



Network for Affirmation of Non-Governmental Sector  
Monitoring and Analytics Program

# Implementation of the Law on Public Procurements CHALLENGES AND SOLUTIONS



September 2016



The creation of this report is supported through the project „More Transparent and Just Public Procurement System in Montenegro“, funded by the Embassy of the United States in Podgorica. Views and opinions expressed in the report cannot be considered opinions of the donors that financially supported the project.





Network for Affirmation of Non-Governmental Sector  
Monitoring and Analytics Program

Implementation of the Law  
on Public Procurements

# CHALLENGES AND SOLUTIONS

September 2016

**Title:**

Implementation of the Law on Public Procurements  
CHALLENGES AND SOLUTIONS

**Publisher:**

Network for Affirmation of NGO Sector - MANS  
Monitoring and Analytic Programme

**Authors:**

Vuk Maraš, Monitoring and Analytic Programme Director  
Mitar Batrović, Programme Assistant for Public Procurement monitoring

**Print:**

3M - Makarije

**Edition:** 200 copies

**Contact:**

Dalmatinska 188, Podgorica, Montenegro

Phone: +382 20 266 326

Fax: +382 20 266 328

E-mail: [mans@t-com.me](mailto:mans@t-com.me)

[www.mans.co.me](http://www.mans.co.me)

INTRODUCTION .....	5
1. MONITORING OF PUBLIC PROCUREMENTS OF THE MINISTRY OF INTERIOR (MoI) AND PUBLIC PROCUREMENTS OF WORKS .....	7
1.1. Public procurements of works .....	7
1.2. Public procurements of MoI .....	8
2. MISUSE OF DIRECT CONTRACTING METHOD .....	9
2.1. Dividing of tenders by the Ministry of interior .....	9
2.2. Office supplies .....	10
2.3. Toner cartridges .....	11
2.4. Car tires .....	12
2.5. Car parts .....	13
3. EXCEEDING OF DIRECT CONTRACTING .....	16
4. FAILURE TO PUBLISH PUBLIC PROCUREMENT PLAN .....	17
5. FAILURE TO SUBMIT PUBLIC PROCUREMENT REPORTS .....	18
6. CONTROL OF HIGH-VALUE PUBLIC PROCUREMENTS .....	19
7. BARRIERS IN THE LEGAL PROTECTION SYSTEM .....	20
8. RECOMMENDATIONS FOR IMPROVEMENT .....	21



# INTRODUCTION

Amendments to the Law on Public Procurement, which began to be implemented in May 2015, resolved a number of concerns that have previously plagued the system of public procurement. Still, it is evident that there is a significant number of problems that impede efficient implementation of the law by the contracting authorities and bidders, as well as adequate legal protection and supervision and control by the civil society, media and citizens.

Practice has shown that the monitoring of public procurement, based on information from the Public Procurement Portal, is often impossible for tenders that are complicated and of greater value, due to the fact that all the relevant documents are not publicly available, including any offers that are received with regard to a specific tender.

The analysis has also shown that a larger number of institutions, without any consequence, has been violating the provisions of the Public Procurement Law that restrict the use of direct agreements with suppliers for years, and that some institutions often procured the same goods through

several direct agreements, so as to avoid implementing public procurement procedures prescribed by the law.

Data from the report show that a number of institutions has violated the obligation to adopt and publish the procurement plan, which is laid down in the Law on Public Procurement, and that because of the lack of coordination of the Public Procurement Administration and the Inspection for procurement, which operates within the Inspection Directorate, they do not bear any misdemeanor responsibility.

Moreover, in the reported period, there was no concrete sanctioning of contracting authorities for failing to report on conducted public procurements, although in this case there is a clearly prescribed legal obligation.

Because of all the problems in the public procurement system, in this report, MANS has defined a set of recommendations the implementation of which could enhance the legal and institutional framework, as well as the practice itself.





# 1. MONITORING OF PUBLIC PROCUREMENTS OF THE MINISTRY OF INTERIOR (MoI) AND PUBLIC PROCUREMENTS OF WORKS

Early in 2016, MANS began monitoring all public procurements done in Montenegro by all contracting authority. Due to the large number of public tenders issued every day, a pilot project was done based on a sample defined through the use of two criteria - the most funds that are spent through public procurement and various methods of procurement.

Therefore, the initial - pilot sample that MANS monitored covers the area of public procurement of works, through which most of the funds are spent, and all purchases of the Ministry of Interior, since it is an institution which has a large budget

for public procurement, but which is not predominantly spent on procurement of works.

After the development, testing and perfecting the public procurement database, early in 2016, MANS began monitoring those tender documents published on the Public Procurement Portal which concerned public procurements of works. Also, the Ministry of Interior itself was an object of interest and monitoring of MANS.

The total sample includes 417 tenders from the beginning to 24 June 2016, and total estimated value of the public procurement is over €70 million.

## 1.1. PUBLIC PROCUREMENT OF WORKS

During the period of observation and monitoring of tender documents the subject of which is public procurement of works, contracting authorities published over 340 procedures, with a total estimated value of over €60 million. The most common type of procedure was open procedure, immediately followed by the shopping method.

PUBLIC PROCUREMENT OF WORKS		
Public procurement procedure	No. of published tender documents	Estimated values
Open procedure	189	64.727.251,17
Shopping method	156	2.832.487,00
Negotiated procedure with previous publishing	2	1.280.000,00
<b>Total:</b>	<b>347</b>	<b>68.839.738,17</b>

Table 1: Statistic data on public procurement of works January – June 2016

However, at the very outset, it appeared that the legality of procurement of works, based on publicly available documents, is virtually impossible. In fact, given the complexity of the procurement of works, data published on the Public Procurement Portal - tender documentation, the decision on the best offer and the contract are not sufficient to determine whether the procurement was completely lawful.

In order to carry out adequate verification of the legality of the tender, the public must have access to all the offers that arrived on the tender, and in the case of works, such offers are very expensive. Thus, if an entity wants to control public procurements, such entity may require the offers only via the Law on free access to information, but will bear the costs of photocopying of such documents, which can often amount to several hundred euro.<sup>1</sup>

In this way, the control of large and complicated tenders, as is the case with the works, by the public, is virtually impossible, which should be urgently amended when drafting the new Law on Public Procurement.

