

PROCUREMENT IN MONTENEGRIN MUNICIPALITIES



Podgorica, 2013

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1. INTRODUCTORY REMARKS

A yearlong research on the risks of corruption in public procurement procedures in Montenegrin municipalities was conducted within the project Corruption at the Local Level- Zero Tolerance.¹ Among other things, the project entails monitoring of local action plans for fight against corruption in 14 municipalities², as well as development of a study of practical policies in six areas of high risk for corruption.³ The analysis Procurement in Montenegrin municipalities represents both a continuation of the research activities of the Institute Alternative in the field of public procurement during which several practical policy proposals have been made in the light of improving the legal and institutional framework and overcoming the problems in practice, as well as a guide for a more effective monitoring of public procurement by the Parliament of Montenegro.

The overview of the situation in the field of public procurement in Montenegro, with special emphasis at the local level, during 2012 and 2013 has been made on the basis of the official reports on the work of relevant institutions responsible for public procurement

1 The project, which is financed with the support of European Union, through Delegation of the European Union in Montenegro via IPA 2011, is conducted by Centre for Civic Education (CCE) in cooperation with Institute Alternative, NGO Bonum from Pljevlja and NGO Nada from Herceg Novi.

2 Bar, Budva, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Kotor, Mojkovac, Nikšić, Pljevlja, Plužine, Podgorica, Rožaje and Tivat.

3 Public procurement, public - private partnerships and concessions, employment, urbanism, political corruption and work of local parliaments.

system, conclusions of the Government, reports on analytical overview of harmonization of legislation with the EU Acquis for the Chapter 5 Public Procurement and Chapter 23 Judiciary and Fundamental Rights, as well as Montenegro 2013 Progress Report of the European Commission. This section is followed by the criteria for transparent implementation of public procurement which have been applied to Montenegrin municipalities, with a special reference to local self - governments covered by the project. A part of information was obtained through requests for free access to information.

In order to obtain relevant information on the capacity of local self - governments for the implementation of public procurements and perception of the risk of corruption in this area, a questionnaire was prepared for civil servants responsible for public procurement. The questions have been formulated in such a manner so as to provide basis for assessment of the capacity of services for public procurement, tender committees and process of multiyear procurement planning. The questionnaire was sent to public procurement officers in 14 local self-governments, as well as to civil servants responsible for public procurement working in public institutions and enterprises founded by these municipalities. Based on responses received from 34 civil servants the problems have been indentified in implementation of the Law on Public Procurement at the local level, which are presented in Chapter 4 - analysis.⁴

In line with the identified problems in the direction of a transparent implementation and sustainable planning of public procurement at the local level, at the end of the analysis a set of recommendations for improvement of the current situation has been offered.

⁴ As a part of the project, 14 consultative trainings have been conducted with local civil servants, members of local parliaments and local non-governmental organisations in July 2013.

2. PUBLIC PROCUREMENT IN MONTENEGRO IN 2012

Legislative framework - continuous evolution or wandering in the dark

Montenegrin public procurement legislation is broadly aligned with the EU Acquis in this field,⁵ with the exception of the area of utilities and defence, as well as consulting services. The Law on Public Procurement from 2011 came into force on January 1, 2012 and the key problems, according to the European Commission assessment, are related to implementation and capacity for enforcement of legislative framework.

“The implementation of the Law on public procurement remains a concern. The PPA’s responsibilities, e.g. in monitoring and assessing contract implementation and the risk of irregularities, analysing infringements and deviations from good practice and providing legislative advice, still need to be clarified and strengthened.”⁶

Working group for negotiating Chapter 5 Public procurement was formed in July 2012. In September and December of 2012, explanatory and bilateral screening meetings for this chapter were held, followed by European Commission’s Analytical overview of the harmonisation of legislation with the Acquis in this field.

⁵ Report on analytical overview of the harmonisation of legislation with EU acquis in Chapter 5- Public procurement, p. 9

⁶ Montenegro 2013 Progress Report, 16. 10. 2013, p. 29

“Montenegro needs to strengthen implementation capacities at all levels in order to reduce irregularities in the implementation of the Law on Public Procurement by different contracting authorities. The lack of transparency of certain procedures, failure to appoint public procurement officers, splitting of single public procurement contracts into several contracts and poor reporting create conditions conducive to corruption. Targeted training for prosecutors and judges on public procurement issues should be provided. Monitoring and control measures need to be increased, both in the phases of ex-ante control and contract implementation.”⁷

In order to further harmonise the Law on Public Procurement with the EU Directive 2004/17, the Government has in the Agenda for 2013 envisaged adoption of the draft Law on amendments and changes in the fourth quarter, and in June a working group of seven members has been formed that is working on these changes. Representatives of non-governmental sector have not been involved in the work of the working group, nor has there been a public call for participation to interested parties. The Action plan for Chapter 23 Judiciary and Fundamental Rights envisages the changes of the Law on Public Procurement in certain areas where improvement is a priority in terms of EC recommendations from the Analytic overview of the harmonization in this chapter regarding the necessity to strengthen the control system and monitoring of implementation of awarded contracts.⁸ However,

⁷ Ibid., p. 55

⁸ Action plan envisages inter alia the following: changes in the method of appointment of the President and members of the State Commission for Control of Public Procurement Procedure by the Parliament of Montenegro; introduction of negative references of the bidders, as well as the obligation that at least one member of the Committee for opening and evaluation of bids must possess a certificate of professional examination; improved system of records kept by the contracting authorities and the content of the report of Public Procurement Administration on public procurements, etc.

there is still no publicly available information as to the extent to which these activities are the subject of the amendments of the Law.

In February 2013, Ministry of Finance has issued a decision on establishment of the Coordinating Body for Monitoring and Implementation of the Strategy for Development of Public Procurement System for the period 2011-2015.⁹ This body should submit quarterly reports to the Government on its operation. By the end of November 2013 there have been no available reports of the Coordinating Body on the implementation of the Strategy.

Almost two years of implementation of the Law on Public Procurement from 2011 show some changes in comparison to previous years, which are partly caused by new legal solutions, but also by a variety of other factors. There is a noticeable decrease in the share of public procurement in GDP and it amounts to 9.72%. This trend of decrease in the share of public procurements in GDP is present as of 2007. In 2012, a total of 4,423 contracts have been concluded, with a total value of 323,155,258.90 EUR. Since 2010, the number of bids per tender is decreasing, which is a cause for concern. During 2012 the average number of bids was 4.09, as compared to 4.57 from 2010.

2007.	2008.	2009.	2010.	2011.	2012.
3,03	3,51	4,29	4,57	4,34	4,09

Table 1: Average number of bids per tender

9 See: <http://www.ujn.gov.me/2013/04/rjesenje-o-formiranju-koordinacionog-tijela-za-pracenje-i-sprovođenje-strategije-razvoja-sistema-javnih-nabavki-za-period-2011-2015-godine/>. Members of the Coordinating body are: representatives of the Public Procurement Administration, 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 State Prosecution, State Commission for Control of Public Procurement Procedure, Parliament of Montenegro and the Chamber of Commerce.

Use of direct agreement

In 2011 through direct agreement¹⁰ 16 million EUR has been spent, while in 2012 it amounted to 19,721,342.59 EUR. Therefore, in 2012 expenditures arising from application of the least transparent procurement procedure have increased, while the share of contracts concluded by this method amounted to 6.10% of the total contracted value.

The Law on Public Procurement does not prescribe that this method is used in exceptional circumstances and that it must be elaborated, but this is the only public procurement method where it is explicitly prescribed that it shall be signed by the head of contracting authority. The only audit of the annual financial statement of the budget of local self-governments in 2012 shows exceeding the total annual value of public procurement by using direct agreement.¹¹ The same practice existed in 2011. Director of Public Procurement Administration states the following in the commentary on appliance of direct agreement:

“Accountability of the heads of institutions which have spend for procurements by direct agreement up to 20% or even more, and have shown that they have abided by the law, i.e. have spend 10% for this, was without effect.”¹²

Additional problem is the fact that the contracts concluded on the

¹⁰ Direct agreement represents an immediate arrangement between a contracting authority and a bidder regarding the terms of a public procurement.

