



Partners Albania, Center for Change and Conflict Management

**POLICY PAPER
SOCIAL PROCUREMENT IN ALBANIA**

November 2014



B | T | D The Balkan Trust
for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND



This Policy Paper comes as part of Partners Albania long – term initiative to advocate for an enabling environment for the development of civil society organizations in Albania. It stands in a line with the platform’s pillars discussed and agreed upon, between civil society organizations and state actors in the National Conference “Social Partners – Time for Action”, organized in December, 2013.

This Policy Paper is prepared by Partners Albania with the assistance of Luben Panov, international expert, Program Director at European Center for Non-Profit Law (ECNL).

The financial support was provided by the European Union and Olof Palme International Center in Albania with funding from the Swedish Government.

The content of this document is the sole responsibility of the author and can in no way be taken to reflect the views of the European Union, Olof Palme International Center and the Swedish government.

TABLE OF CONTENT

I. EXECUTIVE SUMMARY..... 4

II. INTRODUCTION 5

III. WHAT IS SOCIAL CONTRACTING/PROCUREMENT AND WHY IT IS IMPORTANT? 6

 3.1. The obligation of the state to provide services..... 6

 3.2. Terminology 6

 3.3. Key factors determining social contracting..... 7

 3.4. Types of support to CSOs 7

 3.5. Specificities of social contracting..... 8

 3.6. What is a framework that supports social procurement by CSOs? 9

 3.7. What are the benefits of social contracting?..... 9

IV. INTERNATIONAL EXCAMPLES OF HOW SOCIAL CONTRATING WORKS 11

 4.1. Country models 11

 4.2. The EU regulation 12

V. THE LEGAL ENVIRONMENT FOR CONTRACTING OF SOCIAL SERVICES TO CSO s IN ALBANIA 13

 5.1. Possibility for CSOs to engage in economic activities..... 13

 5.2. Provision of social services (based on a review of Law No. 9335/10.03.2005 on social assistance and social services)..... 13

 5.3. The procedure for procurement of services (based on a review of Law on public procurement No. 9643/20.11.2006 with last amendment from 22.07.2010)..... 14

VI. PRACTICES WITH REGARD TO CONTRACTING SOCIAL SERVICES TO CSOs..... 16

VII. RECOMMENDATIONS 21

VIII. ANNEXES 24

 8.1. Case Study - Emanuel Mission Foundation, Korçë..... 24

 8.2. List of Interviewees 25

 8.3. Participants in the Focus Groups with CSOs 26

I. EXECUTIVE SUMMARY

In Albania, like in other countries, the state has the obligation to provide social services for its citizens, resulting from international conventions and treaties that the state has ratified and signed, as well as from the national legal framework and regulations. The state also has the obligation to ensure that a supportive and clear legal framework for provision of social services is in place, ensuring the delivery of qualitative social services to its citizens.

Albanian legislation defines that there are both public services financed by the state and private services funded from private sources. While very often civil society organizations (CSOs) with funding from foreign donors ensure the provision of services that are not and/or cannot be provided by the state, the responsibility of the state that services are provided entails also the provision of financing for the services. According to the contracting of services to private providers, either CSOs or other providers, it should be done under the rules and procedures of the Public Procurement Law. Implementation of this Law for contracting of social services is considered problematic by both state bodies and the CSOs for several reasons that are elaborated in this policy paper, leading to an urgent need for the introduction of Social Procurement practice in Albania that would be the process through which the state contracts the provision of social services to private providers. This paper will focus on the way how this should happen in Albania.

The first part of the paper presents an overview of the social contracting/procurement, and its importance in the field of social service delivery, the frameworks supporting social procurement by CSOs, as well as some models of its application in different countries.

The second part of the paper is dedicated to the analysis of situation in Albania with regards to the legislation in place and the practice, identifying the main factors that hinder social procurement in Albania: lack of traditions in providing community-based social services; lack of state financing for social services; lack of appropriate procedures for contracting services; lack of capacity to contract social services; delays and other problems related to payments; CSOs seen as a source and not a recipient of funding etc.

The last part of the paper provides recommendations to ensure that social contracting is not only possible but can be a leading practice with regard to the provision and financing of social services in Albania, as: inclusion of social contracting in the policy documents developed; definition of key elements of the social contracting mechanism; clearly outlining the responsibilities of local authorities for social service delivery; secured funding for the delivery of community-based social services; increased capacities of CSOs and institutions and participation of CSOs in all steps of social services development.

As a final conclusion, the paper evaluates that the current political situation, with the development and undertaking of several important reforms, presents a unique opportunity for the successful development and implementation of social procurement. CSOs, with their expertise and long experience in the field of social services, will be a natural partner of the state in this process.

II. INTRODUCTION

CSOs are state partners in social service delivery. They represent a key category of service providers in traditional fields of social services as social care and assistance, health care, education, etc. Many CSOs in Albania deliver social services that are complementary to the services that the state has the obligation to deliver, but they have also established a new set of social services that are not delivered by the state or any other service provider, being thus the main, not to say the only, provider for such services, for example: services for drug addicted people, etc. CSOs are closer to the needs of the people and can bring an added value to the definition of needs for services and the way they could be better addressed. In addition to that, CSOs have the expertise and can offer another perspective in the process of evaluation of services delivered by the state.

Albanian legislation acknowledges and allows for collaboration between the state and CSOs in the field of social services, and CSOs are not excluded by the legislation in delivery of public social services, and other private social services that they can develop. But, the practice shows that there are few sporadic cases, mostly initiated by projects of foreign donors, in which the state through different mechanisms and procedures has contracted CSOs to design, deliver, or evaluate public social services. In a situation in which all involved parties acknowledge the importance and the necessity of transferring the provision of social services to CSOs, still there is a lack of regulated procedure for these practices to take place.