<sup>1</sup> For instance, MANS required all the offers regarding the tender for the reconstruction of the road Podgorica-Budva, through the Law on free access to information. The price of photocopying of documents regarding nine requests for free access to information was €330. Decisions of the Transport Directorate 03-7262/2, 03-7263/2, 03-7264/2, 03-7265/2, 03-7266/2, 03-7267/2, 03-7269/2, 03-7270/2 and 03-7271/2

## 1.2. PUBLIC PROCUREMENT OF THE MINISTRY OF INTERIOR

From the beginning of 2016 until 24 January the same year, the Ministry of Interior published a total of 70 tender documentation on the Public Procurement Portal. The most common procedure carried out by the Ministry was open procedure, followed by the shopping method, while in one case restricted tendering was used as means of public procurement.

The total amount of estimated value of Mol's public procurement for the said period is over €8 million.

PUBLIC PROCUREMENTS OF MOI		
Public procurement procedure	No. of published tender documents	Estimated values
Open procedure	53	8.335.175,00
Shopping	16	248.900,00
Restricted tendering	1	32.000,00
<b>Total:</b>	<b>70</b>	<b>8.616.075,00</b>

Table 2: Statistic data on public procurements of Mol January–June 2016

## 2. MISUSE OF DIRECT CONTRACTING METHOD

The direct contracting method in the public procurement system of Montenegro is defined by the law as “a direct agreement between the contracting authority and bidder on the terms of public procurement”<sup>2</sup>. It is a method that is used for purchases of lowest value, or procurements that require an urgent action.

Therefore, this method is the least regulated and most difficult to control one. That is why the law clearly limits the amount of funds that may be spent by this method, both for a single procurement and on an annual basis.

Thus, a single procurement through the direct contracting must be less than €5,000<sup>3</sup>, while institutions can spend a maximum of seven to 20 percent of its total previous year’s budget for public procurements using this method.

Based on the analysis of documents obtained from the Ministry of Interior through the requests for free access to information and documentation published on the website of the Ministry of Interior and the Public Procurement Portal, one can get a general impression that the police demonstrated very poor planning of public procurements and dysfunctional spending from the budget.

The Ministry of Interior, carrying out nearly 150 direct agreements, divided unnecessarily public procurements in four categories, while carrying out simultaneously very poorly procedures of their own, official procurement plan.

In this way, the Mol violated all the principles of the Public Procurement Law which should ensure the effectiveness and efficiency of use of public funds, competition, transparency and equality of tenderers.

### 2.1. DIVIDING OF TENDERS BY THE MINISTRY OF INTERIOR

**For the acquisition of four types of goods - office supplies, toners, car tires and car parts, the Ministry of Interior significantly divided tenders, which was a violation of the law and the public procurement plan of the Ministry. Instead of using the method of open procedure, which should be used for major public procurements, the Ministry of Interior decided to cut tenders and to procure the same goods several times, using the direct contracting, thus violating the law and its own procurement plan and excluding competition from the procedures.**

In 2015, the procurement plan of the Ministry of Interior included funds for the purchase of office supplies, toner cartridges, car parts and tires. The estimated value of those procurements, according to the plan, was €760,000, and the same document envisaged that all of the goods needed to be acquired by the open procedure.

The portal of the Public Procurement Administration contains several tender invitations and documentation for

those items of public procurement, but for most of the procedures it is difficult to conclude whether the procedures were carried out to the end, and whether the public procurement realized, on the basis of the publicly available documentation.

Type of goods	Office supplies	Toners	Car tires	Car parts
Value per PP Plan	240,000 €	170,000 €	105,000 €	245,000 €
Type of procedure	Open	Open	Open	Open

*Table 3: Public procurement of four specific types of goods, in accordance with the Mol plan, with planned values and methods of public procurement*

<sup>2</sup> Law on Public Procurement (Official Gazette of Montenegro, 57/14 and 28/15), article 30, paragraph 1.

<sup>3</sup> Ibid, article 21.

## 2.2. OFFICE SUPPLIES

**At the beginning of 2015, the Ministry of Interior, published in only two days two calls for tenders regarding office supplies, one open procedure worth over €200,000 and other shopping, worth €25,000. The Mol failed to complete the first big public procurement until the end of the year due to the fact that the State Commission for Control of Public Procurement twice annulled the decision on the best offer. As a result, the Mol was acquiring office supplies through direct contracting, while carrying out the tender procedure at the same time. The other acquisition, carried out by the method of shopping, was successfully completed.**

### *Open procedure*

On 12 February 2015, the Ministry of Interior published on the Public Procurement Portal the call for the open procedure of public procurement of office supplies, the estimated value of which was €215,000.00. After conducting the open public procurement procedure, on 27 April 2015, the decision on the best offer was published on portal and it could be seen that there was five bidders: "Stratus d.o.o.", "Kastex d.o.o.", "Ljetopis d.o.o.", "Jolly commerce d.o.o." and "Raster office d.o.o."

In the process of review and evaluation of bids, it was concluded that only the bid of "Stratus d.o.o." was correct, and that as such, it was the only one that remained and evaluated as the best, with the price of €193,385.10. It is important to emphasize during the procedure the State Commission for Control of Public Procurement Procedures did not receive any complaints.

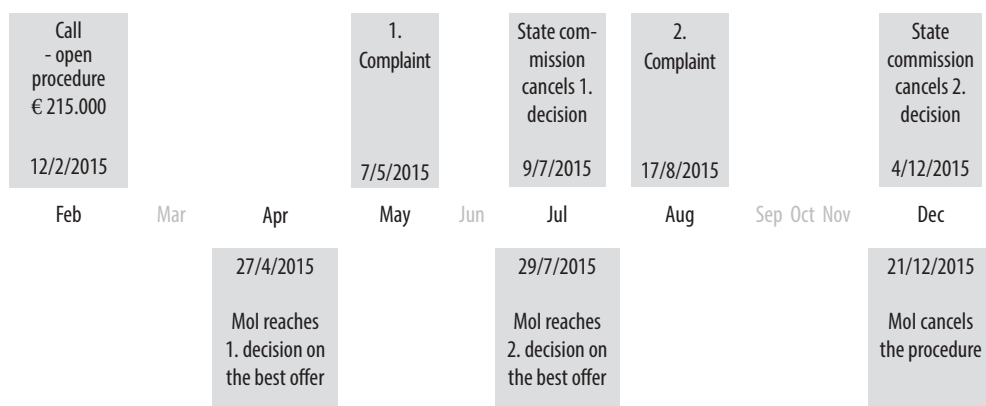
Following the decisions taken on the best bid, on 7 May 2015, one of the bidders, namely "Kastex d.o.o.", submitted a complaint to the State Commission for Control of Public Procurement Procedures, which annulled the decision of the Ministry of Interior<sup>4</sup> and decided to reconsider the whole case.

On 29 July 2015, the new decision of the Ministry confirmed the previous decision and concluded that the only valid bid was that of "Stratus d.o.o." On 17 August 2015, "Kastex d.o.o." again appealed to the State Commission against the decision of the Mol, the State Commission again canceled the decision of the Mol<sup>5</sup> and decided to reconsider the case for the second time.

