

COVID-19 PROCUREMENTS IN THE SPOTLIGHT

SECOND SEMI-ANNUAL MONITORING REPORT

on public procurements
related to COVID-19
protection in 2021

Skopje, July 2022

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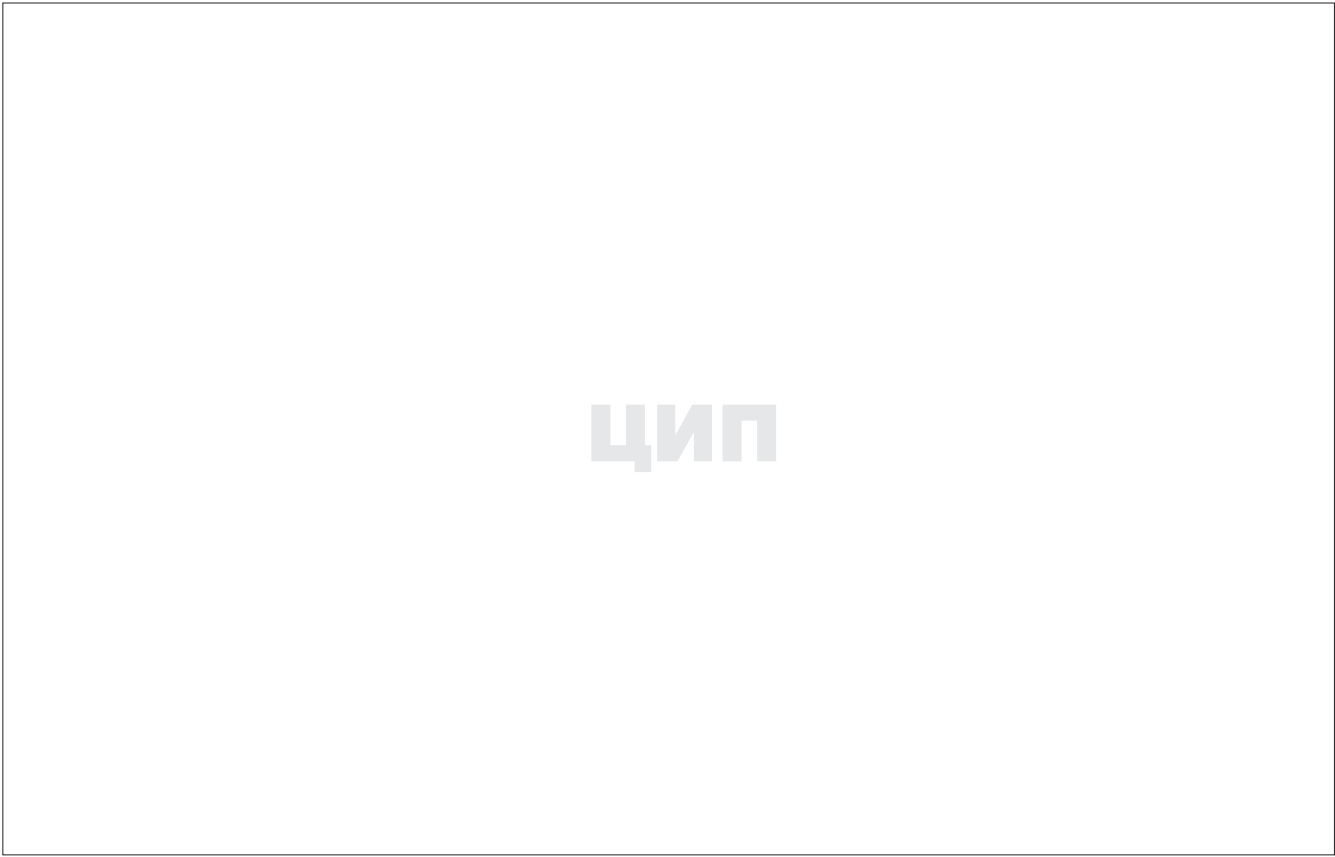


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KEY FINDINGS

In-depth monitoring of public procurements related to COVID-19 protection detected a number of key problems and corruption risks, as follows:

- In the second half of 2021 and more than one year after the onset of the health crisis, public procurements related to COVID-19 are still plagued by problems and corruption risks.
- Estimated values of procurements continue to be set in amounts higher than prices attained at tender procedures, which might indicate to risks of purposeful action to create space for awarding contracts at higher prices and to afford corruptive dealings.
- Without any exceptions, in the cases marked by one bidder or one qualified bidder after elimination of other bids during the evaluation stage, bided prices match or are very close to the procurement's estimated value that has not been published, which refers to previous illegal arrangements between institutions and bidding companies.
- The monitoring continues to observe high differences in price for same products procured in the same time period, ranging up to 500%.
- In the case when reagents are procured, there is long-standing dependence from the company whose testing apparatus is used by the concerned institution, which implies a risk of paying higher prices for reagents and opportunity for corruption.
- Poor supporting documents are available for already non-transparent negotiating procedures without previously announced call for bids.
- Engagement of external associates or companies for implementation of public procurements carries an inherently high risk for conflict of interests and corruption.
- Products that cannot be easily correlated to the coronavirus have been purchased as public procurements related to COVID-19, for example, passenger vehicle for business purposes with leather steering wheel, six speakers and metallic in color.

INTRODUCTION



Significant corruption risks in public procurements existed even before the coronavirus pandemic, mainly due to the fact that states spend enormous sums of money to procure goods, services and works needed for performance of different state functions. However, these risks have multiplied under conditions of emergency state declared in the light of the global pandemic, on the account of general shortages of necessary goods, required speed for implementation of COVID-19 tender procedures and protection of human lives.

That has resulted in predominant organization of tender procedures with direct negotiations, most of which included negotiations with one company, with only a handful of institutions complying with legal provisions on ex-post transparency, i.e. publication of contracts signed under this type of procurement procedures within a deadline of ten days from contract award. Well into the health crisis, monitoring of public procurements observed major differences in price paid by different institutions for identical products. Procurement contracts are scarce in content, lack details about goods procured, quantities thereof and individual prices attained.

Having in mind the low efficiency of institutions in respect to prevention of corruption in public procurements, public procurement monitoring performed by non-governmental organizations whose findings reach the general public through the media has proved an efficient tool for reducing abuse and malpractices. Such pressure has resulted in increased number of companies invited to participate in tender procedures with direct negotiations; decreased use of these non-transparent procedures, and increased number of tender procedures that publish relevant contracts within the law-stipulated deadline of ten days.

After the relatively chaotic year of 2020, 2021 was the second consecutive year featuring public pro-

cedures for COVID-19 protection. In particular, the monitoring shows continued presence of many weaknesses in public procurements initially identified at the pandemic's onset and peak. However, old weaknesses are now complemented with new problems, some of which are specific to these procurements, while others are general problems that have persisted in the field of public procurements.

In the meantime, the government had failed, directly or indirectly through the Ministry of Finance, to intervene in the method applied for implementation of public procurements related to the COVID-19 crisis or in the system of public procurements during the pandemic. Efforts were not made to organize large-scale centralized procurements and there was no proactivity in providing instructions and guidance for state institutions when procuring goods, services and works for coronavirus protection.

It seems that any country, but especially those with limited public funds such as North Macedonia, cannot afford further "loss" of significant funds under the veil of chaos, speed and human lives protection. At the beginning of the third year marked by implementation of COVID-19 public procurements, it is high time for systemic measures to be taken towards more cost-effective public spending, not only in the light of the ongoing crisis, but also in the light of possible future crises of similar or different nature.

For that reason, this in-depth monitoring maps corruption risks in public procurements related to COVID-19 protection and provides solid baseline for further activities by independent institutions in the country, such as the State Commission for Prevention of Corruption and the State Audit Office, and attempts to generate greater public pressure for improved integrity in this type of procurements. The second objective is to initiate policy dialogue on improving the process of public procurements for this purpose at times of crisis.



RESULTS FROM MONITORING PUBLIC PROCUREMENTS RELATED TO COVID-19 PROTECTION

This report is based on in-depth monitoring of 40 public procurements for goods, services and works related to COVID-19 protection whose contracts were awarded in the second half of 2021, i.e. in the period from 1 July to 31 December 2021. Targeted public procurements represent 52% of all COVID-19 tender procedures organized in the analyzed period (total of 77 tender procedures). The value of these tender procedures accounts for 1.25 million euros, i.e. 30.4% of the cumulative value of all COVID-19 public procurements organized in the analyzed period (4.1 million euros).