This situation is also evidenced in the Monitoring Matrix on Enabling Environment for Civil Society Development¹, where collaboration in social service provision is one of the areas measured. The Report shows that only 8% of the CSOs had benefited from state contracts to deliver public services, including social services. Several challenges have been presented by CSOs and state representatives, especially at the local level, where the most of the contracting occurs, in accordance with the competences and responsibilities that the local government units have on public services delivery. Among others, many problems were related with the implementation of the two key laws in this field:

1. Law No. 9335/10.03.2005 on Social Assistance and Social Services
2. Law on Public Procurement No. 9643/20.11.2006 with last amendment from 22.07.2010

Considering the above, this Policy Paper presents the practice of Social Contracting/Procurement, with the final aim of proposing the proper mechanism to transfer the provision of social services from the state to CSOs in Albania.

¹ Monitoring Matrix on Enabling Environment for Civil Society Development, COUNTRY REPORT FOR ALBANIA, Partners Albania

III. WHAT IS SOCIAL CONTRACTING/PROCUREMENT AND WHY IT IS IMPORTANT?

3.1. The obligation of the state to provide services

States have the obligation to provide certain services in public interest to its populations. This obligation stems from international treaties (e.g. the International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Rights of People with Disabilities) and their own constitutions and laws. This is also part of the public contract between the citizens and the state. Such services usually include services in the social area, healthcare and education, among others.

While states may transfer the provision of services to independent providers, states should always have the responsibility that the services are provided to the beneficiaries and this obligation is non-transferable. In terms of financing, while very often CSOs or foreign donors are able to support the provision of services, the responsibility of the state that services are provided entails also the provision of financing for the services.

In addition to ensuring the services are provided to the population, states also have the obligation to ensure that the legislative framework for provision of services exists and is supportive. Such legislation includes, in addition to defining the types of services and the way those will be provided, also the rules and mechanisms through which the provision of those services can be transferred to independent providers. This paper will focus on the way how this should happen in Albania.

3.2. Terminology

For the purposes of this paper social contracting/procurement would be the process through which the state contracts the provision of social services to private providers. We focus on the social area because this is an area in which:

- The state has the responsibility to provide services;
- There are certain specificities which differentiate the procedures from the general public procurement;
- CSOs are actively involved and have the capacity to provide services;
- There are already many positive examples of how these services can be contracted out;
- There is a constant need for greater efficiency and effectiveness of social system.

When we speak about social services, we will not include the broader circle of services which are often called public services such as healthcare and education but will focus on a more narrow definition of social services which includes services that aim to help a person to be included in society and improve his/her quality of life. These services are targeting people in disadvantaged position (e.g. poor people, people with disabilities, etc.).

Generally, there are two basic ways to help people in a disadvantaged situation:

- Through provision of cash transfers or another form of material assistance (free housing, free electricity, etc.); or/and
- Through provision of social services.

Usually the first type of support is within the realm of the states so social procurement focuses on the second area.

3.3. Key factors determining social contracting

There are several important issues which affect the process of social procurement. The first one relates to **which institutions and at what level have the obligation to provide the social services**. Sometimes this obligation lies at the national level – a ministry or some other agency. Very often, this obligation is decentralized – the local authorities have the obligation to take care of the needs of the population in their area.

A second issue is how the services are funded – **does funding for the services come from the national budget or they are within the realm of the local budgets**. Moreover, it is important to know whether the institution that has the obligation to provide the services actually has the budget to ensure that services are provided.

A third important issue related to whether there is willingness to transfer the provision of services to an independent provider, and there is sufficient funding to cover the costs, is **whether there are potential independent service providers**. Sometimes it is necessary to invest in building the capacity of service providers also.

3.4. Types of support to CSOs

In the social area, CSOs are the most typically contracted entities to provide services delegated by the state. There are several ways in which states can provide funding for CSOs to work in the social area:

- **Subsidies** – this is a form of institutional support or support for specific organizations which have a special status. Typically these include unions representing the interests of people with disabilities. This funding is given without any competition and over time may create a group of privileged organizations.
- **Grants** – this is a form of support provided most often on a competitive basis. Grants are used when the aim is to address certain problem but the exact way how to do that is not defined e.g. the government wants to fight domestic violence but it is not certain what the best tool is for that. It may then announce a call for proposals and CSOs would apply for funding. One CSO may consider that the best way is to support abused women by providing them with a shelter after they have suffered violence. Another CSO may propose to organize training for people on how to act when there is violence or train people on the negative effects of domestic violence. These are different approaches to the same problem. After receiving the different proposals, the government decides which ones best suit their goal. Grants could also be used to build the capacity of providers or to develop or pilot new services.
- **Procurement/Contracting** – this is the typical way to “purchase” services from CSOs. In this case the government knows exactly what types of services it wants to receive and announces a tender through which to select the supplier for those services (e.g. to provide a shelter for 50 women that have suffered domestic violence). When selecting the provider, the government sets criteria based on which it takes its decision – the lowest price, the economically most advantageous offer, etc.

- **Vouchers/third party payments** – These terms are used to describe a separate mechanism through which it is not the state but the beneficiaries or clients that are actually determining which service provider should get paid by the state. In this model the state licenses or authorizes a larger number of providers to be able to provide the service. It then gives the right (or in some cases a special document called voucher) to the beneficiaries in need of the services to identify their preferred service provider. Based on the decision of the client, the state pays to the provider for the services provided.

3.5. Specificities of social contracting

There are several important issues, which need to be taken into consideration when deciding how to choose service providers:

1. Social services are usually provided to people that cannot afford to pay for them. So there is no real market for these services without the state.
2. In the social area there are always more needs than available resources. Moreover, the needs are constant and usually long-term e.g. providing a personal assistant to a person with disabilities is not something that can be provided for one year and then terminated.
3. Because the main source of funding for social services is the public budget (local and national), it is important to know that (because we speak about state funding), savings in the social budgets may lead to budget cuts for the following year. So instead of saving on the budget, authorities in charge of the social area usually try to use to the maximum possible extent the available budget and provide a higher quality service or cover more people with the same budget.

