

SHADOW REPORT

ON PUBLIC PROCUREMENT
IN ALBANIA 2023





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December 2023



This report is developed as part of the project “Balkan Tender Watch” implemented by the Center for Civil Communications and the Balkan Tender Watch Coalition and financially supported by the Foundation Open Society – Macedonia.

Balkan Tender Watch is a regional coalition of CSOs working on fight against corruption in public procurement in the Western Balkans.



Publisher:

Center for Civil Communications (for the Balkan Tender Watch coalition member Res Publica Centre)

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Electronic edition

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INTRODUCTION

Starting from 2018, Balkan Tender Watch - a regional coalition of civil society organizations working on fight against corruption in public procurement - assesses the state-of-affairs in public procurement in the Western Balkans.

Based on the unique monitoring methodology comprised of 68 indicators, the average score for all six WB countries related to public procurement performance in terms of application of legislative, institutional, systemic and practical anticorruption measures is calculated at 67%, which means that 33% of all public procurements are still implemented under serious threat of corruption.

In 2022, the total value of public procurement in all WB countries amounted to total of 11.6 billion EUR. The average share of public procurement in the gross domestic product (GDP) of WB countries stands at 8.78%, while its share in total budget expenditure averages at 25.7%. When this amount is correlated to the calculated score of 67%, it could be inferred that, annually, 3.8 billion EUR are under direct threat of corruption.

As regards the general preparedness of WB countries in the area of public procurement, the European Commission has assessed Montenegro as the best prepared and Bosnia and Herzegovina as the least prepared country. Montenegro has moderate-to-good and Bosnia and Herzegovina has some level of preparedness. Kosovo is assessed as some-to-moderately prepared, with the remaining WB countries (Albania, North Macedonia and Serbia) falling within the range of moderate preparedness. All WB countries are recommended to improve integrity, fight against corruption and conflict of interests in public procurement, and to ensure consistent implementation of public procurement rules.

Public procurement in the Western Balkans is characterized by absence of/insufficient competition, incomplete transparency, lack of efficient control across the entire public procurement cycle, especially in respect to contract performance, and lack of integrity.

Almost all WB countries suffer some form of non-alignment of their respective legislative and institutional framework which creates problems in implementation of public procurements.

Impunity for violations, abuses and criminal offences committed as part of tender procedures remains the biggest problem in the fight against corruption in public procurement and hinders all and any efforts made towards more efficient public spending.

WB countries are recommended to further improve transparency, accountability and liability in public procurement, take specific measures aimed at detecting and preventing conflict of interests, promote integrity in public procurement, as well as process and monitor cases of malpractice and abuse.

WB countries should take urgent and enhanced efforts to ensure and promote competition, equal treatment and non-discrimination in public procurement, as well as to provide further professional and continuous training for persons involved in public procurement.

In addition to the Comparative Evaluation Report, the state-of-affairs in the field of public procurement at the level of individual WB countries is covered under annual shadow reports aimed to offer country-specific and evidence-based insight into and “local” view of public procurement: how effective is the public procurement system; is the legislative and institutional setup appropriate; and do the practical measures taken safeguard against corruption.

List of Abbreviations:

CA – contracting authority

CoE – Council of Europe

PPA – Public Procurement Agency

CSOs – civil society organizations

EO – economic operator

EU – European Union

EC – European Commission

GDP – Gross Domestic Product

IMF – International Monetary Fund

LPP – Law on Public Procurement

OECD – The Organization for Economic Co-operation and Development

PPC – Public Procurement Commission

SAI – Supreme Audit Institution

HIGHLIGHTS

KEY PUBLIC PROCUREMENT FIGURES, 2022	
Annual value of public procurement:	1.489 billion
Annual change under the value of public procurement:	EUR +22% in EUR, or +14% in ALL)
Public procurement as share of GDP:	9.40%
Public procurement as share of state budget expenditure:	27%
Average number of bids per tender procedure:	2.5
Share of tender procedures with one bid:	25%
Value share of open procedures:	76%
Value share of goods:	57%

