



# MONITORING OF PUBLIC PROCUREMENTS

Report no. 34  
(January - June 2020)

Skopje, February 2021



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# Key Findings

- » Institutions do not practice organization of consultations with the business sector in order to improve tender documents and, thereby, to improve the process of public procurement. In the first half of 2020, calls for technical dialogue were announced for only 1.4% of tender procedures. Moreover, omissions have been observed even in respect to this symbolic process of consultations.
- » Institutions do not comply with law-stipulated deadlines for taking decisions in procurement procedures and for submission of notifications on contract signed and notifications on contract performance to the Electronic Public Procurement System.
- » In the first half of 2020, the non-transparent negotiations procedure without previous announcement of call for bids was used to award contracts in total value of 11 million EUR, representing an increase by 14.58% compared to the same period last year.
- » Tender annulments in the first half of 2020 were marked by increase compared to the same period last year and account for 27%. Dominant share of tender procedures are fully annulled. The highest number of tender annulments was observed with JSC Power Plants, Ministry of Defence and Ministry of Interior.
- » Every third tender procedure was presented with only one bid or was not presented with any bids. In the first half of 2020, competition in tender procedures was marked by minor improvement compared to the same period in 2019, but has deteriorated when compared to the entire 2019.
- » "Lowest price" was used as criterion for selection of the most favourable bid in 96% of tender procedures organized in the first half of 2020, thus maintaining the unfavourable trend from the previous year. Justified is the doubt that widespread use of lowest price as selection criterion brings under question the principles of rationality, efficiency and effectiveness in public spending.
- » Electronic auctions were organized in as many as 92% of tender procedures, thus enabling broad space for manipulations generated by downward bidding in public procurements.
- » Estimated value of tender procedures is not published in advance, but companies still submit bids that are suspiciously close to the procurement's estimated value.



- » At local level, monitoring activities noted frequent non-compliance with the Law on Public Procurements and errors in tender documents. Competition in tender procedures organized at local level is improving, but there are numerous examples of restricted competition, primarily pursued through technical specifications. One quarter of tender procedures were annulled and although their share is decreasing, it still remains high. "Lowest price" is still used as the single criterion for selection of the most favourable bid in tender procedures, failing to utilize the law-stipulated possibility for bid-evaluation to take into account the quality of goods and services being procured.



# 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 underlying principles of public spending stipulated by 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 use of public funds.

Subject of CCC's monitoring are public procurement procedures organized by all state institutions in the country, both at central and at local level of government. Selection of the monitoring sample is made upon publication of procurement notices in the Electronic Public Procurement System (EPPS) and the "Official Gazette of RNM".

Monitoring activities include collection of primary and secondary data, by means of attendance of CCC's monitors at public opening of bids, discussions with bidding companies, browsing and researching data available in EPPS, browsing information on appeals lodged and decisions taken by the State Commission on Public Procurement Appeals (SCPPA) on its official website, and by submission of requests under the instrument for free access to public information for data that is otherwise unavailable. Questionnaires and other templates used as part of this monitoring endeavour are structured in such a manner that facilitates most effective method for monitoring 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 information and data obtained, structured and imputed into a specially designed matrix, and related to compliance with above enlisted principles and efforts to obtain the most favourable bid, including accountability for funds spent under public procurements.



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 procurement, and detailed elaboration of the observed state-of-affairs.

This report is developed on the basis of monitoring and analysis of the selected sample comprised of 60 procurement procedures implemented by central and local institutions in the period from 1<sup>st</sup> January until 30<sup>th</sup> June 2020.

\* \* \*

The Center for Civil Communications (CCC) was established in April 2005 as non-governmental, non-for-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 has focused its work in two groups of interrelated activities: (1) monitoring state institutions and recommending measures and policies aimed to improve their performance and narrow the space for corruption, and (2) capacity building for journalists and the special role played by media and non-governmental organizations in the fight against corruption.

In this regard, CCC has drafted and proposed several hundred specific recommendations for measures aimed at promoting 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 papers and manuals.





# Analysis of Monitored Public Procurements at Central Level

» ***Institutions do not practice organization of consultations with the business sector in order to improve their tender documents and, thereby, to improve the process of public procurement. In the first half of 2020, calls for technical dialogue were announced for only 1.4% of tender procedures. Moreover, omissions have been observed even in respect to this symbolic process of consultations.***

In the first half of 2020, institutions have published only 131 calls for technical dialogue, thus allowing interested bidding companies, prior to official start of relevant tender procedures, to make comments or proposals aimed at amending tender documents in order to improve them.

Designed as a tool for previous market research, technical dialogue is anticipated under Article 76 of the Law on Public Procurements. Having in mind that, in the first half of 2020, institutions have announced a total of 9,537 procurement notices, it could be inferred that technical dialogue was organized for only 1.4% of them. Technical dialogue was organized by only 43 institutions in the country, i.e. which account for only 3% of all contracting authorities registered in the Electronic Public Procurement System. In that, it should be noted that more than half of these institutions have announced only one call for technical dialogue each.

Technical dialogue with interested companies is organized after the contracting authority has taken the decision on public procurement, which actually represents initiation of the public procurement procedures, and prior to announcement of the procurement notice that also includes relevant tender documents in attachment. In particular, technical dialogue implies disclosure of tender documents which the contracting authority plans to use as part of its



procurement procedure and call to all interested companies to submit remarks, comments or proposals aimed at improving these documents.

Tender documents (and technical specifications that are integral part thereof) constitute the key package of documents describing the procurement subject and its characteristics, as well as conditions for companies to participate in the tender procedure.

Proposals and comments to published tender documents may be requested and collected electronically or by organizing a joint meeting with pre-defined time and place. In that, public procurement committees are obliged to review comments and proposals received, to adequately integrate them in relevant tender documents and, when these are considered unacceptable, to elaborate reasons for their rejection.

Small use of technical dialogue, noted with only 1.4% of tender procedures, prevents the consultation process between contracting authorities and the business community in respect to tender documents. Technical dialogue represents a unique check-and-balance mechanism for tender documents developed and defined by contracting authorities against actual state-of-play on the market.

In addition to small use of technical dialogue, monitoring activities observed two additional weaknesses related to this consultation process. The first concerns the manner in which technical dialogue is announced, while the second concerns the attitude on the part of institutions to proposals and suggestions made by companies.

As regards the first weakness, it was noted that significant portion of institutions only publish tender documents, but not "invitation for participation in technical dialogue". Notably, this invitation should include basic information about what is expected from interested bidding companies and the manner in which they should submit their comments and proposals. In cases when such invitation is missing, the published document is titled as "call for submission of bids", which could be utterly confusing for companies, especially for those that lack broad experience in public procurements.

