

Nature of corruption in the public procurement in Hungary

Prepared in the frame of the project

*“Prospects of Fighting Corruption in the Post-socialist Countries:
The cases of Russia and Hungary”*

(sponsored by USAID, IRIS, KPMG Consulting Barents Group)

Foundation for Market Economy

Budapest, November 2003

Foundation for Market Economy

Leader of the Hungarian research team and editor of the Hungarian studies

dr. Mária Major Dezsériné

Authors of the Hungarian case study:

:

dr. Tamás Benedek
dr. Mária Major Dezsériné
Magdolna Knáb
Adrienn Krassó
Adrienne Trönnberg-Révai

Contents

<u>Introduction</u>	4
<u>1 Development of the Hungarian public procurement practice</u>	6
<u>1.1 The development of public procurement in numbers</u>	6
<u>1.2 Anti-corruption legislation regarding the public procurement</u>	7
<u>1.3 Regulatory system and operation conditions of public procurement procedures</u>	8
<u>2 The nature of public procurement</u>	10
<u>2.1 Changes in the scope of the Act on Public Procurement (corruption front door)</u>	10
<u>2.1.1 Preparedness of those applying the law, headcount shortage, problems related to interpretation and approach</u>	11
<u>2.1.2 Contradictions lying within other requirements pertaining to the regulation of budget financing; special problems arising with practical solutions</u>	12
<u>2.1.3 Successful assertion of group interests in excluding openness and transparency</u>	12
<u>2.2 Evaluation of ensuring equal opportunities, transparency and clarity in public procurement (analysing further corruption back doors)</u>	13
<u>2.2.1 Problems pertaining to the announcement of public procurement procedures</u>	13
<u>2.2.2 Problems in resolution/evaluation process</u>	14
<u>2.2.3 Evaluation of audits, controls of the public procurement process</u>	16
<u>3 Overview of findings and recommendations</u>	17
<u>3.1 Evaluating efficiency of public procurement from the point of corruption and savings in public money</u>	18
<u>3.2 Conclusions, recommendations</u>	19
<u>3.2.1 Moderating corruption risk by amending the regulation (PPA)</u>	20
<u>3.2.2 Handling corruption risk during the creating and decision-making process of tenders</u>	22
<u>3.2.3 Moderating corruption risk in public procurement by control and monitoring</u>	23
<u>Bibliography</u>	24

Introduction

This study was developed in the frame of the project titled „*Fighting corruption in post-socialist countries: cases of Russia and Hungary*” sponsored by *USAID, IRIS, KPMG Consulting Barents Group*¹ with participation of the following NGOs: **Foundation for Market Economy** (Budapest), **Center for Independent Social Research** (St. Petersburg) and **American University Transnational Crime and Corruption Center** (Washington). The Hungarian case study is devoted to surveying the nature of corruption by reviewing development path of the public procurement procedure in Hungary.

Purpose of the Hungarian research was to review the different facts and opinions in connection of setting a limit to reducing corruption in the public procurement procedure and also to value the chance of developing the anti-corruption practice in it. It could be stated on the basis of opinions collected at the relevant organizations and enterprises that both the buyers and sellers are interested in decreasing corruption, increasing transparency and equal chances and also improving efficiency of operation in course of the public procurement procedure. FME team is expecting that corruption danger could be decreased by monitoring the transparency and efficiency of the public procurement procedure and permanent strengthening of formal contacts.

Participants of the research project express their gratitude to organizations and enterprises for the helping opinions. They also hope that their suggestions would contribute to strengthening the cooperation of related partners, to developing the rule-making and to reducing the administrative burden, the bureaucracy by demonstrating the nature of corruption in the public procurement procedures.

The research team of Foundation for Market Economy examined how openness, equal opportunities, transparency, clarity and efficiency are enforced in terms of the following aspects:

- ? The main institutions inviting tenders based on the value and number of public procurement procedures (budgetary organs, local governments, public utility companies, other state-owned organisations);
- ? Major product manufacturers and service providers submitting bids based on the value and number of public procurement procedures.

The survey – due to the nature of the topic – was carried out via in-depth interviews, during which we guaranteed anonymity to the organisations providing information and provided a comprehensive summary of their opinions related to the various topics. While conducting the survey, we interviewed 57 institutions /companies in the following breakdown:

- ? Institutions inviting bids: 47%, bidders: 53%;
- ? 30% of the institutions inviting bids represented the central budgetary organs and their respective institutions, whereas 37% and 33% represented local governments as well as public utility and state-owned companies, respectively;

¹This study was developed in the frame of the program “Improvement of Economic Policy Through Think Tank Partnership” program sponsored by the US. Agency for International Development, IRIS and KPMG Consulting Barents Group. The opinions expressed herein are those of the authors and do not necessarily reflect the views of sponsoring authorities

- ? Roughly 45% of bidders were SMEs²,
- ? Determining segments of the entire group:
- ? 49%: investment -construction,
- ? 17%: products (within products: healthcare products: 21 %, IT products: 28 %),
- ? 34%: services (within services: construction: 35%, public utility companies: 20%).

In order to thoroughly elaborate the topic, we considered it important to clarify, in a separate paper³, the general, particular and individual levels of corruption as well as the specific features of its development in time.

Corruption, in its general form of appearance, is a continuously changing social phenomenon, a given product of the social and economic environment, with its characteristic proportions and time horizon determined by the pace, nature and extent of imminent changes. It must be also added that, in terms of its existence and typical features, corruption - just as crime - reflects the basic features and contradictions of society, actively forming/deforming the development of the system of social and economic integrity. Corruption, **as a mass phenomenon**, possesses all the features of social mass phenomena and first of all, forms/deforms the distribution system of society. Therefore, the basic feature of corruption on the society level is that it plays a role of secondary redistribution, preventing the planned functioning of the rules of distribution, either with respect to its

- ? extent,
- ? method or
- ? beneficiaries.

Another important criterion of corruption is that it also affects the non-pecuniary distribution/redistribution relations of society. By this we mean that although corruption strongly influences the trends of economic relations, at the same time, it also brings about, on both macro and micro levels, powerful changes in various fields of social and economic relations such as morals and ethics, culture, science, ideology, politics or family.

The particular level that links mass and individual level corruption phenomena is characterised by a uniquely positioned circle possessing identical sets of habits, traditions and values. By being a member of this circle, the members of the group possessing a unique social status can be both corrupted and are also corrupt.

It can be established that, **in its general form of appearance, corruption is a social mass phenomenon**, whereas, **in its individual form, it is a unique social relation**. It seems that it can be considered a **historic rule of legislation** that a prevailing legislation will select a segment from the entire phenomenon of corruption and persecute it using the methods of criminal law. The extent of these segments changes from time to time but is never of minor significance; which indicates that the above-mentioned phenomena have already trespassed the border of social danger currently determined by criminal law. **Relating to the penal law:** as a case of corruption, the following offences are listed as a crime against the clean morals of public life: bribery of officials, economic bribery, fraudulent misuse of funds, influence peddling.

