

MONITORING OF PUBLIC PROCUREMENTS

(January - June 2023)

39



Skopje, December 2023

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The background of the page features a monochromatic orange-toned image. It depicts a city skyline with several tall, thin skyscrapers in the distance. In the foreground, there are multiple stacks of coins, likely Euro coins, arranged in a way that creates a sense of depth. The coins are stacked in various heights, with some stacks being taller than others. The overall composition suggests themes of finance, economics, and urban development.

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Key findings

- » Portion of public procurement procedures are marked by decisions that lack adequate and precise elaboration which creates legal uncertainty among tender participants and increases the doubt about objectivity and legality of actions taken. In general, it is a matter of decisions on bid rejection and on tender annulment.
- » In the first half of 2023, every third public procurement contract was awarded in tender procedure marked by participation of only one company. A total of 5,045 contracts in cumulative value of 283 million EUR have been awarded in the absence of any competition whatsoever. Moreover, the average number of bids per tender procedure in the first half of 2023 is reduced and accounts for 2.8 bids compared to 3 bids in 2022. Absence of competition is particularly worrying in the area where significant portion of public funds are spent on public procurements, i.e. healthcare. Competition is absent even in tender procedures of high value, such as the two-year procurement of insulin and glucagon for 2023 and 2024, in the value of 28 million EUR.
- » Significant share of procurement procedures do not indicate the quantity of what is being purchased whereby, to the detriment of budget funds, companies are prevented to offer lower prices for higher quantities of goods. This approach facilitates manipulation and abuses in the stage on contract performance.
- » In the first half of 2023, the non-transparent negotiating procedure without previously announced call for bids was used to award contracts in total value of around 11 million EUR. As many as 91% of these contracts were awarded to the only bidder. The highest value of such contracts is noted with JSC Power Plants.
- » 'Lowest price' was used as the criterion for selection of the most favourable bids in high 95% of tender procedures implemented in the first half of 2023, which is by 1 percentile point higher than the previous year. On the other hand, it was noted that some tender procedures which used both quality and price to select the most favourable bid do not include adequate bid-evaluation elements.
- » A favourable trend is seen in decreased organization of electronic auctions. In the first half of 2023, e-auctions were anticipated in 62% of tender procedures compared to 73% in the same period last year.



- » Against the backdrop of widespread corruption in public procurements, instead of being enhanced the control department at the Bureau of Public Procurements is downsized. In the course of three years, the number of staff members at this department comprised of two units, administrative control and previous control, has been reduced from 12 to 8 employees. A positive development is seen in increased number of administrative controls over tender procedures, some of which are selected on the basis of risk assessment related to violation of law provisions.



Recommendations

- » Decisions need to be accompanied with precise elaborations that would allow companies participating in tender procedures to be assured of their legality or otherwise provide them with reasonable grounds to seek legal protection. Lack of precise elaboration, especially in the case of significant decisions, such as bid rejection or tender annulment, leads to increased doubt among tender participants about disregard of the underlying principles in public procurement.
- » Each institution should conduct an analysis of competition in its tender procedures and design a plan with measures aimed at promoting the manner in which public procurements are implemented and facilitating greater competition. In order to stimulate competition, the institutions need to more frequently conduct preliminary market checks by means of the so-called technical dialogue with companies.
- » Having in mind the non-transparency of the negotiating procedure without previously announced call for bids, the institutions need to use this type of procedure only in exceptional circumstances. At the same time, in order to increase insight in these type of contracts, tender documents should be published together with the notification on contract signed, with the notification including the names of all companies that have participated in negotiations, not only the name of the company that was awarded the contract.
- » The institutions should not implement procurement procedures that do not indicate the quantity or the scope of their procurement subject. As minimum requirement, the institutions are obliged to enlist indicative quantities in order to secure lower prices and enable fair access to tender procedures for all participants.
- » The trend on decreased organization of e-auctions should continue, and these should be an exception not a rule in implementation of public procurements. The institutions should follow the logic of organizing e-auctions only in the case of products of known and standard quality and those characterized by market competition.



- » To ensure the best value for the money spent, the institutions should more frequently use the selection criterion defined as 'best quality-price ratio'.
- » Efforts are needed to strengthen capacity of staff members in order to enhance administrative controls conducted by the Bureau of Public Procurements. At the same time, the share of administrative controls performed on the basis of risk assessment for violation of law provisions should be increased, pursuant to the indicators already developed by this institution. Having in mind that the Bureau does not have competences and authority to assess whether certain irregularities are a result of unintentional error or have been made with the intention to favour certain companies, competent prosecution services need to be timely informed about relevant findings from administrative controls.



Goals and methodology

The Center for Civil Communications (CCC) regularly monitors and analyses implementation of public procurements in the country, starting from 2008 when the first national legislation on public procurement drafted in compliance with the European Commission's Directives entered into effect. The overall goal of this endeavour is to assess whether and to what extent the state institutions comply with the underlying principles of public spending, as stipulated under the law: competition among companies, equal treatment and non-discrimination of companies, transparency and integrity in implementation of public procurements, cost-effective and efficient public spending.

Subject of this monitoring effort are public procurements implemented by all state institutions in the country, both at central and local level of government. Selection of the monitoring sample is made at the time of when procurement notices are published in the Electronic Public Procurement System (EPPS).