The second weakness identified in respect to this process concerns rejection of proposals and comments made by companies. For example, minutes from technical dialogue conducted for one tender procedure from the monitoring sample allow the conclusion that companies whose proposals for changes to tender documents had been assessed as unacceptable by the contracting authorities were not presented with elaboration of reasons behind such rejection. Namely, each and every proposal for changes to tender documents should be elaborated with arguments and it is expected for proposals deemed unacceptable to be adequately elaborated and for facts to be presented in support of approved solutions. Actually, this is an



anticipated under the law, where it is stipulated that “the committee shall compose minutes from the technical dialogue conducted, which should include a brief description of proposal and comments made by economic operators, as well as elaboration for rejection of proposals and comments that have not been integrated in tender documents”. In cases when actions are not taken pursuant to the law, technical dialogue loses its purpose and discourages companies from taking part in this process.

**Recommendation:** Contracting authorities need to organize technical dialogue and involve interested companies in the process of drafting tender documents. In doing that, all interested natural and legal entities are given insight into tender documents for large portion of procurement procedures, and the right to make remarks, comments and proposals. On the other hand, this process allows contracting authorities to properly and adequately define conditions and procurement specifications, as well as the opportunity to timely eliminate possible shortcomings and irregularities. Moreover, this process reduces possibilities for abuse in developing tender documents, while increasing transparency in public procurements.

» **Institutions do not comply with law-stipulated deadlines for taking decisions in procurement procedures and for submission of notifications on contract signed and notifications on contract performance to the Electronic Public Procurement System.**

One third of contracting authorities have not complied with the law-stipulated obligation for adoption of selection decision or tender annulment decision within deadline that is not longer than the deadline set for submission of bids (Article 112, paragraph 2 of the Law on Public Procurements). In that, the monitoring sample included tender procedures in which relevant deadlines were breached by 2 to 103 days. The longest deadline breach was noted in the procurement procedure for services defined as “software development – speech synthesiser with on-screen reader in Macedonian language for blind and persons with damaged sight”, which has received two bids. Such behaviour on the part of contracting authorities creates distrust and increases the risk of speculations about existence of illegal arrangements.

Disrespect for law-stipulated deadlines is subject to sanctions pursuant to misdemeanour provisions from the Law on Public Procurements (article 181, paragraph 2, item 11), which stipulate misdemeanour fines in the amount of 1,000 to 2,000 euros in MKD counter value for the responsible, i.e. authorized person at the legal entity acting as contracting authority when it has failed to take selection decision or tender annulment decision in compliance with deadlines under the Law on Public Procurements.



Non-compliance with this deadline was also noted by the Bureau of Public Procurements as part of its administrative control performed for one procurement procedure from the monitoring sample in the first half of 2020. However, except for recommendation that, in the future, the contracting authority should comply with law-stipulated deadlines, there is no information available on follow-up actions taken.

Pursuant to Article 172, paragraph 5 of LPP, in cases when the Bureau, after having performed administrative control, has established one or more irregularities bearing features of misdemeanour pursuant to this law or bearing features of criminal offence, it may motion relevant misdemeanour charges before the competent court or may notify the competent prosecution service in the Republic of North Macedonia.

According to information obtained from the Bureau of Public Procurements, in the first half of 2020, this institution has not submitted any notices to competent courts.

Significant portion of institutions do not comply with the law-stipulated deadline of 10 days for submission of notifications on contract signed to EPPS, while almost none of them has submitted notifications on contract performance.

The Law on Public Procurements (article 181, paragraph 1, item 7) stipulates misdemeanour fines in the amount of 500 to 1,000 euros in MKD counter value for the responsible, i.e. authorized person at the legal entity acting as contracting authority when it has not submitted relevant notification on contract signed and notification on contract performance.

Although the Bureau of Public Procurements disposes with such observations based on data published in EPPS, it has not taken any measures that would allow competent institutions to issue misdemeanour fines.

Given the above presented, it could be concluded that institutions do not comply with their law-stipulated obligations, whereby this type of behaviour goes by unsanctioned in spite of the fact that the Law on Public Procurements anticipates misdemeanour fines.

**Recommendation:** Contracting authorities must adhere to relevant deadlines stipulated under the Law on Public Procurements, while the Bureau of Public Procurements must take all law-stipulated measures to initiate sanctions for contracting authorities in cases of unlawful actions taken as part of their public procurements. According to Article 45, paragraph 1, item 12 of LPP, the Bureau of Public Procurements shall immediately notify contracting authorities of irregularities established on the basis of notifications received and, when relevant, it shall also notify the competent authorities.



» **In the first half of 2020, the non-transparent negotiations procedure without previous announcement of call for bids was used to award contracts in total value of 11 million EUR, representing an increase by 14.58% compared to same period last year.**

A total of 464 contracts, in cumulative value of 676,713,700 MKD (11 million EUR), were awarded under this procedure in the analysed period. These data are indicative of an increase in the number of such contracts by 161%, from 178 contracts in the first half of 2019 to 464 contracts in the first half of 2020. On the other hand, increase in total value of these contracts accounts for 14%, i.e. in the first half of 2019 their value amounted to 9.6 million EUR compared to 11 million EUR in the first six months of 2020. According to data processed by CCC, portion of these contracts (198) were signed due to the emerging coronavirus crisis, which imposed the need for urgent procurement of goods, services and works for protection against and prevention of virus infection. In that, the value of procurement contracts for protection equipment and coronavirus treatment amounted to around 148 million MKD, i.e. 2.4 million EUR. This means that, in the first six months of 2020, only 22% of the total value of contracts signed without previously announced call for bids could be attributed to the COVID-19 crisis.

**Value of contracts awarded under negotiations procedure without previous announcement of call for bids**

Period	Value of contracts (in million EUR)	Difference (in %)
January - June 2016	6.6	-42.6%
January - June 2017	7.4	+12.12%
January - June 2018	10.8	+45.95%
January - June 2019	9.6	-11.11%
January - June 2020	11	+14.58%

At the level of institutions, in this monitoring period only 129 contacting authorities (from the total of 1,455 registered in EPPS) have organized negotiations procedures without previously announced call for bids. According to contract value, the top position is held by the Ministry of Interior, with 11 contracts awarded in cumulative value of 127 million MKD, i.e. 2 million EUR.