Any mechanism that is designed to transfer the provision of social services from the state to independent providers, should take into consideration these three characteristics. This would mean that the system for social procurement should:

- Not be based on the lowest price offered but on the capacity of the providers, the quality of the services they can provide and on their long-term vision for developing the service or tackling the social problem;
- Allow for long-term contracts rather than one-off tenders. Long-term contracts guarantee the stability of the providers and ensure they can invest in their own development and in the development of the services they provide;
- Be flexible and allow service providers to invest in the best possible way the resources they receive. This would also mean receiving payment on time and in advance (rather than based on the principle of reimbursement of expenses made);
- Allow for competition.

As noted above there are various methods used to transfer the provision of social services to independent providers. Each of them has its strong and weak points. While procurement is the most typical mechanism used by the state to purchase services, it may not be the most appropriate mechanism to purchase social services, because the leading factor for selecting a provider should be the capacity of the provider. Moreover, very often states introduce fixed prices for covering the cost of certain social services so there could be no competition on price. Some countries have developed separate procedures for procuring social services where the procedure is simpler and the selection criteria are closely linked to the capacity of the provider and the proposed program for developing the service (one example is Bulgaria).

Alternatively, grants are a very good mechanism to develop pilot projects or implement new and innovative services. Grants are important also for building the capacity of the providers.

Having clients choose the provider sounds tempting, but this system is hard to establish because it is possible only when the social service market is well-developed and there are various providers which can continue to exist even if they have no guaranteed budget-flow.

3.6. What is a framework that supports social procurement by CSOs?

There are different measures through which governments can support the transfer of the provision of social services from the government to CSOs. The first step is that **CSOs are allowed to provide services in the areas where the contracting will take place** – most commonly these areas include the social area, education and healthcare. CSOs should also not be subject to additional administrative requirements which do not exist for other service providers and even if there are specific registration requirements for service providers, those are not excessively burdensome.

A second important factor relates to the **availability of funding for the services to be contracted and this funding is predictable and CSOs could access it**. In addition, as social services require long-term commitment, there is also possibility for long-term funding and long-term contracts for the delivery of the social services. If the provider is changed annually, there is no interest in investing in improving the service or putting extra effort in the treatment of the beneficiaries (as this will not influence the fact that next year there will be a new tender). It is also important that the funding is flexible and there are no delays in payments. Funding should also allow for covering the administrative costs of providers.

A third important factor is that **there are easy and transparent procedures through which the service provider is selected** and CSOs are able to take part in the tenders. It is very important that such procedures take into consideration the specific character of social services and are based on the capacity of the provider rather than just the price.

Finally it is very important that **CSOs are involved in all stages of the service cycle** – they participate in defining the social policies, in assessing the needs, in determining how to best satisfy those needs, in the provision of services and in monitoring and evaluation.

3.7. What are the benefits of social contracting?

The reasons for the government to contract services to independent providers:

- If a service is contracted, the government can focus on its core functions – policy-making and monitoring of the implementation of its policies. It does not also have to deal with problems such as cooking food for poor people, etc. Through contracting, the limited human capacity of the government will be devoted to the core functions.
- The government will also be able to exercise stricter control over the services provided and will focus on the care for the beneficiaries, not on the satisfaction of the staff working in the services;

- Very often there is pressure towards governments for decreasing the number of people employed by it (the state employees). Transferring state obligations to outside providers is a key way to address that.
- Last but not least, a reason to transfer the service provision to outside providers is to increase the quality of the services or to reach wider groups of people in need.

The benefits of having CSOs provide services:

- CSOs work to improve the lives of disadvantaged groups and it is within their mission to provide social services to them. This guarantees that they have vested interest in providing quality services, rather than just interest in receiving the funding.
- CSOs have the best knowledge of the needs of the clients and have the necessary expertise to provide the services.
- CSOs are able to attract additional resources (through volunteer labor, donations, project funding, etc.) and maximize the effect of the funds spent by the government. Through additional funding they can increase the quality of the service or cover more beneficiaries.
- CSOs are more flexible in terms of how they operate – they can use part-time personnel (instead of having to open a full-time position), react to emergencies, etc.
- CSOs bring innovations in the social area. They can pilot new services or methods, they have access to international best practices (through their partners abroad) and many of the newly introduced social services in many systems have actually been first developed by CSOs.
- Very often CSOs themselves represent people which give credibility to the local policy.

IV. INTERNATIONAL EXCAMPLES OF HOW SOCIAL CONTRATING WORKS

4.1. Country models

There are various models for providing social services. These range from systems where social contracting is in its initial stages of development to fairly complicated systems which use various mechanisms to transfer the provision of services to CSOs. An example of a country which is in the early stages of development is Armenia where the government provides mainly material support and direct payments to people in need. Social services are provided predominantly by CSOs with donor funding. The government, however, has decided to support several of the CSOs providing social services by including them in the annual budget and they receive direct budget funding without a competition. In this case, the state resources cover a minor part of the cost of providing the social services and the organizations have to secure the rest by themselves. There is no social contracting mechanism in place.

Bulgaria represents another model. The state has introduced a separate (from the general public procurement) mechanism through which providers of the social services, for which the government has the obligation, are selected. They are selected through a tender organized at the local level (by the mayor of the municipality). Both CSOs and commercial companies can take part but practice shows that in more than 90 % of the cases CSOs are selected as social service providers. Currently, more than 10 mln EUR is distributed to CSOs through that mechanism and around 20 % of all state-funded services are contracted to CSOs (only 10 years after the mechanism was firstly introduced). Most importantly, in the tender procedure price is not among the selection criteria (as the budget for the service is part of the information announced at the start of the competition). CSOs compete based on their experience and program for provision of the service to be contracted.

Hungary represents another model of transferring service provision to CSOs. The most common mechanism used to select providers of social services is called normative support. In this case it is the client of the service that chooses the provider, instead of the state. The state selects a larger group of providers which are authorized to provide the respective services for which the government will pay. Then the beneficiaries that can use state-funded social services are allowed to select which of the providers they prefer and the state reimburses the provider for the services used by the clients.