² In 2002-ben the highest value of tendering – in practice of the Hungarian public procurements - had the – investment-construction (49%) and the highest number of successful tenders the healthcare products. In the centralised public procurement the highest value (62,5%) was represented by IT products. Therefore the previous three groups of bidders were surveyed by FME during the research process.

³ Survey on the roots of corruption in Hungary prior to and following the social and economic transformation, Foundation for Market Economy, Budapest, May 2003

1 Development of the Hungarian public procurement practice

1.1 The development of public procurement in numbers

The importance of public procurement market in Hungary has been growing continuously:

- ? the value of public procurements has raised from HUF 100 billion in 1996 to 800 billion (3,3 billion €) in 2002;
- ? in 2002 about 1/5 of the budget expenditure was realised by public procurement;
- ? nearly **80%** of all 4,242 procedures were **open bids**, 20% were contracted through negotiations in 2002;
- ? concerning the **subject of tenders**: 60% of them were construction investments, 25% were made as product purchase and 15% included services in 2002.

Both the proportion of municipalities and its institutions, moreover budgetary organs and their institutions have risen (by fourfold and ninefold) recently. Also, opportunities for SMEs to obtain public procurement orders have widened (47%).

Both the number and value of the procedures completed by **budgetary organs and their institutions, moreover municipalities and its institutions** altogether are determinant; **their total proportion in number and in value reached and exceeded 70% in 2002.** (see the next table)

**Number and value of the public procurement procedures
by types of parties inviting bids**

<i>Types of parties inviting bids</i>	Number of procedures from 01.11.1995 to 31.12.1996	Value of procedures from 01.11.1995 to 31.12.1996	Number of procedures from 01.01.2002 to 31.12.2002	Value of procedures from 01.01.2002 to 31.12.2002
	Pieces	'000 HUF	Pieces	'000 HUF
Budgetary organs and their institutions	661	39,1	1092	349,2
Municipalities and their institutions	1.692	55,1	1.857	249,5
Public utility companies	762	51,0	481	98,6
Pension and Health Insurance Agencies	n.a.	n.a.	46	11,4
Public bodies and foundations	n.a.	n.a.	184	13,6
Subsidized organisations	n.a.	n.a.	246	30,5
Other purchasing institutions	126	4,1	337	51,8
Total	3.241	149,4	4.243	804,6

Source: Public Procurement Database

Municipalities and its institutions represent the highest proportion (43,8%) in number of the procedures, followed by budgetary organs and their institutions (25,7%) and public utility companies (11,3%).

Concerning **the procedures in value, budgetary organs and their institution's** value was doubled compared to 2001, due to motorway buildings. Their proportion therefore reached 43%, exceeding municipalities' (31%) and public utility companies' (12,3%) ratio.

The total value of public utility companies' procedures was reduced by 10% in 2002 compared to the previous year, their proportion has been decreasing year by year. By

reviewing a more detailed statistics of public procurement, it cannot be excluded that some of these companies purchase by neglecting the Act. The solution of this problem is extremely important and urgent, as they are also bodies under the force of EU public procurement. As a result, the Council for Public Procurement appealed to them in writing in order to make their practice clear.

With regard to the object of the public procurement procedures, **construction investments represent the biggest part both in number (45,3%) and in value (60%)**. Product purchase reached 25%, services 15% in value in 2002.

Regionally, Budapest - with most of the parties inviting a tender - **has the greatest proportion both in number and in value, which** were also increased last year, similarly to previous years. They initiated 2126 procedures (50% of the total) in the value of HUF 516 billion (64% of the total value).

The total turnover of **the centralised procurement** based on general contracts was HUF 82,6 billion in 2002, which was higher by 29% than the 2001 one (HUF 58,5 billion), and **represented 10,3% of the total value of public procurement in Hungary**.

The support of **SME** development and also their appearance in the public procurement market has a great importance not only from the domestic point of view, but from EU integration. SMEs were successful in 2788 public procurement procedures in 2002 (**65% of the total procedures**), in the value of **HUF 376,5 billion (46,8% of the total value)**.⁴ Their participation in such procedures has been favourably effected by the increasing number of open procedures in Hungary (SMEs won 66% of the number, and 34% of the value of the open procedures in 2002.)

1.2 Anti-corruption legislation regarding the public procurement

In compliance with the obligations undertaken in the Accession Partnership signed in 1999 Hungarian government approved a decree (1023/2001 (III.14) concerning the **national strategy against corruption** in March 2001. Its main items are prevention and control, as well as changing public opinion, transparency of decision making and the freedom of press.

In **May 2002** the new government in power announced a **program on transparency in public life**, one of its principal goals being to eliminate corruption. **Several anti-corruption measures were taken** – among them supporting the establishment of investigating boards, strengthening the role of Governmental Supervisory Office (KEHI) to reveal corruption cases on the one hand, and to narrow the possibilities for corruption through presenting new bills, enhanced controlling of civil servants or approving the so called glass-pocket bill on the other hand. According to the government decree containing regulation concepts for managing public finance and on the transparency of the usage of public property and its strict controlling launched in 2002 the level of corruption can be reduced first of all by modification of laws.

The measures taken between 1998-2002 were aimed entirely to prevent even the possibility of corruption and to raise penalty level of corruption cases in the sphere of civil service. The government has made serious steps in implementing this strategy. As the main legal step Public Procurement Act was modified, the bill on property claim for civil servants was elaborated and bribery was listed as higher penalty crime.

⁴ An advance can be observed both in number and value of procedures won by SMEs compared to 2001, though the proportion in value was smaller (59%) than in 2001 - due to the significant value of motorway building which was done by bigger companies.

From July 2002 a **political secretary of public finance** subordinated to prime minister was nominated to be responsible for supervising systems of managing and using public monies. His duty – according to the requirements of transparency, controllability fair public life – is to harmonize the systems supervising public finance and elaborate initiatives and proposals for further development of these systems. The office of the secretary has a position of a kind of ombudsman for public finance in the governmental system.

The **European Union** accession procedure includes the objectives of **law harmonization** in some areas – not necessarily concerning anti-corruption policy:

- ? public procurement (reforming procedures, defining threshold values),
- ? reforming civil service (increasing the number of staff, professional quality and income),
- ? strict state control and auditing (directives, creating independent in-company controlling systems, increasing capacity in number of staff and information technology)
- ? reforming court activities (the independence of judges and the increasing efficiency of legal judgment system).

The elements of law harmonization program stated in the government decree already being realized are the following:

- ? modification of act on lawyers;
- ? modification of some of the laws concerning consumer protection;
- ? publishing the Criminal Law Convention on Corruption of Council of Europe (CE).

Important step forward against corruption was the **so called “glass pocket” legal package** approved unanimously by the Parliament in April 2003⁵. **This is the first system of regulations, which fights against corruption through economic measures instead of by means of criminal law.** The coherent legal package modifying 19 laws in full harmonization with the EU requirements – among them the one on SAO, the public finances, on the Civil Code, the economic organizations, the company registry, data protection, local authorities – aims to inform citizens and to make management of public finance more transparent and extend control over them.

