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MONITORING LOCAL PUBLIC PROCUREMENTS

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INTRODUCTION: GOALS AND METHODOLOGY

The Centre for Civil Communications (CCC) is regularly monitoring the implementation of public procurement procedures in Macedonia from 2008 onwards, i.e. from the entry in effect of the new Law on Public Procurements, drafted in line with the European Commission's Directives. The purpose of monitoring activities is to assess whether and to what extent state institutions adhere to the general principles underlying public spending, as stipulated in the Law: competition among companies, equal treatment and non-discrimination, transparency and integrity in implementing public procurements, as well as cost-effective and efficient use of public funds.

Monitoring activities target procurement procedures organized and implemented by all state institutions country-wide, both on central and local level. Due to differences and specificities identified between central and local institutions in relation to implementation of public procurements, from 2010 onwards local and central level procurements are monitored separately. Namely, this endeavour resulted in collection of more detailed and significant insights that can be used by all interested parties with a view to promote and improve the manner in which public procurements are organized and implemented and guarantees compliance with the Law and application of the general principles governing public procurements.

This report is prepared on the basis of monitoring results for a sample comprised of 40 public procurements implemented by local institutions throughout Macedonia in the period 1 October 2014 to 31 March 2015.

The monitoring sample was selected from public procurements announced in the Electronic Public Procurement System (EPPS) and the Official Gazette of the Republic of Macedonia. Moreover, the selection process made due account of the need to make broad, diverse and equitable coverage of institutions (local self-government units and local institutions under their jurisdiction, such as public enterprises, schools, kindergartens, etc.), different types of contracts (goods, service and works) and different procurement subjects, as well as equitable geographical distribution of institutions whose public procurements are subject to monitoring activities.

The monitoring process is carried out by collection of primary and secondary data, including CCC monitors' attendance at public opening of bids, interviews with bidding companies, browsing and searching EPPS database, researching information on appeals lodged in front of and decisions taken by the State Commission on Public Procurement Appeals available on its website and by means of Freedom of Information (FOI) applications requesting information that is otherwise unavailable. Questionnaires and other forms used as part of the monitoring process are structured in a manner that enables the most effective monitoring of public procurements in terms of compliance

with the legislation and adherence to the general principles governing public procurements.

Data and information collected are fed into a previously designed and structured matrix, which allows analysis of public procurements in terms of compliance of above-referred principles, including competition among companies, equal treatment and non-discrimination, transparency and integrity in organization and implementation of public procurements, as well as cost-effective and efficient use of public funds.

Once data are analysed and processed, a report is drafted with key monitoring findings and analysis of public procurement procedures, accompanied with recommendations aimed to address identified problems and weaknesses in the public procurement system, and detailed elaboration of the observed state-of-affairs.

* * *

The Centre for Civil Communications (CCC) was established in April 2005 as a non-governmental, non-profit and non-partisan citizens' association. CCC's mission is to develop and improve communications among all societal actors in Macedonia and to inform them about various processes of broader significance. CCC monitors, analyses and strengthens democratic processes in the country and in the region, especially those related to anticorruption and good governance, media and economic development. In its ten-year operation, CCC focused its work on two groups of interrelated activities: (1) monitoring of state institutions and, on that basis, recommending measures and policies aimed at promoting their work and narrowing the space for corruption; and (2) enhancing the abilities of journalists and the special role played by the media and non-governmental organizations in the fight against corruption. In this regard, CCC – to present – has drafted and proposed several hundreds of specific recommendations concerning measures that need to be taken to promote the legislation and practices aimed at more transparent, accountable and responsible operation on the part of central and local authorities; has trained over five hundred journalists from both, national and local media outlets, as well as representatives of civil society organizations; and has published around forty research studies and manuals.

SUMMARY

Low competition in local tender procedures continues to decline despite the series of law amendments adopted in this period and aimed to turn around such tendencies, thereby increasing the number of participants in public procurement procedures. In average, public procurements from the monitoring sample were marked by participation of 2.4 bidding companies, while as high as 57% of tender procedures monitored were not presented with a single bid or were presented with only one bid.

Although they are law-mandated for all tender procedures, e-auctions were organized in only 53% of monitored procurement procedures. Low competition in tender procedures and “lowest price” defined as the single criterion for contract awarding would continue to deepen the problem related to non-organization of electronic auctions, envisaged as means for reduction of initially bided prices.

The number of annulled tender procedures in the monitoring sample maintained its high share of 20% and was marked by an increase compared to tendencies observed in the past one to two years, when it amounted to around 15%. The main reason indicated for tender annulment remains the statement that bidding companies have offered prices that are more unfavourable than those anticipated or planned by the contracting authority.

In dominant share of small procurements whose value does not exceed 5,000 EUR, companies actually had only two days to prepare their bids. In these cases, contracting authorities opted for the minimum deadline of five days for submission of bids, but announced their respective procurement notices in a manner whereby the submission deadline runs during weekends, thus effectively decreasing it by two days which, when combined with the loss of the first day when the tender procedure is announced and the last day when the deadline usually expires in the morning, leaves only two days for companies to prepare their bids.

Although 95% of contracting authorities whose tender procedures were subject to monitoring actually disclosed information requested by means of FOI, the information they had provided were incomplete. Documents they most often omitted to disclose include those related to the market research they have conducted.

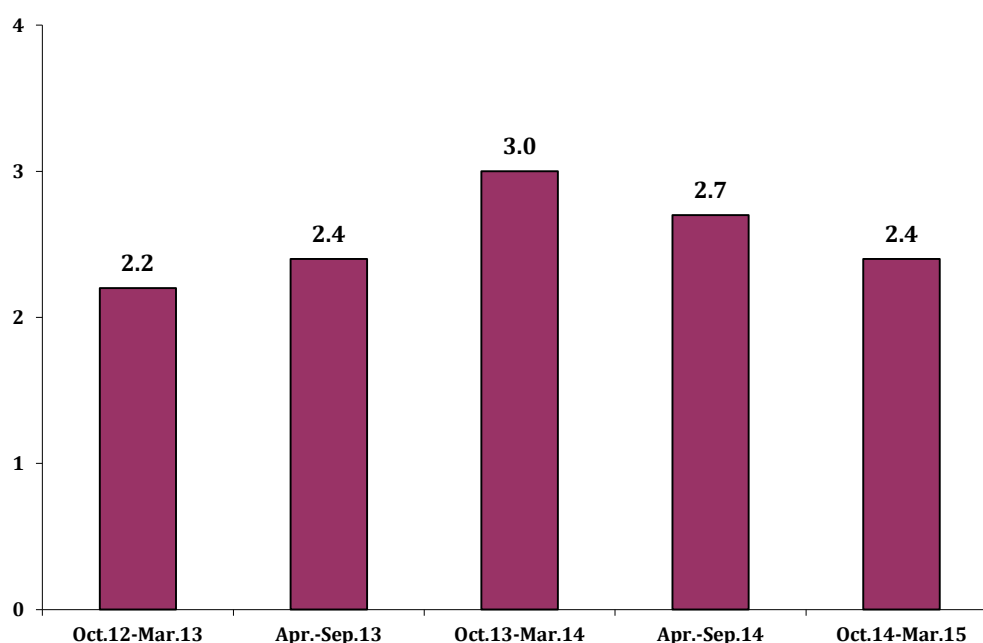
Inadequacy of “lowest price” defined as the only contract-awarding criterion and tumbling down of prices as result of mandatory e-auctions are the two biggest problems faced by companies participating in tender procedures organized and implemented on local level. More than half of companies surveyed are also facing the problem of late payment for public procurement contract performance.

