

2014

23

## MONITORING THE IMPLEMENTATION OF THE PUBLIC PROCUREMENT REPORT

ON MONITORING  
THE IMPLEMENTATION  
OF PUBLIC PROCUREMENTS IN  
THE REPUBLIC  
OF MACEDONIA



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IN THE REPUBLIC OF MACEDONIA

REPORT **2014**

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Skopje, September 2014

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# Abbreviations

<b>BPP</b>	Bureau of Public Procurements
<b>SCPPA</b>	State Commission on Public Procurement Appeals
<b>CA</b>	Contracting authorities
<b>EO</b>	Economic operators
<b>EPPS</b>	Electronic Public Procurement System
<b>LPP</b>	Law on Public Procurements
<b>RM</b>	Republic of Macedonia
<b>CCC</b>	Centre for Civil Communications

## KEY FINDINGS AND RECOMMENDATIONS

- **Main problems companies face in public procurement procedures include: ample scope of documents required for participation in tender procedures, late collection of receivables for implemented procurement contracts and definition of eligibility criteria for participation in tender procedures that favour particular bidders.**
- **Companies that have been awarded procurement contracts, in average, wait for six months to collect their receivables related to the contract performance.**
- **Dominant share of surveyed companies believe that e-auctions result in attainment of unrealistically low prices, whereby quality is disregarded on the account of procurement prices.**
- **High costs related to and distrust in appeal procedures are main reasons on whose account 93% of surveyed companies rarely or never motion appeals against public procurement procedures.**
- **On the scale from 1 (negative) to 5 (excellent), companies assess the overall process on public procurements in the country with 2.86, which implies an insignificant improvement compared to 2012 assessment of 2.84.**
- **Three most common proposals put forward by bidding companies and aimed to amend LPP are: change of the legal provision stipulating “lowest price” as the only selection criterion for the purpose of selection crite-**

**ria to make due consideration of quality of products, services and works being procured; revoke the legal provision establishing mandatory organization of e-auctions for small-scale procurements whose value does not exceed 5,000 EUR; as well as, simplify and reduce scope of bid-related documents.**

- **Comparative analysis of appeal procedures shows there is possibility to change deadlines for submission of appeals in public procurements, expanding the list of entities entitled to lodge appeals and introducing new, more equitable method on setting administrative fees for submission of appeals.**



## GOALS AND METHODOLOGY

From November 2008, the Centre for Civil Communications from Skopje has continuously analysed the implementation of public procurements in the Republic of Macedonia, as regulated under the Law on Public Procurements. The analysis aimed to assess the implementation of public procurements in the light of the new Law on Public Procurements and the application of the underlying principles of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal proceeding, cost-effectiveness, efficiency, effectiveness and cost-effective public spending, commitment to obtain the best bid under the most favourable terms and conditions, as well as accountability for public spending in procurements.

The present analysis is based on data obtained by means of surveying companies that participate in public procurement procedures in the country, which inquired about their experiences and opinions on the manner in which tender procedures are organized and implemented.

Moreover, this report includes a comparative analysis of appeal procedures led against public procurements in several countries from the neighbourhood and the broader region, which allowed conclusions to be inferred about possible changes that would promote relevant appeal proceedings in the Republic of Macedonia.

# SURVEY OF COMPANIES INQUIRING ABOUT THEIR EXPERIENCES IN PUBLIC PROCUREMENTS

## INTRODUCTION

Research on companies' experiences in public procurements was conducted in the period June-July 2014 and targeted a total of 267 economic operators based and operating in all bigger towns and regions countrywide. For that purpose, a survey was conducted (individual interviews and electronic correspondence) based on previously designed questionnaire comprised of 17 questions, structured and formulated with a view to enable clear image about state-of-affairs in public procurements from the perspective of tender procedure participants, i.e. bidding companies. Overall goal of the survey is to identify most common problems and irregularities companies have encountered in public procurements, main challenges and considerations about e-auctions and companies' satisfaction with appeal procedures. Finally, survey questionnaire allowed companies to enlist problems they have encountered when participating in public

procurements and to make suggestions aimed at improving relevant legislation in effect and the public procurement system in general.

From 2009 to present, this is the fifth regular survey of companies' experiences in public procurements, organized and conducted by CCC as part of regular monitoring activities in the field of public procurements. Last survey was organized in July 2012 and results thereof were presented in 14th Quarterly Report on Monitoring Public Procurements. In order to assess whether progress has been made in the field of public procurements, at least from companies' standpoint, summarized answers presented in this report were compared against results from previous surveys.

In order to identify experiences of surveyed companies on public procurement market, we calculated the average

number of public procurements per year in which surveyed companies participate. High share of surveyed companies (44%) participate in maximum of 5 public procurements per year, followed by companies which participate in 6 to 12 public procurements per year (29.5%). Share of companies that can be freely assessed as companies whose “primary business” is public procurements, given the fact that they participate in more than 24 tender procedures per year, accounts for 19% of this survey’s sample, while the share of companies which, in average, participate in 13 to 24 public procurements per year accounts for 7.5%.

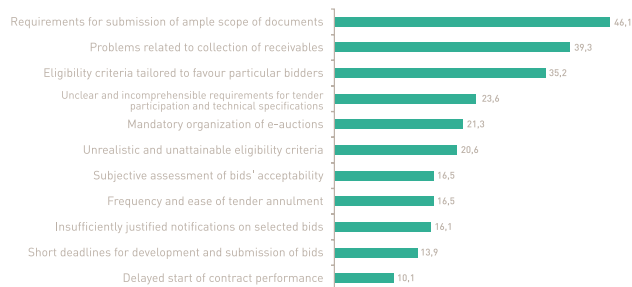
## PROBLEMS IN PUBLIC PROCUREMENTS

- **Main problems companies face in public procurement procedures include: ample scope of documents required for participation in tender procedures, late collection of receivables for implemented procurement contracts and definition of eligibility criteria for participation in tender procedures that favour particular bidders.**

Main problems in public procurements, as indicated by surveyed companies, are broad and various, and concern all stages of public procurement procedures. In general, surveyed companies reported several problems (an average of three problems). Main problem, as indicated by the highest number of surveyed companies (46.1%), concerns requirements for submission of ample scope of documents for tender participation for which companies need to invest significant time and money. Group of three main problems also includes late collection of receivables for implemented procurement contracts (39.3%) and definition of eligibility criteria for tender participation and technical specifications that can be fulfilled only by particular bidders (35.2%).

Next in frequency is another group of three problems indicated by similar share of respondents. They include: unclear and incomprehensive requirements for tender participation and technical specifications (descriptions on technical characteristics of products, services and works being procured), which were indicated as main problem by 23.6% of surveyed companies, followed by mandatory organization of e-auctions (i.e. downward bidding, for the purpose of reducing initial prices), which was indicated by

What are the main problems you face in public procurements?  
(multiple answers are allowed)



21.3% of surveyed companies, and finally, unrealistic and unattainable eligibility criteria for tender participation, i.e. requirements for companies to demonstrate their economic and financial status and technical ability, which was indicated by 20.6% of surveyed companies.

Almost identical is the share of next group of problems, which includes: subjective assessment of bids' acceptability (16.5%), frequency and ease of tender annulment (16.5%) and insufficiently justified notifications on selected bids provided by contracting authorities (16.1%).

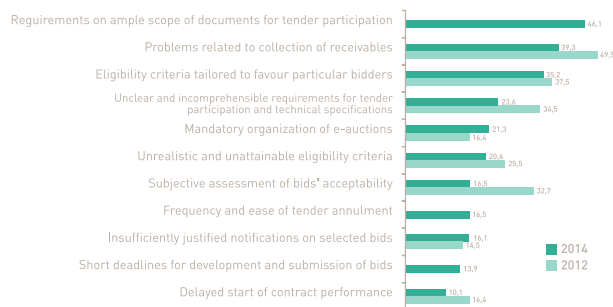
Last group of problems indicated by companies as main problems in public procurements concern short deadlines for development and submission of bids (13.9%) and delayed start of contract performance (10.1%).

