commission delegation from 2010 gave positive assessment of the progress made in the development of the public procurement system in

Montenegro, with focus placed on administrative and institutional capacity building in the public procurement field.

The project of the development of generic training modules for public procurement for the countries beneficiaries of IPA project - "Training in Public Procurement in the Western Balkans" - was launched in cooperation with SIGMA/OECD. The European Commission organises this project. The role of SIGMA is to prepare a set of public procurement handbooks, in cooperation with representatives from national institutions, which will be used in the training of trainers at the regional level which is to take place and will also be further localized and then used in the public procurement training at the national level in countries beneficiaries of IPA project.

Under the British Council project "Skills for European Union" the Directorate staff received an adequate training on acquiring the skills for developing techniques of efficient communication and functioning in international context which are required to meet the EU needs.

Intensified trainings were provided through implementation of IPA 2007 projects over the period 2010-2011 which included development of a comprehensive training plan and programme, preparation of the public campaign and practical training for contracting authorities - entities obliged to implement public procurement regulations, bidders, all persons involved in procedures and control, supervision and audit, as well as the media representatives.

There is a plan to set up a Regional Centre for the Western Balkans countries and Turkey with the aim of strengthening regional cooperation. Active cooperation also exists at the formal level with bodies and organisations in the public procurement field at the regional level through establishment of an international public procurement centre with the aim of data exchange in the public procurement field and here we primarily refer to cooperation with the public procurement directorates from Serbia, Bosnia and Herzegovina, Croatia and Macedonia, while the cooperation also started with the Court of Auditors from Slovenia, regulatory bodies from Turkey, Romania, Kosovo, Austria and Albania.

Under IPA 2007, the Directorate was included in cooperation through study visits to Cyprus, Turkey, Brussels and Rome.

## **9. Environmental and social aspects of public procurement**

Environment protection criteria are also important in public procurement. Public procurement staff needs to be familiarised with environmental parameters and possess necessary knowledge for their application in accordance with the law. Therefore, environment protection measures should be part of the training of the public procurement staff.

Likewise, economic operators also need information on how and why these criteria will be applied in public procurement. In preparing the training needs analysis, we will be able to state what level of standards of environment protection is applied by the public procurement staff.

In defining subject of the contract, the contracting authority may select a type of products or services which correspond to the environment protection requirements (for instance, building design with low electricity consumption, certified ecological products).

Call for public competition may also contain other data needed for more complete informing of bidders about the subject of public procurement which are related to environmental and social aspects. Environmental and social aspects must be part of the bidding documents (contracting authority must be capable to define the need). Contracting authority is free to include environment protection aspects - ecological aspects, that is, the proof of these ecological aspects from the bidders, such as stickers, declarations. Technical specifications may refer to the manufacturing method and process, for instance with the procurement of electric power generated from renewable sources or there may be a requirement for organic healthy food which is proved with stickers and declarations. If the works or services contracts require specialised knowledge in the field of environment protection (for instance, construction of waste treatment plants), bidders may be required to present the proof of meeting the environment management standards. Provisions on contract execution may refer to some sensitive environment protection issues (for instance, the manner of packaging and delivery, use of materials and packaging that may be reused, collection and recycling of waste generated during or after execution of the

contract etc.).

Social inclusion of minorities and prevention of their discrimination are the most prominent principles in the EU public procurement system.

Public procurement staff needs to be familiarised with social inclusion and anti-discriminatory practice related to minorities. It is important to ensure that national minorities, refugees and internally displaced persons are not victims of discrimination in the competition process in the public procurement system. Public procurement staff needs to be aware of this and they also need to have knowledge of its correct application under the law. Therefore, issues of minorities should be part of the training of public procurement staff. Successful bidders in the public procurement system will have to adopt principles of equal opportunities, non-discriminatory employment and other practice.

## **10. Equal opportunities**

Equal opportunities are important in public procurement of works and services. Fair and transparent public procurement system contributes to the prevention of any kind of discrimination.

Therefore it is important for the public procurement staff not only to be aware of that, but also to possess knowledge in order to introduce equal opportunities dimension and abolish any discriminatory practice based on sex, age and disability. That is why the equal opportunities principle has to be part of the training to be delivered to the public procurement staff.

## **11. Proposed approach to the organisational structure**

Having in mind general views on the other public procurement systems and specificities of the system of Montenegro, two alternative organisational models may be proposed.

The first organisational model is similar to the existing organisational model and it is specific for the initial phase of the public procurement development. However, since Montenegro is in the pre-accession process its functions and response to the increased requirements from EU should be strengthened which is why another organisational model

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is recommended according to which the Directorate would consist of four organisational units in total, as follows:

- A. Department for monitoring implementation of regulations and inspection:
  - A.1. Division for monitoring implementation of regulations and
  - A.2. Division for Inspection;
- B. Division for professional training, professional development and international cooperation;
- C. Division for monitoring public procurement procedures and electronic public procurement management;
- D. General Affairs and Financial Service.

## **VI PROFESSIONAL TRAINING IN THE PUBLIC PROCUREMENT FIELD AND ADMINISTRATIVE CAPACITY BUILDING**

The aim of this chapter is to propose sustainable national training strategy in the public procurement field which will enable setting up of a mechanism for regular assessment of the training needs of staff and acquisition of a broad range of skills which are connected with public procurement, identification of training needs, planning of trainings, assessment of results and issuance of appropriate certificates. This mechanism is considered very important since the procurement environment is very dynamic and it constantly changes.

The training programme should be adopted, along with providing for its continuity, on the basis of analysis of the training needs, definition of target groups and update of the plan for each target group in line with the needs and new requirements.

The main objective of the Training Strategy is to set up a sustainable training system in the

public procurement field in Montenegro through cooperation of all the stakeholders (such as the Directorate, Commission, Human Resources Management Authority, Ministry of Finance, Ministry of Education and Sports, Ministry of Science, Ministry of Justice, Chamber of Commerce, University and others).

### **1. Main objectives of the training strategy are:**

- 1) education and training of staff involved in the public procurement process with the aim of producing certified staff - public procurement officers, persons involved in the Commission for Bid Opening and Evaluation, persons involved in the planning process, and independent experts engaged by the contracting authority, which would ensure compliance with basic principles of the public procurement system,
- 2) provision of education and training to bidders who are involved in the public procurement procedure in order for them to understand the procedure in all phases, as well as the rights and obligations arising from the procedure and concluded contract,
- 3) provision of education and training to all the persons interested in the public procurement system as a whole, as well as the individual procurement procedure,
- 4) finally, the result of all the activities mentioned above is achievement of the value for money principle, i.e. achievement of the principle of efficient, effective and transparent spending of public funds,
- 5) introduction of a special subject "Public Procurement" in the curricula at the University of Montenegro.

### **2. Future activities in the field of education and training related to public procurement**

The Directorate plays central role in the existing training system in the public procurement field in Montenegro and the Administration for Public Procurement will continue such an activity in accordance with the law. As a result of the education process, there is a legal obligation for the public procurement staff and employees at the Directorate and the Commission to pass professional exam to be able to work in the public procurement field. This exam may be taken by any other interested persons as well.