¹¹ Including the amount covered by the sample, the expenditures on the basis of direct agreement exceed the allowed limit for 12,188.57EUR. This is not in accordance with the Article 30 of the Law on Public Procurement, which stipulates that the total annual value of public procurement of a contracting authority conducted by direct agreement may not exceed 7% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority does not exceed 800,000.00 EUR“ is stated in the Report on the audit of the final accounts of the budget for the Municipality of Bijelo Polje for 2012, State Audit Institution, October 2013, p. 8

¹² Interview of the Director of the Public Procurement Administration Mersad Mujević in daily Pobjeda from November 07, 2012. See://<http://www.pobjeda.me/2012/11/07/direktor-direkcije-za-javne-nabavke-mersad-mujevic-o-izvjestaju-dri/#.UotOzmTF2rZ>

basis of the direct agreement are not published on the Portal of Public Procurements.

The impossibility of verifying the information provided by the contracting authorities

Public Procurement Administration prepares an annual Report on public procurement based on the information provided by the contracting authorities. However, the issue of credibility of information provided by the contracting authorities has been raised on many occasions. Among other things, the Report on public procurement for 2012 states that:

“The contracting authorities are responsible for providing information about concluded procurements, who based on the concluded contracts submit reports in written and electronic form to the responsible body which are in accordance with Regulations signed by the responsible person of the contracting authority- head of contracting authority or public procurement officer.”¹³

It is interesting that according to findings of the State Audit Institutions, in 2011 among those institutions that provided false information to the Public Procurement Administration were Ministry of Finance, Ministry of Economy, Ministry of Foreign Affairs and European integration and Ministry of Health, as well as Protector of Property and Legal Interests and Agency for Protection of Personal Data. It remains unknown if responsible persons in these bodies have been penalised for delivery of false reports or if in 2012 any additional measures have been taken in order to ensure the delivery of accurate and objective information. The European Commission also points out to the importance of respecting the recommendations provided by the State Audit Institution:

¹³ Report on Public Procurement in Montenegro for 2012, Podgorica, May 2013, p. 6

“In November 2012, the State Audit Institution has issued recommendations on the public procurement system, including recommendations on unrealistic planning, non-transparent procedures and overuse of direct agreements, failure to appoint public procurement officers, cases where single public procurement contracts had been split into several contracts and poor reporting.”¹⁴

Inspection control

Inspection for public procurement has been established on March 1, 2012 by appointment of the General Inspector who controls the regularities of the implementation of public procurement contracts worth from 3,000.00 EUR to 500,000.00 EUR.

24
inspection
controls at the
local level in 2012

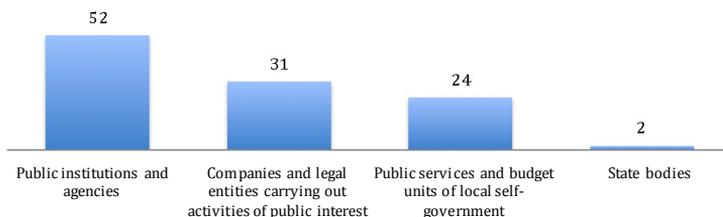
From March 1, 2012 to December 31, 2012 a total of 109 inspection controls have been conducted,¹⁵ and of this number 24 of supervised entities are at the local level (public services and budgetary units of local self-government).¹⁶ In the reporting period,¹⁷ the Inspector has issued 11 fines totally amounting to 13,250.00 EUR, of which 7 have been paid in full amount of 8,750.00 EUR (66.30%).

14 Montenegro Progress Report for 2013, p. 29

15 In the period from March 1, 2012 to June 1, 2012, when the inspection was under the jurisdiction of the Public Procurement Administration, a total of 19 inspections have been carried out, and 6 fines have been issued totally amounting to 6,750.00 EUR.

16 Ibid., p. 88

17 1. 3. – 31. 12. 2012.



Graph 1: Entities inspected in 2012

Subject	Numbers of controls	Number of irregularities
Regularity of conducted public procurement procedures	12	2
Timely submission and publication of the decisions and concluded contracts in the public procurement procedures	18	11
Timely preparation and submission of public procurement reports and plans to the competent authority	54	48
Proper preparation and maintaining of records of public procurements	17	10
Meeting the conditions for performing of the duty of public procurement officer	8	3
Regular inspections (97)	108	74
Inspections upon the request of parties (11)		

Table 2: Subject of inspection controls in 2012

Department for inspection supervision of public procurements has only one employee- the General Inspector for procurement. Taking into consideration the total number of the subjects of application of the Law on Public Procurement,¹⁸ it is obvious that the capacities of the Administration for Inspection Affairs in relation to the field of public procurement are limited. The need to strengthen the capacity, i.e. increase the number of inspectors for one more position, is recognized in the report on work of this body for 2012:

“Increasing the number of inspectors for public procurement to one additional position is conditioned by the number of public procurement procedures (almost 62,000 small value procedures and over 2,500 large values public procurement procedures), information that for public procurements in 2011 totally was allocated 34,646,174.03 EUR, as well as that there are over 700 subjects of application of the Law on Public Procurement, which are located

¹⁸ In 2012 this number was 724

*throughout the country. Taking into consideration the complexity of inspection control in public procurement, this would allow for more balanced inspection controls in the northern, central and southern region.*¹⁹

In the Report on work of the Administration for Inspection Affairs for May 2013 it is stated that the Inspection for public procurements has 3 systematised working positions, but still has only one inspector who is conducting supervision in this area,²⁰ whereas the Action Plan for Chapter 23 envisages a measure to strengthen the capacities of the competent authorities for supervision through the authorized officers and increase of the number of inspection controls, with the deadline for its realization set for January 2014.²¹

Work of the State Commission for the Control of Public Procurement

“The high rate of rejection of decisions of the State Commission for the Control of Public Procurement by the administrative courts is an issue of concern.”²²

Since the appointment of the State Commission for the Control of Public Procurement, i.e. from April to December 2012, this body has considered 682 cases and issued 571 decisions. The most common mistakes in the application of the Law on Public Procurement recorded by the State Commission relate to the following: the wrong choice of the type of procedure; inadequate description of the subject of procurement, i.e. technical specifications; inconsistency between the invitation for

19 Report on work of the Administration for Inspection Affairs for 2012, p. 13

20 Report on work of the Administration for Inspection Affairs for May 2013, Podgorica, June 2012, p.4

21 Action Plan for Chapter 23, Judiciary and Fundamental Rights, p. 101

22 Montenegro Progress Report for 2013, COM(2013) 700, 16. 10. 2013, p. 29

submission of bids and tender documents; improper keeping of minutes on the public opening of bids, etc²³.

Decisions of the State Commission for the Control of Public Procurement are not applied to the full extent. In the period from April 1 to December 1, 2012 a total of 15 decisions of the State Commission have not been carried out. Of this number of unexecuted decisions, 14 have been made in the public procurement procedures which have been initiated by the old Law on Public Procurement from 2006, whereas one unexecuted decision is connected to the public procurement procedure initiated in accordance with the Law on Public Procurement from 2011.²⁴ Of the total number of unexecuted decisions (15) problematic is the fact that 11 decisions have been adopted by the State Commission in the repeated procedure, acting upon the judgements of the Administrative Court of Montenegro. These decisions of the State Commission largely differ from the previous decisions of the Commission for Control of Public Procurement Procedure because they are based on findings and legal positions set out in the judgments of the Administrative Court of Montenegro. Failure to respect these decisions represents not just disrespecting the State Commission for the Control of Public Procurement, but also the Commission is obliged to inform the Government about the non-compliance with its decisions. The Law does not prescribe a time limit for such actions of the State Commission. The State Commission has through the Ministry of Finance informed the Government about non-compliance with a number of decisions by the contracting authorities and has provided a set of measures which need to be taken in order

²³ Report on work of the State Commission for the Control of Public Procurement for 2012, p. 13

²⁴ The contracting authority may choose one of the two methods of not following the decisions of the State Commission for the Control of Public Procurement Procedure: 1. not to conduct repeated procedure for deciding and not adopting a new decision or 2. to make a decision in a repeated procedure which is not in line with the factual findings and legal understanding set out in the decision of the State Commission for the Control of Public Procurement Procedure.

to reduce the number of such solutions. On March 7, 2013 the Government has reviewed the Information about non-compliance with the decisions of the State Commission for the Control of Public Procurement and instructed the contracting authorities to urgently implement the decisions and inform the Government about their actions through the competent ministry. However, by November 2013 only 3 contracting authorities have implemented these decisions.²⁵

Significant portion of the financial needs of the State Commission for Control of Public Procurement is funded from taxes on complaints submitted before this body.

