

Pursuant to Article 15 paragraph 4 of the Public Procurement Law (Official Gazette of Montenegro, 42/11, 57/14 and 28/15), the Ministry of Finance adopted the following

RULEBOOK ON METHODOLOGY OF RISK ANALYSIS IN PERFORMING CONTROL OVER PUBLIC PROCUREMENT PROCEDURES

Subject

Article 1

This Rulebook shall regulate the methodology of risk analysis in performing control over public procurement procedures, with an aim of proactive effect in prevention and an early detection of corruptive actions and other acts characterized by corruption (hereinafter: anti-corruption methodology).

Application of the Anti-corruption Methodology

Article 2

A contracting authority shall apply the Anti-corruption Methodology in the following phases of a public procurement procedure:

- 1) the phase of planning and preparation of a public procurement procedure;
- 2) the phase of conducting a public procurement procedure;
- 3) the phase of realization of a public procurement contract.

The Anti-corruption Methodology by all phases referred to in paragraph 1 of this article is provided in Annex 1 which is an integral part of this Rulebook.

Entry into force

Article 3

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

No: 07-12142/2015

Podgorica, 30 December 2015

Minister,
Radoje Žugić PhD

Anti-corruption Methodology

1. PHASE OF PLANNING AND PREPARATION OF A PUBLIC PROCUREMENT PROCEDURE	
Potential risk zone	Preventive measures
<p>The public procurement plan is not within the financial resources planned by the budget</p> <p>The public procurement plan is frequently changed or amended during the fiscal or financial year</p>	<ul style="list-style-type: none"> - Timely coordination with internal organizational units for the purpose of compiling the needs provided for by public procurement - An objective assessment of required quantities taking into account the data from previous years - A market research aimed at estimation of costs and an objective calculation of the estimated value of public procurement - Planning of subject of public procurement in accordance with the CPV (Common Procurement Vocabulary) - An objective determining of the type of goods, services or works in relation to their technological and functional characteristics, purpose and properties - Coordination with the financial unit prior to adoption of the public procurement plan - Obtaining approval from the competent authority to the public procurement plan, as well as to the changes and/or amendments to the public procurement plan - Timely publication of the public procurement plan, as well as of its changes and/or amendments at the Public procurement portal - Use of the standard form for a public procurement plan
<p>Division of a public procurement subject which makes a whole during the same fiscal or financial year with the intention of avoiding the application of the Public Procurement Law, that is, the procedure prescribed by the law.</p> <p>Division of similar procurement subjects which are usually jointly procured in order to reduce the estimated value of public procurement and conduct a separate procurement procedure</p> <p>A large number of public procurement subjects</p>	<ul style="list-style-type: none"> - Planning of subject of public procurement in accordance with the CPV (Common Procurement Vocabulary) - An objective determining of the type of goods, services or works in relation to their technological and functional characteristics, purpose and properties - An objective control over public procurement plan in relation to defining a a procurement subject, especially in reference to their technical

<p>have their estimated values slightly below the EUR 5,000 threshold</p>	<p>characteristics or specifications, performed by a public procurement officer or an expert who possesses a knowledge in the field of a procurement subject, and who has at least the qualification of an university degree, the seventh level (VII) in scope of 240 CSPK credits (hereinafter: expert)</p> <ul style="list-style-type: none"> - Recruitment of an expert, especially when it comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications - Control of a total annual value of the public procurement planned to be conducted by using direct agreement in relation to restriction to executed budget of the contracting authority in the previous year as provided by Article 30 of the Public Procurement Law - Adoption of an act for acting by the contracting authority upon conducting the public procurement procedure using direct agreement and its publication on the Internet page of the said contracting authority
<p>Consolidation of different procurement subjects which normally are not mutually compatible in order to limit the competition and reduce a number of potential bidders without an objective justification</p>	<ul style="list-style-type: none"> - Planning of subject of public procurement in accordance with the CPV (Common Procurement Vocabulary) - An objective determining of the type of goods, services or works in relation to their technological and functional characteristics, purpose and properties - An objective control over public procurement plan in relation to defining a a procurement subject, especially in reference to their technical characteristics or specifications, performed by a public procurement officer or an expert - A division of procurement subject into lots according to the technology, type, quantity, place or time of delivery - Recruitment of experts in the field of the procurement subject
<p>Using discriminatory conditions and criteria or measures in technical characteristics or specifications in order to limit or prevent competition</p> <p>Too frequent use or reference to technical characteristics or specifications, trademark, patent or type, specific origin or production</p>	<ul style="list-style-type: none"> - Determining the technical characteristics or specification with reference to the standards or norms stating the words "or equivalent" - Determining the technical characteristics or specifications in terms of required functional characteristics or requests for contract execution - In the functional description of the procurement

