



## REPORT

on

**the Public Procurement Procedure for the Design and Works  
of Struma Motorway, Lot 3.1 Zheleznitsa Tunnel (terminated)**

### PHASE II

**Monitoring of the work of Evaluation Committee.  
Termination of the Procedure**

## SUMMARY



This report presents the findings of Transparency International Bulgaria, an Independent Observer, regarding the second phase<sup>1</sup> of the procurement procedure – evaluation of the submitted offers in the call for open tender for the design and works of Struma motorway lot 3.1, Zheleznitsa tunnel. The Contracting Authority had to terminate the tender in April 2017 during the prolonged evaluation phase.

The civil monitoring of the procurement procedure is implemented under an Integrity Pact concluded in 2015 between the Contracting Authority, the National Company “Strategic Infrastructure Projects” (NCSIP), and the Independent Observer. Following the termination of the NCSIP in April 2016 and the appointment of the Road Infrastructure Agency (RIA) to take over the completion of the on-going tender procedures for design and construction of the Struma motorway, TI-Bulgaria and the RIA signed<sup>2</sup> an annex to the Integrity Pact to officially declare mutual commitments for cooperation.

Monitoring has been conducted by an expert team of Transparency International Bulgaria, including legal advisors, sociologist, engineer, and geologist. Monitoring of the evaluation phase took place between August 2016 and April 2017.

Transparency International Bulgaria report reflects on the compliance with the major principles laid down in the Public Procurement Act (PPA)<sup>3</sup> and further elaborated in the Rules for its implementation, namely publicity and transparency, free and fair competition and equality, and non-discrimination.

## FINDINGS, CONCLUSIONS, AND COMMENTS

### Bidders

After the relaunch of the procedure<sup>4</sup> the new deadline for submitting of offers was set to 15 August 2016. A total of seventeen participants, including fifteen consortia and two companies, submitted bids for the tender. Among them were businesses from Bulgaria, Greece, Italy, Poland, Spain, and Turkey. Almost all major Bulgarian construction companies were represented. This reconfirms the common understanding that open procedures contribute to increase of the competition and consequently could help achieve best value for money.

---

<sup>1</sup> Summary Report regarding the initial phase of the tender in English is available at [http://integrity.transparency.bg/en/wp-content/uploads/sites/2/2017/02/InitialMonitoringReport-Summary\\_EN\\_w.pdf](http://integrity.transparency.bg/en/wp-content/uploads/sites/2/2017/02/InitialMonitoringReport-Summary_EN_w.pdf)

<sup>2</sup> Cf. <http://integrity.transparency.bg/en/integrity-news/ti-bulgaria-and-the-road-infrastructure-agency-will-collaborate-within-the-design-and-build-of-zheleznitsa-tunnel-at-the-struma-motorway/>

<sup>3</sup> All references in the report to the Public Procurement Act concern the presently repealed Public Procurement Act, which has been in force between 06.04.2004 and 15.04.2016 and was applicable to the monitored public procurement procedure.

<sup>4</sup> Suspended from March 2016 to July 2016 because of the termination of the NCSIP.

## Evaluation committee

The evaluation committee has been appointed in compliance with the legal requirements in terms of date of appointment, number and professional qualification of the members, appointment of external experts and deadlines for concluding of the evaluation and ranking of the submitted offers.

The first meeting of the evaluation committee took place on 16 August 2016. The meeting was open to public, hence representatives of the bidders, the media, and the Independent Observer were present. During the meeting the evaluation committee announced the bidders and performed preliminary check for completeness of the submitted documents.

Generally, the open meeting was conducted in accordance with the procedures stated in the law. However, two comments might be made.

The first is in regard to the declaration of conflict of interest (Col). The Committee members are required to declare absence of conflict of interest after receiving of the list of bidders. In the monitored procedure the bidders were mostly associations of companies without official legal personality. Thus upon receiving of the list, the committee members did not have sufficient information regarding all legal persons who participate in the bidding. The law also states that Col should be re-declared at each phase of the procedure upon change or ascertainment of earlier declared circumstances. While we recognize the professionalism of the Contracting Authority staff, we consider it a good practice to remind this obligation to the committee members during the open meeting.

