

# SHADOW REPORT



## PUBLIC PROCUREMENTS IN MACEDONIA: TRAPPED BETWEEN THE OLD AND THE NEW

STATE-OF-AFFAIRS, PROBLEMS AND FUTURE CHALLENGES  
IN IMPLEMENTATION OF TENDER PROCEDURES



# SHADOW REPORT

## **Public Procurements in Macedonia: Trapped Between the Old and the New**

State-of-Affairs, Problems and Future Challenges in  
Implementation of Tender Procedures

**Publisher:** Center for Civil Communications

**Translation into English:** Abacus

**Graphic Design:** Polyesterday DOOEL Skopje

**Print:** Polyesterday DOOEL Skopje

**Circulation:** 200 copies

**Free-of-charge/non-commercial circulation**

**CIP – Каталогизација во публикација**

Национална и универзитетска библиотека “Св. Климент Охридски”, Скопје

**35.073.53(497.7)(047.31)**

ЈАВНИТЕ набавки во Македонија : меѓу старото и новото : состојби, проблеми и идни предизвици во спроведувањето на тендерите : извештај во сенка. – Скопје : Центар за граѓански комуникации, 2018. – 12, 12 стр. : граф. прикази; 30 см Насл. стр. на припечатениот текст: Public Procurements in Macedonia: trapped between the old and the new : state-of-affairs, problems and future challenges in implementation of tender procedures : shadow report. – Обата текста меѓусебно печатени во спротивни насоки. – Текст на мак. и англ. јазик. – Фусноти кон текстот

**ISBN 978-608-4709-69-5**

а) Јавни набавки – Македонија – Извештаи COBISS.MK-ID 109104138

This publication is developed with financial support from the European Union with the Balkan Tender Watch project. The contents thereof are the sole responsibility of the Center for Civil Communications, and can in no way be taken to reflect the views of the European Union.

## Table of contents:

<b>1. Introduction</b>	<b>4</b>
<b>2. Drop in value of tender procedures by 35% within a period of only one year</b>	<b>5</b>
<b>3. Problems “solved” on paper in the new law that is still not adopted</b>	<b>7</b>
<b>4. Wiretapped conversations and SPO give boost to the fight against corruption in public procurements</b>	<b>11</b>
<b>5. 2018 as the year lost: great expectations for 2019</b>	<b>12</b>

## 1. INTRODUCTION

In 2018, state-of-affairs related to public procurements in Macedonia are still trapped between the valid “old” and heavily criticized Law on Public Procurements and the already drafted “new” law that should “correct” matters, but is still pending enactment by the Parliament of the Republic of Macedonia.

The most heavily criticized specificity of the system of public procurements in Macedonia, i.e. the infamous Council of Public Procurements responsible to provide previous approval to all public procurements that could not demonstrate minimum level of competition on the relevant market, was terminated in November 2017, in response to numerous remarks and concerns raised by all parties. However, that solved only portion of problems plaguing public procurements, given that other disputable provisions from the law are still in effect, notably those that were in place prior to establishment of this council that only further complicated matters.

The current version of the Law on Public Procurements is not aligned with EU Directives from 2014 in many segments and, in spite of the fact that the EU has noted these concerns in several consecutive country reports and has requested urgent changes to be made, that did not happen. The previous government turned the deaf ear to criticism of this type, while the new government (in office since June 2017) attempted to mitigate criticism by engaging in development of completely new legislation. Be that as it may, the new law is still not adopted, allowing public procurements to continue to be implemented pursuant to regulations that had been strongly criticised not only by Brussels, but also by domestic factors in this process, such as: contracting authorities, companies, chambers of commerce, civil society organizations, regulatory and oversight institutions, etc.

Except at systemic level, problems related to implementation of public procurements were also noted at the level of institutions. According to different research studies<sup>1</sup> on practices related to implementation of tender procedures, institutions that spend the highest amount of public funds demonstrate the lowest level of transparency, accountability and integrity in public procurements. In particular, procurement planning and contract performance continue to be the weakest links in the cycle of public procurements.

Although the year 2018 nears its end, the last annual report published on performance of the system of public procurements in Macedonia is still the 2016 annual report. Non-publication of annual report for the previous year by the end of November in the current year amounts to precedence in the recent history in Macedonia. In that, there was no public and official explanation about reasons behind this record-breaking delay.