In addition to being a leader in the field of trainings at the national level, the Directorate is also active at the international and regional levels. In that sense, the Directorate participates in implementation of IPA 2009 regional assistance project "Training in Public Procurement in the Western Balkans and Turkey" organised by SIGMA which includes countries of the Western Balkans, Albania and Turkey and will enable further development and implementation of the sustainable training strategy and programme in the countries beneficiaries of this project at all levels. Training of trainers (ToT) at the national level was completed under this project in order for the trainers to be able to efficiently pass on knowledge and skills in this field at the national level. Participation of the Directorate is continuation of previous activities in the process of training of procurement staff at the contractors' which were implemented in March 2010 at the national level.

It is important to underline that professional training in the public procurement field must be based on cooperation among several stakeholders which is essentially relevant for the sustainability of the training system. This primarily refers to the cooperation of the Directorate with: the Commission, Human Resources Management Authority, Chamber of Commerce, universities, Ministry of Education and Sports, Vocational Education Centre and Examination Centre ("Training Network").

#### **2.1 Sources of funding**

The overall training system in the public procurement field may not be and does not have to be funded only from (central) public sources. The following sources may exist as well:

A: Training organised and funded at the central level - the Directorate would be deciding on its size and scope in cooperation with the Human Resources Management Authority.

B: Training organised at the central level, but funded individually/from public funds (by public organisations which send participants for training) - for instance, at least one part of certified

trainings should be funded in this way so as to improve the quality and efficiency.

C: Training organised at the central level, but funded individually/from private funds

(by private organisations which send their trainees) - training for economic operators in the field of legal regulations which fall under the competence of the Directorate.

D: Decentralised and privately funded training.

Special basis for development of the training system in the public procurement field should be training materials prepared by the Directorate which are publicly available for all participants in electronic form at the Directorate website.

## 2.2 Types of education and training programmes, target groups

Training in the public procurement field should aim to achieve certain learning outcomes. Learning outcomes take very important position along with the vision, goals and spirit prevailing in the system or the institution. They have direct impact on the training programme and pedagogical approach and also significantly contribute to what and how people learn and the manner of evaluation of learning.

Learning outcomes represent focus and play critical role in organisation of systemic goals, training programmes, pedagogical approach, assessment and quality assurance. Increasing role of learning outcomes should make strong contribution to learning through the system, making institutions and training programmes more organised, while the role of training of trainers themselves should increase. In order to achieve results, the training methodology should include different training forms depending on concrete objectives and structure of participants, such as: seminars, workshops, round tables, presentations, discussions, learning through the internet.

For that purpose, professional training programmes in the public procurement system in Montenegro will seek to achieve the following objectives and results:

- improved knowledge of the public procurement system through adequate implementation of legal regulations (basics, manner of proceeding and passing of decisions);
- improved knowledge of the public procurement system on a practical example of the public procurement procedure in an open, restricted and negotiated procedures, framework agreement, direct agreement - direct contracting for the procurement of goods, works and services;
- capacity for planning and implementation of national procurement procedures, adequate application of rules and adoption of decisions;
- examples of the most interesting and most relevant decisions adopted by competent institutions in relation to the implementation of legal regulations in the public procurement field, including court decisions;
- discussion on legal dilemmas and giving practical advice for overcoming problems which arise in application of certain procedures;
- instruction for practical implementation of the law and other legal regulations in the public procurement field;
- understanding the basics of the Treaty on European Union which are related to the public procurement field and competition, with focus on the Treaty pillars;
- understanding the role of European institutions, particularly European Commission and European Court of Justice;
- understanding two types of Directives (classical sector and utilities sector) and Directive on the Legal Protection;
- understanding the procedure for filing complaints and appeals to the EU and under national law.

## 2.3 Main training types and programmes

The Training Strategy proposed the following main levels of education and training in the public procurement field:



1. University level;
2. Training programme for professional qualification of public procurement staff which is implemented by the Directorate in cooperation with other members of the "Training Network";
3. Training programme for the qualification of participants in the public procurement procedure which is supervised by the Directorate from the central level;
4. Decentralised training.

## VII PUBLIC PROCUREMENT IN THE EU ACCESSION PROCESS

*Acquis communautaire* in the public procurement field is founded on basic principles arising from the Treaty on European Union and jurisprudence of the European Court of Justice such as transparency, equal treatment, free competition and non-discrimination.

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These principles are applied to all the public procurement procedures including those which are not in the focus of EU public procurement directives, for instance when it comes to their value (procurement under the EU standards) or subject of public procurement (concessions for services, public-private partnership). Award of public contracts (contracts on public works, public procurement and public services) is coordinated under two special Directives: Directive 2004/18/EC which deals with the so-called "traditional authorities" ("classical sector") and Directive 2004/17/EC on authorities and operators in the field of water supply, energy, transportation and postal services ("utilities sector"). The scope of application of these directives is defined in terms of included contracting authorities/operators and contracts, applicable thresholds and special exceptions. In this framework, special requirements were set to ensure full compliance with basic principles during the public procurement procedures. Specifications and transparency are particularly regulated, along with implementation of the procedure, including qualitative selection and contracts award. Special requirements are set for the preparation of advertisements and - in "classical sector"-concessions for public works. Directives also provide the framework which was introduced in 2004 for electronic procurement including electronic means of communication, dynamic shopping systems and electronic auctions. Rules on included contracts and advertisements were supplemented with special regulations on the Common Procurement Vocabulary (CPV), as well as with the standardised advertisement templates. Compliance with the public procurement directives also requires appropriate capacity for implementation.

There is particular need for appropriate administrative structures at the central level so as to ensure main functions of policy creation, preparation of laws and by-laws, provision of operational mechanisms, services for information, monitoring and statistics, as well as the coherent control in all fields related to public procurement. Effective implementation and application of EU legislation depends on the existence of appropriate administrative and judicial systems. *Acquis* in the public procurement field includes two directives on legal remedies: Directive 89/665/EEC which concerns the "classical sector" and Directive 92/13/EEC which concerns "utilities sector" and which has been recently replaced by the Directive 2007/66/EC. Directives on legal remedies contain requirements for establishing effective audit procedure for any act or omission of the contracting authority/operator that may cause legal consequences in tenders which are covered by these directives. Procedures must guarantee access to an independent audit, including authorisations to adopt interim measures and pay damages. Audit authorities must possess adequate capacities so as to guarantee effectiveness of the system as a whole. Furthermore, in accordance with the judicial protection principles arising from the Treaty, access to legal remedies must also be secured outside the scope of these directives.

The SSA already laid down concrete obligations in the field covered in this chapter. The Interim Agreement on Trade and Trade-Related Matters was applied from 01 January 2008 until entry of the SAA into force. Building upon Article 72 subparagraph 4 of the SAA, the Government adopted Information Paper on monitoring fulfilment of obligations from the SAA along with the proposed Quarterly Reporting Table. In addition, these reports were delivered to the European

Commission as well in order to monitor the process of fulfilling obligations defined in the Agreement in a comprehensive manner. After full ratification of the SAA and its entry into force on 01 May 2010, the permanent bodies of Montenegro and EU were set up as follows: the Stabilisation and Association Council whose members are Government representatives and high representatives from European Commission and EU Council; Stabilisation and Association Committee; seven subcommittees and Parliamentary Committee on Stabilisation and Association of EU and Montenegro. In the reporting period, the meetings were held by the Stabilisation and Association Committee, Parliamentary Committee on Stabilisation and Association of European Parliament and the Parliament of Montenegro, Stabilisation and Association Council and four subcommittees: Subcommittee on Justice, Freedom and Security (Brussels, 12 April 2011), Subcommittee on Innovations, Human Resources, Information Society and Social Policy (Brussels, 13 April 2011), Subcommittee on Internal Market and Competition (Podgorica, 11 May 2011) and Subcommittee on economic and financial matters and statistics (Podgorica, 12 May 2011).