Comparison of survey results on main problems faced by companies in public procurements shows difference in answers provided in 2012 and 2014. Unlike the situation observed in 2014 where the main problem of companies are requirements on ample scope of documents they need to submit for tender participation, two years ago, the main problem indicated by surveyed companies implied untimely collection of receivables for performed procurement contracts, which is now ranked as the second most important problem. It should be noted that under the previous survey of companies, the issue of ample scope of documents was not indicated as significant problem, and therefore it was excluded from relevant analysis and report on 2012 survey findings.

Definition of eligibility criteria for tender participation that can be fulfilled only by particular bidding companies (i.e. favouring particular bidding companies) is an equally

important problem for companies. Actually, this is the third-ranked problem under both surveys, in 2012 and 2014, with an insignificant difference in terms of relevant shares of surveyed companies that indicated this answer. In 2012, 37.5% of surveyed companies reported this as major problem, compared to 35.2% of surveyed companies that indicated this answer in 2014.

Comparison of answers on main problems faced by companies  
in public procurements, 2012 and 2014 surveys



As regards other problems, relevant shares of companies that indicated unclear eligibility criteria and technical specifications, subjective assessment of bids' acceptability

and delayed start of contract performance among main problems they face in public procurements are marked by decrease.

On the contrary, increased shares of companies that indicated mandatory organization of e-auctions in all tender procedures and insufficiently justified notifications on selected bids submitted by contracting authorities are indicative of deteriorating state-of-affairs.

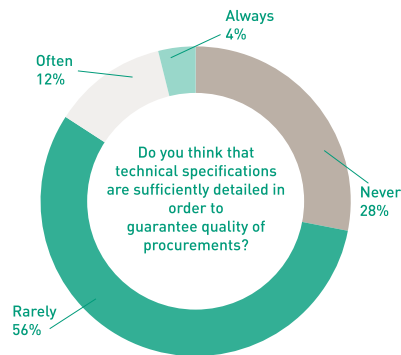
Two new problems indicated by surveyed companies imply frequent annulment of tender procedures and short deadlines for development and submission of bids. Newly emerged problem of short deadlines is closely related to the greatest problem identified by companies targeted with this survey research: requirements on ample scope of documents for tender participation.

Among other answers provided by companies in terms of problems they face in public procurements, most frequently indicated is "lowest price" defined as only criterion for public procurement contract awarding. In the opinion of surveyed companies, this criterion is not sufficient to facilitate selection of the most favourable bid, i.e. it leads to selection of bids whose performance is of poor quality.

In cases when “lowest price” is defined as only criterion for selection of the most favourable bid, contracting authorities have to define very detailed technical specifications in order to guarantee required quality of products, services and works being procured by means of tender procedures. However, high share of companies believe that contracting authorities rarely use this possibility to address problems created by definition of “lowest price” as only selection criterion in public procurements.

Hence, in cases when “lowest price” is defined as only selection criterion, as many as 84% of surveyed companies believe that technical specifications are never (28%) or rarely (56%) sufficiently detailed in order to guarantee quality of public procurements. Smaller share of companies believe that contracting authorities always (4%) or often (12%) develop sufficiently detailed technical specifications of what they are procuring, in order to guarantee quality.

Answers provided by surveyed companies on the question inquiring about problems they face in public procurements, in addition to “lowest price” defined as only selection criterion and associated issues also include another worrying problem related to definition of tender participation requirements



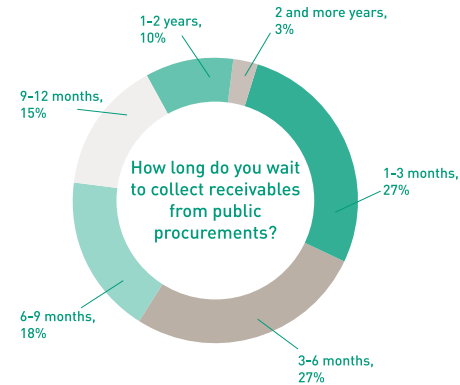
that favour particular bidding companies. Other problems indicated by surveyed companies, but not analysed in this document include: inadequate estimation of procurement's value; submission of false documents on the part of some economic operators and contracting authorities' failure to take any actions in that regard, even upon complains about such practices; contracting authorities' ease in rejecting bids when they are lacking particular document, without giving bidding companies in question opportunity to submit missing documents and/or supplement their bid-related documents.

## DELAYED PAYMENT FOR PUBLIC PROCUREMENTS IMPLEMENTED

- Companies that have been awarded procurement contracts, in average, wait for six months to collect their receivables related to the contract performance.

Having in mind that the problem related to contracting authorities' irregular payment of contracts performed has been regularly emphasized, we asked the companies to indicate the average period of time for collecting their receivables from procurement contracts performed. Average period of time for collection of these receivables calculated for this survey sample is six months.

Equal shares of companies responded that, in average, they have been paid with delays of 1-3 months (27%) and 3-6 months (27%). 18% of companies responded that payment of performed contracts is by 6-9 months delayed, while 15% of them had to wait 9-12 months to collect their receivables. Delayed collection of receivables by 1-2 years was reported by 10% of surveyed companies, and only 3% of answers indicated non-payment for procurement contracts performed in duration of more than 2 years.

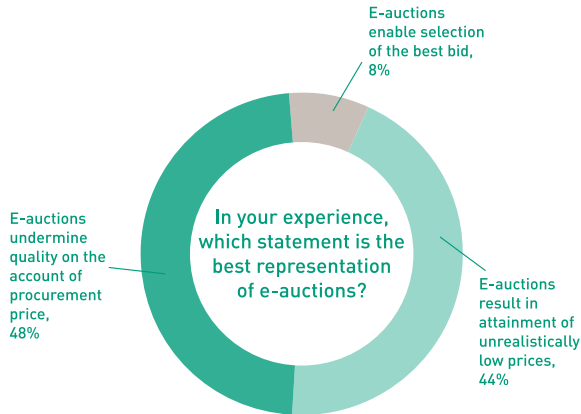


## E-AUCTIONS

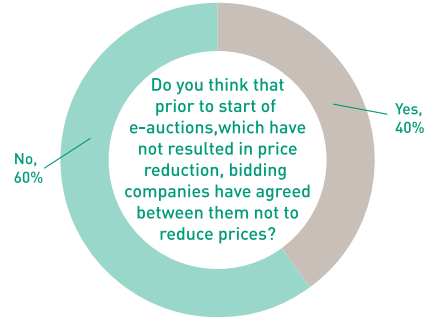
- Dominant share of surveyed companies believe that e-auctions result in attainment of unrealistically low prices, whereby quality is disregarded on the account of procurement prices.

Only small share of surveyed companies (8%) believe that mandatory organization of e-auctions as final stage of public procurement procedures ensures selection of the best bid.

High share of surveyed companies believe that e-auctions disregard quality of procurements on the account of low price (48%) and that e-auctions result in attainment of unrealistically low prices (44%).



Dominant share of surveyed companies (60%) negate allegations that e-auctions at which initial prices are not reduced are actually result of participating companies colluding and agreeing between them not to reduce their prices.



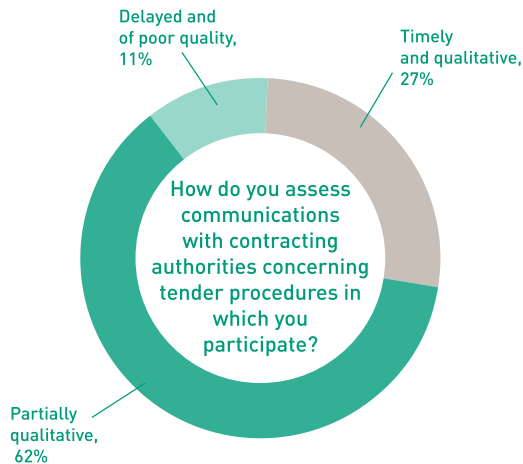
Nevertheless, significant 40% of surveyed companies believe that agreements on not reducing prices in the course of downward bidding (i.e. e-auctions) are made in advance.

