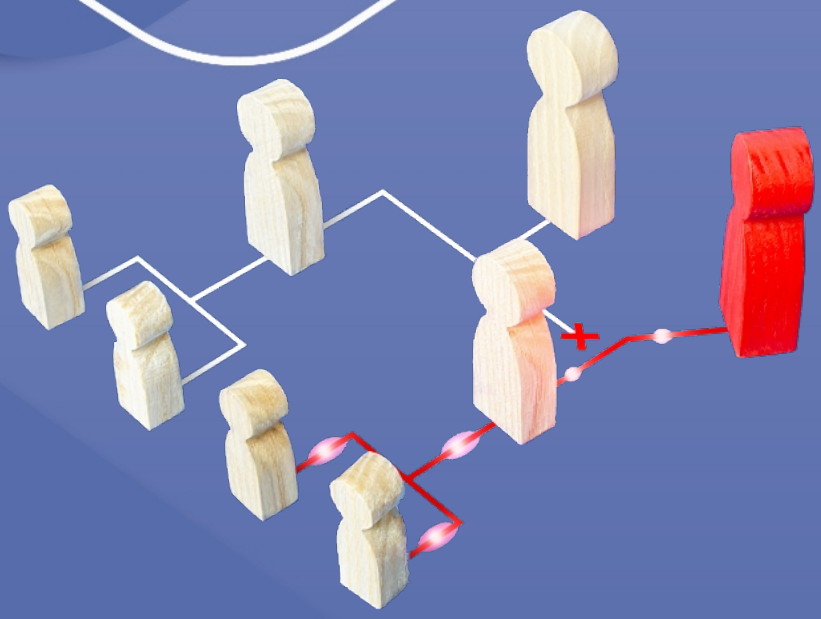
Center for Civil Communications
Центар за граѓански комуникации

PROPOSALS TO REDUCE CORRUPTION AND ADVANCE IMPLEMENTATION OF PUBLIC PROCUREMENTS



Kingdom of the Netherlands

Skopje, March 2021

Electronic publication:
„Proposals to Reduce Corruption and Advance Implementation of Public Procurements"

Publisher:
Center for Civil Communications

Translation:
Katerina Dimishkovska

Graphic design:
Polyesterday dooel Skopje

These proposals are drafted as part of the project "Towards Accountable Enterprises", financed by the Embassy of the Kingdom of the Netherlands in Skopje and implemented by the Center for Civil Communications in the period from 1 October 2019 to 30 September 2021.

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INTRODUCTION

The problem of corruption in public procurements affects all institutions in the country, both at national and local level, but the need to put the focus on public enterprises and joint stock companies founded by the Government and local self-government units (LSGUs) arises from myriad important arguments. The total number of public enterprises and joint stock companies founded by the Government and LSGUs in the Republic of North Macedonia is estimated at 145, accounting for 10% of all contracting authorities that are obliged to implement public procurements (1,457 registered in the Electronic Public Procurement System). On annual level, the cumulative value of public procurement contracts awarded by these state-owned enterprises accounts for 250 to 300 million euros, representing 30% to 35% of the total value of public procurements in the country. Hence, contracting authorities that implement public procurements of high value are justifiably expected to demonstrate greater accountability in terms of applying firm policies and procedures and to integrate sustainable mechanisms for reducing corruption. Therefore, contracting authorities, such as bigger public enterprises and joint stock companies founded by the Government and local self-government units, should be forerunners of efforts to prevent and suppress corruption in public spending. It is expected for reduction of corruption at state-owned enterprises to directly affect increased integrity of the overall economy in the country and to improve the quality of services delivered to citizens.

The proposed measures are developed on the basis of in-depth research of corruption risks, systematized in the research paper "Mapping Corruption Risks in Public Procurements of Enterprises Owned by the Government and Municipalities" and individual screening of 37 state-owned enterprises founded by the Government, the City of Skopje and Municipalities of Gostivar, Kavadarci and Struga, which provides an overview of key parameters that reflect the manner in which they implement public procurements, as well as their human resource capacity and internal policies.

Weaknesses noted in all previously conducted research papers and analyses have confirmed the need to enhance integrity and reduce corruption risks at public enterprises and joint stock companies.

Recommendations presented in this document are drafted as part of the project "Towards Accountable Enterprises", implemented by the Center for Civil Communications with financial support from the Embassy of the Kingdom of the Netherlands in Skopje in the period 2019-2021, and aimed at establishing sustainable mechanisms to advance implementation of public procurements and to strengthen integrity in the process of public spending under tender procedures organized by state-owned enterprises founded by the Government, the City of Skopje and Municipalities of Gostivar, Kavadarci and Struga.

In February 2021, the Center for Civil Communications presented the Government of the Republic of North Macedonia with portion of proposed measures, as presented in this document, as contribution in the process of drafting the Government's Action Plan to Fight Corruption.

EXECUTIVE SUMMARY

Proposals aimed to reduce corruption and advance implementation of public procurements are grouped into four segments, as follows: proposals to enhance integrity in public procurements, proposals to improve the process of implementing public procurements, proposals to increase transparency in public procurements, and proposals related to identification and sanctioning of corruption in public procurements.

In regard to enhanced integrity of public procurements, relevant proposals include:

- Public enterprises and joint stock companies founded by the Government and local-self-government units (LSGUs) to develop integrity plans by identifying, analysing and prioritizing corruption risks in public procurements, with application of risk assessment indicators and definition of measures to reduce corruption risks.
- Develop and enforce clear internal policies (procedures, rules or guidelines) on proceedings by employees and external associates in all stages of the process of public procurement, which also include proceedings in respect to reporting corruption in public procurements.
- Apply the principle of employee rotation as members of public procurement committees at bigger public enterprises and joint stock companies founded by the Government and LSGUs.
- Develop and implement adequate programmes for continuous professional education of employees, including topics on integrity, ethical behaviour and prevention of corruption in the process of public procurement.
- Conduct internal periodic and consistent analyses and performance assessments on implemented public procurements that would cover all segments and all stages in the process of public procurement, starting from procurement planning and ending with completion of procurement contracts, including external controls that have been conducted.

