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MONITORING THE IMPLEMENTATION OF PUBLIC PROCUREMENTS IN THE REPUBLIC OF MACEDONIA

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Abbreviations

BPPB	Bureau of Public Procurements
SAO	State Audit Office
SCPPA	State Commission on Public Procurement Appeals
CA	Contracting Authorities
ELEM	Macedonian Power Plants
EO	Economic Operators
EPPS	Electronic Public Procurement System
EU	European Union
LPP	Law on Public Procurement
RM	Republic of Macedonia
DGA	Department for General Affairs at the Government of RM
CCC	Center for Civil Communications

KEY FINDINGS AND RECOMMENDATIONS

- Although mandated by law, e-auctions were not scheduled in 40% of procedures from the monitoring sample, whereas every fourth e-auction that was organized did not result in decrease of initially-bided prices. On this account, large share of procurement procedures did not achieve the effect of budget savings. This problem is a direct result of limited competition on tender procedures that define disproportionate eligibility criteria related to economic operators' financial and economic, as well technical and professional capacity, which ultimately prevents many companies to submit their bids.**

Recommendation: In a situation when e-auctions are mandatory for all types of tender procedures, which renders Macedonia the only country in Europe that pursues this concept of public procurements, additional efforts are needed to stimulate greater competition. On the contrary, there is a macro-level risk that savings effectuated under tender

procedures with organized e-auctions would be lost due to high prices paid in the cases when e-auctions were expected, but were not organized. Therefore, it is recommended that eligibility criteria for companies' participation in tender procedures to be adequate and proportionate, which in turn would stimulate greater competition.

- Although the average number of bids submitted per tender in this quarter is 3.47 and is higher compared to relevant figures recorded in the previous quarters, 45% of procedures from the monitoring sample were characterized with low competition. On the other hand, the several procurement procedures that included higher number of bidders were annulled.**

Recommendation: In addition to the Bureau of Public Procurements' engagement, resolution of this problem necessitates the involvement of the business sector and the relevant business associations and they have to be open

to identify the reasons and propose efficient measures to eliminate them.

- The share of annulled tenders in the last quarter of 2012 is very high and accounts for 23.38% on the level of the entire country. Comparison of annual data for the last four years provides the conclusion that the share of annulled procurement procedures is the highest in 2012 and accounts for 24.16%. The main reason indicated for procedure annulment is the low number of bids submitted.**

Recommendation: Sanctions should be introduced for the contracting authorities that have high share of tender annulments. Moreover, Article 169 of the Law on Public Procurement should be amended with a view to establish that in cases where the contracting authority has annulled the procedure on awarding a public procurement contract on the grounds of “unpredictable changes to the budget” and “changes related to the contracting authority’s procurement needs” it should be forbidden to re-organize the procurement in question in the same budget year.

- In the fourth quarter of 2012, a total of 408 contracts were signed under negotiation procedures without prior announcement of call for bids, in total value of around 22 million EUR. On annual level, around 65 million EUR are spent on procurements organized under this type of procedure. It has been identified that the main and most frequently indicated reason for the increased number of contracts signed under this type of procedure is the inability to organize an e-auction due to low competition on the tender.**

Recommendation: Poor competition, failure to organize e-auctions, increased number of annulled procedures and organization of negotiation procedures without prior announcement of call for bids are merely the consequences, whereas the reasons for their occurrence should be sought in tender documents, especially in pre-defined eligibility criteria for tender participation and technical specifications. However, BPP must immediately conduct an in-depth analysis that would confirm these conclusions, followed up by adequate measures aimed to eliminate or reduce the negative aspects affecting the public procurement process.

- In the second half of 2012, 14 companies were prohibited to participate in tender procedures for a given period of time, by means of issuing negative references. 12 companies were prohibited to participate in public procurements for a period of one year and 2 companies were prohibited to do so for a period of two and five years, respectively.**

Recommendation: BPP should conduct an analysis inquiring about the adequate application of the rules governing issuance of negative references for economic operators and whether certain malpractices or abuses were pursued on the part of contracting authorities in cases of negative references issued to date.

- Although “economically most favourable bid” is rarely defined as the selection criteria, the contracting authorities frequently make mistakes or conscious manipulations when selecting the bid-evaluation elements. Irrelevant elements or elements that are conducive to manipulation on the part of the bidders are defined as selection criteria, including elements that are prone to subjective bid-evaluation on the part of contracting authorities.**

Recommendation: Contracting authorities must follow and replicate the positive experiences of other contracting authorities that have selected appropriate bid-evaluation elements under the criterion “economically most favourable bid”, especially in terms of the manner in which points are allocated to the “quality” element.

- In the group of ten largest public procurement contracts signed in 2012, the highest contract amount of 53.3 million EUR was recorded in the contract signed by the state-owned electricity generation company ELEM and the service provider REK Bitola, which concerned coal and inter-layer spoil excavation at the coal mine Brod - Gneotino.**
- The trend on decreased number of appeals lodged by the companies in front of the State Commission on Public Procurement Appeals continued in 2012 as well. In that, according to the analysis of decisions taken by SCPPA in 2012, almost every third appeal was approved, which is also the highest share of approved appeals in the last four years.**

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 aims 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, the commitment to obtain the best bid under most favourable terms and conditions, as well as accountability for the public spending as part of procurements.

Analysis of the public procurement process in the Republic of Macedonia was performed based on the monitoring of randomly selected sample of public procurement procedures (40 per quarter). Monitoring activities start with the publication of calls for bids in the “Official Gazette of the

Republic of Macedonia” and in the Electronic Public Procurement System (EPPS), followed by attendance on public opening of bids and data collection on the procedure course, and use in-depth interviews and structured questionnaires submitted to economic operators, as well as data collected from contracting authorities through EPPS and by means of Freedom of Information (FOI) applications.

The present analysis was performed on the basis of monitoring of selected sample of 40 public procurement procedures implemented by central level contracting authorities, whose public opening of bids took place in the period October - December 2012. In addition, the present report includes a summary of findings concerning the entire 2012, an overview of the ten largest public procurement contracts signed in 2012, as well as an analysis of procedures led in front of the State Commission on Public Procurement Appeals in the period January - December 2012.

QUARTERLY PUBLIC PROCUREMENT MONITORING REPORT

- Although mandated by law, e-auctions were not scheduled in 40% of procedures from the monitoring sample, whereas every fourth e-auction that was organized did not result in decrease of initially-bided prices. On this account, large share of procurement procedures did not achieve the effect of budget savings. This problem is a direct result of limited competition on tender procedures that define disproportionate eligibility criteria related to economic operators' financial and economic, as well as technical and professional capacity, which ultimately prevents many companies to submit their bids.**

Number of procurement procedures in which the law-mandated e-auction was not organized remains very high. In 40% of procedures, although planned, e-auctions were not scheduled due to insufficient number of acceptable bids obtained. Only one procedure from the monitoring sample did

not anticipate organization of e-auction due to the fact that it was a matter of signing framework contracts with several bidders, under which downward bidding was anticipated for a later stage in the procurement process. As for the procedures that included organization of e-auctions, bidding companies were not inclined to decrease their initially-bided prices. More precisely, prices were not reduced in 26% of all e-auctions scheduled in the procedures from the monitoring sample, which provides the conclusion that although they took place, the final outcome in every fourth e-auction is equal to the situation if the e-auction did not take place.