CONTINUED DECLINE OF ALREADY LOW COMPETITION IN LOCAL TENDER PROCEDURES

Low competition in local tender procedures continues to decline despite the series of law amendments adopted in this period and aimed to turn around such tendencies, thereby increasing the number of participants in public procurement procedures. In average, public procurements from the monitoring sample were marked by participation of 2.4 bidding companies, while as high as 57% of them were not presented with a single bid or were presented with only one bid.

As is the case with tender procedures organized by central institutions, competition in monitored tender procedures that are organized by local institutions continues to decline from 2013 onwards. Only in the period March 2014-March 2015, the average number of bids submitted in local tender procedures has decreased from 3 to 2.4. Despite the fact that in this period a series of law amendments have been adopted and enforced with a view to increase competition in public procurements, their effects in the practice are counterproductive. More specifically, after having reached a record level of 3 bidding companies per tender procedure, competition in monitoring samples has been reversed to the level observed two years ago (Figure 1).

Figure 1. Competition in monitored local tender procedures: average number of bidders per tender procedure



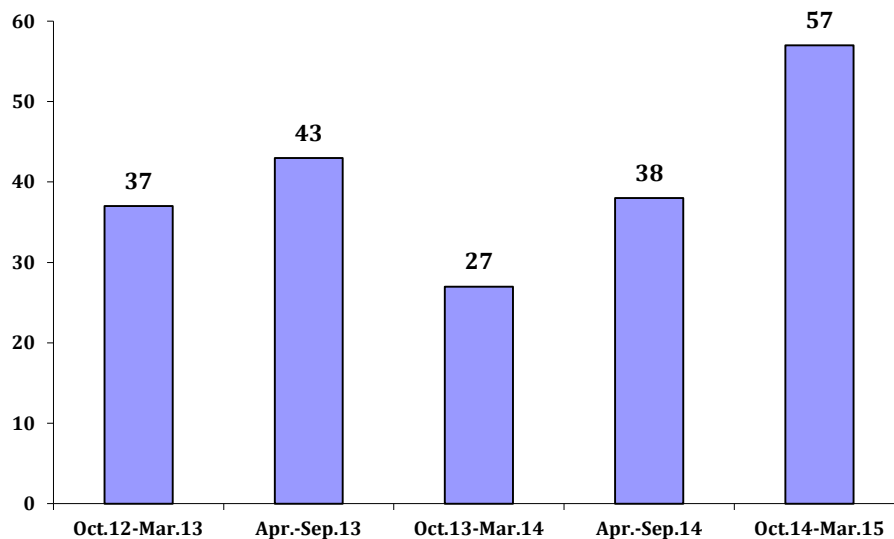
Another measure, the mode, shows the most frequently occurring number of bidding companies and also accounts for 1, in particular because as many as 22 tender procedures from the monitoring sample were presented with only one bid.

[illegible]

Median: 1 bidder (middle of the order: $1+1 = 2 : 2 = 1$).

The declined level of competition is further supported by the increased number of tender procedures marked by participation of one bidder or no bidders. In this six-month monitoring period, as high as 57% of tender procedures were presented with only one bid or no bids at all. In euphemistic terms, actual competition characterized by 3 or more bidding companies was observed in 30% of tender procedures, while the remaining 13% of tender procedures were characterized by participation of two bidding companies (Figure 2).

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One must have in mind that such downward spiral of competition in local tender procedures overlaps with the series of law amendments adopted in the same period and aimed to encourage greater competition in public procurements.

Notably, two measures that could have positively affected competition in public procurements entered in effect at the beginning of 2014. One measure concerns mandatory publication of tender documents together with the procurement notice and implies that companies would be able to download all tender documents from the Electronic Public Procurement System immediately and free-of-charge, thus saving time and money. The second important law amendment, in effect from January 2014, concerns mandatory publication of the procurement's estimated value allowing companies to better plan the prices they offer in tender procedures.

Law amendments that entered in effect in May 2014 and introduced the Council of Public Procurements as an institution that should be addressed by contracting authorities for obtaining approval prior to announcing their procurement notices in order to ensure that their tender documents are not limiting competition by means of descriptions of procurement subjects and by means of eligibility criteria for tender participation, also failed to yield any results.

Aware of these effects, valid is the recommendation for serious examination of reasons behind the continuously low and ever decreasing competition in public procurements. Some of them could be identified in the inability on the part of companies for fast adaptation to frequent and rushed changes made to regulations governing public procurements, difficult restoration of already lost confidence in the system on public procurements, late payment for contract performance, low prices attained at e-auctions, as well as centralized influence on tender procedures exercised by the Council of Public Procurements.

An interesting phenomenon was observed among public procurements for which contracting authorities have conducted previous market research to demonstrate that there is sufficient number of companies operating in the market sector according to the procurement subject and eligibility criteria defined, but were ultimately presented with only one bid.

Same was the case with public procurements where contracting authorities did not conduct market research, but obtained an approval from the Council of Public Procurements that their tender documents are not limiting competition.

This means that market research and approvals issued by the Council of Public Procurements are only formal and do not include incentives for greater competition. In other words, the introduction of two new stages in the public procurement procedure that imply more time and money has not improved low competition in public procurements.

This imposes the need for re-examining the existence of the Council and the instrument called “previous approval” as a Macedonia-specific uniqueness in public procurements.

THE MANDATORY NON-MANDATED ORGANIZATION OF E-AUCTIONS

Although they are law-mandated for all tender procedures, e-auctions were organized in only 53% of monitored tender procedures. Low competition in tender procedures and “lowest price” defined as the single criterion for contract-awarding would only continue to deepen the problem related to non-organization of electronic auctions, envisaged as means for reduction of initially bided prices.

From the introduction of mandatory e-auctions as the final stage of public procurement procedures whereby, in cases of multiple bidding companies, they compete in terms of offering the lowest price, the share of tender procedures that have been completed with organization of e-auction accounts for around 50%. Hence, in this monitoring period as well, e-auctions were held in only 53% of monitored tender procedures. Other tender procedures that have not been completed with an e-auction were either annulled or have been presented with only one bid, i.e. only one acceptable bid, thereby failing to secure conditions for organization of e-auction.