- In the section on public procurement, the European Commission's 2023 Report for Albania notes that progress is not satisfactory compared to past years.
- The Supreme Audit Institution identified significant risks throughout the overall public procurement cycle, with persistent inefficiencies, lack of control, risks from inadequate qualifications, licenses and other criteria required, and irregularities leading to financial damages.
- Negotiating procedures without previously announced procurement notice, discrepancies in fund calculations, and insufficient legal knowledge among procurement staff members all contribute to a risk-laden landscape.
- Most common red flags for corruption are lack of transparency (inconsistent distribution of information to bidders), inadequate choice of procurement procedures, unjustified use of a noncompetitive procedure, unclear evaluation criteria, too narrow or too broad tender specifications, etc.
- Eight out of the ten highest value contracts in 2022 resulted in *red flag* risk for procedural irregularities, and competition issues, according to a study by Open Data Albania – a civil society organization that bases its activity on promoting transparency through data – which analysed the 100 tenders with highest contract value in 2022.

STATE OF AFFAIRS

The European Commission's assessment of public procurement in Albania has changed from:

*“**Good progress** was made during the reporting period, in particular by adopting further implementing legislation to the new law on public procurement, launching an electronic appeals and complaint system, developing and implementing of certified training course on public procurement, publishing first monitoring reports on the public procurement strategy and deploying real time “open data” on procurement activities, and including procurement related corruption risks in institutions’ integrity plan”;*

as noted in the EC's 2022 Report, to:

*“**Some progress** was made, in particular, through an increased use of the most economically advantageous tender award criteria”;*

in the EC's 2023 Report.

The same conclusion is valid in respect to EC recommendations. Notably, in 2021 it was reported that recommendations were **largely** implemented, but in 2022 the EC Report notes that recommendations **were only partially** implemented and remain valid.

In respect to integrity and conflicts of interests, the Public Procurement Agency (PPA) issued instructions for declaration of conflict of interests by public procurement officers and adopted a regulation on preventing conflict of interests in exercise of public functions at PPA.

The Supreme Audit Institution continues to report irregularities in public procurement at both central and local level.

While public procurement is featured among main areas covered by national cross-cutting strategies, such as the Cross-Cutting Strategy on Fight Against Corruption and the Public Finances Management Strategy, both of which include contributions by PPA on the basis of its regular reporting as part of periodic monitoring reports on implementation of relevant measures and achievements under performance indicators, tangible results in terms of fighting corruption in specific cases are still missing.

In 2022, the Supreme Audit Institution (SAI) reported 64 irregularities in public procurement, with an estimated damage to the state budget of approximately 3.1 million EUR (compared to 2.8 million EUR in 2020, based on smaller sample). In 2021, PPA imposed fines for 102 employees and proposed disciplinary measures for 145 employees.

As regards development of effective system for prevention of corruption in public procurement, Albania should again focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalisation. Albania has laid down a good foundation by significantly improving transparency through its comprehensive electronic system of public procurement and appeals, and by developing its review system to allow participants access to redress.

2022 was a challenging year for the Public Procurement Commission (PPC) in terms of digitalization of services as a whole, which has not changed only access to the review system for economic operators, but also behaviour of interest groups, including PPC. In particular, digitization of services accelerated decision-making whereby only 10.1% of complaints were handled beyond the legal deadline and shortened the time for handling complaints from 17 to 12 days. It was observed that, in 2022, contracting authorities avoided repetition of same mistakes/problems. In the same year, PPC continued cooperation with PPA by presenting the latter with motions for in-depth investigation for cases in which it had found administrative violations.

The Public Procurement Agency has been presented with 10 cases for investigation, one of which was further referred to the Network of Coordinators on Fights Against Corruption and the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests.

Moreover, in 2022, administrative fines were imposed for the heads of two contracting authorities on the grounds of non-cooperation with PPC.

In 2022, the capacity of PPC and the Administrative Court to deal with high number of appeals needed to be further improved. As a result of a cooperation agreement signed between PPC and the University of Tirana, specialised training courses on public procurement were developed and PPC staff completed a 13-week certified training course (on various topics) in the period September-December 2021.