This effort implied in-depth monitoring of public procurements and detection of risk corruptions in all stages of public procurements, from procurement needs assessment and planning, through organization of procurement procedures, to contract award and performance.

As noted in the monitoring report for the first half of 2021, the general conclusion for the second half of 2021 again concerns the fact that, after a crisis year such as 2020, public procurements organized in 2021 and related to COVID-19 are plagued by problems and corruption risks, from start to end of the procurement cycle.

An impression is gained that some institutions still use the vulnerable situation that implies saving human lives to organize tender procedures that do not instill any confidence they have made their

best effort to purchase what is most cost-effective, i.e. to obtain the best value for the money spent.

Most problems noted as part of monitoring COVID-19 public procurements are mutually dependent and intertwined, and are - accidentally or purposefully - organized into complex tender procedures and situations, sometimes hidden in the details and other times - evident and straightforward.

The general conclusion from the previous monitoring report remains valid in this analyzed period as well, i.e. public procurements related to COVID-19 are plagued by problems and corruption risks, although institutions had the entire 2020 crisis year of experience behind them.

Below is the detailed description of problems identified as part of the analysis of monitored COVID-19 procurements, with an attempt to underline weaknesses that have not been detected in the previous report.

- **Estimated values of procurements continue to be set in amounts higher than prices attained at tender procedures, which might indicate to risks of purposeful action to create space for awarding contracts at higher prices and to afford corruptive dealings.**

Although there are many examples of this practice in the monitoring sample, here we underline several cases for illustrative purposes.

One institution set the value of its procurement for rapid SARS-COV-2 antigen tests in the amount of 708,000 MKD, VAT included, for quantity of 1100 tests, i.e. 644 MKD per test kit. Initially, this tender procedure was presented with 6 bids, of which 4 were eliminated in the evaluation stage, while remaining two bidding companies did not participate in the electronic auction and the contract was awarded to the bid in the value of 472 MKD per test kit.

Another institution also organized procurement of 1000 rapid SARS-COV-2 antigen tests in estimated value of 590,000 MKD, VAT included. This means that the institution has estimated the value of individual test kits in the amount of 590 MKD, which is almost double the retail price of such tests available in pharmacies at the time when this public procurement was organized. In the end, due to high competition in the tender procedure, the final price attained was 119 MKD per test kit.

The third example from the monitoring sample concerns procurement of 1500 such tests in the estimated value of 525,000 MKD, VAT included, i.e. 350 MKD per test kit. The tender procedure was presented with 9 bids, of which 4 bids were rejected, and the final price attained during the electronic auction organized with remaining bidders was 141 MKD per test kit.

One of the most glaring examples concerns the public procurement organized for N95 protective masks (5,000 pieces) and medical protective masks (100,000 pieces), estimated in total value of 2,360,000 MKD, VAT included, but the final price attained at this tender procedure accounted for a total of amount of only 127,558 MKD.

- **Without any exceptions, in the cases marked by one bidder or one qualified bidder after elimination of other bids during the evaluation stage, bided prices match or are very close to the procurement's estimated value that has not been published, which refers to previous illegal arrangements between institutions and bidding companies.**

There are many examples of this practice in the monitoring sample. One public procurement organized as negotiating procedure without pre-

viously announced call for bids concerned procurement of laboratory equipment in estimated value of 2,200,000 MKD (VAT excluded) and was presented with three bids in the amounts of 2,200,000 MKD, 2,403,250 MKD and 2,544,350 MKD, respectively. In the course of negotiations all three bidders have reduced their initially offered prices and the contract was signed in the amount of 2,000,000 MKD, offered by the company that initially matched its bid to the procurement's estimated value.

Another procurement for COVID-19 tests and reagents was organized as open procedure and was presented with two bids, one for each of the two procurement lots - tests and reagents. Estimated value for the first procurement lot was set in the amount of 7,826,000 MKD, while the second procurement lot was estimated in the value of 876,520 MKD, which were not published in advance by the contracting authority. Nevertheless, both bidders matched the estimated values by offering prices in identical amounts of 7,826,000 MKD and 876,520 MKD respectively, serving as final prices under which procurement contracts were awarded.