“The Budget of Montenegro has from the fees for procedure on appeals before the State Commission in 2012 received 126,814.96EUR, which amounts to 67.25% of the total assets allocated by the Budget of Montenegro for the work of the State Commission for 2012, or 71.85% of the budget fund spent by the State Commission s in 2012.”²⁶

The Law on Public Procurement does not prescribe the way to prevent conflict of interest of the State Commission, but only regulates cases and ways of preventing conflict of interest of the contracting authorities and the bidders, the newly appointed State Commission has prescribed²⁷ the way of preventing conflict of interest of the President and members of the State Commission, by which in its work it eliminated a risk of application of the Article 18 paragraph 1 of the Law on Public Procurement which prescribes that the public procurement procedure conducted with existence of conflict of interest shall be declared null and void.²⁸

25 Reply of the Ministry of Finance from October 30, 2013 to the question of the MP from Socialists Peoples Party Zdenka Popović.

26 Report on the work of the State Commission for the Control of Public Procurement Procedure for 2012, p. 45

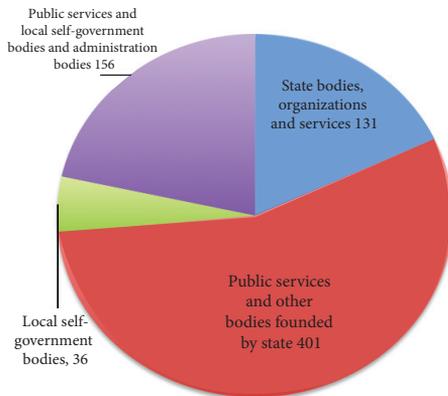
27 Rules of Procedure (“Official Gazette of Montenegro” No. 16/12) adopted at the first session held on March 19, 2012.

28 “Public procurement procedure conducted with the existence of conflict of interested shall be declared null and void. The contracting authority is obliged to keep the record on

Local self-governments

In 2012 local self-government bodies have concluded 10,995 contracts worth 17,494,830.93 EUR, whereas public services and other administrative bodies have concluded 4,271 contracts, worth 16,276,634.83 EUR.²⁹

Public procurement system in Montenegro is decentralised. Number of parties obliged to adhere to the Law has decreased from 974 in 2011 to 724 in 2012 and 698 in 2013, while at the local level for 2012 it amounted to 192.



Graph 2: Number of parties adhering to the Law on Public Procurement³⁰

In percentages, parties covered by the Law on the local level make 26.52% of the total number of covered parties.

When it comes to the use of procedures foreseen by the Law on Public Procurement, in 2012 the local self-government bodies have mostly used shopping method for procurement of goods and services of small value (347), followed by open procedure (231), framework agreement (9), negotiated procedure without prior publication of a contract notice (8) and with prior publication of a contract notice (1). The situation is similar when it comes to public services founded by local self-government: shopping method (258), open procedure (164), negotiated procedure without prior

the cases of existence of conflict of interest referred to in Articles 16 and 17 of this Law and to notify thereof the competent state authority without delay.

²⁹ Public Procurement Report for 2012, p. 72

³⁰ Montenegro, Public Procurement Report for 2012, Podgorica, May 2013 p. 43.

publication of a contract notice (6), framework agreement (3). During 2012, local self-government bodies have received a total of 1,588 offers within 483 procedures, out of which 175 have been refused and 22 rejected.

Municipality	Number of public procurements	Total number of bidders (Form A)	Total number of bidders for shopping method (Form B)	Total number of bidders for direct agreement (Form C)	Use of the procedure (Form A)	Use of shopping method (Form B)	Use of direct agreement (Form C)
Bar	78	79	16	54	8	16	54
PA in Bar¹	311	17	21	290	9	15	290
Budva	269	36	12	251	11	7	251
Cetinje	410	27	27	397	7	6	397
Danilovgrad	342	1	8	339	1	2	339
PA in Danilovgrad	165	3	4	161	2	2	161
Kolašin	4	5	11	0	1	3	0
Kotor	50	4	6	44	3	3	44
Mojkovac	21	1	10	13	1	7	13
Pljevlja	504	9	33	485	6	13	485
Plužine	151	0	10	146	0	5	146
PA in Plužine²	471	0	0	471	0	0	471
Tivat	87	67	103	32	25	30	25
PA in Tivat³	200	14	25	183	8	9	183

¹ PE Cultural Centre of Bar, Communal Services, Sports and Recreation Centre, Radio Bar and Rumija Bar

² PI Centre for Culture, Public Housing and Communal Enterprise and Tourist Organization of Plužine

³ PE Cultural Centre, Water Supply and Wastewater, PE Communal Services Tivat

Table 3: Review of the number of public procurements, bidders, used methods in 14 Montenegrin municipalities³¹

With the exception of Kolašin, there is a noticeably large number of purchases realized through direct agreement in all municipalities. Thus, for example, in 2012 in the municipality of Plužine out of 151 procurements 146 have been concluded by direct agreement, while in Danilovgrad out of 165 public procurements 161 have been concluded by direct agreement.

Anti-corruption activities

Taking into account the fact that implementation of local action plans for fight against corruption and organized crime for the

³¹ Data were collected on the basis of the request for free access to information sent to the municipalities and public institutions and enterprises. The following municipalities: Podgorica, Nikšić, Herceg Novi and Rožaje did not respond to the request and did not submit the report on public procurement for 2012.

period 2009-2012 has been completed, local self-governments have in 2013 been working on preparation and adoption of the new ones, which are based on the Model of the harmonised Action plan prepared by the working group consisting of the representatives of the Ministry of Interior, Union of Municipalities, local self-government and Directorate for Anti-Corruption Initiative.³² However, as the previous ones, new action plans are too uniform; they do not provide separate overview of activities in the areas of high risk for corruption and do not contain specific measures relating to public procurement.

Public Procurement Administration has an open phone line for reporting cases of corruption and conflict of interest since 2010. In 2011 the Public Procurement Administration did not receive any corruption complaints, and in 2012 only one complaint on suspicion of corruption in public procurement.³³ The complaint of corruption in public procurement procedure was electronically submitted by the company SMART TACH. LLC, the report was addressed to the Directorate for Anti-Corruption Initiative and submitted to Supreme State Prosecution for further processing.³⁴

According to the provisions of the Rulebook on maintaining records of violations of anti-corruption policies, Public Procurement Authority is preparing an annual report on violation of these rules on the bases of semi-annual reports submitted by the contracting authorities. However, Public Procurement Report for 2012 stated that „certain“ number of reports from contracting authorities have been submitted with additional forms or without them and that there are no mentioning of the cases of conflict of interest, i.e. of corruption. Therefore, the Report only contains the list of contracting authorities which have submitted their

32 See: <http://www.uom.co.me/wp-content/uploads/2013/03/osce-protiv-korupcije.pdf>

33 Report on the number of complaints of corruption for the period October- December 2012, Directorate for Anti-Corruption Initiative, January 2013, p. 9

34 Public Procurement Report for 2012, p. 37

reports³⁵, with the conclusion that contracting authorities largely do not submit reports.³⁶ In 2012, only one case of conflict of interest has been reported by the public procurement officer from Public enterprise for Coastal Zone Management of Montenegro (Morsko dobro).³⁷

35 Among the contracting authorities who have submitted documents which do not contain reports and records of violations of anti-corruption policies are: Tourist Organisation of Kotor, PE „City Theatre Budva“, LLC „Academy of knowledge“ Budva, PE for Management of advertising space of Budva Municipality „Mediterranean advertising“, PE „Maintenance“ Podgorica, Parliament of Montenegro and the Tourist Organisation of Budva. Records of violation of anti-corruption policies have been submitted by: Tax Administration, Municipality of Herceg Novi, Tourist organization of Herceg Novi and PHI General Hospital „Blazo Orlandic“ Bar. - See: Public Procurement Report for 2012, p. 79.

