MONITORING LOCAL PUBLIC PROCUREMENTS

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INTRODUCTION: GOALS AND METHODOLOGY

The Center for Civil Communications (CCC) is regularly monitoring the implementation of public procurement procedures in Macedonia from 2008 onwards, i.e. from the entry in effect of the new Law on Public Procurements, drafted in line with the European Commission's Directives. The purpose of monitoring activities is to assess whether and to what extent state institutions adhere to the general principles underlying public spending, as stipulated in the Law: competition among companies, equal treatment and non-discrimination, transparency and integrity in implementing public procurements, as well as cost-effective and efficient use of public funds.

CCC's monitoring activities target procurement procedures organized and implemented by all state institutions countrywide, both on central and local level. Due to differences and specificities identified between central and local institutions in relation to implementation of public procurements, from 2010 onwards local and central level procurements are monitored separately. Namely, this endeavour resulted in collection of more detailed and significant insights that can be used by all interested parties with a view to promote and improve the manner in which public procurements are organized and implemented and guarantees compliance with the Law and application of general principles governing the public procurements.

This report is prepared on the basis of monitoring results from a sample of 40 public procurements implemented by local institutions throughout Macedonia, in the period 1 April – 30 September 2015.

The monitoring sample was selected from public procurements announced in the Electronic Public Procurement System (EPPS) and the Official Gazette of the Republic of Macedonia. Moreover, the selection process made due account of the need to make broad, diverse, and equitable coverage of institutions (local self-government units and local institutions under their jurisdiction, such as public enterprises, schools, kindergartens, etc.), different types of procurement procedures (bid-collection, open procedures, etc.), different types of contracts (goods, services and works) and different procurement subjects, as well as equitable geographical distribution of institutions whose public procurements are subject to monitoring activities.

The monitoring process is carried out by collection of primary and secondary data, including CCC monitors' attendance at public opening of bids, interviews with bidding companies, browsing and searching EPPS database, researching information on appeals lodged in front of and decisions taken by the State Commission on Public Procurement Appeals (SCPPA) available on its website and by means of Freedom of Information (FOI) applications requesting information that is otherwise unavailable. Questionnaires and other forms used as part of the monitoring process are structured in a manner that enables the most effective monitoring of public procurements in terms of compliance

with the legislation and adherence to general principles governing the public procurements.

Data and information collected are fed into a previously designed and structured matrix, which allows analysis of public procurements in terms of compliance with above referred principles, including competition among companies, equal treatment and non-discrimination, transparency and integrity in organization and implementation of public procurements, as well as cost-effective and efficient use of public funds.

Once data are analysed and processed, the report is drafted with key monitoring findings and analysis of public procurement procedures, accompanied with recommendations aimed to address identified problems and weaknesses in the system of public procurements, and detailed elaboration of observes state-of-affairs.

* * *

The Centre for Civil Communications (CCC) was established in April 2005 as a non-governmental, non-profit and non-partisan citizens' association. CCC's mission is to develop and improve communications among all societal actors in Macedonia and to inform them about various processes of broader significance. CCC monitors, analyses and strengthens democratic processes in the country and in the region, especially those related to anticorruption and good governance, media and economic development. To present, CCC focused its work on two groups of interrelated activities: (1) monitoring of state institutions and, on that basis, recommending measures and policies aimed at promoting their work and narrowing the space for corruption; and (2) enhancing the abilities of journalists and the special role played by the media and non-governmental organizations in the fight against corruption. In this regard, CCC – to present – has drafted and proposed several hundreds of specific recommendations concerning measures that need to be taken to promote the legislation and practices aimed at more transparent, accountable and responsible operation on the part of central and local authorities; has trained over five hundred journalists from both, national and local media outlets, as well as representatives of civil society organizations; and has published around forty research studies and manuals.

SUMMARY

Market research for the purpose of drafting technical specifications has failed in all cases. More specifically, in 100% of tender procedures contracting authorities had to obtain approval from the Council of Public Procurements prior to announcement of their procurement notices. As regards eligibility criteria for tender participation, market research has been successful in 71% of cases, while in 29% of cases contracting authorities had to obtain approval for these criteria. In that, higher competition was observed among tender procedures marked by successful market research and no need to obtain approval for their procurement notices.

Numerous examples from the monitoring sample showed great interdependence between procurement's estimated value and final price attained, as well as with tender annulments. Therefore, prior to engaging in any serious effort to set estimated values of their procurements, contracting authorities are recommended to perform preliminary research of market prices and conditions.

In this monitoring period and sample, the share of tender annulments has decreased to below-average level, although there are examples of problematic tender annulments or non-annulment of tender procedures.

Competition in tender procedures organized on local level remained on the same low level of an average of 2.5 bidding companies per tender procedure, while the share of tender procedures with no bidding companies or with only one bidding company was decreased.

While the share of monitored tender procedures that have been completed with e-auction is increasing compared to the last monitoring period, the average number of companies participating in downward bidding at e-auctions accounted for only 2.

IT IS IMPOSSIBLE FOR CONTRACTING AUTHORITIES TO DEMONSTRATE EXISTENCE OF MANUFACTURERS OF GOODS BEING PROCURED ON DOMESTIC AND ON FOREIGN MARKETS

Market research for the purpose of drafting technical specifications has failed in all cases. More specifically, in 100% of tender procedures contracting authorities had to obtain approval from the Council of Public Procurements prior to announcement of their procurement notices. As regards eligibility criteria for tender participation, market research has been successful in 71% of cases, while in 29% of cases contracting authorities had to obtain approval for these criteria. In that, higher competition was observed among tender procedures marked by successful market research and no need to obtain approval for their procurement notices.

