

IMPLEMENTATION OF THE NEW
PUBLIC PROCUREMENT LAW

**A CHANCE TO LEAVE
THE VICIOUS CIRCLE**



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Implementation of the New Public Procurement Law: A Chance to Leave the Vicious Circle

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EXECUTIVE SUMMARY

Frequent changes of plans, changes of plans at the end of the year, and failed implementation of plans due to untenable planning – these are the indicators of poor procurement planning by ministries and municipalities. On average, the 24 municipalities covered by this analysis amended their Public Procurement Plans on 6.4 occasions during 2020. The ones that did so most frequently included the Royal Capital of Cetinje (18 rounds), Zabljak (11), Berane, Pljevlja and Petnjica (10). The 17 ministries tended to amend their Public Procurement Plans less frequently than the municipalities, on average on 2.8 occasions in 2020. The Ministry of Justice carried them out most frequently (8 rounds), followed by the Ministry of Interior (6), Ministry of Sustainable Development and Tourism and Ministry of Public Administration (5).

The municipalities spent only some 60% of their respective planned public procurement budgets in 2019, while the ministries spent 93%. The ones that were flagged up were the Municipality of Ulcinj, which spent only 7%, and the Ministry of Labour and Social Welfare, which spent less than a half of its public procurement budget.

Instead of bringing improvements to the planning and implementation of public procurement procedures, market analysis brought the potential for abuse that aimed to favour some tenderers. Since it is not mandatory, there is no prescribed obligation to develop and publish reports on the consultations with business operators on the value of procurement. There are no records on whether the ministries and municipalities conducted any market analyses in the second half of 2020.

Although price can be used as the sole criterion for tender evaluation only exceptionally, the ministries and municipalities still tend to prioritise it within the price-quality ratio criterion. The lowest tender price was decisive in over 90% of the ministries' and municipalities' tenders since the beginning of the implementation of the new Public Procurement Law (PPL).

The obligation of developing a report on the performance of public procurement contract is a novelty in the Montenegrin public procurement system. However, rather than an overview of the course of events from contract signing to its implementation, the report is more of a set of technical data already largely contained in the contract itself.

The new regulations have brought the most improvements in terms of simple procurement, which replaced low-value procurement; the improvements relied on the Institute Alternative's recommendations from 2018. The key improvements relate to the adoption of the Rulebook on the method of conducting simple procurement that stipulates equal rules for all contracting authorities. The contracting authorities are now also required to advertise simple procurement via the E-procurement Portal, which considerably aids transparency. Still, not all contracting authorities are equally compliant with the obligations laid down in the Rulebook, in particular concerning the observance of the threshold for direct contracting. We have mapped a few possible instances of split procurement that served to circumvent the procedures from the PPL and conduct simple procurement – a practice that is prohibited under the PPL.

Inspection of simple procurement needs to expand in order to prevent and/or prosecute abuse. Contracting authorities have to be imposed more stringent obligations concerning the development of Public Procurement Plans, along with the obligation to provide supporting arguments for any amendments to those Plans, and the obligation to develop, adopt and publish the Plans. Market analysis should be mandatory, and the contents of the report on the performance of public procurement contract need considerable improvement. Contracting authorities should prioritise the quality of works, goods and services in public procurement procedures so as to ensure their extended lifespan and protect the budget.

INTRODUCTION

The new Public Procurement Law (PPL) was adopted on 17 December 2019 and its implementation began on 7 July 2020. It was adopted with the aim of further harmonisation with the EU Directives within the accession negotiation process between Montenegro and the EU, in particular in the aim of harmonisation with Directives 24 and 25, which had brought significant changes in 2014. Harmonisation of the national framework with the EU *acquis communautaire* is one of the three closing benchmarks for Chapter 5 – Public Procurement¹.

The European Commission 2020 Montenegro Report noted **limited progress** in this area, with the adoption of the new PPL and the Law on Public-Private Partnerships.² It further stated the need for consistent implementation of these laws, along with the adoption of relevant secondary legislation. This is reminiscent of the European Commission's assessment from 2015, which noted *good progress* on the back of the PPL amendments from late 2014; the subsequent implementation, however, failed, and the 2016 Report noted *limited progress*. The 2018 Report noted a *backslide*.

The Montenegrin public procurement system has been hampered for years by a lack of transparency and a low level of competition in the procedures. The 2017 amendments of the PPL meant significant deterioration, as they introduced insufficiently regulated emergency procedures and absolute discretion with regard to low-value procurement. Those amendments, described upon adoption as a “temporary situation and transitional period to the adoption of the new PPL”, were implemented for three years and brought lasting consequences for the system. At €608,224,346.95, the spending on public procurement in 2019 was at its highest since 2007, coupled with the lowest level of competition of just 2.01 tenders per tender. As much as one-quarter of the total value of contracts was concluded on the basis of a single submitted tender³. The amount contracted by the ministries in 2020 was €21,117,713.11, while the amount contracted by municipalities was €28,648,757.49⁴.

1 The Chapter was officially opened on 18 December 2013.

2 European Commission 2020 Report for Montenegro, Brussels, 6 October 2020, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

3 Public Procurement 2019: Increasing Spending, Decreasing Competitiveness, Institute Alternative, June 2020, available at: <https://institut-alternativa.org/en/33639-2/>

4 According to the IA's preliminary findings, on the basis of individual contracting authorities' reports on public procurement published by the Ministry of Finance and Social Welfare on its website: <http://www.ujn.gov.me/pojedinacni-izvjestaji-obveznika-primjene-zakona-o-javnim-nabavkama/>
Note: Reports for 5 municipalities and 2 ministries are still not available. Last accessed on 20 April 2021.

This analysis considers the new mechanisms and concepts under the PPL and their implementation in the second half of 2020. It focuses on two categories of contracting authorities, namely all ministries (17) and all municipalities (24)⁵. A small number of public procurement procedures was recorded during the first six months of implementation of the new PPL, in particular with regard to new procedures, as they were practically absent (competitive negotiated procedure, partnership for innovation, competitive dialogue). The ministries recorded a small number of procedures due to the outcome of the parliamentary election held on 30 August 2020 and the first change of the political composition of government in 30 years. From the election to the establishment of the new Government in December 2020, the Government and its ministries had a technical mandate, so procedures were launched only when necessary.

Consequently, rather than on the procedures, this analysis focuses on the new mechanisms and concepts under the PPL – market analysis, most economically advantageous tender as the sole evaluation criterion, report on contract performance, and simple procurement – and on their impacts on transparency and competition. The analysis also looks at procurement planning and harmonisation of Public Procurement Plans with the new legal procedures. It concludes with proposed recommendations for improvement of each of the instruments and mechanisms addressed.

Secondary legislation – putting in place the preconditions for the implementation of the Law

The new PPL envisaged the adoption of 35 pieces of secondary legislation, forms, guidance notes, methodologies and other accompanying documents for the implementation of the Law. The deadline left for the development and adoption of secondary legislation was six months from the date of the Law entering into force, which coincided with the date of commencement of implementation of the PPL - 7 July 2020.

Three Decrees were adopted, governing procurement for the purposes of diplomatic and consular offices, defence and security and centralised procurement⁶, along with 17 Rulebooks⁷ and one Guidance Note⁸. Separate Rulebooks were adopted initially for each

5 There are currently 12 ministries (as of December 2020); still, for the most part of 2020, there were 17 ministries, so that was the number of contracting authorities and spending units that constituted the sample for this survey.