36 Ibid, p. 79

37 Public Procurement Report for 2012, p. 80

3. CRITERIA FOR TRANSPARENT IMPLEMENTATION OF PUBLIC PROCUREMENTS – THE APPLICATION IN MONTENEGRIN MUNICIPALITIES

Transparent management of public procurement at the local level depends on fulfilment of a set of criteria, of which the most important are the following:

3.1. Realistic planning and assessment of the value of purchases: planning and implementation of public procurement in accordance with local budgets and development plans of the municipalities

Planning is the first step in implementation of public procurement. Well prepared public procurement plan is instrumental for the contracting authorities to fulfil their needs on an annual or multi-year level, i.e. to what extent will the funds be used rationally. Therefore, this plan usually contains, or should contain, necessary quantities of certain goods and services, type of procedure to be used, timeframe within which the acquisition will be realized. Having in mind the aforementioned parameters, appropriate public procurement plan can decrease room for corruption. However, in Montenegro there is no developed methodology for planning of public procurement. Public Procurement Authority noted the following:

*“In 2012, viewed by categories of covered parties, state bodies and organizations inadequately planned public procurement, thus in order to plan in an adequate and correct manner, increased activities and efforts should be made in the framework of future trainings for institutions at the state level”.*³⁸

38 Report on Public Procurement in Montenegro for 2012, p. 84

There is no information on the realization of specialised trainings of public procurement officers on procurement planning, nor is there information if any guidelines or recommendations have been developed for planning in specific areas, i.e. specific services.³⁹ Public Procurement Administration is of the opinion that for further development of public procurement system it is necessary to „intensify the training on planning of public procurements and determining the estimated value of the subject of procurement“.

At the same time in local self-governments in Montenegro there is no developed system of planning of public procurement. After examining the review of planned and contracted public procurement in 2012 in 14 Montenegrin municipalities we can see significant deviations from the planned procurements in all cities.

Municipality	Planned procurements in 2012	Value of contracted procurements in 2012
Bar	5,915,100.00	703,253.53
Budva	95,288,987.10	3,562,226.42
Cetinje	3,783,500.00	1,285,478.35
Danilovgrad	969,000.00	119,563.60
Herceg Novi	760,000.00	176,104.90
Kolašin	156,700.00	37,314.68
Kotor	220,200.00	113,988.08
Mojkovac	788,400.00	172,057.62
Nikšić	2,824,560.00	835,799.06
Pljevlja	4,891,102.05	430,307.19
Plužine	1,274,400.00	660,762.21
Podgorica	3,218,500.00	1,544,094.70
Rožaje	1,714,200.00	716,079.55
Tivat	3,916,730.00	1,442,359.25

Table 4: Planned and contracted procurements in 2012

The lowest percentage of the execution of the public procurement plan for 2012 is in Municipality of Budva with 3.7% and the highest in municipalities of Kotor and Plužine with 51.8%.

The reasons why municipalities do not plan adequately procurement procedures are numerous. Public procurement

39 Overview of contracting authorities with the biggest deviations between the planned and contracted procurements is provided in Annex 4 of the Report on Public Procurement for 2012, p. 99

officers believe that planning and realization of public procurements is impeded by late adoption of the budget, which is not done within the statutory period- by the end of the current year for the following year, as well as that poor planning of public procurement is caused by unrealistic budget planning.

The heads of sectors often do not realise the importance of preparation of the public procurement plan.⁴⁰

Officers also list as one of the problems an inability to maintain revenues at the planned level, and therefore contracting authorities cannot commence procurement of large value without having the allocated funds. That is why, in their opinion, it could be possible to introduce a category of unallocated funds, which could be used in emergencies, with appropriate explanation, and in a certain percentage compared to the total planned funds.

It is also estimated in the reports of the State Audit Institutions that public procurements at local level are not planned on the bases of the real needs.⁴¹

None of the municipalities implements long-term or multi-year planning of public procurement. Public procurement officers have different perceptions about the causes of inadequate planning process.⁴² In their opinion, planning involves an in-depth analysis of the operations of every company, which assumes a certain level of expertise of staff, or the team which will determine and define

40 Replies of the public procurement officers to the questionnaire sent by Institute „Alternative“, November 2013.

41 See for example: Audit report on the final budget accounts of the Municipality of Kotor for 2010, October 2011. Also, in the Audit Report on the final budget accounts of the Municipality of Bijelo Polje for 2012 of the State Audit Institution it is stated that there is a need to provide technically correct data in the application of the Regulations on the classification of a single account for the Budget of Montenegro, budgets of extra-budgetary funds and budgets of Municipalities and in the part of accurate presentation of planned expenditures by ordinal numbers, when adopting the procurement plan, p. 57

42 Replies of the public procurement officers to the questionnaire sent by Institute „Alternative“, November 2013.

the goals and priorities of the company (short term, medium and long term), based on the parameters from the previous years and the actual needs of the contracting authority. In this regard, it would be useful, according to them, that the heads of the sector in a specific timeframe submit to the procurement officer a list of procurements which should be made for smooth operation of the sector, so that the public procurement officer could develop a reasonable plan in accordance with the Law on Public Procurements and the funds committed for this purpose.

After examining the form for one-year planning of public procurements in Montenegro, which contains the following elements:

No.	Subject of public procurement	Name i.e. description	Estimated value of the public contract	Type of public procurement	Tentative date for initiation of procedure	Account i.e. budget position	Amount on the account i.e. budget position	Source of financing
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Table 5: The content of the form for planning of public procurement in Montenegro

it can be concluded that planning of public procurement, inter alia and foremost can be improved by extending the data contained in the plan, but also through planning of procurements for longer term.

Example of good practice: Template for planning of public procurement in Serbia

Rulebook on the form and content of the plan of procurements and report on execution of the procurement plan specifies the following elements of the plan as mandatory: a number of purchase, the subject of procurement; the amount of planned funds; information about appropriation in the budget; estimated value on annual level and total value; type of procedure of public procurement; information about application of other procedures for procurements which are not subject to the Law; tentative date for initiation of the procedure; tentative date for signing of contract; tentative date for execution of the contract; information about centralised procurement; reason and justification for individual purchases; the method

of determining the estimated value and other information and remarks that are important for the process of planning of procurement.

Template for planning of public procurement which is used in Serbia more precisely defines the details of public procurement both in terms of the (tentative) time of conclusion of the contract and its execution, estimated value on the annual level and manners for determining of the estimated value. Including of these categories in the form for planning can contribute to prevention of shortages of goods and to their more adequate planning.

3.2. Transparency in publication of documents related to public procurement procedures

The Law on Public Procurement sets forth an obligation to publish public procurement plans, notices of public competition, decision on the qualification of the candidates, selection of the most favourable offer, decisions on suspension of a public procurement procedure, public procurement contracts, changes or addenda to the plan, notice or contract, as well as by undertaking other actions and measures.⁴³ Public Procurement Administration states in its report that it has published „3,154 public procurements awarded contract in 2012^c“. The total number of awarded contracts in 2012 was 4,332. Despite the obligation to make awarded contract public, relatively low number of contracts was published on the Portal. Public Procurement Administration does not mention information about the number of contracts published on the Portal, or the number of contracts which have been submitted by the contracting authorities to this body for publishing, nor does it mention any causes of this problem in its report.