2014 share of surveyed companies that provided affirmative answers on the question about possible previous agreement between bidding companies in cases of e-auctions that have not resulted in lower prices is slightly lower compared to 2012 survey results. In 2012, 47.5% of surveyed companies provided affirmative answers, compared to 40% of surveyed companies in 2014. In 2012, 52.5% of surveyed companies provided negative answers, compared to 60% of surveyed companies in 2014.



## COMMUNICATION WITH CONTRACTING AUTHORITIES

- High share of surveyed companies assessed quality of communications with contracting authorities concerning tender procedures they are participating in as partial.

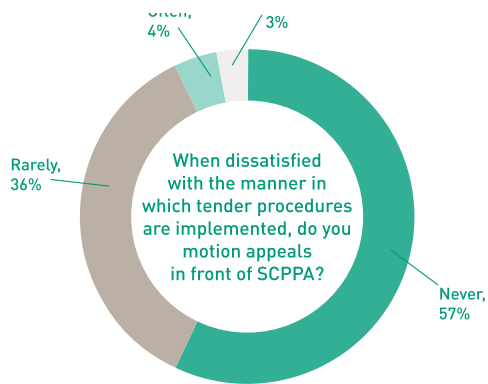


In the opinion of 62% of surveyed companies, quality of communications with contracting authorities concerning tender procedures they are participating in is partial.

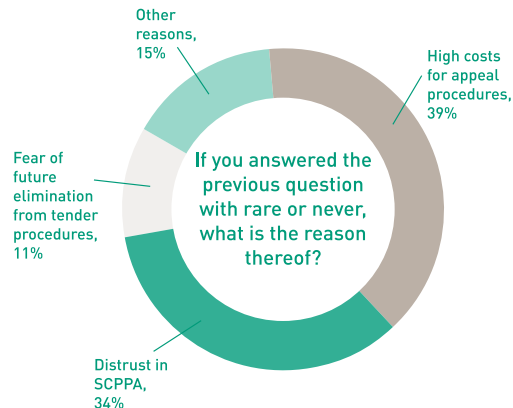
Unlike most companies, 27% of them assessed communications with contracting authorities as timely and qualitative, but 11% of surveyed companies indicated they are delayed and of poor quality.

## APPEAL PROCEDURE

- High costs related to and distrust in appeal procedures are main reasons on whose account 93% of surveyed companies rarely or never motion appeals against public procurement procedures.



High 93% of surveyed companies have never (57%) or rarely (36%) motioned appeals against tender procedures they have participated in. On the contrary, very small share of companies have often (4%) or always (3%) motioned appeals in front of the State Commission on Public Procurement Appeals in cases they are dissatisfied with the manner in which tender procedures are implemented.



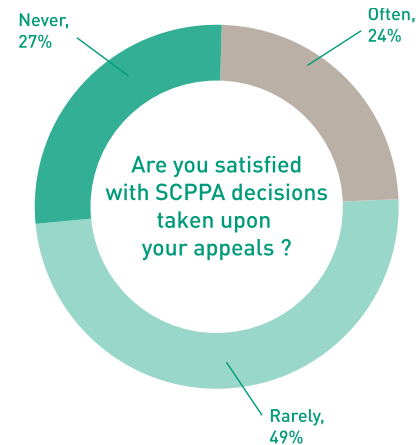
Most frequently indicated reasons for companies' reluctance to motion appeals in public procurements imply high costs related to appeal procedures (39%) and distrust in SCPPA (34%).

Compared to results obtained under 2012 survey, the number of companies that have indicated high costs related to appeal procedure as the main reason behind their reluctance to

motion appeals against public procurements is increased. In other words, 33% of companies surveyed in 2012 and 39% of companies surveyed in 2014 provided this answer. In 2012 and 2014, equal shares of companies indicated distrust in SCPPA as the main reason for their reluctance to appeal tender procedures they are dissatisfied with (34%).

In 2014, decreased share of companies justified their reluctance to motion appeals with fear of being eliminated from future public procurements organized by contracting authorities. Namely, in 2012, 21% of surveyed companies indicated this answer, while in 2014 their share accounts for 11%.

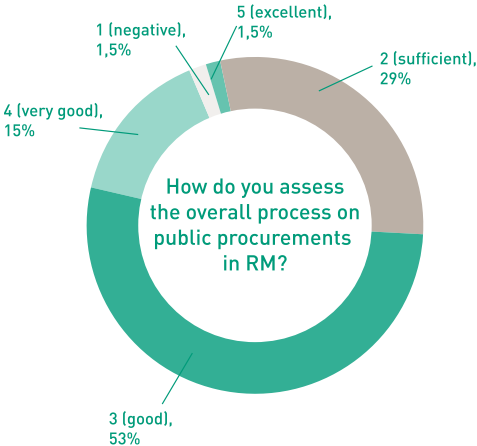
On the question inquiring about companies' satisfaction with decisions taken upon their appeals in public procurements, high shares of them indicated that they are rarely or never satisfied with these decisions (73%), although their share in 2014 is lower compared to 2012 survey results, when 81% of surveyed companies provided this answer.



On individual level, the share of companies which are often satisfied with SCPPA decisions has increased from 19% (2012) to 24% (2014), while the share of companies which are rarely satisfied with SCPPA decisions has increased from 45% (2012) to 49% (2014). On the other hand, the share of companies which are never satisfied with SCPPA decisions upon their appeals has decreased from 36% (2012) to 27% (2014).

ASSESSMENT OF PUBLIC PROCUREMENT PROCESS

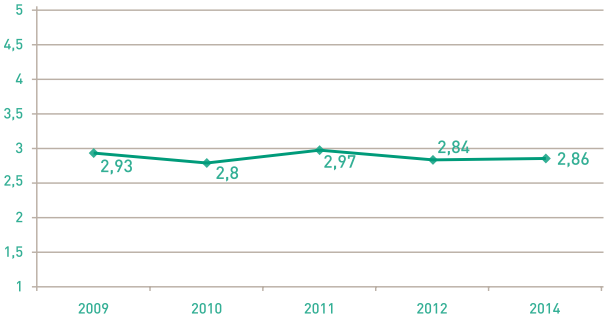
- On the scale from 1 (negative) to 5 (excellent), companies assess the overall process on public procurements in the country with 2.86, which implies an insignificant improvement compared to 2012 assessment of 2.84.



When asked to assess the overall process on public procurements in the country, the highest share of companies (53%) indicated an assessment of 3 (good), followed by 29% of companies that indicated an assessment of 2 (sufficient) and 15% of companies that provided an assessment of 4 (very good). Only 1.5% of surveyed companies gave the highest or the lowest assessments each, i.e. 1 (negative) and 5 (excellent).

Compared to 2012 survey results, 2014 average assessment of the overall process of public procurements in the country

Movement of company's average assessment of the public procurement system



is marked by a minor improvement. In other words, 2014 average assessment calculated for all surveyed companies is 2.86 compared to 2012 average assessment of 2.84.

Comparison of assessments made throughout the monitoring years provides the conclusion that there are no significant differences in companies' assessment of the public procurement system. The highest assessment was observed in 2011 (2.97), while the lowest assessment was recorded in 2010 (2.80).