According to official data, the most frequently indicated reasons for not scheduling e-auctions are insufficient number of bidders (no bidders or only one bidder) or all bids submitted have been assessed as unacceptable. As for the reasons why a certain bid is considered unacceptable, the contracting authorities indicated that bidding companies did not fulfil the eligibility criteria for tender participation (i.e., did not meet eligibility

criteria related to staff, professional, economic and financial requirements as well as technical and professional capacity) or the bid obtained deviated from the requirements enlisted in the technical specifications. Often, these reasons are indicated as an alibi for the fact that the contracting authority favours a particular company. Requirements and specifications are designed in a manner so that most companies would not be able to meet, with the exception of the company favoured for contract-awarding. Therefore, relying on the fact that there is only one bidder or only one acceptable bid, contracting authorities do not schedule e-auctions and the procurement contract is signed with the only bidder, whose price is often identical with the estimated value of or funds allocated for the procurement in question. This approach generates two negative effects: contracts are signed with the favoured company and procurement procedures do not result in budget savings.

In terms of the monitoring sample, the key problem identified behind failure to organize e-auctions as the final stage in the procurement procedure are the unattainable eligibility criteria on economic operators' economic and financial, as well technical and professional capacity. It is a matter of criteria whose

use in the procurement procedures is optional, irrespective of the type of procedure organized or the estimated value of the procurement. This means that contracting authorities are at liberty to choose whether they will use eligibility criteria in a given procurement procedure or not. In principle, these criteria should be included in procurements of greater value and longer period of performance, because these procurements can be performed only by companies that demonstrate better financial results, dispose with relevant human resources and have relevant previous experience. However, in the case of procurements of lower value and one-time performance, i.e., in the case of procedures with prior announcement of calls for bids, these criteria should be defined only in exceptional circumstances. Namely, this type of procurements implies lower risk of contract's non-performance that would result in damages inflicted on the contracting authority. However, analysis of procedures from the monitoring sample reveals that contracting authorities are prone to defining disproportionate eligibility criteria, even for procurements of low scope and value, which ultimately prevents more companies to submit their bids. This represents direct discrimination of many companies, all for the purpose of favouring a small number of companies.

As regards the monitoring sample, serious concerns are raised in regard to eligibility criteria related to economic operators' technical and professional capacity (years of experience, number of references and expert staff employed), as they were disproportionate and limited the competition among economic operators. Following are several examples that provide evidence in support of this statement.

Eligibility criteria defined in the procurement procedure concerning design and realization of promotional campaign on encouraging entrepreneurship in agriculture included a criterion that reads "previous experience in designing and producing promotional materials for state authorities". The requirement related to bidders' previous experience is not disputable per se, because the procurement-performing entity wanted to make sure that it would select a company that has already worked in this field. However, the fact that the referenced experience should be exclusively related to services provided for state authorities is disputable, restrictive and discriminatory, as it means that possible bidding companies that have produced promotional materials exclusively for private sector legal entities, non-governmental sector entities or foreign

donors are denied the opportunity to submit their bids. Only 2 companies submitted their bids, one of which was assessed as acceptable and won the contract, without the organization of e-auction as the final stage in the procurement procedure.

In another case, the eligibility requirement related to possession of B licence for construction work and license for inter-city road public transportation raised serious concerns given that the procurement concerned "engagement of winter road maintenance machinery". Due to this and several other requirements, despite the fact that there were 7 companies that submitted their bids for the total of 5 procurement lots, a selection decision was taken only for one lot, while the procurement procedure for the remaining 4 lots was annulled on the grounds that the bids received for these lots were unacceptable.

The procurement procedure organized for printing of road traffic safety materials included large number of eligibility criteria on companies' technical and professional capacity. Considering the procurement subject, requirements related to lists of previous deliveries/contract performance, description of technical equipment and samples seem to be justified, whereas the requirement related to the declaration on techni-

cal staff employed and the need for the economic operator to dispose with 2 vehicles seem irrelevant, restrictive and unnecessary administrative burden in the preparation of bids.

At first glance, the eligibility criteria defined in the procurement procedure for services related to food, breeding and healthcare for service dogs do not include stringent requirements on technical and professional capacity of economic operators. However, the request whereby the bidding companies should demonstrate successful performance of at least 2 contracts in the same procurement subject in the last 3 years is not conducive to greater competition, especially knowing that in the Republic of Macedonia there are only 3 procurement-performing entities for this type of services, which organize relevant procurement procedures only once a year. The fact that only one company submitted its bid in this procedure is not surprising, knowing that the company in question has won all tender procedures organized for this type of procurements.

In the procurement procedure concerning motor vehicle liability insurance and car glass insurance, issuance of green cards and full casco insurance, the bidding companies were required to present a declaration on expert staff engaged (minimum 10 persons) and statement on technical equipment

and capacity to operate it. These requirements are somewhat odd, given the character of the procurement subject (insurance), and more so knowing that the insurance business is a regulated activity, i.e., the Agency for Supervision of Insurance Businesses issues the relevant business activity permits only to companies that fulfil a pre-defined set of terms and conditions. Therefore, the question is raised on the reasons for the procurement-performing entity to define these requirements for companies that have already fulfilled the terms and conditions set by the regulator and have obtained the relevant permits. Moreover, why and what kind of technical equipment and capacity to operate it is needed in the performance of this contract.

It seems that definition of stringent and disproportional criteria on technical and professional capacity has gone beyond any reason in the procurement procedure concerning services related to installation of stage, lighting and audio equipment at the theatres throughout the country. Namely, the bidding companies were requested to demonstrate successful delivery of the said equipment under at least 3 previous contracts in the last 3 years, where the individual value of past procurement contracts should not be lower than 18 million MKD. Only one bid was submitted by a foreign company in the

amount of 270,000 EUR, but it was considered unacceptable, after which the procurement procedure was annulled.

In the procurement procedure for Internet access and server colocation in 2013, bidding companies were required to demonstrate at least 5 years of relevant experience is considered discriminatory. This means that all companies that operate for less than 5 years are prevented from submitting their bids, although they might have relevant experience in performance of this type of contracts. A more appropriate eligibility requirement would be for the companies to demonstrate "certain number of previous contracts performed in the relevant field", which will guarantee that bids are submitted by experienced companies.

Another problem identified under one procurement procedure from the monitoring sample includes the fact that bidding companies were required to present documents that demonstrate their capacity, but the tender documents did not provide precise definition of the minimum terms and conditions they need to fulfil. For example, the companies were required to present lists of previous deliveries and description of the technical equipment they dispose with, without indicating the minimum criteria that should be met. These

practices raise several questions: why were documents required in the absence of relevant description of terms and conditions that should be met? Does this mean that bidding companies will not be evaluated in this regard? If they are evaluated, obvious is that the contracting authority would make a subjective assessment whether a given company holds relevant technical and professional capacity.

Eligibility criteria on technical and professional capacity defined in several tender procedures implied submission of samples, but in many cases no indications were made as to the reason why the samples are needed, i.e., what purpose would they serve. An exception from this practice was noted only in the procurement procedure concerning immunology serums, where it was clearly indicated that the samples will be used to assess three elements that are subject to point-allocation in the bid-evaluation process.

It should be noted that several tender procedures from the monitoring sample included a positive practice on requiring economic operators to present a statement or statements on fulfilment of most eligibility criteria related to their technical and professional capacity. The statements in question are drafted by the economic operators them-

selves, which reduces the administrative burden and the time needed for companies to collect and complete various evidence documents (certificates and attest documents).