⁴³ Article 7, Law on Public Procurement, “Official Gazette of Montenegro”, No. 42/11

Also, the following statement of Public Procurement Administration is incorrect:

“Individual reports of the parties obliged to adhere to regulations on public procurement contracts from 2012 have been published on the web site of the Public Procurement Administration”⁴⁴

And it can be easily confirmed by visiting the Portal on Public Procurement.⁴⁵

3.3. Internal and external control

“The system of control of public procurement should be strengthened, as well as control over application of awarded contracts.”⁴⁶

3.3.1. Internal audit

Internal audits in the system of public internal financial control (PIFC) have a role to ensure effective management of risks, controls and governance processes. Taking into consideration the fact that risk of corruption exists in all phases of realisation of public procurement contracts, internal audit should have a special role in this area, based on the internal review of the legality of planning and realisation of all public procurements. However, despite well-rounded legislative framework for the establishment of PIFC,⁴⁷ internal audit has not been established

44 Report on Public Procurement in 2012, p. 50

45 www.ujn.gov.me

46 Report on analytical overview of the harmonisation of legislation with EU acquis in Chapter 23 – Judiciary and Fundamental Rights, p. 27

47 Strategy for the Development of PIFC (2007), Law on the Internal Financial Control in the Public Sector, “Official Gazette of Montenegro”, No. 73/08

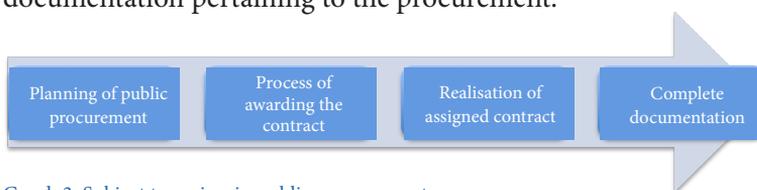
in all municipalities which were required to do so.⁴⁸ Thirteen local self-governments has systematised units for internal audit. Only 8 local self-governments have appointed internal auditors. All in all, 17 internal auditors work at the local level.

As according to the Law on System of Internal Financial Controls in Public Sector units for internal audit should have at least 3 auditors, this means that currently functional units for internal audit exist in only 3 cities. None of the local self-governments have used the legal possibility to entrust the affairs of internal audit to the unit for internal audit of some other local self-government.

Lokal self - governments	No of auditors
3 units	1 auditor
2units	2 auditor
2 units	3 auditor
1 units	4 auditor

Internal audit plays an important role in ensuring control of public procurement procedures, and reports of these audits should serve as a base for elimination of perceived irregularities in their implementation.

The subject of the audit should be all phases of the implementation of public procurement, from planning phase to verification of all documentation pertaining to the procurement.



Graph 3: Subject to review in public procurement

48 “A special organisational unit for internal audit is established in municipalities with a population over 10,000 inhabitants. In accordance with paragraph 1 of this Article and the results of the Census in Montenegro from 2011, a special organizational unit for internal audit is to be established in: 1. the capital city of Podgorica 2. Old Royal Capital of Cetinje 3. Municipality of Bar 4. Municipality of Berane 5. Municipality of Bijelo Polje 6. Municipality of Budva 7. Municipality of Danilovgrad 8. Municipality of Herceg Novi 9. Municipality of Kotor 10. Municipality of Nikšić 11. Municipality of Plav 12. Municipality of Pljevlja 13. Municipality of Rožaje 14. Municipality of Tivat 15. Municipality of Ulcinj”, Article 3, of the Regulation on the establishment of internal audit in the public sector, “Official Gazette of Montenegro”, No. 50/12 from 01.10.2012.

3.3.2. *Audit by the State Audit Institution*

State Audit Institution (SAI) has heretofore executed 11 regular audits of annual financial statements of the budgets of local self-governments and 6 control audits⁴⁹ In performance of the audits in municipalities, SAI has recorded irregularities and violations of the Law on Public Procurement in all local self-governments which were audited until now, and these are: Bijelo Polje (2012); Plav (2011), Bar (2011), Kotor (2010), Tivat (2010), Herceg Novi (2009), Rožaje (2007), Kolašin (2006), Ulcinj (2005), Danilovgrad (2005) and Nikšić (2004).

Recorded irregularities related to the selected type of the public procurement procedure,⁵⁰ failure to appoint a public procurement officer,⁵¹ exceeding the value of procurement based on the shopping method,⁵² failure to adopt the plan of public purchases and failing to allocate appropriate funds for procurement, and as already mentioned inadequate planning.⁵³

From the beginning of implementation of the Law on Public Procurement from 2012 SAI has performed one regular audit of the final budget account of the Municipality of Bijelo Polje. The report mentions violation of the Article 107⁵⁴ of the Law on Public

49 Kotor (2013), and collective control audits for municipalities of Nikšić, Danilovgrad, Ulcinj, Kolašin and Rožaje (2009.)

50 See: Audit Report on Final Budget Account of the Municipality of Bar for 2011, October 2012; Audit Report on Final Budget Account of the Municipality of Plav for 2011, December 2012; Audit Report on Final Budget Account of the Municipality of Bar for 2011, October 2012; Audit Report on Final Budget Account of the Municipality of Tivat for 2010

51 See: Audit Report on Final Budget Account of the Municipality of Herceg Novi for 2009, September 2010.

52 Audit Report on Final Budget Account of the Municipality of Rožaje for 2007, September 2008.

53 Audit Report on Final Budget Account of the Municipality of Kolašin for 2006, August 2007.

54 "...The public procurement contract shall not be concluded before the expiry of the time limit for receiving objections (a standstill period), and adoption of the decision on the filed complaint, unless provided differently by this Law"the Law on Public Procurement, „Official Gazette of Montenegro“, No. 42/11

Procurement which prescribes that public procurement contract done by shopping method should not be concluded before the expiry of the time limit for receiving objections; submission of incomplete data in the Report on Public Procurement; exceeding of 7% of expenditure by using direct agreement.⁵⁵

Due to its limited capacities, SAI is unable to perform the audit of a larger number of municipalities during one year. Taking into consideration heretofore dynamics of work, the conclusion is that State Audit Institutions on average performs only one audit of final budget accounts of local self-governments per year. Institute „Alternative“ already in 2011 pointed out to this problem, with the assessment that it can be expected that only by 2024 all municipalities have at least once been subjected to the general audit.⁵⁶

3.4. Submission of reports on public procurements of local self-governments

According to available data from Public Procurement Administration it is evident that a total of 44 parties obliged to adhere to the law did not submit a report on public procurement for 2012, which is in percentages 6.2% of the total number of parties adhering to the law. Out of this number, 41 of them belong to the local level and mainly these are local public institutions or enterprises founded by municipality.⁵⁷ Among these are PI Centre for Social Work in Podgorica, Agency for Investments and Property from Bar, Agency for Investments, Construction Grounds and Development from Mojkovac, Budva Holding LLC,

55 See: Audit Report on Final Budget Account of the Municipality of Bijelo Polje for 2012, State Audit Institution, October 2013.

56 See: Control of the Local Self-Governments' Budget – Constraints and opportunities, Institute Alternative”, April 2011, p. 6

57 List of all parties parties obliged to adhere to the law who did not submit a Report on public procurement for 2012 is available in the Report on Public Procurement for 2012, p. 86

Enterprise for Consulting and Engineering BSP from Budva, PI Centre for Culture from Nikšić, Touristic Organisation from Nikšić, PE Waterworks from Pljevlja. After examining the list of contracting authorities who did not submit a report to the Administration on public procurements for 2011, it can be seen that 19 parties obliged to adhere to the law continuously fail to fulfil this obligation.⁵⁸

3.5. Establishment of effective organisation of public procurement services at the local level

Managing public procurement procedures at the local level requires proper organization of professional services, i.e. trained and qualified staff to perform these duties. Service for public procurement should be a centre of expertise for public procurement in the municipality. Employees in the Service need to be trained to perform duties connected to public procurement, i.e. need to provide advice to contracting authorities, and make available to them models of tender documents, contracts, etc. In Montenegrin municipalities there is no unified model of organisational units- services - for public procurements, and positions for public procurement officers are systematised within various secretariats. Only two municipalities have established units for public procurement, whereas the most of municipalities (10) have only one public procurement officer. Certificate of professional

58 1. Agency for Managing the City Harbour Herceg Novi; 2. Budva holding LLC; 3. PC Sports and Recreation Centre „Budva“; 4. PI Memorial Home "Crvena komuna" Petrovac; 5. PI Memorial Home "Reževići" Budva; 6. „Company for Consulting and Engineering BSP Budva“; 7. PC "Sports Center" Herceg Novi; 8. Information Centre of Kotor; 9. PI for Culture Nikšić; 10. Tourist Organization of Nikšić; 11. PI Centre for Culture Plav; 12. Inventiveness LLC Podgorica; 13. PC Maintenance and Development Šavnik; 14. PI Centre for Culture, Media and Sport Šavnik; 15. Tourist Organisation Šavnik; 16. PC for Urbanism, Planning and Supervision Ulcinj; 17. Agribusiness Information Centre Žabljak; 18. PI Centre for Culture Žabljak; 19. PC for Housing and Communal Services Žabljak. See: Report on Public Procurement for 2011, p. 73-74

examination for work on public procurement is obligatory,⁵⁹ but this condition has not been met in four municipalities which were the subject of this research, as indicated in Table 6 that was prepared based on information submitted by public procurement officers.

