



## REPORT

on

**the Call for Open Tender for the Design and Works of Struma  
Motorway, Lot 3.1 Zheleznitsa Tunnel**

### PHASE I

**Analysis of the Call Preparation and Tender Documentation.  
Suspension of the Tender Procedure. Closure of the National  
Company “Strategic Infrastructure Projects”**

## SUMMARY

The report presents the findings of Transparency International Bulgaria, an independent observer, about the call preparation and tender documentation in the call for open tender for the design and works of Struma motorway lot 3.1, Zheleznitsa tunnel.

The Zheleznitsa tunnel covers a road section of approximately 4.5 km falling under lot 3.1 of the Struma motorway. The project is funded under the Operational Programme Transport and Transport Infrastructure 2014-2020, and the awarding authority is the National Company “Strategic Infrastructure Projects”.<sup>1</sup> The timeframe for execution of the design and works contract is 1,400 days and the estimated value is BGN 250 million.

The civil monitoring of the call for tender is effected under an Integrity Pact concluded in 2015 between the awarding company and the independent observer. Monitoring has been conducted by an expert team of Transparency International Bulgaria comprising specialists in the area of legal, engineering and geology sciences. Monitoring of the call preparation took place in the period December 2015 – August 2016.

Transparency International Bulgaria report reviews compliance with the major principles of public procurement laid down in the Public Procurement Act<sup>2</sup> and further elaborated in the Rules of its Implementation, namely publicity and transparency, free and fair competition and equality, and non-discrimination.

The monitoring team has made its assessment on the basis of an analysis of the tender documentation, other publicly accessible documents and information related to the call, documents and written answers provided by the awarding authority upon the team’s request, as well as an on the spot check in the office of the awarding authority.

Although it has not provided all documents required by the monitoring team, the awarding authority has nevertheless presented well-grounded replies and/or copies of documents that give a clear picture of the process of call preparation. To ensure more transparency and to allow for more reliable and correct findings by the observer, it is necessary to discharge in a stricter manner of the commitments entered into under the Integrity Pact.

### Conclusions and comments

- By and large, the awarding authority has complied with the statutory requirements and has acted so as to ensure that the tender is further conducted in a lawful manner.
- The review of the tender documentation justifies a conclusion that it is relatively complete; statutory requirements have been met; the documentation has been elaborated in line with the applicable rules and procedure of the awarding authority.

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<sup>1</sup> By amendments to the Roads Act of April 2016 (SG no. 30 of 15 April 2016), the state enterprise has been wound up and the Roads Infrastructure Agency has been designated to be its legal successor.

<sup>2</sup> All references in the report to the Public Procurement Act concern the Public Procurement Act in force from 6 April 2004 to 15 April 2016 applicable to the monitored tender.

- For the purpose of elaborating the tender documentation, the awarding authority has mobilized expert capacity, which guarantees its quality. In-house control has been exercised and control and consultation rules and procedures have been duly applied.
- The Public Procurement Agency has exercised ex-ante control, following which certain corrections have been made to the tender documentation. In case the control body's suggestions have not been endorsed, the awarding authority has provided reasoned explanations.
- The Standard Contract Terms of the public procurement are in line with established international standards such as FIDIC. Nevertheless, it would be more appropriate that in similar tenders the awarding authority use template contracts where all provisions are made public. This will enhance greater transparency and control over implementation.
- The awarding authority could invest some effort in the elaboration of General Conditions that interpret the established international standards and are in line with the applicable legislation. In this way a series of technical problems would be overcome such as copyright protection or errors due to unpunctual translation. In general, this will help overcome risks of legal insecurity in participants and introduce more guarantees for the protection of the public interest.

The present report has been prepared in the framework of the European Commission initiative „Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds, Phase 2”. The project involves civil monitoring of public procurement procedures funded by European resources in a total of 11 EU Member States. The initiative has been implemented in partnership with 17 non-governmental organizations and is coordinated by the Global Anti-Corruption Coalition Transparency International.

The initiative aims to establish, through promoting a wider implementation of Integrity Pacts, a preventive mechanism for safeguarding public spending. The application of this instrument in practice demonstrates its importance for complying with the principles of competition, equality and non-discrimination. The Integrity Pact lays down rules for independent civil monitoring of public procurement procedures thus contributing to enhancing transparency and integrity in public procurement.

In Bulgaria the project is implemented by Transparency International – Bulgaria. It conducts monitoring of the call for an open tender for the design and works of Struma motorway, lot 3.1 Zheleznitsa tunnel, originally opened by the National Company “Strategic Infrastructure Projects”. Pursuant amendments to the Roads Act of April 2016 (SG no. 30 of 15 April 2016), the state enterprise has been wound up and the Roads Infrastructure Agency has been designated to be its legal successor.

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