Other two examples concerned procurement of tests and did not publish the estimated value in advance, but were presented by bids in amounts that are close to the estimated value. In the first case, the procurement's estimated value was set in the amount of 1,800,000 MKD and the bidder offered a price of 1,775,730 MKD, while in the second case the estimated value was set in the amount of 3,800,000 MKD and was presented with a bid in the value of 3,798,000 MKD.

Another example concerned a negotiating procedure organized due to urgency reasons and was intended for procurement of COVID-19 disinfection services for 50 polling stations within one municipality, in estimated value of 240,000 MKD, VAT included. Two bids were presented, one in the value of 295,000 MKD and the other in the value of 283,000 MKD. In the course of negotiations, the bidder that offered a higher price did not reduce its bid, while the other bidder reduced the price to 239,999.99 MKD, i.e. it reduced the price to amount that differs from the estimated value by only 0.01 MKD.

Examples of bided prices matching the procurement's estimated value

Procurement subject	Number of bidders	Estimated value	Bid value	Final price	Difference against the estimated value
Laboratory equipment	3	2,200,000	2,200,000	2,000,000	-9 %
COVID-19 tests	1	7,826,000	7,826,000	7,826,000	0 %
Reagents	1	876,520	876,520	876,520	0 %
Test kits	1	1,800,000	1,775,730	1,775,730	-1 %
Test kits	1	3,800,000	3,798,000	3,798,000	0 %
Disinfection	2	240,000	283,000	239,999	0 %
Computers	1	900,000	897,860	897,860	0 %
Computers	1	300,000	297,500	297,500	-1 %

Situations in which bidders "match" the procurement's estimated value, especially when there are no other bids presented, raise doubts are illegal arrangements between bidding companies and contracting authorities, i.e. backdoor disclosure of estimated value to the bidding company in order to keep its bid within that value threshold and for the tender procedure to be successful. Having in mind that, in general, institutions do not invest serious efforts in setting estimated values of their procurements and are mainly guided by prices attained on previously organized tender procedures, in addition to being illegal, this practice might also indicate to corruption. Setting of higher estimated values and these being matched by bids presented, which results in successful completion of tender procedures awarded in that value could also mean availability of sufficient "surplus funds" for corruption.

One good practice in the cases where contracting authorities are certain they have made a good assessment of the tender's estimated value on the basis of previous experiences, as well as on the basis of market research and surveillance, and experiences of other institutions, is the recommendation to publish the procurement's estimated value which can be reduced during the electronic auction.

Actually, this is the essence of the option given to contracting authorities under the Law on Public Procurements - to individual assess whether they will publish or not the estimated value of their

public procurements, of course, guided by the principle for obtaining the best value for the money spent.

- **The monitoring continues to observe high differences in price for same products procured in the same time period, ranging up to 500%.**

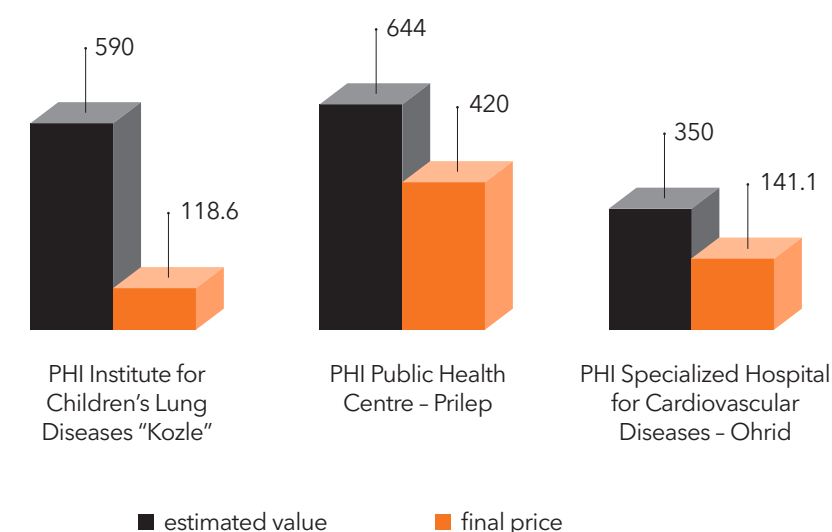
One and a half years into the coronavirus crisis, there are still significant differences in price attained for one and the same product, which is a problem that has persisted from the onset of the health crisis to present.