Another interesting piece of information is the fact that the threshold for mandatory organization of open procedure has resulted in 48% of all public procurements in 2022 being organized as open procedures compared to their share of 40.3% noted in 2021. The increase in number and respective value of this type of procedures is explained by the change made to monetary thresholds under the new public procurement legislation, which has significantly reduced the upper monetary threshold. It should be that 2022 is the first full calendar year when the new legal provisions were implemented after adoption of the new Public Procurement Law, given that the new rules were implemented only in the second half of 2021.

In Albania, the public procurement market accounts for around 9.4% of GDP in 2022, compared to 10.7% in 2021, 9.4% in 2020 and 4.8% in 2019. The increased share in 2020-2021 was largely driven by post-earthquake reconstruction efforts (November 2019 and onwards) and decline in GDP due to the economic impact of the COVID-19 pandemic.

STATE OF AFFAIRS FROM THE PERSPECTIVE OF THE WATCHDOG ORGANIZATION AND BASED ON BROAD CONSULTATIONS

Albania has a central electronic public procurement portal where tender and contract notices, as well as other important information and guidance is published. Use of this portal is mandatory, including for low-value procurements. The procurement forecast register is developed and posted online. However, SAI reported 64 irregularities, with estimated damages to the state budget of around 3.1 million EUR, while PPA imposed fines for 102 employees and proposed disciplinary measures for 145 employees.

In December 2021, PPA introduced 'open data' with real-time information on public procurement procedures and archives dating back to 2010, but even this measure was insufficient to change the general public's perception on corruption in public procurement, preselected procurement winners and predefined outcome of procurement procedures.

While the completely new legislation on public procurement entered into force in 2021 and ensured further alignment of the legal framework with the 2014 EU Directives on Public Procurement, the thresholds set for competitive procurement of goods and services remain high.

PPA is the public authority mandated to propose regulatory measures, monitor compliance with public procurement rules and monitor contract performance. In March 2023, a new organisational structure was created for this entity, comprised of 48 job positions in total, of which eight are still vacant. In 2022, a regulation was adopted to strengthen the status of the Agency for Centralised Procurement. Key organizations responsible for public-private partnerships and concessions are the Ministry of Finance and Economy and the Concessions Treatment Agency (ATRAKO).

In 2022, a regulation was adopted that further clarifies the rules on invalidity of procurement contracts and PPC's role in this respect. The remedy system is easily accessible to economic operators, albeit subject to payment of fee. An electronic portal for submission and management of appeals and complaints is in place and provides real-time statistics. PPC completed the overhaul of its internal procedures to incorporate the new online procedures.

As regards development of effective system for prevention of corruption in public procurement, Albania should focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalisation.

According to SAI's 2022 Annual Report, key problems in the public procurement system concern:

- inefficient, ineffective and uneconomic use of funds in the field of public procurement due to lack of control over implementation of these procedures which, in many cases, are not carried out in compliance with the legal framework;
- budget discipline violations as part of public expenditure programming and execution, and late payment of expense or investment invoices, resulting in creation of arrears.

As regards legality of public procurement procedures, SAI's report identifies cases where:

- requirements defined by procurement unit staff regarding qualifications, licenses, and required certificates do not correspond to the procurement subject and the type of contract;
- failure to verify economic operator's ability, i.e. fulfilment of technical specifications; use of agreement schemes prohibited by non-life/life insurance economic operators;
- organization of negotiating procedure without previously announced procurement notice although the procurement in question does not fulfil conditions for that type of procedures; cases of limit fund calculations that are contrary to the legal framework in

force; failure to verify documents demonstrating fulfilment of eligibility criteria defined in the Standard Tender Documents (STD);

- lack of legal knowledge on the part of procurement officers; cases of failure to set up structures responsible to monitor contract performance, which jeopardizes the process of supervision and/or delivery of goods.

On implementation of public procurement for works, the audit findings show:

- differences in volume or calculation of works performed and those enlisted in the contract/ project; performance of works after the contract's end or beyond contract deadlines;
- construction works not performed in accordance with technical specifications;
- unfinished works, i.e. violation of the contract signed;
- breach of deadlines for contract performance; etc.