6 Decree on the Method of Conducting the Procurement for the Purposes of Diplomatic and Consular Office of Montenegro Abroad (Official Gazette of Montenegro 090/20 of 01 September 2020); Decree on the List of Military Equipment and Products, Procedure and Method of Conducting Public Procurement in the Field of Defence and Security (Official Gazette of Montenegro 076/20 of 28 July 2020); Decree on the Method of Planning and Conducting Centralised Public Procurement (Official Gazette of Montenegro 069/20 of 11 July 2020).

7 The list of adopted Rulebooks with the Official Gazette references is available in Annex 1.

8 Guidance on the procedure for verification and compliance for the participation of the economic operators registered in Montenegro and issuance of certificates for participation in procurement for the purposes of the North Atlantic Treaty Organization (Official Gazette of Montenegro 106/20 of 02 November 2020).

of the forms envisaged under the PPL, but they were subsequently compiled into the Rulebook on the forms for conducting public procurement procedures⁹.

The regulation governing the specific form of public procurement – *e-auction*¹⁰, has not been adopted to date; neither have the forms for invitation, minutes and notifications on the outcome of a *design contest*¹¹, as a specific form of procuring services.

Most of the secondary legislation was adopted in time or with slight delays; all of the regulations entered into force by the end of July 2020.

Adoption of the Rulebook on the method of operation and use of electronic public procurement system was the one most delayed, as the Rulebook was adopted in late 2020, which was one whole year following the adoption of the PPL and six months after the set deadline. If we consider the broader context and the timing of the establishment of the e-procurement system (EPPS) in early 2021, the delay did not affect the establishment and launch of that system.

Procurement planning did not unfold “as planned”

To be conducted, a public procurement procedure has to be included in the Public Procurement Plan of the individual contracting authority, and relevant funding has to be secured.¹² Besides being a precondition for conducting public procurement, the Plan is an important source and document for the purpose of oversight and monitoring of this segment of public spending and an instrument for providing timely information to tenderers about the contracting authority’s intentions concerning procurement for the current year. It is therefore important that public procurement are adequately planned and follow the plan to a maximum extent. However, most of the time that was not the case with the ministries and municipalities covered by this analysis.

The Royal Capital of Cetinje amended its 2020 Public Procurement Plan as many as 18 times. Besides serving as an illustration of poor procurement planning, this also illustrates the poorly regulated procurement planning procedures: the Law allows for

9 Official Gazette of Montenegro 014/21 of 12 February 2021.

10 The new Law envisages that electronic auction may be conducted after the assessment of bids to obtain new prices, revised downwards and/or new values concerning certain elements of bids, which enables ranking of the bids using automatic evaluation methods. The Ministry of Finance is competent for prescribing the method of conducting and completing electronic auction, under Article 71 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

11 To purchase services in the fields of architecture, construction, engineering and IT, a contracting authority may organise a design contest: 1) prior to concluding the service contract; 2) with prizes or fees for the contenders, Article 155 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

12 The Public Procurement Law (Official Gazette of Montenegro 074/19 of 30 December 2019).

the Plans to be amended as many times as desired and without any rationale. Although the most drastic example, Cetinje was not an exception, as almost all institutions and municipalities amended their Procurement Plans on multiple occasions during the year. Since such amendments were not accompanied by rationales, it is often impossible or very difficult to identify what the amendment referred to and whether it was substantive or technical.

On average, the 24 municipalities covered by this report amended their Public Procurement Plans on 6.4 occasions during a single year. The ones that resorted to this most frequently, besides Cetinje, were Zabljak (11), Berane, Pljevlja and Petnjica (10), while the ones that amended their Plans the least were Budva, Andrijevisa, Mojkovac and Herceg Novi (twice).

Table 1: Frequency of amendments to municipal Public Procurement Plans in 2020.

Municipality	Rounds of amendments	Municipality	Rounds of amendments
Cetinje	18	Plav	6
Zabljak	11	Pluzine	5
Berane	10	Ulcinj	5
Pljevlja	10	Tivat	4
Petnjica	10	Danilovgrad	4
Bijelo Polje	9	Kotor	3
Rozaje	8	Niksic	4
Kolašin	8	Bar	3
Tuzi	8	Budva	2
Gusinje	7	Andrijevisa	2
Savnik	7	Mojkovac	2
Podgorica	6	Herceg Novi	2

The 17 ministries changed their Public Procurement Plans less frequently than the municipalities, on average on 2.8 occasions in 2020. The Ministry of Justice amended its Plan most frequently (eight times)¹³. The Ministry of Interior had six rounds of amendments; the Ministry of Sustainable Development and Tourism and the Ministry of Public Administration carried out amendments on average almost once in two months, or five times during the year. The Ministry of Labour and Social Welfare, Ministry of Human and Minority Rights, Ministry of Science and Ministry of Health amended their respective Plans only once during 2020.

¹³ Six out of eight amendments referred to technical corrections of the Plan related to VAT calculation and similar matters, according to information shared by the Public Procurement Office of the Ministry of Justice at the meeting with contracting authorities held on 2 April 2021.

Table 2: Frequency of amendments to ministries' Public Procurement Plans in 2020.

Ministry	Rounds of amendments	Ministry	Rounds of amendments
Ministry of Justice	8	Ministry of Foreign Affairs	2
Ministry of Interior	6	Ministry of Sport and Youth	2
Ministry of Sustainable Development and Tourism	5	Ministry of Defence	2
Ministry of Public Administration	5	Ministry of Education	2
Ministry of Transport and Maritime Affairs	3	Ministry of Human and Minority Rights	1
Ministry of Agriculture and Rural Development	3	Ministry of Science	1
Ministry of Finance	3	Ministry of Health	1
Ministry of Culture	2	Ministry of Labour and Social Welfare	1
Ministry of Economy	2		

The amendments conducted by each municipality and each ministry included one amendment pertaining to the mandatory alignment of Public Procurement Plans with the new PPL and the procedures envisaged under it.¹⁴

Besides frequency, the timing of the amendments served as another indicator of poor planning. Almost a third of municipalities amended their "Plans"¹⁵ in late 2020, with the Ministry of Finance and Ministry of Justice as the only ones that conducted amendments in November.

Inadequate procurement planning is illustrated also by the large differences between the planned and executed procurement budgets of contracting authorities. The total difference between the planned and spent procurement budget, as the aggregate amount for all of the contracting authorities, remains unknown. Neither the Ministry of Finance nor its predecessor the Public Procurement Administration published those data. However, the data for the individual categories of contracting authorities, such as ministries and municipalities, are available and suggest that the problem of inadequate planning is particularly present among municipalities.

¹⁴ The contracting authorities were required to align their Plans within 15 days from the date of implementation of the Law, that is by 22 July 2020 – Article 213, paragraph 2 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

¹⁵ The Royal Capital of Cetinje, the Municipalities of Niksic, Tivat, Ulcinj, Berane, Petnjica and Zabljak.

During 2019, the municipalities spent only some 60% of the budget planned for public procurement: €48,114,198.99 out of the planned amount of €81,703,241. The Municipality of Ulcinj executed only 7% of its public procurement budget in 2019,¹⁶ followed by the Royal Capital of Cetinje at just 29%,¹⁷ and the Municipality of Budva at close to one half of the planned budget, almost 54%¹⁸.