⁵⁹ Program and the manner of vocational education and training in the field of public procurement was adopted and came into force on May 29, 2012. During 2012, a professional examination was organised and it consisted of a written and oral part. A total of 90 public procurement officers successfully passed the professional examination.

Table 6: Overview of the capacities in 14 Montenegrin municipalities

Municipality	Criteria/capacities	Is there a special unit for procurement?	Number of employees working on public procurement	Composition of Commission for opening and evaluation of bids	Passed professional exam
Bar		No/Secretariat for General Administration and Social Services – Service for technical and support affairs	2 procurement officers and 1 operator	Members are mainly engineers from various fields, and Presidents of the Commission are Vice-Presidents of the Municipality	No
Budva		Yes/Public Procurement Service	Head ¹ Rulebook on systematisation of working positions is still not adopted		
Cetinje		No/Service for General Affairs-Unit for public procurement	4 working positions – Head of the Unit, a lawyer and 2 procurement officers	President of the Commission is a graduated lawyer and members economists from the field of public procurement	1/2
Danilovgrad		No/Service for General Affairs	1	President of the Commission is a graduated lawyer and other members are changing depending on the subject of public procurement.	No
Herceg Novi		No/Secretariat for Finances, Tourism and Economic Development ²	1	President of the Commission is a lawyer and other members are changing depending on the subject of public procurement. Members of the Commission are never the same people.	Yes
Kolašin		No/Secretariat for Economy and Finances	1	The Commission is appointed in accordance with Article 59 of the Law on public procurement.	Yes
Kotor		No/Service for General Affairs	1	President of the Commission is a lawyer, one member is economist, and other members are professionals from the field of public procurement.	Yes

¹ Municipality of Budva – Public procurement unit was established in 2013. Until 2013, the public procurement officer functioned as a member of the cabinet of the Mayor of the Municipality of Budva.

² In the decision on reorganisation of the Municipality of Herceg Novi, which should come into force by the end of the current (2013) year, it is planned to establish the unit or public procurement.

Mojkovac	No/ Service of the Manager	1	At least one member is a graduated lawyer; Specialists with expertise in the area which is the subject of public contract; a person employed at the contracting authority.
Nikšić	No/Service of the Mayer ¹	2 public procurement officers and 2 persons for technical assistance	The head of the Commission is a graduated lawyer, other members of the commission are changing depending of the subject of public procurement
Pljevlja	No/Secretariat for General Administration	1	Odd number of members (at least 3). President of the Commission is always a graduated lawyer. Members are Specialists with expertise in the area which is the subject of public contract
Plužine	No/Secretariat of Local Government- Department for collection of public revenues	1/ Independent Advisor II –for the collection of local public revenues and public procurement	A graduated lawyer and additional two or four members, depending on the subject of public procedure.
Podgorica	Yes/Service for public procurement	3 systematised positions, 1 public procurement officer	Commissions usually have 3 members, and sometimes five members. The Chair of the Commission is a graduated lawyer and the other members are one economist and one (or more) Specialists with expertise in the area which is the subject of public contract
Rožaje	No/Secretariat of General Administration	1/Independent adviser for public procurement	Local self-government employees in accordance with distribution foreseen by the Law.
Tivat		1	A graduated lawyer; Specialists with expertise in the area which is the subject of public contract; Support staff who assists in writing of minutes (Councillor from oppositional party).

¹ New decision on the systematisation of job positions in Municipality of Nikšić foresees opening of the unit for public procurement.

Although the Law on Public Procurement clearly defines the composition of the Commission for Opening and Evaluation of Bids,⁶⁰ the table shows certain deviations in some municipalities. Public procurement officers generally agreed that the law regulates this issue well, but there are some opinions on possible improvements present as well. The suggestions are that passing of the professional examination for performing of public procurement tasks should be mandatory for all members of the Commission, and that responsible person at the contracting authorities (directors, etc) should be educated about public procurement procedures. Also, in their opinion, increasing the number of people working on public procurement is a priority, as well as improving of their financial position, due to the „difficulty and responsibility of the work they perform“

60 “The public procurement procedure shall be conducted by the Commission for the opening and evaluation of bids appointed by the contracting authority simultaneously with the adoption of decision on initiating the procurement procedure. The Commission referred to in paragraph 1 of this Article shall be consisted of an odd number of members. At least one member of the Commission for the opening and evaluation of bids shall be a graduated lawyer. Specialists with expertise in the area which is the subject of public contract shall be appointed as members of the Commission for the opening and evaluation of bids. At least one member of the Commission must be employed with the contracting authority. The Commission for the opening and evaluation of bids may be appointed for the period of 1 year.”, Article 59, Law on Public Procurement, Official Gazette of Montenegro, No. 42/11

4. PROBLEMS IN IMPLEMENTATION OF PUBLIC PROCUREMENT IN LOCAL SELF GOVERNMENT

Although the Law on Public Procurements is to a large degree aligned with the acquis, Institute Alternative already in May 2012 warned about incompleteness of certain norms which leave a wide space for corruption, as well as about unclear definition of qualifications for participation in specific procedures, especially when it comes to shopping.⁶¹ Implementation of the Law so far “contributed” to joint position of all bidders that technical preconditions for realisation of public procurement are largely slowing down the procedure, which in turn additionally complicates actual procurement.

While working on this analysis, and having in mind that our focus was implementation of public procurement on local level, we conducted a poll among employees dealing with public procurement in local self-governments in order to gain insight of their direct experience in implementation of the Law. After analysing their responses, we can divide them regarding their opinion about:

1. formalities⁶² envisaged by the Law that slow down the whole of procedure;
2. need to improve specific procedures (especially regarding legal deadlines for implementation of open procedure, i.e. precise defining of shopping method);

⁶¹ See: Corruption and Public Procurement, Institute Alternative, May 2012.

⁶² Sealing, returning of tender documents, etc

3. necessity to improve existing legal solutions.

Employees dealing with public procurement find that the whole of procedure for public procurement is unnecessarily burdened with formalities that slow down the procurement, and because of:

“not so important mistakes i.e. errors on the side of bidders, and also on the side of contracting authority, which leave space for appeals, lead to delaying of procedure which in turn violates deadline and envisaged financial framework for the specific procurement. Principle of efficiency and economy is in this case significantly violated”⁶³

Also, employees point out that the procedure is unnecessarily too long and that it should be shortened, as well as 37 days deadline for submitting bids in open procedure of public procurement, which can be shorten to 22 days, and in case of urgent procurement to 15 days. Having in mind that the Article 89 of the Law on Public Procurement envisages possibility to extend the deadline, it is logical that it can also be shortened.⁶⁴

Problems in the implementation of public procurement procedure shopping method are numerous, in the opinion of public procurement officers, and large number of problems concerns to definition of core activity. Envisaged criteria for participation in public procurement shopping method – defined basic, core activity – in practice can hinder selecting of better bid with better quality, in cases where it is not predominant activity of the bidder. Also, small number of bidders can meet these criteria, and in many cases bidders do not have the activity specified in tender defined as their predominant activity, but they do have it

63 Replies of the public procurement officers to the questionnaire sent by Institute „Alternative“, November 2013.

64 “The time limit for submission of bids must be appropriate to the time necessary for preparation of the acceptable bid. In case that the preparation of the bid requires review of comprehensive tender documents or comprehensive technical characteristics or specifications, site visits or the like, the contracting authority shall envisage the extension of the time limit.” Article 89 of the Law on Public Procurement, „Official Gazette of Montenegro“, No. 42/11

envisaged in their statute. Employees also say that for two or more of services predominant activity cannot be determined. The fact that draft contract is not delivered during the procedure is also problematic, because it may happen that bidder refuses to sign the contract after the procedure is completed.

