



**The Government of Montenegro
PUBLIC PROCUREMENT
AGENCY**

**GUIDE TO PROMOTE THE PARTICIPATION OF SMALL AND MEDIUM-SIZED
ENTERPRISES IN THE
PUBLIC PROCUREMENT MARKET IN MONTENEGRO**

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The present Guide was drawn up as part of the Support Program of the World Bank (hereinafter WB), the Public Procurement Agency (hereinafter PPA). The Guide is funded by the WB and implemented by Vladimir Boričić, a local expert. The implementation of the "program" was initiated in January 2017 and it will end in May 2017.

The general objective of the Guide is to contribute to increased participation of SMEs in the public procurement market in Montenegro.

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Please note that the Guide is based on an analysis of the most important documents regulating the public procurement system in Montenegro. Individual thematic units in the document set out expectations of further development of the public procurement system in Montenegro and its harmonization with the EU acquis.

In order to ensure the practical applicability of this Guide, it will be improved and adapted in line with any amendments and identified needs that may arise in the forthcoming period in the public procurement system.

Some of the views and suggestions given in this document, which are not recognized in the Law on Public Procurement, are the responsibility of the engaged consultant of the WB.

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Acronyms¹

Action plan	AP
Gross Domestic Product	GDP
Central Registry of the Commercial Court	CRCC
State Commission for the Control of Public Procurement Procedures	SC
Directorate for Development of Small and Medium-Sized Enterprises	DDSME
Delegation of the European Union to Montenegro	DEUM
State Audit Institution	DRI
European Union	EU
European Commission	EC
European Institute of Innovation and Technology	EIT
The European Bank for Reconstruction and Development	EBRD
Enterprise Europe Network	EEN
European Investment Fund	EIF
European Investment Bank	EIB
The European Court of Justice	ECJ
Pension and Disability Insurance Fund	PDI Fund
Health Insurance Fund	HIF
Development Fund of Montenegro	DF MN
Tender Experts Group	TEG
Global Entrepreneurship Monitor	GEM
Investment and Development Fund of Montenegro	IDF MN
Instrument for Pre-Accession Assistance	IPA
Public-Private Partnership	PPP

¹ The most common abbreviations widely used in technical reference books on public procurement in Montenegro

Small and Medium-Sized Enterprises	SMEs
Ministry of Finance	MF
Ministry of Economy	ME
Montenegro Business Alliance	MBA
Program of Accession Montenegro to the European Union	PPCG
Tax Administration	TA
Chamber of Commerce	CC
Statistical Office of the European Communities	EUROSTAT
Foreign Direct Investment	FDI
World Bank	WB
Treaty on the Functioning of the European Union	TFEU
Public Procurement Agency	PPA
Administration of Inspection Affairs	AIA
Administrative Court	US
Human Resources Administration	UK
Montenegrin Employers Federation	MEF
Customs Administration	CA
The Government of Montenegro	The Government of MN
The Supreme State Prosecutor's Office	SSP
Association of Municipalities of Montenegro	AMMN
Law on Public Procurement	LPP
Law on Administrative Procedure	LAP

GUIDE PLAN

1. INTRODUCTION: This short chapter usually begins with the notes on key objectives of the Guide to encourage greater participation of SMEs in the public procurement market in Montenegro. The introduction clearly defines SMEs and thus explains which type of enterprises the Guide focuses on specifically. The introduction distinctly explains how the Guide to support the development of SME is tuned in with the Strategy for Supporting the Development of SMEs, Strategy for the Development of the Public Procurement System in Montenegro for the period 2016-2020 and how they are used to the utmost extent at the national, regional and local levels. It is necessary to bear in mind that one of the characteristics of effective economic development is the harmonization of sectoral plans at various levels of government. What local government is able to achieve varies from level to level, but is still within the framework of activities carried out by the Government.

2. ANALYSIS OF THE SITUATION: This significant chapter includes, first of all, the analysis of the economy in the state and municipalities, as well as the nature of SMEs. It lays out an analysis of the structure and trends that are typical of the economy at the state and local levels. Important questions that should be answered are: What are the key economic activities in the state and the municipalities? Has the scope of the economic activity in the past five to ten years increased or decreased and what are the reasons that caused such changes? Important information about SMEs that are presented in this section refer to the number of SMEs by activity, the number of entrepreneurs, the number of individuals employed in SMEs, the trends of employment in the last five to ten years, the market and the challenges that SMEs are currently facing. In addition, we have also carried out an analysis of weaknesses, opportunities and threats, an analysis which highlights the main issues that should be addressed through support plan for SMEs, and more importantly, their relationship i.e. their cause-and-effect link.

3. STRATEGIC FRAMEWORK: This section describes what state and local governments and stakeholders in the sector want to achieve. It often begins with the statement of vision, for example indicating the proposed business environment that encourages and enables the development of SME. A brief summary of ways for achieving the vision through the activities which the state and local governments and stakeholders wish to undertake. The chapter moves on to describe the priorities and strategic objectives of the plan and the specific targets that are associated with the implementation of the plan for the Guide. These objectives are the indicators by which it is possible to measure progress, performances and the like, in the implementation of the Guide plan.

4. ACTION PLAN: This chapter introduces specific activities to be undertaken in order to realize the vision. These activities include certain changes in policy at the national level and local self-government level as well as new projects. An example of a change in policy is, for instance, a change in rules governing the public procurement of goods, works and services. The Action Plan covers the period from 2017 to 2020.

5. BUDGET AND FUNDING PLAN: Consideration of project costs - Guide and ways to obtain necessary funds are included in Chapter IV of the Action Plan. Without clearly allocated funds in the state and local budget, the Action Plan will only remain a dead letter without coverage.

6. MONITORING AND EVALUATION PROCEDURES: The final chapter focuses on the manner in which to monitor progress and impact of this Guide. Monitoring is often overlooked, but it is an extremely important and essential part of implementation. Monitoring on state and local self-government level allows to determine whether the implementation is on the right track and if not, which modes for implementation should be reviewed.

1. INTRODUCTION

The sector of small and medium-sized enterprises (hereinafter SMEs) represent an increasingly important segment of Montenegrin economy and have been key drivers of its economic growth and employment for the past several years.

With foreign direct investment, this sector could be an important lever of economic development and the main creator of new jobs in the future. In order to survive and develop in the market, these enterprises have to constantly build new competitive benefits. The same can be built within the enterprises themselves through their strengthening and development, but also through mutual cooperation and linking.

Because SMEs have an important role in the economic development of each country, it is necessary to encourage and facilitate their participation in public procurement procedures. Taking into account the fact that procurements merge at all levels (national and local), special attention should be paid to get SMEs more closely involved in the procurement procedures with contracting authorities, subject to the application of the LPP.

Public procurement is of key importance to the Strategy Europe 2020, established in the EU as "*Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth*". It is one of the instruments based on the market that are used to achieve smart, sustainable and inclusive growth, while ensuring the most efficient use of public funds.

Montenegro has recognized in its Agenda through the Strategy for the Development of the Public Procurement System for the period 2016 – 2020 the necessity of active relationship between the state and local self-government on the development and encouragement of SMEs.

Based on research carried out in direct communication with the representatives of these entities and their associations, with the aim to assess the readiness of SMEs to adapt to future activities in the field of public procurement, it is evident that they are planning new investments and expansion of business. They are ready to invest in human resources, technical, technological and other facilities necessary for successful business, in order to be competitive in the market.

To that end, they expect more support from the state of Montenegro and the local community. In accordance with the orientation and expectations of SMEs this Guide is intended to encourage the participation of SMEs at all levels in the area of public procurement.

By following the steps, tips and ideas contained in this Guide, the State and local self-governments can create their own "setting", the document - Guidelines whose implementation will significantly affect the improvement of the business environment.

For this purpose, the rules on public procurement adopted pursuant to Directive 2004/17/EC of the European Parliament and the Council and Directive 2004/18/EC of the European Parliament and the Council will be reviewed and improved in order to increase the efficiency of public spending, especially in order to facilitate participation of Small and Medium-Sized Enterprises (SMEs) in public procurement and to allow contracting authorities to make better use of public procurement in order to achieve common social goals².

² Directive 2014/24/EU

Montenegro is on the right track regarding the full implementation of the Directive from the package 2014/EU, which clearly recognize the role and importance of SMEs in the economy of countries.

2. ANALYSIS OF THE SITUATION

2.1. The structure of business entities in Montenegro

In Montenegro, according to size, in accordance with the criteria applicable to their classification, businesses are divided into small and medium. According to Monstat data of March 2017, there are 27,954 or 98.9% of small enterprises and 268 or 0.9% of medium-sized enterprises operating in Montenegro, which generate about 76% of the total turnover, and account for 67% of the total added value, employing almost 2/3 of the total number of employees.

The sectors in which small and medium-sized enterprises mostly operate are: wholesale and retail trade, repair of motor vehicles and motorcycles, accommodation and catering services, professional, scientific and technical activities, construction, manufacturing industry³.

The classification of enterprises into small, medium and large, in accordance with the Law on Accounting and Auditing ("Official Gazette of the Republic of Montenegro" no. 069/05 of 18/11/2005, 080/08 of 26/12/2008, 073/10 of 10/12/ 2010, 032/11 of 01/07/2011), is based on the average number of employees, total annual turnover and the value of total assets.

They include physical and legal entities, which perform a specific activity in order to make a profit on the market, including self-employment and family-run businesses generating profit and other activities, registered with the competent authority regardless of the form of organization. The structure of business entities in Montenegro viewed on the basis of size class should meet the following criteria:

- **Small enterprises are those legal entities in which:**
 - 1) the average number of employees ranges between 1 and 49;
 - 2) business turnover is less than or equal to euro 10,000,000;
 - 3) the average value of assets is less than or equal to euro 10,000,000.

- **Medium-sized enterprises are those legal entities in which:**
 - 1) the average number of employees ranges between 49 and 249;
 - 2) business turnover ranges between euro 10,000 and 50,000,000;
 - 3) the average value of assets ranges between euro 10,000 and 43,000,000.

Table 1: *Classification of business entities in Montenegro*

Legal entities	Average number of employees	Turnover /in Euro/	Assets /in Euro/
Small enterprises	1-49	≤ 10,000,000	≤10 000 000
Medium-sized	49-249	10,000 to 50,000,000	10,000 to 43,000,000

³ www.monstat.org/cg/publikacije.

enterprises			
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According to the Statistical Business Register of Montenegro, in terms of the form of ownership, business entities in Montenegro are divided into three forms of ownership⁴, as follows:

- private,
- two or more forms of ownership, and
- state-owned.

Of the total number, approximately 99% of business entities are privately-owned. More detailed information is given in the following table;

Table 2: *Classification of business entities per form of ownership in Montenegro*

Name	Business entities in 2014	%	Business entities in 2015	%	Business entities in 2016	%
Privately owned	23,166	99.4	25,801	99.4	28,076	99.30
Two or more forms of ownership	57	0.2	60	0.2	58	0.2
State owned	85	0.4	94	0.4	134	0.5
Total	23,308	100%	25,955	100%	28,268	100%

For the classification of enterprises by size, the annual average of employees is used, rather than the number of employees on a particular date, as well as generated profits and assets available on an annual basis.

Table 3 shows the number of small, medium- sized and large enterprises in Montenegro for the period 2014-2016. In the class of small enterprises, the number of businesses in 2016 compared to 2015 has increased by 8.1%, and there was a rise in the number of businesses in the class of large enterprises.

Table 3: *Classification of business entities per class size in Montenegro*

Denomination	Frequency 2014	%	Frequency 2015	%	Frequency 2016	%
Small enterprises	23,051	98.9	25,698	99	27,954	98.9
Medium-sized enterprises	221	0.9	220	0.9	268	0.9
Large enterprises	36	0.2	37	0.1	46	0.2
Total	23,308	100%	25,955	100%	28,268	100%

Per activity sectors in Montenegro, a classification of active entities was performed, in accordance with the Classification of Activities KD2010, which fully corresponds to the Classification of Activities NACE Rev. 2, used in EU countries⁵. Comparing the data from 2015, in 2016 there was an increase of businesses in all sectors of activity. The growth ranged

⁴ Statistics Business Registry of Montenegro, which was used for the analysis of business entities in Montenegro

⁵ Distribution of active enterprises by activity sectors in Montenegro, Monstat 2016 -Table 3

between 10.1% in the sector of "Accommodation and Catering Services", followed by 9.6% in the sector of "Construction", then 9.4% "Professional, scientific and technical activities" and 6.5% in the sector "Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles".

The tables below, in descending order, give the share of businesses in five areas of activity and the number of businesses per units of local self-government for the period from 2014 to 2016.

Table 4 shows indicators of the share of business entities by sector in Montenegro. By looking into the given data, it can be concluded that almost 75% of Small and Medium-Sized Enterprises of them are concentrated in five activities / sectors:

- wholesale and retail trade,
- service delivery and food,
- professional, scientific and technical activities
- construction and
- processing industry.

Table 4: Representation of business entities by sectors in Montenegro

Code	Sector name	Frequency in 2014	%	Frequency in 2015	%	Frequency in 2016	%
G	Wholesale and retail trade, repair of motor vehicles and motorcycles	8,263	35.5	8,944	34.5	9,582	33.8
I	Accommodation and catering services	2,600	11.2	3,083	11.9	3,429	12.1
M	Professional, scientific and technical activities	2,400	10.3	2,710	10.4	2,990	10.6
F	Construction	2,410	10.3	2,659	10.2	2,942	10.4
C	Manufacturing industry	1,962	8.4	2,085	8.0	2,223	7.9

These are activities/sectors with large labor intensity and small capital investments.

The largest number of businesses in 2016 was recorded in Podgorica, i.e. 10,333 or 36.6%, followed by Budva with 3,267 or 11.6%, and Bar with 2,718 or 9.6% of the total number of businesses. Apart from Podgorica, Budva and Bar other municipalities have seen an increase in the number of business entities for the period from 2014 to 2016.

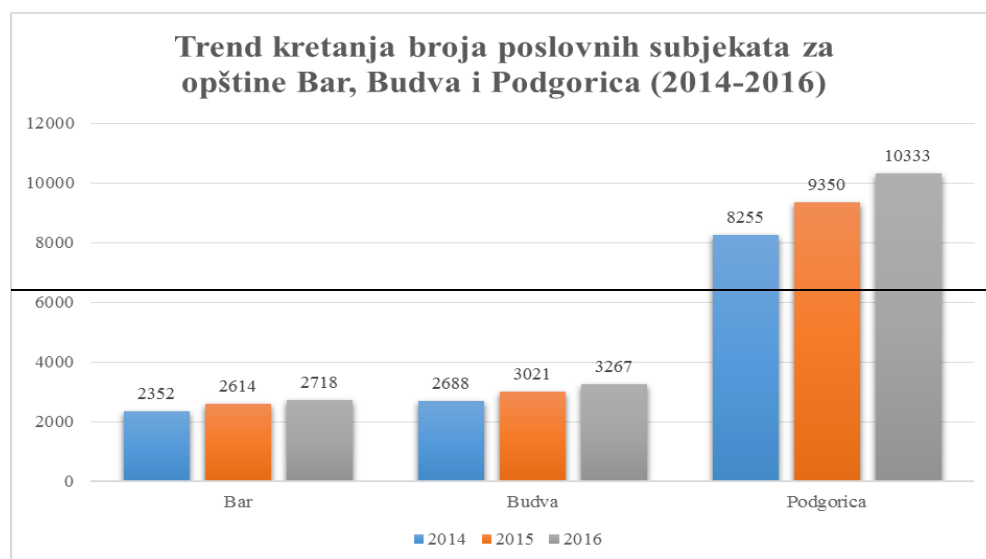
Table 5: Business entities by municipalities in Montenegro

Municipality	Active entities in 2014	Percentage	Active entities in 2015	Percentage	Active entities in 2016	Percentage
Andrijevica	52	0.2	64	0.3	72	0.3
Bar	2,352	10.1	2,614	10.1	2,718	9.6
Berane	437	1.9	465	1.8	506	1.8
Bijelo Polje	863	3.7	959	3.7	1,033	3.7
Budva	2,688	11.5	3,021	11.6	3,267	11.6
Cetinje	521	2.2	599	2.3	665	2.3

Danilovgrad	393	1.7	446	1.7	487	1.7
Gusinje	1	0.0	6	0.0	15	0.0
Herceg Novi	1,879	8.1	2,132	8.2	2,201	7.8
Kolasin	186	0.8	195	0.8	211	0.8
Kotor	1,043	4.5	1,153	4.4	1,201	4.2
Mojkovac	130	0.6	139	0.5	150	0.5
Nikšić	1,520	6.5	1,675	6.5	1,782	6.3
Petnjica	1	0.0	8	0.0	19	0.1
Plav	0	0.4	99	0.4	111	0.4
Pljevlja	496	2.1	552	2.1	579	2.1
Plužine	28	0.1	33	0.1	34	0.1
Podgorica	8,255	35.4	9,350	36.0	10,333	36.6
Rožaje	469	2.0	521	2.0	557	2.0
Šavnik	22	0.1	24	0.1	39	0.1
Tivat	945	4.1	950	3.7	1,166	4.1
Ulcinj	825	3.5	850	3.3	996	3.5
Žabljak	112	0.5	100	0.4	126	0.4
Total	23,308	100.0	25955	100.0	28268	100.0

The trend in the number of businesses in the municipality of Podgorica, Bar and Budva is given in Figure 1.

Figure 1.



If we take into account the number of active business entities and their trend in Montenegro for the period 2014/2016, we can conclude that the most difficult period of the economic crisis has passed, and that there are positive changes in the business environment that make room for further improvement.

However, many analyses show that there is a need for various means of acquiring knowledge and skills by management and employees, improving access to finance, certification of quality standards, raising competitiveness, encouragement of innovation, strengthening the dialogue between the public and private sectors, strengthening the institutional framework for SME development, strengthening cooperation between all institutions, at national and local levels.

These needs are particularly important for business entities in order to reduce weaknesses that have a negative impact on the operations of SMEs and the exports of products of our enterprises on the international market.

2.2. Small and medium-sized enterprises in the EU

Micro, small and medium-sized enterprises (SMEs) make up 99% of all enterprises in the EU, provide two out of three jobs in the private sector and account for more than half of overall GDP generated by enterprises in the EU. Nine out of ten SMEs are actually micro enterprises with less than ten employees. In order to support and assist SMEs, various action programs such as the Small Business Act were adopted, which included all these programs in order to create a comprehensive policy framework. Horizon 2020 and COSME programs have also been established to increase the competitiveness of small and medium-sized enterprises with the help of research and innovation, in order to get better access to funding for SMEs.

SMEs mainly operate at the local and national level because they are relatively less involved in cross-border activities within the EU. Their business is covered by EU legislation in various areas such as taxation (*Articles 110 to 113 of the Treaty on the Functioning of the European Union (TFEU)*), market competition (*Articles 101 to 109 of the TFEU*) and enterprise law (*right of establishment: Articles 49-54 of the TFEU*), whereas the definition of SMEs can be found in the recommendation of the Commission 2003/361/EC.

In EU countries, the definition of SMEs is different. Small enterprises comprise those legal entities which have fewer than 50 employees, with less than ten million euros annual turnover and/or total balance sheet of less than ten million euros. Medium-sized enterprises have less than 250 employees, less than 50 million euros turnover and/or total balance sheet of less than 43 million euros. A more detailed approach to the classification of business entities, their structure and share of SMEs in the EU is provided in the following tables.

These enterprises are key to business, the source of entrepreneurial spirit and innovation that ultimately have a decisive impact on the competitiveness of enterprises in the EU. Therefore, the aim of EU policy in the field of small and medium-sized enterprises is to ensure that the policies and measures of the Union are tailored for small enterprises and contribute to greater attractiveness for the establishment of enterprises and strengthening of their business activities⁶.

To that end, certain accomplishments have been achieved:

a) In 2008 the Small Business Act was passed, which includes:

- smart regulations in terms of reducing barriers to business, combating late payment, issuing of electronic receipts upon payment so as to equalize the fiscal bills, reducing the administrative burden of SMEs in public procurement procedures, the introduction of possibilities for community submission of offers, simplification of financial reporting, etc.;
- access to funding in order to obtain the necessary funds on the financial market and credit by providing loans, guarantees and venture capital, increased activity by European financial institutions, the EIB and EIF, and in that sense, the Action Plan to improve access to funding for SMEs was adopted in 2011;

⁶*Fact Sheets on the European Union -2017*

- “Single Market Act – for a Highly Competitive Social Market Economy”, which contains policy initiatives to facilitate access of SMEs to venture capital markets;
 - policy of state aid for SMEs.
- b) The program and the EU network for SMEs
c) The program for SMEs and research;
d) COMSE - the program for the competitiveness of enterprises and SMEs, which carries out its activities within the Framework Program for Competitiveness and Innovation in accordance with the set general aims.