**10 institutions with highest values of contracts awarded under negotiations procedure without previously announced call for bids, in the first half of 2020**

Contracting authority	Number of contracts	Value of contracts (in MKD)	Value of contracts (in EUR)
Ministry of Interior	11	127,427,353	2,071,989
Agency for Electronic Communications	2	57,218,120	930,376
Government of RNM - General Secretariat	6	46,006,620	748,075
Ministry of Health	21	44,852,611	729,311
Ministry of Foreign Affairs	6	38,693,054	629,155
PHI University Clinic of Traumatology, Orthopaedic Diseases, Anaesthesia, Reanimation and Intensive Care and Emergency Centre	41	37,938,540	616,887
Public Enterprise for State Roads	1	27,377,180	445,157
PHI Public Health Centre - Skopje	10	24,464,528	397,797
PE City Parking - Skopje	4	21,646,940	351,983
PHI Health Care Centre - Skopje	18	18,766,600	305,148

**Recommendation:** Contracting authorities should reduce to minimum the use of non-transparent negotiations procedure without previously announced call for bids, especially because this type of procurement procedure is often used to engage in negotiations with one company, thus increasing corruption risks.

» **Tender annulments in the first half of 2020 were marked by increase compared to the same period last year and account for 27%. Dominant share of tender procedures are fully annulled. The highest number of tender annulments was observed with JSC Power Plants, Ministry of Defence and Ministry of Interior.**





A total of 2,064 tender procedures were annulled in the first six months of 2020, among which 1,838 were fully (71%) and 766 were partially annulled (29%).

When the number of annulled tender procedures (2,604) is correlated to the number of procurement notices announced in the same period (9,537) it could be concluded that 27% of all tender procedures were annulled, accounting for an increase by 1 percentile point compared to the same period last year, but in the same range with the share of tender annulments calculated for the entire 2019.

#### ***Tender annulments at semi-annual level (partial and full)***

Period	Number of procurement notices	Number of decisions on tender annulment	Share of tender annulments in total number of procurement notices
January - June 2015	8,657	1,602	19%
January - June 2016	9,220	2,030	22%
January - June 2017	8,562	2,033	24%
January - June 2018	10,259	2,707	26%
January - June 2019	9,743	2,511	26%
January - June 2020	9,537	2,604	27%

In the first half of 2020, decisions on tender annulment were adopted by 567 institutions (from the total of 1,455 contracting authorities registered in EPPS), of which 188 institutions have annulled only one tender procedure each, while 118 institutions have annulled two tender procedures each. 60 institutions share the top position with 10 from 96 tender procedures annulled, some of which, for example, the Ministry of Interior, are marked by higher number of notifications on tender annulments (56) compared to procurement notices announced (39). Such difference is indicative of the fact that tender procedures announced in 2019 have been annulled in the analysed period, but that does not justify the negative trend that still raises concerns.



#### ***Institutions with highest numbers of tender procedures annulled in the first half of 2020***

Institution	Number of tender annulments	Share of annulled tender procedures in total number of procurement notices
JSC Power Plants of North Macedonia	96	40%
Ministry of Defence - Sector on Logistics	72	86%
Ministry of Interior	56	144%
Municipality of Bitola	43	61%
Municipality of Veles	41	44%
Faculty of Veterinary Medicine - Skopje	38	59%
PHI City General Hospital "8 September" - Skopje	34	45%
Equipment and Spare Parts Factory LLC, JSC Power Plants Skopje	32	70%
City of Skopje	28	31%
PHI Clinic of Traumatology, Orthopaedic Diseases, Reanimation and Intensive Care and Emergency Centre	26	325% <sup>1</sup>

Analysed in terms of reasons indicated for tender annulment, the dominant reason implies that contracting authorities have not been presented with any bids or have not been presented with any acceptable bids, which was used as legal ground in 59% of tender procedures annulled, representing an increase by 17 percentile points compared to the same period last year.

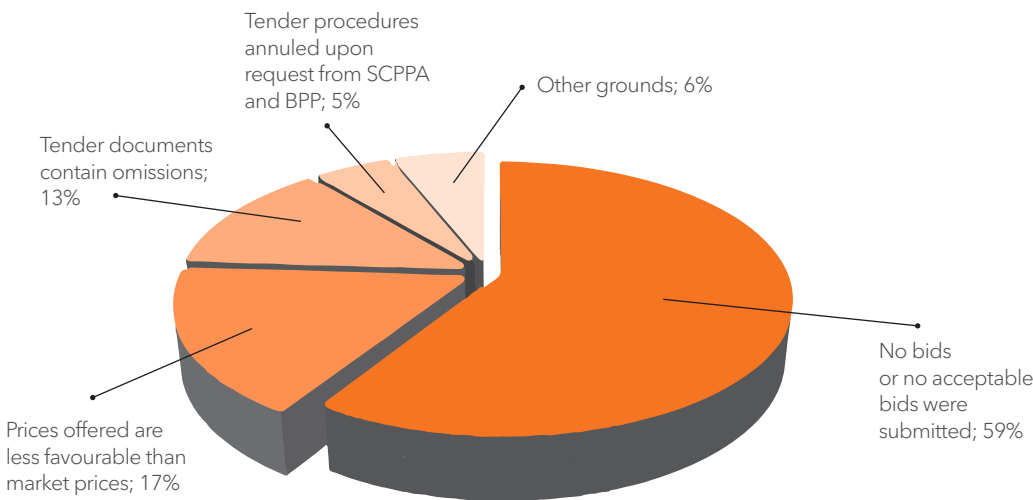
Second most frequently indicated reason for tender annulment concerns the fact that bid prices are less favourable than market prices, which was used as legal ground in 17% of tender procedures annulled. Third in frequency is the reason whereby tender procedures have been annulled due to significant omissions in tender procedures, accounting for 13% of tender annulments. The share of tender procedures annulled by means of decisions taken by the State Commission on Public Procurement Appeals or the Bureau of Public Procurements,

<sup>1</sup> For most part, it is a matter of partially annulled tender procedures.



after having performed administrative control, account for 5% in total. More specifically, in this analysed period, 113 annulment decisions were taken upon instructions from SCPPA, while 16 annulment decisions were taken upon request from BPP.

**Overview of reasons indicated for annulment of tender procedures in the first half of 2020**



The highest portion of annulled tender procedures from the monitoring sample implied that no bids or no acceptable bids have been submitted, which is certainly indicative of the fact that some problems could have been addressed, primarily by means of thorough market research and transparent consultation process with companies. .

**Recommendation:** An obligation should be introduced for the Bureau of Public Procurements to develop and publish annual analyses of annulled tender procedures. Findings from such analyses could be used by the Bureau of Public Procurements to take adequate measures and to improve systemic solutions in public procurements.

