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Policy Brief

TRANSPARENCY IS NOT SUFFICIENT TO IMPROVE STATE-OF-AFFAIRS IN PUBLIC PROCUREMENTS

Skopje, October 2019

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ABBREVIATIONS

BPP	– BUREAU OF PUBLIC PROCUREMENTS
SCPC	– STATE COMMISSION FOR PREVENTION OF CORRUPTION
EPPS	– ELECTRONIC PUBLIC PROCUREMENT SYSTEM
RNM	– REPUBLIC OF NORTH MACEDONIA

SUMMARY

Publication of more information and documents related to tender procedures in the last several years has contributed to increased transparency of the system of public procurements in the country, but this trend was not accompanied with improved integrity and accountability of the institutions that implement tender procedures.

Among others, public procurement contracts became part of documents that are mandatorily published in the Electronic Public Procurement System (EPPS) and annual plans for public procurements and procurement notices are more often uploaded on official website of the institutions.

That allowed the interested public an opportunity for greater insight in public spending, but having in mind that implementation of public procurement procedures is still burdened with corruption and inadequate spending of public funds, instead of decreasing, the public's distrust in the system of public procurements remains at exceptionally high level.

Only few institutions have internal rules for public procurements, especially rules that govern aspects that are not precisely regulated by the law. The implementation rate of plans for public procurements continues to be one of the main weaknesses in the system of public procurements. High

share of public procurements presented with only one bid continues year after year, with unreduced tempo. Similar is the situation in regard to high concentration of public procurements with small number of companies and the trend on tender annulment.

Thus far, the new Law on Public Procurements, which entered into effect in April 2019, does not contribute greatly to addressing long-standing problems because the institutions, in general, have maintained old practices starting from procurement needs assessment, through planning of public procurements, to implementation of tender procedures and performance of procurement contracts.

Hence, implementation of public procurements in the country should be paid much greater attention; the capacity of entities implementing tender procedures should be significantly improved; the Bureau of Public Procurements (BPP) should be enabled to perform its increased competences, especially those related to control over implementation of tender procedure; the trend on taking measures aimed to further improve transparency and openness of public procurements should continue, with parallel emphasis on improving other aspects of public procurements, such as accountability and integrity.

INTRODUCTION

Even before the new Law on Public Procurements¹ entered into effect in April 2019, the institutions enforcing this legislation (contracting authorities) were obliged, from December 2017, to publish procurement contracts and possible annexes thereto in the Electronic Public Procurement System.

Previously, the Government obliged line ministries, from November 2017, to publish information and documents from the so-called list of 21 documents, which included annual plans for public procurements.

Under the new law, all institutions must publish in EPPS the so-called plan dossier, i.e. they are obliged to publish their 2019 plans, but in different format and without the column on procurement's estimated value.

Under the Open Government Partnership's National Action Plan 2018-2020,² all institutions are obliged to publish on their official websites a series of information and documents related to public procurements, such as: annual plan for public procurements, procurement notices, notifications on contracts signed and notifications on contracts performed, as well as procurement contracts and possible annexes thereto.

In July 2018, after it was established that this obligation is not complied with, as part of its direct competences the Government tasked institutions to mandatorily publish this set of information on their websites.

Previously, the Bureau of Public Procurements enabled institutions to post hyperlinks to this information on their websites, which also lead to information and documents already published in EPPS.

In the middle of 2017, the so-called overview function was introduced for tender documents related to ongoing procurements without an obligation for entities using this option to be registered in the Electronic Public Procurement System.

By the end of 2016, the institutions were enabled to post hyperlinks to basic contract and annexes thereto, although at that time these hyperlinks led only to notifications on contracts signed, but did not allow access to contracts signed and annexes thereto.

Requirements for implementation of all these measures aimed to increase transparency and followability of tender procedures were put forward by the civil sector and, by association, international organizations and institutions.

Although all contracting authorities did not fully comply with these measures aimed to improve transparency in public procurements, they still resulted in certain improvement of state-of-affairs in the last several years.