Overall, the ministries executed 93% of the funds planned for public procurement in 2019.¹⁹ Individual ministries were flagged up as examples of poor planning: one-half and one-third of the respective planned budgets remained unspent in the cases of the Ministry of Labour and Social Welfare²⁰ and Ministry of Defence²¹, while the Ministry of Interior spent €8 million more (€30,230,903.72) than originally planned (€22, 211,729.21).²²

Planning unaccompanied by market analyses

The PPL introduced market research in the course of developing a Public Procurement Plan or when launching a public procurement procedure. It is prescribed as a possibility, not an obligation, and only provided that it does not jeopardise the principle of market competition, prohibition of discrimination and transparency²³. Transparent and inclusive implementation of prior market analysis has the potential to ensure more adequate public procurement planning. Besides, consulting all the interested tenderers when preparing the public procurement procedure may lead to faster and simpler implementation of such procedures and reduce the number of complaints against procedures and their outcomes.

In practice, there are no indications or evidence that the contracting authorities from the category of ministries and municipalities implemented such analyses. No findings of a market analysis were included in Public Procurement Plans, Tender Documentation, procurement notices or reports on implemented procedures i.e. Decisions on the selection of the best tender.

16 The amount spent was €355,852.79, against the originally planned amount of €5,543,600.00, Annex 4. Comparison of planned and contracted public procurement of local governments in 2019, Report on Public Procurement for 2019, Ministry of Finance, available at:

<http://www.ujn.gov.me/2018/01/godisnji-izvjestaj-o-javnim-nabavkama-u-cg-za-2019-godinu/>

17 Out of the planned amount of €7,986,300.00, only €2,283,981.32 was executed, *Ibid*.

18 Out of the planned amount of €12,199,795.00, the Municipality of Budva spent approx. €5,644,216.30 on public procurement. *Ibid*.

19 Out of the planned amount of €60, 212,293.9, €55, 826,420.86 was spent, Annex 3. Comparison of planned and contracted public procurement of local governments in 2019, Report on Public Procurement for 2019, Ministry of Finance, available at:

<http://www.ujn.gov.me/2018/01/godisnji-izvjestaj-o-javnim-nabavkama-u-cg-za-2019-godinu/>

20 Only €3,023,295.34 was spent, against the planned amount of €7, 396,830.34, *Ibid*.

21 The planned amount was €13,526,808, and the amount spent was €9,404,119.33, *Ibid*.

22 For the sake of verification, we cross-referred the data from the Report on Public Procurement for 2019 with the data from the latest Ministry of Interior Plan for 2019, as published on the Public Procurement Portal and the individual Ministry of Interior Report on the conducted procedures and concluded contracts for 2019.

23 Article 85 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

In **Croatia**, market analyses are implemented as a rule prior to launching a public procurement to prepare the procurement and inform economic operators about the contracting authorities plans and requirements and are mandatory also prior to launching an open or restricted procedure for the purchase of works or procedures of large value purchases of goods or services. A contracting authority is required to consult with all interested tenderers prior to launching the procedure on the description of the subject-matter, technical specifications, criteria for qualitative selection of economic operators, criteria for tender selection and specific conditions for contract execution.

To ensure equal treatment of all participants in the procedure, the contracting authority is required, under the PPL, to consider all comments and suggestions of interested economic operators and to prepare and publish a report on endorsed and rejected comments and suggestions.

Public procurement are divided into six categories according to the specific value thresholds which are based on the estimated value.²⁴ The thresholds are important, *inter alia*, as they determine whether a certain type of procurement is subject to the PPL and what type of procedure is applicable. Under the PPL, a contracting authority must not use the method of calculation of the estimated value that circumvents the application of the Law²⁵.

The method of calculation of the estimated value of procurement of goods, works and services used to be laid down in the laws governing public procurement, but the new PPL envisaged adoption of the relevant Ministry of Finance Methodology²⁶. The Methodology makes no mention of market analysis, nor does it refer to the need for and method of its implementation. In addition to market analysis not being mandatory even when procuring works or high value goods and services, there is no obligation to develop and publish reports on implemented market analysis or consultations with interested tenderers. This leaves room for market analysis – instead of serving to improve planning and implementation of procurement procedures – to be conducted in secrecy and abused to favour some tenderers.

Although this was a novelty in comparison with all previous PPLs, we cannot confirm that introduction of the concept of market analysis has improved public procurement planning, as it is insufficiently regulated.

24 Article 26 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

25 Article 82 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

26 Rulebook on the Methodology for Assessing the Value of Public Procurement Subjects (Official Gazette of Montenegro 057/20 of 18 June 2020).

Price trumped quality

The new PPL brought other novelties that concerned the criteria for the selection of the best tender. The lowest offered price had been the predominant factor for the outcome of public procurement procedures for years.²⁷ In the course of a public procurement procedure, contracting authorities used to be required to select the most economically advantageous tender by applying the principle of cost-effectiveness, on the basis of the price criterion i.e. the price-quality ratio and lifecycle costs.²⁸ The new method of tender evaluation should improve the quality of purchased goods, services and works. The lowest offered price should only exceptionally serve as the decisive factor determining the winning tender; however, this persists in practice.²⁹

The **Ministry of Finance**, which had proposed the PPL, envisaged launching a tender for the procurement of SAP Named User Licences worth €71,000 and evaluate tenders by assigning 95 points for the price and 5 points for quality. The PPL lays down that the number of points assigned to price may not exceed 90% of the total maximum score.³⁰ 24 days later, the MoF modified the tender document and adjusted the tender valuation criterion by assigning 10 points for quality and 90 for price.³¹ This illustrates that tender evaluation according to the most economically advantageous tender does not accommodate the specific features of the subject-matter of some procurement where it is difficult to evaluate product quality because it is identical across all tenderers.

From July to December 2020, seven (out of 17 (former)) ministries launched and implemented 25 open procedures. The outcome of more than 90% of them was driven by price, since, under the criterion that referred to price-quality ratio, the price carried more than 50% of the total score in most cases.

In as many as 14 open procedures, the price carried 90% of the total score, as

27 In 2019, 87.82% of contracts were concluded on the basis of the lowest offered price. There are no data available for 2018, while the figure for 2017 was 90.58%, for 2916 93.01%, for 2915 92.70%. Source: Annual reports on public procurement of Ministry of Finance/Public Procurement Administration for 2015-2019. Available at: <http://www.ujn.gov.me/en/category/izvjestaji/>

28 Article 117 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

29 Price can serve as the sole criterion for tender evaluation only exceptionally, in the negotiated procedure without prior notice, in several specific situations when concluding a framework agreement, e-auction or dynamic purchasing system, in the procedure for the award of the contract for social and other special services, in the case of procurement for the purpose of defence and security or the purposes of diplomatic missions, consular offices and military-diplomatic staff abroad, Ibid.