In the third, the repeated evaluation procedure and evaluation of bids, the Ministry of Interior decided that the offer of "Stratus d.o.o." was invalid, although the two times before the offer had been valued as correct. The Mol maintained the stand that the other four bids were invalid as well, causing the public procurement procedure to be suspended. That was confirmed by the decision of the Ministry of Interior dated 21 December 2015, which was published on the public procurement portal.

Only a few days later, on 31 December 2015, the Ministry of Interior launched a new open procedure of the public procurement of office supplies. The value was €215,000 again, but the procedure was divided into two lots. Five companies submitted bids, namely: "Jolly Commerce d.o.o.", "Kastex d.o.o.", "Chronicle d.o.o.", "Raster Office d.o.o." and "Stratus d.o.o."

In the process of review and evaluation of bids for lot 1 and lot 2, it was estimated that two bids were invalid, and the most favorable bid was the one of "Jolly Commerce d.o.o." On 12 February 2016, the decision on the best bid was made. However, on 24 February 2016, the second-ranked bidder "Kastex d.o.o." Podgorica filed an appeal against such a decision to the State Commission for Control of Public Procurement Procedures, and the further proceeding was suspended until a new decision on the appeal was



*Scheme 1: Timeline of the open-procedure public procurement by Mol, concerning the acquisition of office supplies*

<sup>4</sup> State Commission for Control of Public Procurement Procedures, decision UP:0904-354/2-2015, dated 9 July 2015

<sup>5</sup> State Commission for Control of Public Procurement Procedures, decision UP:0904-609/2-2015, dated 4 December 2015

made. However, the Ministry of Interior partially reversed the decision made on 12 February 2016 and on 03 March 2016 adopted a new decision on the best bid for the lot 1, which stated that "Jolly Commerce d.o.o." had submitted an invalid bid, and "Kastex d.o.o.", the second-ranked bidder in the original decision, got the tender. Yet, one of the interested parties was dissatisfied with the Mol's decision again, it filed a complaint to the State Commission. As there is no official decision on the lot 1, nor the decision of the State Commission on the website of the Public Procurement Directorate, it can be concluded that the process has not been completed yet.

In the meanwhile, the State Commission for Control of Public Procurement Procedures has made decision with regard to the appeal of „Kastex“, so the decision<sup>6</sup> dated 16 June 2016 states that the complaint is dismissed as inadmissible insofar as it relates to the lot 1, because the Mol has previously reversed the decision that was the subject of the complaint. Also, the complaint related to the lot 2 sustains, but the decision on the best offer dated 12 February 2016 is rendered void and the case is returned for a new trial.

The Ministry of Interior, based on the decision of the State Commission, adopted on 15 July 2016 a new decision on the best bid for the lot 2, where the first-ranked bidder with the best price was "Kastex d.o.o." The contract with "Kastex" concerning the lot 2 was concluded on 29 August 2016.

### Shopping

The Ministry published a tender for the procurement of office supplies once again in February 2015. This time they chose the shopping method, and the estimated value of the tender was €25,000. This procurement was carried out without any appeals. There were five bidders, all of whom had valid offers and the selected was the one with the lowest price. The offer was made by "Ljetopis d.o.o." and the amount was €22,833.72. The contract was concluded at the end of March 2015.

### Direct contracting

As the Ministry of Interior in 2015 successfully conducted only one public procurement of office supplies through the use of the shopping method, which is less than 10 percent of the total estimated value for this type procurement, most of the office supplies were procured through the direct agreement with the bidders, thus violating the law.

In 2015, the Mol concluded a total of 13 direct agreements for the purchase of office supplies, the total of which was €48,321.93.

In this way, the Ministry of Interior violated the law, because the tender for the supply of one type of goods, which due to its value had to be carried out through the open procedure, was divided into several smaller tenders. Those smaller tenders were carried out with the least transparent method, the legality of which is very difficult to control and which mostly precludes market competition.

Another problem here is the fact that eight of the total number of direct agreements were concluded for the total value of one euro or less lower than the upper limit of the tender that can be carried out through the direct contracting, i.e. €5,000.

Moreover, bearing in mind the procurement of the office supplies, one can conclude that the inefficient handling of the complaints by the State Commission for Control of Public Procurement Procedures contributed to the Mol's decision to recourse to direct contracting as an alternative way of securing the funds necessary for its work and functioning of its bodies. Therefore, the improvement of capacities of the State Commission for Control of Public Procurement Procedures is necessary to ensure prompt actions of the institution on submitted complaints.

Procurement of office supplies by Mol through the direct contracting		
Date	Agreed value ex VAT	Bidder
22.06.2015.	4,999.90 €	Jolly commerce d.o.o.
22.06.2015.	660.56 €	Ljetopis d.o.o.
01.10.2015.	4,999.32 €	Stratus d.o.o.
06.02.2015.	4,998.98 €	Jolly commerce d.o.o.
18.09.2015.	4,999.55 €	Ljetopis d.o.o.
22.09.2015.	754.22 €	Jolly commerce d.o.o.
09.11.2015.	4,998.94 €	Jolly commerce d.o.o.
26.12.2015.	4,999.69 €	Stratus d.o.o.
08.12.2015.	4,998.28 €	Stratus d.o.o.
23.06.2015.	92.54 €	Jolly commerce d.o.o.
24.07.2015.	2,050.00 €	Jolly commerce d.o.o.
02.09.2015.	4,770.00 €	Ekspert MG d.o.o.

Tabela br. 4: Lista neposrednih sporazuma MUP-a za nabavku kancelarijskog materijala

## 2.3. TONER CARTRIDGES

**In 2015, the Ministry of Interior called only one tender for the procurement of toner cartridges. Although the public procurement plan for 2015 envisaged the acquisition to be carried out with the open procedure method, the Ministry opted for the shopping method. The shopping procedure was carried out, but it is not known whether it was completed, as the Public Procurement Portal does not show the agreement**

<sup>6</sup> State Commission for Control of Public Procurement Procedures, decision UP.0904-179/2-2016, dated 16 June 2016

that was supposed to be signed between the contractor and the first-ranked bidder.

Once again, the Ministry of Interior decided to close a series of direct agreements for procurement of toner cartridges, despite the fact that such a procedure is not lawful. Therefore, the Ministry spent just over €12,000 for the acquisition of toner cartridges through the total of eight direct agreements.