Netherlands uses a more complicated social system where many of the costs for certain services (e.g. services for people with disabilities) are covered through health insurance. The preliminary selection of service providers is made at the regional level by the insurance company that has most clients in the respective region. It concludes contracts with these providers and it provides funding to the providers based on the number of clients they serve. Again, the choice of which of the pre-selected providers will take care of any individual client, is the decision of that client (so the final selection is made by the client/beneficiary). In addition to that, Netherlands allows that the client, instead of receiving the services to which he/she is entitled, can receive the financial equivalent of 75% of the cost of these services (individual budget). In addition to this personal budget scheme, for other services there could be competitions for selection of providers at the level of the municipality. Different municipalities choose different types of contracting procedures in these competitions e.g. competition based on both price and quality; or fixed price and competition on quality only;

or having a first stage when providers qualify based on their experience and the quality of the services they will provide, and then followed by a competition on price among the pre-selected providers, etc.

An interesting example exists in Poland where it is possible for a CSO to provide an offer to deliver a social service even in the case when it is currently delivered by a state agency. The CSO should provide an offer and the respective public authority within a month has to evaluate it and decide if it will open a tender for the service at stake.

In the UK transferring the provision of services to CSOs has a long-standing tradition. Some of the new trends with regard to social contracting have had an unclear effect on the CSO providers of social services. By focusing the social system on the outcomes, in the UK a “payments by results” system is being introduced. While its goal is positive as what is important is the achieved result through the funding, this means that many CSOs are unable to compete for funding because they do not have sufficient resources to cover in advance the costs which are then reimbursed based on the results.

Another interesting model, which also may have a negative effect on CSOs is the lead agency or “prime contractor” model. In this case the state, instead of contracting many providers for the various services it has to provide, unifies the small contracts into a bigger one and selects a “prime contractor” – a big provider which may then subcontract the small services to smaller providers. In this case the state has fewer burdens because instead of administering many contracts, it takes care of only one big contract. In such a case, it does not have to worry if the procedure is burdensome or overly bureaucratic, because the big, experienced company deals with that. On the other hand, it is not clear how the prime contractor selects its subcontractors and whether there will be CSOs among them. For sure, increasing the size of the contracts decreases the number of CSOs that can actually compete for them which limits competition and may sometimes affect the quality of the services provided.

4.2. The EU regulation

There is an EU directive on public procurement². It allows for certain exceptions from the general procurement regulation in the case of social or health services. For them, it is not necessary to use the public procurement mechanism, and using another mechanism reflecting better the specific conditions related to these services is possible. If, however, the value of such contracts exceeds a minimum threshold, the procedure at a minimum should provide that the procedure is transparent and all economic operators are treated equally³.

In other words, the EU allows that social services are contracted not using the public procurement mechanism but by designing a separate mechanism that may be simpler and taking into consideration the specificities of the social services and their potential providers.

² DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

³ Directive 2014/24/EU, paragraph 114 (page 23). The threshold set by art. 4 of the Directive is 750 000 EUR.

V. THE LEGAL ENVIRONMENT FOR CONTRACTING OF SOCIAL SERVICES TO CSO s IN ALBANIA

5.1. Possibility for CSOs to engage in economic activities

According to Law on Nonprofit Organizations⁴, CSOs can engage in economic activity (art. 36). There is no need for them to create a separate legal entity. This means that CSOs can receive income from service contracts or public procurement.

5.2. Provision of social services (based on a review of Law No. 9335/10.03.2005 on social assistance and social services)

The law defines that there are both public and private social services (art. 17). Public are the services which are financed by the state or the local government while private are the services funded from private sources. It also provides for licensing of all providers and that all services can be contracted to private providers based on the public procurement law (art. 18).

The Ministry of Social Welfare and Youth (MSWY) is responsible for the overall state policy in the area of social services including the planning of funds. It also sets the standards for the services and monitors their provision at both national and local level and for both state and private providers (art. 27). MSWY also drafts requests for funds and submits them to the Ministry of Finance (art. 28). Funding is according to the possibilities of the state budget (art. 32).

At the local level, the municipal council among others (art. 29):

- Approves the funds for social services;
- Drafts a plan for the development of social services;
- Approves and supports the development of social services based on local needs;
- Authorizes local government units to contract providers

The state funding for social services is transferred from the MSWY to the local authorities at the beginning of each year (art. 38). The calculation and allocation methodology is done by the MSWY and the Ministry of Finance and approved by the Council of Ministers.

Apart from that, there are other sources of state funding for social services such as National Lottery⁵ which specifies that an obligatory contribution of 2,2% of the annual turnover of the licensed should be dedicated to the “good issues”. The selection of projects, organizations or events that will benefit from this fund will be done from a Board for Good Issues that will be established through a decision of the Council of Ministers yet to be issued. It will be composed by 4 representatives of Ministry of Finance and three representatives of the licensed company. The Board will make its decisions based on the procedures and criteria established through a Decision of the Councils of Ministers and a Directive of the Minister of Finance yet to be issued.⁶

⁴ Law No. 8788 dated 7 May 2001, on Non-profit Organizations

⁵ Law no. 95/2013 For the Approval of the Licensing Agreement for the National Lottery between the Ministry of Finances, as the authorizing authority, and the “OESTERREICHISCHE LOTTERIEN”, GMBH company, through “OLG PROJECT” SHPK,

⁶ Idem, 18.3, point c.

Another source of funding comes from the implementation of the Law “For the prevention and striking of organized crime, trafficking, and corruption through preventive measures against property”⁷. The law creates a Special Fond for the Prevention of Criminality (art. 37), with revenues coming from its implementation to support services related to the needs of groups affected or at risk by the crime. Besides central and local public authorities, beneficiaries of this fund through the financing of projects for prevention of criminality are also CSOs (art. 37, Point 2, b). As the establishment of this fund is based on the revenues, it is not a sustainable and predictable fund annually based. By the other hand, there are not clear rules and procedures for the announcement of the fund and the application process is closed and not publicly announced.