Law-stipulated possibility for contracting authorities to conduct market research prior to announcing their procurement notices, in order to demonstrate sufficient number of manufacturers in the country and abroad, seems to remain letter on paper. Contracting authorities in all monitored tender procedures concerning procurement of goods had to obtain approval from CPP prior to publication of their procurement notices.

According to documents presented and related to market research, it could be concluded that almost all contracting authorities made efforts to obtain confirmations from required number of domestic and foreign manufacturers that they produce goods being procured, but without success. More specifically, none of the companies addressed with such letter provided written responses or replied that they sell goods indicated, but do not manufacture them.

Unlike domestic companies, foreign companies addressed with requests to confirm that they manufacture goods being procured have not responded to them. Therefore, contracting authorities are obliged to seek approval from CPP in order to be able to publish their procurement notices. This renders the relevant legal provision senseless, notably because there are no contracting authorities that, by means of market research, have succeeded in demonstrating sufficient number of manufacturers of goods that are subject of their procurements.

Problem with this legal provision surfaced after changes made to LPP on introducing the obligation for contracting authorities to demonstrate existence of at least three, four or five manufacturers on the market in Republic of Macedonia and on foreign markets which produce goods that are subject of their procurements. The problem is twofold.

First, the legal provision does not stipulate economic operators, but rather manufacturers which rarely participate in tender procedures, because that is done by companies selling their products. For example, manufacturers of computer equipment, such as Dell, Toshiba, Lenovo, etc., never participate in tender procedures; on the contrary, dealers and sales agents of their products participate in tender procedures.

Second, the legal provision does not require manufacturers in the country or abroad (as stipulated in the Law before this provision was amended), but both - in the country and abroad. Therefore, even if contracting authorities are able to demonstrate existence of certain number of manufacturers in the country (for example, furniture) it would be difficult for them to obtain confirmations from manufacturers abroad.

Although this legal provision caused multitude of problems that have been repeatedly indicated by representatives from contracting authorities, worrying is the fact that it is still in effect and is not subject to change despite the several rounds of amendments adopted in the meantime, i.e. after this legal provision was introduced in the Law.

Unable to demonstrate existence of sufficient number of manufacturers on domestic and on foreign markets contracting authorities are obliged to obtain approval from CPP, for which they lose time and money. This is both valid for tender procedures whose value is expressed in millions and for tender procedures whose amount does not exceed 500 EUR, for which it is irrational to spend up to 20% of procurement's value to obtain the required approval and lose time for that purpose.

Hence, in 100% of monitored tender procedures contracting authorities have failed to conduct successful market research and had to obtain approval from CPP. In that, there are no rules whether CPP would acknowledge the opinion presented by three experts contracted for each tender procedure in which approval is sought.

Although LPP stipulates that opinion and role of experts are advisory and non-binding for the Council, various situations have been observed in practice. There are examples when two of the three experts believed that approval should not be granted, but CPP approved the procurement notice in question. On the contrary, other examples show that two of the three experts believed that approval should be issued, but CPP did not issue such approval.

The situation is different in terms of obtaining approval for all types of procurements in which contracting authorities have defined eligibility criteria for tender participation. Namely, LPP stipulates an obligation for contracting authorities to obtain approval in cases when they have anticipated eligibility criteria for tender participation, except for requirements related to economic operators' status and ability to perform certain professional activity.

Although in these cases contracting authorities more easily demonstrate, by means of market research, sufficient number of companies fulfilling the eligibility criteria defined, the problem is identified elsewhere.

First, it should be noted that the legal provision in this regard is "less stringent". Namely, it requires evidence to be presented on sufficient number of "economic operators", which is easier to establish.

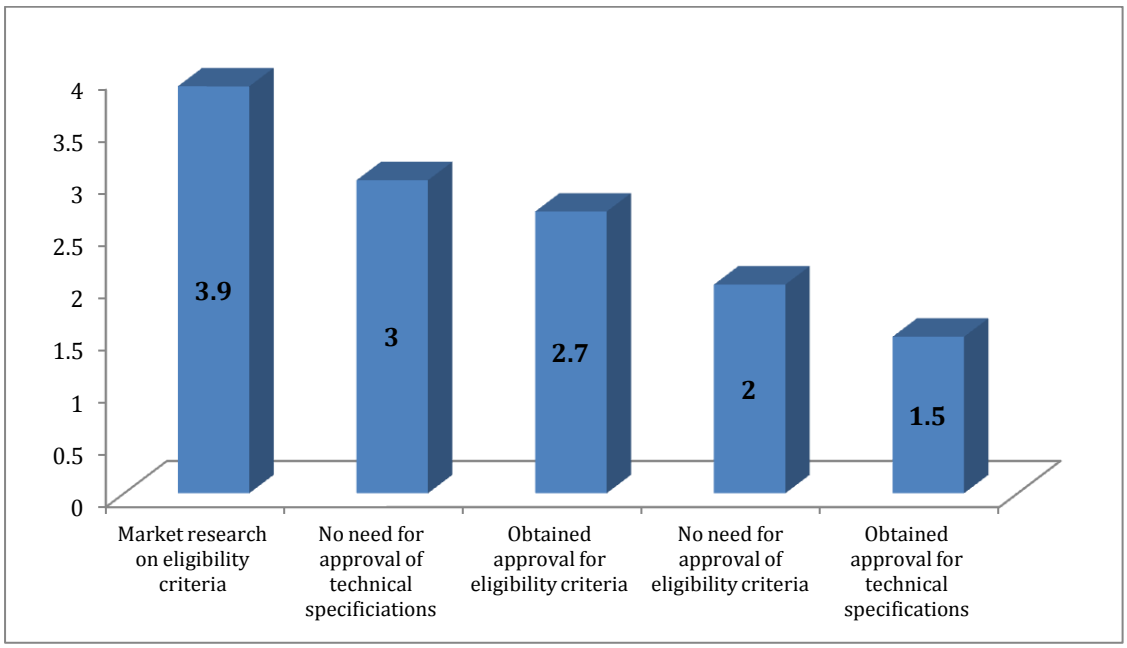
Second, contracting authorities have the possibility not to define any requirements in this regard, which relieves them of the obligation for market research or obtaining approvals. However, this is actually the biggest problem.