Irregularities and shortcomings detected in the field of public procurement concern:

- inadequate definition of the procurement subject;
- procurement planning in the absence of previously conducted needs-assessment for goods, work or services and, in some cases, in the absence of available funds;
- failure to deposit procurement orders to the Treasury before the start of procurement procedure;
- actions that lead to organization of procurement procedures without available funds and increase in debt accrual at the end of the fiscal periods;
- procurement units responsible for drafting tender documents employ officers with completed higher education, but their respective professions are unrelated to the procurement subject, which is most prominent in procurement of civil works due to lack of civil engineers knowledgeable about the procurement subject;
- use of criteria that do not correspond to the procurement subject, directly impacting competition among economic operators;

Cases are observed when the procurement unit has defined unreasonable eligibility criteria by imposing requirements that favour pre-determined economic operators, which indirectly affects attainment of the procurement's main objective.

Incorrect definition of eligibility criteria is generally noted in civil works contracts and relates to:

- determining license categories and category classification;
- requiring unreasonable license categories that do not match the volume of works or license categories unrelated to the procurement subject;
- requirements related to the number of employees that do not correspond to the volume of works and, in many cases, are set higher or lower than the actual number needed to attain the procurement's purpose, etc.;
- requirements related to additional documentation demonstrating the number of employees, for example, social security payment forms, etc.;
- unsubstantiated requirements for machinery that do not correspond to the volume of works, owned or rented;
- requirements for additional technical and management staff that should be employed, not outsourced, which limits participation of companies that do not have such staff on their payroll and could engage them temporary work contracts;
- use of special eligibility requirements by some contracting authorities related to submission of non-debtor certificate issued by the contracting authority, which exceeds the public procurement law requirements given that receipt of such certificates reveal

names of economic operators participating in the procurement procedure, thereby compromising the procedure and directly affecting fair competition in the procurement process, etc.;

- in some cases, members of bid-evaluation units have unfairly disqualified economic operators that submitted lower-value bids and have qualified economic operators with higher-value bids, resulting in damages to the contracting authority's procurement budget or illegality in implementation of public procurements;
- failure to analyse reasons for tender annulment prior to organization of new procurement procedure that would have allowed necessary corrections to be made and would have increased competition.

On problems identified in implementation of contracts for works and goods, the audit has found economic damages in the amount of 112,802 thousand ALL as a result of non-implementation of rules in the field of construction and failure to conduct construction works approval and handover. In particular, identified irregularities and problems relate to:

- technical deficiencies due to inadequate definition of technical specifications (failure to study the terrain) that required substantial changes during performance of contracted works;
- initial estimates that do not match the project's volume;
- price caps that are not provided for in construction works pricing manuals, are not accompanied by price analyses or are based on price analyses that are not conducted according to the regulations in place;
- postponed deadlines for completion of works without technical justification to avoid contractual penalties for delays in completion of the works;
- deviations from situational volumes, revealed by comparison of technical file documentation against actual works performed.

PPA's reports did not include data on corruption cases in 2022. Therefore, the Agency was presented with a freedom of information request inquiring about this matter, but in its response the Agency informed that *"in the year 2022, there were no corruption cases or reports referred to the prosecution office"*.

Given that the General Directorate of Anticorruption's 2022 Annual Report is not published yet, this institution was also addressed with a freedom of information request, but with the same outcome, i.e. the General Directorate's response read: *"Based on performed checks, in 2022 the General Directorate of Anticorruption has not filed any criminal charges in the field of public procurement"*.

Based on all these reports, FOI requests and media consultation, it can be concluded that public authorities are hesitant to forward corruption cases for further processing by competent authorities in an attempt to hide behind law-stipulated goals, leaving this responsibility to the media and civil society organizations.

Furthermore, given the exceptions from application of the new Law on Public Procurement that entered into force in 2020, more and better results in the fight against corruption were expected, but in reality results are the same or even worse – non-existent.

Another significant element that should be analysed concerns the extent of changes made to forecast registers as important performance indicator related to budget execution and good planning on the part of contracting authorities.

According to PPA's 2022 Report, performance of forecast register was calculated at 15.23%, expressed as the ratio of elements changed versus total elements that have not been cancelled. Hence it turns out that 85% of elements published, i.e. foreseen and implemented or under implementation, have not been changed. Except for minor improvement and positive

trend compared to the situation in 2021, efforts are still needed on the part of all stakeholders involved to further improve the performance of the public procurement system.