30 The price-quality ratio is set so that the score assigned for price may not exceed 90% of the total maximum score, Article 118 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

31 The tender procedure for this procurement is available at: <https://portal.ujn.gov.me/delta2015/search/displayNotice.html?id=134448&type=InvitationPublicProcure>

opposed to 10% for quality. In all of the 9 open procedures launched during the given period, the **Ministry of Interior** used that method to evaluate the tenders. The Ministry purchased tyres, supplies of hygiene products, equipment and maintenance of various software, systems and subsystems – the Ministry’s financial information system, satellite subsystem for the communication network connecting the border crossing points etc. **The Ministry of Public Administration** used the same method to evaluate four out of the five conducted open procedures. The subject-matter of procurement were mainly IT and telecommunication services. The **Ministry of Justice** falls into the same group, as it implemented one out of the three open procedures using the same method: the procedure concerned purchase of computers and computer equipment for the purposes of judicial institutions.

The price-quality ratio followed the 80-20 scheme in two procedures: the former **Ministry of Sustainable Development and Tourism (MSDT)** used it to purchase the services of designating the appraisers for the LUSTICA BAY project, and the **Ministry of Youth and Sport** contracted purchase of works to reconstruct the cycling lanes and fitness trails at Jaloviste site in the Municipality of Mojkovac. Four procedures were implemented using the 60-40 price-quality ratio.

Quality was prioritised in only two procedures. One was implemented by the former MSDT to purchase services of a controller tasked with monitoring the implementation of privatisation contracts in the field of tourism. The price-quality ratio in that open procedure was set at 10-90; the quality sub-criterion assessed, *inter alia*, the controller’s past references. The Ministry of Public Administration used this approach when evaluating the tenders in the procedure for the purposes of the project setting up a new Government web portal, intended to enable unified online access to all state administration authorities. The quality sub-criterion assessed the composition of the managerial staff and experts involved in the project.

During the period in question, twenty municipalities³² launched and conducted in total 81 open procedures. Price was the decisive criterion in 96%, or 78 procedures where it carried more than 50% of the score.

In most of the procedures (65%), price carried 90 points and quality 10. The Capital City of Podgorica and Pljevlja each launched ten procedures in total, with the price always carrying 90 points. **The Capital City** used this method to purchase equipment for the local radio and TV station RTV Podgorica worth €247,933.88 and tactile paths for the blind and

32 The Municipalities of Petnjica, Andrijevica and Mojkovac did not have any open procedures posted on the Procurement Portal during the period in question, while the Municipality of Ulcinj launched three procedures that were not completed by the end of 2020.

sight-impaired persons worth €49,586.78. The remaining 10 points in these procedures referred to delivery deadlines. The **Municipality of Pljevlja** used this method to contract various types of works – reconstruction of streets, renovation of facades, construction of a parking lot, but also to purchase pellet (under the environmental incentives scheme) worth €247,933.88.

It is particularly concerning that works predominated in municipal procurement. Quality and deadline for completion, along with professional references, have to be the decisive factors in such procurement in order to ensure quality and extended lifespan, as well as safety, since procurement of works frequently pertained to traffic routes.

The **Municipality of Rozaje** should be flagged up, as it carried out works to reconstruct rural roads solely on the basis of the lowest price criterion, contrary to the Law³³. We could not find an example of a municipal tender where the score assigned for quality exceeded the one for price; there was a single example of the procurement implemented by the **Royal Capital of Cetinje** where the experience of the persons to be entrusted with the execution of the subject-matter of procurement was assigned 35 points and the deadline for design completion was assigned 15 points, while the price carried 50 points. The procurement pertained to the development of technical documentation for the reconstruction of Cetinje water supply system³⁴.

Report on contract performance reveals nothing about that performance

The obligation of drafting the report on contract performance is a novelty in the Montenegrin public procurement system.³⁵ However, that report is more of a set of technical data most of which are contained in the contract in the first place, rather than a presentation of the course of events from the point when the contract was concluded to the completion of its performance, with a clear outline of responsibilities for each segment of the performance.

The format of the report contains just the basic data categories which are already for the most part contained in the contract itself. Such data include the tender document number, description of the subject-matter of procurement, date of contract conclusion

33 As these were not exceptions under the PPL.

34 Public Procurement Portal, available at: <https://portal.ujn.gov.me/delta2015/search/displayNotice.html?id=135289&type=InvitationPublicProcure>

35 The obligation was introduced under Article 152 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019). Under that Article, a contracting authority is required to develop the report within 30 days from the date of contract execution and publish it in the e-procurement system (EPPS).

and date of completion of its performance, price, tenderer and payment deadline. The only information that the report must include and that is not already included in the contract is the information concerning any amendments to the original contract (description of amendments to any of the basic elements of the contract and relevant dates)³⁶. Institute Alternative forwarded its comments concerning the improvement of this report template to the Ministry of Finance's Directorate for Public Procurement Policy during the process of drafting the by-law on templates³⁷; however, those comments were not endorsed.

The template for the report on contract performance does not even include data on the contracting authority that concluded the contract.

The report does not include a narrative part or any photo documentation or annexes that would support the data included in the report and provide a clearer picture of the course of contract performance and the final product. This is of particular importance in relation to the procurement of works for the purposes of capital projects.

Interestingly, the report template does not include data on the contracting authority or the responsible person at the contracting authority, so it is not clear who is responsible for the contents of the report. The reports on contract performance do not include, for instance, data on the essential characteristics of the subject-matter of procurement, in terms of quantity, quality, dimensions, type of procurement of goods, or proof of receipt of goods.

Ultimately, the report does not include any conclusions as to whether the procurement was conducted in accordance with the contract, or if that was not the case, whether a contract termination procedure or another appropriate action was launched to remedy the consequences of failed performance.

None of the total of 15 reports on contract performance available from the Procurement Portal³⁸ reveal anything in addition to the prescribed contents of the format, not even the name of the contracting authority or the person responsible for the contents of the report.

36 Rulebook on the templates of reports on public procurement procedures (Official Gazette of Montenegro 060/20 of 21 June 2020).

37 Institute Alternative sent comments to the Directorate for Public Procurement Policy of the Ministry of Finance on May 28, 2020.

38 For the period 7 July 2020– 31 December 2020.

Sample report on contract performance – guess who produced it!