Most eminent example in this monitoring period (July-December 2021) concerns procurement of rapid antigen COVID-19 tests. Analysis of these tender procedures shows that price of such products depends on competition, in the sense that prices are lower when there are more bidders and vice versa. Moreover, the rule whereby lower price are attained for procurement of higher quantities and vice versa is still invalid in this type of procurements. In the monitoring sample, all three institutions have procured rapid antigen tests, but prices they obtained per test kit differ by two and half times. In all cases, the estimated value was set in significantly higher amount than the actual market price. In one case, the estimated price was as many as four times higher than the price attained at the tender procedure.

Prices per rapid antigen test for detection of SARS-COV-2, in MKD

Institution	Quantity	Price per test kit (MKD)	Estimated value per test kit	Number of bids	Number of disqualified bids
PHI Institute for Children's Lung Diseases "Kozle"	1.000	118.6	590.0	10	0
PHI Specialized Hospital for Cardiovascular Diseases - Ohrid	1.500	141.1	350.0	4	2
PHI Public Health Centre - Prilep	1.100	420.0	644.0	2	4

Ratio between price attained and estimated value for procurement of rapid test for detection of SARS-COV-2, in MKD



Similar situation is observed by comparing prices attained by the two, perhaps, most commonly procured products during the entire health crisis: single-use protective masks and N95 respiratory masks.

The economic logic whereby lower prices are attained for larger quantities and vice versa is valid only in two tender procedures from the monitoring sample. However, this logic is not applicable in other tender procedures. As was the case with rapid COVID-19 tests, major differences in price are observed, not taking into account the highest price attained for procurement of only 120 protective masks. For example, when comparing the two tender procedures that have purchased 13,000

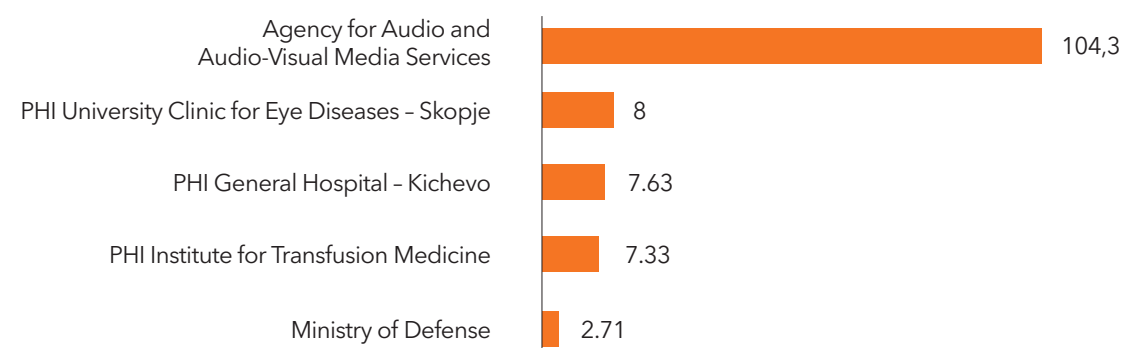
protective masks each, the difference in prices attained is three times higher, which means that the price attained at one tender procurement is by 195% higher than the price attained at the other tender procedure.

Hence, it could be concluded that the higher number of bids, the lower prices are attained. In this case as well, the estimated value was set in significantly higher amount than the price level attained at tender procedures. In one case, the procurement's estimated value was 13 times higher than the actual price attained.