Below we discuss certain interesting figures about e-auctions.

Actual competition, characterized by participation of three or more bidding companies and resulting in reduction of prices by means of electronic downward bidding, was observed in 35% of monitored tender procedures.

Analysis of these tender procedures shows that, almost by rule, higher number of e-auction participants goes hand in hand with greater competition for downward bidding. Accordingly, prices are reduced by significant percentages in the course of e-auctions.

Hence, the record-breaking price reduction at e-auctions observed in the monitoring sample implied a reduction by 44% compared to the initially bided price in the tender procedure characterized by record level of competition, i.e. 11 companies participated in the e-auction. Then, there were two tender procedures that have attained price reductions by 37% at their respective e-auctions marked by participation of 9 and 8 companies, respectively. The final record-breaking price reduction by 27% was observed in the procurement procedure marked by participation of 5 bidding companies.

In contrast, e-auctions that have not resulted in price reduction or have resulted in insignificant price reduction were organized for tender procedures marked by the lowest number of bidding companies. Hence, all public procurements that did not result in price reduction, i.e. public procurements that were not finalized with organization of e-auction, were characterized by participation of only two bidding companies each.

In this regard, tender procedures from this monitoring sample were organized for procurement of goods or services which, by rule, imply high competition and attainment of highest price reduction at their respective e-auctions. In this monitoring sample they include procurement of computer equipment and office supplies, such as printer toner, as well as small construction and craftsmen works, for example, craftsmen works concerning replacement of roof, refurbishment of premises within a building, patching streets, construction of small parking lots, and the like.

Given the above enlisted observations, contracting authorities are recommended to invest all efforts possible to ensure maximum number of bidding companies in public procurements, because only in this manner they would be able to make law-mandated electronic auctions meaningful.

Furthermore, knowing that all previous analyses have shown that e-auctions are meaningful and cost-effective only for certain types of procurement subjects (those implying standard quality), competent institutions should finally develop a list of procurement subjects for which organization of e-auctions is mandatory. In the case of other types of procurement subjects, organization of e-auctions should be an option left at the discretion of contracting authorities, as required by EU Directives on Public Procurements.

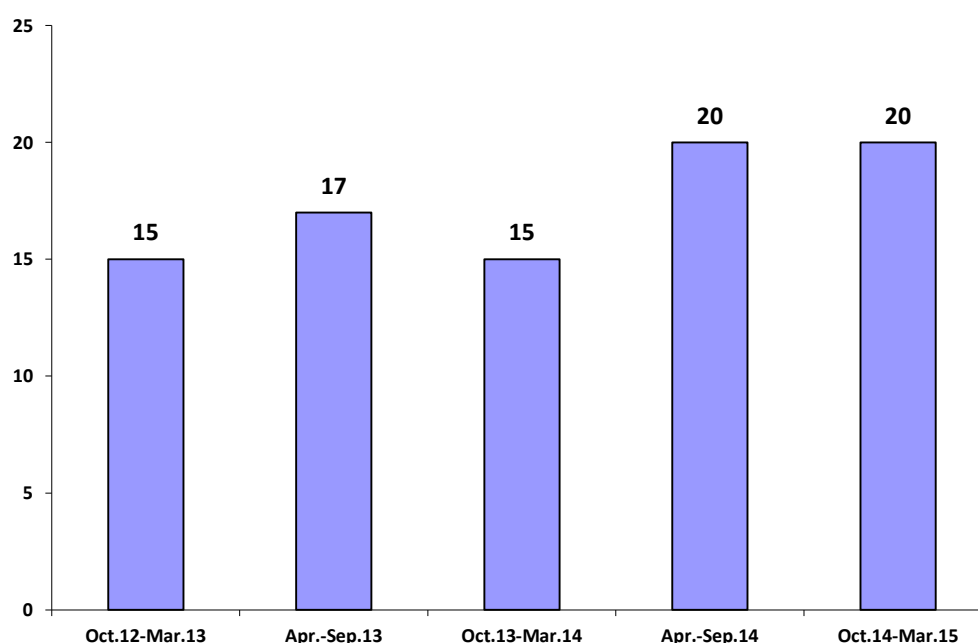
In the meantime still valid is the problem related to the inability for precise assessment of effects created by e-auctions in public procurements where the estimated value, i.e. funds available to and planned by the contracting authority for the procurement in question, is expressed in total value, but tender documents request bidding companies to submit unit prices. Then, after a particular price is attained at the e-auction, the contract is signed under the same total amount, irrespective of the unit price attained and the quantity of goods or services needed. For illustration purposes, here we analyse the procurement of printing services for municipal newsletter. The procurement's estimated value was set at 1,000,000 MKD. Bidding companies were requested to submit unit price for printing one copy or for printing one issue with defined circulation. Ultimately, irrespective of the individual price attained, the contract was signed under the total amount planned. Unclear is why, in cases like this, contracting authorities are not proportionally reducing the contract's total amount, especially if they know the quantity needed.

STABLE HIGH SHARE OF TENDER ANNULMENTS

The number of annulled tender procedures in the monitoring sample maintained its high share of 20% and was marked by an increase compared to tendencies observed in the past one to two years, when it amounted to around 15%. The main reason indicated for tender annulment remains the statement that bidding companies have offered prices that are more unfavourable than those anticipated or planned by the contracting authority.

In the last six-month monitoring period, the number of tender annulments have risen to as high as 20%, thus representing an increase by 5 percentile points compared to the previous period (Figure 3).

Figure 3. Share of tender annulments in the monitoring sample at local level



The main reason indicated for tender annulment remains the same in this monitoring period as well and concerns unfavourable prices obtained. It means that even after the electronic auction (in cases of two or more bidders) or after the submission of final bid (in cases of single bidder) companies have still offered prices that are higher than those planned by contracting authorities, i.e. prices that are higher than those anticipated under the procurement's estimated value. In as many as 61% of annulled tender procedures, contracting authorities indicated unfavourable price as the reason for