### Shopping

Although the public procurement plan envisaged that the toner cartridges would be procured by the open procedure method, and the procedure should have been initiated in May 2015, the Ministry of Interior initiated the procurement by the shopping method on 20 March 2015, in two lots. The estimated value of the procurement was €25,000.00, of the total of €170,000.00, which was the sum envisaged in the public procurement plan for 2015. It is also the tender published on the Public Procurement Portal. The total number of submitted bids was four for the lot 1 and two bids for the lot 2. The following bidder submitted their offers for the lot 1: "Ljetopis d.o.o.", "Kastex d.o.o.", "Raster Office d.o.o.", "Biomont d.o.o." and "Stratus d.o.o.". "Kastex" and "Raster Office" bid for the lot 2 as well.

The decision on the best bid was rendered on 23 April 2016. It stated that the bid of "Biomont d.o.o." for the lot 1 was invalid, and that out of the remaining four, the bid of "Kastex d.o.o." was the most favorable. There were two bids for the lot 2, and again the one made by "Kastex d.o.o." was the most favorable.

There were no appeals to the State Commission at that stage. However, it is not known whether the procedure has been completed at all, as the Public Procurement Portal does not show the contract that should have been signed with the best bidder.

However, even in case that the public procurement has been completed, the most of the funds planned for the acquisition of toner cartridges, i.e. €145,000, remains unspent.

### Direct contracting

Despite the fact that the Mol kept a significant amount of funds for the purchase of toner cartridges and that it could initiate an open procedure for procurement of those items, the Ministry nevertheless decided to carry out a series of direct agreements, to cut it into several smaller tenders and thus significantly exclude competition from the procedure.

Thus, the documentation that was submitted to MANS upon the request for free access to information indicated that in 2015 the Mol concluded six direct agreements for the purchase of toner cartridges, the total value of which was €12,396.04.

Procurement of toner cartridges by Mol through direct contracting		
Date	Agreed value ex VAT	Bidder
05.06.2015.	3,034.50 €	Stratus d.o.o.
20.05.2015.	2,641.80 €	Stratus d.o.o.
14.04.2015.	4,990.54 €	Ljetopis d.o.o.
21.07.2015.	870.06 €	Jolly commerce d.o.o.
16.09.2015.	104.92 €	Jolly commerce d.o.o.
22.09.2015.	754.22 €	Jolly commerce d.o.o.

Table 5: List of direct agreements of the Mol for procurement of toner cartridges

Direct agreements were concluded from 14 April 2015 to 22 September 2015.

It is interesting that once more the only direct agreement of the Mol was only a few euro below the upper limit of €5,000, i.e. below the limit that would oblige the Mol to carry out the procurement by using the method that would involve more competition.

## 2.4. CAR TIRES

**After examining the public procurement portal, we concluded that in 2015 the Ministry of Interior did not issue any individual procedure for procurement of tires until 29 December 2015. That procedure was completed in August 2016. However, the public procurement plan envisaged €105,000.00 for the purchase of tires in February last year.**

**Instead of conducting an open public procurement procedure in 2015 and thus acquire the necessary tires, the Mol decided to divide the public procurement into 28 direct agreements, which completely stultified the law.**

### Open procedure

The public procurement of tires was launched at the end of 2015, contrary to the public procurement plan. The estimated value of the procedure was €87,000, while the total sum envisaged by the plan was €105,000. After several amendments to the tender documents, on 15 February 2016, a complaint against the tender documents was made to the State Commission for Control of Public Procurement Procedure, which interrupted all further activities of the contracting authority.

The decision on the best bid was made on 07 July 2016, while there was no information that the procedure with regard to the complaint had been completed and that the public procurement procedure continued. Bids were submitted by four companies: "Vujacic Company d.o.o.", "Omnoio d.o.o.", "Efel travel d.o.o." and "Efel Motors d.o.o."

The only valid bidder was the one made by „Vujacic Company d.o.o.“ Its value was €82,572.26 and it was the most favorable bid. The contract between the best bidder, “Vujacic Company d.o.o.” and the Ministry of Interior was concluded on 26 August 2016, nearly eight months after the procurement procedure was launched and nearly 19 months later than it should have been done according to the public procurement plan.

### Direct contracting

However, despite the fact that the Mol did not procure tires in 2015 in accordance with dynamics and methods provided by the plan, the Ministry once again decided to divide tenders into smaller, direct agreements, without any grounds.

Procurement of tires be the Mol through direct contracting		
Date	Agreed value ex VAT	Bidder
31.03.2015.	565.77 €	Vujačić company d.o.o.
09.04.2015.	322.68 €	Vujačić company d.o.o.
25.03.2015.	1,155.20 €	Vujačić company d.o.o.
09.04.2015.	564.01 €	Efel Travel d.o.o.
09.04.2015.	537.26 €	Vujačić company d.o.o.
09.04.2015.	533.83 €	Vujačić company d.o.o.
21.04.2015.	324.35 €	Vujačić company d.o.o.
09.04.2015.	686.01 €	Efel Travel d.o.o.
21.04.2015.	1,229.56 €	Vujačić company d.o.o.
21.04.2015.	753.70 €	Vujačić company d.o.o.
12.05.2015.	435.44 €	Vujačić company d.o.o.
30.04.2015.	254.47 €	Vujačić company d.o.o.
05.06.2015.	191.99 €	Efel Travel d.o.o.
11.06.2015.	640.46 €	Vujačić company d.o.o.
05.06.2015.	141.80 €	Vujačić company d.o.o.
11.06.2015.	412.69 €	Vujačić company d.o.o.
24.06.2015.	207.58 €	Vujačić company d.o.o.
31.08.2015.	431.97 €	Vujačić company d.o.o.
31.08.2015.	518.40 €	Bolex d.o.o.
27.08.2015.	669.78 €	Vujačić company d.o.o.
28.09.2015.	273.68 €	Efel Travel d.o.o.
09.11.2015.	543.96 €	Castellana CO d.o.o.
09.11.2015.	596.56 €	Castellana CO d.o.o.
01.12.2015.	504.00 €	Efel Travel d.o.o.
13.11.2015.	725.91 €	Castellana CO d.o.o.
30.11.2015.	382.06 €	Castellana CO d.o.o.
15.12.2015.	370.00 €	Efel Travel d.o.o.
27.11.2015.	830.36 €	Castellana CO d.o.o.

Tabela br. 5: Lista neposrednih sporazuma MUP-a za nabavku tonera

In 2015, the Mol concluded a total of 28 contracts with several suppliers, some of which was “Vujacic Company d.o.o.,” the leader in the number of contracts concluded with the Ministry, with the total of 17.

The total sum spend on the procurement of tires through direct contracting is €15,037.43.