Representatives from the Directorate and Commission regularly inform and prepare reports on prioritised activities and accomplished tasks in the public procurement field in the current year which constitute starting basis for preparation of Progress Reports prepared by representatives from the European Commission.

In 2009 and 2010, the working group made of representatives from the Directorate and the Commission prepared response to the questions and additional questions from the European Commission Questionnaire in the public procurement field from Chapter 5. Public Procurement.

In relation to that, the public procurement field will represent one of significant chapters in the future process of negotiation with the EU (CHAPTER 5) in the framework of internal market and competition field. Montenegro set up and appointed members of the Commission for European Integration (Subgroup V - Public Procurement) and management teams for groups and subgroups for the chapters to be negotiated.

## **VIII PREVENTING CORRUPTION IN THE PUBLIC PROCUREMENT SYSTEM**

Corruption and organized crime represent one of the biggest threats to the rule of law and development of a modern democratic society. Montenegro is determined to develop and improve its legal framework, institutions and capacities, to cooperate with the countries of the region and international organizations and to use all the available capacities in the fight against corruption and organized crime. There is a need to develop further the strategic approach in the fight against the most serious forms of crime and to continue the fight against corruption and organized crime.

In mid-2005, the Government adopted the Program for the fight against corruption and organized crime, as the first national strategic document that defines goals to be achieved in the fight against the most serious forms of crime, especially corruption and organized crime.

In order to implement the priorities defined in the Program for the fight against corruption and organized crime, in August 2006, the Government adopted AP for implementation of this Program. National Commission for monitoring of implementation of this AP was established by the Decision of the Government adopted in February 2007. Besides, in May 2008, the Government adopted a new, reviewed Action Plan for implementation of the Program for the fight against corruption and organized crime for the period 2008-2009. Measures and activities defined in the Renewed AP were to be implemented by the end of 2009. A tripartite commission was established, comprised of representatives of courts, the prosecution and the police, with the aim to report and develop uniform methodology of statistical indicators in the area of organized crime and corruption.

The Government decided to develop a Strategy for the fight against corruption and organized crime, with the AP for its implementation for the period 2010-2014.

The National Strategy for the Fight Against Corruption and Organized Crime defines: strategic directions, principles and goals in the fight against corruption and organized crime, priority measure in the process of establishment of an efficient system for the fight against corruption and organized crime in the public, private and civil sectors; roles and responsibilities of all the entities, as a basis for efficient development of a sustainable system for monitoring and evaluation of effectiveness of the comprehensive national response to threats posed by corruption and organized crime.

This Strategy represents a framework for adoption of the AP for the period 2010-2012, which will define goals, measures, implementers and dynamics of implementation of activities in the first phase of implementation of the Strategy.

In defining the strategic goals, the starting point were periodical reports of the National Commission, as well as the obligations defined in the National Program for Integration of Montenegro into the EU for the period 2008-2012.

Strategy for the fights against corruption and organized crime for the period 2010-2014 and the relevant AP for the period 2010-2012 already identify the "high risk" areas as follows: privatization process, public procurement, urban planning, local self-government, education and health. In that respect, it is legitimate to try to assess the risk in these areas. Essentially, assessment of risk against corruption in individual sectors is the stage that precedes definition of the Strategy and Action Plan, which should define strategic goals and measures, based on that risk assessment. Furthermore, the term *assessment of risk against corruption* involves the process of identification of organizational factors (internal and external ones) that are suitable or can be suitable for corruptive behavior within specific public policies, and definition of recommendations to remove or reduce the negative effects. Still, the fact that the aforementioned strategic documents can be subject to change and that they are adopted for a mid-term period, risk assessment contained in this document will serve exactly that purpose.

In order to ensure transparency of the public procurement, PPA has developed and published on its web page the brochure *"How corruption harms the public procurement process"* and the *"Practical Guide for Reporting Irregularities in the Public Procurement Procedures"*.

In the seminars and training programs it is especially emphasized that the contracting authorities and bidders should contact PPA to report irregularities in the procedures, especially with regard to unethical behavior and corruptive actions.

When it comes to the fight against corruption, according to the existing regulations, PPA is primarily involved in preventive actions. In order to make PPA more accessible for the citizens, a telephone line was introduced that the citizens can use to report corruption, and to obtain information and legal advice. The Law contains anti-corruption rules in Article 13, and the ones regarding conflict of interest in Article 14. These provisions correspond to the solutions defined in the European directives. The reports regarding both - corruption and organized crime mostly say that certain public procurement officers and members of the tender commission can adapt tender documentation to the specific, desired bidder or that they can open the bids received prior to the formal opening of the bids specified in the published call for submission of bids, and to inform and prepare the potentially favored bidder. In that case, the disciplinary and criminal responsibility of the officer in question must be established. For such action reported to the PPA, or if the irregularities are noted ex officio, adequate procedure is initiated, primarily through the State Audit Institution, if it involves violation of public procurement principles. Besides, PPA may also contact the prosecutor's office or the basic courts.

Persons who have identified themselves can protect their rights regarding existence of corruptive actions and conflict of interest through the appeal submitted to the Commission.

The Law emphasizes preventive role of PPA, as well as repressive one - through the authority to pronounce misdemeanor sanctions.

Besides, persons who wanted to report conflict of interest in various administrative areas have contacted PPA by phone, and they were referred to the institutions responsible for consulting and taking concrete actions in those administrative areas.

In the upcoming period, within the system of training and provision of consulting and advisory services, we will pay special attention to the special training on the manners of resolving conflict of interest and possible anti-corruption activities.

## 1. Strengthening of the legal framework

The first measure in the fight against corruption involves consistent implementation of laws and bylaws and further development of the legal framework, aimed at implementing the public procurement procedures and spending the public funds according to the clearly defined rules, in a transparent manner, which will have a direct impact on reducing the risks of corruptive actions.

Thus, it is necessary to regulate the overall public procurement system, all the way to contract awarding, but also, to define contract management rules through the regulations on internal and external audit. Namely, one of the riskiest stages in the public procurement system involves actions after the contract has been signed and exactly that stage should be subject to strict control, in order to avoid increase in prices offered in the bids, using the negotiated procedure without prior publication

of a contract notice, if all the requirements have not been met.

Furthermore, the legal framework must define rules and requirements for participation of companies in the public procurement procedures, if they are related to the contracting authority in any way - interest-based relationship, ownership or family ties. The Law defines the obligation to observe anti-corruption rules and the rules for the prevention of conflict of interest, but there are novelties introduced that the contracting authority is obliged to register such cases and write official minutes about that, report it to the responsible state authorities so that they can take action in accordance with the law, and to inform the responsible authority. Similar provisions are defined with regard to the violation of rules to avoid conflict of interest that the contracting authority must record and inform the responsible authority without delay.

## 2. Execution of decisions of the State Commission

Improve the control over execution of decisions of the Commission, in order to ensure legal safety in the public procurement procedures.

## 3. Strengthening the control mechanisms

Through the public procurement system it is necessary to develop control mechanisms, as follows:

a) Preventive action, through transparency of the public procurement procedures, and transparency of work of the institutions financed from public funds.

b) Education of all entities involved in public procurement procedures, in order to prevent corruption in public procurement procedures, represents one of important segments, where the education and training courses should emphasize potential danger of corruption.