Table 6: Classification of enterprises in the EU

Legal entities	Number of employees	Operating income	Total value of assets ⁷
Small enterprises	<50	<10 million	<10 million
Medium-sized enterprises	<250	<50 million	<43 million

Table 7: The structure of SMEs in the EU

	Number of enterprises (in millions)	Number of employees (in millions)	Generated value (%)	Work efficiency (in € 1,000 per person)
Total SMEs	20.9	90.6	3617	39.9
<i>Micro</i>	19.3	39.3	1348	34.3
<i>Small</i>	1.4	27.9	1147	41.2
<i>Medium</i>	0.2	23.4	1122	47.9
Large	0.1	45.2	2559	56.6
Total	21.0	135.8	6176	45.5

Source: adapted from **Key figures on European business with a special feature on SMEs**, Eurostat, 2011

Table 8: Percentage structure of SMEs in the EU

	Number of enterprises	Number of employees	Generated value	Work efficiency (%)

⁷A *Partial and Fragile Recovery, Annual Report on European SMEs 2013/2014, Final Report* http://ec.europa.eu/growth/SMEs/business-friendly-environment/performance-review/files/supporting-documents/2014/annual-Report-mixture-2014_en.pdf

	(%)	(%)	(%)	
Total SMEs	99.8	66.7	58.6	87.8
<i>Micro</i>	92.0	29.0	21.8	75.3
<i>Small</i>	6.7	20.5	18.6	90.5
<i>Medium</i>	1.1	17.2	18.2	105.3
Large	0.2	33.3	41.4	124.5
Total enterprises	100	100	100	100

Source: adapted from **Key figures on European business with a special feature on SMEs**, Eurostat, 2011

There are 21 million SMEs in the EU. These enterprises are a key source of employment because they employ around 66.7% of total employment figures in the EU, of which 29% are employed in micro enterprises, 20.5% in small and 17.2% in medium-sized enterprises, whereas large enterprises employ 33.3% of the employees. In terms of business areas, the largest number of SMEs are those engaged in wholesale and retail trade, as high as 27%, followed by real estate trade, renting and other services at 22%, SMEs engaged in production make up 13%, followed by construction at 11%, and the smallest number of SMEs are in the field of financial, health and social services⁸.

2.3. The role of public procurement markets for SMEs

In Montenegro, public procurement was introduced in 2001 by adopting the first LPP when important prerequisites for efficient market operations were created, which was amended later on. In the period following the introduction of the system of public procurement it has been noticed that it plays an important role and is a key element of public investment, it is important for strengthening the single market, achieving economic development and it represents an important component of economic development, accounting for a substantial share in the total GDP of our country.

From the statement on the agreed public procurement prepared by the Public Procurement Agency⁹ it is evident that in 2016 the stakeholders subject to the application of LPP agreed a total of 447,739,222.36 euros for procurement of goods, services and works and completed a total of 7653 contracts by carrying out tender procedures and 84,967 contracts through direct agreement (see the figure on agreed purchases for the period 2011/2016 and its share in GDP).

	Total public procurement (In EUR)	GDP (in EUR)	% share of PP in GDP
2011	377,260,094.38 €	3,234,000,000.00	11.67
2012	323,155,258.90 €	3,149,000,000.00	10.26

⁸ Observatory of European SMEs - Analytical report, Flash Eurobarometer, European Commission, p.8

⁹ <http://www.ujn.gov.me/category/izvjestaji/>

2013	277,001,460.50 €	3,335,900,000.00	8.30
2014	327,161,639.73 €	3,400,000,000.00	9.62
2015	428,890,701.64 €	3,606,000,000.00	11.89
2016	447,739,222.36 €	3,805,000,000.00	11.77

The management of public procurement is a key determinant of good governance and progress of Montenegro, because annual volume of funds allocated from the Budget of Montenegro, the budgets of contracting authorities, donations, funds from the European structural and investment funds for the procurement of goods, services and works are a potential market for all enterprises in Montenegro. Public procurement opens new opportunities for SMEs which encourages investment and contributes to strengthening the overall economic growth and development.

2.4. Analysis of the most common barriers to the participation of SMEs in public procurement procedures and possibilities of their elimination

Public procurement procedures are very complex, and therefore may pose difficulties for SMEs to understand the procedures themselves, as prescribed by the Law on Public Procurement ("*Official Gazette of Montenegro*" no. 42/11, 57/14 and 28/15, hereinafter: *LPP*). Furthermore, there are other problems that can present a barrier to these enterprises participating in the bidding process.

Conducted research and analysis have pointed out the most frequent obstacles faced by SMEs in the procurement process:

- a) high-value contracts and the impossibility to meet optional conditions related to the necessary capacities (*economic, financial, professional and technical personnel*), as well as the temporary closure of the market through "*framework agreements*";
- b) lack of information and inadequate communication with contracting authorities;
- c) tight deadlines for the preparation of offers for particularly complex procurement;
- d) lack of necessary knowledge of procedures and experience in participation in public procurement procedures;
- e) giving priority to the lowest bid in relation to the criterion of the most economically advantageous offer;
- f) unnecessary administrative burden;
- g) delay in payment or non-payment for the work done,
- h) lack of procedures to protect rights in public procurement procedures,
- i) high banking costs with financial security in public procurement procedures (guarantees), and
- j) other.

The section below describes the stated obstacles and provides certain information in order to overcome them.

a.) High-value contracts and the inability to fulfill optional conditions, temporary closure of the market through "framework agreements";

The centralization of public procurement, on the one hand, can provide contracting authorities with significant savings, but can negatively affect the operations of SMEs. The centralization/consolidation of procurement can pose a potential threat to SMEs to be excluded from public procurement procedures because they are not able to meet the requirements of the contracting authorities. This is actually one of the greatest challenges of each country, to provide SMEs with access to these procedures, which are usually intended only for large bidders. It is of crucial importance to find a way to get the SMEs to be part of such huge transactions.

The LPP has taken into account the difficulties that would be encountered by SMEs, and predicted that the contracting authorities must organize their purchase into lots whenever possible, so as to allow the participation of SMEs¹⁰. Distribution of items into lots should be carried out in quantitative and qualitative terms. In quantitative terms, it is necessary to determine the lot by taking into account the size and the number of lots that would be in line with the production capacity of the bidder, whereas in qualitative terms, it is necessary to consider the contents of the lots so as to adapt them to specialized sectors of SMEs. Naturally, the organisation of procurement items into lots can also be considered while implementing Framework Agreements.

In order to facilitate SMEs' participation in framework agreements, contracting authorities may consider the possibility of concluding framework agreements with multiple bidders, rather than with one. Compared to a traditional public procurement procedures in which the contracting authorities choose one bidder and conclude the contract with him (which is usually a major legal entity), in the framework agreement concluded with several bidders, and at the same time divided into lots, greater chance is given to a larger number of smaller bidders to get the part that they may fulfil. The above is particularly important because the conclusion of framework agreements for a longer period in a way temporarily closes the market. In some EU countries, Guidelines for the implementation of the framework agreements were adopted, providing guidance to contracting authorities that during the implementation process in order to conclude a framework agreement as a minimum level of the bidders' skills should be linked to *"the largest contract"* and not to the total value of all contracts to be concluded by a framework agreement.

In addition to the qualitatively and quantitatively major contracts, the contracting authorities can exclude SMEs by determining capacities as optional conditions for participation that are disproportionate to the subject of procurement. In this way there is discrimination against bidders who could undertake such a purchase, if such conditions were realistically placed. For example, determining the financial capacity which is unreasonably high may discourage SMEs to participate in the process. The Directive from 2004 and the Directive from 2014¹¹ predict the optimal financial capacity which the contracting authorities can foresee in the tender documents, i.e. the minimum income required of bidders. It must not be greater than twice the estimated value of procurement except in particularly justified cases, when that is necessary because of specific risks associated with the subject of public procurement. There is a commitment that the optional conditions (*facilities that are generally required*) must be logically related to the subject of procurement and must not discriminate the bidders.

¹⁰ Article 77 of the LPP, Article 46 of the Directive 24/2014 / EU.

¹¹ Article 58 of the Directive 2014/24 / EU

Limiting the participation SMEs by determining capacities which are unrealistic or aimed at reducing competition in public procurement procedures in the EU Member States has led to the clear definition of this issue in the new Directive.

b.) Lack of information and inadequate communication with contracting authorities

SMEs are faced with a major problem of the lack of necessary information related to public procurement procedures (*where to find "ads" on public procurement, how to see the tender documents, what is necessary to prepare a bid, how to get in touch with contracting bodies, etc.*).

The LPP MN clearly stipulates the process of publication of tender documentation on the Public Procurement Portal¹². This law has taken a further step, and thus Article 66 commits each contracting authority to publish a notice on a public procurement procedure in one daily newspaper issued and distributed throughout the territory of Montenegro, and which is also available on the Internet within three days from the date of publication of tender documentation on the Public Procurement Portal. The public procurement procedure launched or implemented without a notice is null and void.

Downloading tender documents by SMEs is free of charge. Therefore, all information and all the documents concerning a specific public procurement are easily accessible to SMEs. Access to the Public Procurement Portal is very simple and does not require prior registration on the part of the bidder. The website and the Public Procurement Portal PPA allows browsing:

- public procurement plans,
- tender documents for procurement of goods, services and works;
- decisions on qualification of candidates,
- decisions on the best bid,
- decisions to suspend the public procurement procedures,
- decisions to annul of the public procurement procedures,
- agreements on public procurement,
- amendments or additions to the public procurement plan, tender documents, decisions and contracts,
- PPA's opinions regarding the regularity of application of the law,
- reports on agreed public procurement and
- other documents.

The Public Procurement Portal allows for a significantly improved browsing of public procurement, and the website has a significant amount of information in English. SMEs can use instructions which is important to search the Portal¹³. Furthermore, the SMEs have the possibility to get answers related to certain queries about the LPP from PPA in a simple and quick way by phone, e-mail or through a written request¹⁴. Similar solutions exist in EU countries. In Bulgaria, it is envisaged that experts from the Public Procurement Agency should give advice over the phone, whereas in Italy, in the context of their central body, a project of cooperation is designed through a functional Help Desk which helps enterprises, particularly SMEs to increase their participation in public procurement procedures¹⁵. In Latvia there is also

¹² www.ujn.gov.me: Public Procurement Portal

¹³ <http://www.ujn.gov.me/category/uputstva/>

¹⁴ A website to find contact information of OOA is...

¹⁵ http://ec.europa.eu/internal_market/publicprocurement/docs/sme_code_of_best_practices_en.pdf

a unique online Portal that publishes procedures, which is free and offers information on a daily basis¹⁶.

In preparing offers, it is important that SMEs as bidders know what they need to offer. A contracting authority is obliged to clearly and accurately describe the characteristics of the subject of public procurement. In this regard it would be advisable that the contracting authority should previously explore the market in order to consider the solutions which exist therein, and to prepare the technical specifications so that they are really in line with their actual needs. Unclear technical specifications can often deter bidders from participating in the present proceedings because they are not sure what exactly the contracting authority is buying. Some EU countries, therefore, tend to set up a dialogue between contracting authorities and bidders so as to determine what can be bought in the market, whether there are any alternative solutions and how to sufficiently and properly to describe the subject of public procurement. Very often not even the contracting authorities themselves have the necessary knowledge on the subject of public procurement, and this can cause that in the process they may receive all improper offers or do not receive an offer at all. When there is a dialogue in place between the contracting authorities and bidders it should be borne in mind to act in accordance with the principles of equality and that the technical specifications should not be adapted to a particular bidder.

In addition, if the process has already been initiated, but the deadline for the submission of bids has not yet expired, bidders may ask for further explanations regarding the preparation of the bid. This kind of communication between contracting authority and bidder is allowed and necessary. Very often, in doing so they provide significant clarifications and give assistance to bidders in order to prepare an acceptable offer. Accordingly, the LPP foresees that the stakeholder shall have the right to require the contracting authority to clarify the bidding documents. Depending on the type of public procurement procedure, the contracting authority is obliged to submit to the applicant the clarification of the bidding documents and to have it published on the Public Procurement Portal within three days upon receiving of the request, but the clarification shall not be used to make changes and/or additions to the bidding documentation and it shall be an integral part of the bidding documents.

Depending on the type of public procurement procedure, the bidder, i.e. an SME can require a clarification from the contracting authority within:

- 1) 22 days after the date of its publication, or submission of the tender documents, if the period for the submission of bids is at least 37 days, from the date of publication or submission of the tender documents;
- 2) eight days after the date of its publication, or the submission of tender documents, if the deadline for submission of tenders is at least 22 days from the date of publication or submission of tender documents;
- 3) six days after the date of its publication, or the submission of tender documents, if the deadline for submission of bids is at least 12 days from the date of publication or submission of tender documents;
- 4) three days after the date of its publication, or the submission of tender documents, if the deadline for submission of tenders of less than 12 days from the date of publication or submission of the tender documents.

¹⁶http://ec.europa.eu/internal_market/publicprocurement/docs/sme_code_of_best_practices_en.pdf

In terms of increasing the level of bidder's (SMEs) awareness, future activities in the area of electronic public procurement are more closely aimed at developing a system for electronic bidding, through the following stages:

- analysis of the necessary amendments to the legislative framework for the implementation of electronic public procurement;
- analysis of the current institutional frame in MN;
- analysis of technical solutions and options that are being used or are under development in the EU Member States;
- the choice of optimal selection of the legal, technical and institutional model to be used in MN;
- preparation of technical solutions, in accordance with the selected optimal model;
- development and commissioning of a new platform of electronic public procurement.

The ultimate goal is the establishment and functioning of a single, comprehensive platform of electronic public procurement, which would contain all of these key functions, namely:

- The procedure prior to the award of public procurement: e-notices; e-tender documents; e-submission of bids; e-review and evaluation; e-awarding of public procurement;
- The procedure after the award of public procurement: e-orders; e-invoicing and e-payments.

In the process of the development of electronic public procurement system in Montenegro the following activities were conducted: in November 2015 the Minister of Finance formed a workgroup for drafting the Terms of Reference (*ToR*) to prepare for the introduction of electronic public procurement ("*Implementation of e-procurement system*"). The workgroup developed a drafted a Prior Information Notice - PIN (*notice of the contract*) and it was published in January 2016 (*published on the website of the Ministry of Finance - Directorate for Finance and Contracting of the EU Assistance (CFCU) www.mif.gov.me/rubrike/CFCU_tenderi/Tenderi*). Further activities related to the project that followed are the drafting of Contract Notice and the finalization of the Terms of Reference s (based on the Action Document for the given project), based on which some specific items in the Contract Notice were amended. In December 2016 the Contract Notice was finalized and it was given approval for its publication. In order to publish the ToR it is necessary to obtain approval of the Ministry of Information Society on the project task – through the reform of the state administration, these matters are the responsibility of the Ministry of Public Administration, the ToR was agreed upon and after all the expectations by the end of April/May 2017 an invitation to submit the most favourable offer for this project will be published. In this regard, the process of improving the Public Procurement Portal shall be followed by the process of implementing training in order to promote electronic public procurement.

When introducing electronic public procurement, it is necessary to use exclusively such information systems and technologies that are widely available to all stakeholders, whereas at the same time there must be no restriction of competition, or any form of discrimination of participants.

Montenegro is conducting an intensive preparation for the implementation of the New Directive which demands mandatory introduction of legal provisions for the application of certain techniques of e-procurement by the Member States (*e-auctioning, dynamic procurement*

system and e-catalogs), whereby the contracting authorities are free to decide whether they will apply them.

c.) Tight deadlines for preparing bids

One of the difficulties for SMEs are tight deadlines for the preparation of bids. LPP stipulates minimum deadlines for submission of bids in public procurement procedures, which does not mean that contracting authorities can determine a longer deadline, especially if the object of public procurement is complex and complicated and involves more serious preparation. The deadline for submitting bids is adapted to the type of public procurement procedure and ranges from a reasonable period in the cases referred to in Article 25 Paragraph 1, Item 1, Items 2 and 3-37 days in the open public procurement procedure:

Type of public procurement procedure	Deadline for submission of tenders/applications
Open, the first stage of restricted procedure	37-22
The second stage of restricted procedure	22
Shopping	12
Negotiating procedure with the publication of the invitation to tender	22
Negotiating procedure without prior publication of the invitation to tender	22 Except in cases of Article 25, Paragraph 1, Item 1, Items 2 and 3

Since the process of preparing tenders is quite complex, it is necessary for SMEs to provide for adequate time for their preparation because these entities often lack sufficient and necessary qualified staff, and in cases of public procurement of great value and complex procedures these enterprises need additional time to find a partner for the joint appearance i.e. to participate in a joint bid or tender with subcontractors, i.e. manufacturers.

The EU Directive 2014/24/EC stipulates the possibility of publication of prior information notice so as to inform the bidders and SMEs in a timely manner that a public procurement procedure will soon be carried out¹⁷. Prior information notice should be sufficiently detailed and contain the information necessary for preparing bids.

Ever since it was passed, the LPP of Montenegro has stipulated this responsibility in a very transparent way, namely by means of mandatory publication of the public procurement plan on the Public Procurement Portal by 31 January of the current year so that each provider has insight, at the beginning of the calendar year, into what will the contracting authorities buy, at what price and when it will be bought.

¹⁷ Article 48 of Directive 2014/24 / EU

d.) Lack of necessary knowledge about procedures and experience in public procurement procedures

Insufficient knowledge of public procurement procedures by contracting authorities and SMEs can be the cause of a lesser participation of SMEs in public procurement procedures. Some countries have drafted manuals for contracting authorities and bidders with a focus on the needs of SMEs. An example of good practice that provides guidelines for contracting authorities on how to facilitate the participation of SMEs is the brochure "*Small bidder better value*"¹⁸ which aims to raise awareness of contracting authorities on the possibilities of achieving "*value for money*" that SMEs can offer. In this sense, the stated brochure briefly describes what problems may be encountered by SMEs and how the problems can be overcome.

In the Netherlands, the Ministry of Economy established the "*PianoO*"¹⁹ agency which helps contracting authorities to be more professional in their procurement. On its website, "*PianoO*" publishes information regarding the legislation in the area of public procurement, as well as examples of good practice. "*PianoO*" also encourages dialogue between public and private sectors within its network with approximately 3,500 professionals in public procurement. Training in the field of public procurement is necessary for bidders, especially for SMEs because they most often lack the administrative capacities which are exclusively engaged in public procurement and thoroughly understand the "*language*" of public procurement. It is therefore necessary to continuously organize workshops and training sessions intended exclusively for SMEs, prepare guides that will be of assistance in public procurement procedures. France has drawn up a detailed guide for SMEs '*Guide pratique pour la réponse des PME à la commande Publique*'²⁰. The above guide gives instructions to SMEs on how to obtain information on procurement in order to understand the needs of contracting authorities on the basis of the published tender documentation, how to assess whether they have the necessary capacities for specific procurement, etc. Great Kingdom went a step further, and has developed an SME training program. The goal of this program is to provide the necessary knowledge to participate in public procurement procedures and raise awareness of contracting authorities on the problems faced by SME. Following the success of this program, the United Kingdom has organized online courses for SMEs called "*Winning the Contract*" which provide practical advice for finding potential jobs. The European Commission has paid particular attention to SMEs and has established a portal designed exclusively for SMEs - "*European Small Business Portal*", which provides important information to SMEs (e.g. *loans, guarantees, business rules in the EU, research, development and innovation, doing business outside the EU, etc.*)²¹.

The Development strategy of the public procurement system of Montenegro for the period 2016-2020 and AP have envisaged liberalized activities of the PPA, CCMN, MEF, MBA and AMMN in order to:

- facilitate access to information on public procurement for SMEs,
- establish the informational table of SMEs,
- draw up communication guidelines for business entities, with a focus on developing guidelines for SMEs which has resulted in the preparation of this Guide,

¹⁸http://webarchive.nationalarchives.gov.uk/20110822131357/http://www.ogc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf

¹⁹<http://www.secteurpublic.asso.fr/Club-Secteur-Public/Les-travaux/Guide-pratique-pour-la-reponse-des-PME-a-lacommande-publique>.

²⁰ http://ec.europa.eu/small-business/index_en.htm.

²¹ http://ec.europa.eu/small-business/index_en.htm.

- train contracting authorities in market analysis and evaluation of bidders, and therefore benefits with a special focus on SMEs,
- include strategic issues surrounding SMEs within the curriculum for the training of procurement officers.

PPA performs continuous training of contracting authorities²² in accordance with the professional training program, and it is recommended to do so also for bidders, when sustainable legal requirements are created.

e.) Preference for the minimum bid price in relation to the criterion of the most economically advantageous offer

One of the key issues for SMEs participation in public procurement procedures is the inability to be competitive towards high bidders if the selection of the best offers is reduced solely to the criterion of the lowest price offered. Therefore, it is recommended to make more use of the option provided by the criterion of the most economically advantageous tender, which ensures through different elements of criteria that, in addition to the acquisition cost, other important elements referring to and related to the subject of procurement should be taken into account, such as: quality, running costs, cost effectiveness, technical and technological benefits, post-sale servicing and technical assistance, etc.