The European Commission' 2023 Progress Report for Albania again reiterates that, in respect to development of effective system for prevention of corruption in public procurement, Albania should focus its efforts on further strengthening the functioning of the overall system in order to increase competition, compliance and professionalisation. Albania has laid down a good foundation by significantly improving transparency through its comprehensive electronic procurement and appeals system, and by improving its review system to allow participants access to redress.

IDENTIFIED CORRUPTION RISKS

BASED ON THE MONITORING OF PUBLIC PROCUREMENT PROCEDURES, IT COULD BE CONCLUDED THAT EACH STAGE OF THE PUBLIC PROCUREMENT CYCLE IS PLAGUED WITH CORRUPTION RISKS.

While the new legislation on public procurement adopted in 2020 further aligned Albania's legal framework with the EU *acquis*, the EC's 2023 Report notes that progress is not satisfactory compared to past years.

The Supreme Audit Institution identified significant risks throughout the overall public procurement cycle, with persistent inefficiencies, lack of control, risks arising from inadequate eligibility criteria, license requirements and other criteria required, and irregularities, all leading to financial damages. Moreover, problems related to use of negotiating procedure without previously announced procurement notice, discrepancies in calculation of funds, and insufficient legal knowledge among procurement officers contribute to a risk-laden landscape. The state audit reveals shortcomings in contract/project implementation, including deviations from situational volumes, technical deficiencies, and discrepancies between initial estimates and actual volumes. The risk of corruption looms large and is evident in the public authorities' reluctance to report cases and the absence of criminal charges filed by anticorruption bodies.

The overall system needs to be strengthened, with special emphasis on competition, compliance, and professionalization, as well as efforts to address identified risks in comprehensive manner that would ensure a more robust and transparent public procurement environment in Albania.

Most common corruption red flags include lack of transparency (inconsistent distribution of information to bidders), inadequate choice of procurement procedures, unjustified use of noncompetitive procedures, unclear bid-evaluation criteria, too narrow or too broad contract specifications, etc.

Open Data Albania - a civil society organization that bases its activity on promoting transparency through data - has analysed the top 100 tenders with the highest contract value in 2022. According to their data, 39 of these tenders were organized as limited procedures, which implies a high risk to competition.

According to Open Data, economic efficiency of bidding in these 100 tenders is deteriorating: *"None of the tenders has guaranteed an offer less than 95% of the procurement's limit value. Even the main part has this level of 99.9%".*

Eight out of the ten highest value contracts in 2022 raised *red flags* related to risks of procedural irregularities and competition issues. In 2022, the Albanian Road Authority (ARA) organized as many as three of these high-value tenders.

The highest-value tender in 2022 concerns expansion of a national road (phase 1) and was organized by the Albania Road Authority. The contract was awarded under procedure in which four of the total of six economic operators were disqualified during the evaluation phase, all of which had offered lower price bids.

The second highest-value contract concerns another tender procedure organized by the Albanian Road Authority (construction of national road – Lot 2) in the value of 2.165 billion ALL and was awarded to ANK. Red flags identified in this tender are related to disqualification of all economic operators except for the contract-winning bidder.

The third highest-value contract concerns the Traffic Monitoring Centre, awarded to the union of operators led by MC Networking, in cooperation with Intera Elektronik Sanayi ve Ticaret Anonim Sirk, and Gjoka Konstruksion, worth 2.12 billion ALL, VAT excluded. Again, the contracting authority is ARA and the tender procedure raises *red flags* for irregularities.

In terms of contract value, construction of the National Theatre (phase I) is ranked as the fourth highest-value tender procedure. This tender was organized by the Municipality of Tirana and was awarded to the bid submitted by Agi Kons in cooperation with BE-IS, in the amount of 1.84 billion ALL, after all other economic operators had been disqualified.

In fifth-ranked contract concerns supply of oxygen and gas for medical use and was awarded by the Ministry of Health to the Union of Economic Operators GTS shpk and Messer Albagaz whose successful bid amounted to 1.62 billion ALL, VAT excluded. Again, the tender procedure is riddled with competition problems (red flags) due to development of favouring eligibility criteria.