In 63% of monitored tender procedures contracting authorities did not define any eligibility criteria for tender participation. This is particularly worrying in tender procedures that do require guarantees on certain quality of goods being procured. It is a matter of tender procedures for procurement of foodstuff intended for kindergartens, schools, hospitals, etc. Under conditions when the single selection criterion is defined as "lowest price" and when there are no eligibility criteria for companies, it would be extremely difficult to secure quality of goods, services and works being procured. Although there are possibilities to guarantee quality, albeit to certain extent, by means of technical specifications, i.e. under the section on describing the procurement subject, such endeavour necessitates more specific knowledge in different fields, which cannot be expected from officers tasked with organization of public procurements. Therefore, in order to avoid seeking approval from CPP and, thereby, save money and time, contracting authorities dominantly avoid setting of any eligibility criteria for tender participation and thereby bring under question the quality of what is being procured, especially in regard to attainment of the principle on cost-effective purchase on the market.

Otherwise, in 71% of tender procedures where contracting authorities defined eligibility criteria, they have performed successful market research, i.e. have demonstrated sufficient number of companies fulfilling said requirements. In only 29% of cases contracting authorities failed to perform successful market research and ultimately had to obtain approval from CPP.

As regards competition in tender procedures that have obtained previous approval or have performed market research, at least among those from the monitoring sample, it was established that tender procedures in which contracting authorities managed to demonstrate necessary level of market competition by means of market research were characterized by higher number of bids received, compared to tender procedures for which approval was obtained (Figure 1).

Figure 1. Average number of bids per tender procedure from the monitoring sample



Having in mind practices related to implementation of legal provisions governing approval from CPP and indications made by representatives from contracting authorities about problems they are facing, competent institutions are recommended to seriously re-examine the obligation on obtaining previous approval and existence of CPP. Instead of this additional administrative burden in the system of public procurements, competent institutions should reconsider introduction of other forms and models of control during implementation of public procurements, following the example of other countries, instead of maintaining the current legal solution that is unique worldwide.

With the exception of having decreased number and value of procurement contracts signed by means of negotiations, i.e. direct agreements, to present there are no other known arguments supporting the Council's existence and legal obligations implying the need to obtain approval for public procurements.

Nevertheless, various examples have been observed in practice.

In the public procurement concerning reconstruction of local road in one small municipality, on the request to disclose documents related to performed market research or approval obtained from CPP, the contracting authority did not provide any documents and responded that "market research was not conducted because it was a matter of transparent public procurement procedure" and that "approval was not sought from CPP".

Such response is inadequate because implementation of transparent procedures does not have anything in common with law-stipulated obligations on conducting market research or obtaining approval from CPP.

Given that the analysed procedure concerned procurement of "works", the contracting authority was not obliged to perform market research or obtain approval for the technical specifications. However, having in mind that the contracting authority used (to significant extent) eligibility criteria to establish ability of economic operators, it had to perform market research to determine sufficient number of companies fulfilling said criteria or it had to address CPP for approval of used eligibility criteria. In this case, the contracting authority did not perform market research and did not obtain approval from CPP, which means that it had violated the Law. Moreover, eligibility criteria for tender participation defined by this contracting authority include: positive balance and total income in minimum amount of 150,000,000 MKD for the last three years; at least three statements on satisfactory performance of services in the last three years; at least 2 civil engineers with minimum B certificate; own or rented tipper truck, dredge, earthmover, rollers, and statement on use of asphalt base.

Another problem identified with this procurement procedure concerns the fact that its estimated value amounted to 13,000,000 MKD, but economic operators were required to demonstrate annual income in cumulative amount of 150,000,000 MKD for the last three years, i.e. 50,000,000 MKD per year, which is almost 4 times higher than the procurement's value.

Absurdity of the legal obligation for market research in order to demonstrate existence of sufficient number of companies manufacturing goods being procured in the country and abroad was observed in several examples from the monitoring sample concerning procurement of everyday office supplies. In all these cases, contracting authorities failed to demonstrate sufficient number of manufacturers on the domestic and on foreign markers, so they had to obtain approval from CPP.

There are several examples in which the contracting authorities completed successful market research and obtained confirmations from sufficient number of companies indicating that they fulfil requirements defined in tender documents, but they received bids from only one company after announcement of their procurement notices. It seems that, even in these cases, the obligation on demonstrating market competition has lost its purpose, knowing that ultimately it has not been effectuated in increased number of bidding companies.

Other examples include cases in which contracting authorities were not required to conduct market research or obtain approval from CPP for their public procurements (because they concerned procurement of services or works or they did not use eligibility criteria), but they still conducted market research. In that, it is unclear whether contracting authorities engaged in such efforts due to ignorance or as good practice, in order to make sure that sufficient competition does exist on the market.

FINAL PRICE AND TENDER ANNULMENT DEPEND ON THE PROCUREMENT'S ESTIMATED VALUE

Numerous examples from the monitoring sample showed great interdependence between procurement's estimated value and final price attained, as well as with tender annulments. Therefore, prior to engaging in any serious effort to set estimated values of their procurement, contracting authorities are recommended to perform preliminary research of market prices and conditions.

