

# **MONITORING OF THE IMPLEMENTATION OF CENTRAL LEVEL PUBLIC PROCUREMENTS IN THE REPUBLIC OF MACEDONIA**

## **FIRST QUARTERLY REPORT**



## Monitoring of the implementation of the public procurement procedures in the Republic of Macedonia - First quarterly report

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# QUARTERLY REPORT ON MONITORING THE IMPLEMENTATION OF CENTRAL LEVEL PUBLIC PROCUREMENTS IN THE REPUBLIC OF MACEDONIA

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## EXECUTIVE SUMMARY



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In the period November 2008 – November 2009, the Center for Civil Communications (NGO) from Skopje will monitor public procurement implementation in the Republic of Macedonia, as regulated under the Public Procurement Law. Subject of analysis will be public procurements implemented by contracting authorities of central level public administration bodies. Total of 160 public procurements will be subject to monitoring activities (40 per quarter).

For the purpose of obtaining complete overview of public procurement implementation process, the present analysis includes direct monitoring activities on public procurement calls for bids, attending opening of bids for sampled public procurement procedures, as well as designing structured questionnaires for economic operators participating in the sampled procurements and structured questionnaires for contracting authorities.

The monitoring aims at assessing the implementation of public procurement procedures in the Republic of Macedonia in light of the new Public Procurement Law and

determining application of basic principles as follows: transparency, competitiveness, equal treatment of economic operators, non-discrimination, application of legal provisions, cost-effectiveness, efficiency, effectiveness and cost-effective budget spending, tendency of awarding the contract to the bid offering most favorable conditions (best value for the money), and accountability.

Monitoring activities from the first quarter resulted in following general remarks on the process:

- annual procurement plans are frequently amended, thus indicating poor annual needs programming skills;
- despite decisive legal provision, tender documents are not uploaded on contracting authorities' websites, from where they can be downloaded by economic operators thus saving them money and shortening procedure's duration;
- the legally stipulated possibility on engaging external experts in the process on developing technical documents and bid assessment is not utilized by contracting authorities;

- as regards eligibility criteria and technical specifications development, cases were recorded of inappropriate provisions and procedures enabling discrimination of economic operators;

- high percentage of annulled procedures (17.5% of sampled procedures) indicate poor development of tender documents resulting in waste of time and money and affecting economic operators' trust;

- imprecise legal provisions regulating deadlines on procurement awarding decision-taking provide for individual interpretation and result in procedures' duration of more than three months;

- public procurement commissions do not apply legal provisions stipulating the mandatory submission of notifications on reasons for awarding or rejecting the bid in question;

- most bids are rejected on grounds of formal shortcomings;

- few bidders appeal procurement-awarding decisions, which can partially be attributed to recently adopted legal provisions;

- contracting authorities are late as regards payment of public procurement contracts, thus negatively affecting

the operation of economic operators and implementation rate of contracts signed;

- 1/3 of public procurements in the first six months of 2008, i.e., in the total value of 2,192,334,631.38 MKD were contracted under limited call for bids and negotiated procedures without call for bids, thus indicating poor transparency of public procurements;

- statistics on procedures implemented and contracts signed as gathered, processed and analyzed by the Bureau of Public Procurements enable quantitative analysis thereof, and do not provide for qualitative and analysis of public procurements; dynamics, assessment of cost-effectiveness, efficiency and effectiveness of public procurements implemented in the Republic of Macedonia.

Considering remarks presented in the present report, the Centre for Civil Communications recommends as follows:

- tender documents to be published on contracting authorities' websites;

- to acquit practices on charging tender documents issuance, whenever possible;

