



POLICY BRIEF

Planning of Public Procurements in Macedonia:
Between the Needs and the Reality

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INTRODUCTION

On annual level, the value of public procurements organized in our country ranges from 600 million to almost 1 billion euros and accounts from 6% to 10% of the Gross Domestic Product.

Having in mind that public institutions manage and spend funds in whose creation they have not directly participated (revenue is created by means of collection of taxes and other charges levied on citizens and companies), nor do they suffer any economic consequences from irrational spending of said funds (public funds are not personal property of entities/persons managing them and loss thereof does not imply personal damages), there is a need for continuous improvement of mechanisms that should guarantee transparent, legal and purposeful use of funds for public procurements.

Hence, the stage on planning public procurements is of great importance for successful implementation of procurement procedures and award of procurement contracts, as one of the three main stages in this process, together with organization of tender procedures and contract performance.

In that, successful planning of public procurements synthesises a series of important aspects, such as adequate assessment of needs for public procurements, i.e. goods, services and works that should be procured; precise establishment of procurements' estimated value; and, finally, proper definition of timetable for organization and implementation of public procurements.

The importance of planning public procurements arises from the fact that this stage sets the foundations that determine further course of this process and successful attainment of needs. Equally important aspect is the fact that only small portion of the planning stage is regulated under relevant legislation on public procurements, which primarily focuses on the middle stage, i.e. organization of the procedure on awarding public procurement contracts. Hence, planning is the stage that heavily depends on integrity, commitment and professionalism demonstrated by staff members at contracting authorities, not only those involved in organization and implementation

of public procurements. Hence, planning of public procurements is often regulated by means of bylaws, as well as internal acts adopted by institutions.

Based on practices in Macedonia, planning - as separate stage in the cycle of public procurements - is accompanied by a series of weaknesses. Problems affecting the process of adequate establishment of procurement needs are best represented by frequent changes and amendments made to public procurement plans and low realization of these plans.

On the other hand, problems related to establishment of procurements' estimated value are a result of the absence of precise rules that would govern estimation of procurement value, which brings under question the underlying principle of public procurements that concerns obtaining the best value for money spent.

Problems related to adequate timing of public procurements are seen in a multitude of examples from actual practices that have led to delayed performance of already announced activities or projects, signing of tender contracts in higher value as part of negotiation procedure without prior announcement of calls for bids on the grounds of urgency, publication of procurement notices for multiannual contracts in the midst of summer holiday season, etc.

Having in mind that there are a total of 1,435 contracting authorities in the country, it is quite understandable for institutions' capacity to implement public procurements and, correspondingly, their capacity to plan public procurements, to greatly vary among them. Hence, it is common for smaller institutions at local level to encounter problems in terms of developing public procurement plans that would not only remain unchanged in the course of the year, but would also be fully realized. However, concerns are raised with the fact that planning of public procurements is accompanied by a series of weaknesses also in the case of contracting authorities, which, by mere logic of matters, should dispose with the highest capacity, such as the government and its line ministries.

CURRENT STATE-OF-AFFAIRS: PROBLEMS THAT NEED TO BE ADDRESSED

According to the applicable Law on Public Procurements (Article 26), on the basis of established sources of funding the contracting authorities adopt their plans on overall procurement needs in the current year per type of goods, services and works, in compliance with the General Glossary of Public Procurements (GGPP), wherein they also define expected start of procurement procedure, contract's estimated value and type of procedure to be organized on awarding the procurement contract.

Contracting authorities are obliged to adopt their annual plans by the end of January in the current year and, when needed, are allowed to change and amend this plan throughout the year.

The Ministry of Finance stipulates the template, contents and method for development of annual plans on public procurements. The applicable Rulebook on the Template, Contents and Method for Development of Annual Plans on Public Procurements¹ was adopted in 2012 and is essentially very superficial, focusing solely on graphic format of these plans, organized into seven columns as follows: ordinary number of procurement procedure, subject of procurement contract, code under GGPP, expected start of procurement (month), procurement's estimated value, type of procedure to be organized, while the seventh column is intended for possible comments.