In this way, contracting authorities have a possibility to carry out the evaluation not only of the price of a specific subject of public procurement, but also take into account the cost of the life cycle, which includes the following:

- costs associated to procurement,
- running costs, such as the consumption of energy and other resources,
- maintenance costs,
- costs at the end of the life cycle, such as the cost of collecting and recycling
- costs attributed to external environmental factors associated with the product, service or work during their life cycle, provided that their monetary value can be determined and checked;
- costs of emissions of greenhouse gases and emissions of other pollutants, and other costs of climate change mitigation and
- other costs.

In EU countries, the criterion of the lowest price is normally used as a criterion for selecting the best offer only exceptionally, when the subject of public procurement are standardized goods, services or works and it is used more rarely than is the case in our country.

Directive 2014/24/EU has foreseen that the contracting authority may base the award of public procurement contract on the most economically advantageous tender²³, and the lowest price as a special criterion no longer exists. The Directive has given the possibility that Member States may stipulate, that the contracting authorities may not solely use the price or the cost as the only element of the criteria for the award of contracts or may limit its application to certain categories of contracting authorities or certain types of contract²⁴. However, this does not mean that contracting authorities may not determine only the price as an element of the criteria.

²² <http://www.ujn.gov.me/program-strucnog-osposobljavanja-i-usavsavanja/>

²³ Article 67 of the Directive 2014/24/EU

²⁴ Article 67 Directive 2014/24/EU

The LPP stipulates as the criteria for selecting the most advantageous tender (*for contract awards*) the lowest price and the most economically advantageous tender²⁵. Consequently, in the practice of the Montenegrin public procurement system the lowest available price is used more often, on average about 83% (*in the period of the last five years*), while the criterion of the most economically advantageous tender was used on average approximately 17%²⁶.

Furthermore, by examining the annual reports on public procurement at the national level, it is evident that the contracting authorities generally opt for the procurement procedure by shopping. The reason for this state of facts is a simpler procedure in the sense that the procurement is conducted by a public procurement official, and shorter deadlines for submission of tenders. However, in the procurement procedure by shopping, the lowest price is the only criterion, which causes a high percentage of this criterion in public procurement in Montenegro.

In contrast to that, the Directive from 2014 stipulates that contracting authorities should base the award of public procurement on the most economically advantageous tender²⁷ and the lowest price as a special criterion no longer exists. The countries have been given the possibility to stipulate that the contracting authorities should not use the price or the cost as the sole criterion for the award of contracts or may limit its application to certain categories of contracting authorities or certain types of contract²⁸. However, this does not mean that contracting authorities cannot determine the price as one of the criteria. The harmonization of national regulations in public procurement will go in this direction.

f.) Unnecessary administrative burdens

In addition to the above stated, certain administrative burden may also negatively affect the SMEs. To this end, the forthcoming LPP (*whose draft has been completed*) to be aligned with the new directives shall enable substantial relief. In this regard, there is a possibility to prove all or certain requirements for participation in public procurement procedures with a statement of the business entity. Directives stipulate that such a document may serve as preliminary evidence instead of certificates issued by the competent authorities and other evidence, whereby it is certified that the business entity:

- is not in any of the situations for which the business entity shall be excluded or may be excluded from the public procurement procedure,
- meets the capability requirements of business entities,
- if necessary, meets the objective rules and criteria for reducing the number of qualified candidates, offers and solutions.
- and other relevant information required by the contracting authority by means of tender documentation.

The business entity will deliver a statement in the standard format as part of the offer or application for qualification in accordance with the tender documentation. If the business entity relies on the ability of another entity, it is obliged to deliver a special statement containing information for that entity as part of the offer of application for qualification. A business entity shall be obliged, at the request of the contracting authority, to submit the required documents or information stating the issuers of supporting documents, the website for information which can

²⁵ Article 93 of the LPP

²⁶ Data from the LPP - Report on Public Procurement for the period 2011-2015, www.ujn.gov.me/izvjestaji

²⁷ Article 67 of the Directive 2014/24/EU

²⁸ Article 67 of the Directive 2014/24/EU

be accessed electronically, all identification data and the declaration of consent, if applicable, within a period of not less than eight days of receipt of the request. If it is not possible to do a check or issue a certificate for the capacity requirements, the public contracting authority shall require the business entity to deliver all or a part of the supporting documents or evidence, within a reasonable period, but not less than eight days. The contracting authority is obliged, before making a decision on the best bid in the public procurement procedure, to ask the bidder who submitted the most economically advantageous tender to submit the updated supporting documents, unless they already possess a valid document, within a reasonable period, but not less than eight days.

If the information or documentation to be delivered by a business entity is incomplete or incorrect, or appear as such or if certain documents are missing, the public contracting authority may, while respecting the principle of equal treatment and transparency, demand from these business entities to supplement, explain and deliver the necessary information or documentation within a reasonable period of time which may not be less than five days. If the bidder who submitted the most economically advantageous tender does not submit the updated documents within the extended deadline or they fail to prove the requirements, the public contracting authority is obliged to reject the offer of the bidder and opt for the bidder who submitted the next best offer or annul the procurement procedure, if there are grounds for annulment. This provision shall not apply when concluding the contract based on the framework agreement.

In addition to the abovementioned, the forthcoming LPP MN, in order to facilitate and alleviate the burden, shall stipulate the establishment of the “*Register of bidders*” which will be managed by the competent authority, and the most optimal is the PPA. In this way, the register of bidders would be available on the PPA Portal (*website*). Those bidders who are registered in the Register of bidders will have to submit evidence on the fulfilment of the mandatory requirements for participation in the public procurement procedure. It will suffice to state that they have been registered in the Register of Bidders.

The Register of Bidders can register all persons who are otherwise registered with the National Institute of Statistics - MONSTAT or the Commercial Court by submitting documents proving the fulfilment of the mandatory requirements in pursuance of the Law. When bidders are registered in the Registry, they do not have to collect the necessary certificates to prove that they meet the required conditions for participation for each procedure which they are taking part in. In this way, the participation of bidders and SMEs shall actually be facilitated to the highest extent.

As regards any changes that arise in connection with the status of bidders, the organizations and bodies responsible for imposing sanctions and measures that prevent the participation of persons in the public procurement procedure shall inform the PPA, i.e. the data will be updated automatically. The Register of Bidders will allow to minimise the administrative difficulties that bidders and SMEs have in the collection of evidence, so that they can participate in public procurement procedures in a simpler and cheaper way.

In the EU Member States, enterprises and SMEs find that the greatest barriers to their participation in public procurement are administrative burdens arising from the need to deliver a substantial number of certificates or other documents relating to the participation in the procurement procedure. Therefore, Directive 2014/24/EU has envisaged the limitation of such requests, through the use of the *European Single Procurement Document* (ESPD), which consists of updated statements, and thus significantly simplifies the procedure in favour of the

contracting authorities and enterprises.²⁹ Contracting authorities have the right to require the submission of all documentation or parts of it if they consider it necessary for the proper implementation of the procedure, at any time. The documentation is required only of bidders which will be awarded the contract. In addition, the Directive provides that contracting authorities are not obliged to require documents which are still valid, which they already have from previous procurement procedures. In addition, the Commission provides and administers an electronic system of e-Certis. It is an information system that allows the retrieval of various certificates and attestations that are often required in public procurement procedures in 28 EU member states, Turkey, Iceland, Norway and Lichtenstein. It is a system that allows contracting authorities and bidders to find out more easily which certificates and certificates are usually required in public procurement procedures in individual Member States (*as well as Turkey, Iceland, Norway and Lichtenstein*).

It is enough to enter a description of the required document or search the database using e-Certis search criteria, including word search. Information in the database are provided by national authorities and are regularly updated.

g.) Delay in payment or non-payment for the work done

Non-payment for work done or the mere existence of a doubt that the payment will not go through can also affect the SMEs to not participate in the public procurement procedure. If they are not paid on time or not at all for the contracted delivery of goods, the services rendered or works performed it may result in the bankruptcy of SMEs or job losses. Therefore, Article 4 of the Law on Deadlines for the Settlement of Monetary Obligations ("*Official Gazette of Montenegro*", no. 28/14 of 04/07/2014) stipulates: "*The deadline for the settlement of monetary obligations between the public sector and business entities is 30 days upon commencement of the debtor-creditor relationship, and whereas a contract may stipulate a different deadline for the fulfilment of obligations of the debtor, it cannot be longer than 60 days. If the contract between the public sector and a business entity does not stipulate a deadline for the settlement of monetary obligations, the debtor is obliged, without prior warning, to reconcile his financial obligations within 30 days. If case the debtor is the Health Insurance Fund, or a beneficiary of the Health Insurance Fund, the contract may provide a longer deadline for the settlement of financial obligations, but it shall be longer than 90 days. A fine of 1,000 to 10,000 euros shall be imposed on a legal entity if they fail to settle their financial obligations within the time limits stipulated by this law (Articles 3 and 4). For a minor offense referred to in paragraph 1 of this Article a fine ranging from 500 to 2,000 euros shall be imposed on the responsible person within the legal entity. Supervision of the implementation of this Law shall be conducted by the administration authority responsible for the identification, collection and control of taxes. The manner and procedure of exercising control over authorities referred to in paragraph 1 of this Article shall be stipulated by the Government of Montenegro, Article 9 of the Law*".³⁰

In order to protect business activities, especially that of SMEs, in 2011 the EU adopted a new Directive 2011/7/EU in order to prevent delays in payment which stipulates stricter measures than the previous one of 2000/35/EC. It is also an integral part of the "*Small Business Act*". According to the Directive 2011/7/EU, a deadline for payment of the public sector towards business entities is 30 days, and only exceptionally this deadline may be 60 days. The EU has launched a campaign against late payments³¹ in order to protect jobs, promote growth and prevent the bankruptcy of SMEs. It was found that the delay in payment or non-payment is the

²⁹ Article 59 of Directive 2014/24 / EU.

³⁰ Law on the Deadlines for the Settlement of Monetary Obligations ("*Official Gazette of Montenegro*", no. 28/14 of 07/04/2014)

³¹ http://ec.europa.eu/growth/SMEs/support/late-payment/campaign/index_en.htm

main obstacle to the free movement of goods and services in the single European market and may significantly affect competition.

h. Ignorance of procedures on rights protection in public procurement procedures

An important segment for the efficiency of the public procurement system is the procedure of protection of rights of participants in the procurement process and the public interest, which can be achieved at all stages of the procurement procedure. The LPP stipulates active legitimacy in the procurement process. The process of protecting the rights is exercised by filing an appeal to the SC related to the tender documents and decisions of the contracting authority³². The complaint may be submitted by a bidder or a stakeholder³³.

For the purposes of this topic, practice has shown that SMEs are not able to employ persons who will monitor the actions of the contracting authorities, prepare bids, monitor the deadlines for the submission of bids, participate in the public opening of bids, the deadlines for filing appeals, engage in the process of preparation and submission of complaints against the tender documents of the contracting authority, or complaints which would repudiate the legality of the decision of the contracting authority.

In cases when they have employees, they are not sufficiently well-trained to carry out the mentioned tasks, so the SMEs are forced to engage external experts through legal services, which increases the price of their product, and has an indirect impact on the amount of public funds spent.

i.) High banking costs of financial security in public procurement procedures (*guarantees*)

In order to protect itself from unserious bids and violations of public procurement contracts, the LPP stipulates the duty of the contracting authority that the tender documentation should establish the obligation of bidders and SMEs to submit bid guarantees, a performance guarantee for the contract before the conclusion of the contract, advance payment guarantee and other guarantees for public procurement whose estimated value exceeds 30,000 euros, as well as the amount of guarantees³⁴. In case of failure to supply a bid guarantee, the bid shall be declared defective. In case of failure to submit the performance guarantee before the conclusion of the contract it shall not be possible to conclude it, and in case of breach of contract by the selected bidder the contracting authority is obliged to activate the given guarantees.

Since the bank guarantee is an instrument for proper execution of obligations under the contract, i.e. the protection from the risk of default of such obligations, for the issuance thereof by the bank, it is necessary that the bidder or the SME should previously conclude a contract with the bank to issue a bank guarantee. The bank shall issue the bidders a bank guarantee to a certain amount in euros with a term of validity of the tender documents or the contract for which SMEs claim to have obtained all that is necessary for performance of the contract which is the subject of guarantee, and that they have also provided the necessary authorizations from the competent authorities. The guarantee shall be issued on the basis and at the discretion of the

³²Law on Public Procurement MN Art. 122 and 123, more information about the procedure of protecting the rights are provided throughout the text of this Guide - Tendering stage.

³³ Law on Public Procurement of Montenegro, Article 4, Item 17

³⁴Law on Public Procurement of Montenegro, Art. 57

Bank's bodies. Through its guarantee the Bank undertakes that, in the case its debtor fails to fulfil an obligation at the time of its maturity, it shall be settled from own funds if the conditions of the issued guarantees are fulfilled. The benefactor of the bank guarantee is obliged to duly and timely perform their obligations that make up the subject of the bank guarantee and inform the Bank of any settled area and the final payment of the obligations for which the guarantee has been issued. If the bidder fails to execute properly and timely their obligations, the Bank shall be obliged to pay the issued guarantee to the benefactor. The business enterprise (*the principal*), an SME in whose name the guarantee was issued, is required to pay all the costs to the Bank and interest in accordance with applicable regulations. When concluding the contract with the Bank, the bidder shall give the authorization to block its assets in the Bank and with other banks in Montenegro, in order to collect the issued guarantee which is the subject of the Contract. In case of any enforced collection and damage incurred on the Bank, such business entities are obliged to settle the obligations. Business entities are obliged to pay the Bank a fee for the issuance of guarantees and according to the Bank's tariff on the issuance of bank guarantees. The contract shall also govern other rights and obligations of the contracting parties.

This legal requirement in public procurement represents an additional financial burden for SMEs, and they themselves point out a problem of high costs of financial warranty in public procurement procedures, they consider that contracting authorities do not need to require financial guarantees for procurement under 30,000 euros. This would have an impact on the reduction of their costs and the cost of procurement itself. By acting in that way, the contracting authorities would provide financial relief to SMEs.

j.) Other burdens for SMEs

The Directorate for Small and Medium-Sized Enterprises in Montenegro point out other burdens that may be or are a big obstacle to the participation in public procurement of these entities, and are not directly related to the LPP:

- the complexity of the procedures themselves, the procedure for obtaining permits for business for certain activities;
- insufficient or poor services of business support and business consulting, through the strengthening of business infrastructure (*business centers and incubators*);
- lack of advisory information related to establishment and business operation;
- insufficient knowledge and skills to strengthen the competitiveness of SMEs;
- high liquidity and impossibility of debt collection;
- underground economy and unfair competition;
- slow state administration;
- barriers in legal regulations (*administration, taxation, customs, issues related to licenses and permits*);
- inflexible labour market;
- lack of harmonization of the education system and skills to labour market needs,
- long duration of commercial disputes;
- lack of knowledge and modern technology;
- insufficient export orientation;
- inadequate marketing activities and skills,
- insufficient application of international business standards,
- inefficiency in the execution of the contract,

- low level of value added in manufacturing;
- barriers at the local level, a large number and the amount of municipal taxes and fees, high costs for obtaining authorizations, the complexity of the documents that depend on the type of business.

2.5. Overview of overcoming barriers for SMEs

Difficulties and problems	The possibility of overcoming them
High-value contracts, inability to fulfil optional conditions, temporary closure of markets through “framework agreements”	<ul style="list-style-type: none"> • breakdown of the subject of public procurement in lots in quantitative and qualitative terms • stipulation of optional conditions in proportion to the subject of public procurement, in particular by limiting financial capacity to a maximum of double value of the estimated value of the contract • participation of SMEs in the joint bids with manufacturers and subcontractors • concluding framework agreements with multiple bidders, breakdown of the subject of public procurement in lots and in framework agreements
The lack of information and inadequate communication with contracting authorities	<ul style="list-style-type: none"> • publishing plans of public procurement required by contracting authorities and their amendments, and respecting deadlines stipulated by the LPP • publication of public procurement on the PPA Portal implemented by special procedures of international organizations and financial institutions • introduction of a single “desk” for the registration of bidders • introduction of a single system of registration and browsing of bidders for certain codes from the Common Procurement Vocabulary (CPV), and their automatic notifications about items they are interested in • further improvement of the Public Procurement Portal • further improvement of the Call Center to provide help when using the services of the Public Procurement Portal • further improvement of training of all users of the Public Procurement Portal • further improvement of the dialogue between SMEs and government bodies, local governments and others. • drawing up single and clear technical specifications for certain items of public procurement
Tight deadlines for preparing bids	<ul style="list-style-type: none"> • stipulation of longer deadlines for the submission of bids especially for complex public procurement procedures
Lack of necessary knowledge on the procedures and experiences in public procurement procedures	<ul style="list-style-type: none"> • organising specialized training and workshops for SMEs • drawing up of manuals, bulletins for contracting authorities, bidders and particularly for SMEs

Preference for the lowest price bid in relation to the most economically advantageous tender	<ul style="list-style-type: none"> • encouraging the use of the most economically advantageous offer, which can include other elements of criteria other than price, with an emphasis on lifecycle costs of products
Unnecessary administrative burdens	<ul style="list-style-type: none"> • enable delivery of statements on the fulfilment of mandatory requirements for the participation in all public procurement procedures • enable submission of bids through electronic public procurement
Delay in payment or non-payment for the work done	<ul style="list-style-type: none"> • strictly respect the deadlines for payment prescribed by the law
Ignorance of procedures on rights protection in public procurement procedures	<ul style="list-style-type: none"> • respecting deadlines for the protection of rights and training of employees for drawing up and filing appeals
High banking costs of financial security in public procurement procedures (guarantees)	<ul style="list-style-type: none"> • exemption of financial security – a guarantee for the estimated value below euro 30,000 in the public procurement procedure.

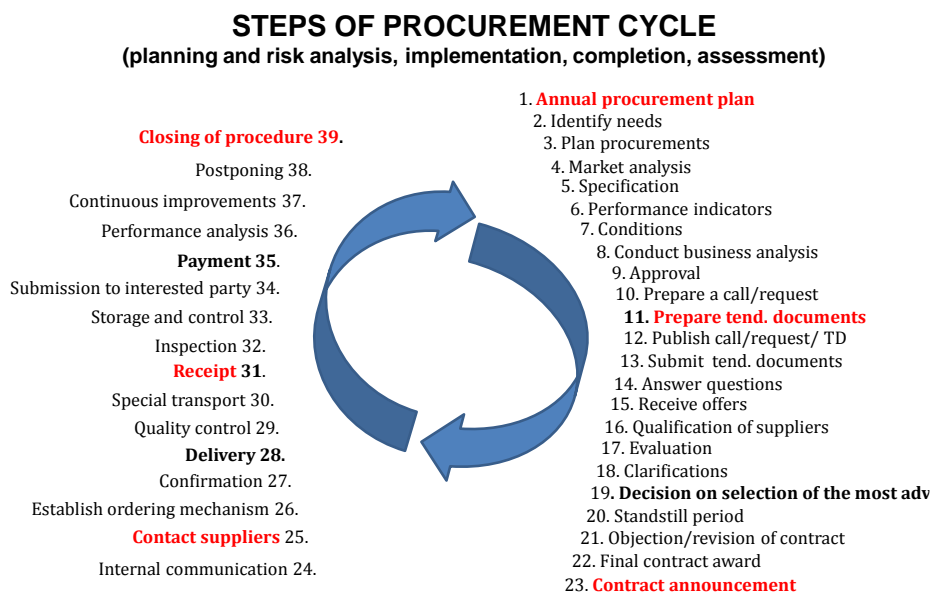
2.6. Analysis of obligations of contracting authorities and the bidders by stages of the public procurement procedure

Public procurement in the professional literature is not studied only on the basis of the contract award procedure, but on the basis of the entire public procurement cycle. In this respect, the public procurement cycle can be observed through three stages: pre-tender stage, tender stage and post-tender stage.

Each stage of the procedure includes particular steps that the Contracting Authority needs to follow in preparation and implementation of the public procurement procedure, and the Bidders and SMEs in preparation of the Bid.

The steps of public procurement depend on the business activity of the contracting authority, type of a subject of procurement and the type of public procurement procedure. A comprehensive overview of the steps of public procurement is given on the scheme below.

2.6.1. Public procurement cycle/Steps of public procurement



Obligations of contracting authorities, bidders and SMEs can be reviewed for the entire public procurement cycle and by stages or steps of the public procurement procedure. For the purpose of providing better information of all parties, introduction to the public procurement procedure by stages, the text below offers an overview of obligations of contracting authorities and business entities so that public procurement procedures can be completed successfully³⁵.