- to avoid setting bank guarantees at the highest stipulated level of 3% from the procurement's value;
- the Bureau of Public Procurements should develop standardized templates on public procurements per category, for the purpose of unifying procedures as far as possible;
- to develop recommendations and guidelines for contracting authorities as regards evidence and documents required from economic operators in light of eligibility criteria and avoiding discrimination thereof;
- to deliver training for public procurement commission members as regards the newly adopted Public Procurement Law;
- to guarantee continuity of operation among trained members;
- contracting authorities should pay greater attention and time to tender documents development, notably technical specifications, for the purpose of avoiding assessment of certain criteria, but subjecting them only to proof of eligibility;
- to introduce legal provisions on mandatory submission of bid-assessment reports to all economic operators participating on the call for bids;
- Bureau of Public Procurements should be tasked with supervision of legal proceeding in public procurements;
- to consider the introduction of provisions on mandatory submission of public procurement contract awarding decisions to the Attorney General in light of examining awarded contracts' compliance with the procurement awarding decision taken;
- to restructure data processing as gathered by the Bureau of Public Procurements in light of enabling both quantitative and qualitative analysis, as well as analysis of public procurement implementation dynamics;
- Bureau of Public Procurement to identify all entities obliged under the Public Procurement Law;
- reports issued by the Bureau of Public Procurements must provide comprehensive analysis of and comments on all public procurement elements and aspects and include new dimension in terms of contents, as they should also include analysis, assessments, comments, findings, conclusions and recommendations related to cost-effectiveness, efficiency and effectiveness of public procurements implemented in the Republic of Macedonia.

The present quarterly monitoring report and recommendations therein shall be submitted to all competent authorities and other interested organizations and institutions.

Acknowledgement: Centre for Civil Communications would like to express its gratitude to the Bureau of Public Procurements for the support provided, as well as to acknowledge the valuable feedback provided by contracting authorities and economic operators, and the Foundation Open Society Institute - Macedonia for its financial project support.

Considering that certain contracting authorities and economic operators declined their participation in the monitoring activities, the Centre would like to reiterate the need for greater transparency on behalf of contracting authorities and business entities in light of eliminating possibilities and concerns on public procurement corruption in the Republic of Macedonia.



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## DETAILED REPORT



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**Public procurement plans – deadlines for their adoption are observed, but frequent amendments to public procurement plans throughout the year indicate poor procurement needs programming skills**

As a rule, contracting authorities are unable to develop annual public procurement plans before the enactment of the state budget, the latter allocating exact funds available for public procurements. As the state budget is enacted and published at the end of each year, January the following year is legal and actual deadline for adoption of public procurement plans. Most contracting authorities apply this deadline.

One to several amendments to public procurement plans are common for most contracting authorities throughout the year, indicating that public procurement needs programming fails in terms of factoring-in actual procurement needs. External factors account for amendments to public procurement plans in certain cases, such as, for instance, budget rebalance and Government's instruction on particular public procurement, initially unaccounted for in the annual procurement plan of the relevant contracting authority.

**Tender documents uploading and downloading – despite decisive legal provisions in this regard, tender documents are not uploaded on contracting authorities' websites, thus disabling monetary and time savings for economic operators and shortening procedure's duration**

Electronic publishing of tender documents on relevant websites is rarely applied in practice, despite the given possibility and on-line resources at almost all contracting authorities. Therefore, contracting authorities fail to use the legal possibility provided on shortening procurement's duration for at least 5 days.

Previously explained situation is also related to common practices among contracting authorities on charging economic operators for tender documents issued. Should tender documents be made available on-line, contracting authorities would no longer impose unnecessary charges thereon.

Bank guarantees were most commonly mentioned in the feedback provided by economic operators. Notably,

although the threshold stipulated in the relevant legislative act designates up to 3% of the procurement's total value, usually the highest threshold of 3% is required, thus disadvantaging economic operators, especially those bidding on several tenders at the same time.

**Recommendation:** Contrary to decisive provisions in the Public Procurement Law as regards electronic publishing and downloading tender documents and promoting procedure efficiency and cost reduction for bidding parties, common practices indicate inappropriate application of such provisions. Therefore, electronic publishing of tender documents should be promoted, as well as abolishment of established practices concerning collection of charges on tender documents issued, whenever possible.

For the purpose of enabling more bidders to participate and thus enhance the competition, contracting authorities should be instructed to abstain from setting bank guarantees at the highest legally stipulated threshold of 3% from procurement's total value.

### **Engagement of external experts – rarely applied legal possibility**

Legal provisions providing the engagement of external experts that would assist public procurement commissions in terms of assessing technical, financial and other matters related to bids are rarely applied in practice. Services of external experts have been used in few procedures, that is, in cases when contracting authorities did not dispose with relevant internal expert staff on tender documents development and evaluation of bids due to procurement of specific commodities and/or services. However, cases were also registered of contracting authority repeatedly utilizing services provided by same expert on specific commodity/service procurements.

