

# **Strategy for Development of the Public Procurement System in Montenegro for the period 2016 – 2020**

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## Acronyms

<b>AP</b>	Action Plan
<b>GDP</b>	Gross Domestic Product
<b>MNE</b>	Montenegro
<b>SC</b>	State Commission for Control of Public Procurement Procedures
<b>EU</b>	European Union
<b>EC</b>	European Commission
<b>DEUMNE</b>	Delegation of European Union in Montenegro
<b>SAI</b>	State Audit Institution
<b>PPP</b>	Public-Private Partnership
<b>PPA</b>	Public Procurement Administration
<b>IPA</b>	Instrument for Pre-accession Assistance
<b>SME</b>	Small and Medium Enterprises
<b>PAMNEEU</b>	Program for Accession of Montenegro to the European Union
<b>ECJ</b>	European Court of Justice
<b>MF</b>	Ministry of Finance
<b>MBA</b>	Montenegro Business Alliance
<b>ME</b>	Ministry of Economy
<b>MSDT</b>	Ministry for Sustainable Development and Tourism
<b>MIST</b>	Ministry for Information Society and Telecommunications
<b>IT</b>	Information Technology
<b>AC</b>	Administrative Court
<b>TEG</b>	Tendering Expert Group
<b>AIA</b>	Administration for Inspection Affairs
<b>HRMA</b>	Human Resources Management Authority
<b>CEMNE</b>	Chamber of Economy of Montenegro
<b>SSP</b>	Supreme State Prosecutor
<b>UE</b>	Union of Employers
<b>UMMNE</b>	Union of Municipalities of Montenegro
<b>PPL/LPP</b>	Public Procurement Law/Law on Public Procurement
<b>LAP</b>	Law on Administrative Procedure
<b>CA</b>	Contracting Authorities
<b>B</b>	Bidders
<b>GMNE</b>	Government of Montenegro
<b>PMNE</b>	Parliament of Montenegro

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## INTRODUCTION

Public procurement represents an important component of each contemporary economy. During past years a good management over public procurement became an essential presumption of a good governance and progress of the state. Its importance for social and economic development is reflected in the fact that the value of public procurement has a significant share in the Gross Domestic Product (*GDP*) of each country (10-20%). The value of public procurement in Montenegro (*MNE*) is depicted in the following chart.

Year	Total value of public procurement (in euros)	GDP (in euros)	% of share of PP in the GDP	Budget (in euros)	% of share of PP in the Budget
	A	B	A/B*100	B2	A/B2*100
2011	377,260,094.38	3,234,000,000.00	11.67%	1,400,606,987.97	26.94
2012	323,155,258.90	3,149,000,000.00	10.26%	1,408,299,482.92	22.95
2013	277,001,460.50	3,335,900,000.00	8.30%	1,375,793,668.99	20.13
2014	327,161,639.73	3,400,000,000.00*	9.62%	1,337,605,069.81	24.45

\*GDP of Montenegro according to preliminary data for 2014<sup>1</sup>

*Chart 1: Spending of public funds through public procurement in relation to the annual budget and the GDP<sup>2</sup>*

An efficient public procurement system is necessary for achieving the goals of the free market and providing the conditions for market competition. The public procurement system is based upon the principles of transparency, equal treatment, free market competition and nondiscrimination.

The public procurement in the European Union (EU) encompass the set of activities of contracting authorities from the EU member states for the purposes of procurement of goods, provision of services or execution of works. The aim of European legislation in this area is to allow for the service providers, deliverers of goods or executors of works a possibility to compete at public tenders in the EU member states. The aim is, on one side, to strengthen the economic development and efficiency, but also to provide a full sense to the unique market of the EU. The institutions established for that purpose should ensure observance of the legislative framework at all levels as well as an efficient legal protection system in public procurement procedures which is, inter alia, based upon the right of submission of an appeal.

The harmonization of national public procurement systems of the member states is one of crucial instruments for existence of the internal market and removal of barriers for a free trade within the EU. The revised EU Directives on public procurement envisage an even more intense usage of public procurement as an instrument for promotion of a sustainable development, which has been achieved by fulfilling high social and environmental criteria as

<sup>1</sup> Public Procurement Administration, *Report on Public Procurement in Montenegro for 2014*, Podgorica, May 2014.

<sup>2</sup> Public Procurement Administration, *Report on Public Procurement in Montenegro for 2014, 2013, 2012 and 2011*, Podgorica, May 2014.

well as increasing availability of public procurement process for the small and medium enterprises.

The negotiations in this chapter were opened on 18 December 2013 at the Intergovernmental Conference and on that occasion the European Commission (EC) defined for Montenegro three comprehensive and complex closing benchmarks, the fulfilling of which required planning and undertaking numerous activities, envisaging a set of legislative changes and amendments, development of strategic documents and reports in order to monitor the progress of the entire system.

- Montenegro aligns its national legislative framework covering all areas of public procurement, including in particular concessions, public-private partnerships, and defence procurement, in accordance with EU procurement legislation and in conformity with the Treaty on the Functioning of the EU and other relevant provisions of the *acquis*.

- Montenegro puts in place adequate administrative and institutional capacity at all levels and takes appropriate measures to ensure the proper enforcement and implementation of national legislation in this area in good time before accession.

This includes, in particular:

(a) the implementation of Montenegro's Strategy for the Development of the Public Procurement System 2011-2015 and the Action Plan for its implementation to improve its administrative capacity, including proper training at all levels for all stakeholders;

(b) the preparation of practical implementing and monitoring tools (including administrative rules, instructions, manuals, and standard contract documents);

(c) the strengthening of control mechanisms which are necessary to ensure full knowledge and reliability of the system, including close monitoring and enhanced transparency of the execution phase of public contracts based on systematic risk assessments with prioritisation of controls in vulnerable sectors and procedures;

(d) effective functioning of the remedies system, including in the area of concessions, public private partnerships and defence procurement;

(e) measures/actions related to the prevention of and fight against corruption and conflict of interest in the area of public procurement at both, central and local level.

- Montenegro demonstrates a track record of a fair and transparent public procurement system, which provides value for money, competition, and strong safeguards against corruption.

The activities on fulfilling the closing benchmarks are numerous and all of them are either commenced or planned, defined by the respective time limits and submitted to the Government for their information. Some of those activities include:

- Adoption of a new Law on PPP.



- Adoption of a new Public Procurement Law (*PPL*), for which the Government shall determine a deadline and, according to the plans, it shall be in the I quarter of 2017, and it shall be harmonized with the new set of Directives of 2014 regulating this area.
- Establishing of an electronic public procurement system, with estimated value of 1.65 million euros, through the Instrument for Pre-accession Assistance (IPA) 2014.
- Development of the Strategy for Development of the Public Procurement System for the period 2016-2020.

This Chapter is to a less or greater extent connected with the following Chapters and, additionally, with the Strategy for Reform of Public Administration for period 2016-2020 as well as the Program for Reform of Management of Public Finances of December 2015:

**Chapter 22** (*Regional Policy and Coordination of Structural Instruments*) – structural funds and cohesion fund of the EU, decentralized management;

**Chapter 23** (*Judiciary and Fundamental Rights*) – in the part concerning the anti-corruption policy;

**Chapter 31** (*Foreign Relations*) – regarding the international agreements in public procurement field;

**Chapter 32** (*Financial Supervision*) – establishing of adequate capacities for internal and external audit of public procurement procedures;

**Chapter 33** (*Financial and Budget Provisions*) – an independent internal and external control/audit shall be performed in view of cashing, settlement and putting of traditional own means at disposal.

The particular challenge is represented in harmonization of Montenegrin regulations in public procurement field with the set of new directives published by the EC in May 2014 and their full implementation in practice. The member states have the obligation of transposing these directives within a two-year period, i.e. until May 2016. Three new directives (*utilities, classical and the directive on concessions*) support the economic growth and reducing of deficit by speeding up the public procurement procedure, reducing the costs of participation in that procedure and making it less bureaucratic, while strengthening the position of the small and medium enterprises (*SMEs*).

The Montenegrin Strategy for Development of the Public Procurement System for the period 2011-2015 is being implemented. There has been established the mechanism for a regular reporting. This strategy has been developed as a result of the analysis on how the public procurement practice is being conducted in the country and with a relevant experience from other countries. During preparation of the new Strategy document for the period 2016-2020, a number of essential gaps and priority issues related to the Strategy were recognized by the key stakeholders. The raised issues had been considered, ratified and checked before the Strategy was developed. The gaps and issues were discussed and ratified at the sessions of the Working Group which prepared the Strategy and at special workshops/trainings organized by the PPA, that is, through particular public consultations organized by the PPA, CE of MNE and the NGO sector, where more than 300 representatives of contracting authorities, bidders and civil sector took an active participation. Thus, this Strategy was developed on basis of a participative process of all parties involved.

The key goals of this Strategy are as follows:

- Improvement of the public procurement system through a constant monitoring and implementation of necessary regulatory changes;

- Strengthening of access to public finances;
- Increasing transparency, efficiency and improving information flow;
- Keeping up with the current trends (*green procurement, socially responsible procurement, innovative procurement, electronic procurement, support to the SMEs and so on*);
- Further development of human resources involved in public procurement;
- Further harmonization with the EU Directives.

In addition, this Strategy is expected to focus on the achievement of a full compliance with the *acquis* and to set out the ways in which Montenegro would ensure strong implementation capacities at all levels.

## **I LEGISLATIVE FRAMEWORK OF THE PUBLIC PROCUREMENT SYSTEM IN MONTENEGRO**

The legislative framework of the public procurement system in MNE is based upon the PPL and a special Law on Concessions which is currently in its developing stage. These laws shall be fully in line with the new EU Directives by the I quarter of 2017.

The effectiveness of implementation of the legislative framework of the public procurement system shall be monitored during the whole period and the specific measures shall be duly undertaken.

### **1.1. Description of the existing situation**

The Public Procurement Law regulates the method and procedure for procurement of goods, services and works, protection of rights in public procurement procedure and other issues relevant for public procurement. The PPL (*OG of MNE 42/11*) and the Amendments to the PPL (*OG of MNE 57/14 and 28/15*) are largely in line with:

**Directive 2004/17/EC** regulating the procurement procedures of entities operating in sectors of water management, energy, transport and postal services;

**Directive 2004/18/EC** on coordinating the procedures for awarding public works contracts, public procurement contracts for goods and public services contracts;

**Directive 2007/66/EC** amending the Council Directives 89/665//EEC and 92/13/EEC in relation to improved efficiency of the review procedure regarding award of public procurement contracts;

**Directive 2009/81/EC** on coordinating the procurement procedures for certain works contracts, contracts on procurement of goods and service contracts in the area of defence and security.

Along with the new PPL, the implementation regulations have also been adopted and they are as follows:

**Rulebook on Forms in Public Procurement Procedures** (*OG of MNE 23/15 and 31/15*),

**Rulebook on Methodology for Expressing the Sub-criteria for Selection of the Most Favourable Bid in a Public Procurement Procedure** (*OG of MNE 24/15 and 29/15*),

**Rulebook on Detailed Criteria for Establishment of a Commission for Opening and Evaluation of Bids** (*OG of MNE 24/15*),

**Rulebook on Method of Determination of a Calculation Error in a Bid in a Public Procurement Procedure** (*OG of MNE 24/15*),

**Rulebook on Amendments to the Rulebook on Method of Keeping and Contents of the Records on Violation of Anti-corruption Rules** (*OG of MNE 56/15*).

The PPL is applied to all public contracts. The basic public procurement principles are defined by the Law, and they are, primarily, transparency, competition, non-discrimination, equal treatment and the principles of cost-effectiveness and efficiency in use of public funds. An equal treatment of domestic and foreign bidders is ensured, that is, the foreign companies are allowed participation at public competitions under the same conditions which apply to the domestic companies. The PPL prescribes that a procurement procedure may be launched only provided that there are financial means allocated for that purpose by the budget or in some

other way in accordance with the Law and in case that the said procurement was envisaged in the Public Procurement Plan of that contracting authority.

Transparency is ensured by publication of laws and implementing acts at the Portal (*Montenegrin and English version*). The public procurement plans are published at the same page, along with invitations to public competitions, decisions on qualification of candidates, decisions on selection of the most favourable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes and amendments to plans, invitations, decisions and contracts as well as undertaking of other actions and measures.

In case that the public procurement plan, invitation to public competition, decision on qualification of candidates, decision on suspension of public procurement procedure, decision on annulment of public procurement procedure, public procurement contract or changes or amendments thereof submitted to the PPA for purpose of their publication are not in accordance with the Law, the PPA shall inform immediately the contracting authority about it so that the contracting authority can remove the observed irregularity within three days after receipt of the report on the irregularity. In case that the contracting authority fails to remove the irregularity within the prescribed time limit, the PPA shall publish the contracting authority's act in the submitted text and inform the public procurement inspector thereof.