The documentation that we were provided by the Ministry of Interior shows that the tires were procured through direct contracting from late March to mid-December 2015, i.e. in the period when, according to the public procurement plan, the Mol should have conducted an open procedure for procurement of all tires.

## 2. 5. CAR PARTS

**Concerning the procurement of car parts, the Ministry of Interior published to tenders in 2015 on the Public Procurement Portal - one early in the year and the other by the end of the year. The total amount of these two procedures exceeded the estimated value from the public procurement plan for more than €30,000, which indicates that the procurement of car parts was not well planned from the very beginning.**

**Apart from the procurement through the open procedure, the Ministry of Interior spent over €25,000 from the budget for procurements through direct contracting. The number of those procurements was almost 100.**

### Open procedure

In April 2015, the Ministry of Interior called an open procedure for the public procurement of car parts. The estimated value was €220,000, while the total sum for procurement of car parts, according to the public procurement plan was €245,000.00. The public procurement of car parts was divided into 10 lots, depending on the brand of vehicles the parts were procured for.

The decisions on the best offer for each lot separately were made in June 2015, and the contracts with the best bidders were concluded at the end of July 2015, as there were no complaints against the procedure.

The Ministry of Interior issued another open procedure tender for the procurement of car parts at the end of the year, more precisely on 25 December 2015. The estimated value of the tender was €57,000.00. The decision on the best bid was made in March 2016, and the contracts were concluded a little over a month later, also without any complaints from the bidders.

It is interesting that the total estimated value of those two procurement procedures was €277,000, which significantly exceeded the funds envisaged in the procurement plan, which was €245,000.



## Direct contracting

The Ministry of Interior procured a big share of car parts through direct contracting. Thus, in 2015, 99 agreements were concluded, a total sum paid from the budget of the MoI under those agreements was €25,876.70. Suppliers that concluded most of the agreements with the MoI were

“Magnus DP d.o.o.” Podgorica (33 agreements) and “Omnioil d.o.o.” Podgorica (27 contracts).

Therefore, the MoI once more stultified the Law on Public Procurement, because instead of purchasing the goods through the announced open procedures, they decided to use a series of direct agreements, for which there were no legal grounds.

### PROCUREMENT OF CAR PARTS BY THE MOI THROUGH DIRECT CONTRACTING

Date	Agreed value ex VAT	Bidder
29.01.2015.	60.00 €	Vm Motors d.o.o.
29.01.2015.	314.14 €	Omnioil d.o.o.
28.08.2014.	78.50 €	TD Ščekić d.o.o.
23.02.2015.	725.00 €	N&S bravarska radionica
11.03.2015.	267.75 €	Omnioil d.o.o.
11.02.2015.	440.00 €	Vm Motors d.o.o.
10.03.2015.	203.90 €	Magnus DP d.o.o.
26.03.2015.	89.25 €	Omnioil d.o.o.
08.04.2015.	253.32 €	BMW Grebović d.o.o.
06.04.2015.	166.50 €	Alliance d.o.o.
30.03.2015.	39.92 €	Omnioil d.o.o.
03.04.2015.	523.48 €	Likos Montenegro d.o.o.
31.03.2015.	148.56 €	Omnioil d.o.o.
16.04.2015.	28.00 €	Bolex d.o.o.
23.04.2015.	47.92 €	Magnus DP d.o.o.
21.04.2015.	177.31 €	Magnus DP d.o.o.
21.04.2015.	133.76 €	Spona d.o.o.
21.04.2015.	544.67 €	Ljetopis automotive d.o.o.
21.04.2015.	183.26 €	Spona d.o.o.
21.04.2015.	235.04 €	Spona d.o.o.
21.04.2015.	173.76 €	Spona d.o.o.
08.05.2015.	25.00 €	Magnus DP d.o.o.
04.05.2015.	43.70 €	Magnus DP d.o.o.
25.03.2015.	312.73 €	Omnioil d.o.o.
29.04.2015.	87.73 €	Rokšped Auto centar d.o.o.
30.04.2015.	49.32 €	Magnus DP d.o.o.
21.04.2015.	214.20 €	Omnioil d.o.o.
23.04.2015.	426.80 €	Šišević company d.o.o.
21.04.2015.	470.06 €	Spona d.o.o.
23.04.2015.	565.25 €	Rokšped Auto centar d.o.o.
30.04.2015.	189.21 €	Spona d.o.o.
27.05.2015.	316.22 €	Magnus DP d.o.o.
05.06.2015.	236.81 €	Omnioil d.o.o.
05.06.2015.	39.40 €	Magnus DP d.o.o.
12.05.2015.	71.04 €	Omnioil d.o.o.
27.05.2015.	122.90 €	Magnus DP d.o.o.
18.05.2015.	168.98 €	Omnioil d.o.o.
05.06.2015.	387.00 €	Bolex d.o.o.

Date	Agreed value ex VAT	Bidder
24.06.2015.	24.99 €	Omnioil d.o.o.
24.06.2015.	132.09 €	Omnioil d.o.o.
23.06.2015.	72.00 €	Omnioil d.o.o.
10.07.2015.	39.50 €	Magnus DP d.o.o.
21.07.2015.	26.82 €	Bolex d.o.o.
21.07.2015.	601.16 €	Magnus DP d.o.o.
23.06.2015.	419.48 €	Omnioil d.o.o.
10.07.2015.	224.70 €	Magnus DP d.o.o.
03.07.2015.	239.74 €	Bolex d.o.o.
10.07.2015.	198.70 €	Magnus DP d.o.o.
03.07.2015.	129.12 €	Omnioil d.o.o.
23.06.2015.	910.80 €	Karal Commerce d.o.o.
03.07.2015.	98.10 €	Bolex d.o.o.
10.07.2015.	451.06 €	Magnus DP d.o.o.
10.07.2015.	66.05 €	Omnioil d.o.o.
10.07.2015.	35.70 €	Omnioil d.o.o.
24.06.2015.	211.29 €	Vujačić company d.o.o.
24.06.2015.	547.82 €	Omnioil d.o.o.
24.06.2015.	258.69 €	Magnus DP d.o.o.
05.06.2015.	714.00 €	Omnioil d.o.o.
03.07.2015.	208.68 €	Magnus DP d.o.o.
30.07.2015.	669.78 €	Vujačić company d.o.o.
24.06.2015.	595.00 €	Omnioil d.o.o.
03.07.2015.	118.62 €	Magnus DP d.o.o.
10.07.2015.	1,432.00 €	Efel Travel d.o.o.
30.07.2015.	70.60 €	Magnus DP d.o.o.
05.06.2015.	190.10 €	Omnioil d.o.o.
10.07.2015.	255.10 €	Magnus Moto d.o.o.
24.06.2015.	81.48 €	Magnus DP d.o.o.
23.06.2015.	177.19 €	Omnioil d.o.o.
01.07.2015.	145.50 €	Magnus Moto d.o.o.
30.07.2015.	315.26 €	Bolex d.o.o.
30.07.2015.	87.80 €	Magnus DP d.o.o.
23.06.2015.	51.23 €	Spona d.o.o.
28.06.2015.	743.02 €	Alliance d.o.o.
15.06.2015.	532.19 €	Magnus DP d.o.o.
28.07.2015.	141.61 €	Omnioil d.o.o.
14.08.2015.	71.46 €	Bolex d.o.o.