### **Setting eligibility criteria and developing technical specifications – in general, these are precisely developed, although cases have been recorded on provisions and procedures with possible discriminating effects**

Although such criteria are – in principle – precisely developed and non-discriminatory, cases were recorded on

eligibility criteria that impose terms and conditions unrealistic for small or newly established economic operators; requirements of additional evidence in support, although particular documents confirm the fulfillment of several conditions, as well as additional certificates and documents imposed to foreign economic operators.

Economic operators frequently pointed out the unprofessional relations and lack of competence on behalf of public procurement commission members as regards tender document development and procedure management.

**Recommendations:** As procurements address various goods/services, adoption of primary and secondary legislative provisions on technical specification development are neither recommended nor feasible. Nevertheless, certain procurement types can be unified by means of standardized templates developed by the Bureau of Public Procurements but only to a certain extent. Eligibility criteria should not be a matter of legal regulations, but of best practices, i.e., contracting authorities should be recommended and guided in terms

of evidence and documents required from economic operators for the purpose of avoiding discriminatory practices.

Considering the relatively recent enactment of the Public Procurement Law, it is necessary for public procurement commission members to be appropriately trained thereon and to secure continuity in the operation of commission members already trained.

**Bid-assessment – greater attention should be paid to setting bid-assessment criteria in light of eliminating possible malpractices**

Bids are often rejected on the grounds of high prices, which is not solely the case in justifiable and legally stipulated situations. When a single bid is submitted in a specific procurement procedure, the commission is entitled to reject it on the grounds of exceeding the estimated value (available funds), i.e., it is entitled to annul the procurement procedure. However, when several acceptable bids are submitted, the commission is obliged to assess even those

exceeding the estimated value of the procurement, instead of rejecting them immediately.

Bidders are divided in their opinion as regards the objective criteria and definitions thereof. Those believing that criteria are subjectively developed have serious remarks on the fact that price is the single criteria for procurement awarding, or that too much weight is given to quality, thus providing space for subjective assessment and malpractices. Criterion on quality should not be set and ranked, especially in cases of procuring goods/services required to fulfill particular standards (for example, ISO and like). On the other hand, malpractice is reduced when price is the single criterion, but such cases provide for selection of cheap goods/services at the detriment of quality (this is of particular importance in regard to procurement of medicines).

Most commonly, “economically most favorable bid” is defined as bid-assessment criteria, while “lowest price” appears as such in smaller number of procurements. When the selection criterion is defined as “economically most favorable bid”, price and quality are taken into consideration

but at different ranking, accompanied by other bid elements considered as less relevant for ranking, such as, for instance, delivery deadline and payment terms.

Cases were recorded when the criterion “price” was the highest ranking one, but the most expensive bid was awarded the procurement contract, as well as those where bidders were prevented from obtaining insight in bid-assessment minutes and reports, which is contrary to the principles of transparency and objectiveness.

**Recommendations:** Contracting authorities should pay greater attention and time to tender documents development, notably technical specifications, for the purpose of being able to exempt certain criteria from assessment and ranking procedures, but merely stipulate them as evidence of bid’s eligibility. This will enable contracting authorities to take procurement-awarding decisions based on one criterion – price, but will guarantee bidders’ fulfillment of other terms and conditions in the assessment stage (prior to ranking) so that they can enter the stage of being ranked according to the price offered.

**Procurement-awarding decision/decision on public procurement procedure annulment and deadlines thereof – high percentage of annulled procedures indicates poorly developed tender documents and waste of time and money, resulting in economic operators' distrust, while individual interpretations of legal provision's vagueness as regards decision-taking deadlines often lead to delayed decision-taking, sometimes longer than three months**

Decision on selecting the most favorable bid was reached in only 60% of the sampled public procurements. 22.5% of public procurements are not completed, as decisions have not been taken, while 17.5% of sampled procurements were annulled.

High percentage of annulled public procurements indicates poor development of tender documents resulting in waste of time and money and affecting economic operators' trust.

Although there are no legally stipulated deadlines on decision-taking, in practice decisions are made within a period of 15-20 days from the day of public opening of bids.

Nevertheless, cases have been registered on public procurements, whose assessment and decision-taking period are unduly delayed (sometimes up to 96 days), indicating inefficiency in their proceedings.