1.3 Regulatory system and operation conditions of public procurement procedures

The Act of 1995 XL regulating the public procurement process was passed by the Parliament on May 9, 1995, and came into force on November 1, 1995. At the same time, the central state agencies of public procurement came into being: the Council for Public Procurement and the Public Procurement Arbitration Committee.

The legal institution of public procurement was introduced into the Hungarian legal system, on the one hand, with the end to render the utilization of central funds more transparent, and, on the other hand, to make it more efficient. The legislature fundamentally considered the legal material in force in the European Union as a basis, in order to fulfil Hungary’s harmonisation requirement – in the framework of the Accession

⁵ XXIV/2003 Act on Modification of Regulations Concerning the Management of Public Finance, the Publicity and Transparency of Managing Common Property

Agreement -, in accordance with relevant guidelines.

In compliance with the Act, state and municipality agencies and their institutions, the Pension and Health Insurance Agencies, public bodies and public foundations are obliged to act in conformity with the rules of this Act in the course of their procurement of goods, building projects and the ordering of services.

Certain special procedures do not fall within the Act of public procurement (i.e. purchasing of international organisations or purchasing defined in international contracts, special tactical purchase of assets, purchase under agricultural regulation, purchase of water and fuels). Also, services that can only be provided by certain person or organisation defined in a regulation, central bank and banking operation, sale of securities, broadcasters' programme-making, R+D activity (with the exception when it is half-financed and utilized by a public entity), moreover plans of resettlement, construction authorization and execution plans of investments do not come under the ruling either.

The value limits of public procurement are determined each year in the annual Budget Act, and so far limits have been raised annually in each procurement category compared to the starting year (in real value by approx. 70 per cent).

The supreme supervisory agencies of the public procurement process are the following two organisations: **Council for Public Procurement**⁶ and the **Public Procurement Arbitration Committee**⁷ set up by the Council.

The agencies responsible for **thematic and overall controlling of the public procurement procedures** are the State Audit Office (SAO) and the Government Control Office (GCO). The **State Audit Office (SAO)**, established according to the Act of 1989 XXXVIII, as the state's main financial and economic supervisory body is obliged to report to the parliament. It controls the closing of the state, the Pension Fund and 3200 local municipalities budget yearly. It has also been able to control private companies related to state organisations since the approval of the transparency law in May 2003. Though SAO has wide legal authority and also access to trade and bank secret, it is not an authority therefore cannot take correction measures. The **Government Control Office (GCO)** – based on the Public Procurement Act –

⁶ The **Council**, consisting of 19 members representing central government officials, contracting authorities, and bidders keeps track of the enforcement of the rules of the law. It initiates and reviews the amendments to the legal rules relating to public procurement, keeps track of the performance of the contracts concluded on the basis of public procurement procedures, and provides for the fulfilment of various other administrative responsibilities. It falls within the competence of the Council to conduct the proceedings instituted on grounds of the unlawful omission of public procurement procedures and related to the violation of the fundamental principles and rules of the public procurement process.. The Council draws up a report for the Parliament annually on its own activity, and on its experiences relating to the fairness and transparency of public procurement.

⁷ Within the Council there is the **Public Procurement Arbitration Committee** consisting of 18 members responsible for providing legal redress in case of disputes or violation of the Act of Public Procurement. The Council cannot provide the Committee with professional instructions. The Committee may, as a sanction, order the suspension of a public procurement procedure, may prohibit conclusion of a contract not yet concluded, or may order involvement of the applicant in the procedure. At the interested parties' request, the Committee conducts an open session at which the parties may make comments and may present their evidence. In the case of the disclosure of erroneous or false data, the concealment of material information or refusal to disclose such information, the Committee may impose a fine. Review of a resolution of the Committee may be requested of a court. The cases launched (less than 10 per year) due to omitting public procurement are only the part of the 7-800 requests for legal redress annually. It is the municipalities that have most of the legal redress procedures against the decisions of the purchasing institutions. The main reasons for legal redress are decisions concerning participation of enterprises and selection of the awarded one.

is entitled to control the government's expenditure financed by the central budget and state funds. GCO reports directly to the government. It also examines the effectiveness of non-profit state organisations and practicability of purchases by so-called performance effectiveness tests, moreover makes proposals for the government. It is not an authority therefore cannot judge or penalize. GCO makes approx. one third of the auditing for the prime minister's request. Besides, it also checks realization of international aid programmes such as EU subsidies.

Amendments of the Public Procurement Act

The Act has been modified several times since then, though these were only smaller changes. The amendments covered both the subjects and the objects of the Act, the sphere of the organisations was widened and the definition of the subject of public procurement and centralised procurement procedures was made more exact.

Besides the slightest changes, **the overall amendment of the Act** was carried out after a four-year period of operation and controlling on **September 1, 1999**. Though the changes⁸ effected almost every articles of the Act, it did not result a new Act but only the renewal of the legal material in force, reflecting **the validity and authenticity of the Act's regulatory principles** regarding also EU harmonisation. The amendments intended to keep back the evasion of the Act by introducing stricter provisions, and at the same time, to keep the rules in by making provisions more flexible.

The new comprehensive modification of the Act is still expected from January 1 and/or May 1, 2004, one of the important elements of which is the minimizing of the sphere of exceptions therefore decreasing corruption possibilities and neglect of the Act. The draft is also aiming at strengthening the already existing supervisory bodies by certain tools such as the Council for Public Procurement's recommendation for 'unreal undertaking', which obligates the parties inviting a tender to sort out unfeasible offers.

There are several new EU directives appearing in the draft such as *reconciliation*, which does not really work properly in the EU either, and *certification*, in the course of which an independent, accredited body certifies the legal compliance of the public procurement procedures of the party inviting a tender. It is important that EU regulations will be built into the actual Hungarian rules. The procedures reaching the EU limit compose a separate chapter in the structure of the new Act and are totally harmonizing with EU law. The limit alters according to procurement types. This chapter comes into force on the day of the accession. If the value of the procurement reaches the EU limit, the procedure should be published for EU countries as well. (The EU limits are significantly higher than the Hungarian ones.)

Also, all the parties inviting a tender are obliged to make a yearly public procurement plan until the end of the first quarter of the year despite the fact that especially municipalities are not aware of the amounts available in time.

2 The nature of public procurement

2.1 Changes in the scope of the Act on Public Procurement (corruption

⁸ One of these was the support of SMEs' access to public procurement procedures.

front door)

Openness in public procurement is clearly ensured if procurements made by institutions are carried out in accordance with the order of public procurement procedures as required by law. If procurements are removed from under the force of the PPA, the opportunity considered by the public as a „corruption front door” opens up.

We will now list the factors that may influence the spreading of procurements conducted as part of public procurement procedures at a slower pace and in a more contradictory manner than desirable:

- ? Preparedness of those applying the law, staff shortage, problems pertaining to interpretation and approach;
- ? Contradictions of other provisions pertaining to the regulations on budget financing, special issues related to practical solutions,
- ? Successful assertion of group interests in excluding the public and regarding transparency.

