

/media brief

CONFLICT OF INTEREST IN THE PROCESS OF PUBLIC PROCUREMENT IN MONTENEGRO - THE EXAMPLE OF CAREVIĆ

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„The issue of conflict of interest in the public procurement procedure is regulated by the Law on Public Procurement. Unfortunately, in reality, it rests on the principle of the complete absence of any control of formal statements on conflict of interest that are made before awarding the contract. The examples covered by MANS show that no one controls the credibility of such statements, including the Agency for Prevention of Corruption (APC) itself, after reporting or learning about the existence of a possible conflict of interest in the procurement process. There is a lack of checks even despite the fact that the Law on Prevention of Corruption allows the APC to carry out much more detailed checks of the circumstances of conflict of interest in terms of persons connected with the public official who makes the decision. According to that law, any legal entity and/or legal entity that enters into a public procurement contract with a public official becomes a related entity that may be subject to comprehensive checks of the assets and income of that entity.[1]

Article 40 of the current Law on Public Procurement prescribes the Duty to prevent conflict of interest, as follows: *“A contracting authority shall take appropriate actions to efficiently prevent, recognise and eliminate conflict of interest related to a public procurement procedure.”[2]*

Later, in Articles 41 and 42, it recognizes the dangers in terms of *Conflict of interest between contracting authorities and business entities* and *Conflict of interest arising from prior activities of business entities with contracting authorities*.[3]

Finally, in the article *Prevention and recording of conflict of interest*, the Law stipulates signing a statement declaring absence of conflict of interest by the contracting authority and bidders (as well as subcontractors), or later submission of the Request for recusal if a conflict of interest occurs in the process of public procurement.[4]

Earlier legal solution, which was in force until July 2020, elaborated the concept of conflict of interest in even more detail, thus Article 16, paragraph 4, item 1 stipulated that *„conflict of interest of a contracting authority shall exist if the person referred to in paragraph 2 of this Article:*

1) is a bidder, a bidder submitting the joint bid, subcontractor, legal representative, or attorney of the bidder, of the bidder submitting the joint bid, or of the subcontractor; [5]

However, all the possibilities for abuse of this system have been exposed in the example of Marko Carević, president of the Municipality of Budva and a businessman, as well as the inactivity of the

[1] Article 6, paragraph 1, item 4 of the Law on Prevention of Corruption (Official Gazette of Montenegro No. 53/2014 and 42/2017)

[2] Art. 40 of the Law on Public Procurement (Official Gazette of Montenegro No. 74/2019 of December 30, 2019)

[3] Art. 41 and 42 of the Law on Public Procurement (Official Gazette of Montenegro No. 74/2019 of December 30, 2019)

[4] Art. 43 of the Law on Public Procurement (Official Gazette of Montenegro No. 74/2019 of December 30, 2019)

[5] Art. 16, paragraph 4, item 1 of the previously valid Law on Public Procurement (Official Gazette of Montenegro, No. 42/2011, 57/2014, 28/2015 and 42/2017)

/CONFLICT OF INTEREST IN THE PROCESS OF PUBLIC PROCUREMENT IN MONTENEGRO – THE EXAMPLE OF CAREVIĆ

state authorities that are obliged to protect it. For further explanation, it is important to point out that Carević is the owner of the construction company "Carinvest", registered in Kotor.[6]

Namely, NGO MANS' Investigative Centre obtained data that reveal that Carević's company was the contractor for the works for which tenders were announced by the Municipality of Budva, and in connection with which and on whose behalf Carević himself concluded the contracts.

On the other hand, those contracts were formally concluded by the company "Asfalt-Beton Gradnja" from Podgorica, which then used the machinery of the "Carinvest" company to perform the agreed works.

This was disclosed by the MANS Investigative Centre in May 2020, when it was discovered that the Municipality of Budva concluded as many as 11 contracts with the company "Asfalt-Beton Gradnja", worth one million and 900 thousand euros.[7]

In addition to the contracting authority, the bidder himself - in this case the company "Asfalt-Beton gradnja" from Podgorica, was obliged to submit a Statement on non-existence of the conflict of interest, signed by an authorized person of its subcontractors.