Contracting authorities adhere to the legally stipulated deadline of 3 days as regards submission of notification on procurement-awarding decision to economic operators, while some – in light of speeding the procedure as the appeal deadline is expiring – forward notifications via fax.

**Recommendations:** In light of increasing the rate of successfully completed public procurements, consideration should be made on introducing supervision and assessing objectiveness of decisions taken on procedure annulment, as well as imposing sanctions to commission members on the grounds of subjective performance. For the purpose of accelerating and making procurements effective, and avoiding to keep economic operators in suspense and tying their finances by means of bank guarantees, legally binding deadlines on decision-taking should be introduced depending on procurement's value or number of bidders. An alternative to this recommendation

could be the consideration on introducing maximum deadlines on decision-taking as a binding obligation of public procurement commissions.

**Decision rationale and decisions' compliance with bid-assessment criteria – public procurement commissions do not adhere to the legally stipulated provision on providing reasons behind decisions on procurement awarding or rejection of bids based on formal shortcomings**

Most economic operators comment on the fact that procurement-awarding decisions and notifications thereof disregard legal provisions on providing reasons behind the selection of the most favorable bid or reasons for rejecting the bid in question, since decisions taken by public procurement commissions simply list the bid selected as most favorable without any further explanations.

Procurement-awarding decisions taken are in compliance with bid-assessment criteria developed, but often many bids are rejected on various formal shortcoming grounds in the eligibility assessment stage, thus leaving a single bid in the ranking stage as the only acceptable one, although

terms and conditions therein as regards price, quality and like, were not the most favorable ones.

**Recommendation:** As the non-application of mandatory submission of notification on the procurement-awarding/rejection of bids is more than obvious, consideration should be made on introducing legal provisions for submitting public procurement proceedings' report to all tender participants in light of improving transparency.

**Appeal procedure – small number of bidders appeal the procurement-awarding decision taken, partially due to most recent legal provisions in effect from the beginning of the monitoring period**

Few economic operators participating in sampled public procurement procedures appealed the final decision, partially due to fact that number of sampled public procurements is still pending final decisions, but also due to most recent legal provisions on appeal procedures in effect from the end of last year, i.e. beginning of the present monitoring project.



Appeal allegations most often concern following: procurement-awarding decision contents; contesting the eligibility of the bidder awarded the contract; and elements factored in the criterion “economically most favorable bid”. Appeal allegations occasionally require cancellation of final decision taken and re-assessment of bids, while on other occasions appeals contest the entire public procurement procedure.

Only a handful appeals were responded to; economic operators assess appeal answers as inappropriate, i.e., insufficiently justified or unjustified. Also, in the opinion of economic operators participating in public procurement procedures sampled, 2 public procurement procedures failed to respect the deadline on taking decision upon previously submitted appeals (15 days from the day of appeal’s submission). None of interviewed economic operators sought further legal remedies against the decision taken by the State Commission on Public Procurement Appeals.

Due to the recent establishment of the State Commission on Public Procurement Appeals, no assessment can be made on the operations thereof, notably in regards to rationale of decisions taken upon appeals.

### **Implementation of public procurement contracts – contracting authorities are late with payments of contracted procurements**

Economic operators had serious remarks on the late payment of contracted procurements, sometimes exceeding the period of 10 months from the implementation of the procurement in question. This negatively impacts the operation of companies and implementation rate of public procurements. Supervision is lacking both in terms of contracting authorities’ proceedings and procedure management, as well as the implementation of contracted procurements.

**Recommendations:** The Bureau of Public Procurements should be tasked with supervision of legal proceeding in public procurement procedures, and consideration should be made on the possibility for submitting procurement contracts signed to the Attorney General (in cases when public administration bodies appear as contracting authorities) that would provide supervision over signed contracts’ compliance with the decision on selecting the most favorable bid.