Further to the practice of the last three years and the findings of the in-depth interviews, it can be ascertained that we have found examples of all the above-mentioned factors pertaining to the exclusion of procurements financed from public funds from the scope of the Act on Public Procurement.

2.1.1 Preparedness of those applying the law, headcount shortage, problems related to interpretation and approach

The PPA sanctions errors arising during public procurement procedures, however, **failure to conduct a public procurement procedure is basically not checked by any institution**, with the exception of the thematic inspections of the State Audit Office. The Act does not provide a detailed list of the institutions subject to its scope, thus some institutions may try to evade it. No organisation is in charge of monitoring the failure to conduct public procurements; there is no such organisation that possesses the power or the apparatus to investigate such failures.

Missing legislation in respect of managing material expenditures. The Act focuses on investments reaching a certain value limit, however, no organisation monitors what happens to material expenditures that may reach as much as 75 % of the budget of a ministry or state organ. Also, investments made with the purpose of development are not monitored, either. Thus, there is also a chance for corruption here. Although these are minor items on their own, they will be significant in total. (This is why extending the scope of the PPA to procurements under national value limits (HUF 10 millions) through the amendment thereof is of major importance).

There are also **problems of harmonisation** between the laws; for example, several provisions of the Act on Concessions are conflicting with those of the PPA, which ought to be changed.

There are differences in the interpretation of the PPA, i.e., who is subject to its scope. Often, the legal status of an institution is not identified, thus the institutions themselves do not know whether or not they fall within the scope of centralised public procurement and the Act fails to provide a detailed list of the organisations subject to its scope. This entails the possibility that an organisation that should conduct a public procurement procedure fails to proceed in accordance with provisions of the Act (possibly through no fault of its own).

However, it is impossible to provide a comprehensive list of all the organisations that will use public funds in one way or another in the future, or of those whose activities are under the controlling influence, either directly or indirectly, of any organisation within the scope of the state budget. The legislator may, at any time, establish sui generis subjects-at-law and legal entities of a new type, the consequence of which may be that if the Act fails to include a new subject-at-law in its itemised list, the given organ will not be under the obligation to apply the provisions of the Act.

2.1.2 Contradictions lying within other requirements pertaining to the regulation of budget financing; special problems arising with practical solutions

Experiences drawn from the surveys, carried out by the State Audit Office and also by Foundation for Market Economy, indicate that several problems arise from the contradictions of other provisions relating to the regulation of budget financing and from special problems pertaining to practical solutions, such as the lack of synchronisation or certain limitations of settlement etc.

These problems affect local governments and healthcare in the first place, however, thanks to changes regularly taking place in the institutional system and as a higher level of co-ordination is achieved, the situation is continuously improving.

As regards the planning of, and preparations for, public procurement procedures, the **lack of budgetary funds** remains a serious problem. Another problem is that decisions on procurements must be taken based on insufficient information concerning the size of the available budgetary funds, as such information is made available only at a later stage. Although it is not mandatory to actually implement the purchases announced, however, in this case, conducting preliminary evaluations will be in vain.

2.1.3 Successful assertion of group interests in excluding openness and transparency

In this area **we find**, among other things, **several organisations**, in respect of which the legislators were too late to realize that they should have been made subject to the scope of the **Act on Public Procurements**. Examples are the State Privatisation and Holding Company, the Hungarian Bank for Development and the State Motorway Management Corporation, this latter one still being a “freelancer” in our knowledge.

Our survey has found that bidders are rather indignant that, for a long time, the possibility for evading the law existed for certain organisations (ministries, local governments) e.g. through having businesses supervised by them carry out public procurement procedures.

The problems of exemptions based on legal authorisations aimed at the circumvention of public procurement procedures and on “skilful” circumvention are, in general, irritating and are hard to explain. Of course, **not all acts of circumvention are part of the “circle of scandals”** but this requires the ability to differentiate, on the basis of careful analyses, between problems brought about by development problems, efficiency requirements and economic necessities.

An example to the last above-mentioned category is the release from public procurement, pursuant to Government Decree No. 290/2002 27th December), of plants and enterprises receiving agricultural support. The reasons that can be provided include the limited ability to

bear administrative burdens of small- and medium size enterprises operating in this field as well as time limitations springing from the ‘biological nature’ of this business. In principle, this exemption will cease to exist as of May 2004, although there is no knowing as to how the date of Hungary’s joining the EU resolves the basic roots of the problem.

In summary, it can be ascertained that, in a successful assertion of group interests to evade the rules of public procurement it also play a fundamental role: Public morals / public culture do not carry an anti-corruption conduct in a wide, society-level sense.

Our former findings, in our world progressing on the road towards globalisation, are valid also beyond country boundaries.

2.2 Evaluation of ensuring equal opportunities, transparency and clarity in public procurement (analysing further corruption back doors)

The basic principle regarding equal opportunities of the PPA is realised in that it moves a larger group of entrepreneurs, however, only properly qualified companies of an appropriate size are fit for works of a certain dimension. **Smaller companies** lack the apparatus required for bidding and can first of all **act in the public procurement market as a subcontractor**.

When determining eligibility criteria, requirements are sometimes tailored to a certain company as it can be questioned as to why e.g. the institution inviting bids considers acceptable deliveries made within exactly ten days? There may be only one enterprise that can fulfil this requirement. The Act does not contain any obligation to provide an explanation for setting such criteria, therefore, the consideration of such unique, subjective factors cannot be eliminated.

As regards the set of aspects further to which bids are evaluated, it is a rather sensitive, product- and service-dependent issue. When evaluating the bids submitted by the individual organisations, in principle, it is easy to agree that the best bid is not necessarily the one with the lowest price. The Public Procurement Act does not set forth the principle of value-proportionate results; the entity inviting bids may decide at its discretion as to what to take into consideration. At the same time, this freedom also provides opportunities for background agreements prior to determining bidding criteria.

The transparency and clarity of public procurements can only be ensured by guarantees of openness. In our survey, we examined corruption risks occurring during the preparation of bids or while issuing invitations for bids and also during the decision-making process.

2.2.1 Problems pertaining to the announcement of public procurement procedures

It is a general opinion formulated by bidders that **bids** are not announced on the basis of proper expertise and, as a result, are **not announced precisely**. Institutions inviting tenders in the IT area are often unable to determine their needs precisely. As a consequence, bidders will become exposed.

Companies submitting bids noted that they will only participate in a bid if it is „unlikely” that such bid is „tailored to” a certain company. All of the bidders we asked have encountered this problem. Technical criteria are very often determined in a way that only a single company can fulfil them.

In general, bidders may receive information about the current bidding opportunities from the **Public Procurement Bulletin**. At the same time, distributors of healthcare products and certain IT companies receive preliminary information from their customers and partners about the tenders to be announced. What is more, some of them even said that obtaining information on tenders forms an organic part of their customer relations or marketing activities. Good customer relations are also useful in receiving information (e.g. during a working lunch) about other details of tenders (such as the amount available for implementing a project).

