

# 3

**MONITORING  
THE IMPLEMENTATION  
OF CENTRAL LEVEL PUBLIC PROCUREMENTS  
IN THE REPUBLIC OF MACEDONIA**  
THIRD QUARTERLY REPORT



## Monitoring the implementation of the public procurement procedures in the Republic of Macedonia – Third quarterly report

Publisher:

**Foundation Open Society Institute - Macedonia**



For the publisher:

**Vladimir Milcin, Executive Director**

Prepared by:

**Sabina Fakic, German Filkov, Vanja Mihajlova,  
Darko Janevski, Miroslav Trajanovski,  
Igor Mojanoski i Elena Ristevska.**

**Civil Association "Center for Civil Communications" (CCC) - Skopje**

Editors:

**Fani Karanfilova Panovska  
Kire Milovski**

Translation in to English and Proof reading:

**Abakus**

Design & Layout:

**Toni Vasic**

Print:

**Bato & Divajn**

Circulation:

**250**

CIP - Каталогизација во публикација

Национална и универзитетска библиотека „Св. Климент Охридски“, Скопје  
35.073.53:005.504.1(497.7)“2009”

МОНТОРИНГ на процесот на јавни набавки во РМ : трет квартален извештај / уредници Фани Каранфилова Пановска, Кире Миловски . -

Скопје : Фондација Институт отворено општество - Македонија, 2009. - 32, 32 стр. ; 22 см

Насл. стр. на препечатениот текст: Monitoring of the implementation of the public procedures in the Republic of Macedonia : third quarterly report. - Обата текста меѓусебно печатени по спротивни насоки . - текст на мак. и англ. јазик

ISBN 978-608-218-041-0

а) Јавни набавки - Мониторинг - Македонија - 2009  
COBISS.MK-ID 80305674

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

October 2009



## CONTENTS

Key remarks .....	7
Goals and methodology .....	8
Quarterly Public Procurement Monitoring Report .....	10
Analysis of Public Procurement Supervision and Protection .....	16



## KEY REMARKS

**The trend of annulling public procurement procedures is enhanced and reached concerning 25%.** An average of 5 bidders has participated in the public procurement procedures annulled by state institutions. This number of bidders is equal to the average number of registered bidders per announced tender in Macedonia, and therefore concerns on the motives of the contracting authorities in regard to annulment decision-taking for the procedures remain.

**Broad discretionary rights of contracting authorities in regard to setting the criteria for the selection of the most favorable bid still provide the possibility for subjective bid-assessment and malpractices.** Indicative is the fact that high 40% of monitored public procurement procedures have applied contestable elements as criteria for the selection of the most favorable bid, thus raising the question on the application of the principle on cost-effective and efficient public spending.

**Utilization rate of the e-Procurement system accounts for 1% of the total number of public procurements three**

**months prior to the enforcement of the legal obligation stipulating that at least 30% of annual public procurements should be organized as e-Procurements.** Such practices, inter alia, prevent the expected decrease of corruption and budget savings in the course of public procurements.

## GOALS AND METHODOLOGY

Centre for Civic Communications from Skopje, in the period from November 2008 until November 2009 will monitor the implementation of public procurements in the Republic of Macedonia, as regulated under the Public Procurement Law. The monitoring aims to access the implementation of public procurements in the Republic of Macedonia in the light of the new Public Procurement Law and the application of basic principles of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal proceeding, cost-effectiveness, efficiency, effectiveness and cost-effective public spending, the commitment to obtain the best bid under most favorable terms and conditions, as well as accountability for the public procurements implemented.

The analysis of the public procurement process in the Republic of Macedonia was performed based on the monitoring of selected sample of procedures and analyses of supervision and protection in the field of public procurements.

The selected sample subjected to the monitoring activities undertaken in this reporting period was comprised of 40 public procurement procedures announced by central level contracting authorities, whose call for bids were published in the “Official Gazette of the Republic of Macedonia” in the period May-July 2009. Monitoring activities start with the publication of calls for bids, followed by attendance on public opening of bids and data collection on the procedure course, and used structured questionnaires submitted to the contracting authorities and the economic operators.

The second part of the present report contains the analysis of supervision and protection in the field of public procurements, performed by means of in-depth interviews carried out with representatives from the State Audit Office, the Public Prosecution in Skopje, the Financial Police and the Sector on Public Internal Financial Audit. In order to obtain comprehensive overview of the supervision and protection in public procurements, the team performed a comparative analysis of the Macedonian legislation and the



relevant legislation in effect in Slovakia, Albania, Slovenia, Croatia and Serbia.

