

# **MONITORING OF PUBLIC PROCUREMENTS**

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Цивика мобилитас е проект на Швајцарската агенција за развој и соработка (СДЦ) кој го спроведуваат  
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## KEY FINDINGS

- » The ever so frequent use of electronic auction in tender procedures could mean that participants in public procurements are not abandoning already perfected mechanisms for malpractice and corruption. In practice, non-mandatory e-auctions are still an inseparable part of tender procedures and were organized in 91% of all public procurements implemented in the first half of 2021.
- » Inequitable treatment of bidders leads to two extreme situations, whereby on the one end, bidding companies are exempted from tender procedures for matters that are not regulated under the law, and on the other end, erroneously drafted financial bids are accepted although they are inadmissible according to the law.
- » Submission of bids that are identical to the procurement's estimated value, which had not been published, provides undeniable indication about previous arrangements. The monitoring sample includes significant number of tender procedures in which the estimated value was not published in advance, i.e. was not indicated in the procurement notice, but bidders have "ideally" pitched their offer within that amount.
- » In the first half of 2021, competition in public procurements is marked by mild increase compared to the same period in 2020. However, every fourth tender procedure was presented with one bid or no bids, and this monitoring observed cases of limiting competition.
- » Tender annulments in the first half of 2021 remain at exceptionally high level, accounting for 26%. Dominant share of these tender procedures were annulled in full.
- » In the first half of 2021, non-transparent negotiation procedure without previously announced call for bids was used to award contracts in total value of 7.9 million euros. At the level of individual institutions, Power Plants JSC takes the lead with award of 6 contracts under this procedure in total value of 4 million euros.
- » Administrative controls are marked by modest increase compared to the same period last year, but the number of tender procedures in which irregularities have been found is decreasing. In the first half of 2021, the Bureau of Public Procurements performed 132 administrative controls, accounting for increase by 12% compared to the first half of 2020.

## GOALS AND METHODOLOGY

The Center for Civil Communications (CCC) regularly monitors and analyses implementation of public procurements in the country since 2008, i.e. when the first public procurement regulations in the country drafted in compliance with the European Commission's Directives entered into effect. The overall goal of this endeavour is to assess whether and to what extent state institutions comply with underlying principles in public spending, as stipulated under the law: competition among companies, equal treatment and non-discrimination of companies, transparency and integrity in implementation of public procurements, cost-effective and efficient public spending.

Subject of monitoring efforts are public procurements implemented by all state institutions in the country, both at central and local level of government. Selection of the monitoring sample is made upon publication of procurement notices in the Electronic Public Procurement System (EPPS) and the "Official Gazette of RNM".

Monitoring activities include collection of primary and secondary data by means of CCC monitors' attendance at public opening of bids, discussions with bidding companies, browsing and researching data available in EPPS, browsing information on appeals lodged and decisions taken by the State Commission on Public Procurement Appeals (SCPPA) available on its official website, and by submitting requests under the instrument for free access to public information inquiring about data that is otherwise unavailable. Questionnaires and other templates used for monitoring purposes are structured in a manner that facilitates the most effective method to monitor implementation of public procurements in terms of their compliance with relevant legislation in effect and the fundamental principles that govern public procurements.

Implementation of public procurements is analysed on the basis of all information and data obtained, previously structured and inputted in specially designed matrix, in terms of compliance with above-enlisted principles and efforts to obtain the most favourable bid, including accountability for public funds spent.

Data analysis serves as baseline for development of reports that outline key findings from monitoring and analysis of public procurements, recommendations to address problems and weaknesses identified in the system of public procurements, and detailed elaboration of the observed state-of-affairs.

This report is developed on the basis of monitoring and analysis of a selected sample comprised of 60 public procurement procedures implemented by central and local institutions in the period from 1 January to 30 June 2021.

\* \* \*

The Center for Civil Communications (CCC) was established in April 2005 as non-governmental, non-profit and non-partisan association of citizens.

CCC monitors, analyses and strengthens societal processes in the country and the region, in the field of anticorruption and good governance, media and economic development.

Thus far, CCC has focused its work on two groups of interrelated activities: (1) monitoring performance of state institutions and recommending measures and policies aimed to advance

their track-record and narrow space for corruption; and (2) capacity building for journalists and promotion of the special role played by media and non-governmental organizations in the fight against corruption.

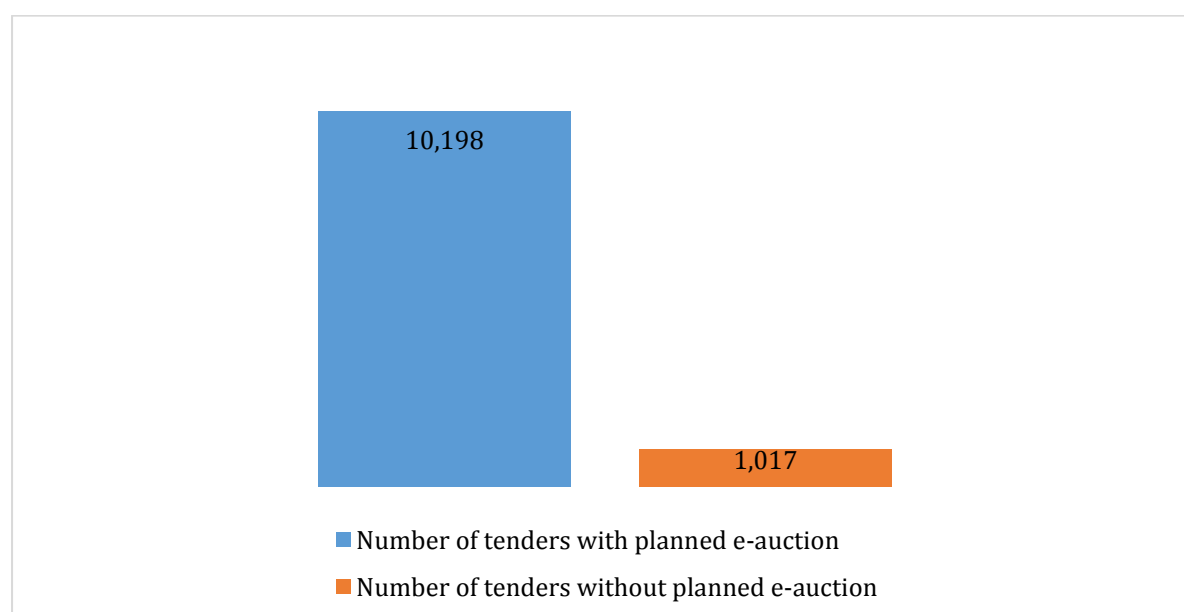
In that regard, the Center for Civil Communications has developed and proposed several hundred specific recommendations for measures aimed to promote legislation and practices in order to ensure more transparent, accountable and responsible operation on the part of central and local authorities, has trained more than five hundred journalists from national and local media outlets and civil society representatives, and has published more than hundred analyses, research studies and manuals.