This segment of educational activities should include the following participants:

- higher levels of management structures in the contracting authorities, as well as top management,
- bidders, in order to inform them about their responsibility in case of offering bribe,
- media, in order to properly inform the public.

Education in this respect should involve: publishing of manuals, organization of round table, workshops and other forms of informing the stakeholders about the problems of corruption in public procurement.

In the activities aimed at strengthening the mechanisms for prevention of corruption in public procurement, it is necessary to clearly define in the Law the activities of each individual institution that can be involved in any way in monitoring and control of public procurement procedures.

## 4. Establishment of central public procurement authorities

This form of organization of public procurement should be undertaken in cases when the contracting authorities transfer all the authority for public procurement procedures to this central authority, which implements public procurement procedures on behalf of these contracting authorities, for specific subject matters of public procurement, in order to make the public procurement procedure more rational. Establishment of the central public procurement authority would also reduce the risk of corruptive behavior.

## 5. Implementation of public procurement procedure by other contracting authority

Together with adoption of decision on initiation and implementation of the public procurement procedure, the contracting authority may authorize some other contracting authority, with its consent, to implement the public procurement procedure on its behalf and to its account, or to undertake some actions in that procedure.

## 6. Supervision over enforcement of contracts and protection of rights

Effective contract management is of vital importance for success of the contract. It involves the public procurement officer and other persons within the contracting authority who work proactively with the staff in the relevant company in order to ensure enforcement of the contract as agreed. In order to reach this goal it is necessary to create legal prerequisites for PPA to undertake supervision over the enforcement of contracts.

Protection of rights of the bidders, in this context, is exercised before the Commission.

## **IX DEVELOPMENT AND STRENGTHENING OF ELECTRONIC COMMUNICATION IN PUBLIC PROCUREMENT**

In order to develop and strengthen electronic communication in public procurement, that is, in order to develop electronic public procurement system, it is necessary to define a software solution for the establishment of this system. To that end, there is an ongoing project called "designing, development and support to the web-based system for receipt of requests and publication of notifications regarding procurement".

The aim of this document is to provide description of the system and the function for receipt of requests and publication of notifications. This document is based on the concept of contracting authorities and bidders. The contracting authority, in the sense of this document, is the user within the public sector, who calls for the submission of bids, and the bidder is the private sector entity that applies to the tender.

The key actors are as follows

- User (PPD) and its partners,
- PPC,
- MNE Ministry of Finance,
- EUD,
- Consultant (consortium Planet SA, BiP & Crown Agents that leads Planet SA),
- Contracting authority (Cikom).

Other important actors in the process are as follows:

- Ministry for Information Society,
- State Audit Institution,
- Contracting authorities from the private sector,
- General public in MNE

### 1. Scope of application

This document prescribes the processes and functions necessary in order to create, regulate and verify the publication of contract notices:

- Keeping the record of beneficiaries  
Registration, check-up and record keeping of beneficiaries

- Keeping the record of notices

It allows the contracting authority to keep, add and manage notices, as follows:

1. Creating notices - allows gradual development of new notice by the contracting authority. This involves creating the notice itself. The notice contains detailed fields for the subject matter of procurement.
2. Verifying the notice in order to ensure that all the mandatory fields and all the relevant values are correctly filled out and within the defined limits.
3. Publishing the notice including amendments and suspension of tender from the perspective of the contracting authority. The process involves administrative intervention that is necessary in order to publish the notice.
4. Reporting about notices in order to enable contracting authorities to undertake "standard" reporting regarding notices that they have access to. This function includes the possibility of creating and managing templates for reporting, to use the same data as presented in the notices.

### 2. Details regarding operation

#### Registration of users

Registration process must ensure safe transfer and keeping of all personal data regarding users. Furthermore, it is necessary to establish mechanisms for verification of information that were

provided by the new users of the system. However, the registration process must take place in two stages. One stage involves allowing the new users to apply for registration in the system, and the second one involves allowing the authorized persons to verify submitted information and approve or reject application for registration.

#### Control of users

This condition allows users to be identified in the system. This is necessary in order for the system to show relevant data to the users, to enable certain activities to be undertaken in accordance with the data provided by the users, and to make implementation of certain activities possible in accordance with the defined role of the user in this system.

#### Authorization of users

All users in the system have a specific role. Authorization of user enables for identification of role of the users in the system. Depending on the rights granted to the users, the system may control which actions the user may take, and which data the user may access.

#### Creating working space for notices

When notice is created, the system should give virtual working space to the user, in order to store all information regarding notices. This virtual working space allows authorized users to provide key information about notices, such as name, description, estimated value, etc., and to enable for entry of documents, such as notices, contracting documentation, additional documentation, etc.

Working space should be well integrated with the system of user authorization (Condition 6.3: "User authorization"), as it is necessary to ensure access to information stored in the working space/ or it can only be used by the authorized users. Besides, some actions should only be possible after specific events (e.g. access to details of the tender should only be granted to the authorized persons once the bids have been safely opened, if this function is outside the domain of requirements designed for this stage).

#### Notice writing and publishing

This function, sometimes called "Mechanism for filling out the forms" should represent part of the system or external application integrated into the system.

Templates and electronic standard forms will be used to prepare notices.

Contracting authorities may be assisted in preparation of notices through automatic use of information that is already in the system, within the work post for notices. Form-filling mechanism may contain all the previously defined information about notices in the system and automatically fill out as many fields in the template as possible.

#### Use of CPV (Common Procurement Vocabulary)

Public procurement directives require the contracting authorities to use CPV standard to public their procurement needs. CPV represents European classification standard, designed especially to describe goods, services or works that were procured by the contracting authorities through the numerical code. CPV exists in 20 official EU languages. Through this classification, the bidders can easily identify goods/ services/ works that the contracting authority wants to procure, irrespective of the language of PIN and to do some search. The system should encourage buyers to use CPV standard when preparing the notice.

#### Use of NUTS (Nomenclature of territorial units)

Notice must define NUTS codes for the contract that must be obtained. NUTS is a classification standard for geographic areas, which uses numerical codes to define location of goods/ services/ works that will be procured. Similar to CPV, entering NUTS codes enables bidders to identify easily locations to which they are supposed to deliver contracted goods/ services/ works, irrespective of the language used in the notice.

The system should encourage buyers to use NUTS classification standard when creating a notice. The request for this function is not regulated by EU legislation in the field of public procurement, but it can significantly improve future service that can be offered within the system (e.g. search, reporting, integration of the system, etc.).

#### Publishing of notices

Once the notice is created, procurement officers can be assisted in sending the relevant electronic message to the system administrators, and that message contains all the information about the notice, in order to apply for publication of the notice. The system should enable saving of the date

when the notice was published.

#### Awarding of contracts

Once the awarding process is finished, the contract is awarded to the bidder that offered the lowest price or the economically most favorable bid in the tender, as concluded using the methodology of evaluation defined by the contracting authority. The contracting authorities must publish the information about contract awarding in which they inform all the interested parties about the results of the bidding process. The procedure for creation and publishing of the contract award notice is the same as in the creation of any other notice.

Besides, contracting authorities will inform all bidders that participated in the tender about the decision on contract awarding. At the request of the bidder, the contracting authority usually gives reasons for rejection of the bid.

#### Reporting system

Reporting system contains "standard" reporting templates that simply refer to a set of data. Standard report is, essentially, a defined format with dates which defines the time period of reporting. An example of a standard report would be EU Statistical Report.