The third quarterly report from the monitoring of public procurements was developed in cooperation with and financial support from the Foundation Open Society Institute – Macedonia (hereinafter: FOSIM).

## QUARTERLY PUBLIC PROCUREMENT MONITORING REPORT

**The trend of annulling public procurement procedures is enhanced and reached concerning 25%.** 10 of the total number of 40 public procurement procedures monitored and randomly selected for this quarterly monitoring activity were annulled. 8 of them were annulled by the contracting authorities, while the remaining 2 by the State Commission on Public Procurement Appeals. An average of 5 companies bid on the procedures annulled by the state contracting authorities. This number of bidders is equal to the average number of registered participants in the open tenders in Macedonia for the year 2008, thus raising concerns in regard to the motives behind the procedure annulment decision-taking. As most common reasons and grounds for procedure annulment, the contracting authorities referred to Article 169, paragraph 1, items 2, 4, 5 and 6 from the Public Procurement Law, those being:

- contingency changes to the contracting authority's budget;
- contingent and objective circumstances that resulted in adjusted needs of the contracting authority;
- failure to obtain a single acceptable bid;

- prices and terms and conditions bided for the contract implementation were more unfavorable than the real terms and conditions and prices on the market;
- bidders failed to meet certain minimum required criteria announced in the call for bids.

The continuing lack of detailed supervision of annulled procedures, whose necessity was already pinpointed in the previous quarterly report, raises doubts that the broadly stipulated legal possibility on procedure annulment is abused in some cases where certain calculations of the contracting authorities have not been materialized in the way they preferred.

**Recommendation:** To narrow the broadly-stipulated legal framework on public procurement annulment. Precise stipulation of terms and conditions, as well as circumstances under which a public procurement procedure can be annulled is needed, and should be accompanied with the obligation to provide rationale and arguments on why none of the obtained bids is acceptable.

In order to increase the share of successful public procurement procedures, the legislators should consider

the introduction of supervision as regards the justification of procedure annulment, as well as relevant sanctions, which are to be imposed to public procurement commission members in cases when subjective shortcomings have been identified.

**Broad discretionary rights of contracting authorities in regard to setting the criteria for the selection of the most favorable bid still provide the possibility for subjective bid-assessment and malpractices.** Indicative is the fact that high 40% of monitored public procurement procedures applied contestable elements for the selection of the most favorable bid, thus raising questions on the application of the principle on cost-effective and efficient public spending. In these cases, the use of elements such as delivery deadline, payment deadline, bank guarantee and reference list is disputable.

The criterion “economically most favorable bid” incorporates a dominant use of manipulative elements such as the delivery and payment deadline. This was recorded in 27.5% of the monitored procedures. The risk, however, of manipulating the selection of the most favorable bid was

also recorded in the selection of the criterion “bank guarantee”, which should be an eligibility criterion for tender participation and not subject of bid-assessment and point-based ranking, which in some cases accounts for high 30 points from the total number, thus enabling the contracting authorities to favor more expensive bids. At the same time, public procurements whose subject is strategy development show worrying tendencies of high points being allocated to subjective and mutually similar criteria, such as the qualifications and previous experience of the staff. Often, reference lists are used as selection criterion, although they should be an eligibility criterion on the technical and professional qualification of the economic operators, and not merely a bid-assessment criterion.

In general, 17.5% of public procurement procedures subjected to the monitoring activities stipulated the price as the criterion for selecting the most favorable bid, while the remaining 82.5% the key selection criterion was “economically most favorable bid” and included different bid-ranking points allocated to certain criteria (price, quality, payment deadline, etc.).

The present quarterly report also recorded a case where the criteria set for selecting the most favorable bid were not respected at the end. Notably, despite the high rank of the price criterion by allocating it 90 points, the procurement was awarded to the company whose price was seven times more expensive than the one bided by the cheapest competitor.

As regards the listed terms and conditions, and the accompanying eligibility criteria for economic operators and the bid selection criteria, companies commented on the failure on behalf of the contracting authorities to define the manner of valorization and application of individual criteria elements, notably the qualifications and competences of key staff, appropriateness of suggested operation plans and the methodology, as well as the bidder's experience, i.e., the lack of clear formula on bid-ranking points allocation, which creates doubts for discriminatory treatment of bidders and favoring particular economic operators contrary to the defined principles of public procurements.

**Recommendation:** the Bureau of Public Procurements (hereinafter (BPP) should recommend development of more precise criteria aimed at decreasing subjective bid-assessment. At the same time, the BPP should enhance its pressure over the contracting authorities for the latter to be more attentive in regard to the use of manipulative elements (manner of payment and payment deadline), which are to be defined as eligibility criteria in the tender documents, and not part of the bid-assessment and ranking criteria.