Frequent Changes to Public Procurement Plans

The Law on Public Procurements does not stipulate upper threshold on the number of amendments to public procurement plans. According to the Rulebook, contents of annual plans on public procurements should not be amended in cases of changed estimated value or changed type of procedure to be organized on awarding procurement contract. This means that plans are amended only in cases when particular procedure that had been planned is deleted from the annual plan, when new public procurement procedure is added, or when planned start of procurement procedure is changed.

The practice has shown that public procurement plans are often subject to changes due to deletion of already planned or addition of new tender procedures, but rarely due to alignment of planned deadlines for implementation of procurement procedures, although they are often breached.

More specifically, the project "Network for Transparency, Accountability and Integrity in Public Procurements" conducted a research of public procurement plans for 2017, which showed that line ministries have changed and amended their plans in the range from one to five times in the course of the year. In the case of the government's general secretariat and five line ministries, these changes have covered 32% to 62% of items under their respective public procurements plans (deletion of initially planned tender procedures and addition of new tender procedures), while in the case of eight line ministries, these changes have accounted for 1% to 24%, and only two line ministries have not made any changes to their annual plans for 2017. Detailed overview of data per institution is available on the specially designated website: integritet.mk.

Poor Realization of Public Procurement Plans

The government, including its line ministries and secretariats, is marked by an average realization rate of procurement plans standing at 57%, whereby the highest realization was observed with the Ministry of Finance (87%), and the lowest realization was observed with the Ministry of Health (21%). Calculation of relevant realization rate for all public procurement plans was made by comparing completed tender procedures against plans on public procurements after they have undergone all changes thereto. Hence, it can be concluded that the realization rate would be even lower if their realization would be established on the basis of public procurement plans adopted at the year's beginning, not taking into account all changes and amendments thereto in the course of the year.

¹ <http://www.bjn.gov.mk/content/documents/PRAVILNIK-ZA-FORMATA-SODR@INATA-KAKO-I-NA%5EINOT-NA-IZGOTVUVAWE-NA-GODINIOT-PLAN-ZA-JAVNI-NABAVKI1.pdf>

Hence, it seems that institutions do not have practices in place to timely delete procurements procedures they do not plan to organize, which means that plans do not reflect actual intent and need, thus creating confusion among potential tender participants, as well as among citizens affected by implementation of these public procurements.

In strategic terms, the fact that government institutions are marked by such low realization of public procurements plans gives rise to the assumption that contracting authorities do not view public procurement plans as a tool which should ultimately ensure greater efficiency in implementation of public procurements and attainment of relevant operational goals set by institutions concerned.

Low realization rate of public procurement plans could be explained with the absence of system on monitoring their implementation. The research showed that only five from the total of 20 line ministries and government secretariats have established some form of system to monitor realization of their public procurement plans.

As part of its performance audit titled "Efficiency of Local Self-Government Units in Planning and Realization of Annual Plans on Public Procurements",² the State Audit Office has assessed that, among municipalities, the realization rate of planned procurements stands at 66%. In that, it is assessed that public procurement procedures from the annual plan are anticipated on the basis of planned revenue, instead of actual capacity of individual municipalities for revenue collection and execution.

According to this report, in the period 2014-2016, the average revenue execution among municipalities covered by this audit accounts for 56%, which is indicative of the fact that unrealistic assessment of expected revenue collection also affects efficiency in planning and realization of public procurements.

Secrecy of Public Procurement Plans

The current Law on Public Procurements does not stipulate any obligation for institutions to publish their public procurement plans, let alone changes and amendments thereto. However, due to the importance of this issue, transparency related to procurement plans was duly integrated in commitments enlisted in the Open Government Partnership Action Plan for the period 2014-2016.

