

6TH INTERNATIONAL STUDENT CONFERENCE ON LOCAL SAFETY AND SECURITY

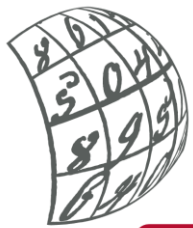


UNIVERZITET CRNE GORE
PRAVNI FAKULTET



University of Maribor

Faculty of
Criminal Justice and Security



arrs

SLOVENIAN RESEARCH AGENCY

PREVENTION OF CORRUPTION IN THE PUBLIC PROCUREMENT SYSTEM IN MONTENEGRO

Anđela Đorović

Katia Pejović

Tina Vujović

Berna Fetahović

The background of the slide features several black silhouettes of business professionals in various poses, such as walking, standing, and sitting. They are positioned on a path made of large, light blue puzzle pieces that recede into the distance. The overall theme is business and progress.

The content :

➔ Initial consideration

➔ Main risks for corruption in Montenegro

➔ Best practices in the fight against corruption

➔ Recommendations – prevention

➔ Rule on anti-corruption in the public procurement system

Initial consideration

- ★ **Public procurement represents a sensitive area of state activity, which is closely related to the application of state sovereignty.**
 - ★ **Any deviation from legal norms and other regulations that circumvent public procurement is a risk factor for corruption.**
 - ★ **In Montenegro, the public procurement plan is adopted by January 31, after the budget is adopted.**
 - ★ **The public procurement system in Montenegro must be in compliance with European Union directives, which should be a guarantee that our system will be functional and fair to all users.**
 - ★ **Public procurement involves spending large sums of public money. Namely, on average 8-16% of GDP is spent on public procurement in every modern country.**
- 
- An illustration in the background shows two white 3D figures shaking hands. Behind them is a bar chart with four blue bars of increasing height. A large orange arrow points upwards and to the right, starting from the top of the first bar and extending over the top of the fourth bar.

Main risks for corruption in Montenegro



- *The Law on Public Procurement in Montenegro particularly emphasizes the importance of anti-corruption rules that must be followed by contractors, bidders and other participants in the process.*
- ➔ **Two parties: the contractors and the bidder, and both parties can largely corrupt the procedure at any stage.**

Contractors

- **The biggest risk factor for corruption is ignorance of the law by the management of public clients.**
- **Contractors continue the practice of irrational planning of goods and services on an annual basis, and bidders respond to given tenders by substituting products or inferior work or services that do not fulfill the contract.**

Key risks for corruption in Montenegro



- The contractor usually makes unlawful demands after the public opening of bids:
 - a) Price changes;
 - b) changes in the content of the offer; or
 - c) changes due to which the unacceptable offer becomes acceptable.
- High-ranking officials->the largest part of the bribe
- The contractor usually determines the conditions under which national or territorial discrimination by the subject of procurement or other discrimination of economic entities or discrimination based on the classification of activities performed by the economic entity.

Main risks for corruption in Montenegro

Bidder

>In most cases, it supports the preparation of discriminatory technical specifications and influences the work of the members of the Commission for the opening and evaluation of the tender.

>The offer is made by the bidder. In this offer, he may unlawfully offer several procurement items at the price he has set in euros, although according to Article 120. of the Act it is possible to offer only one item.

Additional risks

*Tendering phase

- Absence of a public announcement of the invitation to tender
- information about the award of the contract is not announced and not published
- lack of competition
- lack of access to the records of the procedure

An example from Montenegro

The country's largest infrastructure project without a tender and under a veil of secrecy

In 2015, Montenegro awarded the country's largest infrastructure project - the construction of a section of the Bar-Boljara highway - worth 809 million euros under an intergovernmental agreement with China. The state-owned Chinese bank EXIM approved a loan for the construction of the Smokovac-Mateševo section. The government of Montenegro also agreed that the Chinese company would hire domestic subcontractors to build the section worth 30 percent of the contract price, but by mid-2018, the figure was 50 percent, meaning the value of domestic subcontractors was 404 million. The highway construction project is shrouded in secrecy, as the government has declared most of the information a trade secret and its intellectual property in advance. The section was supposed to be completed by May 2019, but delays occurred and the contract value was exceeded by about 100 million euros, so the road was not completed until 2022.



Best practices in the fight against corruption

The "**white list**" principle is one of the mechanisms that facilitates the selection of bidders in public procurement tenders. This approach implies that companies that meet strict anti-corruption criteria can be placed on the white list of bidders. In order for a company to be on the white list, it is necessary to prove that its previous operations are not the subject of corrupt affairs, that it adheres to ethical values and that it adheres to anti-corruption principles.