The group of proposals aimed to improve the process of implementing public procurement includes:

- Improve the process of planning public procurements in respect to needs for individual procurement subjects and value thereof.
- Organize electronic auctions only for goods of known and standardized quality and those characterized by market competition.
- Contracting authorities to reduce to minimum non-transparent negotiation procedures without previous announcement of call for bids, especially because they are often used to enter negotiations with one bidder, thereby increasing corruption risks.
- Compliance with law-stipulated deadline for adoption of selection decision or tender annulment decision, which is not the case in significant portion of monitored public procurement procedures organized by state-owned enterprises and joint stock companies.
- Avoid the ease and frequency of tender annulment on particular legal grounds, and when tenders are annulled, provide detailed elaborations that allow insight into justification of such decisions.

Transparency in public procurements should be increased with implementation of following proposals:

- Intensify transparent communications between contracting authorities and economic operators and their professional associations, especially through frequent organization of technical dialogue and tender clarification meetings.
- Minutes from public opening of bids to be made available by publishing them in the Electronic Public Procurement System.
- Adherent enforcement of obligations under the Law on Public Procurements related to publication of notifications on contract signed within a deadline of 10 days from contract signing and notifications on contract performance within a deadline of 10 days after completion of procurement contracts.
- Contracting authorities to publish on their websites current plans for public procurements with all amendments thereto, procurement notices and notifications on contract signed/ contract performance.

As regards identification and sanctioning of corruption in public procurements, relevant proposals are:

- Bureau of Public Procurement to expand the scope of administrative controls for public procurement procedures, i.e. to conduct controls on the basis of risk assessment for violation of provisions under the Law on Public Procurements and on randomly selected sample of procurement procedures.
- Websites of authorities competent to investigate misdemeanour and criminal offences in the field of public procurements and/or authorities competent for prosecution of offenders to regularly inform the public in systemic and user-friendly manner about the course of such cases.
- Tender documents must enlist officers authorized for receipt of internal and external whistleblowing reports related to corruption in public procurements.

All proposals drafted are accompanied by relevant elaboration, including description of problems addressed and objectives to be achieved with their implementation.

PROPOSALS TO ENHANCE INTEGRITY IN PUBLIC PROCUREMENTS

Public enterprises and joint stock companies founded by the Government and local self-government units to develop integrity plans by identifying, analysing and prioritizing corruption risks in public procurements, with application of risk assessment indicators and definition of measures to reduce corruption risks. Integrity plans for public procurements can be integrated into annual integrity plans of individual state-owned enterprises.

ELABORATION OF THE PROPOSAL:

Planning and implementation of public procurements upon previously conducted corruption risk analysis and established measures for reduction of corruption risks will contribute to overall decrease of corruption, by means of easier detection and prevention.

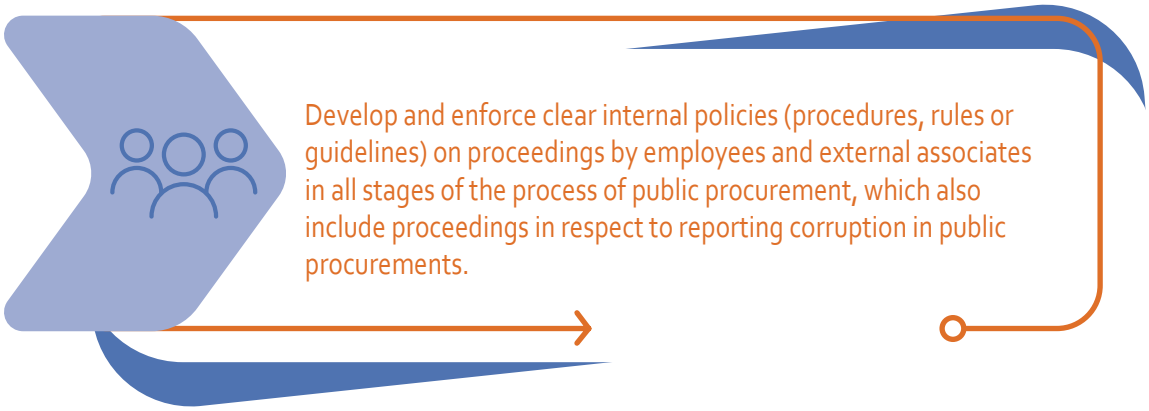
In the capacity of founders of state-owned enterprises, the Government and local self-government units should encourage and support this process. In that, it could be justifiably expected for introduction of integrity plans to be championed by public enterprises and joint stock companies whose total annual value of public procurements amounts to at least 500,000 euros, and later this practice can be introduced by other enterprises with smaller scope of public procurements. Integrity plans for public procurements can be integrated into annual integrity plans of individual state-owned enterprises and should be based on actual corruption risk assessments.

As part of the project "Towards Accountable Enterprises", the research conducted on the basis of comprehensive monitoring of tender procedures organized by state-owned enterprises Mapping Corruption Risks in Public Procurements at Enterprises Owned by the Government and Municipalities has identified 15 types of corruption risks in all stages of public procurement implementation (planning, organization of procurement procedure and contract performance). To facilitate the process of developing and implementing integrity plans, the project team will draft a separate manual that would be made available to enterprises and their founders. At the same time, the process of developing integrity plans will be facilitated by existence of indicators for corruption risk assessment that were already presented to all state-owned enterprises and their founders and are consulted and aligned with all stakeholders in the field of public procurements.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

Existence of high corruption risks in implementation of public procurements and absence of methods to identify such risks and measures to address them, which has been particularly noted among bigger public enterprises and state-owned companies that dispose with large amounts of funds and are among greatest consumers through public procurements.