Examples for this interdependence are abounding. One of them concerns the procurement of works for construction of gazebo, organized by one primary school. This procurement procedure was successful in the second attempt, notably because the first procedure was annulled on the grounds that the only bidding company offered price in the amount of 80,000 MKD and did not reduce its bid on the occasion of submitting final price, although the procurement's estimated value amounted to 67,790 MKD. The contracting authority annulled this tender procedure under the justification that "the bid is not adequate because it not acceptable, which means that the bid does not fall within the amount set by the contracting authority…" According to the Law, when a particular bid is evaluated as inacceptable, it means that the bid has not been submitted within stipulated deadline or the bid does not fulfil requirements from tender documents. On the other hand, when a particular bid is evaluated as inadequate, it means that the bid is acceptable, in terms of being submitting within stipulated deadlines and fulfilling defined requirements, but does not fall within the amount set by the contracting authority for that procurement. Hence, justification provided by the contracting authority is obviously erroneous, i.e. the bid is acceptable, but not adequate.

Be that as it may, the procedure was immediately repeated and its estimated value was increased to 80,000 MKD, i.e. in identical amount with the bid submitted by the single bidding company from the annulled tender procedure. One biding company participated in the repeated tender procedure as well, but was not the same company that offered 80,000 MKD ten days earlier. Namely, the new company's bid amounted to 79,940 MKD, i.e. by 60 MKD less that the procurement's estimated value. As it might be expected, this company was awarded the procurement contract.

Otherwise, the Law stipulates that when final price attained at e-auction or by means of submission of final price is higher that the procurement's estimated value, contracting authorities are allowed to sign the contract in that amount, provided they are able to secure the funds needed and provided that the price attained is not less favourable than market prices. Knowing that in this case the contracting authority secured the higher amount of funds, it is unclear why it had to annul the tender procedure and announce

new procedure, on the same day nonetheless, in the amount received as bid under the first procedure.

In these cases, the question is raised about the need to annul the tender procedure and organize new procedure, knowing that the contract could have been signed in the first attempt because the contracting authority, several days later, estimated the procurement's value in the same amount as the bid received under the first procedure, meaning that it disposed with necessary funds. Tender annulment and repeated procurement procedure resulted in saving of 60 MKD, but wasting much more time and money to organize the public procurement anew. Also, unanswered is the question why the bidding company from the first procedure did not participate in the second procurement procedure, given that another bidding company participated in the repeated procedure and its bid indicated the same amount of the bid obtained under the annulled tender procedure.

On the other hand, there are numerous examples when the final price presented (or the most favourable acceptable bid) is higher than the procurement's estimated value, i.e. does not fall within the amount of funds allocated by the contracting authority for that procurement by means of its decision on organizing public procurement and the contract was signed in the higher amount, although that amount was sometimes significantly higher than planned funds.

Such is the procurement of construction works organized by one small municipality. One bidding company submitted its bid upon the procurement notice in the amount of 3,642,862 MKD and on the occasion of submitting final price reduced its amount to 3,034,911 MKD. The contract was signed with this company, although the procurement's estimated value amounted to 2,600,000 MKD, i.e. the price bided was by 17% higher than the amount planned for this procurement.

In this context, contracting authorities are again recommended to make additional efforts for the purpose of as precise definition of procurements' estimated values as possible, because final price attained in tender procedures and outcomes of tender procedures depend on that amount.

More specifically, prior to setting procurements' estimated values, contracting authorities are recommended to conduct some form of preliminary market research, different from the market research required by the Law in terms of establishing market competition for goods being procured and eligibility criteria defined for tender participation. Sole purpose of this preliminary research is to establish the price of goods/service/works being procured as precisely as possible. Based on conversations with contracting authorities it was concluded that current practices imply setting procurements' estimated values according to the value of same type of procurements implemented in previous years or according to funds allocated for that purpose in their respective budgets. Such, one might say, voluntary manner of setting estimated values leads to numerous problems. Inter alia, one of the most frequent problems is attainment

of prices higher than market prices, which fall within the estimated value, in particular when it is set in higher amount. On the contrary, there are also cases when estimated values are set in lower amounts and tender procedures cannot be implemented, because all bids are in amounts higher than planned funds, frequently leading to tender annulments.

Therefore, proper setting of estimated values could lead to lower prices and more efficient procurements in terms of successful implementation thereof and reduced tender annulments that imply loss of time and money and result in distrust in the system of public procurements.

Setting estimated values of procurements requires research of recent market developments and movements in relation to prices, competition, supply and demand, as well as possible forecasts for future movements. Moreover, important information can be obtained by monitoring recently attained prices for procurement of same products by other contracting authorities.

Importance assigned to solid estimation of procurements' values arises from the fact that large share of tender procedures, irrespective of the fact whether they implied organization of e-auction (in case of more than one bidding company) or submission of final price (in case of one bidding company), ultimately result in attainment of prices that are identical or similar with the procurement's estimated value.