Otherwise, annual reports provide detailed overview on implementation of public procurements and, in general, performance of the system of public procurements in the country, including analysis of the market of public procurements and proposals aimed to advance the system as a whole. According to practices in place, annual reports are adopted by the Government, after which the Bureau of Public Procurements (BPP) publishes them on its official website.

<sup>1</sup> For more information, please visit: <http://www.integritet.mk/>

## 2. DROP IN VALUE OF TENDER PROCEDURES BY 35% WITHIN A PERIOD OF ONLY ONE YEAR

Data from the Electronic Public Procurements System<sup>2</sup> (EPPS), which is government-run online platform for implementation of public procurements in the country, indicate to record-breaking drop by 35% in terms of the value of public procurements in Macedonia implemented in 2017 compared to their value in the previous year. In 2016, the total value of public procurements on annual level had reached 962 million euros, but in 2017 their value dropped to only 625 million euros, i.e. it has decreased by 337 million euros. In that, the number of contracts signed and the number of procurement notices have decreased by only 10% and 7% respectively.

To present, there is no official explanation for this major decrease in terms of the value of public procurements in 2017 and, according to available data, this level will be maintained in 2018 as well.

Such decrease in the value of public procurements has resulted in their smaller share in the Gross Domestic Product (GDP) and the state budget. Hence, the total value of public procurements in 2017 accounted for only 6% of GDP and 19% of the state budget, unlike the situation observed in 2016, when these shares stood at 10% of GDP and high 30% of the state budget.

### Value of public procurements (in million €)<sup>3</sup>



According to unofficial interpretations, this decrease could be due to several reasons, as follows: decreased number of tender procedures organized and procurement contracts signed; change of government at both levels (central government in June, and local government in October 2017); restructuring of companies on the market of public procurements impacted by the new government; fear among newly appointed/elected public officials concerning “easy” implementation of tender procedures due to massive investigations and court proceedings on the grounds of abuse of public procurements, led and processed by the Special Prosecution Office against previous holders of public offices; distrust among new public officials in people at institutions implementing public procurements who were recruited by their predecessors; as well as extremely high prices attained in some tender procedures from previous years, which were now implemented at significantly lower prices.

In addition to the lack of detailed analysis about this dramatic decrease in terms of the value of tender procedures, there are no analyses about the negative impact this decrease has on economic development in the country, having in mind the importance of public procurements as macroeconomic variable.

<sup>2</sup> <https://e-nabavki.gov.mk/PublicAccess/Home.aspx#/home>

<sup>3</sup> Data for 2018 are taken from EPPS, with cut-off date by 31.10.2018.

## General data on public procurements in Macedonia

Year	Value of public procurements (in million €)	Number of procurement notices	Number of contracts signed
2016	962	18,444	30,895
2017	625	17,227	27,764
2018 <sup>4</sup>	599	17,303	22,960

As regards the share of individual types of procurement procedures in the total value of contracts signed, open procedures have a dominant share and account for almost three quarters of the total value.

### Share of individual types of procurement procedures in the total value of contracts signed

Year	Open procedure	Up to 20,000 €	System of qualifications	Negotiation procedure	Up to 5,000 €	Other
2016	75.5	6.9	6.1	4.0	2.0	5.4
2017	75.3	8.9	5.2	4.7	2.8	3.1
2018	78.0	8.4	4.1	4.2	2.6	2.7

Direct contracts, i.e. contracts signed under negotiation procedure without previously announced call for bids, in value terms, continue to account for more than 4% of the total value of contracts signed. This trend is maintained in the course of 2018, although the number of this type of contracts (by 31.10.2018) is lower than 2% of all contracts signed, but the value of these contracts, also called "tête-à-tête contracts", accounts for 4.3% of the total value of all contracts signed.

### Share of negotiation procedures without previously announced call for bids (direct contracts)

Year	Number of direct contracts	Share in all contracts signed	Value of direct contracts (in million €)	Share in value of all contracts
2016	640	2.1%	38.5	4.0%
2017	505	1.8%	29.3	4.7%
2018 <sup>2</sup>	418	1.8%	25.0	4.2%

Appeals lodged by companies before the State Commission on Public Procurement Appeals (SCPPA), which for a long string of years had been indicated as form of control over implementation of tender procedures, continue to be rare. In 2017, companies have lodged only 513 appeals for the total of 17,227 procurement notices, accounting for only 2.98% of all procurement procedures.