» **Every third tender procedure was presented with only one bid or was not presented with any bids. In the first half of 2020, competition in tender procurements was marked by minimum improvement compared to the same period in 2019, but has deteriorated compared when compared to the entire 2019.**



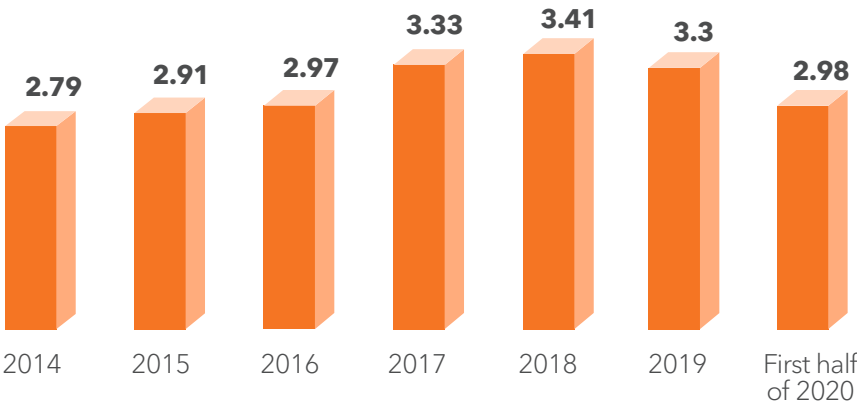
In the first half of 2020, the share of tender procedures marked by satisfactory level of competition (3 or more participants) accounted for 55% of monitored public procurements. As regards the remaining tender procedures, 5% of them were not presented with any bids, 27% were presented with one bid, and 13% were presented with maximum 2 bids.

**Competition in monitored tender procedures at semi-annual level**

Period	No bids	1 bid	2 bids	3 or more bids
January - June 2016	5%	39%	19%	37%
January - June 2017	3%	25%	23%	48%
January - June 2018	2%	18%	13%	67%
January - June 2019	0%	35%	22%	43%
January - June 2020	5%	27%	13%	55%

At the level of the monitoring sample, the average number of bids per tender procedure in the first half of 2020 accounted for 2.98 bids, representing a decrease compared to previous years.

**Average number of bids per tender procedure\***



\*Calculations for the first half of 2020 are based on the monitoring sample, while calculations for other years use data from annual reports of the Bureau of Public Procurements.



The fact that 27% of monitored tender procedures were presented with only one bid, combined with the knowledge that it is a matter of non-specific procurements (office supplies, construction works, vehicles, lease of media space, software development, etc.) is indicative that reasons thereof could be sought in developed tender documents. Of course, this aspect of public procurements primarily depends on institutions, however, monitoring findings do not allow the conclusion that efforts are made to improve competition in tender procedures.

**Recommendation:** As part of their tender documents and actions taken, institutions need to demonstrate honest will to stimulate greater competition in public procurements.

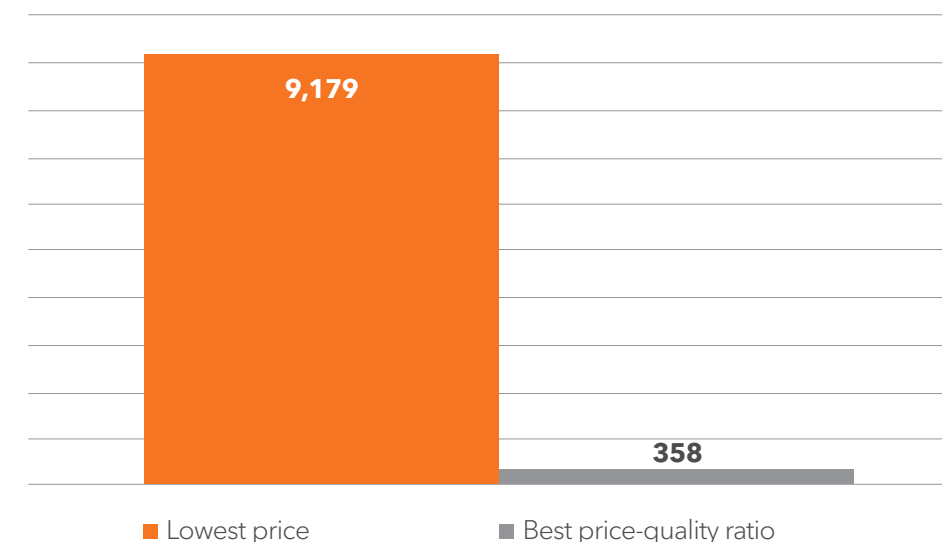
» **“Lowest price” was used as criterion for selection of the most favourable bid in 96% of tender procedures organized in the first half of 2020, thus maintaining the unfavourable trend from the previous year. Justified is the doubt that widespread use of lowest price as selection criterion brings under question the principles of rationality, efficiency and effectiveness in public spending.**

The most favourable bids in tender procedures continue to be selected mainly on the basis of prices bided, raising concerns about the risk that goods, services and works purchased are not necessarily of required quality. Continuation of this practice prevents practical enforcement of provisions under the new law that entered into effect in April 2019 whereby, in addition to the price, selection of the most favourable bid could also include evaluation of quality and other characteristics relevant for the procurement subject.

Among total of 9,537 procurement notices announced in the analysed period, as many as 9,179 tender procedures have defined the criterion “economically most favourable bid” on the basis of “price”, whereas only 358 procurements defined the selection criterion as “best price-quality ratio”.



### Use of criteria for selection of the most favourable bid in the first half of 2020



Hence, it could be inferred that price was the only parameter for bid-evaluation in as many as 96% of tender procedures in the first half of 2020. As shown in the table, use of other criteria elements in addition to price, broken down at monthly level, ranges from minimum 1.76% in January to maximum 4.89% in May.

### Use of criterion “lowest price” in the first half of 2020

Month	Lowest price	Best price-quality ratio	Share of the best price-quality ration in all tender procedures
January	1,080	19	1.76%
February	2,300	90	3.91%
March	1,953	80	4.10%
April	964	41	4.25%
May	1,248	61	4.89%
June	1,634	67	4.10%
Total	9,179	358	3.90%



Such action on the part of institutions is not in compliance with the principles of rationality, efficiency and effectiveness in public spending, as stipulated under Article 4, paragraph 2 of LPP, which reads: “contracting authorities shall implement public procurements in a manner that ensures adequate quality of the procurement subject in respect to purpose and value thereof”.

On the other hand, monitoring findings show that in cases when “best price-quality ratio” is used as selection criterion, its application is not pursued in a manner that guarantees objectivity and legality in bid-evaluation and selection. A monitored tender procedure for roof refurbishment at educational institution used “best price-quality ratio” as criterion for selection of the most favourable bid. In that, the price element accounted for total of 80 points, while the quality element was allocated 20 points. Potential bidders had to demonstrate quality by submitting evidence that they dispose with scaffold of at least 500 m<sup>2</sup>, one truck with load capacity of at least 10 tons, one truck with tail lift and capacity of at least 2 tons and electrical lift for vertical transport of materials with capacity of at least 500 kg. Each of these sub-elements accounted for 5 points, but not more than 20 points in total, and implied submission of evidence by economic operators demonstrating disposal of such equipment. All these elements used to evaluate the quality are inadequate because they concern equipment (for example, scaffold of 12.5 meters) which, according to the technical specifications and the procurement subject, is necessary for successful contract performance. Namely, the question is raised about what would happen when a certain bidder does not dispose with scaffold or machinery indicated, but offers the lowest price and thereby receives the highest number of points. Does that mean that the company is able to refurbish the educational institution’s roof?