In that, due consideration should be made of the fact that transparency is of crucial importance in terms of enabling citizens to engage in this process. Hence, in the last several years, citizens started to "keep an eye" on the market of public procurements, which was perceived as predestined for companies and for institutions. They realized that their taxpayer money is being spent and that they have the right to know whether funds are spent in purposeful and rational manner. More specifically, they are entitled to know whether the public procurement, in addition to meeting needs of the particular institution, has broader positive effect.

Greater transparency allowed more journalistic research stories and more initiatives from civil society organizations that focus on public spending through public procurements.

Unfortunately, this trend in transparency was not replicated in regard to accountability and especially in regard to integrity of the institutions when implementing public procurements, which are key indicators for their overall performance and, on the other hand, for detecting certain wrongdoings and corruptive behaviour.

¹ Published in the Official Gazette of the Republic of Macedonia no. 24 from 1 February 2019 (link to the law's text: http://www.bjn.gov.mk/wp-content/uploads/2019/05/ZJN_Sluzben-vesnik_24-2018-od-01.02.2019.pdf)

² OGP National Action Plan is available on the following link: http://www.mioa.gov.mk/sites/default/files/pbl_files/documents/ogp/nap_4_ogp_usvoen_na_vlada.docx

CURRENT STATE-OF-AFFAIRS

Increased transparency of the system of public procurements in the country does not mean that the desired level has been achieved. Most institutions still do not publish information that should be made publicly available.

Research studies conducted by civil society organizations³ show that the dynamics in terms of implementing obligations related to transparency is faster compared to stagnation observed in regard to accountability and integrity in public procurements, which prevents positive effects of transparency to be actually felt.

In North Macedonia, public procurements are implemented through the single internet-based information system, i.e. Electronic Public Procurement System.⁴ In that, EPPS hosts a multitude of information, data and documents on tender procedures which, for the most part, contracting authorities are obliged to publish in this system.

EPPS's special section titled "open data"⁵ is another contribution towards transparency in public procurements, notably because it contains summary and processed data on procurement notices, contacts signed and tender annulments, which can be browsed per institution, per period and per company, and can be cross-referenced.

Unlike mandatory publication in EPPS (which is not always complied with and pursued within law-stipulated deadlines), research studies conducted by civil society organizations indicate that the institutions voluntarily publish only small portion of information and documents in addition to those whose publication is mandatory.

Hence, among 21 analysed institutions (government, line ministries, government secretariat and parliament), as many as 86% publish annual plans for public procurements on their websites, but less than half of them (48%) publish information about procurement notices (as hyperlink to complete notices hosted on EPPS). Less than 10% of institutions publish notifications on contracts signed (as hyperlink to complete notifications hosted on EPPS), while 29% publish contracts signed and possible annexes thereto. Not a single institution publishes notifications on contract performance.

This situation is even worse at the level of municipalities. In particular, 14% of municipalities publish their annual plans, 10% of them publish

procurement notices, and only 9% of municipalities publish notifications on contracts signed.

In the recent period, deterioration is observed also in regard to obtaining information from institutions under the instrument for free access to public information. The fact that the Commission for Protection of the Right to Free Access to Public Information is not functional for year and a half due to insufficient members appointed thereto, which prevents this body to collectively take decisions, has been abused by the institutions, whereby their average response time to information requests is calculated at 40 days, although the law-stipulated deadline is set at 30 days and the new law, which should enter in effect in November this year, stipulates an even shorter deadline of 20 days. A multitude of important information and documents related to tender procedures are not publicly available and access thereto can be obtained only under the instrument for free access to public information.

Be that as it may, increased transparency that is still facing problems in terms of compliance has proved to be insufficient in order to improve state-of-affairs in the system of public procurements. Transparency allows monitoring of implementation of public procurements by more journalists, media outlets and civil society organizations, and grants citizens greater insight in public procurements.

However, research studies show that, in parallel with efforts for greater transparency of the system of public procurements, institutions only slightly improved other, maybe more important, aspects of this system, i.e. accountability and integrity in public procurements. Many indicators used to measure performance of the system of public procurements are slowly improving despite the series of measures undertaken, primarily in relation to the legislation.