5.3. The procedure for procurement of services (based on a review of Law on public procurement No. 9643/20.11.2006 with last amendment from 22.07.2010)

5.3.1. Applicable procedures

While there is a separate Law on Concessions and Public Private Partnerships (LCPPP)⁸ where social services are one of the areas that can be offered as concessions, this mechanism is not really applicable to social contracting. This is so because the aim of the LCPPP is to use private resources for investing in certain works and services and the compensation for that will be “*derived from the right to exploit the works or services subject to the concession i.e. to generate revenues*”. This means that the private investor expects to be charging a fee for the use of the respective works or services. In the case of social services whose clients are usually people without sufficient financial resources (to be able to pay for the services received), the mechanism of concessions is not an option.

As noted in the previous point, contracting services to private providers is carried out under the rules and procedures of the Public Procurement Law. The public procurement law excludes from its scope several types of services but not social services specifically. One of the excluded areas is research and development services (art. 7/e). In the cases of social care services, if the contracting authority do not have a project for the service to be procured, it can select as procuring procedure “the counseling service”, which offers services of an intellectual and counseling nature⁹. Each contracting authority is required to establish a procurement unit which organizes the procurement procedures. The law sets specific thresholds based on which the procurement procedure is selected. It is possible to use a simplified procedure only if the value of the contract is below the low threshold: 400 000 ALL. If the value of the contract is estimated above the low threshold, in addition to the open procedure a restricted procedure could be organized. This is a procedure according to which the contracting authority can first evaluate the capacity of the candidates and invite only the candidates with the necessary capacity to submit an offer.

5.3.2. Evaluation criteria

With regard to the evaluation of the bids, there is a possibility to require candidates to list their staff as well (art. 44). This is important in terms of social service delivery where the qualifications of the professionals that will be hired to provide the services are very important for the quality of service provision.

⁷ Law No. 10 192, dt. 3.12.2009 (changed with the law no.24/2014)

⁸ Law No. 125.2013 For Concessions and Public Private Partnership

⁹ Directive No. 06 dated. 03.09.2013 For the Conduction of the Procedures of Social Care Services of the Public Procurement

The most commonly used evaluation criteria in public procurement procedures is the “lowest offer”. For the contracting of Social Care Services, based on a Directive of the Public Procurement Agency¹⁰ the contracting authority can use “the most economic favorable offer“, when it is judged as more appropriate. But, even in this case, the weight of the price in the evaluation process should not be less than 50 points (50% of the evaluation points).

The contracting authority may use various evaluation criteria in addition to the price (art. 55). If it decides to use such other criteria, it has to ensure that:

- The requirements for the candidates are linked to the subject matter of the contract;
- They are objective, proportionate and non-discriminatory;
- The criteria are clearly set in the notice/tender;
- They are set in such a way that they can be evaluated in quantity or quality and can be expressed in monetary terms or pass/fail criteria.

Considering the specific nature of social services, the procurement unit as part of the specific criteria, should also ask for the license and the standards for the services¹¹.

¹⁰Idem

¹¹Idem

VI. PRACTICES WITH REGARD TO CONTRACTING SOCIAL SERVICES TO CSOs

The Law on Social Assistance and Services was adopted in 2005. Almost 10 years after its adoption there are almost no cases of Local Government Units (LGUs) providing funding to CSOs for provision of social services according to the procedure established in the law – using the mechanisms of public procurement. The few existing cases are sporadic e.g. Emanuel Mission Foundation in Korça, that received two contracts from Korça Municipality in 2014.

We have no experience of direct tender procedure of social services in these 8 years in Vlora municipality. It is difficult to procure social services because these services provide not only material but also moral support and benefits, so the service cannot be measured.

Deputy Mayor of Vlora Municipality

Based on the meetings with stakeholders and on focus groups carried out in Tirana, Vlora, Durrës, Korça, and Shkodra, we can identify a combination of problems which hinder the development of the social contracting process and social service provision in general.

a. Lack of traditions in providing community-based social services

The social policy in Albania is centered on three main areas:

- Economic aid (cash payments);
- Cash payments for disabled;
- Support to residential institutions.

Even though the law defines different types of social services, including community-based, in practice the services which are most developed in Albania currently are the residential social services. The institutions in which those are provided have been created and operated by the government (most of the institutions have been transferred under the control of local authorities) so there no contracting has happened or is planned. Currently the government is engaged in social care reform and one of its aims is to gradually reform institutions and develop alternative services. CSOs are the only ones that provide community-based social services.

Community Center “Today for the Future” in Durrës, is supported by Durrës Municipality for the delivery of two services: 1) Legal and psychological support and 2) Counseling line for victims of domestic violence. The support started through a UNDP project in 2010, where The Community Center “Today for the Future” was selected among other CSOs that applied with their projects after an announcement by the municipality (not through a public procurement procedure). At the end of the UNDP project, the Municipality continues to support the center, but as there is not a regulated mechanism to provide funding directly to the center, the municipality itself does direct payments to other service providers for the services and the activities that are delivered at the community center.

b. Lack of state financing for social services

The national budget provides for funds that cover only the three main types of social support. Parts of these funds are transferred to local authorities for managing the residential institutions which have been transferred under their control. There is no separate budget line for social services in the national budget, or in the local budgets. Social services are included under “services” budget line, and despite the diversity of social services delivered mostly by CSOs, the money goes only to traditional services delivered through public institutions, and no other fund is dedicated to new services.

All social services have become part of the obligations of local authorities. Public social services that are funded by the central or local budget, shall be procured by the local government units from private providers under the legislation in force on public procurement.¹² Transferring the obligation has not, however, resulted in increased budget and all community-based social services need to be provided from the local resources of municipalities. An example for the serious problem that municipalities face when attempting to secure finances is the case of the World Bank project in 2005 in cooperation with the ex-Ministry of Labor, Social Issues and Equal Opportunities (today MSWY) that financed the creation of community centers delivering social services for marginalized groups in the municipalities of Shkodra, Durrës, Vlora, and Tirana.

We benefited from the World Bank grant in 2008, but when the funds ended, the things become difficult and all the support for CSOs that delivered social services and that benefited from the grant, stopped there.