In terms of eligibility criteria related to economic operators' economic and financial capacity, every fourth procurement procedure from the monitoring sample included a requirement for the companies to demonstrate certain minimum annual revenue in order to participate in the tender procedure. Certain improvements were noted in regard to the minimum amount of annual revenue set by the contracting authorities in the light of setting amounts that are proportionate to the procurement's estimated value. Namely, notwithstanding the procurement procedure where the minimum annual revenue of bidding companies was set in an amount 58 times higher than the contract's value, according to data available on the estimated value of the contract or the procurement, in the remaining 9 procurement procedures this ratio was 1.35:1. Otherwise, the disproportionate amount of annual revenue requested from the bidding companies in the procedure on procurement of heating oil can be easily fulfilled by several big companies that operate in this sector, but the question is raised whether

the eligibility criteria in this procurement of a relatively small value (27,000 EUR) should be less stringent in order to encourage smaller oil derivatives distributors to participate in the tender procedure.

When setting the requirements related to companies' annual revenue due consideration should not be made only of the procurement's estimated values, but other circumstances as well, such as the procurement's frequency and number of legal entities on the market that can appear as bidders. Procurement of postal service sacks is not very common and most probably a very small number of companies are able to deliver this procurement subject, but that did not prevent the procurement-performing entity from setting a high amount for companies' annual turnover (165,000 EUR) in the last 3 years, each. In addition, the technical specifications did not provide space for possible deviations, as the sacks and packages that were the subject of procurement were described in very detailed manner, including their colour, which is irrelevant in regard to the quality of the procurement subject. This resulted in one bid submitted, which was assessed as unacceptable and the tender procedure was annulled.

In 25% of monitored tender procedures which included eligibility criteria on companies' economic and financial capacity, the companies were required to submit their balance sheets and profit and loss statements, in that failing to indicate the minimum annual revenue required from the company in order to be considered eligible for contract performance.

Sometimes, the contracting authorities are not aware of what they are looking for when setting certain criteria, which is obvious from the following example. The manner in which this condition was formulated in the monitored procedure on procurement of immunology serums creates a total confusion. The section on "documents required to demonstrate economic and financial capacity" from the relevant call for bids and tender documents indicates that "in cases of companies that operate for less than 3 years, the minimum average turnover in the last year of operation should amount to 10,000,000 MKD", whereas later in the documents, under the section "minimum criteria on economic and financial capacity" the formulation reads "companies should demonstrate positive financial results in the last 3 years" and "companies should have performed the relevant business activity for more than 3 years or they

should demonstrate a minimum average turnover for the years of their operation in the amount of 10,000,000 MKD". In this case, there is obvious combination of requirements related to minimum average turnover and positive balance sheets, which is absolutely unnecessary. Moreover, companies that perform the given business activity for less than 3 years are treated differently from the other bidders.

Inconsistencies were noted in the formulation used under the eligibility criteria published as part of the call for bids and the tender documents for the procurement procedure on ICT equipment. The call for bids required the bidding companies to present their relevant balance sheets and profit and loss statements, in that failing to set a minimum requirement that should be met, whereas the tender documents indicated that the bidding companies should demonstrate positive financial operation.

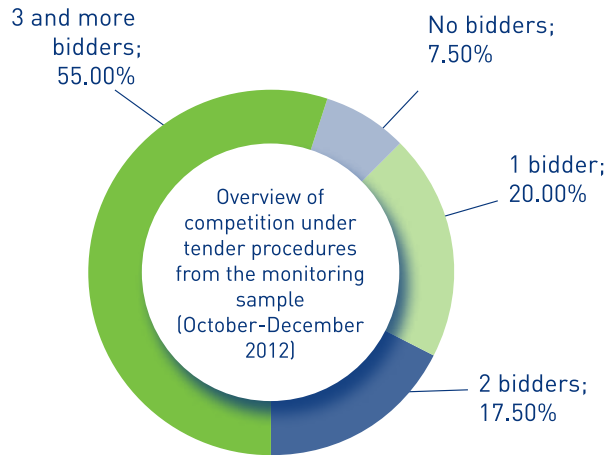
Recommendation: In a situation when e-auctions are mandatory for all types of tender procedures, which renders Macedonia the only country in Europe that pursues this concept of public procurement, additional efforts are needed to stimulate greater competition. On the contrary, there is

a macro-level risk that savings effectuated under tender procedures with organized e-auctions would be lost due to high prices paid in the cases when e-auctions were expected, but were not organized. Namely, there is an unwritten rule that prices indicated in the companies' initial bids are set at higher rates in anticipation of the e-auction that should result in lower prices.

Therefore, in cases of procurement procedures that imply collection of bids, as well as in open procedures of lower value, the contracting authorities are recommended to set eligibility criteria related to companies economic and financial, as well as technical and professional capacity only as an exception, not as a rule. As regards tender procedures of greater scope and value, the eligibility criteria should not be copy-pasted from one to another procedure, but the contracting authorities are encouraged to pursue an individual approach and make an objective assessment, which would result in eligibility criteria that are relevant for the procurement subject and would not limit the competition among companies.

- **Although the average number of bids submitted per tender in this quarter is 3.47 and is higher compared to relevant figures recorded for the previous quarters, 45% of procedures from the monitoring sample were characterized with low competition. On the other hand, the several procurement procedures that included higher number of bidders were annulled.**

Apparently, the competition noted under procedures from the monitoring sample for this quarter is satisfactory and has increased in comparison to previous quarters, notably because the average number of bidders per procedure is 3.47. However, an in-depth analysis of tender procedure reveals that the share of procedures without any bids submitted is 7.5%, while the number of procedures with one or two bids is 37.5%. Tender procedures to which no or up to two bids were submitted cannot be categorized as competitive procedures. Therefore, a conclusion can be inferred that in 45% of procedures from the monitoring sample there was no significant competition among companies.



In this regard, it should be noted that the average number of bidders is increased, i.e., there is higher competition among companies, primarily due to procurement procedures on ICT equipment, which are characterized by at least 7-8 bids, and even more (which was also noted in the previous quarters). High competition is also noted under procurement procedures concerning construction works and insurance services. As regards the remaining procurement

subjects, especially procurement of specific machinery and equipment organized by public enterprises or state-owned joint stock companies, relevant tender procedures are not characterized by any competition among companies. Moreover, absence of competition is also noted under procurement procedures that imply numerous and stringent criteria concerning economic operators' economic and financial, as well as technical and professional capacity, which was already addressed in this analysis. All these indicate another important trend in public procurements that is not conducive to greater competition, i.e., companies are increasingly requested to present certificates on implementation of certain standards, primarily ISO 9001:2008, the standard on quality management systems, but also ISO 14001, the standard on environment management, which in most cases are completely irrelevant for successful contract performance.

Requesting the companies to fulfil certain standards, such as ISO 9001:2008 (quality management systems) and ISO 14001 (environment management) is in compliance with LPP. Moreover, the quality management standard is welcomed and might contribute to high quality and more successful procurement performance, especially if communication and

cooperation, organization of work flows, reporting, approach to problem solving, etc., are of great importance in the procedure. However, concerns are raised about the tender procedures and procurement subjects in which these standards are required. Most often, these standards are required under procurement procedures where the fact whether the companies hold the requested certification on compliance with standards is irrelevant and does not contribute to improved quality of contract performance. On the contrary, requesting these standards in procurement procedures where they are not of crucial importance results in lower competition, notably because only a small number of companies operating in a given sector hold the relevant standard/certificate, while at the same time the contracting authorities lack knowledge or expertise on assessing the credibility of certificates they were presented with. In reality, this is done to facilitate contract-awarding to a previously favoured company. Therefore, the question is raised on the baseline assessment and main reason for contracting authorities to request this standard in the procedures from the monitoring sample, which is illustrated with several examples given below.