<p>which indicate to goods, services or works, upon preparation of tender documents</p> <p>Omission to quote the words “or equivalent“ when the procurement subject can not be described in a manner which ensures that the technical characteristics or specifications are intelligible to to bidders, while the elements such as trademark, patent, type or producer are quoted</p> <p>The subject of public procurement is not described fully, clearly and comprehensibly, in a manner that enables submission of the appropriate bid according to type, quality and price, as well as other required properties and conditions</p>	<p>subject, the purpose of the subject as well as the requirements established for that procurement subject must be recognizable</p> <ul style="list-style-type: none"> - Check to see if the words "or equivalent" are expressly stated in the tender documentation when the elements such as trademark, patent, type or manufacturer are used or referred to - An objective control of terms and requirements in tender documentation, especially in relation to description of a procurement subject and technical characteristics or specifications, by a public procurement officer or an expert - Recruitment of an expert, especially when it comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications
<p>Using discriminatory conditions for participation in a public procurement procedure in order to limit or prevent competition, especially the optional conditions (e.g. requiring too high amounts of income from performance of activity at annual level in relation to the estimated value of public procurement; requiring a large number of years of work experience or certificates which are not related to the procurement subject; submission of proofs on visits to a construction site/facility as a condition for submission of a bid; requiring a sample or a pattern whose production induces very high costs, since it is not common – it contains an engraved logo of the contracting authority and the like.)</p>	<ul style="list-style-type: none"> - Objective control of connection between conditions for participation in a public procurement procedure with the subject of public procurement by a public procurement officer or an expert - Objective control of proportionality of conditions in relation to the estimated value of the procurement subject by a public procurement officer or an expert - Recruitment of an expert, especially when it comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications
<p>Using discriminatory subcriteria for selection of the most advantageous bid on basis of the economically most advantageous bid criterion in order to limit or prevent competition</p>	<ul style="list-style-type: none"> - Objective control of connection between the subcriteria for selection of the most advantageous bid on basis of the economically most advantageous bid criterion with the provisions of the Rulebook on methodology for expressing subcriteria for selection of the most economically advantageous bid by a public procurement officer or an expert - Objective control of connection between the subcriteria for selection of the most advantageous bid on basis of the economically most advantageous bid criterion with the subject of public procurement by a public procurement officer or an expert - Recruitment of an expert, especially when it

	comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications
<p>The time limits for submission of bids or applications for pre-qualification made too short</p> <p>Abuse of reasons of urgency for the purpose of shortening the time limit</p>	<ul style="list-style-type: none"> - Careful planning and timely initiation of public procurement procedure - Objective control aimed at proving that the time limit for submission of a bid or application for pre-qualification is corresponding to the time needed for preparation of a valid bid or an application, in accordance with the principle of proportionality - Control aimed at proving that the time limit for submission of bids is not shorter than the minimum time limit prescribed by the Public Procurement Law, performed by a public procurement officer - In case that the preparation of bid or an application requires review of an extensive tender documentation or site visits, especially when it comes to contracts of a large estimated value and complex technical characteristics or specifications, a longer period for submission of bids or applications should be provided than the one prescribed by the Law, in accordance with the principle of proportionality - Objective argumentation on basis of restrictive interpretation of the reasons of urgency
Lack of competence of the officers	<ul style="list-style-type: none"> - Employment of at least one public procurement officer who possesses an university degree and who passed the professional examination for performing public procurement tasks - Timely delivery of decisions on appointment of persons at posts of public procurement officers to the competent authority - Regular prompting of public procurement officers to receive professional development and education in public procurement field - Recruitment of an expert, especially when it comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications
The existence of a conflict of interest	<ul style="list-style-type: none"> - Issuing the statement of an authorized person of non-existence of a conflict of interest at the Public procurement portal, which is an integral part of tender documentation

