

Report on the Research into Public Procurement Corruption

In the public procurement business, which on a state and local level is estimated at more than one billion euros a year, elaborate, tried and tested schemes of corruption are hidden. In this vicious circle of corruption, in a silent coalition between the public and the private sector, state money are being misused for the purpose of achieving personal gains, by awarding businesses to favoured companies. As a result of this state, which has been going on for years, part of the companies decide to no longer participate on public procurement tenders, assuming that the business has already been agreed on in front, so that the competition on the market is further undermined.

According to various competent sources from both the public and the private sector, all this has made the public procurements more expensive for up to 30%. The research, which has been carried out in this area, has displayed a complete lack of readiness on the part of the business community representatives to publicly speak about the corruption chain in the public procurements. Those that are part of this chain protect their interests in this way, while those who are not involved in it fear that, by speaking out, they will lose the chance for ever obtaining some state - financed business.

The manner and the procedure for conducting the public procurements are arranged by the Public Procurement Law, and apply to the government bodies, the bodies of the local government units, the public enterprises, and the companies in which the state or the local government units have dominant capital, civic associations and foundations to which the law grants public authorizations, as well as legal entities who conduct specific public services.

Sources and forms of corruption

The broad manoeuvrable terrain for misuses in the field of public procurements can be located to a great extent in the scant control of the realized procurements in the sense of inspecting whether what had been paid from state money was really obtained. The choice of bidders with dubious credibility, accompanied with scant control, sometimes results in bizarre situations. Thus, it happens that the roof of a newly - built school starts leaking even before students enter it, so additional expenses have to be made for its reconstruction, since the edifice has been damaged from the leakage.

A possibility for misuse also exists within the area of procurements which involve the fulfilment of highly expert and detailed criteria specified in so - called tender specifications. This primarily applies to procurements in the area

of civil engineering, mechanical, and information technology equipment. As a result of incompetence on the part of the committees that are in charge of the procurements, the tender specifications, although this is prohibited by law, are often given to be prepared by a company which later appears as a bidder for the public procurement. This creates a possibility for that company to include in the specifications performances that only that company can accomplish or that will make its offer the most competitive.

Another potential form of misuse in public procurement can be detected in the awarding of businesses in equal shares to all the companies who participated and competed on the tender, although in essence there is no economic logic to split the procurement in portions. Numerous examples of this type of procurements on a state and local level are recorded on the public procurement website. The danger of this manner of conducting the tender procedure lies in the possibility to "squeeze in" among the companies who are awarded an equal share of the procurements "protégé" companies which are not competitive and could not win on the tender in a regular and legal procedure.

Researches have shown that unlike the conditions in part of the Ministries, where the concerned authorities interviewed in this research have even registered improvement in this respect, the situation is more critical in the public companies sector, in which some smaller bidders complain of being discriminated against big companies which keep getting the tenders all the time. In terms of sectors, the civil engineering sector is considered as particularly vulnerable because of the possibility for exceptionally profitable manipulations. The ones surveyed in this business claim that there are several possibilities for abuse: using a lesser quality (and thus, cheaper) material than the one with which the company has competed on the tender and won; using a lesser quantity of material than the one stated in the tender specification; cases in which the company who won on the tender upgrades, through the legally allowed section on "unpredicted expenses", the initially low price offer which made her the most competitive. Since this sort of manipulations happen in spite of the fact that during each construction a separate subject is assigned to supervise the works, it is obvious that there is an unprincipled connection between the constructor and the supervisor.

Corruption is also to blame for the cracks and holes which open up again and again on the already repaired streets and local roads. Although it is paid for an appropriate standard thickness of an asphalt layer, there are cases when the road is built with a significantly thinner layer of asphalt, as a result of which the road is more rapidly damaged. The ones who order the construction, blinded by the provision, do not see this as a problem, but simply as an opportunity for a new repair of the road or street, which is financed from the municipal budget.

One can detect motifs for corruption in the very act of making decisions on what to be supplied or built. Is this something which is really necessary and planned or is simply a business which is meant to bring extra profit to closely related companies? Thus, there are cases in which a public supply of goods is

made for which the subject in question has no obligation to supply. Alternatively, the supplied, i.e. performed work is bigger in quantity or scope, thus surpassing the real need.