## ANALYSIS OF MONITORED PUBLIC PROCUREMENTS AT CENTRAL LEVEL

- » **The ever so frequent use of electronic auction in tender procedures could mean that participants in public procurements are not abandoning already perfected mechanisms for malpractice and corruption. In practice, non-mandatory e-auctions are still an inseparable part of tender procedures and were organized in 91% of all public procurements implemented in the first half of 2021.**

Contracting authorities do not respect recommendations made by the civil society and competent institutions concerning limited use of e-auctions in order to avoid negative effects and malpractices encouraged by this instrument. A total of 11,215 public procurement procedures were organized in the first half of 2021, of which 10,198 (91%) anticipated organization of e-auction, which is literally just 1 percentile point less compared to the relevant share in the first half of 2020.

### *Organization of electronic auctions in the first half of 2021*



Monitoring data show that planned e-auctions have not taken place in almost half of tender procedures in which they were anticipated.

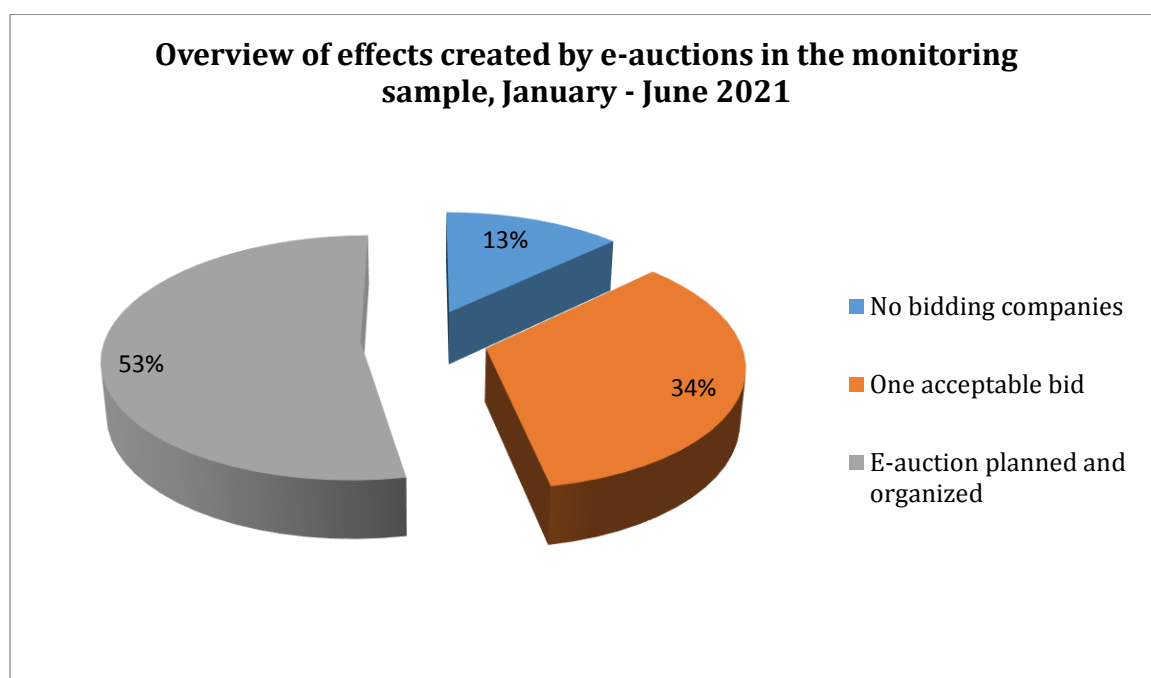
Distortions created by frequent use of e-auctions could be grouped into two clusters. The first cluster concerns consequences emerging in tender procedures with low or without any competition, while the second cluster concerns tender procedures marked by competition, but resulting in previous arrangements among companies or unrealistic price reductions.

Every third tender procedure (34%) with planned but not organized e-auction was presented with only one bid or with only one acceptable bid, because other bids have been exempted on the account of not meeting terms and conditions defined in tender documents. Having in mind

that, by rule, bidders offers much higher prices in tender procedures with planned e-auction, there are justified concerns that many of these public procurements have awarded contracts at prices higher than the actual price.

The second cluster of distortions concerns tender procedures marked by competition, but resulting in previous arrangements among companies or unrealistic price reductions. Arrangements among companies are manifested by non-participation in downward bidding (13%), symbolical price reduction or major price reduction for the bid to match the procurement's estimated value. As regards unrealistic price reductions, problems emerge in the later stages, i.e. they are manifested by poor quality of procurements. Moreover, unrealistically low prices could have a deferring effect on future participation of bidding companies that do not work with goods and services of low quality.

All weaknesses identified in the high share of tender procedures with planned e-auctions are best represented by figures from the monitoring sample.



Furthermore, monitoring reveals several utterly worrying phenomena that bring under question reality and accuracy in setting estimated value of public procurements.

For example, the monitoring sample included procurement procedure for reparation of walls and floors, with sanitary installations, in estimated value of 1,500,000 MKD without VAT, implemented by state university. The procurement's estimated value was not published in advance and the tender procedure was presented with bids from 14 economic operators. During the e-auction, the lowest price bided, in the amount of 719,755 MKD, was reduced to 489,429 MKD without VAT. It turns out that price attained is three times lower than the estimated value. Major price reductions were also observed in the tender procedure organized for procurement of office furniture, in estimated value of 950,000 MKD without VAT, organized by state institution. This procedure was presented with bids from 6 economic operators, and although the estimated value was published, the e-auction resulted in price reduction from



965,750 MKD to 449,000 MKD without VAT. These are only two hallmark examples of major price reductions in tender procedures that inevitably raise serious questions. First, what is the reason for such drastic difference between estimated value and prices bided? Second, why are institutions not alarmed by high initial prices offered by companies that are later significantly reduced, and what happens in tender procedures presented with one bid or where companies engage in previous arrangements?

