

## CONCLUSIONS

### **Regional Conference: «Efficient implementation of European standards in the field of public procurement – legislative framework and best practices»**

The Conference, held on 22<sup>nd</sup> and 23<sup>rd</sup> September in the hotel «Panorama» at Bečići, the participants of which were 71, was opened by: Deputy prime Minister of the Republic of Montenegro for financial system and public expenditure, Mr. Miroslav Ivanišević, the Ambassador Paraschiva Badescu, head of OSCE Office in Podgorica, deputy head of OSCE mission in Serbia and Montenegro, Dr. Ray Kirkland, USAID Regional director, Veselin Šuković, Executive secretary SPAI/RSLO and Marko Lazarević, President of the Commission for Public Procurement of the republic of Montenegro. The organizers of the Conference are the Commission for Public Procurement and OSCE Mission in Serbia and Montenegro – Podgorica office, in cooperation with the Stability Pact Anticorruption Initiative/Regional Secretariat. The participants of the Conference were the representatives of Public Procurement Administrations, Commission for public procurement and anticorruption institutions which deal with public procurement from: Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Macedonia, Romania and Moldova. As for national participants, there were the following: Ministries, administrative organizations, local self-governments, business companies, Chamber of Commerce and NGOs. International organizations dealing with anticorruption fight had their high representatives: SIGMA/OECD, Council of Europe, USAID, UNDP Office, Stability Pact Anticorruption Initiative and OSCE.

The following conclusions were made at the Conference:

**First**, the role and importance was emphasized of the preferential treatment of national bidders in transition period as opposed to the principles of the equality of bidders. All countries participating at the Conference are in transition period, thus the aspects and modalities of regulating the preferential treatment of national bidders were emphasized as a priority topic in the region. The participants presented various ways of incorporating the preferential treatment of national bidders in laws and bylaws (Croatia, through the provisions related to the language in which offers are submitted, Bosnia and Herzegovina, in bylaws, Serbia, through the provisions of the law). It was concluded that giving preferential treatment makes one of the assumptions for creating conditions for more efficient development and technological progress, for securing greater market competitiveness of national bidders, easier access to new knowledge and experiences and accessibility of contemporary equipment and means of work, for the elimination of regional differences in the level of development, enabling efficient realization of appropriate programmes of environment protection and/or job creation in inadequately developed areas.

The criteria for giving the preferential treatment should be, amongst other things, the value of a bidder's original capital, the origin of the foundation capital, level of equipment and personnel skills, employment of residents, business references, investment in development and training, licenses and authorizations for work and so on.

While looking at the reasons for and against the introduction of the preferential treatment, the participants especially valued the circumstance that a great number of countries which were at this stage of accession to the European Union have been familiar with certain form of preferential treatment and retained it until the full membership in the European Union, which is in accordance with the rules of the World Trade Organization.

**Second**, the objections to the Draft Law on public procurement related to the establishments of clear definition of those who are supposed to implement, distinction of authorizations at the level of local self-government, securing greater degree of transparency of public procurement system by means of publishing public procurement plans, announcements and decisions on the web site of the Public Procurement Administration, importance of the general agreement for the implementation of the Law, especially with contracting authorities who are not budget users and in particular in accordance with the requests specified in the Agreement on Stabilization and Association, strengthening of the institutional framework – Public Procurement administration, State Commission and public procurement employees.

The need was emphasized for the adaptation of the appeal procedure with the character of public procurements and the necessity of efficient and timely decision making in the appeal procedure for the protection of rights and in that sense the strengthening the role of State commission, as well as the inadequacy of the administrative dispute in public procurement procedure, which, due to strict formalisms in judicial proceedings, has as its consequence a longer procedure that does not suit public procurements, which are of urgent character.

Also, the need was emphasized for the implementation of European standards in the organization of the Public Procurement Administration, the consequence of which are the reforms of public procurement system in Montenegro.

**Third**, the Conference brought into attention the possible links between the public procurement systems and their vulnerability to corruption. A special panel designed and moderated by RSLO representatives discussed about the importance of prevention and repression of corruption in public procurement, the most efficient measures to be adopted, victims of corruption and available channels for complaints, reparation of damages, sanctions and possible liability of the legal persons.

The participants stressed the necessity of establishing closer cooperation of the institutions in charge of public procurement internal audit – department for internal audit of the Ministry of Finance, external audit - State audit institutions and Public Procurement Administration. It is envisaged that this approach will ensure a more efficient control and monitoring of public procurement system and will enhance the impact of the preventive mechanisms against corruption.

Furthermore, participants highlighted the need for a better cooperation, coordination and communication among the Public Procurement Agencies, law enforcement agencies and judiciary in the process of detecting, investigating, prosecuting and adjudicating cases of fraud and corruption in public procurement.

The active participation of the experts and the interest showed for this topic entitles RSLO to analyze the possibility of organizing a follow-up Regional Conference dedicated to the vulnerable points and risk factors for corruption within public procurement mechanisms.

**Fourth**, the need was noticed for regional exchange of experiences, thus it is necessary to organize regional conferences annually in order to ensure permanent exchange of experiences and familiarization with the problems faced in practice and the solutions for the overcoming of the same. It was proposed for the topic of the next meeting to be legislation in wider sense, in the light of regulations which are directly or indirectly linked to the system of public procurements, in order to determine efficient mechanisms for the curbing of corruptive occurrences through adequate legislative solutions. Apart from that, it is necessary to discuss potential initiatives for the amendments of anticorruption pillars and strengthening of institutional frameworks for the curbing of corruption.

**Fifth**, the participants invite the European Union to give its contribution to the improvement of institutional and legislative framework for more efficient implementation of European standards in public procurements and strengthening the regional cooperation, through professional, technical and financial assistance to newly established institutions in accordance with the Law and initiatives for the intensification regional cooperation.

**Sixth**, during November and December of the current year, as a follow up of the conference, the publication will be issued with the presentations and conclusions from the Regional Conference and create conditions for the issuance of the publication which would contain excerpts from the most important rulings of the European Court of Justice.