The Law also provides that all contracting authorities must keep records on all public procurement procedures – on conducted procedures and concluded public procurement contracts, about which they shall report annually to the PPA. These information represent a basis for preparation of the PPA's annual report, which is then submitted to the Government and published at the Public Procurement Portal. Moreover, the PPA prepares a list of contracting authorities and publishes it on the Public Procurement Portal and submits annual reports on public procurement to the Government.

Different types of contracting authorities, including state authorities, local self-government bodies, public services and other beneficiaries of the Montenegrin Budget funds, or the budget of local self-government units or other public revenues; business enterprises, legal persons, entrepreneurs and natural persons which are financed from the Montenegrin Budget funds, the budget of local self-government units or other public revenue by more than 50%, also from the funds of a business enterprise or a legal person; business enterprises, legal persons and entrepreneurs operating in sectors of water management, energy, transport and postal transport. The PPA establishes the list and publishes it at the Public Procurement Portal. The contracting authorities who meet the requirements of the PPL are obliged to apply for entering the list of contracting authorities and to apply the Law, regardless of whether they are on the list or not.

Montenegrin legislation allows for exemptions from the PPL due to specific reasons defined by the PPL.

The procurement in the utilities sector is also covered by the public procurement regulations.

The value thresholds for classical and utilities sector are lower than the thresholds prescribed by the EU Directives due to the size of Montenegrin economy and the specific features of the economic situation.

Regarding the course of the procedure, the PPL distinguishes between the qualification requirements and the award criteria. The Law provides for a minimum number of participants in a restricted procedure. In terms of the contract award criteria, the PPL contains also the criterion for the most economically advantageous bid and the lowest price criterion.

Montenegrin PPL contains the set of anti-corruption rules, as well as the provisions related to prevention of conflict of interest.

The concessions and PPP are not covered by the PPL. A particular law regulating this area is in its final stage of revision and it shall be harmonized with the Concessions Directive 2014/23/EU, while its adoption is expected in 2016.

The new Law on PPP and Concessions, which is in the process of its finalization, provides a comprehensive coverage of this area.

Apart from the PPL and the implementing acts adopted on the basis of the PPL, there are other very important regulations which are, directly or indirectly, applied upon implementation of the public procurement procedures.

Those are, primarily, as follows:

The Law on General Administrative Procedure;

The Law on Inspection Supervision;

The Law on the System of Internal Financial Controls in Public Sector;

The Law on Obligations;

The Law on Budget;

The Law on Business Enterprises;

The Law on Utility Services and other laws regulating the areas of water management, energy, transport and postal services;

The laws regulating the area of defence and security, the Law on Minor Offences, the Criminal Code, etc.

## **1.2. Identified shortcomings of the current system**

In the **closing benchmark for Chapter 5**, there are listed all the strategic directions by which it would be necessary to conduct the activities in forthcoming period so that Montenegro could meet the requirements for its EU membership related to that chapter. In this regard, the first benchmark emphasized the activities noting that *“Montenegro shall harmonize its entire legislative system for public procurement with the acquis in all areas, with a special focus on the area of concessions, PPP and the procurement in the area of defence”*.

Accordingly, and pursuant to obligation of harmonizing the legislative system of public procurement in Montenegro with the EU acquis, the stated obligation was recognized and defined by the **Program for Accession of Montenegro to the European Union for the period 2015-2018 (PPCGEU)**, whereupon Montenegro committed to develop a new **Public Procurement Law harmonized with the EU Directives of 2014, in the I quarter of 2017**.

**Further efforts are required** for harmonization of public procurement regulations with the EU acquis, as follows:

- *Exemption from the PPL application;*
- *EU procedures are currently missing in the PPL;*
- *Proportionality of criteria and qualification requirements;*
- *Time limits in general;*
- *Relying on capacities of other entities;*
- *Nullity of public procurement contracts and alternative sanctions;*
- *Classification of parties covered by the application of the PPL is not fully in line with the EU Directives;*
- *Prior consultations with the market – involvement of candidates or bidders;*
- *Prior information notice;*
- *Life-cycle costs;*
- *Abnormally low bids;*
- *Sub-contracting;*
- *Modification of contracts and framework agreements in the course of their duration, end of a contract;*
- *Special procurement regimes «light regimes», reserved contracts for certain services of the light regimes;*
- *Monitoring of contracts;*
- *Supervision and reporting on public procurement procedures.*

Apart from the above mentioned, the identified shortcomings relate also to further improving of the prescribed procedure which is, in certain segments, burdened with unnecessary formalistic approach, the dominance of price as the only criteria for the award of contracts and requirements that don't have crucial importance on the quality of the bid and security of the realization of the future agreement, which on one hand represents a certain type of business barrier, because it requires increased costs and timeliness in preparing the bids from the bidder and limits market competition, while on the other hand it contributes significantly to delaying of the process flow causing circumstances and situations that affect the final outcome of the procedure, as well as the costs in terms of appeal fees, which is a huge expense for the bidders. It is necessary that MNE invests in better management of data in order to monitor the entire procurement cycle and to make the system more easier to use.

The problem in public procurement which is caused by the inadequacy of other laws and regulations - may not be possible to get rid of by improving regulations in the field of public procurement but it certainly has an impact on public procurement.

**The Law on General Administrative Procedure:** its procedural requirements are stricter or it takes a lot more effort than effective administrative procurements require or allow, the problem in the appeal is that the body that deals with its contents and reviewing thereof, is considering the other laws much more than the PPL within which the appeal was lodged; During IV quarter of 2015 and the I quarter of 2016, there shall be conducted a harmonization with the LAP in the part concerning public procurement, since the new LAP will start to implement as of 1 June 2016.

**The Law on Inspection Supervision:** better monitoring the of the award and implementation of contracts is required, the practical questions about who controls the application of the principles of public procurement, its policies and procedures, when and how, all those issues require a revision;

**The Law on the System of Internal Financial Controls in Public Sector:** better internal audit within contracting authorities remains crucial for improving monitoring and verification of implementation of contracts;

**The Law on Obligations:** rules and principles of the Law on Obligations, that is, review of the draft contract which is an integral part of tender documentation and its compliance with the said Law;

**The Law on Budget:** practical issues, especially for utilities sector in terms of commencing public procurement procedures (restricted procedure, qualification system); the contracting authorities act as if the allocated financial resources should be spent until the end of budget year (*the Law on Budget does not allow for the possibility of transferring the unused funds to the next year, but the projects in progress shall have the advantage*);

**The law on corporate liability:** need for further harmonization with the requirements regarding eligibility and grounds for exclusion which are included in the EU Directives on public procurement;

**The Law on Utility Services and other laws regulating the areas of water management, energy, transport and postal services:** further harmonization with the PPL is needed, hence it requires revision.

### **1.3. The main strategic goal and the results expected to be achieved in the coming period**

Public procurement is one of the market-based instruments to be used to implement the Europe 2020 strategy for smart, sustainable and inclusive growth with a view to:

- Improve conditions for conducting business with innovations;
- Encourage wider use of green procurement;
- Ensure the most efficient use of public funds;
- Open the public procurement markets of the EU.

As a candidate for EU accession, which is making progress in the negotiations, MNE shares these general development goals. These goals are reflected in changes which were incorporated in the Directives of 2014, which were focused on ensuring transparency, increasing flexibility and encouraging involvement of the SMEs in public procurement. Additional provisions relate specifically to green (environmental) issues of public procurement. Also, more emphasis is placed on conducting procurement using electronic means.

In June 2015, MNE became a full member of the WTO Government Procurement Agreement (GPA).

MNE should now address the remaining gaps and ensure a full compliance with the EU Directives on public procurement of 2014, especially regarding the Concessions Directive. In purpose of further harmonization of Montenegrin legislation with the EU public procurement system, through incorporating of a new set of directives of 2014, it is necessary to conduct an analysis of implementation of the Amendments to the PPL, which would also include the conclusions and recommendations for further improvement of the system that, through the period of implementation of the legislation, proved to be an obstacle for an efficient implementation of the public procurement system.

Therefore, the goals for a regulatory development of the public procurement system in Montenegro for the period 2016-2020 are:

- To allow the contracting authorities to conduct public procurement with minimum administrative efforts while providing the best value for money and adequate performances of the procured goods, services or executed works, with ensured transparency and integrity of the process;
- increase the ease of access of economic entities to the public procurement market, providing them with fair and equal treatment and the promotion of competition based on quality and price;

Accordingly, the specific results to be achieved during the said period are as follows:

- implementation of the plan for legislative adjustments in purpose of ensuring full harmonization with the EU Directives in public procurement field, especially in area of concessions;
- development of a new PPL which is fully in line with the EU acquis until the I quarter of 2017,
- development of corresponding implementing acts during implementation of the new PPL, with regular modifications during the said period;
- **full harmonization with other laws and regulatory acts by the end of 2017, that is, the analysis of compliance of the new PPL and other regulations relevant to the public procurement field.**

#### **1.4. Methods and main measures for achieving the set goals and planned results, with main time frames for their realization included**

Regulatory development of the public procurement system for the period 2016-2020 shall be implemented by the employees of the PPA in close cooperation with the competent services of the EU, especially the EU Delegation in MNE, with an active participation of all interested parties within the country, contracting authorities and bidders in particular, as well as other bodies and representatives of the civil society.

The measures for achieving the set goals and planned results shall be implemented in accordance with the following chronology:

- Review and revision of the PPL (SWOT analysis, public consultations, drafting of the new PPL) area foreseen for 2016;
- Adoption of the new Law on PPP is foreseen for 2016, as well as the relevant implementing regulations;
- Adoption of the new PPL is foreseen for the I quarter of 2017;
- Work on the appropriate implementing regulations shall be conducted after the new PPL is adopted, that is, during the II quarter of 2017;
- Continued work on harmonization of the new PPL and other regulations relevant for the public procurement field – foreseen for the end of 2017;
- Continued monitoring of implementation of the new PPL and identification of potential needs for further improvement of legislation in this field – continuously during 2018-2020;



- Amendments in accordance with the possible changes of legislation at the EU level (new or amended directives, as well as the rulings of the European Court of Justice (ECJ), as well as with the observed practical issues - continuously during 2018-2020.

## II INSTITUTIONAL FRAMEWORK

The main institutions in public procurement system are:

- Ministry of Finance;
- Public Procurement Administration;
- Administration for Inspection Affairs;
- Commission for Concessions and
- State Commission for Control of Public Procurement Procedures.

**MINISTRY OF FINANCE** on basis of the Decree on Organization and Method of Work of the State Administration (*OG of MNE 05/12 and 20/13*), the line ministry in the field of public procurement. In that regard, this ministry, in cooperation with other competent authorities in this area, prepares drafts of laws, other regulations and general acts, proposes to the Government development strategies and other measures in public procurement area, performs monitoring over implementation of the Law.

**PUBLIC PROCUREMENT ADMINISTRATION** performs administrative and other related professional tasks in public procurement area, and these are the following:

- 1) monitoring of realization of public procurement system;
- 2) monitoring compliance of regulations governing public procurement with the EU legislation, prepares technical basis, initiating and participation in preparing of public procurement regulations;
- 3) giving approval to contracting authorities on fulfillment of conditions for using an appropriate public procurement procedure, in accordance with the Law;
- 4) providing advisory support at request of the contracting authority;
- 5) organization and conducting of professional development and training of the staff and other persons involved in performing public procurement tasks;
- 6) organization of professional examination for performing tasks in public procurement field;

- 7) establishing and maintaining public procurement portal in purpose of ensuring transparency of public procurement;
- 8) publication of public procurement plans, tender documentation for implementation of procedure upon the invitation for public competition, decision on qualification of candidates, decision on selection of the most favourable bid, decision on suspension of public procurement procedure, decision on annulment of public procurement procedure, public procurement contracts, changes or amendments to the public procurement plan, invitation to public competition, decisions and contracts, and other acts in accordance with this Law;
- 9) preparation of a list of contracting authorities and its publication at the Portal;
- 10) promotion of conducting public procurement in electronic form;
- 11) realization of cooperation with international organizations, institutions and experts in public procurement area;
- 12) preparation and submission of the annual report on public procurement to the Government, for the previous year;
- 13) preparation of a list of bidders on basis of decisions on selection of the most favourable bid and its publication on the Portal;
- 14) preparation of the Common Procurement Vocabulary and its publication on the Portal;
- 15) issuing publications and other technical literature;
- 16) performing other tasks, in accordance with the Law.

The PPA as a key institution in the public procurement system of Montenegro currently does not have sufficient staff and technical capacities necessary for implementing all its competences. Accordingly, a new Rulebook on Internal Organization and Job Classification of the PPA was adopted at the session of the Government of MNE of 22 October 2015, whereby the number of classified job posts within the PPA has increased from 18 to 20.

In accordance with the tasks it performs, the PPA 's priorities in the coming period are as follows:

- Strengthening of administrative capacities;
- Development and establishing of an electronic public procurement system;
- Strengthening of monitoring of the public procurement system;
- Raising public awareness through education and training;
- Upgrading the performance assessment of the procurement process, risks of irregularities and factors reducing competitiveness and efficiency of the public procurement system.