All these distortions, which are indicative of manipulations on both sides, reiterate the urgent need for a much more serious approach to setting estimated values and deliberation whether particular tender procedure should anticipate organization of e-auction. Namely, if companies are deprived of the possibility to make calculations and arrangements, their initial prices will be final and they will pay serious attention to setting the actual price.

Throughout this monitoring and in the recent period, continuous indications were made that insistence on organization of e-auction should also sound the alarm for management bodies at institutions about heightened risk for abuses in the process of public procurements and about incentives for arrangements among companies.

**Recommendation:** Organization of e-auction should be exception, not a rule in implementation of public procurements. Contracting authorities need to follow the logic whereby e-auction are organized only for goods of known and standard quality, and for goods characterized by market competition. The Bureau of Public Procurements should take additional measures to enhance pressure on contracting authorities for reduced use of e-auctions whose consequences are evident.

- » **Inequitable treatment of bidders leads to two extreme situations, whereby on the one end, bidding companies are exempted from tender procedures for matters that are not regulated under the law, and on the other end, erroneously drafted bids are accepted although they are inadmissible according to the law.**

20% of monitored tender procedures have rejected bids as unacceptable. Some reasons indicated for bid rejection are objective and in line with provisions under the Law on Public Procurements, demonstrating that companies participating in public procurements are insufficiently familiar with legal provisions that govern this field. Nevertheless, monitoring efforts observed intentions on the part of contracting authorities for additional complication of the already complex process of public procurements. In some cases, actions taken by institutions could be considered unlawful. Notably, several procurement procedures from the monitoring sample, organized as simplified open procedures, included requirements defined by contracting authorities for bidding companies to present statement on professional capacity and documents in support of that. Such action is contrary to Article 49, paragraph 3 of the Law on Public Procurements, which stipulates that submission of bids should not be accompanied by statement on professional capacity or documents that demonstrate professional capacity. One tender procedure from the monitoring sample was annulled on this ground by SCPPA, acting in ex-officio capacity.

Discriminatory treatment was observed towards one bidding company in the monitored public procurement that has requested bidders to submit an endorsed model contract in attachment to their bids. In particular, the bidder was exempted from bid-evaluation on the ground of not

having submitted such endorsement. The problem here concerns the fact that model contracts serve the purpose of introducing potential bidders with content of such contracts and there is no logic in the request for companies to endorse/sign the contract in advance. Nevertheless, when tender documents indicate that, together with their bids, companies need to submit an endorsed model contract, they are obliged to comply with such requirement. Be that as it may, when bidding companies do not submit endorsed model contract in spite of such requirement, contracting authorities should not exempt them from bid evaluation, but request them to additionally provide the document in question. Such action would be in the spirit of stimulating competition, and in line with the Law on Public Procurements.

The other extreme, which concerns acceptance of bids that are not drafted in compliance with the Law on Public Procurements, is best represented by the monitored tender procedure for procurement of hardware equipment, server and installation, in estimated value of 24,000,000 MKD without VAT, implemented by state institution. The procurement's estimated value was not published in advance, but the only bidder has ideally matched this value by submitting a bid in the amount of 23,994,000 MKD. The key problem with this procedure concerns erroneously completed financial offer, making it impossible to infer the total price with VAT included or the total amount of taxes. According to Article 109, paragraph 4 of the Law on Public Procurements: "No changes to financial and technical bids shall be requested by [public procurement] committees and shall not be allowed or offered by bidding companies, except for correction of arithmetic errors." However, the above referred bid was not rejected and the single bidder was awarded the contract under the price that is exceptionally high. Moreover, insight in documents related to this public procurement allowed identification of differences in tabular presentation of the financial offer submitted for tender participation and the financial breakdown featured in the signed contract, as published in EPPS.

**Recommendation:** Such extremes in treatment of bidding companies create distrust in the system and require competent institutions to take adequate measures aimed at sanctioning unlawful actions.

- » **Submission of bids that are identical to the procurement's estimated value, which had not been published, provides undeniable indication about previous arrangements.**

The monitoring sample includes significant number of tender procedures in which the estimated value was not published in advance, i.e. was not indicated in the procurement notice, but bidders have "ideally" pitched their offer within that amount. Cases in which bided prices are just below the estimated value are not only indicative of risks that information on estimated value has been shared in advance with particular bidders, but also that contracting authorities do not expect competition and organization of planned e-auction. Otherwise, under conditions of tender competition and possibility for price reduction, bidding companies would initially offer much higher prices and adjust their value during the auction.

Evidence in support of this interpretation is found in the monitoring sample. Hence, one procurement procedure for information and computer equipment, organized for the needs of state agency, included 60 desktop computers, 9 network switches of several types and 2 network routers, in estimated value of 8,470,000 without VAT. This tender procedure was

presented with one bid, whose price is by 0.13% lower than the estimated value, i.e. 8,458,186 MKD. Having in mind that the estimated value was not published as part of the procurement notice, precision in price-setting demonstrated by this bidder is almost unbelievable.

Concerns about previous arrangements are raised in respect to monitored procurement procedure for 15 laptops with centralized management software and 6 desktop computers with centralized management software, organized in two procurement lots. The procurement notice included the total estimated value (825,150 MKD without VAT), but not estimated values at the level of procurement lots. Hence, bidding companies were unable to know the estimated value of individual lots. The fact that one of three bidders participating in this public procurement has offered bids that match both procurement lots to the last penny, as indicated in the decision for organization of public procurement, is utterly symptomatic. In that, the price offered for 15 laptops amounted to 504,750 MKD, while the price for 6 desktop computers amounted to 320,400 MKD. No bidders participated in the planned and organized e-auction.

Furthermore, the estimated value (4,500,000 MKD without VAT) of the monitored procurement procedure for 24 laboratory agitators – blood mixer machines organized by healthcare institution was not published in advance. However, this tender procedure was presented with one bid in total value of 4,389,000 MKD, which is only 2.5% lower than the estimated value.

An almost identical scheme was observed in the procurement procedure for services related to medical waste collection and destruction, in estimated value of 661,760 MKD without VAT, organized by another healthcare institution. In that, the estimated value was not published in advance, but the tender procedure was presented with one bid in the amount of 660,000 MKD, accounting for only 0.27% less funds than those planned.

**Recommendation:** Institutions must demonstrate integrity in the process of public procurement and should prevent unprofessional and unlawful actions of leaking the procurement's estimated value to particular bidding companies. The Bureau of Public Procurements should enlist the practice of bids matching non-published estimated value within a margin of +/- 5 % as "red alert" for corruption risks, especially in cases when tender procedures are presented with only one bid.