On their behalf, the contracting authorities should pay more attention and time to proper development of tender documents, notably the technical specification, so as to avoid assessment of certain criteria, but subject them to the level of eligibility confirmation. In this way, the contracting authorities will define the criterion "lowest price" as the single bid-assessment criteria, but will stay assured that in the eligibility-assessment stage (prior to bid-ranking stage) the bidders have met the remaining terms and conditions and relevant criteria so as to be able to rank according to the price bided.

**Utilization rate of the e-Procurement system accounts for 1% of the total number of public procurements three months prior to the enforcement of the legal obligation stipulating that at least 30% of annual public procurements should be organized as e-Procurements.**

In the first nine months of 2009 only 70 public procurement procedures were implemented via the Electronic Public Procurement System (hereinafter: EPPS). Such low application of e-Procurements by the contracting authorities raises the question on their preparedness to implement such procedures from 1st January 2010, as stipulated under the Public Procurement Law, where 30% from the total value of annual public procurements should be implemented via the electronic system.

The number of e-Procurements is distressingly low having in mind the following facts: the system is operational and available for use for several years now; utilization of the system does not imply additional costs, formal procedures or advanced IT knowledge; the system decreases the time needed for procedure implementation; it improves the insight in information, and the use of e-Procurements is expected to reduce corruption and increase budget savings.

Number of contracting authorities implementing procurements via the EPPS amounts to 25, while very few of them implemented more than one e-Procurement, i.e., decided to use the system on regular basis for organizing and implementing public procurements.

It seems that the contracting authorities are failing to benefit from the transitional period in order to acquire the knowledge and routine required, and therefore delay the use of a more transparent procurement system that enables budget savings.

According to the information obtained under the USAID's E-Governance Project, which assists the introduction of e-Procurements in the Republic of Macedonia, from the beginning of 2008 until this moment, approximately 50 training sessions and presentations on EPPS were delivered, 20 of which were held this year. Most of the events targeted representatives from the contracting authorities, and some targeted the economic operators. The total number of participants attending the training accounts for approximately 1900. Approximately 100 e-Procurements were implemented from the introduction of this system, 70 of which were organized this year.

**Recommendation:** Having in mind that e-Procurement will be mandatory from 2010 onwards, by the end of this year the contracting authorities must increase the number of implemented e-Procurements in order to avoid serious problems with their implementation in the next year.

**High bank guarantees continue to create problems for the companies.** 60 % of procedures from the monitoring sample of the third quarterly report required bank guarantees. In that, although the Public Procurement Law (hereinafter: PPL) sets the upper threshold of bank guarantee as not amounting to more than 3% of the bid value, in practice, it is exactly the highest amount of 3 % that puts most of the economic operators in unfavorable position, and in particular those who participate in several public procurement procedures. Namely, the maximum threshold of 3% was requested in 22 from the 40 monitored procedures comprising the random sample, one procedure required a bank guarantee in the amount of 1%, and one in the amount of 2% from the bid value.

Bank guarantees for quality performance of the awarded contract (pursuant to Article 48 from the PPL)

were requested in 25 public procurements, in 8 of which the amount was set at 5%, which is the minimum amount for such bank guarantees as stipulated under PPL, while in 11 cases the threshold was set at 10%, and in 6 public procurements it was set at the maximum 15% from the awarded public procurement contract, i.e., the maximum allowed bank guarantee of this type. In one case, the framework agreement signed anticipated an interest rate of 0.05 % from the contract's total value provided the contract is not executed as agreed, as well as the possibility to terminate the contract in cases of unduly delays or non-performance.

**Recommendation:** In order to create conditions for greater competition among the companies in public procurement procedures, thus improve the quality and at the same lower the prices of goods and services, it is necessary for the contracting authorities to stipulate lower bank guarantees.

**Economic operators still do not receive notifications with rationale of the reasons behind the selection of the most favorable bid as stipulated under the law.**

Contrary to the provisions under Article 168 from the Public Procurement law which stipulate and guarantee notifications with rationale of the reasons behind the bid's rejection or acceptance, notifications on the selection of the most favorable bid remain void of any detailed information thereof.

Most commonly, as was the case before, the decision submitted to the economic operators states that in compliance with the tender documents and upon the implemented bid assessment certain bid was selected, but does not provide explanation on the elements on which the decision was based nor the reasons for the rejection of other bids. Therefore, the companies have serious doubts about the existence of subjective bid-assessment.