OBRAZAC 1

IZVJEŠTAJ O REALIZACIJI UGOVORA O JAVNOJ NABAVCI

Rb.	Broj i datum tenderske dokumentacije	Opis predmeta javne nabavke	Vrsta postupka javne nabavke	Pozicija u planu javnih nabavki	Iznos budžeta predviđen planom	Podaci o ponuđaču (naziv, PIB, % učešća u ugovorenoj nabavci)	Podaci o podgovaračima (naziv, PIB, % učešća u ugovorenoj nabavci)	Osnovni elementi ugovora					Opis izmjene osnovnih elemenata ugovora i datum izmjene	Vrijednost ugovora nakon izmjene	Datum zaključenja ugovora	Datum potpune realizacije ugovora/ okvirnog sporazuma	
								Vrijednost	Period trajanja	Rok i način izvršenja	Rok plaćanja	Garantni period					
1	0705-426/20-6451/3	Partija 1: Sredstvo za tehničku dezinfekciju na bazi alkohola	Pregovarački postupak bez prethodnog objavljivanja poziva za nadmetanje	Ne mora se planirati shodno situacionom uputstvu o primjeni ZJN tačka 8	22.727,27 €	„Hemko“ doo Podgorica PIB 02283115	/	16.000,00 €	28.02.2021. godine	Isporuka robe je 15 dana od dana zaključenja ugovora ije dnokratna isporuka	60 dana	12 mjeseci		16.000,00 €	20.11.2020. godine	28.01.2021. godine	
		Partija 2: Sredstva za dezinfekciju ruku na bazi alkohola			7.438,00 €	„Hemko“ doo Podgorica PIB 02283115	/	4.590,00 €	28.02.2021. godine	Isporuka robe je 15 dana od dana zaključenja ugovora ije dnokratna isporuka	60 dana	12 mjeseci	14.12.2020. godine je izvršen prijem sredstava (9 dana zakašnjenja – obračunati penali u iznosu od 720,55 €)	3.869,45 €	20.11.2020. godine	28.01.2021. godine	
		Partija 3: Sredstva za dezinfekciju radnih površina i podova			2.330,58 €	„Hemko“ doo Podgorica PIB 02283115	/	2.085,00 €	28.02.2021. godine	Isporuka robe je 15 dana od dana zaključenja ugovora ije dnokratna isporuka	60 dana	12 mjeseci			2.330,58	20.11.2020. godine	28.01.2021. godine
		Partija 4: Zaštitna oprema			25.289,26 €	„Hemko“ doo Podgorica PIB 02283115	/	19.685,00 €	28.02.2021. godine	Isporuka robe je 15 dana od dana zaključenja ugovora ije dnokratna isporuka	60 dana	12 mjeseci	14.12.2020. godine primljen je dio sredstava (9 dana zakašnjenja – obračunati penali u iznosu od 3.091,85 €)		16.593,15 €	20.11.2020. godine	28.01.2021. godine

Simple procurement in a new guise

Simple procurement procedures replaced low-value procurement, which had been introduced into the Montenegrin public procurement system in 2017.³⁹ The new PPL raised the thresholds for simple procurement to €20,000 for goods and services and €40,000 for works⁴⁰. These procurement were exempt from the application of the PPL,⁴¹ except with regard to the inspection and reporting to the Ministry of Finance. In comparison with them, the simple procurement procedures are less expensive, shorter, with shorter deadlines for tender submission, and involve simpler tender preparation. On the other hand, there is more room for discretionary decision-making and possible abuse. The PPL, therefore, lays down that contracting authority must not divide the subject-matter of procurement to circumvent the application of the Law⁴².

The key novelty related to simple procurement is the single regulation, namely the Rulebook on the method of conducting simple procurement⁴³, which stipulates a uniform method of procurement for all the contracting authorities in the system. Unlike that, the regulation of low-value procurement allowed for discretionary decisions under the internal regulations of contracting authorities, and therefore the existence of various rules⁴⁴. The other novelty refers to the transparency of public procurement. While low-

39 Under the 2017 amendments, low-value procurement was defined as procurement of goods and services of the estimated value of up to €15,000 and procurement of works of the estimated value of up to €30,000.

40 Article 26 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

41 Article 23, *ibid.*

42 Article 27, paragraph 3, *ibid.*

43 Official Gazette of Montenegro 061/20 of 24 June 2020, 065/20 of 03 July 2020, 071/20 of 16 July 2020, 074/20 of 23 July 2020, 102/20 of 17 October 2020.

44 More details on low-value procurement in: Đurnić, Ana, Institute Alternative, Low-Value Procurement in Montenegro: Without Transparency or Competition), May 2018, available at: <https://institut-alternativa.org/en/low-value-procurement-in-montenegro-without-transparency-or-competition/>

value procurement entailed the obligation of posting only on the contracting authority's webpage, the simple procurement involve the obligation of posting on the EPPS, i.e. Procurement Portal until such time as EPPS is established. Adoption of the single regulation and rules on contracting simple procurement that apply to all contracting authorities and the obligation to advertise these procurement on the Portal had been recommended by the Institute Alternative in 2018⁴⁵.

Between 7 July and 31 December 2020, the municipalities launched and conducted 182 simple procurement procedures via the Portal. Out of that total number, 25 procedures were annulled, and 156 simple procurement worth €1,768,458.62 were contracted. During that same period, the ministries launched only 28 simple procurement procedures, seven out of which were annulled and 21 conducted, totalling €216, 596.92⁴⁶.

Uniform rules – uneven practice

Adoption of the single regulation and uniform rules on contracting simple procurement that apply to all contracting authorities and the obligation to advertise such procurement on the Portal had been recommended by the Institute Alternative in 2018.

Manipulation with the thresholds for direct acceptance of a pro-forma invoice (direct agreement), avoiding the publication of concluded contracts, failure to adopt or delays in the adoption of internal regulations, controlled competition and requests for quotations sent to the tenderers who have been selected in an arbitrary and discretionary fashion – these were some of the key issues in the context of low-value procurement. Laying down uniform rules that would be binding for all contracting authorities was recommended at the time as the solution to these problems that would help reduce discretionary spending. Due to less competition and transparency of the procedures, low-value procurement were considerably prone to abuse.

The Rulebook on the method of conducting simple procurement (hereinafter the Rulebook) addressed most of the problems mentioned above, thus impacting the uniformity of contracting authorities' practices. Still, we noted a few examples of non-compliance with the binding rules, in particular in the case of municipalities.

The Rulebook envisages **direct contracting**, where a pro-forma invoice, fiscal invoice or contract are accepted, depending on the subject-matter, to procure goods, works or

45 Đurnić, Ana, Institute Alternativa, Low-Value Procurement in Montenegro: Without Transparency or Competition, May 2018, available at:

<https://institut-alternativa.org/en/low-value-procurement-in-montenegro-without-transparency-or-competition/>

46 Data on simple procurement conducted by ministries and municipalities posted on the Procurement Portal.

services of the estimated value of up to €5,000 per year⁴⁷. Contrary to this rule, the Capital City of Podgorica accepted a direct pro-forma invoice for as many as five procurement where it should have concluded a contract instead, since the estimated and contracted value of the procurement was higher than €5,000. The purchase of equipment for the City Theatre worth €14,875, for instance, was contracted on the basis of a pro-forma invoice, rather than a contract; that was contrary to the Rulebook. The same applies to the purchases of uninterruptible power supply device (€5,656), furniture for the Public Institution “Dječji Savez” (€5,342), books for the Public Institution “Radosav Ljumović” Library (€7,411.03) and sound equipment for the Public Institution “Zeta Cultural-Information Centre” (€5,527).

1.6
was the average
number
of tenders
per simple
procurement
procedure
conducted by the
ministries and
municipalities

Steps forward have been made with regard to **improved competition**, but they have not rendered major results in practice. Under the Rulebook, the contracting authorities are currently required to post the Invitation to Tender pertaining to simple procurement on the EPPS/Procurement Portal⁴⁸. Publication of such requests on the EPPS/Procurement Portal enables all interested tenderers to familiarise themselves with the request and submit their quotations. On the other hand, the provisions from 2017 allowed for full discretion of contracting authorities with regard to the method of obtaining quotations, so different contracting authorities adopted and practised different arrangements⁴⁹. The contracting authorities are currently allowed to send direct requests for quotations to select tenderers if necessary due to urgency; that, in turn, entails the provision of a specific explanation.⁵⁰ The average number of tenderers that took part in the simple procedures launched by the ministries and municipalities was 1.6. At 1.8 tenders per procedure, the competition in simple procurement procedures was slightly higher for the municipalities than for the ministries (1.4)⁵¹.

47 Article 3 of the Rulebook on the method of conducting simple public procurement (Official Gazette of Montenegro 061/20 of 24 June 2020, 065/20 of 03 July 2020, 071/20 of 16 July 2020, 074/20 of 23 July 2020, 102/20 of 17 October 2020).