### Number, share and admitted appeals lodged by companies in public procurement procedures

Year	Number of tender procedures	Number of appeals lodged by companies	Share of appeals in total number of tender procedures	Share of admitted appeals in total number of appeals
2016	18,444	557	3.02%	44.7%
2017	17,227	513	2.98%	42.9%

<sup>4</sup> Data for 2018 are taken from EPPS, with cut-off date by 31.10.2018

<sup>5</sup> Data for 2018 are taken from EPPS, with cut-off date by 31.10.2018.



Reasons why companies refrain from utilization of this instrument are numerous, in spite of their continuous complains that tender procedures are “rigged”. The survey conducted among companies shows that most frequently indicated reasons for failure to lodge appeals include high fees for initiation of appeal procedures (as reported by 45% of surveyed companies), distrust in SCPPA (as reported by 41% of companies) and fear that they would be eliminated from future procurements (as reported by 9% of companies).

Due attention should be paid to continuous increase observed in terms of the share of admitted appeals in the total number of appeals lodged, which in 2017 accounted for high 42.9% of all appeals. The fact that almost every second appeal lodged by companies was admitted, meaning companies have rightly claimed in their appeals that tender procedures have not been properly implemented, leads to the conclusion that lodging appeals is still worth the effort and that frequent use of this appeal mechanism should be encouraged.

### 3. PROBLEMS “SOLVED” ON PAPER IN THE NEW LAW THAT IS STILL NOT ADOPTED

In late 2017, the Government initiated the process for development of new Law on Public Procurements, mainly for the purpose of aligning domestic legislation with the new EU Directives, but also under pressure of continuous criticism expressed in regard to the current law in effect. Unlike practices in the past, development of the new legal framework was accompanied by process of broad consultations, with particular participation of the private sector and civil society organizations. The new law is expected to be adopted by the end of this year and to enter in effect in the first half of 2019.

Key novelties featured in the new proposed law<sup>6</sup> and related to anticorruption mainly originate from demands put forward by the civil society<sup>7</sup> and the European Union. In particular, they concern:

- ◆ Introduction of administrative control over tender procedures by the Bureau of Public Procurements (BPP) in the course of their performance, i.e. so-called ex-ante control on selected public procurement procedures: in particular those whose value exceeds half million euros (goods and services) and two million euros (works); procedures flagged by the risk assessment system (under development at BPP) as “high-risk”, and random selection of procurement procedures (for example, every 100<sup>th</sup> tender procedure).
- ◆ Introduction of precise anticorruption provisions in the law, which arise from practices observed, i.e. malpractices and bad experiences related to law enforcement.
- ◆ Provisions that regulate conflict of interests at the State Commission on Public Procurement Appeals.
- ◆ Introduction of penal provisions for violation of the law.
- ◆ Expanded scope of the law to cover the period after signing of public procurement contracts, i.e. inclusion of the stage related to contract performance whereby, for the first time, the law covers the entire “cycle of public procurements”. In this regard, contracting authorities are now obliged to perform mandatory controls over contract performance, as well as to develop and publish reports on completed public procurements.

<sup>6</sup> <https://www.sobranie.mk/materialdetails.nsp?materialId=2bafc1d8-bae6-4cf7-9937-e352a6262c47>

<sup>7</sup> <http://www.ccc.org.mk/images/stories/predlozi.pdf> and <http://www.ccc.org.mk/images/stories/p2017m.pdf>

- ◆ In the same line, treatment of public procurements as “cycle” instead of “procedure on awarding public procurement contract” strengthens the initial stage of public procurements, i.e. procurement planning, notably by introduction of obligation for contracting authorities to justify the need for all public procurements and to take into consideration market conditions when computing estimated value of individual procurements.
- ◆ Narrowed legal grounds for annulment of public procurement procedures (which is another long-standing and burning problem that affects public procurements in Macedonia), notably by cutting number of qualified reasons for annulment of tender procedures, as follows: inadequate bids received; inability to compare bids; and significant violations to the law.
- ◆ Introduction of an obligation for BPP to issue opinions on fulfilment of conditions under procurement procedures that include award of direct contracts.
- ◆ Introduction of penal provisions for contracting authorities and economic operators.
- ◆ Introduction of several provisions aimed to stimulate greater participation of small enterprises in public procurements, such as: division of public procurements into lots, when possible and allowed, as well as provision of mandatory justification when procurements are not divided into lots; capping the threshold on annual turnover of companies at double the amount of the procurement’s estimated value, when defined as eligibility criteria for participation in tender procedures; direct payments to subcontractors, when requested; reduced fees for initiation of appeal procedures in tender procedures of smaller scope, from 100 to 50 euros.