The research conducted among public enterprises and joint stock companies founded by the Government, the City of Skopje and Municipalities of Gostivar, Kavadarci and Struga, which account for vast share of bigger state-owned enterprises, showed that 70% of them have never conducted corruption risk assessment in public procurements. At the same time, 92% of them have not organized trainings on integrity and anticorruption in public procurements, neither for their employees nor for their management. None of analysed enterprises has a developed integrity plan for public procurements. These data undoubtedly indicate that enterprises founded by the Government and LSGUs do not work in systematic manner to prevent and suppress corruption in public procurements. Such situation results in completely passive attitude to addressing the problem of corruption, which is best represented by data indicating that, in the last three years, management staff at these enterprises has not initiated a single disciplinary procedure against employees in respect to problems identified in the field of public procurements, and has not motioned initiatives for criminal proceedings due to suspicions for corruption in public procurements.



ELABORATION OF THE PROPOSAL:

Development of internal polices will enable clear definition of obligations for everybody involved in procurement procedures, starting from procurement planning, through implementation of procurement procedures, to completion of procurement contracts. That will enable much easier monitoring of the process of public procurement and will allow high level of knowledge about procedures and rules among all stakeholders involved in public procurements, which is especially important for employees that do not work in the field of public procurements, but are appointed as members of public procurement committees. The need for development of internal policies (procedures, rules or guidelines) on proceedings by employees in all stages of the process of public procurement is also stressed by the State Audit Office (SAO).

These internal policies and procedures will enable precision and specification of certain rules of procedure, ethical behaviour, will enhance integrity, and will increase accountability among employees. Therefore, internal policies and acts will contain rules and methods (systems) for development of plans for public procurements, monitoring implementation of plans for public

procurements, implementation of procurement procedures, monitoring performance of procurement contracts, and proceedings in cases of detecting and reporting corruption in public procurements.

It could be justifiably expected that internal policies on proceedings by employees and external associates in all stages of the process of public procurement will also facilitate the process of auditing (internal and external) and will most certainly allow institutions involved in fight against corruption to detect possible disrespect of procedures for the purpose of putting personal benefits above the public interest.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

Independently from provisions under the Law on Public Procurements that govern prevention of corruption and the Code of Conduct in Implementation of Public Procurements, there are still numerous examples of irregularities and corruptive behaviour in implementation of public procurements in all stages of this process, from procurement needs assessment and procurement planning, through implementation of procurement procedures, to performance of procurement contracts.

According to the research conducted among 37 state-owned enterprises founded by the Government, the City of Skopje and Municipalities of Gostivar, Kavadarci and Struga, only half of analysed public enterprises and joint stock companies have separate rulebook on proceedings in the field of public procurements, which is communicated to all employees involved in this process. Hence, half of these contracting authorities will have to adopt such policies and rules, while the other half will have to align their existing policies with the proposals presented herein. According to research findings, dominant share of state-owned enterprises claimed they have an established system for monitoring implementation of plans for public procurements (78% of surveyed enterprises), and for monitoring performance of procurement contracts awarded (84% of surveyed enterprises). Nevertheless, direct monitoring of public procurements organized by these enterprises did not confirm actual application of procedures for monitoring implementation of plans and performance of procurement contracts.

Moreover, on the question inquiring about key problems, surveyed public enterprises and joint stock companies enlisted the following: lack of sufficiently expert staff in the field of public procurements, insufficient education of employees and lack of willingness to be members of public procurement committees, dilemmas around implementation of procurement procedures, frequent changes to legislation that complicate its enforcement in practice, poor mobility and communication with the Bureau of Public Procurement about issues and dilemmas raised by contracting authorities, etc.



ELABORATION OF THE PROPOSAL:

One of key issues that should be adequately addressed under internal policies on the process of public procurement concerns the rotation of employees. In that, clear criteria should be defined for appointment of committee members and situations, additional to those stipulated under the Law on Public Procurements, which will be considered as potential conflict of interests or risk of evident subjectivity on the part of appointed employees. For example, one person cannot be appointed as committee member for procurement subjects when he/she had been commission member for same procurements in the previous several years whereby procurement contracts have been awarded to the same economic operator in continuity.

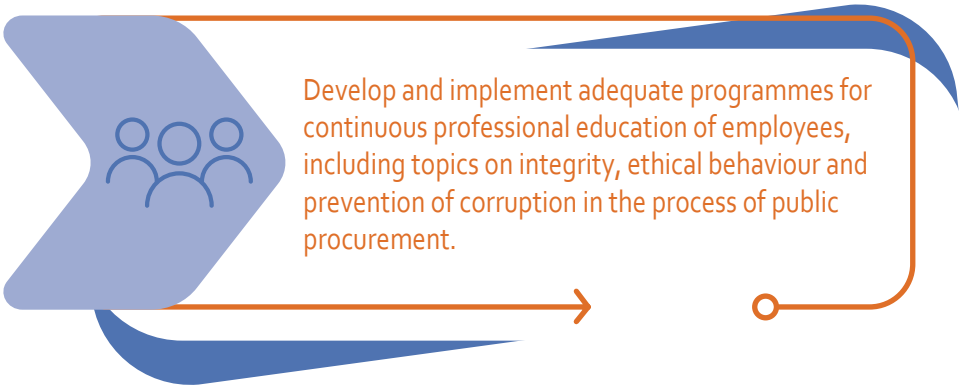
This proposal is applicable for bigger public enterprises and joint stock companies that have more people involved in public procurements and that, in general, have a large number of employees performing administrative tasks.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

In the case of more than three quarters of public enterprises and joint stock companies, members of public procurement committees are rotated for each procurement procedure. Having in mind that only half of public enterprises and joint stock companies have separate rulebook on proceedings in the field of public procurements, it could be inferred that state-owned enterprises that do not have such rulebooks pursue rotation of employees according to some unwritten rules, i.e. certain long-standing practices, which could be easily changed.