48 Article 4, *Ibid.*

49 Only four ministries had internal regulations on low-value procurement that included the obligation to post invitations to tender, and only as a possibility, not an obligation. The rest of the ministries, and the municipalities, decided to send the invitations to the addresses of a certain number of tenderers of their choice. See: Đurnić, Ana, Institute Alternativa, Low-Value Procurement in Montenegro: Without Transparency or Competition, May 2018, available at: <https://institut-alternativa.org/en/low-value-procurement-in-montenegro-without-transparency-or-competition/>

50 Article 5, paragraph 2 of the Rulebook on the method of conducting simple procurement, (Official Gazette of Montenegro 061/20 of 24 June 2020, 065/20 of 03 July 2020, 071/20 of 16 July 2020, 074/20 of 23 July 2020, 102/20 of 17 October 2020).

51 Calculated based on the publicly available data on conducted simple procedures as posted on the Procurement Portal between 7 July and 31 December 2020. The average number of tenders was calculated by dividing the total number of received tenders by the number of launched and conducted procedures.

The obligation to publish contracts on simple procurement procedures was prescribed only later, in October 2020.⁵² However, even in the period when this obligation was not prescribed, the contract authorities mostly published concluded contracts on simple procurement. The exceptions are the Municipality of Bijelo Polje which did not publish the contract for three simple procedures upon deadline expiration, while the Municipalities of Ulcinj and Cetinje, respectively, did not publish the contracts for two⁵³ and the Municipality of Budva for one simple procedure⁵⁴. Capital city of Podgorica did not publish two contracts concluded in the period before the introduction of the obligation to publish simple procurement contracts and three contracts concluded after the introduction of this obligation.

Simple procedures can be conducted without a plan

Just as explained above, one of the major reasons for the contracting authorities to develop and publish the Procurement Plan is to communicate their intentions and needs for the procurement of goods, works and services during the year to the interested tenderers. However, the development and publication of such a plan that would cover simple procurement are recommended, and not set as an obligation.

The Capital City of Podgorica and the Municipality of Mojkovac do not plan simple procurement, although they conduct them.

Simple procurement are exempt from the application of the PPL and as such do not necessarily get included in the Public Procurement Plan. The Ministry of Finance issued the Technical Instructions on public procurement planning, where it is further explained that the obligation of development, adoption and publication of Public Procurement Plans “relates to the contracting authorities planning the public procurement procedure prescribed by the Law in the current fiscal year”. It is stressed that the contracting authorities that conduct only simple procurement in the current fiscal year are not required to develop Public Procurement Plans and share them with the Ministry of Finance in order to get them published in the EPPS. Still, the Ministry recommends planning these procurement if they are certain, in order to inform the interested economic operators about the contracting authority’s intention to conduct simple procurement⁵⁵.

52 This was the fourth amendment to the Rulebook on the method of conducting simple procurement. Article 4, paragraph 2 of the Rulebook prescribes the obligation to publish a simple procurement contract. Rulebook on the method of conducting simple procurement (Official Gazette of Montenegro 061/20 of 24 June 2020, 065/20 of 03 July 2020, 071/20 of 16 July 2020, 074/20 of 23 July 2020, 102/20 of 17 October 2020).

53 After a meeting with purchasers organised by the Institute Alternative on 2 April 2020, the Municipality of Cetinje subsequently published these two contracts.

54 This was a procurement where the representative of the tenderer was unable to sign the contract due to medical reasons. Information of the representative of the Public Procurement Office of Budva, shared at the meeting with contracting authorities held on 2 April 2021.

55 Technical Instructions on Procurement Planning (Official Gazette of Montenegro 074/19) Ministry of Finance, available at: <http://www.ujn.gov.me/akti-za-primjenu/>

It remains unclear, however, whether the only ones exempt from the obligation of developing the Public Procurement Plan are the contracting authorities that plan solely simple procurement, i.e. whether contracting authorities that plan other procedures from the PPL have to include simple procurement in their Plans.

The contracting authorities' practice in this regard is better than the regulation; most of the municipalities and ministries complied with the recommendation to plan simple procedures after all. The exceptions are the Capital City of Podgorica and the Municipality of Mojkovac – although they conducted simple procedures, they did not include them in their Plans.

Most municipalities and ministries include simple procurement in their annual Public Procurement Plans; the MSDT, the Ministry of Economy, and the Royal Capital of Cetinje implemented the good practice of developing specific plans of simple procurement⁵⁶.

The absence of obligatory planning of simple procurement translates as the lack of plans for 15% of the budget spent on public procurement, on average⁵⁷. We therefore recommended, during the public consultations on the Rulebook on simple procurement, that the contracting authorities' obligation to develop, share with the Ministry of Finance and publish the Plan of Simple Procurement be laid down, and a template for such a Plan developed⁵⁸. At the time, we noted that avoiding laying down the obligation of planning simple procurement was contrary to the findings of the Ministry of Finance analysis of the impact assessment (RIA) of the Rulebook on the method of conducting simple procurement. The said analysis stated that one of the objectives of adoption of the Rulebook was “enhanced transparency and legal certainty through the adoption of a single regulation that will generate uniform practice across all contracting authorities and **efficiency when planning** and implementing simple procurement procedures”⁵⁹. Our recommendation, however, was not endorsed.

In the course of drafting the Rulebook on simple procurement, the Ministry of Finance did not endorse our recommendation to stipulate the obligation of development of the Plan of simple procurement.

56 Source: Public Procurement Portal, overview of Public Procurement Plans of all ministries and municipalities from 7 July to 31 December 2020 (PPPs and all amendments to them). The Royal Capital of Cetinje initially adopted the specific Plan of Simple Procurement, only to subsequently include it in the Public Procurement Plan.

57 Ministry of Finance Reports on public procurement for 2018 and 2019, available at: <http://www.ujn.gov.me/category/izvjestaji/>

58 IA recommendations for improvement of simple and centralised procurement, Institute Alternative, March 2020, available at: <https://institut-alternativa.org/en/ia-recommendations-for-improvement-of-simple-and-centralised-procurement/>

59 Public Call for the Proposal of the Decree on centralised public procurement and Proposal for the Rulebook on the method of conducting simple procurement, Ministry of Finance, Directorate for Public Procurement Policy, March 2020, available at: <http://www.ujn.gov.me/2020/03/javni-poziv-za-predlog-uredbe-o-centralizovanim-javnim-nabavkama-i-predlog-pravilnika-o-nacinu-sprovođenja-jednostavnih-nabavki/>

A cover for irregularities or a reflection of poor planning?

Dividing the subject-matter of public procurement to avoid application of the PPL is prohibited and punishable, as it constitutes a severe misdemeanour⁶⁰. However, a detailed mid-year analysis of the Plans' alignment with the new PPL⁶¹ revealed several cases that suggested precisely such breaches of the Law.

The Municipality of Plav included the €70,000 procurement of works for the purpose of local roads' maintenance in its Public Procurement Plan from the first half of 2020, envisaging an open procedure⁶². However, when the Plan was aligned with the new PPL, the Municipality of Plav planned this procurement as three simple procurement: filling of the roads and culverts; engagement of machinery to repair small-scale landslides, and purchase of construction works to build retaining walls, totalling again €70,000.