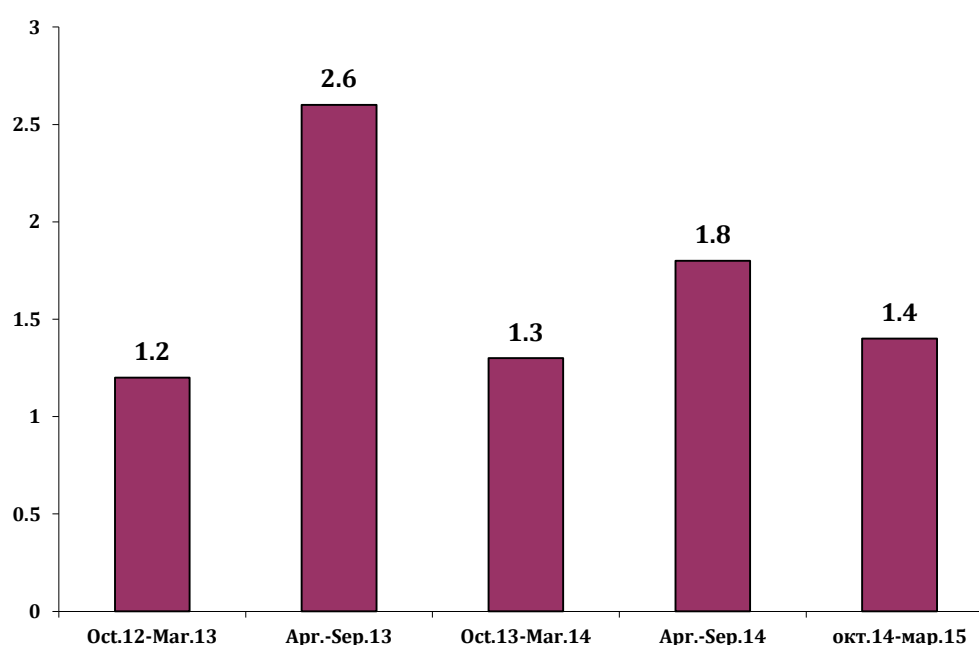
tender annulment. This share remains almost identical with the share observed in the previous six-month period, when unfavourable prices were indicated as reason for tender annulment in 62% of all cases.

The formerly most frequently indicated reason for tender annulment (no bids submitted) was now indicated as reason for tender annulment in 31% of all cases.

Among other reasons indicated, significant frequency of use was observed with the statement that the tender procedure had been annulled due to significant violations to Article 210 of the Law on Public Procurements (4%), unexpected changes have occurred to the contracting authority's budget (2%) and the tender procedure had been annulled by the State Commission on Public Procurement Appeals (2%).

On the other hand, in this reporting period the average number of bids submitted in the annulled tender procedures has also declined. Only two years ago, this number accounted for 2.6 bids per procedure, in the previous six-month period it was 1.8 and in this monitoring period it accounts for 1.4 bids submitted in annulled tender procedures (Figure 4).

Figure 4. Average number of bids submitted in annulled tender procedures



Having in mind that for one year now the number of tender annulments has maintained its high share of 20%, it seems that it is high time to take more serious and well-designed steps to address this issue.

Such steps are also necessary due to the fact that current solutions designed to mitigate the problem of frequent tender annulments have yielded short-term effects or have decreased tender annulments according to one ground, but increased their number according to other grounds.

Valid is the general recommendation to decrease grounds for annulling public procurement procedures stipulated in the Law on Public Procurements. Moreover, an analysis is needed to examine the link and interdependence between the manner in which estimated value of procurements is set and the annulment of procurement procedures. Such need arises from the fact that the law-stipulated obligation for publishing the procurement's estimated value overlaps with the increased share of tender annulments on the grounds that prices bided are unfavourable. Therefore, efforts should be invested in increasing knowledge of officers responsible for setting estimated values of procurements so they would make more accurate calculations.

Tender annulments – the easiest solution when “plans” are falling through

As was the case in the past, this monitoring sample also included examples of absurd procurement procedures and decisions taken by contracting authorities that speak volumes about their insufficient knowledge, disrespect for and violation of law provisions.

One such procedure concerned procurement of accounting and consulting services organized by local public utility enterprise. The procurement notice indicated an estimated value of accounting services for a period of one year in the amount of 300,000 MKD without VAT, one company submitted a bid in the value of 25,000 MKD per month or 300,000 MKD annually, without VAT.

In cases of one company participating in the tender procedure, electronic auctions do not take place, but the bidder is invited to submit its final price, meaning that should it wishes, the company can reduce its initially bided price. In this case, most probably due to the fact that the bidder's offer overlapped with the procurement's estimated value, the company did not reduce its price, i.e. it did not offer a new, reduced price.

The contracting authority annulled the procurement procedure providing the following justification: “due to the fact that there was only one bid and the company did not submit final price”. This ground for tender annulment does not exist in the Law on Public Procurements and the public procurement commission that has adopted such decision acted contrary to the law provisions in effect.

To make matters more absurd, contrary to the legal ground indicated for tender procedure annulment in the official document (the decision), the notification on tender annulment submitted to EPPS enlists “occurrence of unpredictable changes to the

contracting authority's budget" as the reason for annulling the tender procedure in question.

This case, which is not an exemption in overall practices, raises a series of dilemmas and is indicative of problems arising due to the lack of control over public procurements. The only chance for exercising any control over public procurements at the moment is for companies to lodge appeals in front of SCPPA, which did not happen in this case. Notably, for procurement of services worth 300,000 MKD, the company decided not to exercise its right to appeal, which would cost 6,100 MKD. In cases when the company does not lodge an appeal, but this kind of irregularities have occurred, there is no other control mechanism in place that would prevent violations of the Law and would protect companies, in particular small and microenterprises, against the frivolous behaviour on the part of contracting authorities.

How to ensure procurement of quality goods, where necessary?

Among annulled tender procedures, attention should be given to the single procurement procedure annulled by means of decision taken by the State Commission on Public Procurement Appeals (SCPPA). This procedure concerned procurement of meat and fish for one Skopje-based kindergarten. The contracting authority requested and was granted previous approval by the Council of Public Procurements for the requirements related to companies' technical and professional capacity defined in the tender documents. Nevertheless, one of the two bidding companies contested two provisions from the tender documents in front of SCPPA and the Commission admitted the motion for appeal and later annulled the procedure.

In particular, the bidding company and the Commission found two eligibility requirements defined by the kindergarten to be disputable – the contracting authority required the facility supplying meat to have at least three entrance doors (for employees, for raw materials and for buyers) and bidding companies to present evidence that their employees have been trained in food hygiene by the Food and Veterinary Agency. In its appeal response, the kindergarten indicated that both requirements have been stipulated under applicable rulebooks governing terms and conditions for food storage and maintenance. Moreover, the kindergarten indicated that the Council of Public Procurements has approved these requirements.

SCPPA accepted the appeal allegations put forward by the bidding company that the rulebooks in question do not decisively stipulate a requirement for three different entrance doors and that there are other institutions delivering training on food hygiene, in addition to the state agency named in the tender documents. By doing so, SCPPA rejected justifications provided by the kindergarten, especially those concerning the requirement for different entrance doors for raw materials, employees and buyers, which relied on provisions contained in the rulebook and was deemed necessary for the

purpose of preventing food contamination. Furthermore, the kindergarten indicated that such special measures have been required in the light of the fact that food being procured is intended for children up to 5 years of age. Also, it indicated that prior to drafting the tender documents and as part of its market research the kindergarten has visited and has taken photographs of as many as ten meat suppliers that are in compliance with requirements enlisted in the rulebook. However, SCPPA found that the two requirements are contrary to Article 2 of the Law on Public Procurements, which stipulates that the purpose of the Law shall be to ensure competition among economic operators, equal treatment and non-discrimination, transparency and integrity of the public procurement contract-awarding process and cost-effective and efficient use of public funds under public procurements.