**Recommendation:** To secure a manner in which the contracting parties will abide the PPL provisions in regard to the obligation on listing the reasons for the selection of the most favorable bid, as well as the reasons for rejecting the bids of other bidders – all for the purpose of eliminating doubts that the decision was taken based on biased criteria. A unified template of the notification including a detailed overview of the bid-assessment process and the decision

taken should be introduced. In order to increase the transparency of the procedure, consideration should be made also in regard to stipulating a legal provision on mandatory submission of the bid-assessment report to all tender participants.

## ANALYSIS OF PUBLIC PROCUREMENT SUPERVISION AND PROTECTION

### I. INTRODUCTION

The aim of this analysis is to determine to what extent the existing legal framework enables supervision of the procedure on awarding and implementation of awarded public procurement contracts. In that, the main questions raised are as follows: is an efficient mechanism on budget spending supervision established; which authorities hold supervision competences and what measures can they undertake in cases of detected irregularities and malpractices. For the purpose of the present analysis, the term protection does not refer to the legal protection in the sense of legal remedies against decisions and actions taken in the procedure on awarding public procurement contracts, but to the protection from possible misuse of taxpayers' money.

In the research, we set the task to determine whether the procedure in its course provides possibilities for supervision of actions undertaken and how efficient is such

supervision in preventing or sanctioning malpractices and illegal operations. The analysis also aimed at answering the questions whether and how much is supervised – whether the contents of the public procurement contract is implemented under the agreed terms and conditions. In this regard shortcomings were identified concerning the insufficient number of legislative provisions, vaguely defined competences, but also frequent malpractices. General findings thereof can be found in the following part of the report, accompanied with conclusions and recommendations, as well as the detailed analysis of competences and practice of authorities holding such competences or those that should be competent for auditing and supervising public spending (the State Audit Office, the Public Prosecution, the General Attorney Office, the Financial Police, the Sector on Public Internal Financial Audit and the Bureau of Public Procurements).



## II. GENERAL FINDINGS AND RECOMMENDATIONS

- Most irregularities detected by the State Audit Office (hereinafter: SAO) regard the actions that precede or follow the procedure on public procurement contract awarding, i.e., the purchase plan and contract implementation, which as an important stage of the process has not been regulated under the Public Procurement Law.

- The Public Prosecution, based on SAO reports on determined irregularities and illegal operation on behalf of the contracting authorities, often fails to find grounds for criminal prosecution. In cases where there are reasonable doubts for committed criminal acts in the contracting authorities work, including the public procurement procedures, the said title addresses the Ministry of Interior (hereinafter: MOI) to undertake additional investigation actions, but this is where the whole procedure stops. The delay of the procedure or lack of data for requested investigation actions actually prevents court ending (criminal procedure) for the illegal operations and public spending.

- Although the title of the law itself – Law on Public Internal Financial Audit – suggests possible competences of internal auditors and/or the Sector on Public Internal Financial Audit within the Ministry of Finance as regards the identification of irregularities in the financial operations of the contracting authorities, the overall objective of this law – as confirmed by the current practice – is to protect the responsible person from possible malpractices on behalf of contracting authority's staff. This implies that even in the case of determined illegal operations as part of the public procurement procedure, the same are addressed under an internal procedure within the contracting authority.

- All countries whose national legislations were subject of the comparative analysis (Slovakia, Albania, Slovenia, Croatia and Serbia), with the exception of Slovenia, established separate administrative bodies on monitoring and improving the public procurement process. In addition to the common competences, such as monitoring the enforcement of the public procurement legislation, organizing training and like, these bodies are also authorized to supervise the public procurement process as well. In that, the Croatian and Serbian Public Procurement Laws stipu-

late the competences of these administrative bodies in regard to raising misdemeanor charges, while in Slovenia, this competence was given to the National Audit Commission. The law in Albania stipulates a separate body – Advocate for Public Procurements – which is also charged with supervision of public procurements in the interest of economic operators. According to our Public Procurement Law, such competences are not stipulated for the Bureau of Public Procurements.

- The national legislations in the listed countries stipulate penal (misdemeanor) provisions for failure to enforce certain legislative provisions, which is not the case with our Public Procurement Law.

- Legislation needs to be adopted to regulate the implementation stage of awarded public procurement contracts, where - due to legislative gaps - malpractices are often identified. For that purpose, competences of all state bodies currently holding certain (imprecise) competences on public procurement supervision must be stipulated. This primarily refers to the State Audit Office and the General Attorney Office.