It is recommended to previously enter several standard reports into the system, in accordance with the demands of the users and they should also predict daily reporting requests.

Reporting system should allow for more flexible reporting through the export system. As a minimum requirement, export system should allow exporting of data from the database, including the non-published meta-data that does not have to be presented to the end users. Export option allows for offline reporting that needs to be undertaken and for connection between this data and other sources of data, e.g. Excel, Business Objects, Crystal Reports etc.

Reporting system should also allow for writing template reports through the web interface. This involves advanced search with logical comparison between and within fields, in order to, primarily, limit the set of data. Search possibilities should allow the report creator to filter all the entered data. The next step in template reporting should be online formatting tool, or at least, to enable full data export in the defined format (e.g. TST, CSV) in order to enable for formatting of reports in the offline package, e.g. Excel, Business Objects, Crystal Reports etc.

## **X. PROTECTION OF RIGHTS IN THE PUBLIC PROCUREMENT PROCEDURES**

### 1. Protection of rights in the public procurement procedure

Protection of rights grants legal safety to all the participants in the public procurement procedures and all persons that have legal interest in having access to efficient and fast legal protection.

The system of legal protection is fast and predictable, and accessible in all stages of the public procurement procedure, from the moment when decision is made to initiate the public procurement procedure to the conclusion of the contract. Through the creation of prerequisites for non-discriminatory, competitive fight between the bidders, ensured in this way, the state can achieve the most favorable procurement, meaning, that the best value for money is obtained.

### 2. Improvements in monitoring and control

#### Improvement of the system of internal audit in public procurement

Internal audit is undertaken by the Department for internal audit within the Ministry of Finance, in accordance with the Budget Law. According to the Law, the Ministry of Finance audits accounting documentation, proceeds, contracted liabilities and expenditures of the spending units and municipalities. The Ministry of Finance may audit whether legal entities use the earmarked funds obtained from the state budget as planned. Internal audit is implemented by the internal auditors.

In order to improve the system of internal audit in public procurement, in the upcoming period it is necessary to implement the following measures:

- Raise the awareness of the managers about their role and managerial responsibility, as well as the importance and usefulness of internal audit and the necessity to act in accordance with the recommendations given by the auditor;
- Capacity building of the contracting authorities in order to establish effective internal audit;
- Establishment of internal audit units in the contracting authorities;

- Ensure independence in the work of auditors;
- Ensure implementation of recommendations of the auditor.

#### Improving the system of external audit in public procurement

External audit is undertaken by the State Audit Institution, in accordance with the Law on State Audit Institution. In accordance with the Law, audit is undertaken in order to obtain important information about management of the budget, property and economic affairs, legality of action by the audited entity, improvement of the capacity of the entity to successfully implement its tasks and to prevent mistakes.

In order to improve the public procurement system in the area of audit and control of public procurement procedures, a strong anti-corruption front has been established, based on the signing of the Cooperation Agreement with the State Audit Institution. Namely, external audit undertaken by the State Audit Institution contributes to greater efficiency, transparency of action and control of public procurement system, thus implementing anti-corruption activities and strengthening the overall public procurement system.

This resulted in a strong connection between external audit and control undertaken by the Commission, thus ensuring protection of the public interest, through transparency, correct implementation of the Law and use of the relevant legal remedy in public procurement procedures, improvement and development of inter-institutional cooperation and activities to prevent corruption and other forms of illegal actions; achieving high degree of information for the purpose of prevention and timely detection of possible cases of abuse through incorrect or incomplete implementation of the Law; organization of advisory meetings and seminars for civil servants and state employees and development of professional publications; capacity building of PPA and the Commission, and stronger support to the implementation of the Law, for the purpose of achieving good results in the area of control and audit of public procurement, and timely mutual information about finalized audits among audited entities, regarding public procurement and decisions made based on appeals in the public procurement procedures.

### 3. Control mechanism through the Commission

The Law prescribes control of the public procurement procedures by the Commission as the way to control legality of action in public procurement. The Law stipulates that if the value of procurement exceeds EUR 500,000, the contracting authority is obliged to submit to the Commission complete documentation about the public procurement procedure within 5 days from the date of publishing of the decision on selection of the best bid, in order to control public procurement procedure. The control is undertaken by the Commission within 30 days from the date of receipt of the documentation about public procurement procedure. If an appeal has been lodged against the decision on the selection of the most favorable bid, the Commission decides on the control and the appeal in one and the same decision.

#### More efficient control of enforcement of decisions of the Commission

More efficient control of enforcement of decisions of the Commission would contribute to reduced irregularities in the public procurement procedures, but also to the increase in efficiency in the implementation of those procedures. Strengthening the mechanisms that ensure binding character of the decisions made in the procedure for rights protection surely encourages the persons implementing public procurement procedures to act with due attention and in a conscientious manner, observing all the prescribed principles.

In order to provide for legal safety in the public procurement procedures and effective procedure for the protection of rights, the Law defines the following:

- Obligation of the Commission to monitor enforcement of its decisions and, when necessary, to inform the responsible state authorities about the results of this monitoring;
- If the contracting authority fails to enforce the decision within the prescribed deadline, the Commission informs the government, that is, the responsible local self-government authority, about that fact and proposes to initiate the procedure to establish responsibility.

This solution enables the Government and the responsible local self-government authority to take measures against the contracting parties acting contrary to the law. In any case, the contract signed contrary to the decision of the Commission is null and void.

In this respect it is necessary to do the following:

- Raise the awareness of the contracting parties about the obligation to enforce the decisions and their responsibility if they fail to enforce the decisions of the Commission.
- Establishment of a file in the Commission, containing reports on the measures and actions



- that were undertaken,
- Warning to the contracting authorities to enforce the instruction of the Commission contained in those decisions, and if they fail to do so even after the warning was issued, the Commission informs the government, that is, the responsible local self-government authority, about that fact and proposes to initiate the procedure to establish responsibility.

#### Protection of competition in the field of public procurement

One of the strategic goals that the state should achieve is to create the conditions that will lead to free competition in the field of public procurement. If the conditions have not been created for a strong competition among bidders, there is high risk of agreements being made among them, resulting in the following possible situations:

- Mutual coordination in the preparation of bids;
- Fixing of prices;
- Mutual rotation;
- Division of the market;
- Speculative limitations of the bid, etc.

Effects of limited competition involve less favorable conditions of procurement for the state, consisting in higher prices, weaker characteristics, lower quality, etc. At the same time, credibility of the public procurement procedures is undermined among bidders, so that in the future period some of them decide not to participate in the tender, considering that it is agreed in advance who will get the job. In this way, limiting competition becomes stronger over time and makes it much easier for the remaining, declining number of bidders who participate in the public procurement procedure to agree what to do. That is why it is important to pay special attention in the upcoming period to detection and suppression of agreements between bidders.

Strategic goal is to create prerequisites for free competition in the public procurement market, which can be achieved through two sets of measures.

The first group of activities focuses on contracting authorities who are trying to limit competition in order to conclude the contract with the pre-selected (preferred) bidder.

The most common modalities for "setting up" tenders by the contracting authorities involve "mere copying" of the technical specifications provided by the preferred bidder into the tender documentation; then, through references that are not logically connected to the subject matter of the public procurement; through the quality criteria that are evaluated in a subjective way by the members of the Commission for opening and evaluation of bids, without a clear methodology for evaluation, etc. Usually, the other bidders participating in the public procurement procedure can easily notice these forms of discrimination, having in mind that they know well the specific circumstances in the sector they operate in, thus, by lodging an appeal they can prevent these situations.

