

DETAILED RECOMMENDATIONS AIMED TO IMPROVE THE PUBLIC PROCUREMENT SYSTEM

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- PPL should incorporate penal provisions, as is the common practice adopted by most countries from the region and beyond – Legal mechanisms, notably sanctions, should be introduced in the relevant legislation and imposed to contracting authorities failing to fulfill the obligations stemming from the PPL (for example, failure to submit the notification on the public procurement contract signed). Sanctions can also apply to authorities denying cooperation in the course of audits, i.e., authorities that do not submit requested information and do not proceed in compliance with their competences and within the legally stipulated deadline.
- PPL should define in detail the terms and conditions under which a public procurement procedure can be annulled and should introduce the obligation on providing argument-supported rationale on the unacceptability of bids obtained – The broadly defined legal framework stipulating the terms and conditions for annulment of public procurements should be narrowed. In the light of increasing the share of successfully implemented public procurements, introduction of audits concerning the factual need thereof should be reconsidered, and should be accompanied with relevant sanctions for commission members in the case of identified subjective shortcomings.
- PPL should stipulate a deadline for the decision-taking on the selection or the annulment of the public procurement procedure, which should start from the moment of public opening of bids — In the light of providing efficiency and effectiveness of procedures, as well as in the light of avoiding to keep economic operators in suspense and release their tied finances, the deadline on decisiontaking in public procurement procedures should be legally stipulated. Such deadlines can vary depending on the procedure's value or number of bidders participating therein.
- Contracting authorities should respect the legal obligation stipulating their obligation on submitting notifications with rationale to all bidders. In that context, the uniform template of the notification form with rationale could be stipulated and should include detailed overview of the bid-evaluation process and the decision taken.
 - This recommendation should apply to and be applied by contracting authorities in the context of informing the public procurement participants on the decision taken for the selection of the best bid or when informing them on the procedure annulment. Such actions would provide better information on the fact why certain bids are rejected or have not been assessed as the most favorable one. If the report on the bid-assessment procedure cannot be forwarded to all parties concerned, then consideration should be made on stipulating the template of the notification that would provide details from the evaluation procedure.
- The Methodology on Point-Based Ranking Criteria, developed by the Ministry of Finance should be adequately amended, or the BPP should develop guidelines and recommendations on the criteria for selection of the most favourable bid – This should result in the elimination of common practices implying application of inappropriate criteria and evaluation elements and the non-unified criteria for the procurement of same goods applied by different contracting authorities. Such

rules and recommendations should provide for a more detailed point-allocation to criteria prone to subjective assessment and therefore decrease the subjective assessment of bids.

- Certain criteria should not be subject of bid-assessment, but rather eligibility criteria for participation – This recommendation targets contracting authorities which should discontinue the practice of allocating points to criteria which could be deemed eligibility criteria or precondition for participation of economic operators (these include: reference list, warranty periods, delivery deadlines, etc.)

- Contracting authorities should pay more attention and time to development of tender documents, notably the technical specifications, whereas the BPP should develop unified template for specific procurement-type forms – This recommendation applies to and should be applied by the contracting authorities, but the BPP can develop the standardized technical specifications for particular procurement types for the purpose of unifying the description of such procurements, to the extent possible.

- Contracting authorities should publish the tender documents on their website and on the website of the Electronic Public Procurement System – This recommendation should be enforced by the contracting authorities, but should it fail to provide the relevant effects, it is our suggestion that the legal obligation on the publication of tender documents on contracting authorities' websites to be stipulated in the relevant legislation. This would result in shorter procedures, better insight and access to tender documents for interested economic operators, broader public, and also, for other contracting authorities.

- To discontinue the common practice on imposing economic operators a charge for tender documents – This recommendation targets contracting authorities, but should it fail to provide the relevant effects, it is our suggestion the existing provision from PPL to be correspondingly amended and to include the stipulation of the upper threshold for charges to be imposed to economic operators for the tender documents.

- To avoid setting the amount of bank guarantees at the maximum threshold of 3% from the procurement value – This recommendation should be applied by the contracting authorities. In the course of that, contracting authorities should avoid stipulating the bank guarantee as a formal requirement for participation in almost any possible public procurement procedure.

- Contracting authorities should more often use the Electronic Public Procurement System, which enables application of basic principles underlying the public procurement procedures – The funds invested in the development and implementation of the EPPS should be justified with the increased utilization rate thereof, which would contribute to effective use of the benefits offered by the said system, those being: speed, efficiency, transparency. At the same time, we reiterate the legal obligation stipulating that in 2010 30% of funds planned for public procurements should be awarded by means of e-auctions (e-procurements).

- BPP should undertake an analysis of the scope, legal justifiability, transparency and competitiveness, and should it deem reasonable, should suggest limited use of negotiation procedures, and exclude from this group certain nonpriority services to

which the public procurement rules can be applied - BPP should establish monitoring mechanism for negotiation procedures, whereas contracting authorities that implement them should report to the BPP on the procedure's course, including the signed contract.

- BPP should be involved in the supervision of legal proceeding in public procurement procedures — BPP's role should be enhanced with relevant provisions included in the PPL, that would authorize the Bureau to supervise the public procurement process, i.e., to issue binding opinions for contracting authorities. The BPP should also be authorized to issue measures concerning the discontinuation of procedures until the elimination of identified shortcomings therein, including the decision-taking on the most favourable bid. • Rules should be adopted in the light of regulating the realization of signed public procurement contracts – Due to the identified legal gaps, many irregularities and abuses have been identified in this stage of public procurements. In that context, competences of contracting authorities should be stipulated and targeted to overcome the current (vague) competences concerning the supervision of public procurements, notably supervision competences of the State Audit Office and the Attorney General.

- Special type of public procurement audit should be stipulated in the legislation – Such audits would be enforced by state auditors, which implies the need for specialized public procurement audit training for a number of state auditors. Public prosecutors would also require relevant training and expertise in order to proceed in cases initiated as a result of these auditing reports, as well the recruitment of economists, accountants and other financial expert at public prosecution offices. All these would facilitate and speed up the proceeding upon SAO's reports.

- BPP's reports on the public procurement system should provide a more comprehensive analysis and relevant comments on all public procurement elements — Processing of data collected by BPP and presented in its annual and interim reports should not address only quantitative information (summary of statistics), but also analysis of the quality and implementation dynamics of public procurements. Therefore BPP's reports should include analyses, assessments, comments, findings, conclusions and recommendations related to the efficiency, cost-effectiveness and effectiveness of public procurements in the Republic of Macedonia.

- Contracting authorities should secure a continuity in the work of persons trained in the field of public procurements – Responsible persons at contracting authorities should not discharge and replace the employees trained in the field of public procurements, especially those with longterm working experience in procurement procedure implementation, i.e., persons who have specialized in this field.

- The SCPPA should continue to publish on its website decisions taken in appeal procedures and provide detailed rationales thereof– This legal obligation, whose enforcement was discontinued by the SCPPA should be properly implemented, by means of publication of decisions taken after all SCPPA sessions held.

- PPL should stipulate that the SCPPA should ex officio annul appealed procedures for which the contracting authority has not submitted the requested documents – The introduction of this provision would “discipline” the contracting authorities that do

not comply with the legally stipulated deadline for the submission of all documents related to the appealed public procurement procedure and would therefore shift the burden of initiation from the plaintiff to the SCPPA which is in better position to monitor the deadline compliance by the concerned contracting authority.