Monitoring activities include collection of primary and secondary data by means of CCC monitors attending the public opening of bids, discussions with bidding companies, browsing and researching data available in EPPS, browsing information on appeals lodged before and decisions taken by the State Commission on Public Procurement Appeals (SCPPA) available on its official website and submitting requests under the instrument for free access to public information inquiring about data that are otherwise unavailable. Questionnaires and other templates used for monitoring purposes are structured in a manner that facilitates the most effective method of monitoring the implementation of public procurements in terms of compliance with relevant legislation and the fundamental principles that govern public procurements.

Implementation of public procurements is analysed on the basis of all information and data collected, previously structured and inputted into a specially-designed matrix, in terms of compliance with above-enlisted principles and efforts to obtain the most advantageous bid, including accountability of public funds spent.



Data analyses serve as baseline for development of reports that outline key findings from monitoring and analysis of public procurements, recommendations to address problems and weaknesses identified in the system of public procurements, and detailed elaboration of the observed state-of-affairs.

This report is developed on the basis of monitoring and analysis of a selected sample comprised of 60 public procurement procedures implemented by institutions at central and local level, in the period from 1 January to 30 June 2023.

The Center for Civil Communications (CCC) was established in April 2005 as non-governmental, non-profit and non-partisan association of citizens.

CCC monitors, analyses and strengthens societal processes in the country and the region in relation to anticorruption and good governance, the media, and economic growth.

Thus far, CCC has focused its work on two groups of interrelated activities: (1) monitoring the performance of state institutions and recommending measures and policies to advance their track record and narrow the space for corruption; and (2) capacity building for journalists and promotion of the special role played by the media and non-governmental organizations in the fight against corruption.

In that regard, CCC has developed and promoted several hundred specific recommendations for measures aimed at promoting the legislation and practices that ensure more transparent, accountable and responsible operation on the part of central and local authorities; has trained more than five hundred journalists from national and local media outlets and civil society representatives; and has published more than hundred analyses, research studies and manuals.



Analysis from monitoring of public procurements

- » ***Portion of public procurement procedures are marked by decisions that lack adequate and precise elaboration which creates legal uncertainty among tender participants and increases the doubt about objectivity and legality of actions taken. In general, it is a matter of decisions on bid rejection and on tender annulment.***

Institutions that purchase goods, services and works under public procurement procedures often take decisions void of adequate and precise elaboration. This negative practice was observed with portion of monitored public procurements, especially in the stage on bid-evaluation when the public procurement committee checks the adequacy of bids against the terms and requirements from the tender documents, but also in respect to decisions on tender annulment.

Bid rejection was observed in 40% of monitored procurement procedures. Reasons indicated for bid rejection are multiple, but additional concerns are raised with examples where the reason for bid rejection is not precisely elaborated, which prevents the bidders to be certain about the decision's objectivity. At the same time, lack of adequate information prevents affected companies to seek legal protection, i.e. prevents them to lodge an appeal before the State Commission on Public Procurement Appeals.

Two examples from the monitoring sample provide an excellent illustration of this shortcoming. The first tender procedure concerns procurement of circular and drain pumps in the value of 9,440,000 MKD (153,496 EUR) in which one of the two bids was rejected with a generic justification, as follows: "Rejected due to negative reference or formal shortcomings in the bid". According to data available in the Electronic Public Procurement System, the bidder in question does not have any negative references, which leaves other shortcomings as the reason for bid rejection; however, the committee had not found it necessary to clearly elaborate on this, which is utterly inadequate.

Bid rejection without precisely indicated reason thereof was noted also in the procurement procedure for emergency power generator in estimated value of 1,800,000 MKD, i.e. 29,268 EUR. Bids were submitted by two companies, but one bidder was rejected with the following



elaboration: “The bid of the economic operator is inadequate, i.e. does not match the need and the requirements given in the technical specifications published by the contracting authority. According to the expert opinion given in written by professionals at the contracting authority’s IT sector who participated in evaluation of the technical bid and whose names are given in the public procurement decision”. This statement was also featured in the decision on selection of the most favourable bids without any specific information what parameters of the rejected bid do not match the tender requirements. Even the expert opinion submitted as integral part of the report on implemented public procurement is void of details. The document titled “expert opinion” and submitted to the public procurement committee enlists that one of the two bids does not match the technical specifications in several aspects, i.e. does not meet the minimum technical requirements. Moreover, the “expert opinion” is signed by two people, one of which is also member of the public procurement committee. It remains unclear why there are no details on relevant parameters which the rejected bid failed to meet in respect to the technical specifications defined.

Furthermore, problems are raised with tender procedures where elaboration of bid rejection is given by the public procurement committee, but later actions of the institution impose the question whether these have been objective.

Such example is found in the monitored procedure for procurement of 60 specialized work uniforms and 60 protective glasses. The institution that purchased work uniforms in estimated value of 2.4 million MKD (39 thousand EUR) was presented with 4 bids. One bid was rejected on the account that the statement on serious intent had not been adequately signed, while the remaining 3 bids were rejected because they did not match the technical specifications. The committee adopted a decision on tender annulment. Two months later, the same contracting authority published a new procurement notice and received only one bid from one of the companies whose bids had not matched the technical specifications earlier that year, i.e. in May. The single bid submitted in the new tender procedure was accepted and was awarded the contract. In that, comparison of technical specifications published in both tender procedures allows the conclusion that there are literary no differences in the description of work uniforms. What had changed however is the selection criterion used in the second tender procedure, i.e. the tender procedure organized in May used ‘lowest price’, while the tender procedure organized in ‘July’ used the criterion defined as ‘the most economically advantageous bid’, whereby price was assigned 50 points and quality was assigned 50 points. It is evident that certain processes have taken place in the two-month period from the first tender procedure and announcement of the second tender procedure which have helped some bidding companies to understand they should not apply to the procurement notice for work uniforms.



