

2019 | MONITORING OF PUBLIC PROCUREMENTS

**Report no. 33
(July - December 2019)**

Skopje,
May 2020



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Key Findings

- » Frequent tender annulments, reasons for annulment and size of tender procedures in which such decision are taken open the dilemma whether annulments are used to cover weaknesses or manipulations in implementation of public procurement procedures.
- » Transparency of public procurements falls below the level anticipated under the new Law on Public Procurements. Disrespect for the law-stipulated obligation to publish notifications on implemented tender procedure is observed in more than one quarter of monitored procedures at central level (27.5%).
- » In 2019, a total of 141 tender procedures were subject of administrative control performed by the Bureau of Public Procurements. Irregularities that could not be addressed are identified in 16% of them (23 tender procedures), followed by instructions to annul such tender procedures. After having conducted these controls, the Bureau has not submitted any misdemeanour motions before competent authorities and has not notified the Public Prosecution Office.
- » In the second half of 2019, monitoring activities observed increase of the number of bids per tender procedure compared to the first half of the year. In spite of that, the average number of bids for 2019 is calculated at 3.12 and is lower compared to 2018 when it stood at 3.41.
- » 'Lowest price' was used as selection criterion for the most favourable bid in 97% of tender procedures, while electronic auctions were organized in high 94% of tender procedures. Such actions on the part of institutions are neither in line with current trends in Europe nor with demands of the business community.
- » In 2019, direct negotiations without previously announced call for bids were organized to award 368 contracts, in total value of 40 million euros. Compared to last year's figures, the number of contracts is reduced, but the cumulative value is increased by 21%.
- » At local level, almost all tender procedures used lowest price and electronic auctions, although they are not mandatory; annulment of local tender procedures reached a new record-breaking level of 30%, which means that almost every third monitored tender procedure was annulled; not a single public procurement from the monitoring sample included justification for procurement needs although this element is now mandated by law.

- » As regards appeals, the trend on increasing number of appeals lodged before the State Commission on Public Procurement Appeals continues. In 2019, companies have lodged by 22% more appeals compared to the previous year, while the State Commission approved high 59% of them.
- » The survey conducted among companies shows that use of 'lowest price' as selection criterion is the most frequent problem they encounter in public procurements, as indicated by three quarters of companies. Late payment again emerged as major problem for companies, with an average period of seven months for collection of receivables from performed procurement contracts. 48% of companies believe that corruption is 'always' or 'often' present in public procurements. Companies have assigned an average score of 2.82 (on the scale from 1 to 5) to the process of public procurements in the country, representing an insignificant decrease compared to last year's survey when this score was calculated at 2.87.

Goals and Methodology

The Center for Civil Communications (CCC) regularly monitors and analyses implementation of public procurements in the country since 2008, i.e. when the Law on Public Procurements drafted in compliance with the European Commission's Directives entered into effect. The overall purpose of this endeavour is to assess whether and to what extent state institutions comply with the underlying principles in public spending stipulated under the law, as follows: 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 to CCC's monitoring are procedures organized and implemented by all state institutions in the country, both at central and local level of government. Selection of the monitoring sample is made upon publication of procurement notices in the Electronic Public Procurement System (EPPS) and "Official Gazette of RNM".

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

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

Data analysis serves 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 observed state-of-affairs.

This report is developed on the basis of monitoring and analysis of the selected sample comprised of 60 public procurement procedures implemented by central and local institutions in the period from 1st July until 31st December 2019. Attached to this report is an analysis of procedures led before the State Commission on Public Procurement Appeals in 2019 and the survey conducted among companies about their experience from participation in public procurements.

* * *

The Center for Civil Communications (CCC) was established in 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 the field of anticorruption and good governance, media and economic development.

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

Hence, CCC has developed and proposed several hundred specific recommendations for measures aimed to promote legislation and practices in order to 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 of Monitored Public Procurements at Central Level

» ***Tender annulment is used to cover weaknesses or manipulations in implementation of public procurement procedures. Evidence in support of this suspicion are not seen only in frequent tender annulments, but also in reasons indicated for tender annulment and size of tender procedures in which such decisions are taken.***

The share of annulled tender procedures in all public procurements accounts for high 27% both in the second half of 2019 and at annual level. This is the second consecutive year marked by exceptionally high level of 27% concerning fully or partially¹ annulled tender procedures.

Additional concerns are raised by data that tender annulments are proportionally higher among public procurements of greater scope. This statement is confirmed by data from the Electronic Public Procurement System and findings for the monitoring sample.

Namely, based on overall data in Electronic Public Procurement System it could be concluded that, in the second half of 2019, a total 1,233 procurement notices were published for so-called "open procedures" that are organized for procurements of the highest value, but in the case of 553 tender procedures decisions have been taken on full or partial annulment, accounting for high share of 45%. In the case of "simplified open procedure", a total of 4,768 procurement notices were announced, with 1,201 tender procedures being fully or partially annulled, which accounts for share of 25%. The number of procurement notices for so-called "small procedures" is the highest and accounts for 6,783, of which 1,578 have been annulled, accounting for 23%. Calculations at annual level would not be relevant for this analysis because the new Law on Public Procurements entered in effect on 1st April 2019

¹ In the case of tender procedures divided into lots it is possible for the annulment decision not to concern the entire procurement but only relevant procurement lot or lots.

and uses new titles for types of procurement procedures, including new thresholds for organization of different types of procurement procedures.

Tender annulments per type of procurement procedures (1.7.2019 - 31.12.2019)

Type of procurement procedures	Share of annulled procedures in total procurement notices announced
Small procurement (organized for procurements in the value from 1,000 to 10,000 euros for goods and services and up to 20,000 euros for works)	23%
Simplified open procedure (organized for procurements in the value from 10,000 to 70,000 euros for goods and services and up to 500,000 euros for works)	25%
Open procedure (organized for procurements in the value above 70,000 euros for goods and services and above 500,000 euros for works)	45%

Decisions on tender annulment are taken in some of the biggest tender procedures that were monitored. One of them concerns procurement of services related to development of national version of the EU *acquis* (written translation of EU acts, national acts, other documents of importance for the EU integration process and written translation of other materials), in estimated value of 910,000 euros, VAT included. This tender procedure was presented with a record number of 18 bids. The decision on tender annulment was taken almost one month after the opening of bids with the following justification: *"[...] has assessed that tender documents contain important omissions or shortcomings. Additional reason 'Appendix 1. Bid Template, Part 2 - Technical Bid' does not correspond to detailed description of the procurement subject, which is given in technical specifications from tender documents, and 'Bid Template, Part 2 - Financial Bid' does not precisely indicate whether total price per page, expressed in letters, is given with or without VAT"*.

This outcome opens two questions. First, how is it possible for procurement procedure of such scope not to timely detect possible errors and omissions in tender documents, and second, why there is no detailed explanation of problems that have emerged and have imposed the need for tender annulment? According to the relevant institution's annual plan for public procurements, this tender procedure should have been announced in June, but was announced in September 2019, which means that the contracting authority had longer period of time for preparations from what was initially planned. As regards the second

question, it is in the best interest of this institution to provide detailed elaboration of identified omissions in tender documents, in order to better inform participants in the public procurement and to eliminate doubts that the annulment decision was taken to cover other motives. Minutes from the administrative control by the Bureau of Public Procurements (BPP) noted the same remarks. At the same time, they indicate: *"The submitted proposal for tender annulment should contain detailed clarifications whether the financial bids were evaluated, whether and which of them could not be evaluated due to imprecisely expressed prices in the financial bid"*.

Omissions in tender documents were indicated as reason for annulment of another monitored procedure for procurement of works related to construction of six swimming pools, in estimated value of 3.2 million euros. In this case, the annulment decision was taken four days prior to the opening of bids. Omissions in project design document were made evident from questions raised by potential bidders. Such outcome for this large-scale tender procedure does not instil certainty that this institution had taken all necessary activities for quality development of the tender procedure.

Decision on tender annulment prior to the opening of bids was also taken in the large-scale procedure for procurement of printing services and distribution for the official newsletter "Official Gazette of RNM" in duration of two years, i.e. for the period from 1.1.2020 to 31.12.2021. Subject of monitoring was the tender procedure whose procurement notice was published on 18th October 2019. The tender annulment decision was taken 10 days prior to announcement of the procurement notice, with the justification that it has been assessed that tender documents contain important omissions or shortcomings, i.e. *"due to technical/systemic error, i.e. error in connecting with Electronic Public Procurement System, the procurement notice is published without information on the minimum eligibility criteria for performance of this public procurement contract in terms of technical or professional capacity"*.

On the same day (28.10.2019) when the annulment decision for this tender procedure was published, the contracting authority announced procurement notice for the new tender procedure. But, another notification on tender annulment was published on 11.12.2019, again indicating errors in tender documents: *"The committee [for public procurements] has assessed that tender documents, i.e. technical specifications contain important omissions or shortcomings because they provide an opportunity for some bidding companies to submit incorrect prices for individual items from the technical specifications that would be incomparable to prices per individual items submitted by other bidders and would result in major damages to the Public Enterprise"*

After the second failure, on 31.12.2019 the institution published a third procurement notice for this tender procedure. But, three months after its publication the procedure is still under-

way because two from the three bidders have lodged appeals to dispute lawfulness of the decision for selection of the most favourable bid. Having in mind this course of events, it is evident that the public procurement contract that should have been signed in December 2019 and start implementation from January 2020 will be delayed by more than 4 months in the best case scenario. Key questions about this public procurement are related to reasons for this institution to initiate the procurement procedure only 73 days prior to expiration of the old three-year contract and the level of expertise among its employees tasked with public procurements and development of tender documents. It would have been understandable if this public procurement was timely planned and implemented, anticipating all possible reasons for its prolongation and investing maximum efforts for development of quality tender documents.

In the context of frequent annulments among large-scale tender procedures, due consideration should be made of the monitored procurement procedure for equipping a plenary hall with electronic speaking and voting system in the value of 1 million euros. This procurement was not initially planned and was introduced in the 2019 annual plan for public procurements under changes made on 16th May 2019. Implementation thereof started immediately afterwards, notably by means of decision for this public procurement taken on 17th May and by opening the technical dialogue on Electronic Public Procurement System on 20th May, with deadline for submission of proposals and comments by 28th May 2019.

The procurement notice was published on 12th June 2019, with deadline for submission of bids set on 22nd July 2019. Having in mind the scope of this tender procedure, it is utterly inadequate to set the deadline for submission of bids amidst summer holidays.

Four bids were submitted, but in spite of this solid number of bids and the previously conducted technical dialogue, which should have addressed all and any dilemmas, the procurement procedure was annulled. This decision was explained by the committee with the indication that during the bid-evaluation process it has found that, according to requirements defined in tender documents and technical specifications, one bid contained formal shortcomings, another bid did not include all necessary documents to demonstrate technical and professional capacity, while the remaining two bids did not fulfil technical requirements from relevant technical specifications. Moreover, the decision for tender annulment was taken beyond the maximum law-stipulated deadline (from announcement of the procurement notice until expiration of the deadline for collection of bids).

These examples only confirm alarming state-of-affairs related to frequent tender annulments, especially in cases marked by solid number of bids and high value of procurement subjects. Hence, a very serious problem is seen in the fact that high 27% of published notices for public procurements have ended with decisions on full or partial annulment.

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However, matters are much worse when analysed in terms of the scope of tender procedures. Namely, according to the old Law on Public Procurements, in the first half of 2018² the share of small tender procedure annulled stands at 25%, while their share among large scale tender procedures accounts for 36% compared to their current share of 45%.