In the procurement procedure related to design and realization of promotional campaign for entrepreneurship

in agriculture, the companies were required to hold ISO 9001:2008. Only two companies submitted their bids which may be due to the fact that many marketing agencies do not have this certificate.

Possession of ISO 9001:2008 certificate was requested from manufacturers of goods used, as well the contractor of construction and craftsman works that were the subject of procurement under one monitored tender procedure. For this type of procurements, it would be more relevant to include requirements related to the products being used and installed, rather than to rely on the quality management system standard applied by the manufacturing company and the company performing small-scale construction works.

The procurement procedure for copy-machine toner organized by a state university required the successful company to be certified with ISO 9001:2008. It is a matter of procurement subject which implies an obligation for the company to deliver the goods from its premises or warehouses to the premises of the procurement-performing entity, which renders the manner in which the company manages its business processes irrelevant, in particular because it has little or no effect on the contract performance.

The monitoring sample included more explicit examples of procedures in which the companies' certification according to certain standards is irrelevant to the procurement subject. In the procedure for procurement of postal service sacks, in addition to ISO 9001:2008, the companies were also required to hold ISO 14001 on environment management. In this case, possession of the above-indicated certificates would not result in better quality of goods being procured or environmental protection in the course of procurement delivery. The fact that only one bid was submitted, but was assessed as unacceptable, indicates that stringent terms and conditions were defined, which resulted in procedure's annulment.

In the procurement procedure related to stage, lighting and audio equipment for theatres throughout the Republic of Macedonia, the bidding companies were required to possess certificates on the environment management standard, which in terms of the procurement subject (indoor equipment) is irrelevant and limits the competition among companies. Only one foreign entity submitted its bid in this tender procedure, which was assessed as unacceptable and the tender procedure was annulled. This imposes the need

for the contracting authorities, prior to deciding to include possession of certificates and application of certain standards as eligibility criteria for bidding companies, to make an assessment whether and to what extent does the required standard contribute to quality and successful contract performance and how many economic operators from the relevant market sector have already implemented the standard in question.

Analysis of the monitoring sample also revealed that although competition was noted in certain procedures, it does not guarantee that the most favourable bid will be selected and that the procurement contract will be signed. Namely, three procedures from the monitoring sample were annulled, although there were three or more bids submitted! This phenomenon was duly noted in the previous monitoring reports, and it is indicative of:

- non-professionalism on the part of contracting authorities, which failed to develop clear and understandable tender documents that would enable the economic operators to submit bids that correspond with tender terms and conditions and technical specifications or they change their pro-

curement needs once the procedure has been implemented; and

- manipulative approach on the part of contracting authorities when they assess all bids received as unacceptable in order to avoid selecting the most favourable bid that has not been submitted by the company they favour.

On annual level, low competition was noted in 51% of monitored procurement procedures. This provides the conclusion that low competition is an issue that has been noted in all monitoring quarters from 2012, albeit with small variations.

Recommendation: In addition to the Bureau of Public Procurements' engagement, resolution of this problem necessitates the involvement of the business sector and the relevant business associations, and they have to be open to identify the reasons and propose efficient measures to eliminate them. Business associations should initiate debates and analyses of reasons behind the declining interest on the part of companies to participate in public procurements and, together with the competent state authorities, they need to take specific measures to eliminate these reasons.

- **The share of annulled tenders in the last quarter of 2012 is very high and accounts for 25% of the monitoring sample, i.e., 23.38% on the level of the entire country. According to data obtained from the Electronic Public Procurement System, the annual share of annulled procedures is the highest in 2012 compared to relevant figures recorded for the last four years and accounts for 24.16%.**

The analysis shows that tender procedures of greater scope organized as open procurement procedures are more frequently annulled than tender procedures of smaller scope, which are usually organized as bid-collection procedures. This unfavourable trend was noted on both, quarterly and annual level. In terms of the monitoring sample, worrying it is the fact that there were procurement procedures that involved competition (i.e., three or more bids were received), but the contracting authorities took decisions on partial or full procedure annulment. It should be emphasized that one of the most competitive procedures that was subject of monitoring in this quarter (procurement of system hall equipment: computer equipment, equipment for halls and login

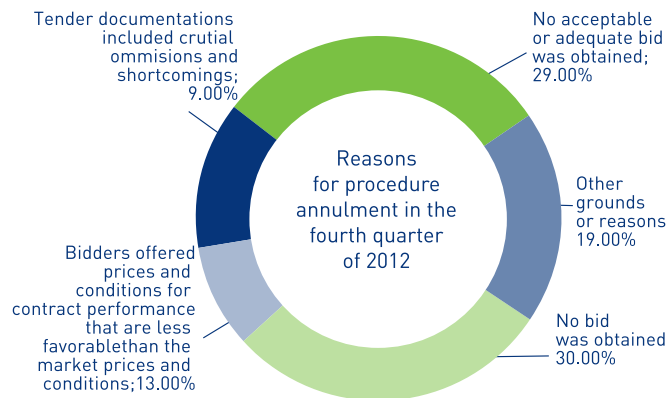
solutions) where 7 bids were submitted, was annulled on the grounds of unexpected changes in the contracting authority's budget. This is indicative of contracting authorities' unserious approach or even their failure to realize their pre-defined calculations, i.e., their inability to award the procurement contract to the company they favour.

1,047 procedures from the total number of procurement procedures organized in this quarter were annulled. Some annulment decisions concern calls for bids announced in the previous quarters, but a portion of them concern calls for bids announced in this quarter as well. According to rough estimates, the number of calls for bids published in this quarter was 4,570, which means that if all annulment decisions taken in this quarter concern the calls announced in the same period, the share of annulled procedures would account for 23.38%, i.e., every fourth procurement procedure was annulled. Comparison against the relevant figures for the same period in the previous monitoring years shows that the share of annulled procedure in the last quarter of 2012 is higher than the one recorded in the previous year, but is still lower than the highest share recorded for the same period in 2010.

Trend related to procedure annulment, per quarter

Period	Number of calls for bids announced	Number of decisions on procedure annulment	Share of annulled procedures
October – December 2009	1,737	320	18.42%
October – December 2010	1,773	476	26.85%
October – December 2011	2,081	464	22.30%
October – December 2012	4,478	1,047	23.38%

A detailed analysis of reasons indicated in the 1,047 decisions taken on tender annulment at the level of the entire country shows that most frequently indicated reasons include: no bids were obtained on the call (30%) and no acceptable or adequate bid was obtained on the call (29%). Most certainly, these reasons are again closely related to the issue of low competition and high eligibility criteria for bidding companies, which in turn result in the bids submitted being assessed as unacceptable.



The diagram above provides the conclusion that most frequently indicated legal grounds for tender annulment are those that imply no competition, which further confirms the above given statement about low competition among companies in tender procedures. Increased number of annulment decisions on the grounds of "bidders offered prices and conditions for contract performance that are less favourable than the market prices and conditions" confirms the statement that contracting authorities do not want to select the only acceptable and adequate bid, although they have secured the funds needed for the procurement, but instead opt for procedure annulment, followed by a negotiation procedure without prior announcement of call for bids or publication of a new call for bids.

