

AIS Recommendations for interventions related to the Public Procurement Sector

AIS has carried out several activities under the Improvement of the Integrity of Public Contractors Project, aiming at creating an impact through two components of the project: i. strengthening civic actors, media, and non-governmental organisations ii. Public pressure for improving Public Procurement legislation and practice in the country

Regarding the second component, AIS became officially part of the working table with the Albanian Government in drafting the new Public Procurement Law. Our organization presented its findings and proposals regarding problems of legislation on public procurement, and mainly the integrity of public contractors at this working table (government; agencies; parliament; international assistance bodies). Also, AIS has proposed that the Government should develop a public procurement strategy, and is already working on proposing the priorities that such strategy should have, such as improved digitalisation of e-Procurement and the practices of scanning competitors through short listing in the process of public procurement.

Some of AIS Recommendations for interventions related to the public procurement sector:

- 1. Public procurements together with PPPs to be considered high-risk sectors in terms of corruption and be covered in a separate chapter in the National Anti-Corruption Strategy.** Corruption in the public procurement sector and Public Private Partnerships is expected to be on the highest position in terms of its influence and effects on the national economy. Corruption issues in these two sectors are expected to have a major impact on the country's economy in the coming years. For this reason, it is suggested that that the National Anticorruption Strategy be revised by focusing on better instruments for control, prevention, damage minimization, and punishment of the consequences of corruption and miss governance in these two sectors (PPPs and public contracting). Drafting a strategy for the sectoral development of Public Procurement (the strategy is already being drafted under the Public Procurement Agency) is an effort that is not expected to give any effects regarding corruption. The efforts of the Albanian Government to reduce corruption in these sectors should not be limited to drafting a sectoral strategy. Public procurements and PPPs should be the focus of the anticorruption strategy. This national strategy should focus on strengthening and coordination of independent institutions, which are expected to have a larger role in controlling and combatting the phenomenon.
- 2. Strengthening the Independent Monitoring and Social auditing Mechanism in the public procurement process, applying the Integrity Pact.** The High State Audit has increased and improved the quality of audits for public procurement in recent years, thanks to several projects with international donors or partnerships with counterpart institutions in the EU countries. However, the High State Auditing is post factum

auditing, which does not suspend irregular activities in real time. An Independent Mechanism (by watchdog civil actors and legal clinic) to control Public Procurement is a mechanism that needs to be institutionalized. So far there is a sufficient number of organizations and actors, who control, assess, identify, and analyze elements of risk and performance in public procurement. Likewise, freelance media also produces good product public procurement investigations. The country lacks co-ordination to support this group of civil actors to switch from a monitoring level to a more operational level (action). AIS organization proposes that the Albanian Government considers applying the Integrity Pact, an instrument that is being successfully piloted in several states, including 11 EU member states. This is an Integrity Pact, as a tool that seeks to improve transparency, accountability and integrity in public procurement. It was developed by Transparency International¹ to help governments, businesses and civil society fight corruption in public contracting. It consists of a process, typically led by a civil society organization that includes an agreement between a government agency and all bidders for a public sector contract to abstain from corruption during the process and commit to compliance with actions that are conducive to a clean and efficient procurement process. The initiative has been widely recognized as a success in bringing EU policies and administrations closer to citizens. It received the European Ombudsman's Award for Good Administration 2019 in the category "*Excellence in open administration.*"² The project was also included in the special G20 Compendium as a global good practice for promoting integrity and transparency in infrastructure development.³

The initiative is part of the broader action undertaken by the European Commission in tackling fraud and corruption, as well as enhancing administrative capacity in the use of EU funds.⁴

An "independent monitor" oversees Integrity Pact implementation and ensures all parties uphold their commitments under the agreement, bringing transparency and oversight to all stakeholders in a contracting process. Over the years, Integrity Pacts have been adapted and utilized in various countries, not only in the European Union, in different contexts and in varying procurement procedures, by Transparency International chapters, governments and other civil society organizations. Two general approaches to curbing corruption in procurement include **increasing transparency in the process**, and **increasing oversight by external agents**. More specifically, these approaches can focus more on making key information available to the public; on bringing together different actors involved to influence their behavior; or on observing and monitoring the different

¹ https://www.transparency.org/whatwedo/tools/integrity_pacts/5

² https://ec.europa.eu/regional_policy/en/newsroom/news/2019/07/07-01-2019-ombudsman-awards-integrity-pacts-as-excellence-in-the-field-of-open-administration?utm_campaign=58ca6a2173a6a3222e01b7f2&utm_content=5d1b8ca02011be0001e762e5&utm_medium=smarpshare&utm_source=generic

³ https://ec.europa.eu/regional_policy/en/newsroom/news/2019/07/07-10-2019-integrity-pacts-included-in-the-g20-compendium-of-good-practices-promoting-integrity-and-transparency-in-infrastructure-development

⁴ https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/

stages of public procurement processes. NGOs in Albania have established control and assessment mechanisms for public procurement, which have their methodology, product, impact, and satisfactory consistency in risk assessment of contracting. As an example, AIS with Open Procurement Albania; Nisma Thurje with several cases referred even to the Special Prosecutor's Office (SPAK); Exit.al or BIRN Albania through clear investigations and denouncements, etc. These are projects supported over the years by the programme for rule of law and good governance mainly by supported by donors like USAID; the Dutch Embassy and the US Embassy in Tirana; and even by the Swiss Government at a more local level Leviz Albania Project. While independent and external investigation and monitoring have produced a lot of visible results, the model of impunity, and the lack of accountability on the side of the government authorities have made corruption in public procurement to mark growth threatening the local economy. The institutionalization and strengthening of social auditing by strengthening the independent control and response mechanism for public procurement is an act that should be considered a binding condition for the Albanian Government. Equally, these civil actors with a role in the social auditing of corruption in public procurement should be supported by direct anticorruption programmers that increase institutional capacities of the organizations participating in such independent monitoring mechanism.