Tender annulments per year

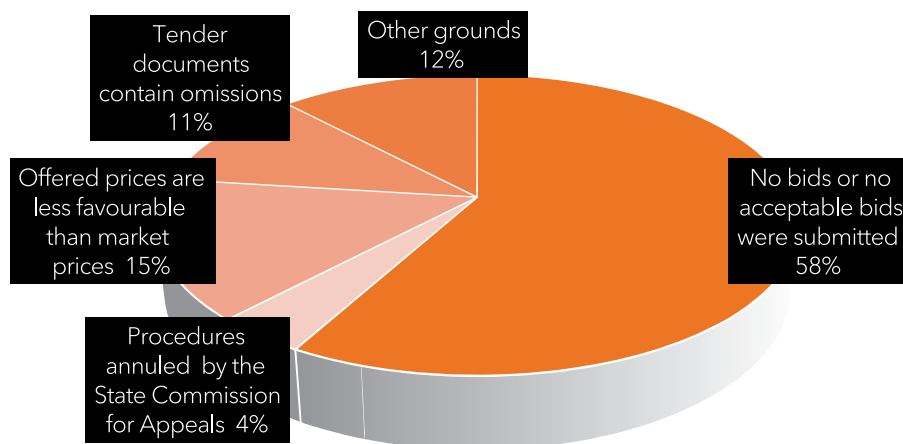
Year	Number of procurement notices	Number of decisions on tender annulment	Share of annulled tender procedures
2015	18,469	3,673	20%
2016	18,444	4,230	23%
2017	17,227	4,210	24%
2018	21,406	5,833	27%
2019	22,538	5,985	27%

Analysed in terms of reasons indicated for tender annulment, more than half (58%) of them are annulled due to no bids received or no acceptable bids received. A portion of monitored tender procedures have used this legal ground for tender annulment because offered prices had significantly exceeded the estimated value. Having in mind that these tender procedures were presented with bids from several companies and none of their prices were proportionate to the estimated value, it is logical to raise doubts about the accuracy of the estimated value set by the contracting authority.

Second most frequently indicated reason for tender annulments (15%) concern cases in which bidding companies offered prices and conditions for performance of public procurement contracts that are less favourable than actual prices and conditions on the market. Third in frequency, accounting for 11% of all tender annulments, are procedures in which the institution has established omissions in relevant tender documents.

² The share of annulled public procurements organized as "bid-collection procedure", which was used for procurements in value from 500 euros to 20,000 euros for goods and services and up to 50,000 euros for works, stood at 25%, while in the case of public procurements organized as "open procedure" which at the time was used for all procurements in the value above 20,000 euros for goods and services and above 50,000 euros for works, the share of annulled tender procedures from all initiated public procurements stood at 36%.

Overview of reasons indicated for tender annulments in 2019*



*Overview of reasons indicated for annulment of public procurement procedures is based on notifications on tender annulment submitted to EPPS for procurement procedures organized in 2019.

Recommendation: In order to reduce tender annulments, institutions need to more frequently conduct market research through the so-called technical dialogue with companies, in compliance with Article 76 of the Law on Public Procurements. This means that prior to announcement of procurement notices, insight into relevant tender documents should be given to potential bidding companies on Electronic Public Procurement System so they could make relevant comments and remarks. Understandably, organization of technical dialogue makes sense only when institutions that organize them are truly prepared to listen to potential bidders and to implement their constructive remarks and comments. By doing that, institutions would ensure timely correction of certain omissions in tender documents and would improve these documents with a view to ensure successful implementation of public procurements.

- » **Transparency of public procurements falls below the level anticipated under the new Law on Public Procurements. Disrespect for the law-stipulated obligation to publish notifications on implemented tender procedures within a deadline of 10 days is observed in more than one quarter of monitored procedures at central level (27.5%). Some institutions published these notifications as late as two months beyond this deadline.**

Monitoring activities observed inconsistencies in terms of compliance with the law-stipulated deadline for submission of notifications on signed contracts or notifications on tender annulments. According to the new Law on Public Procurements, all tender procedures are covered by the obligation³ for submission of notifications within a deadline of 10 days after the contract is signed or after the tender annulment decision is taken. The previous law anticipated much longer deadline for submission of such notifications (30 days) and covered only tender procedures whose value exceeds 20,000 euros. At the same time, another novelty in the current law concerns the fact that actual contracts should also be published in attachment to notification on contract signed.

The monitoring showed inconsistent compliance with increased obligations in regard to transparency. Hence, 27.5% of monitored procedures at central level have not complied with the law-stipulated deadline of 10 days for submission of notifications on signed contract and publication of the contract signed or notifications on tender annulment. Institutions were late in publication of necessary documents on the Electronic Public Procurement System in the range from several to more than 65 days.

Most dramatic example from the monitoring sample related to disrespect of law-stipulated obligations on transparency was noted with the University in Tetovo. In particular, the monitoring sample included its procurement procedure for reconstruction and adaptation of the Faculty of Applied Sciences. Seven months after this procurement was organized, the Electronic Public Procurement System still lacks any information on the outcome of this public procurement, i.e. whether the contract was signed or the tender procedure was annulled. Moreover, the University did not disclose documents requested under the instrument for free access to public information. It did not act upon the decision taken by the Agency for Protection of the Right to Free Access to Public Information, whereby it was tasked to disclose the requested documents.

Recommendation: Institutions must adherently enforce the Law on Public Procurements in regard to transparency of contracts signed under public procurement procedures. If these practices continue in the future, measures need to be taken against certain institutions in order to sanction their non-transparency.

³ The obligation for submission of notifications on contract signed is regulated under Article 70 of the Law on Public Procurements. In the case of tender annulment, institutions are obliged to submit relevant notifications within a deadline of 10 days, as stipulated under Article 114, paragraph 4 of LPP.

- » ***In 2019, a total of 141 tender procedures were subject of administrative control performed by the Bureau of Public Procurements. Irregularities that could not be addressed are identified in 16% of them (23 tender procedures), followed by instructions to annul such tender procedures. After having conducted these controls, the Bureau of Public Procurements has not submitted any misdemeanour motions before competent authorities and has not notified the Public Prosecution Office of RNM about certain findings.***

In the second half of 2019, the Bureau of Public Procurements conducted administrative controls in 127 tender procedures. Since the new Law on Public Procurements entered into effect (April 2019), controls were performed on 141 tender procedures from total of 16,000 tender procedures organized. All administrative controls were performed in compliance with Article 172, paragraph 3 of LPP, which means they cover public procurement procedures whose estimated value exceeds 500,000 euros for goods and services and 2 million euros for works. In 2019, the Bureau of Public Procurements has not performed any administrative controls on the basis of risk assessment related to violation of provisions under the Law on Public Procurements and by means of random sampling, as stipulated under Article 172, paragraph 4 of Law on public procurements.

Among total number (141) of administrative controls performed by the Bureau of Public Procurements, irregularities that affect procedure outcome and that could not be eliminated in the stage of such control were found in 23 tender procedures, whereby the Bureau of Public Procurements issued guidelines for these procedures to be annulled. According to information obtained from the Bureau of Public Procurements, in the remaining cases it was found that most irregularities are of technical nature and were eliminated upon issued suggestions. The Bureau of Public Procurements did not provide data on the number of irregularities of technical nature. In the cases in which the Bureau of Public Procurements has established adherent enforcement of the Law on Public Procurements and proper implementation of procedures, relevant institutions were notified that administration control is completed and the procurement procedure continued in compliance with legal provisions.

Administrative controls performed by BPP (1.4.2019 - 31.12.2019)

Period	Number of administrative controls	Number of tender procedures for which instructions were issued for tender annulment
April - June 2019	14	3
July - December 2019	127	20
Total 2019	141	23

Although the Bureau of Public Procurements issued instructions for annulment of 23 tender procedures, data published in the Electronic Public Procurement System indicate that, in 2019, only 21 tender procedures were annulled on this basis. Other two cases concern procurement procedures in which additional explanations were accepted either by Bureau of Public Procurements or State Commission on Public Procurement Appeals. According to the Law on Public Procurements, contracting authorities are obliged to act upon instructions given by the Bureau of Public Procurements unless they provide additional explanation. In cases when, after additional explanation is provided by institutions, Bureau of Public Procurements still confirms its initial findings the State Commission on Public Procurement Appeals needs to provide its opinion about the procedure in question, in compliance with Article 178, paragraph 4 of LPP.

The State Commission on Public Procurement Appeals does not publish decisions it has taken in these procedures. However, according to data obtained from State Commission on Public Procurement Appeals through the instrument for free access to public information, in the period April-December 2019, this commission was presented by the Bureau of Public Procurements with 9 requests to take decision in procedure upon conducted administrative control. Structure of SCPPA's decisions is the following: in the case of six requests State Commission on Public Procurement Appeals took decisions to confirm BPP's decisions rejecting the additional explanation; in two cases State Commission on Public Procurement Appeals rejected BPP's request as incomplete, and in one case State Commission on Public Procurement Appeals annulled BPP's decision and accepted the additional explanation provided the institution whose public procurement was subject of administrative control.

One such case is registered among monitored tender procedures. It is a matter of tender procedure organized for engagement of auxiliary machinery for the needs of a mining co-operative. After having performed administrative control, the Bureau of Public Procurements issued instructions for annulment of this procedure with remarks in regard to tender documents and bid-evaluation method. As regards tender documents, BPP's remarks concerned imprecise definition of technical specifications that prevent economic operators to offer

actual market prices and do not encourage interest among other economic operators to participate in this tender procedure with their bids. As regards bid-evaluation method, the administrative control has established several remarks related to acceptability of submitted bids on whose basis it was assessed that the evaluation process is irregular. The contracting authority did not accept instructions issued by the Bureau of Public Procurements and this case ended before the State Commission on Public Procurement Appeals. Instead of annulment, as requested by the Bureau of Public Procurement, this tender procedure was completed with award and signing of 14 contracts in total value of 11 million euros.

Otherwise, the Bureau of Public Procurements has not assessed that irregularities established by administrative controls performed in 2019 include features of misdemeanour pursuant to the Law on Public Procurements or features of criminal offence. Hence, in 2019, the Bureau of Public Procurements has not submitted any misdemeanour charges before competent courts and has not notified the competent public prosecution office about its findings.

Having in mind that all controls by the Bureau of Public Procurements were conducted on tender procedures whose value exceeds half million euros for goods and services, i.e. 2 million euros for works, it means that all controls were expected in advance. This element of anticipation means that institutions made maximum efforts to organize procedures that are in compliance with LPP. Hence, the fact that irregularities were found in 16% of controlled tender procedures and have compelled the Bureau of Public Procurements to request their annulment could be considered high level and raises concerns. This situation suggests that this share could be significantly higher among tender procedures that would be selected for control on the basis of risk assessment for violation of provisions under the Law on Public Procurements or by selection of random sample, i.e. among tender procedures in which relevant institutions are not informed in advance about performance of administrative control.

Recommendation: In order to feel the actual effects of administrative controls in terms of reduction of abuses and corruption, and in compliance with the Law on Public Procurements, the Bureau of Public Procurements should expand the scope of controls to include tender procedures selected on the basis of risk assessment or random sampling. Having in mind the fact that the Bureau of Public Procurements is not competent to assess whether certain irregularities are result of unintentional errors or intentions to favour certain companies, it needs to inform competent prosecution offices about relevant findings from its administrative controls.