A similar problem was observed in the monitored procedure for procurement of services related to development of basic design documents for construction of water supply pipework for several villages, which used “best price-quality ratio” as criterion for selection of the most favourable bid, whereby the price element accounted for 70 points, while the quality element was allocated 30 points, with sub-elements defined as: number of employed or engaged civil engineers (up to 15 points) and previous contracts for same or similar services (up to 15 points). In that, tender documents indicated that points allocated for the number of employed or engaged civil engineers will be allotted in the following manner: 1 person shall carry 5 points, 2 to 4 persons will carry 10 points and 5+ persons will carry 15 points. Although it was stressed that economic operators should have employed or engaged at least 1 civil engineer with bachelor degree in hydro technology and B certificate for construction of second category buildings, the question is raised whether successful performance of this procurement depends on the number of engineers and if that is the case why they are not part of require-



ments related to technical and professional capacity of bidding companies. Otherwise, the contracting authority risks to be presented with documents that demonstrate availability of several engineers solely for the purpose of earning more points, which does not mean that these engineers will be actually used for performance of this project.

**Recommendation:** Contracting authorities should behave responsibly with public funds and should ensure that public spending is pursued in compliance with the principles of rationality, effectiveness and efficiency. Insistence on use of “lowest price” as criterion for selection of the most favourable bid might make it easier for public procurement teams at institutions, but undermines quality of goods and services being procured, and ultimately harms their budgets.

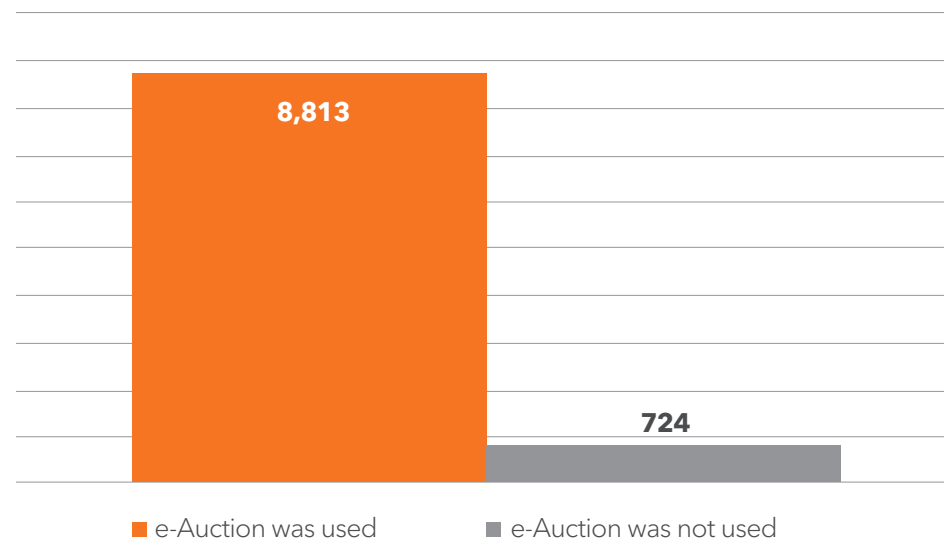
The Bureau of Public Procurements should educate and encourage contracting authorities, when selecting the most favourable bid, to use other bid-evaluation elements in addition to price, thereby ensuring rational spending of public funds.

» **Electronic auctions were organized in as many as 92% of tender procedures, thus enabling broad space for manipulations generated by downward bidding in public procurements.**

Except for lowest price, high frequency of use is also noted with electronic auction (e-auction) for downward bidding. In the first half of 2020, e-auctions were organized in 92% of all tender procedures organized, representing a decrease by 1 percentile point compared to their incidence in 2019. As shown in the diagram below, among total of 9,537 tender procedures implemented in the first half of 2020, as many as 8,813 tenders anticipated organization of e-auctions, which was not the case in 724 tender procedures.



### Use of electronic auctions in the first half of 2020



Use of e-auction increases possibilities for abuse and previous arrangements among bidding companies, while in cases when downward bidding is anticipated, but does not happen because of lack of competition, there is a greater risk for contracts to be signed under prices that are higher than actual market prices. In particular, 42% of monitored tender procedures have anticipated organization of e-auctions which did not take place because contracting authorities were presented with one bid or because bidders have not fulfilled eligibility criteria or their goods/services were not in line with technical specifications.

**Recommendation:** Continuous insistence for organization of e-auction should be perceived by management bodies at relevant institutions as increased risk of abuses in the process of public procurement and as stimulus for arrangements among companies. Hence, contracting authorities are recommended to follow the logic whereby e-auctions are organized only for goods of known and standard quality and for those marked by high market competition.

» **Estimated value of tender procedures is not published in advance, but companies submit bids that are suspiciously close to the procurement's estimated value.**



Non-publication of the procurement's estimated value should have resulted in greater objectivity of financial bids submitted by companies, whereby they would not be guided but the published estimated value that could be unrealistically high, but rather by actual value of goods and services bided. Nevertheless, this has opened new space for manipulations in public procurements. It was established that in some cases, although estimated values have not been known in advance, companies presented financial bids that are suspiciously identical to the procurement's estimated value.

Flagship examples thereof are found in two public procurements from the monitoring sample. Estimated value of the tender procedure for procurement of office supplies comprised of two lots accounted for 5,600,000 MKD, VAT excluded. After the procurement notice was announced, the contracting authority was presented with one bid for procurement lot 1, in the value of 3,295,000 MKD, VAT excluded, and one bid for procurement lot 2, in the value of 2,292,850 MKD, VAT excluded. It could be established that difference between the procurement's estimated value that was not published in advance and the total value of the bid presented by one company accounts for only 0.59%. In that, such overlap of value was achieved in tender procedure comprised of two lots that include 228 individual items.

The monitored procedure for procurement of software was presented with only one bid in identical amount with the estimated value of 3,500,000 MKD, VAT excluded, that was not published in advance, which is particularly worrying in the case of procurements like this one.

These cases give rise to doubts that employees involved in public procurements have disclosed the estimated value to some bidding companies, but the same remained secret for other bidders. In doing that, they are putting bidding companies in unequitable position.

**Recommendation:** Institutions must demonstrate integrity in the process of public procurement and should prevent unprofessional and unlawful actions whereby the procurement's estimated value is disclosed to some bidding companies.