In spite of that, implementation of this commitment in the practice was exceptionally low. Having in mind the poor implementation thereof, in October 2017, the government adopted a decision whereby it established the list of acts and materials which line ministries are obliged to publish on their official websites. This list includes the annual plan on public procurements, as well as all changes and amendments thereto.

In spite of this decision taken by the government, some ministries still do not publish their plans. More specifically, six from the total of 20 government institutions (line ministries, secretariats and government's secretariat for general and legal matters) have not published their annual plans on public procurements.

Having in mind the fact that the obligation for mandatory transparency in terms of public procurement plans does not create any legal effect on local authorities, state-of-affairs at this level of government is even worse. Namely, only 20 from the total of 81 local self-government units have published their public procurement plans.

Publicity of public procurement plans is important for both, citizens and businesses. Publication of these plans would allow citizens insight into what certain ministries, municipalities, schools or public enterprises plan to purchase or build in the current year, and thereby gives them opportunity to influence plans so they would reflect citizens' actual needs.

On the other hand, publication of these plans would allow companies to timely prepare for participation in public procurement procedures, hence ensuring positive effect on increased competition in tender procedures and contribution to more cost-effective spending of public funds.

Furthermore, publication of these plans would narrow the space for manoeuvres on the part of those in power to change plans according to their personal and political party interests.

Inadequate Estimation of Procurements' Value

Inadequate estimation of procurements' value is best seen in the fact that not a single government institution that was covered by the monitoring conducted as part of the project "Network for Transparency, Accountability and Integrity in Public Procurements" has developed methodology/guidelines, i.e. official document that

² http://www.dzr.mk/Uploads/57_RU_Efikasnost_ELS-godisno_planiranje_realizacija_JN_2017.pdf

provides basis for calculation of procurements' estimated value.

All institutions refer to the Rulebook on the Method of Estimating Value of Public Procurement Contracts.³ Nevertheless, this rulebook does not define any techniques for calculation of estimated values such as, for example, market research, etc. Hence, estimated values are often set on the basis of budget projections and available funds.

In cases when procurement's value is underestimated, there is increased risk for procurement of goods marked by low quality or annulment of public procurement procedures. On the other hand, in cases when procurement's value is overestimated, i.e. estimated value is higher than the market price, there is risk for contracts to be signed under non-market prices, thus allowing undeserved outflow of public funds into private pockets.

Actually, one of the reasons behind great differences in price for procurement of same goods or services⁴ should be sought in poor estimation of procurements' value that allows companies in given situations to sign contracts at exceptionally high prices. This situation is made possible by the mere fact that, under conditions of mandatory organization of electronic auctions, companies submit higher prices in anticipation of downward bidding, i.e. price reduction during e-auctions. However, in reality, almost one third of tender procedures are presented with only one bid, which results in cancellation of anticipated e-auction and opens possibility for contracts to be signed under initial high prices.

The Law on Public Procurements allows contracts to be awarded also under procedures when the bid obtained is higher than estimated value thereof, which again refers to the need for solid knowledge of actual market prices because, on the contrary, contracting authorities might accept prices that are unfavourable and contrary to the public interest.

Poor Timing of Public Procurements

Institutions are obliged to change and amend their annual plans on public procurements in cases of changed start of public procurement procedures; however, in the practice, tender procedures are organized late, while plans are not amended to reflect such changes.

Delayed organization of public procurement procedures is common feature of many institutions. In that, the public becomes aware of such behaviour on the part of institutions only in cases when procurement procedures in question are directly related to attainment of their needs. Hence, it is not uncommon for shortage of medicines, lack of laboratory reagents or unrepaired medical equipment to be attributed to slow dynamics of public procurement procedures, rather than poor planning of public procurements.

Most obvious examples thereof, which have been perpetuated for long string of years, include procurements organized for student transportation, heating, aerial spraying against mosquitos, and even procurements organized for New Year decoration of public spaces.