In order to realize the said priorities efficiently, it is necessary to provide the PPA with an increase in number of staff as well as to improve its technical capacities. The resources at the PPA's disposal remain insufficient for an effective realization of the above mentioned priorities in the forthcoming period.

**THE STATE COMMISSION FOR CONTROL OF PUBLIC PROCUREMENT PROCEDURES** is an independent and autonomous legal entity in charge of the area of protection of bidders' rights and public interest in a public procurement procedure. It is a second instance authority acting upon lodged appeals.

The SC has a president and four members performing their functions professionally. President and members of the SC may not perform any other public function, nor they may conduct some other activity professionally. The president and members of the SC are appointed by the

Government, on basis of a public contest. A person can be appointed as a president of the SC provided that he/she has a law degree and passed a bar exam, with at least eight years of work experience and at least five years of work experience in public procurement area. can be appointed as a member of the SC provided that he/she has a law degree and passed a professional exam for work in state bodies, with at least five years of work experience or at least five years of work experience in public procurement area.

Competences and powers of the SC:

- 1) examines and decides on appeals in public procurement procedures;
- 2) examines the appeal in terms of the correct application of the law and proposes and undertakes measures for removal of irregularities in public procurement procedures;
- 3) decides on requests of contracting authorities on the continuation of the public procurement procedure when the appeal was filed in accordance with this Law;
- 4) decides on requests regarding the costs of the proceedings;
- 5) monitors the implementation of decisions in accordance with Article 132 paragraph 5 of this law and takes measures in accordance with the law;
- 6) cooperates and exchanges information in the field of public procurement with the competent authorities of other countries;
- 7) adopts rules of procedure;
- 8) performs other duties in accordance with this Law.

**ADMINISTRATION FOR INSPECTION AFFAIRS** is an independent body which performs the tasks of inspection supervision in various fields. Within this Administration there is also the public procurement inspection which supervises the implementation of the PPL and other regulations based upon that Law. The inspector for public procurement performs inspection control particularly over: adoption, changes, amendments and publication of a public procurement plan, meeting the requirements for performing tasks of a public procurement officer, contents, publication, announcing, changes and amendments and submission of tender documentation, implementation of anti-corruption measures and measures aimed at prevention of conflict of interest in public procurement procedures etc. Although the Amendments to the PPL of 2014 assigned greater powers to this public inspection service in this field, it still does not have enough capacities for addressing these issues.

**COMMISSION FOR CONCESSIONS OF MONTENEGRO** is autonomous and independent in performing its tasks established by the Law on Concessions. The Commission acts upon appeals by participants in a procedure of awarding concessions related to evaluation and ranking of the bidders and it adopts decisions upon those appeals, keeps a register of concessions contracts, gives approval to conducting of a procedure for extension of a period for granting the concession or extension of a space where the concession activity is being conducted and other issues.

In addition, there are other state administrative bodies which are indirectly related to the public procurement area and those are:

- State Audit Institution;
- Agency for Prevention of Corruption;
- Administrative Court;
- Magistrate's Court;

- National Police;
- Judicial Council;
- Supreme State Prosecutor.

### **III ELECTRONIC PUBLIC PROCUREMENT**

Electronic public procurement is a procurement system facilitating the possibilities created by information and communication technology in order to increase efficiency of public procurement procedure. Public procurement is potentially and practically – an intense information function. It must be supported by information and communication technology and a reliable database. Electronic procurement system may offer a range of advantages compared to the usual paper-based procurement system. The main advantages are an easy cost-effective access to the procurement information. The electronic procurement is an innovation supporting information and communication technology in MNE, increasing efficiency and effectiveness of public procurement.

The main, strategic goal of introducing electronic public procurement in MNE is, above all, increasing transparency and efficiency of public procurement, then contribution to the fight against corruption and other irregularities occurring in this area, as well as establishing of a unified public procurement system thanks to unification and standardization of procedures. The IPA Project which should result in implementation of e-procurement will be a major contribution to achieving this goal in the course of following years. It will significantly upgrade the existing and introduce some new functions into the current Montenegrin Public Procurement Portal, for establishment and maintenance of which the PPA is responsible, and

which represents a successful platform for electronic announcement of tenders and other documents related to public procurement procedure.

### **3.1 Current situation and legal basis for introduction of e-procurement**

The PPL of MNE, Articles 114-116, provides for a possibility of conducting a public procurement procedure in an electronic form, thus creating basic preconditions for application of electronic means in public procurement which has become equal to the approach based on paper documents. This solution was developed at the time when the EU Directive 2004/18 was in force, which results in the fact that the said solution only partially meets the requirements imposed by the new Directives.

The PPL of MNE, although it provides an adequate level of compliance with the EU acquis, during the strategic period shall go towards the further harmonization with the new EU Directives on public procurement - 2014/24 and 2014/25.

At this moment, the information technology (*IT*) system which was established in 2012 and upgraded in 2013, allows for a continuous monitoring of procedures, with basic indicators, the annual collection of data and improved transparency of traditional public procurement procedures. Since its introduction, the number of users rises permanently, which is reflected in the information provided in the Report on Public Procurement for 2014. Namely, the Portal registered the total of 2,198 users in 2012, 3,748 users in 2013, while in 2014 the number of users rose above 5,100.

The current electronic public procurement system in Montenegro provides **e-notification**, that is, an electronic publication of tender documentation, which contains the invitation to public competition, as well as the publication of all other public procurement notices for which the obligation for publication was prescribed by the Law. That includes: public procurement plans, decisions on selection of the most favourable bid, decisions on suspension or annulment of a public procurement procedure, and public procurement contracts.

The functions of the current e-procurement system include: management of users, i.e. registration, checking and management of the latter; management of notices, i.e. free creation, verification, publication of notices and reporting on notices within the previously set limits. The transition to full e-procurement is necessary, while framework agreements should be used more systematically.

The requirements related to e-procurement are set in the new EU Directives on public procurement, which foresee a gradual introduction of e-procurement, whereupon e-notification, e-tender documentation and e-submission of bids are mandatory elements for all contracting authorities, while the level of mandatory use of e-evaluation of bids and e-award of contracts remains the discretion of the EU member states. However, given the complexity of the application of the above elements, especially bearing in mind the technical and functional aspects, EU Member States are allowed a longer period to comply with Directives from the usual, but no longer than 54 months, except when it comes to centralized bodies for public procurement. Also, the new Directives, unlike the old ones, require a mandatory introduction of legal provisions for the application of certain techniques of e-procurement by the member states (*e-auctions, dynamic purchase system and e-catalogs*), where the contracting authorities are free to decide whether to apply them.

Electronic public procurement cover 8 stages:

- Proceedings before the award of contract  
e-notification; e-tender documentation; e-submission of bids; e-review and assessment of bids; e-award of public contract;
- Proceedings after the contract award  
e-orders; e-invoicing and e-payment.

Evidently, the use of electronic means for the implementation of the different steps in the procurement process will also help in generating information to be used for improving the function of monitoring and reporting .

In addition, Directive 2014/55/EC of 16 April 2014 on electronic invoicing in public procurement also introduces an obligation for member states to adopt, publish and apply the provisions necessary for compliance with obligations for receiving and processing electronic invoices, so that is one of the directions in which Montenegro, as a candidate country for EU membership, must move.

### **3.2 Identified shortcomings of the current system**

Although there is a legal possibility, the current software solution does not support the submission of bids in electronic form. Therefore, future activities on development of e-procurement should be aimed at achieving a higher level of electronic communication of contracting authorities and bidders in the above sense, and a complete relaxation and simplification of implementation of the procedures for the award of public procurement contracts.

The current system does not support the electronic submission of tenders and qualification requirements, as well as electronic invoicing, so the biggest challenge in the future will be the development and implementation of the mentioned activities.

### **3.3 The basic strategic goals and results planned to be achieved in the coming period**

The introduction of electronic procurement in Montenegro is in line with the EU acquis and should result in the following improvements:

- Better management of data in order to monitor entire procurement cycle and to make the system easier to use;
- Increasing the efficiency in procurement targets, both generation of savings as a result of lower prices due to higher competition and administrative savings due to optimization of the procedures. The e-procurement decreases the administrative burden despite the efforts that are needed to train procurement staff and change internal working methods;
- Improving transparency in the procurement process. The e-procurement system would allow the publication of real-time data in an easy processing format, giving access to large public to follow the procurement procedures, as well as the post-contracting phase and the delivery of the results;
- Improving the monitoring over the procurement process and implementation of targeted actions when problems on the procurement market are identified. This can be done only when structured information is available, collected and **analysed**. An e-

procurement system would further extend the available monitoring capacity, allowing for a full traceability on the tenders from publication of contract notice until the contract implementation.

By implementing a modern system of e-procurement, MNE will respond to the recommendations of the European Commission concerning the implementing capacities, increase of transparency, reducing irregularities while ensuring the implementation of EU legal provisions concerning public procurement.

As a result of the above, an electronic public procurement system will allow:

- Contracting authorities to prepare and conduct public procurement procedures via electronic means in shorter time;
- Bidders to participate in public procurement procedures more easily and with lower costs;
- State of Montenegro to generate substantial savings, in view of costs related to procured goods, services and works during their life-cycle as well as the administrative costs borne by the contracting authorities;
- Economic operators to have easier and simpler access to procurement market, thus attracting the wider participation and increasing competition;
- Improved transparency in the public procurement procedures, so that the improvements in procedures and practice may be achieved on basis of a solid evidence and in such a manner as to prevent fraudulent actions and corruptive behaviour;
- The PPA personnel to extract useful statistical and other information regarding public procurement in Montenegro and prepare statistical and other reports required by legislation for all public procurement competitions conducted in Montenegro, thus assisting them in fulfilling their procurement monitoring and reporting responsibilities.

The PPA shall establish an e-procurement portal which would include in particular:

- a) Registration of contracting authorities;
- b) Assuming of tender documentation and issuing contract notices;
- c) Competition procedures;
- d) Receiving requests for clarification by the bidders and an online management of communication and information;
- e) Shortlisting, assessment of bids and comparison of bids;
- f) Electronic auctions;
- g) Collecting, keeping and systematization of information and statistical data in procurement procedure;
- h) Electronic aggregation of needs of administrative bodies at central level;
- i) Development of a registry of bidders;
- j) E-catalogue;
- k) “*Reports on exceptions*” and the alarm sign whenever there are certain significant deviations from standards and norms;
- l) Comparison of expenditures for procurement items;
- m) Cost analysis;
- n) Possibilities for management of contracts that allow for monitoring of concluded contracts;
- o) E-invoicing and e-payment, etc.

In the initial phase, the e-procurement will be required for procurement contracts above a certain threshold to be defined by the PPA. After that, it may be mandatory for contracts with a lower threshold value.

### **3.4 Methods and main measures for achieving the set goals and planned results, with time frames for their realization included**

Currently, the main need in order to commence the fulfillment of these objectives is the development of electronic infrastructure which will enable the technical management of the procurement process by electronic means. Initial assessment and technical description of the simple system used prior to the award of contracts have been developed in the course of 2013. Further extension in order to ensure full e-procurement, where the phases before and after contract award are combined will bring additional benefits and increase the economic impact in accordance with the practices at the EU level. Consultations with the European Commission services would be useful in order to ensure compatibility of this system with those of the EU and to learn from the Member States' experiences.

In accordance with the recommendations of the *Tendering Expert Group* (TEG), a system that will be implemented will ensure interoperability of the application among the available EU e-procurement systems, and also will ensure that bidders encounter no technical barriers to a competitive bidding process in different systems. The system should be constructed in order to be easily accepted by contracting authorities and economic operators.

The main activities in this direction will be implemented within the Project IPA II 2014-2020 "Implementation of e-procurement." The project will specifically focus on the developing a modern system of e-procurement in the classical sector in Montenegro through the following set of activities:

- Development of an Action Plan for the practical introduction of e-procurement in Montenegro;
- Development of the e-procurement infrastructure including delivery and installation of the necessary hardware and software components for the operation and an initial maintenance of the new system;
- Provision of operational support and a Help Desk services during a 12-month pilot operation phase. Development and implementation of a training program for the system users and administrators (*PPA staff, contracting authorities and bidders*), as well as delivery of all the necessary training material;
- Media campaign for raising awareness on e-procurement policies.

The main parties involved in the process of development of the e-procurement system are Ministry of Finance and the Public Procurement Administration as a key coordinator of the activities.

This will require the additional regulatory and institutional development by other administrative bodies involved in the process.

## **IV PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT PROCEDURES**



#### **4.1. Description of the current situation**

Legal protection in the public procurement system is achieved through the so-called pre-contract and the post-contract legal protection. Pre-contractual legal protection includes protection of the rights and interests of the persons concerned and bidders from the launch of the procurement procedure to the conclusion of a public contract and is realized before the SC in the appeal proceedings against the actions and decisions of contracting authorities.

The post-contractual legal protection is achieved before the Administrative Court (AC) of MNE against the decisions of the State Commission and before the Supreme Court of Montenegro on extraordinary legal remedies against the judgment passed by the AC of MNE against the rulings of the SC, as well as before the ordinary courts in connection with the conclusion and implementation of public procurement contracts.