13.05.2015.	167.50 €	Magnus DP d.o.o.
13.05.2015.	45.22 €	Omnioil d.o.o.
05.06.2015.	29.23 €	Sincommerce d.o.o.
15.05.2015.	167.50 €	Magnus DP d.o.o.
10.06.2015.	196.35 €	Omnioil d.o.o.
12.05.2015.	38.55 €	Magnus DP d.o.o.
05.06.2015.	130.31 €	Omnioil d.o.o.
12.05.2015.	227.17 €	Magnus DP d.o.o.
12.06.2015.	388.53 €	Alliance d.o.o.
03.06.2015.	27.00 €	Bolex d.o.o.
11.06.2015.	388.94 €	Vujačić company d.o.o.
03.07.2015.	234.47 €	Magnus DP d.o.o.

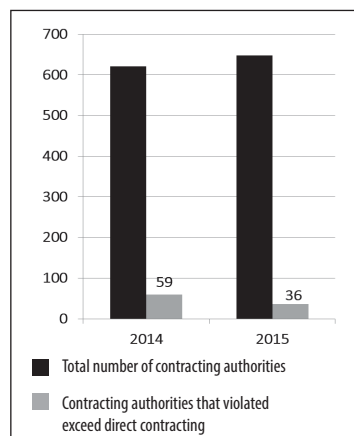
27.07.2015.	77.10 €	Magnus DP d.o.o.
30.07.2015.	90.10 €	Magnus DP d.o.o.
14.09.2015.	523.18 €	Castellana CO d.o.o.
17.09.2015.	29.16 €	Omnioil d.o.o.
16.09.2015.	96.00 €	Bolex d.o.o.
04.09.2015.	364.30 €	Bolex d.o.o.
27.08.2015.	227.17 €	Magnus DP d.o.o.
27.07.2015.	575.25 €	Bolex d.o.o.
28.09.2015.	881.87 €	Magnus DP d.o.o.
27.05.2015.	267.13 €	Magnus DP d.o.o.
10.03.2015.	855.85 €	Bolex d.o.o.

*Table 7: List of direct agreements of the Mol for the procurement of car parts*

### 3. EXCEEDING OF DIRECT CONTRACTING

After MANS found that in 2015 the Ministry of Interior overly used the method of direct contracting when acquiring the goods for the acquisition of which, according to the law and its own public procurement plan, other methods should have been used, we have also analyzed the application of this method by other institutions.

The Law on Public Procurement provides that the amount of money a contracting authority may spend through direct contracting in the current year can be up to 10 percent of the executed budget for procurements in the previous year. For small institutions, the budget of which was up to €25,000 for procurement, this limit cannot be more than 20 percent.<sup>7</sup>



Graph 1: Number of contracting authorities that exceeded the use of direct contracting compared with the total number

that exceed the use of direct contracting and thus violate the law.

For this reason, in late 2015, MANS addressed to the Supreme State Prosecutor's Office and reported each of the 59 institutions that had violated the law in 2014. We requested that the prosecution examine whether in those excessive use of direct contracting there were elements of a criminal offense, and if so, to institute proceedings in accordance with the criminal law.

Data show that in 2014 nearly 10 percent of the contracting authorities violated these provisions and that direct contracting cost more than it is permitted by law.<sup>8</sup> In 2015, the number was somewhat smaller, but was still over five percent of the contracting authorities.<sup>9</sup>

Yet, the law does not envisage any concrete sanctions for those institutions and responsible persons

After more than half a year, the Special State Prosecutor's Office responded for only two of the institutions.

The prosecution's response says that they collected the necessary data and documents, that they made the evaluation and found no reasonable doubt that any person had committed any of the offenses reported, nor any other offense that should be prosecuted by virtue of office.

As for the other 57 complaints, we have received no response yet, i.e. the process of verification is still in progress.

Particularly interesting is the fact that the list of the institutions that have been reported for violating the law, with regard to the direct contracting, includes those authorities which should control the legality of the implementation of public procurement regulations, such as the State Audit Institution and the Supreme State Prosecutor's Office.

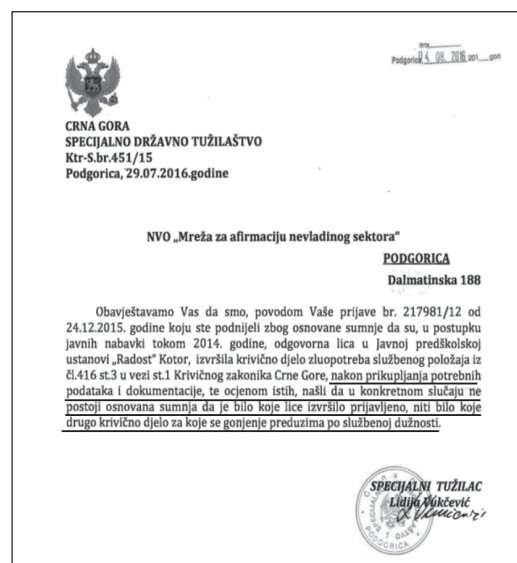


Figure 1: Sample of response by the Special State Prosecutor's Office regarding the appeal against Public Preschool Institution „Radost“ from Kotor

7 Law on public procurement (Official Gazette of Montenegro, 57/14 and 28/15), art. 30, paragraphs 2 and 3:

Total annual value of public procurement through direct contracting cannot exceed:

- 10% of the executed public procurement budget of the contracting authority in the previous year, in case the public procurement budget is up to €200,000;
- 9% of the executed public procurement budget of the contracting authority in the previous year, in case the public procurement budget is €200,000 - €500,000;
- 8% of the executed public procurement budget of the contracting authority in the previous year, in case the public procurement budget is €500,000 - €800,000 EUR;
- 7% of the executed public procurement budget of the contracting authority in the previous year, in case the public procurement budget is over €800,000.

Notwithstanding paragraph 2 of this Article, the total annual value of public procurements through direct contracting can be up to 20% of the executed public procurement budget in the previous year, as long as the public procurement budget amounts to €25,000. The public procurement procedure by direct contracting shall be regulated by the contracting authority by means of a specific act.