- » **In the first half of 2021, competition in public procurements is marked by mild increase compared to the same period in 2020. However, every fourth tender procedure was presented with one bid or no bids, and this monitoring observed cases of limiting competition.**

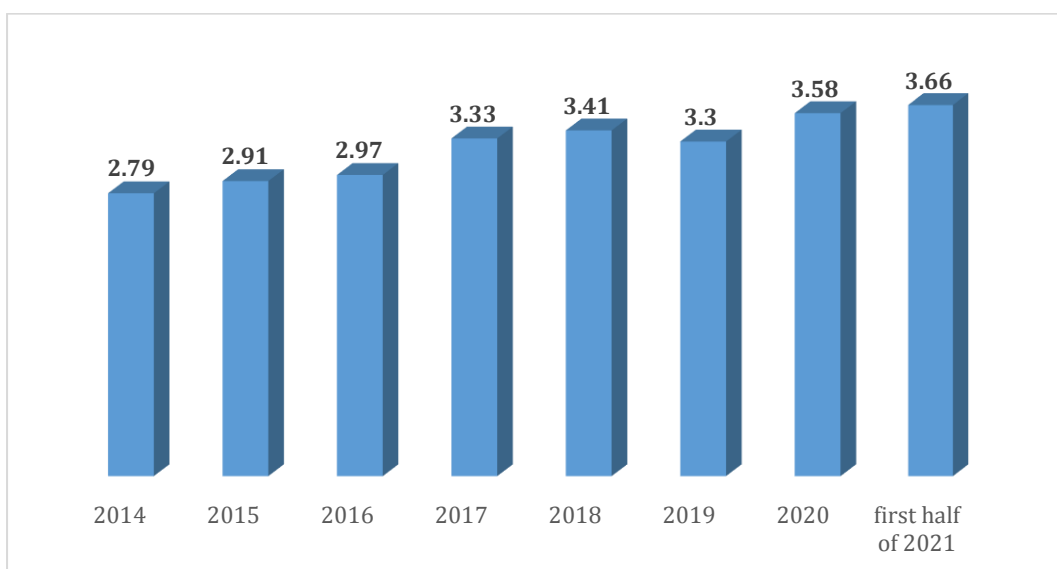
In the first half of 2021, the share of tender procedures with satisfactory level of competition (3 or more bidders) stands at 52% for the monitoring sample. As regards other monitored procurement procedures, the situation in respect to competition is the following: no bids received (2%), one bid received (23%) and maximum 2 bids received (13%).

### ***Competition in monitored tender procedures, on semi-annual level***

Period	No bids	1 bid	2 bids	3 and more bids
January-June 2016	5%	39%	19%	37%
January-June 2017	3%	25%	23%	48%
January-June 2018	2%	18%	13%	67%
January-June 2019	0%	35%	22%	43%
January-June 2020	5%	27%	13%	55%
January-June 2021	2%	23%	13%	62%

At the level of the monitoring sample, the average number of bids per tender procedure calculated for the first half of 2021 stands at 3.66 and implies a mild improvement compared to the entire 2020.

### ***Average number of bids per tender procedure\****



\*Calculations for the first half of 2021 are made on the basis of the monitoring sample, while annual figures are taken from relevant reports published by the Bureau of Public Procurements.

This mild trend of improved competition means that examples of discrimination are still not evident. Namely, the procurement procedure for polo t-shirts, in estimated value of 4 million MKD without VAT, organized by line ministry, required bidding companies to provide samples of certified (sealed) final products tailored according to precise technical specification and certificate of quality issued by an independent chartered laboratory, i.e. by control body for sealed samples. Moreover, the tender procedure required certificates to indicate examination of all parameters indicated in technical specification (narrative and tabular) with exclusive use of accredited methods for aspects covered by adequate standards. The tender procedure was presented with three bids, but was annulled by the contracting authority on the ground that no acceptable bids were received, meaning that the bid-evaluation process has found that no bids are in compliance with parameters required under technical specifications.

The relevant committee for the monitored procedure for procurement of 38 inverter air-conditioners, in estimated value of 1,000,000 MKD without VAT and implemented by public enterprise, has rejected bids made by two economic operators as unacceptable on the ground of not fulfilling conditions defined in tender documents. In particular, bidding companies were required to offer air-conditioners with noise level of 38 db for their indoor unit. This condition could be assessed as discriminatory because one company offered air-conditioners with noise level of 20 to 39 db.

**Recommendation:** Through development of tender documents and their actions, institutions need to demonstrate true will to stimulate competition in public procurements.

- » **Tender annulments in the first half of 2021 remain at exceptionally high level, accounting for 26%. Dominant share of these tender procedures were annulled in full.**

In the first six months of 2021, a total of 2,882 tender procedures were annulled, of which 1,890 were annulled in full (66%), and 992 were annulled in part (34%).

When the number of annulled tenders is correlated to the number of procurement notices published in the same period, it turns out that 26% of all tender procedures have been annulled, accounting for just 1 percentile point less compared to the same period last year.