As regards imprecise elaboration of decisions on tender annulment, most problematic are tender procedures annulled under the justification that an error in tender documents had been noted after publication of the procurement notice. This is a law-stipulated ground for tender annulment, i.e. Article 114, paragraph (1), item 5) of the Law on Public Procurement anticipates a possibility for tender annulment on the grounds that tender documents contain major omissions or shortcomings. In terms of the monitoring sample, tender procedures annulled on this ground lack precise indication about the type of omission/error in the relevant tender documents. Namely, an indication of the actual error/omission would provide necessary information to interested bidders and would facilitate perceptions about objectivity of the annulment decision. In that, detailed description of omissions identified should also be featured in the notifications on tender annulment published in EPPS.

Tender annulment remains a serious problem that affects public procurements. As many as 3,214 from the total of 11,930 public procurement procedures announced in the first half of 2023 have been annulled, accounting for a share of 27%. Having in mind the high share of annulled tender procedures in the same period in 2022, it could be noted that, in 2023, tender annulments are decreased by 2 percentile points.

Annulment of tender procedures (full and partial), semi-annual overview

Period	Number of procurement notices published	Number of annulment decisions	Share of annulled tenders in total number of procurement notices
January - June 2019	9,743	2,511	26%
January - June 2020	9,537	2,604	27%
January - June 2021	11,215	2,882	26%
January - June 2022	11,024	3,216	29%
January - June 2023	11,930	3,214	27%

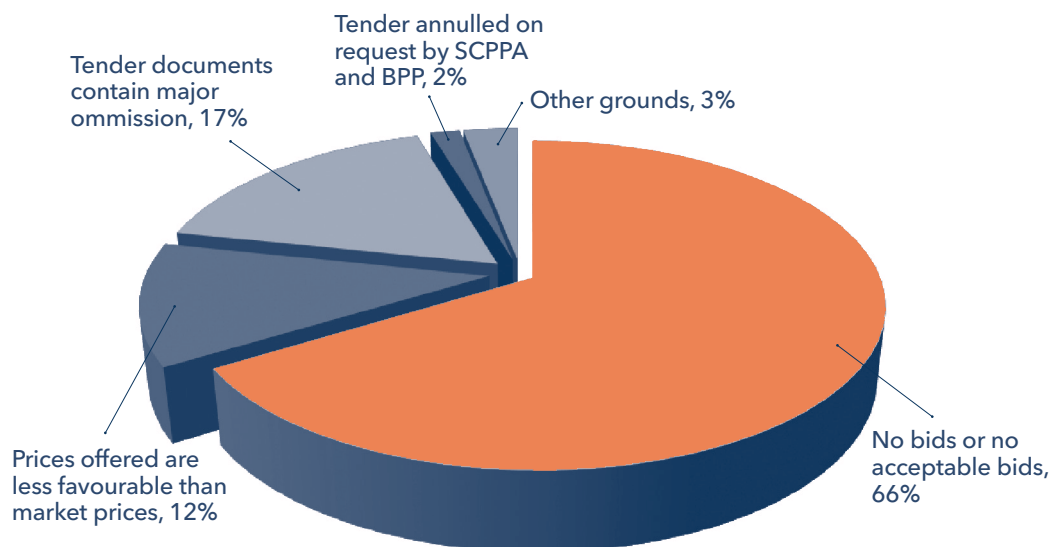
Analysed in terms of reasons for tender annulment, as was the case in the previous period, the most dominant reason is the fact that no bids were submitted or no acceptable bids were received. This legal ground accounted for 66% of annulled tender procedures.

Second most frequently indicated reason concerns major omissions in tender documents, which accounted for 17% of annulled tender procedures. The third reason in terms of frequency concerns the fact that prices bided are less favourable than market prices, which accounted



for 12% of annulled tender procedures. The share of tender procedures annulled by means of decisions by the State Commission on Public Procurement Appeals or by the Bureau of Public Procurement upon previously conducted administrative control accounted for less than 2%.

Breakdown of reasons indicated for annulment of tender procedures in the first half of 2023*



** The breakdown of reasons for tender annulment is made on the basis of processing all notification on tender annulment in the first half of 2023 submitted to EPPS*

Recommendation:

Decisions need to be accompanied with precise elaborations that would allow companies participating in tender procedures to be assured of their legality or otherwise provide them with reasonable grounds to seek legal protection. Lack of precise elaboration, especially in the case of significant decisions, such as bid rejection or tender annulment, leads to increased doubt among tender participants about disregard of the underlying principles in public procurements. At the same time, given that this finding also covers frequent annulment of tender procedures, each institution should conduct an analysis of annulled tender procedures and design a plan with measures aimed at overcoming the issue of frequent tender annulments.



- » ***In the first half of 2023, every third public procurement contract was awarded in tender procedure marked by participation of only one company. A total of 5,045 contracts in cumulative value of 283 million EUR have been awarded in the absence of any competition whatsoever. Moreover, the average number of bids per tender procedure in the first half of 2023 is reduced and accounts for 2.8 bids compared to 3 bids in 2022. Absence of competition is particularly worrying in the area where significant portion of public funds are spent on public procurements, i.e. healthcare. Competition is absent even in tender procedures of high value, such as the two-year procurement of insulin and glucagon for 2023 and 2024, in the value of 28 million EUR.***

A total of 14,696 public procurement contracts were awarded in the analysed period January - June 2023, whose cumulative value accounts for 68 billion MKD, i.e. 732 million EUR. Analysis of competition in implemented public procurement procedures allows the conclusion that the unfavourable trend whereby every third contract is awarded in tender procedure presented with only one bid continued well into 2023. Notably, tender procedures that lack competition, i.e. are presented with only one bid, account for 34% of all contracts awarded (5,045), in total value of 17.4 billion MKD (283 million EUR). The share of these contracts in the total value of all contracts awarded in the first half of 2023 accounts for high 39%.