Implementation of this proposal will avoid or reduce opportunities for unlawful arrangements among bidding companies and members of public procurement committees – a risk present when one and the same people are members of such committees. At the same time, it will distinguish competences, thus preventing accumulation of authorizations with one job position or one employee.

Rotation of public procurement committee members is well known and recognized principle in good practices worldwide, and is promoted by numerous renowned international organizations (e.g. Organization for Economic Cooperation and Development, OECD) or national authorities (e.g. State Audit Office), aimed at reducing risks of abuse and malpractice.



ELABORATION OF THE PROPOSAL:

When developing annual training plans at the level of individual public enterprises and joint stock companies and when setting individual plans for professional advancement of employees that are in contact with public procurements (public procurement officers, members of public procurement committee, officers involved in development of tender documents or performance of procurement contracts), due consideration should be made to anticipate their participation in educational events on public procurements, but also in educational events that are not directly related to public procurements. In that context, although the low number of provisions under the Law on Public Procurements related to ethical behaviour, prevention of corruption and conflict of interests might indicate that it is a matter of small and insignificant segment of public procurements, nevertheless they are of great importance that had been rather undermined in the past. Therefore, training and other educational events on this or similar topics, which will not focus solely on the legal framework, but will also cover practical situations, should be organized or attended at least once every year.

Intensification of training on ethical performance, prevention of corruption and conflict of interests could be achieved in several ways, as follows:

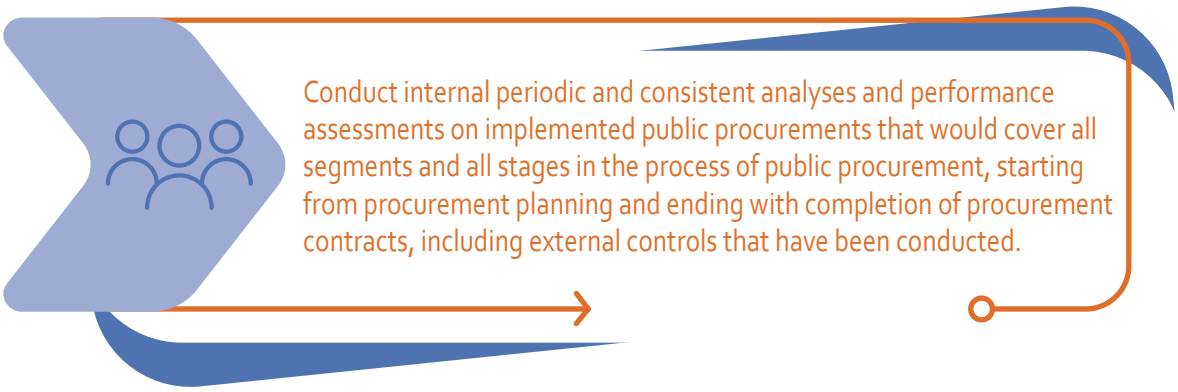
- development of separate modules within the education programme for public procurement officers delivered by the training centre at the Bureau of Public Procurement;
- organization of special training beyond the regular education programme for public procurement officers, which could be also delivered by the training centre at the Bureau of Public Procurement; and
- organization of in-house training by public enterprises and joint stock companies.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

As many as 92% of analysed public enterprises and joint stock companies do not organize training on integrity and anticorruption for their employees, management staff or board members. Only 8% of them organize and deliver such training at least once every year, but only for their management, while 5% implement annual training for their employees and organize training for management staff every several years.

These training sessions should contribute towards raised awareness about integrity risks, such as corruption, fraud and discrimination, but also towards acquisition of knowledge about manners to prevent such risks and creation of culture for integrity building as defence line against corruption.

Public enterprises and joint stock companies believe that large number of training courses will be beneficial for their employees involved in public procurements. Among others, they enlisted training on advance knowledge for staff members, training on practical enforcement of the Law on Public Procurements, hands-on training for resolution of specific problems, anticorruption training, training for acquisition of skills for better planning of assets, development of plan for public procurements, hands-on training for development of tender documents, training intended for technical staff on designing better criteria and point-allocation systems, etc.



ELABORATION OF THE PROPOSAL:

Internal policies, rules and procedures on public procurements must anticipate that contracting authorities, i.e. public procurement officers or specially appointed teams will conduct internal periodic and consistent analyses and performance assessments on implemented public procurements. More importantly, the need for conducting analyses should not be enlisted as merely letters on paper, but should be implemented in practice. Analyses should be comprehensive and should include an overview of issues marked by high corruption risks, as follows:

- implementation of the plan for public procurements – reasons for amendments thereto and implementation rate;
- competition in implemented procurement procedures – average number of bidders per tender procedure and procurement procedures presented with only one bid or one acceptable bid;
- distribution of awarded tender procedures per economic operator;
- prices attained and overall costs – how much do prices offered and prices under which contracts were awarded correspond to the procurement's estimated value and average market prices;
- contacts awarded without announcement of call for bids – analysis of reasons for organization of this type of procedures;
- annulled tender procedures – thorough overview of reasons for tender annulment, i.e. whether they are objective or could be attributed to the contracting authority;
- appealed tender procedures – reasons for lodging appeals and outcome of appeal procedures;

- findings from administrative controls conducted by the Bureau of Public Procurement; and
- compliance with obligations and internal measures for transparency.

A separate segment that should be duly analysed concerns competition in public procurement procedures. Such analysis should indicate procurement subjects marked by competition (3 or more bids) and those that lack competition (no bid or maximum two bids). In that context, the analysis should target reasons behind low competition and how much the low number of bids for certain procurement subjects corresponds to the national average for that procurement subject. If lack of competition for certain procurement subject is exclusive only for that or for small number of contracting authorities, the analysis should locate reasons thereof (due to small quantity procured or late payment, the contracting authority is not attractive for bidding companies; strict eligibility criteria for economic operators prevent competition; excessively detailed or too general technical specifications deter bidding companies from tender participation; existence of cartel arrangements among bidding companies, etc.). Moreover, the analysis should result in specific measures aimed to improve competition, which could include: allocating more time and resources for development of tender documents, including previous market consultations by organizing technical dialogue and involving external experts; eliminating eligibility criteria that have led to restricted competition; defining longer period of time for submission of bids, etc.