### COMPANIES' PROPOSALS FOR CHANGES TO THE LAW ON PUBLIC PROCUREMENTS

Given the possibility to share their views, provide guidelines and specific proposals aimed at changing relevant legislation on public procurements for the purpose of promoting relevant legal provisions, companies offered around hundred suggestions. On the basis of their frequency, following are the three most common proposals put forward by surveyed companies:

- **change of the legal provision stipulating “lowest price” as the only selection criterion**

**for the purpose of selection criteria to make due consideration of quality of products, services and works being procured;**

- **revoke the legal provision on establishing mandatory organization of e-auctions for small-scale procurements whose value does not exceed 5,000 EUR; and**
- **simplify and reduce scope of bid-related documents.**

Other frequently indicated suggestions are given below and are quoted verbatim from relevant questionnaires:

- **Law is good, but it is poorly enforced. Legal provisions should be adherently and fully implemented.**
- **Literally everything and anything should be precisely stipulated in the Law, leaving no space for manipulations and malpractices.**

- ⦿ **Greater supervision and stricter sanctions are needed in cases of non-compliance with the Law, especially in cases of tender/bid rigging.**
- ⦿ **Lowest threshold should be established for prices that can be bided during e-auctions.**
- ⦿ **Organization of e-auctions should be optional.**
- ⦿ **Administrative fees related to motions of appeal need to be reduced.**
- ⦿ **Administrative fees for appeals should be set as relevant share of company's price bided.**
- ⦿ **Possibility for appeals in front of contracting authorities should be re-introduced and should not imply any administrative costs.**
- ⦿ **Public opening of bids should also allow insight in tender documents submitted by bidding companies, and not merely reading of prices bided.**
- ⦿ **There should be greater transparency at public opening of bids.**
- ⦿ **Insurance services should not be procured in compliance with the Law on Public Procurements.**
- ⦿ **Contracting authorities and economic operators should be given equal rights.**
- ⦿ **Weekends and holidays should not be calculated in relevant deadlines for submission of bids.**
- ⦿ **More specific definitions are needed for particular terms, such as guarantees, sub-contractors, joint ventures, additional works, unpredictable works/services, surpluses, deficits, etc.**

- ① **One document [template] should be defined for participation in all tender procedures.**
- ① **[Bidding companies] should be exempted from payment of fees for obtaining documents needed for participation in public procurements.**
- ① **To introduce transparency in terms of reasons on whose account particular terms and conditions are included in tender documents and to provide rationale for all companies to be aware thereof.**
- ① **Line ministries should not implement centralized public procurements from Skopje for all regional branches, but the latter should be allowed to organize localized procurement procedures.**
- ① **EPPS registration fee imposed to small and micro-sized enterprises should be revoked.**
- ① **Municipalities should publish their public procurement plans and procurement notices on their official websites.**
- ① **Elimination of bids with the lowest and the highest price offered.**
- ① **E-auctions should be scheduled and organized one day after completion of bid-evaluation.**
- ① **Public institutions should be obliged by law to timely settle their liabilities stemming from public procurements.**

# COMPARATIVE ANALYSIS OF LEGAL PROTECTION IN PUBLIC PROCUREMENTS AND RELATED ADMINISTRATIVE COSTS

## INTRODUCTION

Right to legal protection is enlisted among fundamental rights and is guaranteed by the Constitution. The state is obliged to enable legal protection in all procedures where subjective rights have been violated, and should ensure that legal protection is efficient and cost-effective. Deadlines governing motions for legal protection by unsatisfied parties and deadlines for competent authorities to decide upon appeals are of crucial importance for effective exercise of legal protection in public procurements and for protection of bidding companies' business plans. On the other hand, administrative fees imposed to parties requesting legal protection should not burden them and should not render relevant procedures expensive, thereby imposing a barrier to exercising the right to legal protection whenever bidding

companies believe their rights have been violated as a result of contracting authorities acting contrary to the Law.

This analysis aims to identify the manner in which legal protection is regulated in other countries. Namely, it shows main aspects of deadlines for submission of legal protection applications, effects and costs thereof. Comparative analysis targets countries in the region and beyond, recent EU Member-States and candidate-countries for EU membership, which are successfully paving their path towards the EU. Common denominator for these countries is the fact that when defining their legal protection in public procurements they have integrated relevant European standards, while Macedonia has still not achieved full compliance with these standards.



## SERBIA

Republic of Serbia adopted the new Law on Public Procurements in 2013. It lays down the relevant procedure, deadlines for seeking legal protection in public procurements and bodies competent to decide upon appeals. Legal protection can be sought in all stages of public procurement procedures and may concern any action taken by contracting authorities, except in cases stipulated by the Law. In Serbia, right to seek legal protection is enjoyed by several entities, including the Public Procurement Office, State Audit Institution, Attorney General and Civil Supervisor (competent to monitor public procurements whose estimated value exceeds 1 billion RSD).

### **Deadlines for submission of legal protection application**

– Within a deadline of 8 days from their receipt, bidding companies can appeal conclusions taken by the Public Procurement Office on issuing negative reference in front of the Republic Commission for Protection of Rights in Public Procurements (hereinafter: Republic Commission). It is considered that legal protection applications do not suspend company's enlistment in the relevant register of negative references. Motions for legal protection contesting type of

procurement procedures, contents of procurement notices or tender documents are considered timely and admissible when relevant contracting authorities have received them at least 7 days before expiration of relevant deadlines for submission of bids, whereas in cases of small-scale public procurements and in cases of qualification procedures, at least 3 days before expiration of relevant deadlines for submission of bids, regardless of the manner in which these motions are submitted. Deadlines governing submission of appeals against decisions on contract awarding, signing framework agreements, approving companies' qualification and discontinuation of procurement procedures vary and depend on procurement's value. In that, relevant deadline for small-scale public procurements is 5 days, while in cases of large-scale public procurements deadline governing submission of appeals is 10 days from decision's receipt. Deadline for submission of appeals in negotiation procedures without previously announced call for bids is also 10 days from publication of contract awarding decisions on the Public Procurement Portal. In order to prevent abuses of right to legal protection, actions taken by contracting authorities cannot be contested in cases when appealing

parties whose rights have been violated in the course of public procurements have been or might have been informed about reasons that provide grounds for lodging appeals prior to expiration of relevant deadline, but they have failed to lodge appeals within given deadlines. In cases when companies motion second appeal in relation to the same public procurement, appeal allegations contesting actions for which the company in question had been or might have been aware when submitting the first appeal are not considered admissible.

**Body competent to decide upon legal protection applications** – In Serbia, the Republic Commission, in the capacity of independent and autonomous body and established as separate legal entity, is competent to decide upon legal protection applications. This body decides on legal protection in cases of procurement contracts signed which might imply conflict of interests; appeals lodged against conclusions adopted by the Public Procurement Office; upon contracting authorities' proposals requesting appeals lodged not to delay enforcement of their decisions, i.e. not to postpone signing of procurement contracts or framework agreements; upon appealing parties' proposals

requesting prohibition of contract signing or performance; on costs related to initiation of legal protection procedures and on costs related to development of bids, as well as on revoking procurement contracts signed in cases when other participants in public procurements have sought legal protection.

**Effects of legal protection applications** – Motions for legal protection contesting particular actions in public procurement procedures and contesting contract awarding or selection decision terminate all future actions on the part of contracting authorities, except in negotiation procedures or in cases when the Republic Commission has decided otherwise, on proposals made by contracting authorities. Legal protection applications have the effect of discontinuing deadlines for submission of bids, when they contest this stage of public procurement procedures. When legal protection applications are submitted after contracts have been signed by means of so-called dynamic procurements, contracting authorities are allowed to sign procurement contracts until expiration of deadlines governing submission of appeals. However, contracting authorities are not allowed to pursue contract performance until decision is taken in appeal

procedures, unless the Republic Commission has decided otherwise, on proposals made by contracting authorities. Actually, such decisions are taken in cases when non-performance of contracts would cause difficulties in business activities or operation of relevant contracting authorities that are disproportionately higher than procurement's value or in cases when non-performance of contracts would significantly jeopardize state interests. In such cases, contracting authorities are obliged to immediately, without engaging in detailed review, address the Republic Committee with proposals and to attach complete documents thereto concerning the public procurement in question, including justification of the need to pursue contract performance, upon which the Republic Commission decides within a deadline of 5 days from proposal's receipt. In cases of negotiation procedures, appealing parties can propose the Republic Commission to adopt decision on prohibiting contracting authorities to sign or perform procurement contracts, and the Republic Commission decides within a deadline of 5 days from proposal's receipt. When the Republic Commission has not approved proposals motioned by appealing parties, contracting authorities are allowed

to sign or perform procurement contracts. In cases when legal protection concerns conflict of interests, the Republic Commission approves proposals made by contracting authorities, provided they have proved that prohibition for contract signing or performance would cause major difficulties in their operation that are disproportionately higher than procurement's value or they have proved that non-performance of contracts would significantly jeopardize state interests or they have proved that all measures have been taken to address harmful effects of such contacts.