Overview of public procurement contracts awarded, per number of bids received (January - June 2023)

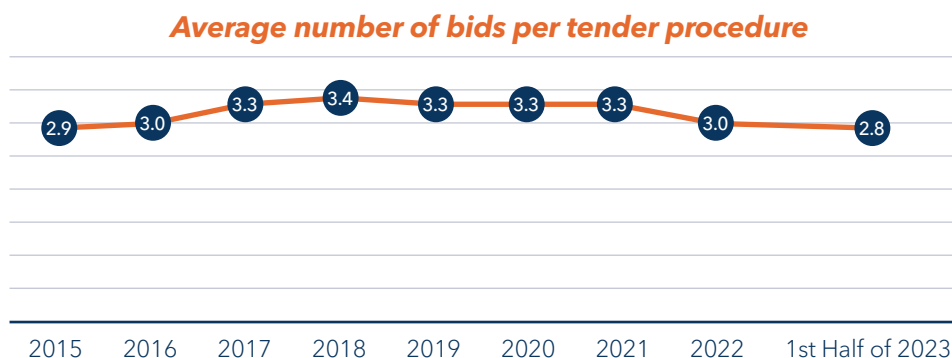
Competition (number of bids received)	Total number of contracts signed	Value of contracts (in billion MKD)	Value of contracts (in million EUR)
1 bid	5,045	17.4	283
2 bids	3,370	9.6	157
3 and more bids	6,274	18.0	292

The share of contracts awarded in non-competitive procedures is one of the key indicators for identifying negative trends in any system of public procurements. It shows the potential risk of procurement procedures being implemented without due consideration of the key principles such as competition among economic operators and equal treatment of economic operators. In that, the absence of competition prevents verification of market justifiability



of prices at which contracts are signed which, in turn, raises doubts that contracts involve prices significantly higher than actual market prices and additionally threaten the principles of cost-effectiveness and efficiency.

In the first half of 2023, the negative developments in respect to competition in tender procedures are further confirmed by the drop in terms of the average number of bids per tender procedure compared to the previous years. Namely, according to data available in EPPS, the average number of bids in all tender procedures implemented in the period January - June 2023 stands at 2.8 bids per tender procedure compared to 3 bids throughout the three-year period from 2019 to 2021.



At the level of individual sectors, particular concerns are raised about the state-of-affairs in the field of healthcare. All tender procedures organized in this sector and included in the monitoring sample were marked by no competition.

The biggest tender procedure among these concerns procurement of insulin and glucagon for the period January 2023 - December 2024 to meet the needs of the population in the Republic of North Macedonia, in estimated value of 1,721,782,346 MKD, VAT included, i.e. 27,996,461 EUR, and was implemented by the Ministry of Health. The tender procedure was comprised of 24 lots and bids were presented by 6 companies. However, 20 lots were presented with only one bid, 1 lot was presented with 3 bids and no bids were submitted for 3 lots. All six companies were awarded contracts for several lots of the tender procedure in the capacity of single bidder. Analysed in terms of the value, the highest value share (58%) belongs to PHOENIX PHARMA Skopje, which was awarded contracts for 7 lots in total value of 16.2 million EUR (table below provides overview of companies awarded contracts and respective contract values).



Such award of public procurement contracts of extremely high value under conditions of total absence of competition is highly worrying, especially having in mind that the only lot presented with 3 bids (lot no. 22) included major difference in prices offered, i.e. the winning bid amounted to 1,220,400 MKD (19,844 EUR), the second-ranked bid amounted to 1,927,800 MKD (31,346 EUR), and the third-ranked bid amounted to 7,713,360 MKD (125,420 EUR).

***List of companies awarded contracts under the tender procedure
for procurement of insulin and glucagon***

Lot and generic name	Number of bids	Company awarded the contract	Contract value (MKD)	Contract value (EUR)
Lot 1. Short acting human insulin Lot 4. Insulin glulisine Lot 6. Insulin and injection analogs, medium and short acting, combined with fast acting insulin human 75/25	1	D-R PANOVSKI Skopje	193,585,151	3,147,726
Lot 2. Ultra-fast acting insulin aspart Lot 3. Ultra-fast acting insulin aspart Insulin aspart Lot 8. Insulin and injection analogs, medium and long acting, combined with fast acting insulin aspart (70/30) Lot 9. Insulin and injection analogs, of medium and long acting, combined with fast acting insulin aspart (70/30) Lot 16. Insulin degludec Lot 17. Insulin deludeg/liraglutide Lot 21. Semaglutide	1	PHOENIX PHARMA Skopje	996,925,545	16,210,171
Lot 5. Insulin lispro Lot 7. Insulin and injection analogs, medium and long acting, combined with fast acting insulin human 70/30 Lot 10. Insulin and injection analogs, medium and long acting, combined with fast acting insulin lispro (75/25) Lot 11. Insulin and injection analogs, medium or long acting, combined with fast acting insulin lispro (50/50) Lot 12. Medium acting human insulin Lot 15. Insulin Glargine biosimilar	1	PHARMA TRADE Skopje	220,898,391	3,591,844