***Annulment of tender procedures on semi-annual level (fully and partially)***

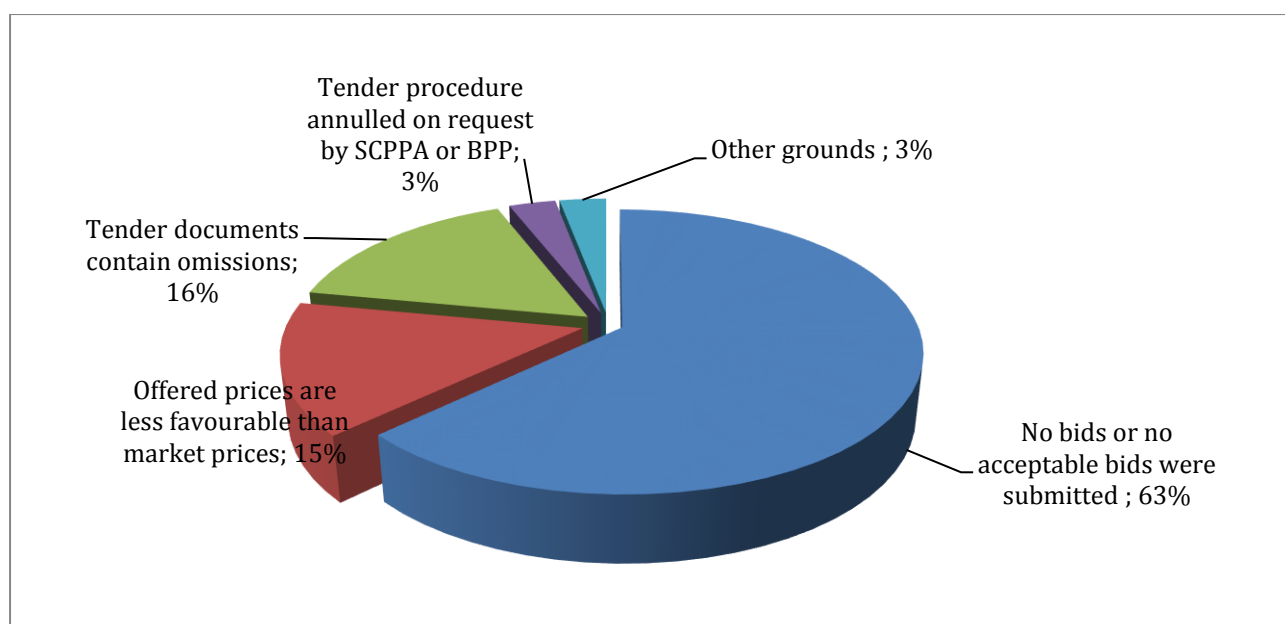
Period	Number of procurement notices	Number of decisions on tender annulment	Share of annulled tender procedures in total number of procurement notices
January-June 2015	8,657	1,602	19%
January-June 2016	9,220	2,030	22%
January-June 2017	8,562	2,033	24%
January-June 2018	10,259	2,707	26%
January-June 2019	9,743	2,511	26%
January-June 2020	9,537	2,604	27%
January-June 2021	11,215	2,882	26%

Viewed in terms of reasons indicated for tender annulment, just like in the previous period, the dominant reason concerns no bids received or no acceptable bids received, accounting for annulment of high 63% of tender procedures, which is by 4 percentile points higher compared to the same period last year.

Second most frequent reason concerns major omissions in tender documents, as indicated in 16% of annulled tender procedures. Third reason for tender annulment implies that prices offered are less favourable than market prices, accounting for 15% of annulled tender procedures.

The share of tender procedures annulled upon decision taken by the State Commission on Public Procurement Appeals or the Bureau of Public Procurements (upon administrative control) accounts for total of 3%. In this monitoring period, SCPPA has taken 86 decisions on tender annulment, while 8 tender annulment decisions were taken on request from BPP.

### ***Overview of reasons for annulment of tender procedures in the first half of 2021\****



\*Overview of reasons indicated for annulment of public procurements is based on processing all 2,882 notifications on tender annulment for the first half of 2021, submitted to EPPS by October 2021.

The monitoring sample showed frequent tender annulment due to submission of bids whose financial offer exceeds the estimated value, which is indicative of weaknesses in the public procurement planning process. The monitored procedure for procurement of agriculture produce (fruits and vegetables), in estimated value of 5 million MKD without VAT, resulted in annulment decision based on Article 114, paragraph 1, item 4 of LPP (bidders have offered contract performance prices and conditions that are less favourable than actual market prices), although the lowest bid amounted to 2.9 million MKD, which is significantly below the procurement's estimated value.

**Recommendation:** A legal obligation should be introduced for the Bureau of Public Procurements to develop and publish annual analyses on annulled tender procedures. Findings from such analyses could be later used by the Bureau to take adequate measures and to improve systemic solutions in the field of public procurements.

- » **In the first half of 2021, non-transparent negotiation procedure without previously announced call for bids was used to award contracts in total value of 7.9 million euros. At the level of individual institutions, Power Plants JSC takes the lead with award of 6 contracts under this procedure in total value of 4 million euros.**

In this period, a total of 139 contracts in cumulative value of 488 million MKD, i.e. 7.9 million euros, were awarded without previously announced call for bids. The number and value of such contracts is significantly lower compared to the same period in 2020, when this parameter accounted for 464 contracts in cumulative value of 11 million euros. This decline in numbers is due to the fact that, in the first half of 2020, such contracts were awarded due to urgent needs imposed by the COVID-19 crisis.

***Value of contracts awarded under negotiation procedure without previous announcement of call for bids***

Period	Value of contracts (in million EUR)	Difference (%)
January-June 2016	6.6	-42.6%
January-June 2017	7.4	+12.12%
January-June 2018	10.8	+45.95%
January-June 2019	9.6	-11.11%
January-June 2020	11	+14.58%
January-June 2021	<b>7.9</b>	<b>-28.18%</b>

Half of the total value for contracts awarded under non-transparent negotiation procedure without previously announced call for bids belongs to contracts awarded by Power Plants JSC, i.e. 6 contracts in total value of 4 million euros. Actually, the highest value individual contracts awarded under this procedure belong to Power Plants JSC, including contract for construction of groundwater drainage sill signed with the company for construction, production, trade and services TOPLINA export-import LTD v. Podmolje, Ohrid in the amount of 153,400,000 MKD, i.e. around 2.5 million euros, and contract for revitalization and reconstruction of dredge machine KU 300 (MEC Bitola) signed with the company for production, construction, engineering, wholesale and retail, import-export and service MZT ENGINEERING LPP Bitola, in the amount of 59,000,000 MKD, i.e. around 960 thousand euros. The group of contracting authorities with high number of contracts awarded under negotiation procedure includes PHI Clinical Hospital Bitola, with 10 contracts in total value of 21.5 million MKD (350 thousand euros) and PHI General Hospital Kumanovo, with 14 contracts in total value of 14.9 million MKD (242 thousand euros)

**Recommendation:** Contracting authorities should reduce use of non-transparent negotiation procedure without previously announced call for bids to the minimum, especially because such procedures are used to engage in negotiations with one company, which increases the risk of corruption.

- » **Administrative controls are marked by modest increase compared to the same period last year, but the number of tender procedures in which irregularities have been found is decreasing.**

According to data obtained under the instrument allowed by the Law on Free Access to Public Information, in the first half of 2021, the Bureau of Public Procurements performed 132 administrative controls, accounting for increase by 12% compared to the first half of 2020.