These analyses, which will contain performance assessment of public procurements and measures to improve this process, should be presented to the founders of state-owned enterprises and joint stock companies.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

Problematic aspects of public procurements that are present among monitored public enterprises and joint stock companies concern low competition (small number of bidders per tender procedure) and concentration of awarded contracts with handful of bidders. In that, contracting authorities very rarely conduct analyses to identify reasons for this and other weaknesses and anomalies observed in implemented public procurements.

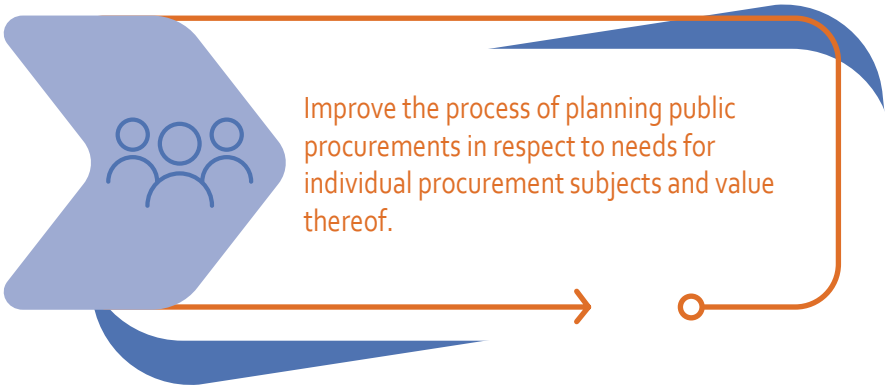
As many as 73% of public enterprises and joint stock companies do not monitor competition in their procurement procedures and therefore do not dispose with information on the average number of bids per tender procedure at annual level or the share of tender procedures in which contracts were awarded to the only bid received.

40% of monitored tender procedures that were implemented by analysed public enterprises and joint stock companies have been presented with one bid each. The average number of bids among these public enterprises and joint stock companies is calculated at 2.5 bids per tender procedure and is below the national average in 2019, which stood at 3.3 bids. Low competition further confirms existence of discrimination in public procurements, which was noted in specific examples related to application of inadequate eligibility criteria for bidding companies, favouring technical specifications and favouring criteria for selection of the best bid. Low competition refers to the risk of restrictive conditions in procurement procedures or, when such elements do not exist, refers to distrust among bidding companies that the selection process is objective and unbiased.

Concentration of public procurements with particular economic operator, as one of the most relevant indicators for existence of corruption risks, is a problem observed with large portion of analysed public enterprises and joint stock companies. Almost one third of them are characterized by concentration of public procurements with one company that is higher than 40%.

Analyses will encourage management at public enterprises and joint stock companies to make strategic decisions on public procurements and will facilitate this process. More specifically, analyses will facilitate identification of methods to meet new procurement needs, i.e. planning and implementation of new public procurements.

PROPOSALS TO IMPROVE THE PROCESS OF IMPLEMENTING PUBLIC PROCUREMENTS



ELABORATION OF THE PROPOSAL:

Guided by the rules stipulated under the Law on Public Procurements, especially those that govern procurement subjects and situations that are liable to organization of procurement procedures and time periods needed for preparation and completion of adequate types of procurement procedures, contracting authorities should adopt methodology or guidelines on needs assessment for particular procurement subjects and value thereof. In that regard, contracting authorities should not be bound only by previously awarded contracts for same or similar procurement subjects. They should utilize EPPS as rich database of completed public procurements on the territory of the entire country and publicly available information on the internet.

As the first step in any process, it is important for planning to be informed by the last step from the previous process. This means that internal analysis conducted on previously implemented procurement procedures and performed contracts for same or similar procurement subject should ensure better estimation of new procurements (whether and when they are needed, in what volume and for which period, how much funds are needed, etc.).

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

In the course of 2019, only 8% of all analysed public enterprises and joint stock companies have not amended their current plan for public procurements. In that, 49% of public enterprises and joint stock companies have made one to three changes to their annual plans, while 43% of them have made more than three changes. Average implementation rate for 2019 annual plans of analysed public enterprises and joint stock companies accounts for 54%. Only 6% of them are marked by implementation rate of annual plans that exceeds 90%. It should be noted that plans for public procurements are adopted by governing boards or boards of directors at public enterprises and joint stock companies. Hence, poor implementation of plans for public procurements increases the risk of subjectivity and thereby the risk of corruption when deciding which tender procedures will be implemented and which will not be implemented.

In spite of that, three quarters of public enterprises and joint stock companies claimed that they have an established system for monitoring implementation of annual plans for public

procurements. Some of them have separate operational unit for that purpose, while others make detailed analyses in MS Excel spreadsheets for monitoring and record-keeping on implementation of annual plans, and in the case of third group of analysed enterprises, their governing boards decide on implementation of annual plans for public procurements.

Only two public enterprises and joint stock companies have methodology/guidelines or similar document that provides baseline for calculation of procurement's estimated value.

Frequent changes to plans for public procurements and absence of system for monitoring their implementation are indicative of poor procurement planning and inefficient management of public funds. In small number of cases, changes could be justified with objective circumstances related to business activities of relevant public enterprises and joint stock companies. For example, a state-owned enterprise has not collected planned revenue or has been unable to perform its activity in full scope and consequently did not incur the need for certain procurement subjects, and if they were needed, it lacked financial means to procure them. However, in vast number of cases procurement plans were changed because, during their initial development, sufficient attention has not been paid to determining the need and possibility for specific procurements and to estimating their value, and very often the problem is reduced to failure to reconsider medium-term needs, i.e. whether certain activities or events would give rise to the need for specific procurement subjects.