There are several ways according to the practice of local governments to evade the Public Procurement Act, while such evasions are either initiated by institutions or enterprises. Most often the case is that the body considers the criterion of „**the most favourable bid overall**” instead of the aspect of „**the lowest price**”, which offers ample room for announcing and assessing tenders in a subjective manner. Attempts are also made to influence certain announcements or decisions for political reasons. In relation to the above, we heard a number of times that the representatives of so many parties are present in public procurement committees that this fact in itself ensures a balance.

Companies submitting bids to local governments attempt to evade the lawfulness of public procurement procedures using several methods: **by formulating prices further to public financial budgets** and through a consequential division of the market among themselves (construction enterprises, architects).

Often a **subcontractor that has entered into a contract is changed at a later point in time**. Reviewing such a switch is so time-consuming and complicated for local governments that they prefer to leave such issues untouched.

There are no unified regulations existing in the area of **quality assurance** – there are no regulations relating to institutions inviting tenders, whereas there are certain, rather broad regulations for bidders.

2.2.2 Problems in resolution/evaluation process

As regards form, tenders are evaluated based on the set of evaluation criteria. Nevertheless, it is still a frequent problem that bidders are unable to meet **requirements regarding form**. (Approximately 20-40 percent of all the efforts made in compiling a tender will be dedicated to the substantial part, whereas 60-80 percent on meeting formal requirements). Unreasonably strict formal requirements may raise the doubt on the part of bidders that the company inviting tenders intends to restrict the number of participants for formal inappropriateness. Bidders also complained that **opportunities for completing omissions** are also not regulated in a uniform manner and that exclusions are often made on such grounds.

In most cases, companies inviting tenders will select an offer that is most favourable altogether and not the one that is value proportionate or offers the lowest price. This is occasionally ensured by setting unreal criteria (deadline penalty, warranties), which facilitates more „flexible” evaluation.

Although tenders are mostly evaluated according to the criteria set forth in the call for tenders, it sometimes occurs that **bids are evaluated using weightings other than previously indicated (pharmaceutical tenders)**. The evaluation will be subjective despite that fact that, in almost every case, it is carried out on the basis of scores. Another problem is that between

0 and 10 scores no distinction is made in terms of the various criteria and the respective weights of the various criteria are not always determined.

Undertaking disproportionate commitments may result in maximum partial points, which presents a realistic opportunity for winning the tender. As regards construction investments, certain bidders tend to leave out certain items from their offers to make them look somewhat cheaper than others. However, the implementation of such tenders will later involve additional costs.

The proposed amendment of the PPA may present a significant step forward in handling **unfounded commitments**. Considering competition in the market of public procurements, at times **bidders undertake** commitments that interfere with fair competition, violate generally accepted professional practices, rules of ethics (unfounded content elements of the bid such as prices too low or, in a manner fit for humour magazines, a warranty for 700 years) to ensure that the entity inviting tenders awards these sections the maximum number of scores. The proposed amendment of the PPA intends to handle this issue by providing that institutions inviting tenders must ascertain the splidity and feasibility of such content elements of tenders that look unreal and impossible to fulfil. Inappropriate explanation may also result in exclusion. However, *what do we consider appropriate explanation?* If executing the above-mentioned public procurement at an unreal price may, as a reference, generate significant assignments for the bidder at a later date, a low price as a good investment may produce multiple returns. Thus, from the bidder's point of view, this is a great deal that should not be disapproved of. *Who should the law protect; can it be regulated at all? Is there a need for regulation?* The PPA only mentions requests for explanations but does not deal with the future course thereof, as to when, under what circumstances can an explanation be accepted?

The Act cannot solve the problem of **resolving issues requiring immediate action**. Our interviewees also mentioned a problem, namely that government operation also requires fast, ad hoc reactions, which this system is not capable of. The Act handles public procurements relating to advisory services, PR activities and event organisation with difficulties. As regards event organisation, e.g. only the price and other factors that can be expressed in numbers will count; the quality of the programme is a criterion that is difficult to measure and evaluate further to the bid. This issue is not and cannot be regulated by the Act.

In summary, it can be established that compliance with the Act in itself will not eliminate corruption. Intentions relating to corruption will either diminish or there will be less reason for corruption if **an appropriate market balance exists in one form or another**. Thus, the question is whether or not those carrying out procurement activities possess an appropriate knowledge of the market and for what purpose and how reasonably public funds are used as the PPA only includes provisions on how to use such public funds.

It was a common view of both those inviting and submitting bids that an opportunity for corruption only occurs **when determining the professional criteria and upon possible leakage of information**. In all other occurrences, corruption will result in a violation of the law, which, in most cases, will become known almost immediately. Therefore, the opinion is that the call for bids, with special emphasis on its professional section, must be extremely specific and clear as regards wording. Meeting the technical parameters set forth in the call for tender is mandatory.

As regards corruption, the area with the most room for attacks is the invitation itself and its professional section. The reason is that any violation of the law is extremely difficult to detect in this area and once it occurs it cannot be grasped. At the same time, it is a conviction that corruption cannot be eliminated; and neither the Public Procurement Arbitration Committee

nor the various sanctions or threats are able to detect or even prove any possible pooling of interests existing in the area of public procurements. The task is not the above; it is much rather bringing about circumstances where **there is less reason for corrupting anyone** over the course of a public procurement procedure. Tax evasion is a good comparison as again, the solution for tax evasion is not having a tax inspector stand behind every citizen but bringing about circumstances where there is no reason for fraud.

2.2.3 Evaluation of audits, controls of the public procurement process

Public procurement procedures are audited and verified by the internal audit units of organisations inviting bids, by the thematic audits of the State Audit Office (1997, 2001), and, in the case of legal remedies, by the Public Procurement Arbitration Committee (PPAC). The audits are usually confined to verifying the regulatory compliance of the procedures and usually find all formal elements in order. However, **performance of the contracts concluded pursuant to the public procurement procedure is not audited!**

The State Audit Office⁹ carried out its first public procurement audit in 1997. In the first stage of this audit, central budgetary organisations and their institutions, as well as earmarked public funds were **reviewed**, while the 2nd stage focused on the public procurements of local governments and their affiliated institutions. The audits of 1997 year have established that due to deficiencies partly on the regulatory and partly on the law enforcement side, public procurement procedures have **not been integrated into the budgetary administration system**. Legal provisions were regarded to be unnecessary limitations, whose formal implementation was attempted, with varying success, but its role in the organisation and success of economic administration was not recognised. However, some of the shortcomings revealed in the process of implementation could be traced back to the regulatory and interpretation-related issues of the law. On numerous occasions, legal provisions were circumvented and ignored, which was made possible by unclear legislation in several areas. And centralised public procurement procedures were still not assessable due to the delay and shortcomings of Government-level regulation.