#### ***Administrative controls on semi-annual level***

Period	Number of administrative controls	Share of tender procedures subject to administrative control in total number of tender procedures
July-December 2019	127	0.99%
January-June 2020	87	0.91%
July-December 2020	118	1.11%
<b>January-June 2021</b>	<b>132</b>	<b>1.17%</b>

All administrative controls performed by the Bureau are based on Article 172, paragraph 3 of the Law on Public Procurements, which means that administrative controls were conducted on tender procedures whose estimated value exceeds 500,000 euros in MKD counter-value for procurement of goods and services and 2,000,000 euros in MKD counter-value for procurement of works. The Bureau has not performed any administrative control based on risk assessment for violation of law provisions and based on random selection, as allowed under Article 172, paragraph (4) of the Law on Public Procurements.

Irregularities have been found in 33 from 132 public procurement procedures that were subject of administrative controls. More specifically, repeated bid-evaluation was performed in 26 tender procedures in which irregularities have been established, new decisions were taken in 2 tender procedures and irregularities found in 5 tender procedures could not be eliminated, whereby contracting authorities were instructed to annul them.

In the first half of 2021 the Bureau of Public Procurements has not taken any actions pursuant to Article 172, paragraph 5 of the Law on Public Procurements, according to which, when the Bureau has found one or more irregularities with features of misdemeanour according to this law or criminal offence, it could submit misdemeanour motions before competent court or notify the competent public prosecution service in the Republic of North Macedonia. However, none of irregularities established as part of administrative controls performed by the Bureau of Public Procurements in the first half of 2021 were found to have features of misdemeanours according to the Law on Public Procurements or features of criminal offence.

**Recommendation:** In order to allow benefits from administrative controls to take effect in terms of reducing malpractices and corruption in tender procedures, in compliance with the Law on Public Procurements, the Bureau should expand the scope of its controls with a view to cover tender procedures on the basis of risk assessment or based on randomly selected sample.



Having in mind that the Bureau does not have competences to assess whether certain irregularities are a result of unintentional errors or intentions to favour certain companies, it needs to timely inform competent prosecution services about relevant findings from its administrative controls.

## ANALYSIS OF MONITORED PUBLIC PROCUREMENTS AT LOCAL LEVEL

- » **Frequent overlaps between procurement's estimated value and prices offered raise doubts about previous arrangements among contracting authorities and bidding companies.**

High share of analysed public procurements organized at local level are marked by overlaps between the estimated value set by institutions and bid prices offered by companies participating in tender procedures, in spite of the fact that estimated values were not published in advance and were known only to persons at the procurement-making institution.

Estimated value means the amount of funds calculated and allocated from the budget of the contracting authority for the relevant procurement. While this value should be estimated with precision, by taking into account many factors, such as previous procurements, actual situation, market conditions and movements, etc., institutions have failed to pay due attention to precise estimation of their tender procedures, which is the main reason for frequent tender annulments.

The new Law on Public Procurements, which entered into effect on 1 April 2019, allows institutions (contracting authorities) to decide whether to publish the procurement's estimated value together with the procurement notice. In practice, estimated values are published only for around one third of tender procedures. Institutions that do not publish the estimated value of their procurements mainly indicate that reason thereof is not to impact companies if they wish to offer prices lower than the estimated value. Nevertheless, such justification loses its significance in reality because at least one bid submitted in tender procedures is set in identical or similar amount to the procurement's estimated value, although the latter is not publicly announced.

This situation does not happen only with small-value procurements for one procurement subject, but also with high-value procurements comprised of several lots where it is more difficult to have accidental overlap between estimated value and prices offered.

Examples of such "perfect matches" are numerous. The procurement procedure for equipment and didactic means intended for schools in one municipality, comprised of as many as 48 types of products, in estimated value of 7,450,000 MKD that was not published in advance, was presented with one bid in the amount of 7,250,625 MKD. Similar example is seen in the procurement for disinsection and deratisation services in estimated value of 169,491 MKD, presented with a bid in the amount of 169,500 MKD, which differs by only 9 MKD. Another procurement for deratisation services has set the estimated value at 118,000 MKD and received one bid in the amount of 117,676 MKD. Moreover, the procedure organized for procurement of work uniforms in estimated value of 180,000 MKD was presented with a bid in the amount of 177,550 MKD. Full overlap among estimated value and price offered in the amount of 1,000,000 MKD was noted with the procurement of used vehicle. Similar is the case with the procurement for winter maintenance services for roads, where the price offered was identical with the estimated value of 900,000 MKD. In both cases, tender procedures were presented with only one bid.

Having in mind that institutions do not engage in precise value estimation of their public procurements to match actual market conditions and even if companies are able to calculate

their bids in amounts similar to the estimated value, there are valid concerns that such overlaps are due to institutions disclosing the estimated value to particular bidding companies.

- » **High number of public procurements do not indicate the quantity of goods or services being procured, preventing companies to offer lower prices for higher quantity.**

Another frequent practice observed with contracting authorities at local level concerns tender documents that do not indicate the quantity of goods needed or planned for procurement. In such cases, contracting authorities request bidding companies to offer unit prices. This prevents companies to rationalize their bids, i.e. offer lower prices for goods planned to be purchased in higher quantities.

Moreover, this prevents verification whether prices offered match the procurement's estimated value or market prices.

Third problem identified under this monitoring concerns the fact that contracting authorities ultimately sign contracts in full estimated value, irrespective of prices offered and attained. This creates confusion about the actual quantity of goods or services needed by the contracting authority, given that the total amount remains the same irrespective of individual prices attained.

Typical examples thereof are found with tender procedures organized for printing services. One municipality has estimated that such tender procedure would cost 84,746 MKD for printing municipal newsletter, brochure, calendars, cards, notebooks, invitations, leaflets, stickers, t-shirts and pens. Tender documents for this procurement do not indicate quantity of individual products, which is exceptionally important for printing services as unit prices are always lower in cases of bigger quantity. In spite of this logic, the municipality requested companies to provide unit prices. The contract was awarded to the bid in amount of 1,820 MKD calculated as sum of unit prices for all types of products requested. Finally, the contract was signed in total amount of its estimated value, (84,746 MKD). It remains unclear why the municipality did not disclose relevant quantities in order to obtain more realistic prices. Moreover, it is equally unknown whether unit prices match market prices or at least those estimated by the municipality. At the same time, it could not be established what the municipality planned to have printed.

Similar examples of tender documents without indicated quantities and requesting unit prices were noted in monitored procedures for procurement of foodstuffs, paint for street markings, sewage pipes, and van and bus transport services.

To make matters worse, quantities are not indicated in contracts signed for these procurements, thus preventing these tender procedures to be monitored by interested citizens and civil society organizations.