As mentioned earlier, these measures were introduced on proposal from the civil society and the European Union, with a view to narrow the space for malpractices and corruption in public procurements. Although proposals put forward by the civil society have been valid for almost a decade and arise from problems identified in implementation of public procurements and, in general, the system of public procurements, it seems that the alarm to have these problems addressed (which received additional boost after proposals put forward by the EU) strongly resonated in the aftermath of investigations conducted by the Special Prosecution Office. Most of court proceedings initiated on the basis of said investigations (and arising from the contents of wiretapped conversations) concern abuses in public procurements and further confirm previously raised remarks. Hence, measures proposed under the new Law on Public Procurements represent an attempt to narrow possibilities for such malpractices and abuses.

Among them, crucial “slippery” areas under the previous law, which is still in effect and applicable, include:

- ◆ Lack of oversight and control mechanisms over implementation of public procurement procedures;
- ◆ Insufficient regulation concerning corruption and conflict of interests in public procurements;
- ◆ Lack of any penal provisions in the wake of numerous evidence about day-to-day violations of law provisions;
- ◆ Failure to take into consideration the cycle of public procurements, i.e. failure to address one of the key stages in public procurements - performance of procurement contracts signed, and absence of obligations for contracting authorities to oversee and control this aspect of public procurements;
- ◆ Numerous weaknesses in the initial stage related to needs assessment and planning of public procurements;
- ◆ Easy and frequent annulment of tender procedures, which gives rise to concerns about “rigged” tender procedures;
- ◆ Complete absence of any control over performance of public procurement contracts;
- ◆ Limited possibilities for and unfavourable position of small companies to participate in the market of public procurements.

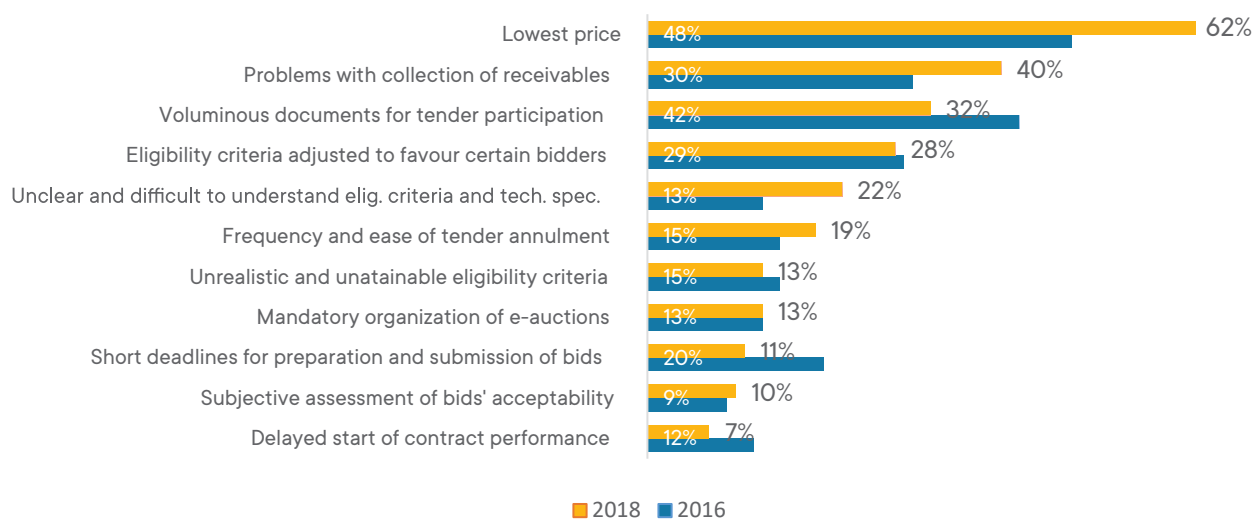
In addition to these problems directly related to proposals integrated in the draft law and labelled as “anticorruption” provisions, other burning problems that affect public procurements in Macedonia include:

- ◆ “lowest price” used as single criterion for awarding public procurement contracts;
- ◆ mandatory organization of electronic auction for the purpose of reducing initially offered prices;
- ◆ low competition in tender procedures;

- ◆ unfavourable structure in terms of small number of companies participating in high share of procurement contracts;<sup>8</sup>
- ◆ high share of annulled public procurement procedures;
- ◆ low share of appealed tender procedures compared to the total number of public procurements;
- ◆ ease of prohibiting companies from participation in tender procedures in duration of one to five years.