Notwithstanding the explanations provided by the contracting authority (kindergarten), by the economic operator (the company lodging the appeal) and those indicated in the decision taken by SCPPA, this example provides ample indications about particular absurd situations in the system on public procurements. They raise questions about the need for market research and collection of evidence that sufficient number of bidding companies operate in the relevant market section and that their number is adequate to the procurement's value (four, five or six), as well as the need to obtain approval from the Council of Public Procurements, knowing that the procurement procedure can "fall through" on the grounds of being discriminatory. Given the mandatory use of lowest price as only contract-awarding criterion and the limited possibilities for setting additional requirements, how are contracting authorities expected to ensure certain quality of goods or services being procured? Does this mean that all procurements in the country should be treated equally – from those concerning printing paper, through those concerning food for kindergarten children and medicines for hospitals, to service vehicles and construction works? In cases when particular business activity is regulated by a series of bylaws, such as rulebooks and the like, to what extent should their existence and importance be taken into account when implementing public procurements and does the Law on Public Procurements take primacy over those acts?

All dilemmas emerging from the practice in implementing public procurements in Macedonia deserve special attention, treatment and adequate solutions to ensure that public procurements will actually result in obtaining the best value for the money spent, which is a principle whose attainment in Macedonia - according to current set-up of the system on public procurements - is very difficult in the practice.

In this context, methods and solutions are needed to guarantee certain quality in procurement of perishable commodities such as food, medicines, etc. According to the system's current set-up, especially in terms of mechanisms available for guaranteeing quality of goods being purchased, it seems that there is no difference whether kindergartens purchase, for example, hygiene products or food for children. Even in case of purchasing hygiene products, kindergartens do not have any possibilities to procure products of better quality that would guarantee better protection of children.

This is a result of the combined effects created by a series of law provisions. First and foremost, the basic criterion for selection is lowest price. Second, mandatory e-auctions for all procurements result in additional reduction of prices on the part of bidding companies to incomprehensibly low levels, with a single purpose of winning the procurement contract. Third, in order to avoid requesting approvals from the Council, contracting authorities do not define any additional requirements on quality assurance. Fourth, the law provision whereby bidding companies can be requested to provide samples of what they offer has been recently revoked. Although it is not prohibited, majority of officers implementing public procurements are of the opinion that since the Law does not offer such possibility, they are not allowed to request samples. As a result, contracting authorities have limited possibilities to ensure certain quality of goods and services they procure, even in cases when quality is important.

Division into procurement lots to absurdity

As regards annulment of public procurements, particularly interesting is one tender procedure from the monitoring sample concerning procurement of New Year decorating services for one municipality. The procurement was divided into three lots. The first lot concerned procurement of New Year decorations, the second lot concerned rent of vehicle with basket crane used for installation and removal of decorations, and the third lot concerned rent of decorations, with their installation and removal.

It should be noted that bidding company was selected for the first lot concerning procurement of decorations, but not for the second lot concerning rent of vehicle for installation of decorations. This procurement lot was annulled on the grounds that no bids have been submitted. Moreover, contract was awarded for the third lot concerning rent of decorations and their installation. Given the fact that the municipality has signed contract for procurement of decorations, but the procurement lot on renting vehicle for their installation has failed, it would be logical to have the annulled procurement lot repeated, as it would be impossible to install decorations procured. However, that did not happen. Although same eligibility criteria were used in the repeated procedure (evidence that bidding companies are in possession of such special vehicle with basket crane that allows work at altitude of minimum 10 meters and one employee capable of operating the vehicle), this time around the contracting authority was presented with two bids and finally, several days before the New Year, and signed the contract for this procurement lot. Given that only the first tender procedure was subject of monitoring and not the repeated tender procedure, it remains unknown why - under the same procurement subject and tender requirements - the first tender did not receive any bids and the second tender, organized just several days later, was presented with two bids.

For the same procurement procedure, the contracting authority requested and was issued approval by the Council of Public Procurements. Although two of the three experts contracted by the Council decisively voted against the issuance of approval, the

Council accepted the opinion of the third expert and issued the approval. Unknown is whether the contracting authority requested and was issued approval for the repeated procurement procedure. However, having in mind that the new procurement notice was announced on the same day when the procurement lot was annulled, it is logical to conclude that the contracting authority has not requested new approval. Although it is considered common practice for contracting authorities not to request new approval when they have not changed tender documents from the first tender procedure that had been approved, according to the law provisions in effect at that time, the contracting authority was obliged to request new approval.

COMPANIES HAVE ONLY TWO DAYS TO PREPARE THEIR BIDS

In dominant share of small procurements from the monitoring sample whose value does not exceed 5,000 EUR, companies actually had only two days to prepare their bids. In these cases, contracting authorities opted for the minimum deadline of five days for submission of bids, but announced their respective procurement notices in a manner whereby the submission deadline runs during weekends, thus effectively decreasing it by two days which, when combined with the loss of the first day when the tender procedure is announced and the last day when the deadline for bid submission expires in the morning, leaves only two days for companies to prepare their bids. Almost half of tender procedures which implied 10-day deadline for submission of bids were announced in a manner so they encompassed as many as two weekends, thus leaving companies only five days to prepare their bids.

Despite numerous recommendations made for contracting authorities to define reasonable deadlines for submission of bids so that companies would be able to prepare their bids, all monitored tender procedures whose value ranges from 500 to 5,000 EUR implied deadlines that run during weekend days. In addition to these two days, by rule, bidding companies also lose the first day when the procurement notice is announced, because they need time to find and review these notices, and the last day because, in almost all cases, the deadline for submission of bids expired by midday. This means that four from the five days defined as deadline for submission of bids are already lost and companies have only two working days to prepare their bids.

Moreover, the fact that it is a matter of so-called small procurements does not mean that procurement subjects and technical specifications are always easy to understand. Below we provide examples of what contracting authorities organizing the monitored tender procedures have required from companies and left them only two days to prepare their bids, thereby raising questions about their honest intent to receive as many and as better bids as possible in order to be able to select the best, the most qualitative and the most cost-effective bid.

The tender procedure concerning procurement of computers needed by one local school included the following list of commodities which the winning company would have to deliver within a deadline of only three days after signing the contract:

- 2 computers (MB G31 RAID, CU Q8200, RAM 2 x 2GB DDR2, HDD 2 x 500GB, ODD DVDRW, CASE Haier Case + 400W Real PSU);
- 6 PCI Card X550;

- 32 monitors (15" LCD HL 1510W); and
- 30 Thin Client XD2.