Prices attained for procurement of one N-95 respiratory mask

Institution	Quantity	Price per mask (MKD)	Estimated value per mask	Number of bids	Number of disqualified bids
Ministry of Defense	13,000	2.71	36.3	11	/
PHI Institute for Transfusion Medicine	5,000	7.33	/	6	1
PHI General Hospital - Kichevo	5,000	7.63	/	8	/
PHI University Clinic for Eye Diseases - Skopje	13,000	8.0	23.6	6	1
Agency for Audio and Audio-Visual Media Services	120	104.3	/	4	1

Price per one N95 respiratory mask, in MKD



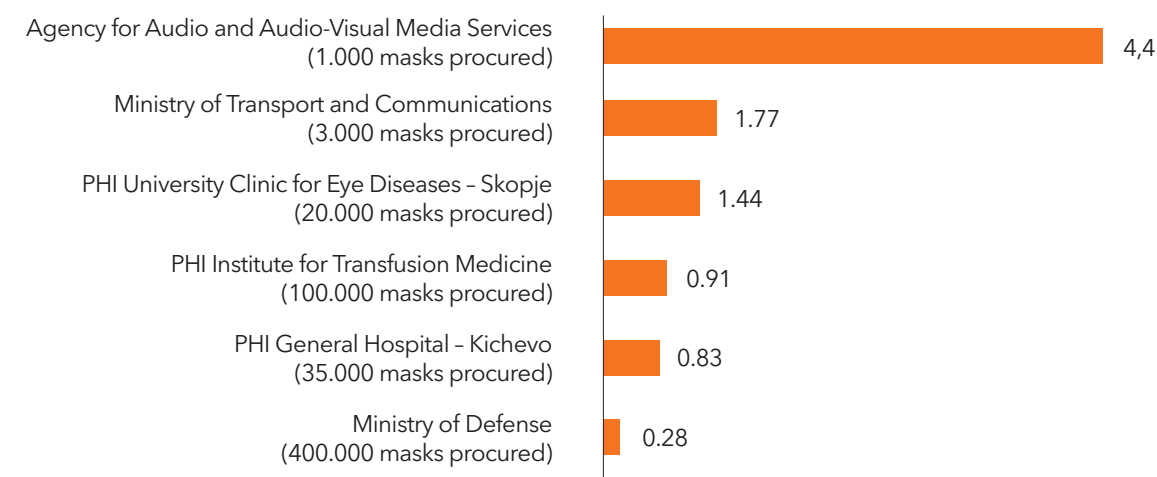
Almost identical conclusions can be inferred from the analysis of public procurements organized for single-use medical masks. The only difference here is that it could be said that the economic logic of lower prices for higher quantities of purchased products is valid. All previously made observations remain the same.

In particular, the differences in price attained are major, again not taking into account the highest price attained for procurement of only 1,000 protective masks. The difference between the lowest and the highest price accounts for as many as 500%, while the estimated value of one procurement was set in amount that is 17 times higher than the actual price attained at the tender procedure.

Prices attained for procurement of one single-use medical mask

Institution	Quantity	Price per mask (MKD)	Estimated value per mask	Number of bids	Number of disqualified bids
Ministry of Defense	400.000	0,28	4,72	14	/
PHI General Hospital - Kichevo	35.000	0,83	/	9	3
PHI Institute for Transfusion Medicine	100.000	0,91	/	10	1
PHI University Clinic for Eye Diseases - Skopje	20.000	1,44	3,54	6	/
Ministry of Transport and Communications	3.000	1,7	19,7	4	/
Agency for Audio and Audio-Visual Media Services	1.000	4,4	/	4	/

Price per one single-use medical masks, in MKD



- **In the case when reagents are procured, there is long-standing dependence from the company whose testing apparatus is used by the concerned institution, which implies a risk of paying higher prices for reagents and opportunity for corruption.**

The monitoring sample includes high number of procurements of reagents for laboratory testing that indicate the name of testing apparatus used by the concerned institutions, which results in only one bid submitted by the company acting as authorized dealer for said reagents and has previously supplied the apparatus in question.

This is an old practice applied by many healthcare institutions that continues despite indications on possible damages it caused and implied corruption risks. Actually, using the same apparatus for laboratory testing for many years in a row makes the institution dependent from the single bidder that offers reagents for the apparatus in question. These tender procedures are inevitably marked by one bidding company that dictates prices and whose bid always matches the procurement's estimated value, implying that previous arrangements have taken place concerning the price.

There are institutions that do not reference the type, i.e. the brand of their apparatus for which they are procuring reagents, but indicate the work method of the apparatus for which they are

procuring reagents. Ultimately, this provides the same outcome because every apparatus operates according to particular method and again tender procedures are marked by participation of one bidding company that had previously supplied the apparatus in question.