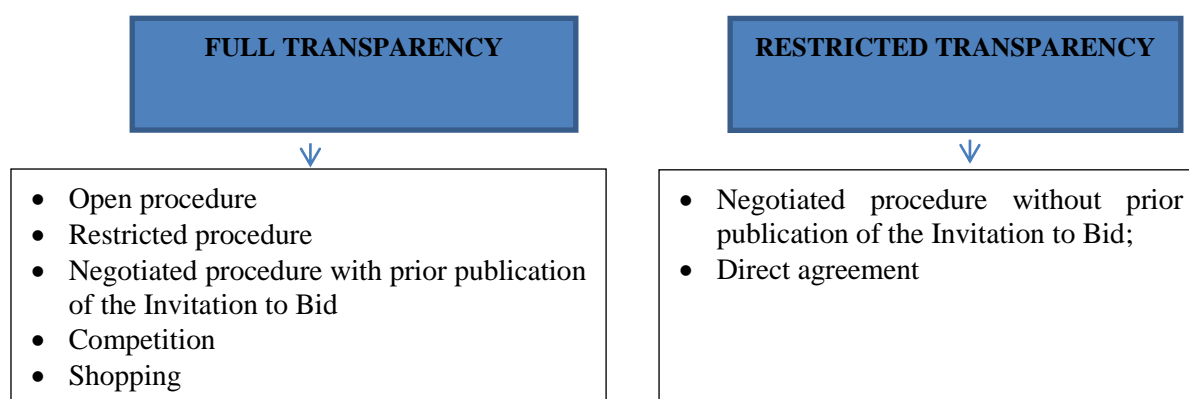
³⁵ Public Procurement Agency believes that this Guide will be useful to contracting authorities and bidders

a) Pre-tender stage

In the pre-tender stage of launching of a public procurement procedure, contracting authorities are obliged to specify the goods, services or works that they intend to procure. The contracting authorities are obliged to prepare a public procurement procedure which will enable equality and active competition among potential bidders³⁶. This is particularly expressed in the preparation of tender documents, definition of technical specifications, description of the subject of public procurement, eligibility conditions for bidders and the criteria for the selection of the most advantageous bid³⁷. The basic rule is that contracting authorities are obliged to provide complete information about the public procurement procedure and the conditions for awarding contracts, that they are obliged to ensure fair and active competition among potential bidders so as to allow bidders to prepare their bids on a competitive basis³⁸.

In preparation of the procedure, contracting authorities choose public procurement procedures under Article 20 of the Law on Public Procurement, which implies publication of tender documents and an opportunity for any interested business entity to prepare and submit a bid³⁹. The contracting authority may choose, as an exception, a negotiated tender procedure without prior publication of the Invitation to Tender⁴⁰, which is not open because the tender documents are provided to particular business entity(s), whereby the contracting authority is allowed to negotiate financial, technical, administrative or any other aspect of the business entity's bid. This procedure is applicable only in urgent cases caused by events that contracting authorities could not influence and foresee⁴¹, and the contracting authorities may implement the procurement procedure by direct agreement⁴².

Scheme 6. Types of public procurement procedures⁴³



³⁶ Law on Public Procurement of Montenegro, Art. 6, 7 and 8.

³⁷ For all information – help desk of the PPA, the Rulebook on the forms in the public procurement procedure and standard tender documents <http://www.ujn.gov.me/2015/05/pravilnik-o-obrascima-u-postupku-javnih-nabavki-2/>

³⁸ Law on Public Procurement of Montenegro, Art. 49 to 56

³⁹ Law on Public Procurement of Montenegro, Art. 20, 21, 22, 24, 26, 27, 28, 29

⁴⁰ Law on Public Procurement of Montenegro, Article 25

⁴¹ Law on Public Procurement of Montenegro, Article 31

⁴² Law on Public Procurement of Montenegro, Article 30

⁴³ The new Law on Public Procurement will regulate new public procurement procedures and techniques and, thus, there is a possibility for direct agreement and shopping to be excluded or replaced by new procedures and techniques of procurement of goods, services or works.

In this stage, contracting authorities should consider the solutions that exist on the market, prepare tender documents and technical specification in a clear and precise manner, in accordance with their objective needs. Unclear technical specifications most often can discourage SMEs to participate in the specific procedure because they are not sure what the contracting authority needs to procure exactly and whether they can respond to such needs.

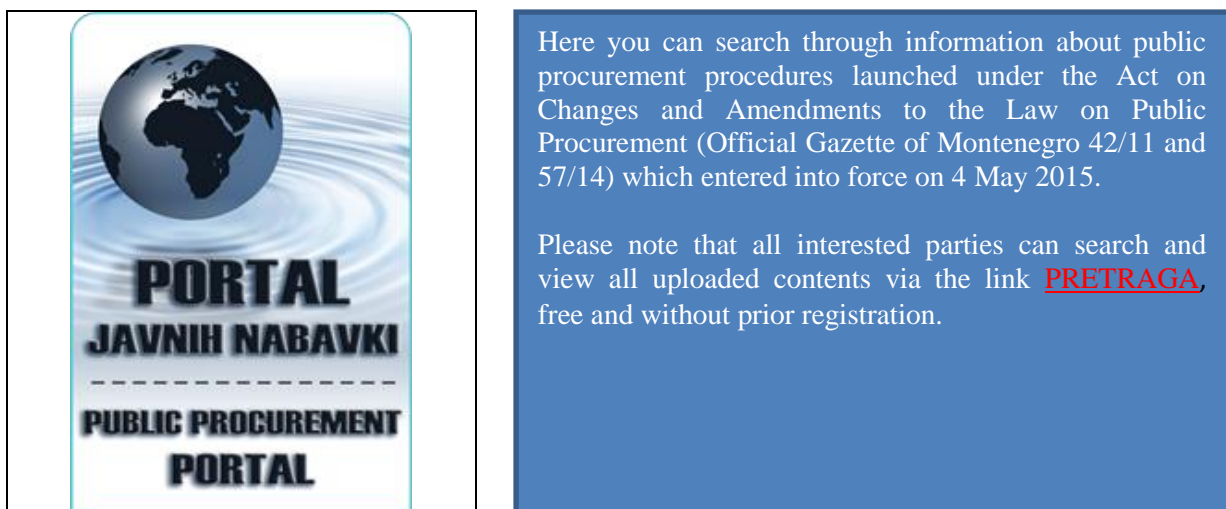
b) Tender stage

The most advantageous bid is selected in the tender stage. It includes publication or submission of the tender documents, collection of bids, assessment and evaluation of bids and contract award. Contracting authorities publish the tender documents on the public procurement portal of the Public Procurement Agency and in one of daily newspapers, except for the negotiated procedure without prior publication of the Invitation to Bid. All interested business entities can, without any compensation and without prior registration on the public procurement portal⁴⁴, download the necessary information about launched public procurement procedures where they can search for:

- public procurement plans of all contracting authorities,
- tender documents, clarifications, changes and/or amendments to tender documents,
- decisions of contracting authorities in the public procurement procedure,
- public procurement contracts,
- individual reports on contracted public procurements by contracting authorities,
- report on contracted public procurements at annual level,
- other information which may be important for SMEs.

Special importance for participation in public procurement procedures for business entities (*SMEs*) is attributed to **tender documents**⁴⁵ which contain all information needed by SMEs to decide whether or not they will participate in a public procurement procedure, prepare or not a bid. The access to the public procurement portal is simple and presented in Figures 1, 2 and 3.

Figure 1.



⁴⁴ <http://portal.ujn.gov.me/delta2015/login.jsp>

⁴⁵ Law on Public Procurement of Montenegro, Article 49

Figure 2.

Detailed information about the manner of creating documents on the public procurement portal are provided on the website of the Public Procurement Agency: <http://www.ujn.gov.me/category/uputstva/>.

Figure 3.

Naručilac	eObavještenje	Opis	Vrsta Obavještenja	Datum kreiranja	
JU Lovčen-Bečići Cetinje	Tenderska dokumentacija za otvoreni postupak javne nabavke za nabavku prehrambenih proizvoda, pića i sredstava za održavanje higijene	Nabavka i isporuka robe – prehrambenih proizvoda, pića i sredstava za održavanje higijene za objekte na Ivanovim Koritima i u Rafailovićima.	Tenderska dokumentacija	21/09/2016 09:25 GMT	Pregledajte
Ministarstvo odbrane	Nabavka drva za ogrjev	Nabavka drva za ogrjev.	Tenderska dokumentacija	21/09/2016 09:22 GMT	Pregledajte
Ministarstvo odbrane	Nabavka specijalne opreme za Bording tim, po partijama	Nabavka specijalne opreme za Bording tim po specifikaciji datoj u tenderskoj dokumentaciji.	Tenderska dokumentacija	20/09/2016 16:31 GMT	Pregledajte
DOO "Vodovod" Pijevlja	Nabavka HTZ opreme	Nabavka HTZ opreme	Tenderska dokumentacija	20/09/2016 15:55 GMT	Pregledajte
Opština Nikšić	Izmjena VII Plana javnih nabavki za 2016 godinu		Plan za javne nabavke	20/09/2016 15:54 GMT	Pregledajte
Opština Tivat	tenderska dokumentacija za Cacovo	Izvođenje radova na izgradnji ulice u Cacovu- I faza .	Tenderska dokumentacija	20/09/2016 15:54 GMT	Pregledajte

The Law on Public Procurement has regulated deadlines for **submission of bids** depending on the type of procedure. The general rule is that the contracting authority sets deadlines in the tender documents so as to make sure that business entities (*SMEs*) have enough time to take all necessary actions, prepare and submit a valid bid.

The manner of **preparation of bids**, submission of bids by lots, what is considered to be timely and untimely bid, a bid's validity period, whether it is permitted to submit alternative bids, whether a bidder appears independently, independently with a sub-contractor, jointly or jointly with a sub-contractor, the manner of collecting and presenting evidence of fulfilment of mandatory and optional conditions, other evidence and the form of submission of evidence is regulated by the Law on Public Procurement⁴⁶ and, thus, the tender documents of contracting authorities for a specific procedure and the subject of procurement. Business entities (*SMEs*) prepare and submit bids accordingly, within the period set for submission of bids, which they can, within the period identified for submission of bids, change or amend or withdraw their bids in writing. Changes and amendments to bids or withdrawal of bids is submitted in the same manner as the bids. A bid is returned unopened in case of its withdrawal. For the purpose of better preparation of bids, interested parties (*SMEs*) have the right to request from contracting authorities to provide clarification of the tender documents, depending on the public procurement procedure, within the defined deadline⁴⁷, and the contracting authorities are obliged to send the clarifications of the tender documents to the applicant and publish them on the public procurement portal within three days from the day when the request was received. Clarifications of tender documents cannot make changes and/or amendments to the tender documents and they will make an integral part of the tender documents.

Business entities (*SMEs*) can request assistance from the Public Procurement Agency in relation to vagueness regarding application of the Law on Public Procurement by telephone, e-mail or by a written request and via the established **help-desk** which provides advice and thus encourage their greater involvement in public procurement procedures.

It is important to point out that the Law on Public Procurement does not prohibit a dialogue between contracting authorities and bidders so as to determine what can be purchased on the market, whether there are any alternative solutions and how the subject of the procurement should be sufficiently and properly described. The reason for this is that often even contracting authorities do not possess the necessary knowledge about the subject of the procurement, and the most common consequence is that they receive unsuitable bids in the procedure or contracting authorities do not receive any bids. When a dialogue is established between a contracting authority and a bidder, it should be kept in mind that actions should be compliant with the principle of equality and that this is not the way to adjust technical specifications to an individual bidder. A limited dialogue is permitted if a procedure has been initiated, but the deadline for submission of bids has not expired, in writing as indicated above for the purpose of additional clarification of preparation of the bid. This type of communication is permitted and needed. Very often this is how important clarifications and assistance is provided to bidders in preparation of acceptable bids. Also, during assessment and expert evaluation of bids, the contracting authority may ask bidders for certain clarifications which will help them to evaluate the bids properly. The possibility of a dialogue

⁴⁶ Law on Public Procurement of Montenegro, Art. 65 to 83

⁴⁷ Law on Public Procurement of Montenegro, Article 56

between contracting authorities and bidders in certain stages of the public procurement procedure is permitted under the Law on Public Procurement in a way that the established dialogue does not distort the main principles of public procurement.

Compared to the previous period, the expenditures incurred in preparation of Bids have been reduced significantly through the opportunity for the evidence of fulfilment of the conditions for participation in the public procurement procedure and other required evidence can be submitted as originals, certified copies, uncertified copies or electronically together with other requirements as laid down by the Law on Public Procurement⁴⁸. Current expenditures will be overcome by the implementation of the new Law on Public Procurement which will lay down that bidders will submit a **certified declaration** proving that they fulfil the specified requirements, and only the selected bidder will submit the required documents verifying statements made in the declaration.

After submission of bids, within the period defined by tender documents, representatives of the contracting authority (*Commission for Opening and Evaluation of Bids or a public procurement officer*) will perform **public opening of bids**⁴⁹, which may be attended by authorized representatives of bidders. The bidder who revokes or withdraws the bids will not have the right to attend public opening of bids. The procedure of opening of bids will start at the indicated time and at the indicated location, not later than one hour upon expiry of the period for submission of bids, and the contracting authority will prepare Minutes of the Opening of Bids. The Minutes are made available for consideration, verification of contents and signing by authorized representatives of bidders, who will be provided with a copy, and by members of the Commission. The bidders who have not attended the opening will be provided with the Minutes within three days following the day of opening. After finalization of the procedure of opening of bids, the bids must not be available to unauthorized persons.

The contracting authority will **review, assess, compare and evaluate**⁵⁰ the opened bids against the conditions and requirements defined by tender documents, without bidders' participation. Within the assessment procedure, the contracting authority may request from bidders to provide clarifications so as to eliminate doubts concerning correctness of bids. Accidental calculation mistakes up to 3%, spelling and typing errors are accepted as clarifications, and explanations cannot change or amend bids. A bidder is obliged to provide explanation of his bid within eight days from the day of submission of the request, otherwise the bid will be rejected as improper. During assessment and evaluation of bids, the contracting authority may request independent expert assistance, if needed, in accordance with the requirements he had set. In this stage, the following is mandatory subject of control: timeliness, form, content, completeness of bids, fulfilment of the conditions concerning capability and calculation correctness of bids. A bid which is assessed as improper will be rejected. After the review and assessment, bids are ranked on the basis of the criteria for selection of the most advantageous bid. All actions in this stage of the procedure are secret until the moment of disclosure of the decision on the selection of the most advantageous bid or the decision on dismissal of the procedure. Minutes of the review, assessment and evaluation of bids are prepared to include analytical overview of requested and submitted evidence, correctness and admissibility of bids and reasons for exclusion of bids. The Decision on the selection of the most advantageous bid/Decision on dismissal of a public

⁴⁸ Law on Public Procurement of Montenegro, Article 74

⁴⁹ Law on Public Procurement of Montenegro, Article 98

⁵⁰ Law on Public Procurement of Montenegro, Art. 99 to 107

procurement procedure will be issued by the authorized person of the contracting authority and it will be submitted to bidders not later than three days following the day of issue and publication on the public procurement portal.

The public procurement procedure will end on the day of effectiveness of the decision on the most advantageous bid, the Decision on dismissal of the public procurement procedure or the Decision on annulment of the public procurement procedure. The Decision on the selection of the most advantageous bid will become enforceable resulting in a contract or a framework agreement upon the expiry of the standstill period, if a complaint has not been filed, or by announcement of the decision of the State Commission rejecting or denying the complaint. In case that the bid validity period has expired, the contract or the framework agreement will be concluded following a written statement of the bidder on the extension of the bid validity period and by submission of extended bid guarantee if submission of the bid guarantee was a condition for tendering. The bidder will be given a suitable period for submission of extended bid validity period and the bid guarantee. If the selected bidder fails to submit the statement on extension of the bid validity period and the bid guarantee, withdraws his bid, refuses to sign the public procurement contract and the framework agreement or fails to submit performance guarantee as required by tender documents, the contracting authority will repeat ranking of bids against the selection criteria not taking into consideration the bid of the selected bidder and decide on the selection of the new most advantageous bid or, if there the reasons exist, dismiss the public procurement procedure. The Law on Public Procurement allows bidders to review bids and the course of decision making process after the decision has been made for the purpose of protection of own rights and public interest.

The contracting authority must not conclude the contract in the standstill period and while deciding on a complaint unless otherwise regulated by the law, i.e. after the expiry of the standstill period in case a complaint has not been filed with the State Commission or after the State Commission has decided to reject the complaint and the decision on the selection of the most advantageous bid will become final. The contracting authority will conclude a public procurement contract or a framework agreement with the bidder(s) whose bid has been selected as the most advantageous one in accordance with the conditions set by tender documents and the selected bid. If the public procurement contract is concluded contrary to provisions of the Law on Public Procurement (*Article 15 paragraph 5 and Article 18 paragraph 1*) regulating anti-corruption rule and the rule on prevention of conflict of interest, it will be void. In addition to the Law on Public Procurement, provisions of the Act on Obligations will apply appropriately to the responsibility of contractual parties in relation to fulfilment of obligations under the public procurement contract.

The protection of the rights of participants in the public procurement procedure and the public interest in all stages of public procurement will be ensured in a way and under conditions laid down in the Law on Public Procurement. All interested persons and bidders will have the right to appeal via the State Commission, in writing or by registered mail, and electronically if the conditions for submission of electronic documents are met. An appeal is initiated by the person having legal interest in winning the public procurement contract or the framework agreement or who suffered or could suffer damage caused by alleged violation of subjective rights. Appeal may be against: tender documents; decision on the selection of the most advantageous bid; decision on dismissal of the public procurement procedure; decision on annulment of the public procurement procedure⁵¹.

⁵¹ Law on Public Procurement of Montenegro, Art. 120 to 143

If the appellant failed to appeal the tender documents in the right stage, he will lose the right to request review of legality in the later stage for the previous stage.

The appeal will contain the following information and evidence⁵²:

Name and seat of the appellant, address and contact person
Name and address, seat of the contracting authority
Information about tender documents which are subject to the appeal (<i>number and date of publication or submission</i>), or about the decision of the contracting authority (<i>number and date of the decision on the selection of the most advantageous bid, dismissal or annulment of the public procurement procedure</i>)
Appeal statements (<i>description of irregularities and explanation</i>)
Appeal request
Evidence proving violations (proposed evidence)
Appeal request
Signature of the appellant's authorized person

The appeal is accompanied by the evidence that the fee for the implementation of the procedure has been paid in the estimated amount of up to 1% of the estimated public procurement value, whereby the amount of the fee must not exceed 8.000 EUR. The fee for the implementation of the procedure is the income of the budget of Montenegro. If the decision in the process based on a complaint was made in favour of the appellant, the contracting authority is obliged to reimburse costs to the appellant within 15 days from the day of effectiveness of the decision on the complaint. The appellant whose seat is not in the territory of Montenegro is obliged to designate an attorney to receive notifications in the territory of Montenegro or determine another way of serving notifications which will not procrastinate the procedure.

A timely appeal stops any further activities of the contracting party in a public procurement procedure until the appeal is decided upon. In case of an appeal, the contracting authority may request approval of continuation of the public procurement procedure, concluding of a public procurement contract or a framework agreement for the subject of the public procurement or a part of the subject of public procurement for the reason of: possible persistence of the damage which is disproportionally larger than the value of the public procurement, protection of public interest, urgency of procurement and for possible threat to human life and health, or for other serious hazards or possible damages. The contracting authority must prove or make probable the circumstances which the request is based on. The request may be filed within five days from the day of receipt of an appeal, and this request is decided upon by the State Commission within three days from the day of filing of the request. If the State Commission accepts the request, the contracting authority is obliged to notify all participants in the procedure thereon within three days following the day of submission of the decision⁵³.

In a procedure based on appeal, the State Commission decides by a decision and a conclusion⁵⁴. The decision of the Commission must be justified. The decisions of the State Commission are final and the contracting authority is obliged to act in accordance with the

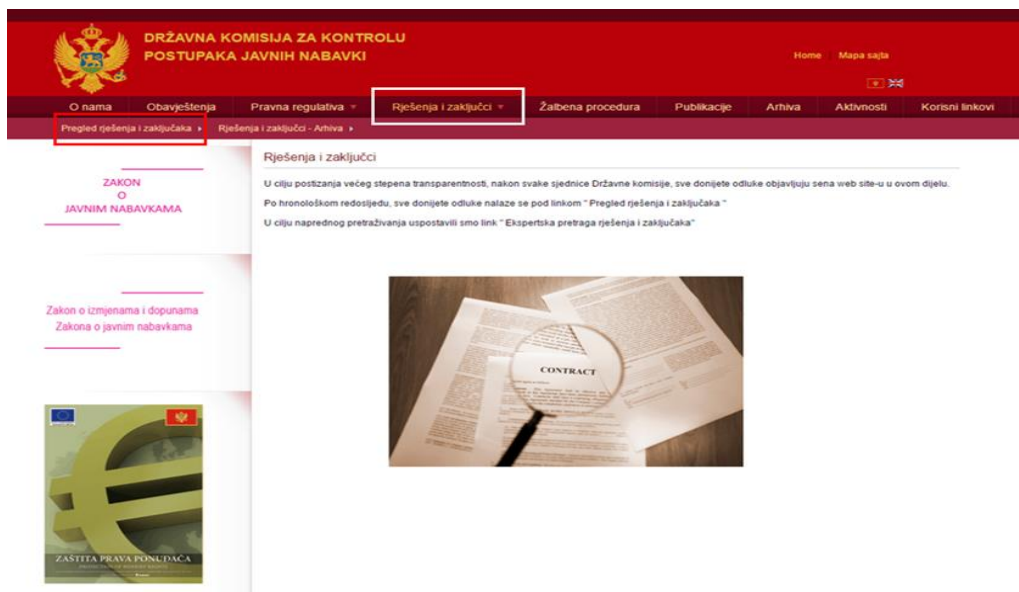
⁵² Law on Public Procurement of Montenegro, Article 125

⁵³ Law on Public Procurement of Montenegro, Article 124

⁵⁴ Law on Public Procurement of Montenegro, Article 132

decision and notify the Commission thereon within the specified period. If the contracting authority fails to implement the decision within a defined period, the State Commission notifies the Government or the competent authority of the local self-government thereon and proposes initiation of an accountability procedure. An administrative dispute, i.e. court protection⁵⁵, can be initiated against the decision of the State Commission before the Administrative Court, whereby the legality of the State Commission's decision in the appeal procedure will be assessed. The appeal to the Administrative Court does not stop concluding of the public procurement contract. The procedure based on an administrative complaint in the public procurement case is urgent by nature.