Plav Municipality Public Procurement Plan, 28 April 2020

18	Radovi	Radovi na održavanju puteva 45233141-9 Radovi na održavanju puteva	70000.00	Otvoreni postupak	avgust-septembar	441-2	755000.00	Budžet Opštine
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Plav Municipality Public Procurement Plan, 15 July 2020

15	Radovi	Nasipanje puteva i postavljanje vodopropusta 45233142-6 Popravljanje puteva	23700.00	6300.00		Jednostavna nabavka	441-2	Budžet Opštine
16	Radovi	Rad mehanizacije na sanaciji manjih klizišta i puteva 45233141-9 Radovi na održavanju puteva	7900.00	2100.00		Jednostavna nabavka	441-2	Budžet Opštine
17	Radovi	Izgradnja potpornih zidova 45262620-3 Potporni zidovi	23700.00	6300.00		Jednostavna nabavka	441-2	Budžet Opštine

= 70000,00 €

60 The Law envisages a €5,000-€20,000 fine to be imposed against a legal person, Article 211, paragraph 1, item 2 of the PPL (Official Gazette of Montenegro 074/19 of 30 December 2019).

61 Contracting authorities shall align their Public Procurement Plans with this Law within 15 days from the day when the implementation of this Law commences, Article 213, paragraph 2, *Ibid.*

62 All the Plans of Plav Municipality are available on the Procurement Portal: <https://portal.ujn.gov.me/delta2015/search/noticeSearch.html?locale=sr&>

The Municipality of Rozaje planned procurement of works to asphalt the roads in the following local districts: Klanac, Skarepaca, Bogaje, Lucice and Grizica, with the estimated value of €115, 000, in an open procedure.

Rozaje Municipality Public Procurement Plan, 01 June 2020

16	Radovi	Asfaltiranje putnih pravaca u MZ: Klanac, Skarepača-Bogaje, Lučice i Grižica. 45233140-2 Radovi na putevima	115000.00	Otvoreni postupak	III kvartal	441-2	966262.00	Budžet Opštine Rožaje
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By means of amending the Public Procurement Plan on 23 July 2020, the Municipality of Rozaje excluded asphaltting of the road in the Klanac district from this procurement and planned it instead as a simple procurement worth exactly €35,000 (incl. VAT).

Rozaje Municipality Public Procurement Plan, 23 July 2020

14	Radovi	Asfaltiranje putnih pravaca: Skarepača-Bogaje, Lučice i Grižica. 45233140-2 Radovi na putevima	66120.00	13880.00		Otvoreni postupak	441-2	Budžet Opštine Rožaje
23	Radovi	Asfaltiranje putog pravca u MZ Klanac 44113620-7 Asfalt 45233140-2 Radovi na putevima	28927.50	6072.50		Jednostavna nabavka	441-2	Budžet Opštine Rožaje

= 115000,00 €

Rozaje Municipality Public Procurement Plan, 10 August 2020

14	Radovi	Asfaltiranje putnih pravaca Lučice i Grižica. 45233140-2 Radovi na putevima	41025.00	8615.00		Jednostavna nabavka	441-2	Budžet Opštine
25	Radovi	Sanacija puta Skarepača-Bogaje 45233140-2 Radovi na putevima	24975.00	5025.00		Jednostavna nabavka	441-2	Budžet Opštine
23	Radovi	Asfaltiranje putog pravca u MZ Klanac 44113620-7 Asfalt 45233140-2 Radovi na putevima	28927.50	6072.50		Jednostavna nabavka	441-2	Budžet Opštine

= 114 639.5 €

By means of subsequent amendments to the Plan, asphaltting of the roads in Lucice and Grizica was also arranged as separate simple procurement, as was the reconstruction of the Skarepaca Bogaje road⁶³.

63 All the PPs of Rozaje Municipality are available on the Procurement Portal: <https://portal.ujn.gov.me/delta2015/search/noticeSearch.html?locale=sr&>

Another example - a less manifest one, since the procurement was not completely split – was recorded in the **Municipality of Niksic**; it referred to the procurement of construction works for the purpose of reconstruction of town blocks, worth €810,000.

Niksic Municipality Public Procurement Plan, 01 July 2020

27	Radovi	Uređenje gradskih kvartova 45200000-9 Radovi na objektima ili djelovima objekata niskogradnje i visokogradnje 45000000-7 Građevinski radovi	810000.00	Otvoreni postupak	IV kvartal	441-2	2710000.00	Budžet Opštine Nikšić
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Amendments to the Plan were used to drastically reduce the value – to €361, 601.14, while the procurement of works to reconstruct the block of buildings around Dom Revolucije, was organised as a separate simple procurement worth €39,999.00 (including €8,399.79 for VAT, totalling €48,398.79)⁶⁴.

20	Radovi	Uređenje kvarta oko Doma revolucije 45200000-9 Radovi na objektima ili djelovima objekata niskogradnje i visokogradnje	39999.00	8399.79		Jednostavna nabavka	441-2	Budžet Opštine Rožaje
21	Radovi	Asfaltiranje putnih pravaca u MZ: Klanac, Skarepača-Bogaje, Lučice i Grižica. 45200000-9 Radovi na objektima ili djelovima objekata niskogradnje i visokogradnje 45000000-7 Građevinski radovi	298843.97	62757.23		Otvoreni postupak	441-25	Budžet Opštine Rožaje

64 All the PPPs of Niksic Municipality are available on the Procurement Portal: <https://portal.ujn.gov.me/delta2015/search/noticeSearch.html?locale=sr&>

CONCLUSION AND RECOMMENDATIONS

Although the new PPL is largely harmonised with the EU Directives – just as the previous Law, which was implemented as of May 2015, was harmonised with the Directives applicable at that time – its implementation is threatening to become a stumbling block. The initial six months of its implementation showed a lack of consistent implementation of some of the provisions from the Law and the secondary legislation, and the potential for the new concepts, such as market analysis, to bring more damage than benefits to the public procurement system. Inadequate planning and failure to deliver on the plans remain the key weaknesses in the management of this segment of public spending. For the most part, the Rulebook on the method of conducting simple procurement resolved the issues attached to low-value procurement. Still, in practice, these procurement and must be kept under the constant scrutiny of the Public Procurement Inspectorate, in order to ensure consistent application of the rules. Furthermore, it is very important to prevent abuse of simple procurement and to use them for the purpose of simplified procedures, faster procurement and lower procurement costs. Unfortunately, control of contract performance failed to deliver on the announcements made by the Ministry of Finance, since contract performance reports contained very few or no new data when compared with the contents of the contract. Inadequate monitoring of contract performance, both internal and external, is another chronic shortcoming of the public procurement system.

Provided no reoccurrence of the situation from 2017 – of a course of action contrary to harmonisation with the EU regulations – the current provisions may serve as a good basis for further strengthening and upgrades of the public procurement system. To that end, we offer the recommendations given below.

Recommendations concerning planning

More stringent obligations should be defined on the part of contracting authorities concerning the development of Public Procurement Plans. Such Plans should include the contracting authority's needs assessment for the previous three years, explanatory notes in case the envisaged needs differ radically from the past ones, and specific explanatory notes on any new procurement. Amendments to the Public Procurement Plan should include mandatory explanations.

In its annual Public Procurement Report, the Ministry of Finance should clearly highlight the aggregate difference between the total planned and spent public procurement budget (of all purchasers).