Corruption risks inherent to this type of procurements are higher because the institution in a way becomes "prisoner" to the only bidding company from which it procures reagents, often at very high prices or at prices on which contracting authorities, i.e. public healthcare institutions in this case, cannot exercise any influence.

Above-elaborated practice prevents competition in these tender procedures, which would have been facilitated if procurements are organized only for reagents and the selected bidder is obliged to also provide the testing apparatus for use by the concerned institution, which would be returned after expiration of the tender procedure.

Another option is the one offered under the relatively new Law on Public Procurements and is common practice in the world - selection of the best bid to take into consideration lifecycle costs of goods procured.

- **Poor supporting documents are available for already non-transparent negotiating procedures without previously announced call for bids.**

Award of public procurement contracts under non-transparent negotiating procedure without previously announced call for bids continued in 2021, albeit in significantly smaller extent compared to 2020. These procedures are still organized in so-called paper form, unlike other types of procurement procedures that are fully implemented in electronic form. This imposes the need for greater transparency in negotiating procedures because the public and all other stakeholders learn about these procedures only after the contracting authority that has organized the public procurement publishes the notification on contract signed – ten days after the contract award.

Negotiations with bidding companies is one of the most important stages in this type of procedures, on the account of which they are called “negotiating procedures”. All negotiating procedures from the monitoring sample are marked by exceptionally small number of documents that would provide information and details about the method of negotiations. Minutes taken during the negotiations are brief and scarce in details. They allow the conclusion that negotiations are very short, in duration of several minutes, and that, without any exceptions, they only focus on offered prices. In that, bidding companies are only asked if they are willing to reduce their price or their initial bid is still valid, instead of being informed about prices that are suitable for the contracting authority that would serve as starting point of negotiations.

Scarce documents for negotiating procedures without previously announced call for bids make this procedure even harder for monitoring and verification of lawfulness and fairness in actions taken by the institutions. Therefore, as minimum, efforts are needed for more detailed stipulation of mandatory elements for negotiation procedures (as part of internal documents) and timely publication of minutes taken during such negotiations as part of notifications on contracts signed.

- **Engagement of external associates or companies for implementation of public procurements carries an inherently high risk for conflict of interest and corruption**

COVID-19 procurement are also “affected” by the most recent trend in public procurements in the

country which implies engagement of external entities for implementation of tender procedures. Nevertheless, engagement of these entities does not mean expert assistance for development of technical specifications for procurement subjects, but complete organization and implementation of public procurement procedures.

Based on monitored procurement procedures, this practice implies several problems that must be urgently addressed having in mind that it is becoming frequently used.

First, what are the reasons for an institution to decide to engage external associate or company for implementation of its public procurements. This issue becomes more relevant against the fact that such “external assistance” in implementation of public procurements is also used by institutions that have several persons employed for organization and implementation of public procurements. In the case of institutions that do not have employed public procurement officers, the question raised concerns the fact whether they have made necessary efforts to employ or qualify such officers before resorting to outsourced experts.

The second problem concerns the method for selection of such external associates or companies. It is unclear how institutions select these experts or companies, i.e. which criteria they use, under which procedure, etc. Only few institutions have organized separate tender procedure for this purpose, i.e. have selected outsourced companies by means of public procurement procedure.

The third problem is related to ever-present risk of conflict of interests and failure to take measures to address it. There are no cases in which relevant documents are available to demonstrate that external associates or companies had signed conflict of interest declarations or that employees responsible for implementation of public procurements have signed such declarations, as mandated by the law.

Fourth, based on the analysis of monitored tender procedures that have been implemented with assistance from outsourced associates or companies, this practice has not resulted in any special positive effect on the manner in which tender procedures are implemented or their outcome.

Therefore, urgent efforts are needed to draft legal measures that would regulate engagement of external associates or companies for implementation of public procurements, because the manner in which this is pursued at the moment does not only imply high risk of conflict of interests and corruption, but also brings under question enforcement of the Law on Public Procurements, which fully relies on and regulates implementation of public procurements by officers, bodies and units within institutions acting as contracting authorities.

