



KEY RISKS FROM **CORRUPTION** IN PUBLIC PROCUREMENTS AT LOCAL LEVEL AND RECOMMENDATIONS FOR OVERCOMING THEM



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Magdalena Simionska

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INTRODUCTION

The key risks from corruption in the municipalities and the local public companies have been determined by monitoring the public procurements of these institutions which was conducted on the base of a unified methodology by 8 non-governmental organisations in 8 municipalities in the country: Bitola, Kichevo, Kumanovo, Negotino, Strumica, Tetovo, Chair and Shtip. The monitoring of the public procurements was conducted by the Youth Cultural Center Bitola, Rural Coalition Kichevo, Center for Intercultural Dialogue Kumanovo, Environmental Association Vila Zora Veles, Center for Research and Analysis Novus Strumica, Association Multikultura Tetovo, Association of Citizens ZIP Institute for policies and good governance Skopje and Association EHO educational-humanitarian organisation Shtip under the mentorship of the Center for Civil Communications.

The opportunity to provide an objective and measurable image of the risks from corruption was a good basis to prepare clear recommendations and targets towards whose realizations the monitored institutions should aim in order to reduce corruption and abuse of public funds.

The selection of indicators to map public procurement corruption in the municipalities was done taking into account the following:

- internationally acknowledged indicators for assessment of corruption in public procurements;
- indicators which after several years of public procurement monitoring in the country both on national and local level by the Center for Civil Communications have been assessed as relevant to detect public procurement corruption;
- indicators based on the so called red flags system developed by the Public Procurement Bureau which are used to prepare reports and analysis by the Bureau and are delivered to the State Audit Office and the State Commission for Prevention of Corruption so that they might be acted upon and/or so as to take further actions and
- the obligations for prevention of corruption in public procurements that arise from the National Strategy for Prevention of Corruption in the Republic of North Macedonia 2021-2025.

The separate reports with the key risks from corruption for each municipality and local public companies have already been published and are also available on the [web page](https://www.ccc.org.mk/) of the Center for Civil Communications <https://www.ccc.org.mk/>. Hence, the goal of this document for public policies is to summarize the key risks from corruption, as well as the provided recommendations for overcoming them.

The public policy document is prepared as part of the project “Protection against Corruption” whose goal is to reduce corruption and abuse of public funds at the local self-government level through increasing the transparency, accountability and integrity of the local institutions and the implementation of the measures foreseen in the National Strategy for Prevention of Corruption and Conflict of Interests 2021-2025.

KEY RISKS FROM CORRUPTION

Low realization of the annual plans for public procurements has been noted in both the municipalities and the public companies. At the same time, the average realization of the public procurement plans at the municipalities is 68% from the annual planning, whereas this percentage is lower at the public companies and is only 55%.

The public procurements planning process in the municipalities and the local public companies has been analysed through four parameters: (1) adopting the public procurement plans and their publication in the Electronic System for Public Procurement (ESPC) within the legal deadline of January 31 of the current year; (2) publishing the public procurement plans on the institutions' web pages; (3) the number and percentage of changes to the public procurement plans and (4) percentage of realization of the plans.

The monitoring of the public procurements conducted in the eight municipalities and 21 local public companies established by the municipalities has shown that they timely adopt the public procurement plans and consistently respect the obligation to publish them on the ESPC, which cannot be said of the publishing of the plans and all the subsequent amendments and additions on the institutions' web pages.

Regarding the amendments and additions to the public procurement plans, it has been noted that in 2021 they were frequent and significant. At the same time, on average, the municipalities changed as much as 38% of the content of the public procurement plans whereby the individual percentages vary from 13% to 66%. In the public companies the average percentage of changes to the plans is 10%, whereas the individual percentages vary from 0% to 33%. The common changes to the plans according to the Public Procurement Bureau can lead to lack of trust from the business community and the public and can be an indicator of corruptive elements and subjectivism regarding procurements which had previously not been planned.

On the other hand, the level of realization of the public procurement plans in the municipalities is 68% on average and varies from 45% to 87%. The average in the public companies is 55% and varies from 25% to 100%. The low percentage of realization of the annual public procurement plans may be an indicator of poor management of the needs and poor anticipation of the necessary funds; hence, it is fertile ground for possible corruptive elements in selecting which planned procurements will be realized and which will not.

The conducting of the tenders is accompanied by insufficient competition, the domination of certain companies which get the tenders and frequent cancellations of tenders.

The process of implementing public procurement procedures has been analysed through nine parameters: (1) the average number of tender bidders; (2) the frequency of single bid tenders; (3) noticing whether there is domination of one or a small number of bidders; (4) the level of application of electronic auction in the procedures; (5) frequent cancellation of the tenders; (6) application of the negotiation procedure without previously publishing an announcement; (7) publishing public procurement announcements and tender documentation on the institutions' web pages; (8) number of submitted complaints from economic operators and (9) share of complaints accepted by the authorized State Commission for Public Procurement Complaints (SCPPC).