- Special type of public procurement audits needs to be stipulated (as part of the Strategy on Public Procurement Development, and put into operation through the Law on State Audit), which are to be performed by state auditors. At the same time, this implies the need for tailored qualifications and expertise with certain number of state auditors on public procurements.

- The possibility for the State Audit Office, in addition to Audit Reports, to present the Public Prosecution copies of data and evidence from cases where irregularities in the financial operation of the contracting authorities have been identified should be reconsidered in the light of achieving greater efficiency and effectiveness in investigation procedures.

- The possibility on recruiting economists, accountants and other financial experts in the Public Prosecution should be reconsidered as well, in the light of facilitating and accelerating the proceeding upon State Audit Office's reports. For that purpose, it is necessary to provide tailored in-service training for the prosecutors who are to work only on such cases.

- Legal mechanisms should be introduced, notably sanctions, which should be applied against MOI and other bodies failing to cooperate in the investigation procedure, i.e., failing/refusing to submit requested information and failing to act according to their competences in due time.

- The role of the Bureau of Public Procurements should be strengthened by incorporating appropriate provisions in the PPL that would authorize the Bureau to perform supervision of the public procurement process, not so much as classic supervisory body, but rather as a body whose recommendations and opinions are obligatory for the contracting authorities. Also, the Bureau should be authorized to take decisions/measures on terminating public procurement procedures until the elimination of certain identified shortcomings in the procedure and in the stage of decision-taking on the selection of the most favorable bid.

- It is our suggestion that the PPL should include penal (misdemeanor) provisions, which is the common practice in most countries from the region and beyond.

### III. DETAILED ANALYSIS OF THE LEGISLATIVE FRAMEWORK AND PRACTICE OF BODIES COMPETENT IN THE FIELD OF PUBLIC PROCUREMENT SUPERVISION

#### State Audit Office

According to Article 232 from the Public Procurement Law, the audit of public money use and spending for public procurements is performed by the State Audit Office (hereinafter: SAO), while the manner (procedure) under which SAO performs the audit of the material and financial operations is set forth in the Law on State Audit. Due to the provision from the PPL stipulating the competences of SAO as regards the audit (supervision) of public spending, we have requested the SAO to provide us data on previous findings and reports, especially in regard to the illegal operations of the contracting authorities as regards public procurement contract awarding and implementation.

In the period May-September 2009, 8 of the 59 findings in total concerning the illegal aspects of financial operations

as identified under the audit concern the violation of provisions from the Public Procurement Law, those being:

- weaknesses in the process on public procurement plan development by the contracting authorities;
- advance payments in higher amounts than the agreed;
- shortcomings in regard to invoicing the contract implementation (payment deadline, higher payment amounts from the agreed, and like).

SAO acknowledges that the lack of monitoring activities for the implementation of already awarded public procurement contracts is a weakness, as the practice shows numerous inconsistencies and shortcomings. It is expected for this matter to be bridged in future, when SAO plans to expand its competences to include the monitoring of contract implementation as the last chain in the public procurement process.

Positive is the fact that SAO's final reports can now be subject of debate within the Parliamentary Committee on Finances and Budget, contrary to the previous practice when the Parliament was presented only with SAO's Annual

Report. This will provide greater insight, but also supervision on behalf of the Parliament of the Republic of Macedonia over SAO's work and monitoring the actions taken based on these reports and activities taken by other competent authorities.

Otherwise, the last two years saw the decreased responsiveness of the Public Prosecution as regards the audit reports submitted, i.e., SAO received small, if any, feedback from the Public Prosecution on the measures undertaken thereby. In 2001, the share of feedback obtained amounted to 94%, while in 2007 it was only 39%. Accordingly, small is the number of criminal procedures initiated by the Public Prosecution and based on SAO findings. In the period 2001-2008, the Public Prosecution has initiated only 12 criminal procedures based on the total 269 audit reports submitted, thus accounting for only 4.5 %. SAO information speaks that in the same period only 2 cases were completed with a court ruling. Audit reports' findings most commonly end with the statement made by the prosecution that there are no reasonable doubts on the criminal act being committed and liable for ex officio prosecution (in 89 cases) or that the cases are currently

referred to the MOI for the collection of required notifications (in 57 cases).

Although pursuant to Article 23 from the Law on State Audit, SAO reports containing financial findings are submitted to the Ministry of Finance, SAO does not receive feedback on measures undertaken by the line ministry.

According to the Strategy on Public Procurement Development prepared by the Bureau of Public Procurements in consultation with SAO, topic audits of public procurements have been anticipated, which are believed to enhance the efficiency and effectiveness of the audit process in the field and timely measures in cases of violation of provisions contained in the PPL and the other regulations.