As it could have been anticipated, only one company submitted a bid and expressly performed the contract:

- Public opening of bids: 17.11.2014
- Selection decision: 18.11.2014
- Contract signing: 21.11.2014
- Delivery deadline: 24.11.2014

Another procurement procedure concerning school and office furniture organized by one local school included the following, very precisely defined commodities and allowed interested companies only two days to prepare their bids:

- 23 school desks (computer table 136*60 cm, steel frame made of 40*30 mm profiles, electrostatically painted and protected with plastic end caps, panel made of laminated chipboard with thickness of 18 mm and ABS edging);
- 3 teacher desks (dimensions 130*60*75 cm, metal frame made of 25*25*1.5 mm profiles, electrostatically painted and protected with rubber end caps, panel made of laminated chipboard with thickness of 18 mm and ABS edging);
- 25 closets (dimensions (w h d) – 900 mm 1800 mm 516 mm, made from laminated chipboard with wooden décor, protected with adequate ABS edging with given dimension and placed on legs; closets should have two doors, one of which should have a lock and both should have handles installed; interior space in the closet should have vertical division in the middle, the left side should have four horizontally divided compartments and the right side should have two shelves and metal bar; the closet backside should be made of the same material);
- 1 cabinet (made of laminated chipboard with thickness of 16 mm and laminated chipboard doors with ABS edging; the cabinet should have four doors in the lower part with shelves for holding logbooks and two doors in the upper part with shelves for 16 logbooks with dimensions 150x100x40 cm).

The third example concerns tender procedure organized by one municipality for procurement of computer accessories and printers which requested submission of unit prices for following items:

- Keyboards (usb connection, features: plug and play USB);
- Computer mouse (usb connection, features: plug and play USB);

- Headphones with microphone (Comfort Fit Stereo Backphone, Microphone In-Line Design, Impedance: 32 ohms Microphone Sensitivity: -58db❖db, Input Plug: 3.5 mm stereo, used as part of conference interpretation systems and intended for audience members, set as minimum requirements);
- Headphones without microphone (Sensitivity: 104 dB Speaker diameter: 40 mm Maximum power, input: 100 mW Impedance: 32, Ohm Connectivity Cable length: 3 m, Input Plug: 3.5 mm stereo, used as part of conference interpretation systems and intended for interpreters, set as minimum requirements);
- Printer connection cable to computer (usb standard connection); UPS Amperes Power, Microprocessor controlled Line, Interactive Technology with voltage regulation system (AVR Boost & Buck) RJ11/45 connectors, (Tel/Fax/Modem protection), Cold start feature if no power supply, Ups automatic restart when mains power restored, Automatic battery charge when UPS OFF energy saving functions audible alarms, with a warranty period of at least one year);
- HDMI cables 1.5 meters long;
- Black and white laser printer, Print speed black (normal, A4) Up to 18 ppm, Up to 600 x 600 x 2 dpi, Category Professional;
- Inkjet printer, Printing Resolution 5,760 x 1,440 dpi, Category Professional, PAPER Number of paper trays 2, Paper Formats A3, A4, A5, A6, B5, C6.

Another example of procurement procedure that allowed companies only two days to prepare their bids concerns services for organized travel with transport and two bed&breakfast days in Istanbul, Turkey, intended for employees and councillors from one municipality.

Another procurement procedure organized by local public utility enterprise defined the following requirements for excavation services:

- machine earth excavation with trencher;
- machine earth excavation with mini excavator;
- machine drilling under asphalt;
- machine cutting of concrete or asphalt;
- digging and filling works on road;
- one-axis road roller for asphalt;
- tamping with vibratory rammer;
- tamping with vibrate plate compactor;

- compressor with concrete-breaker;
- pneumatic concrete-breaker;
- transport trailer for the mini excavator; and
- truck with grapple crane.

Examples of procurement procedures that have effectively reduced the deadline for submission of bids by two weekends were also identified among tender procedures whose value ranges from 5,000 to 20,000 EUR and whose deadlines are set at 10 days.

One such tender procedure concerned procurement of inventory for equipping primary school, where the municipality requested following commodities with very precise definitions concerning their dimensions, design, manufacturing materials, colour, etc.

- 96 school desks;
- 200 student chairs;
- 24 desks for first-graders;
- 48 student chairs for first-graders;
- 22 teacher desks;
- 22 teacher chairs;
- 1 desk for the school principal;
- 1 conference table for the school principal's office;
- 1 chair for the school principal;
- 1 three-winged administrative cabinet;
- 1 two-winged administrative cabinet;
- 1 movable three-drawer casket;
- 5 dactylo chairs for offices;
- 4 four-winged cabinets;
- 1 four-winged cabinet for keeping logbooks;
- 22 green chalkboards.

Below we discuss the detailed descriptions of items to be procured. In the case of school desks, for example, the contracting authority requested their upper side to be manufactured from High Pressure Laminate (HPL) with thickness of 0.8 mm, glued to

18 mm medium-density-fibreboards (MDF) one-side laminated with melamine foil. The HPL should be three-layer with enhanced resistance to mechanical scratches, heat resistance and antibacterial protection (can also be in colour); shelf under the plate with dimensions 126/36/15 cm. Edges processed from profiled beech massive, with final layer of polyurethane lacquer, and the laminate must cover the joint between materials (medium-density-fibreboards and wooden strip). Shelf manufactured from laminated chipboard with d = 16 mm and ABS edging. Frame: steel profile 30/ 40 mm and 2 mm wall thickness, with electrostatically painted finish in black colour and ability for level adjustment.

Having in mind the above discussed issues, contracting authorities are recommended to set reasonable deadlines as part of their public procurements, instead of always opting for the minimum law-stipulated deadline. In the case of small procurements, the law-stipulated minimum deadline for submission of bids is five days, but this type of procurements is rarely announced on Mondays so that bidding companies would have at least three working days to prepare their bids.

Reasonable deadline would mean leaving the companies sufficient time to prepare their bids adequately to procurement subjects and required technical specifications. In cases when procurement notices are announced in a manner whereby they run during weekend days, a reasonable deadline would imply addition of two days to the minimum deadline of five days, i.e. deadline of seven days, to compensate for lost weekend days.

In the case of public procurements whose value is up to 20,000 EUR and imply deadline of ten days, a reasonable deadline would mean sufficient time for preparation of bids. If the deadline of ten days runs during two weekends, it implies a loss of as many as four days and a reasonable deadline in such cases should run for 12 or more days to compensate for the weekends.

Monitoring of public procurements shows that unlike the situation observed in the case of small procurements where the deadline for submission of bids runs during weekend days, in the case of procurements whose values amounts up to 20,000 EUR contracting authorities more frequently set deadlines that are longer than the minimum of ten days stipulated by law.