» ***In the second half of 2019, monitoring activities observed increase of the number of bids per tender procedure compared to the first half of the year. In spite of that, the average number of bids for 2019 calculated for the monitoring sample is 3.12 and is lower compared to 2018 when it stood at 3.41.***

In the second half of 2019, competition in tender procedures is improved compared to the previous six months. Hence, solid level of competition among 3 and more bidders was ob-

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served in 55% of monitored tender procedures. On the contrary, 11% of tender procedures were marked by participation of only one bidder, unlike their share of 37% for the same period last year.

Competition in tender procedures on semi-annual level *

Period	No bidders	1 bidder	2 bidders	3 and more bidders
July – December 2015	2%	26%	20%	52%
July – December 2016	4%	22%	16%	58%
July – December 2017	8%	17%	28%	47%
July – December 2018	2%	37%	14%	47%
July – December 2019	10%	11%	24%	55%

* Calculations are made on the basis of monitoring samples.

Decreased number tender procedures presented with only one bid is also noted on annual level. Hence, in 2019, every fourth tender procedure from the monitoring sample was presented with only one bid, while the share of tender procedures with solid level of competition (3 or more bidders) stands at 49%, and is higher by 1 percentile point compared to the previous three years.

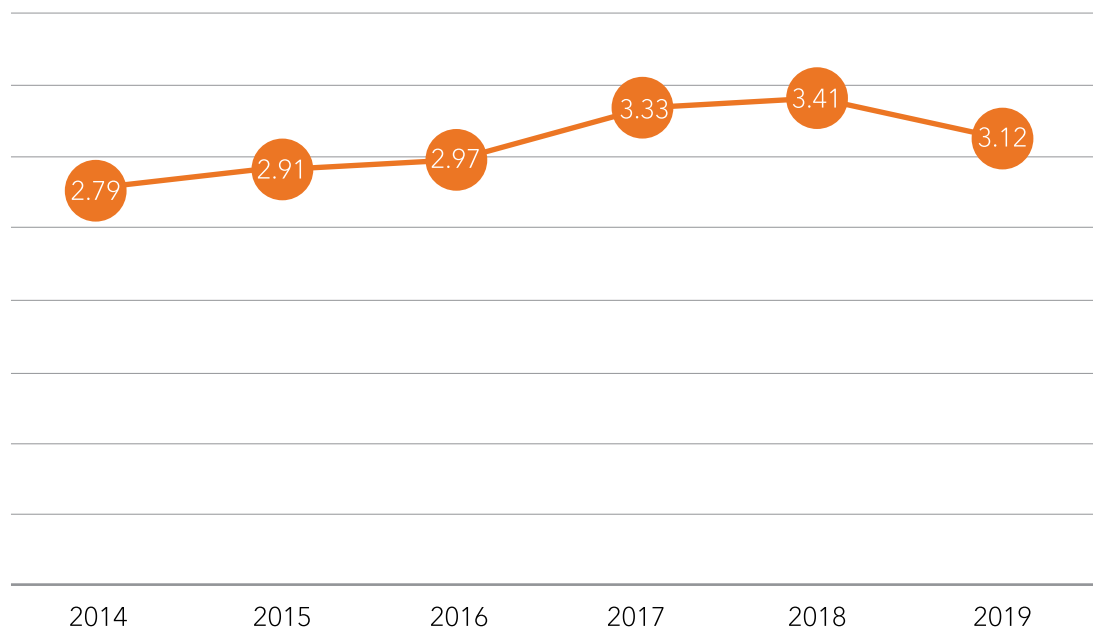
Competition in tender procedures on annual level*

Year	No bidders	1 bidder	2 bidders	3 and more bidders
2015	3%	26%	20%	51%
2016	4%	31%	17%	48%
2017	6%	21%	25%	48%
2018	5%	32%	15%	48%
2019	5%	24%	22%	49%

* Calculations are made on the basis of monitoring samples.

In the second half of 2019, the average number of bids per tender procedure is calculated at 3.50 compared to 2.74 in the first six months. Nevertheless, even with this improvement the annual average number of bids per tender procedure for 2019 stands at 3.12 and is lower compared to 2018. Here it should be noted that calculations for 2019 are made on the basis of the monitoring sample, while numbers for other years are based on data from annual reports published by the Bureau of Public Procurements.

Average number of bidders per tender procedure

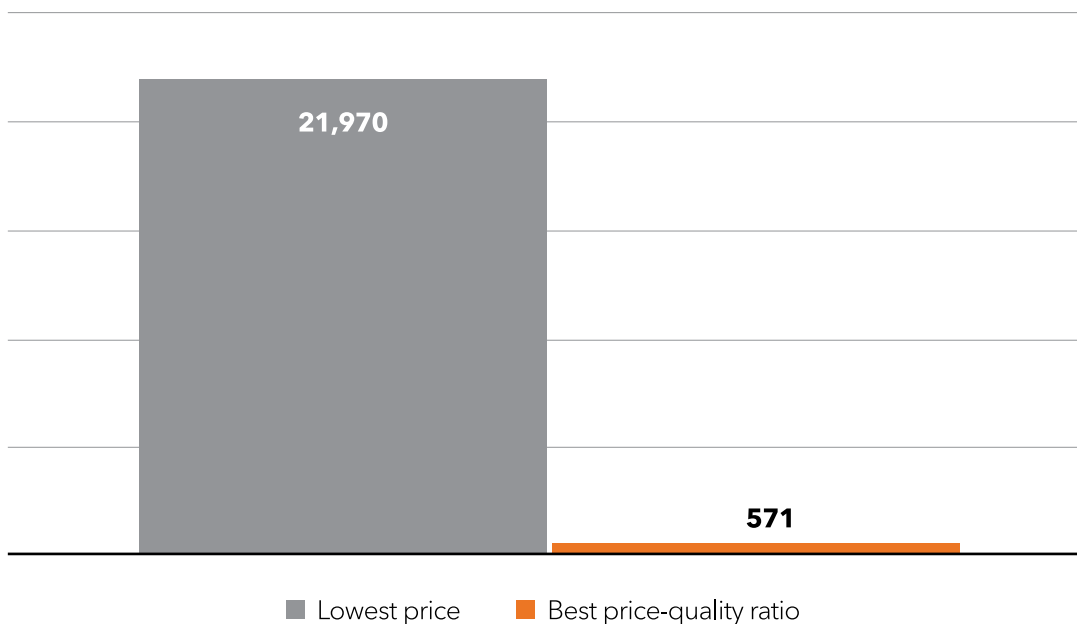


Recommendation: Institutions must work on encouraging competition, because only competition could guarantee cost-effective spending of public funds.

- » ***'Lowest price' is used as selection criterion for the most favourable bid in 96% of tender procedures organized in the second half of 2019, while at annual level 'lowest price' was used as criterion in high 97.4% of tender procedures. Electronic actions were organized in high 94% of tender procedures. Such actions on the part of institutions are not in line neither with current trends in Europe nor with demands of the business community.***

Best bids in tender procedures are still selected mainly on the basis of prices, thereby maintaining high risk for procurement of goods, services and works of inadequate quality. Such practices actually prevent practical implementation of provisions under the new law that entered into effect in April 2019, according to which, in addition to price, selection of the most favourable bid can also evaluate quality, technical value, social, environmental and innovative characteristics, post-sales services, etc.

Use of criteria for selection of the most favourable bid (January - December 2019), number of tenders



As shown in the table below, use of other criteria in addition to price is marked by very small breakthrough from 1.26% in April to 4.44% in December 2019.

Use of selection criterion 'lowest price' in 2019, number of tenders

Month	Lowest price	Best price-quality ratio	Share of best price-quality ratio in total number of tender procedures
January	1,040	7	0.67%
February	2,232	3	0.13%
March	3,249	4	0.12%
April	396	5	1.26%
May	1,252	24	1.92%
June	1,492	42	2.82%
July	2,154	73	3.39%
August	1,656	56	3.38%
September	1,781	71	3.99%
October	2,177	94	4.32%
November	2,352	90	3.83%
December	2,189	102	4.66%
Total	21,970	571	2.60%

'Lowest price' is used as selection criterion for procurement of foodstuffs, which means that contracting authorities do not enforce legal provisions under Article 99, paragraph 10 of LPP, which reads: *"As regards selection criteria for the most favourable bid in cases when foodstuffs are procured, advantage shall be given to foodstuffs under quality programs (such as season foodstuffs produced in integrated manner, season foodstuffs produced with organic agriculture methods and the like), foodstuffs produced in compliance with national regulations on quality of food and foodstuffs that are permanently produced and processed and have ensured higher quality of food in the sense of freshness or lower burden on the environment in transport"*.

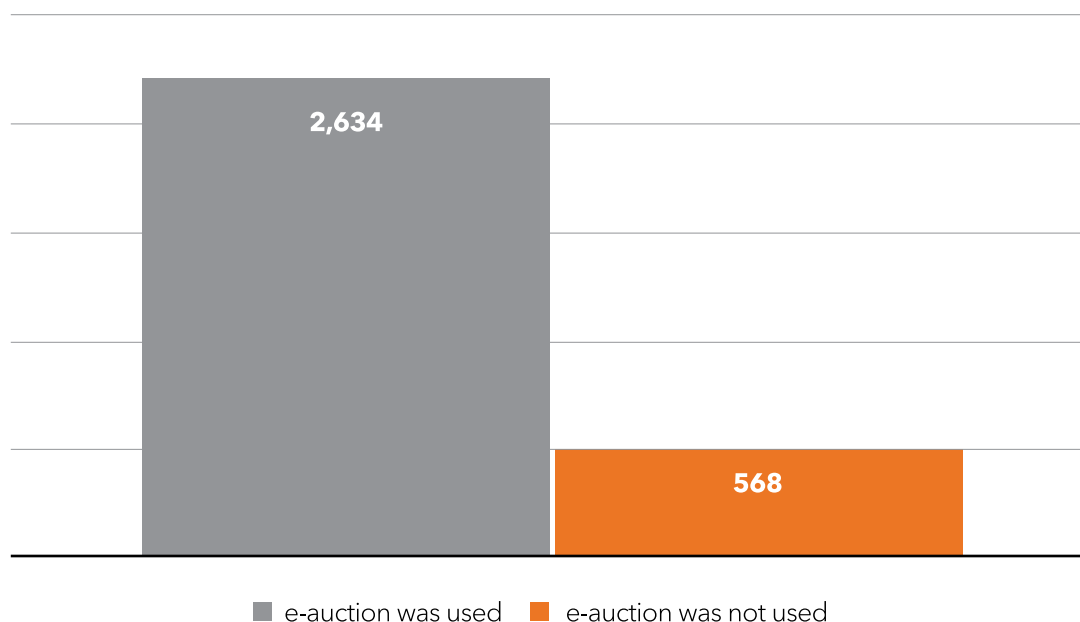
It is unclear whether this unexpectedly high use of 'lowest price' as selection criterion for the most favourable bid is due to lack of experience among staff members responsible for public procurements or due to inertia and lack of care for adequate public spending. Notably, use of price as single criterion overshadows quality of goods, services and works for state institutions.

In some situations, blind adherence to lowest prices puts institutions in conflict with the Law on Public Procurements. An example thereof is seen in the monitored procedure for procurement of internal building refurbishment. This tender procedure was presented with 6 bids, of which one bid included a price that is by 60% lower than average price of acceptable bids (4,515,302 MKD) and by 40% lower compared to the next best-ranked bid (3,908,758 MKD). It should be stressed that the contract's value is lower than the estimated value by 34%. Based on documents obtained, it was established that the institution requested justification for this uncommonly low price. Such practice is contrary to Article 110, paragraph 1 of LPP, which reads: *"Contracting authorities shall request the economic operator, within an adequate deadline, but not shorter than five days, to explain the price or cost given in their bid, when they believe that the bid in question contains uncommonly low price in respect to goods, services or works that are subject of procurement or when there is suspicion whether the contract will be performed. In any case, contracting authorities shall request explanation of the price when the bid's value is more than 50% lower than the average price of acceptable bids or is more than 20% lower from the next-ranked bid, in cases when they have been presented with at least three acceptable bids."*

The monitoring sample included tender procedure in which one of three bids received was 5 times lower than the average value submitted on the tender procedure and 4 times lower than the next best-ranked bid. Although there is no market logic for such major differences in price, the law was enforced and explanation was requested for such low price in compliance with Article 110 of LPP.