However, one must not undermine the number of tender procedures that were annulled on the grounds that the contracting authority has identified crucial omissions and shortfalls in their tender documents (8.9%), which is indicative of their unprofessional and unserious approach to organization and implementation of public procurements.

It should be noted that 5% of all tender procedures organized in the fourth quarter were annulled by referring to the law

provision which stipulates that the number of candidates (companies) that have submitted their bids is lower than the minimum number of bids stipulated for public procurement contract-awarding. Concerns raised in regard to this issue primarily concern the fact that the minimum number of bidders is stipulated only for limited procedures for bid-collection and negotiation procedures. Decisions on tender annulment that refer to this legal ground were actually taken in procurements that did not imply organization of above-indicated types of procedures, which means that under 52 tender procedures from the last quarter in 2012 the contracting authorities have acted illegally when they indicated that the procedure in question has been annulled due to low competition. Namely, according to the law provisions in effect, one bid is sufficient for procurement contract-awarding organized as open procedure and bid-collection procedure. In the fourth quarter of 2012, decisions on tender annulment were adopted in three procurements organized as limited procedure, but in all cases the reason indicated for tender annulment implied that bidders offered prices and conditions for contract performance that are less favourable than the market prices and conditions. Not a single procurement organized in 2012 was organized as negotiation procedure (competitive dialogue).

Trend related to procedure annulment, per year

Period	Number of calls for bids announced	Number of decisions on procedure annulment	Share of annulled procedures
January – December 2009	6,869	1,372	19.97%
January – December 2010	7,091	1,554	21.92%
January – December 2011	7,800	1,656	21.23%
January – December 2012	11,726	2,833	24.16%

As shown in the table above, the trend on increased number of annulled procedure is significant, especially on annual level. Despite all indications for the need to reduce the num-

ber of annulled procedures, their share in 2012 accounts for 24.16% and is the highest share recorded in the last 4 years.

Recommendation: The trend on increased number of annulled procurement procedures imposes the need for limiting and precisely defining the possibilities for tender annulment stipulated in the Law on Public Procurement. CCC reaffirms its proposal for introduction of sanctions for the contracting authorities that have high share of tender annulments. Moreover, Article 169 of the LPP should be amended with a view to establish that in cases where the contracting authority has annulled the procedure on awarding a public procurement contract on the grounds of “unpredictable changes to the budget” and “changes related to the contracting authority’s procurement needs” it should be forbidden to re-organize the procurement in question in the same budget year. At the same time, having in mind the problems that are related to the procurement’s estimated value, before organizing the procurement procedure, contracting authorities should first conduct a market research/survey in order to be able to make a realistic estimation on the procurement’s value.

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In the fourth quarter of 2012, a total of 408 contracts were signed under the negotiation procedure without prior announcement of call for bids, in total value of more than 1.3 billion MKD, i.e., around 22 million EUR. On annual level, around 65 million EUR are spent on procurements organized under this type of procedure.

The number of contracts signed by means of direct negotiations without prior announcement of call for bids and the value of these contracts has increased in the fourth quarter of 2012. If in the previous quarters an average number of 250 contracts were signed by means of negotiations without prior announcement of call for bids, their number in the fourth quarter accounted for 408. A significant increase was noted in regard to the value of these contracts, i.e., the total value of these type of contracts signed in the fourth quarter of 2012 amounted to 22 million EUR and is by 116% higher compared to the total value recorded for the same period last year.

Value of contracts signed under negotiation procedures without prior announcement of call for bids

Period	Value of contracts (in million EUR)	Change
October - December 2009	5.0	/
October - December 2010	6.9	+38.0%
October - December 2011	10.1	+46.4%
October - December 2012	21.9	+116.8%

Such dramatic increase imposes the need for a detailed analysis of reasons behind the increased number of con-

tract signed under this non-transparent procedure, whose application is stipulated as an exception in LPP. Namely, LPP stipulates several cases in which this procedure can be organized and almost all of them were referred, more or less frequently, as grounds for organization of negotiation procedures without prior announcement of call for bids. The chart below provides an overview of the frequency of reference made to these legal grounds in the procurement procedures organized in this quarter.



The conclusion is inferred that one of the more frequently indicated reasons for organization of this type of procedures is the inability to schedule an e-auction due to low competition. Total of 81 contracts signed in the period October-December 2012 referred to this reason, and their total value amounts to around 9 million EUR. Often, and probably due to ignorance or fear, instead of signing the contract with the only company that submitted a bid, which was assessed acceptable and adequate, the contracting authorities decide to annul the procedure and initiate a negotiation procedure in hope it would result in lower prices from those indicated in the initial bids, be it in the minimum amount possible.

Be that as it may, there is an obvious link between the last several findings indicated in this monitoring report (resembling the principle of communicating vessels). Insufficient competition prevents organization of e-auctions which, in turn, is the reason behind procedure annulment and initiation of new procedure with direct negotiations without prior announcement of call for bids. One might even conclude that this option is becoming common for public procurements in the Republic of Macedonia. The origin of this unacceptable phenomenon

should be sought in the previous stages of the process, i.e., as early as the development of relevant tender documents. The manner in which rules are defined in the tender documents (terms and conditions for tender participation, deadlines, technical specifications) determines the outcome of the public procurement procedure. If these rules are defined in order to favour a certain company (only one company can comply with them), the contracting authority – relying on the possibilities stipulated in LPP – achieves its “desired” outcome in the following stages of the procedure and ultimately signs the public procurement contract with the favoured company.

It should be emphasized that high number contracts signed by means of direct negotiations (94 contracts), whose total value amounts to more than 5 million EUR, was pursued by referring to urgent need for the procurement in question caused by events and developments beyond the control of the contracting authority.

On annual level, the value of all contracts signed under negotiation procedure without prior announcement of call for bids reached a record high level in 2012.

Value of contracts signed under negotiation procedure without prior announcement of call for bids

Period	Value of contracts (in million EUR)	Change
January - December 2009	23.1	/
January - December 2010	26.4	+14.3%
January - December 2011	39.4	+49.2%
January - December 2012	64.7	+64.2%

As shown in the table above, the value of direct contracts signed in 2012 is around 65 million EUR and is by 25 million EUR higher than the relevant 2011 figure, and almost three times higher than the 2009 figure.

Recommendation: Poor competition, failure to organize e-auctions, increased number of annulled procedures and organization of negotiation procedures without prior announcement of call for bids are merely the consequences, whereas the reasons for their occurrence should be sought in the tender documents, especially in the pre-defined eligibility criteria for tender participation and technical specifications. However, BPP must immediately conduct an in-depth analysis that would confirm these conclusions, followed up by adequate measures aimed to eliminate or reduce the negative aspects affecting the public procurement process.

- ⦿ **Although “economically most favourable bid” is rarely defined as the bid-selection criterion, the contracting authorities frequently make mistakes or conscious manipulations when selecting the bid-evaluation elements. Irrelevant elements or elements**

that are conducive to manipulation on the part of the bidders are defined as selection criteria, including elements that are prone to subjective bid-evaluation on the part of contracting authorities.