ABOUT TRANSPARENCY AND ACCOUNTABILITY – PART TWO

Although 95% of contracting authorities whose tender procedures were subject to monitoring actually disclosed information requested by means of FOI, the information they had provided were incomplete. Documents they most often omitted to disclose include those related to the market research they have conducted.

Contracting authorities did not disclose information requested by means of FOI applications for only two from the total of 40 tender procedures comprising the monitoring sample for this period. All other institutions responded to the FOI applications and disclosed most of information requested.

Particularly specific for this monitoring sample is the fact that contracting authorities needed longer time to respond to FOI applications, i.e. not only beyond the deadline stipulated for FOI responses, but even longer compared to previous common practices. As a reminder, information holders are obliged to immediately respond to FOI application and within a deadline of 30 days the latest (or 40 days in cases when the contracting authority needs more time to compile the response).

There is still great discrepancy among institutions in terms of documents they disclose. In that regard, they can be grouped into three categories. The biggest group is comprised of institutions that disclose only information requested. The second group includes institutions that disclose portion of information requested, in that omitting certain documents, at their own discretion. Documents that are most often omitted are those related to the market research conducted by contracting authorities. The third group is comprised of institutions that disclose all documents related to the procurement procedure for which information was requested, irrespective of the fact whether documents in question were requested or not. Documents that have not been requested, but were disclosed by these institutions include copies of procurement contracts signed, documents concerning contract performance, etc.

As regards accountability, again, cases have been observed in which institutions do not comply or circumvent law provisions that guarantee at least minimum accountability on their part.

Hence, in the case of the procurement procedure organized by one small municipality the decision on selecting the most favourable bid includes only one sentence that reads: "The company XXX was selected as the most favourable bidder". The decision does not include any additional explanation of the selection process. Another disputable and frequent occurrence among many contracting authorities concerns the wording used in selection decisions that refers to "selection of the most favourable bidder". The Law on

Public Procurements and the overall procedure stipulated therein put the emphasis on selection of “the most favourable bid” and not “the most favourable bidder”. The point is to select the best bid, irrespective of the company that has submitted the bid, or in other words, procurement procedures are not organized for the purpose of selecting the company, but rather for the purpose of selecting the bid. This is of crucial importance, in particular because throughout the monitoring of public procurements the team conducting monitoring activities has repeatedly indicated that practices in Macedonia are more inclined to selection of the bidder, not the bid. This type of “typing errors” committed by contracting authorities by means of which they indicate “selection of the most favourable bidder” instead of “selection of the most favourable bid” further confirm their erroneous understanding of the entire public procurement procedure.

Furthermore, as part of its records on contracts signed for small procurements and, in particular, under the section where they need to enlist the number of bids, one contracting authority enlisted that it has been presented with four bids although it had previously eliminated three bids on the grounds of being unacceptable and made the selection on the basis of the single acceptable bid. Hence, this type of situations that are frequently observed in the practice provide an unrealistic image about the state-of-affairs by enlisting the number of bids submitted, instead of the number of acceptable bids, or bids among which the selection was made.

In the case of some contracting authorities, practices were observed whereby they do not indicate the number of bids in their notifications on contracts signed, although the template for such notifications anticipates enlistment of such data. By engaging in such unaccountable practices, these institutions deprive the public of very important information, such as competition level in tender procedures they have organized which, inter alia, could affect the manner in which the institution in question implements public procurements.

Another omission observed in this regard includes cases of procurements with a number of lots where under the relevant section on the number of bids, almost by rule, all contracting authorities enlist the number of all bids received for all procurement lots, instead of publishing data about the number of bids received under individual procurement lots. According to the Law on Public Procurements, each and every lot in a procurement procedure is treated individually and separately, especially in terms of tender competition, meaning that individual bids are submitted and individual e-auctions are organized for each and every lot in the procurement procedure, provided there are more than one bids submitted for that lot. For example, if a public procurement is divided into three lots and the contracting authority was presented with a total of three bids, one for each procurement lot, information that the tender procedure received three bids does not provide the actual image about tender competition, because in reality there is no competition under individual lots knowing that each lot received only one bid.

Above-indicated remarks reiterate the recommendation that institutions should increase their transparency and accountability on the manner in which they spend public funds. First, they need to adherently publish all information they are obliged to make public by law or information they are expected to disclose by filling-in templates related to public procurements. Second, contracting authorities should voluntarily disclose information they are not obliged to make public by law, but are in possession thereof, and are indicative of the manner in which they spent public funds. Ultimately, this will increase companies' trust in contracting authorities and can contribute to resolution of one of the biggest problems affecting public procurements in Macedonia – low competition in public procurements.

LATE PAYMENT – A PROBLEM AFFECTING HALF OF SURVEYED COMPANIES

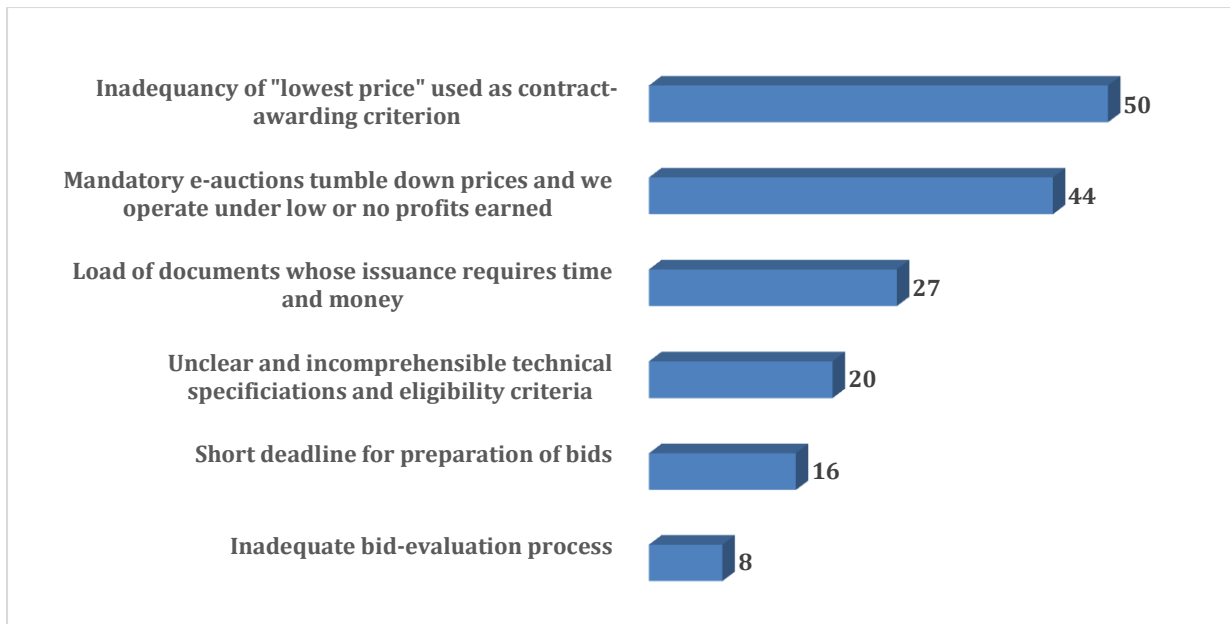
Inadequacy of “lowest price” defined as the only contract-awarding criterion and tumbling down of prices as a result of mandatory e-auctions are the two biggest problems faced by companies participating in tender procedures organized and implemented on local level. More than half of companies surveyed are also facing the problem of late payment for public procurement contract performance.