The average number of tender bidders among the municipalities is 3.6 bidders per tender, which is quite solid and above the state average which in 2021, according to the data from the Public Procurement Bureau, was 3.3 bidders per tender. On the other hand, the average number of offers per tender among the public companies is 2.5, which is significantly lower than the national average. The average number of offers is one of the most relevant parameters to assess whether the procedures are implemented in a competitive way and whether there were restrictions on competition during the procedure.

In order to have a more complete picture of corruption, it is very important that the first parameter (average number of offers per tender) be supplemented with the calculations from the second parameter which is the frequency of single bid tenders. The conducted analyses show that in the eight monitored municipalities, 24% of the tenders on average were won by single bid offers. This share among the public companies is slightly higher and is 26%. It can be concluded that both among the municipalities and the public companies this indicator points to an increased risks from corruption enabled by restricting competition.

The domination of one or a small number of bidders in the tenders of a single municipality or public company can undoubtedly be interpreted as a manifestation of apparent favoring of certain bidders. In all eight municipalities, a high share of the value of the public procurement contracts concluded with one company in the total value of the municipality's procurements was established and it ranged from 18% to 36%. In the public companies, the share of one company in the total value of the procurements varies from 11% up to even 100% in the case of one public company where through one public procurement procedure there are two contracts concluded with the same company. In general, it can be assessed that this parameter points to the existence of increased risks from corruption by favoring certain companies both in the municipalities and the public companies.

The frequent application of the electronic auction (e-auction) in circumstances when there is no competition leads to an increased risk for the public procurement contracts in a significant number of the tenders to be concluded with prices higher than the real market prices. The intensive use of e-auctions is a remnant from the old Law on Public Procurements which is deeply entrenched among the public procurement officers. Namely, in 2021, on average, e-auction was planned among the municipalities in 85% of the tenders and was conducted in only 54%, whereas this difference is even greater among the public companies where e-auction was planned in 94% of the tenders and was conducted in only 51%. The risks from corruption arise also from the fact that e-auction enables the bidders to make a deal as regards the price and market share before even conducting the auction itself.

It has been concluded that five of the eight municipalities included in the monitoring have an above average high number of received complaints from the companies compared to the national average (4.4%), whereas the number of complaints at the public companies is very low. In the municipalities, the individual percentages of complaints received compared to the total number of tenders throughout the year ranges from 1.6% to 15%.

The transparency as regards publishing the public procurement announcements and the tender documentation on the institutions' web pages is still not at the desired level. This problem is especially emphasized among the public companies where almost half do not have their own web pages.

The problem regarding the cancellation is especially highlighted among some municipalities and public companies. The monitoring of the tenders conducted in 2021 has pointed out that, on average, the municipalities cancelled 26% of their tenders. The share of cancelled procedures among separate municipalities even reaches 37%. In view of this parameter, the situation among the public companies is even more problematic where in 6 from the total of 21 public companies the share of cancelled procedures is greater than 30%.

As regards the implementation of the negotiation procedure without publishing an announcement, the situation is more positive. Such a procedure has been implemented by only 3 of the eight municipalities and for amounts of up to 1% of the total value of their procurements. Among the public companies this procedure was implemented by only 3 of the 21 analysed companies for amounts ranging from 0.1% to 24%.

Insufficient accountability regarding the realization of the public procurement contracts.

The municipalities claim that they appoint one or two persons who undertake to monitor the realization of the public procurement contracts. This good practice has not been applied in seven of the monitored public companies.

All monitored municipalities comply with the legal obligation to submit notices of concluded contracts to the ESPC. Still, there has been a noted delay in the realization of this obligation and breaking the 10 day deadline for notices of concluded contracts among all the municipalities with varying percentages. As regards the public companies, it has been noted that four of them have not once timely submitted a notice of concluded contract.

The monitored institutions inconsistently respect the legal obligation to submit notices for concluded contracts and are significantly late with their announcements on the ESPC which is a legal obligation.

Apart from the ESPC, the institutions have to submit the notices for the concluded contracts, the contracts and the announcements about the realized contracts on their web pages as well. The announcement of all relevant public procurement documents on the ESPC cannot be considered as a realization of the obligation for accountability to the citizens. The use of the ESPC as a source of information demands considerable knowledge which the citizens do not possess. Hence, the institutions are obligated to put all relevant information on their web pages. The weaknesses regarding introducing the citizens to public procurements through the institutions' web pages are particularly problematic when it comes to the public companies. The monitoring has shown that only three of the 21 monitored public companies post announcements for concluded public procurement contracts, the contracts themselves, as well as announcements about the realized contracts on their web pages.