# Analysis of Monitored Public Procurements at Local Level

» ***At local level, monitoring activities noted frequent non-compliance with the Law on Public Procurements and errors in tender documents.***

Two provisions from the Law on Public Procurement that are often violated, at least in tender procedures organised at local level, concern the contracting authority's obligations to elaborate the need for given public procurement and reasons why certain public procurement is not divided into lots (in the case of indivisible procurements).

Mandatory elaboration of the need for given public procurement should be integral part of the decision on public procurement, as stipulated under Article 77 of the Law on Public Procurements. The idea behind this elaboration is multi-fold. It allows for better planning of public procurements, i.e. when the need for particular procurement is assessed and elaborated, chances are lower for the institution to procure something it does not need or to procure higher or lower quantity from what is actually needed. In that, contracting authorities rationalize their procurements and make them more cost-effective. Lastly and most importantly, the obligation to elaborate the need for given procurement narrows the space for corruption. Well assessed and elaborated need for given procurement allows institutions to avoid entrapments of procuring something they do not need (or at least not in indicated quantity or of indicated quality), but is still being procured because a person with decision-making authority had wished to make procurement from a company close to him/her.

Only 25% of monitored tender procedures at local level had elaborated the procurement need in their respective decisions, but these elaborations are formal and far from containing



essential information. Remaining 75% of monitored tender procedure did not provide any elaboration whatsoever.

Here is an example of information included in the elaboration provided by local public enterprise concerning the need for procurement of aluminium sulphate: "Implementation of this procurement procedure is necessary for ongoing operation of the enterprise." Without any understanding of the essence behind and even the need for such elaboration, this enterprise had erroneously titled its decision on public procurement as "decision on the need for public procurement", although its content does not include any reference to the need, but rather to the enterprise's ongoing operation.

Another elaboration reads: "The municipality needs to organize a public procurement procedure for building materials for the purpose of ongoing construction activities in the municipality".

Furthermore, another example is the procurement procedure for production and assembly of fitness zones wherein the need was elaborated as follows: "The procurement needs to be implemented due to increased interest and requests from youth in the municipality for recreational sport activities".

The next two examples are even more banal. The procurement procedure for works related to "maintenance of horizontal and vertical signals" included the following elaboration: "the need for this procurement arises from maintenance of traffic signals", while the elaboration for another procedure implied that "the procurement arises from the municipality's competences". As if the municipality could purchase something that is beyond its competences!

Indifference applied to development of tender procedures, which includes solid assessment of the procurement need, required quantity, quality and estimated value, is visible in almost all tender procedures.

It seems that the institution had a lot to elaborate in the previously referred tender procedure for procurement of aluminium sulphate, which is a substance used in the process of drinking water treatment. First, why the quantity purchased this year amounted to 36,000 kilograms, when in the previous and the year before, this contracting authority needed 24,000 kilograms. Second, why did the contracting authority indicate it would need 1,062,000 MKD for this procurement, when last year it paid 460,200 MKD, i.e. 19.2 MKD per kilogram, but is currently planning to pay 29.5 MKD per kilogram? The elaboration should explain why the institution needs increased quantity of this procurement subject and why it believes the price would be significantly higher than the price paid last year.



In the end, the price attained for this tender procedure amounted to 578,294 MKD, i.e. 16.1 MKD per kilogram, which is lower than the price attained in the previous year.

The second law-mandated elaboration that is not published by contracting authorities is stipulated under Article 78 of the Law on Public Procurements and concerns reasons why the contracting authority has decided to divide the procurement subject into lots.

When the tender procedure is divided into lots, all interested companies can submit bids for one procurement lot. That allows greater competition in tender procedures, i.e. facilitates submission of more bids. In turn, more bids allow greater selection, lower prices and better quality. Also, it increases chances for small and micro companies to participate in bigger tender procedures, as they would not be able to participate if the procurement is indivisible.

Hence, the new rules for public procurements in the country, which had been aligned with the European rules in this regard, require all large-scale tenders to be divided into lots. Otherwise, if the contracting authority decides that it would not be cost-effective for given procurement to be divided into lots or the procurement subject is such that it cannot be divided into lots, reasons for such decision must be duly elaborated.

In this regard as well, there are almost no tender procedures whose indivisibility has been elaborated, while the cases in which institutions felt compelled to write something in order to comply with their legal obligation, the content of such elaborations does not include more than one sentence.

It seems that the essence behind this legal obligation is not understood, as it is intended for contracting authorities to reassess whether given procurement cannot be divided at all, which means that planning of all procurements should be approached as being divisible into lots, except in cases when that is not possible, thereby necessitating adequate elaboration of their indivisibility.

Non-compliance with this obligation on the part of institutions at local level is particularly odd, as they should be the first ones to engage in such practices, and often, having in mind that this is one of the measures intended to encourage or to facilitate participation of small and micro companies in public procurements, which is a prominent need among local enterprises.

In addition to above listed violations to the Law on Public Procurements, monitoring activities observed frequent errors in tender documents at local level. They range from erroneous title of tender documents, through errors in indicated values, to non-alignment of main elements and information contained in procurement notices with those indicated in tender documents, etc.



For example, tender documents for procurement of chemical substances have enlisted that the procurement concerns electro materials. The decision on public procurement for another tender procedure indicated its estimated value in the amount of 300,000,000 MKD, but further analysis of documents allowed insight in the fact that the tender's estimated value is set at 300,000 MKD. Having in mind importance of the document titled "decision on public procurement", which serves as basis for initiation of procurement procedure and governs overall proceedings, it could be concluded that this omission is not insignificant. The final value of this tender procedure amounted to 84,000 MKD. If the procurement decision had referred to estimated value of 300,000,000 MKD and value of received bids amounted to 84,000 MKD, as minimum, the contracting authority should have requested bidding companies to justify their low prices. That did not happen, because nobody had noticed this error in the procurement decision, neither was the decision changed to correct the value.