The extent of the seriousness of the problem can be supported by certain information that the manipulations with the public procurements go as far as situations in which several companies linked through family or friendly relations compete on the same tender. One of them gets the business, while the others serve solely for the purpose of creating an illusion that a competitive bidding exists. Although this business is "clean" in the eyes of the law, with an observed tender procedure and a required number of bidders, the essence lies in the fact that a price, which is significantly higher than the market one, is achieved. The difference between the tender price and the market price ends up in someone's private pockets. In order to even create conditions for this kind of conducting a tender, prior to that, the real bidders are gradually discouraged and eliminated, so that they lose interest to compete on tenders either because they are disappointed for never winning, or, if they did win, because of the problems and obstacles they encounter with payment. One such case of a long established and worked - out scheme of public procurement is already under investigation in the Ministry of Interior and under the audit control of the State Audit Bureau.

Neither the so - called low-value procurements (sums up to 3,000 euros) are immune to this vulnerable sphere, where the very procedure specified by the Law leaves a space for an easy "squeezing in" of one's own companies. For this type of procurement, a public bid is not demanded - all that is required is to provide three offers and to select the most favourable one. Thus, the company which wants to obtain the business, can itself provide the other two less favourable offers from firms with whom it cooperates. Precisely due to this easy opportunity for promoting one's own companies, it is not rare for small procurements to be a source of a great battle of interests and conflicts among the members of the committees for public procurements.

Recommendations for diminishing the possibility for corruption

The space for corruptive bargains in the sphere of public procurements in the Republic of Macedonia is made possible by two phenomena. The first has to do with the fact that few have been punished for misusing public procurements, a fact which can only encourage those involved in these businesses. The second is the possibility of covering the misuses with a suitable documentation, whose trace can be discovered only if the control proceeds from the state institution down to the private company with whom a contract has been made. This sort of control is not legally granted at present to the State Audit Bureau, and there is also a lack of strengthened coordination, so that the control of the private companies could be further continued by institutions that have such an authority.

A serious institutional mechanism for improving the transparency of spending state money should be looked for in the recently established Public Procurements Bureau, which has the legal obligation to ensure legitimacy,

efficiency, and rationality in the carrying out of public procurements, as well as to enhance the competitiveness and equality of the bidders. However, for this function to be put into practice, the Bureau needs more staff and strengthening.

In addition, a complete, centralized overview of all concluded contracts for public procurements is needed in the publicly accessible electronic Registry for Public Procurements, so that the possibility for corruption is diminished through the transparency of the data. However, for the time being, the number of concluded agreements for procurements published in the Registry is significantly smaller than the number of tenders for public procurements that are announced in the Official Gazette of the Republic of Macedonia.

A serious control mechanism for the public procurements and a guarantee for their transparency and efficiency should be seen in the possibility for introducing an electronic conducting of the public procurements on state and local levels. This model, which would require an appropriate legal regulation, is regarded as a great chance for reducing the distortions that occur during the public procurements procedures.

It is considered that a significant improvement could be also achieved through strengthening the control of the public procurements and increasing the competence of the committees that conduct them. The possibility for misuse could be significantly decreased through a heightened control of the prices reached at the tenders with the market prices, as well as a control of whether what was paid for was acquired in reality. In contrast to the current frequent practice for all procurements in a given institution to be conducted by the same committee, it is suggested that a compulsory duty is instituted whereby at least one member of the public procurements committees is knowledgeable and competent for the area of the concerned procurements.

One of the recommendations that follow from the conducted research is an alteration of the legal deadlines for carrying out the public procurements. It is recommended that the deadline for receiving bids is shortened, since it is unnecessarily lengthy, while on the other hand, the period for complaints, which is considered too short, should be extended.

Although in the business circles there are comments that part of the manipulations are enabled by the Public Procurements Law itself, the experts from this area state that deviations may exist even if the Law were perfect. It is considered that, in order to achieve more substantial results in decreasing the corruption in the area of public procurements, a serious willingness is primarily needed in the representatives of the state and local authority, who need to show greater awareness and responsibility for a purposeful and efficient spending of the tax - payers money. However, since it takes two for a "corruption tango", the business community as well needs to demonstrate willingness to improve the state of affairs in this area.