Child and Mother in Focus, Vlora

When the project ended and with it the funding from the World Bank also, only the center in Tirana, Association for Women and Children Kombinat, continued to receive some support and funding from Tirana Municipality for a 5 year period through a contract signed with the municipality and with the approval of the Municipal Council. With the change of the political power in 2012

the funding and support from the municipality was terminated.

In practice, most of the experiences of contracting or attempts to contract CSOs to provide social services has started or have been a result of donor supported projects, as the case of World Bank, UNDP, Cooperacione Decentrata Emiglia Romana Region, EU, etc. And all the cases show that with the end of the project, ends the support from the state.

c. Lack of appropriate procedures for contracting services

The public procurement law is quite flexible in terms of determining the procedure, in requiring previous experience in the area of the service to be contracted or with regard to the financial capacity of the candidates. But one issue, that is unavoidable, is the weight of the financial offer in evaluating the potential contractors. Even if the economically most advantageous offer is chosen as a method for selecting the winner (as opposed to the lowest

¹²LAW No. 9355, date 10.03.2005 ON SOCIAL ASSISTANCE AND SERVICES, article 18, point 2.

price), price should still be at least 50 % of the total grade. This is a problem noted by various stakeholders as in the social area quality of the services is the most important factor.

CSOs could hardly compete with big businesses in procurement procedures, because the selection of the offer with the lowest price remains the main selection criteria. *SEEP, Vlora*

There have been attempts from the MSWY to contract or provide financing for private providers of social services, but because of the complicated procedures, these attempts failed e.g. the Ministry tried to support anti-trafficking centers by covering the cost of food but the process was really burdensome and at the end failed.

The lack of clear procedures associated with lack of clear understanding of the procedure by both local authorities and CSOs, has led to some situations in which contracts and agreements with CSOs are considered as irregular by the Supreme State Audit inspectors and municipalities have been punished for the practices that they have applied, as Shkodra and Korça municipality refer. Considering this “bad” experience, in Shkodra Municipality, even though for three years in a row the municipal fund for social services is increased as a result of a lobbying in the Municipal Council, the fund is not used. Despite the willingness and the efforts, the municipality has failed to find the proper mechanisms or procedures to transfer or to procure this fund to the specialized organizations in Shkodër.

The existing Law on Procurement does not enable procurement by CSOs, the rules of public procurement are not clear and the fiscal decentralization of LGUs is still unclear, allowing for different point of views and as a result for different practices.

Shkodra Municipality

It is easier for the municipality to pay a singer for a concert than to support a service for the community in need, not because the lack of the will, but because there is a lack of procedures, and the existing procedures for public procurement are too much rigid for procurement of social services.

AULONA, Vlora

d. Lack of capacity to contract social services

One very important factor that hinders the process is the lack of understanding of the importance of social service contracting. Municipalities very often are not familiar with this possibility; do not know whether this is really allowed and how to organize such a procedure in practice. The lack of good examples and practices is a decisive factor for others to not try to identify innovative approaches. CSOs on the other hand are also not really aware of the existing possibilities and have not actively advocated for a change in the situation with social contracting.

Albania as a state can't have social procurement because it lacks proper capacities, including financial and human capacities, at least at local level.

Deputy Mayor of Vlora Municipality

e. Delays and other problems related to payments

In the very few cases identified in which CSOs have benefited public funds to deliver social and other services, there are mentioned problems related with the payments making it difficult for CSOs to properly implement and deliver the required services. Such problems are related with:

- Delays in payments or lack of payment for the service delivered.
- Reimbursement after the service is delivered
- The obligation to submit to the contracting authority contract insurance of 10% of the value of the contract before the signing of the contract¹³

In 2012 with a request from Kavaja Municipality we have been contracted to deliver psycho-social services for the elderly center and still we have not received the final payment. The municipality is waiting to collect money from the taxpayers to do the payment. *CSDC, Durres*

Previously, service providers were also affected by the fact that the price of social services included also VAT, but some positive changes were made in the new Law On VAT¹⁴, in which services and goods related with social care and assistance, delivered by public institutions and not-for-profit organizations are exempted from VAT.

f. CSOs are seen as a source and not a recipient of funding

While CSOs are considered a key partner of the government in the social area, their role is seen more as a mechanism to attract donor funding to various parts of the country and support financially the local authorities in solving the serious social problems. They are not seriously viewed as a recipient of state/municipal funding for the provision of social services. Even in the cases when CSOs did receive such funding, this was short-term project-based support.

Despite all of these shortcomings, the current situation provides a great opportunity to push the social contracting forward. In Albania, unlike other countries from the region, exactly because the state has not supported the development of community-based social services so far, the issue of state employees engaged in social service provision which might lose their jobs if services are contracted to private providers, do not present an obstacle to the process. In many countries this is an important obstacle to the process of social contracting. In addition, the political environment and the stage of reforms in itself is an opportunity:

1. A social care reform is underway – its aim, among others, would be to identify the possibilities to develop community-based social services and the ways CSOs can be involved in the process.
2. A local government reform is underway – currently Albania is revising the role and responsibilities of local authorities. This is a key moment to ensure that local

¹³ Rules for Public Procurement, pg.9

¹⁴ Law 92/2014, dated 24.07.2014, On VAT in the Republic of Albania, art. 51 Exempted Furniture.

authorities are empowered to both decide on local social services and have the necessary funds to ensure their provision.

3. The National Strategy 2014-2020 is developed – it is important that this strategic document outlines especially the importance for ensuring that social contracting should be developed and supported by the government.
4. A Charter for CSO-Government relations is discussed in Parliament – this is an important document that could highlight the important role of CSOs in social service delivery and the need to ensure that such services could be outsourced to CSOs.
5. A roadmap for CSO development is under preparation – the government of Albania is working on a document that will outline the steps it will undertake in terms of supporting civil society development. It is important that social contracting is one of the areas in which targeted efforts should be invested.

VII. RECOMMENDATIONS

Based on the international practices and the current legal and practical situation in Albania, we could outline the following recommendations. Their purpose is to ensure that social contracting is not only possible but is also a leading practice with regard to the provision and financing of social services in Albania.