- **Products that cannot be easily correlated to the coronavirus have been purchased as public procurements related to COVID-19, for example, passenger vehicle for business purposes with leather steering wheel, six speakers and metallic in color.**

Although labelled as COVID-19 procurements, many tender procedures from the monitoring sample cannot be correlated to the coronavirus pandemic. While some of them might actually be related to COVID-19 protection, at least indirectly, on the account of institutions’ failure to comply with the legal obligation on elaborating their procurement needs, it cannot be inferred that said procurements are in any way or form connected to the health crisis. Otherwise, such justifications should also include procurement reasons that would clearly indicate the link between procurement needs and COVID-19 protection.



METHODOLOGY NOTES

According to the previously developed methodology, this monitoring effort started with retrieval of data from the Electronic Public Procurement System for all COVID-19 procurements in the analyzed period, followed by selection of adequate monitoring sample. The number of public procurements per monitoring sample is set at 80, i.e. 40 public procurements for each six-month period in 2021.

Definition of the monitoring sample took into consideration several criteria: ensuring proper ratio of procurement types (small procurements, simplified procedures, open procedures and negotiating procedures) and procurement subjects (goods, services and works); representation of different types of institutions to the extent possible and their adequate geographical distribution.

Data needed for monitored tender procedures were collected from the Electronic Public Procurement System, official websites of institutions, the State Public Procurement Appeal Commission, and directly from institutions, i.e. contracting authorities, by using the instrument from the Law on Free Access to Public Information. In the cases where institutions, as information holders, have not disclosed information requested or have provided incomplete information, the project team lodged appeals before the Agency for Protection of the Right to Free Access to Public Information in order to secure necessary information and data.

Information and documents collected directly from the Electronic Public Procurement System include:

- *Basic information on all public procurements related to COVID-19 protection and implemented in the period from 01.01.2021 to 31.12.2021, divided into two semesters, i.e. 01.01.2021 to 30.06.2021 and 01.07.2021 to 31.12.2021, on the basis of published procurement notices and notifications on contracts signed;*
- *Files from the section on public procurement plans;*
- *Procurement notices (for all public procurements except those organized as negotiating procedures without previously announced call for bids);*
- *Tender documents per procurement procedure (for those with published procurement notice);*
- *Notifications and changes to tender documents;*
- *Notifications on contracts signed;*
- *Public procurement contracts;*
- *Notifications on tender procedure annulment;*
- *Information on possible initiation of appeal procedure.*

Information related to public procurement plans and other possible information needed for this monitoring (photos of completed procurements, news on procurements, etc.) were collected from official websites of relevant institutions.

Information on appeal procedures initiated for public procurements from the monitoring sample were collected from the State Public Procurement Appeal

Commission. In particular, information on appeals lodged, dates and commission's decisions were collected from SPPAC's official website.

Institutions whose public procurements were included in the monitoring sample were addressed with freedom of information requests indicating relevant documents and information that should be disclosed, as follows:

- *Decision on public procurement;*
- *Elaboration of procurement reasons and need, as well as the manner in which the procurement subject's quantity and quality were defined;*
- *Elaboration of the manner in which the procurement's estimated value was calculated;*
- *Tender documents (for negotiating procedures without previously announced call for bids);*
- *Statements on absence of conflict of interests in the public procurement;*
- *Elaboration of the manner in which the institution selected economic operators that will be invited to submit bids (for negotiating procedures without previously announced call for bids);*
- *Minutes from the public opening of bids;*
- *Minutes from negotiations with economic operators (for negotiating procedures without previously announced call for bids);*
- *Report from the bid-evaluation process;*
- *Report on implemented procurement procedure;*

- *Report on the course of downward bidding during the electronic auction;*
- *Decision on selection of the most favorable bid or decision on tender procedure termination or tender procedure annulment;*
- *Document confirming receipt of goods/services/works (delivery note, receipt note or another adequate document);*
- *Document on payments made according to the public procurement contract; and*
- *Decision on appointment of person responsible for contract performance (if applicable).*

Collected documents and information were first inputted into matrix that facilitates data insight, arrangement and processing. This was followed by analysis that resulted in definition of relevant conclusions about state-of-play and weaknesses detected in public procurements. The last step concerned mapping corruption risks in public procurements related to COVID-19 protection in the form or summary findings and specific examples.



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