### **Public Prosecution**

According to the Constitution, the Public Prosecution is the state body charged with the protection of the societal interest and the prosecution of perpetrators of criminal and other punishable acts. For that purpose, violation of

societal interest can exist also in the public procurement contract awarding and implementation, where several criminal acts have been stipulated under the Criminal Code (for example, abuse of official duties, embezzlement, etc.). Having in mind that this project targets the public procurements implemented by central level contracting authorities, the Public Prosecution competent for acting upon possible criminal charges and reasonable grounds for raising charges is the Basic Public Prosecution in Skopje. Most frequent basis for action on behalf of the Basic Public Prosecution in the field of public procurements are the audit reports submitted to the Basic Public Prosecution under the legal obligation set forth in the relevant legislation. However, the Basic Public Prosecution proceeds also upon public knowledge on malpractices and irregularities in public spending. Interviews carried out with the staff of the Basic Public Prosecution provided the following knowledge and data:

- In the course of 2009, the State Audit Office submitted the Basic Public Prosecution a total of 9 audit reports, 3 of which have been forwarded to MOI for additional processing;

- In the course of 2008, the State Audit Office submitted the Basic Public Prosecution a total of 13 reports, for 2 of which the prosecution stated there are no elements for initiating the procedure, while the findings from the other reports are pending MOI feedback in the form of data and investigation results, hearings and depositions of responsible authorized people at the competent authorities subject to state audit actions.

- In the course of 2007, the SAO submitted 8 reports, one of which resulted in an initiated investigation procedure and raised charges, for 2 cases the Basic Public Prosecution adopted resolutions stating that there are insufficient grounds for opening the procedure, while the remaining 5 reports are pending MOI feedback. MOI feedback is also pending for SAO reports containing identified irregularities and submitted in 2006.

- Worrying is the fact that the requests submitted by the Basic Public Prosecution and concerning responses or actions needed remain unanswered for long time period, and MOI is not reacting on the Basic Public Prosecution's interventions as well. This results in the inefficiency of prosecution's procedure on raising charges and the possible accountability allocation for illegal budget spending.

- The Public Prosecution does not dispose with specific data on procedures initiated based on SAO reports containing identified violations of regulations concerning the public procurements.

- The Basic Public Prosecution does not give high priority to SAO reports in its work, i.e., cases are processed according to their date of submission, together with the remaining criminal acts (for example, thefts).

- Lack of economic expert staff at the Basic Public Prosecution slows down the proceedings upon SAO reports, as it requires outsourcing competent forensic experts.

### General Attorney Office

The General Attorney Office is the body competent for undertaking measures and legal remedies for the purpose of legal protection of property rights and interests of the Republic of Macedonia. It exercises this protection in front of courts and other authorities, both in the country and abroad. According to Article 207 from the Public Procurement Law, the General Attorney Office is entitled to require legal protection in public procurement procedures.

But, according to the Law on the General Attorney, taking actions depends on the submitted applications by the contracting authorities or any other natural or legal person holding a legal interest thereby. According to the statements provided by the General Attorney Office, it has not been asked for legal protection in public procurement procedures, and on one occasion the contracting authority requested an opinion as regards the implementation (termination) of the awarded public procurement contract.

### **Financial Police**

Occasionally, the SAO submits its audit reports to the Financial Police as well, but no serious action has been undertaken by the Financial Police as regards the possible criminal acts related to public procurements. The criminal charges submitted to the Basic Public Prosecution against the contracting authorities concern various financial abuses. From that reasons, the Financial Police does not hold precise data on whether such abuses are related to the procedure on awarding or the implementation of public procurement contracts, as the Basic Public Prosecution is

competent to categorize the identified irregularities (most often as abuse of official duties, which – on the other hand – can include different illegal actions). The Financial Police works under the coordination of the Sector against Organized Crime at the MOI.

### **Public Internal Financial Audit and Public Procurements**

The internal audit in the public sector was introduced to additionally strengthen the supervision of public spending, i.e., the manner in which the contracting authorities dispose with the financial funds allocated to them. Therefore, two laws were enacted and enforced in the past period, those being: Law on Internal Audit in the Public Sector (adopted in 2004) and the Law on Public Internal Financial Audit (adopted in 2007). To a large extent, both laws contain same or similar provisions and share a common objective. Hence, in 2009, a new Law on Public Internal Financial Audit was adopted and aimed to unify and replace both previously listed laws (therefore, their effect was terminated).