- a. Given the reforms that are currently happening in Albania, it should be ensured that **social contracting is included as an important priority in the policy documents developed**. It should also be ensured that when drafting the various legal amendments related to the current reforms (e.g. local government reform or social care reform), it should be ensured that social contracting is regulated properly.
- b. **Key stakeholders should come together and define the key elements of the social contracting mechanism** which should then be regulated in the law. This process should be a joint effort of CSOs, national government and local authorities to ensure that each of these partners understands the process and its role in it.
- c. The main considerations with regard to the mechanism include:
 - 1) With regard to social services, it is very important to have the **possibility to enter into multi-year contracts** with the providers. The quality effect for the people can be achieved after long-term provision of social services and if we want high-quality services, we need to give the provider certain security (that he will be providing the service for a sufficiently long period) so that he invests in the development of the service.
 - 2) Another important issue relates to the **flexibility of the funding** and the possibility for the provider to receive advance payments in order to be able to cover the costs of the service. Another aspect of the flexibility is the possibility to cover administrative costs related to the provision of the service and to invest any savings in the development of the service instead of having to return those to the contracting authority.
 - 3) A third important element is at the start of the procurement to be able **to select the provider based on the capacity of the candidate and not on the lowest financial offer**. As in the social area funding is scarce and never sufficient, it is important that the funding that is budgeted is used to achieve a higher quality service or to cover more people in need, instead of receiving a lower price at the expense of quality.
 - 4) The **procedure should also be sufficiently simple (not too burdensome) and should allow for CSOs to take part in it** (having in mind also their capacity and not only the legal possibility to participate). CSOs are the most important provider of social services and it should therefore be ensured that in Albania their participation is not hindered because of legal or administrative obstacles.
 - 5) **The social contracting procedure should be separate from the general public procurement procedures** because of its specificities and especially the requirement that price should not be a leading criterion because the

government will be providing fixed budgets based on cost calculations. The social contracting mechanism should ensure that:

- i. The selection is transparent;
 - ii. There is monitoring on spending, quality of the services and satisfaction of clients.
- 6) While it is important for all pieces of the puzzle to find their right places, it is important to start the social contracting process as early as possible - **as long as there is a legal possibility and sufficient funding to contract some services**. Practicing the process will give important feedback that will help improve the mechanism in the future.
- d. **There is a need to clearly outline the responsibilities for social services delivery.** Currently local authorities are responsible for social services but there is a joint responsibility for social policy and mitigating poverty. In the future, local authorities should be empowered to both have the responsibility to decide on the social services to be provided and have the necessary funding to secure their delivery. This should be explicitly written in the respective laws related to the powers of local authorities.
- e. There should be **secured funding for the delivery of community-based social services**. Such funding is necessary in both local government budgets and the national budget. As a first step, in the budget of the Ministry of Social Welfare and Youth, in addition to the existing three budget items (economic aid, disability aid and residential institutions) a new line item should be added specifically for social services. This could be used for securing funding for both national-level social services (e.g. a help-line for battered women that covers all the territory of Albania) and for providing funds to local authorities to provide basic community-based social services. This funding could be provided to local authorities in the form of targeted budget support to be used under the condition that it is contracted to private providers. Alternatively, the funding could be provided to local authorities as a matching grant – to double any funding that local authorities use from local resources for community-based social services.
- Local authorities, on the other hand, should include in their own budgets, special funds for provision of community-based social services at some minimum level (e.g. 5 % of the local budget). This should come from their local resources and should be additional to any funds they may receive from the national budget for providing social services.
- f. There is a need to ensure that at the local government level **CSOs are included not only in the delivery of social services but also in the identification of needs, planning the social services and in monitoring the local social policy**. One of the first steps to be undertaken is to map the needs of the people in order to understand which services are most needed in different locations.
- g. The **capacity of both CSOs and institutions needs to be increased** with regard to the social contracting process. There needs to be specialized trainings that explain what the purpose of social contracting is, what are the legal possibilities, what are the existing procedures, etc. In addition to that, good practices from both Albania and

abroad should be disseminated so that both parties understand the value of social contracting.

As a final conclusion, even though social contracting is not at all developed in Albania at the moment, the current political situation creates a rare opportunity to make this process a success. In addition to the reforms that are taking place, the fact that there are almost no community-based social services gives the opportunity that when these start developing, CSOs will be the natural partner as the only institutions that have experience in providing social services and having the needed capacity. So instead of the authorities investing a lot of resources to train employees, they can benefit from the investments in people already made by CSOs. Of course, CSOs need to develop their capacity even further to be able to cover wider groups of beneficiaries, provide new services, etc. But the social contracting process would be a natural stimulus for that process to be initiated.

VIII. ANNEXES

8.1. Case Study - Emanuel Mission Foundation, Korçë

In 2013, Emanuel Mission Foundation in Korça, through a contractual agreement with Korça Municipality, approved by the Municipal Council, received support from the municipality in two ways:

1. Funding for the payment of rent, electricity, and water for two community centers: Center for Roma and Egyptian Children, and Elderly Day Center
2. In-kind contribution with spaces for two other community centers: Center for Roma and Egyptian Children, and Elderly Day Care Centers.

The assistance provided by the Municipality was used by the organization as part of the cost-share of 15 % that it should contribute in the project funded by a foreign donor (approximately 4% of the cost share was provided from the municipality).

The audit control in the municipality considered the procedure as not regular and not legal. The funding was considered as a “donation” to the organization, and the municipality is prohibited by the law to give such “donations”.

Considering the situation and the willingness to continue to provide support to the organization in order to deliver the services to the vulnerable groups during 2014, the Municipality applied the Public Procurement procedures in 2014, for the first time for such services. The tender procedure was an Open Procedure, where all interested offers could participate and the “lowest price” was the main criteria based on which was done the evaluation of offers.

There were two tender procedures organized:

1. Trainings, lobby and advocacy for the Center of Roma and Egyptian Children
2. Social and cultural activities for the Elderly Center (birthdays, excursions, etc.)