Namely, abuse of authority, that is, setting up of tenders is a phenomenon that is very common in the transition countries. Observance of the law, control and audit of the public procurement procedures, as well as observance and enforcement of decisions made by the Commission reduce the possibility for irregularities in public procurement. The Commission represents an independent and autonomous body, whose task is to ensure legal protection to the bidders and protection of the public interest in all stages of the public procurement procedure.

The second set of measures that ensure free competition focuses on bidders, who replace mutual competitive fight in certain situations with secret agreements through which they protect their interests, which is reflected in higher prices, limited and controlled offer that results in less favorable procurement conditions for the buyer and in discouraging other bidders from participation in public procurement procedures.

In order to prevent the bidders from reaching these agreements, it is necessary to take measures that will enable contracting authorities and regulatory bodies to detect these agreements, to regulate actions to be taken by the contracting authority when agreements between bidders have been detected, to improve the capacities of the contracting authorities to detect and react efficiently to these agreements and to use the instruments that will ensure free competition.

The Law allows for better control of the bidders through the following:

- fees paid for lodging the appeals (we will no longer have "professional" appellants who lodge appeals in all public procurement procedures that they participate in). The fee is paid by the appellant, and it amounts to 1% of estimated value of public procurement, whereas the fee cannot exceed EUR 8,000.
- not every appeal will result in suspension of the procedure; it will be the responsibility of the Commission to decide whether to suspend the public procurement procedure or to continue with it,

and this solution is in accordance with the EU requirements.

Guidelines for future development:

1. Strengthening of administrative capacities

As the Commission will have new authority and responsibilities, thus, increased obligations, it is necessary to strengthen further its administrative capacities, so that it is fully prepared for the fulfillment of tasks and supervision over efficient use of public resources and increased transparency and competitiveness of the bidders.

Currently, there are 8 civil servants and state employees in the Commission, including the secretary. Thus, as the Commission will definitely have a wider scope of responsibilities in the future, in order to efficiently meet its duties, it is necessary to adopt the new act on internal organization and systematization of the Commission's Secretariat and the new Rules of Procedure.

2. Development of the electronic system, through the development of software and portal of the Commission, where it would be possible to file all appeals, all decisions of the Commission, all the initiated administrative disputes and rulings of the Administrative Court, as well as to find the template for appeals

In the upcoming period, it is planned to introduce new software, as a basis for introduction of the electronic public procurement system, which should enable for networking with the Administration. It is also planned to introduce a new electronic filing system and a web site that will contribute to the increase in transparency of work of the Commission and monitoring of the system of protection of rights of the bidders and protection of the public interest.

3. Awareness raising about the importance of protection of rights and ways in which this protection is ensured

With the coming into effect of the Law, the Commission will have greater authority and responsibilities; it will have to engage in a more active regional and international cooperation and to organize many conferences, in order to inform the public (bidders and contracting authorities) about the novelties in the Law, which will involve several activities:

- Intensifying regional and international cooperation in order to participate in international meetings, conferences, round tables and in order to strengthen the bilateral cooperation with the countries in the region and the EU member states.
- Working visits to the relevant bodies involved in public procurement in the region, which will contribute to the exchange of experiences and knowledge, for the purpose of higher quality and overall improvements in the public procurement system.
- Organization of numerous round tables, seminars, conferences and other events, in order to present the new text of the Law, level of its harmonization with the European legislation, novelties and improvements, as well as specific provisions, all with the aim to engage in a constructive dialogue, direct exchange of experiences and views among the representatives of the contracting authorities in the public procurement procedures, the media, NGOs, etc.

4. Ensuring enforcement of decisions of the Commission

Contracting authority is obliged to enforce the decision and inform the Commission about actions taken within the specified deadline. Only through the enforcement of decisions of the Commission it is possible to truly implement the Law, which says that these decisions are binding for all participants in the public procurement procedure. If the contracting authority fails to enforce the decision within the prescribed deadline, the Commission informs the government, that is, the responsible local self-government authority, about that fact and proposes to initiate the procedure to establish responsibility.

5. Achieving judicial protection and its further strengthening

The issue of judicial protection in the field of protection of rights is currently debated in the EU. Directive 2007/66/EC stipulates that there must be court protection granted, so the Law stipulates that it is possible to initiate administrative dispute against the decision of the Commission.

Having in mind that public procurement is a multi-disciplinary field, it is necessary to look into the possibilities for further improvement of legal protection through the court proceedings that would cover all aspects of public procurement, and not only the legality of the final administrative act.

6. Prohibition of attempts to affect the independent and autonomous work of the Commission, through pressure exerted by the media

The Commission is an independent and autonomous legal entity. The Law stipulates that it is prohibited to affect in any way the work of the Commission, and that any use of public authority, the media or public presentation for the purpose of affecting the course and outcome of procedure before the Commission is also prohibited.

Acting in a pro-active manner, with the aim to improve the system of legal protection, the following is planned:

- A series of seminars covering the topic "Legal protection in the public procurement system", which will be held in numerous towns, and participation will be offered on equal footing to the representatives of the entities obliged to implement the Law and the representatives of the private sector;
- Manual about legal protection for bidders and contracting authorities,
- Organization of workshops to discuss specific issues in this field.

## **XI MISSIONS AND VISIONS OF DEVELOPMENT OF THE PUBLIC PROCUREMENT SYSTEM**

I. To ensure higher degree of professionalism among public procurement officers, which will enable them to give adequate guidelines and advice to the contracting authorities looking for the best value for money.

II. To ensure that the budget of the Administration is financed in the manner that will ensure commitment of the employees to the implementation of the Law, its amendments, if and when necessary.

III. To create prerequisites for centralized procurement, in order to concentrate sources of procurement in one or several contracting authorities within the state and local centers, thus cancelling the need for individual procurement.

IV. To create prerequisites for the Commission to classify appeals and formally inform the Administration about the appeals that are considered grounded, based on the frequency of appearance of specific categories of appeals. This will be a precious tool for the Administration to identify the most common mistakes in the tender process, in order to organize additional training for the contracting authorities that have acted in an irregular manner.

V. To establish a separate Department in the Administration for professional training, education and international cooperation.

VI. To enable the Administration to adopt and harmonize a set of control mechanisms, so that all the necessary management duties can be exercised (having in mind that there are 1,000 contracting authorities right now).

VII. Design a training program to maintain continuous professional development.

VIII. Put emphasis on training of staff to prepare specifications, the manner in which evaluation criteria are used and negotiation techniques, with special emphasis on details in defining those parts of the law that are related to this issue.

IX. To ensure sustainability of professional development of staff, through the previously defined and structured program of professional training and education.

X. To undertake further harmonization of the public procurement system, in the sense of further harmonization with the EC Directives 17 and 18, as well as the new EU Directives, primarily the ones in the field of defense, the ones that put emphasis on green public procurement, and directives regarding protection of rights.