Open Data Albania monitors tender procedures in the country's main sectors such as: infrastructure development; health; local government; public procurement by state-owned enterprises, etc. Its analysis of the top 100 contracts in terms of contract value shows red flags for risks related to procedural irregularities and competition issues.

RECOMMENDATIONS

IN ALBANIA, OR ANY COUNTRY FOR THAT MATTER, FIGHTING CORRUPTION IN PUBLIC PROCUREMENT REQUIRES A COMPREHENSIVE AND MULTI-FACETED APPROACH. RECOMMENDATIONS THAT COULD BE USEFUL IN THAT REGARD INCLUDE:

- ALIGNING CONCESSIONS, PPP LAWS WITH EU STANDARDS** National legislation should be harmonized with the EU acquis in the field of public procurement through alignment of the legislative framework on concessions and public-private partnerships.
- PROMOTE COMPETITIVE PROCUREMENT AND ECONOMICALLY ADVANTAGEOUS TENDERS** Continuous efforts are needed to ensure competitive procurement procedures, with focus on further encouragement for use of ‘the most economically advantageous tender’ as contract-award criterion and framework contracts.
- ENHANCE E-PROCUREMENT SYSTEM** The Electronic Procurement System should be continuously improved, especially in respect to archived procedures that would allow access to data from previous tender procedures with a view to identify problem issues from the past and avoid them in future public procurement.
- ASSIST PPA IN ENSURING FAIR, EFFICIENT PUBLIC PROCUREMENT AND BOOSTING CONTRACTING AUTHORITIES’ PERFORMANCE** PPA should provide assistance to contracting authorities in preparation of public procurement to minimize cases in which eligibility criteria defined by contracting authorities restrict participation of and fail to ensure fair competition among economic operators and to enhance the performance of contracting authorities when implementing public procurement in order to guarantee efficiency of such procedures.
- DEVELOP GUIDELINES FOR COST-BASED MOST ECONOMICALLY ADVANTAGEOUS TENDER EVALUATION** Guidelines for use of cost-based evaluation of the most economically advantageous tender should be developed and promoted.
- CREATE GREEN PROCUREMENT ROADMAP** Green Procurement Roadmap should be created to ensure that public procurement take into consideration environmental and energy efficiency requirements when developing technical specifications, selection criteria and contract-award criteria.
- FORM INDEPENDENT BODY TO OVERSEE PUBLIC PROCUREMENT CONTRACT EXECUTION & DEFINE BUDGET INSPECTION CRITERIA** An independent body should be established and tasked with supervision over performance of public procurement contracts, including adoption of adequate internal acts that would regulate in details the manner in which the budget inspection performs supervision and the criteria for selection of contracts that would be subject of such supervision.
- TRAIN PROCUREMENT OFFICIALS; ENHANCE INTER-INSTITUTIONAL COORDINATION** Training on public procurement standards, anticorruption measures and proper implementation of procurement procedures should be provided for procurement officers and other stakeholders. Also, greater coordination should be ensured among all entities involved in public procurement through law-mandated institution and other forms of cooperation.
- ESTABLISH MECHANISMS TO PROTECT WHISTLEBLOWERS** Effective mechanisms should be implemented to protect whistleblowers reporting corruption in public procurement.
- INCREASE PROCUREMENT TRANSPARENCY**

EDUCATE PUBLIC; ENCOURAGE CIVIC ENGAGEMENT IN MONITORING PUBLIC PROCUREMENT

Transparency of the public procurement process should be ensured by making all relevant information easily accessible to the public.

ENHANCE COLLABORATION BETWEEN PPA, PPC, AND PROSECUTOR'S OFFICE

The public should be made aware about the negative impacts of corruption on the society and the economy and civic engagement should be encouraged in monitoring and reporting corrupt practices in public procurement.

Greater collaboration is needed between PPA, PPC and the prosecution office in order to address the issue of failure to report corruption cases.

It should be reiterated that successful implementation of these recommendations requires commitment by the government, collaboration between different stakeholders, and ongoing efforts to adapt to emerging challenges. Regular review and adjustments to the Anticorruption Strategy is also of crucial importance to ensure long-term fight against corruption in public procurement.