Within a deadline of 5 days, contracting authorities can take decisions on approving legal protection applications when they have assessed that applications are reasonably grounded, and should present appealing parties, bidding companies and the Republic Commission with its decision within a deadline of 3 days. In cases when contracting authorities have not approved legal protection applications, they are obliged to notify appealing parties thereof and present the Republic Commission with response to legal protection applications within a deadline of 3 days from their receipt.

**Court protection** – Administrative dispute can be initiated against decisions taken by the Republic Commission within a deadline of 30 days from their receipt. Administrative dispute can also be initiated when the Republic Commission has not adopted or has not delivered its decision within relevant deadlines stipulated in the Law on Public Procurements. Motions for administrative dispute do not postpone execution of decisions taken by the Republic Commission.

## CROATIA

Croatian Law on Public Procurements was adopted in 2011 and was amended in 2013. According to legal provisions contained therein, the right to appeal is given to any natural or legal person, associations of natural or legal persons holding legal interests in being awarded public procurement contracts and have suffered or might suffer damages. Appeals can also be lodged by the competent central body within state administration and the State Attorney.

**Deadlines for submission of legal protection applications** – Deadlines for seeking legal protection vary depending on procurement' value and type of procurement procedures. Hence, in cases of open procedures, limited

competition procedures, negotiation procedures without previously announced call for bids and competitive dialogue procedures, as well as in cases of public services being procured and large-scale procurement procedures, appeals can be lodged within a deadline of 10 days, whereas in cases of small-scale procurements organized as any of above-enlisted procedures, appeals can be lodged within a deadline of 5 days from announcement of procurement notices, when appeals concern contents of procurement notices and documents required for bid submission; from receipt of selection or tender annulment decisions; from announcement of procurement notices, when appeals concern contents thereof and additional tender documents that are available in electronic form; after they have learned about reasons that prevent participation of particular bidding companies; when contracting authorities have not responded in timely manner to requests for clarifications or changes made to tender documents; when they have learned about other actions in procurement procedures until adoption of final selection or tender annulment decision. Appealing parties that have failed to lodge appeals in particular stages of public procurement procedures are not entitled to lodge appeals in later stages of proceedings.

Deadlines stipulated for submission of appeals in other procedures are applicable in cases of negotiation procedures without previously announced call for bids, with the exception that expiration of deadlines starts from publication of notices on contracting authorities' intention to sign procurement contracts, notices on selected bids and notices on actions taken in procurement procedures. When contracting authorities have not published call for bids or notice on their intention to sign procurement contracts, appeals can be lodged within a deadline of 30 days from publication of notices on signed contracts.

Deadline for submission of appeals in cases of procurement contracts signed without previously organized public procurement procedure is 30 days from receiving information thereof, but appeals can also be lodged within a deadline of 6 months from contract signing. In cases of negotiation procedures, deadline for submission of appeals is 30 days from receipt of contract awarding decision, while in other cases deadline is set at 10 days from receipt of decisions on individual rights of bidding companies in relation to different actions, decisions, procedures and omission of other actions by means of which particular rights of concerned bidding companies have been violated.

**Body competent to decide upon legal protection applications** – State Commission on Public Procurement Control (hereinafter: State Commission) is competent to act *ex officio* in cases of significant violations in all stages of public procurement procedures. State Commission notifies thereof selected bidding companies in procurement procedures, while in cases of appeals contesting particular actions in procurement procedures it also notifies other participants in procurement procedures, which are allowed to respond to appeal allegations..

**Effects of legal protection applications** – Appeals related to tender documents or changes thereto have the effect of terminating all future actions under open procedures, limited competition procedures, negotiation procedures without previously announced call for bids and competitive dialogue procedures, whereby contracting authorities are obliged to immediately notify all bidding companies thereof.

In cases of approved motions of appeal, depending on the type of decision taken by the State Commission, contracting authorities are obliged to organize new procurement procedure or complete already initiated procedures. When

procurement procedures continue, contracting authorities are obliged to publish corrections to procurement notices and changes made to tender documents in terms of sections that have been assessed as unlawful, and to define new deadline for submission of bids. As an exception therefrom, when copy of appeals contesting tender documents or changes made thereto is submitted to contracting authorities after expiration of 15 days in cases of large-scale procurements or 10 days in cases of small-scale procurements, they are allowed to continue with activities under relevant public procurements, but are prohibited to take selection or tender annulment decisions before the State Commission takes decision in appeal procedure.

When appeals contest selection decisions, the decision becomes enforceable when the State Commission has taken decisions on denying, rejecting or terminating appeal procedures.

Appeals contesting tender documents or changes made thereto have the effect of discontinuing procurement proceedings in all cases. Appeals contesting selection decisions have the effect of preventing signing of

procurement contracts or framework agreements, while appeals contesting notices on contracting authorities' intent to sign procurement contracts have the effect of preventing realization of procurement contracts signed. In other cases, appeals do not have the effect of terminating future actions under public procurements, unless the State Commission approves interim measures, on proposals made by appealing parties.

As is the case with relevant legislation in other countries, contracting authorities are allowed to request continuation of procurement proceedings and signing of procurement contracts even in cases of motioned appeals by indicating one of following grounds: non-performance of these activities would cause damages that are disproportionately higher than procurement's value; protection of public interests; urgency of procurements in questions; possible danger to live and health of citizens or other serious dangers or possible damages.

In attachment to appeals that do not have the effect of preventing future actions in procurement procedures, appealing parties can propose issuance of interim measures

aimed to correct violations to the Law or prevent damages to occur due to non-performance of contested public procurements. When the State Commission rejects such proposals on interim measures, procurement procedures continue and procurement contracts can be signed.

**Court protection** – Administrative dispute can be initiated in front of the competent administrative court against decisions taken by the State Commission. Motion for administrative dispute in front of the competent court is not considered urgent matter for reconsideration.

## MONTENEGRO

In Montenegro, new Law on Public Procurements was adopted in July 2011 and entered in effect on 11 August 2011. According to legal provisions contained therein, legal protection can be sought in all stages of public procurement procedures. Bidding companies and any other interested entities are entitled to motion appeals related to public procurements. Definition of “interested entities” provided in the Law on Public Procurements implies any person that has requested insight in or has obtained copy of tender documents, as well as any person that can prove

it has suffered or might suffer damages due to contracting authorities’ decisions and actions, failure to take particular actions or actions taken contrary to the Law.

**Deadlines for submission of legal protection applications** – Appeals contesting all actions and decisions taken by contracting authorities can be lodged within a deadline of 10 days from publication of procurement notices; obtaining copy of tender documents or contracting authorities’ refusal to provide clarifications about tender documents; public opening of bids; receipt of conclusions and decisions concerning omitted actions on the part of contracting authorities that have resulted in violation of rights enjoyed by bidding companies or interested entities in public procurements. Appealing parties that have failed to lodge appeals concerning particular actions or decisions taken by contracting authorities within given deadlines are not entitled to lodge appeals in later stages of procurement procedures.

**Body competent to decide upon legal protection applications** – State Commission on Public Procurement Control (hereinafter: State Commission), in the capacity

of independent and autonomous body and established as separate legal entity, is competent to decide in appeal procedures. Appeals can be lodged against any action taken in the course of public procurements, i.e. from contents of and manner in which procurement notices are announced, through public opening of bids, decisions on rejecting bids, bid-evaluation process, to selection or tender annulment decisions.