ELABORATION OF THE PROPOSAL:

Public enterprises and joint stock companies need to organize e-auctions pursuant to good practices worldwide, including recitals from the 2014 EU Directive on Public Procurement. Notably, e-auctions should be organized only for goods of widespread consumption, i.e. goods of known and standardized quality and goods that could be precisely described in technical specifications.

In addition, e-auctions have an effect in cases of procurement subjects characterized by market competition that is also reflected in public procurements. Auctioning, i.e. downward revision of initial prices offered by bidding companies can be expected for such procurement subjects.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

In spite of the fact that e-auctions have become optional under the new Law on Public Procurements, they are still anticipated in high number of public procurements (around 90% in 2020) as the final step in the bid-evaluation process. This does not correspond to global practices,

which imply organization of e-auctions when there is actual competition and when technical specifications are very precise. Facts show that competition in public procurements is low both among monitored public enterprises and joint stock companies and at the level of the entire country. Moreover, insight into large number of technical specifications allowed the conclusion that they include obscure description of relevant procurement subjects.

Intensive use of e-auctions is a legacy from the old Law on Public Procurements, which has been deeply rooted among public procurement officers. Also, continuous insistence to organize e-auctions should be a signal for management at the institution about possible increased risks of abuse in the process of public procurement and stimulus for previous arrangements among companies.



ELABORATION OF THE PROPOSAL:

Contracting authorities must always seek an opinion from the Bureau of Public Procurement about organization of negotiation procedure without previous announcement of calls for bids in respect to legal grounds for which the Bureau is competent to issue opinions. When the Bureau has issued negative opinion for organization of negotiation procedure, contracting authorities must comply. Also, contracting authorities should not resort to use of this type of procurement procedures without having obtained an opinion from the Bureau of Public Procurement, although the law allows them in exceptional situations.

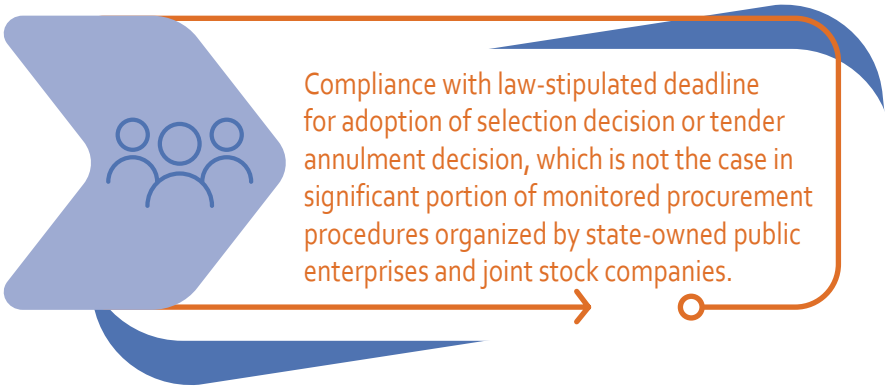
PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

Although the Law on Public Procurements further reduced legal grounds for organization of negotiation procedures without previous announcement of call for bids, these procedures are still broadly present. One third of monitored public enterprises and joint stock companies have organized non-transparent negotiation procedures without previous announcement of call for bids. In the case of some analysed enterprises, the share of these procurements in total value of all procurements accounted for 22% to 28%. This share is far above the national average in 2019, which stood at 4.1%.

Particularly problematic in terms of existence of corruption risks are two legal grounds, as follows: 1) negotiation without call for bids due to urgent reasons; and 2) negotiation because the procurement can be performed only by one economic operator. Although implementation

of procurement procedures on these two grounds requires an opinion from the Bureau of Public Procurement and is allowed without such opinion in exceptional situations, this type of non-transparent procurement procedures, by default, opens a possibility for corruption.

As lower as possible number of negotiation procedures without previous announcement of call for bids will increase transparency of public procurements and will stimulate competition.



ELABORATION OF THE PROPOSAL:

When setting deadlines for submission of bids, contracting authorities should not necessarily take the minimum deadline defined under the Law on Public Procurements for that type of procurement procedures. Independently from the fact that procurement subjects might be of lower value and could imply shorter deadlines, due consideration should be made of all objective circumstances and actual period of time needed by contacting authorities to adopt selection decision or tender annulment decision.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

Failure to adopt selection decision or tender annulment decision within the law-stipulated decision is liable to issuance of sanctions for the responsible person. By setting shorter deadlines for submission of bids, contracting authorities consciously put themselves in position to be unable to comply with deadlines for decision-making, i.e. in position to violate the Law on Public Procurements. When this is combined with knowledge that this type of violations is not sanctioned, it creates a practice and signals that violation of law provisions could go by unsanctioned, i.e. it creates some form of gradation for violations that are sanctioned and those that will be tolerated.

Decision-making within the law-stipulated deadline will ensure operationalization of the principles of cost-effectiveness and efficiency in public procurements. At the same time, it will provide an example that all legal obligations have particular weight and must be complied with.



ELABORATION OF THE PROPOSAL:

Legal grounds for annulment of public procurement procedures include the following two stipulations: 1) the contracting authority has assessed that tender documents contain significant omissions or shortcomings; and 2) due to unpredicted and objective circumstances that have changed the contracting authority's needs. Having in mind that among all legal grounds for tender annulment, these two, and especially the first ground, imply a dose of subjectivity and space for manipulation in the sense of avoiding decision-making whereby the selected bidder is not the favoured one, it is necessary for decisions and notifications on tender annulment to feature detailed arguments supported with evidence.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

In 2019, the share of annulled procurement procedures at state level accounted for 27%. Significant portion of analysed public enterprises and joint stock companies are marked by high number of annulled tender procedures which, according to the Bureau of Public Procurement, raised "red flags" for existence of corruption risks. More specifically, 22% of public enterprises and joint stock companies were characterized by share of tender annulments higher that the national average, while 78% of them are below the national average.