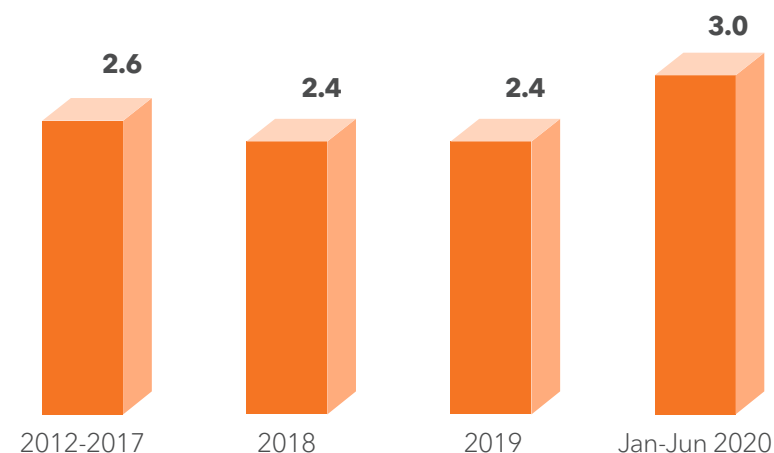
This triggers other inconsistencies in public procurements. Every procurement procedure, including this one, is organized by committee comprised of at least 3 members (chair and two members) and 3 deputy members. Most often, procurement decisions are drafted by the person responsible for public procurements and are endorsed by the institution's manager. In that, at least 8 people review these decisions, which are only one page long. The fact that decisions still include such errors is indicative of the formal approach to development of this important document.

» **Competition in local tender procedures is improving, but there are numerous examples of restricted competition, primarily pursued through technical specifications.**

The average number of bids per tender procedure in the monitoring sample at local level stands at 3 bids and is the highest average calculated in the last several years. After a longer period of time, this is the first instance for average number of bids per tender procedure to reach 3, which is considered to represent minimum competition in tender procedures. In the past, this average ranged from 2.4 to 2.6 bids.

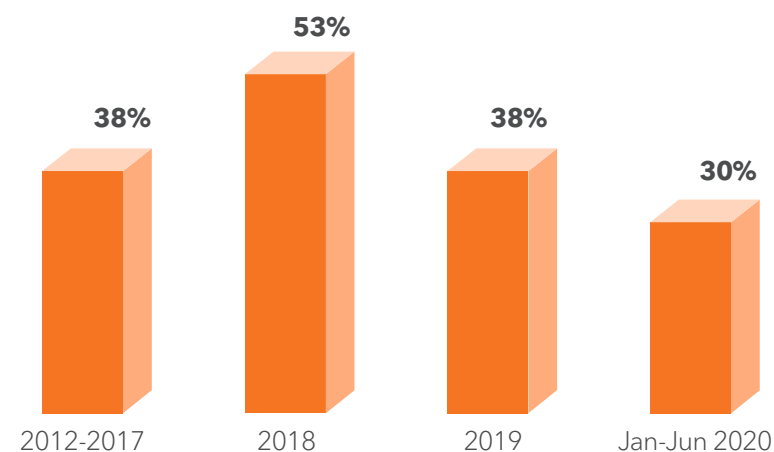


**Competition in monitored tender procedures at local level,  
average number of bids per tender procedure**



Proportionally to increased competition in tender procedures at local level, monitoring activities observed decreased share of tender procedures presented with only one bid. From high 53% of tender procedures with only one bid in 2018, in this analysed period, i.e. the first half of 2020, only one third of tender procedures were presented with one bid, which is the lowest share noted in the last several years.

**Share of tender procedures presented with one bid or no bids**



15% of tender procedures were presented with two bids, while more than half of tender procedures (55%) were presented with three or more bids.

Nevertheless, analysis of monitored tender procedures shows that competition in public procurements could be higher when certain practices are eliminated from implementation of public procurement procedures.

There are numerous examples in which technical specifications require bidding companies to quote unit prices without any indication of the quantity planned to be procured. This prevents companies to economize their bids. Namely, according to one of the fundamental tenants of economy, i.e. economy of scope, the more products are purchased, the lower their unit price. In cases when the quantity is unknown, bidding companies are unable to apply this rule. On the contrary, it opens great space for corruption, especially if certain bidder is given insider information about the quantity of individual goods planned to be purchased, thus putting this bidder in favoured position of being able to economize its offer and submit the most favourable bid.

It is inadmissible to withhold information on quantities in tender procedures for procurement of toner, crushed stone or small inventory, as was the case with several tender procedures from the monitoring sample. It is equally inadmissible for procurement of services related to vehicle repayment to take into account only the cost per one hour labour, but not the cost of spare parts that would be eventually replaced.

Hence, it becomes distasteful to continuously recommend the institutions to publish planned quantity or scope of their procurements in order to allow companies to submit more economic bids and to avoid doubts that tender procedures in which quantities are not published have been rigged.

Competition in public procurement is also reduced by previous arrangements among bidding companies. There are many examples of tender procedures that raise concerns about companies having entered arrangements in respect to tender participation, meaning that competition in these public procurements is illusory.

The procurement notice announced by one municipality in Skopje for building security services was presented with two bids. One bid was submitted by a Skopje-based company in the value of 9,996,000 MKD, while the second bidder was a company from Kichevo, whose bid amounted to 9,900,000 MKD. Accidentally or not, both bids were almost identical with the procurement's estimated value of 10,151,600 MKD, which had not been published in advance. During bid-evaluation, the second bid was excluded from the tender procedure because the bidding company had not provided required documents to demonstrate technical and pro-



fessional capacity for tender participation which, among others, included the following: at least 40 employees, 8 patrol vehicles, 20 radio communication devices, etc. The contract was awarded to the first company.

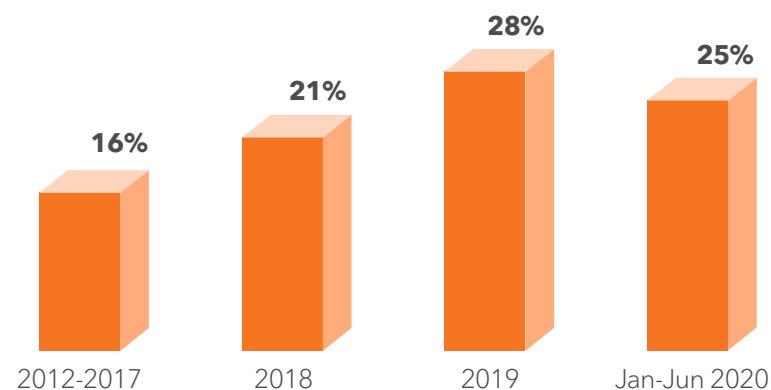
» **25% of tender procedures were annulled - although their share is decreasing, it still remains high.**

Competition is often affected by frequent annulment of tender procedures, which is among biggest problems plaguing public procurements in the country.

Although the share of annulled tender procedures in this monitoring period is slightly decreased compared to the previous period and stands at 25%, it still remains high and implies that every fourth tender procedure was annulled.

Tender annulment has proved to be the safest tool disposed by institutions when the procurement's outcome is not to their liking, irrespective of the fact whether intentions behind that are honest or dishonest.