The conclusion that contracting authorities most often use “lowest price” as the selection criterion for the most favourable offer is also valid for this monitoring quarter. The ratio of lowest price versus economically most favourable bid is 3:1 in this reporting period as well. In cases when “economically most favourable bid” is used as the selection criterion, the elements defined under it differ to a great extent, while some of them imply an erroneous approach and possibility for malpractices related to bids and bid-evaluation. The negative aspects noted in this regard are reconsidered further in this analysis by means of examining individual examples from the monitoring sample.

The procurement procedure concerning construction and craftsman works included two bid-evaluation elements (price and quality) with a ratio of 90:10, where the quality was allo-

cated rank-points on the basis of pre-defined formula, because the contracting authority referred to the warranty period as quality of works performed. The fact that a formula was developed on allocating ranking points for the quality element of the bid is positive, in particular because it eliminated subjective bid-evaluation. However, the negative aspects of this approach to bid-evaluation are more numerous. First, disputable is whether the ranking-points ratio would be conducive to selecting a bid of better quality (longer warranty period), because the price element is the dominant one in the total number of points. This means that the company that offers the lowest price can be certain of its selection as the most favourable bid, irrespective of the points allocated to the bid's quality. Second, the question is raised whether the warranty period is the most adequate manner to rank bid's quality, given that the procurement subject concerns construction and craftsman works, which predominantly rely on performance (labour input), compared to procurement of goods that are used and installed and that require warranty periods.

Under the procurement procedure for immunology serums, the price element was assigned 85 points, whereas the oth-

er 3 elements were assigned a total of 15 points (5 points each), which were awarded on the basis of samples submitted. The positive aspect is seen in the fact that the bid-evaluation process included a specific manner of allocating ranking-points to quality elements and that the samples were not requested pro-form, as is the case under many tender procedures, but were used for analysis and point allocation. However, the total number of points assigned to these elements is too small in order to guarantee that the company that offered serums of better quality is selected as the most favourable bid, notably because the price element was assigned significantly higher number of points.

Under the foodstuffs procurement procedures divided into lots, the quality element was assigned 20 points on the basis of: (1) submitted certificates, attest receipts and other documents related to quality control; (2) references on timely, efficient and quality delivery issues by other contracting authorities; and (3) list of deliveries performed in the last 3 years. This approach is erroneous due to the fact that the tender documents did not indicate the exact number of points assigned to a given number (quantity) of certificates presented,

i.e., the public procurement commission is allowed to make subjective assessments and points-allocation.

In the procurement procedure for air tickets, the “payment manner and deadline” element was assigned 50 points, which resulted in one bidder offering a payment deadline of 367 days! Payment deadline was also used as bid-evaluation element in other three procurement procedures from the monitoring sample and was assigned 20 points in two procedures and 30 points in one procedure. One of these procedures did not apply the standard and objective formula, but used a point-allocation formula developed by the contracting authority. This formula is not fully based on objectivity, as it enables several bidders to be allocated same number of points, although their respective payment deadlines (may) differ by up to 80 days. Previous monitoring reports repeatedly remarked and urged the contracting authorities to refrain from allocating points to the “payment deadline” element, in particular because the bidders offer unrealistic deadlines, which are often not complied with in practice, and therefore the ultimate outcome implies that the procurement was awarded to a company that did not submit the most favourable bid.

The procurement procedure related to interoperability included detailed and relevant sub-elements and points allocated to the quality element (30 points), which provides a good example for the manner in which quality should be evaluated and ranked.

Recommendation: Contracting authorities must follow and replicate the positive experiences of other contracting authorities that have selected appropriate bid-evaluation elements under the criterion “economically most favourable bid”, especially in terms of the manner in which points are allocated to the quality element. As part of its decisions, SCPPA emphasises the fact that it has annulled contracting authorities’ selection decisions because they did not define the manner in which they would evaluate and allocate points to the “quality” element, and therefore, the contracting authorities must be more careful. BPP should develop and publish a manual on good practices that would include examples from best practices worldwide and positive examples from the domestic public procurement system, especially related to defining adequate bid-evaluation elements for quality.

o **Established practices on requesting bank guarantees for the bids submitted continue and were noted under every third tender procedure from the monitoring sample.**

Introduction of the statement on the bidder’s serious intention for contract performance did not result in less frequent requirements for bank guarantees, in particular because they were requested in 35% of procedures from the monitoring sample and in most cases they were set in the law-stipulated upper threshold of 3% of the bid’s value (in average, bank guarantees were set at 2.79%). Unclear is contracting authorities’ purpose behind imposing additional financial burden on the companies in the form of bank guarantees, instead of using the statement on the bidder’s serious intention for contract performance. In that, it should be noted that the above-referred statement is a strong instrument whose activation implies negative reference for the company that has withdrawn from the bid submitted.

In this monitoring period, no changes were recorded in regard to frequent requirements related to bank guarantees on quality performance of the contract. On the contrary, there is a

modest trend of increased number of procedures in which this guarantee was requested (60% of procedures from the monitoring sample). Moreover, the average percentage requested under this guarantee was set at 8.58% of the contract's value. Under circumstances when many companies operate on the brink of liquidity and when state authorities postpone payment of already preformed contracts, the companies find provision of bank guarantees additional and unnecessary cost. Often, they calculate this cost in the price bided, which ultimately makes the procurement more expensive.

Recommendation: Indisputable is that the statement on the bidder's serious intention represents a good protection mechanism and an appropriate replacement for the bank guarantee, as it reduces administrative and financial burdens for the bidding companies. Therefore, the institutions must replace their requirements for bank guarantees with a statement on the bidder's serious intention for contract performance.

- **The number of tender documents published in electronic form is increasing, but half of those that can be obtained in hard copy still imply payment of relevant fees.**

The number of tender documents published in EPPS is increasing. The share of tender documents published in ESPP account for 60% of procedures from the monitoring sample. For the first time from the onset of the present monitoring process, a conclusion is reached that the number of contracting authorities that publish tender documents in electronic form is higher than the number of those who provide tender documents only in hardcopy.

However, the number of tender documents whose issuance implied payment of a fee still remains high. The share of these procedures in the monitoring sample is 22.5%. Nevertheless, having in mind that the fee is paid only if the documents are available in hardcopy, the actual share of these procedures is much higher and accounts for 56.25% of all tender documents that were exclusively issued in hardcopy. The average amount of tender document fees was 756 MKD, and the highest amount charged for issuance of tender documents did not exceed 1,500 MKD.

Recommendation: Without any exceptions, the contracting authorities should publish complete tender documents together with the call for bids, in that relieving the bidding

companies of additional financial and administrative costs. Next round of amendments to the Law on Public Procurements should include an obligation on publishing tender documents in electronic form. This would also guarantee certain financial compensation for the companies' obligation to pay for registration in EPPS.

- In the second half of 2012, 14 companies were prohibited to participate in tender procedures for a given period of time, by means of issuing negative references. 12 companies were prohibited to participate in public procurements for a period of one year and 2 companies were prohibited to do so for two and five years, respectively.**

A total of 19 negative references were issued in the first 6 months from the date this instrument entered in effect (1 June – 31 December 2012). In that, one company was issued as many as 5 negative references, while another company was issued 2 consecutive negative references, which means that a total of 14 companies were sanctioned by being prohibited to participate in tender procedures for a period of

one year for one negative reference, and two and five years for companies issued more negative references. The most frequently indicated reason for issuing negative references reads: “the bidder did not sign the public procurement contract”, but a portion of them also included “the bidder did not submit a bank guarantee for quality performance of the contract, which the contracting authority anticipated in the relevant tender documents”. CCC indicated the negative aspects of this instrument as early as the instrument on issuing negative references was first introduced.