- Depending on the manner of submission of bids, a bidder shall submit within their bid a statement of their responsible person, responsible persons of the bidder submitting the joint bid and responsible person of the subcontractor on existence or non-existence of the conflict of interest referred to in paragraphs 1 and 2 of this Article.[8]

However, at that time, local media recordings, which followed the officialization of works and the reconstruction of rural roads for which the company from Podgorica was formally engaged, actually revealed to the general public that the works were being performed by the mechanization of Carević's company.[9]

In addition to the recordings, the analysis of the tender documentation also showed that the formal bidder guaranteed that it had the machinery needed to complete the work, even though it was the machinery of the "Carinvest" company. A simple look at the financial statements of the company "Asfalt-Beton Gradnja" would be enough to conclude that they do not have such equipment, which indicates that they use a subcontractor.

[6] The company was transferred to his son (Milan Carević) in the fall of 2021

[7] See at: <http://www.mans.co.me/asfalt-sa-mirisom-korupcije-kako-je-budvanski-predsjednik-opstine-zaradivao-od-gradskih-tendera/>

[8] Art. 17, paragraph 3, of the previously valid Law on Public Procurement (Official Gazette of Montenegro, No. 42/2011, 57/2014, 28/2015 and 42/2017.)

[9] See at: https://www.youtube.com/watch?v=Z3DEwN9MzTw&feature=emb_title

/CONFLICT OF INTEREST IN THE PROCESS OF PUBLIC PROCUREMENT IN MONTENEGRO – THE EXAMPLE OF CAREVIĆ

However, in their bids, they did not state that it was the company "Carinvest", which was their legal obligation. Another obligation was the signing of the Statement on non-existence of the conflict of interest, which Carević signed without any problems, even though he had to be aware that his company was the actual contractor for these works. [10] By this, Carević misled the authority he manages, the general public and other competent authorities.

During 2019, Carević confirmed in a TV show that his company participated in tenders announced by the municipality he manages, as a subcontractor.[11]

Later that year, Carević concluded another contract with the said company from Podgorica - worth as much as 700,000 euros, by which the value of the works that the municipality managed by Carević had previously awarded to the company directly connected to him exceeded the amount of 2.6 million euros.[12]

After this discovery, MANS Investigative Centre filed a report to the Special State Prosecutor's Office against Carević and the members of the tender commission who carried out these procedures, on suspicion of committing the crimes of Abuse of official position, Misconduct in office and Undue influence.

However, the report was promptly rejected, and the complaint against such a decision of the Special State Prosecutor's Office was also rejected shortly afterwards by the Supreme State Prosecutor's Office.[13]

The aftermath of such decision of the prosecutor's office was that in the meantime, the Municipality of Budva awarded the company "Asfalt-Beton Gradnja" five more jobs, and thus indirectly to the company of its Mayor, with a total value of nearly one million euros.

[10] See at: <http://www.mans.co.me/asfalt-sa-mirisom-korupcije-kako-je-budvanski-predsjednik-opstine-zaradivao-od-gradskih-tendera/#prettyPhoto/2/>

[11] TV Vijesti's show Načisto, broadcast on 13.06.2019: <https://www.youtube.com/watch?v=A6pXmHE1SUc>

[12] See at: <https://www.mans.co.me/careviceve-masine-i-dalje-rade-bez-tendera/>

[13] See at: <https://www.pobjeda.me/clanak/mans-dokazi-protiv-carevica-nesporni-tuzilastvo-da-preispita-odluku>

/recommendations

Recommendations:

- *The Statement on non-existence of the conflict of interest should be signed by ALL participants in the procedure, including representatives of subcontractors; it already exists as a solution in the law, but apparently, the statements are not checked*
- *The competent authorities of the Contracting authority should proactively check contracts and look for conflict of interest and other abuses*