- The introduction of "**black lists**" or lists of bidders with negative references can also be considered. It is about the creation of a register of companies that previously did not fulfill their contractual obligations, or violated the law by participating in corrupt practices.

Recommendations – prevention



★ According to **the Law on Public Procurement** and the Use of Illegal Practices, the customer is obliged to:

- may not determine the conditions under which there is national or territorial discrimination according to the subject of procurement or other discrimination against economic entities, nor discrimination resulting from the classification of activities carried out by the economic entity. **(Article 10)**

- **(Article 38)** In this case, the contracting entity shall:

1) exclude an entity or a candidate from the procurement procedure qualifier, i.e. a tenderer who has directly or indirectly provided a service, offered, promised, or otherwise created the appearance of a gift or other benefit to a contracting authority procuring official, a member of the implementing commission of the public a person who participated in the preparation of a bid to a person who was involved in the planning of the award of a contract, or to another person with the aim of obtaining confidential information or influencing the decision to award a contract to influence the actions of the contracting authority;

Recommendations – prevention

2) records the cases from item 1, submits a report to the competent statea report to the competent state authorities so that they take measures in accordance with the law, and informs the Department;

3) shall conduct risk analysis and control in public procurement procedures.

- **(Article 39)**A person employed in public procurement or any other person connected with the contracting authority who has knowledge of corruption in public procurement shall be obliged to inform the authorized person of the contracting authority, the Ministry, the authority responsible for preventing corruption and the competent public prosecutor.

★ The **principles** on which public procurement should be based are the principle of economic and efficient use of state/public funds.

- the principle of competitiveness
- the principle of transparency
- the principle of equality



Recommendations – prevention



- **(Article 57, paragraph 3)** The contracting authority shall be obliged to describe the subject matter of the contract in the tender documents in such a way as to define its needs and minimum requirements regarding the elements and characteristics of the subject matter of the contract
- **(Article 79)** The subject matter of the procurement shall be defined by its nature and designation in such a way that it constitutes a technical, technological, functional or other unit and enables the preparation of an appropriate tender.
- **(Article 91)** A quality mark is a proof (certificate, attestation or other document) confirming that certain works, goods, services, processes or procedures meet certain requirements.

Rule on anti-corruption in the public procurement system

- ➔ **The contractor shall maintain records for anti-corruption purposes. As for the records themselves, they shall be kept only bidders whose bids have been rejected are recorded.**
- ➔ **The contractor shall keep an official record if there is a reasonable suspicion or a reasonable allegation that an action has been taken that constitutes a violation of anti-corruption regulations. All data shall include data contained in this official log shall be data contained in the anti-corruption records kept in written or electronic form. The Contractor shall be obliged to prepare a report on the anti-corruption violation regulations.**



Conclusion:

- ★ **All mentioned and eventual measures must be consistently applied, updated in case of an emergence of new occurrences . Regular education of employees and third parties about the rules is key to understanding and accurate application of these provisions. That way only, by retention of all these measures can we create a strong system, without corruption.**

Literature:

- 1.The Law on Public Procurement (*“Official publication Montenegro”, number 74/2019*)
- 2.Ministry of Finances, Official Sheet of Montenegro, number 42 (2011) Manual on operating principle and content of evidences on breaking of anticorruption rules (articles 1,2,4,5)
3. Prof.dr Markovic M, Radovic K (2008). Manual of Public Procurement (p.18, 52, 79). Personnel administration

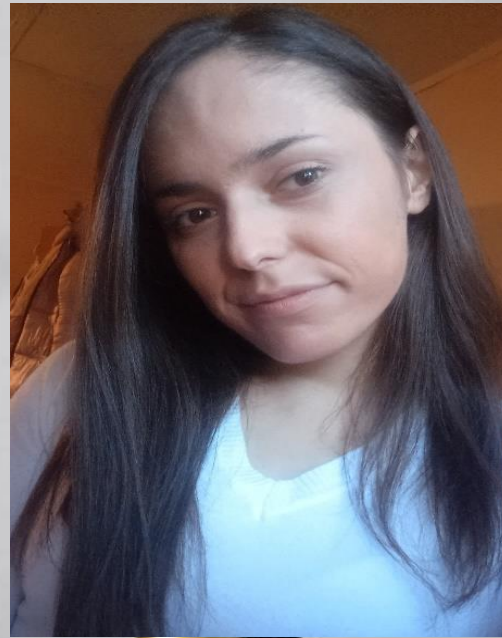
Thank you for your attention!



Dorović Anđela,



Pejović Katia,



Tina Vujović,



Berna Fetahović