In addition to lower price, monitoring activities observed high use of electronic auction (e-auction) to reduce initially bided prices. In the second half of 2019, e-auctions were organized in 92% of implemented tender procedures. At annual level, e-auctions were organized in 93% of tender procedures.

Organization of electronic auctions (January - December 2019), number of tenders



Recommendation: The Bureau of Public Procurements should educate and encourage contracting authorities to use other bid-evaluation elements in addition to price when they select the most favourable bid, in order to guarantee as much as possible cost-effective public spending. Small use of 'lowest price' as selection criterion should be accompanied with limited use of e-auctions.

- » ***In 2019, direct negotiations without previously announced call for bids were organized to sign 368 contracts, in total value of 40 million euros. Compared to the last year's figures, the number of contracts is reduced, but the cumulative value is increased by 21%. The highest value contract signed by means of direct negotiations is noted with Balkan Energy and concerns procurement of natural gas from TE-TO (21 million euros).***

The dynamics for signing this type of contracts was more prominent in the second half of 2019 when the value of these contracts is double compared to the first half of the year. A total of 178 contracts in the value of 10 million euros were signed in the first half, while 190

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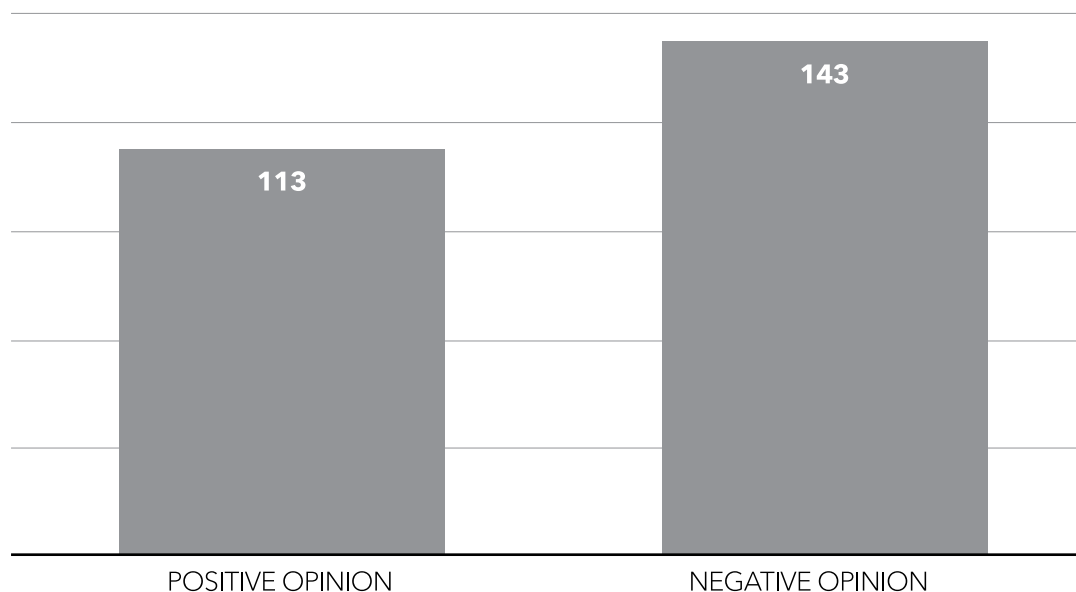
contracts were signed in the second half, but their cumulative value amounted to 30 million euros. Hence, a total of 368 contracts were signed in 2019, which is significantly lower compared to 2018, but the value of these contracts is by 21% higher than their cumulative value in the previous year.

Breakdown of the value of contracts signed under negotiation procedures without prior announcement of call for bids, per year

Year	Number of contracts signed	Value of contracts (in million euros)	Annual change in value
2014	834	56	-42%
2015	951	29	-49%
2016	605	35	+20%
2017	496	29	-17%
2018	596	33	+14%
2019	368	40	+21%

Pursuant to the new Law on Public Procurements, from 1st April 2019 the Bureau of Public Procurements provides opinion on fulfilment of conditions for use of negotiation procedure without prior announcement of call for bids due to protection of exclusivity rights and when artistic or technical reasons require contracts to be signed with particular economic operator, as well as in cases of urgency caused by events that could not have been anticipated by or could not be attributed to contracting authorities, resulting in inability to announce adequate procedure with publication of call for bids.

In the period April-December 2019, the Bureau of Public Procurements was presented with 265 applications for opinion related to use of negotiation procedure without prior announcement of call for bids. Negative opinions were issued for more than half of these applications (143), compared to positive opinion issued for 113 applications.

Responses from BPP upon applications for opinion on use of negotiations procedure (April - December 2019)

As regards legal grounds, two thirds of applications submitted by contracting authorities requested the Bureau of Public Procurements to provide opinion on contract award for protection of exclusive rights or when technical or artistic reasons necessitate particular contract to be signed with specific economic operator. Only one third of applications concern opinions for contract award due to urgency reasons. According to data obtained from the Bureau of Public Procurements, it could be concluded that the share of positive opinion is higher in cases that required protection of exclusive rights compared to cases in which opinion was sought for direct negotiations due to urgency reasons.

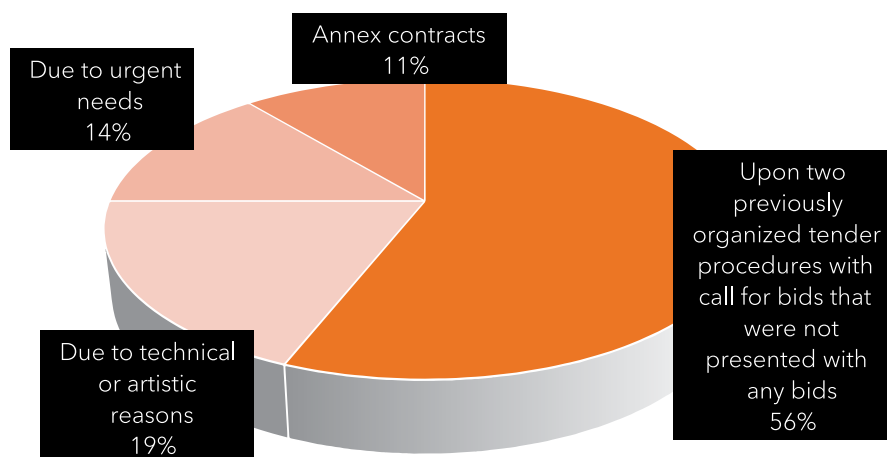
The structure of contracts signed under direct negotiations and without call for bids shows dominant share of cases in which *no bids were received on two previously organized procurement procedures with publication of call for bids (open procedure, limited procedure, etc.), provided that conditions under tender documents remain unchanged*. This legal ground was used to sign 33 contracts in cumulative value of 22.4 million euros. Moreover, this legal ground was used to sign the highest value contract, awarded by contracting authority *Heath Generation Balkan Energy LLC Skopje* for procurement of natural gas from TE-TO company for electricity and heat generation JSC Skopje, in the value of 21 million euros.

Second in frequency, accounting for 19% of contracts signed, are cases marked by *lack of competition in procurement subject due to technical reasons, protection of exclusive rights, including intellectual property rights*. This legal ground was used to sign 239 contracts in total value of around 7.8 million euros.

Third-ranked according to their value share are contracts signed under direct negotiations due to *urgency reasons caused by events that the contracting authority could not anticipate or cannot be attributed as its omission in order to use deadline for announcement of adequate procurement procedure with publication of call for bids*. This legal ground was used to sign 63 contracts in total value of 5.6 million euros. The share of these contracts accounts for 14%.

This procedure is also used to sign annex contracts. In 2019, a total of 29 annex contracts were signed in total value of around 4.2 million euros.

Value structure of contracts signed under negotiations procedure without prior announcement of call for bids (January - December 2019)



Total value of the 10 biggest contracts amounts to 30 million euros, which means they account for high 77% of the value of all contracts signed under negotiations procedure without previously announced call for bids.

List of the 10 biggest contracts signed under direct negotiations

Contracting authority	Procurement subject	Procurement holder	Value (in euros)
Balkan Energy LLC Skopje	Procurement of natural gas in volume up to 63,000,000 Nm3	TE-TO JSC Skopje	21,630,544
Ministry of Education and Science	Bulk purchase of textbooks and accompanying didactic materials and workbooks for primary education in the school year 2019/20	ARS LAMINA LLP Skopje	1,740,955
Ministry of Transport and Communications	Change to contract for construction of water treatment plant for the regional water supply system Lipkovo	ZIKOL LLC Strumica	1,460,306
Ministry of Education and Science	Bulk purchase of textbooks and accompanying didactic materials and workbooks for primary education in the school year 2019/20	ARBERIA-DESIGN LLC Tetovo	1,382,205
Power Plants of RNM	Services related to specialized labour for de-assembling activities at regional branch Thermal Power Plants, Bitola, for the year 2019, in regard to SECTION 20- Turbo Aggregate	MONTING ENERGETIKA LLP Skopje	825,040
Power Plants of RNM	Services related to construction machinery on call for the needs of MEC Bitola (amendment to primary contract no. 11-131/6 from 26.6.2018)	MARKOVSKI COMPANY Borche Bitola	820,086
Power Plants of RNM	Services related to construction machinery on call for the needs of MEC Bitola (amendment to primary contract no. 11-189/1 from 26.6.2018)	MIS-COMMERCE Mitko Skopje	739,973
Public Enterprise for State Roads	Unpredicted works for correction and rehabilitation of state road A1, section Negotino - Demir Kapija	GRANIT JSC Skopje	562,848
Administration for Technology and Industry Development Zones	Unpredicted works for construction of de-levelled road junction for TIDZ Struga	ZIKOL LLC Strumica	537,644
Food and Veterinary Agency	Laboratory services for health protection of animals from contagious diseases	Faculty of Veterinary Medicine - Skopje	515,728

Recommendation: Having in mind non-transparency accompanied with this type of procurement procedures, institutions need to organize them only in exceptional situations. Maximum efforts should be invested to find possibilities for all contracts to be signed under transparent and competitive process. This is particularly important given the fact that portion of contracts signed under this type of procedures implied exceptionally high value.

Analysis of Monitored Public Procurements at Local Level

» ***At local level, almost all tender procedures used lowest price and electronic auctions, although they are not mandatory, while in the period when the old law was in effect these elements were indicated as the reason for biggest problems in public procurements.***

'Lowest price' was used as single selection criterion for the most favourable bid in all monitored tender procedures at local level, while electronic auctions were organized in 90% of tender procedures.

This is completely incomprehensible having in mind that, in the past, when the old Law on Public Procurements was in effect (until April 2019), lowest price and e-auction were mandatory and their mandatory use was indicated as reason for all problems affecting public procurements.

Notably, in order to select the most favourable bid, which is the essence of modern-day public procurements and the new Law on Public Procurements, other selection criteria must be reconsidered and used in addition to the price element. It is understandable for price to serve as single criterion when procurements concern products of known, standard or pre-defined quality. However, in all other cases it is unlikely that use of 'lowest price' would facilitate selection of the most economically favourable bid. Hence, it is very important for technical specifications to define and precise the quality of what is being procured (which is not the case with most tender procedures in the country).