The last survey<sup>9</sup> conducted among companies shows that the most burning problems they have faced when participating in public procurements include: “lowest price” used as single criterion; late payment for contracts performed; voluminous documents required for participation in tender procedures; and rigging tender procedures.

### Main problems faced by companies when participating in public procurement procedures



Be that as it may, there is an overall impression that not many changes have been made in in terms of the manner in which tender procedures in Macedonia were implemented in the course of 2017 and 2018. As mentioned above, the old problems remained, especially in terms of implementation of public procurements and, in general, the system of public procurements, including non-alignment of domestic legislation with the new EU Directives in this field. It should be noted that Macedonia had failed to fully align its legislation even with the previous EU Directives (adopted in 2004), and now it is facing the challenge of alignment with the new rules at EU level.

Use of “lowest price” as single criterion for awarding public procurement contracts, together with the failure to take into consideration, i.e. gross neglect of quality in terms of goods and services being procured, are considered the first and the most critical point in terms of legislation’s non-alignment, as well as source of many serious problems affecting public procurements in Macedonia. This, combined with mandatory organization of electronic auctions (downward bidding), provide yet another unique feature of the system of public procurements in Macedonia.

Such misshaped combination has resulted in attainment of extremely low prices that, in turn, bring under question performance of public procurement contracts pursuant to agreed terms and concerning quality, quantity and timely delivery, or attainment of extremely high prices, sometimes several times higher than market prices, which gives rise to doubts about possible corruptive practices.

The closely intertwined amalgam of causes and effects in the realm of public procurements includes desperately low competition, which averages at less than three bidding companies per tender procedure in Macedonia. In that context, utterly disappointing is the fact that tender procedures presented with one or no bids at all account for high share of 25% – 30% in all tender procedures.

Perpetually high share of annulled tender procedures is yet another specificity of public procurements in Macedonia and is considered to be possible indicator of corruption. In 2017, 24.4% of all tender procedures were annulled (in full and in part), while in the first ten months of 2018 their share is higher and accounts for 27.4%.

<sup>8</sup> <http://www.opendata.mk/Home/TekstualniDetails/42?Category=2>

<sup>9</sup> [http://www.ccc.org.mk/images/stories/30\\_mk\\_web.pdf](http://www.ccc.org.mk/images/stories/30_mk_web.pdf)

## Share of annulled tender procedures (in full and in part)<sup>10</sup>



Another unique specificity of public procurements in Macedonia which, unfortunately, was carried over in the new Law on Public Procurements concerns issuance of prohibition to economic operators for participation in tender procedures in duration of one to five years. Namely, issuance of so-called negative references, as the law refers to blacklisting of companies, is contrary to the EU Directives and rulings taken by the European Court of Justice. In spite of the fact that the EU and civil society, including the companies, have requested this legal provision to be revoked, that did not happen. It seems the Government opted to keep the blacklist of companies until the country's membership in the EU or at least until completion of accession negotiations under Chapter 5, which concerns public procurements.

Blacklisting is considered an extremely rigid penalty for companies, in particular knowing that grounds for particular company to be issued negative reference are broad and that any contracting authority is allowed to prevent companies from participation in all tender procedures organized in the country for a period of up to five years. Moreover, this practice could also serve as generator of corruption.

Inter alia, law-stipulated grounds for issuance of such prohibition include company's refusal to sign the procurement contract or withdrawal of the company's bid. Under the new law, changes made by the Government in terms of the blacklist concern shorter duration of these sanctions, i.e. shorter period of prohibition/blacklisting for companies from participation in the market of public procurements. In particular, provisions under the new law stipulate that the first prohibition of companies should be in duration of six months (instead of one year, as regulated under the current law), and that any future prohibition would imply addition of three months (instead of additional year, as regulated under the current law), but their cumulative duration should not exceed one year (instead of five years, as regulated under the current law).