Average compliance demonstrated by institutions with the criteria on transparency, accountability and integrity stands at 55% from maximally possible 100%, which means there is still vast space for improvement. Although some institutions demonstrated compliance with the criteria of up to 70%, others belong to the compliance range of 30% to 40%. Internal procedures and rules are not in place for unregulated spheres

³ <http://www.integritet.mk/>

⁴ <https://e-nabavki.gov.mk/PublicAccess/Home.aspx#/home>

⁵ <https://e-nabavki.gov.mk/opendata-announcements.aspx#/home>

from the cycle of public procurements; the average number of bidding companies per tender procedures is very low (barely above 3; there is unserious approach to implementation of plans for public procurements; appeals lodged by companies against decisions taken by institutions are more frequently approved; there is high concentration of small number of companies in public procurements; and tender annulment is marked by trend of continuous increase.

Having in mind that, in 2018, the total annual amount spent on public procurements was 754 million euros, while the average compliance rate of institutions with obligations on transpar-

ency, accountability and integrity stood at 55%, it could be concluded that more than 400 million euros annually are under risk of poor implementation.

However, majority of these indicators are not covered by specific law-stipulated obligations but they reflect the manner in which tender procedures are implemented by staff members at institutions, their personal integrity and attitude towards public procurements, and therefore possible improvements could be expected as a result of change in their conduct and better understanding of this sphere.

RECOMMENDATIONS FOR IMPROVEMENT

Relevant to multi-layered problems that affect public procurements, recommendations for improvement concern all above elaborated spheres in the system of public procurements.

As regards transparency, a major step forward would be adherent compliance with the recommendation for publication of a set of documents on official websites of institutions that implement tender procedures.

Furthermore, all data in EPPS should be published in open format, thereby allowing easier use and understanding thereof. That would facilitate a multitude of analyses that are currently missing and could serve as baseline for further improvement in the system of public procurements.

Also, data in EPPS should be linked with data in the Central Register, thereby facilitating detection of possible abuses in tender procedures for corruptive purposes.

People involved in public procurements and institutions where they are employed should utilize potentials of the new Law on Public Procurements and make efforts to attain the underlying principles in public procurements: cost-effectiveness, efficiency and effectiveness of public spending; competition among economic operators; transparency; equal treatment and non-discrimination of economic operators; and proportionality.

Institutions should realistically and honestly assess their procurement needs and based on those assessments they should adherently and precisely develop their respective annual plans for public procurements.

Whenever possible, efforts should be made for lowest price, which is no longer defined as the single selection criterion for contract award, to be

correlated with other elements in order to ensure that procurement procedures result in obtaining the best value for the money spent.

Individual institutions, on their side, should make efforts to implement tender procedures in a manner that would attract as many as possible interested companies and would increase competition in tender procedures. Publicity, accountability and integrity of public procurements serve as guarantees for greater competition and, consequently, better quality of goods, services and works procured.

Public procurements should be viewed as a cycle that starts with needs assessment for particular goods, services or works, and ends with performance of procurement contracts and evaluation about fulfilment of initially assessed procurement needs.

Special attention should be paid to performance and management of procurement contracts, by public disclosure of information on performance of these contracts.

Also, competent institutions, primarily the Bureau of Public Procurements, should organize large-scale training for adherent enforcement of the new law, especially in regard to setting criteria for selection of the most favourable bid, and for application of the underlying principles in public procurements. That would necessitate development of a series of manuals, guidelines, self-evaluation lists and other documents to be used by contracting authorities.

On the other hand, large-scale and free training should also be delivered to micro and small enterprises in order to increase their participation on the market of public procurements.

Cross-border opening of public procurements and greater participation of foreign bidders are another major challenge that could be resolved by reducing corruption and increasing transparency of tender procedures.

Adherent enforcement of new competences assigned to BPP in terms of administrative control over implementation of public procurement procedures is of key importance for serious approach on the part of institutions to public procurements and for reducing malpractices and corruption. Such controls should be implemented in regu-

lar, non-selective and professional manner and pursuant to risk indicators based not only on the institutions' behaviour, but also at the level of individual tender procedures.

Finally, the system of public procurements will be significantly improved when the overall system for fight against corruption is fully functional, which includes a series of other institutions such as State Audit Office, State Commission for Prevention of Corruption, State Commission on Public Procurement Appeals, public prosecution, judiciary, etc.

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