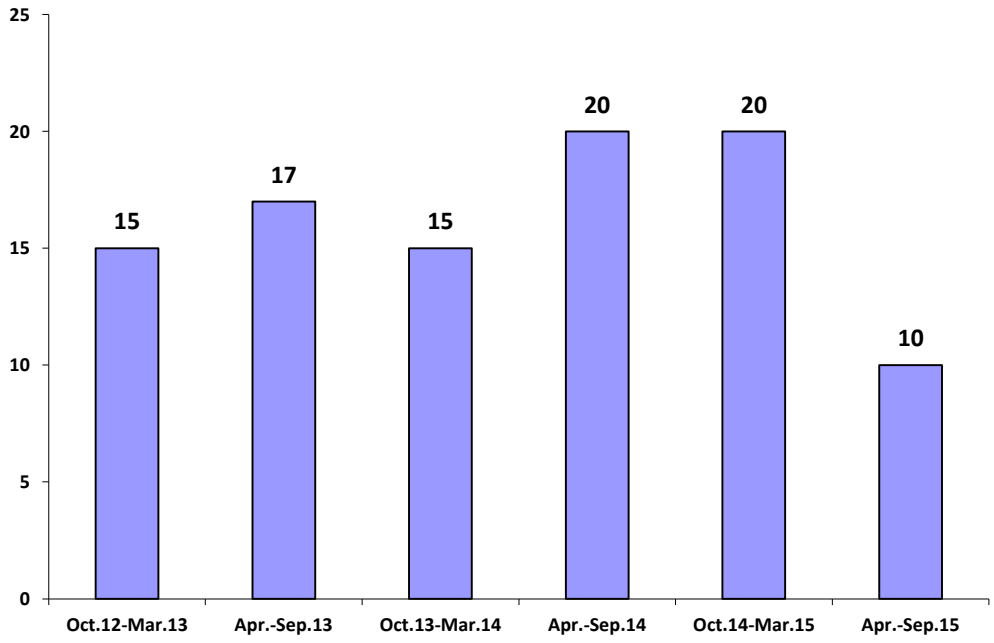
PROBLEMATIC (NON)ANNULMENT OF PROCUREMENT PROCEDURES

In this monitoring period and sample, the share of tender annulments has decreased to below-average level, although there are examples of problematic tender annulments or non-annulment of tender procedures.

In the past monitoring period, the share of tender annulments has increased to high 20%, implying an increase by 5 percentile points compared to the previous monitoring period, but it accounts to only 10% in this monitoring period (Figure 2).

However, having in mind that cases were observed in which no bids have been received until the public opening of bids and, instead of being annulled as required by law, the tender procedure was completed with signed procurement contract, it seems that the actual share of tender annulments would be in the range above 15%.

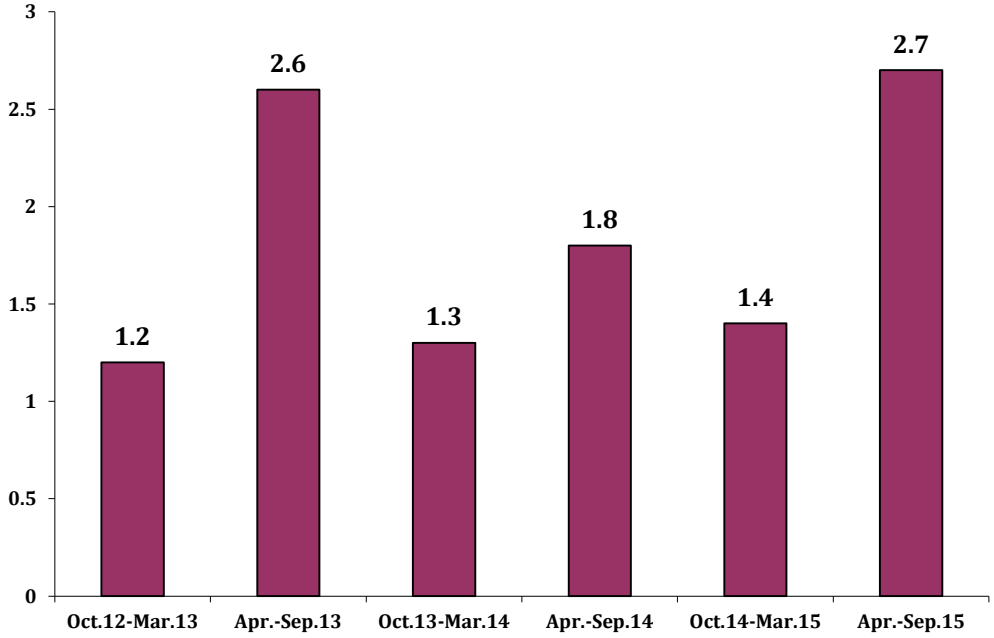
Figure 2. Share of tender annulments in the monitoring sample at local level



As was the case in previous monitoring periods, in this monitoring period and sample the main reason indicated for tender annulment also implied unfavourable prices. This has been indicated as grounds for annulment in 50% of all tender procedures annulled. Reasons implying significant violations of Article 210 from the Law on Public Procurements and unpredictable changes to contracting authority's budget account for 25% of tender annulments each.

Otherwise, the average number of bids per annulled tender procedure has increased from 1.4 bids in the previous reporting period to 2.7 in this reporting period (Figure 3). Of course, this trend is closely related to the type of tender procedures that have been annulled. Namely, three quarters of annulled tender procedures were organized as open procurement procedures, whereas one of them was first completed and two months later the decision on selection of the most favourable bidding company was replaced with new decision on tender annulment.

Figure 3. Average number of bids per annulled tender procedure



Otherwise, it is interesting to note that all annulled tender procedures from this monitoring sample implied specific cases of errors made by contracting authorities.

Example thereof was observed in the annulment of one open procedure organized for procurement of mobile software application for reading water-meters with accompanying computer system, organized by local utility enterprise. This procedure was marked by submission of one bid whose price ranged within the procurement's estimated value. Nevertheless, the contracting authority took decision on tender annulment because "the number of candidates was lower than the minimum threshold for public procurement contract awarding stipulated under Article 169, paragraph 1, line 1 of the Law". Such decision on the part of this contracting authority is erroneous, because it is a matter of open procedure for which the Law does not stipulate any limitations in terms of minimum number of bidding companies, i.e. bids and when the contracting authority receives only one bid, the bidding company – provided that it fulfils conditions and deadline, i.e. the bid is evaluated as acceptable – is invited to

submit final price, if it is willing to reduce the initial bid. None of these aspects were present in the analysed tender procedure; on the contrary, the procedure was annulled by means of referral to non-existing legal grounds for this type of procurement procedures. However, that does not exhaust concerns with the said tender procedure.