Employees believe that in the process of procurement by shopping method in addition to the lowest price criteria it is necessary to add the criteria of economically most profitable tender, in order not to favour price compared to the quality of the offer. The rationale is that the criterion of “the lowest price offered” substantially contributes to the very poor quality of the offer which is ranked as the first. There are also proposals that in the future the shopping method does not require a predominant activity, but a certificate of registration, as well as other conditions and evidences that would ensure that the offer is of good quality.

Municipal public procurement officers also see as obstacles for implementation of the Law on Public Procurement the following: packaging of bank guarantees in open procedure; insufficient percentage (15%) for contingency and additional services in negotiated procedure; too high of a number of parties covered by the Law.

In line with problems they encountered in practice, employees propose the following amendments: introduction of negative references (black and white lists), i.e. possibility for contracting authority to decline to contract the bidder that in previous contracts failed to meet set deadlines; envisaging the possibility that State Commission can control whether the contract was concluded in line with the draft, etc.; reducing the number of evidences bidders must submit; revoking of obligation to ask for approval of competent authority in charge of licensing.

5. CONCLUSIONS

In 2012 323 million EUR were spent on public procurement in Montenegro, which is 9.72% of GDP. In comparison to the previous years, it is noticeable that public procurement in relation to GDP is declining. In the same period local self-governments spent little over 17 million EUR for public procurements. Number of bids on tenders is declining steadily since 2010. Number of parties obliged to adhere to the Law on Public Procurement has been reduced from 724 in 2012 to 698 in 2013.

Number of corruption complaints in public procurement is still negligible, so in 2012 there was only one complaint about corruption, and one about conflict of interests. Local action plans for fight against corruption and organised crime do not envisage measures related to preventing of corruption in public procurement, nor the activities aimed at solving specific problems in local self-governments in fields of high corruption risk.

Work on improvement of legislative framework, already to a high degree aligned with relevant EU directives, has been continued. However, process of preparation of these legal solutions is characterised by non-openness of competent institutions, having in mind the fact that there was no public call for participation of interlocutors in the working group tasked to prepare amendments to laws, and that representatives of non-governmental organisations are not included in the composition of Coordination Body that monitors implementation of the Strategy for development of public procurement 2011-2015. Although this body is obliged to deliver to the Government quarterly reports, there are no available information about its work. In previous period there has been progress in the process of

negotiation in the framework of negotiating Chapter 5 related to public procurement, and it is to be expected that negotiations for this part of acquis will soon be opened.

Key challenges regarding public procurements relate to weak capacities of competent bodies to implement legislation. Oversight of realisation of concluded contracts remains cause for concern. Capacities of Inspection Affairs Administration are insufficient for oversight over contracts of public procurement under 500,000 EUR, while weak capacities of State Audit Institution prevent this body to conduct more than one audit of local self-governments annually. At the moment, only in three local self-governments there are functional units for internal audit. Law on Public Procurement does not envisage preventing of conflict of interest on the side of the State Commission. Instead, this issue is defined by the rules and procedures of the State Commission.

Official documents related to the work of competent institutions, as well as opinions of persons working on the implementation of the Law suggest numerous difficulties in implementation of new legislation. Transparency of the process is still problematic. Although the obligation of publishing of all concluded contracts on Public Procurement Portal is established, large number of contracts is still unavailable on this web page, and contracts concluded by the direct agreement. In 2012, there was a growth of expenditures related to direct agreement, the least transparent procedure for public procurement. Law on Public Procurement only regulates limit of application of this procedure in relation to overall budget for public procurements of contracting authorities for the previous year, and does not envisage that this procedure should be used only in extraordinary circumstances and with mandatory explanation. Individual reports of parties obliged to adhere to the Law regarding application of legislation on public procurements in 2012 are not published on Internet presentation of the Public Procurement Administration, although the annual report of this institution claims that they are.

Public Procurement Administration makes annual report based on the information received from contracting authorities, without possibility to verify the accuracy of information. It is still unclear in Montenegro how the accountability of managers and employees that deliver inaccurate information is established. This limitation can seriously impede objectivity of statistics and reports, not only in the field of public procurement. Also, small number of contracting authorities submits to the Public Procurement Administration report on record keeping, content of records, report on corruption, and forms for official records and record keeping on violation of anti-corruption regulations. 6.2% of parties obliged by the Law did not deliver reports on public procurements for 2012. Out of 44, 41 are local public institutions or enterprises established by municipalities. 19 parties obliged by the Law did not meet this obligation in 2011.

Problem of inadequate planning of public procurements is still very much present. For all units of local self-government in this research there were significant differences between planned and realised public procurements in 2012. None of local self-governments conduct analysis of the market and estimate realistic needs of the municipality before developing plan for public procurements. Data about specialised trainings for planning of public procurement for employees of municipalities are not available in annual report of Public Procurement Administration or on Internet presentation of municipalities. Capacities for conducting of public procurement of local self-governments are also limited. Only two municipalities out of fourteen have established Unit for public procurement, while only four have more than one employee dealing with this issue. Without specialised units for public procurement and more people involved in the work on these procedures it is not possible to establish core of experts for this field on local level, which in turn is a priority in order to secure expert support. Although passing professional examination is mandatory for working on public

procurements, employees in four municipalities did not meet this legal precondition.

Employees dealing with public procurements in local self-governments in this research see as the principal problem for implementation of this Law long tender procedure and too long deadlines for submitting bids when speaking about open procedure, and defining of preconditions for participation in shopping method. Beside this, they believe that too many formalities influence the length of the procedure, as well as possibility to appeal in all stages of the procedure.

6. RECOMMENDATIONS

Competent institutions, primarily the Ministry of Finance and Public Procurement Administration should increase transparency in public procurement procedures and reduce the risk of corruption through legislative and institutional changes.

In this respect it is necessary to:

- ✓ Involve the stakeholders in all phases of the work on the amendments of the legislation in the field of public procurement, as well in monitoring of the implementation of the Strategy of development of the system of public procurement;
- ✓ Make available all concluded public procurement contracts on the Public Procurement Portal, including those concluded by direct agreement;
- ✓ Work on further reduction of the number of parties obliged to adhere to the Law on Public Procurement.

Through the amendments and changes of the Law on Public Procurement it is necessary to:

- ✓ Determine legal liability of the contracting authorities who fail to submit reports on public procurement; reports on violation of anti-corruption rules or submit incorrect or incomplete data;
- ✓ Prescribe prevention of conflict of interest of the State Commission for the Control of Public Procurement;
- ✓ Prescribe use of direct agreement in exceptional circumstances with an obligatory explanation of its application;

At the level of local self-governments it is necessary to:

- ✓ Revise local action plans for fight against corruption by including separate units which will prescribe measures for prevention of corruption in public procurements;
- ✓ Make available all reports on conducted public procurements, as well as annual reports on the web sites of municipalities, as well as on the web site of the Public Procurement Administration;
- ✓ Conduct market analysis and assessment of real needs of local self-governments, in order to adequately assess the value of public procurement, prior to preparing of public procurement plans in municipalities;
- ✓ Draw up public procurement plans through cooperation of secretariats and other organizational units in municipalities and public procurement services;
- ✓ Establish units for public procurement in all local self-governments;
- ✓ Provide professional training for public procurement officers on realistic and timely planning of public procurement. In that regard, it is necessary to define groups and specific types of public procurement in order to identify priorities for the training and selection of participants;
- ✓ Regularly publish information on conducted trainings for public procurement officers and other persons involved in implementation and control of public procurements on the web sites of Public Procurement Administration and municipalities. Managers in municipalities and members of tender committees should be involved in professional awareness programs about public procurement procedures.