Reduction or prevention of tender annulments in cases when favoured bidders cannot be selected also reduces corruption in public procurements. On the other hand, detailed elaborations when indicating certain grounds for tender annulment will contribute to increased transparency and accountability of contracting authorities.

PROPOSALS TO INCREASE TRANSPARENCY IN PUBLIC PROCUREMENTS



ELABORATION OF THE PROPOSAL:

Public enterprises and joint stock companies should more frequently practice technical dialogue, which is allowed as optional method for consultations with economic operators under the new Law on Public Procurements. This form of communication between contracting authorities and potential bidders should be applied in preparations for public procurements of greater value, but first and foremost for planned procurements, irrespective of their value, for which contracting authorities do not know state-of-play and participants in relevant markets or for complicated procurement subjects, i.e. when contracting authorities lack sufficient expertise to describe the procurement subject.

Tender clarification meetings should be regulated under the Law on Public Procurement as optional form of communication between contracting authorities and potential bidders after publication of the procurement notice and until expiration of the deadline for submission of inquiries. Contracting authorities call all interested economic operators to attend these meetings for clarification of the procurement procedure and procurement subject while the call for bids is still open. Minutes with questions and answers from the tender clarification meeting are made publicly available in order to avoid discrimination between economic operators that participated in such meetings and those that did not participate.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

According to the survey conducted among public enterprises and joint stock companies, key problems they enlisted include lack of expert knowledge for development of technical specifications that will prevent submission of bids with goods or services marked by low quality or technical specifications that will eliminate already low competition for certain specific procurements. In spite of that, public enterprises and joint stock companies included in the monitoring sample have not used technical dialogue as method to address this problem. More specifically, technical dialogue was organized for only 4% of monitored public procedures.

By organizing technical dialogue, contracting authorities will gain better understanding of state-of-play on relevant markets, i.e. specificities of goods, services and works offered (prices, conditions, specifications...). Organization of tender clarification meetings will allow potential bidders to better understand the contracting authority's needs and conditions for tender participation.



ELABORATION OF THE PROPOSAL:

Minutes from public opening of bids should be made available to the general public, not only to those that have participated in tender procedures (bidders). For that purpose, EPPS should be upgraded by allowing the broader public access thereto and insight into minutes from public opening of bids uploaded by public procurement committees.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

At public opening of bids, the bids are opened and information read aloud concerns only names of bidding companies and prices offered, and possibly requested and submitted bid guarantees. EPPS does not allow the public insight into basic information (specific bidders and prices) for each tender procedure because notifications on contract signed or notifications on tender annulment include only summary information on the number of bidders and lowest/highest prices offered.

Publication of minutes will allow stakeholders and the broader public to be informed about economic operators that participate in particular procurement procedures and will put public procurements under greater scrutiny, thereby preventing possible previous arrangements among companies. Publication of such minutes is allowed on the electronic platform for public procurements in Croatia.

Adherent enforcement of obligations under the Law on Public Procurements related to publication of notifications on contract signed within a deadline of 10 days from contract signing and notifications on contract performance within a deadline of 10 days from completion of procurement contracts.

ELABORATION OF THE PROPOSAL:

Completion and publication of both notifications within relevant deadlines is regulated by law and therefore implementation of this proposal does not necessitate any legislative interventions, but:

- founders of state-owned public enterprises and joint stock companies should issue indications to responsible persons about the need to comply with this law-stipulated obligation; and
- sanctions stipulated under the Law on Public Procurements for violation of obligations in respect to publication of notifications on contract signed and notifications on contract performance should be enforced.

In case these obligations are not adherently enforced even after such indications and sanctions, then EPPS should activate its configuration whereby contracting authorities are not allowed to publish new procurement notices when, after expiration of certain time period following completion of any public procurement procedure, they have not published relevant notifications on contract signed and when they have failed to publish notifications on contract performance.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

The obligation for publication of notifications on contract signed/contract performance is regulated by law and is very simple for implementation, i.e. does not require investment of time and resources. Therefore, unclear are reasons of certain public enterprises and joint stock companies for their late publication or non-publication of notifications for some procurement procedures they have implemented.

On one side, by complying with these law-stipulated obligations contracting authorities will demonstrate willingness to work and performance according to the law and, on the other side, they will contribute to increased transparency and accountability of the process of public procurement and, thereby, to increased trust among citizens and beneficiaries of services provided by state-owned enterprises and joint stock companies.



ELABORATION OF THE PROPOSAL:

Public enterprises and joint stock companies should designate a separate section on their official websites titled "public procurements" where they will regularly upload and update data on annual plans for public procurements and all amendments thereto, procurement notices and notifications on contract signed and contract performance.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

In spite of the fact that all these data are published in EPPS, official websites of contracting authorities represent a mirror of their transparency and therefore data related to public procurements should be made available on these locations visited by the broader public. At the moment, according to research results, practices for publication of public procurement data on their respective websites are observed with only 11% of state-owned enterprises and joint stock companies.

By implementing this proposal, contracting authorities will additionally increase their transparency and will allow interested parties to find requested information on several internet locations.

PROPOSALS RELATED TO IDENTIFICATION AND SANCTIONING OF CORRUPTION IN PUBLIC PROCUREMENTS

Bureau of Public Procurement to expand the scope of administrative controls for public procurement procedures, i.e. to conduct controls on the basis of risk assessment for violation of provisions under the Law on Public Procurements and on randomly selected sample of procurement procedures.