This raises the issue on whether the contracting authorities were given high discretionary rights in implementing these legal provisions, especially in the contract performance stage, which is prone to malpractices and abuses in order to retaliate against or eliminate other companies so that their favoured economic operators would have better chance at being awarded the contract. Concerns about risk of corruption are raised with the possibility that contracting authorities might not issue negative references to certain companies they favour, especially if the companies in question should be sanctioned pursuant to the law provisions in effect.

Bureau of Public Procurements must make a detailed analysis on the reasons behind companies' withdrawal from contract signing. Furthermore, BPP must analyse the reasons behind companies' inability to secure bank guarantees for quality performance of the contract. Is that yet another way in which the company indicates that it does not wish to sign the contract? Or it is a matter of objective circumstances that are beyond the company's control. It might be that the company, after receiving the notification that it has been selected as the most favourable bidder, tried to obtain the bank guarantee, but was unsuccessful in that because the bank did not want to issue the guarantee or it issues the guarantee under unfavourable terms and conditions. In such cases, even if the contracting authority demonstrates certain tolerance, ultimately it has to act in compliance with the law and issue a negative reference.

Recommendation: Having in mind that six months have passed from the introduction of negative references, BPP should conduct an analysis inquiring about the adequate application of the rules governing issuance of negative references for economic operators and whether certain malpractices or abuses were pursued on the part of contracting authorities in cases of negative references issued to date,

LIST OF 10 LARGEST PUBLIC PROCUREMENT CONTRACTS IN 2012

In 2012, the largest public procurement contract was signed by the state-owned company for electricity generation ELEM (Macedonian Power Plants) in the amount of 53.3 million EUR. The subject of this procurement included coal and inter-layer spoil excavation at the coal mine Brod – Gneotino, REK Bitola, with discontinued technology and in approximate quantity of 11,000,000 m³. In the negotiation procedure with prior announcement of call for bids, ELEM received four bids and signed the contract with the company for construction and services “Pelister” Bitola Ltd. The contract was signed in May 2012 in duration of 24 months.

10 largest public procurement contracts in 2012

Contracting authority	Contract's subject	Contractor	Value of the contract	
			in MKD	in EUR
ELEM	Coal excavation	Pelister Bitola	3.280.400.000	53.339.837
DGA	Construction works	Granit	1.214.198.092	19.743.058
ELEM	Inter-layer spoil excavation	Trans Met.	1.180.000.000	19.186.992
Ministry of Health	Insulin, glucagon, needles and blood-sugar measuring tapes and insulin pumps	Replek	901.058.835	14.651.363
DGA	Construction works	Beton Skopje	834.555.000	13.570.000
City of Skopje	Multi-storey car park	Beton Skopje	781.112.251	12.701.012
ELEM	Oil derivatives	Lukoil	767.357.304	12.477.354
DGA	Hygiene, maintenance, fire protection and typing services	Securicom	625.102.450	10.164.267
AEC	Metering equipment, assistance and maintenance	TCI Int. Freemont, USA	593.091.047	9.643.756
DGA	Construction works	Beton Skopje	572.017.215	9.301.093

The second largest public procurement contract in 2012, in the amount of approximately 20 million EUR, was signed by the Department on General Affairs at the Government of the Republic of Macedonia and concerned performance of construction works and craftsman works on an administrative building: State Institutions – Public Administration and Faculty of Drama Arts. The construction site is located in the downtown area, the small ring urban plan in the Municipality of Centar. The facility is assigned as building of first category. The construction area is 2,126 square meters, and the facility's total area is 19,134 square meters. The maximum allowed height up to the facility's capitol is 25 meters. In a limited procedure for bid-collection, the Government signed a 20-months contract with the construction company Granit JSC Skopje, which is one of the two bidders in the tender procedure.

In the amount of 19.2 million EUR, the contract signed in January 2012, placed the state company for electricity generation on the third position in the list of 10 largest public procurement contracts in 2012. In the negotiated procedure with prior announcement of call for bids related to spoil and coal excavation at the micro location – 3 in the mine Suvodol – REK Bitola, including coal transportation to TPP Bitola, with discontinued technology according to the additional mining project. ELEM

received 6 bids on this tender and signed the contract with Trans Met Ltd from Skopje in duration of 36 months. In the rationale offered for the decision to use negotiated procedure with prior announcement of calls for bids, ELEM referred to legal provisions according to which if the contracting authority did not receive any acceptable bids on a previously organized open procedure, the procedure had to be annulled.

Under an open procedure for procurement of insulin, glucagon, insulin needles and blood-sugar measuring tapes and insulin pumps, including supplies for the period August 2012 – August 2014, organized to meet the demand of the population in Macedonia, in September last year the Ministry of Health signed a 2-year contract with Replek JSC in the value of more than 14.6 million EUR which competed against seven other bidders.

On the fifth place according to the contract's value is the Department of General Affairs at the Government of the Republic of Macedonia, which signed a contract in the amount of more than 13.5 million EUR with the construction company Beton JSC from Skopje concerning construction and craftsman works for state institution buildings – public administration, located on Str. Macedonia no number in

Skopje, based on the Bill of Quantity and Project Design that were integral part of the tender documents. The Department of General Affairs organized an open procedure and was presented with three bids.

In November 2012, the City of Skopje signed a procurement contract with Beton JSC concerning the construction of a multi-storey car park on Str. Dame Gruev, in the value of 12.7 million EUR, which competed against two other bidders that submitted their respective bids as part of the limited procedure for bid-collection.

State-owned electricity generation company ELEM JSC, organized an open procurement procedure for light oil derivatives (Eurodiesel and Eurosuper 95 BS) and was presented with 4 individual bids, while the one-year contract was signed with the company for trade in oil derivatives and services, Lukoil Macedonia Ltd. Skopje, in the amount of 12.5 million EUR.

On the eighth position in this list of largest contacts signed is the contract in the value of 10 million EUR signed on 31 August 2012 between the Department of General Affairs at the Government and Securicom Multiservice Internation-

al Ltd from Skopje, which concerned services on hygiene maintenance of work premises and yards, running maintenance of facilities, security services and fire protection of facilities, typing services and operation of TT centrals in the state administration bodies. The company with which a three-year contract was signed (1.9.2012 - 1.9.2015) was the only bidder on the tender implemented as open procedure.

Last year, the Agency for Electronic Communications organized open procedure for procurement of sophisticated electronic metering equipment (integrated monitoring system for radio frequencies) and operative support, assistance and maintenance. The Agency was presented with three bids and signed the contract in duration of 52 months with TCI International from USA, in the amount of 9.6 million EUR.

At the bottom of the list on 10 largest contracts signed in 2012 is the contract between the Department of General Affairs at the Government and the construction company Beton JSC, which concerned performance of construction and craftsman works on underground car part in the small ring urban plan area in Skopje, with gross construction area of 21,770 square meters. Only two bids were submitted for this tender organized as limited procedure for bid-collection.