On the other hand, 'lowest price' is the easiest method for selection, however it does not guarantee that the best bid is selected, but rather the cheapest.

While, to present, continued use of 'lowest price' was justified with lack of knowledge or fear from making errors when applying other criteria, it seems that this justification is no longer

acceptable because the new law is in effect for almost an entire year and a total of 22,533 tender procedures have been organized pursuant to provisions contained therein.

For example, one and the same subject is procured by two different municipalities and both of them used 'lowest price' as selection criterion. It is a matter of industrial-grade salt for winter maintenance of roads.

In its technical specifications, one municipality enlisted only the need for 'industrial-grade salt', while the other municipality provided the following description:

"Industrial-grade salt that is subject of this procurement and is used for winter maintenance of streets should comply with the following criteria:

Granular composition of the industrial salt

Size of salt grains:

- smaller than 0.5 mm < 10%
- from 0.5 mm to 3.0 mm > 83%
- from 3.0 mm to 5.0 mm > 7%
- volumetric weight from 1.0 t/m³ to 1.1 t/m³
- contents of NaCl minimum 96.6%
- insoluble residue < 1.21%
- content of sulfate ion SO₄²⁻ from 200 to 600 mg/l
- moistness of delivered salt maximum to 3.6%
- allowed contents of heavy metals in mg/kg
- arsenic ≤ 0.25
- lead ≤ 0.5
- cadmium ≤ 0.2
- chromium ≤ 0.5
- copper ≤ 0.5
- nickel ≤ 0.5
- mercury ≤ 0.05
- zinc ≤ 2.2."

While the second case includes well known and defined characteristics of salt allowing the price to have decisive role in selection of the most favourable bid, use of 'lowest price' in the first case could also mean low quality of purchased salt and could lead to irrational public spending.

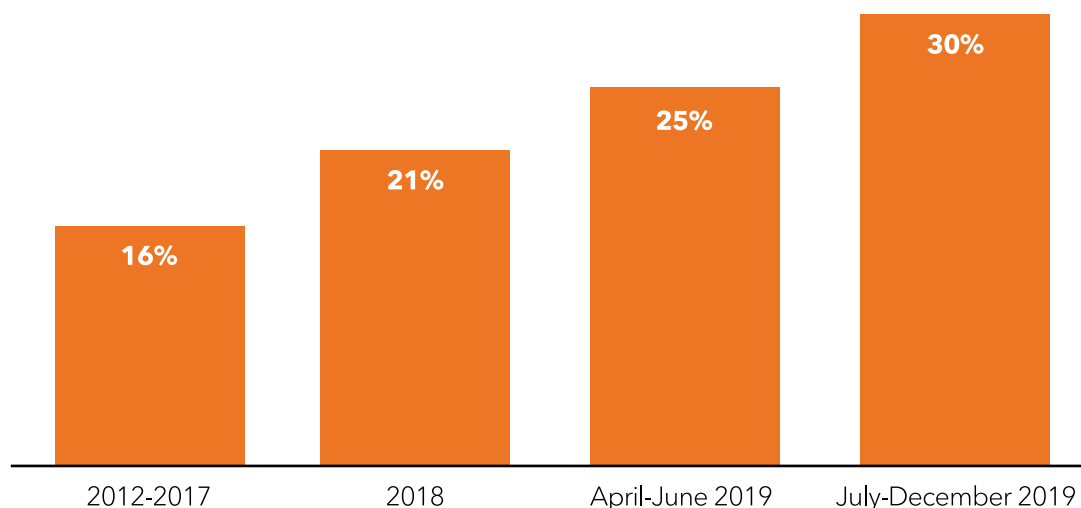
Combination of 'lowest price' and electronic auction in the absence of detailed description for procurement subjects is highly detrimental. Only a more detailed control could verify whether contracting authorities that have used this combination truly obtained the necessary goods, services and works in agreed volume, quantity and quality.

Such example was observed in the procurement procedure for IT equipment organized by one municipality. This procurement was estimated in the value of 200,000 MKD, which the municipality did not publish together with the procurement notice. It received five bids in the range from 168,000 MKD to 261,000 MKD, but the electronic auction resulted in reduced final price of 120,000 MKD. Having in mind all equipment that needs to be delivered by the company awarded this contract for the indicated amount of funds serious questions are raised about the quality of equipment purchased, in particular because the contracting authority did not provide detailed specification related to quality for said equipment.

In one tender procedure, which was annulled, the municipality has estimated the procurement subject in value of 19,984,812 MKD, which were secured from the budget program of another state institution. It received five bids in the range from 13,034,200 MKD to 19,976,124 MKD. The electronic auction included as many as 430 downward bids, resulting in the final price of 5,425,066 MKD. After this outcome, decision was taken to annul the tender procedure because the bidding company offered price that is less favourable than actual market prices and lower than the procurement's estimated value. Aside from tender annulment, the contracting authority did not take proper actions because in cases when prices are lower than market prices it should have requested explanation from the bidding company about the low price offered, and in case it had decided to annul the tender procedure anyway, that would not have been possible because of this possibility which is intended for cases when offered prices are actually higher.

» ***Annulment of local tender procedures reached a new record-breaking level of 30%, which means that almost every third monitored procurement procedure was annulled.***

The standard increase of tender annulments continued in this monitoring period, when as many as 30% of tender procedures were annulled. This is a record-level of tender annulments in the last three years. Hence, the average of annulled tender procedures in 2019 reached 27.5%, which is significantly higher than 2018 average of 21%.

Share of annulled tender procedures in the monitoring sample

In high 83% of annulled tender procedures from the monitoring sample, the reason indicated for such annulment concerned the price, while one tender procedure was also annulled on the basis of opinion issued upon administrative control by the Bureau of Public Procurements.

In almost all tender procedures that were annulled because bidders offered prices higher than the estimated value, accuracy in setting estimated values could be problematized.

Two almost identical procurement procedures were annulled due to the same reason. It is a matter of services for development of urban plans, organized by two municipalities, with funds secured from the Agency for Financial Support to Agriculture and Rural Development. Both municipalities have secured fixed amount of funds for these procurements. In a twist of absurdity, both of them annulled their respective procurements because bids submitted were actually lower than funds secured by these municipalities from the Agency.

A large-scale public procurement was annulled upon opinion issued after administrative control by the Bureau of Public Procurements, which had established a series of shortcomings that could affect the procedure outcome. Among others, shortcomings included: failure to publish the procurement notice in the EU Official Journal in spite of the legal obligation; failure to provide justification for the procurement needs in the relevant decision for organization of public procurement; incomplete minutes from the public opening of bids and incomplete report on organized procurement procedure; tender documents did not indicate

which certificates should be provided by bidding companies to demonstrate eligibility for tender participation.

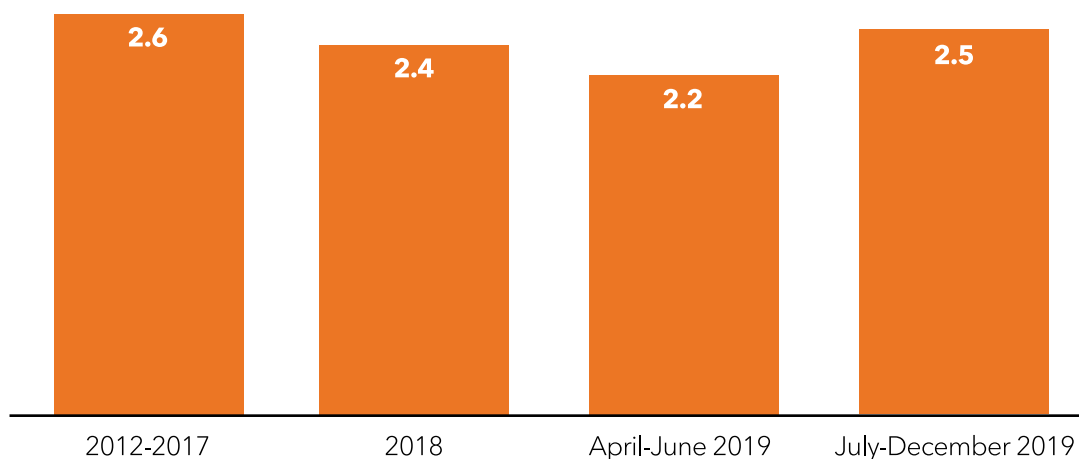
Here, it should be noted that monitoring of public procurements has observed such shortcomings in number of other tender procedures that were not included in administrative controls performed by the Bureau of Public Procurements. For the time being, this control is performed only for tender procedures whose estimated value exceeds half million euros for goods and services and 2 million euros for works, although the law stipulates other parameters that could be used as basis for organization of administrative control, including random selection and risk assessment for violations to the law.

» ***Competition in local tender procedures is slightly improved, but still stands at only 2.5 bids per tender procedure.***

The average number of bids for the monitoring sample is 2.5, which implies certain improvement compared to the first half of 2019 when competition was even lower and accounted for 2.2 bids per tender procedure.

At annual level, no improvements are noted in terms of competition given that the average number of bids per tender procedure in 2019 is identical to the previous year (2018) and stands at 2.4 bids.

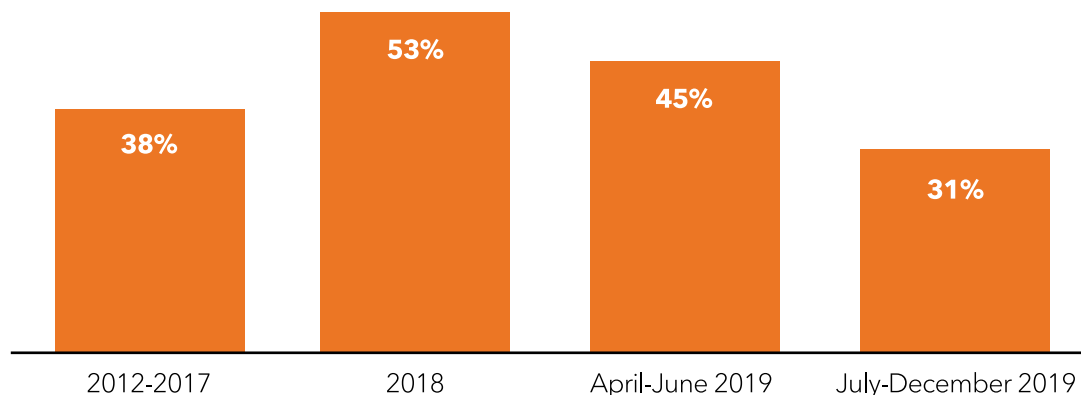
Competition in monitored tender procedures at local level: average number of bidders per tender procedure



- » ***The share of tender procedures with one bid or without any bids continues to decrease.***

In the second half of 2019, the share of tender procedures presented with only one bid or without any bids accounts for 31% and is the lowest share observed in the last several years. This implies stable trend from the first half of the year, whereby the 2019 annual share of these tender procedures accounts for 38%, representing an improvement from the previous year (2018).

Share of tender procedures with one bid or without any bids



- » ***Not a single public procurement from the monitoring sample included justification of procurement needs, while one procedure included justification of reasons for the procurement's indivisibility, in spite of the fact that both types of justifications are stipulated as mandatory under the new Law on Public Procurements.***

By maintaining old and bad practices in implementation of tender procedures, contracting authorities fail to enforce a series of legal provisions that are mandatory under the new law. Two of them concern provision of mandatory justification for procurement needs and reasons for the procurement's indivisibility (when the tender procedure is not divided into lots).