The SC was established by the PPL, as an autonomous and independent legal entity, consisting of a president and four members professionally engaged, without the possibility of simultaneously carrying out other functions or performing other duties professionally. The SC, and its president and members are appointed by the Government of Montenegro on the basis of a public contest and are dismissed upon expiry of their mandate, at the personal request for dismissal or for other reasons provided by the Law.

Given that the appeal is an initial, and therefore a basic regular legal means of protecting the rights and legal interests in the public procurement, the SC is the key subject of institutional protection of rights and legal interests of participants in public procurement procedures and public interest, which is why, for the objectivity of its decision, the Law prohibits any form of influence on its work, as well as any use of public powers, the media and public appearance that may influence the course and outcome of the proceedings before the SC.

The competences, responsibilities and powers of the SC are established by the Law, so the State Commission performs the following tasks in accordance with its competences:

- 1) examines and decides on appeals in public procurement procedures;
- 2) examines the appeal in terms of the correct application of the law and proposes and undertakes measures for removal of irregularities in public procurement procedures;
- 3) decides on requests of contracting authorities on the continuation of the public procurement procedure when the appeal was filed in accordance with this Law;
- 4) decides on requests regarding the costs of the proceedings;
- 5) monitors the implementation of decisions in accordance with Article 132 paragraph 5 of this law and takes measures in accordance with the law;
- 6) cooperates and exchanges information in the field of public procurement with the competent authorities of other countries;
- 7) adopts rules of procedure;
- 8) performs other duties in accordance with this Law.

Pursuant to the stated competences the SC has the authority to:

- 1) annul the public procurement procedure, in case that the contracting authority fails to submit the files and documentation related to the public procurement in question;

- 2) decide on the appeal arguments, and decides ex officio on substantial violations of law in the procurement process;
- 3) dismiss the appeal, if it is messy, inadmissible, overdue or filed by an unauthorized person;
- 4) suspend the appeal proceedings, if the appellant withdraws the appeal filed;
- 5) reject the appeal as ungrounded;
- 6) approve the appeal and annul the public procurement procedure in whole or in part, as well as tender documents and / or the decision of the contracting authority, point to the contracting authority the irregularities committed and order re-conducting the decision-making process or taking necessary steps to remove the committed irregularities.

The SC shall decide on the appeal within 15 days from the receipt of the complete documentation, provided that this period may be extended for another 10 days if involvement of experts would be necessary, as well as for purpose of obtaining the opinion of the competent authorities or due to the volume of documentation.

The SC is obliged to make a decision on the appeal within three days of its issuance and submit it to the complainant and the contracting authority and to publish on its website, thus achieving education of participants in the procurement process, all interested persons and the general public in relation to the practice of law and the standpoint of the SC, as well as an absolute transparency of public procurement procedures and work of the SC.

The purpose of the SC decisions is to provide legality and efficiency of public procurement procedures, so that a decision rejecting or refusing the appeal has an aim to allow the continuation of the public procurement procedure, while decisions approving the appeal has an aim that the contracting authorities remove the observed irregularities and not to repeat them anymore. Contracting authority is legally obliged to comply with the decision of the SC in due course, whereupon it is particularly important that the contracting authority in the process of re-making of a decision or repeating of a procurement procedure acts essentially, not only formally, according to the given orders and instructions to remedy the irregularities and illegalities observed, that is, to fully comply with the factual allegations and legal attitudes of the SC, otherwise the re-appeal shall be filed which would cause further delays in the procurement process, resulting in certain damage for both the contracting authority and the interested parties or bidders. In addition, the SC shall monitor implementation of its decisions by the contracting authorities and in the event of their failure to implement them, depending on who is the founder, owner or co-owner of the contracting authority, inform the Government of Montenegro or competent local self-government body and propose appropriate measures.

#### **4.2. Identified shortcomings of the existing system**

Contracting authorities in response to appeals often try to explain and justify their mistakes in public procurement procedures by the fact that the PPL does not contain adequate solutions for the elimination from a public procurement procedures of those bidders who are not adequately staffed, nor they are professionally, technically and financially capable to realize the subject of public procurement and that it does not contain means of protection against abuse of the right to appeal.

These remarks by contracting authorities are grounded in relation to the existing provisions of the PPL governing optional conditions for the participation of bidders in public procurement

procedures, or stipulating the possible evidence to demonstrate compliance with these requirements, since the prescribed possible evidence does not practically prove anything, but they are, in principle, of a declarative character, so the contracting authorities are trying to define them in the tender documents in a different manner, which, in terms of the existing Law, leads to the illegality that is reflected in the restriction of competition or discrimination against the persons concerned as a potential bidder or bidders, which in the appeal proceedings has the effect of cancellation of the procurement procedure in part or in its entirety. Namely, the optional conditions for participation in public procurement procedure and evidence to prove their fulfillment should be a logical compound of bidders with the subject matter of the procurement, and their demands should be proportional to the scope, specificity, complexity and value of the contract, while their fulfillment must be enabled through the submission of a joint bid, ie. through association of more economic operators and by clearly defining the way in which the fulfillment of these conditions is proved. In addition, certain evidence provided by the Law for demonstrating the professional and technical qualifications of bidders are not related to bidders, but to the subject of public procurement, therefore they are inadequately located and as such they create a confusion and a number of discrepancies in the procurement procedure.

However, upon considering these issues, one should bear in mind that the individual substantive regulations governing certain administrative areas prescribed performance requirements in that field, so it is necessary to initiate a review of such legislation, because the PPL, upon prescribing conditions for participation in procurement procedure relies on these material regulations. For example, the Law on Spatial Planning and Construction prescribes that construction of an object, or carrying out of certain works on the construction project can be performed by a company, legal entity or entrepreneur registered in the Central Registry of economic entities for construction activities, or to perform individual works and which fulfills the conditions prescribed by the law, and out of those conditions the bidder practically should only have a responsible engineer employed that is a graduate engineer or a specialist with an appropriate technical education with three years of working experience in design, construction, supervision or technical inspection of facilities and a professional exam passed, while other requirements in terms of personnel and technical competence and means for their provision are not defined, except that it is provided that for the execution of certain works on the construction of the facility a company, legal person or entrepreneur may conclude a contract with another company, legal person or entrepreneur who has a responsible engineer as its employee.

In addition, authorities reasonably point out that there are cases of abuse of the appeal and that the PPL has no adequate solution for that. Namely, the PPL does not have clear provisions on cases when the appeal is messy, but other laws which are applied accordingly, e.g. the LAP prescribes that a messy appeal is the appeal which does not contain all elements necessary for acting upon it and adoption of a second-instance decision. These are: the decision which is contested, number and date of the decision, name of the authority which adopted the decision, grounds on which the party contested the decision and the information on the appellant. However, The PPL has defined precisely the content of the appeal as well as the procedure concerning the messy appeal (Articles 125 and 126 of the Law).

The PPL provides that a timely filed appeal terminates all further activities of the contracting authority in the procurement procedure, until the decision on appeal is made, and Article 126 of the same Law provides that a contracting authority may, if it considers that the appeal is wholly or partially founded, annul the decision or replace it by another decision, remedy such

an action in accordance with the requirements of the appeal or annul the public procurement procedure and to inform all participants in the procurement process and the SC thereof, which in practice opens certain dilemmas. Specifically, the question is whether each timely filed appeal shall have the effect of suspending further activities of the contracting authority in the procurement process or that such an impact should have an appeal that is timely, orderly, allowed or filed by an authorized person. Also, there is a question of until which decision is the public procurement procedure suspended, i.e. whether it is the decision of the contracting authority or the decision made by the SC upon the appeal. In addition, the PPL only stipulates that the contracting authority may only partially or fully assess the appeal as founded and, in accordance with that take an appropriate decision, that is, an appropriate action, and the LAP provides that the first instance authority previously examine whether the appeal is timely, permitted and submitted by an authorized person, so the question is whether these powers of the first instance body has also a contracting authority in the procurement process and what is the effect of its decisions on these issues.

The essential issue in the implementation of the SC decisions arises when the so-called post-contractual protection is realized, i.e when the AC annul the decision or ruling of the SC by which the appeal against the decision of the contracting authority on the selection of the most favourable bid is rejected or a decision on suspending or annulling the public procurement procedure, because in case of rejection of the appeal against the decision on selection of the most favourable bid, before the verdict of the AC, an already concluded public procurement contract between contracting authority and bidder whose bid was selected as the most favourable one or even when the contract has been partly or fully implemented, which raises the question of the purpose of repeating of decision-making procedure, and in case of rejection of the appeal against the decision on suspension or cancellation of public procurement procedure, the contracting authority has, before the verdict of the AC, initiated or even carried out a new procedure for the same subject of public procurement.

However, the rate of rejected appeals of 43% in 2014 remains significant, and this is partly due to the discrepancies between the public procurement regulations and the those regulating administrative procedure, which reduces the effectiveness of legal protection system. This issue is expected to be resolved upon beginning of implementation of the Law on Administrative Procedure. It is also necessary that Montenegro improves transparency of the SC rulings, in way that it would upgrade the registry of decisions and introduce search functions on the Internet which would be easy to use. Currently, the Secretariat of the State Commission does not have sufficient staff, in particular considering the permanent rise in number of appeals.

Regulation and functioning of the system of legal protection meet the formal requirements of the EU Directive on the legal protection, except that there is no provisions for ineffectiveness.

It is necessary to further strengthen the administrative capacity of the Professional Service of the SC in terms of necessary human and technical capacities, in order to be fully equipped to fulfill the tasks and monitor the efficient use of public resources and to increase the transparency and competitiveness of the bidders. Currently, there are 8 public servants and state employees at the Commission. Strengthening of administrative capacities of the SC is one constant recommendations expressed in the reports of the EC.

The SC published all its decisions on its website [www.kontrola-nabavki.me](http://www.kontrola-nabavki.me) up to 29 August 2014, and since that date, because of problems in the software solution that it owned, the decisions of the SC are being published on the website of the PPA [www.ujn.gov.me](http://www.ujn.gov.me) in the box "Decision of the State Commission", on which all interested parties are timely informed.

In early 2015, the Ministry for Information Society and Telecommunications has established a new software solution as the basis for the introduction of electronic public procurement system and created a new database, which is also the internal electronic journal of the SC, and that software solution that will be the basis for ensuring and upgrading of the browser for searching the SC's decisions.

#### **4.3. The main strategic goal and the results envisaged to be achieved in the forthcoming period**

The new LPP, the adoption of which is planned in the first quarter of 2017 will finalize the procedure of alignment of legal protection with Directive 2007/66/EC, so that the system of legal protection in public procurement would be fully in line with the Directives governing this area.

At the same time, the new legislative package provides for harmonization with the new LAP, which went a step further and which refers to the Law of Civil Procedure. Therefore, it is necessary to regulate matters that are not specifically regulated in the LPP, and refer to the protection of rights, specifying the competence of SC in terms of decision-making, a mechanism should be devised to prevent misuse of complaints, etc.

In addition, the effect of the abolition or limitation of SC's proceeding ex officio will be analyzed, and consequently, the appropriate legislative amendments will be undertaken.

The new law should also consider the possibility that members of the SC be appointed by the Parliament of Montenegro.

Consider the need for the adoption of the new Rulebook on Internal Organization and Job Descriptions for the Executive Service of the SC, whereby the number of civil servants and public employees would be increased, in order to timely perform all activities within its competence, as well as the need to amend certain provisions of the Law, whereby the number of members of the SC would be increased and thereby further improve the process of protection of rights in public procurement.

Given that is the legal obligation of the SC to publish the decisions on complaints on its website, it is necessary to improve the web-site of the SC and the search engine in terms of decisions. It is planned to create a new web site in the forthcoming period, which will be networked with the newly-developed database and which will contain a search engine based on search for terms, so that interested persons could search for a decision by certain additional criteria, such as the object of the procurement, the key words that define the legal problem to which the decisions refer etc., which would also contribute to increasing the level of transparency of work. It is necessary to improve the transparency of the SC's decisions by improving the registry of decisions and introducing the user-friendly internet search functionalities.

It is necessary to provide additional funds for the possibility of networking database of SC with other state institutions (*PPS, SAI, Anti-Corruption Agency, SEC, PA, etc.*), which would greatly contribute to more efficient verification of data of importance to anti-corruption activities and the prevention of conflicts of interest in public procurement procedures.

SC currently has a web site that does not have the option of search by terms, nor is it on-line connected to the new software.

In the forthcoming period, attention should be paid to intensifying regional and international cooperation with a view to participating in international gatherings, conferences, round tables, as well as further compliance with the regulations and good practice in the EU in the field of protection of rights, the continuation of coordination and cooperation with relevant bodies in charge of public procurement in the region, which will contribute to the exchange of experiences and knowledge, aimed at better performance and improving the public procurement system. In this respect, it is important not only to have cooperation with institutions in the country, but also to have international, and in particular, regional cooperation.