Figure 4.



In the appellate procedure, the State Commission may by conclusion: reject an appeal due to incompetence, inadmissibility, disorderliness, untimeliness, lack of legal interest and because the appeal was filed by an unauthorized person; dismiss an appellate procedure upon receiving a written notification from the appellant that he is withdrawing the appeal. By decision, the State Commission: rejects an appeal as groundless, accepts an appeal and fully or partially annuls the public procurement procedure and the decision made, indicates to the contracting authority the irregularities and orders implementation of a new procedure and decision or taking necessary measures to eliminate such irregularities⁵⁶. Within the procedure, the State Commission decides on the requests concerning the costs of procedure.

Decisions of the State Commission are published on the website of this authority within the section Decisions and Conclusions (*Picture 4*).

⁵⁵ Law on Public Procurement of Montenegro, Article 136

⁵⁶ Law on Public Procurement of Montenegro, Article 132 par. 2 and 3

c) Post-tender stage⁵⁷

Although the implementation of the public procurement procedure is finalized by the contract award, its implementation is an important segment of public procurement. The execution of a contract concluded on the basis of a public procurement procedure is regulated by the Act on Obligations. However, the Law on Public Procurement lays down that the inspection supervision of the implementation of this Act and the secondary legislation adopted thereunder is performed by a senior public procurement inspector with respect to actions of contracting authorities, concluding and implementation of public procurement contracts⁵⁸. A special role in monitoring of the implementation of contracts belongs to contracting authorities which may regulate, in accordance with the organization of work, the procedure of monitoring of contract implementation, control of instruments of financial security for good execution of contracts, appeal procedures during contract execution, foreign trade and customs affairs during the implementation of contracts with international suppliers, submission of documents for accounting, keeping records on executed contract, archiving of documents related to contract execution.

Contracting authorities may regulate the procedure which will be linked with other internal documents and standards of the contracting authorities, and linked with external documents as well (*Law on Public Procurement, Law on Obligations, Law on Foreign Trade, Law on Taxes, Law on Construction of Buildings and other provisions related to a subject of a public procurement and standards*), regulate accountability and powers to monitor execution of public procurement contracts, rules of communication with the other contractual party regarding contract execution, submission of concluded contracts and the required documents, designating persons responsible for monitoring public procurement contracts, drafting of decisions and notifications for establishing commissions for monitoring contract execution, receiving goods, services and works, procedure of control and implementation of financial security, objections concerning contract execution, actions taken in case that eliminating of errors is needed within the warranty period, receiving and verification of invoices and other documents for payment and accounting, and submission of complete documents to the accounting and finance department/unit, register of public procurement contracts, keeping and archiving documents concerning public procurements.

Execution of contracts is monitored by controlling invoices as an element of the "*good financial practice*" and the system of registering of customers' complaints as an element of the "*good administrative practice*".

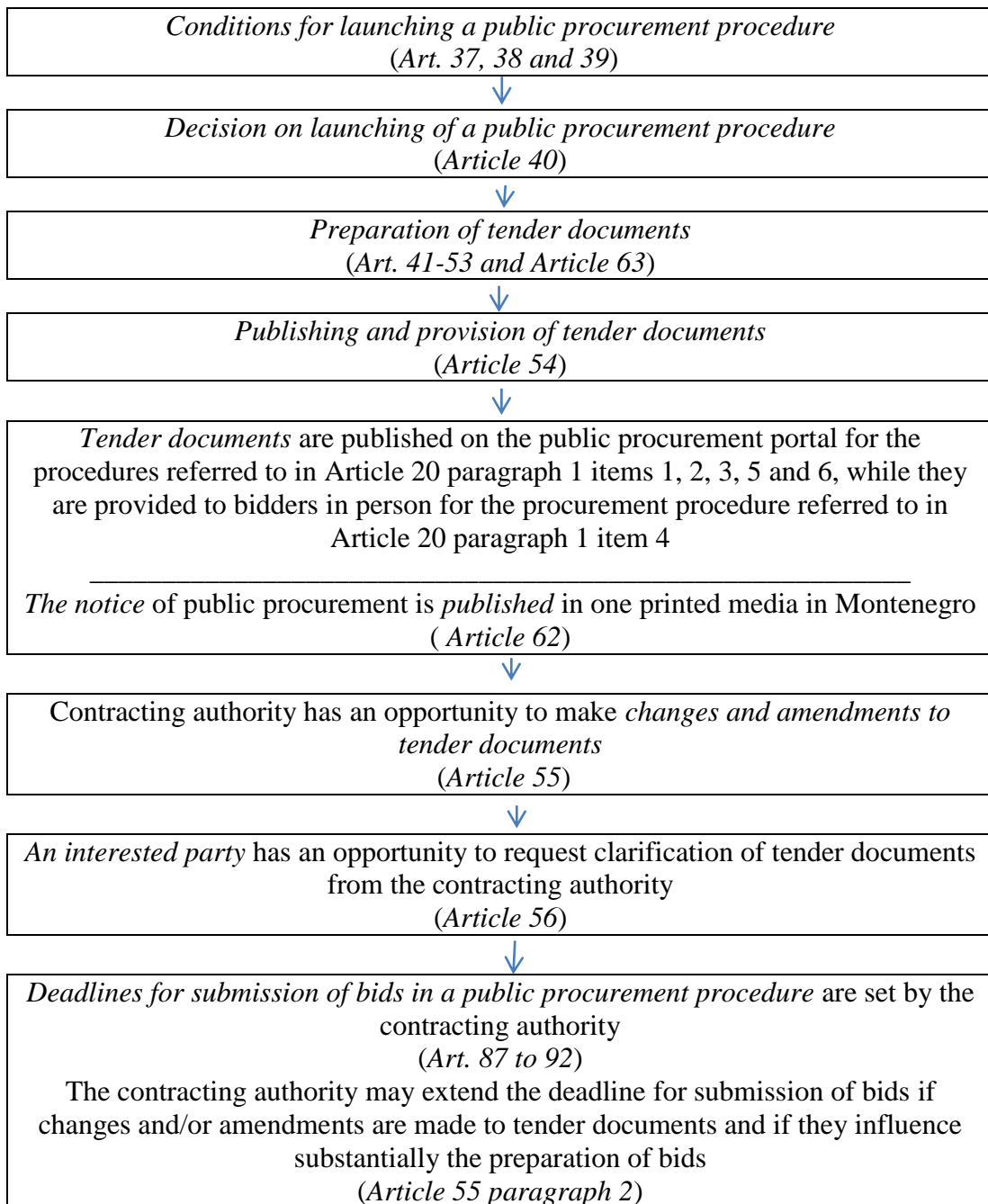
2.7. Diagram of the course of procedure

In order to help a comprehensive review and application, an overview of key provisions of the Law on Public Procurement is given below by stages and steps of the public procurement procedure, and the most common errors made by interested parties and bidders and how to overcome them.

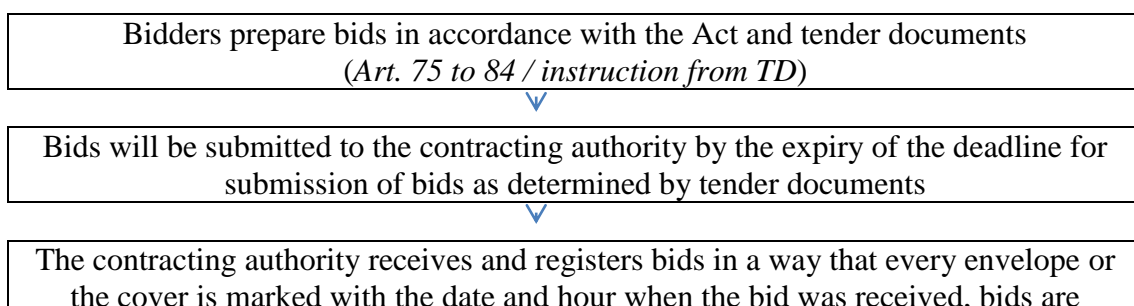
⁵⁷Certain observations and recommendations of the WB consultants as to how contracting authorities should establish their own practices and regulate internal procedure for monitoring the implementation of contracts for the purpose of more efficient use of public funds and protection of interests of contracting authorities

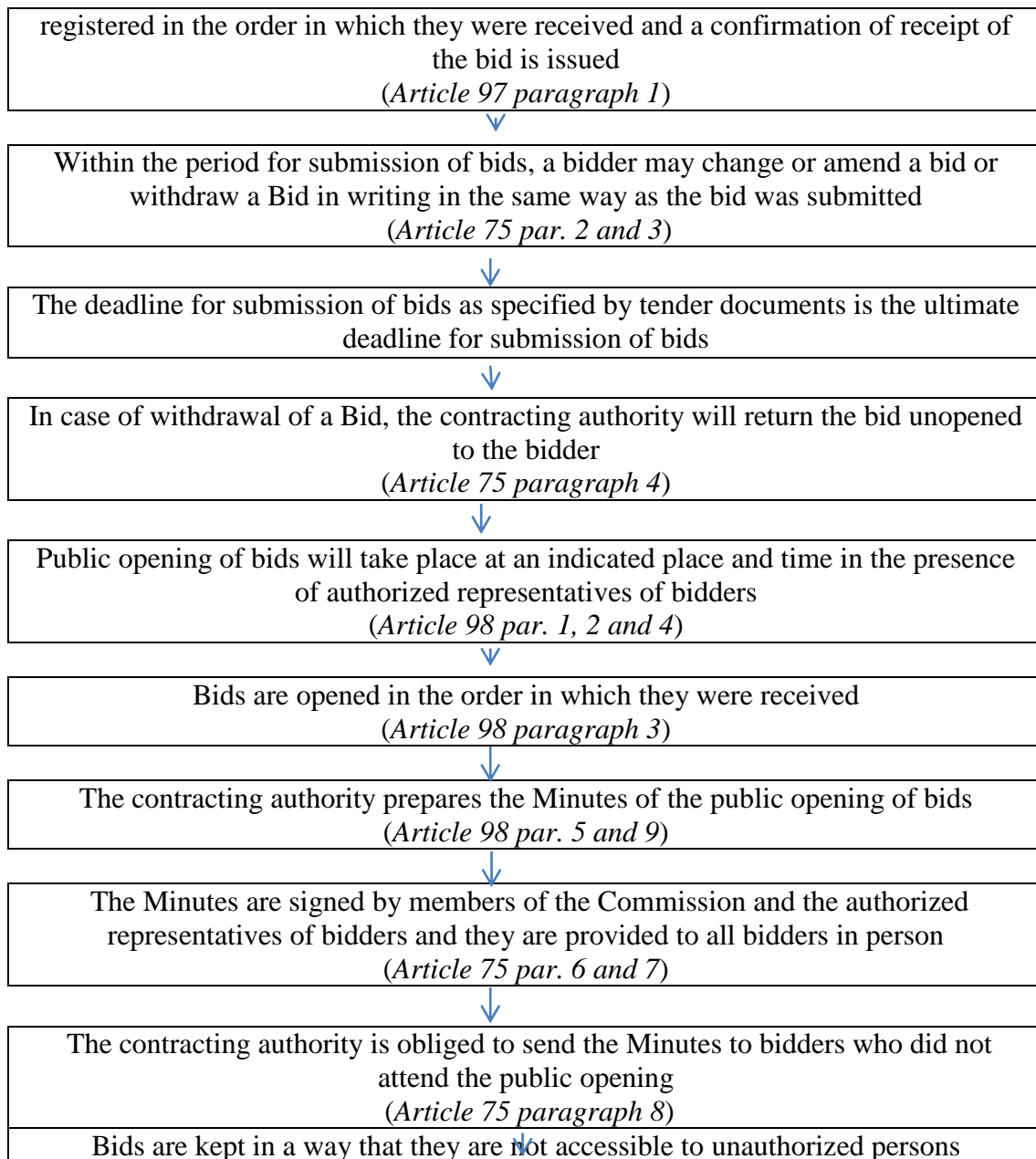
⁵⁸Law on Public Procurement of Montenegro, Article 148

1. Beginning of a procedure

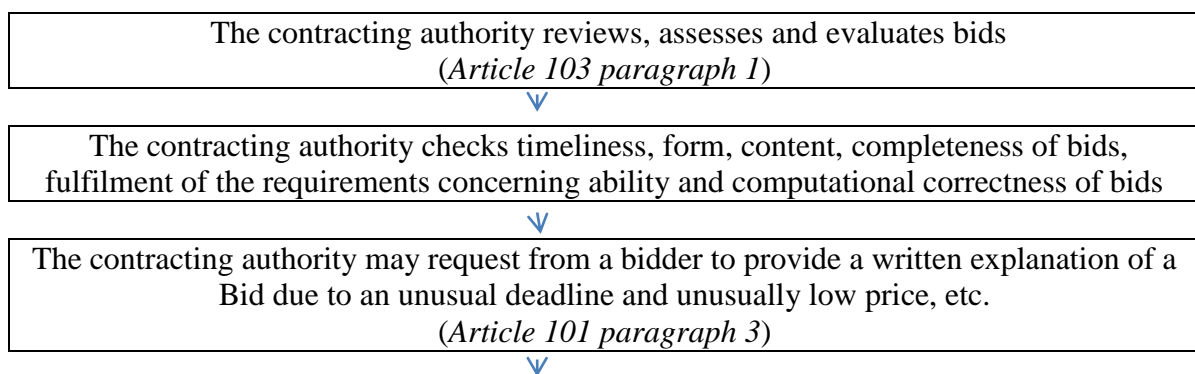


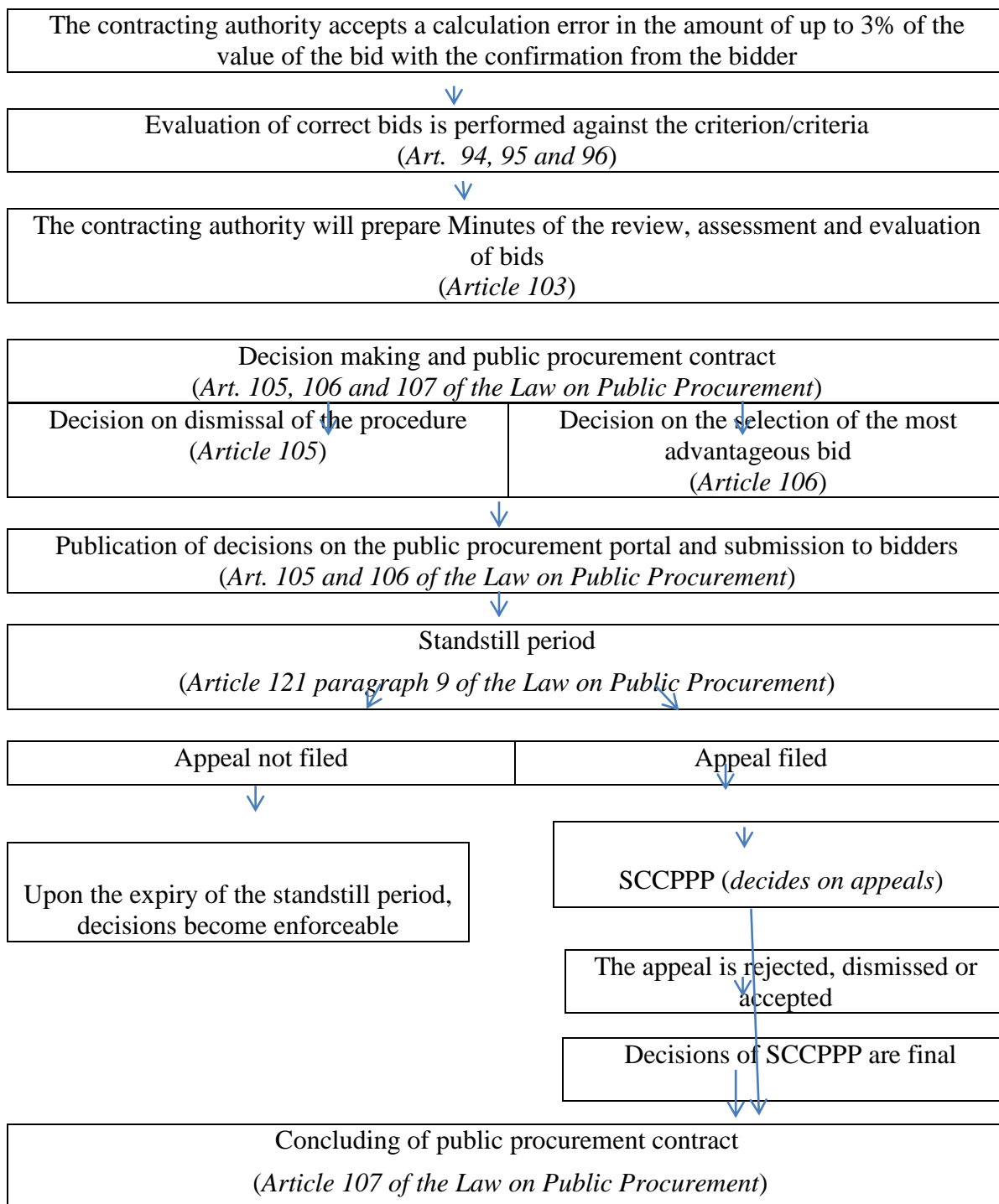
2. Submission and opening of bids





3. The procedure of review, assessment, evaluation of bids and decision making





3. THE MOST COMMON ERRORS IN PUBLIC PROCUREMENT PROCEDURES AND HOW TO OVERCOME THEM

The most common errors of SMEs	How to overcome errors
Failing to follow up on notices of launched public procurement procedures	Daily monitoring of notices on the public procurement portal

Insufficient studying of the requirements determined by tender documents and technical specification	Special attention should be paid to studying of technical specification and the requirements determined for participation in a public procurement procedure
Untimely submission of requests for clarification of tender documents	An interested party has the right to request, within the periods determined by the Law on Public Procurement, from the contracting authority to clarify tender documents and may refute the clarifications in the appellate procedure before the State Commission
Failing to appeal tender documents	An appeal should be filed in a way and within the period regulated by the Law on Public Procurement, and prove the standing to commence an action for an appeal (<i>timely request for clarification of tender documents</i>)
Frequent delays in submitting the Bid	Comply with the deadline for submission of bids which is determined by tender documents
Failing to submit all requested evidence of appropriate evidence of fulfilment of prescribed conditions, failing to submit a suitable bid guarantee or improper submission thereof	Bidders should study carefully the prescribed conditions and comply with the instructions given in tender documents, then prepare the financial part of a bid in accordance with the technical specification, or the Bill of Quantities, and show prices in a prescribed manner and apply the prescribed VAT rate
Changes and amendments to bids	Changes and amendments to bids are permitted only until the expiry of the period for submission of bids, in a form of a written statement signed by a bidder
Withdrawal of bids	Before the expiry of the period for submission of bids, a bid may be withdrawn by a written statement, and the contracting authority is obliged to return such bid unopened to the business entity that has withdrawn the bid
Incorrect preparation of bids by lots, joint bid or bids with a subcontractor	Follow the provisions of the Law on Public Procurement and the instructions of the contracting authority from the tender documents, and in case of vagueness, request clarifications from the contracting authority
Failing to prove equivalence of the product offered	In case an equivalent product to the product requested by the Contracting Authority is offered, it should be proven as foreseen by tender documents
Failing to submit the requested clarifications of a bid	Submit in a timely manner clarification of a bid in case it is requested so by the contracting authority
Submitting of financial bids with a calculation error	Prepare a bid with a potential calculation error not exceeding 3%; otherwise, the bid is incorrect, and when the contracting authority establishes the existence of the error, rectify it or the

	bid will be incorrect
Improper appeal of tender documents and the decision of the contracting authority	A complaint may be submitted by an interested party and a Bidder, and it should be timely, prepared so as to include all elements referred to in Article 125 of the Law on Public Procurement; the complaint should be accompanied by the evidence of payment of the fee for implementation of the procedure and, on the request of the State Commission, eliminate all gaps which prevent acting upon the complaint, or it is incomprehensible or incomplete
Incompliance with a contract elements	A contract is prepared in accordance with tender documents and the selected bid; contracted elements are implemented with the dynamics, within the deadlines, in the quantity and at the unit prices, successively or onetime, as needed by the contracting authority

4. STRATEGIC FRAMEWORK

4.1. Documents of the European Commission facilitating SMEs in public procurements and the role of the European Parliament in the development of SMEs

Having in mind the importance of SMEs, the European Commission passed the act in 2008 stipulating that public procurements should be more adjusted to the needs of SMEs. Contracting Authorities should be encouraged to use the Code of Best Practices from the Working Paper of the Commission of 25 June 2008 titled the "*European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts*", which foresees a set of measures; in general, they are the following principles:

1. create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded; C
2. ensure that honest entrepreneurs who have faced bankruptcy quickly get a second chance; E
3. design rules according to the "*Think Small First*" principle; D
4. make public administrations responsive to SMEs' needs; M
5. adapt public policy tools to SME needs: facilitate SMEs' participation in public procurement and better use State Aid possibilities for SMEs; A
6. Facilitate SMEs' access to finance and develop a legal and business environment supportive to timely payments in commercial transactions;
7. Help SMEs to benefit more from the opportunities offered by the Single Market;
8. Promote the upgrading of skills in SMEs and all forms of innovation;
9. Enable SMEs to turn environmental challenges into opportunities;
10. Encourage and support SMEs to benefit from the growth of markets.