Community Emanuel participated in the tender procedures and was selected as the winner (in one of the tenders there was another CSO competing for the same contract, while in the other one the only offer was from Emanuel Mission Foundation).

The application in the tender was done on-line in compliance the Public Procurement Law. Problems were faced by the organization in the registration in the system, as its NIPT was not recognized by the system and it was rejected, so the organization could not register in the system.

After consultations with the procurement staff in the municipality and the APP staff, it was suggested that the organization should prepare a request and send it to the APP, explaining its status, and form of registration. The request was associated with the NIPT and Statute of the organization and was send by mail to the APP. After that, the organization received the password to get access in the system. This was the only issue that the organization had with the system. Everything else is considered easy.

The amount of the tender was VAT subject, so 20% of the contract value was deducted from the disbursement made to the organization. Based on the contract the organization should prepare and present a narrative and financial report to the Municipality every two months, and after the approval of the reports, the reimbursement is made. The reporting is two-months and

the organization should present narrative and financial report, and a receipt to receive reimbursement for the expenses by the municipality. All expenses executed by the organization should be proved by respective invoices, and the organization should also prepare and issue an invoice for all expenses incurred.

8.2. List of Interviewees

1. Vasilika Hysi – MP, member of the Commission for Legal Issues, Public Administration and Human Rights
2. Evis Qaja – Coordinator, Unit for Cooperation of Development Programs and Strategic Planning, Council of Ministers
3. Enkelejda Lopari – Advisor to the Minister of Social Welfare and Youth
4. Eduard Ahmeti – General Director, Public Procurement Agency
5. Reida Kashta (Shahollari) – Director of the Judicial, Monitoring and Publication Directory, Public Procurement Agency
6. Lida Leskj – Deputy General Director, State Social Service
7. Zarina Taja – Specialist, Directory of Policies and Fiscal Relations, Ministry of Finances
8. Alketa Zazo – Officer of Adolescents Development, UNICEF
9. Ilir Banushi – Vice Mayor, Municipality of Vlora
10. Petro Thanasko – Chief of Procurement Unit, Municipality of Vlora
11. Anjeza Shiko – Director, Directory of Public Properties and Assets, Municipality of Vlora
12. Jeta Xhabija – Chief of Social Services Office, Municipality of Shkodra
13. Armando Lohja – Chief of Cultural Office, Municipality of Shkodra
14. Meme Xhaferraj – Director, Directory of Social Services, Municipality of Durrës
15. Alvaro Kacupi – Specialist, Procurement Unit, Municipality of Durrës
16. Xheni Prenda – Director, Directory of Policies and Strategic Projects, Municipality of Korça
17. Matilda Stena – Chief of Procurement Sector, Municipality of Korça

8.3. Participants in the Focus Groups with CSOs

Korça

1. Robert Stratobërdha - Help for Children Korça
2. Rudina Lako - Help for Children Korça
3. Mirela Kapedani - Help for Children Korça
4. Kristi Ziko - Dorcas Aid International Albania
5. Gerta Kajno - Tabita Foundation
6. Aldi Stratobërdha - Mission Emanuel
7. Nonda Kajno - Artistic Shows Agency Korça
8. Petrika Riza - Dora Prinderore Association
9. Violeta Tici - Social Club
10. Klara Çelo - Woman of Korça
11. Klementina Fundo - Woman of Korça
12. Dhionis Kotrilo - Nature and Life
13. Meri Pollasni - European Gate Korça Qark
14. Natasha Buzhali - Mother, Children, Future
15. Irena Fecani - Civil Society Alliance, Korça
16. Isuf Salice - Association for Physical Benefit
17. Niko Balli – Association of AgroTourism

Tirana

1. Rajmonda Prifti - Association for Women and Children
2. Aferdita Seiti - Association "Help the Life"
3. Marjeta Manushaj - Development Center "Red House"
4. Besa Rroshi - Emmanuel Community
5. Migena Loli, SOS Children Villages
6. Ada Dimo, ARSIS
7. Miloim Demnushaj, Different & Equal
8. Vilma Gjeci, Tirana Legal Aid Society
9. Alketa Kupe, Teerre des Hommes

Vlorë

1. Enela Mane - Aulona Center
2. Egla Imeraj - Aulona Center
3. Adena Vangjeli - Psycho-Social Centre "Vatra"
4. Hodo Kabelle - Intellectuals of Independence
5. Luljeta Gusha - Children and Mother in Focus
6. Alketa Dhimitri - Youth Center
7. Marinela Deraj, Aarhus Info Center

Durrës

1. Viola Cikalleshi - "Today for the Future" Network of Community Development Centers
2. Mirjam Reçi - Civil Society Development Center (CSDC), Durrës
3. Marjana Biba - National Association of Albanian Orphans, Durrës
4. Migena Mehmeti - Association "Hope for Orphans"
5. Vangjeli Cugaj - Association "Hope for Orphans"
6. Llesh Arapi - Association "Mother Teresa"
7. Nikolla Gogo - Association "Solidarity, Friendship, Handicap"

Shkodër

1. Antonjeta Pero - Counseling Center for People with Disabilities
2. Kastriot Faci - THE DOOR
3. Fatmir Lugji - YMCA Shkodera
4. Pranvera Marku - Hope for the Future
5. Kristi Kola - Woman to Woman
6. Armando Lohja - Creative City
7. Entela Shkreli - GO2
8. Arbana Dibra

Partners Albania is a local organization established in 2001, working to build platforms of cooperation between civil society organizations, local and central government, business community and media, towards a sustainable socio-economic development of the society and democracy in the country.

Partners Albania, Center for Change and Conflict Management

Rruga Sulejman Delvina, N.18, H.8, Ap. 12, Njësia Bashkiake 5,

Kodi Postar 1022, Tiranë, Shqipëri,

Kutia Postare (PO Box) 2418/1

Tel. 04 2254881 Fax: 04 2254883

Email: partners@partnersalbania.org

<http://www.partnersalbania.org>