» **Procurement needs and reasons for indivisibility of procurements are still not elaborated and justified.**

The Law on Public Procurements introduced two important obligations. First, for each public procurement, the decision for organization of tender procedure should elaborate the procurement need. The second obligation concerns division of all procurements into lots, whereby in the case of indivisible procurements, the decision on public procurement should elaborate reasons thereof.

The idea for elaboration of procurement needs in terms of type of procurement, scope, quality and deadline, is to reduce malpractices, i.e. prevent procurement of items that are not needed or procurement of higher quantities and procurement of items of higher quality than needed. In other words, this obligation should ensure that procurements are organized only for what is established as need.

The obligation for division of procurements in lots is aimed at ensuring greater participation of small and micro companies in tender procedures, as it would be easier for them to participate in tender procedures where the procurement subject is divided into lots, instead of large-scale tenders. For example, procurement procedures for office furniture divided into lots for desks, chairs, etc., allow companies selling only chairs to submit their bid. However, if such tender procedures are not divided, chances for participation of small companies are lower. Therefore, institutions are obliged to elaborate and justify indivisibility of their procurements.

In reality, only a small number of institutions comply with these legal obligations. Actually, they implement them formally, but not meaningfully.

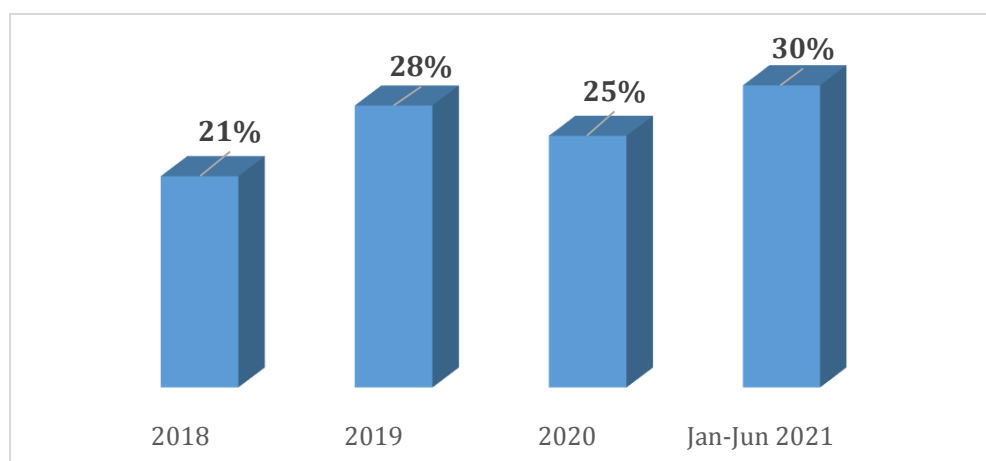
Namely, justification of procurement needs often include phrases such as: “the need for procurement of... is established”, while there is no elaboration provided for indivisibility of procurements or indication that tender procedures are not divided into lots “due to the procurement subject”. High 75% of monitored tender procedures are not accompanied by relevant elaboration of procurement needs, while remaining 15% include only brief justification. As regards justification of procurement’s indivisibility, such document exists only for 17% of monitored tender procedures and is exceptionally brief.

If institutions had elaborated the need for procurements organized, there would not have been any cases of super luxurious vehicle purchased for mayors or procurement of items unrelated to work performed by particular institutions.

» **Annulment of local tender procedures has not subsided and reached a record-breaking 30% in this monitoring period.**

One of long-standing problems in public procurements organized in the country, i.e. tender annulment, does not show to have subsided, and gains in intensity. Every third tender procedure from the monitoring sample at local level was annulled, making public procurements inefficient. At the same time, this figure represents a new record having in mind that, for the first time, it reached the threshold of 30%.

### *The share of annulled tender procedures in the monitoring sample*



The reason indicated for annulment of two thirds of tender procedures (67%) implies there were no bids submitted or there were no acceptable bids after the evaluation process, i.e. all bids have been rejected.

In the case of other annulled tenders, reasons concern the fact that bidding companies offered prices and conditions less favourable than market prices (16.5%) and significant omissions and shortcomings in tender documents (16.5%).

This monitoring sample also shows that frequent reason for tender annulment is erroneous or imprecise definition of the procurement's estimated value, which results in high bids and ends with annulment of tender procedures.

Such example is found in the procedure for procurement of services related to development of municipal energy efficiency programme. The tender procedure was annulled because the only bid was priced at 600,000 MKD, but the municipality has estimated its value at 300,000 MKD. In its decision on tender annulment, the municipality indicated that the only bid received is unacceptable because it is two times higher than funds anticipated for that purpose and it is unable to secure additional funds for this procurement. Nevertheless, 7 days later the municipality announced new procurement notice, under increased estimated value of 400,000 MKD, which means that it managed to secure additional 100,000 MKD for that purpose within such short period. The same company from the first tender procedure submitted new bid, this time in the amount of 400,000 MKD, matching the estimated value that was published together with the procurement notice. This tender procedure was successful.

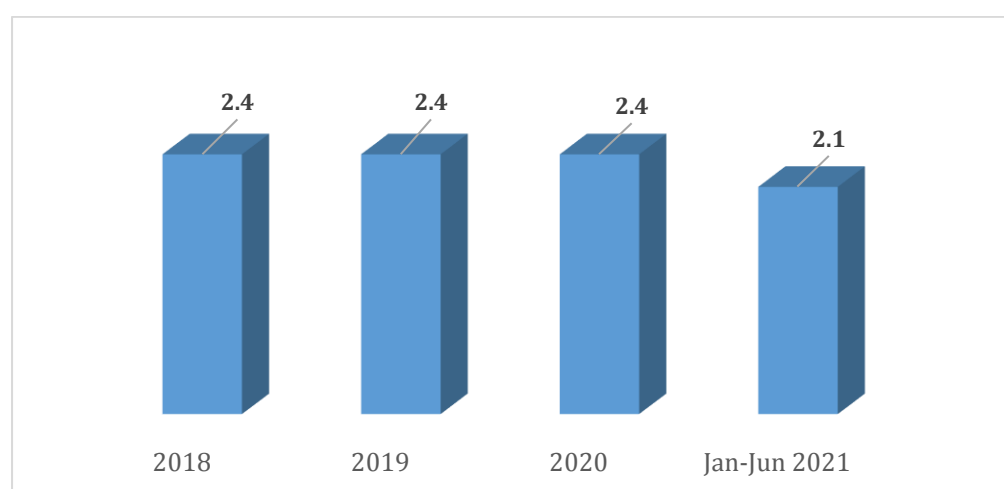
Another example of annulled tender procedure could be indicative of previous arrangements among bidding companies. More specifically, the tender procedure was organized for development of municipal strategic development plan and was presented with three bids, all of which were rejected as unacceptable. In the case of one bid, the reason for its rejection implied that the bid was signed with digital certificate of natural person instead of the legal entity acting as bidder. Two other bids were rejected because bid templates, in the section for bidding company, indicated the name of same legal entity, with different data provided thereafter. Likely is that one person had completed both bid templates, forgetting to change the name of the

bidding company. Moreover, both bids were priced in same amounts, very close to the procurement's estimated value that was not published in advance.