**Effects of legal protection applications** – Motions of appeal have the effect of terminating all future actions on the part of contracting authorities in public procurement procedures until the State Commission takes decision in appeal procedures. As is the case with other countries included in this analysis, an exception therefrom is granted upon contracting authorities' proposal, i.e. the State Commission approves continuation of procurement proceedings when non-performance of these actions would cause significant damages to contracting authorities that are disproportionately higher than procurement's value or when non-performance of these actions would jeopardize state interests. Contracting authorities motion proposals for continuation of procurement proceedings within a deadline

of 5 days from appeal's receipt and the State Commission is obliged to decide upon such proposals within a deadline of 3 days. Once their proposal is approved, contracting authorities are obliged to inform all participants in procurement procedures within a deadline of 3 days after the State Commission has taken its decision.

**Actions in appeal procedures** – When they have individually assessed that appeals are, fully or in part, reasonably grounded, contracting authorities can annul their decisions, correct their actions in compliance with appeal proposals or annul procurement procedures within a deadline of 8 days from appeal's receipt, and are obliged to inform all participants in procurement procedures thereof, including the State Commission. In cases when contracting authorities do not act according to requests made by the State Commission and fail to disclose records and documents within a deadline of 15 days from appeal's submission, the State Commission can take decision on tender annulment. Deadline on deciding in appeal procedures is set at 15 days from receipt of all records and documents related to procurement procedures. This deadline can be extended by maximum of 10 days in cases that require engagement of experts, obtaining



opinion from competent authorities, as well as due to scope of documents concerning procurement procedures under review. Within a deadline of 3 days from taking its decision in appeal procedures, the State Commission is obliged to notify appealing parties and contracting authorities thereof, as well as to publish the decision on its official website. When the State Commission approves appeals as reasonably grounded, fully or in part, it moves to annul procurement procedures and selection decisions, and advises contracting authorities about irregularities identified, together with instructions for organizing and implementing new procedures, taking new selection decision or taking measures necessary to eliminate irregularities identified. It should be noted that when contracting authorities do not act in compliance with the State Commission's instructions within given deadlines, the State Commission notifies the Government or competent local government bodies thereof and requests initiation of relevant procedures on establishing responsibility.

State Commission decides only in terms of appealing allegations and makes *ex officio* decisions about essential violations to the Law, regardless of the stage in public procurement procedures against which appeals have been

lodged. Circumstances that have compelled the State Commission to establish essential violations in public procurements include all stages of public procurements, actions taken contrary to the Law, omissions made in the course of procurement procedures, omission in relevant tender documents and other documents that might result in discrimination of particular bidding companies, selection decisions, etc. Decisions taken by the State Commission are final and enforceable.

**Court protection** – Unsatisfied parties are entitled to initiate administrative disputes in front of the competent court against decisions taken by the State Commission. Due to the nature of public procurements, the Law stipulates that these administrative disputes have primacy in terms of court reconsideration.

## HUNGARY

2011 Law on Public Procurements includes detailed legal provisions governing procedures on legal protection and bodies competent to decide in appeal procedures. In addition to bidding companies, right to legal protection is given to all other stakeholders or bodies representing stakeholders

in public procurements, when they believe that relevant procurement notices, tender documents or changes thereto are, fully or in part, unlawful and whose rights or legitimate interests have been or are at risk of being violated as a result of actions contrary to or in violation of the Law. Chambers of Commerce or associations/organizations representing stakeholders participating or having legal interests in public procurements can also lodge appeals against irregularities identified in terms of procurement notices, invitation for bid submission or participation in procurement procedures. In addition to these entities, right to legal protection is granted to several state bodies, including the State Auditor, State Treasury, State Attorney, Commission for Protection of Competition, internal audit departments/units established by the Government, Arbitration Board, Commissioner for Protection of Fundamental Rights, legal oversight bodies, etc.

**Deadlines for submission of legal protection applications** – Deadlines for submission of legal protection applications vary depending on the type of actions or decisions in public procurements being contested. Bidding companies initiate legal protection procedures within a deadline of 3

working days after having learned about actions taken by contracting authorities in the course of public procurement procedures or about particular documents submitted in procurement proceedings that are, fully or in part, unlawful. Motions are submitted within a deadline of 10 days before expiration of deadlines for submission of bids, or deadlines for participation in accelerated procedures or negotiation procedures without previously announced call for bids on the grounds of extreme urgency.

For the purpose of rendering appeal procedures efficient and cost-effective, the Law stipulates preliminary resolution of disputes. Motions for preliminary resolution of disputes are submitted to contracting authorities, which are obliged, within a deadline of 3 days, to notify thereof other bidding companies or participants in public procurements and request them to provide information or clarifications within a deadline of 3 working days.

Motions for legal protection are submitted within a deadline of 15 days after bidding companies or any other interested parties have learned about violations to procedure rules, and in cases of contesting selection decisions within a deadline of 10 days after having learned about violations in question.

Appeals contesting procurement notices, invitations for participation in public procurements, tender documents or changes thereto are lodged within a deadline of at least 5 days prior to expiration of relevant deadlines for submission of bids, participation, etc.

In general, deadline for initiation of legal protection procedure is set at 15 days from publication of decisions, receipt of records concerning violations to legal provisions contained in the Law that have occurred in the course of decision-making process on selection of the best bid and on completion of procurement procedures, publication of notifications concerning changes made to procurement contracts, signing of procurement contracts or, when this day cannot be accurately established, from the day performance of procurement contracts starts. Deadline for lodging appeals related to contents of tender documents and bid-related documents is also 15 days from obtaining insight in documents concerning contract signing disposed by contracting authorities and the Arbitration Board. In cases of changes made in the course of performance of procurement contracts that have been signed by means of violation to procurement procedures, appeal deadline is set at 13

days from publication of notifications on changes made to procurement contracts or from publication of procurement contract performance on the official website.

In cases when appealing parties have learned that public procurements have been organized and implemented contrary to established criteria and legal procedure, they can seek legal protection within a deadline of 1 year from contract signing, and when this date cannot be accurately established, from the day any party in procurement contract has started performance thereof. No motion for legal protection is allowed beyond these deadlines.

**Body competent to decide upon legal protection applications** – Arbitration Board for Public Procurements (hereinafter: Arbitration Board) is the competent body with *ex officio* powers to decide in appeal procedures.

**Actions in appeal procedures** – Arbitration Board is obliged to decide upon legal protection applications within a deadline of 5 days, without having thoroughly examined the application in question, i.e. when appealing parties have failed to provide documents or information within the given deadline, or have provided incomplete documents and

information. In cases when legal protection applications are rejected without being thoroughly reconsidered, administrative fees related to this procedure are reimbursed to concerned appealing parties. Arbitration Board initiates *ex officio* procedure for legal protection when it has established violation of legal provisions and procedures within a deadline of 30 days from having learned about them, from signing of procurement contracts or from start of procurement contract performance, but not later than one year after the violation has been made and three years after the procurement contract has been performed.

**Effects of legal protection applications** – When acting *ex officio* or upon appeals, the Arbitration Board can issue interim measures with effect until procurement contract signing or performance, provided it has establish likelihood of violation made to rules and procedures stipulated in LPP. In such cases, the Arbitration Board orders suspension of decision on procurement contract signing, whose effect implies extension of deadlines specified in procurement invitations for the period of suspension's duration. On proposals made by contracting authorities, the Arbitration Board can approve procurement contract signing due to

exceptionally important interests that do not allow delay or for the purpose of protecting public interests (for example, to maintain operation of public utility companies). Arbitration Board must adopt this decision within a deadline of 5 days from proposals' receipt. Having in mind specificity of public procurement procedures, the Law stipulates that the Arbitration Board should adopt decision within a deadline of 15 days from initiation of appeal procedures, and in event of public hearings scheduled, should resolve the matter within a deadline of 30 days.

**Court protection** – Parties that are unsatisfied with decisions taken by the Arbitration Board are entitled to motion a lawsuit in in front of the competent court in the country and in front of the European Court of Justice.

## CZECH REPUBLIC

In the Czech Republic, Law on Public Procurements was adopted in 2006 and was subject to several rounds of amendments, most recent ones dating from January 2014. Right to seek legal protection is enjoyed by bidding companies and any stakeholders with interest in signing procurement contracts in cases their rights have been or are at risk of

being violated due to breach of procurement procedure rules on the part of contracting authorities. In first instance level, complaints are lodged to contracting authorities, and when bidding companies have failed to comply with this legal provision they are not entitled to motion appeals in front of the competent second-instance body.