Although the contracting authority annulled this tender procedure, it failed to present the Electronic Public Procurement System with notification on tender annulment, but submitted notification on signed contract for public procurement, not with the company that appeared as single participant, but with a different bidding company. Moreover, no information is available that any other bidding company has been invited to submit final price. Also, it is not a matter of new tender organized as negotiation procedure without prior announcement of call for bids, but the same procedure that was first annulled and later completed by means of signing contract with another bidding company.

Another example is the tender procedure annulled on the grounds of inadequate price, which was repeated on the same day under new estimated value in identical amount of the bid on whose grounds the procedure was annulled in the first place. Same price was obtained in the repeated procedure, but from another bidding company and the contract was signed with that company.

Next example includes the tender procedure that was completed, including the organization of e-auction, and two months later the decision on tender annulment was taken because of unpredictable changes to the contracting authority's budget. More specifically, it is a matter of procurement procedure in the value of 15,000,000 MKD for construction of bus stations, organized by one public enterprise, for which the contracting authority invested serious funds and time. Hence, it is unclear why this public enterprise announced and implemented this tender procedure in the first place, if it did not have sufficient budget funds, moreover knowing that the procedure in question is not common and everyday procurement, but large scale procurement that is organized once within period of several years.

Monitoring results in this regard inevitably impose recommendations on limiting legal grounds for tender annulments anticipated under the Law on Public Procurements.

Having in mind the interdependence of irregularly set estimated values and tender annulments, recommendation provided under the section on procurement's estimated value is valid also in this regard and concerns capacity-building for officers working on implementation of public procurements or capacity-building for state institutions in terms of performing preliminary market research aimed at righteous and more precise setting of procurements' estimated values. In turn, this will result in additional decrease of the number of tender annulments.

Tender procedures that have not received any bids, but are completed with contract signing

The monitoring sample included cases of procurement procedures that should have been annulled, as required by the Law and due to the fact that no bids have been submitted until the public opening of bids, but were completed with decisions on selection of the most favourable bid, as seen from relevant documents available.

Such example was the procedure for procurement of services related to repair and maintenance of vehicles, implemented by local public enterprise. This procurement procedure is considered problematic from several aspects.

Although, by the public opening of bids, the contracting authority has not received any bids, instead of annulling the tender procedure, it took a decision on selection of the most favourable bid, i.e. signed the procurement contract with the single bidder, as indicated in relevant records for this tender procedure.

Moreover, the contracting authority has not sought approval from CPP concerning technical specifications defined in this tender procedure, because it is a matter of services and they do not require such approval. However, documents presented to the monitoring team indicated that the contracting authority had performed a preliminary market research and obtained confirmations from five economic operators indicating that they provide services requested in compliance with technical specifications.

Furthermore, the contracting authority did not seek approval from the Council concerning eligibility criteria for tender participation, in particular because it has not defined any requirements in that regard. Tender documents for this public procurement showed that the section on eligibility criteria for bidding companies do not include any requirements, except for the fact that bidding companies should be registered entities. However, one page before – under the section on method and deadline for service performance – there is a clearly defined requirement, which the State Commission on Public Procurement Appeals has established as being discriminatory. It is a matter of the criterion whereby vehicle repair must be performed at the bidding company's service workshop located within distance of 2 kilometres from the contracting authority. Such action on the part of the contracting authority creates problems. First, although it has not formally defined eligibility criteria for tender participation under the relevant section, tender documents do include one limiting criterion. Second, the criterion in question is not enlisted under the section from tender documents intended for eligibility criteria that should be met by bidding companies, but is enlisted under another section, which is inadequate place for such requirements.

Documents presented by the contracting authority are unclear in terms of the market research conducted, i.e. whether confirmations received from economic operators also include confirmation that they fulfil this requirement as well. Otherwise, in the absence

of such confirmations the contracting authority should have requested approval from the Council of Public Procurements.

Final and most concerning aspect is the fact that the contracting authority has not presented EPPS with notifications on procurement contracts signed whose amount exceeds 20,000 EUR, which it is obliged to submit by 31 January this year, for public procurements implemented in the second half of the previous year.

Next example analysed is similar in terms of non-annulment of the procurement procedure that must have been annulled according to the Law. It concerns the procedure for procurement of concrete slabs for pavement of streets and sidewalks in one municipality. Although, by the public opening of bids, the contracting authority did not receive any bids, ultimately the relevant notification on contract signed showed that procurement contract has been signed with the single bidding company.

On the account of these examples, competent institutions are recommended to introduce disciplinary and misdemeanour sanctions for contracting authorities for non-compliance with legal provisions contained in the Law on Public Procurements. Both cases analysed above showed that the Law has been seriously violated, while the two current mechanisms which the legislator envisaged as control elements in the system of public procurements – the obligation to obtain approval from CPP for relevant public procurements and the possibility to lodge appeal in any stage of the procurement procedure – have not yielded results. Both possibilities are not applicable only in above presented cases, but have been avoided in numerous other cases in which violation of LPP has been established, especially in regard to non-compliance with mandatory and timely publication of information in EPPS about implemented public procurements.