Both legal provisions are introduced as novelty in the new legislation. Justification of procurement needs should be integrated in the contracting authority's decision for organization of public procurement and was among series of new provisions intended to reduce

corruption and risks of procurements which, according to their purpose, quality or quantity, do not correspond to actual needs of relevant institutions. The second type of justification, i.e. reasons why the contracting authority decided not to divide the procurement into lots, was part of efforts to increase competition in tender procedures and open possibilities for greater participation of small and micro enterprises that would submit bids for individual procurement lots instead of the entire procurement.

In contrast, contracting authorities continue their flagrant violation of the law by failing to justify procurement needs and failing to provide reasons for indivisibility of tender procedures.

Moreover, monitoring activities show that contracting authorities do not even understand the reason why and how they should justify procurement needs. Justification of procurement needs should be integral part of the decision for organization of public procurement for all public procurements irrespective of the type of procedures and the procurement value, and it should elaborate the procurement's purposefulness in terms of why the procurement subject is needed in indicated volume (quantity) and quality.

Hence, one of the few institutions that attempted to provide such justification in its decision for organization of public procurement offered an entire sentence to that effect, as follows:

"The need for organization of tender procedure for procurement of electricity arises from the fact that the enterprise is a large consumer of electricity and the possibility for electricity to be procured on the free market, at competitive prices."

It is evident that the contracting authority elaborated why it organizes this public procurement, but not why it needs electricity in the amount of 8,500,000 MKD.

Another contracting authority justified its procurement needs for development of urban plans as follows: "In case of some villages that need to be covered with urban plans and additional gentrification, there are no urban plans in existence and this procurement is intended for their development."

More details were not offered by the third contracting authority which elaborated that the need for procurement of services related to replacement of roof and ceiling construction at the municipal building originates from the municipal program on construction land arrangement.

As regards indivisibility, the single contracting authority that even attempted to provide some justification indicated that the bill of qualities and accompanying calculations had shown impossibility for division of this procurement subject into lots and that they need to be performed by single bidding company.

This monitoring sample also included examples of indivisible procurements without any justification of such decisions, although it seems that procurements could have been imple-

mented more efficiently if they had been divided into lots. Hence, one procurement procedure concerned IT equipment and accessories for the needs of one municipality. It anticipated procurement of computers, monitors, multifunctional devices, keyboards, computer mouses, switchers, memory sticks and routers. It does not take great experience in public procurements to know that the market for IT equipment is segmented and there are specialized companies for computers, other companies for multifunctional devices and printers, third companies for computer accessories, etc. The point is that if this tender procedure was divided into lots the contracting authority would have received better bids for each of the three lots. Hence, it would be interesting to see why the contracting authority decided not to divide the procurement, i.e. what could be the justification for such decision.

This leads to the essence behind the obligation to justify indivisibility of each and any tender procedures, i.e. to make contracting authorities reconsider, once they have decided to make the procurement from one bidding company, whether it would be better to divide the procurement subject into lots. Of course, the ultimate goal is not to divide all and any procurements, but rather those where division into lots makes sense and when such division is aimed at obtaining bids of better quality at lower prices.

» *Non-publication of estimated values, at least for the time being, has not improved state-of-affairs in public procurements in any aspect.*

For the time being, monitored public procurements cannot confirm the legislator's intention to revoke mandatory publication of the procurement's estimate value in order to reduce initial prices offered by bidding companies in the absence of knowledge about estimated values.

Instead, this has given rise to another risk that was duly noted in previous monitoring reports, whereby some companies might learn the procurement's estimated value in advance and obtain disloyal advantage before their competitors.

There are many tender procedures in which bidding companies offer prices that are identical or very close to the procurement's estimated value, which had not been previously announced. By rule, these tender procedures are marked by participation of only one bidding company.

Such example is seen in the procedure for procurement of industrial-grade salt for the needs of one municipality, in estimated value of 300,000 MKD, which was not published together with the procurement notice. The tender procedure was presented with one bid in the amount of 299,970 MKD, which by 30 MKD lower than the estimated value that the bidding company could not have known in advance, and was ultimately awarded the contract at this price.

Otherwise, non-publication of estimated values has not addressed in any significant way underlying problems related to this aspect of tender procedures, whereby poorly estimated procurement values continue to negatively affect tender procedure outcomes.

This monitoring sample includes three cases of annulled tender procedures on the grounds that bidding companies offered prices lower than the estimated value. This raises concerns why contracting authorities did not publish estimated values if they had been certain that their estimations are accurate and adequate to market conditions.

In another case, the contracting authority received one bid that was higher than the estimated value, but prior to making the final decision to accept such bid or annul the tender procedure, it engaged external experts to analyse the bid's feasibility, followed by decision that the bid is real and that additional funds should be secured to accept it.

It seems that the contracting authority acted in logical manner and instead of annulling the tender procedure and losing time and money, it opted to check whether the offered price is realistic and after confirming this fact, completed the tender procedure with selection of the most favourable bid. However, in doing that, the contracting authority acknowledged that its estimated value has been imprecise. Namely, the omission in this case concerns the chronology of events. In particular, actions taken by the contracting authority after having received the bids should have been made in advance, meaning that it should have engaged experts during the stage on setting the estimated value and securing the funds for this procurement.

Recommendations: Having in mind the manner in which local institutions organized public procurements in this monitoring period, contracting authorities are recommended:

- » To adherently enforce all obligations under the Law on Public Procurements;
- » To use possibilities under the Law on Public Procurements and, except for the price element, to use other criteria for selection of the most favourable in order to obtain the best value for money spent, i.e. to make optimal and cost-effective procurements;
- » To organize electronic auctions only for procurement of goods marked by standard, known or well-defined quality, where price has decisive role in selection of the best bid;
- » To provide detailed justification of procurement needs in all cases, with elaboration why they need particular procurements in indicated quantity (volume) and quality, thereby confirming purposefulness of their public procurements;

- » Although their publication is not mandatory, to set accurate and precise estimated values based on actual needs assessment, by means of following market circumstances and movements, and by following procurements of other institutions;
- » To analyse annulled and failed tender procedures and to use such findings to improve other public procurements;
- » To divide procurement subjects into lots, when such division is possible, logical or it has been assessed that such division would facilitate participation of more and smaller companies in order to increase competition, reduce prices and improve quality of goods and services procured;
- » To provide detailed justification for indivisibility of procurement subjects, including analysis and logics behind such decisions.

Analysis Of Procedures Led Before The State Commission On Public Procurement Appeals in 2019

- » ***The trend on increasing number of appeals lodged before the State Commission on Public Procurement Appeals continues. In 2019, companies have lodged a total of 845 appeals, which is by 22% higher compared to the previous year. Most appeals, i.e. 59%, were approved by the State Commission. Among approved appeals, two thirds were completed with decision on full annulment of public procurements.***

Among total of 22,538 tender procedures announced in the course of 2019, companies have lodged 845 appeals (3.75%) before the State Commission on Public Procurement Appeals. As shown in the table below, there is very small increase in the number of tender procedures (5.3%) compared to increase of appeals (21.58%), which is indicative of the fact that appeals are increasing both in absolute and relative figures.

Ratio of announced tender procedures and number of appeals lodged by companies before SCPPA*

Year	Number of tender procedures	Change (%)	Number of appeals lodged before SCPPA	Change (%)
2015	18,469	+17.4%	523	+4.0%
2016	18,444	-0.1%	557	+6.5%
2017	17,227	-6.6%	507	-9.0%
2018	21,406	+24.0%	695	+37.1%
2019	22,538	+5.3%	845	+21.6%

* Calculations are based on processing data related to appeals lodged before SCPPA and published on its official website.

In 2019, the State Commission took decisions upon 816 appeals. In that, most decisions concerns appeals lodged in 2019, and small number of them concern appeals lodged in late 2018.

Analysis of the structure of SCPPA's decisions provides the conclusion that, in 2019, this commission approved 476 appeals, accounting for 58.3% of all decisions taken. 225 appeals were rejected as ungrounded, accounting for 27.6% of all decision. Due to untimely submission or failure to settle procedure fees, 75 appeals were dismissed, accounting for 9.2%. Finally, the number of appeals withdrawn by companies that have lodged them or appeals for which procedure were discontinued because contracting authorities acknowledged appeal allegations prior to decision taken by State Commission on Public Procurement Appeals is 40 and accounts for 4.9% of all decisions.

Structure of decisions taken by SCPPA in 2019*

Structure of appeals according to type of decision	Number of appeals	Share (in %)
Approved appeals	476	58.3%
Rejected appeals	225	27.6%
Denied appeals	75	9.2%
Discontinued/terminated appeal procedures	40	4.9%
Total	816	100%

* Calculations are based on processing data related to appeals lodged before SCPPA and published on its official website.

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Compared against previous years, the share of approved appeals in 2019 is the highest in the last five years and also represents the highest percentile increase (10.7) compared to the previous year. In parallel to this increase, the share of rejected appeals has understandably decreased.

Comparison data on the structure of decisions taken in appeal procedure*

Type of decisions	2015	2016	2017	2018	2019
Approved appeals	43.6%	47.6%	45.8%	47.6%	58.3%
Rejected appeals	37.3%	32.4%	37.5%	31.5%	27.6%
Denied appeals	11.5%	7.6%	10.2 %	12.8%	9.2%
Discontinued/terminated appeal procedures	7.6%	12.4%	6.5%	8.1%	4.9%
Total	100%	100%	100%	100%	100%

* Calculations are based on processing data related to decisions taken by SCPPA and published on its official website.

Among total of 476 approved appeals, 304 decisions taken by State Commission on Public Procurement Appeals, representing high share of 64%, concerned annulment of tender procedures, unlike decisions on revoking selection of the most favourable bid and returning the procedure for repeated bid-evaluation, which accounted for 172 decisions, i.e. 36%.

As shown in the table, the share of decisions on annulling tender procedures is by 3% higher compared to the previous year and is the highest in the last five years. This situation leads to the conclusion that, according to State Commission on Public Procurement Appeals findings and decisions, essential violations of the Law on Public Procurements are increased, in particular because the State Commission on Public Procurement Appeals takes annulment decisions in cases when illegal actions of contracting authorities cannot be remedied by means of changed selection decision and the entire tender procedure must be annulled and organized anew.

Comparison data on the structure of decisions taken upon approved appeals, per year *

Type of decision upon approved appeals	Share of approved appeals				
	2015	2016	2017	2018	2019
Revoked selection decision	35%	48%	58%	39%	36%
Annulled tender procedure	65%	52%	42%	61%	64%
Total	100%	100%	100%	100%	100%

* Calculations are based on processing data related to decisions taken by SCPPA and published on its official website.

According to data processed, in 2019, State Commission on Public Procurement Appeals took decisions within an average deadline of 13 days, ranging from 1 day to 55 days.

Survey among companies related to their participation in public procurements

- » ***As many as three quarters of surveyed companies indicated 'lowest price' as the most frequent problem they face in public procurements.***
- » ***Late payment again emerged as major problem for companies, with an average period of seven months for collection of receivables from performed procurement contracts.***
- » ***Only 6% of companies believe that organized e-auctions make any sense.***
- » ***48% of companies believe that corruption is 'always' or 'often' present in public procurements.***
- » ***Companies assessed the process of public procurements in the country with an average score of 2.82 (on the scale from 1 to 5), representing an insignificant decrease compared to last year's survey when this score was calculated at 2.87.***

This is the tenth regular annual survey among companies related to their participation in public procurements organized by the Center for Civil Communications as part of its efforts related to monitoring public procurements since 2009.