**Statistics on public procurement procedures implemented and contracts signed in the Republic of Macedonia gathered, processed and analyzed by the Bureau of Public Procurements – data processing should be restructured so as to enable both quantitative and qualitative, as well as analysis of public procurement procedures' dynamics, and assessment cost-effectiveness, efficiency and effectiveness of public procurement procedures in the Republic of Macedonia**

Most statistics and indicators on public procurement procedures can represent good basis for thorough analysis and assessment of the economic and legal systems applied in this area of great importance. However, the contents provided in the report (six months) issued by the Bureau of Public Procurements and data and indicators therein do not provide sufficient and accurate basis for transparent public information on public procurement procedures in terms of:

- legal provisions and regulations applied in public procurement implementation;
- dynamics and analysis of public procurement funds;
- effects of public procurement procedures on public consumption; and

- adherence to basic economic standards and principles of public spending management, principles of cost-effectiveness, efficiency and effectiveness.

The above presented opinion is based on following:

- reports issued by the Bureau of Public Procurements provide overview of public procurement statistics in the Republic of Macedonia void of statements, comments, analyses, findings, conclusions and recommended measures on improving public procurement processes in the Republic of Macedonia;
- statistics are expressed in absolute figures and do not provide comprehensive review of public procurement procedures. Also, they do not provide analysis of scope, comparison of public procurement dynamics and series that would enable accurate and actual identification of tendencies thereof;
- the Bureau of Public Procurements does not provide analyses, assessments and comments on the high number of public procurements awarded under limited calls for bids procedure. 74.4% of public procurements are awarded under this limited procedure, i.e., 6,449 from the total 8,668 procurement contracts in the period January-June

2008 (5,517 without call for bids and 932 with call for bids announced). Total value of such procurement contracts amounts to 1,435,402,150.15 MKD or 18.8% of the total value of public procurements. Such practices could be indicative of poor transparency in public procurement procedures;

- the number of contracts signed under the previously given procedure (6,449) together with the number of public procurement contracts awarded under negotiated procedure (544) in the total amount of 756,932,461.23 MKD provide for the total number of public procurement contracts awarded under non-transparent procedures in total number of 6,993, accounting for 80.7% of all public procurement contracts (8,668), in the total amount of 2,192,334,631.38, MKD and account for 28.7% or almost one-third of total public procurements value in the Republic of Macedonia;

- no analysis is performed on public procurement amounts according to procurement type, such as for example, permanent, capital, assets, movable and immovable property and other assets of permanent character, turnover assets, inventory and other assets of temporary character, etc, for the purpose of monitoring principles of cost-effectiveness, efficiency and effectiveness in public

consumption expressed as public spending, budget beneficiaries, local municipal budgets and budgets of other public institutions, public utilities and semi-public institutions in the Republic of Macedonia;

- the report contains descriptive and/or insufficiently defined categories on public procurement structures, making it difficult for ordinary readers and the public to follow indicators and infer conclusions on the public procurement type and character;

- the report contains indicators on notifications issued by contracting authorities and concerning public procurement procedure annulment, but the presentation, analysis and quality thereof are not of satisfactory level to guarantee full monitoring of public procurements in this segment;

- the report encompasses the 700 contracting authorities registered on the Bureau of Public Procurements' web-based information system in the first six months of 2008, but fails to ensure comprehensiveness of public procurement data presented and prevents reliable and accurate conclusions on public procurement procedures' transparency, cost-effectiveness, efficiency and effectiveness.

**Recommendations:** Application of the principle of transparency public procurement procedures is low, thus resulting in the inability to justify public procurement needs in terms of cost-effectiveness, efficiency and effectiveness. Therefore, following is recommended:

- restructuring data processing performed at the Bureau of Public Procurements in light of enabling quantitative, as well as quantitative and analysis of public procurement procedures' dynamics;
- the Bureau of Public Procurements should identify all entities obliged under the Public Procurement Law for the purpose of establishing accurate, comprehensive and efficient system of statistical, financial and legal analyses of public procurement procedures;
- the Bureau of Public Procurements should provide timely public information by publishing monthly, six-months and annual reports on public procurements implementation in the Republic of Macedonia including comprehensive analyses and comments on public procurement elements and the appeal thereof in front of the State Commission on Public Procurement Appeals and competent judicial bodies, as well as elements concerning the cooperation with competent executive, judicial and

authorities fighting crime and corruption in this field;

- reports and documents issued by the Bureau of Public Procurements intended for the broader public should include new contents and in addition to statistics should provide analyses, assessments, comments, findings, conclusions and recommendations on cost-effectiveness, efficiency and effectiveness of public procurements in the Republic of Macedonia.