Lot 13. Insulin glargine 100E/mL Lot 14. Insulin glargine 300E/mL	1	ALKALOID KONS Skopje	152,431,188	2,478,556
18. Lixisenatide 10 mcg	0	Annulled		
19. Lixisenatide 20 mcg	0	Annulled		
20. Dulaglutide	0	Annulled		
Lot 22. Sitagliptin Lot 25. Semaglutide Lot 26. Glucagon	3 1 1	MAKEDONIJA LEK Skopje	70,469,280	1,145,842
Lot 23. Vidagliptin Lot 24. Empagliflozin	1	ZEGIN Skopje	74,153,520	1,205,748
TOTAL			1,708,463,075	27,779,887

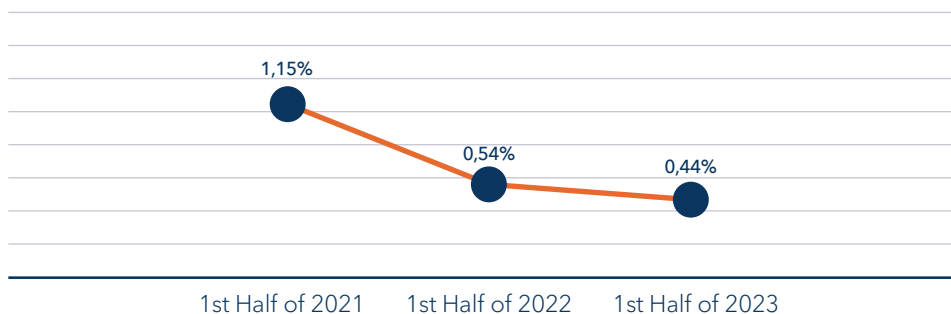
Absence of competition was observed in another monitored procurement procedure for 10 dental chairs in estimated value of 11,800,000 MKD (191,870 EUR). A bid was submitted by only one company requesting a price of 11,784,070 MKD (191,611 EUR) for the dental chairs, which is by merely 0.14% less than the procurement's estimated value, which was not disclosed in advance. This procurement procedure anticipated an electronic auction for price reduction, but the same was not organized on the account of having received only one bid. The procedure was concluded with selection and contract award to the single bidder.

Another monitored procedure for procurement of surgical lights for operating theatres in estimated value of 10,300,000 MKD (167,480 EUR) was presented with bids from two companies, one in the value of 6,803,880 MKD (110,632 EUR) and the other in the value of 10,024,100 MKD (162,993 EUR). The public procurement committee found the lower-value bid unacceptable because it has not provided evidence on fulfilment of requirements from the technical specifications. The contract was awarded to the company that submitted the higher-value bid.

None of monitored procurement procedures used the law-anticipated mechanism for preliminary market checks. This does not surprise given the fact that among the total 11,930 public procurement procedures implemented in the first half of 2023, only 54 procedures, i.e. 0.44%, have conducted such market consultations, which represents an additional decrease to the already low use of this mechanism in the previous years.



Use of the mechanism 'preliminary market checks'



Recommendation:

Each institution should conduct an analysis of competition in its tender procedures and design a plan with measures aimed at promoting the manner in which public procurements are implemented and facilitating greater competition. In order to stimulate competition, the institutions need to more frequently conduct preliminary market checks by means of the so-called technical dialogue with companies, in compliance with Article 76 of the Law on Public Procurements. This means that, prior to publishing the procurement notice, tender documents need to be made available for insight to potential bidders via EPPS, soliciting their comments and remarks. Understandably, the technical dialogue would make sense only if the institution implementing it is truly prepared to listen to potential bidders and integrate their constructive and argument-based remarks and proposals. This would ensure timely correction of certain limiting or favouring elements in tender documents and would improve these documents in terms of successful implementation of public procurements.

- » **In the first half of 2023, the non-transparent negotiating procedure without previously announced call for bids was used to award contracts in total value of around 11 million EUR. As many as 91% of these contracts were awarded to the only bidder. The highest value of such contracts is noted with JSC Power Plants.**

In the first half of 2023, the negotiating procedure without previously announced call for bids was used to award 133 contracts in total value of 654,393,022 MKD (10.6 million EUR).

JSC Power Plants accounts for one-third of the total value of such contracts. Analysed in terms of the value, almost one third of these contracts belong to JSC Power Plants of North Macedonia.



This state-owned enterprise has awarded 4 contracts in total value of 212,171,080 MKD (3.4 million EUR).

***Value of contracts awarded under negotiating procedure
without previously announced call for bids***

Period	Value of contracts (in million EUR)	Change (%)
January - June 2019	9.6	-11%
January - June 2020	11	+15%
January - June 2021	7.9	-28%
January - June 2022*	11.7	+48%
January - June 2023	10.6	9%

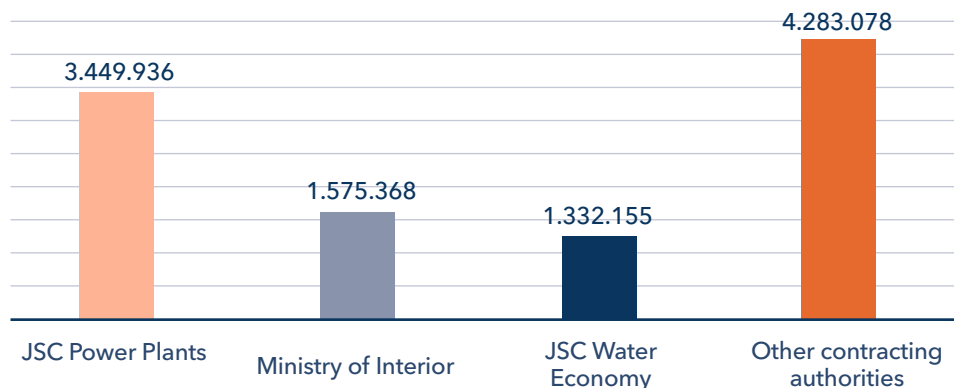
** The total value of these contracts does not include contracts signed by Balkan Energy*

Further data analysis leads to the knowledge that in the case of 121 from the total of 133 contracts, negotiations were held only with one company. The value of contracts marked by negotiations with only one company accounts for 540,988,351 MKD (8.8 million EUR), accounting for a share of 83%.