	<ul style="list-style-type: none"> - Issuing the statements of other persons participating in a public procurement procedure of non-existence of a conflict of interest in tender documentation - Exclusion from a public procurement procedure in case there is a conflict of interest existing - The inclusion of anti-corruption clauses in the contract on public procurement - Rejection or refusal of a bid if it is determined that there is a conflict of interest or that the anti-corruption rule has been violated
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2. THE PHASE OF CONDUCTING A PUBLIC PROCUREMENT PROCEDURE	
Potential risk zone	Preventive measures
<p>The financial means for conducting a public procurement procedure have not been provided by the budget or in some other manner in accordance with the Public Procurement Law</p> <p>The procurement was not foreseen by the Public Procurement Plan</p>	<ul style="list-style-type: none"> - Timely coordination with internal organizational units for the purpose of an accurate determining of the needs provided for by public procurement - A market research aimed at estimation of costs and an objective calculation of the estimated value of public procurement - Coordination with the financial unit prior to adoption of the public procurement plan - Obtaining approval from the competent authority to the public procurement plan, as well as to the changes and/or amendments thereof - Timely publication of the public procurement plan, as well as of its changes and/or amendments at the Public procurement portal - Budget revision or provision of funds by other means in accordance with the Law
<p>Unjustified application of negotiated procedure with or without prior publication of a contract notice in order to limit or prevent competition</p>	<ul style="list-style-type: none"> - A market research aimed at estimation of number of potential bidders - The use of restrictive interpretation upon assessment of justifiability of fulfilling the legal requirements for implementation of these types of procedures - Obtaining approval from the competent authority on fulfillment of conditions for implementation of this type of procedure
<p>The flow of confidential data and information, especially until opening of bids</p>	<ul style="list-style-type: none"> - Signing declaration on keeping the confidentiality of data

<p>The flow of confidential data and information during negotiations upon conducting the negotiated procedure with or without prior publication of contract notice</p>	<ul style="list-style-type: none"> - Existence of a procedure for handling confidential information and ensuring the confidentiality of bids
<p>Too many revisions and / or amendments to the tender documentation during the procurement procedure which can mislead potential bidders, especially if a consolidated version of the tender documents is not available</p> <p>Too short deadline for submission or modification of bids after changes and / or amendments to the tender documents were made</p> <p>Changes and/or amendments to tender documents are conducted by a clarification</p> <p>Ignoring requests for clarification of the tender documentation</p>	<ul style="list-style-type: none"> - Careful planning and timely initiation of a public procurement procedure - Creating a consolidated version of the text of the tender documentation or clearly marking revised or updated parts of tender documents - An adequate extension of the deadline for submission of bids upon modifications and / or amendments to the tender documentation in accordance with the principle of equality - An objective control by a public procurement officer of essence of the provided clarification to the tender documents prior to their submission and publication - In case of a doubt whether it is a clarification or a modification/amendment to the tender documents, it should be treated as if it was a modification/amendment to the tender documents - The establishment of appropriate control mechanisms and procedures to prevent the avoidance of providing clarifications of the tender documents
<p>Certain items of the expenses list have unusually low prices compared to the market prices because they will not be executed or some other compensation mechanisms will be applied (conclusion of an annex to the main contract, conclusion of a contract on basis of conducted negotiated procedure without prior publication of a contract notice for procurement of works or services which were not included in the main contract, and which, due to unforeseen circumstances, became necessary for its implementation)</p> <p>Explanation of unusually low prices provided by bidders is not justified</p>	<ul style="list-style-type: none"> - Careful planning and timely initiation of a public procurement procedure - Review of tender documentation by an expert upon its preparation, especially of the expenses list - Using restrictive interpretation upon assessment of justifiability of fulfilling legally established requirements for conducting a negotiated procedure - Obtaining approval from the competent authority on fulfillment of conditions for implementation of negotiated procedure - Review of the statement made by the bidder on non-existence of conflict of interest in accordance with Article 17 paragraphs 1 and 2 of the Public Procurement Law

