Protection of Rights in the Public Procurement Procedures in Montenegro

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RELEVANT ACQUIS
(partially aligned)


LEGAL FRAMEWORK

- Law on Public Procurement ("Official Gazette of Montenegro" no 42/11);

- Law on General Administrative Procedure ("Official Gazette of the Republic of Montenegro" no 60/03, "Official Gazette of Montenegro" no 32/11);

- Law on Administrative Disputes ("Official Gazette of the Republic of Montenegro" no 60/03, "Official Gazette of Montenegro" no 32/11).
GENERAL OVERVIEW

1. Legal Basis and Institutional Framework

2. Pre – contractual protection

3. Post – contractual protection
1. Legal Basis and Institutional Framework

**LEGAL PROTECTION**

Constitution of Montenegro ("Oficial Gazette of Montenegro" no 1/07)

- Article 19 “Everyone shall have the right to equal protection of its rights”.
- Article 20 “Everyone shall have the right to legal remedy against the decision ruling on the right or legally based interest thereof.”

**ADININITRATIVE PROTECTION**

**SUPERVISION**

- Internal Audit
  - Decentralised system

- External Audit
  - State Audit Institution

- Inspection Supervision
  - Administration for Inspection Affairs

**CONTROL**

- State Commission for the Control of Public Procurement Procedures
  (Chapter VI of the Law on Public Procurement Procedure and the Law on General Administrative Procedure)

**JUDICIAL PROTECTION**

- Administrative Court of Montenegro
- Supreme court of Montenegro
- Basic court
- Commercial court
- Constitutional court of Montenegro
2. Pre – contractual Protection

State Commission for the Control of the Public Procurement

• Independent and autonomous legal entity, established by the Law.
• Composed of the President and 4 members appointed by the Government on the basis of the public announcement, professionally performing their functions.
• President may be a person fulfilling legal requirements for a judge of the Basic Court, whereas the member may be a lawyer with passed professional examination for working in state authorities with a minimum of 5 years of prior working experience.
• President and members are appointed for a period of 5 years and may be reappointed.
• Competences and authorization of the State Commission are prescribed by Article 139 of the Law on Public Procurement.
Procedure Initiation

• Complaint shall be lodged before the State Commission, within 10 days from the day of receipt of the decision of the contracting authority or if the contracting authority fails to undertake actions that are infringing the rights of tenderers or person interested in the public procurement procedure. The right to appeal have bidders and all other interested persons.

• Complaint may be lodged against all phases of the public procurement procedure, as well as against the decision on selection of the most advantageous tender.

➤ STAND STILL PERIOD:
• Timely presented complaint shall postpone all further activities of the contracting authority until the adoption of the decision on complaint;

❖ Exception;
• Public procurement contract may not be concluded prior to the expiration of the stand still period of the complaint and the adoption of the decision on complaint.

• Fee for the procedure.
Deciding on Complaint

- Premission of the contracting authority to decide on appeal;

- State Commission shall decide on complaint within 15 days from the day of receipt of the complaint. Exceptionally, the deadline may be extended to additional 10 days;

- The Decision of the State Commission for the Control of Public Procurement Procedures;

- Reasoned decision of the State Commission for the Control of Public Procurement Procedures shall be delivered within three days to the applicant and to the contracting authority and shall be published on the website www.kontrola-nabavki.me;

- An administrative proceeding may be initiated against the final decision of the State Commission.
Control of the Public Procurement Procedure

• State Commission carries out the control of the public procurement procedures, the value of which is exceeding EUR 500.000;

• Within 5 days from the day of publishing the decision on the most advantageous tender, the Contracting Authority is obliged to submit the complete documentation to the State Commission for the purpose of control;

• Any contract entered prior to adoption of the decision of the State Commission, shall be considered null and void;

• State Commission shall carry out the control within 30 days from the day of documentation submission.
3. Post – contractual Protection

Judiciary Protection

• **ADMINISTRATIVE COURT OF MONTENEGRO** – decides in administrative disputes on the legality of the State Commission’s decision and on the request for reopening the administrative proceeding, inter alia, of “a person who was supposed to participate in a procedure as a party, or interested person, and who was deprived of the opportunity to participate in an administrative proceeding”

• **SUPREME COURT OF MONTENEGRO** – decides on the request of a party that participated in the administrative proceeding and state prosecutor, on extraordinary legal remedies against the decision of the Administrative Court and decides on the request for reopening of the procedure completed on the basis of the final ruling, inter alia, if “interested person was deprived of the possibility to participate in the administrative proceeding”

• **CONSTITUTIONAL COURT OF MONTENEGRO** – decides on constitutional complaint lodged against individual act of the state authority, local – government authority or organization exercising public powers, due to the infringement of human rights and freedoms guaranteed by the Constitution, after exhausting all effective legal remedies.

• **BASIC COURTS** – decides on complaints lodged against the invalidity of a contract, - decides on complaints lodged for compensation of damages, - decide on the criminal offense, seizure of proceeds of crime and decides on a claim under property of injured party.

• **COMMERCIAL COURT** - in first degree decides in disputes between companies, entrepreneurs and other legal entities which do business activity from their economic relations.
Data on State Commission’s work in 2012 year