At the level of individual institutions, the highest value of contracts awarded without previously announced call for bids (high 60%) belongs to only 3 contracting authorities, those being: JSC Power Plants, the Ministry of Interior and JSC Water Economy. As was the case in the previous years, in the first half of 2023, JSC Power Plants is at the top of the list of state institutions with 5 contracts in the value of 212,171,080 MKD (3.4 million EUR). Second-ranked is the Ministry of Interior, with 11 contracts awarded under the negotiating procedure without previously announced call for bids, in total value of 96,885,148 MKD (1.6 million EUR). Third-ranked is JSC Water Economy of RNM, with 2 contracts in the value of 81,927,516 MKD (1.3 million EUR). All other institutions together have spent 263,409,297 MKD (4.3 million EUR), accounting for a share of 40%.



Contracting authorities with the highest value of contracts awarded in negotiating procedure without previously announced call for bids in the first half of 2023 (in EUR)



The list of the 10 biggest contracts is led by JSC Power Plants with its contract for procurement, delivery, assemblance and putting into operation of gas-fuelled engine, signed with the company SPEKTRATERMO Skopje, in the value of 2.8 million EUR.

Ten biggest contracts awarded in negotiating procedure without previously announced call for bids in the first half of 2023

Contracting authority	Economic operator	Procurement subject	Contract value (in EUR)
JSC Power Plants	SPEKTRATERMO Skopje	Procurement, delivery, assemblance and putting into operation of gas-fuelled engine	2,841,221
JSC Water Economy	RAPID BUILD Kumanovo	Repair of the siphon Makarija at HMS Tikvesh	1,276,321
Government of RNM	NEXTSENSE Skopje	Preventive and adaptive maintenance of a multiplatform collaboration system for e-sessions	649,162
PTE Skopje	EVN Macedonia	Procurement of electricity	575,610
Ministry of Interior	HMF Smart Solutions GmbH	Services for maintenance of TETRA systems at Mol	575,610



Ministry of Interior	DAT- CON	Servicing and maintenance of special border surveillance system	487,805
PHI University Institute of Positron Emission Tomography	Comecer S.p.A.	Maintenance of radiopharmaceutical laboratories	402,927
PE City Parking - Skopje	NEXTSENSE Skopje	Procurement for maintenance of the zone parking system	383,740
PE Strumica Gas	CNG SYSTEMS Skopje	Procurement of compressed natural gas	369,295
PE Parking Lots of the Municipality of Centar - Skopje	TSH TECHNOLOGY Skopje	Integrated custom care system	290,683

According to the Law on Public Procurements, the Bureau of Public Procurement issues an opinion on fulfilment of conditions for use of negotiating procedure without previously announced call for bids in cases of urgency caused by events that could not have been anticipated by or attributed to the contracting authority, in the case when exclusive rights need to be protected, and in the case when, due to artistic or technical reasons, the contract can be signed only with certain economic operator.

The number of applications to the Bureau of Public Procurement to obtain opinion on the use of negotiating procedure without previously announced call for bids continues to increase. In the period January - June 2023, the Bureau of Public Procurements was presented with 158 such applications and has issued positive opinion for 137 applications (87%) and negative opinion for 21 applications.

Recommendation:

Having in mind the non-transparency of the negotiating procedure without previously announced call for bids, the institutions need to use this type of procedure only in exceptional circumstances. At the same time, in order to increase insight in these type of contracts, tender documents should be published together with the notification on contract signed, with the notification including the names of all companies that have participated in negotiations, not only the name of the company that was awarded the contract.



- » ***Significant share of procurement procedures do not indicate the quantity of what is being purchased whereby, to the detriment of budget funds, companies are prevented to offer lower prices for higher quantities of goods. This approach facilitates manipulation and abuses in the stage on contract performance.***

A frequent practice observed among contracting authorities implies non-publication of the quantity of goods needed and planned for procurement in their respective tender documents. In such cases, the contracting authorities request bidders to offer unit prices. Hence, companies are prevented to economize their bids, i.e. offer lower prices for goods planned to be purchased in higher quantities. Also, this prevents verification whether prices offered match the procurement's estimated value or the actual market price.

The prejudice underlying non-publication of procurement quantities could be identified in the simple fact that the institutions, in order to calculate the procurement's estimated value, must have certain indicative quantities. Lack of indicated quantity was noted in procedures organized for procurement of fire-extinguishing pumps, TV sets, airplane tickets, as well as procurement of services for temporary employment, printing templates and carwash services. None of these tender procedures have enlisted indicative quantities for the respective procurement subject.

Tender procedures comprised of several items/lots are marked by increased risk of higher quantities being ordered from the supplier upon previous agreements between representatives from both sides, most commonly related to procurement items that imply a higher margin incorporated in the price, i.e. procurement items whose prices are higher than actual market prices.