This year, the survey was conducted in February 2020. It covered 229 companies from all major towns across the country. In particular, the survey included interviews based on previously designed and structured questionnaire comprised of 20 questions.

Questions were structured into several groups and inquired about companies' views and opinions about the most frequent problems they face when participating in public procure-

ments, their thoughts on e-auctions, appeal procedure, corruption and other challenges in public procurements. Also, the questionnaire allowed space for company representatives to enlist own problems they face and to propose measures aimed to improve the system of public procurements.

This analysis includes results from the last survey among companies, as well as comparisons against results obtained under previous surveys, in order to provide insights not only into current state-of-affairs, but also into trends.

As was the case before, the survey first inquired about experiences of companies when they participate in public procurements. The highest share of surveyed companies or 43% participate in maximum 5 public procurement procedures annually. Next in frequency are companies that participate in 6 to 12 tender procedures annually (32%), followed by companies that participate in more than 24 public procurements annually (14%) and companies that participate in average of 13 to 24 tender procedure (11%). The average weighted participation of surveyed companies is calculated at 9 public procurements annually.

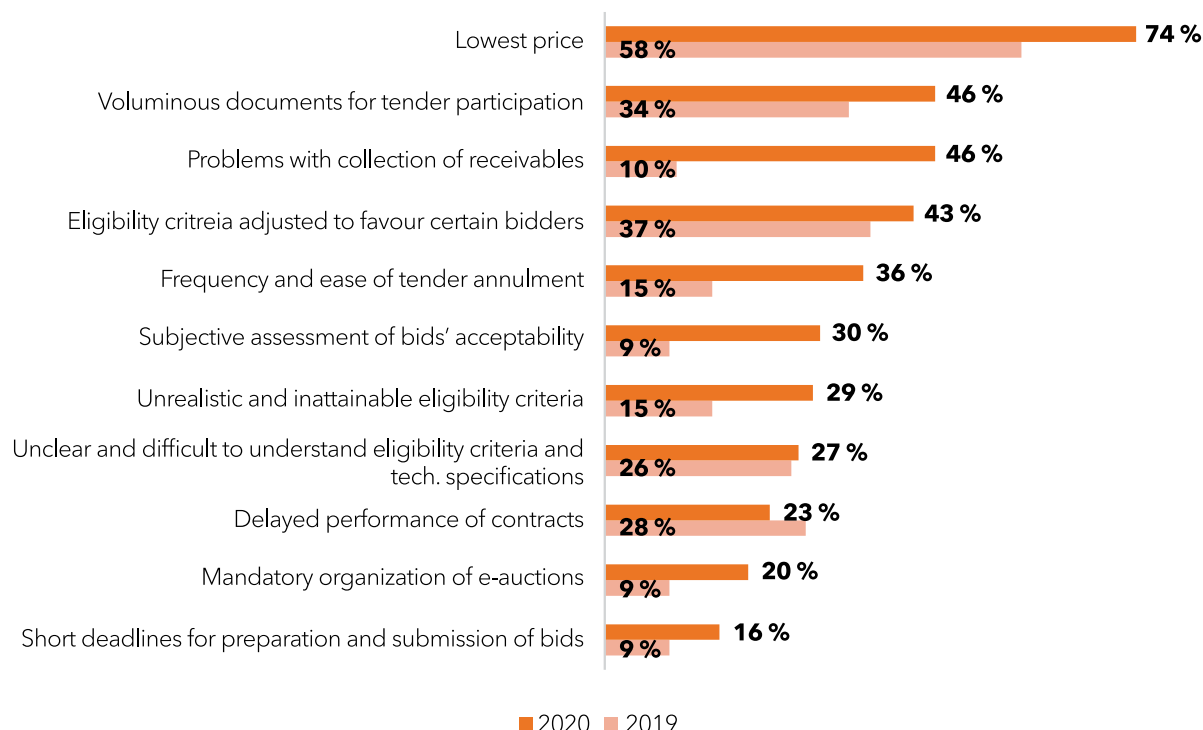
Problems in public procurements: The highest-ranked problem in public procurements, as indicated by three quarters of surveyed companies, concerns use of 'lowest price' as selection criterion for the most favourable bid. This problem is more prominent nowadays compared to previous years when price was the single selection criterion. In that, dominant share of recommendations made by companies imply cancellation of mandatory use of 'lowest price' as single selection criterion, which was effectuated under the new Law on Public Procurements.

Next most frequently indicated problems, each accounting for 46% of answers, concerns voluminous documents required for tender participation and late payment for performed procurement contracts. While voluminous documents required for tender procedures was the second-ranked problem last year as well, it should be noted that the problem related to late payment again emerged on the second ranking position, given that last year it held the eight ranking position, after having spent several years at the top of this list. Unlike last year, when this problem was indicated by 10% of companies, nowadays this problem affects as many as 46% of surveyed companies.

The next problem also pertains to the group of those that have persisted for years and concerns adjustment of eligibility criteria for tender participation to favour particular bidders, which was indicated by 43% of companies. Frequency and ease of tender annulment was stressed as problem by 36% of surveyed companies.

The single problem marked by certain decrease under this year's survey (23%) compared to last year (28%) is delayed performance of contracts by contracting authorities.

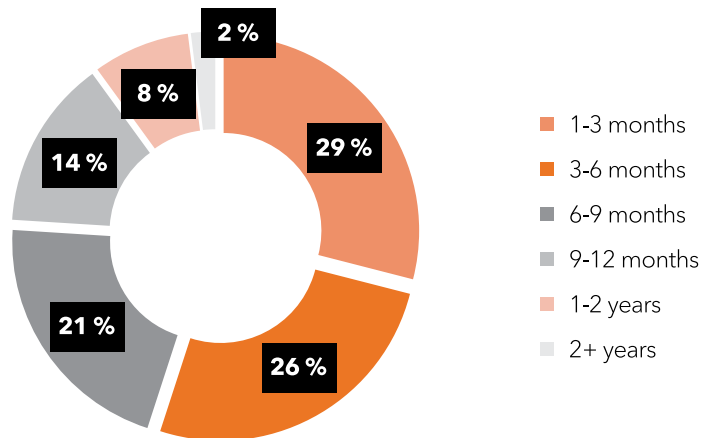
Main problems faced by companies in public procurement procedures (multiple answers are allowed)



Late payment is again among most acute problems: Although last year, after several years on the top, the problem of late payment dropped to the eight ranking position, this year it again emerged as one of the most acute problems faced by companies.

However, the average period for collection of receivables under public procurements is much longer compared to last year. According to companies, on average, they wait for 7 months to collect receivables from performed contracts, while last year this period was calculated at 6 months and 12 days. In 2018, the period for collection of receivables was calculated at 8 months.

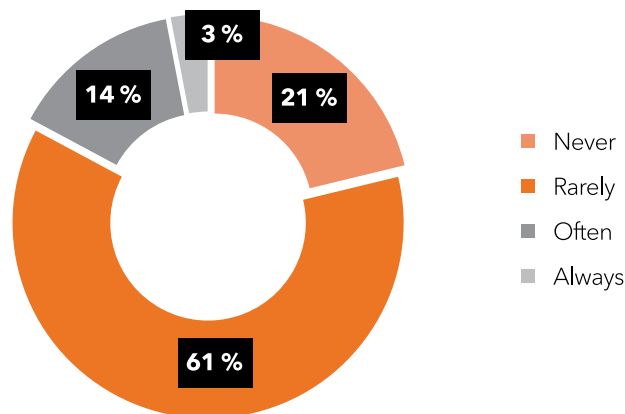
How much do you wait to collect receivables from public procurements?



No improvements under technical specifications: Companies continue to believe that technical specifications are not developed with sufficient details in order to serve as guarantee that certain quality is obtained in public procurements under conditions when almost all tender procedures continue to use 'lowest price' as selection criterion.

As many as 82% of companies believe that technical specifications rarely (61%) or never (21%) include details that closely define the quality of procurements.

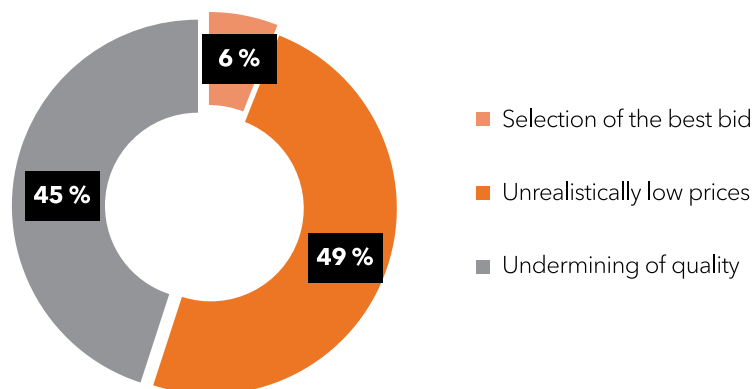
Do you think that technical specifications include sufficient details to guarantee quality of public procurements?



Very small share of companies (17%) believe that contracting authorities often (14%) or always (3%) provide sufficiently precise definition of quality for what they are procuring, whereby 'lowest price' would make sense and would not lead to procurement of goods, services and works marked by poor quality.

E-auctions do not guarantee that best bids are selected: This is confirmed by answers obtained to the question about the function of electronic auctions, which are no longer mandatory, but are organized in dominant share of tender procedures. High 94% of surveyed companies indicated that e-auctions result in unrealistically low prices (49%) and undermine quality in favour of price for what is being procured (45%).

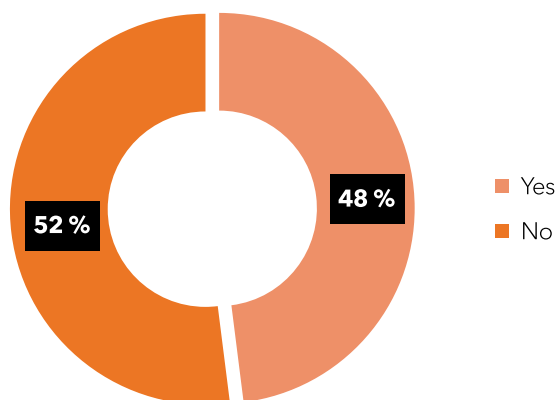
In your opinion, what depicts e-auctions the best?



Very small share of surveyed companies (6%) believe that electronic auctions allow the best bid to be selected.

Price arrangements among companies before e-auctions: Unlike last year, when one third of companies indicated that price arrangements take place prior to organization of e-auctions, this year higher share of them (48%) indicated existence of such practices in order to avoid price reduction during downward bidding at e-auctions.

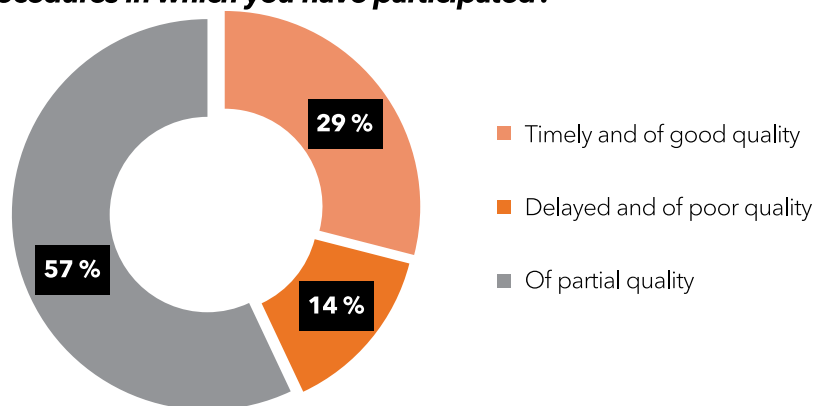
In your opinion, do you think there are previous arrangements among bidding companies before the start of e-auctions in cases when they do not result in price reduction?