	<ul style="list-style-type: none"> - Requiring explanation from the bidder on the unusually low price - Rejection of a bid in case the explanation on the unusually low price is assessed as unjustified - Check of the calculation error - Publication of the decision on selection of the most advantageous bid at the Public Procurement Portal
<p>A bidder (or more of them) gives up its bid without a valid excuse after the public opening of bids, and before making a decision on the most advantageous bid, which has as a result that the contracting authority must choose the remaining more expensive, that is, the economically disadvantageous bid</p>	<ul style="list-style-type: none"> - Establishing the obligation of providing a bid guarantee - Control of interconnection between the bidder who gave up the bid and the remaining one (e.g. affiliates, same addresses, same authorized persons, same percentage of difference between the offered prices) - If the conditions prescribed by the Law are met, the rejection of the remaining more expensive, that is, the economically disadvantageous bid as invalid, due to violation of the principle of competition, and adoption of a decision on cancellation of the procedure - Activation of the bid guarantee
<p>Irregular receipt of bids</p> <p>The bid is kept in a way that it can be accessible to unauthorized persons</p> <p>Duly delivered timely bid is lost in the period from its receipt until its opening</p> <p>Opening of bids is not conducted immediately after expiration of time limit for their submission</p> <p>Opening of untimely bids</p> <p>The bid is not in a closed envelope or is not joined with one red tape and sealed tightly with sealing wax</p>	<ul style="list-style-type: none"> - Existence of procedures for admission and securing the confidentiality of bids so the officials working in the archives upon the receipt of the bid would have clear instructions on how to act - Keeping the list with the records of submitted bids with a serial number and the time (hour and minute) of their receipt - Careful and conscientious acting when opening mail so that the the bids received would not be opened by mistake before expiry of the deadline for submission - The opening of bids shall be carried out immediately after the deadline for submission of bids, and no later than one hour after the expiry of that period - Control of the list containing evidence on submitted bids and number of envelopes - Control of integrity of envelopes and red

	<p>tapes at opening of bids</p> <ul style="list-style-type: none"> - Timely submission of the minutes of public opening of bids to the bidders
<p>The bid is missing several sheets or some of the sheets are lacking their serial number, seal, stamp or some similar mark of the bidder</p> <p>Pages in the bid are written in a different style (printing letters)</p> <p>A bid contains a number of hand-written corrections</p>	<ul style="list-style-type: none"> - A visual control of integrity of envelopes and red tapes at opening of bids - A visual control of pages of the bid - Allowing the bidder to, after submission of the bid and until expiry of the time limit for filing an appeal, realize its right of insight into the documentation pertaining to the public procurement procedure and the submitted bid, except for the data marked as confidential
<p>Exclusion of a bidder or rejection of a bid without valid or justified explanation, especially the bidder who has the lowest price or the greatest number of points</p> <p>The majority of submitted bids have been rejected as invalid</p> <p>Failure to comply with the conditions for participation and criteria for selection of the best bid prescribed by tender documents upon review, assessment and evaluation of bids (the criteria and evaluation methodology used are not the ones that were prescribed)</p> <p>The selected bid do not meet the required technical characteristics or specifications</p> <p>The minutes on review, assessment and evaluation of bids contains short, unclear or contradictory explanation of assessment on validity or invalidity of the bids, as well as on the manner of bid evaluation</p> <p>The minutes on review, assessment and evaluation of bids contains a separate opinion of an individual member of the Commission for opening and evaluation of bids</p> <p>The decision does not contain the explanation, or the explanation is short, unclear or contradictory</p>	<ul style="list-style-type: none"> - Requiring explanations of bids from bidders in order to eliminate doubts and ambiguities - Recruitment of an expert, especially when it comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications - Publication of decision on selection of the most advantageous bid at the Public Procurement Portal - Allowing the bidder to, after submission of the bid and until expiry of the time limit for filing an appeal, realize its right of insight into the documentation pertaining to the public procurement procedure and the submitted bid, except for the data marked as confidential - Timely submission of a public procurement contract and all the annexes thereof to the competent authority for the purpose of their publication at the Public Procurement Portal
<p>Two or more bids have the lowest price or the same number of points</p>	<ul style="list-style-type: none"> - Careful planning and timely initiation of a public procurement procedure - A market research aimed at estimation of costs and an objective calculation of the