Recommendation:

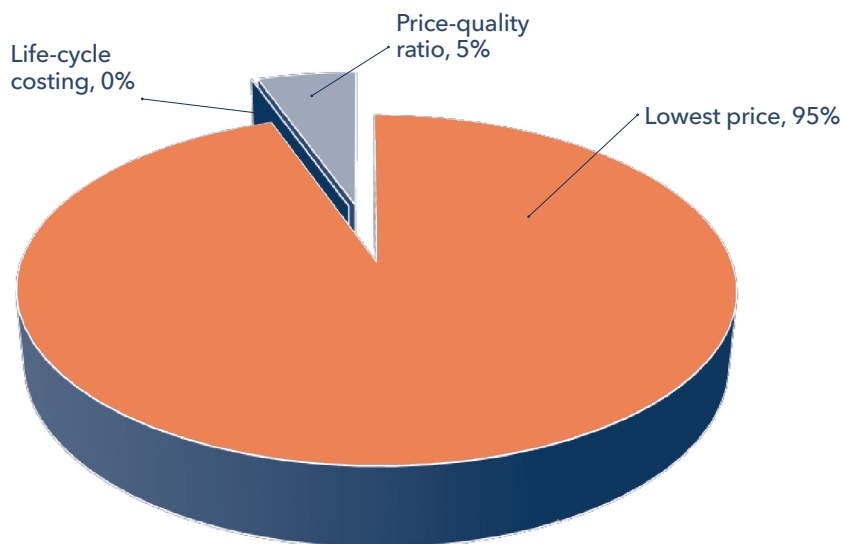
The institutions should always determine, publish and seek financial offers for all procurement quantities planned, instead of requesting bidders to indicate unit prices, without enlisting the quantity needed and planned for each product. This would allow them to receive bids of better quality and to successfully implement their public procurements. Each and every procurement need should be elaborated in detail as part of the decision on public procurement. Moreover, these elaborations should also enlist the reasons why the institution needs the procurement in question, in that quantity and of that quality, and within the indicated deadline.



- » ***‘Lowest prices’ was used as the criterion for selection of the most favourable bid in high 95% of tender procedures implemented in the first half of 2023, which is by 1 percentile point higher than the previous year. On the other hand, it was noted that some tender procedures which used both quality and price to select the most favourable bid do not include adequate bid-evaluation elements.***

In the first six month of 2023, ‘lowest price’ was used as the selection criterion in as many as 11,283 tender procedures among the total of 11,930 procurement notices published, accounting for 95% of all tender procedures. Selection of the most advantageous bids on the basis of ‘best quality-price ratio’ was made in only 646 tender procedures, with a share of 5%, and 1 tender procedure used the criterion defined as ‘life-cycle costing’.

Criteria used for selection of the most advantageous bid in the first half of 2023



This type of action on the part of the institutions is not in compliance with the principles of cost-effectiveness, efficiency and rational use of public funds defined in Article 4, paragraph (2) of LPP, which reads “the contracting authority shall implement public procurements in the manner that ensures adequate quality of the procurement subject relative to its purpose and value”.



On the other hand, it was noted that some tender procedures that used both price and quality to select the most favourable bid do not include adequate bid-evaluation elements. For example, the monitored procedure for procurement of translation services used the selection criterion defined as 'best quality-price ratio' whereby price was assigned 50 points and quality was assigned 50 points. Here, disputable is the fact that quality was assessed on the basis of the number of previously signed contracts for translation services and references on timely performed services in the last three years. In that, 1 to 5 contracts for translation services and references on quality and timely performance in the last three years were assigned 20 points, 6 to 10 contracts and references – 30 points, and more than 10 contracts and references – 50 points. In reality, this method of assessment assigns points for the company's experience, which cannot be linked to the team that would be engaged in performance of this procurement. Namely, the manner in which the tender documents were drafted does not imply any limitations for an experienced company to engage insufficiently experienced translators for performance of this procurement.

Another example of inadequate use of evaluation elements under the selection criterion 'best quality-price ratio' is seen in the monitored procedure for procurement of office furniture in estimated value of 5 million MKD (82,600 EUR). One sub-element used to evaluate the bids concerns the warranty period and was assigned 35 points, while quality of manufacture was assigned 35 points, and price was assigned 30 points. This breakdown of sub-elements is disputable in regard to the fact that quality points are assigned based on analysis and opinion by the public procurement committee and took into consideration the number, contemporaneity, variety, specialization and lifetime of machines used for manufacturing and final production of furniture items on the basis of an inventory list indicating which machine will be used for which part of the manufacturing process. Again, the focus is put on the company, not the procurement subject. Additional concerns with this tender procedure are raised in respect to the eligibility criteria related to technical and professional ability of bidders as they are required to have at least 15 persons employed or engaged, 2 certified architects with B certificates, and portfolio of at least 15 completed projects on furniture, glass and carpets fittings of same or similar nature, value and/or scope. Given the above elaborated conditions, it does not surprise that the tender procedure was annulled because none of the two bids fulfilled the requirements from the tender documents.