- 3. Improve Performance Assessment and Integrity Evaluation of Public Procurement Officers.** Independent Evaluation and Assessment based on concrete indicators (score process). Currently, there are several initiatives to increase the capacities of the Public Procurement Officials or Officers. There is also an expressed need for an education programme that creates Public Procurement professionals. The Public Administration School is expected to develop a training and capacity building program for that. Following the research of empirical risk cases of irregularities in tenders, AIS proposes and highlights the need for a more efficient model and methodology to evaluate Public Procurement Officials. The law should ensure that civil servants exercising the duty of public procurement officials are periodically evaluated by an independent *ad hoc* body, and not in any direct relation of influence with the official subject to evaluation. Currently, civil servants are evaluated by their direct supervisors. In the case the supervisor and the official are the same procurement authority, the evaluation loses objectivity and becomes subject to influence. Therefore, changes are proposed to be made both to the primary and secondary legislation to guarantee the official's independent evaluation. Equally, a rating (scoring) system needs to be established based on quantitative empirical indicators of efficiency, professionalization and integrity of the procurement officials. Assessment indicators should consider cases of contested and appealed procedures, cases of cancelled procedures for irregularities with documentation and notifications, and cases of contested pre-established criteria. Officials with a certain number of proven contestations and errors would have to get poor evaluations, including even termination of their right to work in the procurement sector. Currently, this system

and mechanism of performance evaluation is not empirical and quantitative; it is applied in the same manner as for other public administration officials and has left room for actions leading to problems with competition and clientelist favoritism. There are public procurement officials who systematically make mistakes, leading to cancellation of procedures and situations where the authority is legitimized to make direct purchases without competition.

- 4. Improved criminal policy to address cases of violation of equal participation in tenders or public auctions.** Criminal Liability for Legal Entities - Business Corporates. Our Criminal Code contains only one article that guarantees directly criminal liability for individuals who commit acts that violate participation in public tenders. This article is not widely applied in practice, and so far, the lack of efficiency of criminal justice institutions has caused criminal punishment of cases to be lacking. It is proposed to be carefully assessment of the need for interventions in the Criminal Code by regulating more cases of violations and subsequent actions in the tender process. It is also necessary to increase the capacity of the criminal justice professionals in terms of dealing with corruption cases as a whole, and cases regarding competitiveness in tenders. One recommendation is for a cycle of training and a mini-commentary for dealing with criminal liabilities related to actions affecting free competition and participation in the tenders to be considered. The School of Magistrates and the Law Faculty can engage in this context, exploring even models of other countries. It should also be considered problematic that corruption in tenders in our country is only subject to individual evaluation and punishment. The beneficiary legal entities (Business Corporates) are not subject to any investigation or criminal liability. This is a shortcoming of our criminal policy, which has systematically created premises for impunity. This allows for the same companies to participate in tenders and not classified as companies with records that would prevent them from participating in future procedures. A case of investigation into corruption tenders at the General Directorate of Prisons was followed by a situation, where a company participating in a fictitious tender continued to compete and win in public procurement procedures, even though their administrators were under investigation and sentenced for serious offences.
- 5. Auditing of eProcurement Information Technology System. Lack of efficiency in digitalization of Public Procurement, and the need for applying Open Contracting Partnership Standards.** Albania has applied procurements through its electronic system and digitalization of e-Procurement documents since 2009. The electronic infrastructure has not been used efficiently for years, setting flawed standards for the publication of procedures. The system is not well-structured and avoids complete control of the entire cycle of tendering and contracting. Not all the documents are digitally accessible. The contract planning document is a document that is most frequently missing. No steps have been taken to publish documents related to contract signing in a digital format. Documents of the same procedure are published under different sections of e-

Procurement, making it impossible to access the full cycle of information and tender documentation. Besides, there is no consistency in publication. Acts published in a digital format are removed within weeks from the site, denying the right to sustainable access. In addition, the system offers no option of automatic risk assessment for tender procedures. The system does not create any usefulness for internal or external audits of tender procedures. These issues with digitalization and electronic system are results of the lack of will of the Managers of the Public Procurement Agency and the missing ICT staff capacities. Suggested: 1. Auditing of the Information Technology System and the identification of the need for final interventions to ensure digitalization efficiency; 2. training for ICT staff that manages e-Procurement; 3. Legal regulations providing mandatory electronic access to all documents of the contracting cycle; 4. Work modules and instructions guaranteeing good structuring of tender documents for the entire cycle from planning to execution; 5. Application of algorithms that enable automatic assessment of audit risk and performance (redflag and risk assessment) and linking of the system to institutional auditing. Also, the Albanian Government is committed in the framework of OGP Action Plan to applying standards of Open Contracting Partnership. The Public Procurement Agency (PPA) must create a work plan for meeting this commitment of the Albanian Government and co-operate with non-governmental organizations that have expertise and experience in applying these standards.

The legal reform in Public Procurement continues, and our organisation will continue to work for consultations and proposals in its working groups and further with the parliamentary committees that will review the proposed drafts.

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