8 Public Procurement Directorate, Report on Public Procurement in Montenegro for 2014, May 2015. More information available on <http://www.ujn.gov.me/wp-content/uploads/2015/06/Izvjestaj2014.pdf>

9 Public Procurement Directorate, Report on Public Procurement in Montenegro for 2015, May 2016. More information available on <http://www.ujn.gov.me/wp-content/uploads/2016/06/Izvjestaj2015.pdf>

10 Data on violation of direct contracting in 2015 were published only in June 2016 and are still subject to analysis. After that, if it is determined that there may be grounds for a criminal offense, the complaint will be submitted to the Supreme State Prosecutor's Office, as well as for the year before

## 4. FAILURE TO PUBLISH PUBLIC PROCUREMENT PLAN

The annual report on the implementation of public procurement for 2015, published by the Public Procurement Directorate, also includes the list of contracting authorities that did not publish the Public Procurement Plan for 2015 on the Public Procurement Portal.

Since the Law on Public Procurement<sup>11</sup> binds all contracting authorities to draw up and submit the Public Procurement Plan by 31 January of the cur-

rent year in order for it to be published on the portal, and prescribes misdemeanor liability<sup>12</sup> for contracting authorities that fail to comply with the law, MANS submitted the initiative for misdemeanor proceedings against those contracting authorities.

The total number of initiatives submitted to the Inspection Directorate against the contracting authorities that failed to draft and publish the Public procurement plan for 2015 is 122.

The Inspection has informed us that it has determined that the deadline for acting on our initiatives, as well as the violations, are expired, pursuant to the provisions of the Law on Misdemeanors.<sup>13</sup>

This example showed that due to the inertness of institutions and several months of disregard of violations of the law, those who violated the law will not suffer the consequences.

The Public Procurement Administration is the only authority that has the information on which contracting authorities failed to draft and published the procurement plan within the statutory time limit in the current year. Those data are made available to the public after more than a year, when the Administration publishes the Public Procurement Report.<sup>14</sup>

At the time of the publication of the official report, infringements of institutions that failed to draft and published the public procurement plan are already obsolete, which completely stultifies the Law on Public Procurement.

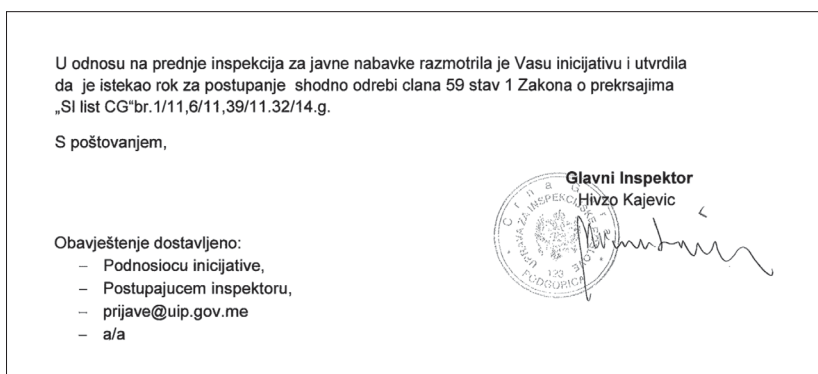


Figure 2: Response from the Inspection Directorate to the initiative of MANS, dated 11 July 2016

11 Law on Public Procurement (Official Gazette of Montenegro, 57/14 and 28/15), article 38, paragraph 1

12 Law on Public Procurement (Official Gazette of Montenegro, 57/14 and 28/15), article 149

13 Law on Misdemeanors (Official Gazette of Montenegro, 1/11, 6/11, 39/11 and 32/14), article 59, paragraph 1

14 As a rule, the report of the Administration for the current year is published in May of the following year

## 5. FAILURE TO SUBMIT PUBLIC PROCUREMENT REPORTS

Having examined the Annual Report on the implementation of public procurement for 2015,<sup>15</sup> which the Public Procurement Administration published in early June 2016, it was found that a number of contracting authorities had not submitted reports on conducted public procurement procedures and concluded public procurement agreements for 2015. Therefore, the Law on Public Procurement has been violated.<sup>16</sup>

As the Law on Public Procurement<sup>17</sup> in the penal provisions prescribes misdemeanor responsibility for contracting authorities that do not submit the report, MANS submitted initiatives for misdemeanor proceedings to the Inspection Directorate, against those institutions or their responsible persons.

The total number of initiatives submitted to the Inspection Directorate is 62. The Directorate has responded that they have the authority to act, and that will conduct the inspection and notify the interested persons of the factual situation. Notification to address MANS received this notification in mid-June 2016, but the final response was not received to the date of this report.

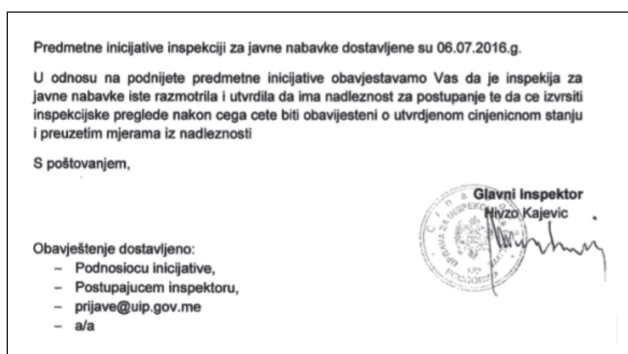


Figure 3: Response of the Inspection Directorate to the MANS's initiative dated 5 July 2016

15 <http://www.ujn.gov.me/2016/06/izvjestaj-o-javnim-nabavkama-za-2015-godinu-3/>

16 Law on Public Procurement (Official Gazette of Montenegro, 57/14 and 28/15), article 118, paragraph 1

17 Law on Public Procurement (Official Gazette of Montenegro, 57/14 and 28/15), article 149

## 6. CONTROL OF HIGH-VALUE PUBLIC PROCUREMENTS

Amendments to the Law on Public Procurement adopted by the Parliament in late 2014 and which entered into force in May 2015, abolished the obligation of the State Commission for Control of Public Procurement Procedures to control ex officio public procurements worth over half a million euro.

Bearing in mind extremely poor legal infrastructure in this area, MANS submitted an initiative to the Inspection Directorate - Public Procurement Inspection, requesting to control the total of 20 public procurement procedures, the estimated value of which was exceeded €500,000.00.

However, the inspection has informed us that it examined the required procedures, and that the public procurement inspector did not have authority to control the entire procurement procedure, only its certain stages. In those specific, according to the opinion of the Inspections, most of the phases that could have been controlled were already completed.