Regular monitoring of public procurements conducted by the Center for Civil Communications has shown numerous examples related to inadequate issuance of negative references, especially in cases when contracting authorities should, but have failed to issue negative references to particular companies. Such cases give rise to doubts and concerns about corruption, i.e. about hidden motives behind the decision to breach the law and to "exempt" particular company from blacklisted.

Several indicators that fuel doubts and concerns about corruptive practices in public procurements include:

- ◆ high concentration, i.e. high cumulative value of public procurement contracts with a small number of companies;
- ◆ small number of bids submitted in tender procedures;
- ◆ signing contracts with same bidding companies over the course of several consecutive years;
- ◆ terms and conditions for participation in tender procedures that favour particular company;
- ◆ high number of annulled tender procedures, etc.

<sup>10</sup> Data for 2018 are taken from ESPP, with cut-off date by 31.10.2018.

#### 4. WIRETAPPED CONVERSATIONS AND SPO GIVE BOOST TO THE FIGHT AGAINST CORRUPTION IN PUBLIC PROCUREMENTS

Macedonia cannot take pride in its track record related to the fight against corruption in public procurements.

Although 88% of companies have reported<sup>11</sup> corruption in public procurements (albeit assigning different scores about corruption level) and the fact that reports published by the EU have continuously noted widespread corruption in this sector, it could be stated that the anticorruption system in public procurements does not function properly, with the exception of investigations and court proceedings initiated by the Special Prosecution Office.

For years at an end, the regular prosecution office had failed to produce any significant results related to the fight against corruption in public procurements. According to most recent information, only in the course of 2018 the Basic Prosecution Office Against Organized Crime and Corruption has opened 39 cases that cover a total of 113 persons for having committed criminal offences related to abuse of office and duties in public procurements. Among them, indictments were raised in two cases, orders for investigation procedures were issued in six cases, while 31 cases are recorded to be in their pre-investigation stage.

As of March this year, the State Commission for Prevention of Corruption ceased any activity, given that five of the seven members have resigned in the aftermath of public revelations that they had unwarrantedly awarded themselves reimbursement of travel costs. In the meantime, the Parliament has not appointed new members, while the Government initiated development of the new Anticorruption Law. In spite of such developments, the Commission cannot take pride in achievement of any results related to the fight against corruption in public procurements in the last years. In 2018, this commission has not motioned any initiative before the public prosecution office for initiation of criminal charges related to abuses in public procurements. Identical performance record was observed in 2017 and 2016, although the Commission, in its 2016 Annual Report, indicated that “procedures and performance of public procurements represent an ongoing and active area in terms of suspicions for corruptive practices”.

Another institution within the state system that has been entrusted with particular role in the fight against corruption in public procurements is the State Audit Office (SAO), i.e. the top-ranked auditing institution whose regular audit activities at state institutions also focus on verification of lawful implementation of public procurements.

As part of its audits in the course of 2017, SAO has presented 63 findings on irregularities in public procurements. Majority of them concern weaknesses in relation to performance of public procurement contracts, award of public procurement contracts, and bid evaluation process.

As is the case with the Anticorruption Commission, SAO is also entitled to present the public prosecution office with its audit reports about institutions where it has been established that certain violations or criminal offences had been committed. In 2017, SAO has submitted 16 audit reports for a total of 12 institutions. Although these reports do not enlist violations or criminal offences committed, analysis of their contents allows the conclusion that, at least in the case of two audit reports, concerns raised therein are directly connected to public procurements.

SAO informed that the most common response they receive from the public prosecution office in relation to reports they have submitted implies lack of grounds for initiation of relevant proceedings based on audit findings. Most recent information obtained from the public prosecution office in late November this year in relation to the two audit reports indicated implies that pre-investigation procedure was initiated in relation to one report, while audit findings from the second report are undergoing verification. In addition to the public prosecution office, SAO submits its final report to the Parliament of the Republic of Macedonia, but the latter has not initiated discussion on any of these reports. Although MPs are not decisively obliged by law to reconsider SAO's reports, that should not prevent them from doing so. Hence, the Parliament also fails to perform its oversight role over the executive branch of government.