Within the fifth principle, as one of important pillars, it is foreseen that countries should facilitate SMEs' participation in public procurement procedures by:

- a) setting up electronic portals to publish information on public procurement;
- b) encouraging contracting authorities to subdivide contracts into lots where it is appropriate and to make opportunities to participate in joint bids and bids with subcontractors visible;
- c) reminding contracting authorities of their obligation to avoid disproportionate qualification (*economic and financial ability, professional and technical equipment and staffing*);
- d) encourage dialogue and mutual understanding between SMEs and large contracting authorities (*buyers*) through activities such as information, training, monitoring and exchange of good practice.

Back in 1983, the European Parliament declared the "*Year of Small and Medium Enterprises and Turnover*" and launched a number of initiatives to encourage their development. Since then, the Parliament has been demonstrating its commitment to encouraging the SMEs development in Europe, so a number of Resolutions have been adopted in the past period.⁵⁹

In June 2010, the Parliament passed the Resolution on the Community Innovation Policy in a Changing World. In this Resolution, the Parliament emphasizes the need to create conditions in which risk capital will be more available to SMEs. It also invites to development of instruments for financing of SMEs such as micro credits, entrepreneurship capital for those who want to invest in innovative enterprises, and investments by "*business angels*" who are interested in sponsoring business projects of young researchers. The Parliament also invites Member States and the Commission to create tax, financial, business and administrative incentives for investments.

In March 2011, the Parliament passed the Resolution on an Industrial Policy for the Globalisation Era. This Resolution, *inter alia*, invites the Commission to continue implementing the Small Business Act so as to alleviate administrative burden and ensure a better access to funding opportunities for SMEs. It also invites to updating of the definition of SMEs to allow broader flexibility in individual industrial sectors. Also, the Parliament appeals to the Commission to increase SMEs' participation in the framework research and development programmes.

In May 2011, the Parliament passed the Resolution on the Small Business Act Revision. In this Resolution, the Parliament, *inter alia*, invites Member States to adopt the last remaining proposal of the Statute of the European Private Trade Society. It highlights the concern due to the fact that the test of influence of legislation on SMEs is applied properly and consistently in all new legislative proposals, particularly at national level. In addition, the Parliament is warning Member States of "*excessively devoted*" passing of regulations which go beyond the requirements of the EU acquis in transposition of Directives into national legislation.

In October 2012, the Parliament passed the Resolution on "*small and medium-sized enterprises: competitiveness and business opportunities*". This Resolution highlights a number of areas including alleviation of administrative burden, supporting competitiveness and job creation, starting new innovative enterprises (*start-ups*) and access to information and financing.

⁵⁹ OG C 236 E, 12 August 2011, pp. 41; OG C 199 E, 7 July 2012, pp. 131; OG C 377 E, 7 December 2012, pp. 102; Adopted texts, P7_TA(2012)0387; Adopted texts, P7_TA(2014)0032

In January 2014, the Parliament passed the Resolution on reindustrialization of Europe to promote competitiveness and sustainability highlighting the importance of SMEs in the EU economy and invites to provision of special support and assistance to SMEs.

4.2. Strategic documents for the development of SMEs in Montenegro

The Strategy for Development of Small and Medium Sized Enterprises for the period 2010-2015⁶⁰ establishes the framework, goals, priorities and measures for better development of small and medium-sized enterprises. The European Code of Best Practice for facilitating SMEs' access to public procurement contracts, which represents the framework of the policy for the development of small enterprises in the EU is, to a large extent, included in the Strategy.

As one of priority measures, this Strategy foresees improvement of conditions for the participation of SMEs in public procurements, facilitating better access to SMEs, better awareness of various aspects of participation in public procurement procedures and reduced administrative barriers to their participation in public procurement procedures in the public sector.

Also, improved transparency, efficiency, better flow of information and following up on current trends related to green procurements, socially responsible procurements, innovative procurements, e-procurements and support to SMEs are some of the objectives of the Strategy for Development of the Public Procurement System of Montenegro for the period 2016-2020⁶¹.

The Action Plan implementing the Strategy for Development of the Public Procurement System for the period 2016-2020, the Montenegro's Programme of Accession to the European Union for the period 2017-2018 (*MPAEU*⁶²), the Work Programme of the Public Procurement Agency⁶³ foresee activities with regard to management of environmental protection, energy efficiency, social requirements and a wider access for SMEs. The following activities are planned in that respect:

1. Harmonization of public procurement legislation with new Directives in this field from 2014, promotion of importance of use of green, social and innovative public procurement and access for SMEs;
2. Training of contracting authorities to create a subject of public procurement to facilitate better access by SMEs;
3. Establishing a platform for exchange of experiences, information and knowledge between contracting authorities;
4. Training of SMEs so as to improve their capabilities in public procurements;
5. Encouraging larger application of criteria of the most economically advantageous bid to create conditions for innovation in public procurement, higher employment and development of SMEs;
6. Reducing formalities for proving the fulfilment of conditions for participation in public procurements by submitting a statement instead of documents;

⁶⁰ Strategy for Development of Small and Medium Sized Enterprises 2011-2015, www.vlada.gov.me

⁶¹ <http://www.ujn.gov.me/strategija-razvoja-sistema-javnih-nabavki-u-crnoj-gori-za-period-2016-2020-godine/>

⁶² <http://www.gov.me/naslovna/vijesti-iz-ministarstava/168217/Program-pristupanja-Crne-Gore-Evropskoj-uniji-2017-2018.html>

⁶³ <http://www.ujn.gov.me/wp-content/uploads/2017/03/Program2017.pdf>

7. Setting up a register of suppliers to establish a single, central, electronic and public database of suppliers who meet the conditions for participation in public procurement procedures;
8. Analysis of effects of substantial reduction of the fee for implementation of the procedure in relation to the protection of the rights in order to create more favourable conditions for SMEs;
9. Encouragement to discontinue the obligation to pay fees for obtaining various confirmations, certificates, etc. in order to simplify business operations of SMEs in preparation of evidence documents regarding solvency for participation in tenders;
10. Encouraging contracting authorities to implement procurements by lots for easier access by SMEs;
11. Strengthening consultation process in preparation of procurements, "bottom-up" meetings with focus groups at local and regional levels;
12. Strengthening administrative capacities of contracting authorities, professionalism of members of the Commission for Opening and Evaluation of Bids and of public procurements officers and specialists for subjects of public procurements;
13. Strengthening of open access to information about tender documents, bids and contracts, etc.
14. Preparation of training materials, manuals, guidelines and other instructions for implementation of the new law and secondary legislation for contracting authorities and bidders, informing officers about the implementation of new Directives in the EU Member States;
15. Development of communication guidelines for business entities in order to understand the benefits that the national economy may have from participation of SMEs in public procurement procedures;
16. etc.

In June 2015, Montenegro became a full member of the WTO Agreement of Government Procurement (GPA⁶⁴) which improves market access through fair competition in tendering, transparency of procedures and inclusion in the field of global procurement market. The objective of this Agreement is the largest openness possible towards international market and competition and, on the other hand, a guarantee of the necessary transparency and commitment to good governance. Therefore, joining this Agreement is a solution for gaining a safe and lawful access to public procurement market, the value of which is estimated at 1.7 trillion dollars a year, which will certainly grow over time. The Agreement is a very important tool which facilitates SMEs' access to international market.

On the basis of the above strategic documents and programmes of Montenegro, it is obvious that enhanced SMEs' access to public procurement market extends in two directions:

1. Creating conditions for contracting authorities to implement procurements with minimum administrative efforts for the purpose of ensuring the best value for money and ensuring transparency and integrity of the process;
2. Enhancing easy SMEs' access to public procurement market by providing them with a fair and equal treatment and promoting competition which is based on the quality and price at the level of Montenegro and the market of GPA members.

⁶⁴ <http://www.ujn.gov.me/2014/11/pridruzenje-crne-gore-sporazumu-o-vladinim-nabavkama-gpa-pri-sto/>

4.3. Institutional framework for public procurements in Montenegro

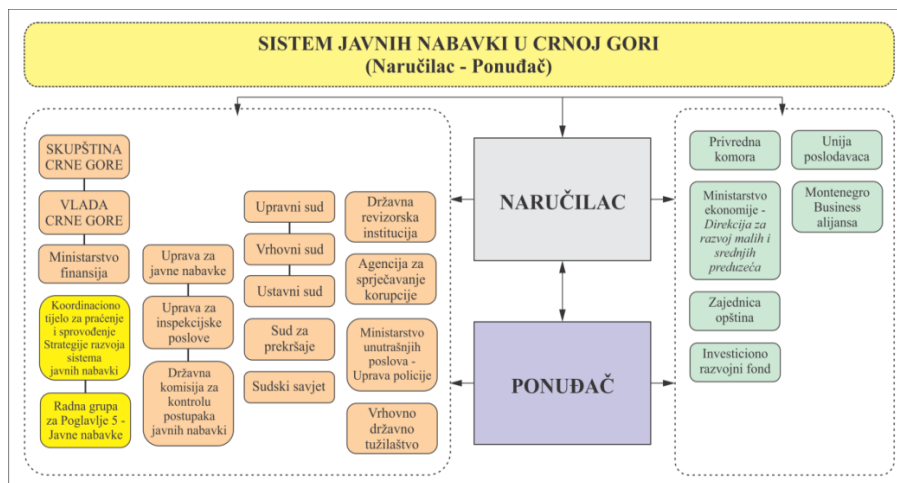
The Law on Public Procurement established institutions which are responsible for its implementation in Montenegro. The public procurement system is under the competence of the Ministry of Finance, which cooperates with other competent authorities in this field in preparation of draft laws, other regulations and general acts, proposes to the Government development strategies and other measures in the field of public procurements, supervises implementation of the law.

The Public Procurement Agency performs administrative and related professional tasks in the field of public procurements and it is competent for training and professional development in public procurements; the State Commission ensures protection of rights of bidders and public interest in public procurement procedure, and inspection supervision of the implementation of the Law on Public Procurement and regulations adopted thereunder is performed by the Administration for Inspection Affairs, which includes a public procurement inspector. The state administration authorities which are indirectly linked to public procurements are: State Audit Institution, Agency for Prevention of Corruption, Administrative Court, Misdemeanour Court, Police Directorate, Judicial Council, Supreme State Prosecutor's Office and other Government authorities.



At the beginning of 2016, the Government of Montenegro formed a **Coordination Body** for continuous monitoring of the implementation of the Strategy for Development of the Public Procurement System in Montenegro for the period 2016-2020 for the purpose of collecting, monitoring and analyzing of data on measures undertaken in the field of public procurements, and implementation of measures from the Action Plan.⁶⁵

⁶⁵<http://www.ujn.gov.me/category/koordinaciono-tijelo/>.



4.4. Legislative framework of public procurements in Montenegro

4.4.1. Existing legislative framework

The regulations in the field of public procurements in Montenegro are based on the Constitution and the Law on Public Procurement. The applicable Law on Public Procurement (*Official Gazette of Montenegro 42/11, 57/14 and 28/15*) regulates public procurement procedures in which contracting authorities and bidders conclude procurement contracts, competences of the Public Procurement Agency, the State Commission and public procurement inspectors and other matters. The Ministry of Finance has adopted a set of rulebooks under the Law on Public Procurement for the purpose of its implementation.⁶⁶

Law on Public Procurement

- Rulebook on the Records of Public Procurement Procedures;
- Rulebook on the Manner of Keeping and the Content of Records on Violation of Anti-Corruption Rules;
- Rulebook on Forms in Public Procurement Procedures;
- Rulebook on the Methodology of Expression of Sub-criteria for the Selection of the Most Advantageous Bid in Public Procurement Procedure;
- Rulebook on the Methodology for Determining Computational Errors in Public Procurement Procedure;
- Rulebook on Detailed Criteria for Training of the Commission for Opening and Evaluation of Bids;
- Rulebook on the Risk Analysis Methodology in Performing Control in Public Procurement Procedures;
- Rulebook on the Methodology for Determining Energy Efficiency Level in Public Procurement Procedures;
- Rulebook on Detailed Content and Manner of Implementation of Electronic Public Procurements;
- Rulebook on Protection Measures for Electronic Signature and Advances Electronic Signature;

⁶⁶ Information about the Act and the secondary legislation:

<http://www.ujn.gov.me/precisceni-tekst-zakona-o-izmjenama-i-dopunama-zakona-o-javnim-nabavkama/>

<http://www.ujn.gov.me/2016/04/pravilnik-o-evidenciji-postupaka-javnih-nabavki/>

<http://www.ujn.gov.me/2015/10/pravilnik-o-izmjenama-pravilnika-o-nacinu-vodenja-i-sadrzaju-evidencije-o-krsenju-antikorupcijskih-pravila/>

<http://www.ujn.gov.me/2015/05/pravilnik-o-obrascima-u-postupku-javnih-nabavki-2/>

<http://www.ujn.gov.me/2015/05/pravilnik-o-metodologiji-iskazivanja-podkriterijuma-za-izbor-najpovoljnije-ponude-u-postupku-javne-nabavke/>

<http://www.ujn.gov.me/2015/05/pravilnik-o-metodologiji-utvrdivanja-racunske-greske-u-ponudi-u-postupku-javne-nabavke/>

<http://www.ujn.gov.me/2015/05/pravilnik-o-blizim-kriterijumima-za-obrazovanje-komisije-za-otvaranje-i-vrednovanje-ponuda/>

<http://www.ujn.gov.me/2016/01/pravilnik-o-metodologiji-analize-rizika-u-vrsenju-kontrole-u-postupcima-javnih-nabavki/>

<http://www.ujn.gov.me/2016/03/pravilnik-o-metodologiji-za-utvrdivanje-stepena-energetske-efikasnosti-u-postupku-javne-nabavke/>

The Law on Public Procurement of Montenegro is largely harmonized with Directive 2004/17/EC, Directive 2004/18/EC, Directive 2007/66/EC, Directive 2009/81/EC. Entry into force of Directive 2014/23/EC, Directive 2014/24/EC, Directive 2014/25/EC repealed Directives of 2004. The next obligation of Montenegro as the country aspiring to join the EU is the implementation of new Directives into national legislation and implementation of provisions relating to a common procurement vocabulary (CPV), standard forms for publishing notices within public procurement procedures, decree concerning application of price classes/limit values on contract award procedures. In that respect, the position of our country will follow through drafting of the new Law on Public Procurement.⁶⁷

In addition to harmonization of public procurement regulations with the EU acquis, Montenegro needs to consider other regulations which directly or indirectly influence efficient implementation of public procurement procedures (*Law on General Administrative Procedure, Law on Inspection Supervision, Law on the System of Internal Financial Controls in Public Sector, Budget Law, Law on Business Organisations, Law on Public Services and Utilities and other laws regulating water management, energy, transportation and postal services, laws regulating defence and security, Law on Obligations, Law on Misdemeanours, Criminal Code, Law on the Protection of Competition, Law on Internal Trade, Law on Foreign Trade, Law on Electronic Signature, Law on Electronic Document, Law on E-Trade, Law on Information Security, Law on Electronic Communications*).

Montenegrin regulations governing confidential procurements, keeping confidential data, initiating and implementation of bankruptcy and liquidation, implementation of technical standards for accessibility for persons with disabilities, proving fulfilment of mandatory conditions in public procurement procedures, proving fulfilment of optional conditions concerning economic and financial ability of business entities, proving professional and technical and staffing conditions in procurement procedures for goods, services and works, proving the quality of the subject of procurement (*certificates, licences and other evidence*), VAT and other taxes, keeping documents and other regulations should be considered as well. Special importance for the public procurement process is attributed to special legislation relating to the activity of subjects of the Law on Public Procurement and the legislation linked to the subject of public procurement⁶⁸.

4.4.2. Drafting of new public procurement regulations

For the purpose of strengthening of the national public procurement system, Montenegro will work in the next period on drafting of the new Law on Public Procurement supported by the EU Directives (2014) so as to ensure better performance for SMEs at the system level. This document elaborates topics and thus presents how the European legal framework and the EU

⁶⁷Information about Directives:

<http://www.ujn.gov.me/2014/09/direktiva-201425eu-evropskog-parlamenta-i-vijeca-od-26-februara-2014-godine/>

<http://www.ujn.gov.me/2014/09/direktiva-201424eu-evropskog-parlamenta-i-vijeca-od-26-februara-2014-godine/>

<http://www.ujn.gov.me/wp-content/uploads/2013/12/Dir81.pdf>

<http://www.ujn.gov.me/wp-content/uploads/2013/12/Dir66.pdf>

<http://www.ujn.gov.me/2013/12/direktiva-200418ec-evropskog-parlamenta-i-vijeca-31-mart-2004-godine/>

<http://www.ujn.gov.me/2013/12/direktiva-200417ec-evropskog-parlamenta-i-vijeca-od-31-marta-2004-godine/>

<http://www.ujn.gov.me/2011/11/direktiva-984eec-evropskog-parlamenta-i-saveta-od-16-februara-1998-godine/>

<http://www.ujn.gov.me/2011/11/direktiva-saveta-9338eez-od-14-juna-1993-godine/>

<http://www.ujn.gov.me/2011/11/direktiva-saveta-9337eez-od-14-juna-1993-godine/>

<http://www.ujn.gov.me/2011/11/direktiva-saveta-9396eez-od-14-juna-1993-godine/>

⁶⁸Information: All applicable Acts are found on the website of the Ministry of Justice: <http://www.pravda.gov.me/biblioteka/zakoni>

programmes can underpin public procurement of innovative solutions and strengthening of SMEs' participation, and what direction Montenegro should head in.

5. MEASURES FOR IMPROVEMENT OF THE PUBLIC PROCUREMENT SYSTEM IN MONTENEGRO

By adopting two important documents (*Strategy for Development of Small and Medium Sized Enterprises and the Strategy for Development of the Public Procurement System*) the Government of Montenegro seeks to eliminate restrictions in SMEs' development, strengthen regulations, eliminate administrative barriers, enhance access to available sources of funds, sources of business and market information, raise the level of business knowledge, and greater participation of SMEs in public procurement procedures. Clear measures and policies which are considered to be the best practice for assistance, promotion, encouragement or facilitating of SMEs' participation in public procurements in Montenegro have been identified.

The Strategy for Development of the Public Procurement System in Montenegro for the period 2016-2020 offers a detailed overview of weaknesses and specific solutions have been proposed to facilitate SMEs' participation, further establishment of the best practice at national level, at the level of local self-government units and subjects of the Law on Public Procurement.