Moreover, the public procurement inspector did not control the actions and decisions of the contracting authorities against which the complaint was filed to the State Commission for Control of Public Procurement Procedures.

Such an act by the Public Procurement Inspection is the best indicator of how poor was the legal act which revoked the jurisdiction of the State Commission for Control of Public Procurement to control ex officio all tenders worth more than €500,000, without having previously defined an adequate alternative that would have the same powers as, for example, the Public Procurement Inspection.

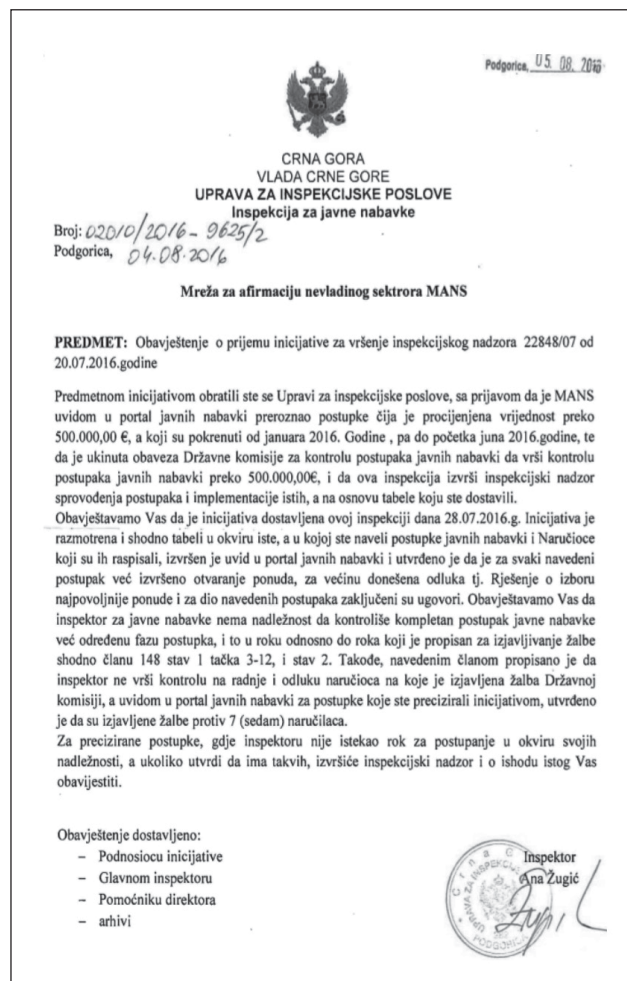


Figure 4: Response from the Inspection Directorate to MANS's initiative dated 4 August 2016

## 7. BARRIERS IN THE LEGAL PROTECTION SYSTEM

The existing Law on Public Procurement provides that the appellant should pay the fee for conducting the procedure, which is one percent of the estimated value of the contract, up to the maximum of €8,000.

This solution is defined primarily as a form of protection from filing of unfounded complaints, the sole aim of which would be obstruction of conducting public procurement by a contracting authority. Namely, an appeal delays the tender process until the decision of the State Commission is being made, which often takes several months. Moreover, during a tender procedure it is possible to file more than one complaint, to each stage of the public procurement procedure. Therefore, the legal protection can be used to obstruct the implementation of the tender, which is why there is a complaint tax defined.

However, the tax has been poorly defined by the existing law. Due to the fixed amount of the tax, which applies even to smaller tenders, submitting complaints can often be a significant financial burden for micro, small and medium-sized companies, which is why those companies often choose not to use the right of legal protection. On the other hand, due to the upper limit of the tax, obstruction of high-value tenders, often up to several million euro, by big companies, is very profitable.

Finally, the complaint tax defined as it is, is contrary to the Constitution of Montenegro. The Constitution stipulates that all are equal before the law, regardless of any particularity or personal trait<sup>18</sup> that everyone is entitled to equal protection of their rights and freedoms<sup>19</sup> and that everyone is entitled to a remedy against the decision concerning his/her right or lawful interests.<sup>20</sup>

However, the Law on Public Procurement states that the appellant pays a fee for the conduct of proceedings in the amount of one percent of the estimated value of the contract, provided that the fee does not exceed €8,000. Moreover, the bidder the evidence of payment of the fees for the proceeding together with the complaint. Such provision restrains and conditions the constitutional right to the remedy or appeal.

Therefore, in March 2016, MANS submitted the initiative to the Constitutional Court of Montenegro to institute proceedings to review the constitutionality of those provisions of the Law on Public Procurement which define the complaint tax for. In order to speed up the proceedings before the Constitutional Court, we

publicly called on all members of the Parliament to institute the same proceedings before the Constitutional Court, as they are entitled to it according to the Constitution. Five MPs accepted our invitation. They submitted the proposal for evaluation of the constitutionality to the Constitutional Court in mid-March 2016.

However, although it has been more than half a year since the initiatives were submitted the Constitutional Court has not issued any decision yet.

---

<sup>18</sup> Constitution of Montenegro, article 17, paragraph 2

<sup>19</sup> Ibid, article 19

<sup>20</sup> Ibid, article 20

## 8. RECOMMENDATIONS FOR IMPROVEMENT

In accordance with the findings of this report, in the coming period it is necessary to implement a set of normative, institutional and practical recommendations to improve the public procurement system:

#1 Law on Public Procurement should prescribe that:

- Contracting authorities are obliged to publish all public procurement documentation relating to procurements worth over €500,000, including the submitted bids, on the public procurement portal;

- Public procurement inspection needs to control ex officio lawfulness of all stages of public procurement procedure when the procurement is over €500,000 worth;

- During a single calendar year, contracting authority cannot acquire the same or similar goods, services or works the total value of which exceeds €5,000 by the method of direct contracting;

- Public Procurement Administration needs to notify the inspection of any violations of the law by the contracting authorities within seven days after discovering such violation, including viola-

tions in terms of failing to draft and publish the procurement plan, failing to report on public procurement, etc.;

- Members of the State Commission for Control of Public Procurement Procedures need to be elected by the Parliament of Montenegro on a public competition, to increase their number and to decide at least through two councils, composed of the members of the Commission;

#2 Increase the capacity of the State Commission for Control of Public Procurement Procedures in order to enable it to act on complaints of bidders more promptly and efficiently:

- Elect all members of the State Commission;

- Improve the act on job classification of the Commission, provide for a higher number of permanently employed staff that would act on complaints and fill in the vacancies;

#3 Increase the number of public procurement inspectors within the Inspection Directorate, in order to ensure prompt acting upon initiatives and carry out inspection control ex officio.