The capacities of State Audit Institution and Administration for Inspection Affairs need to be strengthened in order to enable greater number of audits of municipal budgets and number of inspections.

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6. “PIFC Development in Montenegro – Civil Society Standpoint”, Institute Alternative, June 2012

Reports:

1. Report on analytical overview of the harmonisation of legislation with EU acquis in Chapter 5 - Public procurement
2. Report on analytical overview of the harmonisation of legislation with EU acquis in Chapter 23 – Judiciary and Fundamental Rights
3. Report on number o corruption cases for period October-December 2012, Directorate for Anti-Corruption Initiative, January 2013
4. Public Procurement Report in Montenegro for 2012, Podgorica, May 2013
5. Public Procurement Report in Montenegro for 2011, Podgorica, May 2012
6. Report on Control Audit in Municipality of Kotor, State Audit Institution, Podgorica, January 2013
7. Report on Control Audit in municipalities of Nikšić, Danilovgrad, Ulcinj, Kolašin, Rožaje. State Audit Institution, September 2009

8. Report on work of the Administration for Inspection Affairs for May 2013, Podgorica, June 2013
9. Montenegro Progress Report for 2013, COM(2013) 700, 16. 10. 2013
10. Report on work of the State Commission for Control of Public Procurement, June 2013
11. Report on work of the Administration for Inspection Affairs for 2012
12. Audit Report on Final Budget Account of the Municipality of Bar for 2011, State Audit Institution, October 2012
13. Audit Report on Final Budget Account of the Municipality of Bijelo Polje for 2012, State Audit Institution, October 2013
14. Audit Report on Final Budget Account of the Municipality of Danilovgrad for 2005, State Audit Institution, June 2006
15. Audit Report on Final Budget Account of the Municipality of Herceg Novi for 2009, State Audit Institution, September 2010
16. Audit Report on Final Budget Account of the Municipality of Kolašin for 2006, State Audit Institution, August 2007
17. Audit Report on Final Budget Account of the Municipality of Kotor for 2010, State Audit Institution, October 2011
18. Audit Report on Final Budget Account of the Municipality of Nikšić for 2004, State Audit Institution, December 2005
19. Audit Report on Final Budget Account of the Municipality of Plav for 2011, State Audit Institution, December 2012
20. Audit Report on Final Budget Account of the Municipality of Rožaje for 2007, State Audit Institution, September 2008
21. Audit Report on Final Budget Account of the Municipality of Tivat for 2010, State Audit Institution, September 2011
22. Audit Report on Final Budget Account of the Municipality of Ulcinj for 2005, State Audit Institution, April 2007

Replies of the public procurement officers to the questionnaire sent by Institute Alternative:

Municipalities

1. Begović Zoran, Municipality of Herceg Novi
2. Bošković Ksenija, Municipality of Danilovgrad
3. Gredo Slobodan, Municipality of Tivat
4. Erceg Zoran, Municipality of Podgorica
5. Jablan Milica, Municipality of Cetinje
6. Kalač Mersudin, Municipality of Rožaje
7. Licina Emina, Municipality of Bar
8. Lučić Vera, Municipality of Plužine
9. Peraš Vera, Municipality of Kotor
10. Stojković Marija, Municipality of Nikšić
11. Šćepanović Dušan, Municipality of Kolašin
12. Šubarić Blažo, Municipality of Pljevlja
13. Zejak Predrag, Municipality of Mojkovac

Public institutions and enterprises

1. Dedeić Armina, Tourist Organization, Rožaje
2. Dragović Zoran, PE “Water Supply and Sewerage”, Danilovgrad
3. Fetahović Erdžan, PI “Heritage Museum Ganića kula”, Rožaje
4. Kaluđerović Vojislav, Cultural Center, Tivat
5. Kusovac Marija, Mediterranean Sports Center, Budva
6. Mišković Slavica, PE “Water Supply and Sewerage”, Tivat
7. Mrkaić Tanja, Tourist Organisation, Herceg Novi
8. Murić Amela, PE “Water Supply and Sewerage”, Rožaje
9. Pavićević Dijana, PI “Zahumlje”, Nikšić
10. Petrović Milka, Tourist Organization, Bar
11. Petrović Željka, PE “Communal Services”, Bar
12. Popović Biljana, PE “Communal Services”, Danilovgrad
13. Popović Ljubica, PE “Communal Services”, Tivat

14. Sekulić Snežana, PE “Sports Facilities”, Podgorica
15. Šaranović Perica, PE “Water Supply and Sewerage”, Budva
16. Tahirović Adnan, Cultural Center, Rožaje
17. Tripunović Itana, Tourist Organisation, Budva
18. Tujković Magdalena, Tourist Organisation, Tivat
19. Vujović Velibor, Cultural Center, Bar
20. Vukčević Ana, PE “City Waste Disposal”, Podgorica
21. Vušurović Dragana, PE “Funeral Services”, Budva

Web sites:

1. Capital city Podgorica – www.podgorica.me
2. Municipality Bar – www.bar.me
3. Municipality Budva – <http://www.budva.me/mne>
4. Municipality Danilovgrad – <http://danilovgrad.me/>
5. Municipality Herceg Novi – <http://www.hercegnovi.me>
6. Municipality Kolašin – <http://www.kolasin.me/>
7. Municipality Kotor – <http://www.cg.opstinakotor.org/>
8. Municipality Mojkovac – <http://www.mojkovac.me/>
9. Municipality Nikšić – <http://www.niksic.me/>
10. Municipality Pljevlja – <http://www.pljevlja.me/>
11. Municipality Plužine – <http://www.pluzine.me/>
12. Municipality Rožaje – www.rozaje.me
13. Municipality Tivat – www.opstinativat.com
14. Old Royal Capital Cetinje – <http://www.cetinje.me/>
15. Union of Municipalities of Montenegro - <http://www.uom.co.me/>

LIST OF USED TERMS AND ACRONYMS

Public procurement – The set of all actions and activities undertaken by the public sector for cost-effective procurement of goods, services and works.

Corruption – The abuse of office and violation of the law for obtaining certain, usually material benefit.

GDP – Gross Domestic Product

Acquis – European Union law

EU Directive 2004/17 - Directive 2004/17/EC of the European Parliament and the Council from March 31, 2004 which harmonises the procurement procedures of entities operating in the sector of water, energy, transportation and postal services sector.

Bodies of local-self government units: Municipal Assembly, Assembly of the Capital City and the Old Royal Capital, President of Municipality, Mayor of the Capital City and the Old Royal Capital, local administration and other bodies and services established by the local self-government unit

Public services - University of Montenegro, public enterprises, public and other institutions, state funds and other entities and organizations performing public competences established by the state of Montenegro, or a local self-government unit;

Direct agreement - The total annual value of public procurement of a contracting authority conducted by direct agreement may not exceed: 10% of its total annual executed public procurement budget in the previous year, provided that the budget of that

contracting authority does not exceed EUR 200,000; 9% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority amounts from EUR 200,000 to EUR 500,000; 8% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority amounts from EUR 500,000 to 800,000; 7% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority exceeds EUR 800,000. A direct agreement shall be concluded by the head, or the responsible person of the contracting authority.

Open procedure –A procedure wherein all interested persons may submit bids according to requirements specified in the contract notice for the open procedure and tender documents.

Shopping method –It is conducted by the public procurement officer on basis of requests for submission of bids published on the Public Procurement Portal. In the public procurement procedure conducted by shopping method, the bidder must meet the compulsory requirement for participation in the public procurement procedure that it was registered for performing the function which is a subject-matter of the public procurement, as its basic function. The decision on selection of the most favourable bid by shopping method shall be made by application of the lowest offered price criterion. The public procurement procedure by shopping method may be conducted no more than once a year for the same subject-matter of public procurement.

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