	<p>estimated value of public procurement and the number of potential bidders</p> <ul style="list-style-type: none"> - Review of tender documentation by an expert upon its preparation, especially of the expenses list - Control of interconnection between the bidders (e.g. affiliates, same addresses, same authorized persons) - If the conditions prescribed by the Law are met, rejection of the remaining, more expensive bid due to violation of the principle of ensuring competition and adoption of the decision on cancellation of the procedure
The bidder whose bid was selected as the most advantageous one rejects to conclude a public procurement contract	<ul style="list-style-type: none"> - Requiring compensation of damages in the amount of 100% of the offered bid value in accordance with the Public Procurement Law

2. THE PHASE OF REALIZATION OF A PUBLIC PROCUREMENT CONTRACT

Potential risk zone	Preventive measures
<p>A public procurement contract is not realized in accordance with the tender documentation and the selected bid</p> <p>Conclusion of annexes to the public procurement contract after the procedure is conducted in order to increase the price or extend a deadline or modification of some other substantial term of the contract</p> <p>A guarantee on good performance of the contract required by tender documentation was not submitted or it was submitted in the lower amount</p> <p>There is no appointed person/leader of the project, especially when it comes to public procurement of works of a large estimated value</p> <p>Replacement of certain offered items of the expenses list with the items of a lower quality</p> <p>Withdrawal from the purchase of certain items of expense list during the contract execution</p> <p>Conducting of a negotiated procedure without prior publication of a contract notice for the purchase of works or services which were not included in the main contract and which, due</p>	<ul style="list-style-type: none"> - Careful planning and timely initiation of a public procurement procedure - Review of tender documentation by an expert upon its preparation, especially of the expenses list - Use of standard contract forms, especially upon public procurement of works (e.g. FIDIC) - Anti-corruption clause is contained in the contract - The contract contains a clause on penalties in case of exceeding the deadline and/or rewards for the case of completion ahead of the agreed schedule - Keeping and regular updating of records on concluded public procurement contracts in accordance with the Rulebook on Records of public Procurement Procedures - Publication of records on concluded public procurement contracts and framework agreements at the Internet page of the contracting authority - Using restrictive interpretation upon

<p>to unforeseen circumstances, became necessary for its execution</p> <p>Non-payment of invoices within the period of their maturity</p>	<p>assessment of justifiability of fulfilling requirements for conducting a negotiated procedure established by the Public Procurement Law</p> <ul style="list-style-type: none"> - Obtaining approval from the competent authority on fulfillment of conditions for implementation of negotiated procedure - Recruitment of an expert for control over contract realization, especially when it comes to the contracts of a large estimated value, as well as the complex technical characteristics or specifications - Timely submission of a public procurement contract and all the annexes thereof to the competent authority for the purpose of their publication at the Public Procurement Portal - Approval and payment of the invoices
<p>Conclusion of contracts in a manner contrary to provisions of the Public Procurement Law regulating the exceptions from its application</p>	<ul style="list-style-type: none"> - Publication of records on contracts which are not concluded in accordance with the Public Procurement Law at the Internet pages of the contracting authority, in accordance with the Law - Keeping and regular updating of records on the public procurement contracts which were not concluded in accordance with the Public Procurement Law.