**Deadlines for submission of legal protection applications** – Deadlines for submission of legal protection applications vary depending on decision or action being contested, whether contracts have already been signed and whether contracting authorities have responded to complaints lodged. Complaints lodged to contracting authorities should be made within a deadline of 15 days after bidding companies have learned of the violation made to the Law, within a deadline of 5 days from submission of bids in cases when complaints concerns terms and conditions defined in tender documents, within a deadline of 15 days when complaints contest selection decision or contracting authorities' decision to exclude the bidding company in question from participation in tender procedure. When contracting authorities voluntarily declare their intention to sign procurements contracts in cases when such

announcement is not stipulated by the Law, complaints are lodged within a deadline of 30 days from publication of such intents. Bidding companies are entitled to lodge complaints in cases when contracting authorities have denied them participation in procurement procedures organized in compliance with the dynamic procurement system. Deadline for submission of complaints is set at 15 days after appealing parties have learned about contracting authorities' violation of procurement procedure rules, but not later than date of contract signing. Procurement contracts cannot be signed and tender annulment decision cannot be taken until the contracting authorities take decision upon such complaints and submit them to appealing parties.

Contracting authorities are obliged to reconsider complaints and notify appealing parties in written about their decision within a deadline of 10 days. When contracting authorities reject complaints, they are obliged to instruct appealing parties in question about their right to contest the decision in front of the competent body, and should inform all bidding companies and participants thereof. When contracting authorities establish violation of the Law and procedure rules in the course of public procurement procedures, they

should take adequate measures for legal protection, even when the violation established has not been contested by means of complaints.

Appeals against contracting authorities' decisions on rejecting complaints are lodged within a deadline of 15 days from their receipt. When procurement contracts are not signed and contracting authorities have rejected complaints, appeals are lodged within a deadline of 10 days from submission of decision on rejecting the complaint. When procurement contracts are signed, appeals are allowed only when the contract has been signed without previous notice on contracting authority's intent to organize public procurement procedure, and prior to expiration of deadline for submission of complaints to contracting authorities also in cases of dynamic procurements with framework agreements for public procurements in defence and security sectors.

In such circumstances, appeals can be lodged not later than 6 months from contract signing. When contracting authorities voluntarily published previous notice of their intention to sign procurement contracts, deadline for submission of

appeals is set at 30 days from publication of such notices. Finally, when contracting authorities demonstrate passive behaviour and have not reconsider complaints, bidding companies are entitled to lodge appeals within a deadline of 25 days from submission of their complaints to contracting authorities.

**Body competent to decide upon legal protection applications** – In the Czech Republic, the competent body tasked to decide upon appeals is the Bureau of Administrative Procedures (hereinafter: Bureau). In the capacity of supervisory body, the Bureau controls whether contracting authorities have complied with the Law on Public Procurements and the Law on Concessions in the course of their public procurement procedures. Appeals can be lodged against any action taken by contracting authorities in public procurement procedures that have resulted in or risk resulting in violation of rights enjoyed by appealing parties. Thus, appeals can be lodged against eligibility requirements defined in tender documents, contents of procurement notices or invitations for participation in public procurement, exemption of bidding companies from tender procedures, selection decisions, organization of several types

of procurement procedures, etc. The Bureau acts *ex officio* in cases it has established violation of procurement procedure rules and the Law.

On proposal of any party in appeal procedures, the Bureau can, within the scope of requirements made and in *ex officio* capacity, issue so-called preliminary order prohibiting contracting authorities to sign procurement contracts or suspending procurement procedures. The Bureau revokes the preliminary order once reasons for its issuance are no longer valid; in other cases, the order expires when the final decision enters in effect.

Legal remedies lodged against the Bureau's preliminary order do not have the effect of postponing its enforcement.

**Effects of legal protection applications** – When the Bureau establishes violation of public procurement procedures and when such violation has or may have crucial impact on the selection of best bids, but procurement contracts are not signed, the Bureau can issue legal protection measures on postponing contract signing or other individual action of contracting authorities or can prohibit performance of procurement contract signed. In cases of significant reasons

related to public interests, the Bureau cannot prohibit performance of procurement contract signed, but can impose fines to contracting authorities. In cases when contracts have been signed after expiration of deadline for submission of complaints (30 days from publication of notices of intent, although contracting authorities are not obliged to publish them), the Bureau cannot prohibit contract performance. When the Bureau prohibits contract performance, contracts signed are rendered null and void.

**Court protection** – Unsatisfied parties can initiate administrative dispute in front of the Brno Regional Court within a deadline of 2 months from being notified about the Bureau's decision, while decisions taken by the Brno Regional Court can be appealed in front of the Supreme Court within a deadline of 2 months from their receipt.

## MACEDONIA

Pursuant to the Law on Public Procurements of the Republic of Macedonia, all bidding companies with legal interest in being awarded public procurement contract, which have suffered or might suffer damages as a result of violation of

legal provisions, are entitled to initiate procedure for legal protection. Appeals can be lodged against any activity, decision or action taken by contracting authorities in public procurement procedures. Legal protection can also be sought by the State Attorney of the Republic of Macedonia competent to protect state interests.

**Deadlines for submission of legal protection applications** – Appeals are lodged within a deadline of 8 days, i.e. 3 days in cases of bid-collection procedures, against all actions in procurement procedures. In cases when bidding companies have learned about unlawful implementation of public procurements, they are entitled to lodge appeals within a deadline of 1 year from procedure's completion. In cases of procurement procedures completed by means of e-auctions, deadline for submission of appeals contesting assessment of bidding companies' eligibility and bid-evaluation starts from receipt of decisions concerning individual rights in contract-awarding procedures upon completion of e-auctions. Similar to legislation in other countries, when bidding companies fail to lodge appeals concerning particular stages in procurement procedures, they cannot lodge appeals in later stages of procedures on the same legal ground.

**Body competent to decide upon legal protection applications** – Pursuant to LPP, the competent body is the State Commission on Public Procurement Appeals (SCPPA), in the capacity of independent body and established as separate legal entity. As part of appeal procedures, SCPPA reconsiders and decides about appeal allegations, but also takes *ex officio* decisions in cases it has established significant violations of public procurement procedures, as stipulated in LPP.

After being presented with appeals, contracting authorities can revoke the effect of their decisions when they have established that appeal allegations are, fully or in part, justified, and move to adoption of new decision on tender annulment, take measures to correct contested actions, perform omitted actions or organize new procurement procedure.

When contracting authorities fail to present SCPPA with appeals received and related records within a deadline of 5 days, appealing parties are entitled to request SCPPA to adopt decision on tender annulment within a deadline of 30 days from appeals' submission. When contracting authorities have not complied with this deadline, SCPPA takes *ex officio* decision on complete annulment of procurement procedure.



SCPPA is obliged to take decisions upon appeals within a deadline of 15 days from completing the case, and when it has failed to take decision within the given deadline, appealing parties are entitled to notify the State Administrative Inspectorate thereof within a deadline of 5 working days. Inspectorate is obliged to perform supervision control at SCPPA within a deadline of 10 days from notification's receipt and inform appealing parties thereof within a deadline of 3 working days.

**Effects of legal protection applications** – In cases of appeals lodged, contracting authorities are not allowed to sign or perform procurement contracts within a period of 12 days, i.e. 5 days in cases of bid-collection procedures, from submission of decisions concerning individual rights in procurement procedures, except in cases stipulated by the Law. Moreover, appeals have the effect of delaying, signing and performance of procurement contracts until SCPPA decisions are enforceable. On the contrary procurement contracts are considered null and void. Law on Public Procurements stipulates that, on proposals from contracting authorities, SCPPA can approve continuation of public procurement procedures, in order to prevent damages that

are disproportionately higher than procurement's value. SCPPA is obliged to decide upon such proposals within a deadline of 3 days from their receipt.