ELABORATION OF THE PROPOSAL:

Pursuant to Article 172, paragraph 4 of the Law on Public Procurements, the Bureau of Public Procurement should expand the scope of administrative controls in practice, i.e. should conduct controls of procurement procedures on the basis of risk assessment for violation of provisions under the Law on Public Procurements (so-called "red flags") or on randomly selected sample of procurements. Having in mind that the Bureau does not hold competences to assess whether certain irregularities are a result of unintentional errors or have been purposely made to favour particular economic operator (which implies a punishable offence), findings from administrative controls must be timely communicated to competent prosecution services and thereby ensure adherent enforcement of Article 172, paragraph 5 of the Law on Public Procurements.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

According to Article 172 of the Law on Public Procurements, there are two legal grounds for performance of administrative control by the Bureau of Public Procurement:

- all tender procedures for goods and services whose value exceeds 500,000 euros and for construction works whose value exceeds 2,000,000 euros, and
- any tender procedure on the basis of risk assessment for violation of provisions under this law and on randomly selected sample of public procurements.

Administrative controls conducted thus far have covered procurement procedures for goods and services whose estimated value exceeds 500,000 euros and for works whose estimated value exceeds 2 million euros. To present, the Bureau of Public Procurement has not conducted any administrative control based on the other two legal grounds.

In that, the Bureau of Public Procurement has found irregularities in implementation of one third of public procurements that were subject of its administrative controls. This represents a sufficient indicator that controls need to be enhanced.

Enhanced controls will result in reduced corruption in public procurements. Performance of controls based on the other two legal grounds will also cover public procurements that are of smaller value but for which, according to parameters entered in EPPS, there are indications about possible violation of the Law on Public Procurements and corruptive activities.



ELABORATION OF THE PROPOSAL:

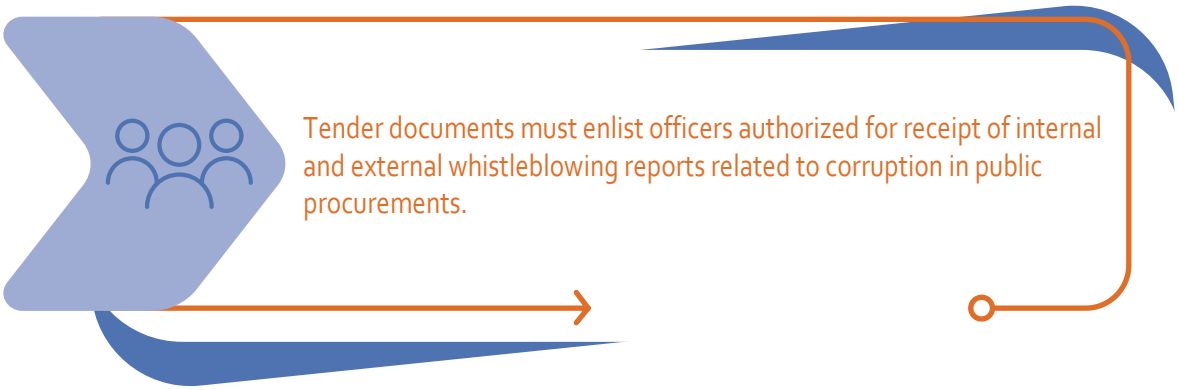
All authorities competent to investigate misdemeanour and criminal offences in the field of public procurements, primarily the State Commission for Prevention of Corruption, have official websites which, in addition to summary information on cases completed, should be regularly used to inform the public in systematic and user friendly manner about the course of specific cases. It means that when proceedings in particular cases have progressed to the next stage, i.e. have been referred for action by another competent authority, the authority that had acted up to that moment should continue to publish information about the status of the case in question.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

The general perception, supported by numerous research conducted by renowned organizations, implies existence of corruption in public procurements. The single variable aspect concerns perception about the degree of corruption. According to the most recent research conducted by the Center for Civil Communications in 2019 and 2020, 48% of surveyed economic operators have stated that corruption is present in public procurements.

Although clear indications for corruptive activities are present with high number of public procurements, the number of court-resolved cases, i.e. cases in which offenders have been sanctioned, is very low. Each consequent stage in identification and sanctioning of offenders is marked by reduced number of cases, which means that investigations are announced for high number of procurement procedures, followed by actual investigations for only a portion of them, and indictments are filed in only small number of cases, while court resolution is reached for even fewer public procurement procedures in the form of enforceable court verdicts and issued and enforced sanctions.

Implementation of this proposal will increase transparency, accountability and, ultimately, effectiveness of misdemeanour and criminal proceedings related to public procurements. In turn, that will eliminate the general perception that prosecution of criminal offenders is unsuccessful by default.



ELABORATION OF THE PROPOSAL:

Public enterprises and joint stock companies should adjust the model templates for tender documents they are using, i.e. these templates must include data on officers authorized for receipt of internal and external whistleblowing reports.

If the practice shows that public enterprises and joint stock companies do not adherently comply with this proposal, the Bureau of Public Procurement – in the capacity of relevant authority for development of tender documents - needs to adopt additions thereto in order to make inclusion of such information standardized.

PROBLEMS ADDRESSED AND OBJECTIVES TO BE ATTAINED:

To present, there is low number of reports on irregularities, both in the form of appeals lodged before the State Commission on Public Procurement Appeals (only 8% of companies have lodged an appeal before this commission) and in the form of reports to other competent institutions (State Commission for Prevention of Corruption, MoI, prosecution service, etc.). Contrary to the low number of reports, there are findings on widespread corruption in public procurements. This situation imposes the need for promotion of mechanisms on reporting irregularities and corruption in public procurements, such as the whistleblower mechanism. The Law on Whistleblower Protection enlists the categories of people that could appear as whistleblowers which, inter alia, include persons who, on any grounds, have or have had business relations or another type of cooperation with the institution concerned, i.e. the legal entity to which the report is made. However, only small portion of institutions have appointed officers authorized to receive whistleblowing reports.

Implementation of this proposal will increase visibility of the whistleblower mechanism and will encourage its use in respect to preventing and fighting corruption in public procurements. This proposal is also featured in the National Strategy on Fight against Corruption that was presented to the Parliament of the Republic of North Macedonia for adoption.

Center for Civil Communications
Центар за граѓански комуникации

Kingdom of the Netherlands