» **Lower competition under tender procedures at local level was observed in the first half of 2021.**

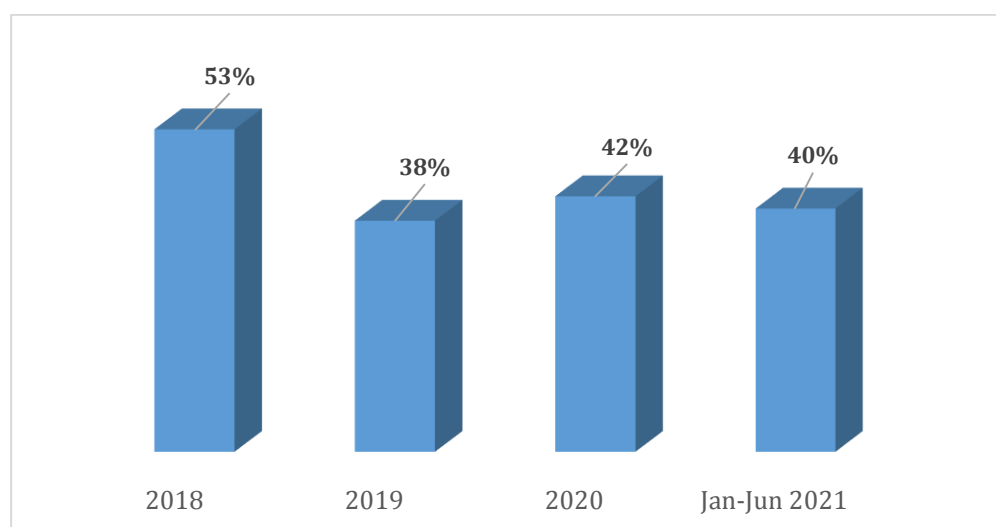
The average number of bids per tender procedure from the monitoring sample at local level is calculated at 2.1, representing a decrease compared to the average from previous three years.

***Competition in monitored tender procedures at local level: average number of bids per tender procedure***



Adequately to the lower average number of bids per tender, the share of tender procedures presented with no bids or presented with only one bid is also lower and stands at 40% in this monitoring period.

***Share of tender procedures presented with one bid or no bids***



In addition to low competition, another particular problem in this monitoring period is the fact that 20% of tender procedures were annulled in spite of being presented with an average of 2 bids that have been rejected. More specifically, high 17% of bids have been rejected in the evaluation stage.

In that, there are examples of absurd situations. They include the procedure for procurement of foodstuffs organized by one municipality, presented with two bids, which were rejected and the tender procedure was annulled. The reason indicated for their rejection implied that bidding companies have not enlisted producers of good they are offering. However, producer name does not play any role in this tender, as the single selection criterion was lowest price. On the other hand, the contracting authority did not find important to provide more detailed description of products being purchased, although they concern foodstuffs, and merely enlisted “hazelnuts”, “yellow cheese”, “white cheese”, “juice”, “plastic cups”, etc. In cases like this, it is more important to describe whether the procurement concerns cow or sheep cheese (as this implies major difference in price) and packaging thereof, whether hazelnuts should be raw or roasted, in bulk or packaged according to pre-defined specifications in terms unit quantity and packaging, fruit base for the juice, and size of plastic cups. What would have happened if one bidder offers cow yellow cheese and the other sheep yellow cheese; what if one bidder offers cheese barrels and the other offers packaged cheese weighting 300 grams each and from different producers? All of that would be irrelevant because price is the selection criterion used, and the municipality requested only yellow cheese.

The monitoring sample includes different eligibility criteria which, by rule, result in tender procedures being presented with only one bid. Such is the case for procurement of works related to water supply and sewage construction, which required bidding companies to demonstrate:

- Reference list of works performed in the last 5 years, with minimum 3 contracts of similar type with certificate of quality performance, one of which should be in the value of at least 40,000,000 MKD;
- Description of technical staff and technical departments that will participate in contract performance, especially those responsible for quality assurance;
- At least 25 employed or engaged staff, of which 2 should be civil engineers with B certificates for construction issued by the Chamber of Chartered Engineers and Architects of RNM, 2 hydro engineer, 1 person with certificate for passed professional exam on safety at work issued by the Ministry of Labour and Social Policy, and 2 workers for road maintenance;
- Materials should be certified by competent quality assurance bodies with recognized competence for materials produced;
- Quality system standards ISO 9001:2015 or equivalent and environment management standards ISO 14001:2015 or equivalent.

Also, there are numerous examples of procurement procedures with two bidders, whose prices are very similar among them and similar to the estimated value, but no price reduction had taken place during the electronic auction.

**Recommendations:** Based on weaknesses detected in implementation of public procurements, local institutions are recommended:

- › To invest more effort for precise calculation of estimated values, especially by taking into account market conditions. Also, decisions on publication of estimated value should be based on previously conducted analysis about possible consequences of such decision on the procurement's outcome.
- › To always determine, publish and request financial bids for quantities planned instead of asking for unit price of goods without indicating quantities needed and planned for individual products being purchased. This would allow contracting authorities to received bids of better quality and would result in successful tender procedures.
- › To elaborate the need for each procurement in relevant decisions on public procurements. In particular, the elaboration should enlist reasons why the institution needs the procurement subject, in indicated quantity, quality and delivery deadline.
- › To justify indivisibility of each procurement which the institution decided not to divide into individual lots.
- › To separate from the decision on public procurement decisions related to establishment of public procurement committee, including elaboration of reasons for selection of commission members and their tasks and duties; justification of procurement needs with detailed description of reasons thereof; and justification of the procurement's indivisibility.
- › To conduct analysis of their annulled tender procedures and develop plan to address the issue of frequent tender annulments.
- › To conduct analysis of competition in their tender procedures and develop plan with measures to improve implementation of public procurements aimed at enabling greater competition.