**Court protection** – SCPPA decisions in appel procedures are final, but appealing parties are entitled to initiate administrative disputes against such decisions in front of the competent court. Competent court decides upon motions for administrative dispute in fast-tracked procedure.

### **ADMINISTRATIVE FEES FOR MOTIONING LEGAL PROTECTION IN FRONT OF COMPETENT BODIES**

Amount of administrative fees paid by economic operators in appeal procedures varies from country to country. According to the comparative analysis developed by SIGMA (OECD and EU's joint initiative) following method on setting these fees are in use:

- free-of-charge (France, Ireland, Luxembourg, Sweden, Romania);
- flat fees (Denmark – 500 EUR, Lithuania – 30 EUR, Finland - 204 EUR);

- share of contract's value (up to 1% in the Czech Republic and Hungary and 3% in Estonia); and
- scale of fees (from 26 to 4,563 EUR in the Netherlands).

Detailed description of administrative fees charged in countries included in this comparative analysis is given below.

**Serbia** – Amount of administrative fees/costs for lodging appeals is different and depends on procurement's value, in the range of:

- 15,000 RSD – for appeals lodged against conclusions taken by the Public Procurement Office on establishing negative references issued by contracting authorities;
- 40,000 RSD – for small-scale public procurements and negotiation procedures without previously announced call for bids;
- 80,000 RSD – when legal protection applications are submitted prior to public opening of bids, or when procurement's estimated value, i.e. price offered by the

bidding company that was awarded the procurement contract does not exceed 80.000.000 RSD;

- 0.1% of procurement's estimated value or 0.1% of price offered by the bidding company that was awarded the procurement contract, when the relevant value exceeds 80.000.000 RSD.

**Croatia** – Amount of administrative fees for motioning appeal procedures is set at:

- 10,000 HRK for public procurements in estimated value of up to 1,500,000 HRK;
- 25,000 HRK for public procurements in estimated value of 1,500,000 to 7,500,000 HRK;
- 45,000 HRK for public procurements in estimated value of 7,500,000 to 25,000,000 HRK;
- 70,000 HRK for public procurements in estimated value of 25,000,000 to 60,000,000 HRK;
- 100,000 HRK for public procurements in estimated value exceeding 60,000,000 HRK.

In cases when procurement's estimated value is unknown at the time of motioning appeals in front of the State Commission or procurement's value has not been published, administrative fees are set at 10,000 HRK. In cases of appeals contesting selection or tender annulment decisions concerning one or several procurement lots, administrative fees are set at one third of their estimated value, but not higher than above-indicated amounts.

**Montenegro** – Administrative fees for initiation of legal protection procedures are set at 1% of procurement's estimated value, but cannot exceed 8,000 EUR. Administrative fees for appeal procedures are considered revenue source in the state budget. When decisions taken in appeal procedures are in favour of appealing parties, administrative fees paid are reimbursed.

**Hungary** – Amount of administrative fees for initiation of appeal procedures in front of the Public Procurement Arbitration Board is not stipulated in the Law. Administrative fees are set by means of decision adopted by the Government. Attached to the request for submission of additional documents or information related to motioned appeals, the

Arbitration Board informs appealing parties of the amount of administrative fees to be settled. Administrative fees are set at 1% of procurement's value (or relevant procurement lot), with specifically defined lower and upper thresholds depending on procurement's value.

**Czech Republic** – Amount of administrative fees (deposit) paid by appealing parties for motioning appeals in front of the Bureau is set at 1% of procurement's value, but cannot be lower than 50,000 CZK or higher than 2,000,000 CZK. In cases when procurement's estimated value or procurement's value cannot be established, appealing parties are obliged to deposit 100,000 CZK.

Such deposits are considered revenue source in the state budget when the Bureau discontinues procurement procedures on proposals to postpone contract signing or individual actions on the part of contracting authorities, or suspends procurement procedures. On the contrary, the Bureau reimburses deposits to appealing parties, with an interest rate, within a deadline of 15 days after the final decision enters in effect.

**Republic of Macedonia** – In addition to administrative fees, appealing parties are imposed additional charges, in the range of:

- 100 EUR for bids in value of up 20,000 EUR (calculated in MKD counter value);
- 200 EUR for bids in value of 20,000 to 100,000 EUR
- 300 EUR for bids in value of 100,000 to 200,000 EUR; and
- 400 EUR for bids in value exceeding 200,000 EUR.

In cases when appealed procurement procedures have not received bids, administrative charges are calculated on the basis of procurement's estimated value, and SCPPA notifies appealing parties about the amount thereof and deadlines for submission of evidence of their payment.

## CONCLUSIONS

Deadlines for initiating legal protection in front of competent administrative bodies and deadlines for the latter to decide upon appeals/complaints motioned vary from country to country. In some countries, deadlines for initiating legal protection depends on the procurement's scope, i.e. whether it is a matter of large or small-scale procurements, while in other countries one deadline is defined for all public procurements. In some cases, for the purpose of implementing the principle of efficiency and effectiveness, legal protection applications are submitted directly to contracting authorities in first instance procedures, and decisions of contracting authorities in first instance appeal/complaint procedures can be contested in front of competent administrative bodies acting in second instance procedures. Relevant legislation on public procurements in all countries analysed provides opportunities for contracting authorities to correct actions or decisions contested on own initiative, with the ultimate goal of rendering legal protection procedures cost-effective and efficient.

In addition to bidding companies and participants in public procurements, right to submit legal protection applications

on the grounds of violation of legal provisions in effect is also given to different state bodies.

Supervision of public procurements on the part of competent authorities tasked with deciding upon legal protection applications aims to ensure contracting authorities' compliance with and adherence to the principle of lawfulness and non-discrimination of bidding companies. In this regard, competent supervision authorities are given broad legal competences and powers.

In general, effects created by motions for legal protection imply suspension of procurement procedures, prohibition for contract signing or introduction of interim measures until decisions are taken in appeal procedures. Moreover, in some countries, motions for legal protection also imply indemnity claims for damages caused by violations of the Law.

Amount of administrative fees/deposits charged for motioning legal protection in front of competent administrative bodies tasked to decide upon appeals (excluding costs incurred by bidding companies and related to participation in procurement procedures) and the method

of setting administrative fees vary from country to country, although most countries targeted with this comparative analysis opted for scaled administrative fees depending on procurement's estimated value (irrespective of the fact whether it is a matter of small- or large-scale procurement) or administrative fees set as share of procurement's value, whose amount cannot exceed a particular upper threshold defined in the Law. Such solutions are in line with the principle of fairness. In addition, relevant legislation in some countries stipulates mandatory refunding of administrative fees to appealing parties when their appeals are admitted as reasonably grounded.

## RECOMMENDATIONS

Based on findings from comparative analysis of legal protection and knowledgeable about relevant state-of-affairs in other countries targeted with this analysis, following recommendations are drafted with a view to promote legal protection in public procurements in the Republic of Macedonia:

- Due consideration should be made of aligning effective deadlines for submission of appeals (8 days and 3 days respectively, depending on type of procurement procedures) with common deadlines defined in other countries, both targeted by this analysis and not included therein. It seems that most often, they have defined deadlines in duration of 10 days and 5 days, depending on type of procurement procedures or procurement's value. It is considered that such deadlines would also be adequate in the Republic of Macedonia.
- Due consideration should be made of expanding the number of entities/stakeholders entitled to motion

legal protection, especially having in mind numerous violations of procurement procedure rules and absence of law-stipulated sanctions for such unlawful practices.

- New and more equitable method on setting administrative fees for submission of appeals should be introduced and should replace the existing method which renders appeal procedures in small-scale procurements expensive and thereby puts participants in these procedures in unequal position compared to participants in large-scale procurements. In this regard, one possible solution that should be duly reconsidered is the method on setting administrative fees for submission of appeals as share of procurement's value, which would enable a level playing field and equitable access to legal protection for all bidding companies, irrespective of their financial capacity.