In order to further improve the level of public awareness about the work of SC, it would be certainly important to draft and publish the Manual for legal protection of bidders and contracting authorities, as well as to organize a series of seminars on the topic of "*Legal protection in the public procurement system*", which would be held in a number of towns.

In order to ensure enforcement of the SC's decisions, it is necessary to:

- raise awareness of contracting authorities the obligation to enforce decisions and their responsibilities if they fail to enforce the decisions of the SC;
- establish records in SC, by means of the Report on the actions and measures taken;
- warn contracting authorities to execute orders of the SC contained in the decisions, and if they fail to execute the above orders following the warning, the SC informs the Government i.e. the competent body of the local governments of this and proposes the initiation of the procedure for ascertaining responsibility.

In the field of EU law protection, the issue of judicial protection is in focus. Directive 2007/66/EC stipulates that there must be judicial protection, so the Law provides that administrative proceedings can be instituted against the decision of the SC. Given that public procurement is a multidisciplinary field, the possibility should be considered for further improvement of legal protection through the judicial process which would include all aspects of public procurement.

#### **4.4. Methods and main measures to achieve the objectives set and results planned, including the deadlines for their implementation**

Since Directive 2007/66/EC introduces a faster and more efficient system of protection of rights for those participants in the public procurement procedure who believe that their rights have been violated in that procedure, it is necessary to:

- pay additional attention to further increasing the efficiency of work;

- raise awareness of the importance of protecting the rights and the ways in which that protection is provided;
- ensure enforcement of decisions of the SC;
- harmonize new LPP with the LAP in the field of protection of rights;
- strengthen administrative capacities of the SC through adoption of the new Rulebook on Internal Organization and Job Descriptions of the Executive Service of the SC;
- increase the number of members of SC by adoption of the new LPP;
- continue to strengthen the capacity of employees in SC through their education;
- transparency of decisions of the SC by creating a new Internet page with search-engine by terms, networking with other institutions and
- taking over the experience and good practices from other similar bodies in the EU countries and neighboring countries.

## **V IMPROVING MEASURES IN ORDER TO COMBAT IRREGULARITIES AND MEASURES TO COMBAT CORRUPTION**

Corruption and organized crime are one of the biggest threats to the rule of law and the development of a modern democratic society. Public procurement in the Montenegrin system, as is the case with all other countries, is recognized as an area at particular risk of corruption, as noted in the number of documents drafted by the Government of Montenegro (*Strategy for Fighting against Corruption and Organized Crime*<sup>3</sup> and *Corruption Risk Assessment in Areas of Particular Risk*<sup>4</sup>). Bearing in mind that between a quarter and a fifth of the annual budget is spend through this system annually, it is necessary to further strengthen and improve the existing legal and institutional framework and practice, in order to reduce corruption in public procurement to the minimum.

### **5.1. Description of the current situation**

Corruption in public procurement system is increasing due to insufficient knowledge of the legal framework among certain contracting authorities, which are not able to fully implement the law, which some bidders with higher legal, administrative and technical capacity can leverage for their own benefits. It is necessary to shrink the room for such misuses by constant capacity building on the side of the contracting authority regarding law implementation but also by constantly drafting and publishing explanatory materials to clarify the application of certain legal norms, based on the opinions and decisions of the PPA, SC and SAI.

The law stipulates a special chapter which includes measures relating to the prevention, i.e. anti-corruption policy and the policy of conflicts of interest in public procurement, both on the side of the contracting authority and on the side of the bidders.

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<sup>3</sup> Ministry of Interior of the Government of Montenegro, *Strategy for Fight against Corruption and Organized Crime*, Podgorica, 29 July 2010

<sup>4</sup> Ministry of Finance of the Government of Montenegro, *Corruption Risk Assessment in Areas of Particular Risk*, Podgorica, July 2011

Multiannual implementation of the legal framework defining public procurement shows that corruption challenges still remain, although the laws have relatively often been amended in order to achieve compliance with the EU acquis.

Inadequate planning of public procurement<sup>5</sup>, insufficient transparency<sup>6</sup>, inadequate determination of specifications and tender conditions<sup>7</sup>, changing public procurement contracts by annexes and protocols after their signing and inadequate contract follow-up<sup>8</sup>, as well as insufficient staff, administrative and technical capacities of institutions responsible for the control and supervision of public procurement<sup>9</sup> are only some of the corruption problems that cast a shadow over the public procurement system in Montenegro, despite the fact that the Montenegrin LPP rests on the principles of cost-effective and efficient use of public funds<sup>10</sup>, ensuring competition<sup>11</sup>, transparency of public procurement procedure<sup>12</sup> and equality<sup>13</sup>.

The problem of potential corruption becomes more pronounced especially when one takes into account that the Montenegro spends between a quarter and a fifth of its annual budget through the public procurement system every year<sup>14</sup>.

For this reason, Montenegrin response to corruption in public procurement should be multi-disciplinary, based on the introduction of strict rules in order to increase the transparency of the entire process, prevent corruption, improve supervision and control including more conducting of more efficient misdeanour procedures for violation of the law, and finally conducting more efficient criminal proceedings in cases where there is suspicion of corruption.

## **5.2. Identified shortcomings of the current system**

EC notes in its Progress Report on Montenegro for 2014<sup>15</sup> that there has been limited progress in the area of public procurement, and that the efficiency and effectiveness of the public procurement system have been improved in the past, but that it is not enough, and that the progress in this direction should be continued. Furthermore, the EC suggests that it is necessary to strengthen administrative and other capacities for implementation of the LPP at all levels, and that the monitoring and control should be focused on the economic impact, appropriateness and efficiency, as well as issues of of formal application of the law.

The source irregularities can be identified in inadequate planning and inadequate identification of needs by contracting authorities, and the failure to include into the procurement planning all the costs related to the procurement subject.

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<sup>5</sup> Institute Alternativa, *Corruption and Public Procurement in Montenegro*, Podgorica, June 2012

<sup>6</sup> Network for Affirmation of the Non-Governmental Sector, *Public works & hidden agendas*, Podgorica, 2012

<sup>7</sup> Network for Affirmation of the Non-Governmental Sector, *Public procurement, hidden deals*, Podgorica, 2013

<sup>8</sup> Ibid.

<sup>9</sup> Network for Affirmation of the Non-Governmental Sector, *Public Procurement System in Montenegro – pilot survey*, Podgorica, November 2014

<sup>10</sup> Parliament of Montenegro, *Law on Public Procurement* (Official Gazette of Montenegro 42/11 of 15 August 2011, 57/14 of 26 December 2014 and 28/15 of 03 June 2015), Article 5.

<sup>11</sup> Ibid, Article 6.

<sup>12</sup> Ibid, Article 7.

<sup>13</sup> Ibid, Article 8.

<sup>14</sup> Network for Affirmation of the Non-Governmental Sector, *Public Procurement System in Montenegro – pilot survey*, Podgorica, November 2014

<sup>15</sup> European Commission, *Montenegro Progress Report*, Brussels, October 2014. For more information, click: <http://goo.gl/zWJgzf>.



Situations of conflict of interest can make the companies lose confidence in public procurement and thus discourage other entities from participating in public procurement procedures. During some surveys carried out in our country by the Commission for Prevention of Conflict of Interest, it has been confirmed that there is a link between transparency, conflicts of interest and corruptive behaviour. The less transparent and reliable the Government is in reporting on their activities, the more incidents involving conflicts of interest and corruptive activities can be detected. In practice, most deviations occurs before or after the opening of bids and signing of the contract in public procurement processes.

The problem perceived in the up-to-date practice is a non-transparent way of reporting in public procurement procedures implemented by a direct agreement. A special area that requires additional effort is the stage of contract performance where numerous deficiencies can be observed, which are implemented through changes to the contract, increasing the price of the contract contrary to the implemented public procurement procedure.

Most of the observed shortcomings are the consequence of insufficient capacities of contracting authorities in respect of the proper law implementation. Severe forms of law violations that are not merely the result of ignorance of the contracting authorities, should be prosecuted.

### **5.3. The main strategic objectives and results envisaged to be achieved in the forthcoming period**

Supressing irregularities at public procurement will be conducted through a variety of measures that permeate all phases of the public procurement process: planning, implementation of the public procurement procedure and execution of contracts, increased internal control, using the “four eyes” principle, accountability of management and internal and external audit,. Therefore, the issue of supressing irregularities and the fight against corruption can not be considered solely as the issue of implementation of some special anti-corruption measures, but as a goal to be achieved through various aspects of the reform of the public procurement system, such as increasing transparency. Montenegro should also establish a risk assessment methodology for the purpose of better identification of potential problems related to integrity.

### **5.4. Methods and main measures for achieving objectives set and results planned, including with the deadlines for their implementation**

In the forthcoming period, the following measures will be taken:

- *Improve the process of planning and implementation of public procurement, improve transparency in reporting, especially in terms of direct agreements;*
- *Improve the public procurement portal and provide detailed statistical record, advanced search functionalities and tools for analysis, including an overview of the public procurement awarded by bidders;*
- *The development and improvement of websites of all contracting authorities in the public procurement system, to ensure the availability of information, tools and instructions used in the practical implementation of public procurement procedures;*

- *Lay down the obligation of all entities covered by the LPP that use funds from public revenues to publish on their websites detailed quarterly reports on the concluded direct agreements, including financial data about the share of resources spent from the amount allocated by annual public procurement plan for the direct agreements;*
- *Prescribe the obligation to publish detailed six-month reports on the control performed of all implemented public procurement by all entities covered by the LPP on their websites;*
- *Improve transparency of data on companies that are related to persons who, on behalf of the contracting authority, perform some of the activities of public procurement and persons who have influence on the performance of the said activities in order to efficiently prevent, identify and eliminate conflicts of interest;*
- *Training of persons involved in public procurement procedures on how to identify, report and efficiently resolve conflicts of interest;*
- *Elaborate specific advice, criteria and indicators to be used in a public tender in terms of promoting the anti-corruption policy and conflict of interest policy and to establish a risk assessment methodology in order to better identify potential problems related to integrity;*
- *Improve advisory functions of the PPA to facilitate the lawful implementation of public procurement regulations;*
- *Increase the number of public procurement inspectors and strengthen the administrative, technical and material capacities of the Inspection Administration so that this body could adequately perform control over the public procurement procedures;*
- *Improve the system of verification of the bidders' qualifications and the basis for the exclusion of bidders, in order to prevent the participation in public procurement procedures of those bidders who have been ascertained to have been violating the provisions of the LPP;*
- *Prescribe in detail the obligations of the contracting authorities to monitor the implementation of public procurement contracts and to comply with contractual obligations, including the payment of penalties and termination of contract in case the bidders violate the contractual obligations;*
- *Preparation of guidelines and the development of the methodology for the management of contracts;*
- *To improve detection and prosecution of violations of the law entailing misdemeanour responsibility of the contracting authority, bidders, responsible and other persons for violations of the LPP and prescribe a special set of misdemeanor measures for inadequate monitoring of the implementation of public procurement contracts;*
- *Improve cooperation among the PPA, SC, SPPO, PA, IAA in terms of information exchange, in connection with the individual violations of the law, as well as cooperation on joint training for the bodies listed above;*
- *Initiate and support the debates on the anti-corruption policy and the conflict of interest policy;*
- *Exchange of best practices among contracting authorities by establishing a platform for the exchange of experiences, information and knowledge on anti-corruption policy and conflict of interest policy.*

## **VI ENVIRONMENTAL, SOCIAL AND INNOVATIVE ASPECTS IN PUBLIC PROCUREMENT, SUPPORT FOR SMALL AND MEDIUM ENTERPRISES IN THE FIELD OF PUBLIC PROCUREMENT AND SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT**

### **6.1. Description of the current situation**

In the existing legislative framework, the area of "green" public procurement in Montenegro is defined by the criterion of the most economically advantageous bid, while the said criterion can be based, inter alia, on the following sub-criteria: program and the level of environmental protection, and energy efficiency, the current costs of maintenance and cost effectiveness.

Furthermore, the technical specifications can include environmental protection management, energy efficiency requirements and social requirements.

In addition, in the description of the subject-matter of public procurement, in accordance with the law, the contracting authorities list the data about the quantity, location and deadlines for implementation or special requirements regarding the manner of execution of the subject of public procurement, which are important for the preparation of bid and performance of the contract, including the data of importance for environmental protection, energy efficiency or social requirements.

Contracting authorities have the ability to define the subject of procurement by lots, allowing easier access of SMEs in public procurement procedures.

### **6.2. Identified shortcomings of the current system**

Possibilities provided in the LPP to the contracting authorities for the application of environmental criteria and aspects, as well as social aspects are rarely implemented in practice.

Successful implementation of green public procurement requires the identification and application of possibilities for environmental impact at the strategic and operational levels, taking into account the models of specific purchasing, sustainable development goals and other government priorities. Given that public procurement, as such, has a direct impact on

the national economy, and could affect the price and availability of goods and services, including construction services, the market, the Government is in a position to influence the demand for eco-friendly goods and services and the ability of industry to respond to the growing use of environmental standards, by integrating the application of the environmental effect in its public procurement procedure.