XI. To continuously work on strengthening the institute of electronic public procurement.

XII. To additionally emphasize and strengthen inter-institutional and international cooperation.

XIII. To strengthen control mechanisms through increased preventive and inspection work of the Administration.

XIV. To raise the awareness regarding environmental and social aspects of public procurement.

XV. To dedicate special attention to anti-corruption policy and policy to prevent conflict of interest.



Government of Montenegro

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**ACTION PLAN FOR IMPLEMENTATION  
OF STRATEGY FOR DEVELOPMENT OF PUBLIC PROCUREMENT SYSTEM  
FOR THE PERIOD 2011 – 2015**

Podgorica, 2011

PURPOSE	S.N.	MEASURE	AUTHORITY	TERM	SUCCESS INDICATORS	SOURCE OF FUNDING	
						BUDGET	EXTERNAL
<b>ACTION PLAN DEVELOPMENT STRATEGY OF PUBLIC PROCUREMENT IN MONTENEGRO</b>							
<b>DEVELOPMENT OF LEGISLATION AND OPERATIONAL MEASURES FOR ITS IMPLEMENTATION</b>							
Improve the regulatory framework in order to fully comply with European standards in this area ii full efficiency, competitiveness Procedure for procurement	1	Coordination body for monitoring the implementation of which will consist of representatives of the MF, and PPA, SC, and other relevant governmental bodies involved in its implementation	GM	Fourth quarter of 2011/12. year	The decision was made on the establishment of CB	Budget	
	2	The new Law on Public Procurement	MF, PPA,SC	Third quarter of 2011.year	The law was adopted and published in the Official Gazette of Montenegro br.42/11	Budget	IPA 2007
	3	Development and adoption of regulations, forms and standard formulas	MF, PPA	IV quarter 2011.year	Adopted by-laws, forms and standard forms		IPA 2007
<b>II. OF INSTITUTIONAL FRAMEWORK AND ADMINISTRATIVE CAPACITY</b>							
Further strengthening of existing institutions responsible for the development and control of public procurement, e-	4	Recruitment of 3 new staff in the Public Procurement	GM, MF i AHR		Filled official positions adopted in accordance with the new act on internal organization and systematization of the Public Procurement	Budget	

procurement system support, training and strengthening of the public procurement				2012/13 year			
	5	Selection and appointment of the new Commission for Supervision of Public Procurement	GM, MF	IV quarter 2011/12 year	The Commission appointed	Budget	
	6	Recruitment of additional staff in the Commission for the Supervision of Public Procurement	GM, MF	2012/13 year	Filled official positions List published on the website DZRMSP	Budget	
	7	List of public procurement and contracting authorities	PPA	IV quarter 2011/15 years-continuous	Published a list on the website	Budget	
	8	The establishment and launch of the Help Desk for advice and consultancy services	PPA	2011/12 years-continuous	Established the Help Desk	Budget	
	9	Establishing a specific group or for reporting irregularities	PPA	2011/12 year	Established a special group	Budget	
	10	Adopt by-Laws regulations to establish an electronic system for public procurement	MF, PPA,MIS	2012/13 year	Adopt regulations, certain applications start, improved software solution for the system of public announcements	Budget	

				Fourth quarter of 2011/12. year			
	11	Adopt a Regulation on electronic public procurement	MIS ,PPA		Adopted Regulation	Budget	
	12	Adopt regulations and define the training modules	MF ,PPA	2011/12 year	Legislation adopted, modules, provided training in accordance with the rules and modules	Budget	
	13	Issue regulations on the program and taking exams for public procurement	MF ,PPA	2011/12 year	Enact-provided conditions professional examination in public procurement	Budget	
	14	Education Commission of the examination	MF ,PPA	Since the second half of the 2011/12 year continuous	<ul style="list-style-type: none"> <li>-Commission established taking</li> <li>- The number of candidates who have passed the expert exam</li> <li>- Keeping records of exams passed</li> </ul>	Budget	
		The establishment of the central body for public procurement (procurement for the needs of public administration and public services can be unleashed by customer regulation of the Government, and for the needs of local				Budget	
					The main central body		



	15	government contracting regulations determined by the competent local authorities	GM, PM	2012/13 year			
	16	Keeping a website public procurement (public procurement portal)	PPA	2011/15 –year continuous	Created public procurement portal	Budget	
	17	Forum on Public Procurement System	PPA	2011/15 year continuous	Forum on Public Procurement System	Budget	Donors
	18	Development of manual	PPA	2011/12 year continuous	Made manuals	Budget	
	19	Specialized workshops for staff training for PPA,SC	PPA, SC	2011- year continuous	Organized specialized training workshops	Budget	Donors
	20	Connecting PPA with NGOs in the form of co-operation agreements	PPA	2012/13 year	Signed agreements	Budget	

**PREVENTION OF CORUPTION IN THE PUBLIC PROCUREMENT**

Prevention of corruption	21	The signing of cooperation agreements with other state institutions ,ACI CPCI, SRA ..	PPA	2011/12 year	Signed agreements	Budget	
	22	Development of manuals, flyers, newsletters, the strengthening of the world in the field of "how corruption harms the process of public procurement" and the development of guidelines on how login irregularities in public procurement	PPA	2011/15 year	Issue the manuals and flyers	Budget	
	23	Development of a manual on procedures for making complaints	SC	2011/15 year	Issue a Manual	Budget	
	24	Conducting campaigns on the strengthening of world-transparency in public procurement	PPA	2011/15 year	Conducted campaings	Budget	
	25	Selection of Agency for Public Relations (designing the campaign, the campaign of ...)	PPA	2011/15 year	Selected agency	Budget	

Pursuant to Article 12 paragraphs 2 and 3 of the Decree on the Government of Montenegro (Official Gazette of Montenegro 80/08), at its session held on 2011 the Government of Montenegro adopted the following

## **DECISION**

### **Establishing the Coordinating Body for Monitoring and Implementation of the Strategy for Public Procurement**

#### Article 1

Coordinating Body for Monitoring and Implementation of the Strategy for Public Procurement (hereinafter: Coordinating Body) shall be hereby established.

#### Article 2

Coordinating Body shall consist of a chairman, deputy chairman and 10 members. Chairman of the Coordinating Body shall be Minister of Finance. Deputy Chairman of the Coordinating Body shall be Director of the Public Procurement Directorate. Members of the Coordinating Body shall be representatives of the following institutions:

- Ministry of Finance,
- Ministry of Justice,
- Ministry of Sustainable Development and Tourism,
- Ministry of Transport and Maritime Affairs,
- Ministry for Information Society and Telecommunications,
- Supreme Public Prosecutor,
- Public Procurement Directorate,
- Commission for Control of Public Procurement Procedures,
- Parliament of Montenegro,
- Chamber of Economy of Montenegro.

Coordinating Body may, if necessary, engage also representatives of other state administrative bodies, institutions, organizations or professionals, without voting rights.

#### Article 3

The Coordinating Body shall perform the following tasks:

- Collection, monitoring and analysis of data on the measures taken in the public procurement field,
- Enhancement of education programs and proposing new educational measures, in accordance with the needs of participants in the public procurement field,
- Monitoring implementation of the Strategy for development of the public procurement system and Action Plan,
- Improvement of efficiency of realization of measures contained in the Action Plan,

- Strengthening of international cooperation in realization of measures contained in the Action Plan.

#### Article 4

Coordinating Body shall convene if necessary, at least once a month.

Coordinating Body shall adopt its decisions at its meetings.

Meetings of the Coordinating Body shall be convened and presided by the Chairman of the Coordinating Body, and in the case of his absence the Deputy Chairman shall preside the meetings.

#### Article 5

Coordinating Body shall adopt the Rules of Procedure.

#### Article 6

Coordinating Body shall report to the Government of Montenegro on its operations, quarterly.