The second comment is regarding the preliminary check of the documents provided by the bidders to demonstrate the compliance with eligibility criteria, which is usually done during the first open meeting of the evaluation committee. The rules require that each bid is completed with a list of all submitted documents. During the open meeting the evaluation committee members cross-checked only those lists for presence or absence of the necessary documents. Instead, our recommendation is that the evaluation committee did actual verification of submitted documents according to a check-list, which is prepared in advance and according to the requirements of the Contracting Authority. This would save both to the committee and the bidders time to become aware if any important piece of evidence was missing.<sup>5</sup>

The original deadline for committee's work was not met. According to the appointment, the evaluation committee had to assess the offers and propose contractor by mid-November 2016. No minutes of the committee's work were published within that deadline, nor any communication on the reasons for the delay was publicly released.

In early March 2017 the Contracting Authority published on its webpage two protocols from conducted working sessions of the evaluation committee. The first one covered the open meeting and the second was from a session conducted in February 2017. Visible from the second

---

<sup>5</sup> The new PPA (in force as of April 2016) provides for usage of the European Single Procurement Document in all procurement procedures, which replaced most of the documents required by the repealed law.

protocol, in January 2017, six months after the opening, the Contracting Authority addressed all bidders with inquiry to prolong the validity of their offers till 10 April 2017<sup>6</sup>. The committee then proceeded with assessment of the bidders' compliance with the eligibility criteria. Only two offers were found to be complete and, according with the law, the evaluators granted the bidders five days to submit missing information and documents. Also, the protocol read that one bidder did not prolong the validity of their offer within the required deadline, thus the evaluation committee suggested its exclusion from further evaluation.

### **Termination of the tender**

On 4 April 2017 the Road Infrastructure Agency published on their website Decision no. 27/04.04.2017 for termination of the procedure. None of the interested parties challenged it in the Commission for Protection of Competition within the statutory timeframe. The Decision thus came in force and the termination became valid.

The Contracting Authority gave five reasons to motivate their decision. Transparency International – Bulgaria earlier published an analysis of four of the five motives<sup>7</sup>. The remaining fifth one, being least motivated, read that the evaluation committee discovered that part of an offer was missing. Although the case triggered broad public and media reaction, the authorities were abstaining from revealing any details, excusing themselves with the started investigation.

While we recognize that termination of the procurement procedure was the only possible way for the RIA to overcome the consequences of the event, it represents a serious negligence of rules for safekeeping and access to sensitive information. The only other option was the bidder, whose offer was found missing, to withdraw from the tender.

The lack of reaction of the business and in particular of the bidders on the tender is also a concern. The bidders were put on-hold for indefinite periods without any clear communication on the reasons, e.g. for delay of the relaunch of the tender and for failure to conduct the evaluation within the initial deadline. Although the business had all reasons to complain against unfavorable treatment, they restrained from publicly expressing of their positions.

### **Integrity Pact implementation. Communication between the Contracting Authority and the Independent Observer**

Despite the commitments made upon signature of the Integrity Pact, the Independent Observer faced issues in communication with the RIA during the monitoring of the second phase

---

<sup>6</sup> The initial validity term, as set in the tender documentation, was 120 days after the deadline for submission, which corresponded to the deadline for their evaluation by the committee.

<sup>7</sup> Available at: [http://integrity.transparency.bg/en/wp-content/uploads/sites/2/2017/04/LegalAnalysis\\_201704\\_EN.pdf](http://integrity.transparency.bg/en/wp-content/uploads/sites/2/2017/04/LegalAnalysis_201704_EN.pdf)

of the tender. The Contracting Authority replied to Monitor's inquiries selectively and with delays as long as several months.

Partially, the reasons might be sought in the dynamic broader political situation, which put all national administrations in an uncertain environment. Further, in the case of the Road Infrastructure Agency, several changes in the top management took place.

We consider the strict compliance of the Contracting Authority with the undertaken commitments is a key prerequisite for successful implementation of the Integrity Pact. Those affect not only the quality of the monitoring reports, delivered by the Independent Observer, but also contribute to reaching the ultimate goal of the IP – more transparency and accountability of the procurement procedure.

After improvement of the communication between the Independent Observer and the Contracting Authority after publication of the original Bulgarian version of this report, we hope the Road Infrastructure Agency will keep closer to the commitments made with the signature of the Integrity Pact.

*The present report has been prepared within 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 movement 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.*

This document has been prepared for the European Commission, however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

© 2018 Transparency International – Bulgaria. All rights reserved.

TRANSPARENCY INTERNATIONAL – BULGARIA

50, Sandor Petofi Str., 1463 Sofia, Bulgaria

T: +359 2 9867713, +359 2 9867920

[mbox@transparency.bg](mailto:mbox@transparency.bg)

<http://integrity.transparency.bg>

<http://transparency.bg>