A general finding of the audits conducted in 2000 was that certain ministries and local governments were more compliant with the stipulations of Act XL of 1995 on Public Procurement. The explanatory stipulations included in the amended Public Procurement Act (clarification of its objective scope, procurements for the same objects), the changes aimed at simplifying the procedures and making the procedural rules easier to apply (shortening of procedures, reducing the number of written confirmations required) and stricter requirements (terms and conditions of bids contracted through negotiation, publishing assessment criteria, extending the scope of legal redress procedures) served well the implementation of the Act's core principles (clarity of competition, publicity and providing equal opportunities to all). However, the **SAO report for the year 2000 also sets out that**

- ? **Frequently, there were still procurements where the PPA was circumvented;** and violations of the Act also occurred, either due to various, knowingly adopted individual interpretations of the law, or “simple”, spontaneous violations of the law due to a lack of knowledge; which can be traced back primarily to attitude problems.
- ? Organisations subject to the Act's scope still viewed public procurements as a bunch of liabilities resulting in unnecessary limitations making the applicable procedures

⁹ The State Audit Office is the most senior central budgetary audit organisation, reporting directly to the Parliament.

more difficult, rather than as a set of procedures allowing the economical utilisation of public funds, that can rise up to the challenge of public competition.

- ? The majority of local governments have not realised that their wide-ranging liberties also place an enormous liability on them when it comes to the utilisation of public funds, and what major help a proper public procurement exercise can be in this.
- ? **It also did not help the organisations to recognise the significance of applying the law, that circumventing the PPA;** i.e. the partial or complete by-passing of public procurements, **do not threaten them enough to ensure an increase in the number and value of public procurements** and the observance of relevant regulations.¹⁰
- ? Within the organisations **where the attitude to public procurements has changed favourably**, the appropriate organisational framework of public procurement has been established and the **enforcement of the law has also improved** throughout the implementation of the procedures.

Central budgetary organisations requesting the bids (ministries) think that public procurement procedures are adequately controlled. Based on the currently applied method, the procurement itself is not conducted by the same entity as the one using the purchased good, therefore there should be no reason to suspect corruption. In theory, it is possible to corrupt certain members of the committee, yet, such act of corruption could be easily discovered by the auditing organisations. The internal audit function is also provided in all organisations. **They also meet the criteria of conflict of interest.** From time to time, they request a statement (by an external expert), but internal regulations also do provide details pertaining to their responsibility. Details are also checked in the company registry, meaning that the audit covers the verification of the basics.

Bidders consider it important that the PPA provides for legal remedy through the Public Procurement Arbitration Committee. Mainly when such an option is a real need: certain construction companies tend to receive the tender opening protocol on the last day stipulated by the law – in the case of projects where the probability of seeking legal remedy is high. Taking into consideration the time available to seek legal remedy, there is often not enough time left.

At the same time, **the majority of the bidders have the experience that it is not always worth attacking a procedure because such action might have a boomerang effect** later on onto the bidder – and they do not want to jeopardise the good client-supplier relationship. Therefore many share the view that it is worthless lodging complaints and initiate law suites. Civil litigation procedures tend to be particularly time consuming with results unpredictable.

In some cases, **we also found different opinions.** During the investigation by the PPAC, in order to ensure uninterrupted supply, the previous public procurement contract remains in effect through a prolongation, which favours the previously contacted supplier. We have found cases where the former supplier attacked the new procedure for that very reason.

3 Overview of findings and recommendations

In the course of our survey – mainly through the process of the interviews and when formulating our opinion – we paid utmost attention to maintaining the fragile equilibrium we

¹⁰ Ignoring the public procurement obligation had especially light consequences in terms of the procurement of goods and services, as, due to a lack of appropriate controlling mechanisms, the budgetary and public procurement information system was not very likely to expose violations of the law and any unjustified modifications to the contract, and, consequently, result in sanctions.

managed to establish when analysing individual cases, because we examined the nature of corruption affecting public procurement through the operation of unique social relationships with a multitude of players. We hope that we managed to summarise the meaningful and generic opinions and succeeded in screening the biased tone of individual assessments.

3.1 Efficiency of public procurement from the point of corruption and/or savings in public money

Considering the fact that the introduction of the legal institution of public procurement into the Hungarian legal system was prompted on the one hand by the intention to make the utilisation of public funds more transparent and, on the other hand, render such utilisation more efficient, we deemed it important to assess, on the basis of the experiences gathered through the survey, the current status of efficiency.

According to recent international estimates: in Asian region the costs of public procurements are 20% higher as it could be reasonable and in the South America 11% of budgetary expenditures are spent of illegal purposes.¹¹ There are also some European estimations that bidders are supposed to be “ready to pay back” to officials from 5 to 10% (or more) of the public procurement values in course of some construction investments. In Hungary there are some estimations delivered at different conferences by representatives of TIHUN and of the Hungarian Society of Public Procurement as follows: about 3% of the public procurement value (it is HUF 23 to 25 billions in 2003).

The **degree of savings** that may be **achieved through public procurement is a rather controversial issue**. No accurate report has ever been produced in that respect, neither by the foreign nor by Hungarian experts. We do not know the volume of savings originated from lower prices in course of public procurement by reducing corruption. The public procurement market is continuously growing and competition is also getting stronger.¹² **Savings can also be realised indirectly**, thanks to the transparency of public procurement procedures. This is so because an open procedure ensuring fair competition can mitigate the risk of corruption and the related expenses, which, ultimately, contributes to a careful utilisation of public funds.

The position can be questioned according to which public procurement regulation presumes the efficiency thereof, i.e., the savings that can be realised through its application are higher than the costs associated with the implementation of the formal procedures.

In course of the survey there were numerous opinions reflecting to the **dangers of excessive bureaucracy** introduced in order to reduce to corruption risk. Many believe that the public procurement procedure **is overburdened by administrative elements**. By this, they mean that a lot more records and various application forms must be obtained and kept, which, on occasion, do not facilitate the procurement activity or are related to it only remotely. They have also indicated as a problem that the authorities issuing certain certificates are not always prepared to enforce the law.

¹¹ Source: Gusztáv Báger, Árpád Kovács, Balázs Kurucsai, János Lévai: Fight against corruption through introducing the operation of SAO, State Audit Office, Budapest, October 2002, page 6.

¹² For example, in Hungary in 2002, 8.3 bids were received for one public procurement procedure as opposed to 5.4 in 2001 (Source: Council of Public Procurement data).

The **inflexibility** of the public procurement procedure is also causing problems mainly for investments whose market is changing rapidly (such as in the area of information technology). It is difficult to apply the PPA currently in force in these areas and the success of the procedure is questionable. Procurements realised through such procedures will not yield the best, up-to-date and cheap offers as such process is time consuming and the requirements of the tender rapidly become obsolete. **The opinion expressed by the bidders interviewed** was fairly uniform: the price is not cheaper and quality is not guaranteed either.

The **efficiency of public procurements conducted by local governments** is also challenged. Despite the fact that some of the respondents considered public procurement as being clearly cheaper, guaranteeing better quality, many said that public procurement **does not create real competition** between companies and has even a price inflating effect because the publicity of framework amounts in the budget and the co-operation of businesses **result in a price cartel**.