#### Article 7

Technical and administrative tasks for the needs of the Coordinating Body shall be performed by the Public Procurement Directorate.

#### Article 8

Bodies and organizations referred to in Articles 3 and 4 hereof shall propose their representatives in the Coordinating Body, within 10 days as of the day this Decision enters into force.

Government of Montenegro shall appoint members of Coordinating Body within 15 days as of the day this Decision enters into force.

#### Article 9

Members of the Coordinating Body shall be entitled to compensation for their work, and it shall be provided by the bodies and organizations whose representatives are part of the Coordinating Body.

#### Article 10

This Decision shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.

No 03-12509/3

Podgorica, 29.12.2011

Government of Montenegro  
Prime Minister, Igor Luksic

Crna Gora  
AGENCIJA ZA JAVNE NABAVKE  
PODGORICA

Primalac: 10. 01. 2012			
Opis posla:	Broj:	Priloga:	Stranice:
01	27		

Crna Gora  
VLADA CRNE GORE  
Broj:03-12509/3  
Podgorica, 29. decembar 2011. godine

KOMISIJA ZA EKONOMSKU POLITIKU  
I FINANSIJSKI SISTEM

PODGORICA

Vlada Crne Gore, na sjednici od 22. decembra 2011. godine, razmotrila je Predlog strategije razvoja sistema javnih nabavki u Crnoj Gori za period 2011-2015. godine, s Predlogom akcionog plana i Predlogom odluke, koji je dostavilo Ministarstvo finansija.

S tim u vezi, Vlada je donijela sljedeće

**ZAKLJUČKE**

1. Vlada je donijela Strategiju razvoja sistema javnih nabavki u Crnoj Gori za period 2011-2015. godine, s Predlogom akcionog plana.

2. Vlada je donijela Odluku o obrazovanju Koordinacionog tijela za praćenje i sprovođenje Strategije javnih nabavki.

Odluka će se objaviti u „Službenom listu Crne Gore“.

GENERALNI SEKRETAR  
Zarko Stulažević



Crna Gora  
 DRŽAVNA UPRAVA ZA VEŠTAČENJE I  
 17. 02. 2012

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Crna Gora  
 VLADA CRNE GORE  
 Broj: 06-12509/4  
 Podgorica, 16. februar 2012. godine

Vlada Crne Gore, na sjednici od 9. februara 2012. godine razmotrila je Predlog za izmjenu i dopunu Zaključka Vlade Crne Gore broj: 03-12509/3, od 29. decembra 2011. godine, sa sjednice od 22. decembra 2011. godine, koji je dostavilo Ministarstvo finansija.

S tim u vezi, Vlada je donijela sljedeći

**ZAKLJUČAK**

U Zaključku Vlade broj 03-12509/3, od 29. decembra 2011. godine, sa sjednice od 22. decembra 2011. godine, tačka 2 mijenja se i glasi:

“Vlada je donijela Odluku o obrazovanju Koordinacionog tijela za praćenje i sprovođenje Strategije javnih nabavki, s tim da se izmijeni i dopuni sljedeće:

- u članu 2 stav 3 riječ: “Direkcije” zamjenjuje se riječju: “Uprave”;
- u članu 2 stav 4 alineja 7 riječ: “Direkcije” zamjenjuje se riječju: “Uprave”;
- u članu 2 stav 4 alineja 8 na početku ispred riječi: “Komisije” dodaje se riječ: “Državne”;
- u članu 7 riječ: “Direkcije” zamjenjuje se riječju: “Uprave”.

Odluka će se objaviti u „Službenom listu Crne Gore.“



GENERALNI SEKRETAR  
 Zarko Sturarić

DOSTAVLJENO:

- Dr Milorad Katnić, ministar finansija
- Komisija za ekon.pol.i finans.sistem

Priloga:			
Opis	Jed.	Priloga	Vrijednost
	01	2149	



CRNA GORA  
MINISTARSTVO FINANSIJA

Broj: 07-2968/1  
Podgorica, 25.02.2013. godine

Na osnovu člana 55 Uredbe o organizaciji i načinu rada državne uprave ("Sl. list CG", broj 05/12), ministar finansija donosi

**RJEŠENJE**

**o formiranju Koordinacionog tijela za praćenje i sprovođenje  
Strategije razvoja sistema javnih nabavki za period 2011.-2015. godine**

I Formira se Koordinaciono tijelo za praćenje i sprovođenje Strategije razvoja sistema javnih nabavki u Crnoj Gori za period 2011.-2015. godine u sljedećem sastavu:

1. Mersad Mujević, direktor Uprave za javne nabavke predsjednik;
2. Ana Ivanović, pomoćnik ministra finansija, zamjenik;
3. Milanka Otović, načelnik Odjeljenja za državnu imovinu i normativno pravne poslove u Sektoru za imovinsko pravne poslove u Ministarstvu finansija, član;
4. Mirjana Purić, šef Službe za pravne i finansijske poslove i logistiku u Ministarstvu pravde, član;
5. Veljko Vrbica, šef Službe za opšte poslove, ljudske resurse, finansije, logističku i tehničku podršku u Ministarstvu održivog razvoja i turizma, član;
6. Zoran Vukašinović, načelnik Odjeljenja normativno-pravnih poslova i Službenik za javne nabavke u Ministarstvu saobraćaja i pomorstva, član;
7. Dobrila Glomazić, rukovodilac Službe za opšte poslove i finansije u Ministarstva za informaciono društvo i telekomunikacije, član;
8. Radmila Ćuković, zamjenik Vrhovnog državnog tužioca Crne Gore, član.
9. Sandra Škatarić, Samostalni savjetnik u Upravi za javne nabavke, član;
10. Tomo Miljić, član Državne komisije za kontrolu postupaka javnih nabavki, član,
11. Ana Miljanić, savjetnik predsjednika Skupštine Crne Gore, član i
12. Aleksandar Mitrović, rukovodilac Sektora za pravne, finansijske i opšte poslove u Privrednoj Komori Crne Gore, član.

II Zadaci Koordinacionog tijela iz tačke I ovog rješenja su:

- prikupljanje, praćenje i analiza podataka o preduzetim mjerama iz oblasti javnih nabavki;
- jačanje edukativnih programa i predlaganje novih mjera edukacije, u skladu sa potrebama učesnika u oblasti javnih nabavki;
- praćenje sprovođenja Strategije razvoja sistema javnih nabavki i Akcionog plana;
- jačanje međuinstitucionalne saradnje u sprovođenju mjera iz Akcionog plana.

III Koordinaciono tijelo o svom radu podnosi izvještaj Vladi Crne Gore, kvartalno.

### ***Obrazloženje***

Zaključkom Vlade Crne Gore broj: 03-12509/3 od 29.12.2011. godine donijeta je Strategija razvoja sistema javnih nabavki za period 2011-2015. godine, kao i Akcioni plan za njeno sprovođenje.

U cilju praćenja i sprovođenja Strategije razvoja sistema javnih nabavki za period 2011.-2015. godine, kao i ostvarivanja mjera iz Akcionog plana, ukazala se potreba za formiranjem Koordinacionog tijela.

Koordinaciono tijelo o svom radu podnosi izvještaj Vladi Crne Gore kvartalno.

Sa izloženog, odlučeno je kao u dispozitivu ovog rješenja.

Dostavljeno: predsjedniku, zamjeniku i članovima

 MINISTAR  
dr Radoje Žugić