Recommendations concerning market analysis

The PPL should stipulate the obligation of conducting market analysis and the relevant procedure, as well as the obligation of reporting on the conducted market analysis, to allow for equal treatment of all the interested tenderers, including those market players who did not take part in the consultations but are interested in taking part in the public procurement procedure. The secondary legislation should stipulate the mandatory contents of the template of the Report on Conducted Public Consultations.

Recommendations concerning tender evaluation

The contracting authorities should prioritise the quality of works, goods and services in public procurement procedures, in line with the specific features of the subject-matter of procurement, in order to ensure extended lifespan and protect the budget.

Recommendations concerning better contents of contract performance reports

The template of the Report on the performance of public procurement contract should be amended so as to include:

- Data on the execution of the contract for procurement of goods, services and works as per each essential characteristic of the subject-matter (quality, dimensions, shape, safety, performances, labelling, expiration date, measurement unit, quantity etc.) and requirements concerning the method of execution, including any requirements related to environmental protection, energy efficiency, social protection and/or protection and transfer of intellectual property rights, as stated in the technical specifications of the selected tender that served as the basis for the contract (Article 87 of the PPL, requirements concerning execution of the subject-matter of procurement and requirements concerning execution of works – Article 89 of the PPL);

- Data on the deadlines and method of payment, with accompanying evidence;
- Evidence of acceptance of goods (delivery slip signed by an authorised person), delivery of services or execution of works (proof of existence of the final product, photo and/or video documentation, report of the legal person in charge of supervision of works).

The report should also include a conclusion as to whether the contract was executed in full in line with the contract (and with any amendments to the contract – annexes concluded). If that was not the case, the report must contain information on whether the appropriate procedure was launched to compensate and remedy any harmful consequences of failed execution. The report should also bear the signature of the responsible person testifying to the accuracy of all the data presented in it.

Recommendations concerning simple procurement

The Rulebook on the method of conducting simple procurement should lay down the contracting authorities' obligation to develop, share with the Ministry of Finance and publish their Simple Procurement Plans and develop the relevant template.

Inspection supervision of the simple procurement conducted by the contracting authorities should be reinforced, in order to ensure that the obligations concerning advertising via EPPS/E-procurement Portal, publication of simple procurement contracts and observance of thresholds for direct contracting (up to €5,000) are met. It is particularly important that the inspections target *control of compliance with the ban on dividing the subject-matter of procurement in order to circumvent the application of the PPL*.

LITERATURE

- Annual reports on public procurement of Ministry of Finance/Public Procurement Administration for 2015-2019;
- Comparison of planned and contracted public procurement of local governments in 2019, Report on Public Procurement for 2019, Ministry of Finance;
- Comparison of planned and contracted public procurement of ministries in 2019, Report on Public Procurement for 2019, Ministry of Finance;
- Đurnić, Ana, Institute Alternative, “Low Value Procurement in Montenegro: Without Transparency or Competition”, May 2018;
- European Commission 2020 Report for Montenegro, Brussels, 6 October 2020;
- IA recommendations for improvement of simple and centralised procurement, Institute Alternative, March 2020;
- Public Call for the Proposal of the Decree on Centralised Public Procurement and Proposal for the Rulebook on the Method of Conducting Simple Procurement, Ministry of Finance, Directorate for Public Procurement Policy, March 2020;
- Public procurement 2019: The highest expenditure, the lowest competitiveness, Institute Alternative, June 2020;
- Rulebook on the Method of Conducting Simple Public Procurement (Official Gazette of Montenegro 061/20 of 24 June 2020, 065/20 of 03 July 2020, 071/20 of 16 July 2020, 074/20 of 23 July 2020, 102/20 of 17 October 2020);
- Rulebook on the Methodology for Assessing the Value of Public Procurement Subjects (Official Gazette of Montenegro 057/20 of 18 June 2020);
- Rulebook on the Forms of Reports on Public Procurement Procedures (Official Gazette of Montenegro 060/20 of 21 June 2020);
- Technical Instructions on Procurement Planning (Official Gazette of Montenegro 074/19) Ministry of Finance;
- The Public Procurement Law (Official Gazette of Montenegro, 074/19 of 30 December 2019);
- The Public Procurement Law (Official Gazette of Croatia, 120/16 of 1 January 2017).

Internet resources

- Public Procurement Portal: <https://portal.ujn.gov.me/delta2015/login.jsp>
- Individual reports of contracting authorities on public procurement: <http://www.ujn.gov.me/%20pojedinacni-izvjestaji-obveznika-primjene-zakona-o-javnim-nabavkama/>

ANNEX I

- Rulebook on Records and Methodology of Risk Analysis in Performing Control in Public Procurement Procedures (Official Gazette of Montenegro, No. 055/20, 12.06.2020);
- Rulebook on the List of Social and Another Special Services Which May be the Subject of Public Procurement (Official Gazette of Montenegro, No. 056/20, 15.06.2020);
- Rulebook on the Program and Manner of Taking the Professional Public Procurement Exam (Official Gazette of Montenegro, No. br. 055/20 12.06.2020);
- Rulebook on the Public Procurement Plan Form (Official Gazette of Montenegro, No. 055/20, 12.06.2020);
- Rulebook on the Form of Records of Registered Bidders in the Electronic Public Procurement System (Official Gazette of Montenegro, No. 055/20, 12.06.2020);
- Rulebook on the Manner of Determining the Correction of a Calculation Error in the Bid in the Public Procurement Procedure (Official Gazette of Montenegro, No. 055/20, 12.06.2020);
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About Institute Alternative

Institute Alternative (IA) is a non-governmental organisation, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

Our mission is to contribute to strengthening of democracy and good governance through and policy analysis as well as monitoring of public institutions performance.

Our objectives are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.

The values we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

We function as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. The areas of our work and influence are structured around the following five main programmes: public administration; accountable public finance; parliamentary programme; security and defence, and social policy.

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups Public procurement (5), Judiciary and Fundamental rights (23) and Financial control (32). Our flagship project is the Public Policy School, which is organized since 2012, and in 2018 we organized the first Open Budget School.

So far we cooperated with over 40 organisations within regional networks in the Western Balkans and with over 100 organisations in Montenegro. Institute is actively engaged in regional networks: Think for Europe (TEN), Pointpulse, SELDI, WeBER, UNCAC Coalition, Global BTAP, PASOS and The Southeast Europe Coalition on Whistleblower Protection.

The results of our research are summarised in 127 studies, reports and analyses, and the decisionmakers were addressed 1036 recommendations. Over four thousand times we communicated our proposals and recommendation to the media for better quality public policies.

We started three internet pages. My town is a pioneer endeavour of visualisation of budgetary data of local self-administrations. My Administration followed, which serves as an address for all those citizens that have encountered a problem when interacting with public administration and its service delivery system. The newest internet portal, My Money, provided national budget data visualisation.

Institute Alternative regularly publishes information about finances, projects and donors that support the work of the organisation. For this reason, the Institute have five-stars rating third year in a row, according to a survey conducted by the international non-profit organisation Transparify, which evaluates transparency for over 200 research centers.

President of the Managing Board is Stevo Muk, and our organisation currently has ten members.

www.institut-alternativa.org

www.mojgrad.me

www.mojauprava.me

www.mojnovac.me