### What did the 2004 Law on Internal Audit stipulate?

Internal audit is a term with broader meaning from the term financial audit, as it also includes audits of internal audit systems, revision of the harmonization and revision of operation success. Internal audit implies independent, objective action to verify information and confirm their accuracy, as well as to provide advice, whose final aim is to contribute to better performance of relevant entities. The department on central internal audit at the Ministry of Finance (latter renamed into Sector on Public Internal Financial Audit) was tasked with the performance of direct internal audit at those entities that failed to establish their internal audit departments, but its primary competence was policy making, law-drafting, coordination, monitoring, training... All entities (contracting authorities) were obliged to establish their internal audit departments as organization- and operation-wise independent bodies accountable in front of the entity's management. The head of such departments and their internal auditors were protected from dismissal provided they worked in compliance with the law, whereas the internal auditors were to be recruited as full-time employees. Competent internal auditors were given numerous rights and competences (as set forth under

Articles 18 and 19), those being: to enter premises for the purpose of performing auditing actions, to have access to documents relevant for the audit, to request information from employees, but also from other institutions related with the audit performed within the entity in question, to study documents, to provide justified findings supported by evidence, to draft audit reports and submit them to the head of department, while in the case of reasonable doubts on committed criminal or misdemeanor acts, to inform the entity's management thereof and propose appropriate measures... The internal auditors worked based on their annual audit plans, which were previously approved by the entity's management and forwarded to the Ministry of Finance. Audit reports (quarterly on request, and annual as mandatory reports) were forwarded to the Sector on Public Internal Financial Audit at the Ministry of Finance.

**What does the 2009 Law on Public Internal Financial Audit stipulate?** This report will list the novelties introduced in comparison to the previously adopted legal solutions. The law precisely lists the entities holding the obligation to establish an internal audit department as part of their organization structure, i.e., the minimum number of



employed internal auditors was set forth depending on the budget funds available for the entity in question. The Sector on Public Internal Financial Audit at the Ministry of Finance was renamed into Central Department for the Harmonization of the Public Internal Financial Audit System. Internal audit's scope was broadened, i.e., it is now implemented in all organization structures, programs, activities and processes at the entity in question. In the case of reasonable doubts on irregularities, embezzlement or corruption by certain employees, it is obliged to report such cases in front of the entity's management, as well as the person appointed for such application (this person should then inform the Public Prosecutor and the Financial Police). The law stipulates supervision of public finances to be performed by public finance inspectors at the Ministry of Finance. This supervision is comprised of activities related to appeals and reported allegations on embezzlement or corruption. Penal provisions have also been set forth (initiation of misdemeanor procedures in front of competent courts) in the case certain provisions from the law have not been applied, such as the failure to establish the internal audit department, ungrounded dismissal of internal auditors, refusal to cooperate with the auditors and like. However,

there are no penal provisions in cases of determined irregularities in the audit reports. On the contrary, in this regard the law stipulates only the violation of the entity's management should it fail to eliminate determined irregularities in the audit reports.

**What are the results of these laws' enforcement and are there future plans?** The interviews carried out with the Sector on Public Internal Financial Audit at the Ministry of Finance (hereinafter: the Sector) competent for monitoring the implementation of these laws provided the following insight. The Sector does not hold precise data on the application of the old legal solution which anticipated the Sector's competence for performing internal audits at those entities lacking internal auditors as part of their staff. According to the new law, the Sector no longer holds such competences, as it is fully focused on the new law's enforcement. For that purpose 120 internal auditors were trained and employed at the entities, while - according to the Action Plan – this number will be increased to 130. With this, almost all entities holding the obligation as set forth in this law will have employed internal auditors. All entities are respecting the legal obligation stipulating that they

should submit their annual audit reports for the previous year to the Sector by 15th April the current year. The Sector is competent to collect reports, without prying in the contents thereof or taking any measures thereby, but merely to compile one summary Report and submit it to the Government. The entity in question (the management thereof) acts upon the findings contained in the report prepared by the internal auditor by taking measures against employees, i.e., by taking measures to eliminate the irregularities. The Sector is not authorized to take measures, but in their previous knowledge (based on the reports), the entities where irregularities have been identified undertake relevant sanctions. In its previous work, as well as in the future, the Sector will work on training internal auditors, coordinating their work, drafting secondary legislative acts, unifying forms, reports and like.

**Summary:** The objective of the internal audit, at least according to the manner in which it is set in the law, is to assist the entity's management (the responsible person at the contracting authority) to better manage, control and supervise the financial operations. This means that the law should provide protection mechanisms from possible

abuses on behalf of entity's employees, in particular by employees holding certain authorizations (as regards the material and financial operations). This mechanism is to be of assistance to internal auditors. Therefore, this department and the auditors employed therein are fully independent from the other sectors and staff at the entity in question, except from the management.