**Share of annulled tender procedures in the monitoring sample**



Having in mind that reasons indicated for annulment in 80% of tender procedures concerned the fact that bided prices are higher than the procurement's estimated value even after the electronic auction organized for additional decrease of initially bided prices is indicative of another problem related to public procurements in the country. It concerns imprecise setting of the procurement's estimated value for which almost no institution has developed and instituted adequate internal procedure. Insufficiently serious approach to calculation of the



procurement's estimated value gives rise to negative consequences in the further course of procurement procedures, which often results in tender annulment. Ultimately, this practice results in loss of time and money, and creates business uncertainty for companies.

» **"Lowest price" is still used as single criterion for selection of the most favourable bid in tender procedures, failing to utilize the law-stipulated possibility for bid-evaluation to take into account the quality of goods and service being procured.**

"Lowest price" was used as single criterion for selection of the most favourable bid in 100% of analysed tender procedures, making this monitoring period the second in a row where all institutions, without any exemptions, have used price to select the most favourable bid.

This practice is completely contrary to the "spirit" of the new Law on Public Procurements which, for the purpose of alignment with EU Directives and in response to problems caused by use of lowest price, has introduced the selection criterion defined as "economically most favourable bid" that, in addition to price, also includes other bid-evaluation elements. The same is valid in respect to use of electronic auctions that imply further decrease of initially bided prices. In the past, this combination of mandatory use of lowest price and electronic auction was indicated as devastating for both contracting authorities, i.e. state institutions, and for companies. Now, when neither of these two instruments is mandatory, 100% of tender procedures still use lowest price as single selection criterion, while 95% of them also anticipate downward bidding (e-auction), which is completely unacceptable.

Although this might be the easiest way to implement a tender procedure, it does not guarantee that the contracting authority has obtained the most cost-effective bid, i.e. has obtained the best value for the money spent. This might be the case only if the procurement subject is well defined under technical specifications, thus guaranteeing certain quality, but even this practice is not common among public procurements organized in the country.





### CASE STUDY

A specific case, which is still representative of flagship problems in public procurements, is best illustrated by an example from the monitoring sample. It is a matter of procurement procedure organized for chemicals (polymers, reagents and laboratory supplies), which was divided into three lots, one for each category of procurement items, and was organized by a local public utility enterprise.

The procurement notice was published on 26<sup>th</sup> February 2020, with a deadline for submission of bids and public opening of bids set on 27<sup>th</sup> March 2020.

The contracting authority was presented with one bid each for the first and third procurement lot, i.e. polymers and laboratory supplies, and four bids for the procurement lot related to reagents.

It should be noted that decisions for selection of the most favourable bids were taken as late as 25<sup>th</sup> September 2020, which means the institution needed six months to select the best bids, although two from three procurement lots were presented with one acceptable bid each. As reminder, the contracting authority is obliged by law to take its selection decision within a deadline set in duration of the same number of days allotted for companies to develop their bids, which in this case accounted for 30 days, from 26<sup>th</sup> February to 27<sup>th</sup> March. Not only was this deadline not complied with, but it was breached by several times in duration. Instead of 30 days, the decision was taken after 182 days.

Moreover, one from the total of four bidders for the second procurement lot lodged an appeal before the State Commission on Public Procurement Appeals, which took a decision to revoke the selection decision for this procurement lot and tasked the institution to repeat the bid-evaluation process. The state commission has adopted this decision on 15<sup>th</sup> October 2020.

Acting upon the appeal decision, the public enterprise adopted a decision to annul the procurement procedure due to significant omissions in tender documents, although tender documents were not subject of appeal allegations.

The decision on tender annulment was adopted on 4<sup>th</sup> January 2021, whereby the total duration of this procurement procedure stretched for more than nine months, i.e. 313 days!



It should be noted that the public does not have any information about procurements like this until publication of notification on contract signed or notification on tender annulment. In this case, the contracting authority has acted in violation of the law by publishing the notification on contract signed there months later (15<sup>th</sup> January 2021), although the contract was signed on 20<sup>th</sup> October 2020 and the relevant notification should have been published within a deadline of 10 days, i.e. by 30<sup>th</sup> October.

Moreover, the institution has failed to disclose requested information related to this procurement as part of the monitoring sample, although it was presented with three requests under the instrument for free access to information, all of which were rejected on the ground that the procurement is still in the bid-evaluation stage. It should be noted that the third information request rejected was received by the institution on 3<sup>rd</sup> December 2020, but according to published notifications the relevant contracts for this procurement (lots 1 and 3) had been signed on 20<sup>th</sup> October 2020. However, having in mind that the notification on contracts signed was published as late as January 2021, at the moment when the last information request was rejected the monitoring team was unaware that the tender procedure is not in the bid-evaluation stage and that the contracting authority has withheld actual information, which amounts to legal ground for submission of appeal before the Agency for Protection of the Right to Free Access to Public Information. In brief, one act of non-transparency leads to another, which leads to third act of non-transparency, and so on.

Although this institution has acted in violation of the Law on Public Procurements and the Law on Free Access to Public Information on multiple grounds, it has not been sanctioned, just as all other contracting authorities in similar situations, which sends a message and even encourages other institutions to continue their wilful practice of law violations.





### **RECOMMENDATION:**

Based on weaknesses detected in implementation of public procurements, institutions at local level and all other contracting authorities are recommended:

- To assume serious approach to adherent enforcement of the Law on Public Procurements, by using all possibilities and mechanisms anticipated under the law for procurement of goods, services and works that they actually need, in required quantity, quality and delivery deadlines, with previously conducted need assessment, market research and establishment of precise estimated value, and by applying elements for selection of the most favourable bid that are conducive to cost-effective procurements, i.e. ensure the best value for the money spent.
- To adherently comply with all law-stipulated obligations and to refrain from violation of the Law on Public Procurements, in spite of the broad absence of sanctions.
- All competent institutions, services and individuals with relevant authority, primarily the Bureau of Public Procurements, participants in tender procedures, internal auditors and other persons, to initiate misdemeanour proceedings to sanction increasingly frequent violations to the Law on Public Procurements.
- To organize electronic auctions only in cases when the procurement subject concerns goods of standard, known or well established quality, and when the price has definitive role in selection of the most favourable bid.
- To analyse failed and annulled tender procedures and use analysis findings to improve future public procurements.
- When possible, to divide the procurement into smaller lots in order to facilitate participation of more small companies, thus increasing competition and improving quality of public procurements.
- When institutions have decided to divide the procurement into lots, they need to provide detailed elaboration of reasons thereof in their decision on public procurement.



- Decisions on public procurements to include detailed elaboration of the procurement need, i.e. why the institution needs the relevant procurement subject, in indicated quantity and of indicated quality.
- To reconsider separating from the decision in public procurement the sections related to establishment of public procurement committee, elaboration of the procurement need and elaboration of reasons for the procurement's indivisibility.
- To always publish planned quantity of procurements, thus ensuring submission of quality bids and guaranteeing successful implementation of tender procedures.