ANALYSIS OF PROCEDURES LED IN FRONT OF THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS IN THE PERIOD JANUARY – DECEMBER 2012

- **The trend on decreased number of appeals lodged by the companies in front of the State Commission on Public Procurement continued in 2012 as well. In that, according to the analysis of decisions taken by SCPPA in 2012, almost every third appeal lodged was approved, which is also the highest share of approved appeals in the last four years.**

In the period January – December 2012, the State Commission on Public Procurement Appeals (SCPPA) was presented with 633 motions for appeal. Contrary to the increasing number of tender procedures organized in the Republic of Macedonia, the number of appeals lodged by the companies is characterized by continuous decrease. In 2009, SCPPA was presented with 960 appeals, in 2010 - 855 appeals, and in 2011 - 768 appeals.

Although some reasons behind the decreased number of appeals should be sought in the institutions' greater experience in implementing public procurements, in the opinion of the business community the actual reason for decreased number of appeals is the traditional distrust in the system institutions. Results from the 2012 survey conducted among 220 companies and inquiring about their experiences related to public procurements show that the two main reasons behind companies' reluctance to lodge an appeal include: distrust in the State Commission on Public Procurement Appeals (34.3%) and the high administrative fee imposed for motioning an appeal (32.9%). Smaller share of companies indicated that the reason for not appealing the contracting authority's decision is fear of possible elimination from future contracts (20.9%). 11.9% of companies indicated other reasons, such as: no need to appeal, failure to comply with the deadline for lodging an appeal, no ef-

fect from leading an appeal procedure and legal inability to appeal against certain activities (for example, response obtained to a question put forward).

According to the structure/type of decisions taken by SCP-PA in 2012, most numerous are the decisions taken on rejecting companies' appeals (37.44%).

Structure of decisions taken by SCPPA in 2012

Type of decision	Number of appeals	%
Withdrawing an appeal (procedure is cancelled)	31	4.90
Rejecting an appeal	237	37.44
Denying an appeal	119	18.80
Approving an appeal	212	33.49
Appeal approved by the contracting authority (procedure is discontinued)	34	5.37
Total	633	100

The share of appeals approved in 2012 (33.49%) is the highest share recorded in the last four years. Namely, in 2011 SCPPA approved 27.60% of all appeals lodged by the companies that participated in tender procedures; in 2010 this share was 31.81%, whereas in 2009, the share of approved appeals was 25.94%.

When approving the appeals, SCPPA takes decisions by means of which:

- it revokes the decision taken by the contracting authority and orders re-evaluation of bids; and
- it annuls the decision on selection of the most favourable bid and thereby annuls the procurement procedure.

112 of the total of 212 approved appeals concerned revoking of contracting authorities' selection decision and the case was returned for repeated bid-evaluation, while the remaining 100 decisions were taken on annulling the public procurement procedure organized by the contracting authority. This provides the conclusion that among approved appeals dominant are those by means of which SCPPA re-

vokes the contracting authority's decision on the selection of most favourable bid (52.83%), compared to 47.17% of all appeals approved that have led to complete annulment of the procurement procedure.

Most often, SCPPA adopts decisions on procedure annulment in cases where it has established serious violations of the law in the procedures on public procurement contract-awarding in particular related to the bid-evaluation process. SCPPA's decisions on approving economic operators' appeals and revoking the decision taken by the contracting authority usually include guidelines for the contracting authorities to eliminate the shortcomings when repeating the bid-evaluation process. More specifically, decisions on revoking the contracting authority's selection decision are adopted when it is clear that the repeated procedure would eliminate the shortfalls identified in the initial decision/process. A number of contracting authorities' selection decisions have been revoked also in cases when SCPPA acted *ex officio*, pursuant to Article 211 of LPP. Namely, Article 211 stipulates that SCPPA, as part of a procedure on legal protection, acts only within the limits of appeal allegations,

and takes ex officio actions in cases of serious violations as stipulated in Article 210 of the Law, such as, for example, violation of the bid-evaluation procedure.

SCPPA adopts decision on procedure annulment in cases of: serious violations of the public procurement procedure; when the factual situation has been erroneously and in-

completely established and when the substantive law has been erroneously applied.

Comparison of relevant data on annual level provides the conclusion that in 2012 the share of annulled procedures is among the highest shares recorded in the past four years, which is indicative of increasing serious violations of LPP.

Comparison of types of decisions taken, per year

Type of decision	2009		2010		2011		2012	
	Decisions No.	%	Decisions No.	%	Decisions No.	%	Decisions No.	%
Decision on revoking the contracting authority's selection decision	150	60.2	153	56.2	130	61.3	112	52.8
Decision on procedure annulment	99	39.8	119	43.8	82	38.7	100	47.2
Total	249	100	272	100	212	100	212	100

In the last several years, it has been noted that there is a continuous trend on decreasing number of SCPPA decisions to deny the appeals lodged by economic operators. Namely, in 2012 the share of appeals denied by SCPPA was 37.44%, in 2011 - 42.58% of all appeals lodged were denied, in 2010 their share was 42.46%, and in 2009 - 44.67%.

On the other hand, the share of denied appeals is marked by an increase and in 2012 it accounted for 18.80%, compared to 17.60% in 2011. This is an unfavourable trend, especially knowing that the appeals are most frequently denied as inadmissible or incomplete. Frequently, SCPPA denies appeals as inadmissible on the grounds of being lodged beyond the law-stipulated deadlines. This is indicative of the fact that some companies are still ignorant about the legislation and the rules referred to in Article 216 of the LPP, which stipulates that in cases of open procedures, the economic operators can lodge appeals within 8 days and in cases of bid-collection procedures they can lodge appeals within 3 days from the day the call for bids was announced, if they are dissatisfied with its contents or deem that tender documents are disputable. Moreover, new deadlines in

same duration are set for lodging appeals after the public opening of bids when the companies can lodge appeals against actions that have taken place in the course of opening of bids, or against the tender documents. Finally, the last deadline for lodging an appeal starts after the contracting authority has taken the decision on the selection of the most favourable bid or on procedure annulment.

As regards appeals denied on the ground of being incomplete, usually SCPPA denies the appeal due to the economic operator's failure to comply with the obligation set forth in Article 212, paragraph 2 of the LPP, which stipulates the payment of administrative fee for initiation of an appeal procedure the amount of which, depending on the value of the public procurement contract in question, is stipulated in Article 229 of the LPP.

As regards decisions on discontinuation/termination of the appeal procedure, whose share in 2012 accounted for 10.27%, part of decisions (conclusions) were based on the fact that following the appeal's submission the contracting authority has acknowledged that the appeal is partially or

fully grounded and pursuant to Article 221 of the LPP has taken a decision repealing the existing selection decision, a decision on annulling the procedure, or a decision by means of which it corrected the action, took the action indicated as omitted or conducted a new procedure.

A total of 9 motions were submitted to SCPAA whereby the contracting authorities requested continuation of the procurement procedure, which means moving to public procurement contract signing in spite of the fact that an appeal was lodged in front of SACPP, 7 of which were denied and 2 were rejected.

In terms of the appeals' contents, companies most often lodge appeals to contest tender procedures on the grounds of problems they have faced in relation to assessment of economic operators' eligibility to participate in the tender, indicating cases when the eligibility criteria were inadequately applied and were abused for the purpose of assessing a certain bid as unacceptable or for the purpose of favouring a certain bidder that does not fulfil the minimum requirements anticipated in the tender documents. Furthermore, companies lodge appeals based on violations of the Law in the bid-evaluation process and selection of the most favourable bid, indicating that certain omissions were made in point-allocation and ranking of bids. .