As a part of continuous commitment to improve the environment and quality of life, green public procurement aims to minimize the environmental impacts of government operations, and promote environmental stewardship by integrating considerations of environmental conditions in the procurement procedure.

Due to the use criterion of the lowest price offered, in most cases, the contracting authorities are unable to obtain a product, service by evaluating costs throughout their entire life cycle, since only the lowest offered price is taken into account.

Additionally, the LPP will be aligned in the forthcoming period with the Directives, and in this regard, novelties will be introduced in terms of enabling the use of sustainable procurement criteria, taking into account the social aspects of public procurement, encouraging innovation in public procurement and easier access of SMEs and enabling use of the entire life cycle cost criteria.

Given its strength and scope, public procurement is in a position to influence the market through the demand for eco-friendly goods and services, and at the same time to strengthen the ability of the industry to respond to growing requirements for the use of environmental standards.

Although the benefits by which the SMEs can contribute to the national economy are well known, the trends in terms of the costs of preparation and participation in public procurement discourage their participation.

SMEs and bidders see the tender procedure in the public sector as an expensive and lengthy process.

In practice, SMEs face difficulties when they want to participate in public procurement procedures together with other bidders (*the issue of responsibility, qualifications, cumulative evidencing of eligibility*).

The manner in which the procurement is developing in the public sector and how rapidly it changes is impressive. There is no doubt that over the years the level of understanding of key issues, and that the number and professional skills of professional staff are continuously increasing, driven by the requirements of the public sector in order to get better value from bidders.

In this environment, it becomes increasingly difficult for the small and medium enterprises engaged in the sale, or wishing to sell goods or services in the public sector to become prevalent.

SME and major bidders see the tender procedure in the public sector as an expensive and time-consuming process, but most of this is inevitable given the legal framework (*in accordance with EU regulations*). E-procurement can help, but "solutions" are in a way still far-fetched, even though they can open up new opportunities for innovative SMEs, whereas they might cause problems for the less progressive ones.

In conclusion, the current trends of large value contracts, aggregation of costs, and longer relationships with contractors and "*partners*" make life more difficult for SMEs, trying to do the selling to the public sector. The prospects for SMEs that do not offer any real differentiation (*innovation, services, quality, special skills*) compared with their larger competitors are not good. However, there are some initiatives that can help to ensure that SMEs that offer these benefits can thrive as bidders in the public sector. And it is particularly those prominent SMEs that will thrive, create new jobs, economic growth and success, providing their public sector clients excellent value and performance.

Procurement in the public sector is becoming increasingly sophisticated, and therefore it must be taken care in this process to ensure that the rules laid down in the legal framework are not questioned. Although the performances of procurement in public sector in Montenegro are improving, steps should be taken towards better cooperation and coordination among various contracting authorities, especially towards facilitating the participation of SMEs.

"*Leveling the playing field*" will help to ensure that SMEs do not suffer undue disadvantages because of their larger competitors. Access to information is vital, and the widespread use of the Internet should be encouraged. Guidelines should be communicated to bidders and not only to procurement officers.

"*SMEs training*" includes a series of recommendations for improving the ability of the sector for competition and the award of public contracts. Focused guidelines should be developed for SMEs in order to cover the detailed approach to competition while seminars or roadmaps should be used to convey messages. However, it is counterproductive to encourage SME to bid for more contracts, unless they understand their strengths and are aware of the probability to win in the business. In many cases, it will be better to train them to act as second-tier bidders, and to work with the main contractors.

"*Training of contracting authorities*" is also a key element, given the increasingly sophisticated procurement system in the public sector.

The most important thing is that they understand the big picture of procurement strategies:

- how to analyze the markets and understand the strengths of bidders,
- when to take into account a SME,
- which are the benefits that they can offer and
- how to properly use framework agreements or consortia.

Socially responsible public procurement refers to the contracting authority which should take into account the social impact of their purchases in the broad sense, not just the purchase price or the price and quality ratio. The guiding impact of public procurement which is of key importance to society is associated with corporate social responsibility.

### **6.3. The main strategic objectives and results envisaged to be achieved in the forthcoming period**

Green procurement will be established in the future in the context of achieving the best value for money. It will require integration of considerations on the environmental situation in the public procurement procedure, of social and innovative aspects. In this context, monetary value will include consideration of many factors such as price, performance, availability, quality, environmental impact and innovation.

The general objectives in terms of environmental management, energy efficiency, social requirements and access of SMEs are:

- increasing the level of their use at the national level;
- stimulating the market by creating a public demand for products that meet high environmental, social standards and innovative technologies;
- training of contracting authorities and increasing awareness of their importance;
  
- increasing the participation of SMEs in public procurement through applying defining of procurement subject by lots and using the requirements for participation in public procurement procedures according to their proportional participation;
- proving fulfillment of requirements for participation in public procurement by submission of a statement instead of documents;
- increasing the number of bidders who have proven environmental management system and / or the production of environmentally certified products.

Regarding socially responsible public procurement, the main goal is to spread the strategic perspective of public procurement by building awareness and knowledge.

The specific objectives are to:

- stimulate contracting authorities and bidders not only by contracts,
- initiate a process of consultation during the preparation of the procurement activities, using a "bottom-up" approach for the meetings, focusing groups at local and regional level and the professional expert commissions;
- spreading the idea of socially responsible public procurement through open access to information about calls, offers and contracts.

#### **6.4. Methods and main measures to achieve the objectives set and results planned, including the deadlines for their implementation**

In terms of strengthening environmental management, energy efficiency, social demands and SME access to public procurement system, the following measures will be undertaken in the forthcoming period:

- *Harmonization of public procurement legislation with the new Directives in this area;*
- *Initiating and promoting the importance of the use of green, social and innovative public procurement;*
- *Exchange of good practice among contracting authorities by establishing a platform for the exchange of experiences, information and knowledge;*
- *Elaboration of specific advice, criteria and indicators to be used in public tenders;*
- *Stimulating the integration of the above criteria at the stage of planning of public procurement;*
- *Training of SME's with a view to improving their capacity in public procurement, the development of guidelines and organizing seminars for SMEs;*

- *In order to create the conditions for innovation in public procurement, greater employment and development of SMEs will be encouraged by an increasing application of the criterion of the most economically advantageous bid;*
- *Training of contracting authorities how to create a subject of public procurement in order to enable better access of SMEs;*
- *The effects of the abolition or substantial reduction of the fee for conducting the procedure regarding protection of rights will be analyzed in order to create more favorable conditions for SMEs;*
- *In order facilitate the activities of the SMEs in the preparation of supporting documentation on the creditworthiness for participation in the tender, the obligation to pay fees when obtaining various certificates, etc. will be lifted;*
- *In order to enable easier access of SMEs to businesses in the area of public procurement, contracting authorities will be encouraged to implement public procurements by lots;*
- *Spread the idea of socially responsible procurement through open access to information about calls, bids.*

## **VII PROFESSIONAL DEVELOPMENT, EDUCATION AND TRAININGS IN THE FIELD OF PUBLIC PROCUREMENT AND STRENGTHENING OF ADMINISTRATIVE CAPACITIES**

### **7.1. Description of the current situation**

In accordance with the LPP, the PPA organizes and implements:

- professional training and development of employees and other persons for the performance of public procurement tasks;
- organizes taking of professional exam for performing activities in the field of public procurement;
- cooperates with international organizations, institutions and experts in the field of public procurement system;
- issues publications and other technical reference materials.

In order to carry out the above tasks of professional training and development, a special Department for professional training, development and taking of professional exam in the field of public procurement was established, with the three officers, including the head of the Department.

The Department carries out the tasks related to:

- participation in the creation of the content of the Training Program – professional training and development in the field of public procurement;

- collecting information and drafting of training needs analysis, organizing and conducting staff training in public procurement activities in cooperation with the Human Resources Management Administration,
- preparation of manuals, publications, bulletins, guides and other materials related to training;
- establishing a system of trainers training in the field of public procurement;
- keeping records of trainers, monitoring the work of trainers in terms of quality of training;
- preparation of analyses and reports on the training and trainers;
- timely publishing of information concerning training and provision of assistance;
- keeping adequate records of trainings;
- participation in the creation of tools for assessment of needs for professional development;
- preparation of a curriculum for implementation of the trainings envisaged under the program;
- keeping records of trained contracting authorities, bidders and other persons;
- providing advisory assistance at the request of contracting authorities and bidders;
- organization and implementation of professional exam for performing tasks in the field of public procurement;
- organization of conferences and round tables, seminars and courses in this field;
- cooperation with international institutions and experts in the field of public procurement and drafts proposals for measures aimed at development and improvement of public procurement system;
- submission of a report within CEFTA, WTO, GATT, GPA agreements relating to the area of public procurement;
- preparation of annual reports on the state of training with analysis and recommendations for improving the system of training in public procurement;
- participates in the preparation of the annual report on public procurement;
- preparation of data for the drafting of the report under the competence of the Department, cooperation with the NGO sector;
- keeping a register of public procurement officers to whom certificates have been issued;
- participate in the development of the program of work of the Administration;
- cooperation with institutions and authorities in Montenegro;
- cooperation with other organizational units and other activities in accordance with the Law.

The public procurement officer can only be a person with a higher degree of education who is employed by the contracting authority and has passed a professional exam for work on the public procurement tasks.

Also, at least one third of the members of the Commission for opening and evaluation of bids must have a professional exam for work on public procurement tasks passed.

PPA adopted the Program and method of professional training and development in the field of public procurement. The said program determines the method of organizing and conducting professional training and development in the field of public procurement and the issuing and renewal of certificates of completion of training program in the field of public procurement. This Programme is the basis for the organization of professional training and development.



The above special Program of professional training and development includes the following topics:

- Public procurement system in Montenegro - principles, legislative and institutional framework in the EU, powers of the public procurement officers, planning in the field of public procurement, covered entities and exemptions from the application of the LPP, use of public procurement portal;
- Importance of professional development and training for civil servants and state employees;
- Conflict of interest in the field of public procurement;
- Anti-corruption principles;
- Open public procurement procedure (*practical examples*);
- Restricted public procurement procedure (*practical examples*);
- Negotiated procedure with and without prior publication of the invitation to tender (*practical examples*);
- Protection of the rights of bidders;
- Other types of public procurement procedures and small value procurement (*practical examples*).

In order to ensure adequate implementation of the law, the Rulebook on the curriculum and manner of taking the professional exam for work on public procurements tasks was adopted (*Official Gazette 28/12*).

The exam is taken according to the examination curriculum, which includes:

- 1) regulation of the public procurement procedure by law, with reference to the EU regulations;
- 2) protection of rights in public procurement procedures;
- 3) other regulations, forms, documents on public procurement.

The exam is taken before the Commission for taking the professional exam for work in public procurement established by the decision of the Director of the PPA. The committee consists of a chairperson and two members.

In the framework of the EC IPA Multibeneficiary project "*Training in the area of public procurement in the Western Balkans and Turkey*," a team of certified national trainers for public procurement that are fully familiar with the contents of the SIGMA module, national legal provisions and skills of training methodology was created and they conduct the training in Montenegro.

## **7.2. Identified shortcomings of the current system**

Capacity development of public procurement officers and members of the Commission for opening and evaluation of bids is a key challenge for the public procurement reform and there is a special need for their administrative strengthening in the context of accession to the EU. In addition to taking into account the implementation of the measures written down, it is

necessary to take into account the level and quality of implementation at the level of contracting authorities.

Public procurement is still treated as an administrative function and is more or less not recognized as a separate profession. On the other hand, in line with the current trend of pursuing socio-economic and environmental objectives through public procurement, it is expected that procurement officers comply with increasingly complex rules. Lack of adequate capacity as well as of specialized know-how, available technologies, innovations and market developments, will become increasingly important.

Traditionally, training in the field of procurement tends to focus on compliance with regulatory rules. Even though it is clear that the regulatory rules are important, this focus often ignores issues related to the quality of procurement, which requires the possession of specific skills, knowledge and experience, as well as the ability to use the modern procurement tools. Focusing on the training authorities as a means of strengthening the capacities of public procurement officers to conduct the procurement efficiently and effectively can raise procurement above the purely administrative function and emphasize the professionalism required to achieve positive results.

Proper understanding and adequate application of new solutions, including the *acquis communautaire* largely depends on the intensity and quality of the process of transferring know-how. Bearing in mind that the ultimate goal of the Strategy is successful implementation of the law and the *acquis communautaire* in practice, special attention will be paid to this form of professional training.

However, it is necessary to point out that the current capacity of the PPA is not sufficient for a comprehensive training of contracting authorities and bidders at all levels, which must be continuously implemented in the future. Also, the new LPP envisaged for the first quarter of 2017 will introduce a number of new tools, methods, procedures which it will not be possible to implement in practice without previously implemented high-quality training. In addition, the transition to exclusively electronic public procurement will not be successful if the contracting authorities and bidders do not have special know-how, which must be ensured through adequate implementation of the training.