For example, as was the case in previous years, this year as well dominant share of municipalities announced their procurement notices for New Year decorations in late November and early December. Data from the Electronic Public Procurement System reveal that four municipalities have scheduled the public opening of bids for this type of procurements intended for 2019 season in the period from 10th to 20th December 2018. Having in mind that, in cases when contracting authorities are presented with more than one bid, the public opening of bids should be followed by organization of e-auction and that this event marks the start of several other deadlines that guarantee legality of the procurement procedure concerned, questions are raised about the time when these contracts would be signed and when would the company awarded the contract perform actual decoration of public spaces.

In addition to being an indicator of poor planning, such behaviour casts doubts on the overall public procurement process. Examples of poor planning include cases of continuous, and even tendentious organization of multimillion tender procedures in duration of three years in the midst of summer holiday season, as well as scheduling the date for public opening of bids on 31st December or 2nd January.

All these cases lead to the impression that planning of public procurements is not used to improve management of public funds, but rather to improve methods for de-stimulation of competition in public procurements.

³ <http://www.bjn.gov.mk/ns-newsarticle-pravilnik-za-nachinot-na-procenuvanje-na-vrednost-na-dogovore-za-javni-nabavki.nspk>

⁴ Index of Rationality, developed by the Center for Civil Communications for 60 types of goods and services, is available on the specially designated website: opendata.mk

PROPOSALS TO IMPROVE STATE-OF-AFFAIRS

Having in mind the above presented weaknesses in the stage of planning public procurements, based on the legislation in effect and aimed to address problems and provide adequate and efficient guidelines for organization of public procurements from the very beginning, following measures are proposed:

- Efforts should be made to adopt new rulebook on the template, contents and method for development of annual plans on public procurements. It should include specific guidelines aimed at ensuring timely organization and implementation of public procurement procedures and the need for market consultations with a view to set procurement's estimated value that reflects actual market prices. By doing so, institutions would be obliged to more seriously approach setting the start of procurement procedures, as well to more realistic estimation of procurements' value.
- The new rulebook on the template, content and method for development of annual plans on public procurements should stipulate obligations for institutions to amend their plans also in cases of changes made to procurements' estimated value. This would enhance pressure on contracting authorities to engage in adequate estimation of procurements' value from the very beginning, i.e. when public procurements are planned, and would ensure adequate information for all stakeholders about all changes made thereto.
- Institutions should develop own detailed guidelines for calculation of procurements' estimated value that would enable them to take into account specificities of different market segments and government levels, as well as nature of public procurements they organize (healthcare system, construction sector, new technologies, etc.).
- Public procurement plans should reflect needs, but also actual funds disposed by institutions at national and local level.
- All institutions should introduce a system on monitoring realization of public procurement plans. This would ensure improvement in terms of realization of public procurement plans, but also contribute towards reduction of frequent changes thereto. At the same time, the system on monitoring realization of public procurement plans would allow staff members responsible for organization of public procurements to take into account experiences related to realization of these plans from previous years when developing their new annual plans.
- Frequent changes to public procurement plans should be reconsidered as indicator in administrative control performed by the Bureau of Public Procurements, as anticipated under the new Law on Public Procurements.
- Public procurement plans should be published on official websites of all institutions. Having in mind that annual plans on public procurements for 2019 would be adopted prior to entry into effect of the new Law on Public Procurements, which duly anticipates transparency of these plans, contracting authorities must pursue such transparency and publicity on own initiative. In addition to annual plans, all changes and amendments thereto should be published as well, thus enabling insight into and streamlined following of changes made.
- With a view to allow the public to closely follow realization of public procurement plans, institutions should provide detailed description of public procurements, instead of enlisting general activities/categories, such as street construction or reconstruction, procurement of software application, etc.
- Actual procurement needs should be established as early as development of public procurement plans. Namely, in compliance with the new Law on Public Procurements, with a view to improve purposefulness of spending taxpayers' money, decisions on organization of public procurements should also include actual need thereof. This would avoid malpractices related to procurement of goods, services and works that contracting authorities do not need, but are procured anyway for the purpose of personal gains, or whose procurement implies irrational spending of public funds.

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