Summarizing the results of FME's survey we can verify the following in terms of efficiency of the public procurements from the point of corruption and savings.

- ? Application of equal treatment resulting equal chances is a core principle both in democracies and in developed formations of integration. It entails the following three major requirements on the basis of which one can fight against corruption:
- ? Legality,
- ? Fairness and
- ? Economic rationality.

Legality means correct legislation being enable to operate without retrospective changes. It is ensured by proper amendments of the act in terms of the public procurements and that of the whole anticorruption regulation in Hungary.

- ? **Fairness** has to be strengthen by developing business culture, business ethics and anticorruption efforts in the whole transition region including Hungary.

As we have seen before, in terms of **economic rationality** there are some more deficits in the public procurement procedures from the point of the administrative overburden in Hungary yet. However we should not forget that combating corruption is a part of the cost of building a new democracy. The indirect advantages of decreasing the corruption risk might be realized through transparency, openness and more equal chances of businesses and the civil sphere.

3.2 Conclusions, recommendations

It can be regarded as a general opinion, that **the relevant regulations and the expected modifications thereof are adequate in terms of mitigating the risk of corruption to a significant extent**. Yet, it is impossible to fully eliminate abuses only through administrative measures. A change in attitude and a different approach is required to prevent corruption. Intertwining of interests may not be excluded nor can the maintenance of information contacts or the leaking of information during the preparations phase be done away with.

Although the basic concept of the PPA is good (spend public funds sparingly and ensure openness), corruption may not be fully excluded nor eradicated through any law. Any law may be circumvented; it is only a question of intention. Yet, the PPA does make the

unscrupulous ‘handing’ of deals more difficult. Honest intentions and fair attitude may mitigate the risk of corruption. In order to attain this, **we need to create an anti-corruption culture** achievable only through the strengthening of public ethics, better level of professional preparedness of both the bidders and the institutions inviting tenders thorough market knowledge, and by „reinforcing public procurement marketing efforts”.

At the same time, another question arises: should we treat a well functioning partner relationship as corruption, a partner relationship which is characterised by continuous communication in order to best meet the needs of the client? Should we suspect corruption when the client is invited to a professional event, or when the known supplier consults the client on the occasion of a tender? An issue specific to public procurement is that the public procurement procedure makes it difficult or **does not even allow the development of longstanding relationships**. Co-operation built on a longstanding relationship would be of special importance in the area of services, especially when it comes to higher quality services, as a service provider must practically ‘learn’ the environment and the specifics thereof and the subjects for whom the services are rendered. Since **this is converse to the wording of the regulation**, the interactive co-operation of the parties may be approached from the practical aspect only and may be solved only informally.

The Act on lobbying is also missing, which, if well formulated, could be a supporting force in that matter and the public opinion would **not confuse lobbying with corruption**. In the opinion of the experts on the subject, unfortunately today it is still difficult to differentiate lobbying from corruption **not only in Hungary but also in the entire post socialist region**. Many explain this phenomenon by the fact that politics are present throughout the preparation and implementation of tenders connected to the implementation of large scale projects – exerting significant influence on international relations and the national economy – and are capable of pursuing their ‘expectations’.

Based on the experiences of the survey and further to our knowledge we want to make recommendations in the following areas in order to mitigate the risk of corruption associated with the public procurement process:

- ? regulations,
- ? preparation of tenders,
- ? the decision-making process, and
- ? control and monitoring.

3.2.1 Moderating corruption risk by amending the regulation (PPA)

Regulations pertaining to public procurement have been elaborated with the approach that they assume the **existence of adequate development strategies and development programs** and the knowledge of related resources. However, the system is currently not apt to ensure this. The solution may lie in the appropriate harmonisation of the above mentioned aspects and the practical implementation thereof.

Amendment of the PPA currently in force is on the agenda of Hungary. **Let us review the substantial elements of the planned amendment of public procurement regulations¹³** (PPA) aimed at reducing corruption:

¹³ The new public procurement regulation, if promulgated by the Parliament to the end of December 30, 2003 – will enter into force in some terms on January 1, 2004 but finally on May 1, 2004.

- ? **Reduce the circle of exemptions** to a minimum level, and any other possibilities to circumvent the law. It is encouraging in terms of closing some “corruption front doors” introduced recently in chapter 2.1 of this study.
- ? So far, it was not possible to sanction irregularities that were found after the expiration of the short deadline available to seek legal remedy. In the event of the gravest offence, i.e., **circumventing the PPA, the option for subsequent legal remedy will be extended for a 1-year period.**
- ? As compared to the Act currently in force, the new law **follows a more differentiated structure and sets forth three public procurement value limits**¹⁴. It does mean that practically each procurement from public money has to be done through a public procurement procedure.
- ? As **new elements**: each public procurement organisation must publish an **annual public procurement plan** until March of each year. Several questions have come up in connection with the preparation of the public procurement plan: who should it be submitted to and does it also affect small businesses? Local governments may face further problems in that they will not know the framework limit of their budgets in due course based on which they ought to prepare their public procurement plans. No specific details pertaining to implementation are available as yet!
- ? Institutions requesting bids must prepare an **annual public procurement summary report** at the end of each year to the attention of the CPP for statistical purposes. Failure to comply with this requirement will **entail sanctions** in the future. **Publication of the report** issued on the performance of the public procurement **will be mandatory.**
- ? The recommendation of the Council for Public Procurement pertaining to unrealistic commitment, hopefully, will be incorporated into the bill. This would **force the institution requesting bids to screen unrealistic, and unsustainable bids.**
- ? **Training activities** by the Council for Public Procurement (CPP) **will be more pronounced** (public procurement experts will take part in special courses). It is very important to train more public procurement experts both in number and of higher quality.
- ? The range of current qualification criteria of qualified bidders will broaden and companies holding the status of **qualified bidders should hopefully enjoy the advantage** of being relieved from at least some of the administrative burdens (within a specific timeline and subjects).
- ? The **certification procedure** means the taking over of the EU-guideline. It will be an independent organisation who will certify the regular public procurement practice of the institution inviting the tender. There are some doubts because details are not yet clarified. They consider that requiring the collaboration of an external and independent advisor is particularly unnecessary in cases where the company has its own experts.
- ? **The institution of conciliation** will also be derived from the EU-guideline (which institution does not yet operate flawless in the EU either). In principle, PPAC offers a conciliation process faster than the 15-day legal remedy procedure, provided that the parties need to reconcile a case of misunderstanding and not a case whereby the interests of either the requestor of the bids or those of the bidder are violated. Parties concerned on both sides consider the introduction of the conciliation procedure as

¹⁴ These limits are the following: a public procurement limit reaching and/or exceeding the European Community value limit, a limit reaching and/or exceeding the national value limit, and a limit below the national value limit. The latter limit means that a so called simple procurement procedure will be introduced from HUF 2 millions (USD 9,000) in terms of products and services and from HUF 10 millions (USD 45,000) in case of investments.

favourable, yet they think that the current deadlines are too short. Keeping such short deadlines will not facilitate the alleviation of the CPP's or the PPAC's workload.