Recommendation:

Insistence on 'lowest price' as the criterion for selection of the most favourable bid might make the work of public procurement teams much easier, but it most certainly threatens the quality of goods and services procured which, ultimately, could cause damage to the institution's

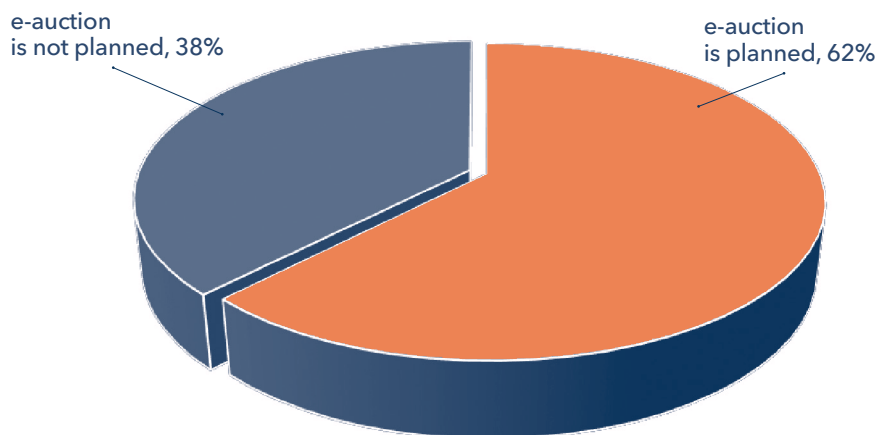


budget. In order to ensure the best value for the money spent, the institutions need to more frequently use the selection criterion defined as 'best quality-price ratio'.

- » ***A favourable trend is seen in decreased organization of electronic auctions. In the first half of 2023, e-auctions were anticipated in 62% of tender procedures compared to 73% in the same period last year.***

As regards electronic auctions, the monitoring noted a drop in use of this mechanism by 11 percentile points compared to the same period in 2022. In the first half of 2023, e-auctions were planned in 7,435 procurement procedures, accounting for 62% of all procurement procedures organized. Compared to the previous year, the use of this mechanism for downward bidding is reduced by 11 percentile points. This shows an increased respect for recommendations made by competent institutions and the civil society aimed at reduced use of e-auction in order to avoid the negative effects and manipulations implied by this mechanism.

Use of electronic auction in the first half of 2023



Monitoring data show that e-auctions were not organized in 61% of tender procedures that have planned downward bidding, which is indicative of an increase compared to 2022 when this share accounted for 53%. On the account of the fact that economic operators learn about other tender participants and prices offered by their competitors at public opening of bids, various processes of arrangements and influences take place in the wake of planned e-auction. As a consequence of arrangements and influences, concerns are raised that, in large



share of tender procedures, prices at which contracts are signed do not reflect the market state-of-play, but are rather a reflection of arrangements made beyond official proceedings.

Recommendation:

To continue the trend of reduced use of e-auctions which should be an exception, and not a rule in implementation of public procurements. The institutions should follow the logic whereby e-auctions are organized only in the case of products of known and standard quality and those characterized by market competition.

- » ***Against the backdrop of widespread corruption in public procurements, instead of being enhanced the control department at the Bureau of Public Procurements is downsized. In the course of three years, the number of staff members at this department comprised of two units, administrative control and previous control, has been reduced from 12 to 8 employees. A positive development is seen in increased number of administrative controls over tender procedures, some of which are selected on the basis of risks assessment related to violation of law provisions.***

The trend on increased number of administrative controls performed by the Bureau of Public Procurements continues. In the first half of 2023, a total of 208 controls were conducted, accounting for a share of 1.7% in the total number of implemented tender procedures. The number of performed controls, as shown in the table below, is marked by an increase both in terms of absolute and relative indicators.

Administrative controls conducted by the Bureau of Public Procurements

Period	Number of administrative controls	Share of tender procedures covered by administrative control in the total number of tender procedures
January - June 2020	87	0.91%
January - June 2021	132	1.17%
January - June 2022	208	1.74%



Most of these 208 administrative controls, i.e. 165, are conducted pursuant to Article 172, paragraph (3) of the Law on Public Procurements, whereby the subject of administrative control are public procurement procedures whose estimated value exceeds 500,000 EUR in MKD counter-value in the case of goods and services and exceeds 2,000,000 EUR in MKD counter-value in the case of works. Risk assessment related to violation of law provisions from Article 172, paragraph (4) of the Law on Public Procurements was used as legal ground for administrative control of 43 public procurement procedures. This is an exceptionally positive trend having in mind that from their introduction in April 2019, administrative controls based on risk assessment related to violation of law provisions were rarely conducted or not at all.

Irregularities have been found in 40 from the total number of tender procedures controlled, which accounts for a share of 19%. More specifically, in the case of 29 tender procedures, the Bureau requested the procedure to be annulled, while in the case of 11 tender procedures, the Bureau issued instructions to eliminate the irregularities found. The importance of administrative controls based on risk assessment is further evidenced by data showing that most irregularities have been identified under these controls (every second tender procedures) and requests were made for all of them to be annulled.

In the first half of 2023, the Bureau of Public Procurements has not taken any action pursuant to Article 172, paragraph (5) of the Law on Public Procurement, which stipulates that when, during an administrative control, the Bureau has found one or more irregularities that bear features of misdemeanour pursuant to this law or of criminal offence, it may motion misdemeanour changes before the competent court or inform the competent prosecution service in the Republic of North Macedonia. The Bureau of Public Procurements has not assessed any of the irregularities identified as part of administrative controls performed in the first half of 2023 as bearing features of misdemeanour pursuant to the Law on Public Procurements or of criminal offence.

Recommendation:

Efforts are needed to strengthen the capacity of staff members in order to enhance administrative controls conducted by the Bureau of Public Procurements. At the same time, the share of administrative controls performed on the basis of risks assessment for violation of law provision should be increased, pursuant to the indicators already developed by this institution. Having in mind that the Bureau does not have competences and authority to assess whether certain irregularities are a result of unintentional error or have been made with the intention to favour certain company, competent prosecution services need to be timely informed about relevant findings from administrative controls.

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