Companies are less satisfied from communication with contracting authorities: Satisfaction among bidding companies concerning communication with representatives from contracting authorities in whose public procurements they participate continues to decline.

Unlike the situation in 2018 when 59% of companies assessed these communications as timely and of good quality, in 2019 their share dropped to 34%, and is further decreased to only 29% under this year's survey. Most companies, accounting for 57%, assessed these communications are being of partial quality, while 14% of them qualified communications as being late and of poor quality.

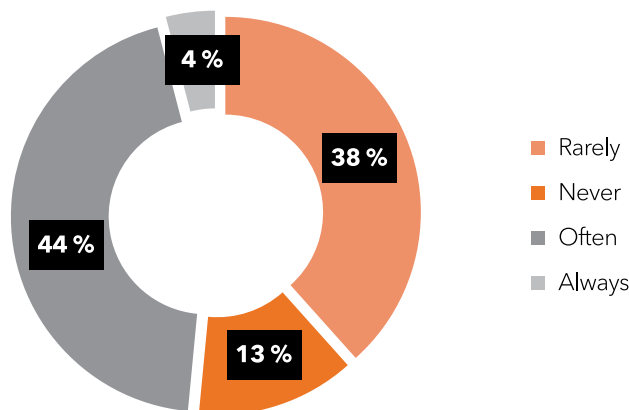
How do you assess communications with contracting authorities in public procurement procedures in which you have participated?



MONITORING OF PUBLIC PROCUREMENTS

Corruption in public procurements, political connections are dominant: As was the situation last year, this year as well 48% of surveyed companies indicated that corruption is present in public procurements. Among them, 44% believe that corruption is often present, while 4% reported that corruption is always present.

In your opinion, is corruption present in public procurements?



38% of surveyed companies assessed that corruption is rarely present in public procurements, while only 13% of them believe there is no corruption in this field.

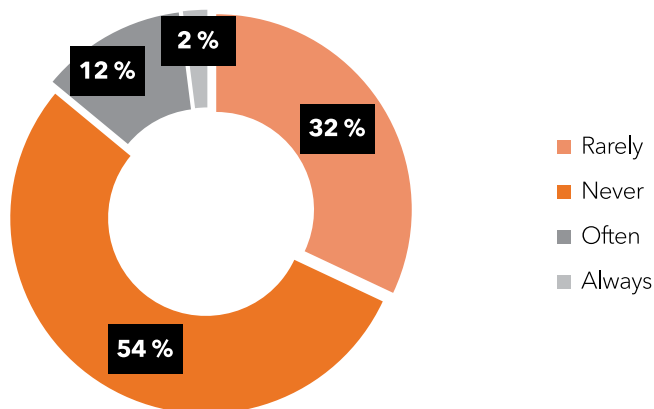
Asked to freely enlist the type of corruption they believe is most commonly present, the highest share of companies that answered this question indicated political connections at the top of the list (24%), followed by classical kick-backs (21%), with remaining 55% of them indicating that all forms of corruption are present.

On the other hand, asked about the number of tender procedures in which they participated and which implied non-compliance with the Law on Public Procurements, dominant share of companies (73%) responded that such practices are rarely (41%) or never (27%) present. In contrast, 27% of surveyed companies indicated that such violations of the law are always or often present.

Very few companies lodge appeals against tender procedures: 14% of companies indicated they always (2%) or often (12%) lodge appeals before the State Commission on Public Procurement Appeals in cases when they are dissatisfied with actions taken by contracting authorities in tender procedures in which they participate.

Dominant 86% of surveyed companies reported that they never (54%) or rarely (32%) lodge appeals before this commission.

Have you lodged appeals before SCPPA when dissatisfied with the manner in which public procurement procedures are implemented?

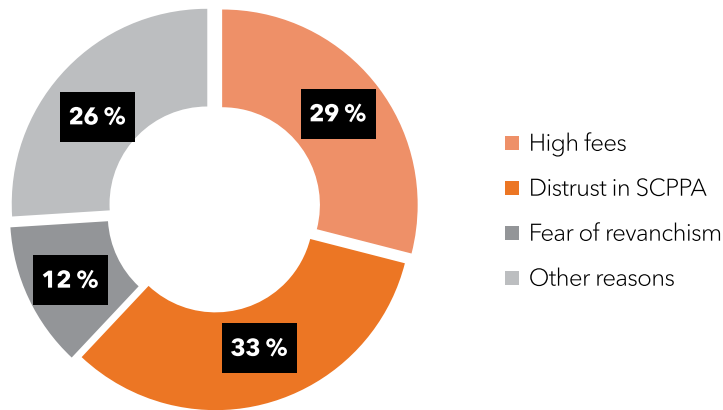


Last year, 94% of companies reported that they never or rarely lodge appeals, while only 6% of them stated they use appeals as protection instrument when they are dissatisfied with actions taken by contracting authorities.

Distrust in the appeal commission: For the first time after many years, the most frequently indicated reason behind their reluctance to lodge appeals does not concern fees for initiation of appeal procedure that should be settled by companies lodging the appeal, but rather distrust in the State Commission on Public Procurement Appeals.

Unlike last year (36%), the share is slightly decreased (33%), but still one third of companies indicated that they do not lodge appeals because of distrust in the competent commission. Second most frequently indicated reason in this regard concerns high fees for initiation of appeal procedure (29% this year compared to 46% last year), followed by fear from retaliation on the part of contracting authorities targeted with such appeals (12% this year compared to 7% last year).

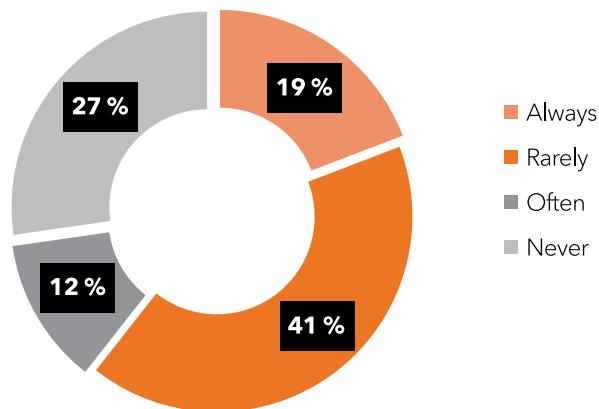
What are the reasons for never or rarely appealing tender procedures before SCPPA?



Companies are rarely satisfied with decisions taken by SCPPA: Compared to last year, companies are slightly more satisfied with decisions taken by the State Commission on Public Procurement Appeals in cases when they have lodged appeals.

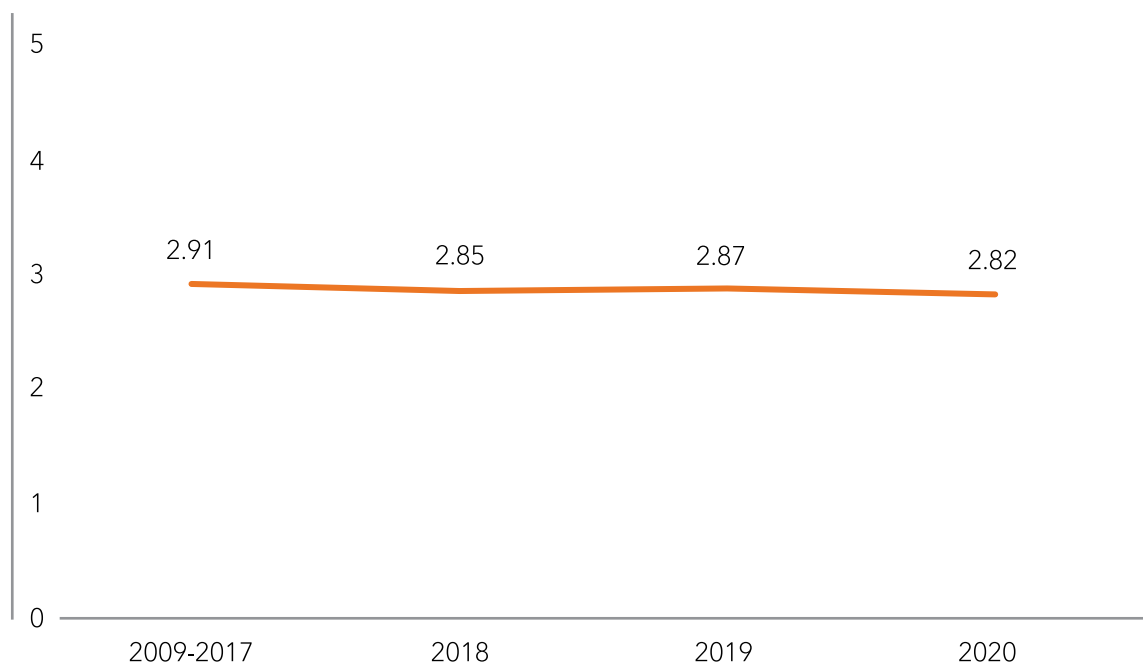
Unlike last year (23%), 31% of companies under this year's survey indicated they are often or always satisfied with decisions taken by SCPPA. However, dominant share of them (68%) are never or rarely satisfied with decisions taken by SCPPA.

In cases you have lodged appeals, how satisfied are you with decisions taken by SCPPA?



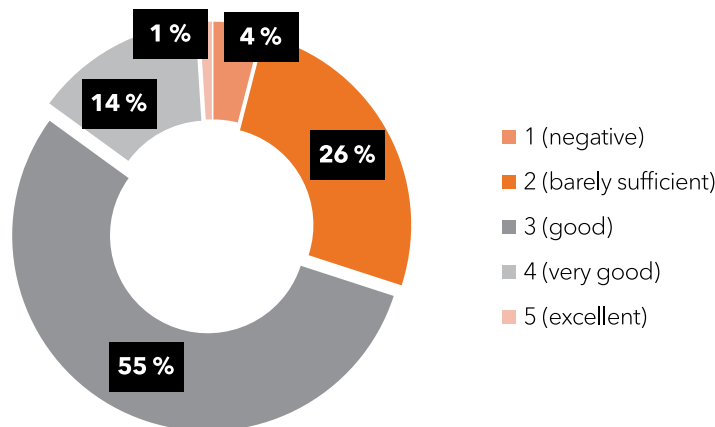
Average score assigned by companies to public procurements is slightly lower than 'good': This year as well companies were asked to assess the process of public procurements in the country on the scale from 1 (negative) to 5 (excellent). The average score assigned by companies is 2.82 and is by 0.05 point worse than last year's average score of 2.87.

Variations under average score assigned by companies to the process of public procurements



In line with the average score calculated, the highest share of surveyed companies indicated scores of 3 (55%). Very small share of them (4%) assessed the system of public procurement with score of 1, while only few (1%) assigned the highest score of 5.

How do you assess the overall process of public procurements in the country?



Half of surveyed companies do not see changes in implementation of tender procurements under the new law: 55% of companies believe that implementation of tender procedures according to the new Law on Public Procurements which entered in effect in April 2019 remained the same. 37% of them indicated that implementation of public procurements is improved under the new law, while only 8% reported worse implementation track record.

As regards specific changes in the law, companies indicated the following change as being the most important: taking into account quality of goods, instead of exclusively focusing on price; raised lower threshold for procurement from 500 euros to 1,000 euros in order to be covered by the law; publication of annual plans for public procurements; increased possibilities for small companies to participate in tender procedures; and lower fees for initiation of appeal procedure. However, high 46% of surveyed companies do not have any opinions about changes in legislation on public procurements.