5.1. Measures for improving the SMEs' participation in public procurements at national level

Specific measures which are proposed are general by nature (*apply to all Bidders*), while some of them apply only on SMEs, are incorporated or will be incorporated into national legislation in the near future. These measures include matters such as:

- **A possibility to sub-divide the subject of public procurement into lots** does not represent a barrier to SMEs (Directives - Bidders encourage subdivision of the subject of procurement into lots, and when that is not possible, bidders must highlight reasons why they are not doing so. Subdivision of public contracts into lots facilitates access to SMEs, both in quantitative (*size of lots can be better suited to production capacities of SMEs*) and qualitative terms (*the content of lots can be more suitable to a specialized sector of SMEs*). To avoid that subdivision is performed in order to or with the effect of avoiding of compliance with provisions on thresholds (*subdivision of contracts into lots could determine that every lot is below applicable price classes or thresholds*), it needs to be prescribed that the total estimated value of all lots is taken into account. When the aggregated value of lots is equal or above the threshold prescribed by legislation, the Law on Public Procurement will apply to every lot).
- **Establishing a possibility of limitation of the size of contracts** so that the contracts are subdivided into lots (*Montenegro will consider the opportunity provided under Directives concerning the establishment of the policy to encourage opportunities for contracting authorities to reduce the size of contracts in a non-binding manner to ensure that SMEs have sufficient opportunities to participate in public procurements or to prohibit consolidation of contracts which would minimize opportunities for SMEs' participation, or to request from contracting authorities to conduct researches and analyses so as to ensure that local SMEs have sufficient opportunities*).
- **Possibilities of subcontracting, submission of Bids with subcontractors** encourage SMEs to benefit from the contracts which are awarded to larger companies. (The Law on Public Procurement allows subcontracting of maximum 30% of the value of

contracts. Some countries have general provision on subcontracting which could result in a higher degree of subcontracting by SMEs. These provisions are aimed at, for example, guaranteeing that subcontractors are paid fully and timely, by prescribing that the Contracting Authority may transfer, on the request of the subcontractor and where permitted by the nature of the contract, received payments directly to subcontractors for the services provided, goods supplied or works executed for the Bidder who was awarded a public contract (*main contractor*). In general, Montenegro encourages subcontracting with SMEs, for example through the Directorate for Development of Small and Medium Sized Enterprises, UP, MBA and the Chamber of Commerce of Montenegro, but there are neither incentives nor specific goals have been set).

- **A possibility to submit joint Bids allows and encourages joint competition** in order to allow SMEs to cooperate with each other, with larger companies within a larger tender. (Some countries have general measures which facilitate participation of SMEs through joint tendering, which are not specifically designed for SMEs. This could be done, for example, by improved visibility of SMEs, broadening opportunities for networking of SMEs and by extending the scope of the market; provision of advisory assistance or training programmes for SMEs; simplification of qualification procedures. Also, the initiatives which offer early visibility of public procurement activities, such as publication of annual procurement plans, offer possibilities to SMEs to consider and discuss their options for joint tendering. Some countries encourage participation of SMEs in joint tendering by allowing them to rely on economic and financial capacities of other companies. Some countries request from their contracting authorities to seek to broaden opportunities for SMEs by taking into account joining in public procurements).
- **Simplification of qualifications requirements** (further improvement of legislative framework in accordance with new Directives will influence the reduction of unnecessary, or simplification of, qualification requirements, mandatory conditions or financial conditions so as to reduce administrative burden, which significantly hinders participation of SMEs. Some countries prescribe that minimum annual turnover which Bidder may be requested to present must not exceed double the estimated value, except in duly justified cases such as the cases relating to special risks concerning the nature of works, services or goods where the requested turnover may be set higher. The contracting authority must list the main reasons for such condition in the public procurement documents);
- **Setting up timely payment of supplies** so as to ensure financial sustainability of SMEs (*most countries have requests concerning timely payment of deliveries of goods and services which apply either to contracts in general or specifically to contracts which include SMEs. These measures range from advance payment to payment within determined timeframes following the completion of either the whole contract or a part thereof, or the request that the contracting authority is informed about specific payments in case of subcontracting*);
- **Further advancement of transparency** so as to facilitate SMEs' access to relevant information (transparency and access to information on public procurements are among the main objectives of procurement policies and such objectives are considered to benefit all bidders, including SMEs. In addition to the service for provision of general information, which has already been set up, some countries maintain special portals which either allow SMEs to seek procurement opportunities or facilitate contracting authorities to identify potential contractors from small business sector which are relevant for SMEs' participation in Government procurements. Some countries maintain the List of Interested Bidders which allows enterprises to add the name of their company and contact information to the publicly available list of bidders which have

expressed interest in a particular tender published on its e-portal for tenders. Other countries maintain the list of contractors such as the above list: in order to simplify the qualification procedure for tendering for public works, a party maintains and manages the approved list of contractors for selective tendering. Some countries offer free internet-based service which allows SMEs to view and respond to information about their current abilities to compete at Government tenders and promote open and fair competition in public sector. Other measures for enhancing transparency include publishing of annual procurement plans which allow businesses early visibility of procurement activities which authorities plan to implement in the next 12 months).

- **Introduction of specific programmes or measures which offer advantage** (*mainly local*) to SMEs in tendering procedures such as **reserved contracts** (some countries have legislation under which contracts are reserved for SMEs if:
 - that is in the interest of maintaining or mobilizing full production capacities of the country,
 - that is in the interest of war or national defence programmes,
 - that is in the interest of making sure that a fair percentage of total procurements and contracts for assets or services for the Government in every industrial category assigned to small business concerns, or
 - that is in the interest of making sure that a fair percentage of the total Government assets on sale sold to small business concerns.
- In such cases, procurements above simplified purchase thresholds will be reserved for small businesses when there are justified expectations that at least two responsible small businesses will submit their Bids in procurement and that the award will be conducted at fair market prices. In addition, legislation prescribes programmes targeted at specific small businesses – Programme for small business owned by women, Programme for concerns of small businesses owned by war veterans or persons with disabilities and the Programme for historically underused business zones. Some countries foresee that Contracting Authorities are obliged to provide SMEs with broader opportunities for receiving orders when such Authorities implement procurements. For this purpose, there is a list of particular products directly produced and supplied by SMEs and which needs expanding on the market as the products for competition among small and medium-sized enterprises. Contracting Authorities are obliged to conclude procurement contracts for competitive products through restricted tendering intended only for small and medium-sized enterprises or a particular competition between the invited SMEs. In addition, for the purpose of increasing direct purchase of construction material produced by SMEs, measures are taken to increase purchase of construction material designated as competitive products;
- **Entrepreneurship education and training** - the country must cherish entrepreneurship spirit and new skills from the early age. General knowledge of conducting business activities and entrepreneurship should be acquired at all levels of education. Specific educational models related to business should become an integral part of curricula in secondary and higher education. Entrepreneurship undertakings by the youngest should be encouraged and promoted and suitable training programmes for managers in small enterprises should be developed.
- **Better legislation and regulations** - national bankruptcy legislation should be reassessed in the light of good practice. Learning through setting benchmarks should result in improvement of the practice existing in Montenegro. New regulations at national level and the level of local communities should be analyzed with respect to their influence on small enterprises and entrepreneurs. Wherever possible, both national and local communities' rules should be simplified. Small enterprises should potentially

be spared from particular regulatory obligations. In this context, Montenegro should simplify the legislation concerning competition so as to cut down on the compliance obligation for small enterprises.

- **Availability of skills** - seek to make sure that the institutions which provide training allow, together with training programmes, adequate availability of skills which are adjusted to the needs of small enterprises and ensure permanent training and consultations.
- **Better internet access** - authorities should be appealed to increase the level of electronic communication with the sector of small enterprises. In this way, enterprises will be able to receive advice, file requests, tax returns or simply obtain information via the internet more quickly and more cheaply.
- **Better use of advantages of a single market** - small enterprises are already experiencing certain benefits of the reforms being implemented in the Montenegrin economy. Montenegro should continue the reforms it has initiated so as to establish a genuine internal market which is inclined to small enterprises in critical areas of the development of small enterprises, including e-trade, telecommunications, utilities, public procurements and transboundary payment system.
- **Taxation and financial matters** - the taxation system should be adjusted so that it rewards success, encourages setting-up and expanding of small enterprises and creating of new jobs, and facilitates creating and succession of small enterprises. Member States should apply the best practice in taxation and encouraging of personal performance. Entrepreneurs need funds to turn their ambitions into reality.
- **Strengthening technological capacities of small enterprises** - strengthen existing programmes for promotion of expanding of technologies towards small enterprises and capacities of small enterprises to identify, select and adjust technologies. Invest in cooperation and exchange in the field of technology between enterprises of varying size, and particularly between European small enterprises, develop more efficient research programmes for commercial application of knowledge and technologies, and develop and adjust systems of quality and certification for small enterprises.
- **Successful models of e-business and the first-class support to small enterprises** - Montenegro should encourage small enterprises to apply the best practice and adopt business models which allow them to truly thrive in the new economy.
- **Developing a better and more efficient representation of interests of small enterprises at national and local level** - review manners in which interests of small enterprises are represented at national level, including a social dialogue.
- **Exchange of good practice** - the EU Commission published the "*Good Practice*" guides aimed at dissemination of good practice and encouraging the exchange of experiences in Europe and this material is a good tool for SMEs.

Montenegro must adjust public policy instruments to the needs of SMEs. It also must use the Code of Best Practice which provides guidelines to contractors as to how to apply the EU public procurement framework in the way which will facilitate SMEs' participation in public procurement procedures. For SMEs to address the market failure that follows them during their existence, they must make a better use of opportunities offered to them by state aid regulations for supporting start-ups and providing incentives for SMEs.

SMEs face barriers to participation on public procurement markets, which account for 16% of GDP in Europe, while they account for around 13% of GDP in Montenegro often due to the lack of awareness of small enterprises of opportunities and/or because they are discouraged by procedures, and because state authorities feel safer to contract particular works with large enterprises with certain experience than with young innovative enterprises. Besides this, 42%

of the total value of public procurement above the EU threshold in 2015 were awarded to small and medium-sized enterprises. However, further substantial efforts are needed to eliminate the remaining obstacles to SMEs' access to public procurement markets, particularly through reduction of the requirements set by contracting authorities in the contract award procedure.

In addition to the above comparative practice which is partly represented in the national legislation, Montenegro will seek in the forthcoming period to improve legislative framework for public procurements and its consistent enforcement, improve electronic public procurements, establish a register of qualified Bidders, establish a one-stop shop for collecting the documents needed in public procurement procedure, improve legal and procedural framework for higher participation of SMEs, identify higher responsibility of institutions - contracting authorities, offer an opportunity to introduce joint ventures for the purpose of higher participation of SMEs, encourage joint appearance of SMEs, introduce simpler opportunities for procurements up to a certain value that the law does not apply to so as to encourage SMEs at local level, introduce proportionality of conditions for qualification of business entities, then standardized documents - Statement of Businesses, strengthen cooperation between the Public Procurement Agency and other Government authorities aimed at exchange of information, continuous monitoring of SMEs' participation in public procurements and their reform.

In order to enhance participation of SMEs, Montenegro will strengthen administrative capacities of institutions, work on collecting and disseminating information about procurements, strengthen Help Desk of the Public Procurement Agency, study factors influencing SMEs' participation, study reasons for bidders' failure, strengthen training of contracting authorities and bidders, work on drafting of manuals, brochures and guidelines, organize conferences, public procurement fairs with contracting authorities and SMEs so as to encourage networking and better access to opportunities, develop a sustainable training programme for bidders and training methodologies, influence building capacities of institutions which control execution of contracts.

5.2. Measures for enhancing SMEs' participation in public procurements at local level

The measures for enhancing SMEs' participation at the level of local self-government should be adjusted to territorial division. Unlike other countries of the region, the system of local self-government in Montenegro is a single-stage one, with the municipality as the main territorial local self-government unit⁶⁹, while the country is divided into three regions for the purpose of regional development policy: coastal, central and northern. Montenegro has 23 municipalities (*including the Capital and the Old Royal Capital*), and two urban municipalities are organized within the Capital Podgorica - Golubovci and Tuzi. All local self-government units are subjects to the implementation of the Law on Public Procurement, as well as the business established by local self-government units.

In accordance with such territorial division, the needs for procurement of particular goods, works and services during one year and SMEs' development can be observed.

⁶⁹ Analysis of the local self-government organizational model:
www.gov.me/ResourceManager/FileDownload.aspx?rId=216406&rType2

In 2016⁷⁰, the analysis of public procurement plans of local self-governments uploaded on the public procurement portal showed that they planned procurement of goods, services and works of the total value of 55.871.205,00 EUR.

In 2016, local self-government units contracted the total of 24.965.671,06 EUR or 44,68% of the planned value whereby they implemented public procurement procedures under Article 20 of the Law on Public Procurement and concluded 540 contracts in total and received 1.195 Bids of which contracting authorities rejected 7 and refused 170 bids. Then they implemented 3.099 procurement procedures by direct agreement of the total value of 1.616.967,18 EUR.

Given the not so low contracted value of public procurements at local level, it can be concluded that public procurements determine substantially the economic development and employment, and constitute a source of further development of private sector, market economy and the overall economic development at the level of local communities.

Therefore, local self-governments⁷¹ should stimulate SMEs to participate in public procurements, particularly small family business which have no opportunities to compete in remote areas, regulate public procurement system from their own budget and the budget of the enterprises they established. It is also particularly important when it comes to the funds supporting the programmes and projects funded by the European Funds and other international organisations.

In relation to this, local self-governments need to implement certain activities in order to promote SMEs sector and build a favourable business environment so as to:

- create a favourable regulatory environment (*policy change?*),
- ensure infrastructure that is "working" (*drains/landfills/roads... etc.*),
- strengthen vocational education and create skilled workforce to allow SMEs to reach workers with appropriate qualifications (*cooperation with schools*),
- support SMEs to obtain funds,
- plan, initiate and implement public procurements for local self-governments in a way to involve more SMEs.

Most local self-governments in Montenegro are developing cooperation with schools and other professional centres, provide support to training programmes so that SMEs and entrepreneurs are provided with available qualified workers in order to meet the market requirements and improve competitiveness. Also, these need to be strengthened and adjusted to the future demand for particular qualifications and occupations.

Local self-governments can encourage the development of sectors and clusters by:

- implementing the sector analysis - "*learn what the sector wants*" - learn what their challenges are,
- promoting cluster development,
- building of common centres (*CFCs*).

⁷⁰Report on Public Procurements in Montenegro for 2016

<http://www.ujn.gov.me/pojedinacni-izvjestaji-o-javnim-nabavkama-za-2015-godinu/>

⁷¹ Mersad Z Mujević - Improvement of the public procurement system in Montenegro in response to the world economic crisis

Furthermore, local self-governments should reassess ways of cooperation with national funds and the relevant central government authorities when developing and implementing such programmes. Harmonization of local, regional and national policy and plans for the development of SMEs is itself the development and offer the local self-government an opportunity to ensure additional resources.

Local self-governments, independently or in cooperation with national authorities or donors, can influence the SMEs' development by:

- **Obtaining funds:** from private sector (*for example, banks*) by providing assistance in drafting business plans or a specific request for funds.
- **Provision of construction land and business premises:** at acceptable price (*many offices for local economic development keep records of available construction land and business premises and market them to attract enterprises to conduct their business activities in their territories*).
- **Promoting products and services of SMEs:** conduct market survey so as to assist SMEs in promoting products and adjusting to the requirements of customers (*many local self-governments will promote local products and services outside their borders as well*). Local self-governments often provide support to SMEs in the process of obtaining international certificates in accordance with international standards which allow them to access new markets.
- **Promoting a municipality/town for incoming investments:** marketing efforts and branding aimed at attracting investments and small and medium-sized enterprises to the local self-government; this is often done by local self-government in cooperation with small and medium-sized enterprises and other interested parties which represent the local area.
- **Establishing a network of SMEs:** industrial groups, associations and networks are valuable for the exchange of ideas and for group dissemination of improved procedures and technological advancement.
- **Cooperation with regional and central authorities:** local self-government may also lobby regional and central authorities to change policies, rules and regulations which are the competence of higher levels of the Government.

5.3. Strengthening the public procurement system at the local self-government level

As already mentioned, local self-government units contracted public procurements in the value of 24.965.671,06 EUR in 2016. Thereby, local self-government units, including local public enterprises and institutions, are by default the most important buyers for local suppliers, particularly in smaller municipalities where these contracting authorities constitute dominant buyers for local enterprises. Therefore, procurements by local governments overall (*i.e. in terms of what is to be procured, in what way and at what prices*) are often crucial for determining economic development and employment in a given municipality.

Especially today, at the time of substantial general drop of demand which affects adversely business operations of enterprises and employment, public procurements are particularly important. Therefore, discrimination in public procurements may seriously endanger the development of local enterprises, particularly small family businesses which have no opportunities to compete in remote areas. Also, irregularities and "*fixing*" of tenders are easily discovered in local environments which prevents building of a regulated system and deepens social differences. In addition, the programmes and projects of assistance which are funded

from the European funds are approved only to those local self-governments which have established reliable systems of monitoring of public procurement expenditures, and modern systems for management and control of project implementation.

Therefore, public procurements should be serve the implementation of strategic goals of local self-governments such as economic development, employment, particularly in the segments where incentives are common in highly developed countries as well, such as small and medium-sized enterprises, for example. Enhancing of public procurements allows implementation of other strategic goals of local self-governments such as:

- neutralizing adverse effects of the economic crisis,
- attracting of foreign investments,
- development of local economy,
- employment, etc.

For public procurements to become an effective instrument in the hands of local self-governments which they use to encourage economic and social development, a defined goal needs to be the "*optimum combination of total costs of life cycle of procured products, services and works and the total benefits of meeting the needs of contracting authorities*". A comprehensive definition of the goal allows including of any costs related to the subject of procurement incurred during its exploitation (*for instance, energy consumption, malfunctioning and servicing costs, etc.*) on the one hand, and any positive effects for local self-government such as employment effects, strengthening of competitiveness of local enterprises, etc. which bring benefits in the longer run. All of these factors must be taken into account when deciding on a public procurement instead of using merely the simplest criterion, which is the minimum bid price.

In terms of further development, specific goals of enhancing public procurements in local self-governments would be:

- the services provided to citizens in local self-governments should be provided at lower prices and their quality should be higher;
- to create conditions for higher participation of SMEs in tenders in local self-governments and, at the same time, encourage economic development of local self-governments and strengthen competition;
- to increase the economy and efficiency of public procurements at local level by consolidating procurements where economically justified and strengthening of organisational and professional capacities of contracting authorities to implement procurements by putting in place organisational units for public procurements (*procurement units*) and public procurement officers;
- to reduce irregularities in implemented tenders by disseminating good practice;
- more efficient monitoring and controlling of public procurement procedures at the level of local self-governments; and
- to make use of advantages offered by information technologies in public procurements, such as public procurement portal, etc.

5.4. Systematic approach to enhancing public procurements in local self-governments

Enhancing of public procurements in local self-governments should be approached systematically, which implies coordination of the process throughout Montenegro. Some local

self-governments have a more developed practice in the field of public procurements, while others lag behind them. Good solutions are quickly disseminated in this way, which is particularly important for smaller local self-governments which do not have sufficient capacities to develop good public procurement practice. The exchange of experiences between local self-governments facilitates arriving at good solutions which are then accepted by the others as well. This rationalizes efforts in terms that everyone does not develop independently and at the same time, for example, the tender documents for procurement of security services, but a good solution that somebody has developed can be used by all members of the network (*system*). This eliminates not only duplication of efforts, but a good solution becomes a standard, i.e. standardization is implemented, which is one of the main characteristics of a successful public procurement system.

The system of improvement of public procurements in local self-governments includes the following aspects:

a) **Organizational:** the reform of public procurements was implemented at the following three levels:

- local self-government (*public procurement officer and public procurement units*),
- regional centres, and
- central body.

b) **Sectoral:** development of SMEs in terms of specialization for particular activities, such as health care, education, production, civil engineering, retail and wholesale, services, etc.

c) **Communication:**

- internal communication via internal network (e-mail, thematic meetings, regional and national workshops), and
- external communication - with public (citizens), other local self-government, regional associations, Union of Municipalities of Montenegro, Parliament, etc.

d) **Resources:**

- human - skilled and certified public procurement officers,
- material and IT (Public Procurement Portal, etc),
- professional literature - public procurement manuals, models of implementation acts and documents, procurement plans, etc.

5.5. Criteria for measuring the success of public procurement reforms in local self-governments

Improvement of public procurements would be measured on the basis of the following criteria:

- **effectiveness** which implies that public procurements serve the implementation of goals of acquiring the main function of the local self-government, which is provision of services to citizens as defined by the law and other regulations (*what is to be procured*);

- **efficiency** which expresses the extent to which tasks are implemented properly and is measured by investments needed to achieve a particular goal (*how procurement is implemented*); and
- **economy** which shows whether the same goods, services and works are procured more cheaply or not (*at what price the procurement is implemented*).

5.6. Persons responsible for the process of public procurement reforms in local self-governments

The persons responsible for the process of improvement of public procurements in local self-governments are:

- decision makers (*Mayor, president of the municipality*);
- managers responsible for finances and disbursement of budget funds (*heads of town and municipal administrations, secretaries for finances*); and
- managers of public procurement units and public procurement officers.

5.7. Measures for improvement of public procurements in local self-governments

The main activities which need to be implemented to improve public procurement in local self-governments are:

- ensure support for public procurement reform from the top of the decision-making hierarchy (*Mayor/president of the municipality*);
- designate a person to be in charge of coordination and reporting to the Mayor, i.e. the president of the municipality, about the activities related to public procurement reforms and improvement;
- monitor public procurement procedures and check whether they have been implemented properly,
- monitor the success of public procurement implementation; and
- monitor competences of public procurement officers and their performance.