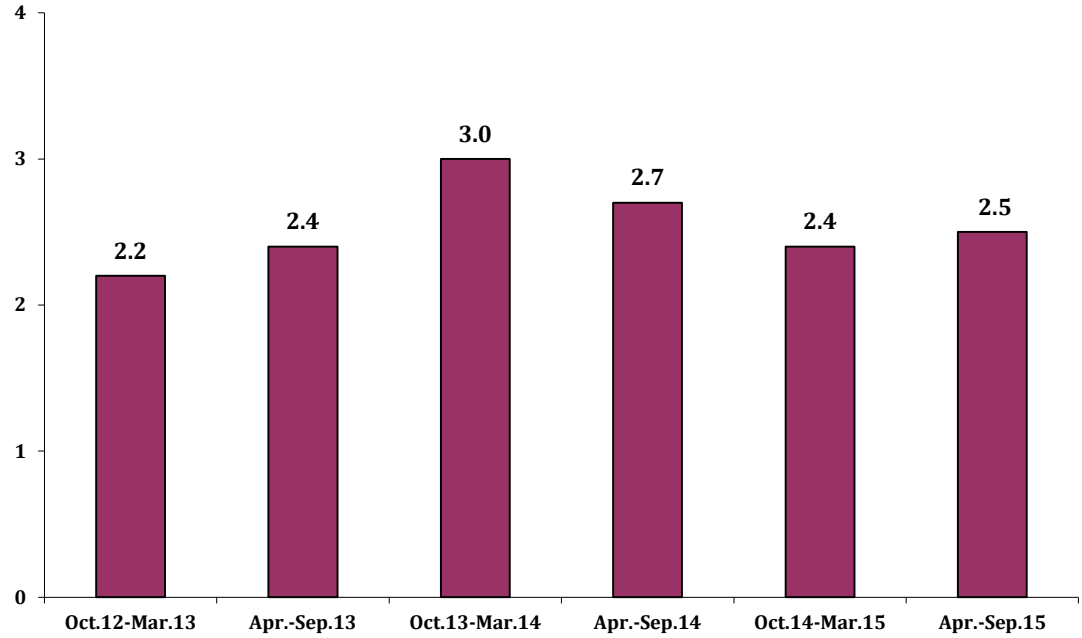
COMPETITION IN LOCAL TENDER PROCEDURES MAINTAINS THE SAME LOW LEVEL

Competition in tender procedures organized on local level remained on the same low level of an average of 2.5 bidding companies per tender procedure, while the share of tender procedures with no bidding companies or with only one bidding company was decreased.

Marked by minimum increase of 0.1 percentile points, competition in monitored tender procedures implemented by local institutions remains almost unchanged compared to the previous period, and accounts for 2.5 bidders per tender procedure.

Following the increased competition noted in the period immediately after changes were made to LPP whereby so-called small procurements were included in the group of mandatory tender procedures, culminating with record-breaking average of 3 bidding companies per tender procedure in late 2013 and early 2014, monitoring activities in the next years have established re-emerged trend on decreased average number of bidding companies. From that period onwards, competition level in monitored tender procedures has been reversed to the level observed three years ago (Figure 4).

Figure 4. Competition in monitored tender procedures on local level: average number of bidding companies per tender procedure



Competition is even lower when represented according to other measures for central tendency different from mathematical computation of the average, i.e. the median and the mode.

Arithmetic mean: 100 : 40 = 2.5 bidders.

Hence, the median, i.e. the middle number of bidding companies when ranked in an increasing order accounts for 2.

Increasing order of the number of bidders:

0 0 1 1 1 1 1 1 1 1 1 1 1 1 2 2 2 2 2 **2 2** 2 2 3 3 3 3 3 3 3 4 4 4 4 4 5 5 5 6 8

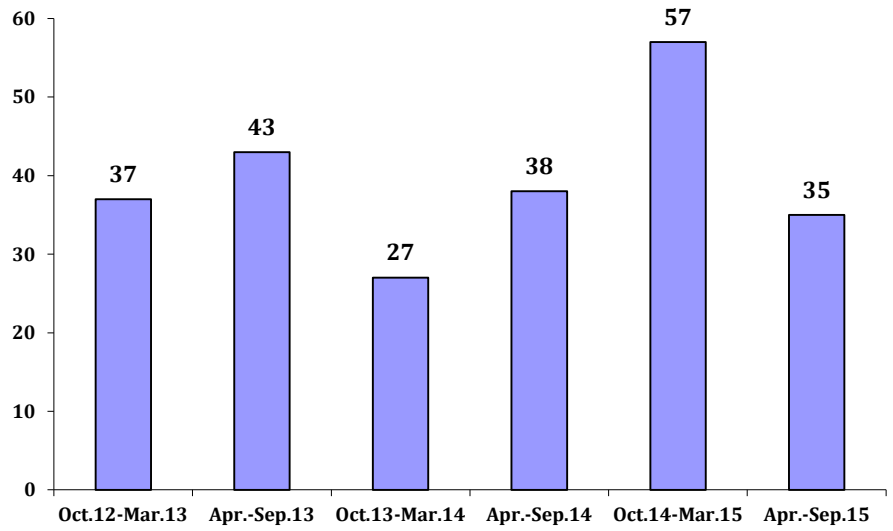
Median: 2 bidders (middle of the order: 2+2 = 4 : 2 = 2).

The other measure – the mode, i.e. the most frequently occurring number of bidding companies accounts for 1, because as many as 12 tender procedures were presented with only one bid.

Mode: 1 bidder (most frequently occurring number of bidders).

Unique characteristic for this monitoring sample is decreased number of tender procedures marked by participation of one bidding company or no bidding companies. Therefore, in this monitoring period of six months, 35% of tender procedures have received one bid or have not received any bid. This share represents a significant decrease compared to the previous period, although it implies reversion towards an average threshold, when measured against figures from the past period (Figure 5).