- ? **The bill does not bring about significant changes in terms of controls.** It mainly aims at reinforcing the operation of audit organs already functioning. no new and specific forms of verification are introduced under the modifications. It must be examined from the point of view of corruption whether it can become a practice that a bidder wins the assignment thanks to offering good conditions, then through continual modifications (change of deadline, price increase) the bidder ends up providing a service that is actually worse than what the competitors would have provided. The law **does not sanction deviations from the contracts.**

The law currently in effect is almost fully suitable to regulate individual procurements, however it is less apt to handle large volume, reoccurring procurements. Although EU directives do contain guidelines as to the framework contract-based procedures, this pertains only to public service providers. Those dealing with centralised public procurements regret that the amendments to the **regulations do not contain procedures supporting the framework contracts of centralised public procurements.** For centralised public procurements, when defining the scope of centrally procured products, it would make sense to request a proposal from a sample representing the institutions providing the scope of products they consider should be part of centrally procured products. This proposal could serve as the basis to help avoid disputes about the standards and the scope of centrally procured products.

Finally one more problem: the public procurement act (**PPA does not recognise the practice of negative reference**) and does not provide the opportunity for equitableness. Bidders start with a clean slate in every procedure. This already ensures the principle of equal opportunities, yet the situation may make us think twice: a company who has abused the goodwill of the clients on several occasions (inadequate, not on time of performance), but can show a sufficient number of references, will not be excluded from the tender. In trying to find a solution to this particular situation, it may constitute a problem that the results of tenders financed directly from the central budget are not collected in a place accessible by all, although such centralised collection would carry significant advantages in terms of making the information public. Naturally, we all agree that if a company, through no fault of its own, fails to perform adequately on one occasion, should not be excluded from among bidders. However, no one likes to deal with repeated problems.

3.2.2 Handling corruption risk during the creating and decision-making process of tenders

Based on the wishes of many, granting the option to submit missing documentation in the course of public procurement procedures should also be harmonised! The reason we think this is a well founded request is because today, during the preparation phase of public procurement tenders – for example in research – there seem to be way too much fuss about formal errors.

We share the opinion of many: **the system of certifications to be submitted for the tenders is obsolete, it needs to be simplified and modified,** as bidders often have to procure certificates and the institutions inviting tender must request such certificates, that will not be needed any longer after their submission; such a certificate serves no purpose.

Proper separation of the institution inviting the tender and the decision-maker would reduce the chances of corruption to a minimum, yet, such segregation would entail additional

duties for those taking part in the process; they would have to prepare very detailed and accurate documentation so that all relevant information may be passed on to the decision-makers in the event they have not participated in the preparatory stage. How to put this into practice is not clear as yet.

It would be important **to elaborate a more differentiated system of evaluation criteria (with weightings)** used for the evaluation of the bids. In order to achieve this, the person(s) responsible for public procurements within the organisation should agree with the expert who is capable to express the definition of key substantial elements in a mathematical approach.

In the case of publicly procuring intellectual products (research, advisory services, or creative activities) we consider the multi-round, pre-qualification, negotiated open public procurement procedure as being the most appropriate one, perhaps using a two-envelop system, so as intellectual products be evaluated not only on the basis of price and delivery deadline as sole determining factors.

3.2.3 Moderating corruption risk in public procurement by control and monitoring

We share a uniform opinion with the sample interviewed by us that there is **no need to further tighten the control of public procurement procedures**. Instead, the fulfilment of the contracts following the procurement procedures should be monitored and deviations be sanctioned. According to the recommendation of construction companies, targeted audits should be carried out at the local governments to that end.

Unfortunately we think that **the conditions** capable of ensuring a meaningful substantive control and monitoring of goods/services/investments created as a result of the public procurement process **are not yet available**. These conditions partly lack the financial background and partly miss electronic support.

According to certain extreme opinions,¹⁵ “the institution of **monitoring** is practically unknown in Hungary”. Indeed, it would be necessary to prepare an actual analysis (e.g. impact study) instead of formal reports upon the completion of some large scale assistance projects. It would be worth considering that, similarly to the EU practice, a predefined percentage of assistances should be allocated for that purpose.

On the basis of the discussions at the - November 24, 2003 Budapest - workshop **FME is enforcing the necessity of preparing more impact studies before introducing new acts or amendments**. The benefit coming from the results of impact studies could be summarised in less administrative overburden of bidders and organisations inviting bids and also in better prepared monitoring system based on content-analysis.

Developing such kind of impact studies would be desirable also before developing a lobby act in Hungary.

¹⁵ Anna Szalai: EU comes, corruption goes? Daily newspaper Népszabadság, September 6, 2003 (p.12.)

Bibliography

‘Act against corruption’ (conference summary), Ministry of Justice, 2003

Development of anti-corruption policy and measures from the middle of the 90s’ in Hungary, Foundation for Market Economy, Budapest, 2003

Pre-transition and Transition Roots of Corruption in Hungary, Foundation for Market Economy, Budapest, 2003

General overview of recent corruption research results in Hungary using a combination of international and domestic sources of information, Result of Gallup Institute survey, Foundation for Market Economy, Budapest, 2003

Articles of the Hungarian press (Figyelo, HVG, Napi Gazdaság, Világgazdaság, Magyar Nemzet, Népszabadság, Magyar Hírlap and other journals), 1998-2003

Gusztáv Báger, Árpád Kovács, Balázs Krucsai, János Lévai: Fight against corruption through introducing the operation of SAO, State Audit Office, Budapest, October 2002

Essays on Corruption and Policy against corruption in Hungary and Corruption and Policy against corruption in the process of EU accession - Open Society Institute, EUMAP, 2002

Handbook on Corruption Assessments – Management Systems International, 2002

Report on the control of the Public Procurement Act, State Audit Office, Budapest, in 1997 and 2001

Dr Ákos Farkas: Analysis of the International Anti-Corruption Campaign Documents with Special Regard to the Accession of Hungary to the European Union (University of Miskolc, Faculty of Law, 2000)

Dr Iván Münnich: Corruption research, National Institution of Criminology, Budapest, 2000

Corruption in Hungary, Volume I. Hungarian Section of the Transparency International, Budapest, 2000

Nature of corruption in the public procurement (In: Accessibility and Transparency of the Public Procurement Process in Hungary, Albania and the Slovak Republic. Foundation for Market Economy - Albanian Center for Economic Research - Center for Economic Development, Budapest - Tirana – Bratislava, 1998)

Dr Mariann Kránitz: Corruption (In: Criminological Issues, Crime, Crime-control. Ed.: K. Gönczöl – L. Korinek – M. Lévai), Corvina, Budapest, 1996, p. 172-185

Public procurement: where the state and private sectors come to do business (Chapter title in the Manual of the international anti-corruption organization, Transparency International. Edited by Jeremy Pope, Berlin, 1996)