The research conducted in the period April –June this year included direct survey of 171 small companies that usually participate in tender procedures organized by local institutions. The multitude of questions, inter alia, requested companies to indicate most frequent problems they face when participating in public procurements and in the course of public procurement contract performance and allowed them to select multiple answers from the pre-defined list of problems.

The two problems most frequently indicated by surveyed companies are: inadequacy of “lowest price” defined as the only criterion for contract-awarding and tumbling down of prices at mandatory e-auctions, which results in companies operating with low or no profits earned.

Next most frequently indicated problems include the load of documents imposed on companies for tender participation and unclear and incomprehensible technical specifications and eligibility criteria for tender participation.

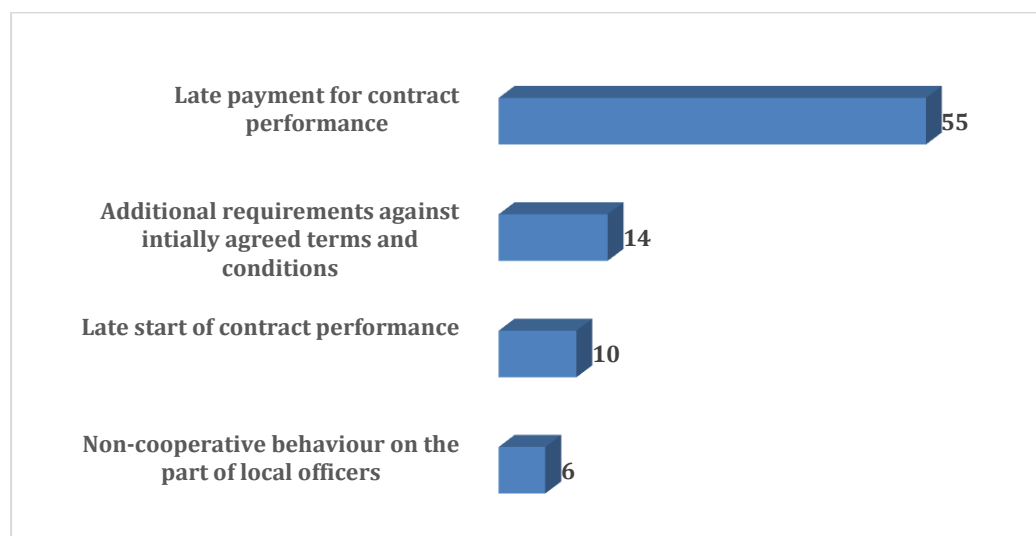
Figure 5. The most frequent problems faced by companies when participating in local tender procedures (expressed in shares)



As regards problems faced by companies in the course of public procurement contract performance, the most frequently indicated problem that emerged from their answers is undoubtedly late payment for contract performance. As high as 55% of surveyed companies indicated late payment for contract performance as the most frequent problem they are facing in this stage of public procurements.

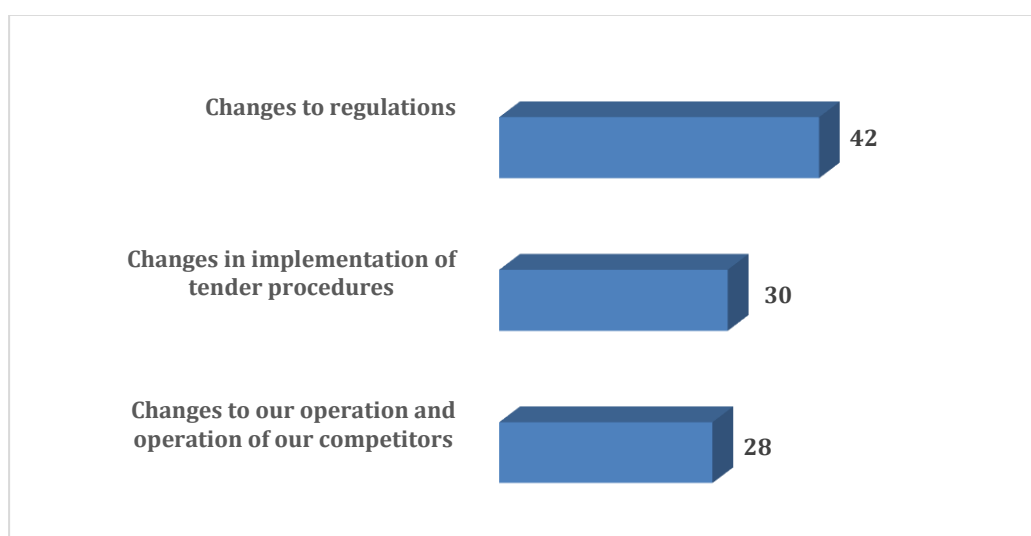
Other frequently indicated problems related to contract performance include burdening of contracts with additional requirements imposed by contracting authorities against the initially agreed terms and conditions and late start of contract performance.

Figure 6. The most frequent problems faced by companies in the course of public procurement contract performance (expressed in shares)



When asked what needs to be changed for companies to participate in more public procurement procedures, majority of them responded that a precondition for their participation would be changes to regulations governing public procurements. Less than one third of surveyed companies reported that they would participate in more tender procedures when state institutions change their practices related to implementation of tender procedures, while a significant share of them admitted that their possible greater participation in tender procedures depends on changes to their operation or operation of their competitors.

Figure 7. What needs to be changed for your company to participate in more public procurements?



The conclusion inferred on the basis of surveyed opinions and experiences shared by representatives of small and microenterprises in terms of their participation in public procurements organized and implemented by local institutions is the existence of serious need for these companies to be consulted in the process on drafting public procurement regulations.

The fact that it is a matter of small companies, based in local environments, which are not organized in any form for the purpose of articulating joint positions and problems, puts these companies in an utterly disadvantaged position and makes them one of the most vulnerable categories in the country.

Therefore, in addition to their engagement in the process on drafting regulations, these entities need to be addressed with activities aimed to improve their information, increase their skills and capacity, and raise their awareness on possibilities offered by the market of public procurements, as well as manners in which they can utilize these possibilities.