RECOMMENDATIONS FOR OVERCOMING THE RISKS FROM CORRUPTION IN PUBLIC PROCUREMENTS

- » The municipalities and public companies should prepare and implement an internal act (procedure and guidelines) for conducting public procurements where the manner in which the employed officers and external collaborators operate in all phases of the public procurement process where they are involved will be determined, as well as the manner of operating in cases of reporting corruption in public procurements. Thus an easier adherence to the public procurement process will be enabled, and there will be high level of knowledge of the procedures and rules on the part of everyone involved in public procurements, which is particularly important for the employees who are not from the public procurement area, but are members of public procurement committees. The preparation of internal rules will enable the clear defining of obligations for everyone involved in the public procurement procedures, from the public procurement planning to the final realization of the contracts. Having an internal public procurement policy is an obligation which also stems from the integrity system whose introduction was initiated by the State Commission for Prevention of Corruption.
- » Respect the legal obligation that every contracting authority has a certified person for public procurements and to work on continual building of capacities of the personnel involved in the conducting of the public procurement process.
- » Improve the public procurement planning process. The frequent changes in the public procurement plan and the lack of a system to monitor its realization lead to bad public procurement planning and inefficient management of public funds.
- » Pay attention not to restrict competition when it comes to tender documentation and technical specifications, but rather encourage competition so as to receive a larger number of offers. Essentially, only greater competition is a guarantee for best value for money spent for public procurement.
- » Intensify the transparent manner of communication among the contracting authority and the economic operator and their associations, especially through more frequent conducting of technical dialogue and organising clarification meetings. The municipalities and public companies should practice the technical dialogue more often, which with the Law on Public Procurements is an optional way of consulting the economic operators. This form of communication between the contracting authorities and the potential bidders should be implemented during the preparation of the procurements, independent of their value. The technical dialogue is especially necessary for procurements for which the contracting

authority does not know the situation or the participants in the market, or whose procurement object is complex, i.e. for the description of which the contracting authorities do not have enough expertise.

- » It is necessary to apply the rotation system of the employees as members of the public procurement commissions, both in the municipalities and the public companies. This recommendation stems from the fact that some municipalities and public companies have one and the same company for public procurements for all the procedures they conduct. With the implementation of this proposal the possibilities for illegal bargaining between bidders and members of public procurement commissions will be avoided – a risk that exists if the same people are always members of the commissions. Also, the competencies will be delimited making it impossible to accumulate the competences at the same work place or the same employee.
- » Electronic auction should be used only for products with a known and standardized quality and for which there is competition on the market. Also, the continual insisting on e-auction should be a signal to the authorities in the institution of a possible increased risk of abuse of the public procurement process and also encouraging collusion among the companies.
- » It is necessary to conduct internal periodic and consistent analyses and assessments of the results of the conducted public procurements which will encompass all segments and phases of the public procurement process, from the procurement planning to the complete realization of the contracts, also including the performed external controls. The competition in the public procurement procedures is a segment that should be paid special attention. The analysis should show for which procurement objects there is competition (3 or more submitted offers) and for which there is none (there is no bidder or there are a maximum of two bidders). In this context, the reasons for weak competition should be analysed and how the lack or small number of offers for a specific procurement object correspond to the national level average for that procurement object.
- » Not to resort to easily and frequently cancelling of the procedure on certain grounds, and when that happens, to provide detailed explanations to determine whether the cancellation is justified. By reducing or by disabling the cancellation of the procedures in cases when the favored bidder cannot be selected, corruption in public procurement is also reduced. On the other hand, detailed explanations while using certain grounds for cancelling the procedure will contribute to increase the transparency and accountability of the contracting authority.
- » Consistently apply the obligations from the Law on Public Procurements for publication of the notification for a concluded contract within 10 days of signing the contract and for the notification of a completed contract within 10 days from the complete realization of the contract. On one hand by complying with these legal obligations the involved contracting authorities will show that they work in compliance with the law and on the other hand this will

contribute to an increase of transparency and accountability in the public procurement process; with it the trust among the citizens and the municipality and public company service users will increase.

- » Publish all relevant information regarding public procurement on the web pages. For those public companies who still do not have a web page, the obligation to publish relevant information should belong to the municipalities as their founders. Even though all data regarding public procurements is published in the ESPC, the web pages of the contracting authorities are a reflection of their transparency which is why these data should be available at such a place which is visited by the general public and in such a way that will be easily understandable for all citizens. The simple attaching of links which lead to the Electronic System for Public Procurement is not the desired model of transparency and accountability. It is necessary to provide a good explanation as regards the content of those links and what the citizens can find on those links.
- » For every concluded public procurement contract there should be one or two persons appointed to monitor the realization of the contracts in order to keep accurate records of the fulfillment of the contractual obligations such as delivery deadline, appropriate amounts and quality according to the tender documentation and the contracts, as well as accurate financial records of payments done connected to the procurements and the like.