Another mechanism and factor in the system on fight against corruption in public procurements that fails to fully perform its intended role is the Commission for Protection of Competition. In spite of concerns, and even evidence about illegal arrangements among companies in public procurements, which is something this commission should control and duly sanction, in the last three years the Commission for Protection of Competition has established illegal arrangements in only one case, in 2017.

<sup>11</sup> Monitoring of Public Procurements in the Republic of Macedonia, Report no. 30, July-December 2017, Center for Civil Communications, Skopje, May 2018, available at: [http://www.ccc.org.mk/images/stories/30\\_mk\\_web.pdf](http://www.ccc.org.mk/images/stories/30_mk_web.pdf)

It seems that the only factor in the system on fight against corruption in public procurements that has taken significant measures in this regard is the Special Prosecution Office (SPO), established in February 2015 and tasked to prosecute criminal offences and wrongdoings arising from the contents of wiretapped communications.

Notably, 6 from the total of 24 cases formed by this prosecution office concern abuses in public procurements. Three of these cases are currently processed at courts, while the remaining three were already resolved with court rulings. Moreover, SPO has initiated six additional investigations on the grounds of reasonable doubts for abuses in public procurements.

## 5. 2018 AS THE YEAR LOST: GREAT EXPECTATIONS FOR 2019

Having in mind that the new Law on Public Procurements, which is expected to enter in effect next year, puts cost-effectiveness in the focus of public procurements (efforts to obtain the best value for the money spent), it will be of crucial importance for contracting authorities to better prepare themselves, with a view to fully utilize the potential offered by the new law.

Contracting authorities will be at liberty to decide what is considered the most economically advantageous bid for given public procurement, i.e. whether that would be price or costs, or in addition they would define criteria such as life-cycle costs or best price-quality ratio, which is assessed on the basis of criteria, including qualitative, environmental and social aspects linked to the procurement subject.

It would be of great importance for contracting authorities to adequately use these possibilities that could facilitate resolution of previous anomalies arising from use of "lowest price" as single criterion and mandatory organization of e-auction, although they might still imply certain risk of malpractices or abuses.

In that regard, great importance is given to timely development of the multitude of bylaws arising from the new law, because in their absence the law could not be properly and fully implemented. Hence, this recommendation does not imply only timely development of said bylaws and allowing sufficient time for entities that will implement them to study them and adjust their practices, but also introducing new good practices for consultations with and involvement of stakeholders in development, i.e. adoption of these bylaws.

Special attention should be given to delivery of training on the multitude of provisions introduced in the new law, with a view to narrow the space for corruption and conflict of interests.

On the other hand, BPP must in timely manner, i.e. before entry into effect of the new law, complete its staffing process and undergo preparations for adherent enforcement of its newly assigned, long-expected and gravely needed competences related to oversight and control over implementation of tender procedures in the course of contract performance, immediately after the law enters in effect.

Almost year and a half after the State Audit Office (SAO) published the audit report on performance of the system of public procurements in Macedonia, only small number of recommendations contained therein has been implemented in practice, with the exception of the recommendation related to the need to terminate the Council of Public Procurements.

In its report, inter alia, SAO has concluded that "[...] current policies and instruments in the system of public procurements do not always ensure satisfactory level of competition, equal treatment of economic operators, as well as cost-effective and efficient use of public funds in procedures on awarding public procurements contracts, which leads to lower quality of procurements and distorts the principle on obtaining adequate value for the funds spent".<sup>12</sup> Having the aforementioned in mind, 2018 could be considered lost year in terms of efforts to make more serious reforms in the system of public procurements in Macedonia. All efforts were geared towards development of the new Law on Public Procurements, thereby failing to take any other measures or efforts aimed at systemic or institutional capacity building and advancement of the manner in which public procurements are implemented. Given the slow pace of reforms, old problems remain to plague the overall system, while at the level of institutions, many contracting authorities continue their old malpractices.

<sup>12</sup> Report is available on the following link (last retrieved on 1.11.2018.): [http://www.dzr.mk/Uploads/1\\_43\\_RU\\_Efikasnost\\_prezemeni\\_memrki\\_razvoj\\_sistem\\_JN\\_davanje\\_soglasnost\\_od\\_biroto\\_2016\\_KOMPLET\\_FINALE.pdf](http://www.dzr.mk/Uploads/1_43_RU_Efikasnost_prezemeni_memrki_razvoj_sistem_JN_davanje_soglasnost_od_biroto_2016_KOMPLET_FINALE.pdf)