Pursuant to the above, it is obvious that the current capacities of the PPA as the body in charge of implementation of the program of professional training and development are insufficient to implement a sustainable training in the future. In this regard, the issue of sustainability of the training remains, reflected in the availability of funds for financing of education and implementation of programs of professional training and development in Montenegro.

### **7.3. The main strategic goal and the results envisaged to be achieved in the forthcoming period**

Further development of professional training and development will be aimed at achieving the following objectives and results:

- improve the skills of planning, organization and implementation of the LPP and respect for the basic principles of public procurement;

- training programs should be more focused on the planning of procurement and contract management;
- make the public procurement system functional, efficient and transparent through work on further professional development of persons who are assigned with duties related to the process of public procurement;
- provide support for civil servants and state employees who participate in the public procurement system through a process of continuous professional development through exchange of knowledge and experience;
- ensure that bidders and all other participants have the necessary knowledge and skills for participation and effective implementation of the procedures within the public procurement system;
- training regarding introduction of the new electronic procurement system, so that contracting authorities, bidders and other stakeholders would be capable of using electronic procurement system;
- training of contracting authorities and raising public awareness on advantages and methods of use of the MEAT criterion depending on specific features of the procurement subjects;
- improve the understanding of the importance of the public procurement in the context of management of national funds and EU financial instruments.

#### **7.4. Methods and main measures for achievement of the objectives set and results planned, including with the deadlines of their implementation**

Professional development is one of the most important forms of strengthening human resource capacity of all participants in the public procurement system. Continuous professional development is necessary for the employees in the institutions that perform tasks of preparing regulations, monitoring and oversight of their implementation and protection of the rights. Employees of these institutions must be enabled to familiarize themselves with the EU *acquis* in the area of public procurement, the "*good practice*" established in the EU countries in the application of the *acquis communautaire*, as well as with the decisions of the ECJ. This strategy is expected to focus on achieving full compliance with the *acquis* and to present the ways in which Montenegro will provide strong capacities for implementation at all levels.

The proper application of regulations by the contracting authorities is not possible without the continuous professional development of public procurement officers and other persons participating in public procurement at the level of contracting authorities. Employees in the public procurement institutions and certified trainers who need to transfer new know-how to persons who conduct procurement in the contracting authorities will have the key role in professional development.

Development of professionalisation will take place through the following steps:

- Continuation of the certification process (*basic level*);
- Introduction of a higher level of certification, whereby the procurement officers would gain more complex and broader knowledge in the area of public procurement, which includes familiarization with the "*good practice*" from the EU countries;
- Improving the status of public procurement officers in order to hire and keep high-quality human resources on this positions, which is essential for the achievement of

effective and regular public procurement and implementation of provisions harmonized with the *acquis communautaire*;

- Improving awareness (*by establishing a forum on public procurement*) in order to address issues of practical application of the Law and other regulations in the area of public procurement;
- Encouraging the work of professional associations/creating a network of professionals in public procurement in order to strengthen professionalism and ethical standards in public procurement and ensuring that persons carrying out public procurement procedures contribute to the adoption and implementation of regulations in the area of public procurement.

In addition to general training programs, the specific, specialized programs intended for target groups, such as: managers, public procurement officers, as well as persons directly involved in the procurement procedure in the contracting authority, such as technical staff, will be carried out. Specialized training programs will be designed for specific areas, such as energy, healthcare etc. or specific issues of interest to several contracting authorities, such as the procurement of insurance services, medicines, airline tickets etc.

Training of bidders is very important, enabling them to efficiently protect their rights and encouraging their greater participation in public procurement procedures, which has a direct effect on strengthening competition on the public procurement market. Training is particularly necessary for the SMEs which often do not have sufficient knowledge and information, which poses an obstacle to their greater participation in public procurement procedures. Trainings will be organized for bidders in cooperation with the Chamber of Economy and regional chambers of commerce, tailored to their actual needs.

In the future, public procurement institutions, primarily the PPA will enable professional development of its employees in order to learn more about the *acquis communautaire*, the new Directives on public procurement 2014/24, 2014/25, 2014/23, the practices in the EU countries, as well as the decisions of the ECJ. Public procurement institutions will design and organize workshops for joint professional development in certain fields relevant for the application of the Law, on the basis of a memorandum of cooperation signed. In addition, workshops will be organized at which the representatives of public procurement institutions and representatives of the judicial authorities will participate in order to improve the level of knowledge and increase the efficiency of prosecution of cases of violations of regulations governing public procurement, through consideration of issues in the field of application of the Law.

PPA will continue to prepare models, instructions, guidelines and other tools intended for persons engaged in the implementation of public procurement procedures, and establish a network of stakeholders in the public procurement system of Montenegro, such as through the active involvement of the Chamber of Economy, the University of Montenegro and beyond, as well as the relevant ministries.

## VIII STRATEGY MANAGEMENT METHODOLOGY

In order to implement the Strategy for Development of Public Procurement and the AP for implementing the Strategy for Development of Public Procurement in Montenegro, the Government will on the occasion of their adoption, at the same time adopt a decision on the establishment of the Coordination Body for the continuous monitoring of the implementation of the Strategy, which will primarily consist of representatives of the MF, PPA, SC, but also other relevant public administration bodies, non-governmental sector, economic sectors and other interested parties involved in its implementation.

AP for the period 2016-2020 is adopted in order to implement the Strategy and is its integral part. The AP contains: activities, entities in charge of activities, deadlines and indicators for monitoring the implementation of the activities of the Strategy. If necessary, the AP will be revised and updated on an annual basis, according to the following schedule:

September-October: PPA coordinates the analysis and, if necessary, revision of AP for the following year, which involves all relevant parties;

December: If necessary, the Government of Montenegro adopts the revised AP for the following year.

Using the AP as a way of monitoring and implementation, the Coordination Body will on a semi-annual basis report to the Government on the progress made in its implementation, according to the following schedule:

January: PPA collects information about the implementation of the plan for the previous year from all relevant parties responsible for the implementation of the AP;

February: PPA prepares a report on the implementation of the AP and submits it to the Government.

Furthermore, to this end, communication will be ensured (Forum on Public Procurement) with contracting authorities, businesses, trade unions and non-governmental organizations through organized discussions, round tables and public debates, in order to provide for discussion on the public procurement system, as well as on its institutional, legislative and other aspects. In this regard, all relevant stakeholders will be invited to participate in implementation of these activities. We anticipate that this method of communication (*Forum on Public Procurement*) be held on semi-annual basis.

In this regard, the progress of results to be achieved and the measurement of fulfillment of indicators listed in the AP for the Strategy will be monitored. In case of delay or non-fulfillment of the indicators mentioned in the Strategy, the Coordination Body will propose specific measures in order to overcome this and determine the appropriate changes in the AP.

**IX ACTION PLAN FOR IMPLEMENTATION OF THE STRATEGY FOR DEVELOPMENT OF THE PUBLIC PROCUREMENT SYSTEM FOR THE PERIOD 2016-2020**

ACTIVITIES	ENTITY IN CHARGE	DEADLINE	INDICATOR
<b>IMPROVEMENT OF THE LEGISLATIVE FRAMEWORK</b>			
1. Analysis of the effects of implementation of amendments to the Law on Public Procurement in practice – preparation of SWOT analysis	PPA	II-III Q/2016	<i>SWOT analysis prepared</i>
2. Analysis of conformity of the amendments to the LPP and requirements of the new EU Directives (2014/24/EU and 2014/25/EU)	PPA	II-III Q/2016	<i>Analysis of conformity of the amendments to the LPP and requirements of the new EU Directives (2014/24/EU and 2014/25/EU) prepared</i>
3. Analysis of other regulations relevant to public procurement, especially of the LPPP and concessions and their compliance with the requirements of the new EU Directive in the field of concessions 2014/23/EU	MF/PPA/ME/CEMN	III Q/2017	<i>Analysis of other regulations relevant to public procurement, especially of the LPPP and concessions and their compliance with the requirements of the new EU Directive in the field of concessions 2014/23/EU prepared</i>
4. Preparation of expert basis for the adoption of a new LPP, while ensuring full	MF/PPA/SC/IAA	II-III Q/2016	<i>Expert basis for the adoption of the new LPP prepared</i>

	transparency and participation on the occasion of adoption of the new LPP			
5.	Adoption of the new LPP	GMNE/PMNE	IQ/2017	<i>New LPP adopted</i>
6.	Adoption of implementing regulations in accordance with the requirements of the new EU Directives and the requirements of the new LPP	MF/PPA/	IIQ/2017	<i>New implementing regulations in the field of public procurement in accordance with the requirements of the new EU Directives and the requirements of the new LPP adopted</i>
7.	Monitoring of the efficiency of implementation of the new LPP	PPA	2017-2020	<i>Analysis of identified deficiencies and proposal for improvement</i>
8.	Initiative of bodies (MF i PPA) to find the “one stop shop” solution related to the issue of documents proving the fulfillment of the mandatory requirements in the public procurement procedures	MF/PPA/CEMN	2017-2020	<i>Initiative launched</i>

**PROFESSIONAL TRAINING AND DEVELOPMENT IN PUBLIC PROCUREMENT AND STRENGTHENING OF ADMINISTRATIVE CAPACITIES**

9.	Organization of expert training for officers of the PPA on the application of EU regulations and proper interpretation and implementation of the new LPP	PPA	2016-2020	<i>Expert training for officers of the PPA on the application of EU regulations and proper interpretation and implementation of the new LPP organized in line with the available technical assistance tools</i>
10.	Adoption of training	PPA	2016-2020	<i>Training materials, manuals, guidelines</i>

	materials, manuals, guidelines and other instructions for the implementation of new legislation for contracting authorities and bidders			<i>and other instructions for the implementation of new legislation for contracting authorities and bidders prepared, introduction of the officers to the implementation of new EU Directives in the EU member states, organization of TAIEX assistance</i>
11.	Preparation of communication guidelines for businesses, which would be developed for SMEs	ME/PPA/CEMNE	2016-2020	<i>Preparation of manuals, info booklets and the like. for representatives of SMEs</i>
12.	Organization of trainings for contracting authorities the special workshops for bidders (strengthen the capacity of contracting authorities and bidders for the implementation of the new LPP)	PPA/CEMNE	2016-2020	<i>Trainings for contracting authorities the special workshops for bidders organized Continuously conduct trainings for contracting authorities, bidders and bodies in charge of implementation, control and supervision of the legal framework defining the public procurement system;</i>  <i>- number and type of trainings held;</i> <i>- number of contracting authorities and bidders who attended trainings.</i>
13.	Organisation of regular "Forum on Public Procurement" in order to gather experiences with the participation of	PPA	2016-2020 (2xyear)	<i>"Forums on Public Procurement" organized, with the participation of contracting authorities and bidders</i>



	contracting authorities and bidders			
14.	Organization of "special -specialist" training programs by sectors for contracting authorities, according to the needs analysis	PPA	2016-2020	<i>"special -specialist" training programs organized. Plan of needs which shall be drawn up as a questionnaire that would be submitted to contracting authorities and bidders in order to make a summary of needs and prepare a sort of proposal, rather than an analysis, for certain specialist trainings.</i>
15.	Organization of taking the professional exam for work in public procurement	PPA	2016-2020	<i>Taking of the professional exam for work in public procurement organized in line with the Program</i>
<b>DEVELOPMENT OF THE ELECTRONIC PUBLIC PROCUREMENT SYSTEM IN MONTENEGRO</b>				
16.	Implementation of the tender procedure for the selection of the most favourable bidder for implementation of IPA II 2014-2020 Project "Implementation of e-procurement system"	MF/PPA/DEUMN/MIST	II-III Q/2016	<i>Tender procedure for the selection of the most favourable bidder for implementation of IPA II 2014-2020 Project "Implementation of e-procurement system" implemented</i>
17.	Procurement and putting into operation of information technology infrastructure for upgrading	MF/PPA/DEUMN/MIST	III – IV/2016 – I Q/ 2017	<i>Procurement completed and information technology infrastructure for upgrading the existing portal, towards the</i>

	the existing portal, towards the introduction of e-access functionalities			<i>introduction of e-access functionalities put into operation. training regarding introduction of the new electronic procurement system, so that contracting authorities, bidders and other stakeholders would be capable of using electronic procurement system.</i>	
18.	Introduction of the new features of e-procurement system and their adaptation to the legislation in the given field	MF/PPA/ /MIST	DEUMN	2017-2018	<i>New features of e-procurement system introduced and adapted to the legislation in the given field</i>
19.	Implementation of procedure before awarding public procurement e-notifications; e-submission of bids; e-review and evaluation of bids; e-award of public procurement, as well as potential setting up of functionalities related to the centralized procurement, including e-auctions	MF/PPA/ /MIST	DEUMN	2017-2020	<i>Implemented procedures before awarding public procurement e-notifications; e-submission of bids; e-review and evaluation of bids; e-award of public procurement, as well as potential setting up of functionalities related to the centralized procurement, including e-auctions</i>
20.	Implementation of procedures after the award of public procurement e-orders; e-bills and e-payment	MF/PPA/ DEUMN/MIST		2018-2020	<b>Implemented procedures after the award of public procurement e-orders; e-bills and e-payment</b>

**PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT PROCEDURES**

21.	<b>Developing web page of SC, allowing the search for decisions and rulings of SC based on keywords</b>	SC	2016-2017	<i>Developed web page of SC, allowing the search for decisions and rulings of SC based on keywords</i>
22.	<b>Provide coordinated communication between the two main public procurement institutions (PPA and SC) and regular communication with the media and the public, including bidders, contracting authorities and citizens</b>	SC, PPA	2016-2020	<i>Provided coordinated communication between the two main public procurement institutions (PPA and SC) and regular communication with the media and the public, including bidders, contracting authorities and citizens</i>
23.	<b>Development of a manual entitled "Legal protection in the public procurement system in Montenegro"</b>	SC	2016-2018	<b>Manual "Legal protection in the public procurement system in Montenegro" developed</b>
24.	<b>Establish mandatory semi-annual reporting on the implementation of obligations under the portfolio of SC's work</b>	SC	2016-2020	<i>Mandatory reporting on the implementation of obligations under the portfolio of SC's work established</i>
25.	<b>Upgrade information system – SC portal</b>	SC	2016-2020	<i>Upgrade SC portal; - provide an overview of terminated contracts in real time;</i>

				- provide an overview of withdrawal from public procurement procedures in real time;
<b>INSTITUTIONAL FRAMEWORK</b>				
26.	Hiring additional officers in the State Commission	GMNE/MF/SC/HRMA	2016-2017	<i>Adoption of the new Rulebook on Internal Organization and Job Descriptions of the Executive Service of the State Commission</i>
27.	Improving administrative capacity in PPA i.e. hiring two new civil servants and state employees in accordance with the new competences from the LPP and APMN 2014-2018	GMNE/MF/PPA/HRMA	2017	<i>Recruitment of new civil servants and state employees in accordance with novim the new competences from the LPP and APMN 2014-2018</i>
28.	Proposal for the improvement of the status of public procurement officers and members of the Commission for opening and evaluation of bids through the introduction of the addition to the basic salary to employees who perform work in these workplaces	MF/PPA	2016-2020	<i>Proposal drafted</i>
29.	Election and appointment of the President of the State Commission for Control of	GMNE/MF/HRMA	I Q/2016	<i>President of the State Commission for Control of Public Procurement elected and appointed</i>

	<b>Public Procurement</b>			
30.	<b>Further strengthening and improving institution responsible for inspection surveillance in the area of public procurement</b>	<b>GMNE/MF/IAA/HRM A</b>	<b>2016-2017</b>	<i>Recruitment of new public procurement inspections and strengthening of administrative, technical and material capacities of the Public Procurement Inspectorate so that this body could adequately perform the control of public procurement procedures; - Draw up and publish a report on strengthening the capacity of the Public Procurement Inspectorate</i>
31.	<b>Strengthening the independence of the SC</b>	<b>MF/GMNE/PMNE</b>	<b>I Q/2017</b>	<i>Legally defined obligations of the Parliament of Montenegro to appoint the members of the SC on the basis of a public competition; Legally improved criteria for the appointment of members of SC;</i>
32.	<b>Complete composition of the SC</b>	<b>PMNE</b>	<b>II Q/2017</b>	<i>Competition for appointment of members of the State Commission announced; The members of the State Commission with the best references elected</i>
33.	<b>Establish a coordination body for monitoring the implementation of the Strategy,</b>	<b>GMNE</b>	<b>I Q/2016</b>	<i>- Coordination body for monitoring the implementation of the Strategy, composed of representatives of relevant government</i>

	composed of representatives of relevant government bodies, non-governmental sector, business sector etc.			<i>bodies, non-governmental sector, business sector etc. established</i>
<b>SUPPORT FOR SMEs IN PUBLIC PROCUREMENT</b>				
34.	Facilitate access to information on public procurement	PPA/CEMN/SC/MBA/UMMN/EF	2016-2017	Access to information on public procurement facilitated
35.	Establish an information desk for SMEs	CEMN	2016	<i>Information desk for SMEs established</i>
36.	Communication guidelines for businesses, with a focus on developing guidelines for SMEs	PPA/CEMN/SC/EF/MB A/UMMN	2016-2017	<i>Communication guidelines for businesses defined, and focused guidelines should be developed for the SMEs</i>
37.	Educate contracting authorities in market analysis and evaluation of bidders, and thereby advantages with a special focus on SMEs	PPA/ME	2016-2020	<i>Program for training of contracting authorities in market analysis and evaluation of bidders, advantages with particular focus on SMEs prepared</i>
38.	Include the strategic issues regarding the SMEs as a part of the curriculum for the training of public procurement officers	PPA/CEMN/NA/EF/UMMN/MBA	2016-2018	<i>Strategic issues regarding the SMEs as a part of the curriculum for the training of public procurement officers included</i>
<b>GREEN PUBLIC PROCUREMENT AND SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT</b>				
39.	Initiate and stimulate debates on green public procurement and socially responsible public procurement	PPA/MSDT	2016-2017	<i>Discussions on green public procurement and socially responsible public procurement initiated and stimulated</i>
40.	Exchange of good	PPA/MSDT	2016-	<i>Guidelines developed for</i>

	practice, and thereby advantages, with a special focus on SMEs		2017	<i>the exchange of bidders, advantages with special focus on SMEs</i>
41.	Include strategic issues regarding the SMEs as a part of the curriculum for the training of public procurement officers	PPA/NA/CEMN/EF/UM MN/MBA	2016-2018	<i>Strategic issues regarding the SMEs included as a part of the curriculum for the training of public procurement officers</i>

**IMPROVEMENT OF MEASURES FOR SUPPRESSION OF IRREGULARITIES AND MEASURES FOR COMBATING CORRUPTION**

42.	Upgrade the Public Procurement Portal	PPA	2016 - 2020	<p><i>Upgraded Public Procurement Portal through the e-procurement project;</i></p> <ul style="list-style-type: none"> <li>- <i>provide a detailed statistical records of public procurement in real time;</i></li> <li>- <i>provide advanced search functionalities for public procurement in real time;</i></li> <li>- <i>provide tools for the analysis of public procurement in real time;</i></li> <li>- <i>provide an overview of the public procurement awarded by bidders in real time;</i></li> <li>- <i>publish all the annexes to the contracts and protocols for all public procurements;</i></li> <li>- <i>number of annexes and protocols to the contracts in relation to the number of annexes and protocols published;</i></li> </ul>
43.	Lay down the obligation of detailed planning of public procurement with the rationale regarding the needs and	MF/Contracting authorities	II Q/2016	<ul style="list-style-type: none"> <li>- <i>Obligation of detailed planning of public procurement with the rationale regarding the needs and appropriateness of public procurement prescribed;</i></li> <li>- <i>timely coordination with</i></li> </ul>

	<b>appropriateness of public procurement</b>				<p><i>internal organizational units of contracting authorities in order to collect needs;</i></p> <ul style="list-style-type: none"> <li>- <i>objective estimate of the necessary quantities particularly if the public procurement plan is prepared based on data from previous years;</i></li> <li>- <i>research into markets in order to assess the costs and objective calculating of the estimated value of procurement;</i></li> <li>- <i>planning of the subject of procurement in accordance with the unique public procurement glossary;</i></li> <li>- <i>objectively determine the type of goods, services or work in relation to the technological and functional characteristics, purpose and features;</i></li> <li>- <i>co-ordination with the financial department before adoption of the public procurement plan</i></li> <li>- <i>obtaining approval of the competent body for the public procurement plan and its amendments and/or supplements</i></li> <li>- <i>timely publishing of public procurement plan and its amendments and/or supplements on the Public Procurement Portal;</i></li> <li>- <i>use of a standardized form of public procurement plan</i></li> </ul>
44.	<b>Improve transparency in reporting, especially in terms of direct agreements</b>	PPA/CA	IV 2016 IV 2020	Q – Q	<p><i>Establishing of a of written procedure (internal act) on the implementation of the public procurement procedure by direct agreement</i></p>
45.	<b>Establish mandatory</b>		2016-		<p><i>Mandatory reporting on the conducted inspection</i></p>



	reporting on the conducted inspection surveillance in the field of public procurement	MF/IAA/GMNE	2020 (twice a year)	<p><i>surveillance established;</i></p> <p><i>- legally prescribed obligation of the Public Procurement Inspectorate to publish on its website detailed semi-annual reports on all inspection controls carried out with detailed information about the irregularities ascertained and the number of filed misdemeanor and criminal charges</i></p>
46.	Develop and upgrade the web pages of all contracting authorities in the public procurement system, to ensure the availability of information, tools and instructions used in the practical implementation of public procurement procedures	CA	2016-2017	<p><i>Web pages of all contracting authorities in the public procurement system developed and upgraded, to ensure the availability of information, tools and instructions used in the practical implementation of public procurement procedures</i></p>
47.	Improve the transparency of data on companies that are related to persons who, on behalf of contracting authority, perform some of the public procurement tasks and persons who have influence on the performance of the above tasks in order to efficiently prevent, identify and	CA/B/GMNE/MF/PPA/PMNE	2016-2017	<p><i>Transparency of data on companies that are related to persons who, on behalf of contracting authority, perform some of the public procurement tasks and persons who have influence on the performance of the above tasks in order to efficiently prevent, identify and eliminate conflicts of interest improved;</i></p> <p><i>-legally prescribed obligation that the public procurement contract can not be concluded unless it</i></p>

	<b>eliminate conflicts of interest</b>				<p><i>contains a detailed anti-corruption clauses relating to conflict of interest on the side of the contracting authorities and bidders, and that all concluded contracts that do not contain these clauses are considered legally null and void;</i></p> <p><i>- legally prescribed clear conditions for the development of technical specifications in the preparation phase of public procurement procedures, as well as the obligation that persons who prepare technical specification for a concrete public procurement cannot at the same time be members of the tender commission for the same public procurement, in order to prevent potential conflict of interest and adjustment of tender documents to favorized bidders</i></p>
48.	<b>Improve cooperation between PPA, SC, SPPO, SAI, PA, IAA in terms of data exchange, in connection with the individual violations of the law, as well as cooperation on joint training for mentioned bodies</b>	<b>PPA/IAA/SC/SPPO/PA/SAI</b>	<b>2016 – 2020</b>		<i>Improved cooperation between PPA, SC, SPPO, SAI, PA, IAA in terms of data exchange, in connection with the individual violations of the law, as well as cooperation on joint training for mentioned bodies</i>
49.	<b>Monitoring the efficiency by analyzing the market prices, contract prices in framework</b>	<b>MF/PPA/IAA</b>	<b>2016 – 2020</b>		<i>Method prescribed for monitoring the efficiency by analyzing the market prices, contract prices in framework agreements</i>

	<b>agreements</b>			
50.	<b>Creating a website where anyone can anonymously report an instance of corruption or misuse of public funds and establish a procedure to investigate these cases (can also be a powerful tool of public relations)</b>	PPA	2017-2018	<i>Website where anyone can anonymously report an instance of corruption or misuse of public funds and establish a procedure to investigate these cases (can also be a powerful tool of public relations) created</i>
51.	<b>Publication of all related documents on public procurement</b>	PPA	2016-2020	<i>Provision and adoption of obligation on publication of public procurement documents including public procurement plans, tender documents, decisions of candidates' qualifications, decisions on the selection of the best bid, decisions on suspension of a public procurement procedure, public procurement contracts, changes or addenda to the plan, tender documents, as well as by undertaking other actions and measures.</i>
52.	<b>Keeping of documents by the contracting authorities resulting from the public procurement procedure in accordance with LPP</b>	PPA/SC/CA	2016-2020	<i>Mandatory keeping of documents by the contracting authorities resulting from the public procurement procedure in accordance with LPP established</i>
53.	<b>Training of police and prosecutors in the field of public procurement</b>	PPA	2016-2017	<i>Training of police and prosecutors in the field of public procurement conducted</i>
54.	<b>Training for the managers of contracting authorities on the</b>	PPA	2016-2020	<i>Training for the managers of contracting authorities on the managerial responsibilities and role in</i>

	<b>managerial responsibilities and role in implementing internal procedures</b>			<i>implementing internal procedures conducted</i>
<b>55.</b>	<b>Sanctions in cases of violation of LPP</b>	<b>IAA</b>	<b>2016-2020</b>	<i>Sanctioning procedures in cases of violation of LPP established</i>
<b>56.</b>	<b>Improve the advisory functions of the PPA to facilitate the lawful implementation of regulations in the field of public procurement</b>	<b>MF/PPA</b>	<b>IIIQ/2016</b>	<i>Legally prescribed competence to give an opinion on the application and implementation of the LPP and bylaws to bidders and contracting authorities in order to facilitate the lawful implementation of regulations in the field of public procurement</i>