Figure 5. Competition in monitored tender procedures on local level: share of tender procedures with one bid or no bids



As regards competition in tender procedures, competent institutions are recommended to develop serious analyses of reasons affecting reduced competition in public procurements and the current, extremely low level of competition. To date, monitoring of public procurements continuously indicated to all and any reasons that have led to low competition, as well as to possible changes and improvements to the Law and the overall system of public procurements aimed at increasing competition which, in turn, would inevitably lead to increased chances for selection of quality and more cost-effective bids. Proposed changes include: to revoke law-stipulated obligation on obtaining approval from CPP; to revoke mandatory character of e-auctions in all tender procedures; to amend the legal provision stipulating use of "lowest price" as the single contract awarding criterion and to restore the possibility for use of selection criterion defined as "economically most favourable bid" in cases where it is more efficient and cost-effective; to increase transparency and proactive publication of more detailed information on tender procedures intended for citizens, instead of targeting only participants in public procurements; to restore the trust of high number of companies so they would participate in public procurements; to streamline the appeal procedure and to enable high number of dissatisfied companies to lodge appeals in simple, prompt and cost-effective manner; to introduce control mechanisms during implementation of public procurements, etc.

DOWNWARD BIDDING AT E-AUCTIONS TAKES PLACE ONLY BETWEEN TWO COMPANIES

While the share of monitored tender procedures that have been completed with e-auction is increasing compared to the last monitoring period, the average number of companies participating in downward bidding at e-auctions accounted for only 2.

Under the present sample, monitoring activities observed certain increase in regard to the share of public procurements that have been completed with organization of e-auction, which is mandatory for all tender procedures marked by participation of more than one bidding company. During e-auctions, bidding companies compete among them by means of downward bidding starting from the initial lowest price, whereby the company that offers the lowest bid is ultimately awarded the contract.

However, e-auctions do not take place in vast number of tender procedures, mainly due to the fact that they have been marked by participation of one bidding company or due to the fact that tender procedures were annulled prior to organization of e-auctions. Non-organization of e-auctions results in lost chance to reduce initial prices which, by rule, are higher than actual prices, because companies anticipate reduction of prices in the course of e-auctions and initially offer higher prices.

If in the past period e-auctions were organized only in half of monitored tender procedures, their share in this monitoring sample accounts for as many as 66% of tender procedures. This accounts for an increase by more than 10 percentile points compared to the average calculated in the last years.

As regards their effects, i.e. in cases where e-auction was organized, downward bidding has resulted in average reduction of initial prices by around 20%. Nevertheless, this figure is of relative importance, because it implies a decrease only in comparison against initial prices offered by companies, and not in comparison against the procurement's estimated value. In most cases, initial prices are higher than the procurement's estimated value and reduction thereof in the course of e-auction is pursued to the level of or slightly below the estimated value, so that participating companies are certain that their prices fall within the range of procurement's estimated value and that the tender procedure is not annulled due to higher prices attained compared to planned funds.

On the other hand, it is difficult to determine the share of price reduction at auctions in comparison to the procurement's estimated value, which would provide truthful image about actual saving of funds, because in most procurement procedures companies bid

prices related to unit of goods/services/works being procured, while the procurement's estimated value is presented as total amount of funds planned for the said procurement.

Another prominent feature of this monitoring sample is the extremely low number of companies participating in downward bidding of prices at e-auctions. While tender procedures that have been completed with organization of e-auction have an average of 3.4 bidding companies, an average of only 2.1 companies participated in downward bidding at e-auctions.

Numerous examples thereof were noted in monitored tender procedures. For instance, two companies participated in downward bidding at the e-auction organized under the procurement procedure implemented by one local public utility enterprise and related to transport services – one daily tour of transport service with tipper truck intended for elimination of unregistered landfills. Starting price for downward bidding was set at 200 MKD. During the e-auction, one bidding company reduced the price by 1 MKD and offered 199 MKD for said service, while the second bidding company reduced the price by additional 1 MKD, arriving to final price of 198 MKD, and was awarded the public procurement.

Another tender procedure concerning procurement of works related to completion of local road, organized by one municipality, was characterized by participation of three bidding companies, of which one company reduced its price only once during the e-auction, by a minimum amount possible, and was awarded the contract. Examples of such formal organization of e-auctions are abounding.

On the other hand, there were examples of dramatic reduction of prices in the course of e-auctions, including one procedure in which the bidding company offering the lowest price at the e-auction later refused to sign the contract on the grounds of overly low price, which triggered the sanctioning mechanism, i.e. the company was issued negative reference and was prohibited to participate in tender procedures for a period of one year. Although these situations were common in the period immediately after mandatory e-auctions were first introduced, they are present nowadays as well, which is indicative of companies' insufficient knowledge of rules governing e-auctions.

Tender procedures that were not finalized with organization of e-auction have been annulled or include those that have been marked by participation of one bidding company or – after the bid evaluation process – have remained with only one bidding company, thereby failing to provide conditions for organization of e-auction.

In these cases, the single bidding company is invited to submit its final price, i.e. if it wishes to reduce the initial price. This was noted in 34% of monitored tender procedures.

Outcomes in high number of tender procedures where the single bidding company had been invited to submit final price implied that contracting authorities were not

presented with final prices, i.e. bidding companies maintained their initially offered prices.

More specifically, in 77% of these cases bidding companies did not submit reduced prices, while in 23% of cases they decided to reduce their initial prices. Most often, bidding companies submit new, reduced prices for the purpose of falling within the range of the procurement's estimated value and to be certain that the contracting authority would not annul the public procurement because the price offered is higher than planned funds.

Having in mind above presented situations, competent institutions are recommended to finally undertake measures aimed at making the most of e-auctions. First, e-auctions should not be mandatory for all procurement subjects, but only in cases where they would yield best results in terms of price reduction. This usually concerns goods of standard quality and products whose quality could be precisely described in advance, thereby giving the price actual role in tender procedures. Second, due reconsideration should be made to revoke mandatory character of e-auctions, especially for small procurements.

Be that as it may, there is an urgent need for detailed analysis of effects created by mandatory e-auctions, while future amendments to the Law need to include revision of this legal solution, with a view to achieve as greater efficiency as possible in this aspect of the system of public procurements.