5.8. Expected benefits from improvement of public procurement in local self-governments

Specific benefits for local self-governments from the improvement of public procurement include:

- raising effectiveness, efficiency and economy which would mean that the procedure is shorter, smaller number of unsuccessful tenders, better quality of what is procured;
- a larger number of SMEs has an opportunity to win contracts which directly reflects on employment in local self-government;
- easier monitoring of public procurements by responsible persons, a higher level of regularity and lower risk of corruption.

5.9. Info Desk for SMEs

In accordance with specified overall objectives concerning broader participation of SMEs in public procurements, an Info Desk was established within the Chamber of Commerce of

Montenegro in 2016, and INFO HELP DESK was created on their website⁷². The objective of the established is based on strengthening of environmental protection management, energy efficiency, social requirements and SMEs' access to the public procurement system.

In that respect, activities and measures have been initiated towards further harmonization of legislation with new Directives in the field of public procurements and related fields, promoting the importance of the use of green, social and innovative public procurement, exchange of good practice and experiences, elaboration of specific advice, criteria and indicators which will be used in public tendering, training of SMEs so as to enhance their abilities in public procurements and organizing workshops and seminars for SMEs. Topics have been initiate towards strengthening SMEs and creating conditions for innovation in public procurements, higher employment and development, and the need for further training of contracting authorities in terms of facilitating a better access for SMEs.

The establishment of the INFO HELP DESK improves enhancement of transparency and reduction of regulatory risk for business entities in a way that all information concerning public procurement procedures are made even more accessible through the link with the information published on the public procurement portal of the Public Procurement Agency and decisions of the State Commission on their website.

Bidders, SMEs in direct communication with the Chamber of Commerce of Montenegro are in a position to initiate improvement of particular solutions offered by regulatory framework and to indicate possible shortcomings in the implementation of established public procurement rules.

Strengthening of the established Info Desk should continue in the next period.

⁷² <http://www.privrednakomora.me/>

6. TRAINING FOR BUSINESS ENTITIES AND SMEs

The Strategy for Development of the Public Procurement System specifies activities and measures, and the Law on Public Procurement regulates the obligation concerning professional development and training for employees of contracting authorities, and for employees of bidders, SMEs and others.

The Public Procurement Agency has defined the training methodology through the "*Programme and method of professional training and development of Bidders in the field of public procurements*".⁷³ This document includes the method of organizing and implementing professional training and development and the manner of issuing and renewing of certificates in the field of public procurements. The training objective is defined in terms of acquiring of knowledge, skills and abilities of participants in public procurement processes for the purpose of increasing the number of successfully implemented public procurement procedures at all levels and generating larger benefits from procurements.

The Public Procurement Agency prepares and delivers training with fees for persons who are not subject to the enforcement of public procurement regulations, in accordance with the pricelist of services which is established by this authority with the consent from the Government of Montenegro.

Upon completion of the training, the Public Procurement Agency issues certificates which can be renewed, and a register which is continuously updated is maintained on the basis of issued certificates. The State Commission also has access to the register for the purpose of implementation of grievance procedures.

The training programme contains several levels: the basic level of training, specialized level of training in the field of public procurements and training of trainers. Every level of training has integral parts, duration measured in hours of training, manner of implementation, the number of trainees, the level of knowledge, professionalism of persons delivering the training, a possibility to sit a professional exam in the field of public procurements, and a possibility for additional, subsequent training, etc.

The Action Plan which is an integral part of this Guide includes the plan of activities for the next period.

Special attention should be paid to the overall organisational and process aspects so as to strengthen training for SMEs.

⁷³ <http://www.ujn.gov.me/program-strucnog-osposobljavanja-i-usavrsavanja/>

7. ESTABLISHING METHOD OF PAYMENT, REPORTING AND DEFINING OF MEASURES FOR INCREASING SMEs' PARTICIPATION IN PUBLIC PROCUREMENTS

The Public Procurement Agency has been recognized as the key institution which will work in the forthcoming period on establishing the manner of monitoring of SMEs' participation in public procurements, the manner of reporting for the purpose of creating the most reliable data, learning about the validity of established monitoring procedures, then reviewing the facts by employing the best established methodological principle and the best practice.

The first task in that direction is to define the goal to be measured and compared, to put together a team for monitoring of the programme implementation. In time, when comparative data and a clearer picture are obtained, strategic and organisational goals can be achieved.

8. ACTION PLAN FOR STRENGTHENING OF BUSINESS ENVIRONMENT FOR SMEs

NO	Activity	Implementing agency	Deadline	Success indicator	Source of funds
1.	Drafting of the new Strategy for the Development of SMEs for a specific period	MiE & Directorate for Development of Small and Medium Sized Enterprise	2017/2018	Establishing an enabling framework in accordance with the needs and abilities of SMEs	Budget of MNE Regular funds
2.	Improvement of legislative framework for establishment, activities and closure of businesses (<i>changes to the Act on Business Organisations</i>)	MoE & MoF	2017/2018	Preparation and adoption of changes to the Act on Business Organisations in order to improve the business conditions and more efficient manner of organizing of business organisations	Budget of MNE Regular funds
3.	Passing of the new Law on Public Procurement	MoF	2017/2018	Preparation and passing of the new Law on Public Procurement for the purpose of harmonization with the EU acquis of 2014 and creating better conditions for SMEs	Budget of MNE Regular funds
4.	Compliance with the Act on Deadlines for Settling Liabilities (<i>Official Gazette of Montenegro 28/14 of 4 July 2014</i>)	MoF & Administration for Inspection Affairs	2017/2020	Compliance with deadlines prescribed by the Act on Deadlines for Settling Liabilities in transactions for collecting claims by applying strict control, particularly payment of public sector	Budget of MNE Regular funds Other sources of financing
5.	Regulatory reform of regulations which are important for business activities of SMEs by business activities, the legislation related to the subject of procurement	MoF, MSDT & other ministries	2017/2020	Other regulations are particularly important for a successful implementation of the Law on Public Procurement, and they need to be continuously harmonized	Budget of MNE Regular funds
6.	Enhancing of human resources of contracting authorities for the purpose of more efficient implementation of the Law on Public Procurement, secondary legislation and other regulations	Public Procurement Agency	2017/2020	Training programme, manuals and other professional literature prepared. The programme includes the basic training, specialized training and training of trainers	Budget of MNE Regular funds, Project support Service contracts
7.	Coordination of activities aimed at reduction of grey economy, protection of competition, corruption and conflict of interests in public procurements	Public Procurement Agency, AzK & AzA	2017/2020	The Act and programmes which regulate these areas and competences of institutions implementing them	Budget of MNE Regular funds
8.	Reduction of taxes, non-tax and other duties burdening SMEs	MoF	2017/2020	To the extent possible, changes to provisions of the Act on Administrative Fees so as to prescribe a nominal amount of fees for all documents and actions in administrative matters, other documents and actions before authorities, and improvement of other regulations	Budget of MNE Regular funds
9.	Enhancing protection of rights in	Public	2017/2018	Prepare changes to the existing	Budget of MNE

	public procurement procedures	Procurement Agency, Administration for Inspection Affairs & State Commission		Law on Public Procurement for the purpose of more efficient protection of rights in public procurement procedures and prevent abuse of complaints. Prescribing sanctions for businesses which do not comply with contracted obligations or abuse grievance procedure in public procurements	Regular funds
10.	Improving monitoring of public procurements	Public Procurement Agency & Administration for Inspection Affairs	2017/2020	Strengthening monitoring of public procurements by the Public Procurement Agency and the Administration for Inspection Affairs and further improvement of legislative role of monitoring	Budget of MNE Regular funds Project funded by the WB
11.	Strengthening of the e-governance system	MoF, Ministry of Public Administration and the Public Procurement Agency	2017/2018	Establishing of a single, comprehensive and updated e-database for the purpose of issuing various confirmations or certificates electronically with electronic signature or at the authority's counter	Budget of MNE Regular funds IPA projects
12.	Establishing one-stop shop system for provision as many services as possible	Public Procurement Agency, MoF and Ministry of Education	2017/2018	Establish exchange of data between MoF, Tax Authority where registration data for SMEs, data on paid taxes are submitted, MP for maintaining records of sanctions and other authorities	Budget of MNE Regular funds
13.	Improving conditions for participation of SMEs in public procurements by implementing training on improvement of mutual information of contracting authorities and bidders	Public Procurement Agency	2017/2020	Minimum six training courses a year	Contracting authorities Business entities Service contract
14.	Guide for increasing participation of SMEs in public procurements	Public Procurement Agency	2017	Guide for increasing participation of SMEs in public procurement procedures is in the adoption stage	Project funded by the WB
15.	Including representatives of SMEs in all stages of preparation of public procurement regulations, particularly within working groups	MoF, Public Procurement Agency and Association of Businessmen	2017/2020	Some acts foresee the obligation for authorities proposing regulations to include representatives of association of businessmen in proposed working groups that prepare draft legislation	Budget of MNE Regular funds
16.	Harmonization of formal education system with the labour market needs	Ministry of Education	2017/2020	Improvement of educational process of work, vocational training depending on the needs of business entities	Budget of MNE Regular funds
17.	Introducing of public procurement as a separate educational content in secondary vocational schools and at faculties of economy, finance and business	Public Procurement Agency, CTO, Ministry of Education	2017/2020	Continuous improvement of human resources and improvement of the quality of workforce, developing mechanisms for regular monitoring and foreseeing needs of SMEs for skilled workforce as requested by the market	Budget of MNE Regular funds
18.	Establishing and implementing short training programmes intended for SMEs on their request	Public Procurement Agency	2017/2020	Training programme adjusted to SMEs' requirements, their existing knowledge and experiences in	Service contract

				public procurements for the purpose of further improvement and independent work	
19.	Establishing a mechanism for mandatory implementation of "ex post" analysis of effects of the Law on Public Procurement and its influence on business operations of SMEs	MoE, Directorate for Development of Small and Medium Sized Enterprise, Chamber of Commerce of Montenegro, MONSTAT	2017/2020	Establish a methodology for monitoring participation of SMEs in public procurements for the period of one year and monitoring effects of work, and monitoring regulations influencing the overall economy so as to create public policy and their improvement	Budget of MNE Regular funds
20.	Support to contracting local or international consultants for the purpose of business advice, support and introduction of good practice in public procurements	ME, Chamber of Commerce of Montenegro and Public Procurement Agency	2017/2020	Develop a programme for mentoring and provision of advisory support Set up a pool of consultants for SMEs Inform SMEs about the programmes and the criteria for participating in them	Service contract
21.	Preparation and implementation of a campaign to promote innovative public procurements so as to encourage SMEs and entrepreneurs to new undertakings	Public Procurement Agency, Chamber of Commerce of Montenegro, UPCG & other associations	2017/2020	Special campaign organized at least once a year on this topic	Budget of MNE Regular funds Project support Service contract
22.	Support to joint appearance on the market, development of clusters with a special emphasis on the development of a common product and joint offer on the local and international markets	ME, PKC and the Agency for Foreign Investments and Export Promotion	2017/2020	Setting-up of new clusters/consortia Growth of existing clusters Growth of export by clusters/consortia	Budget of MNE Regular funds
23.	Reducing and overcoming technical obstacles to trade Harmonization with the EU technical regulations and standards Reassessing compatibility of Montenegrin standards with European and international standards Putting together lists of standards which are harmonized with the European lists of technical standards	Competent ministries and the Institute for Standardization	2017/2020	The number of innovated standards The list of standards should be continuously published and updated	Budget of MNE Regular funds Projects

9. BUDGET AND FINANCING PLAN

The Action Plan for strengthening of the business environment for SMEs in Montenegro is particularly important because it includes activities, implementing agencies, deadlines, success indicators and the source of funds.

This Plan includes actions which constitute a regular activity of competent Government authorities, such as drafting of law and other regulations, and other activities funded from the budget of Montenegro, regular funds of competent Government authorities and initiated projects funded by international organisations and financial institutions. The competent Government authorities have human resources, necessary premises, equipment which can be used to implement planned activities. The Plan includes activities to be funded by SMEs themselves at prices applicable on the market for such type of services, and for that reason this document addresses projection of costs which will arise from such activities and includes the budget itself.

In accordance with the practice for drafting budgets for projects, every activity has direct costs (*remuneration for staff members implementing activities, travel costs, costs for organizing an event, etc.*) and indirect costs (*costs of renting work premises, telephone or internet bills, various administrative costs*).

According to a general estimation, all costs are acceptable and will not impose significant problems for their financing; they are related to human resources - including fees for persons who will be engaged in the project for implementation of particular activities, per diems for those working within the project, travel expenses, costs of renting premises and offices.

All rules concerning payment of the above are determined by regulations of Montenegro.

10. MONITORING AND EVALUATION PROCEDURES

For the purpose of implementation of activities under this Guide and the Action Plan, when adopting them, the Government of Montenegro would preferably and at the same time issue the Decision on the establishment of a team for continuous monitoring of the implementation of the Guide, which would include representatives of Government authorities, representatives of SMEs' associations and other interested parties involved in its implementation.

The Action Plan for the period 2017-2020 implementing the Guide is an integral part of this document. As needed, it can be revised and amended annually according to the following dynamics

- September-October: the Public Procurement Agency coordinates the analysis and, as needed, revision of the Action Plan for the following year with involvement of all relevant parties;
- December: if needed, the Government of Montenegro adopts the revised Action Plan for the following year;
- The team for monitoring of the implementation of measures under the Action Plan will report to the Government on the progress achieved in its implementation once a year;
- Ensure continuous communication with contracting authorities, business entities, SMEs, trade unions and non-governmental organisations;
- Organizing conferences, tribunes, round tables and public debates on the public procurement system, its institutional and legislative segments twice a year;
- Ensure participation of all interested parties for the purpose of implementation of planned activities.

To that end, this will be the way to monitor the progress of results that need to be achieved and measure fulfilment of indicators as listed in the Action Plan of this document. In case of delays or failure to fulfil measures of the Action Plan, the implementation monitoring team will propose measures for overcoming or changes and amendments to the measures.

11. OPPORTUNITIES OFFERED BY PUBLIC MARKETS IN THE EU – EUROPEAN TENDERS AND SUPPORT

11.1. EuropeAid

Where can SMEs find information about the European tenders and support through which the EU institutions fund works, procurement of goods and services and implementation of projects of various types of organisations? Find the answer to this questions on the website: European Commission - Office for cooperation of the European Commission EuropeAid, <http://ec.europa.eu/comm/Europeaid/index.htm>.

EuropeAid – development through cooperation of a number of interested parties of the European Union, which include Member States and the European Commission, represents the largest donor of assistance in the world. The EuropeAid Office for cooperation of the European Commission manages external EU assistance programmes and ensures that the funds intended for assistance are distributed throughout the world.

The main objective of the EuropeAid is to implement external assistance instruments of the European Commission and from the EU budget and the European Development Fund. The Who's Who section explains how EuropeAid is organized. In order to ensure compliance, complementarity and coordination of implementation of external assistance programmes in the world, EuropeAid works closely with various partners. The overall goal is to make external assistance more efficient. Civil society, international organisations and governments of the EU Member States are important factors in this field.

Announcement of funding opportunities

EuropeAid implements programmes and projects worldwide, wherever assistance is needed. It provides assistance through regional or country-specific programmes in various sectors. In addition, the programmes whose subjects are of global nature allow the European Commission to provide assistance to the countries facing similar problems, even when they are thousands of kilometres away. EuropeAid uses a range of financial instruments and programmes to cooperate with partners in the following regions:

- Africa, the Caribbean and Pacific,
- Asia,
- the Gulf region,
- Latin America,
- European Union neighbours on the south and east.

The EC external assistance is allocated through contracts for provision of services, procurement or execution of works with the assistance beneficiary countries or through supports (*usually for projects of non-profit organisations*).

a) Contracts for provision of services, procurement of goods or execution of works (tenders)

The contracts for services, procurement and works are awarded upon completion of a tendering procedure on the basis of projects recognized by the EU with relation to the assistance beneficiary countries.

The mechanism for searching this website allows you to see the opportunities offered by current and future tenders and to learn about tenders whose deadline for submission of Bids has expired, and to obtain information about contracts awarded under such tenders (*including a short list of participants in case of a restricted tender procedure*).

b) Support

The support is allocated for the projects proposed to the EU by (*mostly non-profit*) organisations outside the EU. Projects are selected on the basis of the call for project proposals. The notice of the call for project proposals lists the corresponding priorities for funding by the EU, the criteria for participation and any other conditions for allocation of support. The mechanism for searching this website allows you to find current and future calls for project proposals (*and the ones with expired deadline and information about support allocated under such calls*).

To **find information** on European tenders and support, follow these steps:

- step: log in to the EuropeAid website (*click on the above link*);
- step: click on Funding (*Financing*);
- step: check *advanced search*;
- step: select the type of financing (for example, support for a project or a delivery (*of goods*), services or *works*); also, select a region or a country;
- step: click *search*;
- step: check whether corresponding notices are found on the list of tenders and calls for project proposals which will be displayed on the screen.

11.2. Abilities of public markets in the EU – public procurements in the EU

"Which database contains public markets (*tenders*) of national, regional and local authorities in various EU Member States?" Find the answer to this questions on the TED (*Tenders Electronic Daily*) website (*Electronic register of tenders*): <http://ted.europa.eu/>. Note: TED is the electronic version of Appendices to the Official Journal of the European Union.

The website is updated daily. All tenders of the EU public institutions whose estimated value exceeds the threshold must be notified to the European institutions. Such tenders are published in the Appendix to the Official Journal of the EU and are found on TED website as well.

To **find the information** about public tenders, follow these steps:

- Step 1: selection *Normal search* (or try options *Extended search* and *Expert search*;
- Step 2: enter one or more countries (*for example, Germany*) - enter one or more types of contracts (*for example, contract for works, procurement, services*) - enter one or more types of procedures (for example, open procedure or restricted procedure) - enter

one or more CPV codes - use the opportunity for entering free key words in the *Full text* field;

- Step 3: Click *Go*;
- Step 4: look at selected tenders.

12. CONCLUSION

SMEs are fundamental pillars of the economy and employment in Montenegro and have a great importance in the economy. It is small and medium enterprises that account for the most part, 98.90% to be precise, of the overall economic structure of Montenegro, which makes their role particularly important.

In the forthcoming period, Montenegro needs to provide considerable support to this sector and set it as the backbone of the development of the economy. In that respect, it is important to design programmes of support intended entirely to small and medium-sized enterprises in terms of strengthening innovation, competitiveness of these entities on this and the EU market.

Public procurement is an important segment of the economy, which is best reflected by the volume of goods, services and works procured by contracting authorities, subjects of the implementation of the Law on Public Procurement in the period 2011-2016. The public procurement system should ensure economic and efficient public procurement procedures and rational spending of tax payers' money.

In order to improve this system, substantial progress has been achieved in the past period in relation to legislation governing the field of public procurement. However, certain barriers have been observed and they need to be eliminated towards further harmonization with the European Union *acquis*.

To that end, short-term and long-term goals have been set - primary and secondary relating to legal certainty, prevention of corruption and crime, a positive influence on economic development and employment, improvement of public finance management, environmental protection, etc.

Mandatory implementation of the Law on Public Procurement in Montenegro is clearly regulated. This document contains the existing legislative and institutional framework for public procurement and related legislation.

The processing of individual topics has expressed expectation for further improvement of the Law on Public Procurement and adjustment to new Directives (2014) in terms of identification of subjects of implementation (*public and sectoral contracting authorities*), setting price thresholds, exemptions individual subjects of procurement from implementation, identifying the subject of procurement in a way that it represents its technical, technological, design, functional and/or other element, sub-division of the subject of public procurement into lots according to their properties, purpose, location and/or time of delivery, establishing new public procurement procedures, strengthening of electronic system of public procurement and introducing e-bid, reasons for exclusion, setting conditions and proving abilities of business entities, arranging tender documents and technical specification (*tendering documents*), preparation of bids, receipt and keeping of bids, clarification and complementing of bids, examination and evaluation of Bids, deciding in public procurement procedure, completion of

public procurement procedure, legal protection in public procurement procedure and monitoring in public procurements, etc.

The document contains the most frequently observed problems and recommendations for overcoming them, course of public procurement procedure by stages and steps in public procurement cycle, the most common errors of bidders and recommendations for avoiding them.

There are numerous strategic documents for the development of public procurements and entrepreneurship, and this document present particular plans and measures to be implemented at national level and the level of local self-governments so as to create even better conditions for the development of small and medium-sized enterprises and increase their participation in public procurements.

Awareness of small and medium-sized enterprises should strengthened further by organizing conferences, round tables by topics and for individual economic fields and sectors.

The Public Procurement Agency has been identified as the institution for improvement of the public procurement system, setting up training for small and medium-sized enterprises, manner of monitoring, reporting and defining measures for increasing participation of small and medium-sized enterprises in public procurements, and active implementing agency for individual activities in accordance with the proposed Action Plan which is an integral part of this document.

SMEs may use opportunities offered on the EU markets – European tenders and support, and use the addresses included in this document.

Montenegro will continue to invest in this economic sector because the entire growth and development depends on it, as well as the development because they are the power and the pillar of economic development.