#### IV. COMPARATIVE ANALYSIS OF PUBLIC PROCUREMENT SUPERVISION AS STIPULATED IN THE NATIONAL LEGISLATION OF OTHER COUNTRIES

##### 1. REPUBLIC OF SLOVAKIA (The Law was adopted on 14th December 2005)

###### Body competent in the field of public procurements

The Public Procurement Office (Bureau) (established as an independent administrative body).

###### Competences of the Public Procurement Office in the field of public procurement supervision

The Public Procurement Office performs supervision of procedures on awarding public procurement contracts.

*According to the Macedonian legal system, such supervision would qualify as inspection supervision.*

The Slovak law provides the possibility for the Office to impose penal sanctions.

*According to the Macedonian legal system, penal sanction can only be stipulated by law. Anyhow, the Macedonian PPL lacks penal provisions. We believe they need to be stipulated knowing that the law anticipates certain obligations of participants in public procurement procedures. As it can be seen from this overview, penal provisions are incorporated in the national legislations of all other countries.*

###### Expert exam for people involved in the public procurement process

The law stipulates the obligation of natural persons involved in public procurements, whether on behalf of the contracting authorities or the economic operators, to hold relevant expert knowledge and experiences, for which they need to complete the training, organized and delivered by the Public Procurement Office, and pass the final exam thereof in order to obtain the relevant license.

*Accordingly, the obligation on training, final exam and acquisition of relevant license is stipulated under the law.*

The contracting authorities and the economic operators can implement public procurements via “entrepreneurs”

(natural and legal persons) registered for that purpose at the Public Procurement Office.

## 2. REPUBLIC OF ALBANIA

(The Law was adopted on 26th November 2006)

### Body competent in the field of public procurements

The Public Procurement Agency (established as an independent administrative body)

### Competences of the Agency in regard to public procurement supervision

The Law authorized the Public Procurement Agency to perform (administrative) SUPERVISION of the public procurement process.

*Administrative supervision, according to the Macedonian legal system would mean INSPECTION SUPERVISION.*

### Advocate for Public Procurements

In addition to the supervision performed by the Public Procurement Agency, the Public Procurement Law

anticipates the establishment of the institute Advocate for Public Procurements, which is to perform public procurement supervision, but for the purpose of protecting the legal interests of economic operators.

## 3. REPUBLIC OF SLOVENIA

(The Law was adopted on 23rd November 2006)

### Body competent in the field of public procurements

There is no separate body competent for public procurements.

*Within the Ministry of Finance, there is a Sector on Public Procurements and Concessions, i.e., a Sector on Public-Private Partnerships.*

Nevertheless, there is a body competent for monitoring/detecting possible violations made in public procurement procedures (National Public Procurement Audit Commission).

*Slovenia has its own Court of Audit. This court performs the role given to our State Audit Office.*

However, Slovenia also has the body performing a kind of SUPERVISION whose aim is to detect VIOLATIONS.

## 4. REPUBLIC OF CROATIA (The Law was adopted on 3rd October 2007)

### Body competent in the field of public procurements

There is a Public Procurement Office (Bureau).

### Competences of the Office in the field of public procurement supervision

The Office or the Bureau is competent for undertaking activities aimed at prevention and issuing guidelines, as well as initiating misdemeanor procedures (the last competence is almost identical with the one anticipated for the Slovenian body charged with monitoring violations made in the field of public procurements).

In order to implement its competences, this body can request the contracting authorities to provide insight in tender documents, as well as other information related to a particular public procurement, within a pre-determined

deadline (this is how the supervision is performed in practice).

In addition, this body issues its opinions on detected irregularities and provides guidelines for their elimination.

The specific competence of this body must be underlined, and that is the possibility to initiate a procedure in front of the State Appeal Commission for the purpose of protecting public interests.

## 5. REPUBLIC OF SERBIA (The Law was adopted on 22nd December 2008)

### Body competent in the field of public procurements

The Public Procurement Directorate, as part of the state administration.

### Competences of the Directorate in the field of public procurement supervision

The Directorate can submit applications on protection of rights (actually, it can initiate a procedure in front of the

**State Appeal Commission, which is an identical solution with the one set forth in the Croatian law)** in cases of violation of public interests.

It informs bodies competent for auditing public funds, budget inspection and other bodies competent to initiate misdemeanor procedure on the irregularities detected in the implementation of public procurement procedures.



